Building sustainable institutions ? : the results of international administration in Bosnia & Herzegovina and Kosovo: 1995-2008

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Building Sustainable Institutions?

The results of international administration in Bosnia & Herzegovina and Kosovo: 1995 - 2008

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‘These administrations face challenges and responsibilities that are unique among United Nations field operations. No other operations must set and enforce the law, establish customs services and regulations, set and collect business and personal taxes, attract foreign investment, adjudicate property disputes and liabilities for war damage, reconstruct and operate all public utilities, create a banking system, run schools and pay teachers and collect the garbage (…) In addition to such tasks, these missions must also try to rebuild civil society and promote respect for human rights, in places where grievance is widespread and grudges run deep.’

Secretary-General of the United Nations,
Report on the Panel of United Nations Peace Operations, 2000: 13

‘If the intervening international force is acting, even temporarily, as a government then it has to take on the full responsibilities of a government - from the rule of law, to the economy, to transport infrastructure, to the defence and intelligence services, to protecting human rights, to local government, to the customs and the police, to health and education, to the operation of the utilities and the setting up and managing of political and governmental institutions.’

Paddy Ashdown,
Swords into Ploughshares. Bringing Peace to the 21st Century, 2007:78-19

‘The desire for European integration is one issue shared by all in Bosnia and Herzegovina. Europe must use this desire to shape a multi-ethnic, democratic country based on the rule of law’

Wolfgang Petritsch,
Address to the European Parliament’s Foreign Affairs Committee, 22 January 2002.

‘Ultimately, Kosovo is, and will remain until resolved, a European problem’

International Crisis Group,
Kosovo: No Good Alternatives to the Ahtisaari Plan, Pristina, 2007: i

Preface

When I first started working on this dissertation little had been written about international administration. However, since this time several well documented studies have been published on the topic. With this study I aim to contribute to the discussion and add to the increasing body of knowledge about this particular phenomenon in international politics. The choice for studying international administration was not difficult. Having been trained as an historian with some knowledge of international law, I found myself comfortable with the multi-disciplinary character of the topic. International administration can be studied from a historical, legal or political point of view or from all three perspectives together. In that respect, the topic of this dissertation represents a well established multi-disciplinary tradition in the study of international affairs.

Writing this dissertation was made possible with the support of the Netherlands Royal Military Academy and the University of Leiden. I would like to thank these institutions for facilitating the research project, but also for enabling me to develop myself as a scholar and teacher. Although much of the research could be done from a desk in Leiden, it was still necessary to make several field trips to Bosnia and Herzegovina and Kosovo. I am grateful to those people working for the United Nations Interim Administration Mission in Kosovo, the Office of the High Representative and other relevant international and domestic organizations for their willingness to grant me interviews.

Writing a dissertation is impossible without the help, support and advice from family, friends and colleagues. I thank all those who have showed interest in the project during the past few years and who haunted me with the seemingly everlasting question: 'when will it be finished?' Without under emphasizing the value of support given by others, I would like to mention in particular two colleagues from Leiden who helped me organizing my thoughts on the topic. I thank Huib Pellikaan and Hans Oversloot for commenting on earlier drafts of this thesis. With their direct and honest comments they kept me on track. 'Thank you' also to all those fellow Ph.D. students who commented on parts of the study during our formal and informal meetings, including the ECPR European International Relations Summer Schools, the Ph.D. courses at the Netherlands Institute of Governance, and the Ph.D. meetings of the Departments of Political Science and Public Administration at Leiden University. I want to thank in particular Janne Malkki with whom I exchanged many ideas during the beginning stages of my dissertation while on a hiking tour in Lapland.

Collegial support consists of more than giving specific advice on the topic of one's dissertation. Therefore I also would express my gratitude to those colleagues who have shared an office with me: Ruben Verheul, Floris Vletter, Tom Louwerse, and Robin Best. To this list, I should also add Petr Kopecky, with whom I did not share my office, but who visited room 5b13 daily for a cup of 'black

death' (coffee) and who enlightened me and my roommates off and on in the art of professional cycling.

Speaking of practicing an art, this dissertation would not have come about without the opportunity to let off steam by practicing budo. Therefore I would like to thank my friends from Sportschool Breedveld for helping me clear my mind with martial arts training. Especially the study trips to France, England and Japan were great for setting aside concerns about international administration for a moment. The same goes for the many other times my friends and my family were kind enough to make me think of something else or to inspire me during my work in progress. That being said, Esme Caubo has undoubtedly been the most important person in all of this and without her, this project would not have been so much fun.

Table of Contents

List of Abbreviations and Acronyms

CEC	=	Central Election Commission
EAR	=	European Agency for Reconstruction
ECMM	=	European Community Monitoring Mission
ESDP	=	European Security and Defence Policy
EU	=	European Union
EUFOR	=	European Union Force (operation Althea in Bosnia and Herzegovina)
EULEX	=	European Union rule of law mission in Kosovo
EUPM	=	European Union Police Mission
G8	=	Group of eight leading industrial nations
ICO	=	International Civilian Office
ICTY	=	International Criminal Tribunal for the former Yugoslavia
IFOR	=	Implementation Force
IMF	=	International Monetary Fund
IPTF	=	International Police Task Force (UN police mission in Bosnia)
JNA	=	*Jugoslovenska Narodna Armija* (Yugoslav People's Army)
KFOR	=	Kosovo Force
KIPA	=	Kosovo Institute of Public Administration
KIPRED	=	Kosovar Institute for Policy Research and Development
KLA	=	Kosovo Liberation Army
KVM	=	Kosovo Verification Mission
NATO	=	North Atlantic Treaty Organization
OHR	=	Office of the High Representative
OSCE	=	Organization for Security and Cooperation in Europe
PEC	=	Provisional Elections Commission
PIC	=	Peace Implementation Council
PISG	=	Provisional Institutions of Self Government
SAA	=	Stability and Association Agreement
SAP	=	Stability and Association Process
SFOR	=	Stabilization Force
UCDP	=	Uppsala Conflict Data Program
UÇK	=	*Ushtria Çlirimtare e Kosovës* (Kosovo Liberation Army)
UK	=	United Kingdom
UN	=	United Nations
UNDP	=	United Nations Development Program
UNFICYP	=	United Nations Peacekeeping Force in Cyprus
UNHCR	=	United Nations High Commissioner for Refugees
UNMIK	=	United Nations Interim Administration Mission in Kosovo

UNMIBH	=	United Nations Mission in Bosnia and Herzegovina
UNOSEK	=	United Nations Office of the Special Envoy for Kosovo
UNPROFOR	=	United Nations Protection Force
UNTAC	=	United Nations Transitional Administration in Cambodia
UNTAES	=	United Nations Transitional Administration of Eastern Slavonia, Baranja and West-Sirmium
UNTAET	=	United Nations Transitional Administration of East Timor
UNTAG	=	United Nations Transitional Assistance Group
US(A)	=	United States (of America)

Political parties in Bosnia

HDZ	=	*Hrvatska Demokratska Zajednica* (Croat Democratic Community)
HDZ1990	=	*Hrvatska Demokratska Zajednica 1990* (Croat Democratic Union 1990)
NHI	=	*Nova Hrvatska Iniciativa* (New Democratic Initiative)
NSRZB	=	*Narodna Stranka 'Radom Za Boljitak'* (People's Party 'Work For Betterment')
PDP	=	*Partija Demokratskog Progresa* (Party of Democratic Progress)
SBiH	=	*Stranka za Bosnu i Hercegovinu* (Party for Bosnia and Herzegovina)
SDA	=	*Stranka Demokratske Akcije* (Party for Democratic Action)
SDP	=	*Socijaldemokratska Partija* (Social Democratic Party)
SDS	=	*Srpska Demokratska Stranka* (Serb Democratic Party)
SNS	=	*Srpski Narodni Savez* (Serb People's Assembly)
SNSD	=	*Savez Nezavisnih Socialdemokrata* (Alliance of Independent Socialdemocrats)
SPRS	=	*Socijalistička Partija Republike Srprske* (Socialist Party of the Serb Republic)
SRS	=	*Srpska Radikalna Stranka* (Serbian Radical Party)

Political parties in Kosovo

AAK	=	*Aleanca për Ardhmërine e Kosovës* (Alliance for the Future of Kosovo)
ADK	=	*Alternativa Demokratike e Kosovës* (Democratic Alternative of Kosovo)
AKR	=	*Aleancë Kosova e Re* (Kosovo new Alliance)

BSDAK	=	*Bošnjačka Stranka Demokratske Akcije Kosova* (Bosniak Party of Democratic Action in Kosovo)
BSK	=	*Bošnjačka Stranka Kosova* (Bosniak Party of Kosovo)
DOS	=	*Demokratska Opozicija Srbije* (Democratic Opposition of Serbia)
DSB	=	*Demokratska Stranka Bošnjaka* (Democratic Party of Bosniaks)
DSV	=	*Demokratska Stranka Vatan* (Democratic Party Vatan)
GIG	=	*Građanska Inicijativa Gore* (Civic Initiative Gora)
GIS	=	*Građanska Iniciativa Srbija* (Civic Initiative Serbia)
IRDK	=	*Iniciativa e Re Demokratike e Kosovës* (New Democratic Initiative of Kosovo)
KDTP	=	*Kosova Demokratik Türk Partisi* (Kosovo Democratic Turkish Party)
KP	=	*Koalicija Povratak* (Coalition Return)
LDK	=	*Lidhja Demokratike te Kosovës* (Democratic League of Kosovo)
LDD	=	*Lidhja Demokratike e Dardanisë* (Democratic League of Dardania)
ND	=	*Nova Demokratija* (New Democracy)
ORA	=	*Partia Reformiste ORA* (Reformist Party ORA)
PD	=	*Partia e Drejtësisë* (Justice Party)
PDAK	=	*Partia Demokratike Ashkanli e Kosovës* (Democratic Ashkali Party of Kosovo)
PDASHK	=	*Partia Demokratike Ashkanli Shqiptare e Kosovës* (Democratic Albanian Ashkali Party of Kosovo)
PDK	=	*Partia Demokratik te Kosovës* (Democratic Party of Kosovo)
PLK	=	*Partia Liberale e Kosovës* (Liberal Party of Kosovo)
PREK	=	*Partia e Re E Kosovës* (New Party of Kosovo)
PREBK	=	*Partia Rome e BashkuarE Kosovës* (United Roma Party of Kosovo)
PSDK	=	*Partia Socialdemokrate e Kosovës* (Social Democratic Party of Kosovo)
PSHDK	=	*Partija Shqiptare Demokristiane e Kosovës* (Albanian Christian Democratic Party of Kosovo)
SDA	=	*Stranka Demokratske Akcije* (Bosniak Party for Democratic Action)
SDSKIM	=	*Srpska Demokratska Stranka Kosova I Metohija* (Serb Democratic Party of Kosovo and Metohija)
SLKM	=	*Srpska Lista za Kosovo i Metohiju* (Serbian List for Kosovo and Metohija)

SKMS	=	*Srpska Kosovsko Metohijska Stranka* (Serbian Party of Kosovo and Methohija).
SLS	=	*Srpska Liberalna Stranka* (Serbian Liberal Party)
SNC	=	Serb National Council
SNS	=	*Srpska Narodna Stranka* (Serbian People's Party)
SNSDKIM	=	*Savez Nezavisnih Socijaldemokrata Kosova i Metohije* (Independent Social Democratic League of Kosovo and Methohija)
UNIKOMB	=	*Partia e Unitetit Kombëtar* (Party of Albanian National Unity)

List of Tables and Figures

Note on the terminology

In this study the term Bosnia refers to the country Bosnia and Herzegovina. The three major peoples or ethnic communities living in Bosnia are referred to as Bosnian Serbs, Bosnian Croats and Bosniaks (in the literature also referred to as Bosnian Muslims, but 'Bosniak' is the self-chosen term used by this community). The adjectives Croat and Serb refer to the national or ethnic identity, while the terms Croatian and Serbian relate to Croatia and Serbia respectively. The term Bosnian is used when a reference is made to all inhabitants of Bosnia, including the smaller ethnic communities. The two political entities of Bosnia are referred to as the Federation of Bosnia and Herzegovina (abbreviated as Federation) and the Serb Republic. Together these two entities form the Republic of Bosnia and Herzegovina. The Republic of Bosnia and Herzegovina is referred to as the federal state, the central state or simply as the state. Its institutions are referred to as federal state institutions, central state institutions or state level institutions. The term Kosovo refers to the territory which used to be a province of Serbia, but whose official self-declared name since 17 February 2008 is Republic of Kosovo. The term Kosovo Albanian is used when referring to the Albanian community living in Kosovo. For the Serb community in Kosovo, the term Kosovo Serb is used. When referring to all communities living in Kosovo the term Kosovar is applied. Regarding the place-names in Kosovo both Albanian and Serbian forms are mentioned, unless both forms are similar (like in the case of Mitrovica). Because people outside Kosovo are still more familiar with the Serbian form, this one is mentioned first. An exception is made for Kosovo's capital. I chose to use one term only, namely Pristina (instead of the Serbian Priština or Albanian Prishtina/Prishtinë), because this internationalized form is commonly used in English texts. The same goes for the term Kosovo. The Republic of Serbia is referred to as Serbia. Only in case of quotations a reference is made to the federation which Serbia formed with Montenegro, i.e. the Federal Republic of Yugoslavia from 1992 to 2003 and the Federation of Serbia and Montenegro from 2003 to 2006. Finally, the Socialist Federal Republic of Yugoslavia is referred to as (the former) Yugoslavia.

1 Introduction

After the end of the Cold War the number of international interventions in countries that were torn apart by internal conflicts increased rapidly. This new interventionism, which was motivated by the United Nations' (UN) desire to engage in so called 'wider' or 'multidimensional' peacekeeping in the 1990's, also gave impetus to the establishment of so called international administrations. During the 1990's, several large and ambitious international administrations were established to administer territories that had been plagued by war and which were left without an effective government. This was the case in Bosnia and Herzegovina (Bosnia), in Eastern Slavonia/Croatia, in East Timor and in Kosovo. Before the 1990's, even before the Second World War, international administrations have been established in places such as Danzig, Leticia, Libya, Congo and Cambodia.[1] In addition there are several cases in which international administrations failed to materialize, but were nonetheless considered (like in Liberia and the Middle East for example).[2]

Despite its practical and empirical relevance, international administration has been until recently a neglected area of research and study.[3] In the last few years, however, several studies have appeared which analyze international administrations from different perspectives.[4] This study builds on that literature

[1] See Chapter one for an historical overview of international administrations.

[2] When state collapse threatened Liberia in the summer of 2003, the option of an international administration was seriously considered by the UN: Tim Weiner, 'An evolving idea for Liberia envisions U.N. Trusteeship', *The New York Times* 17 August 2003. An international administration was also proposed to assist in finding a solution for the conflict in the Middle East: Martin Indyk, 'A Trusteeship for Palestine?' *Foreign Affairs* Mai/June: (2003) 51-66.

[3] Mats Berdal and Richard Caplan, 'The Politics of International Administration', *Global Governance: A Review of Multilateralism and International Organisations* 10:1 (2004) 1-5, 2. Boyka Stefanova, 'Regional Integration as a System of Conflict Resolution. The European Experience', *World Affairs* 169:2 (2006) 81-93, 81.

[4] Examples of recent studies on international administration: Jarat Chopra, *Peace-Maintenance: The evolution of international political authority* (London/New York: Routledge, 1999). Richard Caplan, 'A New Trusteeship? The Administration of War-torn Territories', *International Institute of Strategic Studies Adelphi Paper* 341 (2002); William Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power* (Oxford: Oxford University Press, 2003). Simon Chesterman, *You, The People. The United Nations, Transitional Administration and State-Building* (Oxford: Oxford University Press, 2004). Richard Caplan, *International Governance of War-Torn Territories. Rule and Reconstruction* (Oxford: Oxford University Press, 2005). Michaela Saluman, *Democratic Governance in International Territorial Administration. Institutional Prerequisites for Democratic Governance in the Constitutional Documents of Territories Administered by International Organizations.* (Baden-Baden: Nomos, 2005). Daniel Sven Smyrek, *Internationally Administered Territories - International Protectorates? An Analysis of Sovereignty over Internationally Administrated Territories with Special Reference to the Legal Status of Post-War Kosovo* (Berlin: Duncker&Humblot, 2005). Dominik Zaum, *The Sovereignty Paradox. The Norms and Politics of International Statebuilding* (Oxford:

and offers a comparative analysis of the international administrations in Bosnia (1995 – 2008) and Kosovo (1999 – 2008). The primary objective is to understand how these international administrations have attempted to build sustainable political institutions in Bosnia and Kosovo. Although both international administrations can be considered successful in the sense that large scale violence has not re-occurred in Bosnia since 1995 and in Kosovo since 1999, the question remains whether they have achieved their objective of transforming the war-torn territories into two sustainable political entities.[5] The main question guiding this research is whether the international administrations in Bosnia and Kosovo have been successful in building political institutions. Institution-building is not only about establishing political institutions, but also about embedding the institutions in the domestic societies. In other words, have the political institutions matured from mere internationally created institutions to domestically embedded institutions? The international administration's policy of creating and embedding institutions is referred to as 'institution-building', whereas the process of institutions being created and being embedded is referred to as 'institutionalization'. Since the type of international administration in Bosnia differs from the one in Kosovo, the process of institutionalization might differ for both cases.

The main difference between both international administrations was that the administration established in Bosnia was based on a peace agreement, whereas the one in Kosovo was merely based on a UN Security Council resolution. The international administration in Bosnia was founded after the Dayton Peace Agreement (1995) had ended three years of civil war between the three major ethnic communities in Bosnia: the Bosniaks (often also referred to as Bosnian Muslims), the Bosnian Croats and the Bosnian Serbs.[6] The Dayton Agreement established Bosnia as a federal state in which the three communities were organized in two autonomous entities: the Federation of Bosnia and Herzegovina (Federation) and the Serb Republic. A group of about sixty states and international organizations formed the Peace Implementation Council (PIC) in order to supervise the implementation of the Dayton Agreement. The international administration which actually carried out this task was the Office of the High Representative (OHR).

In Kosovo, the international administration was led by the UN. The conflict in Kosovo was about the political status of the territory. As a province of

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Oxford University Press, 2007). Ralph Wilde, *International Territorial Administration. How Trusteeship and the Civilizing Mission Never Went Away* (Oxford: Oxford University Press, 2007).

[5] The rather vague term 'political entity' is used instead of 'state', because in the case of Kosovo the status of the territory (an independent state, an autonomous region within Serbia, or another solution) had not been decided upon in 1999.

[6] The official name of the Dayton Peace Agreement is: 'General Framework Agreement for Peace in Bosnia and Herzegovina.' For sake of brevity it will be referred to as the ' Dayton Agreement' or as 'Dayton.'

the Socialist Republic of Serbia, Kosovo had enjoyed a large degree of autonomy within the Socialist Federal Republic of Yugoslavia (Yugoslavia) since 1974. In 1989, amidst the rising ethnic nationalist tide in Yugoslavia, Serbia's President Slobodan Milošević moved to abolish Kosovo's autonomy. Increasing tensions between the majority population of Kosovo Albanians and the government in Belgrade led to large scale violent conflict in 1998. After the North Atlantic Treaty Organization (NATO) intervened militarily (operation Allied Force) in the first half of 1999 forcing Milošević to withdraw his troops from Kosovo, the UN established its United Nations Interim Administration Mission in Kosovo (UNMIK). In contrast with Bosnia, the presence of UNMIK was not based on a peace agreement which settled the political status of the territory. Instead, it was based on Resolution 1244 of the UN Security Council which authorized an international administration to develop so called Provisional Institutions of Self-Government and to support a process towards a political settlement. A decision on the final status of the territory was expected to be made by the UN Security Council. However, due to political differences between the permanent members of the Security Council, a decision could not ultimately be reached and eventually Kosovo declared independence unilaterally on 17 February 2008.

The presence of a peace agreement in Bosnia and the absence of one in Kosovo are characteristic of two different types of international administration. An international administration can be defined as a specific form of state-building in which an international authority temporarily assumes some or all powers of the state.[7] First, as the definition indicates, international administrations are in most cases used for state-building purposes. Both the OHR and UNMIK were founded in order to establish a sustainable political entity. This is explicitly mentioned in documents that list the objectives of these international administrations. In the case of Bosnia, during the Peace Implementation Conference in London on 8 December 1995 it was stressed that peace should result in 'the creation of a climate of stability and security in Bosnia and Herzegovina and the achievement of a durable and lasting political settlement.'[8] With the case of Kosovo, the international administration was requested to establish and oversee 'the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.'[9] This shows that in both cases the development of political institutions was regarded as essential for maintaining peace and security. It was generally accepted that the international administration over Bosnia and Kosovo would only be ended once - according to the judgment of the PIC or UN Security Council respectively - sustainable democratic political institutions would have been established.

[7] Chesterman, *The United Nations, Transitional Administration and State-Building*, 5.
[8] Peace Implementation Council, 'Conclusions Of The Peace Implementation Conference Held At Lancaster House London', (1995).
[9] United Nations Security Council, 'Resolution 1244', (New York: 1999).

Second, the definition also takes into account that the sovereign powers which are assumed by the international administration may differ from case to case. Although the OHR had legislative and executive powers, its mandate was formally limited due to the fact that the Dayton Agreement made Bosnia a state which enjoyed external sovereignty. Therefore the OHR is an international administration of the 'control type', in which an international administration acts throughout the domestic political structures and in which the country concerned does not enjoy full internal sovereignty. In contrast, the international administration in Kosovo took full control of the sovereign powers. Due to its lack of political status until 17 February 2008, Kosovo's provisional political institutions were neither internally, nor externally sovereign. It was UNMIK which formed the legislative, executive and judicial authority. In this way, UNMIK represents with such powers an international administration of the 'governorship type' in which the international administration takes full responsibility for the functioning of the territory.[10]

The establishment of a PIC/OHR led international administration of the control type in Bosnia and a UN/UNMIK led governorship type of international administration in Kosovo was the result of international political negotiations. Starting with Bosnia, the Dayton Agreement was an internationally forced compromise, but ultimately the decision of conflicting parties' to settle was a tactical decision.[11] Tactical, because all three conflicting parties calculated that by the end of 1995 they would gain more by concluding a peace agreement (which they would not necessarily have to commit) than by continuing the war. Partly facilitated by NATO's operation Deliberate Force (which consisted of air attacks against Bosnian Serb military targets), strategic developments on the ground made all parties 'ripe' for negotiations.[12] Whereas thorny territorial issues had blocked peace negotiations for almost three years, these disputes were suddenly 'settled' by force. As a result, it became possible to establish a line of demarcation between a Bosnian Serb Republic and a Bosniak-Croat Federation.[13] They could now also reach agreement on a (weak) federal government. The countries (France, Germany, Russia, the United Kingdom and the United States) which had established the Contact Group for the Former Yugoslavia (Contact Group) and which had succeeded in launching peace negotiations, preferred the creation of a single

[10] This classification is based on the work of Jarat Chopra and will be elaborated upon in Chapter two. See for Chopra's classification: Chopra, *Peace-Maintenance*, 16.
[11] Elizabeth M. Cousens and Charles K. Cater, *Toward Peace in Bosnia. Implementing the Dayton Accords* (Boulder/London: Lynne Rienner Publishers, 2001), 26. David Chandler, *Bosnia: Faking Democracy after Dayton* (London/Sterling: Pluto Press, 1999), 34.
[12] Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina. Ethnic Conflict and International Intervention* (Armonk/London: M.E. Sharpe, 1999), 311, 320 and 322.
[13] Ibid., 327 and 331.

Bosnian state over the creation of separate ethnically defined states or the merger of parts of Bosnia with Serbia and Croatia.

In the wake of the violent ethnic conflict, the Contact Group recognized that an international authority would be needed to ensure the implementation of the peace agreement. The implementation of the Dayton Agreement would be facilitated by establishing an international administration that would cooperate with Bosnia's political institutions, but which would also have the final authority regarding the implementation of the peace agreement. Within the Contact Group there was little disagreement over the type of international administration proposed or with the political solution offered. All major powers supported the Dayton Peace Agreement with its provision that a control type of international administration would be established to supervise the implementation process.

In the case of Kosovo, international disagreement over the final status was widespread. NATO's operation Allied Force in Kosovo had been conducted without explicit approval of the UN Security Council. In the Security Council, Russia tried to condemn NATO's military operation by passing a Security Council resolution. Although Russia did not succeed (the resolution was only supported by two other (non-permanent) members of the Security Council), Moscow was not alone in its criticism. China was also strongly against this 'humanitarian war over Kosovo.'[14] Despite the lack of international consensus, several options were discussed concerning what would have to be done after Allied Force had ended. At first, an international administration was considered of the control type, the same model used in Bosnia. That model had actually already been adopted in the failed 'Interim Agreement for Peace and Self-Government in Kosovo' (widely known as the Rambouillet Agreement after the French town where the peace negotiations had taken place). On 23 February 1999, the Rambouillet Agreement was accepted by the Kosovo Albanian delegation, but rejected by Milošević. According to the agreement, Kosovo would remain a part of Serbia, but it would also be allowed to have a substantial amount of self-government. The text called for an assembly, a government and even a presidency for Kosovo. At the same time, the territorial integrity of Serbia would be respected. Given the presence of a sovereign government in Belgrade and self-governing institutions in Kosovo, the implementation of the peace agreement would be monitored by a joint implementation mission of the Organization for Security and Cooperation in Europe (OSCE) and the European Union (EU). The implementation mission would have tasks and authorities comparable to those of the OHR in Bosnia.[15] Just like the OHR, it would be 'the final authority in theatre regarding interpretation of the

[14] Adam Roberts, 'NATO's 'Humanitarian War' over Kosovo', *Survival* 41:3 (1999) 102-123, 102.
[15] 'Interim Agreement for Peace and Self-Government in Kosovo', (Rambouillet: 1999), Chapter 5, article II.

civilian aspects' of the agreement and the parties would agree 'to abide by his determinations as binding on all Parties and persons.'[16]

An international administration of the control type as proposed by the Rambouillet Agreement was impossible to establish after Allied Force. NATO's military intervention had come to an end with a peace plan that had been drafted by the group of eight leading industrial nations (G8) in May 1999 and accepted by Milošević on 6 June. The plan called for an international administration of the governorship type. The international administration would have to 'provide a transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.'[17] It was unthinkable that Serbian sovereignty over Kosovo could be restored as had been suggested in the Rambouillet Agreement given the atrocities that had been carried out during the war. Discussions within the UN Security Council showed an international consensus that in the case of Kosovo humanitarian norms should prevail over the norm of state sovereignty. Therefore, the UN Security Council decided to launch a UN mission that would (temporarily) act as the sovereign government in Kosovo. Belgrade protested, but within the Security Council Serbia was only supported by China. In spite of its objections, China did not make use of its veto power because of Serbia's acceptance of the general principles of the peace plan and the acknowledgement that a joint adoption of a Security Council resolution would restore the body's unity which had fallen apart during the NATO intervention. Moreover, China (and Russia for that matter) feared a NATO-led international administration in case Resolution 1244 would not be adopted. A UN-led international administration was considered to be the lesser evil. For these reasons, China abstained from voting so that Resolution 1244 could be adopted by consensus.[18] Resolution 1244 established an international administration for Kosovo of the governorship type. UNMIK would prepare the territory for self-government, without clarifying whether this would eventually be self-government as an independent state, or as an autonomous province within Serbia, or as any other self-governing political entity.

As it is argued above, the absence of a peace agreement and the decision to establish international governorship makes the case of Kosovo different from Bosnia. Both cases are interesting to study by themselves, but the main reason Bosnia and Kosovo were selected for analysis were the differences in design of

[16] Ibid., Chapter 5, article V.
[17] Philip E. Auerswald and David P. Auerswald, eds., *The Kosovo Conflict. A Diplomatic History Through Documents*, (Cambridge/Den Haag: Kluwer Law International, 2000), 1079-1081.
[18] Lene Mosegaard, 'The Kosovo Experiment: Peacebuilding through an international trusteeship', *Kosovo between War and Peace. Nationalism, peacebuilding and international trusteeship*, Tonny Brems Knudsen and Carsten Bagge Laustsen, eds. (London/New York: Routledge, 2006) 56-75, 62-63.

their respective international administrations. Although the main objective of this study is to analyze whether the international administrations have succeeded in establishing sustainable political institutions in each particular territory, a comparative perspective might lead to some general insights about international administration and institutionalization. There have not been that many cases of international administration, so general insights extracted from the analysis of Bosnia and Kosovo are by definition a substantial contribution to the existing body of knowledge of this sort of political phenomenon.[19] Another reason for choosing Bosnia and Kosovo was that, compared to other cases of international administration, Bosnia and Kosovo have become long-term projects. Both cases have been operational for years, which enables a historical analysis. The analysis begins in 1995 for Bosnia and in 1999 for Kosovo. It ends in autumn 2008 for both cases. By that time, the OHR had almost been phased out and the EU had become the principal conflict manager in Bosnia. In Kosovo, on 15 June 2008 the constitution of the self-declared state came into effect and replaced the Constitutional Framework which had been drafted by UNMIK in 2002. UNMIK had been scaled down significantly (but could not be closed down officially, because of the politically divided UN Security Council) and together with the newly created Office of the International Civilian Representative the EU had practically taken over the international administration from the UN.

The question is whether international administrations were successful in creating sustainable political institutions by the time the EU took over. In this study, it is argued that a sustainable political institution is the outcome of a successful process of institutionalization during which an (internationally created) institution becomes embedded in domestic society. In the context of international administration one can speak of an embedded institution when it functions independently from the international administration (institutional autonomy), when it has congruent value systems (institutional congruency), and when it is supported by the domestic political elite and the population at large (institutional support).[20] It will be argued that the processes of institutionalization in Bosnia and Kosovo were influenced by the way the conflicts in both territories were managed.

The concepts of international administration, conflict management and institutionalization are explained in the second chapter of this study. It is shown that contemporary international administrations have had many predecessors, starting from 1920 onwards. Attention is also given to activities that are often associated with international administration, such as protectorates and military occupations. After presenting these two overviews, international administration is

[19] See Chapter two for an overview of cases that could have been selected.

[20] These criteria of institutionalization are - with some modifications - based on the work of Richard Sisson. See Richard Sisson, 'Comparative Legislative Institutionalization. A Theoretical Exploration.' *Legislatures in Comparative Perspective*, Allan Kornberg, ed. (New York: David McKay, 1973) 17-38.

conceptualized and defined. Next, the concept of conflict management is explained. Based on the work of Johan Galtung, it is argued that conflicts can be considered as resolved when the incompatibility of the conflict (that which the conflict is actually about; for example the political status of Kosovo) is solved and when the solution is supported by non-hostile attitudes and non-violent behavior of the conflicting parties. When that is not the case, the conflict is merely 'managed.' Finally, the concept of institutionalization is explained. The way the concept is used is based on the work of Richard Sisson, who studied the institutionalization of parliaments. It is argued that one can speak of sustainable political institutions when they are autonomous, have congruent value systems and are supported by the population. The chapter ends with an overview of the research design and methodology used in this study.

Chapter three describes the background of the cases and presents a general overview of the international administrations in Bosnia and Kosovo. Attention is given to the mandate and organization of the missions, the implementation strategies and the major international partners of the international administrations. Moreover, the basic political institutions of Bosnia and Kosovo are introduced. The analysis starts with the transitional executive institutions that were established in both cases right after the start of the international administration. Then the constitutional design of both territories and the political institutions are discussed. Special emphasis is given to the parliament, the government and the presidency, because these institutions were selected to help examine the process of institutionalization.

The following three chapters analyze the institutionalization process in detail. In Chapter four the question of whether the government, parliament and presidency in Bosnia and Kosovo have become autonomous is closely examined. The analysis starts with explaining the powers of the OHR and UNMIK. It shows that both international administrations are rather intrusive and that they exercise vast political power in Bosnia and Kosovo. The OHR's and UNMIK's decisions and regulations respectively show how deeply these international administrations are involved in daily politics. The chapter ends by evaluating the extent of the independence of Bosnia's and Kosovo's political institutions (from the international administration) and the capacity of their political institutions, since these two factors determine the degree of autonomy of the institutions. In Chapter five an assessment is made of the value systems of Bosnia's and Kosovo's political institutions and determines whether these are congruent or incongruent. It is explained that both international administrations have tried to establish a political culture which is based on citizenship rather than ethnicity. The extent in which the civic nationalist agenda of the international administration has replaced the ethnic nationalist agenda of Bosnian and Kosovar political actors, determines the degree of institutionalization in terms of institutional congruency. Chapter six addresses the question of whether Bosnia's and Kosovo's political institutions are supported

by the population. This is done by assessing the support for political institutions by the elites and among the majority of the population. The actual behavior of political elites and the satisfaction of the Bosnian and Kosovar population show to what extent the political institutions are supported.

Chapter seven elaborates on the attempts to close down both international administrations and on the increasing role of the EU. In Bosnia an attempt was made to end the international administration by facilitating the reform of the constitution which had been established in the Dayton Peace Agreement. After the Bosnians agreed on a new constitution, the OHR would then be closed down and the EU would guide Bosnia in the post-Dayton era towards EU-membership. In Kosovo, political negotiations on the final status took place in an attempt to end the international administration. After the final status would have been determined, UNMIK would leave and just like in Bosnia the EU would take over in order to guide Kosovo towards EU-membership (either as independent state or as part of Serbia). The process and outcome of the constitutional reform and the final status negotiations are indicative of the extent in which the international administrations have succeeded in establishing domestically embedded political institutions. If they were successful, the EU would be able to start an accession process similar to the processes which led to the EU-enlargements in 2004 and 2007. If not, then the EU would probably have to take over OHR's and UNMIK's international administration tasks.

Finally, the last chapter contains a summary of the major findings of this study and provides a general answer to the question to what extent the international administrations have been successful in establishing sustainable (domestically embedded) political institutions. Some implications of these findings for international administration as a policy instrument are also elaborated upon in the conclusion.

2 International Administration, Conflict Management and Institutionalization

In this chapter, the three key concepts of this study, international administration, conflict management, and institutionalization are discussed and the research design is presented. In the first section of this chapter, the concept of international administration is introduced by presenting an overview of international administrations that have been established in the past. This overview is primarily, though not exclusively, based on the work of Ralph Wilde. Wilde argues that while international administration is not a permanent feature in international politics, it is an institution which has regularly been made use of since the end of World War I.[1] Since international administration is often associated with political concepts such as 'protectorate', 'occupation' and 'trusteeship', an overview of institutions which are analogous to and closely associated with international administration are discussed as well. After this overview is provided, the idea of international administration will be further conceptualized in the second section by looking into the purpose and authority of international administrations. Both elements are embedded in the definition used in this study and will be presented at the end of Section 2.2.

The third section of this chapter elaborates on the notion of conflict management. Based on the work of Johan Galtung it is argued that conflict emerges from incompatibilities, hostile attitudes and violent behavior and that a conflict is resolved when all three 'conflict atoms' have been sufficiently addressed. Understanding when a conflict is resolved and when it is not is important for this study, since it will be argued that the establishment of international administrations in Bosnia and Kosovo have led to the creation of weak political institutions and have failed to resolve the conflicts in both territories. While the international administrations have been successful in conflict management (in the sense that armed violence did not reoccur), they have not succeeded in resolving the conflict.

The fourth section discusses the concept of institutionalization. Institutionalization is defined as the process through which an institution is created and becomes domestically embedded. This process of institutionalization can be studied by using Richard Sisson's theory of institutionalization in a slightly adapted form.[2] Following Sisson, the substance of a political institution is defined by its autonomy, culture and support. First, an institution is considered embedded

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[1] Ralph Wilde, *International Territorial Administration. How Trusteeship and the Civilizing Mission Never Went Away* (Oxford: Oxford University Press, 2007), 95.
[2] Richard Sisson, 'Comparative Legislative Institutionalization. A Theoretical Exploration.' *Legislatures in Comparative Perspective*, Allan Kornberg, ed. (New York: David McKay, 1973) 17-38.

once it becomes autonomous; i.e. independent from the international administration and capable of carrying out its tasks. Second, institutionalization occurs when institutions become part of the prevailing political culture. Third, the extent to which the political institutions are supported by the population also determines whether they have become embedded or not.

The chapter ends with a fifth section on the research design and methodology used in this study. It discusses two reasons why the comparative case study method is used for this research. First, since the primary objective of this research is to understand the process of institutionalization in Bosnia and Kosovo, case studies are a logical choice. Second, because the aim of this research is also to provide some general insights about international administration and institutionalization, a comparative perspective is necessary.

2.1 Historical overview of international administrations

2.1.1 A preliminary definition

Before an overview of international administrations can be given, it is necessary to establish a preliminary definition of international administration. Since the overview is primarily based on the work of Wilde, his definition of international administration is used. The definition consists of the notions 'administration' and 'international.' First, Wilde defines administration (he uses the term territorial administration) as: 'a formally-constituted, locally-based management structure operating with respect to a particular territorial unit, whether a state, a sub-state unit or a non-state territorial entity.'[3] Secondly, 'international' refers to actors (for example the UN or the League of Nations) whose spatial identity is international, and thus distinct from the local identity. This makes international administration a rather specific phenomenon, because normally (in a sovereign state) administration is conducted by actors who have the same spatial identity as those who they are administering, rather than by an international organization such as the UN.[4] Using Wilde's definition, several world wide cases of international administration can be identified since 1920.

2.1.2 International administrations between 1920 and 1945

After the end of the World War I, four international administrations were established. Under the terms of the Treaty of Versailles, the cities of Memel and Danzig were put under the authority of the Allied Powers, but without the task to organize a plebiscite and in that respect were different from the international

[3] Wilde, *International Territorial Administration*, 21.
[4] Ibid., 37.

commissions which will be elaborated upon in Section 2.2. The status of Memel and Danzig was determined in a different way. Memel (currently Klaipeda/Lithuania) had been liberated from Germany by the Allied Powers in 1919. Since Germany had renounced its sovereignty over the city in the Treaty of Versailles, it was held by a temporary condominium of Great Britain, France, Italy and Japan, with France delivering a High Commissioner and a military force of 200 troops. Various proposals on the future status of Memel were made, but all were rejected by Lithuania because its port was their only entry to the Baltic Sea.[5] In January 1923, Lithuania took the city by force, roused by the suspicion that France and Poland wanted Memel to become a 'free city' like Danzig (see below).[6] In reaction to the events, the Conference of Ambassadors (the Paris based body consisting of the signatories of the Treaty of Versailles and representing the condominium) declared its willingness to transfer the sovereignty over Memel to Lithuania, 'provided that the local German population was granted full cultural autonomy, that the Port of Memel was administered by an 'International Harbor Board', and that Poland was granted the right of free transit to and from the port.'[7] A commission of inquiry was appointed by the Council of the League of Nations, which studied draft proposals for solving the status issue from the Conference of Ambassadors and from Lithuania. On 8 May 1924, an agreement was reached which ensured Lithuanian sovereignty, but which also included provisions to protect the German community and to guarantee the access of Poland to the economically important harbor of the city. The Port of Memel was recognized as a harbor of international concern and its administration was entrusted to a Harbor Board.[8] The League of Nations was entitled to appoint the chair of the Harbor Board and as such became involved in international administration.[9]

The status of Danzig (currently Gdansk/Poland) was decided upon by the Allied Powers. Until the end of the World War I, Danzig had been a German city with a predominantly German population. After the war, Poland claimed the city, because Danzig was crucial to ensure its free and secure access to the sea. The Allied Powers decided that Polish access to the sea and the interests of the German community were ensured most effectively by declaring Danzig a Free City placed under the protection of the League of Nations. In the interim period between the German renunciation of sovereignty and the Free City's creation in November

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[5] Simon Chesterman, *You, The People. The United Nations, Transitional Administration and State-Building* (Oxford: Oxford University Press, 2004), 23.
[6] David W. Wainhouse, *International Peace Observation. A History and Forecast* (Baltimore: John Hopkins Press, 1966), 42. Chesterman, *The United Nations, Transitional Administration and State-Building*, 23.
[7] Chesterman, *The United Nations, Transitional Administration and State-Building*, 23.
[8] Wainhouse, *International Peace Observation*, 40-42.
[9] Wilde, *International Territorial Administration*, 50.

1920, Danzig was put under the authority of the Allied Powers.[10] They were represented by a British diplomat while British and French troops maintained law and order.[11] This Allied administration ended in November 1920, after which the League of Nations became responsible for ensuring the city's free status and settling possible disputes on the interpretation of their respective rights and duties between Danzig and Poland. The Free City lasted until September 1939 when it was occupied by Nazi Germany.[12]

As mentioned above, the League of Nations exercised some administrative authority in the cities of Memel and Danzig. However, the first time that the League of Nations assumed complete and direct responsibility for the international administration of a territory was in the case of the Saar territory (situated between France and Germany).[13] The Saar territory contained iron ore and coal. As part of the German reparation payments the Treaty of Versailles established that the coalmines would be transferred to French control. The inhabitants of the territory, however, were predominantly German and did not accept French administration. A solution was found in placing the territory temporarily under the responsibility of the League of Nations until a plebiscite would decide the fate of the territory.[14] Until the plebiscite was held in 1935, when the inhabitants decided in favor of Germany, the territory was administered by an international administrative commission which was obliged to report to the Council of the League of Nations four times a year. The tasks and the mandate of the commission were considerable. The commission had received the authority to appoint and dismiss domestic administrators, to provide certain public services, to establish administrative and representative organs, to maintain the rule of law and to levy taxes.[15] The international administration was supported by a force of 3300 troops from Britain, Italy, Sweden and the Netherlands.[16]

The fourth and final case of international administration in the interbellum was Leticia; a disputed territory between Colombia and Peru. In September 1932 Peru invaded Leticia; a territory that the country had ceded to Colombia in 1922 (the treaty was ratified in 1928). After mediation by Brazil failed, the matter was referred to the Council of the League of Nations. According to international law, Peru was obliged to retreat and an agreement on the withdrawal of Peruvian forces was signed on 25 May 1933. A commission of the League of Nations was

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[10] Ibid., 115.
[11] Jarat Chopra, *Peace-Maintenance: The evolution of international political authority* (London/New York: Routledge, 1999), 40.
[12] Chesterman, *The United Nations, Transitional Administration and State-Building*, 20 and 21.
[13] Chopra, *Peace-Maintenance*, 41.
[14] Wainhouse, *International Peace Observation*, 20.
[15] Ibid., 21.
[16] Chopra, *Peace-Maintenance*, 41.

established in order to administer Leticia on behalf of Colombia.[17] The commission got a mandate for one year, and by the end of its term Peru and Colombia signed a border agreement (May 1934) and control over Leticia was transferred from the League of Nations to Colombia.[18]

2.1.3 International administrations since 1945

After World War II, most international administrations have been established by the UN. These administrations have been referred to as 'trusteeship-type activities', because they concern operations that were associated with the tasks of the UN Trusteeship Council (see Section 2.3), but were authorized by the UN General Assembly or the UN Security Council.[19] The involvement of the UN Security Council particularly explains why these administrations are most often referred to as peacekeeping operations rather than international administrations.[20] Nevertheless, in all of the ten operations mentioned below (leaving out Kosovo) the UN has executed tasks that involved international administration.

The first operation to be discussed is the case of Libya. Libya was under the international administration of the UN between 15 September 1948 and 24 December 1951. Libya had been a colony of Italy since 1912. During World War II, French and British forces succeeded in taking control over the territory after which both countries established a military administration (occupation) in their respective spheres of influence.[21] The 1947 Peace Treaty between Italy and the Allied Powers (the United States of America (USA), the Soviet Union (SU), the United Kingdom (UK) and France) included the provision that the 'big four' would decide on Libya's future. However, with the unfolding Cold War, the allies were unable to reach agreement. As a result the case was passed to the UN General Assembly on 15 September 1948.[22] Within the General Assembly several proposals for the future of the country were presented, ranging from making it a trusteeship to carving up the territory. In the end, UN General Assembly Resolution 289 (IV) decided that Libya: '(…) shall be constituted an independent and sovereign state.'[23]

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[17] Chesterman, *The United Nations, Transitional Administration and State-Building*, 24 and 25.
[18] Wilde, *International Territorial Administration*, 129.
[19] A.J.R Groom, 'The Trusteeship Council: a successful Demise', *The United Nations at the Millennium. The Principle Organs*, A.J.R Groom and Paul Graham Taylor, eds. (London/New York: Continuum, 2001) 142-176, 164.
[20] See for example: United Nations Department of Public Information, *The Blue Helmets: A Review of United Nations Peacekeeping* (New York: United Nations, 1996).
[21] The British took control over the regions Tripolitania and Cyrenaica and French forces occupied the Fezzan. Adrian Pelt, *Libyan Independence and the United Nations* (New Haven/London: Yale University Press, 1970).
[22] Ibid., 34.
[23] United Nations General Assembly, 'Resolution 289', (New York: 1949).

In order to assist the Libyans in gaining their independence it was decided that the General Assembly would appoint a UN Commissioner. This post would be given to the Dutch diplomat Adrian Pelt, who was unanimously chosen on 8 November 1949. Together with an International Council, consisting of several international and domestic representatives, Pelt assisted Libya in drafting a constitution and creating an independent government.[24] In Resolution 289, the British and French administrations were summoned to take all necessary steps to prepare Libya for independence, which it gained on 24 December 1951.[25]

A second example of international administration is the *Operation des Nations Unies en Congo* (ONUC, 1960-1964). ONUC was the first peacekeeping operation which involved (*de facto*) some administrative responsibilities for the UN troops. The mission was aimed at saving a failing decolonization effort that had led to a separatist civil war.[26] The original mandate consisted in the provision of military and technical support to the Congolese government, until it could maintain law and order by itself.[27] The complicated situation led twice to a strengthening of the mandate, so that in the end ONUC had a peace enforcement mandate, rather than a peacekeeping mandate.[28] That mandate did not include the explicit authority to execute administrative (executive) authority. However, since the Congolese government was not able to maintain law and order in its territory, in practice ONUC became the effective authority in many areas of the country. As a result, the troops protected lives and property, disarmed the combating factions, reorganized security forces and exercised extensive policing powers.[29] Although the presence of ONUC had a stabilizing effect in the early weeks of the mission, it could not create the basis for a lasting peace.[30]

The third example to be examined occurred at the same time as ONUC, when the UN established the United Nations Temporary Authority (UNTEA, 1962-

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[24] The Council consisted of representatives from Egypt, France, Italy, Pakistan, the UK and the USA as well as one representative from each of the three regions in Libya. Ibid.
[25] Ibid.
[26] William J. Durch, 'The UN Operation in the Congo: 1960-1964', *The Evolution of UN Peacekeeping. Case studies and Comparative Analysis*, William J. Durch, ed. (New York: St. Martin's Press, 1993) 316-352, 316.
[27] Chesterman, *The United Nations, Transitional Administration and State-Building*, 83.
[28] The initial mandate, established by UN Security Council Resolution 143 (14 July 1960) and confirmed in Resolutions 145 (22 July 1960) and 146 (9 August 1960), was expanded in Resolution 161 (21 February 1961). Next to providing military and technical assistance to the Congolese government, ONUC was also allowed to take 'all appropriate measures to prevent the occurrence of civil war.' The use of violence was allowed if necessary. Resolution 169 (24 November 1961) strengthened the mandate for the third time by allowing ONUC to take 'vigorous action, including the use of the requisite measure of force.'
[29] Chopra, *Peace-Maintenance*, 45.
[30] John Terrence O'Neill and Nicholas Rees, *United Nations Peacekeeping in the Post-Cold War Era* (London/New York: Routledge, 2005), 71.

1963) in West New Guinea (currently the Indonesian province of Papua New Guinea or West Irian). Since 1848, New Guinea had been part of the Dutch colonial possessions in Indonesia. When Indonesia became formally independent in 1949, the status of New Guinea was contested. Whereas Indonesia claimed New Guinea as an integral part of its territory, the Dutch argued that the Papuans formed a culturally and ethnically distinct people who had the right to self-determination.[31] This stand off between the Netherlands and its former colony resulted in a crisis in December of 1961 when Indonesian president Sukarno prepared for and threatened armed conflict.[32] An agreement was negotiated under the supervision of the UN as the result of strong political pressure from the USA. The 'Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian)' was signed in New York on 15 August 1962 and provided for the transfer of the territory to Indonesia. A transitional regime of six months was accepted in the form of UNTEA. Under Article V of the Agreement, the Chief of Mission got: 'full authority under the direction of the Secretary-General to administer the territory for the period of the UNTEA administration in accordance with the terms of the present Agreement.'[33] These administrative powers were endorsed in UN General Assembly Resolution 1752, which authorized the Secretary General to 'carry out the tasks entrusted to him in the Agreement.'[34] The UNTEA mission lasted from 1 October 1962 to 1 May 1963, when authority was transferred to Indonesia. The New York Agreement provided for a UN-supervised popular consultation in order to give the Papuans the freedom of choice in determining their future. The consultation in 1969 led to a vote in favor of remaining within Indonesia. According to most observers, this outcome was more the result of careful political orchestration by Indonesia rather than the genuine expression of the will of the people.[35]

The fourth international administration after World War II was the United Nations Transition Assistance Group (UNTAG, 1989-1990). UNTAG was created in order to prepare West-South Africa (the current Namibia) for self-determination. South-West Africa had been a colony of Germany until 1915 when it was conquered by South Africa. After the end of World War I, the territory became a Class C Mandate under the supervision of the League of Nations (see Section 2.1.4). The mandate was conferred on the UK on behalf of South Africa. After

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[31] William J. Durch, 'UN Temporary Executive Authority', *The Evolution of UN Peacekeeping. Case Studies and Comparative Analysis*, William J. Durch, ed. (New York: St. Martin's Press, 1993) 285-298, 286.
[32] Ibid.
[33] Agreement between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian), (New York: 15 August 1962).
[34] United Nations General Assembly, 'Resolution 1752', (New York: 1962).
[35] Chesterman, *The United Nations, Transitional Administration and State-Building*, 67. Durch, 'UN Temporary Executive Authority', 295-296.

World War II, South Africa refused to integrate the mandate of the territory into the UN Trusteeship System (see Section 2.1.4) and claimed South-West Africa as its own territory. The issue became important for the UN when large parts of Africa started to become independent. Another factor that contributed to its appearance on the international agenda was that South Africa extended its apartheid laws to the territory.[36] Several actions were taken by the UN to end South Africa's control; in 1966 the General Assembly revoked South Africa's mandate to administer the territory and in 1971 the International Court of Justice ruled that the South African occupation was illegal.[37] Preparations for an international operation which would prepare the territory for independence started in 1967 when the UN Council for Namibia was created. In January 1976, five Western nations (Canada, France, UK, USA and West-Germany) formed the a Contact Group. Half a year later it proposed a settlement which called for the creation of UNTAG.[38] This was done by UN Security Council Resolution 435 which provided the mission with the mandate to prepare Namibia for independence by organizing free elections. South Africa's refusal to accept UNTAG resulted in a delay of ten years, but a decade of negotiations finally resulted in the Namibia Accords on 22 December 1988.[39] The Namibia Accords allowed for the implementation of Resolution 435 and the actual deployment of UNTAG. Based on Resolution 435 and some subsequent refinements in the shape of informal understandings and protocols, UNTAG was assigned three tasks: monitoring the elections, monitoring the police and supervising the cease-fire.[40] Next to this explicit mandate, the added value of UNTAG consisted above all in forming a counterweight to South Africa's presence and in ensuring a climate of security.[41] Elections were actually organized in November 1989, after which the territory became independent.

The mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO, since 1991) represents the fifth example of international administration even though it has never materialized. Western Sahara had been a colonial possession of Spain and after its withdrawal in 1975 both Morocco and Mauritania claimed the territory. The claim of both countries was opposed by the domestic population in general and in particular by the *Frente Popular para la Liberación de Saguia el-Hamra y Rio de Oro* (POLISARIO) which started an insurgency. In 1979, Mauritania renounced its claim, but Morocco

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[36] William J. Durch, 'United Nations Transition Assistance Group', *The evolution of UN Peacekeeping. Case studies and Comparative Analysis*, William J. Durch, ed. (New York: St. Martin's Press, 1993) 353-375, 354.
[37] Ibid.
[38] Ibid., 354 and 355.
[39] The Namibia Accords included a settlement between South Africa, Angola and Cuba. All three countries were involved in the conflict. Ibid., 355.
[40] Ibid., 360.
[41] Durch, 'UN Temporary Executive Authority', 362.

consisted. In 1988, as a result of good offices provided by the UN and the Organization of African Unity, the Settlement Proposals were concluded. Based on these proposals a plan was created which consisted in holding a referendum in which the domestic population should decided whether to become independent or to integrate in Morocco. The UN would deploy a transitional authority in order to supervise the process.[42] MINURSO was created by Security Council Resolution 690 which made it solely and exclusively responsible for all matters relating to the referendum. MINURSO was allowed to promulgate and repeal laws, maintain law and order and assume the role of territorial authority.[43] However, MINURSO never had the chance to implement its mandate, because of a genuine lack of will among the parties to support the agreement.[44]

The sixth UN international administration was established with the United Nations Transitional Administration in Cambodia (UNTAC, 1992-1993). UNTAC was asked to create a neutral political environment and organize elections in a country that had been torn apart by war since 1975. The conflict in Cambodia was part of what has been called the 'Third Indochina War', involving the regimes of Cambodia, Laos and Vietnam.[45] Under the leadership of Pol Pot, the *Khmer Rouge*, after coming to power in Cambodia in 1975, terrorized the country until Vietnam intervened in 1978. The Vietnamese occupation force actively supported a Vietnam-friendly regime in the People's Republic of Kampuchea (PRK), which changed its name to the State of Cambodia (SOC) in 1989. Yet Vietnamese intervention could not end the civil war. Regional powers condemned the intervention as a violation of international law and supported several resistance groups.[46] Faced with a protracted military stalemate in Cambodia, a weakened political and diplomatic position and domestic economic problems, Vietnam withdrew its military forces in 1989.[47] Attempts to start negotiations were made from 1987 onwards, but a breakthrough only occurred in September 1990, when the four major Cambodian parties to the conflict agreed to the establishment of a power sharing mechanism in the form of the Supreme National Council (SNC). The peace agreement was signed in Paris on 23 October 1991.[48] An important part

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[42] Chesterman, *The United Nations, Transitional Administration and State-Building*, 68.
[43] Chopra, *Peace-Maintenance*, 164.
[44] Chesterman, *The United Nations, Transitional Administration and State-Building*, 68.
[45] Sorpong Peou, 'Implementing Cambodia's Peace Agreement', *Ending Civil Wars. The implementation of peace agreements*, Stephen John Stedman, Donald Rothchild, and Elizabeth M. Cousens, eds. (Boulder/London: Lynne Rienner Publishers, 2002) 499-530, 501.
[46] The most important of these were the Khmer Rouge, the National United Front for a Cooperative, Independent, Neutral and Peaceful Cambodia (FUCINPEC) and the Khmer People's National Liberation Front. Pressured by China and other members of the Association of Southeast Asian Nations (ASIAN) the resistance groups loosely organized themselves in the Coalition Government of Democratic Kampuchea (CGDK). Ibid., 502.
[47] Ibid.
[48] Ibid., 503.

of the agreement was the establishment of UNTAC. The mandate of the mission included a specific task of civil administration: 'In accordance with Article 6 of the Agreement, all administrative agencies, bodies and offices acting in the field of foreign affairs, national defense, finance, public security and information will be placed under the direct control of UNTAC, which will exercise it as necessary to ensure strict neutrality.'[49]

The seventh international administration to be mentioned is the United Nations Operation in Somalia II (UNOSOM II, 1993-1995). UNOSOM II was established by the UN Security Council Resolution 814 and was authorized: 'to assume responsibility for the consolidation, expansion, and maintenance of a secure environment throughout Somalia.'[50] UNOSOM's mandate has been described as 'a testing ground for new peacekeeping ideas.'[51] Although the mandate did not include legislative authority, the Special Representative of the UN Secretary-General exercised *de facto* legislative authority by declaring that the former Somali Penal Code of 1962 would be the criminal law in force.[52] Just like in the case of ONUC, the absence of an effective functioning domestic authority made UNOSOM the *de facto* authority of the territory. UNOSOM II was the first peacekeeping operation in which the use of force was not restricted to self-defense, but was expanded to include the use of force in pursuit of the mission objectives.[53] Part of the objective of maintaining a secure environment was the disarmament of Somali militias. Together with the institution building character of the mandate, the disarmament attempts led to violent confrontations with Somali factions which resulted in the withdrawal of UNOSOM II in March 1995.[54]

The eighth international administration since World War II involved a city, like Memel and Danzig after World War I. Well before the OHR was established in Bosnia, Mostar had been put under international administration by the EU. Mostar had been the scene of fierce fighting between Bosniaks and (Bosnian) Croats after their alliance had broken down in 1993. As a result of the Washington Agreement, which renewed the alliance, the EU took over the administration of the city on 1 August 1994. The German politician Hans Koschnik was appointed as the international administrator of the town. The administration was confronted with many difficulties; Koschnik survived several attacks on his life and he had to face intense opposition from hardline Bosnian Croat ethnic nationalists.[55] The elections

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[49] Agreement on a Comprehensive Political Settlement of the Cambodian Conflict, (Paris: 23 October 1991), Annex 1, Section B. Obtainable from: www.usip.org (last visited on 20 January 2009).
[50] United Nations Security Council, 'Resolution 814', (New York: 1993).
[51] O'Neill and Rees, *United Nations Peacekeeping in the Post-Cold War Era*, 115.
[52] Chesterman, *The United Nations, Transitional Administration and State-Building*, 85.
[53] O'Neill and Rees, *United Nations Peacekeeping in the Post-Cold War Era*, 115.
[54] Ibid., 116-117.
[55] Dejan Jazvic, 'Interview: Wolfgang Petritsch: "A hero of our time or a merciless protector"', *Hrvatska Rijec/OHR Press Office* 21 May 2001, 40-41.

for the city's community council on 30 June 1996 led to the end of the EU administration, after which the OHR took over the responsibility of Mostar with a regional office.

The ninth international administration, the United Nations Transitional Authority for Eastern Slavonia (UNTAES, 1996 – 1998), was created as a result of the Dayton Peace Agreement. Eastern Slavonia is situated in the Danube region of Croatia. As a region with a Serb majority it seceded from Croatia when that country declared itself independent in 1991. Heavy fighting in the fall of 1991 resulted in Serb control over the region which led to an exodus of Croatian inhabitants. In the summer of 1995, Croatian forces regained control over two other territories that had been occupied by the Serbs: the Krajina and Western Slavonia. Under pressure from the international community, the Croats renounced plans to proceed and re-conquer Eastern Slavonia. On 12 November 1995, Croatia and the Serb authorities in Eastern Slavonia signed the Basic Agreement on the Region of Eastern Slavonia, Baranja, and Western Sirmium (the Erdut Agreement). The Agreement contained a request for the Security Council to: 'establish a transitional administration which shall govern the Region during the transitional period in the interest of all persons resident in or returning to the Region.'[56] After the international administration ended in 1998, Eastern Slavonia was reintegrated into Croatia.

Finally, the tenth international administration was the United Nations Transitional Authority in East Timor (UNTAET, 1999 – 2002). UNTAET was established on 22 October 1999 by UN Security Council Resolution 1272. It had been preceded by a multilateral intervention under the leadership of Australia and was endorsed by both the UN Security Council and the government of Indonesia. The intervention was the international response to the violence that emerged as a result of a referendum held on the question of whether East Timor should become independent or remain part of Indonesia. From 1515 to 1975, East Timor had been a Portuguese colony. Portuguese rule was only briefly interrupted by the Japanese occupation (1941 - 1945) during World War II. In 1975, Indonesia invaded East Timor after the sudden withdrawal of Portugal and the subsequent fighting among rival political factions. On 28 November 1975, one of the leading opposition parties to Portuguese rule, Freitilin assumed governance. On 30 August 1999 a referendum was organized in order to let the East Timorese choose between integrating into Indonesia as an autonomous region or becoming independent. The referendum was organized by the United Nations Mission in East Timor (UNAMET), which had started in June 1999. The participation rate was 98,6

[56] The Erdut Agreement, (Erdut: 12 November 1995). Obtainable from: www.usip.org (last visited on 20 January 2009).

percent of eligible voters and a majority 78,5 percent voted for independence.[57] After the international military intervention ended the violence, UNTAET was established. The mission ended on 20 May 2002 when sovereignty was returned to East Timor and when the country became independent.

In addition to these ten cases of international administration, several other more specific cases can be identified. First, the cases should be mentioned where an international administration is established through 'international appointees.' An international appointee is 'an individual of foreign nationality who sits on a body concerned with some form of territorial administration and whose appointment in this regard involved an international actor such as an international organization or a member of an international court or tribunal.'[58] International appointees were established in the cases of Cambodia, Bosnia, East Timor, Kosovo, Sierra Leone, Iraq, Lebanon and Afghanistan. In Lebanon, for example, the tribunal concerning the assassination of Lebanese Prime Minister Rafik Harriri in 2004 consisted of Lebanese and foreign judges who were all appointed by the UN.[59] Similarly, several foreign members were included in the Sierra Leone Truth and Reconciliation Commission.[60] Secondly, international administrations have been established in the form of internationally administrated refugee camps. A refugee camp can be considered an international administration when a state hands over the responsibility of running the camp to the UN High Commissioner for Refugees. This has for example been the case with the Dadaab camps of Kenya.[61] Also included in this category (although representing a less extensive form of international administration) is the UN Relief and Works Agency in Palestinian refugee camps.[62] Finally, the distribution of humanitarian supplies sometimes involves international administration. This was for example the case with the UN Inter-Agency Humanitarian Program in Northern Iraq from 1996 to 2003.[63]

2.1.4 Cases analogous to international administration

There are different terms to describe territories which in some way or another are dependent on individual foreign states, groups of foreign states or on international organizations. The use of a particular term usually depends on the particular

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[57] Michael G. Smith and Moreen Dee, *Peacekeeping in East Timor. The Path to Independence* (Boulder/London: Lynne Rienner, 2003), 18.
[58] Wilde, *International Territorial Administration*, 70.
[59] Ibid., 73.
[60] Ibid., 85.
[61] Ibid., 61.
[62] Ibid., 60-62.
[63] Ibid., 64.

constitutional relationship that exists between the territory and the foreign power.[64] In the section above international administration has been presented as one particular form of foreign dependence. This section contains an overview of operations which are analogous to international administration. Again, the overview of Wilde is used, who distinguishes five institutions analogous to international administration: protection, colonialism, representative bodies, the mandate system of the League of Nations and the trusteeship system of the UN, and occupation.[65] In contrast to international administrations, the analogous institutions are constituted by 'a state, a group of states, or a collectivity of state representatives' rather than by an international organization.[66]

Protection in the form of a protectorate is one of the oldest features of international relations.[67] The idea of a protectorate can be summarized as: 'The assumption by a comparatively powerful state of the duty of protecting a weaker state (...)'[68] The notion has a long history and can even be traced back to antiquity in the form of the *civitates foederatae*: cities which did not belong to the Roman Empire, but were subordinate to Rome as far as their foreign relations were concerned. Also, in the Middle Ages several protectorate type of arrangements existed too; Andorra has been a protectorate of France and Spain since the thirteenth century.[69] Finally, in the sixteenth century, protectorates were used by the French kings as an instrument of expansion. Cities like Cambrai, Verdun and Strassbourg first became protectorates before they were incorporated into the kingdom of France.[70] The modern protectorate was born in the nineteenth century. These protectorates were established by a transaction (often a treaty) 'between two or more subjects of international law, whereby the dependent entity surrendered to the protecting State or States at least the conduct of its foreign relations, and often responsibility for such relations together with various rights of internal intervention, without being annexed or formally incorporated into the territory of the latter.'[71] In the nineteenth century protectorates were used by European states to

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[64] Ramenda Nath Chowdhuri, *International Mandates and Trusteeship Systems. A Comparative Study* ('s-Gravenhage: Martinus Nijhoff, 1955), 6.
[65] Wilde, *International Territorial Administration*, 299.
[66] Ibid., 311.
[67] James Crawford, *The Creation of States in International Law* (Second Edition; Oxford: Oxford University Press, 2006), 286.
[68] Alfred M. Kamanda, *A Study of the Legal Status of Protectorates in Public International Law* (Genève: Université de Genève, 1961), 17.
[69] Stephen D. Krasner, 'Abiding Sovereignty', *International Political Science Review* 22:3 (2001) 229-251, 244.
[70] Kamanda, *Protectorates in International Law*, 18 and 19.
[71] Crawford, *Creation of States*, 287.

ensure access to foreign markets and to prevent territorial control by rival powers.[72] Protectorates provided control over territory with limited governance costs.

James Crawford distinguishes three different types of protectorates: protected states, international protectorates and colonial protectorates. First, protected states are entities which still have substantial authority in their internal affairs, retain some control over foreign policy, and establish their relation to the protecting state on a treaty or another legal instrument. Protected states still have qualifications of statehood. Examples of protected states are Bhutan (with India as protector), San Marino (Italy) and Liechtenstein (Switzerland). Secondly, international protectorates are territories whose governments retain a separate international status, but lack some qualifications of statehood. Examples are Tunisia and Morocco (both under the protection of France). Some contemporary international administrations can also be understood as protectorates in the form of protected states. Wilde argues that international administration is an internationalized form of protection in the sense that 'the actor in the 'protector' role is an international organization rather than a state.' [73] As such, he contends than Kosovo could be described as a 'protected state territory' and Bosnia as a 'protected state.' The term 'protected state' is more accurate than 'international protectorate' given the fact that both Bosnia and Kosovo had some qualifications of statehood (Kosovo as a territory being part of Serbia under UN Security Council Resolution 1244).[74] Finally, colonial protectorates are territories in which the protecting state exercises internal administration on the basis of the formal autonomy of the dependent entity. Many territories in Africa used to fall into this category, as well as Aden and the Solomon Islands (both protected by Britain).[75] This latter category, however, is challenged by several international lawyers on the grounds that the territories under protection often were considered to be part of the sovereign territory of the protecting states.[76] The protecting states used the term 'protectorate' merely to 'avoid the responsibilities that would flow from the enjoyment of sovereignty.' [77] As such, colonial protectorates would better qualify as colonies.

Colonialism, the second institution analogous to international administration, refers to several different forms of foreign dominion, as it ranges from: 'raising a claim over territory without introducing any substantive presence, to informal control exercised by corporate identities such as the East India

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[72] Ralph Wilde, 'From Danzig to East Timor and Beyond. The Role of International Territorial Administration.' *The American Journal of International Law* 95:3 (2001) 583-606, 602. Crawford, *Creation of States*, 286.
[73] Wilde, *International Territorial Administration*, 300.
[74] Ibid., 301.
[75] Crawford, *Creation of States*, 288-302.
[76] Wilde, *International Territorial Administration*, 162,300 and 303.
[77] Ibid., 300.

Companies, to direct administrative presence by European states exercised on top of local structures of governance, to more intrusive and extensive administrative conduct.'[78] The most relevant form of colonialism in the context of historical predecessors of contemporary international administration is the form of colonialism that involves 'some kind of direct administrative control exercised over the colonial territory by the imperial state.'[79] By the end of the nineteenth century, this was especially the case in Africa.

Next to protection and colonialism, so called 'representative bodies' can be regarded as conducting international administration-type activities. Representative bodies are 'bodies made up of representatives of certain states, acting in a representative capacity (…).'[80] According to Wilde, four categories of representative bodies can be identified. First, representative bodies have been established to exercise administrative tasks in disputed territories. Examples of representative bodies in this category are: Krakow which was administered by Austria, Russia and Prussia between 1815 and 1846; Shanghai that was administered by the international Shanghai Municipal Council under the control of the USA and Great Britain from 1854 to 1943; Tangier which was under the international administration of Great Britain, France, Spain between 1923 and 1957 and from Italy since 1928; and Crete that was administered by a Commission of the Consuls existing of Great Britain, France, Germany and Russia from 1897 to 1909 and Albania from 1913 to 1914.[81]

For understanding this type of representative bodies, it is instructive to take a closer look at the case of Albania. Whereas Greece was the first European state to become independent from the Ottoman Empire, Albania was the last.[82] Close to falling totally prey to Greece, Montenegro and Serbia during the First War of the Balkans (8 October 1912 – 18 May 1913) a special congress of Albanian leaders proclaimed independence on 28 November 1912. This proclamation was accepted by the Great Powers during the international peace conference which had been initiated in December 1912. Among the European powers, Austria and Italy had a strong interest in an independent Albania as a buffer zone between each other and between both countries and the new Slavic states.[83] The Treaty of London in May 1913 ended the First War of the Balkans and created an independent, but also a

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[78] Ibid., 303.
[79] Ibid.
[80] Ibid., 307.
[81] Méir Ydit, *Internationalised Territories. From the 'Free City of Cracow' to the 'Free City of Berlin'* (Leyden: Sythoff, 1961); Cavendish W. Cannon, 'Official Documents: Status of Tangier', *The American Journal of International Law,* 51:2 (1957) 460-466. C.G. Fenwick, 'The international status of Tangier', *The American Journal of International Law,* 23:1 (1929) 140-143.
[82] Stephen D. Krasner, *Sovereignty. Organized Hypocrisy* (Princeton: Princeton University Press, 1999), 157 and 147.
[83] Gorrit T.A. Goslinga, *The Dutch in Albania* (Rome: Shejzat (Le Pleiadi), 1972), 6.

chaotic Albania. Since there was no effective independent authority within the country, the major powers established an International Control Commission. The Commission (with one Albanian member) formed a constitution which established a neutral state with the German prince William of Wied as sovereign.[84] Next to the Commission, an international police mission (carried out by the neutral Dutch) was established in order to maintain peace and security and help build an Albanian police force.[85]

The second category of representative bodies involves the various waterway commissions that were established in the 19th century. The commissions had been established in order to exercise joint administration over waterways that crossed the boundaries of different nations. Well known examples are the Central Commission for the Navigation on the Rhine (since 1815) and the International Danube Commission (since 1856).[86]

The third category involved the international commissions that had been established by the Treaty of Versailles to organize plebiscites in certain territories.[87] These commissions were organized in Upper Silesia, a contested territory between Germany and Poland, in Schleswig, a territory between Germany and Denmark, and in Allenstein and Marienweder, both situated between Germany and Poland. In Upper Silesia the plebiscite was organized on 20 March 1921. The plebiscite was decided in favor of Germany, but Poland refused to accept the outcome and created an irregular army that overran a large part of the territory. The international commission was paralyzed, because the British and Italians supported the Germans, whereas the French were on the side of Poland. The Allies handed the issue over to the Council of the League of Nations in order to settle the dispute. A plan for partition was worked out by the Japanese diplomat Kikijiro Ishii and was adopted by the Council of the League of Nations on 12 October 1921. Even though the Ishii plan was very unpopular in both Germany and Poland, it worked relatively well.[88] Determining the new sovereign status of the other territories proved to be less difficult than it had been in the case of Upper Silesia. The territory of Schleswig was divided between Germany and Denmark after the plebiscite held in May 1920, and Allenstein and Marienweder went to Germany after the plebiscites held in July 1920.[89]

Finally, representative bodies in the form of mixed commissions have been created. These commissions implemented particular policies in the territories under administration. An example is the Mixed Commission that was established in

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[84] Krasner, *Organized Hypocrisy*, 174.
[85] Goslinga, *The Dutch in Albania*, 8.
[86] Wilde, *International Territorial Administration*, 307.
[87] Ibid.
[88] Wainhouse, *International Peace Observation*, 33-35.
[89] Chopra, *Peace-Maintenance*, 40.

Upper Silesia (1922 - 1937) after the Allied Commission in that territory had finished (see above).[90] In 1922, the former conflicting parties Poland and Germany had signed a convention which was aimed at stimulating economic cooperation. In order to implement the convention, a Mixed Commission of two Polish members, two German members and a president from a neutral country (appointed by the Council of the League of Nations) was established. The League of Nations had the right to veto German or Polish laws if these concerned Upper Silesia. It also acted as a final arbiter in disputes concerning the convention.[91] Another example of a mixed commission was the commission created in 1923 with the purpose 'to 'supervise and facilitate' the compulsory exchange of Turkish and Greek minority populations between Greece and Turkey.'[92]

The fourth category of institutions analogous to international administration includes the mandate system of the League of Nations and the trusteeship system of the UN. After the end of World War I, the Allied Powers decided that the colonies of Germany and the territories belonging to the Ottoman Empire should be placed under the authority of the League of Nations. This authority was of an indirect nature, because the actual administration of the mandated territories became the responsibility of particular states. A direct consequence of this indirect rule of the League of Nations was that the mandatories could administer the territory as if it was a proper colony, because formal supervision by the League of Nations was limited to an annual report to the Permanent Mandates Commission.

There were two important reasons for establishing the international mandate system. First, it was an instrument to prevent armed conflicts between the colonial powers. It was feared that if the German and Ottoman territories would be annexed by the victorious powers as the booty of war, the outbreak of violent conflict would only be a matter of time. Secondly, it was an attempt to protect the population of the mandated territories against colonial exploitation.[93] Related to the second reason was the objective to develop the mandated territories and to prepare some of them for independence. Complete independence was only relevant for the Class A mandates. These were former Ottoman territories which according to the League of Nations had reached such a state of development that independence was a realistic option and could therefore provisionally be recognized. The administration was officially limited to administrative advice and assistance. Within this class, Iraq, Palestine and Trans-Jordan became territories under British tutelage, and Syria and Lebanon got France as their mandatory. The prospect of

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[90] Wilde, 'Role of International Administration', 603 and 597. Chesterman, *The United Nations, Transitional Administration and State-Building*, 21.
[91] Chesterman, *The United Nations, Transitional Administration and State-Building*, 21 and 22.
[92] Wilde, *International Territorial Administration*, 307.
[93] Chowdhuri, *International Mandates*, 3.

independence for territories belonging to the Class B mandates was much less likely. According to the League of Nations, the peoples inhabiting these territories were: 'at such a state that the Mandatory must be responsible for the administration of the territory.'[94] Most German colonies in Africa, such as Togo and Ruanda-Urundi were placed in this class. The last category, the Class C mandates, were regarded to be the least developed territories and were least likely to become independent. Therefore they had to be administered as an integral part of the mandatory's territory. South-West Africa (administered by South Africa) and the South Pacific Islands (administered by Japan) are the two well known examples of Class C mandates.

The international mandate system was followed by the trusteeship system of the United Nations in 1945. Most mandated territories were turned into trust territories and the Mandate Commission was replaced by the Trusteeship Council.[95] An important difference with the international mandate system was that *all* trust territories were being prepared for self-government or independence.[96] However, the effectiveness of the trusteeship system in promoting independence can be disputed, because trust territories did not receive their independence significantly earlier than other non-self-governing territories. Just as had been the case with the international mandates, individual states were responsible for the administration of the territory which meant that its administration was not very different from the administration of a proper colony.[97]

The administration and supervision of the trust territories was conducted on the basis of individual arrangements with the territories concerned. The categories which the UN used in order to define which territories could become trusts were: (1) those territories that had been mandates of the League of Nations; (2) those territories that had been detached from enemy states as a result of World War II; and (3) those territories that were voluntarily placed under the system by states responsible for their administration. The supervising UN-body was the Trusteeship Council, consisting of the member states administering the trust territories, the five permanent members of the Security Council and other members

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[94] Covenant of the League of Nations, (1920), article 22. Available at: http://avalon.law.yale.edu/20th_century/leagcov.asp Covenant of the League of Nations, article 22.5.

[95] Syria and Lebanon became independent. Arabic countries supported their claim to independence. By taking part in the San Francisco Conference which established the UN, both territories confronted France with a *fait accompli*. Jean E. Krasno, ed., *The United Nations. Confronting the Challenges of a Global Society*, (Boulder/London: Lynn Rienner Publishers, 2004), 34. The mandate of Palestine was formally terminated on 14 May 1948, when the state of Israel was proclaimed by David Ben-Gurion. William R. Keylor, *A World of Nations. The international order since 1945* (Oxford: Oxford University Press, 2003), 149. Iraq had already become independent in 1932. Jordan became independent in 1946.

[96] Charter of the United Nations, (1945), Article 76. Obtainable from: www.un.org (last visited on 20 January 2009).

[97] Chopra, *Peace-Maintenance*, 41.

of the UN elected by the General Assembly. The latter category was included in order to ensure that the total number of members was equally divided between those who administered the territories and those who did not.

Compared to the international mandate system, the international supervision of the trusteeship system was much stronger and relatively more successful. However, it must be concluded that the trusteeship system 'was also dominated by the imperial interests of the colonial power charged with governance.'[98] The Trusteeship Council ceased operations as of 1 November 1994 once the Pacific Island of Palau, the last remaining trust territory, had become independent on 1 October 1994. A month later the UN declared that: 'The aims of the Trusteeship System have been fulfilled to such an extent that all Trust Territories have attained self-government or independence, either as separate States or by joining neighbouring independent countries.'[99]

Finally, occupation can be considered as an activity closely associated with international administration. The end of World War II led to the creation of three Allied occupations in Germany (1945 – 1949), Austria (1945 – 1955) and Japan (1945 – 1952). The three territories were jointly administered by the military forces of the USA, the UK, France and the SU. More recently, the USA established the Coalition Provisional Authority in Iraq after operation Iraqi Freedom had toppled the regime of Saddam Hussein. The Coalition Provisional Authority was a military occupation like those after World War II. The common objective of these occupations was to establish viable democratic regimes and many of the tasks were similar to the tasks carried out by contemporary international administrations. However, a crucial difference with international administration is that occupations are not authorized by and answerable to an international organization such as the League of Nations or the UN.[100] Consequently, occupations are motivated by the particular national interests of the individual occupying states. National interest also plays a role in international administrations, but as Dominik Zaum argues, the dominance of these interests is mitigated because of the international character of the mission.[101]

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[98] Ibid., 33.
[99] United Nations, 'Trusteeship Council.' Obtainable from: www.un.org (last visited on 20 January 2009).
[100] Richard Caplan, *International Governance of War-Torn Territories. Rule and Reconstruction* (Oxford: Oxford University Press, 2005), 2.
[101] Dominik Zaum, *The Sovereignty Paradox. The Norms and Politics of International Statebuilding* (Oxford: Oxford University Press, 2007), 3.

2.2 Conceptualizing international administration

2.2.1 The purpose of international administrations

The overview above has shown that international administrations and analogous institutions share a common characteristic in that they both involve territorial administration by a foreign actor. In this way, Wilde refers to both categories collectively as 'foreign territorial administration.' However, as pointed out above, the difference between international administration and the other foreign administrations is that the latter are state-conducted institutions rather than institutions conducted by international actors (international organizations and international appointees).[102] For this reason, Wilde views international administration as a distinct activity from analogous institutions.

Wilde also distinguishes international administration from state-building and peace operations (like peacekeeping or peacebuilding), because these labels risk 'ignoring the complex nature of the projects under consideration and failing to appreciate the full potential of ITA [International Territorial Administration, *NvW*] based on recent and previous uses of the institution.'[103] According to Wilde the range of tasks international administration can be used for is much broader than the terms state-building and peace operations suggest. Wilde categorizes the many tasks that international administration can carry out according to two broadly defined purposes.[104] The first purpose of an international administration is to respond to a sovereignty problem. In that case the status of the territory in question is contested and an international administration is established in order to facilitate a solution to the problem. The case of Kosovo is mentioned as an example, because of its disputed political status. The second purpose for which international administration can be used is to respond to a governance problem. In that case the problem is not about who governs the territory, but about the quality of governance. The government is either incapable or unwilling to govern the territory well in the eyes of the international community. Bosnia with its legacy of ethnic nationalist politics (bad governance in the eyes of the international community) is mentioned as an example of international administration as a reaction to a governance problem; the international administration attempts to establish good governance by promoting 'a multi-ethnic social and political culture.'[105]

As a distinct activity, international administration is not synonymous with state-building, but even Wilde admits that – at least when addressing a governance problem – international administrations 'perform what is usually called a "state-

[102] Wilde, *International Territorial Administration*, 312.
[103] Ibid., 286.
[104] Ibid., 191-235.
[105] Ibid., 219.

building" role.'[106] State-building is an important purpose of international administration. That is not only illustrated by the actual cases of Bosnia and Kosovo, but also with the academic definitions and theoretical understandings of international administration. First, Richard Caplan regards international administration to be a peace-operation which is more comprehensive in scope and more political in character than other peace operations. Like Wilde he also distinguishes international administration from military occupation and state-building.[107] At the same time, Caplan acknowledges that international administration has much in common with complex peacekeeping, peacebuilding and state-building and that 'one must not be pedantic or dogmatic in drawing too sharp a distinction.'[108] According to Caplan, the chief functions or purposes of an international administration can be divided in five categories: (1) establishment and maintenance of public order and internal security; (2) repatriation and reintegration of refugees and internally displaced persons; (3) performance of basic civil administrative functions; (4) development of local political institutions, including the holding of elections to these institutions, and the building of civil society; and (5) economic reconstruction and development.[109] Especially the fourth category can be considered among state-building activities.

Second, Simon Chesterman conceptualizes international administration (which he calls transitional administration) as a special form of state-building. He defines state-building as: 'extended international involvement (primarily, though not exclusively, through the United Nations) that goes beyond traditional peacekeeping and peacebuilding mandates, and is directed at constructing or reconstructing institutions of governance capable of providing citizens with physical and economic security.'[110] International administration, then, is a special type of state-building which is carried out by assuming 'some or all of the powers of the state on a temporary basis.'[111] Chesterman identifies five different types of international administration based on their purpose and trajectory.[112] In some way or another, all five types are related to state-building, which makes Chesterman's classification consistent with his definition of international administration as a special type of state-building. The first type of international administration is the one which is established in the context of a process of decolonization (UNTAG and UNTAET for example). The second type is international administration established with the purpose to facilitate the transfer of territory (UNTEA, MINURSO and

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[106] Ralph Wilde, 'Representing International Territorial Administration. A Critique of Some Approaches', *European Journal of International Law* 15:1 (2004) 71-96, 71-96 and 601.
[107] Caplan, *International Governance*, 4-5.
[108] Ibid., 12.
[109] Ibid., 44.
[110] Chesterman, *The United Nations, Transitional Administration and State-Building*, 5.
[111] Ibid.
[112] Ibid., 57.

UNTAES). Thirdly, international administrations have been established in order to organize elections (UNTAC). Fourthly, international administrations can be established in order to implement a peace process (the OHR and UNMIK). The fifth and last type of international administration mentioned by Chesterman is the one established in the context of state failure (ONUC, UNOSOM II).

Third and finally, Dominik Zaum defines international administration as: '(…) international bodies exercising governmental functions over a territory, which are locally based, and most recent of which have been engaged in the establishment or reform of that territory's political and social institutions.'[113] Zaum considers international administration also to be a form of state-building. This is not only evidenced by his definition, but also by his description of the key objective of international administration as: '(…) the establishment of effective and legitimate control of the national political institutions, based on a specific model of organizing domestic society.'[114]

Making a clear distinction between international administration on the one hand, and state-building or peace operations on the other hand, is necessary in order to avoid making the concept 'empty.'[115] In that respect, Wilde's argument that international administration should be considered as a specific institution in international politics is compelling. For this study, international administration is considered a distinct activity in which an international authority (rather than a foreign authority) aims to solve sovereignty and/or governance problems through state-building. State-building is broadly defined as the construction or reconstruction of political, social and economic institutions.[116]

2.2.2 The authority of international administrations

Section 2.2.1 briefly mentions that international actors are responsible for conducting international administrations. These international actors have extensive powers at their disposal. Therefore, next to the purpose of international administration, the authority of these actors is also a defining characteristic of international administrations. Caplan points out that by administrating Eastern Slavonia, Bosnia, Kosovo and East Timor, the international authority in question has assumed 'responsibility to a degree unprecedented in recent history.'[117] Caplan has made a distinction between a rather limited scope of international authority and a more substantial scope of authority. He positions international administration on

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[113] Zaum, *Sovereignty Paradox*, 51.
[114] Ibid., 5.
[115] William Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power* (Oxford: Oxford University Press, 2003), 146.
[116] Based on: Chesterman, *The United Nations, Transitional Administration and State-Building*; Wilde, 'Representing International Territorial Administration. A Critique of Some Approaches', 601.
[117] Caplan, *International Governance*, 1.

a continuum with two extremes. One extreme is international administration with relatively little authority in the form of international *supervision*, while the other is a type of administration in which the international authority is extensive and engages in *direct governance* of the territory.[118] A more detailed continuum has been presented by Jarat Chopra and Michael Doyle. Chopra distinguishes four types of international administration, ranging from little authority to more political authority. The first type is *assistance*, where the international authority acts as an independent advisor. The second type*, partnership*, refers to a situation in which the international authority serves as a partner of the domestic authority. The third type is *control*; a situation in which the international authority acts throughout the domestic authority structures. The last type is *governorship*, in which the international authority takes full responsibility for the functioning of the territory.[119] Michael Doyle also distinguishes four types of international administration (which he calls 'ad hoc semi sovereign mechanisms'). His scale of international transitional political authority ranges from *monitoring, administrative authority* and *executive authority* to full *sovereign rule* (or 'supervisory authority' as he calls it).[120] Arguably, the three classifications are more or less overlapping as is shown in Table 2.1.

Table 2.1: A classification of international administration based on the level of authority

Richard Caplan	**Jarat Chopra**	**Michael Doyle**
Supervision	Assistance	Monitoring
-	Partnership	Administrative Authority
-	Control	Executive Authority
Direct Governance	Governorship	Sovereign Rule

On one side of the spectrum, the *supervision* of Caplan could be regarded to be the same as the *assistance* of Chopra and the *monitoring* of Doyle. An example of an international administration of the *supervision*, *assistance*, or *monitoring* type is UNTAC. On the other side of the spectrum, Caplan's *direct governance* is similar to Chopra's *governorship* and Doyle's *sovereign rule*. All three are based on the notion of total international political authority over the administered territory. Examples of the *direct governance, governorship,* or *sovereign rule* type of

[118] Richard Caplan, 'A New Trusteeship? The Administration of War-torn Territories', *International Institute of Strategic Studies Adelphi Paper* 341 (2002), 13-16. Caplan, *International Governance*, 17-18.
[119] This classification is not based on empirical research, but is a deductive classification of political authority. Chopra, *Peace-Maintenance*, 16.
[120] Michael W. Doyle, 'Strategy and Transitional Authority', *Ending Civil Wars. The Implementation of Peace Agreements*, Stephen John Stedman, Donald Rothchild, and Elizabeth M. Cousens, eds. (Boulder/London: Lynne Rienner, 2002) 71-88, 83-86.

international administrations are UNTAES, UNMIK and UNTAET. In all three cases the international administration functioned as the sovereign power. The international administration of Bosnia should be considered as a *control* (Chopra) or *executive authority* (Doyle) type of international administration. The difference between *governorship* and *control* is that in the former case the external state sovereignty is exercised by the international administration, while in the latter case the external state sovereignty lies with the domestic authorities.

The question is whether the categories of *supervision, assistance, monitoring, partnership* and *administrative authority* do enough justice to international administration as a specific institution. According to Zaum, international administrations have in comparison to other instances of institution-building 'the most comprehensive mandates and the most comprehensive authority over local institutions at their disposal.'[121] Zaum argues that 'international administrations are involved in governance, rather than monitoring and assistance, distinguishing them from less intrusive incidents of international involvement such as election monitoring or development work.'[122] Similarly, Wilde argues that 'the difference between supervision/control/conduct, on the one hand, and mere assistance/advice, on the other, is (…) a key component in defining the nature of the involvement in territorial administration by international actors.'[123] Given the specificity of international administration as an institution in international politics, the term international administration can better be reserved for those operations in which the level of authority is of the governorship type (Kosovo) or the control type (Bosnia). Thus, international administrations which involve 'soft' mandates with little authority (the first two types in Table 2.1) and no governance functions are not regarded as international administrations for this study.

2.2.3 Defining international administration

In the two sections above it was pointed out that international administrations are conducted by international actors that have extensive powers at their disposal. International administrations also develop in response to sovereignty or governance problems and most often involve state-building activities. Taking these elements into account, international administration is defined as: a political authority which is established by an international organization and which aims to develop political, social and economic institutions in a specific territory by assuming some or all sovereign powers of the state on a temporary basis. This definition includes an empirical as well as a normative aspect of international administration. First, the empirical aspect involves the extensive political power that is executed by an

[121] Zaum, *Sovereignty Paradox*, 3.
[122] Ibid., 52.
[123] Wilde, *International Territorial Administration*, 33.

international administration. The definition allows for a distinction in the level of authority. In the case of Bosnia, the OHR has assumed 'some sovereign powers' whereas in the case of Kosovo UNMIK has assumed 'all sovereign powers' of the state. This variation is important, because it is argued that the difference in authority might explain the different trajectories of both international administrations when it comes to institutionalization.

The normative aspect of the definition is that international administrations aim to develop political, social and economic institutions; i.e. that they are involved in institution-building or state-building. Institution-building is an important task of international administrations as all authors mentioned above recognize.[124] In this study it is regarded as the core activity of international administration. As has been explained in the introduction, this study attempts to assess the institution-building process in Bosnia and Kosovo. The focus is on political institutions without denying the importance of other institutions.

2.3 Conflict management

A basic argument of this study is that the development of Bosnia's and Kosovo's political institutions into domestically embedded institutions has been impeded by the absence of conflict resolution.[125] The international administration in Bosnia was established after the Dayton Peace Agreement was signed between the conflicting parties. As mentioned in the introduction, the Agreement was imposed by the Contact Group, which shows there was little commitment to conflict resolution. In the case of Kosovo the absence of conflict resolution was even more evident. UNMIK was established while the conflict, the political status of the territory, had not been addressed at all. Instead of being resolved, the conflicts in Bosnia and Kosovo were being managed. In order to understand the concepts of conflict management and conflict resolution, it is necessary to first take a closer look at the concept of conflict.

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[124] Even Wilde argues that international administrations 'perform what is usually called a "state-building" role.' Wilde, 'Role of International Administration', 601.

[125] An alternative term for 'conflict resolution' is 'conflict transformation.' In Galtung's work both terms are defined as an effort to solve the incompatibility. See Johan Galtung, 'Conflict as a Way of Life', *Progress in Mental Health*, Hugh Freeman, ed. (London: J&A Churchill LTD, 1969) 11-33, 15. Galtung and several other conflict analysts prefer the term 'transformation', because 'resolution' has a too definitive connotation to it. According to Galtung, no resolution can be forever. Johan Galtung, *Peace by Peaceful Means* (London: Sage Publications, 1996), 96. Alan Tidwell even speaks of a 'school' of theorists who reject the notion of resolution and write about transformation instead. Alan C. Tidwell, *Conflict Resolved? A Critical Assessment of Conflict Resolution* (London/New York: Continuum, 1998), 72. Nonetheless, recognizing that it does not entail a definitive solution, the term conflict resolution is used in this study, because it is the most common term applied in the literature.

In everyday language, conflict has a negative connotation. However, many conflict researchers stress the positive sides of conflict. In his classic article *Conflict as a Way of Life*, Johan Galtung concluded that: 'conflict can be basically seen as one of the major motivating forces in our existence, as both a cause, a concomitant and a consequence of change, as an element as necessary to social life as air to human life.'[126] According to Luc Reychler, conflict has value, utility and even healing power.[127] Finally, Lewis Coser states that conflict can contribute to society in a positive way.[128] All three authors recognize the functional element of conflict, without denying its potential of destruction; next to a functional, constructive manifestation, conflict can, and often does, manifest itself in a dysfunctional or destructive form.

Most definitions of conflict include the notion of 'incompatibility.'[129] Oliver Ramsbotham, Tom Woodhouse and Hugh Miall define conflict as: 'the pursuit of incompatible goals by different groups.'[130] Galtung defines conflict as an 'incompatibility between goal-states, or values held by actors in a social system.'[131] Adam Curle writes: 'By conflict I mean, essentially, incompatibility.'[132] Based on these definitions one can safely conclude that 'incompatibility' lies at the heart of a conflict. However, Galtung pointed to the equal importance of attitudes and behavior when analyzing conflict. He developed a model, the conflict triangle, in which he described the dynamics between the incompatibility of a conflict and the attitudes and behavior supporting it (see Figure 2.1). The conflict triangle shows three elements of conflict which continuously influence each other. The first element is the incompatibility (also called 'contradiction' by Galtung), the second element is the hostile attitudes and the third element is the hostile behavior of conflicting parties.[133] One can speak of a fully articulated conflict when all elements exist.[134]

Incompatibility should essentially be understood as the content of the conflict, i.e. what the conflict is actually about. The Uppsala Conflict Data Program (UCDP) defines incompatibility as 'generally incompatible positions of the parties to the conflict.' Although it is often not possible to identify one single cause of a

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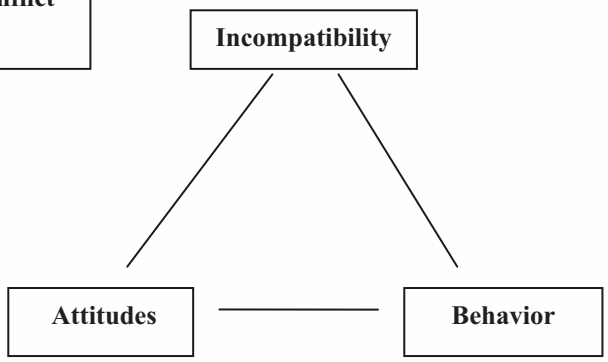
[126] Galtung, 'Way of Life', 16.
[127] Luc Reychler, *Democratic Peace Building and Conflict Prevention. The devil is in the transition* (Leuven: Leuven University Press, 1999), 141.
[128] Lewis Coser, *The Functions of Social Conflict* (Glencoe: The Free Press, 1956).
[129] In the academic literature incompatibility is also referred to as the 'structure of the conflict.' See: Chester A. Crocker, Fen Osler Hampson, Pamela Aall, *Taming Intractable Conflicts. Mediation in the Hardest Cases* (Washington D.C.: United States Institute of Peace Press, 2004), 99.
[130] Oliver Ramsbotham, Tom Woodhouse, and Hugh Miall, *Contemporary Conflict Resolution* (Cambridge: Polity Press, 2005), 27.
[131] Galtung, 'Way of Life', 13.
[132] Adam Curle, *Making Peace* (London: Tavistock Publications, 1971), 3.
[133] In this text the term incompatibility is used instead of contradiction. Galtung, *Peace*, 71.
[134] Ibid., 72 and 73.

particular conflict, in most cases a primary reason for the incompatibility of the conflicting sides can be identified. The UCDP, for example, makes a distinction between two broadly defined incompatibilities: one concerning governmental power (a conflict about the political system or the composition of government) and one concerning territory (a conflict about the status of a territory).[135]

Figure 2.1: Galtung's Conflict Triangle



As will be argued in Chapter three, in Kosovo the incompatibility of the conflict was the political status of the territory. The conflict in Kosovo has been described as: 'an ethnic conflict with strong territorial and cross-border/international dimensions.'[136] In Bosnia, the incompatibility was also about the political status of the territory. The main issue was concerning the question whether the country should be one (federal) state or split into separate political entities, as will be elaborated upon in Chapter three. Steven Burg and Paul Shoup describe the content of the conflict in Bosnia as follows: 'The war in Bosnia-Herzegovina involved an internal struggle among ethnic nationalists over the definition and control, indeed the very existence of the state, as well as an international struggle between the government of Bosnia-Herzegovina and its neighbours.'[137]

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[135] Lotta Harbom and Peter Wallensteen, 'Appendix 2B. Definitions, sources and methods for the conflict data', *SIPRI Yearbook 2008. Armaments, Disarmament and International Security*, D.A. Cruickshank *et al.*, eds. (Stockholm: Stockholm International Peace Research Institute, 2008) 84-95, 84.

[136] Stefan Wolff, 'The Limits of Non-Military International Intervention: A Case Study of the Kosovo Conflict', *Understanding the War in Kosovo*, Florian Bieber and Zidas Daskalovski, eds. (London/Portland: Frank Cass Publishers, 2003) 79-100, 79.

[137] Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina. Ethnic Conflict and International Intervention* (Armonk/London: M.E. Sharpe, 1999), 128.

Conflict researchers, including Galtung, often regard incompatibility as the most important element of conflict.[138] However, it is also recognized that conflicts may start from the other two corners of the conflict triangle. First, a conflict may be born out of the attitudes, or the actors' perceptions and misperceptions of each other. Such a conflict starts with hostile attitudes, fostered and transmitted through ideology and tradition. To justify this attitude, an actor may search for an incompatibility and initiate violent behavior (or the other way around).[139] Second, a conflict may start as a result of violent behavior. Behavior is the visible and manifest aspect of conflict, while attitude and incompatibility are the latent aspects of conflict. A conflict could start with violent behavior and subsequently be legitimized by hostile attitudes and an (invented) incompatibility.[140]

How can conflict be resolved? Based on the conflict triangle, Galtung identifies three types of what he calls 'conflict interventions.'[141] These interventions aim at resolving the three specific conflict elements and aim at ending the three types of violence that are associated with the three elements of the conflict triangle, namely: direct violence (associated with violent behavior), cultural violence (associated with hostile attitudes) and structural violence (associated with incompatibility).

The first type of conflict intervention is focused on the behavioral element of the conflict triangle. Galtung defines behavioral violence as 'direct violence', or 'the type of violence where there is an actor that commits the violence as *personal* or *direct*.'[142] The intervention is aimed at controlling the actors to such an extent that direct violence stops. A concrete example of a conflict intervention which ends direct violence is a cease-fire. The second type of conflict intervention focuses on the attitudinal element of the conflict triangle. Violence emerging from people's attitudes is defined as 'cultural violence', or 'those aspects of culture (…) that can be used to justify or legitimize direct or structural violence.'[143] The intervention is aimed at diminishing the hostile attitudes of the conflicting actors to such an extent that it leads to mutual acceptance of each other. Reconciliation efforts, for example, could be regarded as belonging to this second type of conflict intervention. Finally, the third type of conflict intervention identified by Galtung is focused on resolving the incompatibility. Violence associated with incompatibility is called 'structural violence', or violence where there is no specific actor, but

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[138] In his earlier work Galtung had argued that a conflict may start in all corners of the triangle, but in later work he conceded that it often starts with incompatibility: Peter Wallensteen, *Understanding Conflict Resolution. War, Peace and the Global System* (London: Sage Publications, 2002), 35.
[139] Galtung, 'Way of Life', 14.
[140] Ibid.
[141] Galtung, *Peace*, 103.
[142] Johan Galtung, 'Violence, Peace and Peace Research', *Journal of Peace Research* 6:3 (1969) 167-191, 170.
[143] Galtung, *Peace*, 196.

which is 'built into the structure and shows up as unequal power and consequently as unequal life chances.'[144] The intervention is aimed at ending the inequality in the system. A concrete example of this type of conflict intervention is a negotiated peace agreement.

As has been argued above, a fully articulated conflict includes incompatibility among groups of people, violent behavior and hostile attitudes. Therefore, a resolved conflict includes a solution to incompatibility, which is supported by non-hostile attitudes and non-violent behavior. Only when this is the case, can one speak of conflict resolution. As such, conflict resolution 'implies that the deep-rooted sources of conflict are addressed and transformed.'[145] A resolved conflict means that a new status quo has been found which is accepted and sustained in word and deed by all parties to the conflict. In the case of Bosnia, the Dayton Agreement settled and contained the conflict but it did not resolve the underlining issues of incompatibility. The Agreement was imposed rather than freely accepted by the conflicting parties and resulted in the establishment of an international administration in order to ensure that the provisions of the Dayton Agreement would be carried out. In other words, the focus of the international involvement was on addressing violent behavior and hostile attitudes; the first and second types of intervention. The third type of intervention was absent in the sense that the international administration was based on the Dayton Peace Agreement, in which the incompatibility was incorporated.

In the case of Kosovo the incompatibility was not resolved either, because the political status of the territory remained undecided. The hostile attitudes and violent behavior of the conflicting parties were contained by the international administration, yet their incompatibility persisted. In the case of Kosovo the international administration functioned as a buffer between on the one hand Kosovo Albanians who wanted independence and on the other hand Kosovo Serbs and the Serbian government who opposed Kosovo's secession from Serbia. As in Bosnia, the international administration in Kosovo focused on the behavioral and the attitudinal aspects of conflict, rather than on the incompatibility.

Focusing on the attitudes and behavior of conflicting parties without properly addressing the incompatibility in this study is defined as conflict management. This corresponds with the definition of conflict management as used by Ramsbotham, Woodhouse and Miall who define it as the 'settlement and containment of violent conflict.'[146] Settlement and containment is not the same as conflict resolution (which also addresses incompatibility) and results in different outcomes. Conflict management often leads to what is referred to in the academic literature either as frozen conflict or negative peace. Frozen conflict is a situation in

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[144] Galtung, 'Violence, Peace and Peace Research', 88.
[145] Ramsbotham, Woodhouse, and Miall, *Conflict Resolution*, 29.
[146] Ibid.

which (direct) violence is ended, but in which the incompatibility remains unresolved.[147] Frozen conflicts have been associated with classic peacekeeping operations in which a buffer zone separates two warring parties.[148] An example of a classic peacekeeping operation that has resulted in a frozen conflict is the United Nations Peacekeeping Force in Cyprus (UNFICYP) which was established in 1964 and is still keeping the peace by separating the Greek Cypriots and the Turkish Cypriots.[149] The peace in such a situation is a 'negative' one, meaning the absence of (direct) violence.[150]

Negative peace is often contrasted with positive peace, which goes beyond the mere *absence* of violence. Unfortunately, Galtung is not very clear and consistent about the concept of positive peace and it can only be understood in relation to his conceptualization of negative peace. In 1969, Galtung defines negative peace as the absence of direct violence and positive peace as the absence of direct violence and structural violence.[151] In 1996, however, he defines negative peace more ambitiously as the absence of *all kinds* of violence (i.e. direct, cultural and structural) and positive peace as a 'cooperative system beyond passive peaceful coexistence.'[152] Galtung has never been very clear on what this cooperative system is about. That might explain why many academics working in the field of conflict resolution prefer to use Galtung's earlier definition (although sometimes adding the absence of cultural violence as another element of positive peace as well).[153] Following the literature on the topic, this study defines negative peace as the absence of direct violence and positive peace as the absence of direct, structural and cultural violence.[154] The ultimate challenge for international administrations like those in Bosnia and Kosovo is to avoid freezing the conflict and to establish positive peace, rather than negative peace.

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[147] Crocker, *Taming Intractable Conflicts*, 8 and 36.
[148] Michael Pugh, 'Peacekeeping and Humanitarian Intervention', *Issues in World Politics*, Brian White, Richard Little, and Michaels Smith, eds. (New York: Palgrave Publishers, 2001) 113-132, 123.
[149] Rob de Wijk, *Vechten met een hand op de rug? Vredesondersteuning in escalerende conflicten* ('s-Gravenhage: Nederlands Instituut voor Internationale Betrekkingen Clingendael, 1998), 11.
[150] Galtung, *Peace*, 31. Ramsbotham, Woodhouse, and Miall, *Conflict Resolution*, 41.
[151] Galtung, 'Violence, Peace and Peace Research.'
[152] Galtung, *Peace*, 61.
[153] See for example: Albrecht Schnabel, 'Appendix 2C. The human security approach to direct and structural violence', *SIPRI Yearbook 2008. Armaments, Disarmament and International Security*, D.A. Cruickshank *et al.*, eds. (Stockholm: Stockholm International Peace Research Institute, 2008) 87-95, 88. Ramsbotham, Woodhouse, and Miall, *Conflict Resolution*.
[154] This definition is used by Ramsbotham, Woodhouse and Miall in: Ramsbotham, Woodhouse, and Miall, *Conflict Resolution*, 41.

2.4 Institutionalization

The establishment of (political) institutions (institution-building) by international administrations does not necessarily mean that they will continue to exist by default. A continuous process of institutionalization is necessary in order to prevent institutions from breaking down. According to Samuel Huntington, institutionalization gives institutions value and stability.[155] More concretely, institutionalization is defined by Richard Sisson as: 'the creation and persistence of valued rules, procedures, and patterns of behavior that enable the successful accommodation of new configurations of political claimants and/or demands within a given organization whether it be a party, a legislature, or a state.'[156] Sisson developed a theory of institutionalization in which the internal and external structures of institutions are analyzed.[157] The internal structure refers to the relationships among different actors within the institution; for example, within a parliament, the relationship between parliamentary party groups and parliamentary committees. The external structure refers to the relationships between the institution and its environment, which include other institutions or society as a whole.

This study focuses on the external structure of political institutions in Bosnia and Kosovo. The focus is on the one hand on the relationship between the political institutions and society, and on the other hand the relationship between the political institutions and the international administration. In this study, institutionalization is understood to be composed of two phases. Following the definition of Sisson, the first phase is about the *creation* of institutions (defined as valued rules, procedures, and patterns of behavior). This is done under the direction of the international administration and not by the domestic authorities and in this way the institutions cannot be regarded as embedded in domestic society (which I explain in Sections 2.4.1 to 2.4.3). Again following Sisson's definition, the second phase is about the *persistence* of institutions. Within the context of international administration, this means that the institutions become embedded (or not) in the domestic societies. Although Chapter three is about the first phase of institutionalization, the second phase is the focus of this study.

More needs to be said regarding the selection of the political institutions that are analyzed for this study. This study focuses on three institutions at the central state level: the presidency, the government and parliament. The choice for these institutions is motivated by the international administrations' focus on the central level of governance in their institution-building programs. Although

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[155] Petr Kopecky, *Parliament in the Czech and Slovak Republic. Party competition and parliamentary institutionalization* (Aldershot: Ashgate, 2001), 10.
[156] Sisson, 'Comparative Legislative Institutionalization', 19.
[157] Ibid.

projects for local government reforms have been initiated in both territories, the central level has been the principal target of institution-building. To adapt Sisson's theory to suit the purpose of studying the second phase of institutionalization under international administration, three indicators are used: (1) institutional autonomy; (2) institutional congruency; and (3) institutional support.[158] In the next three sections, I elaborate on these three criteria of institutionalization.

2.4.1 Institutional autonomy

The first criterion of institutionalization is institutional autonomy. Being autonomous is important for every institution since: 'Autonomy affirms the separate identity of a social unit and suggests that its persistence is not primarily a function of directive action from other institutional spheres.'[159] Some academics regard the existence of boundedness, or the ability of a particular institution to demarcate boundaries between itself and the environment, as the conceptual core of institutionalization.[160] The autonomy of institutions in this study refers to the independence of domestic political institutions from the international administration and to the strength of domestic political institutions (institutional capacity).

At the start of the mission the domestic institutions are not independent. It is the international administration rather than the domestic political institutions which has the authority of government. Ultimately, however, an international administration aims at creating independent domestic political institutions. During the process, it gradually transfers governance functions from the international level to the domestic level. In this way, the domestic institutions get the ability to demarcate their boundaries with respect to international involvement step by step. This can be done in two ways. First, institutional independence is increased by a transfer of authority from the international level to the domestic level. There not only needs to be a formal transfer of powers, but authority should also be transferred in practice. Full autonomy in the sense of 'independence' will be considered to exist when all fundamental decisions are being left to the domestic institutions. This holds mainly for the case of Kosovo, where the UN executed a governorship mandate. Second, independence increases when the number of

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[158] Adapted from: Ibid., 25. See also: Kopecky, *Parliaments in the Czech and Slovak Republic*, 12 and 13.
[159] Sisson, 'Comparative Legislative Institutionalization', 25.
[160] David Judge, 'Legislative Institutionalization: A Bent Analytical Arrow?' *Government and Opposition* 38:4 (2003) 497-516, 514. Robert Keohane's definition of autonomy also focuses on the demarcation between an (international) institution and its environment: "the extent to which the institution can alter its own rules rather than depending on outside agents (...) to do so." As quoted in: Robert Jackson and George Sorensen, *Introduction to International Relations. Theories and approaches* (Third Edition; Oxford: Oxford University Press, 2007), 109.

interventions carried out by the international administration decreases. This holds mainly for the case of Bosnia, where the international administration operated mainly through interventions in the domestic political process.

Next to autonomy in the sense of independence, in this study autonomy is also understood as institutional capacity. Institutional capacity is about the strength of the institutions or the ability of institutions to: 'plan and execute policies and to enforce laws cleanly and transparently.'[161] The World Bank defines institutional capacity or 'government effectiveness' as 'the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.'[162] Thus, institutional capacity says something about the quality of work of political institutions and is part of an institution-building policy.[163] It can be expected especially after a war that institutional capacity will be weak. However, institutional capacity can be enhanced through capacity-building programs where the quality of for example parliamentary work or the civil service can be improved. When actual improvement can be identified, institutional autonomy in terms of institutional capacity has increased. A concrete example of capacity-building is the training of a professional civil service or parliamentarians.

2.4.2 Institutional congruency

The second criterion of institutionalization is institutional congruency, or the congruency of 'value systems that associate the institution and its environment and that govern behavior within the institution.'[164] Whereas the indicators of institutional autonomy and institutional support are analyzed at the level of the three particular institutions, for institutional congruency the level of analysis is within the political system. The value systems of a political system are defined as a political culture. Larry Diamond defines political culture as: '(…) a people's predominant beliefs, attitudes, values, ideals, sentiments, and evaluations about the political system of their country and the role of the self in that system.'[165] The

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[161] Francis Fukuyama, *State Building. Governance and World Order in the Twenty First Century* (London: Profile Books, 2004), 9.
[162] Government effectiveness is one of the six governance indicators used by the World Bank: (1) voice and accountability; (2) political stability and absence of violence; (3) government effectiveness; (4) regulatory quality; (5) rule of law; and (6) control of corruption. Daniel Kaufman, Aart Kraay, and Massimo Mastruzzi, *"Governance Matters V: Governance Indicators for 1996-2005"* (Washington D.C.: The World Bank, 2006), 4.
[163] Caplan, *International Governance*, 99.
[164] Sisson, 'Comparative Legislative Institutionalization', 30.
[165] Larry Diamond, *Developing Democracy. Toward Consolidation* (Baltimore/London: The John Hopkins University Press, 1999), 162.

political culture of a political system can consist of different value systems that may be congruent or incongruent with each other. In the latter case, one cannot speak of institutionalization in terms of institutional congruency.

When a territory is governed by an international administration, its domestic political system and its political culture are strongly influenced by that external body. International administration is not neutral in character, but is biased towards Western concepts and values.[166] Although in the cases of Bosnia and Kosovo it was the entire 'international community' that was referred to as being responsible for the international administrations, it were Western states and institutions that were the most deeply involved.[167] The international administrations in Bosnia and Kosovo devised a political system which can be characterized as a market democracy; a liberal democratic political system combined with a market economy.[168] This is clearly reflected in the preamble of Bosnia's Constitution, in which it is stated that democratic institutions and procedures are needed to produce peaceful relations in a pluralistic society and that the promotion of a market economy is necessary for creating welfare and economic growth.[169] The ambition to create a market democracy is also reflected in Kosovo's Constitutional Framework (Kosovo's provisional constitution). In the document it is stated that UNMIK aims at enhancing democratic governance and at developing a market economy.[170]

The value system which the international administrations aim to promote is one based on civic nationalism. Civic nationalism is based on the idea that a political authority rules on behalf of citizens who 'base their appeals on loyalty to a set of political ideas and institutions that are perceived as just and effective.'[171] A civic nation is a 'territorially bounded, sovereign legal-political community (...) whose members are citizens participating in a mass public national culture.'[172] The opposite of civic nationalism is ethnic nationalism. Ethnic nationalism is based on the idea that a political authority rules on behalf of a particular ethnic group which shares 'a common culture, language, religion, shared historical experience, and/or

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[166] Caplan, *International Governance*, 130.
[167] Zaum, *Sovereignty Paradox*, 13.
[168] Roland Paris, 'Peace-Building and the Limits of Liberal Internationalism', *International Security* 22:2 (1997) 54-89, 56.
[169] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 4: Constitution of Bosnia and Herzegovina', (1995). Obtainable from: www.ohr.int (last visited on 20 January 2009).
[170] UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo', (Pristina: 2001).
[171] J. Snyder, *From Voting to Violence. Democratization and Nationalist Conflict* (New York/London: W.W. Norten & Company, 2000), 24.
[172] Anthony D. Smith, 'Ethnicity and Nationalism', *The SAGE Handbook of Nations and Nationalism*, Gerard Delanty and Krishan Kumar, eds. (Londen/Thousand Oaks/New Delhi: SAGE Publications, 2006) 169-181, 170.

the myth of a shared kinship.'[173] In contrast to civic nationalism, ethnic nationalism defines 'citizen' as a member of a particular ethnic community rather than as a member of a legal-political community. Ethnic nationalism was a driving force behind the armed conflicts in Bosnia and Kosovo in the sense that it was used by politicians to mobilize the different ethnic groups. Consequently, at the start of both international administrations the political culture was dominated by ethnic nationalism.

The OHR and UNMIK have tried to replace the ethnic nationalist value system with a civic nationalist (or multi-ethnic) value system. The extent to which the international administration succeeded in establishing civic nationalism as the dominant value system, can help determine whether the political system can be considered to be institutionally congruent. One outcome of institutional congruency would be that the international administration has indeed succeeded in creating a civic nationalist political culture. Another outcome of institutional congruency would be when the international administration would have given up on civic nationalism, and when ethnic nationalism would be the remaining value system dominating the institutions. The third possible outcome would be one of institutional incongruency which would be the case when ethnic nationalism and civic nationalism would still exist as competing and incongruent value systems.

2.4.3 Institutional support

Domestic institutional support is the third indicator to assess the level of institutionalization. Support manifests itself in positive attitudes and in positive behavior (compliance) among the elites and the majority population towards the institutions. Attitudinal support for a political institution is defined as: a predisposition to act on behalf of the interests of the institution.[174] Compliance is defined as: '(…) the congruence between authoritative prescription and subject action.'[175]

Institutional support is problematic in the context of international administrations. Since the domestic political institutions are created by the international administration and since they must operate in a post-war environment it is not unthinkable that the institutions are challenged by opposing domestic actors. There is institutionalization when there is substantial support for and compliance with the political institutions. In order to make the analysis as specific as possible, a distinction is made between support and compliance on the elite level and support and compliance on the mass level of society. Although one could argue that, because of their disproportionate power and influence, political elites matter

[173] Snyder, *From Voting to Violence*, 24.
[174] Sisson, 'Comparative Legislative Institutionalization', 32.
[175] Ibid., 33.

most when it comes to support for and compliance with political institutions, it is not sufficient to include the elite level only. Especially in the long term, the support and the compliance of the population at large may be highly relevant.[176]

Establishing just how much support is substantial enough always includes some degree of arbitrariness.[177] In the case of Bosnia and Kosovo, it would make little sense to adopt quantitative thresholds when assessing the level of support for and compliance with political institutions. As far as the attitudes of the political elite are concerned, it requires that all significant political leaders (of all major communities) believe in the legitimacy of the institutions and believe that the institutions merit their support. These attitudes should be expressed in public rhetoric, ideology, writings, and symbolic gestures.[178] As far as elite compliance is concerned, all significant political leaders need to comply with the institutions. With respect to the majority of the population, it is equally important that it massively supports and complies with the political institutions in order to be able to speak of institutionalization.

On top of the indicators of support and compliance, two additional conditions are to be taken into account when analyzing to what extent the political institutions in Bosnia and Kosovo are supported by the population. First, support and compliance should exist for some period of time. For this study, the period of time examined begins when the institutions were first established and continues until the autumn of 2008. Second, those rejecting the political institutions should not be politically relevant. With these conditions in mind, then one can speak of institutionalization in both territories once all significant political leaders and the overall majority of the population support and comply with the political institutions.

2.5 Research design and methodology

As already stated in the introduction, the research objective of this study is to understand how the OHR and UNMIK have attempted to create sustainable political institutions in Bosnia and Kosovo and whether they have achieved their objective. The explicit research question guiding this research is: have the OHR and UNMIK succeeded in creating domestically embedded political institutions in Bosnia and Kosovo? In order to answer this question the multiple (or comparative)

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[176] See for an elaboration on the distinction between elite and mass level support in the academic literature on democratic consolidation: Diamond, *Developing Democracy*; Richard Gunther, P. Nikoforos Diamandouros, and Hans-Jürgen Puhle, 'Introduction', *The Politics of Democratic Consolidation*, Richard Gunther, P. Nikoforos Diamandouros, and Hans-Jürgen Puhle, eds. (London: John Hopkins University Press, 1995) 1-32.
[177] Diamond, *Developing Democracy*, 68.
[178] Ibid., 69.

case study method is used.[179] To be more exact, the method is applied of structured focused comparison as developed by Alexander George, Timothy McKeown and Andrew Bennett.

Within the method of structured focused comparison the importance of theoretically informed research questions in qualitative research is underscored. The term 'focus' refers to the selection of data based on explicit research objectives and data requirements. It assumes that one particular case can be studied from many different angles and that therefore the research should be guided by explicit research questions. In this study, the theoretical focus is provided by the conflict management and institutionalization models presented above. The term 'structure' refers to a standardization of the research strategy. In every case study, the same type of research questions are asked and the same type of data are used.[180] In this study that is done by asking the following sub questions for each case: 1) what level of institutional autonomy can be observed?; 2) what level of institutional congruency can be observed?; and 3) what level of institutional support can be observed? All three sub questions are logically related to the main research question and thus to the three indicators of institutionalization.

The analysis of both cases is based on written primary sources such as publications from the international administrations, research reports from (independent) research institutes, and newspaper articles.[181] Added to this material is relevant academic literature and interviews with officials from the OHR, UNMIK and other appropriate international organizations. When it comes to more particular data sets, the following are used. For assessing the autonomy of Bosnia's and Kosovo's political institutions (Chapter four) the decisions of the OHR and the regulations of UNMIK are used. All decisions and regulations have been published on the websites of the international administrations. For assessing the institutional congruency (Chapter five), data on the general elections in both cases is used. Finally, the chapter on institutional support (Chapter six) includes the results of opinion polls on popular satisfaction with the major political institutions made by the UN Development Program.

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[179] See for an elaboration on this method: Arend Lijphart, 'Comparative politics and the comparative method', *American Political Science Review* 65:3 (1971) 682-693; Alexander L. George and Timothy J. McKeown, 'Case Studies and Theories of Organizational Decision Making', *Advances in Information Processing in Organizations* 2:2 (1985) 21-58. Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry* (New York: Wiley-Interscience, 1970). Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry. Scientific Inference in Qualitative Research* (Princeton: Princeton University Press, 1994). Robert K. Yin, *Case Study Research. Design and Methods.* (Thousand Oaks: SAGE Publications, 1994).

[180] George and McKeown, 'Case Studies and Theories.'

[181] Due to the lack of knowledge of the languages spoken in Bosnia and Kosovo, I was forced to limit the sources to the Dutch, English, German and French languages. However, much material that was originally written in one of the local languages has been translated into English.

The method of structured focused comparison is used in this study, because it can be applied very well to research which involves case studies trying to study processes rather than static points in time.[182] The method of structured focused comparison actually consists of several sub-methods, such as process tracing, controlled comparison and the congruence method. In this study, the process tracing method is used. In the first instance, process tracing is a method that is used for within-case (or 'single') case analysis. Nonetheless, it can also be used for comparative case studies when the results of the individual cases are drawn together within a common theoretical framework. [183]

Four important limitations resulting from this research design should be mentioned. First, the objective of this study is not to establish a theory of international administration, conflict management or institutionalization. What this research aims to do is to explain how the OHR and UNMIK have attempted to create sustainable political institutions in the particular cases of Bosnia and Kosovo. The comparative perspective might lead to some general insights about international administration, conflict management or institutionalization, but since the analysis includes only two cases broad generalizations are not possible. A second limitation of this research is that it is confined to an analysis of institutionalization defined as institutional autonomy, congruency and support. Using these three indicators in the analysis means that other factors that could also be studied in the context of institutionalization are being left out. That being said, these three indicators can be considered as crucial for understanding how institutions evolve into embedded institutions under international administration. The third limitation is that the study does not offer an irrefutable explanation of the process of institutionalization. The objective is to determine whether the institutions have become embedded in domestic society. In addition a plausible explanation is presented by linking the process of institutionalization with the process of conflict management. However, this should be understood as a proposition that could possibly inform future research, rather than a definite empirical claim. Finally, it must be emphasized that the conclusions presented here are tentative conclusions. In December 2008, neither the OHR, nor UNMIK had been (officially) closed down so that their international administrations had not ended yet. Nonetheless, both international administrations were arriving at the end of their mandates as the EU had positioned itself as the principal conflict manager in Bosnia and Kosovo.

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[182] Guy Peters, *Comparative Politics. Theory and Methods* (Houndmills/Basingstoke/Hampshire/London: Macmilllan Press, 1998), 152. George and Bennett argue that the method of structured focused comparison was designed in order to '(…) study historical experience.' Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Massachusetts: MIT Press, 2005), 67.
[183] George and Bennett, *Case Studies*, 179.

3 The Establishment of the OHR and UNMIK

After having introduced the basic concepts of this study in Chapter two, it is necessary to provide an overview of the OHR and UNMIK as the two specific international administrations analyzed in this study. This chapter presents the background of both international administrations as well as an introduction to Bosnia's and Kosovo's political institutions. First, the historical background of the OHR and UNMIK is elaborated upon. This includes a section which explains how the conflicts in Bosnia and Kosovo were *not* resolved and how the non-resolution of conflict ultimately led to the establishment of international administrations in Bosnia and Kosovo of control and governance types. Secondly, the mandate and organization of the international administrations are described. An analysis is included of how the OHR and UNMIK have proceeded in implementing their mandates and the role of other international actors. Thirdly, the political institutions in Bosnia and Kosovo are introduced. The focus of this examination is put on constitutional design and on those political institutions that are under scrutiny in this study: the presidency, the government and parliament at the central level of government. By presenting these institutions, the first phase of institutionalization (the creation of institutions) under international administration is elaborated upon. The chapter ends with some concluding remarks on this first phase of institutionalization.

3.1 The Office of the High Representative

3.1.1 The historical background of the OHR

The Office of the High Representative (OHR) was created by the Dayton Peace Agreement, which ended the war that had torn Bosnia apart between 1992 and 1995. The war in Bosnia should be placed in the broader context of the break-up of the former Federal People's Republic of Yugoslavia (Yugoslavia). The demise of Yugoslavia was the result of a long process of fragmentation which accelerated at the end of the Cold War. Since the Second World War, there has been the occasional revival of ethnic nationalist feelings in Yugoslavia in general and in Bosnia in particular. In the 1970's, for example, Serb and Croat ethnic nationalists spoke openly about carving pieces of territory off Bosnia in order to incorporate them in Serbia and Croatia respectively.[1] Nationalism was the primary language of the political opposition and when the third Yugoslav Constitution (1974) granted more autonomy to the six republics (Bosnia, Croatia, Macedonia, Montenegro, Serbia and Slovenia) and the two autonomous regions (Vojvodina and Kosovo) of

[1] Noel Malcolm, *Bosnia. A Short History* (New York: New York University Press, 1996), 203 and 204.

Yugoslavia, it indirectly provided ambitious nationalist politicians the opportunity to build a personal power base.[2] Although Joseph Tito was able to keep the republic together for several decades, his death in 1980, the worldwide demise of communism at the end of the 1980's and the economic crisis that emerged in Yugoslavia shifted power to the hands of ethnic nationalist politicians.

When in 1990 the first democratic elections were organized in the six republics, ethnic nationalist parties won the vote.[3] As president of Serbia Milošević developed an ethnic nationalist political agenda and warned that the Serb nation was in great danger. In 1989, Milošević had disbanded the autonomy of Vojvodina and Kosovo. Combined with the vote of Montenegro, the decision left him with four out of the eight votes in de federal presidency of Yugoslavia.[4] Serb ethnic nationalism was primarily aimed at creating a single state that would unify all Serbs. As such, Milošević was not principally opposed to the secession of individual republics from Yugoslavia. In fact, he insisted that Serbs living in Croatia had the same right to secession as Croatia.[5]

The four other republics in the federation developed their own ethnic nationalist politics and eventually this led to war and the break-down of Yugoslavia. Of all six republics, only Macedonia seceded from Yugoslavia without violent conflict. Following a referendum on 8 September 1991, in which the Macedonians voted in favor of independence, a constitution was adopted on 17 November 1991.[6] In the republics of Croatia, Slovenia and Bosnia, war broke out after their independence declarations. In both Croatia and Slovenia the intention to secede from Yugoslavia developed at the end of the 1990's. Ethnic nationalists regarded their republics as being part of Europe and different from Yugoslavia which represented in their eyes an Asiatic form of government.[7] As such, Slovenia adopted a new constitution in October 1989, which gave the republic legislative sovereignty and the right to secede.[8] Secession was supported by the population; a referendum in December 1990 showed that the majority of the Slovenians were in favor of independence.[9] The same support for secession also existed in Croatia. A popular vote that was organized in May 1991 showed that ninety three percent of those who voted (with a turnout of 82 percent) were in favor of secession from

[2] Elizabeth M. Cousens and Charles K. Cater, *Toward Peace in Bosnia. Implementing the Dayton Accords* (Boulder/London: Lynne Rienner Publishers, 2001), 18.
[3] Ibid.
[4] Malcolm, *Bosnia*, 213.
[5] Laura Silber and Allan Little, *The Death of Yugoslavia* (London: Penguin, 1995), 162.
[6] Danie Conversie, 'The Dissolution of Yugoslavia', *The Territorial Management of Ethnic Conflict*, John Coakley, ed. (London/Portland: Frank Cass, 2003) 264-292, 287.
[7] Bruno Naarden, *Beeld en Balkan. Waarneming en werkelijkheid van Zuidoost-Europa* (Amsterdam: Boom, 2002), 43.
[8] Malcolm, *Bosnia*, 214.
[9] Silber and Little, *The Death of Yugoslavia*, 161.

Yugoslavia.[10] In line with this, Slovenia and Croatia declared independence on 25 June 1991.

In Slovenia, secession was followed by a war that lasted for only a few days. The federal army, the Yugoslav People's Army (*Jugoslovenska Narodna Armija*, JNA), which started operations on 27 June, met well prepared Slovenian resistance. Ten days later the war was over and was officially concluded with the Brioni Agreement between Slovenia, Croatia and the remaining parts of Yugoslavia on 8 July, 1991. The Brioni Agreement was mediated by the European Community and called for a three-month moratorium on the implementation of Slovenian and Croatian independence. However, based on a political deal between Slovenia's member of the federal presidency Milan Kučan and Milošević, Slovenia was allowed to secede whereas Croatia was not.[11]

Therefore, the secession of Croatia was more violent than Slovenia's secession had been. In contrast to Slovenia, Croatia had large Serb communities in its territory and Serb ethnic nationalism was aimed at giving these communities the right to secede. In the first instance, Milošević pursued a two-track policy. On the one hand, there was an attempt at military intimidation and on the other hand the areas dominated by Serb communities were strengthened.[12] This policy escalated into a full-scale war at the end of August 1991.[13] The war lasted until January 1992 when a cease fire was negotiated by UN-negotiator Cyrus Vance. On 15 January the independence of Croatia and Slovenia was recognized by the European Community. The UN deployed the United Nations Protection Force (UNPROFOR) to supervise and maintain the cease fire agreement. As agreed, the JNA left Croatia and concentrated its forces in Bosnia.

In Bosnia, the upsurge of ethnic nationalism roused fears of Serbian and Croatian plans to carve up Bosnia.[14] Bosnia consisted of three large identity groups or nations, which were later officially recognized as such in the Dayton Agreement: the Bosnian Croats, the Bosnian Serbs and the Bosniaks (or Bosnian Muslims).[15] Whereas the Bosnian Croats and Bosnian Serbs could identify themselves with Croatia or Serbia respectively, the absence of a Bosniak state made the Bosniaks firmly committed to Bosnia as a single political entity. Especially the (Bosniak) Party for Democratic Action (*Stranka Demokratske Akcije,* SDA), founded in May 1990, felt that it was its task to defend the interests

[10] Ibid.
[11] Ibid., 180.
[12] Malcolm, *Bosnia*, 225. Silber and Little, *The Death of Yugoslavia*, 190 and 191.
[13] Over the summer several clashes between Serb separatists in the Krajina (led by Milan Martic and supported by the JNA) and Croatia's National Guard took place. Silber and Little, *The Death of Yugoslavia*, 186.
[14] Malcolm, *Bosnia*, 218.
[15] Although it is somewhat problematic to speak of nationhood in the case of the Bosniaks, their identification as a 'nation' can be traced back to the 1960's. Ibid., 198 and 199.

of Bosniaks by keeping Bosnia together. Placed between Serbian and Croatian ethnic nationalism, Bosniaks emphasized that they wanted to preserve the multi-ethnic and multi-religious republic.[16] At first, the integrity of Bosnia's borders was also supported by the Bosnian Croat ethnic nationalist party, the Croat Democratic Community (*Hrvatska Demokratska Zajednica*, HDZ) which had been created a few months before the SDA. However, after an internal power struggle, more radical ethnic nationalists increased their influence in the party and presented plans for the 'cantonization' (read carving up) of Bosnia.[17] These plans were a reaction to the cantonization plans of the Serb Democratic Party (*Srpska Demokratska Stranka,* SDS), the Bosnian Serb ethnic nationalist party which had been established in June 1990.[18]

On 6 April 1992, the day Bosnia and Herzegovina was recognized as an independent state by the European Community, the country was on the brink of a full scale war.[19] In February and March of the same year, minor armed clashes between the three large ethnic communities, Bosniaks, Serbs and Croats, started occurring on a regular basis. On 6 April, large scale fighting erupted when Serbs started to lay siege to Sarajevo. From that moment to the end of the war in December 1995 none of the conflicting parties were strong enough to enforce a total victory. The war became even more complicated when the initial coalition between the Bosniaks and the Croats broke down in January 1993, only to be renewed in January 1994 with the American brokered Washington Agreement.

An agreement to end the war was only achieved in December 1995. Prior to this international peace making efforts were characterized by failures. The presence of UNPROFOR, a UN arms embargo, a no fly zone enforced by NATO (operation Deny Flight) and several comprehensive peace proposals could not stop the violence. It took decisive air power from NATO (operation Deliberate Force) and a 'favorable situation' on the ground to impose a comprehensive peace agreement. [20] The thorny territorial issues that had blocked negotiations for almost three years had now been settled by force. Among these 'settlements' were the Bosnian Serb conquest of the Bosniak enclaves of Srebrenica (8 July - 12 July 1995) and Žepa (25 July 1995). While the Bosniaks made considerable gains to the South and North of Sarajevo. In addition, Croatia had successfully started a large offensive which resulted in the conquest of the Serbian enclave Krajina on 4 August 1995. Regular Croat troops were also active in Bosnia and together with Bosnian Croat forces they carried out a successful offensive against Bosnian Serb

[16] Ibid., 218 and 219.
[17] Ibid., 218 and 232.
[18] Ibid., 232.
[19] Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina. Ethnic Conflict and International Intervention* (Armonk/London: M.E. Sharpe, 1999), 121.
[20] Spyros Economides, 'Kosovo', *United Nations Interventionism, 1991 - 2004*, Mats Berdal and Spyros Economides, eds. (Cambridge: Cambridge University Press, 2007) 217 - 245, 230.

troops in western Herzegovina.[21] As a result of these strategic developments it became possible to establish a line of demarcation between the Bosnian Serbs on the one side and the Bosniak-Croat Federation on the other side. The balance had shifted in favor of the Bosniaks and Bosnian Croats, which made all parties to the conflict 'ripe' for negotiations. [22]

The ripeness was stimulated by NATO's air power. Air power was used after the USA had taken over the diplomatic initiative from the Europeans with the formation of the so called Contact Group (consisting of the USA, Russia, France, the UK and Germany) in April 1994.[23] The locus of the international peace effort up to this point had been the European dominated International Conference for the Former Yugoslavia.[24] The Bosnian Serb rejection of the Contact Group peace plans in July 1994 and in February 1995, together with the failure of NATO to deter a Bosnian Serb attack on Bihać in November 1994, increased the USA's willingness to consider using air power to support a political settlement of the conflict.[25] The Bosnian Serb offensive which led to the fall of the UN 'safe area' Srebrenica in July 1995, the potential threat that other 'safe areas' such as Goražde and Bihać might also fall and the continued Bosnian Serb shelling of Sarajevo in the summer of 1995 made the USA even more committed to using force. After a Bosnian Serb mortar attack on the Markale Market in Sarajevo which killed 37 people and wounded 84 people, the UN Security Council authorized NATO to conduct air strikes against Bosnian Serb military targets. NATO operation Deliberate Force started on 30 August and lasted until 14 September after which NATO suspended its air attacks as Bosnian Serb heavy artillery was being withdrawn from around Sarajevo. Six days later, NATO announced the end of Deliberate Force after the Bosnian Serbs had complied with NATO's demands. Subsequently, on 5 October 1995 a cease-fire in entire Bosnia was announced by US President Bill Clinton after which negotiations were planned for a comprehensive peace agreement. [26]

3.1.2 International control

The negotiations were held at the Wright-Patterson Air Force Base in Dayton (Ohio, USA) between 1 and 21 November 1995. They were led by US diplomat Richard Holbrooke and the Swedish EU representative Carl Bildt. The Bosnian Croats were represented by Croatian President Franjo Tuđman and by Bosnian

[21] Burg and Shoup, *War in Bosnia-Herzegovina*, 331.
[22] Ibid., 327.
[23] Carl Bildt, *Peace Journey: The Struggle for Peace in Bosnia* (London: Weidenfeld and Nicholson, 1998), 17. Later the Contact Group was extended to also include Italy.
[24] Burg and Shoup, *War in Bosnia-Herzegovina*, 213 and 300.
[25] Ibid., 311, 320 and 322.
[26] D.A. Leurdijk, *The United Nations and NATO in Former Yugoslavia. Limits to Diplomacy and Force* (Den Haag: The Netherlands Atlantic Commission, 1996), 76-84.

Croat Krešimir Zubak, with Tuđman clearly being the more influential of the two leaders.[27] The Bosnian Serbs were represented by Momčilo Krajišnik, Nikola Koljević and general Zdravko Tolimir, as well as by Slobodan Milošević and Momir Bulatović (President of Montenegro). From the beginning of the negotiations it was clear that Milošević would be the one taking the decisions and the Bosnian Serb delegation was effectively isolated.[28] The Bosniaks were represented by President Alija Izetbegović and Prime Minister Haris Silajdžić of the war-time Bosnian state.

The positions and interests of the three parties were different and often incompatible. Bosniaks recognized the *fait accompli* of the existing entities, but were committed to strong state level institutions, one single economic space, the return of refugees and internally displaced persons, the handover of all areas that had contained a Bosniak majority, and the control over the strategic area Brčko.[29] The Bosnian Serbs wanted to keep the central government as weak as possible, to keep ethnically cleansed territories as they were at the end of the war and to avoid a massive return of refugees and internally displaced persons. An important objective of the Bosnian Serbs was to keep the option of unification with Serbia open.[30] Finally, the Croat delegation to the Dayton negotiations was skeptical towards the Bosniak-Croat Federation. The objective was to unite the Croat dominated areas with Croatia, or at least create a third Croat entity. The Bosniak-Croat Federation was mainly a formal agreement, without concrete initiatives of actual cooperation between the Croats and Bosniaks. Even during the joint offensive against the Bosnian Serbs in September 1995, Bosniak and Croat army units had clashed.[31]

Given these different standpoints of the conflicting parties, the conclusion of an agreement at Dayton was uncertain until the very end of the negotiations. Holbrooke and Bildt had to keep pressure on the conflicting parties in order to keep the negotiations going.[32] The outcome was a compromise. The Dayton Agreement produced a constitution which recognized the two entities that had been created during the war: the Bosniak-Croat Federation (a product of the Washington Agreement in 1994) and the Bosnian Serb Republic (proclaimed by the Bosnian Serbs on 27 March 1992). A weak federal state would unite both entities.

As such, Dayton was an internationally coerced compromise and the local conflicting parties' decision to settle was a tactical decision.[33] As Burg and Shoup

[27] Wolfgang Petritsch, *Bosnien und Herzegowina 5 Jahre Nach Dayton. Hat Der Friede Eine Chance?* (Klagenfurt: Wieser Verlag, 2001), 52 and 53.
[28] Richard Holbrooke, *To End A War* (New York: Random House, 1999), 243. Petritsch, *Hat Der Friede Eine Chance?* 52.
[29] Petritsch, *Hat Der Friede Eine Chance?* 51.
[30] Ibid.
[31] Ibid., 51-52.
[32] Ibid., 51-52.
[33] Cousens and Cater, *Peace in Bosnia*, 26. David Chandler, *Bosnia: Faking Democracy after Dayton* (London/Sterling: Pluto Press, 1999), 34.

point out: 'The Dayton agreement reflected the interest of the US administration in bringing the fighting to a halt, rather than the readiness of the three warring parties to settle their political differences.'[34] David Chandler identifies Dayton as: 'a settlement imposed on Bosnian Croats, Muslims and Serbs by the international community.'[35] Ivo Daalder recalls that 'what Washington desired most was to see an end to the conflict in Bosnia; the details of the settlement achieving that goal were distinctly secondary.'[36] These citations show that the Dayton Peace Agreement was internationally imposed and that ending the war was the first priority. Thus, although formally the conflict was *settled* with the Dayton Peace Agreement, it should not be regarded as an agreement which *resolved* the conflict. Rather, the Dayton Agreement incorporated the incompatibility between the existing parties in the post-war political system.

The imposed nature of the settlement gave birth to international concerns regarding the implementation phase. As Holbrooke commented at the end of the negotiations: "On paper we have peace. To make it work is our next great challenge."[37] The choice for an international administration of the control type was mainly determined by the USA. Given the key role the USA had played in stopping the war, it was likely that it would also have a great say in the implementation phase. Doing so, it had to take into account the positions of the other members of the Contact Group and the permanent members of the UN Security Council. Within the Security Council, Russia and China had little interest in influencing the course of events in Bosnia. Throughout the war the Russian diplomatic interventions regarding Bosnia focused on presenting Russia as 'a major power and constructive partner of the West', not on presenting concrete proposals for ending the conflict.[38] China made its voice heard by abstention. By abstaining (rather than using its veto power) for Security Council decisions regarding Bosnia, China communicated its dissatisfaction with the UN's growing interventionism in general. China's chief priority was to protest against what it regarded as the erosion of the principle of non-intervention in the internal affairs of UN member states.[39]

With China and Russia mainly abstaining from the specific issues surrounding the peacemaking efforts in Bosnia, the major policy differences existed between on the one hand the USA, and on the other hand, the UK and France.[40] This also became clear during the Dayton peace negotiations. When the

[34] Burg and Shoup, *War in Bosnia-Herzegovina*, 318.
[35] Chandler, *Faking Democracy*, 43.
[36] Ivo H. Daalder, *Getting to Dayton. The Making of America's Bosnia Policy* (Washington: Brookings Institution, 2000), 139.
[37] As quoted in: Ibid., 138.
[38] Mats Berdal, 'Bosnia', *The UN Security Council. From the Cold War to the 21st Century*, David M. Malone, ed. (Boulder/London: Lynne Rienner, 2004) 451-465, 458.
[39] Ibid., 458 and 459.
[40] Ibid., 457.

civilian implementation of the peace agreement was considered, the Americans in first instance opted for a strong High Representative who would have 'direct authority over the international organizations that would contribute to the implementation effort.'[41] This would have come down to a structure very similar to the one chosen in Kosovo: one umbrella organization (in the case of Kosovo the UN) which would direct the implementation of the peace agreement. However, the design was based on the conviction that the High Representative would be an American. After it was agreed that the EU would adopt the larger share of reconstruction and economic assistance, the UK, France and other EU members insisted that the post of High Representative should go to a European. This was accepted by the Americans, upon which Washington set out to limit the authority and responsibility of the High Representative as much as possible.[42] However, there were no deep differences of opinion regarding the choice of a control type international administration.

3.1.3 The mandate and organization of the OHR

When the OHR started operations in 1996, it was expected to last for only one year.[43] Back then, the mission could hardly be called an international administration. At this time, the OHR's mandate, included as Annex 10 of the Dayton Agreement, and its powers were interpreted in a limited way. However, due to the lack of the conflicting parties' commitment to the Dayton Agreement it proved to be necessary to reinterpret the mandate in 1997. That reinterpretation made it possible for the OHR to establish itself as the most important international agency in Bosnia and as a true international administration of the control type, as will be further elaborated upon in Chapter four.

The Annexes to the Dayton Peace Agreement include several provisions on the implementation of the treaty. The establishment of the function of High Representative, as the head of the mission of the OHR, is explicitly mentioned in Annex 10.[44] The establishment of the High Representative was requested by the parties to the conflict, in order to: 'facilitate the parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the civilian organizations and agencies involved in the civilian aspects of the peace settlement.'[45] Hence, the role of the High Representative was to monitor the implementation of the treaty

[41] Daalder, *Getting to Dayton. The Making of America's Bosnia Policy*, 157.
[42] Ibid.
[43] Chandler, *Faking Democracy*, 1.
[44] The following persons have occupied the position of High Representative: Carl Bildt (8 December 1995 - 18 June 1997), Carlos Westendorp (19 June 1997 – 31 July 1999), Wolfgang Petritsch (1 August 1999 – 27 May 2002), Paddy Ashdown (28 May 2002 – 31 January 2006), Christian Schwarz-Schilling (1 February 2006 – 30 June 2007), and Miroslav Lajčák (1 July 2007).
[45] 'The General Framework Agreement for Peace in Bosnia and Herzegovina', (1995), Annex 10.

and to coordinate the international efforts in Bosnia. The High Representative was also given the power to interpret the treaty and given the final authority in theatre.[46] It is important to note, however, that the High Representative's responsibility for implementation was strictly limited to the civilian part of the peace treaty; the military part was left to NATO's Implementation Force (IFOR).[47]

Although the establishment of a High Representative was endorsed by and consistent with UN Security Council Resolution 1031 (15 December 1995) it did not become an international administration led by the UN. Instead, the High Representative was made accountable to the Peace Implementation Council (PIC). The PIC was created during the 'International Peace Implementation Conference' that had been held in London on 8 and 9 December 1995. The conference elaborated on the structure of the implementation process of the Dayton Agreement. It decided that the International Conference on the Former Yugoslavia had achieved important objectives, but that a new structure had to be established in order to implement the Dayton Agreement. This new structure would be the PIC, consisting of a group of 55 states, international organizations and agencies. A PIC Steering Board, under the chairmanship of the High Representative and being composed of representatives of Canada, France, Germany, Italy, Japan, Russia, the UK, the USA, the Presidency of the EU, the European Commission and the Organization of Islamic Conferences was established in order to give political guidance on implementation to the High Representative. It would meet on a regular basis and report to the PIC. The expectation was expressed that the Steering Board would also be closely associated with the UN and the Organization for Security and Co-operation in Europe (OSCE) during the implementation process.[48] Moreover, political representatives from Bosnia were also allowed to attend Steering Board meetings.[49] The Steering Board chaired by the High Representative would meet every three months at the level of political directors and every week at the level of ambassadors in Bosnia's capital Sarajevo.

3.1.4 The major international partners of the OHR

Although the High Representative had received coordinating powers with respect to the international presence in Bosnia, until December 1997 he was dependent on

[46] Ibid.
[47] IFOR was employed on 20 December 1995 and was succeeded by NATO's Stabilization Force (SFOR) one year later. In December 2004, a military force of the EU (EUFOR) took over from SFOR.
[48] Peace Implementation Council, 'Conclusions Of The Peace Implementation Conference Held At Lancaster House London', (1995).
[49] Office of the High Representative, 'Weekly column by Christian Schwarz-Schilling, High Representative for BiH: 'Replacing the Push of Dayton with the Pull of Brussels', 20 October 2006', (Sarajevo: 2006).

the cooperation of other international actors that were active in Bosnia. In the course of time, the number of actors even increased and their roles were strengthened to such an extent that Bosnia became to be regarded as the 'world capital of interventionism.'[50] The most important international institutional actors were the OSCE, the United Nations Mission in Bosnia and Herzegovina (UNMIBH), the EU and NATO. All these organizations had been explicitly mentioned in the Dayton Peace Agreement as implementing agencies.

The OSCE mission was created in December 1995 and headed by an ambassador who reported to the OSCE's Permanent Council and coordinated its actions closely with the OSCE's Chairman in Office.[51] As a regional security organization, the OSCE mission in Bosnia was responsible for regional stabilization through confidence and security building measures, for democratization, and for the promotion of human rights.[52] In fact, the OSCE was active in all three areas pursuing its concept of comprehensive security which includes a politico-military dimension, a human dimension, and an economic and environmental dimension.[53] First, regarding the politico-military dimension the OSCE was among others involved in the supervision over and reform of Bosnia's defense sector. The OSCE focused on budget transparency and parliamentary oversight of the entity-based military forces. Further, the mission supported the NATO-led defense reform process which abolished the entity-based armed forces and created a single state level Ministry of Defense in 2004.[54] Secondly, the OSCE was occupied with the human dimension by supporting democratization and human rights. With regard to democratization, initially much attention was given to the organization of elections, but as Bosnians became increasingly responsible for organizing elections themselves, more attention was given to good governance and the development of a civil society. Among others, the OSCE started a Parliamentary Support Programme. In the field of human rights, the OSCE dealt (often in cooperation with the OHR and other international organizations) with

[50] Chandler, *Faking Democracy*, 2.
[51] OSCE Permanent Council, 'Decision no. 145', (21 November 1996).. The OSCE's heads of mission have been: Robert Holmes Frowick (December 1995 – December 1997), Robert Barry (January 1998 – June 2001), Robert Mason Beecroft (July 2001 - July 2004), Douglas Davidson (September 2004 – September 2008) and Gary D. Robbins (October 2008).
[52] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 1B: Agreement on Regional Stabilization', (1995). 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 3: Agreement on Elections', (1995).
[53] Douglas Davidson, 'Ten Years of the OSCE Mission to Bosnia and Herzegovina: Reflections on a Decade and Thoughts on the Future', *OSCE Yearbook 2005. Yearbook on the Organization for Security and Co-operation in Europe (OSCE)*, Institute for Peace Research and Security Policy at the University of Hamburg, ed. (Baden-Baden: Nomos, 2005) 125-138, 125.
[54] Walter A. Dorn and Jeremy King, 'Taking Stock of Security Sector Reform in Bosnia 1995-2002', *Bridges of Peace. Ten Years of Conflict Management in Bosnia*, Charles C. Pentland, ed. (Kingston: Centre for International Relations Queen's University, 2003) 63-96, 71. Davidson, 'Ten Years on the OSCE Mission to Bosnia and Herzegovina', 131-132.

property restitution, the development of the Office of the Ombudsman and the Human Rights Chamber of the State Court, action against the trafficking of human beings, securing economic and social rights, support for the rule of law, monitoring war crimes cases tried by Bosnian courts, assisting with the establishment of a War Crimes Chamber of the State Court, and education reform. Finally, the OSCE took some action within the economic and environmental dimension, including corporate governance (promoting quality in the application of legislation in the workplace) and empowering citizens in environmental endeavors such as initiatives to improve water quality or preserve nature.[55]

UNMIBH was established by UN Security Council Resolution 1035 in December 1995. The mission was headed by a Special Representative of the UN Secretary-General (UN Special Representative).[56] The largest part of the mandate involved a police mission. The specific mandate evolved with the passage of successive UN Security Council resolutions, but in general it included the following tasks: monitoring, observing and inspecting law enforcement activities and facilities, advising and training law enforcement personnel and forces, facilitating the parties' law enforcement activities, assessing threats to public order, advising governmental authorities on the organization of effective civilian law enforcement agencies, and assisting by accompanying the parties' law enforcement personnel as they carry out their responsibilities.[57] These advisory tasks (the mandate did not involve executive policing) were carried out by the International Police Task Force (IPTF) whose commissioner fell directly under the authority of the UN Special Representative.[58] Next to functions related to law enforcement and police reform, UNMIBH also coordinated other UN activities, such as humanitarian relief efforts and the return of refugees and displaced persons, humanitarian (as opposed to military) de-mining, human rights promotion, technical advice on elections, rehabilitation of infrastructure and economic reconstruction.[59] Humanitarian relief and refugee return were carried out by the United Nations High Commissioner for Refugees (UNHCR).

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[55] Davidson, 'Ten Years on the OSCE Mission to Bosnia and Herzegovina', 126-133.
[56] The UN Special Representatives were: Iqbal Riza (December 1995 – November 1996), Kai Eide (January 1997 - January 1998), Elisabeth Rehn (February 1998 – July 1999) and Jacques Paul Klein (August 1999 – December 2002).
[57] Secretary-General of the United Nations, *Report of the Secretary-General pursuant to Security Council Resolution 1026: S/1995/1031* (New York, 1995). 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 11: Agreement on International Police Force', (1995).
[58] The IPTF police commissioners have been: Thomas Fitzgerald (January 1996 – February 1997), Manfred Seitner (March 1997 – February 1998), Richard Monk (February 1998 – March 1999), Detlef Buwitt (April 1999 – April 2000), Vincent Coeurderoy (April 2000 – May 2002) and Sven Christian Frederiksen (May 2002 – December 2002).
[59] Secretary-General of the United Nations, *Report of the Secretary-General pursuant to Security Council Resolution 1025: S/1995/1028* (New York, 1995).

The EU had started its operations in Bosnia already during the war. Before the OHR was established as an international administration, the EU had administrated the divided city of Mostar. Next to this early involvement the European Community had established the European Community Monitoring Mission (ECMM) in 1991. During and after the war, the ECMM was expected to monitor political, humanitarian, security, military and economic developments and report these to the European Community/EU.[60] The EU was also closely involved in many other policy fields. One of the salient characteristics of the EU mission in Bosnia (and Kosovo for that matter) was that its role slowly expanded. First, the EU took over the police mission from the IPTF in 2002 when the European Union Police Mission (EUPM) was established. Second, the High Representative also became the EU Special Representative in 2002. Third, the EU took over the military mission from NATO's Stabilization Force (SFOR; see below) in December 2004 when it established with Operation Althea the European Union Force (EUFOR).[61] Finally, the role of the EU became more prominent with the Stability and Association Process which aimed at the integration of South Eastern Europe (including Bosnia) within the EU (see below).

NATO established its Implementation Force (IFOR) right after the cessation of hostilities. IFOR is mentioned in Annex 1A of the Dayton Agreement and the annex made IFOR responsible for the implementation of the military aspects of the peace agreement.[62] The NATO troops consisted of no less than 60.0000 troops and initially focused on ensuring the cessation of hostilities and monitoring the retreat of the troops behind the inter-entity boundary lines. In the fall of 1996, IFOR was replaced by SFOR. SFOR remained operational until December 2004 when it was replaced by EUFOR..[63]

Next to these four international organizations discussed many more were involved in Bosnia. In the annexes of the Dayton Agreement the following organizations are mentioned as being responsible for some policy area: the European Court of Human Rights (for the Constitutional Court, refugees and displaced persons), the International Monetary Fund (IMF, for the Central Bank), the Council of Europe (for the Human Rights Chamber of the State Court) and the European Bank for Reconstruction and Development (Commission on Public

[60] Kamerbrief Minister van Defensie aan de Tweede Kamer der Staten Generaal, 'Juridische positie European Community Monitoring Mission (ECMM)', (2000). In line with the institutional development of the EU, the ECMM was transformed into the EUMM. International Crisis Group, *EU Crisis Response Capability Revisited* (Brussels, 2005), 20, ICG Europe Report No.160.

[61] The EUFOR commanders since December 2004 have been: David Leakey, Gian Marco Chiarini, Hans-Jochen Witthauer and Ignacio Martin Villalain.

[62] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 1A: Agreement on the Military Aspects of the Peace Settlement', (1995).

[63] The SFOR commanders from November 1996 until December 2004 have been: William Crouch, Eric K. Shinseki, Montgomery C. Meigs, Ronald Emerson Adams, Michael L. Dodson, John B. Sylvester, William E. Ward, Virgil L. Packett II, and Steven P. Schook.

Corporations).[64] Additionally, hundreds of non-governmental organizations were active in Bosnia. The four major organizations mentioned above, however, were the most important ones with respect to political institution-building.

That being said, the list of the OHR's partners is not complete without mentioning the role of the USA. International officials often characterized the international administration in Bosnia as a 'US led mission.'[65] Being the architect of the Washington Accord and the Dayton Peace Agreement, the USA was closely involved in the implementation of the settlement.[66] Apart from the post of High Representative, all other international key positions were held by Americans. The Commander of SFOR/IFOR, the Principal Deputy High Representative and the head of the OSCE mission have always been Americans. Among the ambassadors stationed in Sarajevo, the American ambassador has proven to be the most influential. Almost all major reforms had the decisive engagement of the USA; even OHR-led reforms were frequently back up by American policy behind the scenes.[67] The attempt to reform Bosnia's Constitution in 2005 and 2006 was almost exclusively driven by the USA.[68] Thus, although the OHR could be considered as the principal political component of the international presence in Bosnia it should be emphasized that its actions were influenced not only by other international bodies, but above all by the USA.

3.1.5 A stronger coordination of efforts

The differences in the reporting lines, the funding structures and the agendas of the major international partners, made it difficult for the OHR to devise a coherent policy.[69] All the above mentioned missions were totally independent from the OHR structure and were also much larger. Especially NATO and the UN had deployed large missions; consisting of about 60.000 and 2000 persons respectively. As such, at least until December 1997, the international presence in Bosnia was dominated by the UN and NATO rather than by the OHR.[70] Whereas the OHR had to start from scratch, the field missions of the UN and NATO had ample institutional support from their parent organizations.

Despite its weak institutional position, the OHR tried to coordinate the civilian implementation process. From the end of July 1996, the OHR organized

[64] 'General Framework Agreement.'
[65] Center for European Integration Strategies, *Overcoming the War in the Heads: Renewing Bosnia's Constitutional Debate* (Geneva/Sarajevo/Vienna, 2006), 2.
[66] Chandler, *Faking Democracy*, 72.
[67] Center for European Integration Strategies, *Renewing Bosnia's Constitutional Debate*, 2-3.
[68] International Crisis Group, *Kosovo: No Good Alternatives to the Ahtisaari Plan* (Pristina/Belgrade/New York/Brussels, 2007), 10, ICG Europe Report No.182.
[69] International Crisis Group, *Bosnia: Reshaping the International Machinery* (Sarajevo/Brussels, 2001), 5, ICG Balkans Report No. 121.
[70] Interview with an OHR official (9), *Sarajevo 10 May 2006*.

regular meetings with the principal organizations, including IFOR, OSCE, UNMIBH, IPTF and UNHCR.[71] The PIC supported this coordination effort explicitly in December 1996, by providing the OHR with reinforced coordinating functions.[72] However, coordination of so many different actors remained problematic. This led the International Crisis Group (an international think tank) to conclude in 2001 that: 'the current international presence lacks both an efficient structure and a strategic vision.'[73] In reaction to such criticism, the PIC requested the OHR conduct a study on how to increase the effectiveness of the international presence in Bosnia. The result of this study was the beginning of a streamlining process aimed at eliminating overlapping functions and responsibilities and at increasing the overall effectiveness of the international community.[74]

During the meetings of the PIC Steering Board in December 2001 and February 2002, High Representative Wolfgang Petritsch presented the OHR's action plan. The proposal included the establishment of policy coordination taskforces in the following policy areas: the rule of law, institution-building, economic policy, and return and reconstruction. The taskforces would be complemented by a High Representative led Cabinet, later called Board of Principals.'[75] The task force model was endorsed by the PIC Steering Board in February 2002. The Board of Principles met once a week and served as the main coordinating body of the international community in Bosnia. It consisted of the heads or deputies of SFOR (from December 2004 onwards, EUFOR), UNMIBH, the United Nations Development Program (UNDP), UNHCR, OSCE, the European Commission, the World Bank and the IMF.[76] Bosnian authorities were also integrated within the framework of closer international cooperation. As a result of the new coordination structure, the turf wars between the different organizations decreased.[77]

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[71] Petritsch, *Hat Der Friede Eine Chance?* 79.
[72] Peace Implementation Council, 'PIC London Conclusions', (1996).
[73] International Crisis Group, *Reshaping the International Machinery*, 1.
[74] Christian J. Ebner, 'The Bonn Powers - Still necessary?' *From Peace Making to Self Sustaining Peace. International Presence in South East Europe at a Crossroads? Workshop of the Study Group "Regional Stability in South East Europe"*, Predrag Jurekovic and Frederic Labarre, eds. (Vienna: National Defence Academy Vienna Austria, 2004) 118-150, 128 and 129.
[75] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (6 December 2001). Peace Implementation Council, 'Communiqué by the PIC Steering Board', (28 February 2002).
[76] Paddy Ashdown, *Swords and Ploughshares. Bringing Peace to the 21st Century.* (London: Weidenfeld & Nicolson, 2007), 229.
[77] Interview with an OHR official (1), *Sarajevo 3 May 2006*. Ashdown argues that decisions in the Board of Principals were joint decisions: Ashdown, *Swords and Ploughshares*, 229. However, according to an OSCE official no real discussion took place within the Board of Principals; it was rather a meeting in which the High Representative informed the other stakeholders of his plans: Interview with an OSCE official (2), *Sarajevo 5 May 2006*. It seems that the High Representative used the Bonn powers as a tool to win the different stakeholders for the OHR's plans: 'This meant that, on occasions, say, the World Bank would find it beneficial to back something which was not

Another important aspect of the streamlining process was a closer association between the OHR and the EU. This change in policy was recognized and endorsed by the PIC in February 2002.[78] On 11 March 2002, the Council of the EU decided to appoint the British politician Paddy Ashdown as the EU Special Representative in Bosnia. Thus, when assuming the function of High Representative on 27 May 2002, Ashdown became the first to be simultaneously the High Representative and the EU Special Representative.[79] As both High Representative and EU Special Representative, an important policy objective of Ashdown was to stimulate the integration of Bosnia into Euro-Atlantic structures. As a result, during Ashdown's tenure the High Representative's part of the office has been downsized and more emphasis has been put on the role of the EU.[80] An acceleration of the transfer of functions from the High Representative to the EU Special Representative took place in 2005.[81] In the same year, the PIC explicitly recommended that the position of the High Representative be gradually replaced by the EU Special Representative.[82] In July 2006, the PIC officially decided to phase out the OHR, with the deadline initially set for 30 June 2007. [83] However, due to the stagnation of important reforms the deadline was extended to June 2008. When in February 2008 it became clear that this deadline would not be met, the PIC decided to continue with phasing out the OHR, but without mentioning a concrete date for its definite closure. Instead, the PIC formulated two conditions and five objectives which must be delivered before the OHR is replaced by the EU Special Representative.[84] While the PIC was satisfied with the progress that had been achieved in June 2008, by November the PIC 'expressed its deep concern' about

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strictly speaking within their mandate, because in return they could count on the Bonn powers being used to back their priorities if they could get agreement for them from other members of the board.' Ashdown, *Swords and Ploughshares*, 229.

[78] Peace Implementation Council, 'Communiqué by the PIC Steering Board.'

[79] Official Journal of the European Union, *Council Joint Action 2004/569/CFSP of 12 July 2004 on the mandate of the European Union Special Representative in Bosnia and Herzegovina and repealing Council Joint Action 2002/211/CFSP* (2004).

[80] Paddy Ashdown, 'Speech by the High Representative, Paddy Ashdown at a Conference on the Future of BiH Organised by the Association Bosnia & Herzegovina 2005', (Geneva: 21 October 2005).

[81] Christophe Solioz, *Turning Points in Post-War Bosnia. Ownership Process and European Integration* (Baden-Baden: Nomos, 2007), 109.

[82] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (24 June 2005).

[83] Commission of the European Communities, *Bosnia and Herzegovina 2006 Progress Report* (Brussels, 2006), 8.

[84] The two conditions were: signing of a Stability and Association Agreement with the EU and a positive assessment of the situation in Bosnia by the PIC Steering Board based on full compliance with the Dayton Agreement. The five conditions were: 1) acceptable and sustainable resolution of the issue of apportionment of property between state and other levels of government; 2) acceptable and sustainable resolution of defense property; 3) completion of the Brčko Final Award; 4) fiscal sustainability and the entrenchment of the rule of law. Peace Implementation Council, 'Declaration by the Steering Board of the Peace Implementation Council', (Sarajevo: 27 February 2008).

the lack of progress since the June meeting.[85] As a result, the OHR has continued its tasks alongside the EU Special Representative.

In spite of the continued existence of the OHR, the establishment of an EU Special Representative reflected the increased importance of the EU as an international actor in Bosnia. The year 2000 was a watershed in that respect. First, the PIC decided to meet in Brussels on the level of ministers of foreign affairs and explicitly referred to the EU's road map with respect to a closer association between the EU and Bosnia.[86] Secondly, during the European Council meeting in Feira (June 2000), the EU expressed its commitment for a closer association and eventual integration of South Eastern Europe (and thus Bosnia) into the EU. This was reiterated during the European Council meeting at Thessaloniki (June 2003). The EU's Stability and Association Process (SAP) resulted in the decision to start negotiations on a Stability and Association Agreement (SAA) with Bosnia in November 2005. Further, as already mentioned in Section 3.1.4, the EU took over several important tasks from the UN and NATO. In 2002, the UN-led IPTF was replaced by the EUPM. And in December 2004, SFOR was replaced by EUFOR. Finally, the increased role of the EU in Bosnia is reflected in the OHR reports addressed to the High Representative for the EU's Common Foreign and Security Policy (Javier Solana) and the EU Enlargement Commissioner (Olli Rehn).[87]

3.1.6 Developing implementation strategies

Streamlining the coordination between the OHR's international partners was important, but devising a coherent strategy to implement the Dayton Agreement was crucial. There did not exist such a plan when the OHR started operations. During the first year of the international administration, a lot of time was lost due to the lack of a coherent implementation strategy. It seemed as if the international community was not fully committed to Bosnia. The USA, for example, declared in 1995 that American troops would only stay in Bosnia for one year.[88] It was also anticipated that the OHR would turn over power to the domestic institutions once the first elections were held in the fall of 1996. Soon, however, it became clear that this exit strategy was not realistic.

During the first months of the mission, High Representative Carl Bildt focused on setting up his office, starting economic reconstruction and organizing

[85]Peace Implementation Council, 'Communiqué of the Steering Board', (Sarajevo: 20 November 2008).
[86] Peace Implementation Council, 'Brussels Declaration - Annex', (2000).
[87] Commission of the European Communities, *Bosnia and Herzegovina 2006 Progress Report*, 9.
[88] Kurt W. Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', *After Intervention: Public Security Management in Post-Conflict Societies. From Intervention to Sustainable Local Ownership*, Anja H. Ebnöther and Philipp H. Fluri, eds. (Vienna: DCAF et.al., 2005) 101-137, 105.

elections.[89] The ad hoc policy of the early days was replaced by a concrete implementation plan in the fall of 1996; the Quick Start Package. The Quick Start Package was a collection of regulations for the new domestic state institutions that were established after the September 1996 elections. The Package was created by the OHR in cooperation with the IMF and the European Commission.[90] The regulations varied from economic and financial reforms to matters related to state symbols and provisions for regulating communications.[91]

The Quick Start Package was followed by action plans for 1997 and 1998 as part of the Civilian Consolidation Plan. The Civilian Consolidation Plan included thirteen policy priorities: regional stabilization, security, human rights, democratization, elections, freedom of movement, refugees and displaced persons, war crimes, reconstruction, market economy, reconciliation, education and landmine-removal.[92] The PIC meeting in December 1996 endorsed the action plan for 2007 and added the issues of policing, the construction of a central bank, free and independent media, the strategic Brčko territory and customs.[93] The action plan for 1998 was dubbed 'Self Sustaining Structures' and it focused on the same policy areas as its predecessor.[94] During the Luxembourg meeting in June 1998, the PIC evaluated the progress and presented the implementation agenda for the remainder of 1998.[95] In December 1998, during the PIC meeting in Madrid, the end of the Civilian Consolidation Plan was announced, while recognizing that a domestically sustained peace had not yet been achieved.[96]

The following implementation plan of the PIC, announced in Madrid, was dubbed 'Reinforcing Peace in Bosnia and Herzegovina – The Way Ahead.' Its policy priorities were refugee return, establishing the rule of law, strengthening the common domestic institutions, creating a self sustaining economy, democratization, developing closer relations between Bosnia and Europe, addressing military and security issues, the strategic Brčko territory, state succession issues, and ensuring international support for the civil (as opposed to the military) implementation of the Dayton Agreement.[97] In May 2000 in Brussels, the PIC concluded that the security situation had stabilized, major reconstruction was completed, the return of refugees and displaced persons was accelerating, the Brčko district had been established and political pluralism was gaining strength. Three key strategic areas were defined as focus of the implementation effort:

[89] Carl Bildt, *Report by the High Representative to the Florence Mid-Year Review Conference* (Sarajevo, 13 June 1996).
[90] Chandler, *Faking Democracy*, 62.
[91] Petritsch, *Hat Der Friede Eine Chance?*, 89.
[92] Peace Implementation Council, 'PIC Paris Conclusions', (1996).
[93] Peace Implementation Council, 'PIC London Conclusions.'
[94] Peace Implementation Council, 'PIC Bonn Conclusions', (1997).
[95] Peace Implementation Council, 'PIC Luxembourg Declaration', (1998).
[96] Peace Implementation Council, 'PIC Madrid Declaration', (1998).
[97] Peace Implementation Council, 'Madrid Declaration - Annex', (1998).

economic reform, the return of displaced persons and fostering functional and democratically accountable common institutions.[98] One and a half years later, High Representative Petritsch presented a new action plan during a PIC Steering Board meeting in December 2001. The action plan not only included a framework for stronger international coordination (as discussed above), but also presented benchmarks and end-states for the OHR. It allowed the PIC Steering Board to review and evaluate progress and provide timelines for the transfer of authority to the Bosnians.[99] The action plan was endorsed on 28 February 2002 and was one of the most important priority areas for implementation of judicial reform with the objective to strengthening the rule of law.[100]

Paddy Ashdown, who was Petritsch's successor, put a special emphasis on judicial reform and the economy. Under the heading Jobs and Justice he presented his implementation plan in 2002. However, Jobs and Justice was soon to be replaced by a new implementation strategy which was presented in January 2003. The objective of the so called Mission Implementation Plan was to establish the core tasks for the OHR and to provide the OHR with a method to evaluate progress.[101] New versions of the Mission Implementation Plan were developed in 2004 and 2005, but the four core objectives remained the same: entrenching the rule of law, reforming the economy, strengthening the capacity of (Bosnia's) governing institutions, especially at the state level and embedding defense and intelligence reforms so as to facilitate (Bosnian) integration into Euro-Atlantic structures.[102] In the Mission Implementation Plan for 2006/2007 the number of tasks was reduced to three, since the defense and intelligence reforms had been completed. The Mission Implementation Plan stated: 'Consistent with efforts to transfer responsibility for running the country to the BiH authorities, no new reforms have been added to the OHR MIP [Mission Implementation Plan, *NvW*] for 2006/2007. However, the MIP has been and remains an important tool for OHR to assess the pace and effectiveness of progress in peace implementation.'[103] When the German politician Christian Schwarz-Schilling assumed office as High Representative in January 2006, he emphasized that the OHR would continue to

[98] Peace Implementation Council, 'Brussels Declaration', (2000).
[99] Peace Implementation Council, 'Communiqué by the PIC Steering Board.'
[100] Peace Implementation Council, 'Communiqué by the PIC Steering Board.'
[101] Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', 115.
[102] Office of the High Representative, *OHR Mission Implementation Plan 2004* (Sarajevo, 2004). Office of the High Representative, *OHR Mission Implementation Plan 2005* (Sarajevo, 2005). In 2003, the Mission Implementation Plan included six core objectives. In addition to the four mentioned in the text, these were: 'Ensuring that extreme nationalists, war criminals, and organized criminal networks cannot reverse peace implementation' and 'Promoting the sustainable return of refugees and displaced persons.' Office of the High Representative, *OHR Mission Implementation Plan 2003* (Sarajevo, 2003).
[103] Office of the High Representative, 'Weekly column by Christian Schwarz-Schilling, High Representative for BiH: 'Replacing the Push of Dayton with the Pull of Brussels', 20 October 2006.'

prepare for a transition to an 'Office of the EU Special Representative.' By doing so, the OHR would not undertake new commitments and would focus on executing existing tasks.[104] Given the gradual transfer of authority from the OHR to the EU Special Representative, the Mission Implementation Plan became increasingly associated with the SAP requirements.

3.2 Building Bosnia's political institutions

3.2.1 Transitional executive institutions

The state level institutions in Bosnia were only set up after the first post-war elections in September 1996. Until that time, the Constitution embedded in the Dayton Agreement envisioned interim structures. The highest domestic authority was the Joint Interim Commission, which was allowed to: 'discuss practical questions related to the implementation of the Constitution of Bosnia and Herzegovina and of the General Framework Agreement and its Annexes, and to make recommendations and proposals.'[105] The Joint Interim Commission included the Prime Ministers of the war-time governments of Bosnia. The body was merely consultative and the meetings were chaired by the High Representative. Until the PIC meeting in Florence in June 1996, they only met a few times with the first meeting being in Sarajevo on 24 January 1996. However, after the PIC meeting, it was decided that the Joint Interim Commission would meet on a weekly basis.[106] Next to the Joint Interim Commission a Joint Civilian Committee was established. The Joint Civilian Committee was chaired by the Principal Deputy High Representative and included ministerial representatives from the war-time Bosnian governments, the commander of IFOR and, upon invitation of the High Representative, representatives of international agencies. The Joint Civilian Committee was meant to advise the Bosnian representatives on the results of the meetings of the Contact Group and the PIC, as well as to apply pressure on the domestic members to implement the Dayton Agreement. The OHR also created regional Joint Civilian Committees which were all run by the Principal Deputy High Representative.[107]

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[104] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (Vienna: 15 March 2006).
[105] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 4: Constitution of Bosnia and Herzegovina', (1995).
[106] Office of the High Representative, *1st Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations.* (Sarajevo, 1996). Chandler, *Faking Democracy*, 61.
[107] Chandler, *Faking Democracy*, 61.

3.2.2 Bosnia's constitutional design

After the September 1996 elections, the Joint Interim Commission and the Joint Civilian Committee were disbanded and replaced by permanent institutions. When assessing Bosnia's institutions as they are presented in the Constitution, it is necessary to make a clear distinction between the institutions at the federal (state) level and the political institutions at the entity and sub-entity levels. The Dayton Agreement created what has been called: 'the most decentralized state of the world.'[108] The decentralized character of Bosnia has aptly been summarized by Solioz: 'To sum up: Bosnia contains one state, two entities, three constituent peoples, around four million inhabitants and five levels of authority.'[109] As a result of the decentralized governance structure, no less than fourteen Bosnian institutions have been given legislative powers.[110]

Bosnia under the Dayton Constitution consists of a federal state with two political entities; the *Federacija Bosna i Hercegovina* (Federation) and the *Republika Srpska* (Serb Republic).[111] In addition a condominium of both entities has been established in the form of the Brčko district. The state level is composed of three political institutions: a collective Presidency (consisting of one Bosniak, one Bosnian Croat and one Bosnian Serb), the Council of Ministers (the government) and a bicameral Parliamentary Assembly; consisting of the House of Representatives and the House of Peoples. Further, the Constitution establishes a Constitutional Court, a Standing Committee on Military Matters and the Central Bank, which are not elaborated upon in this analysis.

Before describing the Presidency, the Council of Ministers and the Parliamentary Assembly it is necessary to point out the relatively weak position of the state level when compared to the two entities. When the Bosnian Constitution was drafted during the Dayton negotiations, the Serb Republic and the Federation already existed. That limited the possibility of establishing strong state level institutions.[112] The Constitution established strong entities compared to the state level and both entities enjoy many characteristics of a state, including citizenship,

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[108] Sumantra Bose, *Bosnia after Dayton. Nationalist Partition and International Intervention* (Oxford: Oxford University Press, 2002), 23. Bildt, *Report by the High Representative to the Florence Mid-Year Review Conference*.
[109] Solioz, *Turning Points in Post-War Bosnia*, 107.
[110] Florian Bieber, *Post-War Bosnia. Ethnicity, Inequality and Public Sector Governance* (New York: Palgrave Macmillan, 2006), 40.
[111] The federal state level is referred to with the term 'central state' or state. The Bosniak-Croat Federation is simply referred to as 'Federation' and the Serb Republic as 'Serb Republic.' When referring to political institutions which exist with similar names on the state level and on the entity level, the entity in question is explicitly mentioned. For example, the House of Peoples on the state level is referred to as 'House of Peoples' and as 'Federation House of Peoples' on the entity level.
[112] Richard Caplan, *International Governance of War-Torn Territories. Rule and Reconstruction* (Oxford: Oxford University Press, 2005), 111.

defense, taxation, and justice. Especially the Constitution of the Serb Republic reflects the concept of a unitary state.[113] In turn, the state level was left with traditional federal powers, including: foreign policy; foreign trade policy; customs policy; monetary policy; finances of the institutions and for the international obligations of Bosnia; immigration, refugee and asylum policy; international and inter-entity criminal law enforcement; establishment and operation of common and international communications facilities; regulation inter-entity transportation; and air traffic control.[114] On top of its limited authority, the state level lacked enforcement mechanisms and powers of taxation to enable it to finance its activities.[115] As a result, the power of the three state level political institutions has been limited from the beginning.

Nonetheless, the state level institutions form the highest level of authority in Bosnia. First, the Presidency is the highest state institution. Among others it is responsible for conducting the foreign policy of Bosnia, for nominating the chair of the Council of Ministers and for executing civilian command over the armed forces. The members of the Presidency are elected by their constitutive peoples. Thus, the Bosnian Serb member is elected by voters from the Serb Republic, whereas the Bosnian Croat and Bosniak members are elected by the inhabitants of the Federation. Moreover, each member has to be a representative of one of the three so called constituent peoples (i.e. Bosniak, Bosnian Croat or Bosnian Serb).[116]

Secondly, the Council of Ministers functions as the government. Two thirds of its members come from the Federation and one third comes from the Serb Republic. Based on the law of 1997 on the Council of Ministers the decisions were taken by consensus, the institution had a rotating chair with two co-chairs (all from a different constituent people) and every minister had two deputy ministers from another constituent people. The law on the Council of Ministers was amended twice in 2000 and in 2002. In 2002, the second deputy ministers were abolished as well as the rotating chair. The rotating chair was replaced by one chair and two vice-chairs (from different constituent peoples).

In the meantime, the size of the Council of Ministers had increased significantly since 1997. It started with three ministries: the Ministry of Foreign Affairs, the Ministry of Foreign Trade and the Ministry for Civil Affairs and

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[113] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* (Venice, 11 March 2005), 2.
[114] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 4: Constitution of Bosnia and Herzegovina.'
[115] Caplan, *International Governance*, 112.
[116] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 4: Constitution of Bosnia and Herzegovina.'

Communications.[117] In 2000, the Council of Ministers was expanded with a Ministry for Human Rights and Refugees, the Ministry for Treasury of State Institutions, and the Ministry for European Integration and the Stability Pact. [118] In 2002, two new ministries, the Ministry of Justice and the Ministry of Security, were added. The Ministry for European Integration was downscaled to a directorate under the direct supervision of the chair of the Council of Ministers in 2002, while the Ministry of Civil Affairs and Communications had been split in to a Ministry of Civil Affairs and a Ministry of Communications and Transport.[119] The ninth ministry was added in 2004 with the establishment of the Ministry of Defense.[120]

The Parliamentary Assembly, finally, consists of two chambers: the House of Representatives and the House of Peoples. The 42 member House of Representatives is directly elected by the voters of the entities. Two thirds of the seats are elected in the Federation and one third in the Serb Republic. Each constituent people has a representative in the Presidency of the House of Representatives. The House of Peoples consists of 15 members and gets elected by the parliaments of the entities (see below). Every constituent people has five representatives in the House of Peoples and one member in the Presidency. The Presidency of both the House of Peoples and the House of Representatives consists of one rotating chair (every eight months) and two deputy chairs, each from a different constituent people.[121] The Parliamentary Assembly became operational in January 1997 after the first general elections had been organized in September 1996.[122] From 1996 to 2008, no less than twelve elections have been organized, as is shown in Table 3.1. The table also shows that out of the twelve elections, five elections were general elections which included elections for the state level parliament.[123]

The general elections also included elections for the entity political institutions. On the entity level, the Federation consists of a President and a Vice-President, a Government, a bicameral Parliament (the House of Representatives and the House of Peoples), a Constitutional Court and a Supreme Court. The Serb Republic is composed of a President and Vice-President, a Government, a National

[117] Office of the High Representative, *4th Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1996).
[118] Office of the High Representative, *16th Report by the High Representative for Implementation of the Peace Agreement to The Secretary-General of the United Nations* (Sarajevo, 2000).
[119] Office of the High Representative, 'Law on the Council of Ministers of Bosnia and Herzegovina', (2002).
[120] Ashdown, 'Speech by the High Representative, Paddy Ashdown at a Conference on the Future of BiH Organised by the Association Bosnia & Herzegovina 2005.'
[121] Florian Bieber, 'Bosnia-Herzegovina: Slow Progress towards a Functional State', *Southeast European and Black Sea Studies* 6:1 (2006) 43-64, 54 and 55.
[122] Office of the High Representative, *5th Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1997).
[123] Adapted from: Bieber, *Post-War Bosnia*, 87.

Assembly, a Constitutional Court and a Supreme Court. Both entities have their own constitution, which was first drafted during the war and remained roughly unchanged during the Dayton negotiations.

Table 3.1: Elections in Bosnia 1996 - 2008	
Date	**Type of Election**
30 June 1996	Municipal elections in the city of Mostar
14 September 1996	General elections (State level: Presidency, and House of Representatives; Federation: House of Representatives and cantonal Assemblies; Serb Republic: Presidency and National Assembly)
13 September 1997	Municipal elections
23 November 1997	Extraordinary elections for the National Assembly of the Serb Republic
12-13 September 1998	General elections (see above)
8 April 2000	Municipal elections
11 November 2000	General elections, municipal elections in Srebrenica
5 October 2002	General elections, municipal elections in Žepče
2 October 2004	Municipal elections
2 October 2004	Elections in the Brčko district
1 October 2006	General elections (see above)
5 October 2008	Municipal elections

More levels of government can be found below the entity levels. As an entity, the Federation is a decentralized unit, existing of ten cantons with equal rights and responsibilities. The lowest level of government within the Federation is the municipal level. The municipalities, which amount to over eighty, have far less power than the cantons.[124] The Serb Republic does not have cantons, but has about sixty municipalities that are not very powerful compared to the entity government. Their role is limited to policy implementation and administration. Decision making is left to the Serb Republic as an entity.[125] Thus, whereas a citizen in the Federation has to deal with four levels of government (municipality, canton, entity and state), a citizen living in the Serb Republic has three levels of government (municipality, entity and state).

A special status was created for Brčko. Brčko is a strategic area between the Serb Republic and the Federation; it actually splits the Serb Republic in two parts. Because of its strategically important position, a special regime for the

[124] Bose, *Bosnia after Dayton*, 79.
[125] Ibid., 74.

territory was established. In the Dayton Agreement, the status of Brčko was left unresolved and subjected to international arbitration. In 1996, an Arbitration Tribunal was formed with the American diplomat Robert Owen as presiding arbitrator and Ćazim Sadiković and Vitomir Popović as local members, appointed by the Federation and the Serb Republic respectively. It proved not to be possible to decide on the status of Brčko before 14 December 1996, which was the deadline established by Dayton. The resolution of the issue was postponed several times, until the Final Award of 5 March 1999. The Final Award made Brčko a special district under the exclusive sovereignty of the state of Bosnia. Hence, Brčko belongs simultaneously to both entities in condominium. Brčko is self-governing and, given its strategic position, entirely demilitarized. The international supervisory regime was maintained in order to implement the Final Award.[126] Given the fact that the Brčko supervisor had extensive powers at his disposal, the regime could be seen as an international administration separate from the OHR. Among others, the Brčko supervisor established a multi-ethnic police force and a judiciary.[127] On 8 March 2000, after one year of preparations by a joint implementation commission, the District of Brčko (encompassing three municipalities) was inaugurated.[128] In the same month, an Interim Government and Assembly were established by appointment. The appointed administration was replaced by an elected authority in October 2004.

3.3 The United Nations Interim Administration Mission in Kosovo

3.3.1 The historical background of UNMIK

UNMIK was established after Kosovo had become the scene of violent conflict between Kosovo Albanians and the Serbian government in 1998 and 1999. The issue at stake was the Kosovo Albanian quest for independence and the Serbian wish to keep the territory under the authority of Belgrade. The Yugoslav Constitution of 1974 had provided Kosovo with the status of an autonomous province, but this autonomy had been abolished by Milošević in 1989. During the 1990s, when the former Yugoslavia violently fell apart, the situation in Kosovo was characterized by rising tensions and occasional violence between on the one hand Kosovo Albanians and on the other hand Kosovo Serbs and the Serbian

[126] Office of the High Representative, 'Brcko Final Award', (5 March 1999). The supervisors from 1997 on were: Robert Farrand (1997-2000); Gary Matthews (2000-2001); Henry Clark (2001-2004); Susan Johnson (2004-2006); and Raffi Gregorian (2006).
[127] Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', 114.
[128] Office of the High Representative, 'Address by the High Representative, Wolfgang Petritsch on the occasion of Establishment of Brcko District', (Sarajevo: 8 March 2000). Office of the High Representative, 'Supervisory Order On the Establishment of the Brcko District of Bosnia and Herzegovina', (Sarajevo: 8 March 2000).

authorities. A new Kosovo Albanian party, the Democratic League of Kosovo (*Lidhja Demokratike te Kosovës*, LDK) was created on 23 December 1989.[129] Ibrahim Rugova (1944 - 2006), president of the Association of Writers of Kosovo, became its political leader. Under his leadership, the Kosovo Albanians organized a campaign of 'passive resistance.' That involved the creation of parallel institutions such as education, health and security structures. Rugova even managed to organize an underground referendum for independence in September 1991 and underground presidential and parliamentary elections in 1992 and 1998. These elections were won by the LDK and resulted in his election as President. Rugova was supported by a coalition government-in-exile in Bonn (Germany) under the leadership of Prime Minister and Minister of Foreign Affairs Bujar Bukoshi from 1992 to 1999. The government was comprised of five other ministers; on information, education, finance, justice and health.[130] An important task of the government was to raise funds among the Kosovo Albanian Diaspora in order to finance the parallel government's activities.[131] Although the Kosovo Albanian parallel state was more or less tolerated by Milošević, it was recognized by no other country except Albania.

The situation in Kosovo deteriorated in 1998 when the irregular Kosovo Liberation Army (KLA) started an insurgency. The KLA had been created in the beginning of the 1990's and - in spite of Rugova's call for using the instrument of passive resistance only - grew steadily. Small numbers of KLA members went to Albania in order to get military training in secret camps. These camps formed a basis out of which the army conducted several raids into Kosovo. The disappointing outcome of the Dayton Peace Agreement (which ignored the tensions in Kosovo), the easy availability of weapons in Albania after the state breakdown in 1997, and the lack of concrete results achieved by Rugova's strategy of passive resistance changed the character and intensity of the insurgency.[132] Especially after the Drenica massacre of 5 March 1998 when 58 Kosovo Albanians were killed by Serbian troops, the KLA started to carry out attacks on a more regular basis and became better organized.[133] At the same time, Serbian forces became more determined in their efforts to defeat the KLA.[134]

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[129] The LDK was a mixture of a political party and a popular movement. Noel Malcolm, *Kosovo. A Short History* (London: Macmillan Publishers, 1998), 248.
[130] International Crisis Group, *Kosovo Spring* (Pristina/Sarajevo, 1998), 13.
[131] 'Obituary. Ibrahim Rugova', *The Economist* (28 January 2006).
[132] William G. O'Neill, *Kosovo. An Unfinished Peace* (Boulder/London: Lynne Rienner Publishers, 2001), 23. Independent International Commission on Kosovo, 'The Kosovo report: conflict, international response, lessons learned', (2000). Economides, 'Kosovo.'
[133] O'Neill, *Unfinished Peace*, 22 and 23. Dana H. Allin, 'Unintended Consequences - Managing Kosovo Independence', *What Status for Kosovo?* Dimitrios Triantaphyllou, ed. (Paris: Institute for Security Studies Western Union, 2002) 7-16, 7.
[134] Independent International Commission on Kosovo, 'The Kosovo Report.'

In 1998, the escalation of the conflict finally drew the attention of the international community. The resulting diplomatic efforts to end the conflict were characterized by confusion and mixed signals.[135] UN Security Council Resolution 1160 (31 March 1998) called for a peaceful settlement of the conflict and was full of uncertainty about how to deal with the Kosovo issue. It condemned both Serbia and the KLA (which was considered to be a terrorist organization) for using violence, but at the same time also recognized the territorial integrity of Serbia.[136] Responding to Resolution 1160, Milošević and Rugova made an attempt at a peaceful settlement by holding talks in the summer of 1998. After that had failed, UN Security Council Resolution 1199 (23 September 1999) increased the pressure on Belgrade and called for an immediate ceasefire. The resolution, together with crisis diplomacy by US diplomats, led to an agreement in which Milošević agreed to withdraw 4000 Serbian troops, to allow a 2000 strong observer mission of the OSCE (the Kosovo Verification Mission, KVM) that would monitor the withdrawal, and to undertake further negotiations with the Kosovo Albanian leadership.[137]

Neither Milošević, nor the KLA proved to be committed to the agreement. The violence continued and culminated in the Račak/Reçak massacre of 15 January 1999. After 45 bodies of Kosovo Albanian civilians were discovered near the village of Račak/Reçak and a vicious circle of violence had begun, did the international community realize that continuing the attempt for reaching a peaceful settlement under Resolution 1199 would not be possible. As a result, the Kosovo Albanians and Milošević were summoned by the Contact Group (the same group of nations that had been involved in Bosnia) to participate in negotiations for a political solution at the castle of Rambouillet (France) in February and March 1999.[138] The negotiations failed, because of a lack of consensus within the Contact Group and the lack of preparedness among Kosovo Albanians and Serbs to find a solution. Only as a result of tremendous international pressure, the internally divided Kosovo Albanian delegation agreed to sign a compromise solution proposed by the Contact Group. The Serbian delegation had based its negotiation strategy on internal differences within the Kosovo Albanian delegation. The Serbian delegation accepted many elements of the Contact Group's plan in the expectation that the Kosovo Albanians would not find internal agreement and so they could then be blamed for failed negotiations. However, faced with sudden Kosovo Albanian unity, Milošević refused to sign on the grounds that the final plan had been drafted during secret consultations with the Kosovo Albanians and that he could not sign an agreement that violated the basic rights of Serbia. While the US

[135] Ibid.
[136] Economides, 'Kosovo', 223 and 224.
[137] Ibid., 225.
[138] This was the same Contact Group that had been involved in trying to resolve the conflict in Bosnia and was made up of the USA, Russia, France, the UK, Germany and Italy.

government continued to persuade Milošević to sign the plan, Serbia reacted by stepping up the military campaign in Kosovo.[139]

Serbia's refusal to accept the Rambouillet plan and its intensified military campaign in Kosovo left little room for maneuver for the Contact Group.[140] Moreover, the Western world was in danger of loosing credibility as on several occasions NATO had threatened Milošević with force if he would not withdraw Serbian troops from Kosovo.[141] This threat was actually carried out after the Rambouillet negotiations had failed. From 24 March to 10 June 1999, NATO carried out air strikes (Allied Force) to force Milošević to accept the Rambouillet Agreement and to withdraw his military forces from Kosovo.

NATO's intervention had not been authorized by the UN Security Council which was paralyzed by a lack of consensus among the (permanent) members. Whereas the USA and the UK had been supporters of the Kosovo Albanian case, Russia opposed any resolution to the conflict that would impose a settlement on Serbia.[142] As a result, NATO's campaign was condemned as an act of aggression and support was expressed for Serbia.[143] Not only Russia condemned the NATO operation; Allied Force was also interpreted as an infringement on Serbia's sovereignty by China and India.[144] Two days after the start of the operation, the Russians circulated a draft UN Security Council resolution which called for an immediate end to the bombings since they violated the UN-charter. The draft was co-sponsored by India and Belarus, but rejected by the twelve other members of the Security Council.[145] However, confronted with a *fait accomplit*, the Russian government realized at the end of April that it was also in Russia's interest to end the war as soon as possible. During the meeting of the G8 of 6 May 1999, Russia agreed with the establishment of a peace-keeping force for Kosovo after the NATO bombings would end (an idea which the Russian government had opposed up to that date).[146] The Russian policy change led to the creation of a team of diplomatic envoys consisting of former Russian Prime Minister Viktor Chernomyrdin, President of Finland Marthi Ahtisaari (representing the EU), and US deputy Secretary of State Strobe Talbott. Together they drafted a peace plan which was based on the G8 principles that had been formulated during the meeting of May.[147]

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[139] Economides, 'Kosovo', 227 - 229.
[140] Ibid., 229.
[141] Rob de Wijk, *Pyrrus in Kosovo. Hoe het Westen de oorlog niet kon winnen en zelfs bijna verloor* (Leidschendam: Mets en Schilt, 2000).
[142] Economides, 'Kosovo', 227.
[143] D. Mendelhof, ''Pernicious History' as a Cause of National Misperceptions: Russia and the 1999 Kosovo War', *Cooperation and Conflict* 43:1 (2008) 31-56, 32.
[144] Economides, 'Kosovo', 234.
[145] Ibid., 233.
[146] Philip E. Auerswald and David P. Auerswald, eds., *The Kosovo Conflict. A Diplomatic History Through Documents*, (Cambridge/Den Haag: Kluwer Law International, 2000), 877.
[147] Ibid., 1047.

The peace plan was presented to Milošević on 3 June and included the following elements: [148]

1) Immediate and verifiable end of violence and repression in Kosovo.
2) Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3) Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4) The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control, and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5) Establishment of an interim administration for Kosovo as part of the international civil presence under which the people of Kosovo can enjoy a substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6) After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions: Liaison with international civil mission and international security presence; Marking/clearing minefields; Maintaining a presence at Serb patrimonial sites Maintaining a presence at key border crossings.
7) Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8) A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

[148] Ibid., 1079-1081.

9) A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.
10) Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below. A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo.

This peace plan was unconditionally accepted by the Serbian government. On 5 June talks started on a Military Technical Agreement between NATO and the Serbian military and on 9 June the Agreement was signed. It divided Kosovo into three separate zones and created a demilitarized zone on the Serbian side of the Kosovo border. It also included a timetable under which Serbian forces would withdraw from each zone. The withdrawn troops would be replaced with a NATO force of about 50.000 troops which was allowed to use all necessary force to enforce the Military Technical Agreement.[149] While military experts were drafting the Military Technical Agreement, the G8 Foreign Ministers were working to draft a UN Security Council resolution based on the G8 peace plan. On 8 June there was agreement among the G8, including Russia, for a draft resolution. On 10 June the UN Security Council passed Resolution 1244. Soon after Serbia started to withdraw its forces (withdrawal was completed on 20 June) and NATO suspended its air campaign.[150]

3.3.2 International governorship

The end of operation Allied Force in June 1999 did not result in a final settlement of the conflict. In the end, the only document which was signed by the Serbian government was the Military Technical Agreement which was not much more than a cease-fire.[151] NATO's intervention did not mean that the incompatibility would be solved by making Kosovo independent. Although NATO's intervention and the earlier UN involvement is sometimes explained in terms of political support for independence by the KLA, the position of the Western powers was much more ambivalent.[152] First, the initial reason for the Western involvement in the conflict

[149] Ibid., 1048.
[150] Ibid., 1048-1049.
[151] 'Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia', (9 June 1999).
[152] Economides, 'Kosovo', 226.

was to preserve the stability of South Eastern Europe as a region.[153] Secondly, when it became clear that the conflict erupted into ethnic cleansing and a humanitarian tragedy for hundreds of thousands of people, the principal objective became to stop the humanitarian suffering. As such, Allied Force was not started with the aim to make Kosovo independent.[154]

Despite the lack of international consensus on the issue of Kosovo both types of international administration were discussed. First, international administration of the control type, the model used in Bosnia, was considered. That model emerged in the text of the failed Rambouillet Agreement. The Rambouillet Agreement (accepted by the Kosovo Albanians, but rejected by Milošević) determined that Kosovo would remain a part of Serbia, but that Kosovo would also be allowed to have a substantial amount of self-government. The Rambouillet Agreement called for an assembly, a government and even a president of Kosovo. At the same time, the territorial integrity of Serbia would remain intact. The implementation would be monitored by an implementation mission of the OSCE and the EU. The Chief of the Implementation Mission would have the following tasks and authorities: [155]

(a) supervise and direct the implementation of the civilian aspects of this Agreement pursuant to a schedule that he shall specify;

(b) maintain close contact with the Parties to promote full compliance with those aspects of this Agreement;

(c) facilitate, as he deems necessary, the resolution of difficulties arising in connection with such implementation;

(d) participate in meetings of donor organizations, including on issues of rehabilitation and reconstruction, in particular by putting forward proposals and identifying priorities for their consideration as appropriate;

(e) coordinate the activities of civilian organizations and agencies in Kosovo assisting in the implementation of the civilian aspects of this Agreement, respecting fully their specific organizational procedures;

(f) report periodically to the bodies responsible for constituting the Mission on progress in the implementation of the civilian aspects of this Agreement; and

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[153] Tim Judah, *Kosovo: War and Revenge* (Second Edition; New Haven: Yale University Press, 2002), 224.
[154] Allin, 'Unintended Consequences - Managing Kosovo Independence', 9.
[155] 'Interim Agreement for Peace and Self-Government in Kosovo', (Rambouillet: 1999), Chapter 5, Article II. Obtainable from: www.usip.org (last visited on 20 January 2009)

(g) carry out the functions specified in this Agreement pertaining to police and security forces.

Like the High Representative in Bosnia, the Chief of the Implementation Mission would be 'the final authority in theatre regarding interpretation of the civilian aspects of this Agreement, and the Parties agree to abide by his determinations as binding on all Parties and persons.'[156] However, an international administration of the control type which would be based on a peace agreement proved to be impossible to realize after the NATO operation. The control type international administration in the Rambouillet text presumed the continuation of Serbian sovereignty in Kosovo. Yet it was unthinkable that Serbian sovereignty in Kosovo could be restored given the atrocities carried out during the war in 1998 and 1999. Discussions within the UN Security Council showed an international consensus that in the case of Kosovo humanitarian norms prevailed over the norm of sovereignty.[157] Therefore, the UN Security Council decided to launch a UN mission that would (temporarily) act as the sovereign government in Kosovo; i.e. an international administration of the governorship type.

Belgrade protested against a governorship type international administration, but within the Security Council it only got support from China. However, China did not make use of its veto power due to the Serbian acceptance of the general principles of the peace plan and the acknowledgement that a joint adoption of a Security Council resolution would restore the Security Council's unity. Moreover, China (and Russia for that matter) feared a NATO-led international administration if Resolution 1244 would be vetoed. In that way, a UN-led international administration was considered to be the lesser evil and China abstained from voting so that UN Security Council Resolution 1244 could be adopted by consensus.[158]

Russia had voted in favor of Resolution 1244, because it left the final status undecided. The Russians, having protested against the NATO operation, had finally decided to cooperate with Western countries to broker a deal between NATO and Milošević, but they could not accept an independent Kosovo. As such, there was no international consensus regarding the status of Kosovo. In contrast to the case of Bosnia, the Russian government tried to influence the course of events in a substantial way. The Russian interventions were not merely focused on emphasizing its position in the world, but also on supporting the Serbian

[156] Ibid., Chapter 5, Article V.
[157] Lene Mosegaard, 'The Kosovo Experiment: Peacebuilding through an international trusteeship', *Kosovo between War and Peace. Nationalism, peacebuilding and international trusteeship*, Tonny Brems Knudsen and Carsten Bagge Laustsen, eds. (London/New York: Routledge, 2006) 56-75, 61-64.
[158] Ibid., 63.

government in its claim that the territorial integrity of Serbia could not be harmed. Therefore, postponing a decision on the political status of the territory proved to be the only politically realistic policy option at the end of NATO's air campaign. The UN Security Council hoped that during the period of international administration it would be able to find a solution to the conflict together with the conflicting parties. Having achieved the postponement of a status decision, Russia reluctantly agreed with an UN-led international administration and a military mission led by NATO, the Kosovo Force (KFOR).[159] Kosovo would be administered and prepared for self-government by UNMIK, while KFOR would maintain peace and security. The status of the territory (the incompatibility) was left to the UN Security Council to handle, although no exact timeframe was given.

3.3.3 The mandate and organization of UNMIK

The mandate of UNMIK was based on Resolution 1244. The resolution was decided upon by the Security Council on 10 June 1999 and was meant to restore the authority of the Security Council in the wake of NATO's intervention.[160] The resolution reaffirmed the sovereignty and territorial integrity of Serbia and it authorized the establishment of: 'an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.'[161] In addition to the international administration, it authorized the presence of KFOR with initially about 50.000 troops.

Partly based on 'lessons learned' from the implementation of the Dayton Peace Agreement in Bosnia, all tasks were brought under one umbrella organization.[162] As it was established in 1999, UNMIK consisted of four pillars: humanitarian assistance (pillar 1); civil administration (pillar 2); democratization and institution-building (pillar 3); and economic reconstruction (pillar 4).[163] The

[159] Judah, *Kosovo: War and Revenge*, 278. Besnik Pula, 'The UN in Kosova: Administrating Democratization?' *Understanding the war in Kosovo*, Florian Bieber and Zidas Daskalovski, eds. (London/Portland: Frank Cass Publishers, 2003) 199-216, 201.
[160] Economides, 'Kosovo', 238.
[161] United Nations Security Council, 'Resolution 1244', (New York: 1999).
[162] O'Neill, *Unfinished Peace*, 37. Ashdown, *Swords and Ploughshares*, 37.
[163] Pillar 1 was led by the Office of the United Nations High Commissioner for Refugees (UNHCR), until it was closed in June 2000. In May 2001, it was replaced by a reformed pillar 1 dealing with the rule of law. In line with the transfer of authorities from the international administration to the domestic institutions, pillars 1 and 2 closed down in 2006 and were replaced by much smaller departments within the Office of the Special Representative. Pillar 4 closed down on 30 June 2008

first two pillars were led by the UN, the third by the OSCE and the fourth by the EU. The Special Representative of the UN Secretary-General (UN Special Representative) had the final responsibility for all these pillars.[164] He reported directly to the Secretary-General of the UN, who in his turn informed the UN Security Council. Within the UN Secretariat, the Department of Peacekeeping Operations was responsible for the policy coordination between the UN headquarters in New York and UNMIK. While the Department of Peacekeeping Operations served an operational function, the politically strategic decisions were taken by the UN Security Council.[165]

3.3.4 The major international partners of UNMIK

In contrast to the OHR, UNMIK started with a strong operational mandate and it was not necessary to strengthen it in the course of time. The pillar structure was also an improvement compared to the structure of the international administration in Bosnia in the sense that it facilitated coordination between the major international organizations in the territory. Two principal international partners of the UN, i.e. the OSCE and the EU, were embedded in the pillar organization.

The main function of the OSCE in Kosovo was to support the institution-building process.[166] It did so by organizing elections and setting up capacity building programs for the Assembly, especially through the so called Assembly Support Initiative. Through its Institute of Civil Administration, the OSCE trained a few thousand civil servants between 2000 and 2002.[167] Since 2003, the OSCE supported and cooperated with the Kosovo Institute of Public Administration (KIPA), which was responsible for training and educating a multi-ethnic civil service. The OSCE also fostered the creation of independent media and the promotion of human rights. Finally, the organization was also active in the field of security and helped establish the Kosovo Police School.[168] Since the OSCE mission

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which left pillar 3 as the only remaining one. UNMIK, 'Press Release: UNMIK Countdown: UNMIK/PR/1606', (Pristina: 15 November 2006); UNMIK, 'UNMIK Fact Sheet June 2008', (2008).

[164] The following UN Special Representatives have headed UNMIK: Bernard Kouchner (15 July 1999 - 12 January 2001); Hans Haekkerup (13 January 2001 - 13 February 2002); Michael Steiner (14 February 2002 - 7 July 2003); Harri Holkeri (8 July 2003 - August 2004); Sören Jessen-Petersen (August 2004 – 31 August 2006); Joachim Ruecker (1 September 2006 - 19 June 2008); and Lamberto Zannier (20 June 2008).

[165] Interview with an UNMIK official (7), *Pristina 8 May 2005*.

[166] Although the OSCE had officially been charged with the concrete creation of institutions, it was the UN who actually established the PISG. Especially in the beginning of the mission, the OSCE was excluded from the institution-building process and its role remained limited to supporting the institutions established by the UN. Iain King and Whit Mason, *Peace At Any Price. How the World Failed Kosovo* (London: Hurst & Co, 2006), 77.

[167] Hartmut Purner, 'Taking the first steps together. Supporting the creation of functioning municipal assemblies', *Assembly Support Initiative Newsletter,* 7 (2003).

[168] King and Mason, *Peace At Any Price*, 77.

was integrated in UNMIK's structure, its head of mission reported to the UN Special Representative.[169]

Since the EU member states were the greatest donors to Kosovo, the EU became responsible for economic reconstruction. It carried out its task through the fourth UNMIK pillar and through a specialized agency called the European Agency for Reconstruction (EAR).[170] Among the achievements of the EU were the introduction of a new currency (first in 1999 the German Mark and in 2002 the Euro), the establishment of the Customs Service (executed by the international administration), the creation of the Banking System and Payments Authority and the reconstruction of water and electricity facilities.[171] The EU also set up the Central Fiscal Authority as Kosovo's new treasury.[172] Finally, the EU was involved in the transformation of Kosovo's socialist economy to a modern market economy. Similar to the Head of Mission of the OSCE, the EU Head of Mission reported to the UN Special Representative.[173]

Unlike the OSCE and the EU, NATO did not have its mission integrated in the pillar structure. Nonetheless, since UNMIK was totally dependent on KFOR for maintaining peace and security, smooth cooperation was essential. To that extent, regular consultations took place between the KFOR commander and UNMIK.[174] In the field, coordination between KFOR troops and UNMIK was organized through Civil Military Cooperation teams and security meetings.[175] Next to maintaining peace and security, NATO was involved in the demilitarization of the KLA.

Next to NATO and the pillar organizations, there were other relevant international organizations active in Kosovo. The World Bank, for example, committed approximately 95 million US Dollars to Kosovo between 2000 and 2006.[176] Moreover, an important political role has been played by the Contact Group in general and the so called Quint (the Contact Group minus Russia) in

[169] The OSCE heads of mission in Kosovo were: Daan Everts (June 1999 – December 2001); Pascal Fieschi (January 2002 – March 2005); Werner Wendt (April 2005 – September 2008); Tim Guldimann (October 2007 – October 2008); and Werner Almhofer (October 2008).
[170] King and Mason, *Peace At Any Price*, 87.
[171] Ibid., 87-90.
[172] Ibid., 135.
[173] The EU heads of mission have been: Jolly Dixon (July 1999 – August 2000); Andy Bearpark (September 2000 - June 2003); Nicolaus Lambsdorff (July 2003 – January 2005); Joachim Ruecker (February 2005 – August 2006); and Paul Acda (1 September 2006).
[174] The KFOR commanders since 1999 have been: Wesley Clark; Mike Jackson; Klaus Reinhardt; Juan Ortuno; Carlo Cabigiosu; Thorstein Skiaker; Marcel Valentin; Fabio Mini; Holger Kammerhoff; Yves de Kermabon; Guiseppe Valotto; Roland Kather; Xavier de Marnhac; and Giuseppe Emilio Gay.
[175] Andreas Heinemann-Grüder and Igor Grebenschikov, 'Security Governance by Internationals. The Case of Kosovo', *International Peacekeeping* 13:1 (2006) 43-59, 45 and 56.
[176] *Interim Strategy Note for Kosovo for the period FY06-FY07* (Washington: World Bank, 2006), 1.

particular.[177] Until the renewed outbreak of ethnic violence between Kosovo Albanians and Kosovo Serbs in March of 2004, the Contact Group was only modestly involved and provided some political guidance to UNMIK. The Contact Group increased its involvement after March 2004 and by the start of preparations for status negotiations in 2005 it could be considered the most important international actor in Kosovo. As in Bosnia, within the Contact Group, the USA again played a crucial role.

3.3.5 Developing implementation strategies

NATO's operation Allied Force had been started without a clear vision of what would come after the bombings.[178] When UNMIK was deployed in June 1999, it did not have a concrete implementation plan. As in Bosnia, the first year of UNMIK's presence was largely devoted to setting up its offices. A first deployment mission was organized under the direction of Sergio Veira de Mello and consisted of about 200 officials, mainly drawn from the UN mission in Bosnia (UNMIBH).[179] The main difference between the implementation process in Bosnia and in Kosovo was that UNMIK was not allowed to solve the status issue and to work towards an end state since that would require a new resolution of the UN Security Council.

The primary task of the international administration was to create provisional governmental institutions. That process started with the development of the Joint Interim Administrative Structure and was followed by the Provisional Institutions of Government in 2002 (see below). After the provisional institutions had formally been established, UNMIK threatened to become a mission without any vision.[180] Consequently, UN Special Representative Michael Steiner devised a comprehensive implementation strategy in the course of 2002. In April, Steiner presented the first draft of what was called Benchmarks for Kosovo to the UN Security Council. The benchmarks became known in the press as the Standards before Status policy.[181] It pointed to the necessity that the Standards would have to be implemented by Kosovo's authorities before a decision on the final status of the territory could be taken. The Standards before Status policy had been designed as a tool to manage the interim period until the international community would be ready

[177] The Quint ambassadors met regularly on Fridays to discuss policy priorities. The Contact Group met about every six weeks on the level of political directors with the PISG.
[178] Heinemann-Grüder and Grebenschikov, 'Security Governance by Internationals', 44.
[179] Ibid., 46.
[180] Interview with Kosovar Institute for Policy Research and Development (KIPRED), *Pristina 5 May 2005*.
[181] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2002/1126* (New York, 2002).

to address the political status of Kosovo.[182] The initial benchmarks included eight directives on: functioning democratic institutions; the rule of law (police and judiciary); freedom of movement; returns and reintegration; economy; property rights; dialogue with Belgrade and the Kosovo Protection Corps.[183]

Initially, after their announcement, little was done to implement the benchmarks. According to the International Crisis Group, they were 'a vague pronouncement of UNMIK, rather than tangible, realistic objectives for the provisional institutions to work towards.'[184] However, encouraged by the UN Security Council, UNMIK established a concrete work plan for the Standards in 2003.[185] This resulted in the Standards for Kosovo document, which was presented by UNMIK on 10 December 2003 and endorsed by the UN Security Council two days later.[186] The Standards for Kosovo summed up the same eight issues as the Benchmarks for Kosovo had done, with one slight modification; the fourth standard had become 'sustainable returns and the rights of communities and their members.'[187]

Four months later, on 13 March 2004, the Standards for Kosovo were followed by the Standards Implementation Plan. This document was meant to specify the actions and policies that would be necessary to reach the Standards.[188] The Standards Implementation Plan, consisting of 120 pages and mentioning 484 individual actions proved to be too ambitious.[189] Therefore, UNMIK decided to prioritize several actions within the eight Standards. The focus was on the core principle of minority protection and on fostering a multi-ethnic society.[190] The first prioritization occurred in the field of refugee return in the wake of the large scale ethnic violence in March 2004.[191] Prioritization in the other Standards materialized in the summer of 2004 when UN Special Representative Sören Jessen-Petersen replaced Harri Holkeri.[192] One year later, a comprehensive review of the Standards process was made with the objective to determine whether Kosovo was ready to start negotiations on the final status. This review was carried out by the Norwegian

[182] Secretary-General of the United Nations, *Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council: S/2004/932* (New York, 2004), 15.
[183] UNMIK, 'Benchmarks for Kosovo', (Pristina: 2002).
[184] International Crisis Group, *Two to Tango. An Agenda for the New Kosovo SRSG* (Pristina/Brussels, 2003), 17, ICG Balkans Report No.148.
[185] Ibid.
[186] UNMIK, 'Standards for Kosovo', (Pristina: 2003).
[187] Ibid.
[188] UNMIK, 'Standards Implementation Plan', (Pristina: 2004).
[189] European Stability Initiative, *The Lausanne Principle. Multiethnicity, Territory and the Future of Kosovo's Serbs* (Pristina/Berlin, 2004), 17.
[190] Interview with an OSCE official (1), *Pristina 7 May 2005*.
[191] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/348* (New York, 2004), 5.
[192] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907* (New York, 2004), 4.

diplomat Kai Eide, who concluded that much work still remained to be done. Nonetheless, the report also recognized that the political status of Kosovo had to be decided in order to achieve further results. As a result, the UN Security Council decided to start a new implementation policy which was called Standards and Status. This policy is elaborated upon in Chapter six which examines in detail the final status negotiations.

3.4 Building provisional political institutions in Kosovo

3.4.1 Transitional executive institutions

As had been the case in Bosnia, new political institutions could only be established after the first elections had been organized. Therefore, until 2001 transitional executive institutions were established in order to consult domestic politicians. A few weeks after its establishment in June 1999, UNMIK created the Kosovo Transitional Council, which under the chairmanship of the UN Special Representative brought together the representatives of Kosovo's political parties and ethnic communities. The Kosovo Transitional Council had two primary functions. First, as the highest consultative body to UNMIK, it offered the main political parties and ethnic communities in Kosovo an opportunity for input in the international decision making process. Second, it was designed to be a forum where parties could work on achieving consensus on a broad range of issues, related to civil administration, institution-building, reconstruction and essential services.[193]

This transitional arrangement was changed with the establishment of the Joint Interim Administrative Structure. The term 'joint' referred to the combined membership of international and domestic officials. After months of negotiations within the Kosovo Transitional Council, an agreement was reached to establish the Joint Interim Administrative Structure on 15 December 1999. It consisted of several political institutions. First, the Kosovo Transitional Council remained and continued to carry out its role as highest consultative body. It was expanded to 36 members in order to better reflect the pluralistic composition of Kosovo's population.[194] Second, the Interim Administrative Council, a kind of proto provisional government, was formed. It consisted of four international members, three Kosovo Albanians and one Kosovo Serb.[195] Third, the agreement created

[193] UNMIK, 'Press Release: UNMIK Convenes First Meeting of Kosovo Transitional Council: UNMIK/PR/12 ', (Pristina: 16 July 1999).
[194] UNMIK, 'Press Release: Kosovo Political Leaders Agree to Share Administration of Kosovo with UNMIK: UNMIK/PR/115', (Pristina: 15 December 1999).
[195] The four international members of the Kosovo Transitional Council were senior UNMIK staff members. UNMIK, 'Press Release: SRSG signs Regulation on the Kosovo Joint Interim Administrative Structure: UNMIK/PR/135', (Pristina: 15 January 2000). The three Kosovo Albanian

fourteen and later twenty administrative departments that were jointly administered by international and domestic staff.[196]

The Joint Interim Administrative Structure had merely an advisory function and little actual political authority. Since elections had not been held yet at the time of their formation, the Kosovo Transitional Council and Interim Administrative Council were formed on the basis of perceived electoral strength of Kosovo's political parties.[197] Both interim institutions were orientated to the elite and badly connected with the general public. In addition, the joint administrative departments were poorly staffed and had little authority.[198] The departments were co-headed by an UNMIK representative and a domestic representative who were expected to take joint decisions. However, in case of a lack of consensus, the Deputy UN Special Representative would be responsible for making the decision. Moreover, the co-heads had to report directly to UNMIK rather than to the Kosovo Transitional Council or Interim Administrative Council.[199]

3.4.2 Kosovo's provisional constitutional design

The Joint Interim Administrative Structure was replaced after the Constitutional Framework for Provisional Self-Government had been drafted. During the process towards the first (municipal) elections in October 2000, UNMIK realized that it would need to develop a legal framework which would define the 'substantial autonomy' mentioned in UN Security Council Resolution 1244 and which would include provisions regarding the protection of minorities. The UN Special Representative promised that this step towards greater responsibility and autonomy

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members were initially those who had represented Kosovo during the Rambouillet negotiations: Ibrahim Rugova (Democratic League of Kosovo), Hashim Thaçi (Democratic Party of Kosovo) and Rexhep Qosja (United Democratic Movement). UNMIK, 'Press Release: Kosovo Political Leaders Agree to Share Administration of Kosovo with UNMIK: UNMIK/PR/115.' However, in November 2000 Qosja resigned as the result of disappointing municipal election results for his party. UNMIK, 'Press Release: SRSG Briefs IAC On His New York Visit: UNMIK/PR/422', (Pristina: 21 November 2000). He was replaced by Ramush Haradinaj (Alliance for the Future of Kosovo) in February 2001: UNMIK, 'Press Release: Matthews Welcomes Haradinaj to IAC; Health Care Discussed: UNMIK/PR/512', (Pristina: 27 February 2001). The Kosovo Serb member, Rada Trajkovic joined as an observer in April 2000. UNMIK, 'Press Release: IAC Welcomes the Serb Decision to Join as Observers: UNMIK/PR/209', (Pristina: 4 April 2000).

[196] The fourteen departments proposed on 15 December were endorsed on 14 January 2000 in UNMIK Regulation No. 2000/1. However, on 5 January 2000, the number of departments was extended to nineteen. UNMIK, 'Press Release: Joint Administrative Structures as proposed by UNMIK/Interim Administrative Council: UNMIK/PR/124', (Pristina: 5 January 2000). In spring 2000, a twentieth department was added.

[197] King and Mason, *Peace At Any Price*, 116. and Interview with an UNMIK official (6), *Pristina 4 May 2005*.

[198] Interview with an UNMIK official (6), *Pristina 4 May 2005*.

[199] UNMIK, 'On the Kosovo Joint Interim Administrative Structure: Regulation No. 2000/1', (Pristina: 14 January 2000).

would be taken if the elections would lead to the 'proper conditions.'[200] After an intensive drafting process by a Joint Working Group, the UN Special Representative signed the Constitutional Framework on 15 May 2001.

The Constitutional Framework established two levels of government: the municipal level and the central level. The municipalities are mentioned as the basic territorial units of self-government. In contrast to the decentralized state in Bosnia, however, the Constitutional Framework established a rather centralized state in Kosovo. The central level Provisional Institutions of Self-Government (PISG) in Pristina form the main locus of power. These institutions are the Presidency, the Government and the Assembly.

The creation of a Provisional Presidency was of major symbolic importance for the Kosovo Albanians. Having a President affirmed the Kosovo Albanian aspiration for statehood and for that reason the creation of such an institution was opposed by UNMIK and the Kosovo Serb community.[201] Nonetheless, the Kosovo Albanians succeeded in getting a provision for a President in the Constitutional Framework. The Framework stated that: 'The President shall represent the unity of the people and guarantee the democratic functioning of the Provisional Institutions of Self-Government.'[202] The Assembly elected the President for a three year term (during the government coalition negotiations in 2008 this was changed to five years). The President was to possess authority in external relations. The President was responsible (after consultation with the political parties) for nominating the Prime Minister to the Assembly. He was expected to communicate to the UN Special Representative a request of the Assembly if required to dissolve the Assembly. He also was responsible for presenting the annual report on the state of affairs in Kosovo to the Assembly, as well as fulfilling his ceremonial functions.[203] Taking its functions into account, the Provisional President of Kosovo played above all a symbolic role. The symbolic nature of the Presidency was reinforced with the election of Ibrahim Rugova as President after the Assembly elections of 2001 and 2004. As the former leader of Kosovo's passive resistance movement for many Kosovo Albanians, Rugova was a symbol of an independent Kosovo in waiting. Consequently, he attained importance beyond his limited role in the Constitutional Framework.

The role of the Provisional Government was to exercise executive authority, to implement laws within the scope of responsibilities of the

[200] UNMIK, 'Press Release: Kouchner Briefs Security Council on Kosovo Elections Preparations: UNMIK/PR/373', (Pristina: 28 September 2000).
[201] International Crisis Group, *Kosovo: Landmark Election* (Pristina/Brussels, 2001), 7, ICG Balkans Report No. 120.
[202] UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo', (Pristina: 2001).
[203] Ibid.

Constitutional Framework and to propose draft laws to the Assembly.[204] The Government was led by a Prime Minister, who was nominated by the President and chosen by the Assembly with a simple majority. In turn, the Prime Minister nominated the ministers, who were also chosen by the Assembly based on a majority vote. In contrast to the Bosnian chair of the Council of Ministers, Kosovo's Prime Minister represented the government (as appropriate), defined the general policy line and coordinated the work of the government.[205] Within the government decisions would normally be taken by consensus, but if consensus was absent decisions would be taken by the majority of the ministers present and voting. In case the ministers were divided equally, the Prime Minister would cast the decisive vote.[206]

After the first general elections in November 2001, the twenty administrative departments of the Joint Interim Administrative Structure (see above) were consolidated into nine Ministries: Agriculture, Forestry and Rural Development; Culture, Youth and Sports; Education, Science and Technology; Labor and Social Welfare; Health, Environment and Spatial Planning; Transport and Communications; Public Services; Trade and Industry; and Finance and Economy. [207] On 2 December 2004, the number of ministries was extended from nine to eleven when the Ministry of Health was separated from the Ministry of 'Environment and Spatial Planning' and when the Ministry of Energy and Mining was created. After the Assembly elections of 2004 the Ministry of Returns and Communities and the Ministry of Local Government Administration were added.[208] The fourteenth and fifteenth ministry were the Ministry of Justice and the Ministry of Internal Affairs. Initially, it was planned to establish both ministries in December 2005. Due to political discontent within the government coalition over the appointment of senior officials that objective was not reached.[209] Only after a government reshuffle in March 2006 was it possible to appoint both ministers.[210]

The Provisional Assembly consisted of one chamber with 120 seats, out of which twenty were reserved for non-Albanian communities. These latter seats included ten seats for the Serb community, four for the Roma, Ashkali, and Egyptian communities, three for the Bosniak community, two for the Turkish community and one for the Gorani community. The Presidency of the Assembly existed of seven members, which included one member from the Serb community

[204] International Crisis Group, *Kosovo: Landmark Election*, 6.
[205] UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo.'
[206] Ibid.
[207] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2002/62* (New York, 2002), 3.
[208] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2005/335* (New York, 2005), 13.
[209] UNDP, *Early Warning Report Kosovo 12: October - December 2005* (Pristina, 2005), 5.
[210] International Crisis Group, *An Army for Kosovo?* (Pristina/Belgrade/Brussels, 2006), 4, Europe Report No. 174.

and one member from another minority community.[211] The functions of the Assembly included: 'the adoption of laws and resolutions, endorsing or rejecting the prime minister and government, and establishing committees to oversee legislation.'[212] The Assembly started its first mandate after the first Assembly elections had been held on 17 November 2001. Its inaugural session was on 10 December 2001.[213] New elections were organized in 2004 and 2007, as is shown in Table 3.2.

Table 3.2: Elections in Kosovo 1999 - 2007	
Date	**Type of Election**
28 October 2000	Municipal elections
17 November 2001	Assembly elections
26 October 2002	Municipal elections
23 October 2004	Assembly elections
17 November 2007	Assembly and Municipal elections

The municipalities, which form the second level of government in Kosovo, were established after the elections in October 2000. Since then, Kosovo officially consisted of thirty municipalities. As the basic territorial units of the territory, they were responsible for government tasks ranging from providing primary health care and social services, to licensing of building activities and urban and rural planning. The main political institutions on the municipal level were the Assembly, the President, the Chief Executive Officer and the Board of Directors. The Assembly was the legislative organ of the municipality. It elected the President (and his deputy) who chaired the sessions of the Assembly. The most important task of the President was to maintain general oversight of the execution of the Assembly's decisions and of the financial administration of the municipality. The Chief Executive Officer and the Board of Directors formed the executive authority at the municipal level. The Chief Executive Officer was elected by the Assembly at the recommendation of the President and chairs the Board of Directors. The Board of Directors was made up of the heads of the municipal Departments.[214]

3.5 Concluding remarks on the creation of political institutions

By 2008, the OHR had accomplished an enormous achievement regarding the establishment of political institutions. The international administration had been

[211] UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo.'
[212] International Crisis Group, *Kosovo: Landmark Election*, 5.
[213] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2002/62*, 2.
[214] UNMIK, 'On self-government of municipalities in Kosovo: Regulation No. 2000/45: ' (Pristina: 11 August 2000).

able to implement the Dayton Constitution and establish institutions such as the Presidency, the Council of Ministers and the bicameral Assembly. Further, together with the OSCE, no less than twelve successful elections had been organized on different levels of government. Therefore, High Representative Ashdown could positively conclude: 'By the time I left Bosnia at the end of 2006, VAT [Value Added Tax, *NvW*] was up and running, the customs services had been unified into a single state-wide service, the Bosnian judiciary was working under a single state-wide framework of law, the courts were beginning to try even the highest in the land for corruption (…), a single army was operating under state control, a single state intelligence service, accountable to parliament, had been created, and the country had entered on to the long road that, hopefully, will lead it to Europe.'[215]

A similar picture can be drawn for Kosovo. The review on the status process acknowledged in 2005 that: 'After the end of the conflict in 1999, there was a total institutional vacuum in Kosovo. Today, a comprehensive set of new institutions has been established. This represents a tremendous achievement.'[216] Indeed, an entire institutional infrastructure had been constructed and between 1999 and 2008 five elections had been successfully organized. At the time of the unilateral declaration of independence in February 2008, Kosovo had all the political institutions it needed to function as an independent and modern state. In the report in which the UN Secretary-General announced the restructuring and *de facto* phasing out of UNMIK, he concluded: 'During those nine years, the international civil presence (…) helped Kosovo make significant strides in establishing and consolidating democratic and accountable Provisional Institutions of Self-Government and in creating the foundations for a functioning economy.'[217]

However, in spite of these positive accounts, the creation of institutions says little about their sustainability. As has been explained in Chapter two, the mere presence of political institutions is not sufficient to create a sustainable political entity. Therefore, in the next three chapters, the second phase of institutionalization, the process during which institutions become domestically embedded, is analyzed. This is being done by studying the extent to which the institutions have become autonomous, have become congruent and are supported by the domestic population.

[215] Ashdown, *Swords and Ploughshares*, 296.
[216] Kai Eide, *A comprehensive review of the situation in Kosovo: S-2005-635* (New York, 2005), 4.
[217] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2008/354* (New York, 2008), 1.

4 Institutional Autonomy

Given the extensive powers of international administrations it is not difficult to create domestic political institutions. However, it is more difficult to ensure the sustainability of these institutions. A political institution created by an international administration needs to become autonomous in order to become embedded in domestic society. An international administration is of a temporary nature. This means that an institution that is not autonomous in the sense of being independent from the international administration and having capacity will likely crumble and collapse when the international administration ends. In this chapter, the question is answered whether Bosnia's and Kosovo's political institutions have become autonomous. The chapter is divided into two parts. The first part answers the question for the case of Bosnia and the second part focuses on Kosovo. In both parts a similar line of argument is presented. First, it is shown how the control and governorship types of international administration are reflected in the mandates of the OHR and UNMIK respectively. This is necessary in order to show that given the extensive powers of both international administrations, one at least cannot speak of autonomous institutions at the beginning of both operations. In other words, autonomy is something that must be gained during the international administration of a territory. Secondly, an overview of the OHR's decisions and UNMIK's regulations and directives is presented, because these are the formal instruments through which both international administrations exercised their authority. Thirdly, the independence of the political institutions is assessed, after which the same is done for the institutional capacity. Finally, each part ends with a possible explanation of the outcome based on the particular conflict management strategy for each case.

4.1 Bosnia

4.1.1 The powers of the OHR

The imposed character of the Dayton Agreement made the establishment of an international implementation mission necessary. Since the Agreement had come about as a result of external intervention and a specific strategic balance on the ground, it could not be taken for granted that the conflicting parties would comply with it and implement it. The Contact Group members expected that the establishment of the Bosnian state would be a challenge and the OHR had to ensure that the conflicting parties would comply with the Dayton Agreement in word and in deed. As a result, it was determined that the High Representative would need to have a robust mandate. Annex

10 to the Dayton Agreement gave the High Representative the power to interpret his own authorities and powers.[1] This power of interpretation was confirmed in the Bonn powers (see below). Thus, whereas the Bosniaks, the Bosnian Serbs and the Bosnian Croats, as well as Croatia and Serbia, were bound to the Dayton Agreement as signatories, the international institutions involved in the implementation of Dayton were not.[2] As the 'final arbiter' of the civilian implementation in Bosnia, the High Representative could not be challenged on any clause of the Bosnian Constitution.[3]

Some observers have pointed out that the main fault line in Bosnia has not been between the three communities, but based on overwhelming power at the disposal of the OHR, it was between the three communities and the international community.[4] The extensive power of the OHR in Bosnia inspired Gerald Knaus and Felix Martin to write an article in the *Journal of Democracy*, in which they compared the international presence in Bosnia with the British Empire in the nineteenth century. Their argument is based on the observation that the international administration sets the agenda of reform, imposes it and punishes those who obstruct the implementation of the Dayton Agreement.[5] This resembles a system of indirect rule which existed in India when it was part of the British Empire. According to the authors, the ambitious character of the mission, the belief in progress and the assumption that outsiders know what would be best for the population, are three additional similarities with the British Raj.[6] Knaus and Martin were not alone in their analogy with colonialism. High Representative Carlos Westendorp was depicted as the 'Euro-Spanish viceroy' of Bosnia by *The Economist*.[7] In ethnic nationalist Bosnian Serb newspapers, he was referred to as 'the dictator.'[8] Westendorp himself preferred the term 'friendly arbiter.'[9] In the Bosnian press, Wolfgang Petritsch has been referred to as a

[1] 'Interview: Carlos Westendorp reveals his opinion about the Bosnian politicians', *Slobodna Bosna/OHR Press Office* 30 November 1997.
[2] David Chandler, *Bosnia: Faking Democracy after Dayton* (London/Sterling: Pluto Press, 1999), 52.
[3] Ibid., 70.
[4] Sumantra Bose, *Bosnia after Dayton. Nationalist Partition and International Intervention* (Oxford: Oxford University Press, 2002), 6.
[5] Gerald Knaus and Felix Martin, 'Lessons from Bosnia and Herzegovina. Travails of the European Raj', *Journal of Democracy* 14:3 (2003) 60-73, 61.
[6] Ibid., 62.
[7] 'Charlemagne. Carlos Westendorp, Bosnia's Euro-Spanish Viceroy', *The Economist/OHR Press Office* (4 September 1998).
[8] Carlos Westendorp, ''Don't Bargain With Bosnia'', *The Wall Street Journal/OHR Press Office* 6 April 1999.
[9] 'Interview: Carlos Westendorp reveals his opinion about the Bosnian politicians.'

'merciless protector.'[10] Finally, Petritsch' successor Ashdown has been referred to as a 'proconsul.'[11]

Since 1995, the imposed character of the Dayton Agreement and the robust mandate of the OHR has contributed to OHR's increased involvement and its international partners in the domestic affairs in Bosnia. As described in Chapter three, the Joint Interim Commission and the Joint Civilian Committee were set up and chaired by the OHR and executed only consultative functions. It was the OHR, in cooperation with the International Monetary Fund and the European Commission, which created the Quick Start Package that was the first collection of regulations for the new state institutions,[12] Moreover, the working groups that were established by the Presidency in order to consider a variety of policy issues were actually set up and chaired by the OHR. When Bosnian representatives opposed elements of the Quick Start Package, international economic pressure was applied to counter their opposition. Thus, from the beginning of the international administration, the Bosnian political institutions had little influence over either policy development or implementation.[13]

The same counted for the two entities. Policy making in the Federation was heavily influenced by the OHR and the USA. Federation policy was mostly created in the Federation Forum, which was co-chaired by the Senior Deputy High Representative and the US Assistant Secretary of State. The Forum included the Presidency of the Federation, the state level Presidency, the OSCE head of mission, and other senior international officials. *De facto*, the Federation Forum and its sub-committees sidestepped the domestic representative bodies.[14] In the Serb Republic, autonomous policy making was restricted by the OHR-drafted Law on the Government of the Serb Republic and the Law on the Ministries. As a result of the victory of the SDS in the September 1996 Assembly elections, the Government of the Serb Republic was transferred from Pale to Banja Luka with the objective of weakening the influence of Bosnian Serb ethnic nationalist hardliners.[15]

Despite the OHR's early involvement, a reinterpretation of its powers was judged to be necessary in 1997. The original mandate was not strong enough to enforce implementation of the Dayton Agreement in case of resistance by ethnic nationalist hardliners. Between December 1995 and

[10] Dejan Jazvic, 'Interview: Wolfgang Petritsch: "A hero of our time or a merciless protector"', *Hrvatska Rijec/OHR Press Office* 21 May 2001.
[11] 'Paddy's Passions', *The Economist* (28 June 2007).
[12] Chandler, *Faking Democracy*, 62. Wolfgang Petritsch, *Bosnien und Herzegowina 5 Jahre Nach Dayton. Hat Der Friede Eine Chance?* (Klagenfurt: Wieser Verlag, 2001), 89.
[13] Chandler, *Faking Democracy*, 62 and 63 and 64.
[14] Ibid., 73.
[15] Ibid., 75.

December 1997, little progress had been achieved with respect to some of the reforms including issues of power sharing, unification of (state level) institutions and the return of minorities.[16]

It was during the PIC meeting in Paris in November 1996 where extending the powers of the OHR was first mentioned. 'The Steering Board and the authorities of Bosnia and Herzegovina recognize the need for the High Representative to continue to perform his tasks throughout the entire consolidation period. His task needs to be reinforced in the following areas in particular; as Chairman of the Principals' meetings, as Chairman of the Economic Task Force and as Chairman of other meetings with key Implementation Agencies; in case of conflicting interpretations of the civilian implementation of the peace settlement, as the final authority in theater in accordance with Article V of Annex 10. In case of dispute, the High Representative may give his interpretation and make his recommendations known public.'[17]

During the meeting of the PIC Steering Board in Sintra (Portugal) in May 1997, the reinvigoration of the implementation effort was put explicitly on the agenda.[18] During the summit, the High Representative received explicit powers to: 'curtail or suspend any media network or program whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement.'[19] The creation of these powers was the result of non-compliance with the Dayton Agreement by ethnic nationalist hardliners and the general frustration at the weak performance of Bosnia's institutions.[20] The Sintra powers were the first concrete powers at the disposal of the High Representative to counter ethnic nationalist rhetoric in the media. They were used on 4 October 1997 by requesting SFOR to occupy the transmission towers of the Serb Republic's Radio and Television Station, which had until then been an important political instrument of the SDS.[21]

The Sintra powers proved not to be substantial enough to make large steps forward. Thus, the path was paved for giving the High Representative more power during the Bonn PIC meeting.[22] During the meeting, High

[16] Elizabeth M. Cousens and Charles K. Cater, *Toward Peace in Bosnia. Implementing the Dayton Accords* (Boulder/London: Lynne Rienner Publishers, 2001), 129.
[17] Peace Implementation Council, 'PIC Paris Conclusions', (1996).
[18] Cousens and Cater, *Peace in Bosnia*, 130.
[19] Peace Implementation Council, 'PIC Sintra Declaration', (1997).
[20] Gerald Knaus and Marcus Cox, 'Whither Bosnia?' *NATO Review* 48:3 (2000) 6-11, 7.
[21] International Crisis Group, *Doing Democracy a Disservice: 1998 Elections in Bosnia and Herzegovina* (Sarajevo, 1998), 10, ICG Balkans Report No.42.
[22] Christian J. Ebner, 'The Bonn Powers - Still necessary?' *From Peace Making to Self Sustaining Peace. International Presence in South East Europe at a Crossroads? Workshop of the Study Group "Regional Stability in South East Europe"*, Predrag Jurekovic and

Representative Westendorp gave a speech in which he summed up the huge challenges after two years of peace implementation. With respect to the state level, he pointed out that: 'Two years after the war, the State of Bosnia and Herzegovina still has: no permanently located, properly functioning common institutions; no new flag; no common license plate; no common passport; no currency of its own; no legal definition of citizenship; no law adopted on foreign investment; no adopted permanent laws on a customs code and customs tariffs; no full definition or adequate protection of human rights; no strong, multi-ethnic, country-wide political parties, and no structured civil society. Extremist leaders, although their influence is declining, continue to intimidate the population, to sow discord, and to frustrate economic and political reconstruction. Bosnia has no established public corporations; in particular, the Transportation Corporation, which covers railroads, is not operating.' [23]

The Bonn meeting resulted in the actual extension of the High Representative's powers with respect to the authority to make binding decisions on the following issues: [24]

1) timing, location and chairmanship of meetings of the common institutions;
2) interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned;
3) other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation.

The so called 'Bonn Powers' represented an innovation when compared with the mandate expressed in the Dayton Agreement, to the extent that in addition to the authority to oversee the implementation of the Agreement's provisions and to interpret them, the OHR was asked to exercise its mandate

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Frederic Labarre, eds. (Vienna: National Defence Academy Vienna Austria, 2004) 118-150, 122.

[23] Office of the High Representative, 'Speech by the High Representative, Carlos Westendorp, to the Peace Implementation Council', (Sarajevo: 9 December 1997).

[24] Peace Implementation Council, 'PIC Bonn Conclusions', (1997).

more robustly.[25] In the end, the Bonn powers provided the OHR with more flexibility to push reforms forward.[26]

The Bonn powers have been widely used by the High Representative as an instrument for imposing the peace implementation process. By using these powers, the OHR developed itself into a central pillar of the constitutional order.[27] Since December 1997, the OHR has played a pivotal role in Bosnia, especially as far as political institution-building is concerned. More than any other international agency, the OHR has been focused on (the functioning) of the state level institutions.[28] Among the large number of international organizations present in Bosnia, the OHR can be regarded as the most influential especially since 1997.[29] During the years of international administration, the Bosnians have shown more trust in the OHR than in their indigenous institutions and foreign governments have treated the High Representative as the locus of power in Bosnia.[30] The Parliamentary Assembly of the Council of Europe concluded in 2004 that: 'The scope of the OHR is such that, to all intents and purposes, it constitutes the supreme institution vested with power in Bosnia and Herzegovina.'[31] The influential position of the OHR can be explained by the fact that it is the only international institution with the power to impose decisions and make legislative changes.[32] It could do so, because the Dayton Agreement and the Bonn Powers empowered the OHR to substitute for domestic institutions when necessary.[33]

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[25] Cousens and Cater, *Peace in Bosnia*, 131.
[26] Kurt W. Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', *After Intervention: Public Security Management in Post-Conflict Societies. From Intervention to Sustainable Local Ownership*, Anja H. Ebnöther and Philipp H. Fluri, eds. (Vienna: DCAF et al., 2005) 101-137, 108.
[27] Knaus and Cox, 'Whither Bosnia', 7.
[28] Chandler, *Faking Democracy*, 147.
[29] Cousens and Cater, *Peace in Bosnia*, 129.
[30] International Crisis Group, *Thessaloniki and After II* (Sarajevo/Brussels, 2003), 10, Balkans briefing.
[31] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* (Venice, 11 March 2005), 2.
[32] Walter A. Dorn and Jeremy King, 'Taking Stock of Security Sector Reform in Bosnia 1995-2002', *Bridges of Peace. Ten Years of Conflict Management in Bosnia*, Charles C. Pentland, ed. (Kingston: Centre for International Relations Queen's University, 2003) 63-96, 73.
[33] Interview with an OHR official (6), *Sarajevo 8 May 2006*, (8).

4.1.2 The OHR's decisions

Since December 1997, the High Representative intervened in Bosnian politics by way of making official 'decisions.' The High Representative's decisions can be split into two categories: legislative acts and executive acts. The legislative acts comprise the imposition of political, economic and judicial legislation and the executive acts include among others the dismissal of Bosnian officials deemed to obstruct the peace process, the blocking of bank accounts of persons suspected to aid indicted war criminals, and the appointment of Bosnian officials. Table 4.1 shows the number of decisions made yearly by the High Representative from 16 December 1997 to 5 September 2008:

Table 4.1: OHR decisions from 16 December 1997 to 5 September 2008[34]

Year	**Number of Decisions**
1997	1
1998	29
1999	90
2000	86
2001	54
2002	153
2003	96
2004	158
2005	91
2006	57
2007	37
2008	12
Total	**864**

In total, between the first decision (16 December 1997) and the last decision (5 September 2008) included in this analysis, a number of 864 decisions were made. The years 2002 and 2004, when Ashdown was High Representative, show a clear peak. Since 2005 the number of decisions made has started to decline significantly. In order to better understand the development of the OHR's interventions, it is necessary to know what kind of decisions have been made. Table 4.2 provides an overview of the decisions as related to specific policy fields.

[34] Obtainable from: www.ohr.int (last visited on 20 January 2009)

Table 4.2: OHR decisions from 16 December 1997 to 5 September 2008 as related to specific policy fields[35]	
Decisions related to:	**Number of decisions**
State symbols and state level matters	102
The economic field	95
The judicial field	177
The Federation, Mostar and Herzegovina-Neretva Canton	71
Removals and suspensions from office[36]	175
The media	18
Property laws, return of displaced persons/refugees, and reconciliation	118
Individuals indicted for war crimes in the former Yugoslavia	108
Total	**864**

According to the overview presented in Table 4.2, most decisions were made in the judicial field and in the field of 'removals and suspensions from office.' However, among the 108 decisions made in the category of 'individuals indicted for war crimes', a number of 68 decisions were in fact removals. Adding these 68 cases to the category of 'removals and suspensions from office', it shows that most decisions made by the High Representative were concerned with removals and suspensions. As is argued below, every removal or suspension should be considered as an infringement on the autonomy of the institution where the specific action takes place.

As is shown by Table 4.3, there are substantial differences between the different High Representatives when it comes to the number of decisions made in the implementation process. The first High Representative, Carl Bildt, did not have the Bonn Powers at his disposal and therefore did not have to make any decisions for his record.[37] The Bonn powers were created during the office of the Spanish diplomat Carlos Westendorp and on 16 December 1997, imposing the Law on Citizenship, Westendorp was the first High Representative who made a decision based on the Bonn powers. In total, Westendorp would make 71 decisions in 25 months time. The successor of Westendorp, the Austrian diplomat Wolfgang Petritsch made a number of 252 decisions in about 34 months. The absolute record however for decisions made was set by Paddy Ashdown. He made no less than 446

[35] Obtainable from: www.ohr.int (last visited on 20 January 2009)
[36] The category 'removals and suspensions from office' also includes the rehabilitation of officials.
[37] In this respect, it could be argued that during Bildt's term in office as High Representative, Bosnia was only an international administration *de jure*. The Bonn Powers were implicit in the Dayton Agreement, but were not actually used.

decisions during his administration of almost 43 months. High Representative Schwarz-Schilling made 46 decisions in 11 months and his successor Miroslav Lajčák 28 decisions in 15 months.

Table 4.3: Monthly average of decisions by each High Representative[38]			
High Representative	**Number of decisions**	**Months in office[39]**	**Average of decisions**
Bildt	-	-	-
Westendorp	71	25	2,8
Petritsch	252	34	7,4
Ashdown	446	43	10,4
Schwarz-Schilling	46	11	4,1
Lajčák	28	15	1,9

Looking at the average number of interventions per year made by every single High Representative, a steady increase can be detected until the office of Ashdown; from 2,8 decisions a month (Westendorp), to 7,4 decisions a month (Petritsch), to 10,4 decisions a month (Ashdown). Only with Schwarz-Schilling the average number decreased to 4,1 decisions a month. This decrease had actually started in the last year of Ashdown's administration (2005), when he reached an average of 7.5 decisions a month. On the one hand, the initial increase indicates that from December 1997 to December 2004, the independence of Bosnia's institutions from the OHR decreased. On the other hand, the decline in the number of interventions from January 2005 shows that Bosnia's institutions were becoming more independent.

The OHR's decisions were directed at the implementation of the Dayton Agreement. Given the imposed nature of the Dayton Agreement, any progress at the state level institutions depended heavily on the initiatives and work of the international administration. In its Luxembourg declaration of 9 June 1998, the PIC concluded that substantial progress had been achieved since the Bonn meeting. Among the achievements listed were: the common flag, passports, common license plates, a growing number of arrested war-crimes suspects, the creation of a number of multi-ethnic assemblies after the municipal elections of 1997, and new legislation on customs, privatization,

[38] Obtainable from: www.ohr.int (last visited on 20 January 2009)

[39] The number of months is calculated by counting the months between the first and the last decision of the High Representative. For Westendorp, 16 December – 30 July 1999; for Petritsch, 1 September 1999 – 24 May 2002; for Ashdown; 14 June 2002 – 31 January 2006; for Schwarz-Schilling, 9 February 2006 – 29 June 2007; and for Lajčák, 9 July 2007 – 5 September 2008.

foreign investment and state and entity budgets. However, the PIC acknowledged that almost all of these achievements had required international pressure or intervention and that the pace of implementation by the Bosnian institutions themselves was a serious matter of concern .[40]

Half a year later, during the Madrid meeting, the PIC was even more explicit: 'Bosnia and Herzegovina's structure remains fragile. Without the scaffolding of international support, it would collapse.'[41] During the Brussels meeting in May 2000, the PIC was more positive about the stabilization of the security situation, the completion of the major physical reconstruction, the accelerating return of refugees and displaced persons, the establishment of the Brčko District, and the strengthening of political pluralism. At the same time, however, it was acknowledged that these achievements were largely the result of intensive international efforts and the PIC expressed its dissatisfaction with the slow pace of implementation since the preceding ministerial PIC meeting in Madrid in 1998.[42]

By the time Petritsch assumed the office of High Representative, there was widespread pessimism about the direction Bosnia was heading. Bosnia needed a firm strategy in order to push the reform forward: 'the pivotal factor in breaking the inertia in Bosnia was the decision that the status quo was untenable, and could only be changed by catalytic intervention from the OHR, with appropriate international backing.'[43] The lack of support for the Dayton Agreement was reflected in the legislative and executive decisions that were made from 1997 to 2008. The Dayton Agreement and the Bonn Powers mandated concerning legislative decisions that the OHR substitute for domestic legislative authorities and impose legislation by initiating, amending or repealing laws. A law that was passed by the OHR went immediately into effect. In all cases, the text of the decision stated that it was prohibited to amend the law until it had been adopted as such by the domestic institutions. With that provision, domestic institutions were strongly encouraged to adopt the law themselves even after its imposition.[44] In fact, the imposed law had entered into effect on an interim basis and it would only receive a permanent status once it was adopted by the Bosnian parliament. A clear example of a legislative decision of the OHR is the imposition on the Law on the Council of Ministers of 3 December 2002. The decision states: 'The Law which follows, and which forms an integral part of this Decision shall come into effect as provided for

[40] Peace Implementation Council, 'PIC Luxembourg Declaration', (1998).
[41] Peace Implementation Council, 'PIC Madrid Declaration', (1998).
[42] Peace Implementation Council, 'Brussels Declaration', (2000).
[43] Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', 119.
[44] Interview with an OHR official (6), *Sarajevo 8 May 2006*.

in Article 47 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.'[45]

The first imposition of legislation occurred on 15 December 1997 when the Law on Citizenship was imposed.[46] The PIC had established a deadline for adopting the law which was not met. The Law on Citizenship clearly was a law with an integrationist objective. Much of the legislation imposed was legislation aimed at integrating the three constitutive peoples, such as the Law on the Flag (3 February 1998), the Law on a Uniform License Plate for Vehicles (20 May 1998) and the Law on the National Anthem (26 June 1999). Most laws and by-laws (or rule books) that have entered into effect have been initiated and drafted, at least for the most part, by the OHR.[47] In the case of the Law on the Policy of Foreign Direct Investment for example, the draft law was written by the OHR and submitted to the House of Representatives on 12 February 1998. The House of Representatives, however, removed the draft from the agenda, after which the High Representative decided to impose it.[48] The above mentioned Law on the Council of Ministers was jointly drafted by the OHR and by representatives of the House of Representatives in November 2002.[49]

While the imposition of legislation in the initial years of international administration might not be that surprising, the OHR was still issuing legislative decisions even after twelve years of international administration. Sometimes imposition was judged necessary, because of the lack of attention given by the Bosnian authorities to a certain issue. This was for example the case with the Decision enacting the Law on amendments to the criminal procedural code of Bosnia and Herzegovina. In the decision, the High Representative deplores 'that the changes to legislation necessary to facilitate the prosecution and adjudication of the cases transferred from the ICTY [International Criminal Tribunal for the Former Yugoslavia, *NvW*] have not been given the attention it requires by the authorities in Bosnia and Herzegovina.'[50] In other cases, such as in the Decision amending the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and

[45] Office of the High Representative, 'Decision enacting the Law on the Council of Ministers of Bosnia and Herzegovina', (Sarajevo: 3 December 2002).
[46] Office of the High Representative, 'Decision imposing the Law on Citizenship of BiH', (Sarajevo: 16 December 1997).
[47] Interview with an OHR official (6), *Sarajevo 8 May 2006*.
[48] Office of the High Representative, 'Decision imposing the Draft Law on the Policy of Foreign Direct Investment in BiH', (Sarajevo: 5 March 1998).
[49] Office of the High Representative, 'Decision enacting the Law on the Council of Ministers of Bosnia and Herzegovina.'
[50] Office of the High Representative, 'Decision enacting the Law on Amendments to the Criminal Procedural Code of Bosnia and Herzegovina', (Sarajevo: 13 April 2007).

Herzegovina, the OHR imposed legislation, because Bosnian authorities were not able to reach a compromise: 'Recalling that, in its Declaration of 19 June 2007, the Steering Board of the Peace Implementation Council expressed deep dissatisfaction with "the three-year failure of the State and Entity authorities to reach an agreement on the issue of apportionment of State Property.'[51]

In addition to the legislative acts of the OHR, many decisions of the High Representative were executive decisions. The contents and character of these executive decisions varied considerably. The first executive decision was the establishment of an interim arrangement to manage the airport of Mostar (1 March 1998). Other examples of executive decisions are: the establishment of an independent experts commission to prepare the election law (1 August 1998); the decision to abolish the illegal municipality of Skelani and restoring the pre-war boundaries of the municipality of Srebrenica (5 December 2000); and the decision on police disciplinary proceedings (24 January 2003). However, the most salient and most discussed executive decisions were the decisions made concerning the removal and suspension from office of individuals who were accused of obstructing the implementation of the Dayton Agreement.

Between March 1998 and May 2008, the High Representative removed and suspended hundreds of officials. The first removal from office took place on 8 March 1998, when High Representative Westendorp removed Pero Raguz the Mayor of Stolac and a member of the HDZ. He was accused of hindering the return of Bosniak refugees to Stolac.[52] A similar kind of non-cooperation in the field of refugee return led to the dismissal of the mayor of Drvar on 16 April 1998.[53] The third dismissal took place on 28 August 1998 when the mayor of Orasje was accused of: 'creating a political atmosphere in his municipality detrimental to the holding of free and fair elections.'[54] In the end, most removals were based on non-cooperation with

[51] Office of the High Representative, 'Decision amending the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina', (Sarajevo: 19 December 2007).

[52] This first dismissal by the OHR caused a polemic in Bosnian politics. The issue was raised to the highest political level and was discussed between Westendorp and the President of Croatia, Franjo Tudjman. Mirsad Fazlic, 'Interview: Hanns H. Schumacher, Senior Deputy HR: "Unreal Dreams Of Separation Of The HDZ Hard-liners"', *Vecernje Novine/OHR Press Office* 3 March 1998.

[53] Office of the High Representative, 'Decision removing Drago Tokmakcija from his position as Deputy Mayor of Drvar', (Sarajevo: 16 April 1998).

[54] Office of the High Representative, 'Decision removing Marko Benkovic from his position as Mayor of Orasje', (Sarajevo: 28 August 1998).

the International Criminal Tribunal for the Former Yugoslavia (ICTY).[55] In practice that meant that many of the officials removed came from the Serb Republic. At the same time, a considerable number of Bosnian Croat and Bosniak ethnic nationalist hardliners was removed also. During an interview with the newspaper Dani, Senior Deputy High Representative Hanns Schumacher made very clear that the OHR would not tolerate Bosnian Croat obstruction within the Federation: 'I am simply not interested in who does not want the Federation: this is a concept that we will implement, despite the resistance on the field, which undoubtedly exists!'[56] In answer to the question whether the Bosniak community obstructed the Federation, Schumacher replied: 'We dictate what will be done! Therefore, this [the Federation, *NvW*] is a concept that will be implemented jointly and we simply do not pay attention to those who obstruct! I think we have already proved that we can use the authorities that Dayton gives us and all those who resist will have to face the consequences.'[57]

When firing twenty two Bosnian officials on one day in November 1999, Wolfgang Petritsch declared: 'Four years after Dayton, many of the forces who divided this country still remain in place. With their corrupting presence, those who wish progress find they are prevented or even threatened from abandoning parochial hatreds and shady practices. Ambassador Barry and I concluded that ownership could not take root with obstructionists still in positions of authority. It was with regret that we concluded we had no alternative but to remove 22 officials from their posts on Monday.'[58] A peak of the number of officials fired in one day was reached with these removals.[59] The first record number of officials removed in one day had been set by Westendorp with his dismissal of sixteen officials in March 1999. After the November 1999 removals, a new record was set by High Representative Ashdown on the first of July 2004. On that day, Ashdown fired sixty high ranking officials from the Serb Republic. He argued that they had failed to cooperate with the ICTY in The Hague, they provided assistance to war crime suspects (including Radovan Karadžić and Ratko Mladić) and they were responsible for the failure of Bosnia to be

[55] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, 23.
[56] Emir Suljagic, 'Interview: Hanns H. Schumacher, Senior Deputy HR: "We will break the hardliners of the HDZ!"', *Dani/OHR Press Office* 11 April 1998.
[57] Ibid.
[58] Christophe Solioz, 'The fate of Bosnia and Herzegovina: an inclusive interview of Christophe Solioz with Wolfgang Petritsch', *Journal of Southern Europe and the Balkans* 5:3 (2003) 355-373.
[59] Ebner, 'The Bonn Powers - Still necessary?' 125.

included in NATO's Partnership for Peace Program.[60] For more or less the same reasons, Ashdown again fired sixteen officials from the Serb Republic in December 2004.

The dismissed officials could not appeal against the decision of High Representatives and the OHR. Until May 2005 it has occurred only once that the OHR decided to lift a ban against a Bosnian official who had been removed earlier. However, that decision was at the High Representative's own discretion.[61] This policy changed in 2005. In a report of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, a review of the High Representative's removal decisions was recommended. The report welcomed the announcement of Ashdown that he would initiate a process of rehabilitation of persons that were removed or suspended from office.[62] These developments led to a massive lifting of bans imposed on dozens of officials from May 2005 on. As a result, dozens of formerly removed or suspended persons have been rehabilitated.

In addition to removing officials, the OHR has been very active in making appointments in its executive decisions. These appointments were often related to the new institutions established by the international administration, such as the appointment of the director of the State Investigation and Protection Agency in June 2005.[63] Appointments were also made in case the political parties could not agree on filling high profile executive positions. This occurred, for example, in the case of the director of the State Border Service in 2005. The Bosnian authorities could not agree on a director within the time limit of six months so in the end the OHR decided.[64]

The OHR still executed executive acts as of 2007 and 2008. It even found it necessary to remove two more officials. The first removal took place in July 2007 (being the first removal since October 2005) and was

[60] Ian Traynor, 'Ashdown purges Bosnian Serb Leadership', *The Guardian* 1 July 2004.
[61] After High Representative Westendorp had removed Dragan Cavic as a member of the Serb Republic's National Assembly on 10 August 1998 for obstructing the Dayton Agreement, the ban against him was lifted on 30 July 1999 by Westendorp's successor Petritsch. Office of the High Representative, 'Decision to lift the ban on Dragan Cavic's activities', (Sarajevo: 30 July 1999).
[62] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, 24.
[63] Office of the High Representative, 'Decision on appointment of the Director of the State Investigation and Protection Agency', (Sarajevo: 8 June 2005).
[64] Office of the High Representative, 'Decision on appointment of the Director of the State Border Service', (Sarajevo: 9 September 2005).

followed by a second removal in May 2008.[65] Together with the continued imposition of legislation, the continued interference of the OHR in executive issues indicates that Bosnia's political institutions were not acting independently from the OHR in 2008.

4.1.3 The independence of Bosnia's political institutions

The independence of Bosnia's political institutions increased gradually between 1995 and 2008. Institutional independence increased in two ways. First, the number of decisions imposed by the international administration declined after 2005. Second, the transfer of authority from the international administration to the local institutions increased their independence. This is also reflected in the increasing participation of Bosnian officials in the internationally driven processes of reform.

From 2005, Bosnian political institutions were increasingly allowed and expected to take 'ownership' over their own affairs. Despite the large number of OHR interventions between 1996 and 2005, the High Representatives were aware of the limits of their interventions. In speeches and public documents, they have often acknowledged that *their* capacity to govern Bosnia was limited. Westendorp said: 'People who know a country best are people who live in it. We cannot understand you as much as you can, but we can help create mutual trust here.'[66] With similar words Ashdown declared to the Bosnian parliament: 'I do not have the monopoly of wisdom on what is right for this country. There will always be room for compromise between us if this parliament comes up with sensible and workable solutions that push the reform agenda forward.'[67] Finally, Schwarz-Schilling stated in March 2007: 'But Bosnia and Herzegovina's progress towards Euro-Atlantic integration will be determined by its own achievements and those alone. It will not be determined by outside factors.'[68]

The concept of 'ownership' was introduced by Petritsch in 2000. Petritsch attempted to increase the responsibility of the domestic institutions

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[65] Office of the High Representative, 'Decision to remove Dragomir Andan from his position as Deputy Head of Administration for Police Education of the Ministry of the Interior of the Republika Srpska', (Sarajevo: 10 July 2007). Office of the High Representative, 'Decision to remove Mr. Predrag Čeranić from his current position in the Intelligence and Security Agency of Bosnia and Herzegovina', (Sarajevo: 30 May 2008).

[66] Tomo Maric, 'Interview: Carlos Westendorp, the High Representative in BiH: "To Build a Better Life With Confidence"', *Glas Sprski/OHR Press Office* 31 July 1998.

[67] Office of the High Representative, 'Speech by the High Representative for Bosnia and Herzegovina Paddy Ashdown to the BiH House of Representatives', (17 December 2002).

[68] Office of the High Representative, 'Speech by the High Representative and EU Special Representative for Bosnia and Herzegovina, Christian Schwarz-Schilling to the UN Security Council', (Sarajevo: 16 May 2007).

for the implementation of the Dayton Agreement. Ownership was adopted by the PIC which defined it as: 'a self sustainable BiH [Bosnia, *NvW*], serving its citizens, meeting its international obligations, and integrating into Europe.'[69] At the time, it was judged right to start the process of ownership. In an interview Petritsch claimed that the conditions for ownership had been created: 'Ownership is a process that requires a framework, and I first had to lay the solid foundations to get this process going and create the conditions for ownership to take root.'[70]

A serious test case for ownership was the implementation of a decision taken in 2000 by Bosnia's Constitutional Court which determined that entity constitutions should be amended. The decision had declared the entity constitutions to be in violation of the state level Constitution. The implementation of the decision was seen as a test case for Bosnia's development towards ownership. It was expected given the incumbent moderate government coalition (the Alliance for Change) that the time had come to give more responsibility to Bosnia's domestic institutions. However, after two years there was still no agreement on the implementation of the decision. In February 2002, the Steering Board of the PIC declared: 'The Steering Board therefore strongly urges the political leadership in the country to focus on achievable solutions and to reach a final agreement on this matter [Constitutional Court Decision, *NvW*] (…). Failure to demonstrate 'ownership' on this issue would have serious negative consequences and would retard BiH's [Bosnia's, *NvW*] integration into European structures.'[71] With 'European structures', the PIC referred to the fact that implementation of the Constitutional Court decision had been declared a condition for Bosnia's membership in the Council of Europe. Yet despite such an incentive, the Bosnians still were unable to assume ownership. Although an agreement among all major political parties had finally been reached on 27 March 2002, subsequent disagreements made it necessary for High Representative Petritsch to impose the agreement on 19 April 2002.[72]

Given these problems with implementing the Constitutional Court decision, it is not surprising that High Representative Ashdown did not continue with the ownership policy when he took over from Petritsch in June 2005. According to Ashdown, ownership had been introduced too soon and

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[69] Peace Implementation Council, 'Declaration of the Peace Implementation Council', (Sarajevo: 24 May 2000).
[70] Solioz, 'The fate of Bosnia and Herzegovina', 361.
[71] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (28 February 2002).
[72] Florian Bieber, *Post-War Bosnia. Ethnicity, Inequality and Public Sector Governance* (New York: Palgrave Macmillan, 2006), 128-129.

he emphasized the necessity to establish the rule of law before domestic democracy could develop further.[73] As has been shown in the analysis above, Ashdown was the most interventionist High Representative and as a result he became essentially part of the political process in Bosnia.[74]

The number of interventions started to decline in the last year of Ashdown's term in office, only after he had initiated and sometimes even completed difficult and controversial reforms (mainly regarding the rule of law).[75] The number of OHR decisions decreased from 158 decisions in 2004 to 'only' 91 decisions in 2005. This trend continued in 2006, when no more than 57 decisions were taken (see Table 4.1) by Ashdown's successor Schwarz-Schilling.[76] In 2007 the number of decisions fell to 37 and in 2008 it fell further to 12. Moreover, many of the decisions made from 2005 to 2008 concerned rehabilitations of earlier dismissed and suspended Bosnian officials.[77] In this way, such decisions can be considered measures to strengthen rather than to weaken domestic ownership since they reversed earlier decisions.[78] It is also important to note that few of the decisions made between 2005 and 2008 included reforms necessary for achieving closer association and cooperation with the EU, which at one point was one of the most important policy objectives in Bosnia.

Whereas the policy of ownership in terms of a decreasing number of decisions was back on the international administration's agenda in 2005, stimulating ownership in terms of the transfer of authority from the international level to the domestic level had continued through out the

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[73] Ashdown argued that sometimes democracy must be put second to ending the conflict and establishing the rule of law. He argued that in Bosnia the international community had failed to establish the rule of law after then six years of international administration: Paddy Ashdown, *Swords and Ploughshares. Bringing Peace to the 21st Century.* (London: Weidenfeld & Nicolson, 2007), 19, 36, 77, 78, 87 and 88.

[74] Interview with an official of the Dutch government, *Sarajevo 2 May 2006*.

[75] Paddy Ashdown, 'Speech by the High Representative, Paddy Ashdown at a Conference on the Future of BiH Organised by the Association Bosnia & Herzegovina 2005', (Geneva: 21 October 2005).

[76] Next to the decreasing number of interventions, the OHR started to attend less and less meetings of domestic bodies: Interview with an OHR official (2), *Sarajevo 3 May 2006*.

[77] One OHR official referred to this process as the 'Phoenix process.' Interview with an OHR official (1), *Sarajevo 3 May 2006*. None of the rehabilitated officials were from the group that had been dismissed because of non-cooperation with ICTY. As far as this group was concerned Schwarz-Schilling stated in May 2007: 'I would also point out that I have not rehabilitated anybody removed from office in Bosnia and Herzegovina for failure to cooperate with the ICTY and believe that such individuals should remain removed as long as ICTY co-operation is unsatisfactory.' Office of the High Representative, 'Weekly column by Christian Schwarz-Schilling, High Representative for BiH: 'Solidarity and Justice', 18 May 2007', (Sarajevo: 2007).

[78] It should be noted that in 2005 three officials were removed from office and in both 2007 and 2008 one official was removed from office.

Ashdown period. The transfer of authority had actually started under Bildt in 1996 when the first elections had been organized. However, it took another eight years before the first elections took place that were entirely organized and financed by the Bosnians. These were the 2004 municipal elections and the only international involvement was the presence of international members in the Bosnian Elections Commission. These international members were withdrawn in 2005, which made the elections in 2006 the first elections without any official involvement of the international administration.[79] In 2004 and 2005, several human rights institutions were also transferred from international administration to the domestic level.[80] This included the state level Ombudsman which had been transferred to the domestic level in January 2004.[81] It also included the transfer of the competences of the international Commission for Real Property Claims to the Bosnian state level.[82] Finally, in 2007, within the field of justice Bosnia made substantial progress in reducing its dependence on the international administration by the replacement of several international judges and prosecutors with domestic ones.[83]

The transfer of authority is also reflected in increasing Bosnian membership of expert commissions dealing with specific internationally driven reforms.[84] Although most of the commissions were chaired by an international official the remainder of the members were Bosnians. Most commissions were established in 2003; the Defense Reform Commission, the Commission for Reforming the City of Mostar (which was also chaired by a Bosnian), the Indirect Tax Policy Commission and the Expert Commission on Intelligence Reform. In addition, a second reform commission on Mostar (this time chaired by an international) was established in 2004. In 2005, a second Defense Reform Commission and a Police Restructuring Commission were established. The existence of these

[79] European Commission, *Bosnia and Herzegovina 2005 Progress Report* (Brussels, 2005), 10. Commission of the European Communities, *Bosnia and Herzegovina 2007 Progress Report* (Brussels, 2007), 8.
[80] European Commission, *Bosnia and Herzegovina 2005 Progress Report*, 8 and 9.
[81] Ibid., 15.
[82] Ibid., 19.
[83] Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2007-2008* (Brussels, 2007), 26.
[84] These expert commissions differ from the joint working groups of international and domestic officials. These working groups existed from the beginning and were mainly involved in drafting legislation. Interview with an OHR official (9), *Sarajevo 10 May 2006*. Interview with an OHR official (7), *Sarajevo 8 May 2006*.

commissions gave the domestic authorities the opportunity to administer several of the reform processes.[85]

The results of these commissions were mixed. The commissions dealing with defense reform, intelligence reform and indirect tax were more successful since they led to the adoption of relevant laws and the successful establishment of new institutions. Moreover, the laws and institutions were genuinely owned by the Bosnians. The two Mostar commissions, however, were unable to produce a statute that would unite the divided city; as a result, a statute was imposed by the OHR in the summer of 2004. Also, the Police Restructuring Commission produced a reform proposal in December 2004, but this was rejected by the Serb Republic. The OHR chose not to impose a decision, but rather to continue the ownership policy. Thus, negotiations on police reform continued and were concluded on 28 October 2007 in Mostar. The implementation of the Mostar Agreement involved the establishment of a Bosnian working group which prepared the necessary legislation. The laws were adopted on 16 April 2008.[86]

The decreasing number of decisions and the increasing transfer of authority (including Bosnian participation in important reform commissions) point to an evolving exit strategy of the international administration. Especially since 2006, the concept of ownership was put prominently, and almost impatiently, on the OHR's agenda. In February 2006, Senior Deputy High Representative Martin Nye stated: 'The need for intrusive international action via OHR and its Bonn Powers is decreasing and there is consensus that the time is approaching for the Bosnians to increasingly assume full ownership and responsibility.'[87] Similar ideas were expressed by High Representative Schwarz-Schilling when he said: 'Bosnia and Herzegovina has traveled a long way over the past decade as the country has sought to rebuild itself with international support in the wake of Europe's most devastating conflict since World War II. But progress will only be irreversible when Bosnians themselves take responsibility for the peace process. It is my task as Bosnia and Herzegovina's last High Representative to oversee the transition from today's quasi-protectorate to local ownership.'[88]

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[85] Interview with an OHR official (7), *Sarajevo 8 May 2006*.

[86] Office of the High Representative, *33rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations* (Sarajevo, 2008), 6.

[87] Office of the High Representative, 'Speech by the Senior Deputy High Representative Ambassador Dr. Martin Ney at the European Union Presidency Seminar On Security Sector Reform in the Western Balkans', (Sarajevo: 15 February 2006).

[88] Office of the High Representative, 'Article by Christian Schwarz-Schilling, High Representative for BiH: Bosnia's Way Forward', *Politik/OHR Press Office* 17 March 2006. Schwarz-Schilling proved not to be the last High Representative as he claimed in this

In line with Nye's and Schwarz-Schilling's positive analysis of Bosnia's institutional capacity, the Steering Board of the PIC decided to close down the OHR by July 2007. The OHR had already started to downsize in 2005. In that year, the organization's staff had been cut by nearly half compared to its peak in 2002. Moreover, compared to the 2004 budget of 26 million Euros, the budget was halved to some 13 million Euros in 2006. The OHR declared: 'We are now actively looking at ways in which OHR can transfer many of the functions that have fallen to it in the course of the last decade – from vetting ministers to drafting key pieces of legislation – to the domestic authorities.'[89] In spite of these plans, in February 2007, the closure of the OHR was postponed by one year. By that time, the High Representative Schwarz-Schilling and the Steering Board of the PIC deemed Bosnia's commitment to the implementation of Dayton to be insufficient. There was especially much concern about the secessionist tensions within the Serb Republic.[90] In February 2008, the closure of the OHR was postponed again. The PIC Steering Board concluded that due to renewed tensions over the constitutional design of the country and the lack of cooperation among the different communities the OHR could not be closed.[91]

4.1.4 The capacity of Bosnia's political institutions

Officially, ownership was linked to the achievement of progress by Bosnia's institutions. As Westendorp stated in 1997: 'The faster the progress, the sooner we will be able to leave matters in the hands of the people of Bosnia and those they elect, in free and fair elections, to lead and represent them.'[92] Initially, the PIC had planned to finish the international administration and transfer all authority to the domestic institutions in December 1996. However, given the lack of institutional progress and commitment to the

quotation. Before him, Ashdown had already planned to be the last one, but he was succeeded by Schwarz-Schilling en Lajčák.

[89] Office of the High Representative, 'Speech by the High Representative, Paddy Ashdown: Then and Now – Peace-Building Challenges in Bosnia and Herzegovina', (18 November 2005).

[90] 'On the boil. The politics get messy, even for an old hand', *The Economist* (27 January 2007), 26. Office of the High Representative, 'Weekly column by Christian Schwarz-Schilling, High Representative for BiH: 'Bosnia and Herzegovina's Peace and Security Will Not Be Placed at Risk', 26 January 2007', (2007). Željko Kopanja, 'Interview: Christian Schwarz-Schilling, High Representative for BiH: "Dodik is a capable politician, but he is playing with fire"', *Nezavisne novine/OHR Press Office* 25 January 2007.

[91] Peace Implementation Council, 'Declaration by the Steering Board of the Peace Implementation Council', (Sarajevo: 27 February 2008).

[92] Speech Carlos Westendorp to the PIC in December 1997, as quoted in: Chandler, *Faking Democracy*, 38.

implementation of the Dayton Agreement the mandate of the OHR was extended by two years in December 1996 and in December 1997 the OHR's mandate was extended indefinitely.[93] With the abolition of an explicit deadline for ending the mission, the strategy of the OHR became focused on achieving benchmarks.[94] The achievement of these benchmarks would become the test for whether domestic institutions were ready to assume ownership. As has been mentioned in Chapter three, the benchmarks were embedded in several annual action plans, finally culminating in the Mission Implementation Plan in 2003. The action plans were meant to: 'pave the way towards further progress during the next two years, with the authorities of Bosnia and Herzegovina increasingly assuming greater responsibility for the functions now undertaken or coordinated by the international community.'[95] And the Mission Implementation Plan was devised to function as a method to establish: 'benchmarks for determining when domestic capacities have developed to the extent that will warrant the transfer of power to local authorities in the various core areas.'[96] In other words, the Mission Implementation Plans were meant to create the 'right conditions for Bosnian ownership.'[97]

In general, the capacity of Bosnia's principal political institutions has increased during the twelve years of international administration. At the same time the acceleration of institutional independence since 2005, has not been matched by an increase in institutional capacity. On the contrary, it seems that since the failure of the Parliamentary Assembly to adopt a constitutional reform package in April 2006 (see Chapter seven), Bosnia has gone into a period of political stagnation which had not ended as of autumn 2008.

The institution of the Presidency will be first discussed. The Presidency had reached only a limited capacity to act by 2008. During the first few years of its existence the greatest challenge had been to let the Presidency meet on a regular basis. For the entire duration of the first Presidency (1996-1998) the chairmanship was executed by the Bosniak leader Alija Izetbegović. He had received the highest number of votes in the 1996 general elections and according to the Constitution he was entitled to hold the chair. However, his chairmanship reduced the support for the institution among the other two constituent peoples. The Bosnian Serb member, for example, held office in Pale (the war-time capital of the Serb Republic) rather than Sarajevo. As a result, the work of the Presidency was

[93] Ibid., 51.
[94] Ibid., 55.
[95] Peace Implementation Council, 'PIC Paris Conclusions.'
[96] International Crisis Group, *Thessaloniki and After II*, 11.
[97] Solioz, 'The fate of Bosnia and Herzegovina.'

minimal at best.[98] Next to the frequent political deadlocks, the institution lacked an organizational infrastructure.

Only in 1999, during the second Presidency (1998 - 2002) was an agreement reached to establish a joint secretariat. Another organizational innovation was that from 1998 the chair rotated among the three members; the first chairmanship to be held by the candidate who had received most votes in the elections. The decision to have a rotating chair increased the support for the institution among the Bosnian Croats and Bosnian Serbs during the second Presidency. At the same time the institution's popular legitimacy was negatively affected by the way in which two Presidency members were replaced. Based on an amended election law, drafted by the OHR, they were replaced by parliament rather than by popular vote.[99] Further, as had also been the case during its first term, the Presidency did not meet very frequently. On 15 April 1999, for example, after it had not met for several months, High Representative Westendorp had to order the Presidency to resume its work.[100]

The third Presidency (2002-2006) was characterized by an increased role for the chairmanship. Between 1996 and 2002 the different Presidency members had represented their respective constituent peoples rather than the entire state.[101] In reaction the OHR had tried to make it a more state-representing institution. Despite the OHR's policy, the Presidency was not able to meet on a regular basis until 2005. Nonetheless, in the same year the institution proved to be able to take key decisions in the area of defense reform. In addition, it played a substantial role in the discussion on constitutional reforms in 2006.[102] However, both reforms were driven by the international community and hence the Presidency's involvement was not autonomous. Moreover, the Bosnian Croat Presidency member, Dragan Čović, had to be removed from office by the High Representative as a result of corruption charges.[103]

Finally, the fourth Presidency (formed after the elections of 2006) has been characterized by political paralysis. After the Presidency had been inaugurated in November 2006, the institution met on a regular basis. However, the Presidency members continued with the well established

[98] Bieber, *Post-War Bosnia*, 49.
[99] Ibid., 50.
[100] Office of the High Representative, 'Decision ordering a session of the Presidency of BiH after a long break', (Sarajevo: 15 April 1999).
[101] Bieber, *Post-War Bosnia*, 51.
[102] European Commission, *Bosnia and Herzegovina 2005 Progress Report*; Commission of the European Communities, *Bosnia and Herzegovina 2006 Progress Report* (Brussels, 2006).
[103] Office of the High Representative, 'Decision removing Dragan Covic from his position as a member of the Presidency of BiH', (Sarajevo: 29 March 2005).

practice of showing political allegiance to their entities rather than to Bosnia as a state. As a result, it proved to be difficult to adopt common positions on policy issues. Among others, the Presidency members failed to adopt a common position on how to present Bosnia abroad (particularly concerning the 2007 verdict of the International Court of Justice that Serbia had conducted genocide during the Bosnian war) and on the status of Srebrenica.[104]

The institutional development of the Council of Ministers was as sporadic as the development of the Presidency. In 2008 the institutional capacity of the institution was still very weak. The first Council of Ministers (1996 – 1998) started as a very fragile joint institution. The institution had been dubbed Council of Ministers, because during the Dayton negotiations the Serb delegation had objected to calling it a government.[105] When it was inaugurated on 3 January 1997, it did not even have a location where it could convene its sessions.[106] Moreover, the chair of the Council rotated every week.[107] More substantially, it proved to be very difficult to reach consensus on how many ministries should be created. Whereas the Bosnian Serbs preferred to have only the two ministries explicitly mentioned in the Constitution (foreign affairs and foreign trade), the Bosniaks wanted additional ministries.[108] In the end, agreement was reached in November 1996 that with the addition of a Ministry for Civil Affairs and Communications, the Council would start with three ministries.[109]

The second Council of Ministers (1998 – 2000) was haunted by similar problems. In September 1998, the OHR initiated a discussion concerning the functioning of the Council of Ministers. Especially the issues of chairmanship, the number of ministerial portfolios, the state budget and

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[104] Commission of the European Communities, *Bosnia and Herzegovina 2007 Progress Report*, 8.
[105] Petritsch, *Hat Der Friede Eine Chance?* 57.
[106] Together with the collective Presidency, the venue of sessions shifted between Lukavica (to accommodate the RS) and the Museum of the city of Sarajevo (to accommodate the FbiH). Carl Bildt, *Peace Journey: The Struggle for Peace in Bosnia* (London: Weidenfeld and Nicholson, 1998), 291. Only in the spring of 2001 the Council of Ministers had one building for its sessions: Interview with an OHR official (9), *Sarajevo 10 May 2006*.
[107] Snjezana Setka, 'Interview Part Two: Carlos Westendorp, High Representative in BiH: "Croats are good people who can be difficult sometimes"', *Slobodna BiH/OHR Press Office* 17 February 1999.
[108] United States General Accounting Office. National Security and International Affairs Division, *Report to the Chairman, Committee on Foreign Relations U.S. Senate. Bosnia Peace Operation. Progress toward achieving the Dayton Agreement's Goals* (Washington D.C., 1997), 46.
[109] Office of the High Representative, *4th Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1996).

cooperation with the entities were to be addressed.[110] The OHR was confident that it had the support of all parties concerned.[111] However, the reform was inhibited by the elections in the fall of 1998 and the subsequent slow formation of the new Council of Ministers.[112] Still, in February 1999 the first reform could take place when the weekly rotation of the chairmanship was substituted for a monthly rotation.[113] One year later, a new Law on the Council of Ministers was adopted by parliament; the chair would rotate once in eight months and three ministries were added including the Ministry for Human Rights and Refugees, the Ministry for Treasury of State Institutions, and the Ministry for European Integration and the Stability Pact.[114]

The third Council of Ministers (2000 – 2002) relied heavily on political support of the international community; especially of the USA and the UK.[115] When High Representative Petritsch introduced his concept of 'ownership', this term was rhetorically adopted by Bosnian ministers. In practice however, the government coalition relied heavily on the OHR for all the reforms which it could not or dared not to undertake by itself.[116] The government coalition, the so called Alliance for Change, was made up of an uncomfortable alliance between several moderate political parties that were unable to implement its reform plans before the next elections in 2002. It was even dependent on the OHR for formulating its manifesto which they tried to use to win the 2002 elections.[117]

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[110] Office of the High Representative, 'Press Release: OHR Initiates Discussion on Reconstructing the Council of Ministers', (7 September 1998).
[111] Office of the High Representative, *11th Report of the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1998).
[112] Office of the High Representative, *12th Report of the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1999).
[113] Office of the High Representative, *13th Report of the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1999).
[114] The new law was adopted on 13 April 2000, because on 14 August 1999 the Constitutional Court had decided that the dual chairmanship of the Council (since 1998 it consisted of two co-chairs; Haris Silajdžić for the Federation and H.E. Svetozar Mihajlovic for the Serb Republic) to be unconstitutional. Office of the High Representative, *16th Report by the High Representative for Implementation of the Peace Agreement to The Secretary-General of the United Nations* (Sarajevo, 2000). Office of the High Representative, 'Decision ordering a session of the Presidency of BiH after a long break.'
[115] Ashdown, *Swords and Ploughshares*, 242.
[116] International Crisis Group, *Bosnia's Nationalist Governments. Paddy Ashdown and the Paradoxes of State Building* (Sarajevo/Brussels, 2003), 7, ICG Balkans Report No. 146.
[117] Ashdown, *Swords and Ploughshares*, 243.

The fourth Council of Ministers (2002 – 2006) remained a weak institution. During the formation of the Council of Ministers after the elections of 2002, the SDS candidate for the Ministry of Justice was rejected by the High Representative.[118] Moreover, during the same formation, it proved to be necessary to impose the new Law on the Council of Ministers rather than to have it adopted by the Council of Ministers itself.[119] The new law strengthened the authority of the chair of the Council of Ministers, by abolishing the system of rotation. It was expected that the chair would be able to develop authority and effectively become a Prime Minister. In turn, that would encourage long-term planning and policy consistency.[120] In line with that objective, High Representative Ashdown started to address the chair as 'Prime Minister.' Nonetheless, in his second report as High Representative, Ashdown had to conclude about the Council of Ministers: 'Prime Minister Terzic's administration is hampered by the constitutional dysfunction of the Council of Ministers (he does not appoint and cannot remove Ministers – they owe their existence and loyalty to Parties, not the Government) and lack of capacity and support within the institution of the CoM [Council of Ministers, *NvW*] as a whole.'[121] In addition, in the 2003 Feasibility report, the European Commission identified 'institutional capacity' and 'political will' as the two major factors inhibiting the proper functioning of the institution.[122]

Internal tensions and deadlocks (as a result of the veto powers) have continued to hinder the capacity for autonomous action in the following years.[123] At the end of 2004 and beginning of 2005 the functioning of the Council of Ministers was hindered by the resignation of two Bosnian Serb ministers, after which the work of the Council was blocked for almost two months. In the course of 2005, further problems occurred when a minister resigned following corruption charges and when an open conflict erupted between Prime Minister Adnan Adnan Terzić and the Minister of Foreign Affairs Mladen Ivanović.[124] Confronted with these problems High

[118] International Crisis Group, *Bosnia's Nationalist Governments*, 12.
[119] Office of the High Representative, 'Decision enacting the Law on the Council of Ministers of Bosnia and Herzegovina.'
[120] Commission of the European Communities, *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union* (Brussels, 2003), 8.
[121] Office of the High Representative, *24th Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 2003).
[122] Commission of the European Communities, *On the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement*, 8.
[123] Interview with an official of the Dutch government, *Sarajevo 2 May 2006*.
[124] European Commission, *Bosnia and Herzegovina 2005 Progress Report*, 11.

Representative Ashdown declared in December 2005: 'In order for BiH's [Bosnia and Herzegovina's, *NvW*] European path to be more successful, authorities must be more efficient. This particularly applies to the Council of Ministers. For the last three months it had only five sessions. If this is not changed, the success cannot be expected (…) Out of nine ministers, we have two acting ministers as the result of political games. This must be solved.'[125]

In addition to the problems on the ministerial level, the general secretariat of the Council of Ministers faced continued shortages in staff and a politicized environment. A same lack of staff was identified with respect to the legislative office, which prevented it from addressing all required legislation. Also the bureaucracy was hindered by a lack of capacity. In September 2004, the PIC urged the Bosnian authorities to make sure that by the end of the year an adequate number of staff were hired and allocated to the state level ministries and agencies.[126] In 2004, the PIC developed the State Government Strengthening Plan, which was designed to improve the capacities of the Council of Ministers, but made little substantial progress in 2005. In April 2005 the PIC Steering Board welcomed progress with regard to civil service legislation and the staffing of the Council of Ministers, but stressed that a further increase in qualified staff was still needed.[127] In 2006, serious shortcomings were identified by the European Commission. The consolidation of the state level ministries and institutions had proceeded too slow in 2006. With respect to finances, operation and equipment (in terms of premises and staff), too little progress had been achieved. Limited budgets and premises continued to delay the recruitment of personnel. As a result, Bosnia was far from having recruited the required number of staff for its state ministries in 2006. Moreover, the quality of staff, in terms of capacity and skills, was too low and funds for training were lacking; the annual training budget amounted to approximately 40.000 Euros. Despite the importance of having knowledge of European legislation and despite the Council of Ministers having adopted a training program on European Integration in May 2005, large-scale implementation was impeded due to the lack of funds. Moreover, the European Commission concluded: 'Work towards a professional and apolitical civil service with recruitment and

[125] Sead Numanović, 'Interview: Paddy Ashdown, High Representative: "Before I leave I must accomplish another 11 tasks"', *Dnevni Avaz/OHR Press Office* 14 December 2005. Similar concerns were ousted by the PIC Steering Board: Peace Implementation Council, 'Communiqué by the PIC Steering Board', (Sarajevo: 15 December 2005).
[126] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (Sarajevo: 24 September 2004).
[127] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (7April 2005).

promotion based on experience and merit has been limited.'[128] A positive development, though, was the adoption of the National Strategy for the Reform of the Public Administration which had been a key priority of the European Union's Partnership program.

Finally, the fifth Council of Ministers (formed after the elections of 2006) was plagued by internal tensions and deadlocks during its first year in office (2007). In line with the tradition of long coalition formations in post-war Bosnia, the Council of Ministers was established in mid-February 2007. This was almost four months after the elections were held. In its 2007 progress report the European Commission concluded: 'Complicated decision-making procedures, capacity problems, lack of political will and diverging national interests in government and parliament continue to delay the adoption of legislation.'[129] Moreover, the bureaucracy remained hindered by a lack of capacity. The general secretariat of the Council of Ministers was only partly operational in 2007 and was slow to take up a coordinating role. The legislative office functioned better, but was hindered by a lack of professional staff, premises and office equipment. More crucially, in the wider public administration there was a substantial lack of knowledge of EU-law, European integration processes and foreign languages.[130] Although the European Commission noted some positive developments regarding public administration in 2007 (such as the professional manner in which the negotiations for a Stabilization and Association Agreement with the EU took place), in general it concluded: 'Bosnia and Herzegovina remains affected by cumbersome administrative structures. The National Strategy for the Public Administration Reform has yet to be properly implemented. There has not yet been any systematic or coherent action driven by local ownership.'[131]

Finally, the institutional capacity of the Parliamentary Assembly in 2008 was also weak. During the first mandate of the Parliamentary Assembly (1996-1998) little legislation was produced autonomously. Guided by the OHR's Quick Start Package, the Parliamentary Assembly adopted its first laws in the spring of 1997.[132] Only in December 1997 was the High Representative given the Bonn powers that allowed him to impose legislation. This was extensively done in the second (1998 – 2000) and third

[128] Commission of the European Communities, *Bosnia and Herzegovina 2006 Progress Report*, 10.
[129] Commission of the European Communities, *Bosnia and Herzegovina 2007 Progress Report*, 9.
[130] Ibid., 24 and 25.
[131] Ibid., 10.
[132] Office of the High Representative, *6th Report of the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1997).

(2000 – 2002) mandates of the Parliamentary Assembly. Capacity for autonomous parliamentary action was limited. For example, the election law of 2001 was only adopted after enormous pressure from the international community.[133] Nonetheless, the Parliamentary Assembly's legislative capacity increased between 2000 and 2002 and also the work of the committees improved gradually; making emergency ordinances and the adoption of legislation through accelerated procedures less necessary. Within the legislative period 2000-2002, three times more laws proposed by the Council of Ministers were adopted than in the legislative periods 1996-1998 and 1998-2000. Nonetheless, even in the period 2000-2002 the Parliamentary Assembly met infrequently; often less than two times a month. [134] In order to address these problems and to increase the institutional capacity of the Parliamentary Assembly (and of the parliaments on the entity level) the OSCE initiated the Parliamentary Support Programme in January 2001. The main objective of the program was 'to increase the competency of Members of Parliament and staff in the exercise of their legislative, oversight and representative functions as well as to improve the public profile of the BiH [Bosnian, NvW] Parliamentary Assemblies.'[135]

The fourth mandate of the Parliamentary Assembly (2002-2006) started with a large number of laws being imposed by the OHR in April and May 2002. The objective was to lighten the burden of the new High Representative (Ashdown) in the first months of his term.[136] However, as has been pointed out above, Ashdown continued with a strong interventionist policy which included the imposition of much legislation. During the fourth legislature, parliament was institutionally weak. This lack of institutional capacity was clearly illustrated by Ashdown in his farewell speech to the Bosnian parliament in January 2006: 'You, and yes often even we in the International Community have grown used to expecting OHR to solve problems if consensus cannot be reached: indeed the 'backstop' of an HR [High Representative, *NvW*] imposition has often been adopted by all sides as the default position. BiH's [Bosnia's, *NvW*] politicians feel free to argue the case for one side, without any effort to build consensus, secure in the knowledge that in the end the HR will ride to the rescue.'[137] In an earlier

[133] Commission of the European Communities, *On the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement*, 8.
[134] Ibid., 7.
[135] OSCE Mission to Bosnia and Herzegovina, 'Democratization Fact Sheet', (Sarajevo: 2003).
[136] Dominik Zaum, *The Sovereignty Paradox. The Norms and Politics of International Statebuilding* (Oxford: Oxford University Press, 2007), 94.
[137] Paddy Ashdown, 'High Representative's Farewell Speech to the BiH House of Representatives', (Sarajevo: 30 January 2006).

speech, Ashdown had referred to the Bonn powers as a wonder drug with questionable side effects for the parliament: 'Put simply, the Bonn Powers shattered the long ascendancy of obstructionism, through which those opposed to the rehabilitation of Bosnia and Herzegovina sought to sabotage the country's recovery. At the same time, however, the Bonn Powers created a dangerous dependency both in the Bosnian political establishment and in the international community. The powers have acted like a wonder-drug that radically improves the patient's condition, but weakens the patient's natural powers of resistance – in this case the robust development of a civil society and effective parliamentary opposition capable of reigning in the worst excesses of nationalism and intolerance.'[138]

In November 2006, the European Commission concluded that Bosnia's Parliamentary Assembly was still hampered by 'insufficient technical resources, an unqualified parliamentary administration and cumbersome parliamentary procedures.'[139] The European Integration Committee was especially criticized for having remained largely inactive. The relationship between the executive and the legislative organs was also not sufficient and cooperation with the Council of Ministers remained inadequate.[140] As a result of these deficiencies, the Parliamentary Assembly failed to agree on the creation of two new ministries within the Council of Ministers in September 2006.[141] In the end, during the first half a year of Schwarz-Schilling's term in office (2006), parliament had not even passed one single law.[142]

Finally, the fifth mandate of the Parliamentary Assembly (after the elections of October 2006) proved unable to convincingly demonstrate that it had sufficient institutional capacity. After the general elections, seven-and-a-half weeks elapsed between the first inaugural session of the House of Representatives on 20 November 2006 and its continuation on 7 January 2007. The inauguration was suspended after the parties had failed to agree on the election of the speaker of the House of Representatives.[143] This inactivity was heavily criticized by High Representative Schwarz-Schilling: 'Rightly or wrongly, parliamentarians have given the impression that they believe Bosnia and Herzegovina is not facing any pressing problems. They

[138] Ashdown, 'Speech by the High Representative, Paddy Ashdown at a Conference on the Future of BiH Organised by the Association Bosnia & Herzegovina 2005.'
[139] Commission of the European Communities, *Bosnia and Herzegovina 2006 Progress Report*, 6.
[140] Ibid.
[141] Ibid., 8.
[142] Kopanja, 'Interview: Christian Schwarz-Schilling, High Representative for BiH: "Dodik is a capable politician, but he is playing with fire".'
[143] 'Acting speaker of BiH lower house says session can resume on January 7th', *South East European Times* 20 December 2006.

must now act to change that perception and set an example to others (…) I will not do their work for them, nor will it be done by others in the international community. Members of parliament must now demonstrate that they can take their country and all its citizens forward from division and despair and lead them to prosperity, security and full Euro-Atlantic integration. That is what they were elected to do.'[144] Comparable problems delayed the assembly of the House of Peoples to mid-March 2007.[145] During the entire year, both chambers of parliament met infrequently and progress on parliamentary activities was slow. Only a limited number of laws were adopted in part due to the slow input from the Council of Ministers. Efficiency was hindered by the continuing rotation of the Presidency of the House of Representatives and the House of Peoples on an eight-month basis. Finally, parliament was still hindered by inadequate technical and human resources, cooperation with the Council of Ministers remained inadequate and there was no coordination of legislative agendas between the State and the entity level of government.[146]

4.1.5 Conflict management and institutional autonomy in Bosnia

The analysis above shows that Bosnian autonomy in terms of independence has increased gradually between 1996 and 2008. The transfer of authority from the international to the domestic level and the decreasing number of OHR-decisions has increased the independence of Bosnia. It was shown that especially since 2005, the interference of the OHR declined and the independence of Bosnia's political institutions increased. Autonomy in terms of institutional capacity has also gradually increased. In 2008, Bosnia's key institutions - the Presidency, the Council of Ministers and the Parliamentary Assembly - were better able to 'plan and execute policies and to enforce laws cleanly and transparently' than they had been in 2000.[147]

Nonetheless, in 2007 and 2008 the international administration was still a dominant actor in Bosnia's domestic political order. It still imposed legislation, such as an amendment on the Law on the Council of Ministers in November 2007, and it issued executive acts, such as the removal from

[144] Office of the High Representative, 'Article by Christian Schwarz-Schilling, High Representative for BiH: Fulfilling Promises.' *Euroblic/OHR Press Office* 11 January 2007.
[145] Commission of the European Communities, *Bosnia and Herzegovina 2007 Progress Report*, 8.
[146] Ibid.
[147] Francis Fukuyama, *State Building. Governance and World Order in the Twenty First Century* (London: Profile Books, 2004), 9.

office of a Serb Republic's official from the Ministry of the Interior.[148] In addition, the analysis showed that Bosnia's institutional capacity was still very weak. The Presidency proved not to be able to adopt common positions on important issues such as representation and the status of Srebrenica. The Council of Ministers was paralyzed by internal tensions and deadlocks and was haunted by complicated decisions-making procedures, capacity problems and the lack of political will. The Parliamentary Assembly was rather inactive in 2007 and in 2008, and only a few laws were adopted. As a result, it must be concluded that Bosnia's political institutions were not autonomous in 2008.

How can this outcome be explained? A plausible explanation is that the development of institutional autonomy was impeded by the incorporation of the incompatibility in the Dayton Agreement. As elaborated upon in Chapter three, the Dayton Peace Agreement settled and contained the conflict rather than resolved it. The Dayton Agreement was an internationally imposed agreement in which the incompatibility was incorporated. An international administration of the control type was established in order to ensure the implementation of the Agreement. The OHR received substantial executive powers and became strongly involved in Bosnian domestic politics. The contested nature of the Dayton Agreement and its Constitution has led to continued challenges by the conflicting parties to the post-war political order. In February 2008, more than twelve years after the OHR had started its operations, the PIC Steering Board concluded: 'There have been attempts to weaken progressively the institutions and legitimacy of the state. There have been renewed tensions between political actors over the future constitutional make-up of the country as well as the role and competencies of the state. The limited degree of cooperation among BiH [Bosnian, *NvW*] actors shown in late 2007 has deteriorated. There have also been unacceptable challenges to the Dayton Peace Agreement.'[149]

As a result of these constant challenges and the interventions by the OHR, the international administration developed itself into the central pillar of the Bosnian constitutional order. As such, Bosnian state institutions became dependent on the international administration for executing their tasks. In 2005, the Venice Commission had warned the OHR that it had created a dependency culture in Bosnia. According to the Venice Commission, the powers of the OHR enabled Bosnian politicians to avoid accepting painful political compromises, because they knew that every time

[148] Office of the High Representative, 'Decision enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina', (Sarajevo: 19 October 2007).
[149] Office of the High Representative, 'Declaration by the Steering Board of the Peace Implementation Council', (Sarajevo: 27 February 2008).

political consensus was not achieved, the High Representative would impose legislation.[150] The contested nature of the post-war order probably prevented the political institution from taking ownership and from developing significant institutional capacity. It can therefore be argued that due to the incorporation of incompatibility in the internationally imposed Dayton Agreement, Bosnia's political institutions have not been institutionalized in terms of autonomy by 2008. To that extent, High Representative Schwarz-Schilling was right when he stated: 'Institutions that have been created by imposition will never function effectively unless Bosnians of all ethnicities buy in to them and until Bosnian citizens expect them, and not international organizations, to deliver reform, exercise democratic rules and procedures day by day in a bottom-up process of building the state.'[151]

4.2 Kosovo

4.2.1 The powers of UNMIK

The non-resolution of the conflict in Kosovo required the establishment of an international administration of the governorship type. It was necessary for Kosovo to be governed by an international authority because of its lack of political status as a territory. As in the case of Bosnia, it was to be expected that the conflicting parties would not be satisfied with the status quo. The Kosovo Albanians wanted independence while the Kosovo Serbs and the Serbian government wanted Kosovo to remain a Serbian province. It was up to the international administration to ensure the compliance of both conflicting parties with UN Security Council Resolution 1244.

Given the absence of conflict resolution, UNMIK received a mandate which was even more robust than OHR's mandate. Based on Resolution 1244, UNMIK had the power to issue legislative acts (regulations) and implementation acts (administrative directions) in order to fulfill its mandate. The first regulation confirmed the powers of UNMIK: 'All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General.'[152] Thus, UNMIK was

[150] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, 22.
[151] Office of the High Representative, 'Article by Christian Schwarz-Schilling, High Representative for BiH: Bosnia's Way Forward.'
[152] UNMIK, 'On the Authority of the Interim Administration in Kosovo: Regulation No. 1999/1', (Pristina: 25 July 1999).

established as the ultimate authority in Kosovo's development towards an autonomous self-governing political entity.

UNMIK's powers were clear from the beginning and did not need to be reinterpreted as had been the case with the OHR's powers in 1997. After the Constitutional Framework had been drafted and the PISG had been established in 2001, a number of responsibilities were transferred from the international level to the PISG. The Constitutional Framework had become bigger than originally intended by UNMIK as a consequence of the Kosovo Albanian determination to secure as many responsibilities for the domestic institutions as possible.[153] Nonetheless, a large number of powers and responsibilities remained exclusively in the hands of UNMIK as 'reserved powers.' Moreover, under the Constitutional Framework, each primary law adopted by the Assembly needed to be promulgated by the UN Special Representative in order to become effective. This allowed UNMIK to check the compatibility of a particular law with UN Security Council Resolution 1244, the Constitutional Framework and international standards. In this way, UNMIK and in particular its Office of the Legal Advisor, were allowed to change laws in the promulgation phase. This happened, for example in 2003 with the Laws on External Trade, Telecommunication, Higher Education, and Management of Public Finances and Accountability. In April 2003, UN Special Representative Steiner wrote a letter to the speaker of the Assembly, Nexhat Daci, in which he requested adjustments of the laws; all of which had already been adopted by the Assembly. In May, the Assembly accepted the adjustments of UNMIK with respect to the first two Laws and these were promulgated as such. The Laws on the Management of Public Finances and Higher education were also promulgated, but based on an unilateral adjustment by UNMIK, since it had proved to be impossible to reach parliamentary consensus on UNMIK's adjustments.[154]

From the beginning, Kosovo's politicians have been critical about UNMIK's prerogative of changing laws after they had been adopted by the Assembly. The Democratic Party of Kosovo (*Partia Demokratik te Kosovës*, PDK) was the most outspoken critic of the Constitutional Framework and after its adoption Hashim Thaçi declared: "this document will hold hostage the aim of the people of Kosovo, which is political independence".[155] Bajram

[153] International Crisis Group, *Kosovo: Landmark Election* (Pristina/Brussels, 2001), 3, ICG Balkans Report No. 120.
[154]Franklin de Vrieze, 'Recent developments in the Assembly', *Assembly Support Initiative Newsletter,* 7 (2003) 6-9. Especially the Law on Higher Education proved controversial. The controversy was about the inclusion of the Serb-language university in North Mitrovica in Kosovo's higher education system. Simon Haselock, 'Assembly Expands Its Horizons', *Assembly Support Initiative Newsletter,* 7 (2003) 12.
[155] As quoted in: International Crisis Group, *Kosovo: Landmark Election*, 11.

Kosumi of the Alliance for the Future of Kosovo (*Aleanca Për Ardhmërine e Kosovës*, AAK) called UNMIK's authority to change laws a 'bad habit' and argued that it ran counter to the right of a parliament to draft laws without external interference.[156] Such criticism led to an agreement between UN Special Representative Steiner and Daci in 2003 to improve the procedure. It was agreed that: (1) UNMIK would submit its remarks before the law was accepted by the Assembly; (2) the remarks would be returned by UNMIK to the Assembly with detailed explanations; (3) the work of the Assembly and Government would be better coordinated; and (4) the creation of a working group including UNMIK representative to aid the Government in drafting laws in accordance with UNMIK's demands, before would be send to the Assembly.[157] This improved the relationship between UNMIK and the Assembly considerably.[158]

Even though the above mentioned political agreement shows that Kosovar politicians tried to gain more influence, UNMIK's vast authority could not constitutionally be challenged by any Kosovar institution. The international administration was the supreme authority in Kosovo; no single law could come into force without the signature of the UN Special Representative. UNMIK's powers were merely restricted by Resolution 1244 and the obligation to respect international human rights standards.[159] Further, UNMIK was only politically accountable to the UN Security Council. However, it did always not live up to the standards of democratic and accountable governance it was imposing on Kosovo. Therefore, UNMIK – like the OHR – has been criticized for being 'colonial' or 'absolutist.' The International Crisis Group, for example, referred to the UN Special Representative as a tyrant in the classic sense; meaning a despot without any checks and balances.[160]

The claim regarding the absolutist nature of UNMIK must be qualified since a significant amount of Kosovars participated in the international administration. Within the civil administration pillar (pillar 2), the number of local staff members even exceeded the international staff in the years 2000 and 2001. It should be realized however, that the senior

[156] Shpresa Mulliqi and Shahriniso Najmetdinova, ''We have not invested enough in the structures to prepare laws.' Interview with Bajram Kosumi', *Assembly Support Initiative Newsletter,* 7 (2003) 10-11.
[157] Franklin de Vrieze, 'Latest Developments in the Assembly', *Assembly Support Initiative Newsletter* 5 (2003) 4-5, 5.
[158] International Crisis Group, *Two to Tango. An Agenda for the New Kosovo SRSG* (Pristina/Brussels, 2003), 9, ICG Balkans Report No.148.
[159] Michaela Saluman, *Democratic Governance in International Territorial Administration. Institutional Prerequisites for Democratic Governance in the Constitutional Documents of Territories Administered by International Organizations.* (Baden-Baden: Nomos, 2005), 124.
[160] International Crisis Group, *Kosovo: Landmark Election*, 4.

functions were mostly occupied by internationals. Since 2002, the total number of staff decreased, but then international staff exceeded local staff in numbers (and still in seniority of positions).[161] The decreasing number of local staff is explained by the transfer of local personnel to the established domestic institutions in 2002.

4.2.2 UNMIK's regulations and administrative directions

UNMIK's decisions were presented in so called 'regulations' and 'administrative directions.' The regulations and administrative directions of the UN Special Representative are the equivalent of the High Representative's decisions in Bosnia. In its first regulation, UNMIK defined 'regulation' as a 'legislative act.' A regulation would remain in force until it would be amended or repealed by UNMIK or superseded by decisions of domestic institutions established after the status of Kosovo would have been resolved. Moreover, the regulations would have immediate effect after their promulgation by UNMIK.[162] The term 'administrative direction' is not explicitly defined, but should be understood as an executive act which implements a specific regulation. The administrative direction is not necessarily issued right after the regulation. On the contrary; several weeks, months or even years may go by before an administrative directions is proclaimed. For example, the administrative direction 2006/1 (11 January 2006) implements UNMIK Regulation 2002/13) that was already passed in 2002. It should also be realized that not all regulations are followed by an administrative direction. When a regulation promulgates a law it is implemented by a secondary law made by Kosovo's PISG, not by an administrative direction. The period of time that elapses between a regulation and an administrative direction explains the difference between the total number of regulations (409) and the total number of administrative directions (204) as presented in Table 4.4.

Table 4.4 shows that from 2004 to 2006 the number of regulations remained relatively stable (with a slight increase in 2006), while the number of regulations declined significantly in 2007. The number of administrative directions already decreased in 2005 and dropped subsequently to 23, 18 and 14 directions a year. The year 2008 is an exception to the declining trend in the number of regulations and administrative directions. The 34 regulations and 7 administrative directions were made between January and 14 June 2008, so that in the first five and a half months of 2008 about as many

[161] UNMIK, 'Press Release: Rebuilding Kosovo with UN Civil Administration: UNMIK/PR/1628', (Pristina: 10 January 2007).
[162] UNMIK, 'On the Authority of the Interim Administration in Kosovo: Regulation No. 1999/1.'

regulations and half of the administrative directions were issued compared to entire year 2007. This sudden increase can be explained by the need to complete the regulations and directions before the Constitution of Kosovo came into effect on 15 June 2008. However, the overall decreasing trend of regulations and administrative directions seems to correspond with the developments in Bosnia, where the number of decisions also declined in the last few years.

Table 4.4: UNMIK regulations and administrative directions from 25 July 1999 to 14 June 2008[163]

Year	Number of Regulations	Number of Administrative Directions
1999	27	4
2000	69	29
2001	41	26
2002	23	27
2003	41	32
2004	56	31
2005	56	23
2006	61	18
2007	35	14
2008	34	7
Total	**443**	**211**

As in the case of Bosnia, the development of UNMIK's regulations and administrative directions is better understood when specific policy fields are taken into account. Table 4.5 shows UNMIK's regulations and administrative directions as related to specific policy fields.[164] The table shows that most regulations concerned the promulgation of laws. This differs from Bosnia in which executive rather than legislative acts were more predominant (removals and suspensions from office). The domination of legislative acts in the case of Kosovo can be explained by the governorship mandate; UNMIK was actually mandated to govern the territory and to be extensively involved in legislation. The governorship type of international administration also explains why the UN Special Representative has never dismissed or banned domestic officials from office, although he had the authority to do so.[165] Whereas in Bosnia domestic politicians were

[163] Obtainable from: www.unmikonline.org (last visited on 20 January 2009)
[164] Whereas the policy fields in the case of Bosnia were given by the OHR, UNMIK has not done so in its overview of the decisions and administrative directions. Therefore the policy fields are selected by the author.
[165] International Crisis Group, *Kosovo Status: Delay is Risky* (Pristina/Brussels, 2006), 8, Europe Report No. 177.

'corrected' by the decisions of the OHR *after* they had failed to live up to international expectations, in Kosovo the decisions were predominantly taken by the international administration itself.[166] In other words, the difference between Bosnia and Kosovo concerns the difference between international administration as control (Bosnia) and international administration as governorship (Kosovo).

Table 4.5: UNMIK regulations from 25 July 1999 to 14 June 2008 as related to specific policy fields[167]

Year	**2008**	**2007**	**2006**	**2005**	**2004**	**2003**	**2002**	**2001**	**2000**	**1999**	**Total**
State symbols, state level matters, authority of UNMIK	6	8	7	9	6	-	4	6	26	5	**71**
The economic field (including fiscal affairs and budget)	4	6	6	16	6	7	8	21	18	11	**99**
The judicial field (including police affairs)	5	3	9	5	8	8	6	13	15	9	**76**
Education		-	-	-	-	-	-	-	1	-	**1**
Promulgation of laws	19	16	33	25	32	24	4	-	-	-	**134**
Media	-	-	-	-	-	-	-	1	2	-	**3**
Property laws, return of displaced persons/refugees and reconciliation	-	-	3	1	3	1	-	-	4	1	**13**
Municipal Matters	-	2	2	-	1	1	1	-	3	1	**11**
Total	**34**	**35**	**60**	**56**	**56**	**41**	**23**	**41**	**69**	**27**	**442**[168]

[166] Most regulations were directly decided upon by the UN Special Representative and his team. However, the politically most contentious ones had to be approved by the UN Secretariat's Department of Peacekeeping Operations, the Department of Political Affairs and the Office of Legal Affairs. Ilir Dugolli and Lulzim Peci, *Enhancing civilian management and oversight of the security sector in Kosovo* (Pristina: KIPRED/Saferworld, 2005), 16.

[167] Obtainable from: www.unmikonline.org (last visited on 20 January 2009)

[168] Regulation 29/2006 is not available and could thus not be categorized. Otherwise the total number of regulations would add up to 443 and correspond with the total number of regulations in Table 4.4.

A third difference with Bosnia is the absence of any significant difference between the number of regulations and administrative directions issued by each successive UN Special Representative. Table 4.6 shows the monthly average of regulations and administrative directions for each UN Special Representative and acting UN Special Representative.[169]

Table 4.6: Monthly average of regulations and administrative directions by each Special Representative [170]

	Months in office[171]	**Number of regulations**	**Average**	**Administrative directions**	**Average**
Kouchner	19	100	5,3	33	1,7
Haekkerrup	11	37	3,4	26	2,4
Brayshaw	-	*2*	-	*1*	-
Steiner	16	47	2,9	41	2,6
Brayshaw	-	-	-	5	-
Holkeri	10	33	3,3	25	2,5
Brayshaw	-	*12*	-	*9*	-
Jessen-Petersen	23	120	5,2	43	1,9
Schook	-	*10*	-	*1*	-
Rücker	21	82	3,9	27	1,3

Table 4.6 shows that until 14 June 2008 Kouchner and Jessen-Petersen have been the most interventionist UN Special Representative's when it comes to issuing regulations. Steiner has the highest average of administrative directions, followed by Holkeri and Haekkerrup. The differences, however, are rather insignificant compared to the differences in the case of Bosnia.

[169] In the transition period between two UN Special Representatives the regulations and administrative directions were issued by the *acting* UN Special Representatives. Charles Brayshaw has been acting UN Special Representative three times. The first time he issued two regulations on 24 January 2002 and one administrative direction on 18 January 2002. The second time he issued 5 administrative directions on 24 , 28, 30, July, and on 5 and 7 August 2003. The third time, Brayshaw issued 12 regulations between 16 June and 9 August 2004 and 9 administrative directions between 18 June and 9 August 2004. Steven Schook has also functioned as acting UN Special Representative. He made 10 regulations between 11 and 24 August 2006 and one administrative direction on 11 July 2006.

[170] Obtainable from: www.unmikonline.org (last visited on 20 January 2009)

[171] The number of months is calculated by counting the months between the first and the last decision of the UN Special Representative. For Kouchner, 25 July 1999 – 12 January 2001; for Haekerrup, 7 February 2001 - 31 December 2001; for Steiner, 20 February 2002 – 6 July 2003; for Holkeri, 18 August 2003 - 7 June 2004; for Jessen-Petersen 20 August 2004 – 28 June 2006; and for Rücker 15 September 2006 – 14 June 2008.

4.2.3 The independence of Kosovo's provisional political institutions

The analysis above shows that in Kosovo the number of administrative directions started to decrease in 2005, while the number of regulations started to decrease in 2007. Unlike the case of Bosnia, the decreasing number of regulations and administrative directions cannot be seen as an indication of increasing institutional independence. The big difference when compared to Bosnia is that Kosovo was not sovereign and therefore an ownership policy like the one in Bosnia was not possible. Moreover, the position of UNMIK in Kosovo's provisional constitutional order differs significantly from the OHR's position in Bosnia. Whereas the OHR was expected to intervene *ex post* (for example in case the Bosnians acted against the letter and spirit of the Dayton Agreement), UNMIK was obliged under UN Resolution 1244 and the Constitutional Framework to intervene *ex ante* (and promulgate every law made by the PISG). Institutional independence could thus only be generated by the official transfer of authority from UNMIK to the PISG, and not by a decreasing the number of regulations and administrative directions. In order to assess whether PISG has become more independent from UNMIK during its international administration, it is necessary to look at the transfer of authority, including the extent to which Kosovars were involved in institution-building processes.

The transfer of authority started with the adoption of the Constitutional Framework in 2002. The document itself was drafted by a working group with international and Kosovar members. Nonetheless, UNMIK contributed the larger part of the document.[172] Although the Constitutional Framework can be criticized for creating binding rules for the PISG while failing to limit the powers of UNMIK, it transferred many competencies to the new Kosovar institutions. Among others, these authorities were: the responsibility for economic and financial policy; education, science and technology; labour and social welfare; health; environmental protection; and public administration services.[173] Some reserved powers remained exclusively in the hands of UNMIK. These were the powers that were closely associated with sovereignty; such as foreign affairs, interior affairs, justice and defense. Concrete examples of powers reserved for the UN Special Representative were the right to dissolve the Assembly and to call for new elections, to exercise final authority regarding

[172] Alexandros Yannis, 'The UN as Government in Kosovo', *Global Governance: A Review of Multilateralism and International Organisations* 10:1 (2004) 67-91, 75 and 76. Interview with an UNMIK official (6), *Pristina 4 May 2005*.
[173] UNMIK, 'A Constitutional Framework for Provisional Self-Government in Kosovo: Regulation No. 2001/9', (Pristina: 15 May 2001).

the appointment, removal from office and disciplining of judges and prosecutors, to conclude agreements with states and international organizations and to enforce public safety and order.[174] Moreover, in the preamble of the Constitutional Framework it was stated very clearly that 'the exercise of the responsibilities of the Provisional Institutions of Self Government in Kosovo shall not in any way affect or diminish the ultimate authority of the UN Special Representative for the implementation of UN Security Council Resolution 1244 (1999).'[175] With that provision, the Constitutional Framework gave UNMIK the power to reverse the transfer of authority.

A distinction should be made between the political transfer of authority, which was immediate, and the executive transfer of authority, which was incremental.[176] The first political transfer of authority occurred at the municipal level after the municipal elections in October 2000. Municipalities gained authority in the fields of healthcare, education and public services.[177] The second political transfer of authority (and the first at the level of the central government institutions) took place in 2002, when the PISG was established after Assembly elections had been held in the fall of 2001. For facilitating the process, UNMIK had set up a Transfer Council together with the PISG. The Transfer Council established specialized working groups which met on a regular basis.[178]

As arranged for in the Constitutional Framework, the executive control over the transferred areas was to be handed over to the PISG, while UNMIK kept control over the reserved powers. However, the executive transfer of authority evolved slowly.[179] In October 2003, almost two years after the first Assembly elections, UNMIK was still in the middle of the process of transferring authority; out of the 44 competencies, 19 had been transferred, 17 had been identified for transfer and the remaining 8 were expected to be transferred in December 2003.[180] It took until the summer of 2004 for most of the identified competencies to be transferred to the domestic level.

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[174] Ibid.
[175] Ibid.
[176] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2003/421* (New York, 2003), 1.
[177] Andreas Heinemann-Grüder and Igor Grebenschikov, 'Security Governance by Internationals. The Case of Kosovo', *International Peacekeeping* 13:1 (2006) 43-59, 45.
[178] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2003/675* (New York, 2003), 1.
[179] UNDP, *Early Warning Report Kosovo 5: September-December 2003* (Pristina, 2003), 7.
[180] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2003/996* (New York, 2003), 1.

According to the Kosovo Albanian leaders, the transfer process lacked ambition and they wanted to go beyond the non-reserved competencies. In a speech to the Assembly on 13 March 2003, Prime Minister Bajram Rexhepi called for closer cooperation between UNMIK and the Government in the areas reserved for the UN Special Representative, such as foreign policy, internal affairs, the justice system, security and energy issues.[181] This call was repeated several times and on 30 October 2003, the Assembly approved the creation of a working group to recommend changes to the Constitutional Framework allowing for a speedier transfer of competencies.[182] By the end of 2003, UNMIK proved willing to consider the involvement of the PISG in reserved areas. Plans to implement these changes were developed parallel to the standards implementation plan.[183] UN Special Representative Holkeri had introduced the concept of partnership, which involved among others five joint UNMIK/PISG working groups on the implementation of the standards.[184]

The outbreak of large-scale ethnic violence between (mainly) Kosovo Albanians and Kosovo Serbs in March 2004 threatened to block the transfer process. The violence was triggered by two separate events; the blocking of the main highway to Skopje by Kosovo Serbs in reaction to a drive-by shooting which had wounded a Kosovo Serb, and the drowning of three Kosovo Albanian children who had allegedly been chased into the Ibar river by a group of Kosovo Serbs.[185] According to UNMIK, nineteen persons were killed; eleven Kosovo Albanians and eight Kosovo Serbs. The destruction and damage to property amounted to: 36 orthodox churches, monasteries and other cultural and religious sites, and 730 houses belonging to minorities (mainly Kosovo Serbs). More than 1000 persons were injured, including dozens of international police officers.[186] Despite the March violence, the Kosovar call for partnership (and ownership) was even stronger than in 2003. Reacting to this political pressure from the PISG, Norwegian

[181] Bajram Rexhepi, 'Prime Minister Adresses the Assembly', *Assembly Support Initiative Newsletter* 6 (2003).
[182] Vrieze, 'Recent developments in the Assembly ASI 2003/9', 14.
[183] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2003/996*, 2.
[184] Ilir Deda, 'UNMIK and Kosovo Institutions, finding a way towards partnership', *Assembly Support Initiative Newsletter,* 11 (2004) 10.
[185] Franklin de Vrieze, 'Rolling back the collapse', *Assembly Support Initiative Newsletter,* 11 (2004) 2.
[186] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/348* (New York, 2004), 1 and 2. During the March violence members from the Roma and Ashkali communities were also attacked. Gani Sadik, 'We asked ourselves: who is next?' *Assembly Support Initiative Newsletter,* 11 (2004) 15.

diplomat Kai Eide identified the further transfer of authority (or 'Kosovarization) as one of the 'tests' or 'challenges' facing the international administration after the March violence in 2004. In his 'Report on the situation in Kosovo', Eide wrote: 'An ambitious policy of transferring further competencies should be launched without delay, giving the Provisional Institutions of Self-Government a greater sense of ownership and responsibility as well as accountability.'[187]

After recognizing this, the UN Security Council and UNMIK adopted Eide's recommendation and another set of competencies was identified to be transferred to the PISG by the end of 2004. None of the competencies would impinge on sovereignty and the transfer would be accompanied by robust monitoring and oversight on behalf of UNMIK. This included the use of sanctions and interventions by the UN Special Representative when necessary; as had also been recommended in the Eide report.[188] In addition, Eide had proposed a separate Ministry of Energy, a Ministry for Community matters, Human rights and Returns, a Ministry of Justice and a transition strategy for the Kosovo Police Service.[189] As has been mentioned in Chapter three, the Ministry of Energy and Mining was established in December 2004 and the Ministry of Returns and Communities was established in 2005.

On 19 July 2005, the UN Special Representative presented to the government his plans for transferring competencies in police and justice to the PISG.[190] Consequently, two new ministries, justice and interior, were established in March 2006.[191] Both ministries had been created after the Contact Group and the EU had put political pressure on the UN to do so.[192] The Ministry of Interior was given the task of supervising the Kosovo Police Service. However, the international police commissioner continued to lead the institution.

Parallel to the transfer process, UNMIK started to scale down its operations. This increased the involvement of Kosovars in the institution-building process. The scaling down of pillar 2 had started already in 2002. In

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[187] Secretary-General of the United Nations, *Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council: S/2004/932* (New York, 2004), 6.
[188] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907* (New York, 2004), 16-17.
[189] Ibid., 17.
[190] 'Recent Developments in Kosovo's institutions', *Assembly Support Initiative Newsletter,* 19 (2005) 9-12, 9.
[191] The Ministries of Justice and Interior were created by an UNMIK regulation on 20 October 2005. UNDP, *Early Warning Report Kosovo 12: October - December 2005* (Pristina, 2005), 5.
[192] Interview with an official of the Dutch government, *Pristina 4 May 2005*.

that year the total number of staff (international and local) amounted to 1143, whereas there had still been 3100 staff members in 2001. Since 2002, the number of staff has gradually decreased and in 2006 only 261 staff members remained. Pillar 2 was dissolved in 2006 and replaced by a much smaller Department of Civil Administration.[193] The phasing out of pillar 2 was based on the executive transfer of authorities from UNMIK to the PISG. Especially since 2004, this transfer has accelerated significantly. In 2006, pillar 1 was also closed down and replaced by the Rule of Law Section in the UN Special Representative's office.

In accordance with the transfer of authority (including the increasing role of Kosovars in the institution-building process) public opinion polls show that Kosovars are increasingly starting to perceive their own institutions as being responsible for the political situation. In June 2004, 72 percent of the respondents in a poll considered UNMIK to be the institution that was responsible for the political situation rather than the PISG, which was held responsible by only 15 percent of the respondents. In September 2006, a majority still thought that UNMIK was responsible for the political situation, but the percentage of respondents had decreased significantly to 46 percent. In the same month, the share of the population that held the PISG responsible had increased to 30 percent.[194] In December 2006, the respondents attributed almost equal responsibility to UNMIK and the PISG, but in 2007 a reverse trend occurred. In June 2007, 58 percent of the respondents attributed responsibility to UNMIK and only 19 percent attributed responsibility to the PISG.[195] This changed a little in the second half of 2007, but the majority of respondents kept attributing the main responsibility for the political situation to UNMIK.[196]

The reverse trend in attributing responsibility to the PISG went hand in hand with increased calls to end the international administration and to declare independence. In 2005, a protest movement called *Vetëvendosje* (Self Determination Movement) was formed. It depicted UNMIK as a neo-colonial institution and accused the international administration of 'repressing the people's will of self-determination.'[197] Especially during the status negotiations in 2006 and 2007, the Self Determination Movement was active in rallying support (sometimes violently) for an end to the

[193] UNMIK, 'Press Release: Rebuilding Kosovo with UN Civil Administration: UNMIK/PR/1628.'
[194] UNDP, *Early Warning Report Kosovo 14: July - September 2006* (Pristina, 2006), 18.
[195] UNDP, *Early Warning system Bosnia. Annual report 2007* (Sarajevo, 2008), 17.
[196] Ibid., 20.
[197] Kosovo Perspectives Bulletin 12, 'News in Brief', (21 July 2006).

international administration and for an independent Kosovo.[198] The movement proved successful in voicing its protest, because in general support for the international administration had decreased considerably. The share of the population that had been satisfied with the work of UNMIK had declined from around 60 percent in 2002 to 31 percent in June 2007.[199] Nonetheless, as the analysis below shows, Kosovo's political institutions were not self-sustainable yet.

4.2.4 The capacity of Kosovo's provisional political institutions

As with Bosnia, the transfer of authority from the international to the domestic level was explicitly linked to the progress that would be achieved by Kosovo's provisional institutions.[200] The progress was measured in terms of compliance with UN Resolution 1244 and UNMIK's decisions. That conditionality was reflected in UNMIK's standards before status policy mentioned in Chapter three. This policy was only reluctantly accepted by the PISG and by the Kosovo Serb community.[201] One of the reasons was that the standards were developed by internationals rather than by domestic officials.[202] More important, the Kosovo Albanians were in first instance not really interested in standards; they preferred to have unconditional administrative responsibility. The Kosovo Albanians regarded the standards policy as a process with an open end and as an international strategy to avoid discussing the final status of the territory. The Kosovo Serb community criticized the Standards for Kosovo document for its own reasons; it regarded the document to be a concrete step towards an independent Kosovo which it strongly rejected.[203]

Based on the lessons learned in Bosnia, the UN had not aimed at an early withdrawal from Kosovo. In contrast with Bosnia, institutional progress in Kosovo would not be followed by the end of the mission, but

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[198] For example, on 23 August 2006 *Vetënvedosje* organized protests when the UN Special Representative, final status negotiator Martti Ahtisaari and the Kosovo negotiation team were discussing the negotiation process. The KPS arrested 72 protesters. UNDP, *Early Warning Report Kosovo 14: July - September 2006*, 14.

[199] UNDP, *Early Warning system Bosnia. Annual report 2007*, 15.

[200] To that extent an explicit statement was made by the UN Special Representative during a televised
speech in 2003. Vrieze, 'Latest Developments in the Assembly', 4.

[201] International Crisis Group, *Agenda for the Kosovo SRSG*, 16. Associated Press, 'Serbia rejects UN plan', *The Guardian* 9 December 2003.

[202] Interview with an UNMIK official (6), *Pristina 4 May 2005*. Interview with an UNMIK official (1), *Pristina 5 May 2005*. and Interview with an UNMIK official (8), *Pristina 11 May 2005*.

[203] Interview with an UNMIK official, *Pristina 11 May 2005*.

with the start of negotiations on a final settlement of the territory's status. The extent to which the PISG implemented the Standards for Kosovo was used to assess their institutional progress. Given this conditionality, one would expect that the transfer of authority, especially since its increase in 2004, and the start of negotiations on a final status in 2006, would be matched by an increased institutional capacity. The analysis below shows that this was not the case.

The institution of the Presidency is first discussed. During the first two years of the institution's existence, it failed to guarantee the democratic functioning of the PISG. Although considered to be one of the President's main functions President Rugova failed to regularly address the Assembly. According to the Constitutional Framework the President was obliged to submit at least one report yearly.[204] The first time the President submitted a report was almost two years after his election on 22 January 2004.[205] Only since 2004, the annual address has been made according to the Constitutional Framework; by Rugova in 2005 and his successor Fatmir Sejdiu in the following years. The President has also been blamed for exceeding his authority. In 2005, UNMIK had to pressure Rugova to give up his position as President of the LDK, because according to the Constitutional Framework the President of Kosovo is not allowed to have another official political position.[206] The same situation occurred at the end of 2006 when Fatmir Sejdiu was elected as the new President of the LDK. UNMIK requested that he assume his responsibility under the Constitutional Framework and choose between his functions of President of Kosovo and President of the LDK.[207]

With respect to the other main function of the institution, representing the unity of the people, the institution has performed well since the autumn of 2005. Earlier, Rugova had lost the opportunity to act decisively after a conflict over procedures had emerged between the Government and the parliamentary opposition in 2005. It was the UN Special Representative rather than Kosovo's president who took the initiative to mitigate the conflict by creating a Political Forum that included governmental and oppositional political parties (see below). However, on 13 September 2005, Rugova took the initiative to create a unified negotiation team for the final status negotiations. The team consisted of governmental

[204] International Crisis Group, *Agenda for the Kosovo SRSG*, 9.
[205] Franklin de Vrieze, 'Recent Developments in the Assembly', *Assembly Support Initiative Newsletter,* 10 (2004) 10-12, 12.
[206] Nonetheless, because no successor was identified, Rugova continued to play a key role within his party. Commission of the European Communities, *Kosovo (under UNSCR 1244) 2005 Progress Report* (Brussels, 2005), 10.
[207] UNMIK, 'News Coverage', (12 December 2006).

and oppositional political representatives and was an important accomplishment in view of the problematic relationship between the opposition and Government. After Rugova passed away in January 2006, the Team of Unity was successfully continued by Sejdiu.

The institutional capacity of Kosovo's Government developed very slowly. The establishment of the first Government (2002 – 2004) would have been unthinkable without the intervention of the American liaison office and UNMIK. The grand coalition between the LDK, the PDK, the AAK, and the Kosovo Serb Coalition Return (*Koalitija Povratak*, KP) was only possible after three months of intensive international mediation. The LDK was clearly the winner of the elections. However, when the results were compared with the municipal elections of 2000, the LDK had lost votes. Due to the opposition of the PDK and AAK to a LDK President, and the opposition of the LDK to a PDK Prime Minister, a political deadlock was created. In an attempt to break the deadlock, a first meeting between the representatives of the LDK, PDK, AAK and the KP was held at the US liaison office in Pristina on 18 January 2001.[208] Several other American mediation efforts followed, added with meetings between the main contestants (the LDK and PDK) and UN Special Representative Steiner.[209] At the end of February, consensus emerged on a deal which would make Rugova President and a PDK member Prime Minister. On 4 March, Kosovo's Government under the leadership of Prime Minister Bajram Rexhepi (PDK) and President Rugova were elected by the Assembly.[210] The Government was a grand coalition of the LDK (with four minister posts), PDK (with two minister posts), AAK (with two minister posts), KP (with one minister post) and the Bosniak Democratic Party Vatan (*Demokratska Stranka Vatan*, DSV) one minister post).[211]

The nine ministries that were established in March 2002 remained under tight control of UNMIK. All ministries would be 'looked after' by UNMIK pillars 2 and 4. In practice that meant that the pillars would recruit domestic staff and develop administrative guidelines and administrative instructions. Moreover, the ministries would have an international staff, headed by a senior international officer. This international staff performed line functions until the Government was established, after which it would

[208] UNMIK, 'Local Media Monitoring', (18 January 2002).
[209] Steiner started his office in the middle of the government negotiations. A first meeting between the LDK, the PDK and Steiner was held on 17 February 2002. UNMIK, 'Local Media Monitoring', (17 February 2002).
[210] UNMIK, 'Local Media Monitoring', (5 March 2002).
[211] List of ministers, see: UNMIK, 'Local Media Monitoring', (3 March 2002).

remain in order to advise domestic civil servants.[212] As a result of the international involvement, the first Legislative Strategy of the Kosovo Government was mainly prepared by internationals.[213]

The Government was aided in it is capacity building by the EAR Support Team that had been placed within the Office of the Prime Minister.[214] The Office of the Prime Minister was also the institution within which special support offices were created in order to assist the PISG in developing capacities in the reserved areas. In 2002, five of such offices existed: (1) Legal Support Services; (2) Public Information; (3) Good Governance, Human Rights, Equal Opportunity and Gender; (4) Communities; and (5) Senior Public Appointments.[215] The six offices created in 2004 were: (1) Office of International Cooperation and Regional Dialogue; (2) Office of European Integration; (3) Advisory Office of Public Safety; (4) Energy Office, (5) Office on Judicial Affairs; and (6) Strategic Policy Research, and Planning Office.[216]

Despite international assistance, the formation of ministries proved to be a long process which was not yet completed under the second mandate of the Government (2004 - 2007). Between 2000 and 2002, some 5200 persons were trained by the OSCE Institute of Civil Administration.[217] However, a professional civil service did not yet exist in 2002. When ministers were getting appointed in 2002, their ministries had yet to be created and the subsequent recruiting process of civil servants was far from transparent.[218] As a result, the civil service became politicized as civil servants were appointed according to political party lines.[219] An attempt was made to improve the professional level of the civil service with the establishment of the KIPA. However, in 2007 the European Commission concluded: 'Overall, Kosovo's public administration remains weak and

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[212] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2002/62* (New York, 2002), 3 and 9.
[213] Azem Hajdari, 'Legislative strategy of the Kosovo government through October 2004', *Assembly Support Initiative Newsletter,* 10 (2004) 17, 17.
[214] David Buerstedde, 'Three parliaments support Assembly of Kosovo', *Assembly Support Initiative Newsletter,* 9 (2003) 3-4, 4.
[215] International Crisis Group, *A Kosovo Roadmap (II). Internal Benchmarks* (Pristina/Brussels, 2002), 5, ICG Balkans Report No. 125.
[216] Deda, 'UNMIK and Kosovo Institutions, finding a way towards partnership.'
[217] Hartmut Purner, 'Taking the first steps together. Supporting the creation of functioning municipal assemblies', *Assembly Support Initiative Newsletter,* 7 (2003).
[218] Interview with an OSCE official (1), *Pristina 7 May 2005*.
[219] Interview with Kosovar Institute for Policy Research and Development (KIPRED), *Pristina 5 May 2005*. Interview with a PISG official (1), *Pristina 10 May 2005*. Interview with an OSCE official (4), *Pristina 13 May 2005*.

inefficient. Some progress has been made in reforming the public administration, but reforms are at an early stage.'[220]

The PISG proved to be slow in nominating ministers and assigning office space.[221] For example, by October 2002, only five out of the 11 permanent secretaries for the ministries had been appointed.[222] The OSCE identified serious shortcomings with respect to the staffing of the ministerial legal offices between 2002 and 2006. Only in 2006 did complaints about the level and quality of staff start to decrease. Nonetheless, special attention remained necessary for the Ministry of Justice and the Office of European Integration Processes within the Office of the Prime Minister. The OSCE also recommended that the international donor community involved in capacity building efforts better coordinate their programs with the KIPA. That was necessary, because the KIPA, being Kosovo's primary institution for training its civil servants, often lacked sufficient funding to attract well qualified trainers.[223]

With respect to the Government's policy making, the Kosovar Institute for Policy Research and Development (KIPRED) concluded in 2006 that: 'the current process is limited to a rushed setting of legislative agenda without the necessary analysis of which laws are truly needed and which ones take priority.'[224] In addition, the OSCE criticized the technical deficiencies in the legislative drafting process and advised that the rules of procedure be revised.[225]

Next to the critique on the drafting process, KIPRED also criticized the lack of implementation of the laws and monitoring of their effects.[226] KIPRED's conclusions were supported by the findings of the OSCE. Since 2002, the OSCE had monitored the implementation of Assembly laws.[227] Throughout the years, a steady progress in implementation was identified by the several ministries. Nonetheless, with respect to the implementation responsibilities of the Office of the Prime Minister, the OSCE concluded in

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[220] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2007 Progress Report* (Brussels, 2007), 10.
[221] International Crisis Group, *Kosovo Status: Delay is Risky*, 11.
[222] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2002/1126* (New York, 2002), 3.
[223] OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III. Review Period: Laws promulgated in 2005* (Pristina, 2007), 45 and 49.
[224] Kosovar Institute for Policy Research and Development (KIPRED), *Laws without policy - waste, dead letter and futility* (Pristina, 2006), 4.
[225] OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III.*, 49.
[226] Kosovar Institute for Policy Research and Development (KIPRED), *Laws without policy - waste, dead letter and futility*, 5.
[227] With implementation the OSCE means: 'the drafting of secondary legislation as well as the establishment of specific bodies by the law.' OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III.*, 8.

2006 that: 'There is still an apparent imbalance between drafting primary legislation and implementing these laws by drafting secondary legislation.'[228] An illustration of these problems was the slow pace of the implementation of the Law on Access to Public Documents. Although the Law had already been adopted on 6 November 2003, the OSCE concluded in the summer of 2004 that important deadlines mentioned in the Law had not been kept and obligations had not been fulfilled.[229] A second example of slow implementation concerned the official languages of Kosovo (Albanian and Serbian). Although an elaborate language policy had been established by law in 2001, major shortcomings concerning its implementation were noted in 2004. In 2007, the European Commission concluded that the Law on the Official Languages was still not completely implemented.[230] Contributing factors that were used to explain the slow implementation of these and other laws were the lack of financial, legal and human resources, the lack of political will on behalf of Kosovo Albanian officials and the tendency of ministries to prepare new draft laws rather than to implement existing ones.[231]

Another point of concern was the transparency of policy making. Kosovo's citizens complained about the lack of information concerning the status process in 2006. A public opinion poll showed that the Kosovars expected the PISG to communicate more with the people.[232] The OSCE added that the publication of laws should be more accurate. And in 2003, the International Crisis Group noted that ministers often reported to their party leaders, rather than the Prime Minister.[233] Government transparency improved when new rules of procedure for the government were adopted on 1 February 2005, that were clearer and more comprehensive than the old rules.[234]

Finally, the Assembly has developed a weak institutional capacity. The Assembly started its work slowly during its first mandate (2002 - 2004). Until the first Government was formed in March 2002, the institution was

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[228] Ibid., 6 and 35.
[229] 'Lack of implementation of the law on access to official documents', *Assembly Support Initiative Newsletter,* 13 (2004) 5.
[230] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2007 Progress Report*, 8.
[231] Senad Sabovic, 'Implementation of language policy to be placed on the political agenda', *Assembly Support Initiative Newsletter,* 13 (2004) 11. Michael Schuetz and Diman Dimov, 'Deficiencies Revealed in Preparing Subsidiary Acts to Implement Assembly Laws', *Assembly Support Initiative Newsletter* 14 (2004) 12-13, 12.
[232] UNDP, *Early Warning Report Kosovo 14: July - September 2006*, 32.
[233] International Crisis Group, *Kosovo's Ethnic Dilemma. The Need for a Civic Contract* (Pristina/Brussels, 2003), 14, ICG Balkans Report No. 143.
[234] 'Recent Developments', *Assembly Support Initiative Newsletter,* 16 (2005) 8.

effectively frozen. Subsequently, between March and June 2002, the institution only met once a month. It was only after international pressure was applied that the Assembly started to meet once every week.[235] As with all PISG, the Assembly had been put under the tight control of UNMIK. The most important limitation of its authority was that the Constitutional Framework reserved some powers exclusively for the UN Special Representative. Assembly involvement with respect to these powers did not extend further than reviewing and commenting on UNMIK's draft laws. By engaging the PISG in the legislative work regarding reserved areas as much as possible, UNMIK aimed at creating broad support for its policies. In the end, however, UNMIK was responsible for legislation dealing with the reserved powers.[236]

During the first two years of existence, the relationship between UNMIK and the Assembly was characterized by frequent clashes that were often caused by the Assembly's determination to adopt (non-binding resolutions) concerning issues that fell outside its competencies.[237] Personal animosity sometimes also played a role. It is well known that the tense relationship between UN Special Representative Steiner and Nexhat Daci fuelled some of the conflict concerning Assembly resolutions.[238] Occasionally, UNMIK was prepared to take the Assembly's wishes with respect to the reversed powers into consideration. The UN Secretary-General's report in 2004 stated: 'The 38 proposed amendments to the Constitutional Framework adopted on 8 July by the Assembly were forwarded in September to UNMIK for its consideration. UNMIK continues

[235] International Crisis Group, *Agenda for the Kosovo SRSG*, 6.

[236] In March 2003, for example, UNMIK asked the PISG opinion on the draft provisional criminal code and the draft criminal procedure code. Vrieze, 'Recent developments in the Assembly ASI 2003/7', 7.

[237] Examples of these issues were: (1) a resolution on the territorial integrity of Kosovo (23 May 2002) resulting to a slight loss of territory caused by a border agreement between Serbia and the Former Yugoslav Republic of Macedonia; (2) the condemnation of the inclusion of Kosovo in the preamble of the constitution of the state-union of Serbia and Montenegro (7 November 2002), and (3) the resolution on the 'Liberation War of Kosovo' (15 May 2003). All Assembly resolutions were declared invalid by UNMIK International Crisis Group, *Agenda for the Kosovo SRSG*, 7. In December 2003, the Assembly exceeded its authority by declaring void Serbia's legislation passed after 22 March 1989 (when Kosovo lost its autonomous status). On the same day, UNMIK declared the declaration invalid since it was beyond the competence of the Assembly. The same happened with the Assembly's decision to reject the Serbian elections to be held in Kosovo. Vrieze, 'Recent Developments in the Assembly ASI 2005/10', 10 and 11.

[238] Two weeks after the Assembly had been constituted, Daci declared: 'The office of the SRSG is not and will not be my boss. My bosses are the people of Kosovo through the democratically elected representatives in the Parliament of Kosovo.' International Crisis Group, *Agenda for the Kosovo SRSG*, 7.

to object to the comprehensive review undertaken of the Constitutional Framework, but will study specific areas in which amendments can be considered.'[239]

With the objective of preventing misunderstandings between UNMIK and the PISG and with the desire to increase the institutional capacity of the Assembly, Kosovo's parliamentarians were supported, trained and coached by international staff. This was primarily done by a variety of non-governmental organizations, governmental organizations and the diplomatic offices of individual countries. These organizations were coordinated by the OSCE in the Assembly Support Initiative. The Office of the Prime Minister and the Assembly Secretariat also participated in the program.[240] The aim of the Assembly Support Initiative was to avoid the typical coordination problems that plague most international assistance to transitional societies. A number of six main lines of activities (pillars) were developed: (1) advice on the basic components of parliamentary life; (2) advice on procedural questions; (3) technical support to the committees; (4) assistance to international working visits of Assembly delegations; (5) the role and participation of non-majority communities; and (6) advice and training to various departments in the secretariat. The actual work was done through four types of consultations: (1) regular bilateral consultations with Members of the Presidency, Committee chairpersons, and Assembly secretariat; (2) monthly coordination meetings with Assembly Support Initiative partners, Assembly and Office of the Prime Minister; (3) two-monthly meetings of Assembly Support Initiative partners and country liaison offices; and (4) weekly internal meetings with key-partners and daily bi-lateral contacts.[241] Nonetheless, complaints about long promulgation

[239] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907*, 9.

[240] Members of the Assembly Support Initiative were: Council for the Defence of Human Rights and Freedoms (CDHRF), Friedrich Ebert Stiftung (FES), Friedrich Naumann Stiftung (FNS), Konrad Adenauer Stiftung (KAS), East-West Parliamentary Practice Project (Netherlands), European Agency for Reconstruction (EAR) in cooperation with the Consortium of French, German and Belgian Parliaments, United States Agency for International Development (USAID) in cooperation with Bearing Point and the National Democratic Institute (NDI), United Nations Development Program (UNDP) in cooperation with the Inter-Parliamentary Union (IPU), OMiK Democratization Department, the Assembly Secretariat, the Office of the Prime Minister, and the country offices in Pristina of Austria, Belgium, Germany, Greece, Italy, The Netherlands, Sweden (SIDA), Switzerland, United Kingdom and United States of America.

[241] Franklin de Vrieze, 'Editorial. Program and methodology of three years of ASI cooperation', *Assembly Support Initiative Newsletter,* 13 (2004) 2. Interview with an OSCE official (1), *Pristina 7 May 2005*.

processes remained.[242] Moreover, the presence of these international advisors created a strange situation in that the Assembly laws which had been drafted with the help of internationals could eventually be turned down and overruled by UNMIK during the promulgation phase.[243]

The capacity building programs led to an increased performance of the Assembly, but as a negative side effect its administrative infrastructure became overburdened.[244] First, the Assembly Secretariat (responsible for providing administrative and legal support) was understaffed. Secondly, it was not until the summer of 2003 that parliamentary group leaders received their own office. Other members of parliament did not have a room of their own. They had to meet in the Assembly's coffee bar.[245] Only by the end of 2004, when the Government relocated to the new government building, did more office space become available for the members of parliament.[246] Thirdly, in addition to the shortage of meeting rooms, was added limited access to phone lines, computers and the internet. Fourthly, it was only in 2003 that, under the supervision of the UNDP and the Inter-Parliamentary Union, an attempt was made to introduce a document management system and electronic archives. The support for the Parliamentary Electronic Archives Project also included the launching of a website.[247] Finally, the poor translation of draft laws hindered communication with the international community and the speed with which UNMIK could promulgate legislation.[248] Several reports pointed to a lack of implementation regarding language policy in Kosovo. In September 2004, the OSCE organized a conference to discuss the issue. In general, the bulk of the problems concerned the printing of forms and documents in only one language, the

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[242] 'Recent Developments in Kosovo's Institutions', *Assembly Support Initiative Newsletter,* 18 (2005) 6-7, 6.
[243] Ralner Stinner, 'Time for new ideas in Kosovo', *Assembly Support Initiative Newsletter,* 7 (2003) 3.
[244] International Crisis Group, *Agenda for the Kosovo SRSG*, 8. Peter Cadle, 'A healthy committee structure with room for improvement', *Assembly Support Initiative Newsletter,* 12 (2004) 12.
[245] Mulliqi and Najmetdinova, ''We have not invested enough in the structures to prepare laws.' Interview with Bajram Kosumi', 10. This was still the case in the beginning of 2004: Peter Vanhoutte, 'Working conditions and ownership of the building express the Assembly's independence', *Assembly Support Initiative Newsletter* 10 (2004) 13.
[246] Edmond Efendjia, 'We have to proof that the administration is not politically biased', *Assembly Support Initiative Newsletter,* 12 (2004) 14.
[247] Krenar Loshi, 'The first phase of the SPEAK - project: Establishing a Document Management System for the Assembly', *Assembly Support Initiative Newsletter*, 8 (2003) 20. Roger F. Roy, 'More transparency and accountability through the new Parliamentary Governance Information Center', *Assembly Support Initiative Newsletter,* 12 (2004) 13.
[248] Hubert van Eck Koster, 'How to get three languages speak one legislative voice?' *Assembly Support Initiative Newsletter,* 11 (2004) 16-17.

lack of translation services, the lack or non-existence of street, road, and public signs in other languages than Albanian (i.e. English and Serbian). This was not only caused, because of the lack of human and financial resources, but also because of the lack of commitment on the part of Kosovo Albanian officials.[249] More specifically for the Assembly, it was estimated that 60 to 80 percent of the amendments to draft laws addressed linguistic inconsistencies rather than the substance of the law in question.[250]

Despite these shortcomings, during its first mandate the Assembly was able to adopt more than 80 laws.[251] In his report the UN Special Representative concluded: 'During its three year mandate, the Assembly adopted 83 laws, of which 74 have been formally submitted to UNMIK and 51 promulgated to date.'[252] Nonetheless, with the approaching end of the First Assembly's mandate in 2004, it was concluded that: 'the Assembly of Kosovo, neither from political, nor from procedural point of view has reached the stage of a fully stable, functional and productive legislature (…).'[253] Especially the oversight over the executive, one of the core tasks of any parliament, was judged to have been weak during the Assembly's first mandate.[254]

The second mandate of the Assembly (2004 – 2007) was plagued with similar institutional problems as the first mandate had been. For the period March 2004 – September 2005, the Assembly was criticized by the European Commission for: (1) a dysfunctional Parliamentary Committee on Rights and Interests of Communities; (2) a lack of free access to official documents for members of parliament and the public; (3) underperformance in executive oversight; (4) being not transparent and inclusive enough when important decisions (such as budgetary spending) had been made; (5) having convened too few times for guaranteeing full political debate and performing its basic functions.[255] The OSCE reached similar conclusions.[256]

In its 2006 Progress Report, the European Commission was slightly more positive on the Assembly. In 2005, the Assembly had shown

[249] Sabovic, 'Implementation of language policy to be placed on the political agenda.'
[250] Uli Steinle and Senad Sabovic, 'Lost in Translation or how to make three languages speak one legislative voice', *Assembly Support Initiative Newsletter* 15 (2005) 3.
[251] Franklin de Vrieze, 'Editorial. Agenda of the new Assembly of Kosovo', *Assembly Support Initiative Newsletter,* 14 (2004) 2.
[252] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907*, 8.
[253] Doina Ghimici, 'Committee End-of-Mandate Report: A step in building institutional memory', *Assembly Support Initiative Newsletter,* 11 (2004) 22.
[254] Vrieze, 'Editorial. Agenda of the new Assembly of Kosovo.'
[255] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2005 Progress Report*, 10.
[256] OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III.*, 47.

encouraging signs of maturity in the calm and effective reshuffling of Kosovo's government after Prime Minister Ramush Haradinaj (AAK) had resigned due to his indictment by the ICTY. Within three weeks a new government, continuing the LDK/AAK coalition was formed under the new Prime Minister Bajram Kosumi (AAK). Only minor changes were made in the cabinet.[257] The UN Security Council judged: 'Throughout those difficult days and weeks, the political leaders and citizens of Kosovo managed a highly unusual situation with maturity and without any disorder or instability.'[258] Moreover, the election of the new President after the death of Rugova in January 2006 also ran smoothly. On 10 March 2006, the Assembly elected Fatmir Sejdiu (LDK) as the new President of Kosovo. A few weeks later Kosumi resigned as Prime Minister and was democratically replaced by Agim Çeku. The dismissal of a request of seven Assembly members for a referendum on independence and the calm debate on a Serbian constitutional referendum were also highly appreciated by the international administration.[259]

In June 2006, a reform package mostly drafted by the OSCE was adopted which aimed at addressing oversight within the executive, financial accountability and transparency. The package involved the creation of more parliamentary meetings, better preparation of the parliamentary sessions and an increased role of parliament in scrutinizing the government.[260] Moreover, public hearings had been introduced in order to enable members of parliament the opportunity to address the government without interference of the Assembly Presidency. A wider participation of political groups and committees to determine the budget was ensured and a document management system was created. At the same time, the European Commission criticized the lack of qualified staff working for the secretaries of the parliamentary committees and the insufficient executive oversight over the implementation of laws.[261] The OSCE also concluded that a comprehensive oversight of the implementation of primary legislation was lacking and similar findings were presented by the International Crisis Group.[262]

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[257] 'Recent developments in Kosovo's institutions', *Assembly Support Initiative Newsletter,* 17 (2005) 8-9.
[258] United Nations Security Council, '5188th Meeting', (New York: 27 May 2005), 3.
[259] International Crisis Group, *Kosovo Status: Delay is Risky*, 13.
[260] Kosovo Perspectives Bulletin 6, 'News in Brief', (9 June 2006).
[261] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2006 Progress Report* (Brussels, 2006), 6.
[262] OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III.*, 47.and International Crisis Group, *Policing the Police in Bosnia: A Further Reform Agenda* (Sarajevo/Brussels, 2002), 9, ICG Balkans Report No. 130.

Next to the institutional shortcomings identified by the European Commission and the OSCE, the Assembly in its second mandate was characterized by violations of the rules of procedure. Already during the first mandate of the Assembly, the speaker of the Assembly, Nexhat Daci, had been criticized for keeping too much control over the debate. He defended his tight control with the argument that it was necessary in order to ensure the stability and smooth functioning of the institution.[263] He continued this approach during the second Assembly, when technical issues became easily politicized, because the grand coalition had been replaced by a government with parliamentary opposition.[264] For the government it seemed hard to accept that a parliamentary opposition has its own value in a democracy.[265] Consequently, a conflict erupted between Daci (being a member of the governing LDK) and the parliamentary opposition parties PDK and *Partia Reformiste ORA* (Reformist Party ORA) in the first months of 2005. Daci was accused of violating rules of procedure by allowing too little speaking time for the opposition parties. The conflict resulted in a turbulent plenary session on 21 and 22 April 2005, when PDK and ORA walked out after their proposal for the agenda had been overruled.[266] UN Special Representative Jessen-Petersen reacted by expressing UNMIK's concern over the Assembly session. In a letter, Jessen-Petersen called on Daci to take more into account the interest of the opposition parties. He also expressed concern over recent actions such as denial of the right to speak during a debate, unilateral decisions to delete statements from the records of the proceedings, and threats to remove members of parliament from future plenary sessions.[267] The intervention by UN Special Representative Jessen-Petersen and the adoption of new rules of procedure in May 2005, solved the crisis and improved the relationship between the government and the opposition.[268]

The improved relationship between the government and the opposition did not prevent the apparent necessity to establish a Kosovo

[263] International Crisis Group, *Agenda for the Kosovo SRSG*, 9.
[264] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2005 Progress Report*, 10.
[265] Interview with an UNMIK official (7), *Pristina 8 May 2005*.
[266] 'Recent developments in Kosovo's institutions ASI 2005/17.'
[267] Ibid., 9. United Nations Security Council, '5188th Meeting', 5.
[268] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2005 Progress Report*, 10. The Parliamentary Rules of Procedure have been changed several times. From November 2001 to January 2003, the Provisional Rules of Procedure as drafted by UNMIK were used. On 9 January 2003, the Assembly adopted the new Rules of Procedure. Kevin Deveaux, 'The Rules of Procedure of the Assembly: An Update', *Assembly Support Initiative Newsletter,* 10 (2004) 20. These were changed again in May 2005.

Political Forum in May 2005.[269] Under the chairmanship of the UN Special Representative or his deputy, this forum functioned as a *de facto* grand coalition (all be it without decision making powers), since it included government and opposition representatives.[270] It was an attempt to unite the Kosovo Albanian factions in order to properly implement the UN's standards and to prepare for the final status negotiations.[271] The apparent need for such a Political Forum illustrates the weak functioning of Kosovo's parliament at the time. Despite denials by UN Special Representative Jessen-Pettersen and Kosovar politicians that the forum was a parallel political structure, it actually was. It was regarded as such by the LDK, who argued that the forum had exclusively been set up in order to please the opposition.[272] At the same time, support for the body by the PDK (as the main opposition party) was also limited, because it had failed to reach its objective to give the Forum decision making powers.[273] Thus the first two meetings of the Forum focused on the issue whether the Forum should exist at all. Nonetheless, during the second meeting (30 June 2005) a step towards institutionalization was taken with the decision to create a secretariat.[274] During the third meeting (21 July) several proposals drafted by the secretariat were adopted. The proposals aimed at preparing for status negotiations and included the establishment of five working groups (constitutional and judicial affairs, economy, minority issues, cultural heritage, and missing persons and war damage).[275] In August, however, the continuation of the Forum became uncertain when three meetings were cancelled. On 13 September, the Forum was practically replaced when Rugova announced the establishment of a Team of Unity that would lead the Kosovo Albanian delegation for the status negotiations (see Chapter seven).

Finally, the third mandate of the Assembly (after the elections of 2007) started in a difficult period. The final status negotiations led by Martti Ahtisaari had failed and at the time of the elections a troika of the EU, the USA and Russia made a last effort to arrive at a negotiated solution. Nonetheless, elections were successfully organized on 17 November 2007.

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[269] The idea of establishing the forum was raised by the UN Special Representative during a lunch with main Kosovo Albanian leaders on 29 April 2005. It would aim at improving relations between the government and opposition and tackle issues such as: standards implementation, dialogue with Belgrade, decentralization and status talks. 'Recent developments in Kosovo's institutions ASI 2005/17', 9.
[270] UNMIK, 'Local Media Monitoring', (8 June 2005).
[271] UNMIK, 'Local Media Monitoring', (2 June 2005).
[272] UNMIK, 'Local Media Monitoring', (29 June 2006).
[273] The PDK wanted the forum to have decision making powers, whereas the LDK preferred a merely advisory role 'Recent developments in Kosovo's institutions ASI 2005/17.'
[274] UNMIK, 'Local Media Monitoring', (1 July 2005).
[275] 'Recent Developments in Kosovo's institutions ASI 2005/19', 10.

The new Assembly held its inaugural session in early January 2008, during which it re-elected Fatmir Sejdiu as President of Kosovo, Hashim Thaçi as Prime Minister and Jakup Krasniqi as President of the Assembly. After the inauguration, the Assembly was above all occupied with preparing Kosovo's declaration of independence which materialized on 17 February 2008. That included also work on the approval of laws which derived from Ahtisaari's Comprehensive Proposal.[276] Part of the Comprehensive Proposal was the adoption of a constitution that would replace the Constitutional Framework. On 9 April 2008, the Assembly passed the Constitution which would come into effect on 15 June. However, in spite of these big steps towards a functioning Assembly, the new Assembly faced huge challenges. The European Commission had concluded in November 2007 that, despite some progress being made, the Assembly's administrative and policy-making capacities remained limited.[277] Therefore, the Assembly could not be regarded as an autonomous institution by June 2008.

4.2.5 Conflict management and institutional autonomy in Kosovo

The analysis above shows that since 2003 the independence of Kosovo's three political institutions has gradually increased. After the transfer of authority had commenced with the Constitutional Framework, it accelerated further in 2003 and 2004. The involvement of Kosovar officials in the institution-building process also increased. The number of regulations and administrative directions fluctuated over time and did not experience a decline as in the case of the OHR decisions. Nonetheless, the PISG increasingly received more room for independent action since most of the approved regulations concerned the promulgation of laws made by the PISG. The capacity of the PISG had also gradually increased. Since 2005, the President, Government and Assembly have all started to perform better. In 2006, the European Commission recognized the PISG's increased commitment to standards implementation. It concluded among others that progress had been made in strengthening the Assembly's role and working methods and in improving the governing capacities of the government. This increased commitment had a positive effect of the status negotiations that dominated social and political life in 2006.[278]

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[276] Armend Bekaj, 'The Assembly as and institution of debate and open discussion. Interview with the new President of the Assembly of Kosovo, Mr. Jakup Krasniqi', *Assembly Support Initiative Newsletter* 31 (2008) 3-4, 3.
[277] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2007 Progress Report*, 8.
[278] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2006 Progress Report*, 6-8.

Despite its gradual increase in autonomy, in February 2008 when Kosovo declared independence it was a weak state with political institutions heavily dependent on the UNMIK. UNMIK was still the final authority in Kosovo and had the final say over all legislation and executive acts coming from the PISG. None of the three PISG studied in this chapter had reached a sufficient level of institutional capacity. Although formally the decision to start negotiations on the final status of Kosovo had been made dependent on institutional progress, political motives seemed to have been the primary reason to start negotiations. In its 2005 enlargement strategy paper, the EU Commission concluded that: 'Kosovo's institutions still lack the political maturity necessary to build a truly democratic, secure, and multi-ethnic society.'[279] A few months earlier, Kai Eide had found a serious lack of experience and expertise among the Kosovar institutions in his comprehensive review.[280] Nevertheless, in 2005 the decision was taken to start negotiations, mainly because of a perceived political necessity as the result of the ethnic violence that had occurred in March 2004.

In Section 4.1.5, it was argued that in the case of Bosnia the incorporation of incompatibility in the Dayton Agreement could possibly explain the absence of institutional autonomy in 2008. Similarly, the absence of institutional autonomy in Kosovo, could also be explained by the persistence of unresolved issues of incompatibility. There is, however, a difference. Whereas the incompatibility in the case of Bosnia was incorporated in a peace agreement, in Kosovo there was never any settlement at all. The absence of a settlement made it necessary for the UN to establish an international administration of the governance type, rather than a control type of international administration. That made the PISG even more dependent on UNMIK, than the Bosnian institutions had been dependent on the OHR. UN Resolution 1244 was the only reason for their existence and without UNMIK there would not have been PISG. As a result, UNMIK established itself as the most important political institution in Kosovo. Since 1999, the international administration has been part of the (provisional) constitutional order and like in Bosnia this has allowed the political leadership to evade responsibility. The presence of UNMIK had enabled politicians to focus on other issues, including the status issue, to divert public attention from the weak functioning of the PISG. [281] Even after the status issue was resolved unilaterally with Kosovo's declaration of independence, Kosovo remained under international administration. As will

[279] Commission of the European Communities, *Communication from the Commission. 2005 Enlargement strategy paper* (Brussels, 2005), 8.
[280] Kai Eide, *A comprehensive review of the situation in Kosovo: S-2005-635* (New York, 2005), 5.
[281] International Crisis Group, *Kosovo Status: Delay is Risky*, 12.

be elaborated upon in Chapter seven, a control type of international administration was established by an International Steering Board (the Office of the International Civilian Representative) and the EU in order to ensure the implementation of the Comprehensive Proposal on the basis of which Kosovo's independence was accepted by those states in favor of independence.

5 Institutional Congruency

Next to being autonomous, a political institution created by an international administration needs to have congruent value systems. As explained in Chapter three, value systems associate an institution with its environment and govern the behavior within the institution. Institutional congruency exists when there is either one predominant value system or several different value systems that are neither competitive nor mutually exclusive. An institution might have different and competing value systems. Such a situation is defined as institutional incongruency. This chapter analyzes the value systems of Bosnia's and Kosovo's political institutions at the level of the political system. That means that not all three institutions are analyzed separately, but that an analysis is made of Bosnia's and Kosovo's political culture as a whole. The question is examined whether Bosnia's and Kosovo's political culture is dominated by congruent or incongruent value systems. Similar to Chapter four, the analysis is divided into two parts. The first part focuses on institutional congruency in Bosnia and the second on Kosovo. Both parts start with the observation that in Bosnia and Kosovo, the post-war (provisional) constitutional structure has been characterized by power sharing arrangements in which the basic rights and obligations are primarily based on ethnicity rather than on individual citizenship. Secondly, an analysis is made of how the international administrations have attempted to transform the ethnic nationalist political culture into a civic nationalist political culture. Thirdly, the institutional congruency is assessed by investigating whether the domestic ethnic nationalist political culture has been replaced by an internationally stimulated civic nationalist political culture. If that is not the case, then two mutually exclusive value systems exist and this results in institutional incongruency. Each discussion ends by offering a possible explanation of the outcome based on the particular conflict management strategy of each case.

5.1 Bosnia

5.1.1 Power sharing in Bosnia

The Dayton Agreement has been described as: 'an awkward child of the marriage between the realities of power on the ground and the international ideal of a unitary multi-ethnic state.'[1] In 1995, it was recognized that more than a power sharing arrangement could not be achieved. The Dayton Agreement established a Bosnian state in which power was to be shared by the Bosniak, Bosnian Croat and Bosnian Serb community. The Bosnian Serbs and Bosnian Croats would not have accepted

[1] Michael Pugh, 'Non-Nationalist Voting in Bosnian Municipal Elections: Implications for Democracy and Peacebuilding', *Journal of Peace Research* 38:1 (2001) 27-47, 29.

a central state which, given their numerical strength, would *de facto* be dominated by the Bosniaks. It was only logical that after three and half years of armed conflict the different parties would fear each other's intentions and that the range of acceptable institutions would be limited.[2] The Dayton Agreement was only signed because it kept the state level institutions weak in comparison to the entities.

The power sharing character of the Dayton Agreement resulted in the rights and obligations in Bosnia's Constitution being essentially based on ethnicity, rather than on citizenship. In essence, Bosnia's polity became based on an ethnic principle.[3] The Constitution recognizes Bosniaks, Bosnian Croats and Bosnian Serbs as constituent peoples.[4] By doing so, it puts ethnicity in the form of group rights above individual human rights; which are also mentioned in the Bosnian Constitution. For example, the Constitution contains an ethnicity-based restriction to suffrage and citizens' ability to stand for office. First, citizens who do not identify themselves as one of the three constituent peoples are barred from standing for the Presidencies of the Federal State and the Serb Republic. Secondly, voters registered in the Federation are not allowed to vote for a Serb Presidency member, and likewise, Serb Republic voters are not allowed to vote for a Bosniak or a Croat Presidency member.[5]

The dominance of group rights and the power sharing element is manifested in the Parliamentary Assembly, the Council of Ministers and the Presidency. First, the Bosnian Parliamentary Assembly is determined by territory and national group adherence.[6] The 42 seats in the House of Representatives are two thirds filled with Federation members and one third with members of the Serb Republic. Out of the 15 members of the House of Peoples, five are Bosniak, five are Bosnian Croat and five are Bosnian Serb. Moreover, each chamber elects one Bosniak, one Bosnian Serb and one Bosnian Croat to serve as chair and deputy chairs. The chair rotates among the three members. All legislation to be adopted requires the approval of both chambers, to be achieved by a simple majority vote by those present and voting. However, in case the majority does not include one-third of the members of each entity, the procedure changes. The chairs will have three days to try to get approval of the law with over one third of the vote from

[2] Roberto Belloni, 'Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina', *International Peacekeeping* 11:2 (2004) 334-353, 335.
[3] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* (Venice, 11 March 2005), 12.
[4] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 4: Constitution of Bosnia and Herzegovina', (1995).
[5] OSCE Mission in Kosovo, 'International Election Observation Mission. Bosnia and Herzegovina - General Elections 1 October 2006. Statement of Preliminary Findings and Conclusions', (2006), 3.
[6] Florian Bieber, *Post-War Bosnia. Ethnicity, Inequality and Public Sector Governance* (New York: Palgrave Macmillan, 2006), 54.

each entity. If that attempt fails, the law will only pass, if there is no dissenting vote of two thirds or more of the members of either entity.[7]

The Parliamentary Assembly has been given the task of protecting the so called vital interests of each of the three constituent peoples. A majority of the Bosniak, Bosnian Serb or Bosnian Croat delegates in the House of Peoples may declare a parliamentary decision to be harming their vital interests. In order to adopt the decision, a majority of all three ethnic groups is necessary. It is also possible that a majority of one of the ethnic groups may object to the invocation of the vital interest provision. In that case, a joint commission of three delegates, one from each ethnic group, has to be convened by the chair of the House of Peoples. If the issue does not get solved within five days, it will be referred to the Constitutional Court.[8]

The salience of group rights is also reflected in the tripartite Presidency, which is allowed to invoke a provision to protect vital interests. A Presidency member can block a decision based on a declaration that the decision harms the vital interests of a constituent people. In that case, the decision would be referred to the National Assembly of the Serb Republic or the Federation's Parliament. If either body confirms the declaration with a two-thirds majority, the Presidency decision cannot be taken.[9]

Finally, because of power sharing considerations, the Council of Ministers is not headed by a Prime Minister, but by a chairing Minister. Until 2002, the chair did not have the power to propose the dismissal of a minister to the Parliament. The chair was nominated by the Presidency and approved by the House of Representatives. The chair nominated the ministers who in turn had to be approved by the House of Representatives. The Constitution states that no more than two-thirds of all ministers were allowed to be appointed from the territory of the Federation. The remaining one third had to be recruited from the Serb Republic. The chair of the Council of Ministers appointed deputy ministers (two to each ministry until 2002) who were not allowed to be of the same constituent people as their minister.[10] Moreover, every decision had to be supported by the minister and his deputy ministers. Finally, the ministerial positions were equally divided among Bosniaks, Bosnian Croats and Bosnian Serbs.[11]

The emphasis on group rights in Bosnia's key political institutions shows that Bosnia's institutional design is based on a power sharing arrangement or

[7] David Chandler, *Bosnia: Faking Democracy after Dayton* (London/Sterling: Pluto Press, 1999), 69.
[8] Ibid.
[9] Ibid., 68.
[10] 'The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 4: Constitution of Bosnia and Herzegovina.'
[11] Florian Bieber, 'Bosnia-Herzegovina: Slow Progress towards a Functional State', *Southeast European and Black Sea Studies* 6:1 (2006) 43-64, 52.

consociational settlement.[12] Consociationalism, as defined by Arend Lijphart, is characterized by four principles: government by grand coalition (all segments of society are included), segmental autonomy, proportional representation, and minority veto on decisions that affect the essential interests of minority communities.[13] Because consociationalism emphasizes the importance of the autonomous segments in a divided society, it has been criticised for entrenching cleavages and divisions based on ethnic identities. Moreover, critics have emphasized that consociationalism only functions when there is overarching cooperation at the elite level.[14] An alternative for consociationalism is the integrative approach adopted by Donald Horowitz.[15] Horowitz argues that in ethnically divided societies, moderation should be fostered by making politicians reciprocally dependent on the votes of members of other groups than their own.[16] Whereas Lijphart's model argues for making the different societal segments (ethnic groups) in Bosnia and Kosovo autonomous, Horowitz argues for their segmental disintegration. In the next section, it will be argued that while Bosnia's institutional design was based on a consociational settlement, the OHR has executed a policy which focuses on the integration of all three major ethnic groups rather than stimulating their segmental autonomy.

5.1.2 The OHR's attempts to create a civic nationalist political culture

The Dayton Agreement led to the establishment of a state which was multi-ethnic in design.[17] However, it was multi-ethnic only in the sense of co-existing ethnic communities, rather than integrated ethnic communities. Integration of the different ethnic communities in one civic nation is what the OHR actually aimed to achieve. Increasingly, the Dayton Agreement was considered an instrument that was suited to end the war, but not as a foundation for peace. Therefore, the PIC and the OHR chose an integrative civic nationalist approach, rather than an ethnic nationalist power sharing approach. In other words, the international administration did not want the three different ethnic groups merely to coexist, but also to integrate into a

[12] Sumantra Bose, *Bosnia after Dayton. Nationalist Partition and International Intervention* (Oxford: Oxford University Press, 2002), 43.
[13] Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale University Press, 1977). See for an analysis of consociationalism in Bosnia: Bose, *Bosnia after Dayton*, 216. Bieber, *Post-War Bosnia*, 44.
[14] Bose, *Bosnia after Dayton*, 217.
[15] Donald Horowitz, *Ethnic Groups in Conflict* (Second Edition; Berkeley/Los Angeles: California University Press, 2000), 563. Nina Caspersen, 'Good Fences Make Good Neighbours? A Comparison of Conflict-Regulation Strategies in Postwar Bosnia', *Journal of Peace Research* 41:5 (2004) 569-588.
[16] Bose, *Bosnia after Dayton*, 218.
[17] Carrie Manning and Miljenko Antic, 'The Limits of Electoral Engineering', *Journal of Democracy* 14:3 (2003) 45-59, 46. Richard Holbrooke, *To End A War* (New York: Random House, 1999).

functioning society. It represented an attempt to undue the results of the ethnic cleansing that had occurred during the war.[18]

The objective to create a civic nationalist political culture in Bosnia is reflected in official speeches and documents of the PIC and the OHR. First, in June 1996, in response to the refugee flow that had started in March out of Sarajevo because of the transfer of authority over some quarters of the city from the Serb Republic to the Federation, Carl Bildt stated: 'As the capital of all of Bosnia and Herzegovina, Sarajevo must reflect the multi-cultural and tolerant ideal we are trying to defend. As the standard bearer by which we measure progress, Sarajevo must be the example held up to combat the forces of ethnic separation and hostility that dominate so many other places - Mostar, Prijedor, Doboj, or Bugojno.'[19] Secondly, in its Bonn Declaration of December 1997, the PIC stated: 'The Council considers multi-ethnicity a fundamental goal for the consolidation of a stable and democratic Bosnia and Herzegovina. It therefore recognizes the need to support the establishment of new multi-ethnic parties and to strengthen the existing ones. It invites the High Representative, the OSCE and the Council of Europe to take due account of this need when reviewing the draft Election Law.'[20] Finally, when answering the question from a journalist about what Bosnia needed most, Petritsch declared: 'I think that the most important thing for BiH [Bosnia, *NvW*] at this moment is the strengthening of the political, intellectual and cultural elite's orientation towards a multinational and democratic state.'[21]

An important instrument for the creation of a civic nationalist political culture was electoral engineering. In other words, using elections and the electoral system in such a way that moderation is stimulated. The ethnic nationalist leaders of the war-time political parties were seen as obstructing the peaceful development of the country. In 1998, Carlos Westendorp stated: 'I have always said that the problem of Bosnia is that the leaders who started the war are still in power. Therefore the only solution for Bosnia would be that its people change their leaders at the elections.'[22] In May 2005, Ashdown declared: 'I believe that the current BiH [Bosnian, *NvW*] authorities cannot take it through the door to the EU (…) you cannot complete this journey to the EU unless the country gets rid of nationalism.'[23] Therefore, elections were regarded as a useful tool for removing

[18] Interview with an OHR official (5), *Sarajevo 6 May 2006*.
[19] Carl Bildt, *Report by the High Representative to the Florence Mid-Year Review Conference* (Sarajevo, 13 June 1996).
[20] Peace Implementation Council, 'PIC Bonn Conclusions', (1997).
[21] Slobodan Pavlovic, 'Interview: Wolfgang Petritsch, the High Representative in BiH: "Bosnia and Herzegovina on the brink of a major breakthrough"', *Sense/OHR Press Office* 21 November 2001.
[22] 'Interview: Carlos Westendorp, the High Representative in BiH: "The solution for Bosnia is to change the authorities"', *Delo/OHR Press Office* 22 April 1998.
[23] M Čubro, 'Interview: High Representative, Paddy Ashdown: "Nationalist Parties Cannot Take BiH into European Union"', *Nezavisne Novine/OHR Press Office* 19 May 2005.

ethnic nationalist politicians from the political scene and for creating functioning civic nationalist institutions.

Based on the Dayton Agreement, the OSCE was delegated an important role in the electoral system. The OSCE emphasized that political parties should comply with the letter and intent of the Dayton Agreement. Among others, calling for the independence and territorial separation of parts of Bosnia was regarded as a breach of the Dayton Agreement. By regulation of the OSCE managed Provisional Elections Commission (PEC), the political institutions established by Dayton were not allowed to be challenged by Bosnia's domestic institutions. Political parties that wanted to register were obliged to make a statement that the particular party would comply with the Dayton Agreement. Consequently, the PEC actually determined which party could run for elections and which could not.[24]

The PEC drafted election rules and regulations, which gave the OSCE vast powers in managing the election process.[25] Under the election rules, the OSCE was empowered to put pressure on parties that behaved undemocratically and could remove persons from the ballot. For instance, one month before the 1997 municipal elections took place, the OSCE removed about fifty candidates mostly from the SDS and HDZ.[26] Another example of the OSCE's authority was the voter registration restrictions that were established for refugees and internally displaced persons in 1996. During the first post-war national elections, ordinary Bosnians were supposed to be allowed to vote at their pre-war residence, at their current residence, or where they wished to live in the future. However, in order to encourage refugees and displaced persons (who made up to 36 percent of the electorate) to vote in their pre-war municipalities, where it was more likely they would vote against the dominant ethnic nationalist party and thus stimulate civic nationalist political institutions, so they were strongly discouraged from voting where they wished to live in the future. They could only do so, if they could prove with relevant and convincing documentation to have genuine ties with their future place of residence. Only few refugees and internally displaced persons could do so, and this meant that as a result of the promotion of multi-ethnic political structures, the right to choose a place of residence was withheld from refugees and internally displaced persons.[27]

The OHR was also involved in electoral engineering. First, it tried to limit the control of the ethnic nationalist parties over the political institutions as much as it could.[28] In 1996, for example, enormous pressure was exercised on SDS-President Radovan Karadžić to step down as the Serb Republic's President. The OSCE threatened to bar the SDS from the elections if it mentioned Karadžić's

[24] Chandler, *Faking Democracy*, 121.
[25] Ibid., 115.
[26] Ibid., 123.
[27] Ibid., 116 and 117. Belloni, 'Electoral Engineering in Bosnia', 347.
[28] Chandler, *Faking Democracy*, 114.

name at public rallies or if Karadžić's face appeared on election material.[29] After a public show down between the OSCE and the SDS, Karadžić was forced to step down as President of the Serb Republic and party leader of the SDS because of a deal reached between American negotiator Richard Holbrooke, Slobodan Milošević and leaders of the Serb Republic in July 1996.[30]

Secondly, the OHR openly supported moderate and non-nationalist political parties (see below). In that sense, the largest project of electoral engineering centered on the general elections of October 2000. Beginning in April 2000, the OSCE and OHR started encouraging Bosnians to vote for the opposition rather than for the incumbent ethnic nationalist parties.[31] In the same year, the OHR openly supported the relatively moderate Milorad Dodik in the elections to the Presidency in the Serb Republic. During the general elections of 2002, the international administration's support for moderate parties was more indirect and covert, but nonetheless clearly present. A few weeks before the elections, the PIC Steering Board declared: 'Bosnia and Herzegovina's future lies in a successful unified and stable state fully integrated into European and transatlantic structures. We are committed to helping Bosnia and Herzegovina reach that destination. But how fast you get there depends on your commitment to reform (…) It is for you to choose your political future. And we call on all of you to use the elections on 5 October to shape the future, not be shaped by the past.'[32]

Thirdly, the OHR wanted to use the electoral system to foster moderation. The OHR introduced three major experiments including the introduction of open lists, multi-member constituencies and preferential voting.[33] With the open list system, voters were able to vote for individual politicians, rather than political parties. The idea behind the introduction of open lists was that it would increase the accountability of elected officials and put more decision-making power in the hands of the voters. The objective was to reduce the control of political parties (mainly ethnic nationalist political parties) over the voting process. However, although the open list system increases accountability, it does not necessarily promote moderation in a deeply divided society.[34] In the case of Bosnia, voters continued to vote for their own ethnic candidates as is pointed out below.

The same objective of stimulating moderation also motivated the introduction of multi-member constituencies. Before 2000, Bosnia had consisted of

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[29] Ibid., 102. Wolfgang Petritsch, *Bosnien und Herzegowina 5 Jahre Nach Dayton. Hat Der Friede Eine Chance?* (Klagenfurt: Wieser Verlag, 2001), 78.
[30] International Crisis Group, *The Wages of Sin: Confronting Bosnia's Republika Srprska* (Sarajevo/Brussels, 2001), 8, ICG Balkans Report No. 118. Chandler, *Faking Democracy*, 121.
[31] Bieber, *Post-War Bosnia*, 99.
[32] Peace Implementation Council, 'Declaration of the Political Directors of the Peace Implementation Council Steering Board', (Sarajevo: 24 September 2002).
[33] Open lists and multi-member constituencies were introduced in the 2001 Election Law. However, the new rules were already applied during the elections of 2000.
[34] Bieber, *Post-War Bosnia*, 94 and 95. Belloni, 'Electoral Engineering in Bosnia', 340.

two electoral districts: the Federation and the Serb Republic. The new election law created five multi-member electoral districts in the Federation and three in the Serb Republic. Again, this measure hardly fostered inter-ethnic moderation. That was especially difficult as the constituencies were created in such a way that a clear ethnic majority was preserved in each constituency.[35]

The third tool that was used for fostering moderation was preferential or alternative voting. This was introduced on the occasion of the Serb Republic's Presidency elections in 2000. It was hoped that this would promote the relatively moderate Bosnian Serb politician Milorad Dodik. However, the system did not work as intended. Second preferences proved to be irrelevant given the huge support for the SDS (49,8 percent) in the first round. Moreover, the system did not convince minorities to vote for a moderate candidate from another ethnic group. Given this disappointing result from the perspective of the OHR, the preferential voting system was not introduced in the 2001 Election Law.[36]

As a result of the international engineering the results of the general elections of 2000 have been described as: 'a vote against incumbents, whatever their political views.'[37] At the same time, the effects of the changes in the electoral system were very limited.[38] In the next section it is explained that the HDZ and SDS were actually strengthened compared to the Municipal elections in 1997 and that the resulting multi-ethnic and moderate Alliance for Change coalition was only short-lived. Nonetheless, electoral engineering did not stop in 2000. The election law of 2001 was amended several times. In April 2006, for instance, the active voter registration system was changed into a passive registration system.[39]

Next to electoral engineering, the OHR used constitutional engineering as a tool to stimulate civic nationalism in Bosnian politics. First, it stimulated (and finally imposed) the amendment of the entity constitutions. The entity constitutions had almost remained unchanged after the war. As a consequence, the Federation's entity constitution included discriminating provisions concerning Bosnian Serbs and the Serb Republic's Constitution contained discriminating provisions concerning Bosnian Croats and Bosniaks. In 1997, this was addressed by the Serb Civil Council, an organization which represented Bosnian Serbs in the Federation, and subsequently taken up by Alija Izetbegović in February 1998. Izetbegović, then member of the Bosnian Presidency, brought the issue to the Constitutional Court.[40] Izetbegović argued that fourteen provisions of the Serb Republic's Constitution and five provisions of the Federation's Constitution violated the

[35] Bieber, *Post-War Bosnia*, 95. Belloni, 'Electoral Engineering in Bosnia', 341 and 342.
[36] Belloni, 'Electoral Engineering in Bosnia.'
[37] Gerald Knaus and Marcus Cox, 'Whither Bosnia?' *NATO Review* 48:3 (2000) 6-11, 6.
[38] Bieber, *Post-War Bosnia*, 99.
[39] OSCE Mission in Kosovo, 'International Election Observation Mission. Bosnia and Herzegovina - General Elections 1 October 2006. Statement of Preliminary Findings and Conclusions', 3.
[40] Bieber, *Post-War Bosnia*, 122.

Bosnian state level Constitution. The most important of these provisions concerned the status of Bosnia's constituent peoples. The Federation Constitution included only Bosniaks and Croats as constituent peoples. The Serb Republic's Constitution made no reference to constituent peoples as such, but only referred to the 'Serb people.' Neither did it mention Bosniaks, nor Bosnian Croats. The question was whether the three peoples were only constituent on the level of the nation state, or also on the lower levels of government (the entity, cantonal and municipal levels).[41]

In four partial decisions (in January, February, July and August 2000) the Constitutional Court declared with a five-to-four majority that the constituent peoples provisions within the entity constitutions were unconstitutional.[42] The judges that had supported the case included two Bosniak judges and three international judges. The two Bosnian Croat and two Bosnian Serb judges opposed the decision. Their main line of argument was that since the three groups are mentioned as constituent peoples in the preamble of the state level Constitution only the provisions were not legally binding. They also argued that the decision altered the governing structure of the country fundamentally. That was indeed the case. In the decision the Court argued that the Bosnian state was not based on the existence of two entities and their respective nations, but on a multi-ethnic society. It also found that territorial ethnic autonomy was not in conformity with democratic principles and human rights. As such, implicitly the decision criticized the ethnically organized basis of the Dayton Constitution.[43]

The entity parliaments and governments refused, given the controversial character of the decision, to amend their constitutions. Consequently, the OHR intervened and created two constitutional commissions in January 2001: one commission with 16 members (4 from each constituent people and 4 from other communities) for each entity. The commission members were selected by the entity parliaments and nominated by the OHR. The commissions were responsible for safeguarding the rights of the three constituent peoples and other communities and to develop recommendations for constitutional amendments to implement the decision of the Constitutional Court.[44] The recommendations were negotiated among the major political parties in January 2002 (Mrakovica) and in February 2002 (Sarajevo). An agreement was reached on 27 March 2002, but the HDZ and

[41] International Crisis Group, *Implementing Equality. The Constituent Peoples Decision in Bosnia & Herzegovina* (Sarajevo/Brussels, 2002), 2 and 3, Balkans Report No. 128.
[42] As a result of its decision, the court was praised as the first state-level body to play a serious and positive role in Bosnia: Kurt W. Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', *After Intervention: Public Security Management in Post-Conflict Societies. From Intervention to Sustainable Local Ownership*, Anja H. Ebnöther and Philipp H. Fluri, eds. (Vienna: DCAF et al., 2005) 101-137, 135.
[43] Bieber, *Post-War Bosnia*, 123-127. International Crisis Group, *Implementing Equality. The Constituent Peoples Decision in Bosnia & Herzegovina*, 3.
[44] Bieber, *Post-War Bosnia*, 128.

SDA were not part of it. Moreover, many parties from the Serb Republic had reservations over the compromise which eventually led to amendments weakening the agreement. In addition, the moderate Alliance for Change coalition failed to get the support of the HDZ and SDA in the Federation House of Peoples.

These deadlocks were only overcome on 19 April 2002, when High Representative Petritsch imposed the 27 March 2002 Agreement on both entities. However, the HDZ and SDS objected to the decision and seriously slowed down implementation in the following months.[45] In the end, the constitutional amendments did not lead to a strengthened civic nationalist political culture. Instead, the result of the amendments was that Bosnia's constitutional arrangement became even more complicated and due to the changes the Bosnian Croats and Bosniaks were now able to engage in a similar degree of obstruction at the state level, as some of the Bosnian Serb parties had done before. Moreover, the effect of the decision led to little more than window dressing.[46]

A second case of constitutional engineering was the (failed) attempt to change the Dayton Constitution itself. This attempt will be elaborated upon in Chapter eight; for now, suffice it to say that the reform attempted to make the state level institutions more integrative and less based on a power sharing agreement. For example, the agreement of the draft constitutional amendments of 18 March 2006 included a single President with two Vice Presidents, rather than a collective Presidency. Also the powers of the House of Peoples would be curtailed and the powers of the Prime Minister would be expanded. However, the draft amendments failed to be adopted by the state level House of Representatives and the constitutional reform process was postponed until after the general elections in October 2006.

5.1.3 Bosnia's persisting ethnic nationalist political culture

Despite the OHR's attempts to establish a civic nationalist political culture, the dominant political culture remained based on ethnic nationalism. Bosnia has a history of voting along ethnic nationalist lines which goes back to 1910, when the first multi-party elections were organized by the Austro-Hungarian Empire. Subsequently, between 1920 and 1938 the votes that were cast in seven multi-party elections in the Kingdom of Yugoslavia went to ethnic nationalist parties.[47] The multi-party elections in 1990 led to a victory of the newly established ethnic nationalist parties; the SDA, the SDS and HDZ which together won 75 percent of

[45] Ibid., 128-130. An OHR official admitted that the implementation of the decision had not been a priority of the OHR. Interview with an OHR official (7), *Sarajevo 8 May 2006*.
[46] Bieber, *Post-War Bosnia*, 132.
[47] Manning and Antic, 'Limits of Electoral Engineering', 48.

the vote.[48] Given this tradition, it is not surprising that Bosnians continued to support ethnic nationalist parties after the war.[49] With the exception of the general elections of 2000 and 2006, Bosnian politics has been dominated by ethnic nationalist parties and therefore an ethnic nationalist political culture since 1995.

The three main ethnic nationalist parties were introduced in Chapter three; the Bosniak SDA, the Bosnian Croat HDZ and the Bosnian Serb SDS. Following the war, the three parties had areas under their control where they were able to exercise nearly a complete hold on power. The SDS ruled in the Serb Republic, the HDZ in those cantons of the Federation that were controlled by Bosnian Croats and the SDA in central Bosnia. Moreover, all three ethnic nationalist parties were closely connected to the three separate armies and war-time economic structures.[50] Despite their dominant position, the ethnic nationalist political parties were faced with competition from three other types of political parties: moderate (ethnic) nationalist parties, non-nationalist (civic nationalist) parties, and extreme (ethnic) nationalist parties. [51]

First, moderate ethnic nationalist parties will be discussed. Although these parties have a certain commitment to cross-ethnic cooperation and pursue an agenda which is not exclusively ethnically defined, they are primarily committed to one ethnic community. Therefore, they can be regarded as multi-ethnic political parties, but not as civic nationalist parties. The former Prime Minister of the war-time Bosnian Republic, Haris Silajdžić, established the Party for Bosnia and Herzegovina (*Stranka za Bosnu i Hercegovinu, SBiH*). Although the SBiH was ethnic nationalist in the sense that it appealed to Bosniak voters, it was more moderate in its agenda than the SDA. Among the moderate ethnic nationalist parties with a Croat background, few proved to be viable. Most of these parties had split from the HDZ. They include the New Democratic Initiative (*Nova Hrvatska Iniciativa*, NHI), established by Krešimir Zubak, and the People's Party 'Working Towards Progress' (*Narodna Stranka 'Radom Za Boljitak'*, NSRZB). Whereas the moderate ethnic nationalist parties with a Bosniak and Croat background have their voter base mainly in the Federation, the voter base of the Alliance of Independent Social Democrats (*Savez Nezavisnih Socialdemokrata*, SNSD) has been in the Serb Republic. This party was established by Milorad Dodik in 2001. Like the SBiH, it is an ethnic nationalist party (supporting the autonomy of the Serb Republic), but less so than the SDS and therefore classified as moderate. Other moderate ethnic nationalist parties with a voter base in the Serb Republic are the Serb People's Assembly (*Srpski Narodni Savez*, SNS) of former Serb Republic President Biljana Plavšić, the Party of Democratic Progress (*Partija Demokratskog Progresa*, PDP)

[48] International Crisis Group, *Elections in Bosnia Herzegovina* (Sarajevo, 1996), 2, ICG Bosnia Report No. 16.
[49] Belloni, 'Electoral Engineering in Bosnia', 350.
[50] Bieber, *Post-War Bosnia*, 41.
[51] This classification is based on the one presented by Bieber: Ibid., 103.

which was established in 1999 by Mladen Ivanović and the Socialist Party of the Serb Republic (*Socijalistička Partija Republike Srpske*, SPRS) which used to be affiliated with Milošević's Socialist Party of Serbia, but which broke with Belgrade in 1999.[52]

Amid the moderate ethnic nationalist parties in the Serb Republic and Federation, only one politically relevant non-nationalist party emerged. In contrast to the ethnic nationalist and moderate ethnic nationalist parties, non-nationalist parties do not have a group-specific program and potentially appeal to more than one ethnic community. In this way, non-nationalist parties can be considered as civic nationalist parties. This is the case with the Social Democratic Party (*Socijaldemokratska Partija*, SDP). Its leadership and voter base are multi-ethnic and the party succeeded in attracting voters from all constituent peoples. Moreover, the SDP has argued in favor of the strengthening of the state-level institutions and supports the abolition of ethnicity as an organizing principle for Bosnia's institutions.[53] However, despite its civic nationalist character, the SDP has in fact only succeeded in attracting voters from the cities in the Federation. In 2000, for example, the SDP gained 27 percent of the vote in the Federation and only five percent in the Serb Republic. Moreover, despite the multi-ethnic voter base, most supporters of the party come from the Bosniak community.[54] Thus, whereas the SDP is formally civic nationalist, in practice it cannot be regarded as such.

Finally, a few extreme ethnic nationalist parties have been established. These parties in general 'advocate a change of the status quo, usually secession, threaten other nations [ethnic communities, *NvW*] and endorse the use of force.'[55] Two main extreme ethnic nationalist political parties can be identified. First, within the Serb Republic the Serb Radical Party (*Srpska Radikalna Stranka*, SRS) tried to outflank the SDS in its ethnic nationalist agenda. The SRS was a branch of the SRS in Serbia and was led by Nikola Poplasen. Secondly, within the Federation the Croat Democratic Union 1990 (*Hrvatska Demokratska Zajednica 1990*, HDZ 1990) split off from the HDZ under the leadership of Božo Ljubić in April 2006. By appealing to the 'original' HDZ as established in 1990, it wanted to follow a more radical ethnic nationalist course than the HDZ.[56]

Despite the presence of these alternative political parties, the three main ethnic nationalist parties have dominated the Presidency, the House of

[52] Ibid., 42. International Crisis Group, *Republika Srpska in the Post-Kosovo Era: Collateral Damage and Transformation* (Sarajevo, 1999), 2, ICG Report No. 71.
[53] Bieber, *Post-War Bosnia*, 41 and 104.
[54] Ibid., 104.
[55] Ibid., 103.
[56] OSCE Mission in Kosovo, 'International Election Observation Mission. Bosnia and Herzegovina - General Elections 1 October 2006. Statement of Preliminary Findings and Conclusions.'

Representatives and the Council of Ministers between 1996 and 2006.[57] To begin with an examination of the Presidency, Table 5.1 shows that the three main ethnic nationalist parties lost some terrain during the 1998-2002 mandate of the Presidency, but regained their positions in 2002. A significant change, however, occurred in 2006, when the SDA, SDS and HDZ lost the Presidency. Instead, its members came from two moderate ethnic nationalist parties (SBiH and SNSD) and from the non-nationalist SDP. At the same time, as has been argued above, the SBiH, SNSD and SDP cannot be regarded as civic nationalist political parties. Therefore, despite the absence of the SDA, SDS and HDZ, ethnic nationalist agenda's continued to dominate the Presidency after 2006.

Table 5.1: Members of the Bosnian Presidency and political party affiliation[58]

	1996-1998	*1998-2002*	*2002 - 2006*	*2006*
Bosniak member	Alija Izetbegović, SDA	Alija Izetbegović, SDA (1998-2000) Halid Genjac, SDA (2000-2001) Beriz Belkić, SBiH (2001-2002)	Sulejman Tihić, SDA	Haris Silajdžić, SBiH
Serb member	Momčilo Krajišnik, SDS	Živko Radišić, SPRS	Mirko Šarović, SDS (2002) Borislav Paravać[59], SDS (2002 - 2006)	Nebojša Radmanović, SNSD
Croat member	Krešimir Zubak, HDZ	Ante Jelavić, HDZ (1998-2001) Jozo Križanović, SDP (2001 – 2002)	Dragan Čović, HDZ (2002-2005) Ivo Miro Jovic[60], HDZ (2005-2006)	Željko Komšić, SDP

The House of Representatives shows similar development as has occurred with the Presidency. Table 5.2 shows the number of seats occupied by the three main ethnic nationalist parties in the House of Representatives from 1996 to 2006. As with the Presidency, it shows a dominant position for the SDA, HDZ and SDS. At the same time, the table shows decreasing support for the three ethnic nationalist parties in favor of the moderate ethnic nationalist political parties and the SDP.

[57] Since the House of Peoples is indirectly elected by the entity parliaments, the composition of this institution is not included in this analysis.
[58] Bieber, *Post-War Bosnia*, 49. OSCE Office for Democratic Institutions and Human Rights, *Bosnia and Herzegovina. General Elections 1 October 2006. OSCE/ODIHIR Election Observation Mission Final Report* (Warsaw, 2007), 28.
[59] Mirko Sarovic was succeeded by Borislav Paravac on 10 April 2003.
[60] Dragan Covic was replaced by Ivo Miro Jovic on 9 May 2005, after the former had been removed from his position by High Representative Paddy Ashdown as a result of corruption charges.

Table 5.2: Number of seats of major political parties in the Bosnian House of Representatives[61]					
Election year	**1996**	**1998**	**2000**	**2002**	**2006**
SDA	16	-	7	9	9
KCDB (SDA, SBiH and others)	-	14	-	-	-
HDZ	8	6	5	5	-
HDZ-Croat Coalition-HNZ	-	-	-	-	3
SDS	9	4	6	5	3
Total share of seats (percentages)	**78,57**	**57,14**	**42,85**	**45,23**	**35,7**
SBiH	-	2	4	5	8
SDP	-	4	8	4	5
PDP	-	-	2	2	1
SNSD	-	-	1	3	7
Total share of seats (percentages)	-	**14,28**	**35,71**	**33,33**	**50**
HDZ 1990	-	-	-	-	2
Total share of seats (percentages)	-	-	-	-	**4,76**

It is important to take a closer look at the decreasing support for the SDA, HDZ and SDS, since it suggests a decreasing ethnic nationalist political culture. In August 1996, the International Crisis Group argued in favor of the postponement of the 14 September 1996 elections. The think-tank found that the minimum conditions for free and fair elections had not been reached, because refugee return and reintegration had not begun yet, indicted war criminals were able to exert influence behind the scenes and the freedom of movement and expression remained severely restricted. Bosnia was *de facto* ethnically partitioned, leading to a situation in which voters were more motivated to vote in favor of the ethnic nationalist parties.[62] Nonetheless, following the strict time schedule of the Dayton Agreement which determined that elections should take place within six months of signing of the Agreement, the elections were actually held and confirmed 'the effective division of the country on ethnic lines (…).'[63] With the SDA, HDZ and SDS gaining a large victory, Bosnia's polarized society had resulted in polarized

[61] Bieber, *Post-War Bosnia*, 93 and 102. OSCE Office for Democratic Institutions and Human Rights, *Bosnia and Herzegovina. General Elections 1 October 2006. OSCE/ODIHIR Election Observation Mission Final Report*, 29.
[62] International Crisis Group, *The Wages of Sin: Confronting Bosnia's Republika Srprska*, 8.
[63] International Crisis Group, *Elections in Bosnia Herzegovina*, 1.

mono-ethnic voting blocks.[64] As in 1990, the Bosnians sought security within their own ethnic group. In addition, the ethnic nationalist parties had executed a policy of ethnic engineering by encouraging internally displaced persons to vote in their current place of residency. Moreover, the parties effectively mobilized mass media to get their message across.[65]

The ethnic nationalist victory meant for the Presidency that its three members were chosen from the SDA, HDZ and SDS. For the Council of Ministers this meant that the three parties had to establish a coalition, which was difficult. The ethnic nationalist parties had strongly campaigned against each other and were now expected to cooperate. The appointment of a chair was especially difficult. It proved to be impossible to reach consensus on the issue and therefore it was decided that two co-chairs and one vice-chair would be established from all different constituent peoples.

Since the international community had anticipated a difficult electoral environment after the war, the mandate of the postwar incumbents was limited to two years instead of four years.[66] Therefore, new elections were held again on 12 and 13 September 1998. During the second general elections, the moderate ethnic nationalist parties made some gains at the expense of the SDA, HDZ and SDS. In the Presidency, the SDA and HDZ were able to deliver a member, but the Bosnian Serb member, Živko Radišić, came from the SPRS rather than the SDS. In the House of Representatives, the moderate ethnic nationalist opposition was better organized and stronger. In the Council of Ministers, the SDS and HDZ had to cooperate with a pre-election alliance: the Coalition for the Unified and Democratic Bosnia (*Koalicija za Cjelovitu I Demokratsku BiH*). This alliance included the SDA and some moderate ethnic nationalist parties such as the SBiH.[67]

Nonetheless, the ethnic nationalist parties continued to dominate the political institutions with their ethnic nationalist policies. For example, on 8 October 1998, High Representative Westendorp dismissed Dragan Čavić the Vice-Chairman of the SDS for having made ethnic nationalist statements about the tense situation in Kosovo.[68] The SDS was more or less forced to appeal to ethnic nationalist voters, because the major challenge for the ethnic nationalist parties did not come from the moderate ethnic nationalist opposition, but from within. The SDS had been weakened by a split between a more radical wing under the leadership of Momčilo Krajišnik and a less radical one under the leadership of Biljana Plavšić, who eventually established the SNS. The SDS was also in

[64] International Crisis Group, *The Wages of Sin: Confronting Bosnia's Republika Srprska*.
[65] Ibid., 8.
[66] Chandler, *Faking Democracy*, 101.
[67] Bieber, *Post-War Bosnia*, 92 and 93; Amra Kebo, 'Interview: Hanns H. Schumacher, Senior Deputy HR: "The winner does not take it all"', *Oslobodenje/OHR Press Office* 13 October 1998.
[68] Office of the High Representative, 'Decision removing Dragan Cavic from his position as a member of the newly elected RS National Assembly', (Sarajevo: 8 October 1998).

competition with the SRS under the leadership of Nikola Poplasen, which was even more openly ethnic nationalist than the SDS. Similar internal difficulties haunted the HDZ, which was somewhat weakened when Krešimir Zubak, the Bosnian Croat member of the state level Presidency, left the party and founded the more moderate NHI in 2002.

It seemed that a real change was made after the third general elections in 2000. During these elections, the moderate ethnic nationalist political parties made significant gains which resulted in the Alliance for Change coalition. The Alliance was formed by the SDP, SBiH and eight (later nine) other small moderate ethnic nationalist parties; including the SNSD and PDP from the Serb Republic.[69] This Alliance was enthusiastically received by the PIC. During its meeting on 7 May 2002, the PIC Steering Board concluded: 'The Steering Board notes that substantial progress was made in Bosnia and Herzegovina during Wolfgang Petritsch' three-year mandate, which has been marked by the decline of nationalism and the strengthening of tolerance and multi-ethnicity.'[70]

However, such optimism was not really warranted. First, in comparison to the municipal elections which had been organized in the same year, the HDZ and SDS were actually strengthened.[71] Secondly, the Alliance for Change appealed mainly to Bosniak voters and was perhaps moderate, but not substantially multi-ethnic.[72] Thirdly, the Alliance for Change only had 17 out of the 42 seats in the House of Representatives and thus formed a minority government. It had to enter into an arrangement of mutual support with four parties from the Serb Republic. Three of these parties were also part of the SDS led government in the Serb Republic, which confused voters and made the Alliance suspicious by association.[73] Fourthly, the Alliance for Change was primarily the result of international electoral engineering and it is doubtful whether it could have been formed without international interference.[74]

The general elections of 2000 did not include elections for the Presidency. However, new members had to be found since Izetbegović had retired and Jelavić was dismissed by the High Representative. They were replaced by Beriz Belkić and Jozo Križanović, both from moderate ethnic nationalist political parties (the SBiH and the SDP respectively), became members of the Presidency in 2001. Together with Živko Radišić who was elected in 1998, the three moderate ethnic nationalist politicians controlled the institution until 2002. The Alliance for Change

[69] Bieber, *Post-War Bosnia*, 101.
[70] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (7 May 2002).
[71] Bieber, *Post-War Bosnia*, 99.
[72] International Crisis Group, *Bosnia's Nationalist Governments. Paddy Ashdown and the Paradoxes of State Building* (Sarajevo/Brussels, 2003), 6, ICG Balkans Report No. 146.
[73] Ibid., 5 and 6.
[74] The Alliance for Change was primarily created, because of the interference of former American and British ambassadors Tom Miller and Graham Grand. Ibid., 5.

coalition, in combination with electoral engineering by the OHR, had ensured the election of Belkić and Križanović. The election law called for the election of a new Presidency member by the members of the same constituent people in both houses of parliament. However, the High Representative amended the law in such a way that the consent of the House of Peoples was only required for the first two rounds of voting. If two rounds failed to result in the election of a nominated candidate, the House of Representatives would be allowed to decide on the matter.[75] That is what eventually happened.

The general elections of 2002 showed that the Alliance for Change coalition and the moderate ethnic nationalist Presidency was of a short duration; the fourth general elections resulted in a return of ethnic nationalistic parties. Prior to the elections, the Alliance for Change could not agree on a joint election campaign and fell apart. As a result, the three main ethnic nationalistic parties returned to power; for the first time since 1996, and mainly due to the SDA, the percentage of ethnic nationalists in Bosnia's parliaments increased from 46 percent in 2000 to 48 percent in 2002. Nonetheless, although the SDA, SDS and HDZ won the elections, in absolute terms of voter turnout they lost votes (together the loss amounted to more than 92.000 votes) in comparison with the general elections of 2000. In comparison to those elections, only the SDA won more votes (2249) in absolute terms in the Federation parliament. At the same time the party lost 11.000 votes in the National Assembly of the Serb Republic, so that in the end the SDA lost almost 9000 votes. The SRS was the only extreme ethnic nationalist party that won votes compared to the elections of 2000. The party had been banned from participating in the elections of 2000, but gained 22.396 votes in 2002.[76]

The victory of the ethnic nationalist parties was mainly based on the weakness of the moderate ethnic nationalist parties which simply lost more votes in absolute terms than the ethnic nationalist parties. The general disillusionment with the political process, evidenced by a low voter turnout of 54 percent, made the ethnic nationalist victory possible.[77] After the elections, a coalition was formed between the SDA, HDZ, SDS, PDP and SBiH.[78] Theoretically, it would have been possible to form a Council of Ministers without the ethnic nationalists, but that would have involved too many small and heterogeneous parties; making the coalition even less coherent than the Alliance for Change had been. Thus, in practice, the formation of an ethnic nationalistic government could not be avoided. It took until 13 January 2003 before the coalition had been formed, mainly because of the participation of the SBiH. Its leader, Haris Silajdžić rejected the offered chairmanship of the Council of Ministers, due to which the political deals between

[75] Bieber, *Post-War Bosnia*, 49 and 50.
[76] National Democratic Institute, *Bosnia Herzegovina: Election Results Signal Voter Frustration, Not Return to Nationalism* (Washington, 10 May 2002).
[77] Bieber, *Post-War Bosnia*, 101.
[78] Ibid., 54.

the parties - especially between the SDA (who eventually delivered the chair) and the HDZ - had to be renegotiated.[79]

The 2006 elections were the first elections to be finally administered entirely by Bosnians themselves. They were declared to be generally in line with international standards for democratic elections.[80] Nonetheless, the campaign included fierce ethnic nationalist rhetoric. The failed constitutional reform of spring 2006, led to an election campaign in which key questions of the constitutional structure prevailed over economic issues, education or social welfare. This contributed to the increase in use even among politicians considered as moderates of ethnic nationalist rhetoric.[81] Several Bosnian Serb politicians pleaded for an independent Serb Republic. SNSD leader Milorad Dodik received a warning from High Representative Schwarz-Schilling for linking the status of the Serb Republic to the ongoing status talks in Kosovo.[82] Further, several Bosniak politicians pleaded for the abolishment of the Serb Republic. Haris Silajdžić argued openly for the abolition of the entities, which he called a 'genocidal creation.'[83] On their turn, Bosnian Croat politicians raised the possibility of a third Croat entity. Moreover, Bosnian Croat parties objected to the SDP's decision to put forward only a Bosnian Croat candidate for the state level Presidency. They argued that such a candidate might be elected mainly by Bosniak voters, given the party's predominant Bosniak voter base. They declared that they would not recognize the Presidency member as a legitimate representative of the Croat people.[84]

Examining the election results shows that the three traditional ethnic nationalist political parties lost substantial ground. As Table 5.2 shows, only the SDA managed to hold on to its 9 seats, whereas the HDZ and SDS both lost two seats compared to the results of 2002. Together, the major ethnic nationalist political parties constituted 35,7 percent of the House of Representatives. Nonetheless, new ethnic nationalist parties such as HDZ 1990 and populist parties such as SNSD and SBiH solidified the divisions between the different communities.[85] The elections resulted in a grand coalition which was formed on 9 February 2007 and existed of the Bosniak SDA and SBiH, the Bosnian Serb SNSD and PDP, and the Bosnian Croat HDZ, HDZ 1990 and the new NSRZB. The

[79] International Crisis Group, *Bosnia's Nationalist Governments*, 12.
[80] OSCE Mission in Kosovo, 'International Election Observation Mission. Bosnia and Herzegovina - General Elections 1 October 2006. Statement of Preliminary Findings and Conclusions', 1.
[81] International Crisis Group, *Ensuring Bosnia's Future: A New International Engagement Strategy* (Sarajevo/Brussels, 2007), 19, Europe Report No. 180.
[82] OSCE Mission in Kosovo, 'International Election Observation Mission. Bosnia and Herzegovina - General Elections 1 October 2006. Statement of Preliminary Findings and Conclusions', 5. OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III. Review Period: Laws promulgated in 2005* (Pristina, 2007), 10.
[83] International Crisis Group, *Ensuring Bosnia's Future*, 19.
[84] OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III.*, 10.
[85] International Crisis Group, *Ensuring Bosnia's Future*, 19.

Presidency was occupied by candidates from the SBiH, the SNSD and the SDP (see Table 5.1).

Despite the loss of the three traditional ethnic nationalist parties, ethnic nationalist politics continued to dominate Bosnian politics in 2007 and 2008. In the tri-part Presidency, the individual members remain allegiant to their respective entities and constituent peoples.[86] This was not very surprising, because the Dayton Constitution based the Presidency on territorial and ethnic national representation. In a weekly column High Representative Schwarz-Schilling concluded about the Presidency: 'This institution – which should represent and speak on behalf of the entire population of this country – came to the Steering Board meeting in disarray, its three members presenting positions that were totally incompatible with one another.'[87] The Council of Ministers did not do much better. As the result of ethnic nationalist differences, it experienced serious internal tensions and deadlocks in 2007.[88] The public administration, which falls under the responsibility of the Council of Ministers, was also dominated by an ethnic nationalist political culture. The European Commission concluded: 'There are still insufficient safeguards against political interference in public administration, where ethnic identity and party membership play a significant role.'[89] The Parliamentary Assembly, finally, was still controlled by political parties with ethnic nationalist voter bases. The share of moderate ethnic nationalist parties has increased since 1995, but like the SDS, SDA and HDZ they appeal to a specific constituent people. As a result, the European Commission had to conclude: 'Overall there has been limited progress in improving the efficiency of the Parliamentary Assembly of Bosnia and Herzegovina. Its work has been adversely affected by the tense political climate, systematic voting along ethnic lines and insufficient administrative resources.'[90]

5.1.4 Conflict management and institutional congruency in Bosnia

In 2003, High Representative Ashdown declared: 'It is relatively easy, relatively quickly, to change the hardware of the state – its institutions. It is much more difficult to change the software – peoples' attitudes. But here, slowly, changes appear to be occurring too. A shift in the political culture – in the political

[86] Commission of the European Communities, *Bosnia and Herzegovina 2007 Progress Report* (Brussels, 2007), 9.
[87] Office of the High Representative, 'Weekly column by Christian Schwarz-Schilling, High Representative for BiH: "Speaking With One Voice", 22 June 2007', (Sarajevo: 2007).
[88] Commission of the European Communities, *Bosnia and Herzegovina 2007 Progress Report*, 9.
[89] Ibid., 11.
[90] Ibid., 8.

mindset.'[91] Perhaps the year 2003 was too early, but a slow decline of the ethnic nationalist political culture is apparent when one looks at the outcomes of the general elections between 1996 and 2006. In general, the election results show some improvement with respect to the creation of a civic nationalist political culture. Nevertheless, in 2008 ethnic nationalism had far from disappeared in Bosnia. In his farewell speech at the beginning of 2006, Ashdown stated: 'And one other very tough thing has to happen in BiH [Bosnia, *NvW*] before the European journey is over. It requires a change of mental attitude and that is the toughest thing to change of all. But BiH has no option. BiH has to learn that in Europe individual rights are protected individually not collectively. That each citizen is defined by their individuality, not their ethnicity.'[92] The analysis shows that the ethnic nationalist parties still dominated the political system in 2008 and thus the Presidency, the Council of Ministers and Parliamentary Assembly. At the same time, the OHR continued to stimulate a political culture of civic nationalism. Thus, in Bosnia there was no institutional congruency by the summer of 2008.

The different conflict management strategies that were adopted in Bosnia and Kosovo can plausibly explain the reasons behind this institutional incongruency. As explained in Chapter three, the incompatibility of the Bosnian conflict was incorporated in the Dayton Peace Agreement. This resulted in a constitution that mainly focused on the interests of specific ethnic communities rather than on individual citizens. The constitutional emphasis on ethnicity was reflected in the design of the three major institutions. At the same time, the international administration expected these institutions to defend the interests of all Bosnians as one civic nation. The objective of the international administration was to go beyond ethnicity and to create a civic nationalist political culture in which citizenship rather than ethnicity would be the organizing principle. This objective was not achieved due to the Dayton Constitution which Bosnian politicians used to legitimate and back their ethnic nationalist policies. The ethnicity based Constitution led the OHR to support constitutional reforms (see Chapter seven). By reforming the Constitution, the OHR hoped to diminish the emphasis placed on ethnicity and to increase the role of citizenship in Bosnia's society. Although constitutional reforms may have strengthened the international administration's attempt to create a civic nationalist political culture, the reforms had not materialized by 2008.

[91] Office of the High Representative, 'Speech by the High Representative for BiH Paddy Ashdown At the United Nations Security Council', (8 October 2003).
[92] Paddy Ashdown, 'High Representative's Farewell Speech to the BiH House of Representatives', (Sarajevo: 30 January 2006).

5.2 Kosovo

5.2.1 Provisional power sharing in Kosovo

Whereas a power sharing arrangement was the maximum that could be achieved among the conflicting parties in Bosnia, in the case of Kosovo only a cease-fire could be agreed upon. Any (provisional) power sharing arrangement had to be made at a later stage. That was done through the establishment of the Interim Administrative Council which included, next to the four international representatives, four Kosovo Albanians and one Kosovo Serb.[93] Secondly, the Constitutional Framework was drafted in 2001. Just like Bosnia's Constitution, Kosovo's Constitutional Framework emphasized the importance of ethnicity and group rights. The preamble states: 'Recognizing the need to fully protect and uphold the rights of all Communities of Kosovo and their members'[94] As in Bosnia, ethnic identity became embedded in the political system and was regarded as the defining social characteristic in Kosovo.[95] However, the difference with Bosnia is the ethnic balance. Instead of three ethnic groups which all by themselves form a minority, Kosovo has a large majority (about 90 percent of the population) of Kosovo Albanians and a small minority (between 5 and 7 percent) of Kosovo Serbs. As is pointed out below, that has influenced the design of Kosovo's provisional institutions.

The institution of the Presidency in Kosovo is not collective, but unitary. In contrast to Bosnia, the Presidency has not been 'divided' between the dominant ethnic groups. The President is also not elected by popular vote as in Bosnia, but indirectly by Kosovo's Assembly. Since the President is chosen by a two third majority, it is possible to elect a President without the approval of the Kosovo Serb delegates, who are unlikely to occupy more than one third of the seats in the Assembly. Moreover, given the Kosovo Albanian majority, it is highly unlikely that a Kosovo Serb will ever be elected President. At the same time, the official authority of Kosovo's President is much smaller than Bosnia's collective Presidency. The constitutional role of the President of Kosovo has been designed by the international administration to be symbolic since the Kosovo Serbs had been against the creation of the institution.[96]

The power sharing arrangement element in the Assembly is expressed by the fact that out of the 120 seats, 100 are distributed according to a system of proportional representation. Ten seats are reserved for the Kosovo Serb minority

[93] Aidan Hehir, 'Autonomous Province Building: Identification Theory and the Failure of UNMIK', *Journal of Peace Research,* 13:2 (2006) 200-213, 202.
[94] UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo', (Pristina: 2001).
[95] Hehir, 'Autonomous Province Building', 201.
[96] International Crisis Group, *Kosovo: Landmark Election* (Pristina/Brussels, 2001), 7, ICG Balkans Report No. 120.

and ten seats are reserved for the other minorities. Political parties or coalitions need to declare themselves as representatives of the minority in question in order to be eligible for these seats. The system is skewed in favor of the minorities, because they are entitled to an additional ten seats on top of the number of seats they gain out of the 100 seats which are divided among all parties.[97] The power sharing arrangement is also reflected in the Presidency of the Assembly. It consists of seven members, out of which at least one must be a Kosovo Serb and one a member from another community than the Albanian or Serb community.[98]

Finally, power sharing in the Government is expressed by similar quota for minority representation as in the Assembly. The Constitutional Framework states that at least two of the ministers should be from another community than from the community having a majority in the Assembly and at least one of these should be from the Kosovo Serb community. In case the number of ministers increases to more than twelve, a third minister shall be from a non-majority community.[99] The ministries are apportioned along ethnic lines.[100] Further, the Government and its bureaucracy use both the Albanian and Serbian languages in their meetings and official documents.[101]

As with the Dayton Constitution in Bosnia, the Constitutional Framework stressed group rights. The difference with Bosnia is that it does not mention a legal category similar to the constituent peoples in the Bosnian Constitution. It recognizes that there is a majority population with several minorities which are all given minority rights. As such, Kosovo's Constitutional Framework was focused on co-existence, rather than integration. Consequently, UNMIK has been criticized for entrenching ethnic conflict between Kosovo Albanians and Kosovo Serbs, by making ethnicity an important factor in the institutions.[102] For example, by starting a process of decentralisation in 2002 in order to motivate the Kosovo Serbs to participate in Kosovo's elections, UN Special Representative Steiner ended up promoting the institutionalisation of ethnic politics in post-war Kosovo after territorially based local self-government was put on the table for Kosovo Serbs.[103] Decentralisation remained an issue in the following years and was one of the most important topics in the status negotiations of 2006 and 2007 (see Chapter seven). Despite the constitutional focus on ethnicity as an organizing principle, UNMIK,

[97] Ibid., 4.
[98] Hehir, 'Autonomous Province Building', 202.
[99] UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo', Chapter 3.
[100] Hehir, 'Autonomous Province Building', 202.
[101] UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo', Chapter 3.
[102] Aidan Hehir, 'The Impact of Analogical Reasoning on US Foreign Policy Towards Kosovo', *Journal of Peace Research* 43:1 (2006) 67-82.
[103] International Crisis Group, *Kosovo's Ethnic Dilemma. The Need for a Civic Contract* (Pristina/Brussels, 2003), 18, ICG Balkans Report No.143.

just like the OHR, has executed a policy that emphasizes integration and civic nationalism.

5.2.2 UNMIK's attempt to create a civic nationalist political culture

Creating a civic nationalist political culture has been an important policy objective of the international community in general and UNMIK in particular. The objective is reflected in the Rambouillet Agreement, UN Security Council Resolution 1244, the Standards for Kosovo policy and the several Contact Group statements.[104] However, it was not explicitly formulated as such until about April 2002. Immediately after the war neither of the two ethnic communities were able to commit themselves to a multi-ethnic society. Therefore, specific references to a multi-ethnic society were avoided. Instead, in December 1999 UN Special Representative Kouchner launched the Agenda of Coexistence. When announcing the Agenda during a press briefing, he stated that UNMIK would not impose anything the Kosovars were not ready for. He added: "It is for this reason that we no longer talk about reconciliation, but rather about the first step of co-existence."[105] The successor of Kouchner, Haekkerup continued this policy. During Haekkerup's term in office, the Constitutional Framework was created and by negotiating the Common Document with Belgrade, he ensured Kosovo Serb participation during the first Assembly elections in November 2001.[106] However, although the Constitutional Framework contains explicit references to the protection of minority communities, it does not refer to the creation of a multi-ethnic society as such.

Since 2002 explicit references to a multi-ethnic society have been made. The head of the UN Security Council mission that visited Kosovo in December 2002 declared: 'Nothing is more important than a demonstrated commitment to multi-ethnicity, not only in words but also in deeds.'[107] UN Special Representative Steiner has also been explicit in stating their objective of establishing a multi-ethnic society rather than pursuing co-existence. During his first address to the UN Security Council, Steiner said: "We need to follow a dual track approach. Multi-ethnicity and integration are the two mutually reinforcing elements here. On the one hand, the Kosovo Albanians as the majority community have to practice what their leaders preach. Multi-ethnicity means doing everything they can to encourage the smaller communities to stay in Kosovo and to make returns possible. On the other hand, the smaller communities have to participate in the institutions that we

[104] International Crisis Group, *Kosovo: No Good Alternatives to the Ahtisaari Plan* (Pristina/Belgrade/New York/Brussels, 2007), 8, ICG Europe Report No.182.
[105] As quoted in: International Crisis Group, *Kosovo's Ethnic Dilemma*, 15.
[106] Ibid., 16.
[107] United Nations Security Council, *Report of the Security Council Mission to Kosovo and Belgrade, Federal Republic of Yugoslavia: S/2002/1376* (New York, 19 December 2002), 16.

have set up under Resolution 1244. They must integrate and abandon parallel structures."[108] Steiner's successors have continued this policy.[109] They have been supported by the EU, whose foreign ministers declared during the EU General Affairs and External Relations Council held from 21 to 22 February 2005 that the future of the territory 'can only be conceived in the form of a multi-ethnic and democratic Kosovo, which ensures effective protection for minorities, preserves the cultural and religious heritage of all its communities, and respects the right of refugees and displaced persons to return, contributing to the stability of the region and adhering to the values and standards of the EU.'[110]

There have also been setbacks in the belief in the possibility of creating a multi-ethnic Kosovo. After the March 2004 violence, Harri Holkeri declared: "The concept of multi-ethnic Kosovo that the international community has been persistently attempting to implement in recent years is no longer tenable".[111] In addition, Holkeri welcomed proposals from the Serbian Government for ethnic separation as "a good basis for resuming dialogue".[112] However, international faith in a multi-ethnic Kosovo was restored with the arrival of UN Special Representative Jessen-Petersen in the summer of 2004. The creation of a multi-ethnic society and a civic nationalist political culture remained a long-term objective of the international community.

In contrast to Bosnia, electoral engineering in Kosovo was not aimed at replacing ethnic nationalist war-time political leaders in favor of more moderate ones. In Kosovo, the focus was on minority participation, rather than on stimulating the emergence of multi-ethnic political parties. As in Bosnia, a large role was played by the OSCE, which as UNMIK pillar III was made responsible for institution-building and democratization. Together with the office of the UN Special Representative, it established the independent Central Election Commission (CEC) which served as the primary electoral regulatory body in Kosovo. The CEC was responsible for the voter registration and certification of political parties.[113] For the municipal elections of 2000, some one million voters were registered and 39 political parties, coalitions, citizen's initiatives and independent candidates were certified.[114] For the first Assembly elections in 2001, a total of 26 political parties, coalitions and citizen's initiatives were certified.[115]

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[108] As quoted in: International Crisis Group, *Kosovo's Ethnic Dilemma*, 16.
[109] See for example the following speech: UNMIK, 'Press Release: SRSG Harri Holkeri's Address to the UN Security Council: UNMIK/PR/1119', (Pristina: 6 February 2004).
[110] General Affairs and External Relations Council of the European Union, *2641st Council Meeting* (Brussels, 2005).
[111] As quoted in: Hehir, 'Autonomous Province Building', 200.
[112] As quoted in: European Stability Initiative, *The Lausanne Principle. Multiethnicity, Territory and the Future of Kosovo's Serbs* (Pristina/Berlin, 2004), 17.
[113] OSCE, 'OSCE Mission Fact Sheet.'
[114] UNMIK, 'UNMIK at two. The way ahead: Partnership, Responsibility and Trust.' (Pristina: 2000).
[115] International Crisis Group, *Kosovo: Landmark Election*, 8.

UNMIK and the OSCE had a large influence on which parties were allowed to register and which were not. However, in contrast with Bosnia, no political parties have been denied participation.

UNMIK tried to make Kosovo's political institutions more responsible to their minority communities. The most important instrument was the Standards before Status policy. The essence of the policy was that the PISG would take responsibility for ensuring that minority communities could live safely in Kosovo. The Standards were primarily directed at the creation of a multi-ethnic society.[116] The Standards forced the PISG to adopt far reaching legislation in the field of human rights. For example, since 20 August 2004, Kosovo has one of the most comprehensive anti-discrimination laws in Europe.[117] Thus, the treatment of minorities in Kosovo was considered to be a litmus test; the Kosovo Albanians and their institutions would be judged based on how they would deal with the minorities in Kosovo.[118]

5.2.3 Kosovo's persisting ethnic nationalist political culture

Despite the Standards before Status policy, Kosovo's political landscape has been dominated by ethnic nationalist Kosovo Albanian political parties which appealed almost exclusively to Kosovo Albanian voters. Two political parties have been dominant in post-war Kosovo; Ibrahim Rugova's LDK as the oldest and largest political party and Hashim Thaçi's PDK as the political successor of the KLA.[119] In post-war Kosovo, the LDK derived much of its strength from its record as a non-violent protest movement during the 1990's. Many observers thought that the party had become politically irrelevant in the aftermath of operation Allied Force. First, Rugova had been accused of appeasement after he had appeared on television with Milošević. Second, Rugova did not immediately return to Kosovo after the end of the NATO-bombings and as a result the KLA was able to fill the political and military vacuum and gained much support. Nonetheless, loyalty to the LDK was stimulated by widespread revulsion of perceived arrogance of the KLA in seeking

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[116] European Stability Initiative, *The Lausanne Principle. Multiethnicity, Territory and the Future of Kosovo's Serbs*, 2 and 17.

[117] Hubert van Eck Koster, 'Assembly reviews the Anti-Discrimination Law', *Assembly Support Initiative Newsletter,* 9 (2003) 16-17, 17. The initial draft was made by the OSCE and forwarded to the Assembly in September 2002. The KP, however, challenged the law in response to which a Special Panel was instituted. The largest difference with the final law was the absence of the Centre for Equal Treatment. Although the OSCE welcomed the Anti Discrimination Law, they were concerned about the absence of the centre. Franklin de Vrieze, 'Editorial. Program and methodology of three years of ASI cooperation', *Assembly Support Initiative Newsletter,* 13 (2004) 2.

[118] Franklin de Vrieze, 'European Parliament debates process towards Kosovo's final status', *Assembly Support Initiative Newsletter,* 16 (2005) 12-14.

[119] International Crisis Group, *Kosovo after Haradinaj* (Pristina/Brussels, 2005), 12, ICG Europe Report No. 163.

to dominate post-war Kosovar politics.[120] Even then, support for the KLA proved large enough to build a political party. In September 1999, the PDK was established by Hashim Thaçi, who had represented the KLA during the Rambouillet talks. KLA fighters had taken control over all 26 municipalities after Serbian troops had left. However, due to a lack of experience, the KLA take-over came to be regarded as usurpation. Thaçi and the PDK were held responsible and this led to disappointing results in the municipal elections for the party.[121]

Next to the LDK and PDK, there proved to be enough room for another large political party. In 2000, former KLA commander Ramush Haradinaj established the Alliance for the Future of Kosovo (*Aleanca për Ardhmërine e Kosovës*, AAK) as an alternative for the 'party of non-violence' (LDK) and the 'party of war' (PDK).[122] It started as a coalition of Kosovo Albanian political parties and citizen movements and in 2002 it was transformed in to a genuine political party.[123] As is pointed out below, the AAK proved to be able to appeal to a sufficient number of voters to get elected during the three Assembly elections. Like the LDK and PDK, the AAK had an uncompromising attitude on independence and appealed exclusively to Kosovo Albanian voters.

Next to the AAK, several other new Kosovo Albanian parties were established. The first was the New Party of Kosovo (*Partia e Re E Kosovës, PREK)*. It was established in April 2002 (before the municipal elections) by the co-founder of the LDK and former Prime Minister in exile Bujar Bukoshi. PReK described itself as a rightist centre party with a focus on the rule of law and liberalism: 'PReK engages for a free market economy and a parliamentary democracy where the law protecting rights and interests of all the people dominates.'[124] Again, PRek evolved into an exclusive Kosovo Albanian political party. Secondly, in 2004 publisher Vetton Surroi established his *Partia Reformiste ORA* (Reformist Party ORA). ORA ('hour 'or 'clock') was relatively successful and received 6.2 percent of the vote for the Assembly elections of that year.[125] ORA depicted itself as a new reformist party which aimed to bring Kosovo out of the 'vicious circle of stagnation and degradation and direct it towards a contemporary Western society.'[126] However, ORA was not able to pass the electoral threshold of 5 percent of the votes during the 2007 elections.

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[120] International Crisis Group, *Kosovo: Landmark Election*, 9.
[121] Ibid., 10.
[122] International Crisis Group, *Kosovo after Haradinaj*, 12.
[123] OSCE Mission in Kosovo and Kosovar Research and Documentation Institute, *The Changed Kosovo-Serb Political Landscape after the March Crisis. Trends, Analysis and Policy Suggestions.* (Pristina, 2004), 19.
[124] Ibid., 14.
[125] International Crisis Group, *Kosovo after Haradinaj*, 13 and 14.
[126] OSCE Mission in Kosovo and Kosovar Research and Documentation Institute, *The Changed Kosovo-Serb Political Landscape after the March Crisis*, 18.

In addition to PReK and ORA, two smaller Kosovo Albanian parties were established: the Justice Party (*Partia e Drejtësisë*, PD) in 1999 and the Democratic Alternative of Kosovo (*Alternativa Demokratike e Kosovës*, ADK) in 2004. Other small Kosovo Albanian parties had existed for a longer period of time, such as the Party of Albanian National Unity (*Partia e Unitetit Kombëtar*, UNIKOMB), the Albanian Christian Democratic Party of Kosovo (*Partija Shqiptare Demokristiane e Kosovës*, PSHDK), the Social Democratic Party of Kosovo (*Partia Socialdemokrate e Kosovës*, PSDK) and the Liberal Party of Kosovo (*Partia Liberale e Kosovës*, PLK). All these parties were ethnic nationalist in the sense that they appealed to Kosovo Albanian voters and supported Kosovo's independence. This was also the case with the Democratic League of Dardania (*Lidhja Demokratike e Dardanisë, LDD*) that split of from the LDK. Former Speaker of the Assembly Nexhat Daci founded the LDD in 2007 after internal conflicts within the LDK. The LDD was quite successful in the 2007 elections and gained 11 seats in the Assembly. Another relative new Kosovo Albanian political party, established in 2006, was the Kosovo New Alliance *(Aleancë Kosova e Re,* AKR), which proved to be successful during the elections. As with the other Kosovo Albanian parties, its voter base was Kosovo Albanian.

All Kosovo Albanian parties strongly supported the independence of Kosovo and competed with each other over the best way to achieve that objective. Given their commitment to Kosovo's independence, it is understandable that none of these parties appealed to Kosovo Serb voters. Instead, the Kosovo Serb electorate voted mainly for Kosovo Serb political parties which all opposed independence. Among the Kosovo Serb political parties, the Serb National Council (SNC) was a successful political party at the beginning of the international administration. However, due to the fall of the Milošević regime in Serbia, it lost political influence to Kosovo Serb parties that were associated with the anti-Milošević Democratic Opposition of Serbia (*Demokratska Opozicija Srbije,* DOS).[127] Although the SNC was not able to compete with the DOS-related parties in the two Assembly elections, the party remained influential in the Kosovo Serb enclaves in northern Kosovo.[128]

Prior to the Assembly elections of 2001, a coalition of five Kosovo Serb parties associated with DOS jointly registered as the Kosovo Serb citizens' initiative Coalition Return (*Koalicija Povratak, KP*).[129] Rada Trajković became leader of the parliamentary group after the elections.[130] She resigned on 30

[127] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2001/218* (New York, 2000), 2.
[128] International Crisis Group, *An Army for Kosovo?* (Pristina/Belgrade/Brussels, 2006), 7, Europe Report No. 174.
[129] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2001/926* (New York, 2000), 7.
[130] UNMIK, 'Local Media Monitoring', (23 January 2002).

December 2002 and was succeeded by Dragiša Krstović.[131] Prior to the Assembly elections of 2004, however, KP split into the Serbian List for Kosovo and Metohija (*Srpska Lista za Kosovo i Metohiju*, SLKM) and the *Građanska Inicijativa Srbija* (Civic Initiative of Serbia, GIS). Whereas the SKLM was closely associated with Belgrade, the GIS followed a course which was more independent from Serbia's government and decided to participate in the PISG after the 2004 elections while the SKLM did not. The GIS was primarily aimed at supporting and assisting internally displaced Kosovo Serbs; most candidates on the list were internally displaced persons themselves.[132]

The GIS transformed into the Serb Democratic Party of Kosovo and Methohija (*Srpska Demokratska Stranka Kosova i Metohije, SDSKIM)* in 2007. In the meantime, five new Kosovo Serb political parties were established and competed and gained seats in the 2007 elections. These were the Serbian Liberal Party (*Srpska Liberalna Stranka,* SLS), the Serbian People's Party *(Srpska Narodna Stranka, SNS)*, the New Democracy (*Nova Demokratija, ND*), the Serbian Party of Kosovo and Metohija (*Srpska Kosovsko Metohijska Stranka*, SKMS) and the Independent Social Democratic League of Kosovo and Methohija (*Savez Nezavisnih Socijaldemokrata Kosova i Metohije*, SNSDKIM). All these parties focused exclusively on the Kosovo Serb electorate. The president of the SLS stated for example: 'The essence of our programme is the survival of the Serbian community in Kosovo, and there is no alternative to this.'[133] The main difference between the different parties was that while the SDSKIM and the SLS decided to join the PISG after the 2007 elections, the other parties complied with Belgrade's request to boycott the institutions.

The other ethnic communities, including Bosniaks, Gorani, Turks, Ashkali, Roma and Egyptians also established their own parties. In 2004, Coalition Vakat was formed, which was made up of three Bosniak minority parties: Democratic Party of Bosniaks (*Demokratska Stranka Bošnjaka,* DSB), Democratic Party Vatan (*Demokratska Stranka Vatan*, DSV) and Bosniak Party of Kosovo (*Bošnjačka Stranka Kosova,* BSK).[134] Bosniaks were also represented by the Bosniak Party of Democratic Action in Kosovo (*Bošnjačka Stranka Demokratske Akcije Kosova*, BSDAK) and by the Party of Democratic Action (*Stranka Demokratska Akcije*, SDA).[135] In 2000, a party had been established by and for Gorani called the Civic

[131] Franklin de Vrieze, 'Latest Developments in the Assembly', *Assembly Support Initiative Newsletter* 5 (2003) 4-5, 4.
[132] OSCE Mission in Kosovo and Kosovar Research and Documentation Institute, *The Changed Kosovo-Serb Political Landscape after the March Crisis*, 36.
[133] Mario Maglov, 'The essence of the programme is our survival in Kosovo.' Interview with Slobodan Petrovic, President of the Serbial Liberal Party', *Assembly Support Initiative Newsletter* 31 (2008) 6-7, 7.
[134] OSCE Mission in Kosovo and Kosovar Research and Documentation Institute, *The Changed Kosovo-Serb Political Landscape after the March Crisis*, 8.
[135] Ibid., 13.

Initiative Gora (*Građanska Inicijativa Gore*, GIG).[136] Turks were represented by a party which had already been established in 1990 that was called the Kosovo Democratic Turkish Party (*Kosova Demokratik Türk Partisi*, KDTP).[137] Roma were represented in the United Roma Party of Kosovo (*Partia Rome e Bashkuar E Kosovës*, PREBK) which had been established in the summer of 2000.[138] The Ashkali, have their Democratic Ashkali Albanian Party of Kosovo (*Partia Demokratike Ashkanli Shqiptare e Kosovës*, PDASHK) and the Democratic Ashkali Party of Kosovo (*Partia Demokratike Ashkanli e Kosovës*, PDAK).[139] Finally, the Egyptian community established the New Democratic Initiative of Kosovo (*Iniciativa e Re Demokratike e Kosovës,* IRDK) in 2001.

The fact that Kosovo Serbs and the other minorities only form a small portion of Kosovo's society has resulted in the domination of the Kosovo Albanian political parties in the PISG between 2001 and 2006. Moreover, Table 5.3 shows that among the Kosovo Albanian parties the LDK and PDK have dominated the Assembly elections in 2001 and 2004 and to a lesser extent also in 2007.

Table 5.3: Number of seats of major political parties in the Kosovar Assembly[140]			
	2001	**2004**	**2007**
Major Kosovo Albanian parties in the Assembly			
LDK	47	49	25
LDD	-	-	11
PDK	26	30	36
AAK	8	11	10
AKR	-	-	13
ORA	-	7	-
Kosovo Serb parties in the Assembly			
KP	22	-	-
SLKM	-	8	-
GIS / SDKISM	-	2	2
SLS	-	-	4
ND	-	-	1
SKMS	-	-	1
SNS	-	-	1
SNSDKIM	-	-	1

It is interesting to take a closer look at how the LDK and PDK have dominated the Assembly until 2008. Starting with the elections of 2001, the electorate mainly voted for the LDK, PDK and AAK. Together with the Kosovo Serb KP and the

[136] Ibid., 23.
[137] Ibid., 28.
[138] Ibid., 21.
[139] Ibid., 35.
[140] Obtainable from: www.assembly-kosova.org (last visited on 20 January 2009)

Bosniak DSV, the three parties formed a coalition. This coalition had only been possible, because of large international pressure as has been explained in Chapter four. Within the coalition, the LDK, PDK and – to a lesser extent – the AAK dominated as the largest parties. As will be further elaborated upon in Chapter six, Kosovo Serb voters only hesitantly participated in the elections of 2001. Two weeks before the elections, Belgrade called on the Kosovo Serbs to vote, but many opposed this decision. In addition, in some areas Kosovo Serbs were intimidated not to vote by Kosovo Albanian hardliners.[141] Thus, the first general elections were characterized by bad conditions. It is difficult to speak of free and fair elections for at least the Kosovo Serbs. In contrast with Bosnia, it would probably not have made a difference if the first post-war elections had been postponed. Belgrade's influence and Kosovo Serb security concerns remained important determinants for Kosovo Serb participation in the years after 2001.

All three major Kosovo Albanian parties had an uncompromising position towards independence. During the election campaign repeated calls for independence were made. For example, Rugova stated during an election speech: "As you know, we declared independence in 1991 and we have built our state for more than ten years. Therefore we ask for the official recognition of Kosovo's independence by the United States, the EU and the international community".[142] In general, this attitude was reflected in the functioning of the PISG between 2002 and 2004.

The President of Kosovo, Ibrahim Rugova, formally had a limited role, but was nonetheless influential. It is with Rugova that the office of the Presidency attained importance beyond its limited competencies in the Constitutional Framework. As President, Rugova has mainly lobbied for international support for Kosovo's independence. Only occasionally he called on Kosovars to build a multi-ethnic society. To that extent, a positive symbolic action was taken in July 2003, when the President, together with Kosovo's main leaders (including Prime Minister Rexhepi, Assembly President Daci, Hashim Thaçi (PDK), Ramush Haradinaj (AAK), Bujar Bukoshi (PReK), Agim Çeku (then heading the Kosovo Protection Corps), and Kosovo's non-Serb minority leaders) sent an open letter appealing to all displaced persons from Kosovo to return. Designating Kosovo as 'homeland' for these displaced persons, the political leaders committed themselves to a multi-ethnic Kosovo. The initiative, however, had been taken by Thaçi rather than Rugova.[143]

During the ethnic violence of March 2004, President Rugova expressed his deepest regret for the wounded UNMIK and KFOR personnel, but failed to

[141] International Crisis Group, *Kosovo: Landmark Election*, 1.
[142] As quoted in: Ibid., 9.
[143] International Crisis Group, *Two to Tango. An Agenda for the New Kosovo SRSG* (Pristina/Brussels, 2003), 3, ICG Balkans Report No. 148.

mention Kosovo Serbs.[144] Almost one year later during his annual address to the Assembly, he did not even refer to the March violence at all. Although he referred to the Government's commitment to Standards implementation and to the integration of minorities, he also declared that the achievement of independence would be a priority and that the Government would consider establishing diplomatic representation of Kosovo abroad.[145]

That did not happen since it would have meant a violation of the Constitutional Framework. However, from 2002 to 2004, the Assembly violated the Constitutional Framework on a regular basis.[146] In 2003, UN Secretary-General Kofi Annan criticized the Assembly for continuing to show a tendency to go beyond its institutional role as legislative body by adopting positions on symbolic matters, such as the endorsement of a divisive resolution on 'war values' in 2003. The Secretary-General judged that such acts hindered efforts at cooperation among political representatives of Kosovo's communities.[147]

The 'war values' affair followed the conviction for war crimes in December 2002 of Daut Haradinaj, the brother of AAK's leader Ramush Haradinaj, and the arrest by the ICTY in February 2003 of the leader of the parliamentary group of the PDK, Fatmir Lidaj. This led to tensions between the main Kosovo Albanian parties since the AAK and PDK wanted a resolution that would recognize the efforts of the KLA in liberating Kosovo. The LDK and the Assembly's President Nexhat Daci refused to support such a resolution. As a consequence, the stability of the coalition was seriously challenged because the AAK and PDK considered resorting to a vote of no-confidence. However, that could be avoided with the adoption of the resolution on the Liberation War of the People of Kosovo for Independence and Freedom in May. This resolution was a compromise in which not only the armed resistance of the KLA was recognized, but also the peaceful resistance of the LDK. The resolution was condemned by the international community. Especially, the sentence: "the war was waged for the freedom and independence of Kosovo", caused international agitation.[148] The resolution immediately strained relations with UNMIK, and the UN Special Representative called it 'divisive and against the reconciliatory spirit of UNSC

[144] Lene Kühle and Carsten Bagge Laustsen, 'The Kosovo myth. Nationalism and revenge', *Kosovo between War and Peace. Nationalism, peacebuilding and international trusteeship*, Tonny Brems Knudsen and Carsten Bagge Laustsen, eds. (London/New York: Routledge, 2006) 19-36, 32.
[145] 'Recent Developments', *Assembly Support Initiative Newsletter,* 16 (2005) 8.
[146] International Crisis Group, *Kosovo's Ethnic Dilemma*, 13.
[147] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2003/675* (New York, 2003), 16.
[148] As quoted in: Shpresa Mulliqi and Shahriniso Najmetdinova, ''We have not invested enough in the structures to prepare laws.' Interview with Bajram Kosumi', *Assembly Support Initiative Newsletter,* 7 (2003) 10-11, 11.

[UN Security Council, *NvW*] Resolution 1244.'[149] The Kosovo Serb KP interpreted the resolution as a signal to displaced Kosovo Serbs that their return was unwanted. Given these tensions, the resolution disrupted regular legislative work for many weeks. The USA's chief of mission in Kosovo declared that such kind of resolutions only served to 'further remove the PISG from its stated goal of ethnic integration (…).'[150] As an immediate sanction of the international community, the PISG were declared not to be welcome at the forthcoming North Atlantic Council meetings of NATO, the Stability Pact Parliamentary Conference in Brussels, and the EU/NATO/OSCE/Stability Pact Regional Conference in Ohrid.[151]

Next to the war values discussion, other controversial and divisive issues, based on ethnic nationalist politics, prevented a good relationship between the Kosovo Serbs and Kosovo Albanians in the Assembly. First, there was the issue of whether the University of North Mitrovica that used the Serb language as its language of instruction should be included in Kosovo's Higher Education system. The Assembly had opposed such an inclusion, after which UNMIK had to promulgate its inclusion unilaterally. Secondly, a draft law on holding a housing and population census also proved to be controversial, since it did not include internally displaced Kosovo Serbs who were living outside Kosovo.[152] Therefore, the KP argued that a census based on the draft law was unrealistic and undermined the interests of the Serb community in Kosovo.[153] Other laws that were challenged on that basis were the Law on Access to Official Documents, the Law on Public Procurement, and the Law on Postal Services.[154]

The persistence of ethnic-nationalist politics in the Assembly led to the following conclusion by the UN Secretary-General in 2004: 'The support of the Kosovo Albanian-dominated Provisional Institutions for the concept and practice

[149] Franklin de Vrieze, 'Recent developments in the Assembly', *Assembly Support Initiative Newsletter,* 7 (2003) 6-9, 9.
[150] Reno L. Harnish, 'Message from the U.S. Office', *Assembly Support Initiative Newsletter,* 7 (2003) 8-9, 8.
[151] Vrieze, 'Recent developments in the Assembly ASI 2003/7', 9.
[152] Heather Kashner, 'Our role is not to make, but to influence decisions. Interview with Mr. Oliver Ivanovic', *Assembly Support Initiative Newsletter,* 7 (2003) 14-15, 14.
[153] Azem Hajdari, 'The Kosovo Population and Housing Census Law', *Assembly Support Initiative Newsletter,* 8 (2003) 8.
[154] The Assembly Presidency rejected the motions on the Law on Postal Services and the Law on Public Procurement. However, one out of three recommendations of the Special Panel (including members of the Government, the challengers of the law and UNMIK) on the Law on Access to Official Documents were adopted by the Assembly. Vrieze, 'Recent developments in the Assembly ASI 2003/9', 15. With respect to the Law on Census of Population, Households and Housing in Kosovo, the Assembly failed to approve the recommendations made by the Special Panel on 11 December 2003. Franklin de Vrieze, 'Recent Developments in the Assembly', *Assembly Support Initiative Newsletter,* 10 (2004) 10-12, 11.

of multi-ethnicity remained inconsistent.'[155] He expressed this after the ethnic violence that erupted in March 2004. The Kosovo Albanian political elite did not unanimously condemn the March violence.[156] Although on 18 March the Assembly had condemned the violence, it had above all voiced its disagreement "with the lack of commitment by UNMIK to provide security for all Kosovar citizens." And it stated that: "The tolerance for Serb parallel structures and criminal gangs that murder Kosovar citizens is the wrong policy, and will destabilize Kosovo."[157] Further, calls for independence and demands for the immediate transfer of authority to domestic institutions were made.[158] A few days later, on 25 March, the Assembly condemned the violence against Kosovo Serbs and supported the Government's initiative to create a fund to repair damaged houses and churches. The President and several Assembly committees began visiting municipalities that were affected by the violence.[159] Finally, in the wake of the violence, the Assembly initiated an investigation committee with the mandate to investigate the causes and consequences of the violence.[160] However, despite these intentions, in July 2004, Nexhat Daci admitted that the Assembly had not yet overcome the crisis between the different ethnic communities.[161]

The second general elections on 3 December 2004 led to the re-election of Rugova as President, but only after he had received 64 votes in the third round.[162] This time a political package deal was made before the voting for the President and Government took place. The LDK was again able to become the largest party having managed to gain more votes than in 2001. Arguably that was partly caused by its pre-electoral alliance with the smaller PSHDK. Having learned from the political deadlock in 2001, the LDK/PSHDK tried to make a political deal with the AAK before the Assembly would vote for a President and Government. Consequently, instead of three months of political negotiations, a coalition could be formed within one month. On 3 December 2004, the Assembly approved the coalition government of LDK/PSHDK, AAK, KDTP, Coalition Vakat and IRDK.

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[155] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/348* (New York, 2004).
[156] Kühle and Laustsen, 'Kosovo myth', 32.
[157] As quoted in: Ibid.
[158] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/348*, 7.
[159] Franklin de Vrieze, 'Rolling back the collapse', *Assembly Support Initiative Newsletter,* 11 (2004) 2. Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/348*, 8.
[160] Uli Steinle, 'We have to find the truth and only the truth', *Assembly Support Initiative Newsletter* 11 (2004) 3.
[161] Doina Ghimici and David Buerstedde, 'I hope for a real partnership. Interview with Prof. Daci, President of the Assembly.' *Assembly Support Initiative Newsletter,* 12 (2004) 4-5.
[162] UNMIK, 'Local Media Monitoring', (4 December 2004).

Also the Assembly voted in favor of the re-election of Rugova as President.[163] Within the coalition, the LDK/PSHDK received six ministries and the post of Deputy Prime Minister. The AAK received four ministries and the post of Prime Minister which would be filled by Ramush Haradinaj. The minority communities would receive three ministries; two for Kosovo Serbs (Ministry of Returns and Ministry of Agriculture) and one for the 'others.'[164] As will be further elaborated upon in Chapter six, only one Kosovo Serb Minister (Slaviša Petković of the GIS) was included in the cabinet, because the SKLM decided to boycott the institutions.

As a result of the boycott by SKLM, minority representation in the PISG was problematic. Not only on the level of ministers, but also with respect to the public administration which had to be apportioned along ethnic lines according to the Constitutional Framework.[165] The target for minority representation was 16.6 percent, of which the Kosovo Serbs as largest minority formed the largest share. In November 2004, the UN Secretary-General reported: 'Minority employment in the Provisional Institutions continued to be low and confined to areas below the decision-making level, and mostly in the offices catering to minorities themselves. In the central ministries of the Provisional Institutions, the minorities occupied only about 9.6 percent of total posts but the minimum stipulated percentage was 16.6 percent. The overall percentage of minorities in ministries has declined.'[166] After 2004, minority representation slowly increased until 2007. In May 2005, it was reported that the percentage of minorities working within the PISG at the central level had increased a little to 10,2 percent, for June 2006 a percentage of 11,4 percent was reported, and in June 2007 there was a minority representation of 11 percent was reported.[167] However, by the end of 2007 participation had decreased again to 10.5 percent and after the declaration of independence in February 2008, the UN Secretary-General expressed concerns about the future participation of the Kosovo Serbs in the civil service.[168]

The elections of 2007 broke the dominance of the LDK. Because the LDD split from the LDK, the PDK became the largest political party in the Assembly for

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[163] Ibid.
[164] UNMIK, 'Local Media Monitoring', (21 November 2004).
[165] Hehir, 'The Impact of Analogical Reasoning on US Foreign Policy Towards Kosovo', 202.
[166] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907* (New York, 2004), 8.
[167] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2005/335* (New York, 2005), 8, Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2006/361* (Pristina, 2006), 11. Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2007/768* (New York, 2008), 9.
[168] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2007/768*, 10, Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2008/211* (New York, 2008), 10.

the first time in its history. The PDK's leader, Hashim Thaçi, presented a new coalition on 9 January, 2008 made up of the PDK and LDK. Through their reserved seats, Kosovo Serbs could participate in the coalition. As a result, the Kosovo Serbs got the Ministry for Returns and Communities and the Ministry of Labor and Social Welfare. However, the Assembly continued to be dominated by Kosovo Albanian political parties with Kosovo Albanian voter bases.

5.2.4 Conflict management and institutional congruency in Kosovo

In 2003 the report *Kosovo's ethnic dilemma*, the International Crisis Group concluded: 'The human rights culture has not been internalised by politicians and political structures are not mature enough to accommodate the mobilisation of minority groups.'[169] Moreover, in the report it was argued that the protection of minority rights cannot be guaranteed.[170] Two years later, in April 2005, the International Commission on the Balkans stated in its report: 'A multi-ethnic Kosovo does not exist except in the bureaucratic assessments of the international community.'[171] The Commission cited a survey which indicated that 72 percent of the Kosovo Albanians preferred to live in an ethnically homogenous state and the Commission claimed that the Kosovo Albanian leadership had not made any effort to counter this public opinion.[172]

The analysis of institutional congruency presented above confirms this picture. It has shown that in 2008 Kosovo's political culture was still dominated by ethnic nationalism. All political parties appealed to specific ethnic communities (whether Kosovo Albanian, Kosovo Serb or any other community) instead of to a civic nation. As a result, ethnic nationalism dominated the political system and thus the three PISG. At the same time, UNMIK stimulated a civic nationalist political culture. In 2008 the International Civilian Representative and the Special Representative of the EU continued this policy, as the incoming control type of international administration (see Chapter seven). Thus, given the two competing and mutually exclusive value systems it is not possible to speak of institutional congruency in the case of Kosovo.

Like in the case of Bosnia, the way the conflict in Kosovo was managed can provide a plausible explanation for the absence of institutional congruency. The unsuccessful attempt of UNMIK to make civic nationalism the dominant political culture in Kosovo can be explained by the non-resolved status of Kosovo.

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[169] International Crisis Group, *Kosovo's Ethnic Dilemma*, 17.
[170] Ibid.
[171] The International Commission on the Balkans was established by a consortium of four private foundations with the objective to produce a report which would stir the debate on the future of South Eastern Europe and to develop a vision for the integration of the region into the EU. International Commission on the Balkans, *The Balkans in Europe's Future* (Sofia, 2005), 19.
[172] Ibid., 19 and 54.

First of all, a civic nation was defined as 'a territorially bounded, sovereign legal-political community' (see Chapter two). Since Kosovo was not sovereign, one could argue that it was technically impossible to create a civic nationalist political culture. Secondly and more importantly, the absence of conflict resolution in 1999 led to continued uncertainty over the political status of Kosovo. This uncertainty motivated both Kosovo Albanians and Kosovo Serbs to cling to ethnic nationalism as the organizing mechanism for the political system. Therefore, instead of identifying themselves with a civic nation, they continued to identify themselves in terms of being Kosovo Albanian or Kosovo Serb. As in Bosnia, the international administration did not succeed in replacing the ethnic nationalist culture with a civic nationalist culture which resulted in the continued presences of two competing and mutually exclusive value systems.

6 Institutional Support

This chapter examines institutional support which is the last indicator of institutionalization. Institutional support manifests itself through positive attitudes and positive behavior (compliance) towards the institutions. Support is assessed at two levels of the population: the (political) elite level and the mass level of Kosovo's society. In this chapter the question is answered whether Bosnia's and Kosovo's political institutions are supported by the population on both levels of society. Like in the preceding two chapters, the analysis is split in two parts. The first part discusses institutional support in Bosnia, the second part discusses the situation in Kosovo. In each part it is first discussed whether there exists elite level support for the state level political institutions. In the case of Bosnia, this is done by separately looking at each of the three large ethnic communities. This is necessary, because every particular ethnic group had its own vision of the Bosnian institutions. For Kosovo the focus is exclusively on the Kosovo Serb political elite. Institutional support among the Kosovo Albanian political elite can safely be assumed to be high, because every Kosovo Albanian politician pursued a policy of independence for Kosovo. Therefore every domestic political institution - however imperfect - can be expected to be welcomed as another step towards that goal among the Kosovo Albanian political elite. The Kosovo Serb political elite, in contrast, had every reason not to support the provisional political institutions. For them the institutions also represented a step towards independence, but that was judged to be a step in the wrong direction. After the elite level has been assessed, the mass level of support among the people for Bosnia's and Kosovo's political institutions is analyzed by using opinion polls and voter turnouts. As in the two preceding chapters, both sections end by offering a plausible explanation for the presence or absence of institutional support based on the conflict management strategy.

6.1 Bosnia

6.1.1 Elite level support for Bosnia's state level institutions

In general, the imposed nature of the Dayton Agreement made the conflicting parties in Bosnia hesitant to accept the state level institutions. On the one hand, immediate humanitarian and military imperatives proved to be relatively unproblematic to implement. Especially the degree of compliance by the entities' armed forces with the military measures agreed upon at Dayton was remarkable.[1] However, whenever the OHR tried to strengthen the central state, it encountered

[1] David Lightburn, 'Seeking security solutions', *NATO Review* 48:3 (2000) 12-15, 13.

fierce political resistance.[2] As a result, the first OHR reports are full of complaints about a lack of progress in the implementation of the Dayton Agreement. After the Civilian Consolidation plan had been launched, the PIC stated in May 1997: 'In London, the countries of the PIC reaffirmed their willingness to help and assist with the development of Bosnia and Herzegovina, but on the clear condition that all the authorities of the country fulfilled their own binding commitments to move the peace process forward. Having reviewed developments since then, the Steering Board unanimously agreed that all the authorities of Bosnia and Herzegovina are failing to live up fully to their obligations under the Peace Agreement, and that this is unacceptable.'[3]

As a reaction to the lack of progress, the PIC invited High Representative Westendorp, to make a list of the cases of non-compliance by Bosnian authorities as well as to recommend in each case specific action to be taken by the international community.[4] Subsequently, the PIC Steering Board reiterated the PIC's wish to receive recommendations on non-compliance measures. This resulted in OHR recommendations on international action regarding the appointment of Bosnian ambassadors and the adoption of citizenship and passport laws.[5] The PIC realized that more robust action had to be taken during its meeting in Bonn in 1997. The Bonn Powers were adopted, because of a lack of progress in the priority areas identified in the Civilian Consolidation Plan.

However, the Bonn Powers did not result in significantly increasing support among the elite for the domestic institutions. In 2000, the PIC concluded: 'The Council expresses its dissatisfaction with the slow pace of domestic peace implementation since its Madrid meeting in 1998. The responsibility for this insufficient progress lies squarely with obstructionist political parties and their allies, both within and outside of BiH.'[6] In October 2006, the PIC Steering Board concluded that: 'the authorities in Bosnia and Herzegovina have failed to deliver the expected level of reform in recent months.'[7] This was reiterated by Schwarz-Schilling during a TV-address in which he explained the PIC's decision not to close down the OHR as had originally been planned for the summer of 2007: 'Though Bosnia and Herzegovina has made progress, the country's political leaders have not assumed full responsibility for completing the process of Dayton implementation and fulfilling the remaining requirements necessary for the signing

[2] Gerald Knaus and Marcus Cox, 'Whither Bosnia?' *NATO Review* 48:3 (2000) 6-11, 9.
[3] Peace Implementation Council, 'PIC Sintra Declaration', (1997).
[4] Ibid.
[5] Office of the High Representative, *7th Report by the High Representative for Implementation of the Bosnian Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1997).
[6] Peace Implementation Council, 'Brussels Declaration', (2000).
[7] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (Sarajevo: 2006).

of a Stabilisation and Association Agreement.'[8] Finally, in February 2008 the PIC Steering Board noted that political leaders were not only refusing to carry out essential reforms, but they were also attempting to 'weaken progressively the institutions and legitimacy of the state.'[9]

Most reform attempts by the OHR have been countered by strong domestic opposition from political elites of all ethnic communities. However, differences in elite support for the central state can be distinguished between the three constituent peoples. The Bosniaks are considered the most supportive of the central state. Especially the SDA has portrayed itself in post-war Bosnia as the defender of the Bosnian state level institutions.[10] Part of this support can be explained by the legacy of the war. Between 1992 and 1995, the Bosniaks governed the war-time Bosnian state while the Bosnian Croats and Bosnian Serbs had established their own republics. Furthermore, Bosniak support for the central state can be explained by the numerical strength of their community. Because the Bosniaks constitute a majority over every other single constituent people, they have been the most enthusiastic supporters of the joint institutions from the beginning of the international administration.[11]

The Bosniak support for the central state has manifested itself in a willingness to cooperate with the international community and even an acceptance of the OHR's impositions.[12] Further, it led to attempts by Bosniak political parties to strengthen the central government and to election campaigns by Bosniak political parties in both entities.[13] Finally, Bosniak politicians strongly supported the constitutional reform attempt in 2006 (see Chapter seven). At the same time, however, Bosniak enthusiasm for the central state has led to repeated attacks on the Serb Republic and its institutions.[14] For instance, as already mentioned in Chapter five, during the elections campaign of 2006 several Bosniak politicians called for the abolishment of the Serb Republic.

The Bosnian Croat politicians have been more critical of the central state institutions. Especially the ethnic nationalist HDZ became well known for its lack of support. The most hard-line Bosnian Croats, mainly living in Herzegovina (Southwestern Bosnia), have regularly called for a separate Croat entity. They

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[8] Office of the High Representative, 'Schwarz-Schilling television address on PIC decision', (Sarajevo: 2 March 2007).
[9] Peace Implementation Council, 'Declaration by the Steering Board of the Peace Implementation Council', (Sarajevo: 27 February 2008).
[10] International Crisis Group, *Bosnia's Nationalist Governments. Paddy Ashdown and the Paradoxes of State Building* (Sarajevo/Brussels, 2003), 17, ICG Balkans Report No. 146.
[11] Sumantra Bose, *Bosnia after Dayton. Nationalist Partition and International Intervention* (Oxford: Oxford University Press, 2002), 27.
[12] International Crisis Group, *Bosnia's Nationalist Governments*, 17.
[13] Florian Bieber, *Post-War Bosnia. Ethnicity, Inequality and Public Sector Governance* (New York: Palgrave Macmillan, 2006), 43.
[14] Interview with an official of the Dutch government, *Sarajevo 2 May 2006*.

preferred to return to the wartime entity Croatian Republic of Herzeg-Bosna which had been declared in July 1992. In the eyes of Bosnian Croat politicians, Dayton did not provide equal rights to all three major ethnic groups, because it created only two entities, instead of three entities including a Croat one. As a result, Bosnian Croats have felt themselves outnumbered by the Bosniaks within the Federation.[15]

During the first post-war years, Croat hardliners were considered the largest problem in Bosnia. Deputy High Representative Paul Klein stated in 1998: 'It should be said that the RS [Serb Republic, *NvW*] became more open for cooperation than the leadership in Herzegovina. And it seems quite senseless to me, for it should be vice versa.'[16] Moreover, as was explained in Chapter four, the first officials fired by the OHR were the Croat majors of Stolac (4 March 1998) and Drvar (16 April 1998). In August 1998 the International Crisis Group concluded: 'The reintegration of Bosnia and Herzegovina (Bosnia) has been consistently obstructed by the main Bosnian Croat party, the Croat Democratic Union of Bosnia and Herzegovina (HDZBiH). The HDZBiH is dominated by hard-liners who emphasise the consolidation of a pure Croat-inhabited territory centred in western Herzegovina, with the eventual aim of seceding and joining Croatia.'[17]

Bosnian Croat nationalist hardliners continued to operate parallel structures after 1995. In April 1998, Hans Schumacher stated: 'It is clear that there are still structures of HB [Herzeg-Bosna, *NvW*] and RBiH [Republic of Bosnia and Herzegovina, *NvW*]. All those institutions must be abolished urgently.'[18] The parallel structures were a legacy of the Croatian Republic of Herzeg-Bosna. The entity was formally disbanded by the Washington Agreement in 1994, but it exercised *de facto* control over Croat institutions and public finances. The PIC ordered the dissolution of all parallel structures (including the Bosniak parallel structures) in the Federation. It stated: 'The Council reiterates that remaining parallel and para-constitutional structures in the territory of the Federation ("Croat Republic of Herceg Bosna", "Republic of Bosnia and Herzegovina") are illegal and must be dissolved immediately. The authorities in the Federation should publicly announce that all these former institutions have stopped functioning. The bank accounts of such structures must be closed. Remaining seals must be destroyed. The Council invites the High Representative to report to the Steering Board on

[15] Antonio Prlenda, 'Croats in BiH have differing view on future', *South East European Times* 15 December 2005.
[16] 'Interview: Jacques Paul Klein, Principal Deputy HR: "Zagreb must clearly say to Herzegovinians that they are a part of BiH"', *Vecernji List/OHR Press Office* 18 April 1998.
[17] International Crisis Group, *Changing Course? Implications of the Divide in Bosnian Croat Politics* (Skopje/Sarajevo, 1998), i, ICG Balkans Report No. 39.
[18] Emir Suljagic, 'Interview: Hanns H. Schumacher, Senior Deputy HR: "We will break the hardliners of the HDZ!"', *Dani/OHR Press Office* 11 April 1998.

progress on this issue by 1 March 1998.'[19] Despite this order, the structures continued to exist.

In 2001 a serious crisis occurred when Bosnian Croat hardliners from the HDZ and from some other smaller Croat ethnic nationalist parties proposed to secede from the Federation.[20] The crisis was caused by the fear that Bosnian Croats would be marginalized within the Federation.[21] On 3 March 2001, a coalition of seven Croat nationalist parties referred to as the Croat National Congress (HNS), voted under the leadership of HDZ-president and Presidency member Ante Jelavić for secession from the Federation and the establishment of a third (Croat) entity. Already during the elections of November 2000, the HDZ had organized a referendum in which Bosnian Croats were asked whether they preferred to have their own institutions within Bosnia. According to the HDZ, 71 percent of the registered Bosnian Croats participated in the referendum and 98,96 percent voted in favor of establishing their own institutions.[22] In practice, the Croat third entity had never ceased to exist and the decision of the HNS was little more than an attempt to formalize the Croat parallel structures within the FBiH.[23] Jelavić's initiative was supported by Croatian military units of the Federation army. In spite of the six years of confidence building measures since 1995, Bosnian Croat soldiers decided to side *en masse* with Jelavić.[24]

The crisis was resolved with the decisive action of the OHR. First, High Representative Petritsch ordered the dismissal of Jelavić as a member of the Presidency on 7 March.[25] In an article in *The Financial Times* Petritsch explained his decision in the following words: 'Mr. Jelavic, the Croat member of Bosnia's three-member presidency and the leader of the nationalist Croat Democratic Union (HDZ), has behaved in an unacceptable manner for the head of a state committed to punishing war crimes. He has repeatedly called for the partition of the country. He attended a rally last week where he sang the praises of Dario Kordic and Mario

[19] Peace Implementation Council, 'PIC Bonn Conclusions', (1997), 1F.
[20] The International Crisis Group described this crisis as: 'the most serious challenge yet to the post-war order established by the 1995 Dayton Peace Accords.' International Crisis Group, *Turning Strife to Advantage. A Blueprint to Integrate the Croats In Bosnia and Herzegovina* (Sarajevo/Brussels, 2001), i, ICG Balkans Report No. 106. This was also felt by High Representative Petritsch who declared in an interview: 'I agree with the opinion of many people that the illegal and unconstitutional proclamation of Croat self-rule represented the greatest threat to the Dayton process.' Bisera Lusic, 'Interview: Wolfgang Petritsch, the High Representative in BiH, for Slobodna Dalmacija: "Croat self-rule - bone in Dayton's throat!"', *Slobodna Dalmacija/OHR Press Office* 26 May 2002.
[21] International Crisis Group, *Turning Strife to Advantage*, 1.
[22] Bieber, *Post-War Bosnia*, 99.
[23] International Crisis Group, *Turning Strife to Advantage*, 1.
[24] Walter A. Dorn and Jeremy King, 'Taking Stock of Security Sector Reform in Bosnia 1995-2002', *Bridges of Peace. Ten Years of Conflict Management in Bosnia*, Charles C. Pentland, ed. (Kingston: Centre for International Relations Queen's University, 2003) 63-96, 72.
[25] Snjezana Setka, 'Interview Part Two: Carlos Westendorp, High Representative in BiH: "Croats are good people who can be difficult sometimes"', *Slobodna BiH/OHR Press Office* 17 February 1999.

Cerkez, two war criminals convicted for crimes against humanity by the International Tribunal in The Hague last month. At the weekend, Mr. Jelavic called on Bosnian and Herzegovinian Croats to cease all cooperation with the legally elected government in the Federation half of the country, dominated by Bosniacs (Muslims) and Croats. This threatened to tear up the Dayton Accords and put Mr. Jelavic on a collision course with the rest of the country's citizens and with the international community.'[26] In addition to Jelavić, other Bosnian Croat politicians were dismissed or banned from holding public and party offices, including House of Representatives delegate Ivo Andrić Luzanski and Zdravko Batinić who had accepted the position of Vice-President of the Croat Self-Government.[27] Secondly, Petritsch put the Bosnian Croat Bank *Hercegovačka Banka* under international oversight and appointed a provisional administrator on 5 April 2001. The bank was considered the most important financial source for Bosnian Croat separatists and was put under investigation.[28]

After the March 2001 crisis, the policy of the HDZ towards the unity of Bosnia changed. Starting with the general elections of 2002, the HDZ repeatedly expressed support for the central state and called for the creation of state level armed forces and a state level intelligence agency. The party proposed constitutional changes during which the entities and cantons would be abolished and replaced by strong, competent municipalities (or cantons) to balance the central state.[29] The HDZ became also more supportive of the OHR's impositions, although not as supportive as the SDA; arguing that the OHR should use its powers sparingly and that decisions should be bound by time limits. In addition, the HDZ was of the opinion that Bosnia's domestic authorities should be allowed more time for the decision making process before the OHR would intervene.[30]

This more constructive course adopted by the HDZ towards state level institutions has been maintained since 2002. Although occasional calls for a separate Croat entity continued (for example on 6 September 2005 by Ivo Miro Jović and by several Bosnian Croat politicians during the campaign for the general elections of 2006), they became much less frequent.[31] The change of course of the Bosnian Croat hardliners was also reflected in the diminished political importance

[26] Office of the High Representative, 'Article by the High Representative, Wolfgang Petritsch: Comment & Analysis: Why Jelavic had to go', *The Financial Times/OHR Press Office* 8 March 2001.
[27] Office of the High Representative, 'Decision banning Zdravko Batinic from holding public and party offices', (Sarajevo: 7 March 2001). Office of the High Representative, 'Decision removing Ivo Andric Luzanski from his post as a delegate to BiH House of Representatives and banning him from holding public and party offices', (Sarajevo: 7 March 2001).
[28] Office of the High Representative, 'Decision appointing a Provisional Administrator for the Hercegovacka Banka', (Sarajevo: 5 April 2001).
[29] International Crisis Group, *Bosnia's Nationalist Governments*, 19.
[30] Ibid., 20.
[31] OSCE Mission in Kosovo, *Implementation of Kosovo Assembly Laws. Report III. Review Period: Laws promulgated in 2005* (Pristina, 2007), 10.

of the parallel structures. Although in 2006 parallel structures could still be identified in the cantons dominated by the HDZ, things had improved considerably since the crisis of 2001.

An important factor for the decreasing importance of parallel structures had been the defeat of the HDZ in Croatia in 2000.[32] The existence of Croat parallel structures had been strongly linked to the availability of support for these structures from Croatia; since 1995 the influence of the Croatian Government on the Bosnian Croat politicians had been significant.[33] Therefore, the OHR made serious efforts to change the policy of Croatia in supporting these structures.[34] However, that proved only be possible after the death of Tuđman in 2000. At the time Petritsch stated: 'I am an optimist regarding the future conduct of financial transfers from Croatia to the Croats in BiH. The Croats in BiH [Bosnia, *NvW*] cannot develop their feeling of belonging to Bosnia and Herzegovina as long as Zagreb secretly 'jumps in' with payments for salaries to the Croat leadership, for the Croat military forces in BiH; it pays pensions to war victims, disabled war veterans, pays for Croat Television Erotel, allocates dubious economic loans.'[35] Following the regime change, an important role in the diminishing Croatian interference in Bosnia was played by Croatia's President Stipe Mesić who publicly renounced claims on Bosnia.[36]

Finally, whereas the Bosnian Croats may have been very uncooperative in the beginning of the international administration, Bosnian Serb politicians**,** and especially the SDS, were at least as difficult in the later phases. Support for the central Bosnian state has been low among Bosnian Serb politicians from the beginning. Since 1995, they interpreted Dayton in such a way to consider the entity to be a sovereign state.[37] As with the Bosnian Croats, this was a legacy of the war. A war-time Bosnian Serb entity had been created on 14 October 1991 when Radovan Karadžić, the party leader of the SDS in Bosnia, marched out of a meeting of the Bosnian Assembly and set up Bosnian Serb government structures in Banja Luka.[38] Out of these the Serb Republic was created. Consequently, numerous laws enacted by the entity Government referred to the sovereignty of the Serb Republic until they had to be changed by the OHR. In addition, as late as

[32] Knaus and Cox, 'Whither Bosnia', 10.
[33] Setka, 'Interview Part Two: Carlos Westendorp, High Representative in BiH: "Croats are good people who can be difficult sometimes".'
[34] '"Zagreb must clearly say to Herzegovinians that they are a part of BiH".'
[35] Office of the High Representative, 'Triennial Statement of Accounts: Wolfgang Petritsch's departure', (Sarajevo: 16 May 2002).
[36] Kurt W. Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', *After Intervention: Public Security Management in Post-Conflict Societies. From Intervention to Sustainable Local Ownership*, Anja H. Ebnöther and Philipp H. Fluri, eds. (Vienna: DCAF et.al., 2005) 101-137, 118 and 119.
[37] David Chandler, *Bosnia: Faking Democracy after Dayton* (London/Sterling: Pluto Press, 1999).
[38] Noel Malcolm, *Bosnia. A Short History* (New York: New York University Press, 1996), 228.

2007, politicians regularly referred to the sovereign status of the Serb Republic in speeches.[39]

Consequently, the state level institutions were thought of as institutions that should remain weak.[40] The opposition to the central state was manifest, for example, on 4 February 1999, when during the session of the House of Representatives in which the new Council of Ministers was approved after the general elections in October 1998, all delegates of the SDS and SRS walked out in protest.[41] In general, the Bosnian Serb political elite has strongly opposed the strengthening of the state level, which they regard as ideas primarily coming from the Bosniaks and the OHR.[42] Over the years, the Bosnian Serb opposition to a strong central state has led paradoxically to a stronger commitment to the Constitution agreed upon in Dayton. Whereas Bosnian Serb politicians used to oppose the Constitution, because they wanted to secede or join Serbia, they became serious defenders of it as soon as they realized that the Dayton Constitution was a guarantee for the protection of their entity. By taking a strict legalistic approach towards the Constitution, Bosnian Serb politicians hoped to prevent the central state from obtaining more powers.[43] The SDS has repeatedly warned that Bosnian Serb support for the implementation of the Dayton Agreement depends on the OHR's policy; the more the OHR focuses on strengthening the state level institutions, then the more the issues of secession or unification with Serbia would remain on the agenda.[44]

Since the Bosnian Serbs had been granted their own entity at the Dayton negotiations, it was not really necessary for them to operate parallel structures. Nonetheless, in 1996, Human Rights Watch published a report in which it claimed that an underground parliamentary organization under the control of SDS existed (although concrete evidence was thin).[45] The danger of these parallel structures was that hard-line ethnic nationalist Bosnian Serbs would promote the secession of the Serb Republic. Right after 1995, the city of Pale served as powerbase (as it had been during war) for Bosnian Serb ethnic nationalist hardliners. The OHR attempted to break this powerbase in favor of the more moderate Bosnian Serb political elite in Banja Luka.[46] One of the measures was to transfer the Serb

[39] International Crisis Group, *Ensuring Bosnia's Future: A New International Engagement Strategy* (Sarajevo/Brussels, 2007), 10, Europe Report No.180.
[40] 'Interview: Carlos Westendorp reveals his opinion about the Bosnian politicians', *Slobodna Bosna/OHR Press Office* 30 November 1997.
[41] Office of the High Representative, 'Press Release: Council of Ministers', (5 February 1999).
[42] Vlatko Vukovic, 'Bosnian Serbs seek to preserve entity, find way out of economic woes', *South East European Times* 15 December 2005.
[43] Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', 119 and 120.
[44] International Crisis Group, *Bosnia's Nationalist Governments*, 24.
[45] Chandler, *Faking Democracy*, 103.
[46] Suljagic, '"We will break the hardliners of the HDZ".'

Republic's Government officially from Pale to Banja Luka which happened in 1997.[47] Further, the OHR has tried to isolate the ethnic nationalists and to promote the creation of moderate Bosnian Serb political parties.

Things were expected to improve significantly when - as a result of political engineering - Milorad Dodik (SNSD) became Prime Minister of the Serb Republic in January 1998. In first instance, Dodik seemed to be cooperative.[48] Westendorp declared: 'During its rule, SDS did not bring normal living conditions to the people. On the other hand, the new Government has already done more for improving such conditions than the former leadership did during its whole mandate.'[49] Nonetheless, despite the initial hope of improvement, Dodik proved not to be much more committed to Dayton than his predecessors. A few months after he had taken office, it was concluded by High Representative Westendorp: 'A common flag now exists for eight months in Bosnia and Herzegovina, however, on the official buildings of the Republika Srpska [Serb Republic, *NvW*] that we visited this week it was impossible to find one that was not Serbian.'[50] The International Crisis Group concluded in 2001: 'The money poured into the RS [Serb Republic, *NvW*] during the Dodik years did not create economic stability or push the government to pay more than lip service to the basic requirements of Dayton.'[51] Finally, Dodik refused to support any legislation designed to enhance the competencies of the state level.[52]

In December 2000, the SDS leadership pledged to support the Dayton Agreement and signed an agreement to do so with the OHR. Among other things, the agreement included support for the state level institutions. In the autumn of 2001, however, the Serb Republic in general, and the SDS in particular, were accused by High Representative Petritsch of not implementing their pledge. Petritsch visited Banja Luka as a warning and recalled that since 1995, the Serb Republic had obstructed the implementation of Dayton. No less than thirty seven laws in the National Assembly had been blocked by a SDS veto; despite the non-political, technical nature of these laws.[53] Moreover, Petritsch wrote in his report to the UN Secretary General in 2002: 'Regrettably, during the reporting period, this

[47] Chandler, *Faking Democracy*, 75.
[48] '"Zagreb must clearly say to Herzegovinians that they are a part of BiH".'
[49] 'Interview: Carlos Westendorp, the High Representative in BiH: "The solution for Bosnia is to change the authorities"', *Delo/OHR Press Office* 22 April 1998.
[50] Ana Romero, 'Interview: Carlos Westendorp, the High Representative: "The Nationalism is Insatiable."', *El Mundo/OHR Press Office* 27 September 1998.
[51] International Crisis Group, *The Wages of Sin: Confronting Bosnia's Republika Srprska* (Sarajevo/Brussels, 2001), 10, ICG Balkans Report No.118.
[52] Ibid.
[53] Office of the High Representative, 'AFP Article: Bosnian Serbs criticized for not supporting central institutions', *AFP/OHR Press Office* 5 November 5 November 2001. Office of the High Representative, 'Article by the High Representative Wolfgang Petritsch: Enough of Lies', *Reporter/OHR Press Office* 12 November 2001.

lack of commitment to State institutions was reflected in the behavior of most RS politicians. In my many meetings with the RS leadership, I have underlined that a functional and viable State is the only possible framework for the RS and its citizens to achieve their political and economic aspirations.'[54]

This lack of support still existed in 2004. In an interview, High Representative Ashdown said: 'The RS [Serb Republic, *NvW*] must understand it is an entity and not an independent state. The Dayton Agreement is a two-way street. One part of the Dayton Agreement protects the entities, the other part deals with development of a joint state. RS does only what is suitable for strengthening the entity and avoids things relating to the joint state. I have clearly said to RS I shall not change the Dayton Agreement, only the people of Bosnia can change it. Nevertheless, should RS or anyone else in Bosnia make the state non-functional in relation to Dayton, then it too must be changed.'[55]

As has been the case with the Croatian support for the parallel Bosnian Croat structures, the suspension of support from Serbia's Government to Bosnian Serb ethnic nationalist hardliners in Pale was politically relevant.[56] The fall of the Milošević regime in 2001 changed much in that respect. Nevertheless, from time to time the Serbian political leaders continued to come up with the suggestion that the Serb Republic could secede from Bosnia. On 10 September 2002, for example, with Serbian presidential elections scheduled for 29 September, Vojislav Koštunica described the Serb Republic as 'a part of the family…only temporarily separated from Yugoslavia.'[57] Bosnian Serb politicians have also regularly voiced there willingness to consider secession from Bosnia. During the general elections of 2006, Milorad Dodik stated that the Serb Republic would have to become independent in case Kosovo would become independent. Dodik proposed to organize a referendum on independence, modeled after the 2006 referendum which had led to the independence of Montenegro. This was immediately countered by High Representative Schwarz-Schilling as being in conflict with the Dayton Agreement and the Constitution.[58] Dodik's call for the secession of the Serb Republic was not merely to cater to his electorate for the October 2006 elections. After the elections (which were won by Dodik's party, the SNSD) he continued to express his wish for secession.[59]

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[54] Office of the High Representative, *21st Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations: 26 august 2001 - 19 february 2002* (Sarajevo, 2002), 17.
[55] The Bosnian Institute, 'Chronology of Events: February -June 2004', *Bosnia Report* (8 June 2004). Obtainable from: www.bosnia.org.uk (last visited on 20 January 2009).
[56] Knaus and Cox, 'Whither Bosnia', 10.
[57] The Bosnian Institute, 'Chronology of Events: May - October 2002', *Bosnia Report* (10 September 2002). Obtainable from: www.bosnia.org.uk (last visited on 20 January 2009).
[58] International Crisis Group, *Montenegro's Referendum* (Podgorica/Belgrade/Brussels, 2006), 9, ICG Europe Briefing No.42. UNDP, *Early Warning Report Bosnia: April - June 2006* (Sarajevo, 2006), 8.
[59] 'On the boil. The politics get messy, even for an old hand', *The Economist* (27 January 2007), 26.

A major issue preventing Bosnian Serb politicians from supporting the state level institutions has been the issue of war crimes. Since 1995, the Serb Republic and its politicians had been accused by the international community for not fulfilling their obligations under the Dayton Agreement regarding cooperation with the ICTY. For example, it took until 24 December 2001 - six years after the conclusion of the Dayton Agreement – before the SDS amended its statute and banned persons indicted for war crimes by the ICTY, including Radovan Karadžić and Momčilo Krajišnik, from membership.[60] By the middle of 2004, the Serb Republic had not arrested any single individual indicted by the ICTY. Some arrests had been made on the Serb Republic's territory, but these had been carried out by NATO troops.[61] Furthermore, on 30 November 2004, it became clear that the indicted Ratko Mladić had been on the payroll of the Serb Republic's armed forces until 2002.[62]

The continued lack of cooperation with the ICTY led to increased political pressure on the Serb Republic by High Representative Ashdown.[63] As a result, cooperation with the ICTY started in 2005. Nearly two weeks after Ashdown had complained to Serbia's President Boris Tadić about the fact that the Serb Republic had not delivered any war crimes suspects to the ICTY since 1995, the Serb Republic transferred Savo Todović to the ICTY.[64] Ashdown commented: 'Nine years after Dayton Peace Agreement I commend RS authorities on making this significant step forward (...) But many other indictees, including Karadzic and Mladic, remain at large. It is essential that the transfer of Mr. Todovic to The Hague should now mark the beginning of a process, which will see the other indictees transferred without delay to the ICTY.'[65] On 11 March 2005, a second suspect Mito Stanišić was transferred by the Serb Republic's authorities to the ICTY and a third transfer of Gojko Janković took place on 14 March.[66] Since then, the Serb Republic has gradually intensified its efforts to arrest indicted war criminals as a result of which Bosnia was declared to be in cooperation with the

[60] Office of the High Representative, 'BiH Media Round-up: 26 December 2001', (Sarajevo).
[61] Paddy Ashdown, *Swords and Ploughshares. Bringing Peace to the 21st Century.* (London: Weidenfeld & Nicolson, 2007), 293.
[62] Office of the High Representative, 'BiH Media Round-up: 30 November 2004', (Sarajevo). Office of the High Representative, 'Press Release: HR Sets March 15 Deadline To RS MoD', (Sarajevo: 24 February 2005).
[63] Ashdown, *Swords and Ploughshares*, 293.
[64] Office of the High Representative, 'Press Release: Statement: High Representative Emphasizes Dayton Must Be Respected ', (Sarajevo: 6 January 2005).
[65] Office of the High Representative, 'Press Release: Statement by the High Representative for BiH, Lord Paddy Ashdown, with regard to the transfer by the authorities of Republika Srpska (RS) of ICTY indictee Savo Todovic', (Sarajevo: 18 January 2005).
[66] Office of the High Representative, 'Press Release: Statement: HR welcomes Stanisic Transfer to the Hague ', (Sarajevo: 11 March 2005); Office of the High Representative, 'Press Release: HR's Statement on Jankovic's transfer', (Sarajevo: 14 March 2005).

ICTY by prosecutor Carla Del Ponte.[67] However, as long as Mladić and Karadžić would not be arrested, the negative stigma attached to the Serb Republic when it comes to cooperation with the ICTY would persist.[68]

6.1.2 Mass level support for Bosnia's state level institutions

According to the polls of the UNDP, the level of mass support among the people for the political institutions has been low since it was measured in 2000 for the first time. As is shown by Table 6.1 the approval of the performance of the institutions, most of the time does not rise above 50 percent and only one time above 70 percent (in December 2002 among the Bosniaks). Based on the results, it must be concluded that support among all three constituent peoples for all Bosnia's domestic political institutions has been low. Neither of the two conditions of institutionalization were met (i.e. support for some period of time and those rejecting the political institutions should not be politically relevant). There has not been continuous support for the state level institutions between 2000 and 2008, and those rejecting the institutions are all but politically irrelevant. Within all communities the rate of approval in 2007 had increased only a little compared to the year 2000. The biggest increase was among the Bosnian Croats. Measured over the years, however, the Bosnian Serbs were more supportive of the state level institutions than the Bosnian Croats were. The public opinion polls show that the Bosnian Serbs apart from the years 2003, 2004 and 2007 were more supportive than the Bosnian Croats. At the same time, the Bosnian Serbs were less supportive than the Bosniaks (with the exception of the years 2000, 2006, 2007 and 2008 when they were more supportive). This mixed picture makes it impossible to say which community supports the state level institutions most.

Overall, however, among all three communities the support for the state level institutions has been very low. Especially in 2007 support declined significantly; the highest rate of satisfaction with the institutions was 45,9 percent (Bosnian Croat support for the Council of Ministers). Although especially among the Bosniaks and Bosnian Serbs the support for the state level institutions had declined in 2007, the Bosnian Croats were also less satisfied with the institutions than in 2006. The UNDP therefore concluded in its annual Early Warning System Report: 'Political life in BiH suffered its most severe political and institutional crisis of the past ten years in 2007, which may certainly be considered a highly unstable period that highlighted all the weakness of the current constitutional and political system.'[69] In 2008, support among the Bosnian Croats declined with

[67] Ashdown, *Swords and Ploughshares*, 294.
[68] Office of the High Representative, *33rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations* (Sarajevo, 2008).
[69] UNDP, *Early Warning System Bosnia. Annual Report 2007* (Sarajevo, 2008), 17.

another 10 percent and a small decrease can be noted among the Bosniaks. Support among the Bosnian Serbs, however, increased by a few percentages. According to the UNDP, this can be explained by the institutional paralysis that is a result of the continuing political crisis; Bosnian Serb support for the state level institution is interpreted as actually being support for 'the politics of division'. In other words, the weaker the state level institutions are the more support they can expect from the Bosnian Serbs.[70]

Table 6.1: Approval of respondents with the work of several political institutions in Bosnia – respondents who approve of the work (weighted %)

Bosniak Majority Areas									
Institution	**12/00**	**12/01**	**12/02**	**12/03**	**12/04**	**11/05**	**12/06**	**11/07**	**09/08**
Presidency	32,3	40,4	71,5	50,9	45,7	40.6	45,5	33,6	31,8
Parliamentary Assembly	32,2	35,0	67,1	49,3	52,3	40,3	46,0	32	30,5
Council of Ministers	30,7	40,7	67,1	50,0	49,1	39,2	44,6	31,6	30,8
Bosnian Croat Majority Areas									
Institution	**12/00**	**12/01**	**12/02**	**12/03**	**12/04**	**11/05**	**12/06**	**11/07**	**09/08**
Presidency	16,5	17,5	44,9	65,1	58,6	36,9	47,2	42,2	32,4
Parliamentary Assembly	16,3	15,7	39,3	58,6	41,7	33,6	47,3	42,6	33,4
Council of Ministers	17,3	16,9	38,9	56,7	49,7	32,9	46,9	45,9	35,0
Bosnian Serb Majority Areas									
Institution	**12/00**	**12/01**	**12/02**	**12/03**	**12/04**	**11/05**	**12/06**	**11/07**	**09/08**
Presidency	34,9	18,1	53,4	38,4	33,7	39,5	53,3	38,8	45,7
Parliamentary Assembly	35,6	16,5	49,8	38,0	32,4	37,0	52,0	38,5	44,7
Council of Ministers	36,0	16,4	53,2	38,2	30,9	36,9	51,2	38,2	45,9

Source: PRISM Research (for the UNDP) - December 2000 to September 2008.[71]

The weak level of support among the people as evidenced by the public opinion polls is confirmed by the voter turnouts during the five general elections that have been organized between 1996 and 2006. Since the elections in 1998 (for 1996 the voter turnout is not available) voter turnout decreased until 2002 after which it stabilized at a rather low level during the 2002 and 2006 elections as is shown by Table 6.2.

[70] UNDP, *Early Warning System Bosnia. Third Quarterly Report - September 2008* (Sarajevo, 2008), 11.

[71] See UNDP's Bosnia Early Warning Reports December 2000 – September 2008. Obtainable from: www.undp.ba (last visited on 20 January 2009).

Table 6.2: Voter turnout in Bosnia's general elections from 1996 to 2006 (weighted %)[72]		
Date	**Type of Elections**	**Voter turnout**
14 September 1996	1) State level: Presidency and Parliamentary Assembly 2) Federation: Parliamentary Assembly and cantonal Assemblies; 3) Serb Republic: Presidency and National Assembly	70-75
12-13 September 1998	(see above)	70
11 November 2000	(see above)	64,4
5 October 2002	(see above)	54,7
1 October 2006	(see above)	54,5

Compared to the results of 1998 elections, the voter turnout in 2002 and 2006 was very low. The result in 2002 was an expression of the population's general frustration with the political institutions. In Chapter five it was explained that the ruling Alliance for Change coalition was punished for having failed to live up to the expectations of the Bosnian electorate. According to the smaller members of the coalition, the dominant SDP and SBiH cared little for them and they accused both parties of treating them as 'vote fodder.' Internal disagreements with the Alliance made a common election campaign in 2002 impossible, which fed the popular disappointment with the coalition. Moreover, during the first months of 2002, several political affairs helped the SDA to return to power.[73] Moderate voters remained at home, while those supporting ethnic nationalist parties went to the polling stations. SDA voters were particularly motivated to participate in the elections. The well organized and rurally based SDA had succeeded in selling the slogan: "It's a tough time to be Muslim in Bosnia, Europe and the World. We have to stick together."[74] Bosniaks who were not supporting the SDA, but who had voted for the moderate SDP and SBiH, stayed at home in large numbers, and thus allowed the SDA to win.[75]

[72] The voter turnouts are based on the following sources: For 1996 (being estimated): Noel Malcolm, 'Observations on the Bosnian Elections', *Bosnia Report* 17 (1996/1997). For 1998: Office of the High Representative, *11th Report of the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 1998). For 2000 and 2002: Office of the High Representative, *23rd Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations* (Sarajevo, 23 October 2002). For 2006: OSCE Office for Democratic Institutions and Human Rights, *Bosnia and Herzegovina. General Elections 1 October 2006. OSCE/ODIHIR Election Observation Mission Final Report* (Warsaw, 2007).
[73] International Crisis Group, *Bosnia's Nationalist Governments*, 5.
[74] National Democratic Institute, *Bosnia Herzegovina: Election Results Signal Voter Frustration, Not Return to Nationalism* (Washington, 10 May 2002).
[75] Ibid.

The voter turnout proved to be even lower in 2006. A comparable dissatisfaction with Bosnia's institutions can be detected. The failed constitutional reform in the spring of 2006 and the ethnic nationalist rhetoric that dominated the election year paralyzed the political institutions. For example, the work of the House of Representatives was blocked for four weeks after the Bosnian Serbs had walked out on 24 May 2006.[76] Moreover, the work of the Presidency was hindered as individual Presidency members showed allegiance to their ethnic groups rather than to the people of Bosnia as a whole.[77] Finally, progress in the Council of Ministers has been slowed down by internal tensions and deadlocks.[78] As a result, Bosnians were not inclined to vote during the 2006 elections.

6.1.3 Conflict management and institutional support in Bosnia

The analysis above shows that Bosnia in 2008 had come a long way as far as the elite and mass level support for its political institutions is concerned. On the elite level, the Bosniaks were the most enthusiastic supporters of the state level institutions. The Bosnian Croat and Bosnian Serb political elite, however, did not accept the Dayton Agreement as far as its provisions on the state level institutions were concerned. Nonetheless, after 2001 the cooperation of the Bosnian Croats with the OHR and the state level institutions improved. While the Bosnian Serbs remained primarily committed to their entity and continued to regard it as a separate state with sovereign qualities. In fact, the more powers were attributed to the state level, the less committed Bosnian Serb politicians became to that level. That was especially the case in 2007, when open calls for secession were made by the Serb Republic's National Assembly. This reflected the preference of the Bosnian Serb political elite for either a strong Serb Republic within Bosnia, or for an independent state.[79]

At the mass level the picture was more complex. The most important conclusion drawn from the public opinion polls and the data on voter turnout was that support was low among all three ethnic communities. Especially in 2007, the state level institutions were weak in terms of mass level support. Among the people support for the central state institutions gradually increased over the years. Again, on average the Bosniaks proved to be the most enthusiastic supporters, followed by the Bosnian Croats and Bosnian Serbs. Due to a general political crisis, a significant decline in support occurred in 2007 among all three communities.

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[76] The decision to boycott parliament for a month was taken in reaction to the delays in establishing a 'Truth Commission on the sufferings of Serbs, Croats, Bosniaks, Jews and Others' in Sarajevo during the war. Commission of the European Communities, *Bosnia and Herzegovina 2006 Progress Report* (Brussels, 2006), 6.
[77] Ibid.
[78] Ibid., 7.
[79] International Crisis Group, *Ensuring Bosnia's Future*, 10.

As with institutional autonomy and institutional congruency, the weak institutional support for Bosnia's political institutions can plausibly be explained by the absence of a conflict resolving settlement in 1995. The incorporation of the incompatibility in the internationally imposed Dayton Agreement made all ethnic communities reluctant to accept and support the post-war political institutions. Instead, the political institutions became the new battleground. A sustainable institution is able to accommodate the different interests of conflicting parties by definition (otherwise it would not be sustainable). Bosnia's institutions have been created under the authority of the OHR and were challenged domestically from the very first day they were established. Regarding the second phase of institutionalization (embedding the institution) they proved not to be sustainable from the institutional support point of view. This is illustrated by the fact that by 2008, all three communities wanted to get rid of the Dayton Constitution. However, they had very different ideas on what the new constitution would look like and whether Bosnia would have to continue as one state, or whether it would have to be split up.

6.2 Kosovo

6.2.1 Elite level support for the provisional political institutions

In general, support for Kosovo's political institutions has been high among the Kosovo Albanian political elite and does not need much scrutiny. Every Kosovo Albanian political party mentioned 'independence' in their manifestos as their most important objective to achieve. Kosovo Albanian political leaders strongly supported Kosovo's interim and provisional institutions, because every single institution was perceived as a step towards independence and proper statehood. That has been exactly the same reason why Kosovo Serb politicians were very reluctant to support the provisional institutions established by UNMIK. The weak Kosovo Serb support has manifested itself in two ways: in frequent boycotts of the PISG and in the establishment of parallel institutional structures.

The lack of Kosovo Serb support started with the establishment of the Joint Interim Administrative Structure in December 1999. The Kosovo Serbs had been willing to cooperate in the Kosovo Transitional Council, but they rejected the creation of the more extensive administrative structure. The Kosovo Serb boycott lasted until 2 April 2000, when the SNC was prepared to join the Joint Interim Administrative Structure.[80] However, the decision was taken only by a local branch of the party: SNC-Gračanica. Both the SNC in the ethnically divided Mitrovica and

[80] The SNC was established in January 1999 in opposition to Slobodan Milošević' SPS. OSCE Mission in Kosovo and Kosovar Research and Documentation Institute, *The Changed Kosovo-Serb Political Landscape after the March Crisis. Trends, Analysis and Policy Suggestions.* (Pristina, 2004), 4.

the pro-Belgrade (pro-Milošević) Serb National Assembly (SNA), condemned this decision and refused to follow the example of SNC-Gračanica.[81] Despite the involvement of SNC-Gračanica, Kosovo Serb participation could not be taken for granted. Boycotts occurred on a regular basis. For example, on 4 June 2000, the Kosovo Serb delegation to the Kosovo Transitional Council decided to leave the forum for three weeks because of the serious violence that had been directed against members of the Kosovo Serb community.

One of the more serious Kosovo Serb boycotts was the decision not to participate in the Joint Working Group on the Constitutional Framework. The Kosovo Serbs walked out after the inaugural session of the Working Group on 7 March 2001.[82] They returned on 11 April, and used the occasion to change their representative.[83] In official reports by the chairperson, the Working Group repeatedly expressed its disappointment with the absence of a representative of the Kosovo Serb community. At the same time, the reports reflect the opinion that the drafting of the text proceeded constructively.[84] Therefore, when the Kosovo Serbs returned, most of the work had already been done. Kosovo Serb efforts to renegotiate results achieved during their absence were countered by all other members of the Working Group.[85]

As a result of the boycott the influence of the Kosovo Serb community on the document was limited, despite its informal contacts with UNMIK. In order to ensure the representation of their interests, the international members of the Working Group acted partly on behalf of the Kosovo Serbs.[86] In the end, the Kosovo Serb minority rights were protected with provisions that ensured their participation with in the institutions. Within the Assembly, for instance, ten seats were reserved regardless of the election results for the Kosovo Serb community. Further, one position within the Presidency of the Assembly (totalling eight members) was reserved for a Kosovo Serb. With respect to the Government it was decided that at least one minister would be a Kosovo Serb.[87]

Despite these safeguards, Kosovo Serb politicians have suspended their participation in the Assembly and Government on a regular basis. During the October 2001 elections, Kosovo Serb politicians participated after a great effort of

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[81] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration in Kosovo: S/2000/538* (New York, 2000), 2.
[82] UNMIK Press Release 529. According to an UNMIK official, they never gave a sound explanation for the boycot. Interview with an UNMIK official (2), *Pristina 6 May 2005*.
[83] UNMIK Press Release 559.
[84] UNMIK Press Release 522.
[85] Interview with an UNMIK official (2), *Pristina 6 May 2005*.
[86] Ibid.
[87] Ten other seats and one ministerial post were reserved for other minority communities. Moreover, it was decided that in case there would be more than twelve ministers, a third minister would be appointed from a non-majority community. UNMIK, 'Constitutional Framework for Provisional Self-Government in Kosovo', (Pristina: 2001).

the OSCE to get them on board; only eight days before the election they agreed to participate.[88] The elections resulted in 22 Assembly seats (including the ten reserved seats) for the Kosovo Serb political party KP, a Minister of Agriculture, Forestry and Rural Development, the position of inter-ministerial Coordinator for Returns, two seats in the Presidency of the Assembly and proportional representation in all nineteen Assembly Committees.[89]

From the start, the relationship between the KP and the Kosovo Albanian parties was tense. On 4 July 2002, the KP deputies walked out the Assembly for the first time as the result of disagreement over a procedural issue. In September, the KP invoked the special procedure for the legal protection of the interests of minorities. The issue was the objection of the Kosovo Albanian majority in the Assembly to include the University of Northern Mitrovica in the educational system of Kosovo.[90] In November, the KP finally acted on its repeated threat to boycott the Assembly.[91]

The boycott ended in February 2003, when the KP was 'warmly welcomed' back.[92] Nonetheless, the KP was sceptical about the proper functioning of the Assembly. During an interview the new KP chairman, Dragiša Krstović stated: 'Our relations with other political entities are not better than when we left the Assembly, perhaps worse now. This is because some issues not foreseen for discussion in the Assembly are being proposed or people are talking of them being proposed for discussion on the agenda.'[93] Krstović referred to the repeated attempts of Kosovo Albanian parties to discuss issues related to the status of Kosovo.[94]

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[88] Interview with an UNMIK official (2), *Pristina 6 May 2005*.

[89] The Minister of Agriculture was Goran Bogdanovic, the Coordinator for Returns was Milorad Todorovic. OSCE Mission in Kosovo and Kosovar Research and Documentation Institute, *The Changed Kosovo-Serb Political Landscape after the March Crisis*, 3.

[90] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2002/1126* (New York, 2002), 2.

[91] Next to the KP, Kosovo Albanian parties sometimes decided to boycott specific sessions of the Assembly, including the PDK and AAK. Sven Lindholm and Franklin de Vrieze, 'We need a road map to help us achieve our goals', *Assembly Support Initiative Newsletter,* 7 (2003) 4-5, 4.

[92] Franklin de Vrieze, 'Latest Developments in the Assembly', *Assembly Support Initiative Newsletter* 5 (2003) 4-5, 4. KP's return was only possible after the OSCE had agreed with the presence of an OSCE Assembly monitor during plenary sessions and presidency meetings. Ibrahim Makolli, 'Citizens watch: Monitoring the Assembly of Kosovo', *Assembly Support Initiative Newsletter,* 7 (2003) 20-21.

[93] Jonathan Browning, 'Interview with Mr. Dragisa Krstovic, Head of the Parliamentary Group of Coalition Return (KP). ' *Assembly Support Initiative Newsletter,* 5 (2003) 8-9, 9.

[94] This was the case for example in February 2003. On 4 February the Federal Parliament in Belgrade approved the Constitutional Charter that established the new state union of Serbia and Montenegro. The Charter made reference to Kosovo in the preamble. In reaction, a group of Kosovo Albanian Assembly members started collecting support for a declaration of independence. This resulted in an official Assembly resolution (supported by the LDK, PDK, AAK and political parties from the other communities) which was promptly declared invalid by SRSG Steiner. Vrieze, 'Latest Developments

Despite KP's scepticism, Kosovo Serb participation after their first Assembly boycott was characterized by a period of increased interaction and cooperation, especially at the Assembly committee level.[95] This commitment was acknowledged and praised by Kosovo Albanians and Kosovo Serbs alike. In an interview KP Member of Parliament Oliver Ivanović declared: "Earlier we reacted emotionally, tempestuously and often irrationally, thus it happened that we even missed the dates for filing the objections on some draft laws. Today we react more rationally."[96] Nonetheless, impediments for genuine cooperation remained. In the same article, a member of the Office of the Prime Minister wanted KP to start initiating law proposals and to operate more independently from Belgrade. From the KP side, the Kosovo Albanians were accused of creating (through the operation of the PISG) a foundation for an independent Kosovo before the status issue was even resolved. Related to that, Ivanović stated: 'As far as they insist on independence, we are going to insist on return of full Belgrade authority here. Both options are extreme and therefore highly negative and such a climate is not contributing to the democratic processes and economic development, which is a vital need in Kosovo. Instead of dealing with serious economic issues, we still have the practice that the Assembly is misused for political promotion.'[97]

Despite the overall commitment shown in 2003, the politicising effect of the status issue led to frequent walk-outs by KP parliamentarians. On 27 February 2003, for example, when the Assembly put two items on its agenda which according to the KP fell outside the mandate of the Assembly, Kosovo Serb Members of Parliament left the meeting.[98] A walk out occurred again on 22 December 2003, when the Assembly voted on and adopted a declaration that called for the abolition of the right of Kosovo Serbs to vote in Serbia's parliamentarian elections of 28 December.[99]

In the beginning of 2004, relations between the KP and Kosovo Albanian parties deteriorated again. First, tensions emerged during the first session of the Assembly in 2004, when the 45 Kosovo Albanian victims of the attack of Serb

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in the Assembly', 5; International Crisis Group, *Two to Tango. An Agenda for the New Kosovo SRSG* (Pristina/Brussels, 2003), 7, ICG Balkans Report No.148.

[95] OSCE Mission in Kosovo and Kosovar Research and Documentation Institute, *The Changed Kosovo-Serb Political Landscape after the March Crisis*, 3. Interview with an OSCE official (1), *Pristina 7 May 2005*.

[96] As quoted in: Zoran Culafic, '"Coalition Return" at a cross-road"', *Assembly Support Initiative Newsletter* 10 (2004) 8-9.

[97] Ibid.

[98] These issues were a declaration on the arrest by the ICTY of Fatmir Limaj, head of the PDK parliamentary group, and a declaration opposing the creation of the Union of Serb Municipalities. Vrieze, 'Latest Developments in the Assembly', 4.

[99] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/71* (New York, 2004), 3. Franklin de Vrieze, 'Recent Developments in the Assembly', *Assembly Support Initiative Newsletter,* 10 (2004) 10-12, 11.

forces in the village of Račak/Reçak on 15 January 1999 were commemorated. The KP did not attend the meeting.[100] Only one month later, a second boycott was launched. The immediate cause for this boycott was the inclusion of three murals in the renovated Assembly building, which depicted Kosovo Albanian history, without any reference to the history of the Serb community in Kosovo. This time, only the plenary sessions of the Assembly were boycotted; the Kosovo Serbs continued to participate in the Assembly Committees. [101] The boycott received new impetus as a result of the inter-ethnic violence of March 2004.

The boycott after the March violence intensified in the sense that all PISG were boycotted.[102] The Kosovo Serb Member of the Presidency of the Assembly Oliver Ivanović declared after 17 March that the international community would have to invest more efforts to regain the shattered trust of the Kosovo Serb community.[103] However, the trust in the PISG remained low in 2004. Accordingly, the voter turnout among the Kosovo Serbs during the 2004 elections was very low (see next section). The institutional guarantees established in the Constitutional Framework ensured ten seats within the Assembly. The KP had split into the SKLM, led by Oliver Ivanović, and the GIS, led by Slaviša Petković.[104] Whereas the SKLM was closely associated with Belgrade, the GIS followed a course which was more independent from Serbia's government and decided to participate in the PISG after the elections.[105]

The new Government enlarged the number of ministries and in accordance with the Constitutional Framework two ministerial posts were reserved for Kosovo Serbs. Petković, became Minister of Communities and Returns.[106] He was widely ignored by other Kosovo Serb politicians and Belgrade. They claimed that he had only received 269 votes in the 2004 election and had only become minister by the virtue of the election boycott.[107] In one of his first speeches, Petković laid out his independent position towards Belgrade: "It's us and not somebody from Belgrade who lives here; therefore we must take responsibility for our own future. We people from Kosovo and Metohija should no longer allow Belgrade to tailor our

[100] Vrieze, 'Recent Developments in the Assembly ASI 2005/10', 11.
[101] Senad Sabovic, 'Kosovo Serbs between Belgrade and Pristina', *Assembly Support Initiative Newsletter,* 12 (2004) 20-21, 20.
[102] Ibid.
[103] Zoran Culafic, 'How to reinstate trust', *Assembly Support Initiative Newsletter* 11 (2004) 8 - 9.
[104] In June 2005 the GIS was succeeded by Petkovic' 'Serbian Democratic Party of Kosovo and Metohija' (SDS-KiM). Zoran Culafic, 'Controversial Kosovo-Serb minister', *Assembly Support Initiative Newsletter,* 18 (2005), 14.
[105] Interview with an OSCE official (1), *Pristina 7 May 2005*.
[106] Petkovic was forced to resign in November 2006 after an audit had uncovered evidence of financial irregularities and mismanagement. Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2007/134* (New York, 2007), 2.
[107] Culafic, 'Controversial Kosovo-Serb minister.'

destiny by its policy. We should no longer allow Belgrade parties to order us to choose their party cadres as our representatives in Kosovo and Metohija."[108] However, Petković did not succeed in decreasing the influence of the Serbian Government on the Kosovo Serb community.

The second ministerial post, Agriculture, was reserved for the SKLM, just as with the Vice Minister position and a seat in the Presidency of the Assembly. None of these posts were filled. The official explanation of the SKLM was that because the political party had not participated in the elections, it did not have a mandate to conduct executive or legislative tasks. However, if Belgrade had urged them to participate, they would have done so.[109] The absence of such a sign from can be explained by the Serbian Government's official standpoint that there should be more guarantees to protect the vital interests of Kosovo Serbs. However, in the course of 2005, the recognition was growing among members of the SKLM that Belgrade's policy of abstention did not serve the interests of the Kosovo Serbs either. In February 2005, SKLM already openly considered returning to the Assembly. The party stated that it wanted to do so in order to improve the situation of the Kosovo Serbs in Kosovo and to demonstrate that the Standards for Kosovo were not being respected.[110] This was reiterated during a meeting with the Contact Group members in April and then again during the summer months.[111] However, a concrete return did not materialize. In 2006 and 2007 the SKLM continued to boycott the PISG. As a result, between the election years 2004 and 2007 the position of Minister of Agriculture was not filled.

The situation improved somewhat after the Assembly elections of 2007. The SKLM did not return to the Assembly, but the GIS, renamed SDKISM, did. Five newly established Kosovo Serb parties gained seats in the Assembly. The largest of them, the SLS, gained 4 seats and two ministries (the Ministry of Communities and Returns, and the Ministry of Labour and Social Welfare). The reason the SLS joined the PISG was to protect the interests of the Kosovo Serb community. In an interview, the President of the SLS Slobodan Petrović declared: 'We are in the institutions, because we want to deal with the real life; because we want a better tomorrow. It is easiest to give up, walk out, you can always do that.'[112] Petrović emphasised the difficult position his party was in. Because Belgrade urged people not to participate in the 2007 elections, the SLS did not have the full support of the

[108] As quoted in: Ibid., 14.
[109] United Nations Security Council, '5188th Meeting', (New York: 27 May 2005), 3.
[110] 'Recent Developments', *Assembly Support Initiative Newsletter,* 16 (2005) 8.
[111] Stéphane Suprenant, 'Kosovo: Les Serbes du Kosovo rompent avec Belgrade', *Courriers des Balkans* 25 Juillet 2005. 'Recent developments in Kosovo's institutions', *Assembly Support Initiative Newsletter,* 17 (2005) 8-9. Bajram Kosumi, 'Serbs shall have a secure future in Kosovo', *Assembly Support Initiative Newsletter,* 17 (2005).
[112] Mario Maglov, 'The essence of the programme is our survival in Kosovo.' Interview with Slobodan Petrovic, President of the Serbia Liberal Party', *Assembly Support Initiative Newsletter* 31 (2008) 6-7.

Serb community in Kosovo. The SLS also had no contact with the Serbian government.[113] Together with the SDKISM, the SLS represented the Kosovo Serb community with six seats in Parliament. The four other new Kosovo Serb political parties did not take the oath of office and boycotted the PISG.[114] Therefore, the participation of the SDKISM and SLS in the PISG was only a minor improvement in terms of support for the PISG by the Kosovo Serb community. Especially when it is considered that no Kosovo Serb politicians attended the Assembly meeting where independence was declared in February 2008.[115]

Instead of supporting political parties like the SLS and the SDKISM, Belgrade preferred to exercise direct political influence in Kosovo. The main effect of Belgrade's increased involvement was at the municipal level, where Kosovo Serb parallel institutions have existed since 1999. Parallel institutions are institutions that have been operational in Kosovo after 10 June 1999 (the start of UNMIK) and that are not mandated by the UN Security Council Resolution 1244.[116] Due to limited capacity and experience, UNMIK lost vital time in establishing its authority at the local level in the early days of international administration. The authority vacuum, created by the withdrawal of the Serb military forces, was filled by Kosovo Albanian and Kosovo Serb institutions in their respective municipalities. Whereas the Kosovo Albanian parallel institutions have been included in the international administration through the Joint Interim Administrative Structure and the Provisional Institutions of Government, the Kosovo Serb parallel institutions continued to exist. These structures are not mandated by UN Security Council Resolution 1244 and operate in the majority of cases under the *de facto* authority of the Serbian Government. In Belgrade, a Coordination Centre for Kosovo and Metohia was created in the summer of 2001, with the aim of strengthening the Serb parallel institutions in Kosovo.[117]

Kosovo Serb parallel institutions are mainly found in the north of Kosovo in the northern part of the *de facto* ethnically partitioned city of Mitrovica and in the three northern Kosovo Serb dominated municipalities: Leposavić/Leposaviq, Zubin Potok and Zvečan. South of the Ibar River, there are the Kosovo Serb municipalities of Štrpce/Shtërpca and Novo Brdo. The so called bridge-watchers of Mitrovica became well known as a security organization that guarded the bridge over the Ibar River, in order to prevent Kosovo Albanians from returning to the northern part of the city which is mainly inhabited by Kosovo Serbs. Next to parallel security structures, there exist parallel courts, schools, healthcare systems

[113] Ibid.
[114] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2008/211* (New York, 2008), 1.
[115] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2008/354* (New York, 2008).
[116] OSCE Mission in Kosovo, *Parallel structures in Kosovo 2006-2007* (Pristina, 2008), 5.
[117] OSCE Mission in Kosovo, 'Parallel Structures in Kosovo', (2003), 5.

and local administrations. Although these institutions are mainly present in the Kosovo Serb dominated municipalities in the north of Kosovo, since 2003 they have expanded to the south.[118]

In March 2003 the so called Union of Serb Municipalities in Kosovo was formed with Marko Jakšić as elected President. At its inauguration the Union had about 250 members from a variety of Kosovo Serb political parties. A 'Declaration of Sovereignty and Territorial Integrity of Serbia and the State of Serbia and Montenegro' was adopted. Support for parallel structures was expressed and it was demanded that a significant decentralization of government be implemented by June 2003. The Union's concept of decentralization came down to the creation of two entities: a Kosovo Serb one and a Kosovo Albanian one. Failure to do so would mean the election of parallel municipal Assemblies and the end of cooperation with UNMIK. However, UNMIK choose to ignore the Union and it was also condemned by Kosovo Serb members of the Assembly.[119]

As a result of the expansion of parallel structures, the UN Secretary-General reported the following to the UN Security Council in 2003: 'The existence of Belgrade-supported parallel structures, in violation of Resolution 1244 (1999), which now exist in virtually all municipalities that have a sizeable Kosovo Serb population, continued to hamper the functioning of the legitimate institutions. In the Kamenica municipality (Gnjilane region), the Republic of Serbia Post, Telecommunication and Telegraph Provider employs 12 workers, the Republic of Serbia Power Supply Company employs four workers, the Serbian employment office employs three workers and there are six Serbian civil registration officers. On 19 March, a Public Health Institute was opened by Belgrade officials in the northern part of Mitrovica, in breach of Belgrade's obligation not to support parallel administrative structures. However, parallel structures were removed from the Strpce municipal building, with the support of the Kosovo Serb President of the Municipal Assembly. This operation faced no major problems from the population.'[120]

In 2006, the parallel institutions were strengthened. In April, the Coordination Centre for Kosovo and Metohija demanded that Kosovo Serb municipal employees choose between either being on the payroll of Kosovo's PISG or on the payroll of parallel institutions.[121] As a result by the end of April, no less than 70 percent of all Kosovo Serb employees of the PISG had cut their ties

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[118] International Crisis Group, *Collapse in Kosovo* (Pristina/Belgrade/Brussels, 2004), 7, ICG Europe Report No. 155.
[119] International Crisis Group, *Kosovo's Ethnic Dilemma. The Need for a Civic Contract* (Pristina/Brussels, 2003), 21, ICG Balkans Report No.143.
[120] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2003/421* (New York, 2003), 12.
[121] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2006/361* (Pristina, 2006).

with the institutions and had closed their bank accounts where their salaries were deposited.[122] Furthermore, the municipalities Leposavić/Leposaviq, Zubin Potok and Zvečan/Zveçan declared a 'state of emergency' in June. In response to an unresolved murder of a Kosovo Serb, they cut off all ties with the PISG and UNMIK. A few days after the declaration of the 'state of emergency', Jakšić declared that the boycott concerned only the PISG (and not UNMIK) and that it would result in the discontinuation of all financial transactions of the above mentioned municipalities with the PISG.[123] A few days later, Northern Mitrovica also suspended all cooperation with the PISG.[124] A report stated that members from the Serbian Ministry of Interior carried out security patrols in the area, and that local Kosovo Serb defense forces were organized. A paramilitary force of about 360 former Yugoslav army reservists (with combat experience) was reportedly formed and paid by the municipal budgets furnished by the Serbian government.[125]

The three municipalities continued to boycott most contact with the PISG in 2007 and were almost fully dependent on financial support from Belgrade.[126] During the status negotiations, Belgrade tightened its grip on the Kosovo Serbs in the north.[127] In contrast to the north, the southern Kosovo Serb municipalities continued to work with the PISG.[128] Nonetheless, they maintained there own parallel institutions.[129] Since the parallel institutions enabled the Kosovo Serb political elite to undertake effective political action and duplicate, or even obstruct the policy of Kosovo's PISG, their existence was a serious obstacle to Kosovo's institutional development.

6.2.2 Mass level support for the provisional political institutions

Whereas the Kosovo Albanian political elites were very supportive of the central political institutions, the Kosovo Albanian population was more reserved in its support. Initially, the level of mass support increased after the establishment of the PISG in 2002. Table 6.3 shows that, since 2002 satisfaction with the performance

[122] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2006 Progress Report* (Brussels, 2006), 6.
[123] Kosovo Perspectives Bulletin 6, 'News in Brief', (9 June 2006). Obtainable from: www.kosovoperspectives.com (last visited on 20 January 2009).
[124] Kosovo Perspectives Bulletin 8, 'News in Brief', (23 June 2006).
[125] UNDP, *Early Warning Report Kosovo 13: January - June 2006* (Pristina, 2006), 14. International Crisis Group, *An Army for Kosovo?* (Pristina/Belgrade/Brussels, 2006), 8, Europe Report No. 174.
[126] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2007/134*, 3.
[127] International Crisis Group, *Kosovo Countdown: A Blueprint for Transition* (Pristina/Belgrade/New York/Brussels, 2007), 9, ICG Europe Report No. 188.
[128] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2006 Progress Report*, 7.
[129] OSCE Mission in Kosovo, *Parallel structures in Kosovo 2006-2007*.

of the Government and the Assembly increased until June 2005. From June 2005, however, support for the work of the Government and Assembly decreased considerably to reach the low point of 28,1 percent and 36,7 percent of the respondents being satisfied with the Government (September 2007) and Assembly (December 2007) respectively.

Table 6.3: Satisfaction of respondents with the performance of the Government and the Assembly "satisfied" or "very satisfied" respondents (weighted %)

	Government	**Assembly**
July 2002	60,2	49,6
November 2002	74.1	76.7
March 2003	74.9	71.9
July 2003	78.1	74.7
November 2003	68.5	65.3
March 2004	73.9	64.3
July 2004	71.9	59.1
November 2004	72.2	64.5
March 2005	81,1	73,6
June 2005	67,7	63,1
September 2005	48,7	59,0
December 2005	51,0	56,2
June 2006	43,3	45,4
September 2006	27,7	43,0
December 2006	26,0	27,0
March 2007	34,2	34,6
June 2007	35,9	31,9
October 2007	28,1	36,2
December 2007	Not available[130]	36.7
May 2008	47,0	52,0
Source: Riinvest Opinion polls (for the UNDP) - July 2002 to May 2008.[131]		

When examining the first condition of institutionalisation that support for political institutions should exist for some period of time, it can be argued that until June 2005 it was more or less met for the Government. In seven out of nine times support for the institution exceeded 70 percent. In July 2002 and November 2003, the satisfaction rate was lower, but still more than three fifths of the respondents

[130] Due to the change of government, no data is available for satisfaction with the performance of the government in December 2007.
[131] See UNDP's Kosovo Early Warning Reports No. 1 to No. 19. Obtainable from: www.kosovo.undp.org (last visited on 20 January 2009).

were satisfied with the institutional performance of the government. If it had not been for a result of 68,5 percent in November 2003, then support would have been above the 70 percent for two and a half years in a row. However, the table shows a negative trend beginning in June 2005. Support decreased spectacularly from 81.1 percent in March 2005 to 28,1 percent in September 2007. A similar negative trend is shown in the data regarding support for the Assembly. Support for the Assembly dropped from 73,6 percent in March 2005 to 36,2 percent in September 2007. From the outset, support for the Assembly was lower than support for the Government: the level of 70 percent has only four times been reached. However, from September 2005 support for the Assembly regularly exceeded support for the Government.

The spectacular drop in support for both institutions can be explained by a wave of political pessimism that swept over Kosovo in 2005 and was stopped only after the declaration of independence (as evidenced by the sudden increase in support in May 2008). In 2005, pessimism was caused by accusations of the abuse of financial resources by the Assembly, by the serious illness of President Rugova, by the delay in the implementation of the Standards for Kosovo, and by the political problems in setting up two new ministries.[132] The continued dissatisfaction in 2006 can be explained by the misuse of political positions, corruption and low standards of public administration.[133] Furthermore, the status negotiations that took place in 2006 and 2007 increased political tensions within the Kosovo Albanian community as well as between Kosovo Albanians and Kosovo Serbs. These tensions coincided with the highest level of political pessimism that was reported by the UNDP since July 2002; political pessimism reached 57 percent in October 2007.[134] Political pessimism decreased significantly when the prospect of independence became more real: in December 2007 it had decreased to 41 percent. The decrease continued after the declaration of independence and in June 2008 political pessimism was only 31 percent.[135] As shown in Table 6.3, the 2008 decrease in political pessimism was matched by an increase in institutional support.

The data in Table 6.3 reflects Kosovo's society as a whole, which means that the opinion of the Kosovo Serb minority is not visible. Table 6.4 shows that for the year 2003 Kosovo Serb mass level support for the Government and the Assembly is very low compared to the general levels of support for that year presented in Table 6.3 and compared to the support measured among Kosovo Albanians.[136]

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[132] UNDP, *Early Warning Report Kosovo 12: October - December 2005* (Pristina, 2005), 5 and 6.
[133] UNDP, *Early Warning Report Kosovo 14: July - September 2006* (Pristina, 2006), 18-20.
[134] UNDP, *Early Warning Report Kosovo 18: July - October 2007* (Pristina, 2007), 18.
[135] UNDP, *Early Warning Report Special Edition 20/21. Fast Facts: May 2008* (Pristina, 2008), 2.
[136] Data on Kosovo Serb support from the UNDP exists only for the year 2003.

Table 6.4: Opinion on the performance of some institutions in Kosovo - "satisfied" or "very satisfied" respondents (weighted %)			
Kosovo Albanians			
Institution/Date	**Jan. – April 2003**	**May – August 2003**	**Sept. – Dec. 2003**
Assembly	76,8	76,9	68,9
Government	79,1	80,5	72,7
Kosovo Serbs			
Institution/Date	**Jan. – April 2003**	**May-August 2003**	**Sept. – Dec. 2003**
Assembly	2,6	1,2	1,1
Government	2,6	1,2	0
Others:			
Institution/Date	**Jan. – April 2003**	**May-August 2003**	**Sept. – Dec. 2003**
Parliament	60,7	69,5	77,2
Government	63,3	66,4	75,7
Source: UNDP Opinion polls - January 2003 to December 2003.[137]			

Since data on the difference in support for the Government and Assembly between Kosovo Albanians and Kosovo Serbs has only been collected for the year 2003, a proxy indicator has to be used for the other years. A good indicator in that respect is the extent of support for an independent Kosovo. That shows that from 2002 to 2008 only a very small percentage of the Kosovo Serbs – shifting between 0 percent (lowest score) and 2,9 percent (highest score) – were in favor of an independent Kosovo. Instead, most Kosovo Serbs were in favor of Kosovo being an autonomous province within Serbia.[138] Just as with the Kosovo Serb political elite, at the level of the mass population the Kosovo Serbs considered the PISG as institutions representing a would-be independent Kosovo. Taking that into account, the lack of support for an independent Kosovo suggests a very low level of support among the Kosovo Serbs for the Assembly and Government.

The rejection of the PISG by the Kosovo Serbs has made compliance with the second condition of institutionalization (those rejecting the institutions should not be politically relevant) problematic. Since the support of the Kosovo Serbs for the Government and Assembly is crucial for their institutionalization, neither institution can be regarded as having sufficient institutional support. That conclusion is further supported by an opinion poll organized in June 2006, which showed that most Kosovo Serbs had very little trust in individual Kosovo Albanian politicians. The best score was achieved by the head of the Assembly, Kole Berisha, with a score of 1.87 on a scale of 1 to 5. Moreover, Kosovo Serbs tended to support mostly those Kosovo Serb politicians that opposed the PISG, whereas

[137] See UNDP Early Warning Reports No. 3 to No. 5. Obtainable from: www.kosovo.undp.org (last visited on 20 January 2009).
[138] See UNDP's Kosovo Early Warning Reports No. 1 to No. 19. Obtainable from: www.kosovo.undp.org (last visited on 20 January 2009).

Kosovo Serb politicians who cooperated with Kosovo's institutions scored very low.[139]

Next to opinion polls, voter turnout during elections is a valid indicator of support for political institutions. The data from the public opinion polls is supported by the voter turnouts during the three Assembly elections which have been organized between 2001 and 2007. Overall, as shown by Table 6.5, voter turnout declined considerably.

Table 6.5: Voter turnout in Kosovo's Assembly elections from 2001 to 2007 (weighted %)		
Date	**Type of Elections**	**Voter turnout**[140]
17 November 2001	Kosovo Assembly	64 %
23 October 2004	Kosovo Assembly	54 %
17 November 2007	Kosovo Assembly Municipal Assemblies	42,8 %

The overall turnout (including Kosovo Serbs) during the first Assembly elections was 64 percent.[141] The participation of Kosovo Serbs had been ensured by UNMIK, which had negotiated a Common Document with the Serbian Government in which Belgrade agreed not to obstruct Kosovo Serb participation.[142] This led to the relatively high turnout among Kosovo Serbs of 46 percent.[143] The second Assembly elections led to an overall turnout of 54 percent.[144] Although UN Special Representative Jessen-Petersen called the turnout 'satisfying' it was 10 percent lower than in 2001.[145] The voter turnout among Kosovo Serbs declined even more drastically. Whereas Kosovo Serb turnout during the first Assembly elections reached 46 percent, Kosovo Serbs massively abstained in 2004. Only 0,3

[139] The poll was executed by KUMT Consulting and the Gani Bobi Institute. Kosovo Perspectives Bulletin 7, 'In Focus', (16 June 2006). International Crisis Group, *An Army for Kosovo?* 4.
[140] The Kosovar Institute for Policy and Development mentions slightly different percentages of voter turnout: 64,3 percent for 2001 and 49,5 percent for 2004: Kosovar Institute for Policy Research and Development (KIPRED), *Voting Trends and Electoral Behaviour in Kosovo 2000-2004* (Pristina, 2006), 6.
[141] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907* (New York, 2004), 7.
[142] International Crisis Group, *Agenda for the Kosovo SRSG*, 5.
[143] Kosovar Institute for Policy Research and Development (KIPRED), *Voting Trends and Electoral Behaviour in Kosovo 2000-2004*, 10. Melinda Henneberger, 'Serb Turnout in Kosovo Vote Seen as an Encouraging Step ', *New York Times* 20 November 2001.
[144] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907*, 7.
[145] Søren Jessen-Petersen, 'Kosovo may be moving towards the end game', *Focus Kosovo* 17 (2004) 4-6, 6.

percent of the registered Serbs (around 2000 persons) decided to cast their vote.[146] This was mainly due to the conflicting messages from the Serbian government whether the Kosovo Serbs should participate or not. While Prime Minister Koštunica urged Kosovo Serbs not to vote, President Tadić stated that he would support Kosovo Serb participation under certain conditions.[147]

Finally, the third round of elections, which combined Assembly elections with elections at the municipal level, resulted in a turnout of 42,8 percent. Again Kosovo Serb participation was rather low, all be it a little larger when compared to 2004; around 2300 Kosovo Serbs (around 0,3 percent) cast their vote. Almost all of these came from the south of Kosovo where most Kosovo Serbs recognized the need for practical ties with the PISG. From the three northern municipalities (Leposavić/Leposaviq, Zubin Potok and Zvečan), no Kosovo Serb votes were cast. The Serbian government had called for a full boycott of the elections and most Kosovo Serbs decided to fulfill this request.[148]

6.2.3 Conflict management and institutional support in Kosovo

In the analysis presented above it was argued that the PISG were supported by the Kosovo Albanian political elite. Since they pursued the independence of Kosovo, every domestic political institution was welcomed as another step towards that goal. It was shown that the Kosovo Serb politicians, in contrast, clearly rejected the PISG. This has been manifested in their frequent boycotts of the political institutions and their establishment of parallel institutional structures. The uncertainty over the final status of Kosovo has motivated Kosovo Serb politicians to be as antagonistic as possible toward the PISG. From their point of view, every new or strengthened institution meant a step towards independence. In addition Kosovo Serb parallel institutions were created which undermined the authority of the PISG. At the mass level, both Kosovo Albanians and Kosovo Serbs were dissatisfied with the Government and the Assembly. The absence of support among the Kosovo Albanian community was strongly related to the weak economic development, corruption, nepotism and the lack of political will or inability of

[146] This is the turnout as measured by UN. According to the Kosovar Institute for Policy and Development (KIPRED), turnout was higher: 9 percent. The difference can be explained by the measuring method used. Whereas the UNDP measured overall Kosovo Serb turnout, KIPRED focused on turnout in the Kosovo Serb majority municipalities. UNDP, *Early Warning Report Kosovo 8: September-December 2004* (Pristina, 2004), 11. Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907*, 7. Kosovar Institute for Policy Research and Development (KIPRED), *Voting Trends and Electoral Behaviour in Kosovo 2000-2004*, 10.

[147] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2004/907*, 7.

[148] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2007/768* (New York, 2008), 2.

politicians to solve these problems.[149] This caused a remarkable difference between the high level of support among the Kosovo Albanian elite and the low level of support at the mass level among the Kosovo Albanian people.

How can the absence of institutional support be related to the conflict management strategy chosen in Kosovo? The persistence of the incompatibility of the Kosovo conflict, i.e. the status issue, can explain the lack of support among the Kosovo Serbs on both levels of society. Given the uncertainty over the final status on the one hand, and the Kosovo Albanian commitment for creating an independent state on the other hand, the Kosovo Serbs were unable to commit themselves to the PISG. The most important reason not to support the PISG was the possibility that Kosovo could become independent. This enabled the perpetuation of the conflict and enabled the Serbian government in Belgrade and the Kosovo Serb political leadership to constantly question the legitimacy of the PISG.

[149] UNDP, *Early Warning Report Kosovo 14: July - September 2006*, 14.

7 Muddling Through by the EU?

In the three preceding chapters, it was shown that the political institutions in Bosnia and Kosovo have not become embedded in their domestic societies. Therefore, although the first phase of institutionalization (the creation of political institutions) was successful, the international administrations have not been successful in fulfilling the second phase of institutionalization. It has also been argued that the absence of autonomy, congruency and support can possibly be explained by the absence of conflict resolution. Instead of resolving the conflict, the Dayton Peace Agreement embedded the incompatibility into Bosnia's post war political system. In Kosovo there was not even a peace agreement as a result of which the incompatibility persisted during the international administration. The negative effects of the non-resolution of both conflicts have been slowly realized by the international community. In the course of both international administrations, strategies were developed to resolve the incompatibilities of both conflicts. Different routes were taken in Bosnia and Kosovo, but the outcome is very similar. In this chapter the efforts to overcome the conflicting incompatibilities are discussed. It starts with the attempt to reform Bosnia's Constitution which commenced in 2005 and almost led to an agreement in the spring of 2006. Secondly, the attempt at resolving the incompatibility in Kosovo is elaborated upon. The resolution attempt failed as Belgrade and Pristine could not agree on the future status of Kosovo and because there was no consensus on the issue in the UN Security Council. The chapter ends by exploring how the process of European enlargement - at least according to the EU - may lead to a possible resolution of both conflicts. The EU has intensified its presence in Bosnia and Kosovo in the last few years; on the one hand through its European Security and Defence Policy (ESDP), on the other hand through its enlargement process. It will be argued that although European enlargement is widely considered as a logical and necessary next step in the effort to resolve the conflicts in Bosnia and Kosovo, it cannot be regarded as a quick route towards embedded political institutions. On the contrary, the most the EU can do is muddle through.

7.1 Reforming the Dayton Constitution

7.1.1 Discussing constitutional reform

From the beginning of the OHR's mission there has been a debate on the value of the Bosnian Constitution. The constitution became increasingly regarded as a document suited to end a war, but flawed for providing a sound basis for a healthy and functioning state. As High Representative Ashdown recalled in his inaugural speech in 2002: 'The peace agreement (…) was designed to end a war, not to build

a country.'[1] In 2004, the Council of Europe stated that the Constitution "was the outcome of a political compromise reached in order to end the war, [but] it cannot secure the effective functioning of the state in the long term and should be reformed once national reconciliation is irreversible and confidence is fully restored".[2] Clearly, the Constitution drafted during the Dayton negotiations was a starting point. The objective of the PIC had been that the Dayton Agreement would provide a framework for progress. It had been expected that Bosnia's political institutions would develop to a stage where Dayton could be transcended.[3] This did not happen. Under the Dayton regime, the state level institutions were designed to be weak and dependent (in financial and political terms) on the two entities.[4] Consequently, the state level institutions have remained weak in terms of institutional autonomy, institutional congruency and institutional support, as has been explained in the preceding chapters.

A political revision of the Dayton Constitution has been suggested from time to time, but proved to be a highly contentious topic. First, the mandate of the OHR did not allow for an amendment of the Constitution.[5] Secondly, the international community feared a renewed war if the Constitution would be changed.[6] Therefore, the OHR carried out reforms that strengthened the state level in practice, but did not formally amend the constitutional order. This changed in the spring of 2003 when the idea that the Constitution should be revised seemed to gain some ground. During a meeting hosted by the Council of Europe Parliamentary Assembly on 19 May 2003, several Bosnian and foreign participants argued that the Dayton Constitution was a major obstacle for Bosnia's integration into the EU. On 6 May 2003, after a meeting with EU officials, Bosniak member of the Presidency Sulejman Tihić gave an explanation for the lack of reform in Bosnia. In addition to the legacy of the wartime destruction, the negative interference of neighboring countries into Bosnia's political affairs, and the lack of a coherent strategy by the international community, Tihić named as one of the reasons the defective Constitution imposed at Dayton. Since then Tihić has campaigned for a new international conference in order to rewrite the Constitution.

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[1] Office of the High Representative, 'Inaugural Speech by Paddy Ashdown, the new High Representative for Bosnia & Herzegovina', (Sarajevo: 27 May 2002).
[2] As quoted in: Christophe Solioz, *Turning Points in Post-War Bosnia. Ownership Process and European Integration* (Baden-Baden: Nomos, 2007), 107.
[3] Kurt W. Bassuener, 'Lost Opportunities and Unlearned Lessons. The Continuing Legacy of Bosnia', *After Intervention: Public Security Management in Post-Conflict Societies. From Intervention to Sustainable Local Ownership*, Anja H. Ebnöther and Philipp H. Fluri, eds. (Vienna: DCAF et al., 2005) 101-137, 126.
[4] Ibid., 129.
[5] International Crisis Group, *Bosnia's Stalled Police Reform: No Progress, No EU* (Sarajevo/Brussels, 2005), 6, ICG Europe Report No.164.
[6] International Crisis Group, *Ensuring Bosnia's Future: A New International Engagement Strategy* (Sarajevo/Brussels, 2007), 10, Europe Report No.180.

He was supported by his colleague Dragan Čović, the Bosnian Croat member of the Presidency. The Bosnian Serb member, Borislav Paravać, opposed the effort and called the proposal dangerous.[7] Nonetheless, the issue remained on the agenda. In November 2003, the European Commission reported that the complexity of the Dayton Constitution could hinder the progress of Bosnia's closer association with the EU.[8]

The debate on constitutional reform accelerated in 2004. In January 2004, the think-tank European Stability Initiative published a proposal for reforming the Dayton Constitution.[9] The reactions of the SDA and SDS were negative, but the HDZ believed that the proposal should not be immediately rejected.[10] Consequently, the HDZ expressed support for the abolition of the Federation and the transfer of its powers to the cantonal level.[11] A similar radical proposal was made by the SDP in September 2004. The political party proposed radical changes in the Constitution by abolishing the entities and replacing it with a decentralized and secular republic with strong regional and local self-government. All citizens would be constituent throughout the territory.[12] Another proposal, made by a group of legal experts funded by the Open Society Institute, was also made public in September. These and other proposals were welcomed by High Representative Ashdown who reiterated that the political structure of Bosnia was dysfunctional.[13] He expressed the need for revising the Constitution in order to enable the creation of a more effective state.[14]

The dysfunctional elements of the Dayton Constitution were elaborated upon by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe. In March 2005, it identified several constitutional elements that hindered the functioning of the state level institutions. First, it concluded that the responsibilities of the state level institutions should be strengthened. The Venice Commission argued that these were too weak in comparison with other European federal states such as Switzerland or Belgium.

[7] International Crisis Group, *Thessaloniki and After II* (Sarajevo/Brussels, 2003), 5, Balkans briefing.
[8] Commission of the European Communities, *Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union* (Brussels, 2003), 6.
[9] European Stability Initiative, *Making Federalism Work. A radical proposal for practical reform* (Berlin/Brussels/Sarajevo, 8 January 2004).
[10] Office of the High Representative, 'BiH Media Round-up: 16 January 2004', (Sarajevo).
[11] Office of the High Representative, 'BiH Media Round-up: 19 January 2004', (Sarajevo).
[12] Office of the High Representative, 'BiH Media Round-up: 15 September 2004', (Sarajevo).
[13] Office of the High Representative, 'BiH Media Round-up: 1 September 2004', (Sarajevo).
[14] Office of the High Representative, 'BiH Media Round-up: 12 October 2004', (Sarajevo).

Whereas in these countries the state enjoys strong legislative and executive powers and has control over most financial resources, this is not the case Bosnia.[15]

The second shortcoming identified was the vital interest veto. The vital interest veto is the most important mechanism for ensuring that no decisions are taken against the vital interests of any constituent people. The procedure consists of a vote in the House of Peoples on a proposed decision of the House of Representatives. In order to be adopted, the decision has to be supported by the majority Bosniak, Bosnian Serb and Bosnian Croat delegates. If no such majority can be achieved, a conciliation procedure and ultimately a decision by the Constitutional Court are foreseen as possible solutions to the deadlock. However, the Venice Commission argued that the problem of the mechanism is not the use of the veto as such, but its preventive effect. Political issues that are expected to be blocked by a veto were often not being put to the vote. Moreover, due to the existence of the veto, a delegation that refuses to compromise is in a strong position.[16]

A third problem identified was the bicameral parliamentary system. Whereas the usual purpose of a bicameral system in a federation is to ensure a representation of smaller entities, in Bosnia both houses of parliament are dominated by representatives of the Federation. Thus, the Venice Commission concluded that the House of Peoples is mainly a mechanism favoring the interests of the constituent peoples instead of a reflection of the federal character of the state. The negative consequence of this arrangement is that the compromise based decisions made in the House of Representatives always risk being blocked in the House of Peoples, because its delegates regard the defense of the vital interests of their communities to be their exclusive task.[17]

Fourthly, the collective Presidency was regarded to be dysfunctional and inefficient. The Venice Commission considered the arrangement to be very unusual. The existence of the collective Presidency seemed only motivated by the concern to ensure the participation in all important decisions of the representatives of all constituent peoples. However, the Venice Commission argued that representational functions of a Head of State are better carried out by one person. In addition, since at the top of the executive there is already a tripartite Council of Ministers, the addition of a second collective body was considered to be dysfunctional.[18]

A fifth constitutional problem identified by the Venice Commission, and related to the problem of the collective Presidency, was the weak position of the

[15] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* (Venice, 11 March 2005), 8.
[16] Ibid., 9.
[17] Ibid., 10.
[18] Ibid., 11.

Council of Ministers. Under the Dayton Constitution, there was a large risk of overlap between the Presidency and the Council of Ministers, because both institutions were collegiate bodies. Having two collegiate bodies risked not only the duplication of decision-making processes, but it threatened also the effectiveness of decision-making. Therefore, the Venice Commission argued that the Council of Ministers should be strengthened by concentrating the executive power in the Council of Ministers rather than to let it share its competencies with a collective Presidency.[19]

Finally, the Constitution's emphasis on ethnic group rights was also considered to be problematic in certain respects. The Venice Commission concluded that the state institutions were structured to represent the constituent peoples rather than to represent citizens directly.[20] Consequently, Bosnian Serbs living in the Federation and Bosnian Croats and Bosniaks living in the Serb Republic were unable to vote a representative of their own community in the Presidency. Instead, they have had to rely on representatives of their community from the *other* entity.[21] The Venice Commission concluded that the rules on the composition and election of the Presidency and House of Peoples were incompatible with Protocol No. 12 and Article 14 of the European Convention on Human Rights.[22]

7.1.2 Negotiations on constitutional reform

The discussion on constitutional reforms led to concrete negotiations in 2005 and in 2006. The reform effort was heavily driven by the USA, with Donald Hays, former Principal Deputy High Representative, as one of the key architects of the plan.[23] Despite being the main architect of the Dayton Constitution, the USA had from the beginning of the conflict been in favor of a much more centralized Bosnian state.[24] With the support of the EU and the PIC, Hays started to prepare plans for revising the Constitution and brought together the eight leading Bosnian

[19] Ibid.
[20] Ibid., 12.
[21] Florian Bieber, *Post-War Bosnia. Ethnicity, Inequality and Public Sector Governance* (New York: Palgrave Macmillan, 2006), 51.
[22] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, 20.
[23] Ian Traynor, 'Revealed: US plans for Bosnian constitution', *The Guardian* 10 November 2005; 'Schwarz-Schilling urges BiH Parliament to support constitutional reform agreement', *South East European Times* 20 March 2006. Peace Implementation Council, 'Joint Statement by the Peace Implementation Council Steering Board Ambassadors and the High Representative on Constitutional Reform ', (3 March 2006).
[24] Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina. Ethnic Conflict and International Intervention* (Armonk/London: M.E. Sharpe, 1999), 317.

parties from the House of Representatives.[25] The Bosniak political parties proved to be the most supportive, the Bosnian Serb parties the most rejectionist and the Bosnian Croat parties were somewhere in between. Senad Sepić, member of the SDA presidency, was quoted saying in 2005: 'After the war ended, it started getting in the way of development and better life in Bosnia. Ten years later, it is high time to replace the Dayton Agreement with a constitution which will be adopted in a normal procedure.'[26] The most resistant to constitutional change were the Bosnian Serb representatives. On 11 October 2004, for example, the Bosnian Serb delegation had walked out of the House of Representatives' Constitutional and Legal Affairs Commission when concrete constitutional changes were discussed.[27] Half a year later, in reaction to a call for constitutional change by the European Parliament, the Serb Republic's President Dragan Čavić voiced strong objections and implicitly called the Dayton Constitution a success.[28]

Despite the lack of enthusiasm among the Bosnian Serbs, the eight parties reached a rough consensus about a reform package in the autumn of 2005. Subsequently, the Bosnian politicians were invited to Brussels and Washington to endorse the reform plans. On 21 November 2005, at the occasion of the tenth anniversary of the Dayton Agreement, the eight political parties signed an agreement with the US State Department to push the reforms through Parliament by March 2006. The deadline was established in order to ensure that the reforms would be adopted before the general elections of October 2006.[29] On 14 December 2005, the PIC held an extraordinary session in Paris to discuss the course of the reform process and declared the reforms to be a priority. It was expected that they would 'increase the functionality and efficiency of BiH's [Bosnia's, NvW] institutions and of BiH itself so as to create a state that puts citizens first.'[30]

Between November 2005 and March 2006 several rounds of negotiations on concrete amendments took place. On 18 March 2006 this resulted in an agreement among six of the eight parties on a set of draft constitutional amendments. It was aimed at letting the amendments come into effect on 1 May 2006.[31] The agreement included the following changes: [32]

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[25] International Crisis Group, *Ensuring Bosnia's Future*, 10.
[26] Amer Obradovic, 'Ten years after Dayton divisions remain', *Southeast European Times* 15 December 2005.
[27] Office of the High Representative, 'BiH Media Round-up: 12 October 2004.'
[28] Office of the High Representative, 'BiH Media Round-up: 16 April 2005', (Sarajevo).
[29] International Crisis Group, *Ensuring Bosnia's Future*, 10.
[30] Peace Implementation Council, 'Communiqué by the Political Directors of the PIC Steering Board and the BiH Authorities', (Sarajevo: 14 December 2005).
[31] Center for European Integration Strategies, *Overcoming the War in the Heads: Renewing Bosnia's Constitutional Debate* (Geneva/Sarajevo/Vienna, 2006), 2.
[32] 'Schwarz-Schilling urges BiH Parliament to support constitutional reform agreement.' Office of the High Representative, *Report to the European Parliament by the OHR and EU Special Representative for BiH: February 2006 - June 2006* (Brussels, 2006), 5.

- replacement of the directly elected (by popular vote) collective Presidency rotating every 8 months with an indirectly elected (by Parliament) single President and two Vice-Presidents (all three rotating every 16 months). The Presidency would be elected for four years and each member would represent one of the three constituent peoples;
- the House of Representatives would be expanded from 42 members to 87 members;
- the House of Peoples would be expanded from 15 to 21 members, but its powers would be curtailed;
- the creation of two new ministries (expanding the number from nine to eleven);
- expansion of the powers of the Prime Minister, including the power to hire and fire ministers;
- a more clear-cut division of responsibilities between the state and the entities.

These changes were to be adopted by both houses of parliament before the October 2006 elections. In the meantime, the incumbent chair of the Presidency, Tihić, asked the Venice Commission to give a preliminary opinion on the March Agreement.[33] The Venice Commission responded with their opinion on 7 April 2006. It concluded that the Agreement addressed the issues that were identified as priorities for reform by the Venice Commission, such as granting additional powers to the state level institutions and increasing their efficiency. On the whole, the Venice Commission was positive on the March Agreement, but it also emphasized that a follow up would be needed and that some amendments proposed should be redrafted.[34]

On 31 March, the legal grounds for the amendments were affirmed by the Constitutional and Legal Affairs Commission of the House of Representatives and a public debate on the amendments took place on 12 April. Although the amendments survived the committee stage of the legislative process, the reform package failed to be adopted in the plenary meeting of the House of Representatives on 26 April.[35] By two votes, the required majority of two thirds of

[33] During the negotiations preceding the 18 March Agreement, the Venice Commission had also been consulted on different proposals regarding the election of the Presidency. European Commission for Democracy through Law (Venice Commission), *Opinion on Different Proposals for the Election of the Presidency of Bosnia and Herzegovina* (Strasbourg, 20 March 2006).
[34] European Commission for Democracy through Law (Venice Commission), *Preliminary Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina* (Strasbourg, 7 April 2006), 19.
[35] Office of the High Representative, *Report to the European Parliament by the OHR and EU Special Representative for BiH: February 2006 - June 2006*, 5.

the House of Representatives was not reached.[36] Resistance to the constitutional amendments did not come from the Bosnian Serbs, but from dissenters of the HDZ and from Haris Silajdžić' SBiH. The HDZ dissenters, who split off from the party and formed the 'HDZ 1990', argued that the reforms did not improve the position of the Bosnian Croats. They even argued that the amendments would lead to their marginalization. The SBiH opposed the package, because in its perspective it did not go far enough. The amendments were judged to be superficial and to legitimize the existence of a *de facto* sovereign Serb Republic.[37] Although Tihić (SDA) attempted to save the package by proposing several compromises, the parties remained committed to their resistance.[38]

Despite their disappointment, the USA, the PIC and the EU recognized that the Bosnians should make the ultimate decision on constitutional change themselves. Therefore, after the March Agreement had failed to get adopted in the House of Representatives, neither the USA nor the other international actors were prepared to impose the settlement. Instead, continued efforts were made to convince the political parties that constitutional reform was necessary. The PIC repeatedly called for the adoption of the reform package: 'Bosnia and Herzegovina has a constitution that was shaped by the necessity to end the war, not by the need for functionality, fiscal sustainability and economic and social development. Constitutional reform will be needed to accelerate progress towards the European Union and Euro-Atlantic institutions.'[39] No further progress on the issue could be achieved in the first few months after its rejection. First, the October 2007 elections dominated the political agenda, then the formation of the new central and entity governments, and finally the contentious issue of police reform.[40]

It was only in March 2007 that High Representative Schwarz-Schilling announced the restart of the constitutional reform process with the objective of having it operational in the second half of 2007.[41] An entire new process was deemed necessary as it was unlikely that the March 2006 reform package would be adopted. In 2007 and the first months of 2008, Bosnian political parties worked on their internal positions regarding the issue, but no concrete reform proposal could be achieved. Among the Bosnian Croats there was much internal division. The

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[36] Center for European Integration Strategies, *Renewing Bosnia's Constitutional Debate*, 1.
[37] Office of the High Representative, *Report to the European Parliament by the OHR and EU Special Representative for BiH: February 2006 - June 2006*, 5.
[38] Interview with an official of the Dutch government, *Pristina 4 May 2005*.
[39] Peace Implementation Council, 'Communiqué by the PIC Steering Board', (Sarajevo: 2006).
[40] Office of the High Representative, *31st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations* (Sarajevo, 16 May 2007), 2.
[41] Office of the High Representative, 'Schwarz-Schilling television address on PIC decision', (Sarajevo: 2 March 2007). Office of the High Representative, *31st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations*, 2.

Bosnian Croat political parties agreed in their Kresevo Declaration of September 2007 on common principles for constitutional reform, but the concrete proposals of the HDZ, the HDZ 1990 and the smaller parties differed substantially. The Bosnian Serb political parties were more united. All parties made clear that they would only support constitutional changes when they would not diminish the current strong position of the Serb Republic. The SNSD even concluded that future federal or confederal units would need to have the right to self-determination, including the right of secession. They would also need to have more state-like powers in comparison to the Dayton-based entities. Bosniak politicians, finally, were reluctant to discuss reform models in detail and used the police reform process as a surrogate for constitutional reform. They also considered constitutional discussions to be pointless until Kosovo's final status was settled.[42]

In May 2008 no progress on the issue had been achieved. On 2 February 2008, the party leaders of the ruling Government coalition had decided that in the view of the deep divisions regarding the issues, it would be better to concentrate on police reform. Any discussions on the process or scope of constitutional reform would be postponed until after signing a Stability and Association Agreement with the EU.[43] In his report to the PIC High Representative, Miroslav Lajčák concluded: 'Although constitutional reform remains essential if BiH is to be a functional and sustainable state with real hopes of joining the EU any time soon, reaching any domestic consensus on the matter will prove extremely difficult so long as the domestic parties' conceptions remain both antithetical and non-negotiable.'[44] The lack of domestic consensus on constitutional reform meant that the incompatibility embedded in the Dayton Agreement had not been replaced yet by a new constitutional order. In fact, the constitutional reform process had led to serious challenges to the Dayton Constitution, without resulting in an alternative one. The failure of the constitutional reform process meant that the EU would have to deal with constitutional reforms during the accession process of Bosnia. This is elaborated upon below.

[42] Office of the High Representative, *33rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations* (Sarajevo, 2008), 5.
[43] Peace Implementation Council, 'Declaration by the Steering Board of the Peace Implementation Council', (Sarajevo: 27 February 2008), 4.
[44] Office of the High Representative, *33rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations*, 5.

7.2 Resolving Kosovo's status

7.2.1 Preparing for the status talks

Several opinion polls conducted during the eight years of UNMIK's administration show that the differences of opinion about Kosovo's future between Kosovo Albanians and Kosovo Serbs persisted. A survey held by the US Department of State in May 2001 showed that if by that time a referendum on the status of the territory would have been held, 97,9 percent of Kosovo Albanians would have voted in favor for independence and 100 percent of Kosovo Serbs would have voted for remaining in Serbia.[45] These preferences are supported by statistical evidence from the UNDP: in November 2003, 86,1 percent of the Kosovo Albanians were in favor of independence, while 81,9 percent of the Kosovo Serbs wanted the territory to remain a province within Serbia. In March 2004, the percentages had increased to 90,4 percent and 83,2 percent respectively.[46] In December 2005, 93,4 percent of the Kosovo Albanian community supported independence and 89,6 percent of the Kosovo Serbs wanted Kosovo to remain in Serbia.[47] Finally, in October 2007, 89,3 percent of the Kosovo Albanians were in favor of independence and 89,8 percent of the Kosovo Serbs wanted Kosovo to remain a Serbian province.[48]

Since February 1999 several proposals had been made for solving the incompatibility of the Kosovo conflict. The Rambouillet Agreement, to begin with, called for the restoration of Kosovo's autonomy within the borders of Serbia. NATO and other international organizations would help implementing the Agreement. As was described in Chapter three, Belgrade rejected the Rambouillet settlement and after operation Allied Force had ended Kosovo was put under international administration. UNMIK had to implement UN Security Council Resolution 1244 and was not allowed to decide on the status of Kosovo.

In 2002 the International Commission on the Balkans presented a report in which it argued for Kosovo's 'conditional independence'. During the press briefing, two commission members, Carl Tham and Jacques Rupnik stated: 'It is a huge disillusion if someone thinks of buying time through the status quo.' And further: 'You cannot expect Kosovar leaders to build democracy if they're not allowed to hold responsibilities.' [49] The same International Commission on the Balkans proposed a concrete road map in May 2005. The Commission was very clear in its position that in order to solve the status issue, the EU would necessarily

[45] UNDP, *Building bridges to a better future. Human Development Report Kosovo 2002* (Pristina: UNDP, 2002), 35.
[46] UNDP, *Early Warning Report Kosovo 6: January-April 2004* (Pristina, 2004), 31.
[47] UNDP, *Early Warning Report Kosovo 12: October - December 2005* (Pristina, 2005), 2.
[48] UNDP, *Early Warning Report Kosovo 18: July - October 2007* (Pristina, 2007), 21.
[49] UNMIK, 'Local Media Monitoring', (23 January 2002).

have to play a large role. The Commission connected the status issue to the process of European enlargement and identified four stages. The first stage would acknowledge a *de facto* separation of Kosovo from Serbia, which according to the Commission was already implicit in UN Security Council Resolution 1244. The second stage would create a situation of 'independence without full sovereignty'. At this stage Kosovo would be recognized as an independent entity, but without full sovereignty. Instead, the EU (rather than the UN) would have reserved powers in the fields of human rights and the protection of minorities. The third stage would be the stage of 'guided sovereignty' in which Kosovo would be recognized as a candidate for EU membership and in which accession negotiations would be started with Brussels. The EU would no longer have its reserved powers and would only exercise influence through the accession process. In the fourth and final stage, Kosovo would receive 'full and shared sovereignty'. On the one hand, Kosovo would be fully independent; on the other hand, it would be a member of the EU in which all states to a certain degree share their sovereignty.[50]

The road map of the ICB emerged at a time when the UN was reviewing its international administration. The preparations for this review had started in November 2003 when the US Under-Secretary of State for Political Affairs Marc Grossman declared that progress of the Standards would be assessed in mid-2005.[51] Subsequently, the March 2004 violence prompted a review of the policies and practices of all actors in Kosovo, including recommendations for the way forward. The review was requested by the UN Secretary-General in July 2004 and executed by Kai Eide during the summer. In August 2004 in his report, Eide observed: 'Kosovo (Serbia and Montenegro) is characterized by growing dissatisfaction and frustration.'[52] He identified three challenges: meeting the immediate and urgent requirements following the March 2004 violence; selecting priorities among the (too ambitious) Standards and transferring greater competencies to the PISG; and preparing for future status negotiations. With respect to the latter Eide stated: 'They cannot be postponed much longer. There will not be any ideal moment for starting such preparations – not even a good moment.'[53]

One year later, Eide was asked by the UN Secretary-General to conduct a new review with the purpose to assess whether the conditions were met to start a political process designed to determine the status of Kosovo. In October 2005, Eide published his second report: A Comprehensive Review of the Situation in Kosovo. Eide concluded that although Standards implementation had been uneven, the time had come to go beyond the Standards before Status policy. In fact, Eide repeated

[50] International Commission on the Balkans, *The Balkans in Europe's Future* (Sofia, 2005), 20-23.
[51] Andriani Mortoglou, 'Mid-2005: Time for Review', *Assembly Support Initiative Newsletter,* 18 (2005) 12.
[52] Secretary-General of the United Nations, *Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council: S/2004/932* (New York, 2004), 3.
[53] Ibid., 4.

his earlier position and stated that: 'There will (…) not be any good moment for addressing the future status of Kosovo. Determining Kosovo's future status remains - and will continue to be - a highly sensitive political issue with serious regional and wider international implications. Nevertheless, an overall assessment leads to the conclusion that the time has come to commence this process.'[54] The lowering of expectations regarding the necessary level of Standards implementation was part of an international policy shift that occurred in spring 2005. During the UN Security Council's debate on Kosovo on 27 May 2005, it was acknowledged that much progress had been made with regard to Standards implementation and in many capitals, especially in Washington, it was thought that the process of Standards and Status should be started.[55]

After the first Eide report, the Contact Group got more involved with Kosovo. On 13 April 2005, the Contact Group formulated three guiding principles for resolving the status issue. The first principle ruled out a return to the situation that existed before NATO's intervention in 1999. Secondly, the partition of Kosovo along ethnic lines was excluded as a solution. And the third principle excluded a union of Kosovo with any country in the region. These three principles became part of a larger set of ten guidelines which the Contact Group transmitted to the members of the Security Council in November 2005, who accepted them without delay.[56] The guiding principles of the Contact Group were also adopted by the EU. In a joint declaration in June 2005, High Representative for the Common Foreign and Security Policy Javier Solana and EU Enlargement Commissioner Olli Rehn declared the EU guiding principles to be the following:[57]

- Kosovo must not return to the situation before March 1999 and Belgrade and Pristina must move towards Euro-Atlantic integration;
- Kosovo's Status must be based on multi-ethnicity; the protection of minorities; the protection of cultural and religious heritage; and effective mechanisms for fighting organized crime and terrorism;
- The solution of Kosovo's Status must strengthen regional security and stability;
- Accordingly, there must be no change in the current territory of Kosovo (i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country after the resolution of Kosovo's status);

[54] Secretary-General of the United Nations, *Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council: S/2005/635* (New York, 2005), 18.
[55] Mortoglou, 'Mid-2005: Time for Review.'
[56] United Nations Security Council, 'Letter dated 10 November 2005 from the President of the Security Council addressed to the Secretary-General: S/2005/709', (New York: 2005).
[57] Javier Solana and Olli Rehn, 'Summary note on the joint report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the future EU Role and Contribution in Kosovo', (Brussels: 14 June 2005).

- Any solution must be fully compatible with European values and standards and contribute to realising the European Perspective of Kosovo and of the region;
- Kosovo will continue to need international civilian and military presences.

The Contact Group, the UN and the EU would become the principal actors in the process towards determining the final status of the territory. The negotiations were led by a Special Envoy appointed by the Secretary-General of the UN. On 14 November 2005, Kofi Annan appointed former Finish President Martti Ahtisaari to fulfill that function. Ahtisaari and his deputy, Albert Rohan, established the UN Office of the Special Envoy for Kosovo (UNOSEK) in Vienna as their support office.

7.2.2 Negotiations on the final status

UNOSEK started operations in late 2005. It decided to focus on technical issues, including decentralization of governance, community rights, protection of (Kosovo Serb) cultural heritage and property claims.[58] During a press conference on 23 November 2005, Ahtisaari stressed that the policy of the international community had become one of Standards with Status.[59] Ahtisaari claimed that he followed a bottom-up approach in which mainly practical and status-neutral issues would be dealt with.[60] In that respect, there was little difference with the technical dialogue which had been part of the Standards before Status policy, apart from the fact that the UNOSEK negotiations had a more robust political profile. The idea behind the approach of Ahtisaari and his team was that it would be unlikely to reach a negotiated settlement on Kosovo's status as such. The plan was to negotiate a solution on the technical issues and then refer the matter back to the UN Security Council. Based on the Ahtisaari document, the Security Council would take the final decision on the status of the territory.

Ahtisaari negotiated with delegations from Pristina and Belgrade. The Albanian negotiation team (Team of Unity) was constructed and led by President Rugova. The Team of Unity was endorsed by the Assembly on 28 September 2005 and was a joint enterprise of Government coalition parties and opposition parties. Next to Rugova, the team included Prime Minister Bajram Kosumi, the President of the Assembly Nexhat Daci and the two leaders of the main opposition parties in the Assembly in 2005: PDK's President Hashim Thaci and ORA's President

[58] International Crisis Group, *Kosovo Status: Delay is Risky* (Pristina/Brussels, 2006), 1, Europe Report No. 177.
[59] UNMIK, 'Press Briefing by UN Special Envoy Martti Ahtisaari and his Deputy Albert Rohan', (Pristina: 23 November 2005).
[60] UNMIK, 'News Coverage', (3 April 2006).

Vetton Surroi. The 'Unity Team' was the product of lengthy and difficult negotiations between the government and the opposition and met for the first time in October 2005.[61] The team consisted of several technical working groups (such as on constitutional affairs) which operated below the senior party leaders. Their main task was to depoliticize sensitive issues and produce workable negotiation papers.[62] Especially the Political and Strategic Group proved to be creative in producing workable negotiation papers and positions. The working group contributed considerably to the cohesion of the negotiation team.[63]

The composition of the negotiation team changed in the first months of 2006 after three leaders were replaced. First, Rugova died on 21 January 2006 and was replaced by President Fatmir Sejdiju. Secondly, Kosumi and Daci were ousted by the Assembly and replaced with Agim Ceku (AAK) and Kole Berisha (LDK) respectively in March 2006. That move had been coordinated within the Government coalition, which increasingly considered Kosumi to be ineffective and Daci to be 'overbearing and abrasive.'[64]

The Serbian negotiation team was led by Serbian President Boris Tadić and Prime Minister Vojislav Koštunica. Some Kosovo Serbs were included, but they were under-represented.[65] The first internal meeting of the Serbian negotiation team was in December 2005. In preparation for the first round of negotiations, initially scheduled on 25 January 2006 in Vienna, the Serbian negotiators prepared a document which called for the establishment of Serb municipalities and constitutional and legal protections for Kosovo Serbs.[66] A few days after the presentation of the Serbian document on 9 January 2005, Special Representative Jessen-Petersen and speaker of the Assembly Daci repeated the principle that partition was ruled out.[67] This event started what would become a trend during the negotiations. Whereas the Kosovo Albanian delegation proved to be able to come up with comprehensive proposals and demonstrated flexibility, the Serbian delegation often was 'disorganized, poorly briefed and ill prepared', but nonetheless able to shape the direction of the talks.[68] Thus, most attention during the talks went to the issues of decentralization and the protection of Serbian cultural heritage, rather than on a broader framework of minority rights, debt and

[61] International Crisis Group, *Kosovo Status: Delay is Risky*, 12.
[62] Kosovo Perspectives Bulletin 13, 'News in Brief', (28 July 2006).
[63] International Crisis Group, *Kosovo Status: Delay is Risky*, 12.
[64] Ibid., 15.
[65] Ibid., 3.
[66] Igor Jovanovic, 'Serbian negotiating team adopts platform for Kosovo talks', *South East European Times* 10 January 2006.
[67] Blerta Foniqi, 'Jessen-Petersen rules out partition of Kosovo', *Southeast European Times* 12 January 2006.
[68] International Crisis Group, *Kosovo Status: Delay is Risky*, 4.

state property.[69] Part of Serbian negotiation tactics was to offer few concessions and to send low-level delegations.[70]

In total fifteen meetings took place in ten rounds between the Serbian and Kosovar delegation. An overview of all meetings and the topics discussed are presented in Table 7.1.

Table 7.1: Direct talks between Belgrade and Pristina in 2006 (adapted from UNOSEK)[71]	
-	One meeting of the Serbian and Kosovar leadership in Vienna (24 July).
-	Eight meetings related to decentralization: (20-21 February, 17 March, 3 April, 5 May, 19 July, 7 August, 7 September and 15 September).
-	Three meetings related to the protection of cultural and religious heritage in Kosovo: (23 May, 18 July and 8 September).
-	Two meetings related to community rights: (8 August and 8 September).
-	One meeting related to economic issues: (31 May).

The first meeting focused on local government reform.[72] The Kosovo Albanian team was presided over by Lufti Haziri who was Kosovo's Minister for Local Governance and the Serbian team was led by Leon Kojen who was adviser to President Tadić. The talks were regarded as constructive by UNOSEK, despite the absence of big results. The Serbian team declared that although they welcomed the talks on decentralization, they preferred to address the status issue. With respect to decentralization, the Serbs wanted substantial autonomy for Kosovo Serb minority communities, the possibility of close ties between the communities, and a special relationship between the communities and Belgrade. The Kosovo Albanians wanted to reform local government only after the status had been decided upon and the only outcome of the status could be full independence.[73]

The next three rounds of direct talks between Pristina and Belgrade (17 March, 3 April, and 5 May 2006) also focused on the issue of decentralization. Topics like local finance, inter-municipal cooperation, cross-boundary cooperation and the creation of new municipalities were addressed. At the same time, parallel discussions on cultural and religious heritage, minority rights and the economy were held. The fifth round of talks (23 May) was dedicated to the protection of cultural and religious sites. A special sixth round (31 May) on economic issues was

[69] Ibid., 2.
[70] Ibid., 7.
[71] Obtainable from: www.unosek.org (last visited on: 20 February 2009).
[72] The first meeting between UNOSEK and the negotiation teams had been planned on 25 January 2006, but because of the death of President Rugova a few days earlier the meeting was rescheduled to take place on 20 February.
[73] Most Kosovo Serbs live in the north of Kosovo: an estimated 70.000 out of the 120.000 Kosovo Serbs. Blerta Foniqi, 'First Round of Kosovo negotiations successful, but status not discussed', *South East European Times* 24 February 2006.

organized.[74] During the round, the issues of the external debt of the former Yugoslavia and state property were discussed. On neither issue was an agreement reached.[75] A similar lack of progress dominated the seventh round (18 July) on decentralization and cultural heritage.[76] The eighth, ninth and tenth rounds discussed community rights (8 August and 8 September) and decentralization (7 and 15 September).[77]

Apart from these rather technical consultations, direct high level negotiations on the status of the territory took place on 24 July 2006. The Serbian delegation had made clear during the first technical meeting that they would prefer such direct talks and in May 2006 they had returned with such an explicit request to the Contact Group. This resulted in the July meeting between Serbia's and Kosovo's Presidents, Prime Ministers and other senior political leaders.[78] During the meeting, it became clear that the opinions on the future of Kosovo were still very divergent. Ahtisaari claimed that 'Belgrade was willing to give everything except independence, while Pristina does not want anything else but independence.'[79] Given the deadlock on the final status, Ahtisaari emphasized that negotiations on practical issues, such as decentralization, the protection of religious and cultural heritage and the economy, would be much more important.[80] As a result, direct negotiations on the status of Kosovo were not repeated.

After the last technical negotiations had been held on 15 September, Ahtisaari and his team set out to draft a report that would first be offered to Pristina and Belgrade for feedback and that then would be submitted to the UN Security Council. On 15 September 2006, Rohan had declared that the negotiation team had met a dead-end.[81] Ahtisaari expressed similar pessimism in a statement to the UN Security Council on 22 September 2006. He accused Belgrade of being too obstructive and inflexible. On the one hand, Belgrade still insisted on dividing Kosovo into an (autonomous) Kosovo Albanian entity and a Kosovo Serb entity; the latter with close ties to Serbia. Pristina, on the other hand, still held the position of a unitary state with unified power for the central level of government. The situation got even more complicated after the passage of Serbia's new Constitution, which explicitly mentioned Kosovo as being an integral part of Serbia.[82]

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[74] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2006/707* (New York, 2006), 1.
[75] International Crisis Group, *Kosovo Status: Delay is Risky*, 7.
[76] Kosovo Perspectives Bulletin 12, 'News in Brief', (21 July 2006). Obtainable from: www.kosovoperspectives.com (last visited on: 20 February 2009).
[77] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2006/707*, 1.
[78] International Crisis Group, *Kosovo Status: Delay is Risky*, 3.
[79] Kosovo Perspectives Bulletin 13, 'News in Brief.'
[80] Ibid.
[81] International Crisis Group, *Kosovo Status: Delay is Risky*, 2.
[82] Ibid., 5.

As a result of Ahtisaari's and Rohan's statements, Russia and China expressed support for continued negotiations. Instead, Ahtisaari succeeded in creating greater political space for settling the issue through the arbitration of the UN Security Council. On 9 October 2006, during a seminar in Finland, he declared: "I can't see [that] there will be a negotiated settlement (…) I don't see the parties moving on the status issue. The parties remain diametrically opposed.'[83] Given the deadlock, Ahtisaari decided to postpone the presentation of his report until after 21 January 2007 when Serbian parliamentary elections would have been held. Consequently, Ahtisaari presented his Draft Comprehenisive Proposal to Belgrade and Pristina on 2 February 2008. Following the presentation, additional meetings between both delegations took place in Vienna in order to discuss the draft report. On 10 March, Ahtisaari declared that the discussions were exhausted and that both sides would not come closer together with additional efforts. Therefore, Ahtisaari completed his Final Comprehensive Proposal and submitted it together with his mission report to the UN Secretary-General who in turn sent it to the UN Security Council on 26 March 2007.

In his report to the UN Security Council, Ahtisaari stated that reintegration of Kosovo into Serbia would not be a viable option, that a continued international administration would not be sustainable, and that independence with international supervision would be the preferable option. Based on these three general conclusions, the essential provisions of the Comprehensive Proposal were:[84]

- Kosovo shall be a multi-ethnic society, governing itself democratically and with full respect for the rule of law and the highest level of internationally recognized human rights and fundamental freedoms;
- Kosovo shall adopt a constitution to enshrine such principles. While the Settlement does not prescribe a complete constitution, it defines key elements that must form part of that constitution;
- Kosovo shall have the right to negotiate and conclude international agreements, including the right to seek membership in international organizations;
- With respect to the protection and promotion of community rights, the Settlement addresses key aspects to be protected, including culture, language, education and symbols. Albanian and Serbian shall be the two official languages of Kosovo, while other community languages shall have the status of languages in official use. To ensure adequate representation of communities in public life, the Settlement defines specific representation mechanisms for key institutions.

[83] As quoted in: Ibid., 7.
[84] United Nations Security Council, *Report of the Special Envoy of the Secretary-General on Kosovo's future status: S-2007-168* (New York, 26 March 2007).

- The extensive decentralization provisions are intended to promote good governance, transparency, effectiveness and fiscal sustainability in public service. The proposal focuses in particular on the specific needs and concerns of the Kosovo Serb community, which shall have a high degree of control over its own affairs.
- The Settlement includes specific provisions to ensure that the justice system is integrated, independent, professional and impartial.
- The Settlement places great emphasis upon ensuring the unfettered and undisturbed existence and operation of the Serbian Orthodox Church in Kosovo.
- All refugees and internally displaced persons from Kosovo shall have the right to return and reclaim their property and personal possessions based upon a voluntary and informed decision.
- The Settlement includes specific provisions designed to promote and safeguard sustainable economic development in Kosovo.
- The Settlement provides for a professional, multi-ethnic and democratic Kosovo security sector, encouraging significant local ownership in its development, while retaining a level of international oversight necessary for ultimate success in this sensitive area.
- In general, Kosovo shall be responsible for the implementation of the Settlement. To safeguard and support such implementation, the Settlement defines the role and powers of the future international civilian and military presences.

The Comprehensive Proposal arranged for international supervision in order to ensure the implementation of the proposal. The presence of NATO (KFOR) and the OSCE would continue, whereas the EU would start an ESDP mission. UNMIK would be replaced by an International Civilian Representative with comparable functions and powers as the High Representative in Bosnia. The relevant provision states: 'The International Civilian Representative, who shall be double-hatted as the European Union Special Representative and who shall be appointed by an International Steering Group, shall be the ultimate supervisory authority over implementation of the Settlement. The International Civilian Representative shall have no direct role in the administration of Kosovo, but shall have strong corrective powers to ensure successful implementation of the Settlement. Among his/her powers is the ability to annul decisions or laws adopted by Kosovo authorities and sanction and remove public officials whose actions he/she determines to be inconsistent with the Settlement. The mandate of the International Civilian Representative shall continue until the International Steering Group determines that Kosovo has implemented the terms of the Settlement.'[85]

[85] Ibid., 8.

Extensive discussions about the proposal for supervised independence took place in the UN Security Council from April to July 2007. While the Kosovo Albanians, the USA, the EU Presidency (Germany), the EU's General Affairs and External Relations Council, the European Parliament, NATO and the UN Secretary-General had expressed their support for the Ahtisaari plan, it was strongly opposed by Serbia and Russia. Moreover, some Security Council members requested an additional fact-finding mission. In an effort to build consensus, the UN Security Council sent such a mission to Kosovo and Serbia, but it failed to reach that objective. In the summer of 2007, five resolutions on the Comprehensive Proposal were drafted, but none reached the approval of all UN Security Council member states.[86] On 20 July, the USA, the UK and France called off their attempts to achieve a resolution. However, they continued to express support for the Ahtisaari proposal which they regarded as fair and balanced and the best solution for Kosovo and the region. Deploring that it had been impossible to secure a resolution in the UN Security Council, they decided to renew the discussion within the Contact Group and with the parties to the conflict. This resulted in a troika existing of the German diplomat Wolfgang Ischinger representing the EU, the American Frank Wisner and the Russian Aleksandr Botsan-Kharchenko. The troika was a last chance for the conflicting parties to arrive at a negotiated solution.[87]

Like Ahtisaari had done, the troika avoided discussing the status issue directly and focused on technical issues instead. The troika focused in particular on possible cooperation mechanisms and on the planned oversight missions of the EU. A fourteen point document outlined the possible overlaps in the parties' positions. In the document, emphasis was put on a regime of special relations in which both parties would cooperate through common bodies.[88] During the negotiations, all kinds of specific arrangements were considered, including full independence, supervised independence, territorial partition, substantial autonomy, confederal arrangements and a status silent agreement to disagree.[89] None of these arrangements proved acceptable for the parties. Belgrade continued to insist on substantial autonomy and Pristina considered (supervised) independence to be non-negotiable. As a result, neither party accepted the troika proposals fully. Especially after November 2007, room for compromise between the conflicting parties decreased. In December the troika had to conclude that the last attempt at

[86] 'Kosovo's future. A new battlefield', *The Economist* (12 July 2007).
[87] The establishment of the troika had already been proposed by French president Nicolas Sarkozy during the German G8 summit in June as a method to buy time for the EU to prepare its missions for the post-status phase. It was not expected that the troika would lead to consensus within the UN Security Council. International Crisis Group, *Kosovo Countdown: A Blueprint for Transition* (Pristina/Belgrade/New York/Brussels, 2007), 2, ICG Europe Report No. 188.
[88] Ibid., 3.
[89] International Contact Group, *Report of the EU/US/Russia Troika on Kosovo* (New York, 4 December 2007).

resolution had failed, because 'neither side was willing to yield on the basic question of sovereignty.'[90]

After the failed attempt of the troika to arrive at a compromise, the Kosovar Assembly unilaterally declared independence on 17 February 2008. Before the declaration of independence, Kosovo had ensured the approval of the USA and most member states of the EU. As a result, supportive declarations were issued by these countries in reaction to the declared independence. Given the lack of consensus, the UN Security Council made no declaration and Serbia declared that the declaration of independence represented 'a forceful and unilateral secession of a part of its territory.'[91]

In the first paragraph of the declaration, Kosovo committed itself to the implementation of Ahtisaari's Comprehensive Status Proposal. The declaration stated: 'We, the democratically-elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement.'[92] The Comprehensive Proposal included an international administration of the control type, the International Civilian Office (ICO) under the direction of the International Civilian Representative. The ICO would be led by the International Steering Group a PIC-like ad hoc institution. However, given the increased EU involvement in Kosovo, the International Civilian Representative would be double hatted as the EU Special Representative in Kosovo. Already during the troika negotiations the EU had informally taken the lead. Ischinger even claimed during the troika process that 'for the first time in the history of the Kosovo conflict, the EU has become an actor in its own right and even the one with the most responsibility.'[93] After Kosovo's declaration of independence, the EU together with the ICO practically took over the international administration from the UN, but under the terms of UN Security Council Resolution 1244. On 13 June 2008, the UN Secretary-General announced that the restructuring of UNMIK's presence was based on strict status neutrality. He declared that until the UN Security Council decided otherwise, Resolution 1244 would remain the legal framework for the UN's presence. He also declared that although the EU would perform an enhanced operational role, its activities would fall under the framework of Resolution 1244. At the same time, the UN presence would limit itself to monitoring and reporting on the situation, facilitating arrangements for Kosovo's engagement in international agreements, facilitating dialogue between Pristina and

[90] Ibid.
[91] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2008/354* (New York, 2008), 2.
[92] Assembly of the Republic of Kosovo, 'Kosova Declaration of Independence', (17 February 2008).
[93] International Crisis Group, *Kosovo Countdown: A Blueprint for Transition*, 2.

Belgrade on practical issues and carrying out functions related to that dialogue.[94] As will be pointed out in the next section, like in the case of Bosnia, European enlargement became the new focus of international conflict management in Kosovo.

7.3 European enlargement: two conflicts, one resolution?

7.3.1 The unfolding European perspective for Bosnia and Kosovo

International officials have consistently referred to the regional link between Bosnia and Kosovo. Right before NATO intervened in Kosovo in 1999, High Representative Westendorp stated that Milošević's choice for war would have negative consequences for Bosnia: 'Milošević has awoken the monsters of nationalism in Bosnia. Now he is fighting against the same problems in Kosovo. (…) If Milošević chooses war, the whole region would feel the severe consequences of such a decision. (…) The war would also have a negative impact on Bosnia.'[95] In May 2007, High Representative Schwarz-Schilling said: 'As noted above and predicted in my previous report, the uncertain regional situation and, in particular, mounting tension occasioned by both the approach to and deferment of a Kosovo status decision impacted unhelpfully on BiH [Bosnian, *NvW*] politics and political discourse over the period.'[96] At the same time, international officials have gone at great lengths insisting that political developments in Bosnia would not affect the situation in Kosovo and vice versa. For example in 1998, Deputy High Representative Hans Schumacher stated: 'At this stage, I see no direct connection between the Kosovo crisis and the implementation of the DA [Dayton Agreement, *NvW*]. There is no doubt that the IC [International Community, *NvW*] has learnt its lesson here in Bosnia and that it will be applied in resolving the Kosovo crisis, too.'[97] In an address to the Venice Commission on 9 October 2004, High Representative Ashdown stated that the future status of Kosovo would have no bearing on Bosnia.[98] Finally, Schwarz-Schilling reacted to Milorad Dodik's appeal for an independent Serb Republic during the Bosnian elections in 2006 as follows: 'From a legal, international point of view, the situation in Kosovo has no link with BiH [Bosnia, *NvW*]. I am really sorry that Mr. Dodik is giving such statements

[94] Secretary-General of the United Nations, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo: S/2008/354*.
[95] 'Interview: Carlos Westendorp, the High Representative in BiH: "The solution for Bosnia is to change the authorities"', *Delo/OHR Press Office* 22 April 1998.
[96] Office of the High Representative, *31st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations*, 3.
[97] R. Vojvodic, 'Interview: Hanns H. Schumacher, Senior Deputy HR: "Nationalist Parties are not offering anything good their people"', *OHR Press Office* 30 July 1998.
[98] The Bosnian Institute, 'Chronology of Events: September - November 2004', *Bosnia Report* (9 October 2004).

about the RS [Serb Republic, *NvW*], making a direct connection between the RS and the final decision on the status of Kosovo. This is simply wrong and leads peoples to wrong conclusions and in the wrong direction.'[99]

These latter statements were primarily made in an attempt to ease tensions, to prevent spill over effects and they confirm how closely related developments are in Bosnia and Kosovo. The international community's recognition of the linkage between Bosnia and Kosovo is expressed by the idea of a common European future for South Eastern Europe (or the Western Balkans) and in particular for Bosnia and Kosovo. A European perspective for Bosnia and Kosovo has evolved since 1999. During operation Allied Force, Germany proposed, supported by the USA, that the Western Balkans should have a place in Europe. At an international summit in Sarajevo in June 1999, a few weeks after Allied Force had ended, the EU acknowledged for the first time that the region would have a future in Europe, although a concrete reference towards EU-membership was not made.[100] After the Sarajevo summit, the EU's enlargement policy towards the Western Balkans became more concrete.

First, during the European Council meeting in Feira in June 2000, it was stated that the EU would aim at 'the fullest possible integration of the countries of the Western Balkans region into the political and economic mainstream of Europe through the Stabilisation and Association process, political dialogue, liberalisation of trade and cooperation in Justice and Home Affairs. All the countries concerned are potential candidates for EU membership.'[101] Secondly, during the European Council meeting in Thessaloniki in June 2003, a concrete agenda for the integration of the Western Balkans into Europe was adopted. [102] All the countries in the Western Balkans were given the prospect of EU membership once they fulfilled the accession conditions.

The principal instrument for European enlargement in the Western Balkans has been the Stabilisation and Association Process (SAP). The final stage of the SAP is the conclusion of a Stabilisation and Association Agreement (SAA) between a country and the EU. Before an SAA can be concluded, the European Commission assesses the stability of the country in question. If it decides that stability is sufficiently ensured, the European Commission recommends to the EU Council of Ministers whether and under what circumstances negotiations for an SAA can begin. The SAA, in turn, creates a contractual relationship between an

[99] Željko Kopanja, 'Interview: Christian Schwarz-Schilling, High Representative for BiH: "Dodik is a capable politician, but he is playing with fire"', *Nezavisne novine/OHR Press Office* 25 January 2007.
[100] James O'Brien, 'Brussels: Next Capital of the Balkans?' *The Washington Quarterly* 29:3 (2006) 71-87, 75.
[101] Council of the European Union, 'Santa Maria da Feira European Council: Presidency Conclusions', (19 and 20 June 2000).
[102] Council of the European Union, 'Thessaloniki European Council: Presidency Conclusions', (19 and 20 June 2003).

individual country and the EU and prepares the country for future membership by introducing EU regulations in various fields well in advance of actual accession. Its aim is to demonstrate that the country is able to sustain more advanced relations with the EU. When the SAA is properly implemented the potential candidate country reaches the next stage and becomes an official candidate country. Having achieved this status and having a sufficient degree of compliance with the EU's Copenhagen criteria, accession negotiations with the country can be opened. [103]

The SAP in Bosnia was started in March 2000 when EU External Affairs Commissioner Chris Patten handed a road map of reform to Bosnia's Foreign Minister. In 2003, after the road map had been implemented, the EU initiated a feasibility study in order to assess whether negotiations on a SAA could be started. Although in the conclusions of the feasibility study it was recognized that Bosnia had progressed in several areas, it was also acknowledged that the country was not ready yet to start SAA negotiations. The document identified sixteen priorities of reform; including among others cooperation with the ICTY, more effective governance and more effective public administration. Given the pace of reform, the intention was expressed to start SAA negotiations in 2004.[104] In order to facilitate that process, a Directorate for European Integration of Bosnia and Herzegovina was created within the Council of Ministers in 2003.

Instead of starting actual SAA negotiations, a European Partnership was adopted in June 2004. The document identified again the priority reform areas.[105] On their part the Bosnian authorities drafted an action plan in which they set out their idea on how they would implement the European Partnership. Progress was slow, but on 25 November 2005 Bosnia was allowed to start SAA negotiations with the EU. It was described as a 'highway to the Euro-Atlantic integration' by Principal Deputy High Representative Lawrence Butler.[106] On 25 January 2006, the first round of SAA negotiations took place and several other rounds followed. Progress was mainly achieved with respect to technical issues, such as trade concessions, the movement of goods, approximation of laws, law enforcement and competition rules. However, in 2006 and in the first months of 2007 no breakthrough was achieved on the EU's political preconditions, which included police reform, public broadcasting reform and cooperation with the ICTY.[107] It took until December 2007 before the EU was prepared to initiate a SAA. Despite

[103] European Commission, '2005 enlargement strategy paper', (2005), 8 and 9.
[104] Commission of the European Communities, *On the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement*.
[105] Council of the European Union, 'Council Decision of 14 June 2004 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina: 2004/515/EC', (Brussels: 14 June 2004).
[106] Lawrence E. Butler, 'On the Highway to Europe', *South East European Times* 15 December 2005.
[107] Office of the High Representative, *31st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations*, 8; International Crisis Group, *Ensuring Bosnia's Future*, 21 and 22.

the political turbulence in the last months of 2007, the Bosniaks, Bosnian Croats and Bosnian Serbs agreed on 28 October in Mostar on police reform. Police reform had been the major issue preventing the coming about of a SAA and after a concrete action plan for the implementation of the Mostar Agreement was adopted, the European Commission initialed the SAA on 4 December 2007. Actual signature of the SAA would take place after the passage of the requisite legislation for police reform.[108] This took place in June 2008 after which the SAA between Bosnia and the EU was signed.[109]

For Kosovo it was technically impossible to start a Stabilization and Association Process (SAP) because Kosovo was not a sovereign state. Therefore, falling under UN Security Council Resolution 1244, Kosovo was included in the SAP through the so-called Stability and Association Process Tracking Mechanism. The Tracking Mechanism was launched in November 2002 in order to make it possible for Kosovo's PISG to benefit from core elements of the SAP; i.e. receiving EU assistance, policy advice, monitoring of EU standards and trade concessions.[110] In June 2004, the EU developed a European Partnership for Kosovo. It was in fact a Partnership with 'Serbia and Montenegro including Kosovo' in which Serbia and Montenegro on the one hand and Kosovo on the other hand got separate attention. [111] In the chapter on Kosovo actions were formulated to achieve the implementation of UNMIK's Standards before Status policy. In order to facilitate the Tracking Mechanism, an Office of European Integration Processes was established within the Office of the Prime Minister in July 2004. The Office of European Integration Processes became responsible for 'the coordination of Government action in aligning practices and legislative activities with relevant European Union (EU) norms and standards in the context of the EU Stabilization and Association Process (SAP).'[112]

A revised European Partnership was decided upon on 24 January 2006 with Kosovo still being considered as a part of Serbia under UN Security Council Resolution 1244.[113] After the declaration of independence in February 2008

[108] Office of the High Representative, *33rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations*, 5 and 6.
[109] Commission of the European Communities, *Bosnia and Herzegovina 2008 Progress Report* (Brussels, 2008), 5.
[110] Commission of the European Communities, *Kosovo (under UNSCR 1244) 2005 Progress Report* (Brussels, 2005), 6.
[111] Council of the European Union, Council Decision on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC (Brussels, 9 June 2004).
[112] Venera Hajrullahu, 'Compliance of Kosovo Legislation with EU Acquis Communautaire', *Assembly Support Initiative Newsletter,* 20 (2005) 20.
[113] Council of the European Union, *Council Decision on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by*

Kosovo could become a full recipient of the SAP. EU Enlargement Commissioner Olli Rehn declared that the EU would immediately start working on a closer association with Kosovo.[114] A new European Partnership was agreed upon by the EU Council of Ministers on 18 February 2008. Remarkably, the document is still addressed to 'Serbia including Kosovo under UNSCR 1244.'[115] Since the UN Security Council had not replaced Resolution 1244 with a new resolution on the status of Kosovo, this was necessary from a legal point of view. At the same time, it shows that the integration of Kosovo into the EU would be different from previous enlargement processes.

7.3.2 Enlargement as an instrument of conflict resolution?

In general, the EU considers the political perspective of integration for South Eastern Europe crucial for keeping political and economic reforms on track and for transforming a region of weak states and divided societies.[116] The primary objective of EU enlargement in the Western Balkans is to increase the stability and development of the region. EU enlargement also provided an exit strategy for the OHR and UNMIK. By starting a process of European integration for Bosnia and Kosovo, the EU enabled the OHR and UNMIK to phase out their international administrations. The EU's role is considered to be important, because in the long run Brussels expects that Bosnia's and Kosovo's integration into the EU will facilitate the resolution of the conflicts in Bosnia and Kosovo.

Theoretically, European integration could indeed lead to the resolution of the incompatibilities in Bosnia and Kosovo. European integration goes beyond mere conflict management in the sense that it aims at restructuring the conflict environment 'into a regional framework, common incentive structure, and standards of acceptable behavior.'[117] For Bosnia and Kosovo that means that the incompatibilities could be overcome by integrating the territories into the European Security Community. This community not only includes the EU, but also other relevant Euro-Atlantic institutions like NATO. Being part of a Security Community would imply that Bosnia, Kosovo and Serbia are integrated to such an extent that they have a sense of community which creates the assurance that they

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the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC (Brussels, 24 January 2006).

[114] 'Brussel wil verdrag met Kosovo', *NRC Handelsblad* 19 februari 2008.

[115] Council of the European Union, *Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC* (Brussels, 19 March 2008).

[116] European Commission, '2005 enlargement strategy paper', 2.

[117] Boyka Stefanova, 'Regional Integration as a System of Conflict Resolution. The European Experience', *World Affairs* 169:2 (2006) 81-93.

can settle disputes without violence.[118] Integration in the EU as a specific institution within the European Security Community goes even further. It is thought that ethnic identity and national borders will become less relevant when Bosnia, Kosovo and Serbia are embedded in a multi-ethnic supra-national organization like the EU, which in turn will lead to stability. Support for this thesis can be found in the academic literature. First, there is a general agreement that European integration has been crucial for maintaining peace in (Western) Europe after the Second World War.[119] Secondly, the eastward expansion of the EU in 2004 has been legitimated mainly by the concern of overcoming conflicts and maintaining peace and stability.[120] And thirdly, it has been argued that international organizations in general can be used to overcome the security dilemma between states, to sustain international cooperation and to forestall the recourse to unilateral self-help strategies.[121]

Although integration into the EU and the European Security Community might have the potential of resolving conflict, the incompatibilities will not automatically disappear. European integration might change the conflict environment and motivate conflicting parties to resolve their differences, but the actual outcome is still dependent on the concrete political will of the parties involved. Moreover, apart from the question of whether European enlargement will lead to conflict resolution at all, it matters how Bosnia and Kosovo are being integrated. The question is whether EU enlargement still has benevolent effects when it is primarily done through international administration.

Arguably, by the spring of 2008 the EU had become the principal conflict manager in Bosnia and Kosovo. First, in Bosnia the EU ran a police mission (EUPM) and a military mission (EUFOR). In Kosovo after the declaration of independence the EU had launched a rule of law mission (EULEX). Moreover, by having a double hatted EU Special Representative in both countries, the EU had become involved in two international administrations of the control type: the OHR and the ICO. In Bosnia, the EU Special Representative exercised political power through the mandate of the OHR. As from February 2008, a similar situation existed in Kosovo where the EU Special Representative exercised political power through the mandate of the International Civilian Representative.

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[118] Emanuel Adler and Michael Barnett, 'Security communities in theoretical perspective', *Security Communities*, Emanuel Adler and Michael Barnett, eds. (Cambridge: Cambridge University Press, 1998) 3-28, 3.
[119] Thomas Diez, Stephan Stetter, and Mathias Albert, 'The European Union and Border Conflicts: The Transformative Power of Integration', *International Organization* 60:3 (2006) 563-593, 564.
[120] Atsuko Higashino, 'For the Sake of 'Peace and Security'? The Role of Security in European Union Enlargement Eastwards', *Cooperation and Conflict* 39:4 (2004) 347-368.
[121] Ron E. Hassner, 'The Path to Intractability. Time and the Entrenchment of Territorial Disputes', *International Security* 31:3 (2007) 107-138.

The EU missions in Bosnia and Kosovo have primarily been established in order to facilitate the European integration of Bosnia and Kosovo. This is clearly expressed in the mandate of the EU Special Representative in Bosnia: 'The mandate of the EUSR [EU Special Representative, *NvW*] shall be based on the policy objectives of the EU in BiH [Bosnia, *NvW*]. These centre around continued progress in the implementation of the General Framework Agreement for Peace (GFAP) in BiH, in accordance with the Office of the High Representative's Mission Implementation Plan, and in the Stabilisation and Association Process, with the aim of a stable, viable, peaceful and multi-ethnic BiH, cooperating peacefully with its neighbours and irreversibly on track towards EU membership.'[122] In the light of these objectives, the ESDP missions have been embedded in the enlargement policy. Next to securing peace, EUFOR's tasks explicitly include the obligation to support the civil implementation of the Dayton Agreement. This includes among others the obligation to assist the unified state level defense structures and to assist in the process of parliamentary oversight of the armed forces.[123] The assistance in the civil implementation of the Dayton Agreement is also a clear reference to making Bosnia ready for the EU. At the establishment of EUFOR, the EU High Representative for the Common Foreign and Security Policy Javier Solana stated: 'EUFOR will mesh with the EU's substantial engagement in so many areas: a formidable economic commitment, a police mission deployed, a solid political relationship. All this is part of the journey to the only possible direction: the EU institutions.'[124] As mentioned in this quotation, the EUPM is also meant to help facilitate Bosnia's entry into the EU. It aims 'to establish in BiH [Bosnia, *NvW*] a sustainable, professional and multi-ethnic police service operating in accordance with best European and international standards.'[125]

Secondly, for Kosovo, when the Council of the EU appointed the EU Special Representative in its Joint Action, it was reiterated that the 'Stabilisation and Association Process is the strategic framework for the EU's policy towards the Western Balkans region, and its instruments apply to Kosovo.'[126] The Council's Joint Action also indicates that within the framework of the SAP the EULEX mission 'shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability

[122] Council of the European Union, 'Council Joint Action 2007/87/CFSP of 7 February 2007 amending and extending the mandate of the European Union Special Representative in Bosnia and Herzegovina', (Brussels: 2007).
[123] Solioz, *Turning Points in Post-War Bosnia*, 113.
[124] Javier Solana, 'Launch of the EU 'Althea' operation in Bosnia and Herzegovina', (Sarajevo: 2 December 2004).
[125] Council of the European Union, 'Council Joint Action 2007/749/CFSP of 19 November 2007 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH)', (Brussels: 2007).
[126] Council of the European Union, 'Council Joint Action appointing a European Union Special Representative in Kosovo', (Brussels: 12 February 2008), 2.

and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices.'[127]

As with the countries that joined the EU in 2004 and 2007, enlargement is largely considered to be the best tool for stabilization in Bosnia and Kosovo.[128] The question is whether the authority at the disposal of both EU Special Representatives (i.e. international administration of the control type through the mandates of the OHR and ICO) is compatible with European enlargement. The idea of the EU taking over from the OHR and UNMIK was to replace the 'push' of international administration with the 'pull' of Brussels.[129] Bosnia and Kosovo would be pulled in like the ten countries that joined the EU in 2004, as well as Bulgaria and Romania in 2007. Pulling candidate countries into Europe has mainly been done through conditionality; the accession countries of 2004 and 2007 had to adjusted their state structures and policies according to accession conditions set by Brussels. What the EU is allowed to do in Bosnia and Kosovo goes beyond conditionality, because the EU Special Representatives are allowed to exercise political power. While conditionality (at least in theory) respects and stimulates local ownership, this is not the case with direct political control. Through the mandates of the OHR and ICO, the EU Special representatives could - if judged necessary - impose constitutional reform in Bosnia and impose the implementation of the Comprehensive Proposal in Kosovo. By exercising its full authority, the EU would risk becoming part of the domestic political process as has happened with the OHR and UNMIK.

The outcome of this study suggests that a new international administration led by the EU would likely result in further progress regarding the first phase of institutionalization (establishing new institutions), but it probably would not lead to domestically embedded political institutions. After all, why would the EU perform better than the OHR and UNMIK? Instead of imposing constitutional reforms in Bosnia and imposing the implementation of the Comprehensive Proposal in Kosovo, the EU could better use the prospect of membership combined with strict conditionality. That means that if Bosnia and Kosovo do not comply with the conditions put forward by the EU, further progress towards accession should (temporarily) be stopped instead of being imposed through international administration.

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[127] Council of the European Union, 'Council Joint Action on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo', (Brussels: 4 February 2008).
[128] Anastasios Giamouridis, 'Only through Enlargement: The New European Myth?' *European Foreign Affairs Review* 12 (2007) 183-202, 185.
[129] Commission of the European Communities, *On the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement*, 11.

8 Conclusion

The purpose of this study was to understand how the OHR and UNMIK have attempted to create sustainable political institutions in Bosnia and Kosovo. Or more specifically, to investigate whether the OHR and UNMIK were able to create autonomous institutions with congruent value systems that enjoy popular support. In that case, the international administration would have to had succeeded not only in creating the institutions, but also in embedding them in the Bosnian and Kosovar societies. In this concluding part of the study, the research findings are summarized and a general answer to the main research question is formulated.

Beginning with a discussion of the findings presented in Chapter two**,** it was shown that our contemporary international administrations have had quite a few historical predecessors. It was pointed out that the main elements that define an international administration are: (1) that the institution is created by an international rather than a foreign authority; (2) that its purpose is to respond to sovereignty and governance problems; (3) that the response often comes down to state-building; and (4) that it has sovereign powers at its disposal. It was further argued that the term international administration should be reserved for the international control and international governorship types of international administration. Only when international administrations are regarded as activities which include governance or territorial administration, can it be distinguished from less intrusive activities like monitoring elections or providing humanitarian assistance. Accordingly, international administration was defined as: a political authority which is established by an international organization and which aims to develop political, social and economic institutions on a specific territory by assuming some or all sovereign powers of the state on a temporary basis. As became clear in Chapter three, the international administrations in Bosnia and Kosovo both fall within the scope of this definition.

The second chapter also elaborated on conflict management and on institutionalization. Utilizing Johan Galtung's conflict triangle, it was explained that conflict resolution involves a solution to the incompatibility of the conflict as well as non-hostile attitudes and non-violent behavior. It was stated that when the focus of the conflict intervention is on the attitudes and behavior of the conflicting parties without resolving the incompatibility, one should speak of conflict management instead of conflict resolution. It was argued that conflict management often leads to a negative peace. Negative peace was defined as the absence of direct violence (relating to the behavioral dimension of conflict), while positive peace was defined as the absence of direct violence, cultural violence (related to the attitudinal dimension of conflict) and structural violence (related to the incompatibility). Since the incompatibilities of the conflicts in Bosnia and Kosovo have not been resolved during the international administrations the state of affairs in 2008 can only be described as a negative peace.

Political institutions play an important role in establishing and maintaining positive peace. Well functioning and sustainable political institutions could possibly resolve the incompatibilities and mitigate violent behavior and hostile attitudes in Bosnia and Kosovo. Chapter two defined institutionalization as 'the creation and the persistence of valued rules, procedures, and patterns of behavior that enable the successful accommodation of new configurations of political claimants and/or demands within a given organization whether it be a party, a legislature, or a state.'[1] In the definition it is recognized that institutions are regarded as instruments of conflict resolution and that institutionalization consists of two phases: first the creation of the institutions and secondly the persistence of institutions. Within the context of international administration, the first phase is internationally driven, whereas the second phase is locally driven. In order to persist, institutions must be embedded in their domestic societies. In more concrete terms, this means that the political institutions established by an international administration must be able to function independently from the international administration, must have congruent value systems, and must be supported by the political elites and the population as a whole. In this study, an answer was provided to the question of whether the established international administrations have succeeded in creating political institutions (Chapter three) and in embedding them in the Bosnian and Kosovar societies (Chapters four to six).

Chapter three elaborated on the creation of political institutions and thus the first phase of institutionalization. The establishment of the OHR and UNMIK was first described. The establishment of the international administrations was presented in the broader historical context of the break-up of Yugoslavia. It was shown that in the case of Bosnia, the Dayton Peace Agreement was imposed on the conflicting parties and could not be considered as an agreement that resolved the conflict between Bosniaks, Bosnian Croats and Bosnian Serbs. Instead, the basic incompatibility (Bosnia as one single state or being split up in different political entities) was incorporated in the Dayton Agreement, which made the establishment of an international administration necessary in order to ensure the implementation of the contested settlement. In the case of Kosovo, the absence of conflict resolution was even more evident. UN Security Council Resolution 1244 was silent on the final status of the territory. The UN established an international administration, which would prepare Kosovo for self-government without knowing whether that would be self-government as an independent state or as an autonomous region of Serbia.

Despite the absence of conflict resolution, it was shown that the OHR and UNMIK achieved much in terms of setting up political institutions. By 2008,

[1] Richard Sisson, 'Comparative Legislative Institutionalization. A Theoretical Exploration.' *Legislatures in Comparative Perspective*, Allan Kornberg, ed. (New York: David McKay, 1973) 17-38, 19.

Bosnia and Kosovo had all the institutions needed by a modern state and thus the first phase of the institutionalization process had been a success. However, the mere creation of institutions is not sufficient. Internationally created institutions need to be embedded in the domestic societies. In Chapters four, five and six it was argued that with respect to this second phase of institutionalization in Bosnia and Kosovo, the international administrations have not been successful.

In Chapter four, it was shown that the OHR and UNMIK have not succeeded in developing autonomous domestic institutions. First, the contested nature of the Dayton Agreement made it necessary for the OHR to implement the agreement by imposition. As a result, all principal state level political institutions in Bosnia have been created and sustained by the OHR and its international partners. These institutions were still not able to act autonomously in 2008. The OHR has continued to operate as the final authority regarding the implementation of the Dayton Agreement. With the declining number of decisions and the transfer of authority from the international level to the domestic level, the institutional independence in Bosnia increased a little between 1995 and 2008. However, the continued existence of the OHR with its extensive political authority meant that the international administration kept dominating Bosnian politics. Further, next to institutional independence, the state level institutions also lacked institutional capacity. For a large part they were dependent on help from the OHR and other international actors to function well.

Secondly, in the case of Kosovo, the international administration also did not succeeded in creating autonomous institutions. They had little institutional independence. Until Kosovo's Constitution entered into force on 15 June 2008, UNMIK was the sovereign authority rather than the domestic institutions. Although UNMIK had regularly transferred authorities to the PISG, there could at most be a provisional transfer of authority. Lacking sovereignty, Kosovo's political institutions were even more dependent on UNMIK than Bosnia's institutions had been on the OHR. Further, the institutional capacity of the PISG, including their administrative and policy-making capacities, remained rather limited. As in Bosnia, Kosovo's political institutions depended on assistance from the international administration in order to function well.

In Chapter five it was shown that the OHR and UNMIK have not succeeded in creating institutional congruency in Bosnia and Kosovo. In both territories the institutions were weakened by the persistence of two competing and mutually exclusive value systems: ethnic nationalism and civic nationalism. In Bosnia the three large ethnic nationalist political parties increasingly got competition from more moderate ethnic nationalist political parties. They were also weakened by internal differences which led to several split offs. Nonetheless, in 2008 all significant domestic institutions were still dominated by political parties who appealed to specific ethnic communities rather than to a civic nation. At the same time, the international administration continued to pursue a civic nationalist

agenda. As a result in 2008 there were two value systems still competing to dominate Bosnia's political culture and thus its political institutions.

In Kosovo, UNMIK was also not successful in creating institutional congruency. On the one hand, the PISG were still dominated by an ethnic nationalist political culture. All political parties appealed to specific ethnic communities (whether Kosovo Albanian, Kosovo Serb or any other community) instead of to a civic nation. On the other hand, UNMIK stimulated a civic nationalist political culture. In 2008, the ICO/EUSR as the incoming control type of international administration continued this policy. Thus, given the two competing and mutually exclusive value systems, it is not possible to speak of institutional congruency in the case of Kosovo.

Chapter six on institutional support has shown that neither Bosnia's institutions, nor Kosovo's institutions have become sufficiently supported by the population. In Bosnia there has been an increasing support of Bosnian Croat politicians for the state level institutions, but this did not occur among the majority of Bosnian Croats. Bosnian Serb politicians have criticized the Dayton Constitution, especially the state level institutions, from the very first day. The majority of Bosnian Serbs were also not enthusiastic supporters for the Presidency, the Assembly and the Council of Ministers. Although institutional support among Bosniak politicians (considered to be the most enthusiastic supporters of the Dayton Constitution) remained high, in 2007 support among the Bosniak community at large decreased considerably. In general, there has been an increased dissatisfaction with the Dayton Agreement among all three communities in 2007 and 2008. The Bosniaks wanted to reform the Constitution and get rid of Dayton in favor of more powerful state level institutions. The Bosnian Croats also wanted constitutional reform, but demanded more autonomy for the Bosnian Croat Cantons. Finally, the Bosnian Serbs showed dislike of the state level institutions, but nonetheless defended the Dayton Constitution, because it ensured the strong position of the Serb Republic.

In Kosovo the Kosovo Albanian politicians wanted an independent Kosovo and therefore welcomed any political institution as a step in that direction. At the majority level, the Kosovo Albanian population has been less supportive mainly due to the weak performance of the PISG. The Kosovo Serb politicians rejected the PISG for the same reasons why their Kosovo Albanian counterparts supported it: the development of a possibly independent Kosovo. The Kosovo Serb population became in the course of time even less supportive towards the PISG and for the same reason as their politicians: lending support to the institutions would indirectly legitimize them and stimulate the creation of an independent state.

Finally, in Chapter seven, it has been shown that the international community tried to go beyond conflict management when it attempted to resolve the incompatibilities in Bosnia and Kosovo. In both cases, the attempts failed. The proposals that would reform the Dayton Constitution were not adopted by the

House of Representatives in Bosnia. This created a political crisis which stalled reforms on all levels and necessitated the continued presence and intervention by the OHR. In Kosovo, the unilateral declaration of independence ended the attempt to arrive at a negotiated solution with Belgrade. UNMIK was restructured and together with the ICO the EU adopted the responsibility of the international administration from the UN. The failure to resolve the conflicts in Bosnia and Kosovo seems to indicate that the conflict resolution capacity of international administrations is rather limited. Neither of the three communities in Bosnia, nor the Kosovo Albanians and the Kosovo Serbs had grown closer together during the years of international administration. The question is whether the EU can do better and provide the right context within which the parties can resolve their basic incompatibilities. It was argued that European enlargement could lead to a resolution of the incompatibilities, but this depends both on how the enlargement is managed and on the political will of the conflicting parties.

Apart from determining whether the international administrations have been successful in regard to the second phase of institutionalization, a tentative explanation was provided for the absence of domestically embedded institutions. At the end of Chapters four, five and six it has been suggested that the absence of conflict resolution might have impeded the development of autonomy, congruency and support. Both conflicts were managed rather than resolved, but each was managed in a very different way. While the international administration in Bosnia was based on an internationally imposed peace agreement, the international administration in Kosovo was based on the absence of a peace agreement. This led to two different kinds of international administrations, but with a similar outcome. Neither the control type nor the governorship type of international administration has succeeded in creating sustainable political institutions. The absence of conflict resolution may be the common factor that explains the absence of domestically embedded institutions. Since it is likely that there are other factors that play a role in explaining the outcome, conflict resolution should then be regarded as a necessary, though not a sufficient, condition for the second phase of institutionalization. However, since this study was about assessing whether the international administration have been successful in establishing sustainable political institutions and not about explaining the presence or absence of sustainable institutions, additional research would be necessary to support this claim.

The conclusion of this study is that the OHR and UNMIK have been successful in creating political institutions, but not in making them sustainable. In 2008, Bosnia and Kosovo were weak states with weak institutions being dependent on support from international organizations and foreign states. Moreover, instead of a positive peace, defined as the absence of violence of all kinds, both international administrations had created a negative peace, in which there is (merely) an absence of direct violence. That being said, establishing negative peace

in a conflict ridden environment is already a major achievement. Especially if one considers that often many territories which experience war revert to violent conflict within a few years after a peace accord or armistice has been signed. Arguably, due to the international administrations this did not happen in Bosnia and Kosovo. Therefore, establishing international administrations should not be abandoned as a policy instrument, because negative peace should be preferred over no peace at all.

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Samenvatting (Summary)

Zijn de internationale besturen in Bosnië-Herzegovina (Bosnië) en Kosovo er in geslaagd om in beide gebieden duurzame politieke instituties op te zetten die los van verdere buitenlandse bemoeienis zelf voort kunnen? Deze vraag staat centraal in dit proefschrift. Internationaal bestuur wordt gedefinieerd als een door een internationale organisatie opgerichte politieke autoriteit die tot doel heeft om door middel van tijdelijke soevereine bevoegdheden in een bepaald gebied politieke, sociale en economische instituties te ontwikkelen. Internationaal bestuur is een specifieke institutie in de internationale politiek. De eerste internationale besturen werden opgezet na de Eerste Wereldoorlog (1914 – 1918). Tussen 1920 en 1945 zijn er internationale besturen gevestigd in de steden Memel (Litouwen), en Danzig (Polen), in het Saar-gebied (Duitsland) en in de regio Leticia (Colombia). Na de Tweede Wereldoorlog zijn er verscheidene internationale besturen opgezet door de Verenigde Naties (VN), zoals de VN-missies in Congo (1960-1964), Namibië (1989-1990) en Oost-Timor (1999-2002). Daarnaast zijn er voorbeelden te vinden van instituties die lijken op internationaal bestuur, maar dit niet zijn. Deze instituties missen één of meer van de vier kenmerken van een internationaal bestuur: oprichting door een internationale organisatie (in plaats van bijvoorbeeld door één staat), gericht op het oplossen van problemen die te maken hebben met het bestuur van een gebied of met soevereiniteit, het uitvoeren van taken die worden geassocieerd met *state-building*, en het beschikken over vergaande bevoegdheden op het gebied van de wetgevende, uitvoerende en/of controlerende macht. Voorbeelden van instituties die één of meerdere van deze kenmerken missen zijn protectoraten, koloniën, en militaire bezettingen (waaronder de geallieerde bezettingen van Duitsland en Japan na 1945 en de Amerikaanse bezetting van Irak in 2003).

Er zijn verschillende soorten internationaal bestuur te onderscheiden. In Bosnië werd een internationaal bestuur gevormd dat getypeerd kan worden als ‘internationale controle’, waarbij het internationale bestuur gezag uitoefent via de lokale instituties en er formeel sprake is van een soevereine staat. In Bosnië moest het Bureau van de Hoge Vertegenwoordiger (*Office of the High Representative*, OHR), aangestuurd door een internationale raad (*Peace Implementation Council, PIC),* de naleving van het Vredesakkoord van Dayton garanderen. Het Akkoord van Dayton maakte in 1995 een einde aan de oorlog tussen de verschillende etnische groeperingen in voormalig Joegoslavië. In Bosnië hadden Bosnische Serven, Bosnische Kroaten en Bosnische Moslims elkaar fel bevochten, maar zij moesten onder de bepalingen van het Dayton Akkoord verder met elkaar in één Bosnische staat. Die staat bestond uit een Servische entiteit (de Servische Republiek), en een Moslim-Kroatische entiteit (de Federatie). De Hoge Vertegenwoordiger kreeg vergaande bevoegdheden om de bepalingen van het

Dayton Akkoord te effectueren. Hierdoor werd Bosnië, ondanks zijn soevereine status, onder internationaal bestuur geplaatst.

Het in 1999 gevestigde internationale bestuur in Kosovo kan getypeerd worden als 'internationaal gouverneursschap'. Anders dan Bosnië was Kosovo geen soevereine staat en had het internationale bestuur (tijdelijk) de volledige zeggenschap over het gebied. Het internationale bestuur was niet gebaseerd op een vredesverdrag zoals het Dayton Akkoord, maar op een VN-Veiligheidsraadresolutie. Daarin werd geen uitspraak gedaan over de politieke status van Kosovo. De sterk verdeelde VN-Veiligheidsraad kon geen besluit nemen over de toekomst van het gebied. De voornamelijk door Kosovo Albanezen bewoonde Servische provincie, die zich met geweld had proberen los te maken van het door Slobodan Milošević geleidde Servië, werd direct onder het gezag van een door de VN aangestuurd internationaal bestuur (de *United Nations Interim Administration Mission in Kosovo*, UNMIK) geplaatst. De politieke status van het gebied zou pas (door de VN-Veiligheidsraad) bepaald worden als er een democratisch Kosovaars zelfbestuur was opgebouwd waaraan zowel de Kosovo Albanese meerderheid als de Kosovo Servische minderheid zou deelnemen.

In dit proefschrift wordt betoogd dat hoewel beide internationale besturen er in zijn geslaagd te voorkomen dat er weer oorlog uitbrak, geen duurzame politieke instituties hebben weten te creëren. In 2008 waren Bosnië en Kosovo nog steeds afhankelijk van de politieke en financiële steun van de internationale gemeenschap. In die zin kon in 2008 nog niet worden gesproken van duurzame instituties. Politieke instituties, zoals het parlement, de regering en het presidentschap, zijn binnen de context van een internationaal bestuur duurzaam op het moment dat ze zijn ingebed in de samenleving. Bij een internationaal bestuur zijn er twee fases van institutionalisering te onderscheiden: het opzetten van de institutie en het inbedden van de instituties in de samenleving. Waar in de eerste fase het internationale bestuur het initiatief neemt, zijn in de tweede fase de lokale actoren aan zet. Hoofdstuk drie geeft een overzicht van de eerste fase van institutionalisering, maar de nadruk ligt in deze studie op de tweede fase. Er zijn drie indicatoren geselecteerd aan de hand waarvan het institutionaliseringproces in beide gebieden wordt onderzocht.

Ten eerste wordt onderzocht of de politieke instituties in Bosnië en Kosovo in de loop van de tijd autonoom zijn geworden in hun functioneren (institutionele autonomie). Dit gebeurt door te onderzoeken hoe onafhankelijk de instituties zijn van het internationale bestuur (institutionele onafhankelijkheid) en door te onderzoeken of de instituties in staat zijn hun taken goed uit te voeren (institutionele capaciteit). Ten tweede wordt onderzocht of de waardesystemen die het gedrag binnen de politieke instituties bepalen met elkaar overeenstemmen (institutionele congruentie). In het geval van Bosnië en Kosovo is er concurrentiestrijd geweest tussen enerzijds een lokaal gedragen etnisch-nationalistische politieke cultuur en anderzijds een door het internationale bestuur

gestimuleerde burgerlijk-nationalistische politieke cultuur. Een analyse van de institutionele congruentie wordt gemaakt door te onderzoeken of de internationale besturen er in zijn geslaagd de etnisch-nationalistische politieke cultuur te vervangen door een door de Bosniërs en Kosovaren gedragen politieke cultuur van burgerlijk nationalisme. Wanneer dit niet het geval is, is er sprake van onverenigbare (incongruente) waardesystemen die instituties verzwakken. Ten slotte wordt onderzoek gedaan naar de steun van de bevolking en de steun van de politieke elite aan de instituties (institutionele steun). Door opiniepeilingen en de opkomst bij verkiezingen te onderzoeken wordt nagegaan of de instituties door de Bosniërs en de Kosovaren worden geaccepteerd.

Uit alle drie indicatoren blijkt dat de in dit proefschrift onderzochte politieke instituties (parlement, regering en presidentschap) in Bosnië en Kosovo in 2008 niet waren ingebed in de samenleving. De eerste fase van institutionalisering (het opzetten van de instituties) was succesvol; de tweede fase (de inbedding) is minder succesvol verlopen.

In het geval van Bosnië heeft de OHR zich ontwikkeld tot een centrale factor in de Bosnische binnenlandse politiek en het openbare bestuur. Het ontbreken van overeenstemming over de richting die Bosnië als staat zou moeten inslaan, leidde er toe dat het presidentschap, de regering en het parlement met grote regelmaat werden verlamd door de fundamenteel verschillende posities van de drie grote etnische groepen. De OHR fungeerde telkens als breekijzer op belangrijke hervormingsdossiers en nam besluiten op het moment dat de Bosnische politiek zelf verlamd was. De laatste jaren is het aantal interventies van de OHR in de Bosnische politiek geleidelijk afgenomen. Ook werden steeds meer bevoegdheden van het internationale bestuur formeel overgedragen aan de Bosnische autoriteiten en werden er meer Bosniërs betrokken bij belangrijke hervormingsprocessen. Toch was de OHR in 2008 nog een politieke factor van grote betekenis in Bosnië. En hoewel de capaciteit van de politieke instituties door de jaren heen is gegroeid, was Bosnië in 2008 nog niet in staat om deze instellingen zonder internationale steun goed te laten functioneren. In die zin, waren de politieke instituties niet autonoom.

In Kosovo heeft de institutionele autonomie zich niet veel beter ontwikkeld. Sterker nog, de Kosovaarse instituties waren afhankelijker van UNMIK dan de Bosnische instituties van de OHR. In tegenstelling tot Bosnië was Kosovo namelijk niet soeverein toen het internationale bestuur in 1999 werd gevestigd. UNMIK bestuurde Kosovo als soevereine autoriteit en de president, de regering en het parlement namen een specifieke door UNMIK bepaalde plaats in binnen het constitutionele raamwerk (waarin de voorlopige politieke instituties waren opgericht). Terwijl de toekomst van Bosnië was vastgelegd in het Akkoord van Dayton, was de toekomst van Kosovo onduidelijk; UNMIK mocht zich niet uitspreken over de politieke status van Kosovo. Het gevolg was dat alle instituties die werden opgericht per definitie het predicaat ‘voorlopig’ meekregen. De onafhankelijkheid van de Kosovaarse instituties nam geleidelijk toe tussen 1999 en

2008. Dit gebeurde door formele overdracht van bevoegdheden en toenemende betrokkenheid van Kosovaren bij hervormingsprocessen. Ook nam in dezelfde periode de institutionele capaciteit toe. Toch moet worden geconcludeerd dat op het moment dat Kosovo onafhankelijk werd op 17 februari 2008, de nieuwe staat niet kon functioneren zonder vergaande internationale steun.

Wat betreft de institutionele congruentie heeft de OHR weinig succes geboekt in Bosnië. Terwijl het internationale bestuur heeft geprobeerd het presidentschap, de regering en het parlement te laten dragen door een politieke cultuur van burgerlijk nationalisme, zijn het vooral etnisch-nationalistische politieke partijen geweest die de naoorlogse Bosnische politiek hebben gedomineerd. Tussen 1995 en 2008 hebben Bosnische politici vooral de belangen van hun eigen etnische groep behartigd. De OHR heeft veel werk verzet om een burgerlijk-nationalistische politieke cultuur te creëren, maar is daar onvoldoende in geslaagd. Er is ook thans sprake van twee onverenigbare en concurrerende waardesystemen binnen de Bosnische politieke instituties.

In Kosovo heeft UNMIK hetzelfde geprobeerd als de OHR in Bosnië. Wat de politieke status van Kosovo ook zou worden, uiteindelijk moest er een op burgerlijk nationalisme gebaseerde samenleving komen waarin zowel Kosovo Albanezen als Kosovo Serven een plaats konden vinden. Het verschil met Bosnië was dat het internationale bestuur zich voornamelijk richtte op de deelname van Kosovo Serven aan de politieke instituties in plaats van bijvoorbeeld op het stimuleren van multi-etnische politieke partijen. Aangezien zowel de Kosovo Albanezen als de Kosovo Serven zich op de eigen gemeenschap bleven richten, werd Kosovo in 2008 nog steeds gedomineerd door een politieke cultuur van etnisch nationalisme. Ook in Kosovo was sprake van twee onverenigbare waardesystemen.

Onderzoek naar de institutionele steun, ten slotte, levert een gelijksoortig beeld op. In Bosnië accepteerden de conflicterende partijen de gezamenlijke instituties slechts schoorvoetend. Terwijl de OHR zich constant heeft ingezet voor centralisering van het bestuur, hebben vooral de Bosnische Serven en de Bosnische Kroaten zich daar op het niveau van de politieke elite sterk tegen verzet. De Bosnische Serven zagen niet graag hun bevoegdheden binnen de eigen entiteit, de Servische Republiek, verdwijnen ten gunste van een sterkere centrale staat. In tegendeel, de Bosnische Servische etnisch-nationalistische partijen zagen liever een, al dan niet bij Servië aangesloten, eigen Servische Republiek ontstaan. Ook de Bosnische Kroatische etnisch-nationalistische partijen riepen regelmatig op tot meer autonomie in de vorm van een derde (Bosnische Kroatische) entiteit. De numeriek dominante Bosnische Moslims waren op het niveau van de politieke elite de meest enthousiaste aanhangers van de Bosnische staat. De steun onder Bosnische Moslims op massaniveau was ook hoog, maar nam in de loop der jaren af. Eenzelfde dalende trend is te zien bij de Bosnische Servische en Bosnische

Kroatische bevolking, zodat de institutionele steun in 2008 over het geheel genomen laag was.

In Kosovo was er onder de Kosovo Albanese politieke elite veel steun voor de politieke instituties. Zij was uit op de onafhankelijkheid van Kosovo en steunde daarom iedere stap in die richting. De Kosovo Albanese bevolking was minder enthousiast. Zowel de waardering voor de politieke instituties als de opkomst bij verkiezingen laten een dalende trend zien. Dit had vooral te maken met onvrede over het gebrekkige functioneren van de politieke instituties op het gebied van de economie en de corruptiebestrijding. De Kosovo Servische politieke elite steunde de politieke instituties niet. De weerzin was groot. Dit uitte zich in boycots van de politieke instituties en in het opzetten van parallelle politieke structuren, voornamelijk in door Kosovo Serven numeriek gedomineerde gebieden. Deze situatie werd door Kosovo's onafhankelijkheid in 2008 eerder versterkt dan afgezwakt. Ook de steun onder de Kosovo Servische bevolking is te verwaarlozen. Zowel de waardering voor de politieke instituties als de opkomst bij verkiezingen was extreem laag.

Het belangrijkste doel van dit proefschrift was te onderzoeken of de internationale besturen in Bosnië en Kosovo er in zijn geslaagd duurzame instituties op te zetten. Daarnaast werd ook een mogelijke verklaring gegeven voor de mislukking van deze internationale projecten. De stelling werd opgeworpen dat de tweede fase van institutionalisering in Bosnië en Kosovo niet is gelukt, omdat aan het begin van beide internationale besturen geen proces in gang kon worden gezet dat tot een oplossing van het conflict zou leiden (*conflict resolution*). Idealiter is een conflict opgelost wanneer de conflictpartijen overeenstemming hebben bereikt over een oplossing van de fundamentele tegenstelling (in beide gevallen de politieke organisatie van het gebied) en wanneer er geen sprake meer is van wederzijdse vijandelijke attitudes en vijandelijk gedrag. Los van de vraag of een dergelijke eindsituatie ooit bereikt kan worden, richt een proces van conflictoplossing zich op al deze drie definiërende elementen van conflict (tegenstelling, attitudes en gedrag). In Bosnië en Kosovo bleken de standpunten van de verschillende partijen te ver uiteen te liggen om het conflict inhoudelijk op te lossen. Het hoogst haalbare was een strategie van conflictbeheersing (*conflict management*), waarin een internationaal bestuur probeerde uiteindelijk ook tot een inhoudelijke oplossing te komen door de attitudes en het gedrag te veranderen. In geen van beide gevallen is dat gelukt.

In Bosnië werd met het Akkoord van Dayton in 1995 formeel vrede gesloten. Deze vrede kon tot stand komen door een combinatie van militair-strategische verhoudingen tussen de strijdende partijen en internationale dwang. De fundamentele tegenstelling (de kwestie of de drie grote etnische gemeenschappen één staat zouden vormen of zich zouden opsplitsen) werd niet opgelost. In plaats daarvan werd deze tegenstelling via het Dayton Akkoord ingebed in de naoorlogse politieke ordening van Bosnië. Het is aannemelijk dat de constante discussie over

de aard en vorm van de Bosnische staat een hindernis vormde voor de inbedding van de politieke instituties. Ten eerste zag de OHR zich genoodzaakt veelvuldig te interveniëren in de Bosnische politiek, omdat het Dayton Akkoord constant ter discussie werd gesteld. Deze bemoeienis leidde weliswaar tot naleving van het Dayton Akkoord, maar beïnvloedde de ontwikkeling van autonomie in negatieve zin. Ten tweede leidde de sterke nadruk op etniciteit binnen het Dayton Akkoord tot een voortzetting van etnisch-nationalistische politiek. Dit hinderde de poging van de OHR om een burgerlijk-nationalistische politieke cultuur te creëren. Ten slotte leidde de voortdurende strijd over de aard van de Bosnische staat tot weinig vertrouwen in de politieke instituties bij politieke elite en bevolking. Dat leidde vervolgens tot een lage institutionele steun.

In Kosovo kon ook geen proces van conflictoplossing in gang worden gezet. Anders dan in Bosnië was er niet eens een vredesverdrag. Door sterke verdeeldheid van de VN-Veiligheidsraad was het niet mogelijk een besluit te nemen over de politieke status van Kosovo. UNMIK bereidde Kosovo dus voor op zelfbestuur, zonder dat vooraf duidelijk was of dit zou leiden tot een status als autonome provincie van Servië of tot een onafhankelijke staat. Dat betekende een voortzetting van het conflict tussen de Kosovo Albanezen aan de ene kant, en de Kosovo Serven en de Servische regering aan de andere kant. Net als in Bosnië is het denkbaar dat de afwezigheid van een inhoudelijke oplossing van het conflict de inbedding van de instituties heeft gehinderd. Ten eerste had UNMIK volledige zeggenschap over het gebied. Het gevolg was een grote afhankelijkheid van de Kosovaars instituties en een beperkte ontwikkeling van de institutionele autonomie. Ten tweede leidde de onzekerheid over de toekomstige status van Kosovo tot voortzetting van de etnisch-nationalistische politieke cultuur. Het gebrek aan perspectief op oplossing van het conflict motiveerde beide conflictpartijen om zich op de eigen gemeenschap te blijven richten en hinderde de door UNMIK gestimuleerde ontwikkeling van burgerlijk nationalisme. Ten slotte leidde de onzekerheid over de politieke status er toe dat feitelijk alleen de Kosovo Albanezen de politieke instituties steunden. De Kosovo Serven konden zich niet identificeren met de instituties zoals die onder het internationale bestuur waren opgezet.

Dat twee verschillende typen internationale besturen (internationale controle in Bosnië en internationaal gouverneursschap in Kosovo) hetzelfde resultaat boeken (geen duurzame instituties) maakt bovenstaande verklaring aannemelijk. In ieder geval sluit dit onderzoek uit dat het type internationaal bestuur een verschil maakt bij het opzetten van duurzame instituties. Toch is er meer onderzoek nodig om aan te tonen dat de afwezigheid van duurzame instituties verklaard kan worden door de afwezigheid van een oplossing van het conflict, omdat er waarschijnlijk ook andere factoren een rol spelen. Het is denkbaar dat een oplossing van een conflict een noodzakelijke, maar geen voldoende voorwaarde is voor het inbedden van instituties.

Zowel in Bosnië als in Kosovo is geprobeerd om de fundamentele tegenstellingen alsnog op te lossen. In 2006 werd in Bosnië onder leiding van de VS een poging ondernomen een nieuwe grondwet te creëren. Deze poging strandde op politieke verdeeldheid in het parlement. In Kosovo werden in 2006 en 2007 onderhandelingen gevoerd tussen de Kosovo Albanezen en de Servische regering in Belgrado. Dit leidde tot niets en in februari 2008 riep Kosovo unilateraal de onafhankelijkheid uit. Het mislukken van deze pogingen betekende dat de EU het roer van de OHR en UNMIK moest overnemen. Een complicerende factor is dat de EU niet alleen van plan is beide gebieden te stabiliseren en duurzame instituties op te bouwen, maar ook om Bosnië en Kosovo uiteindelijk op te nemen als lidstaten. Het toetredingsproces zal anders verlopen dan dat van eerdere toetreders, omdat de EU zich via de OHR en de Internationale Civiele Vertegenwoordiger in Kosovo (in 2008 opgericht) bezighoudt met internationaal bestuur. Hoewel in het verleden is gebleken dat Europese uitbreiding een positief effect kan hebben op de ontwikkeling van politieke instituties, is dat niet per definitie het geval. In het laatste deel van hoofdstuk zeven wordt betoogd dat, wanneer het toetredingsproces de vorm krijgt van een internationaal bestuur door de EU, het in het licht van de resultaten van de OHR en UNMIK onwaarschijnlijk is dat dit zal leiden tot duurzame politieke instituties.

Curriculum Vitae

Niels van Willigen (Kedichem, 23 januari 1977) attended secondary school at *Merewade College* in Gorinchem from 1989 to 1996. After his secondary education, he studied history at Leiden University. He also completed a one year program in the Faculty of Law which resulted in a 'Certificate of International Law'. Having completed his studies in 2001, Van Willigen did research on the 'European Security and Defense Identity' as a part of NATO's research fellowship program. From 2002 to 2007 he has worked as a PhD-candidate in the Department of Political Science of Leiden University. Since 2007 he is assistant professor of international relations at the same department and university. His teaching includes introductory courses on international politics and more specialized courses on arms control, on peacebuilding and on military interventions. For the Dutch ministry of Foreign Affairs he evaluated Dutch foreign policy on antipersonnel landmines and explosive remnants of war. He has given several guest lectures for a variety of organizations, including the Netherlands Institute of International Relations Clingendael and the Netherlands Defence College. Van Willigen also participates as a teacher in the *Rijkstraineeprogramma* of Leiden University's *Campus Den Haag*.