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Human Rights Problems in Regions of Crisis: Bosnia/Herzegovina/Kosovo/Macedonia 2007

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**Report of the Human Rights Agenda Association
Human Rights Problems in Regions of Crisis:
Bosnia/Herzegovina/Kosovo/Macedonia -2007**

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Summary

The visit of the Human Rights Agenda Association (HRAA) to Bosnia/Herzegovina – Kosovo – Macedonia to inspect the human rights situation was realized at a time when highly critical decisions for the population were being taken and the situation changed rapidly. The meetings with institutions and persons that contribute to the region's unification with human rights made the efforts for the task that the HRAA had undertaken worth the while.

The task of the HRAA was not so much evaluating the past of human rights and predicting the future but to develop a perspective and research how the cooperation between institutions can be improved. The visit was conducted in the week between 23 February and 4 March 2007, a week with many incidents. While Bosnia/Herzegovina was trying to heal the wounds left by the war the verdict of the International Court of Justice at the United Nations of 26 February left the region in mourning. During the Kosovo talks the people were preparing their protest to the plan of the UN Special Envoy *Martti Ahtisaari* to be held on 3 March 2007 and put up posters everywhere. Shortly before the talks in Macedonia the Slovenian Prime Minister Janez Jansa said on 27 February 2007 that he supported the aim of Macedonia to become a member of the EU and NATO. At this time one of the most important problems of Macedonia was the integration of the Romani minority. At the same time efforts had started to have police officers respect human rights. At such a pressing time the HRAA gave priority to the question how the Constitutional and legal protections could be implemented and brought in line with international human rights standards and concentrated on the conditions of the best way of sharing experience.

Within a very limited time and under the conditions of the countries that were visited the HRAA had meetings with representatives of international organizations active in the region, officials of the governments, human rights organizations and specific minority groups. The talks were held according to an agreed schedule. The most important subjects of these talks were the investigation into crimes of war, the situation of minorities, the prevention of torture and conscience raising for human rights. The talks were held in two groups. Bosnia/Herzegovina was the first research group. The second research group went to the Kosovo and Macedonia. This report was written to demonstrate the findings of the talks.

The report of the Human Rights Agenda Association "*Human Rights Problems in Regions of Crisis: Bosnia/Herzegovina/Kosovo/Macedonia -2007*" includes after the Introduction and Human Rights Relations with a general evaluation of the situation in the region and its history items on each of the visited countries. Rather than concentrating on one them, the report will focus on specific human rights problems as listed above.

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Introduction

1. The HRAA made its first visit to the regions of crisis on the Balkan to the Kosovo and Macedonia in September 2005. In historic and cultural dimensions the Balkan is closely related to Turkey. Both countries have human rights related problems. This was the first time that a human rights organization from Turkey visited these two countries. During the second round of visits the Bosnia/Herzegovina Federation was included. During almost all talks it was mentioned that the traces of the civil war during the collapse of former Yugoslavia can still be seen. While arrests and trials at the Court on War Crimes in Former Yugoslavia continue the verdict of the International Court of Justice at the United Nations on Serbia played a central role during the talks in Bosnia/Herzegovina.
2. During the visits to the region the influence of the UN and NATO forces in the region were obvious. Besides their programs the activities of the OSCE drew attention. The economic, social and cultural activities of the EU, UN and OSCE together with organizations of civil society (OCS) will have an important impact on securing an atmosphere of peace and developing human rights and democracy.

I. Human Rights Relations

3. The federal administrative and legal system in Bosnia/Herzegovina is pretty complex. The cantons are generally formed and governed according to the proportion of Serbs, Bosnian and Herzegovina population. Therefore, it is quite difficult that different ethnic groups can survive in cantons formed according to ethnic categories. It was observed that it will take a long time to overcome the feeling of distrust that developed during the war in particular among the Bosnian population, although the presence of international institutions in the country contributes to establish security and order. The fact that people wanted as criminals of war have still not been apprehended and the verdict of the International Court of Justice in The Hague has weakened the belief of the Bosnian society that lived through great pains during the war in international mechanisms.
4. It was observed that the tension in the Kosovo increased because of its uncertain status. On every platform demands for the independence of the Kosovo whose population is comprised to 90% of Albanians are raised. The minority groups are subject to serious restrictions on their basic rights. The Turkish, Serbian and Romani groups are facing important problems concerning the right to education in their mother tongue, publications, the right to property and organization. It is believed that in the near future the interest of the international community for the Kosovo will rise to determine the final status of the Kosovo.
5. With the reform of the Constitution and by signing international conventions during the process of joining the EU Macedonia took the lead. Even though some visible problems with minorities exist, the Constitution of Macedonia defines and accepts all minority groups. The legal reform, the fact that freedoms of expression, religion and organization have been protected with international standards strike as important improvements. Hindrance and discrimination of minority groups, arbitrary acts of the security forces, torture and ill-treatment, though on a local level, and incidents of extra-legal executions attract attention as the most important human rights problems. Therefore, the Romani, Turkish and Serbian minority groups have certain problems.

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II. The Balkans in the historical development and the Heritage of the Past¹

6. Since World War I the Balkans has been a region of crisis. Nationalist movements have damaged the ethnic mosaic of the region.
7. After World War I the borders of many states were completely redrawn, and the new Kingdom of Serbs, Croats, and Slovenes, later Yugoslavia, was created. Both Austria-Hungary and the Ottoman Empire were formally dissolved. Between 1929 and 1934 King Alexander I ruled the country as a dictator. After his assassination Alexander was succeeded by his eleven year old son Peter II and a regency council headed by his cousin Prince Paul.
8. On 6 April 1941 the Axis Forces (Germany, Italy, Hungary and Bulgaria) attacked Yugoslavia and occupied it. Yugoslavs opposing the Nazis organized a resistance movement. In November 1943 the Anti-Fascist Council of National Liberation of Yugoslavia convened and established a federation under the leadership of Marshal Josip Broz Tito, a Croatian national. In 1945 Yugoslavia became a Republic. In 1946 Tito ordered the execution of General Draja Mihailovich.
9. Tito adopted a socialist policy, different to that of Stalin. During the 1968 movement in Czechoslovakia Tito opposed Russia. He traded with Western countries. Incidents occurred in Croatia in 1972, but were suppressed immediately. Tito led the Non Alignment Summit in 1979.
10. On 4 May 1980 Marshal Josip Broz Tito died. Veselin Djuranovic became State President in 1984. A memorandum of 1986 stating that Serbia was exploited by the other Yugoslavian republics triggered the Serbian uprising.
11. In 1990, a new Yugoslav Constitution was enacted. Four republics soon declared independence, leaving 'Rump Yugoslavia' as only Serbia plus Montenegro. The status of the former Yugoslav republics and provinces can be summarized as such: **Slovenia:** Declared independence in June 1991; one-week war with Serbia (a 'bloodless' war because Serbia focused on Croatia); **Croatia:** Declared independence in June 1991; longer war with Serbia; heavily involved with Bosnia war; **Macedonia:** Declared independence in Nov. 1991; avoided war because of arrival of international forces (including US forces, which are still based there). **Bosnia-Herzegovina:** Declared independence in 1992; lengthy war with Serbia and Croatia, with all three countries involved in 'ethnic cleansing.' The war ended with the Dayton Peace Accords in 1995. Bosnia was partitioned into three ethnic regions (Serb, Bosnian, & Croat); **Montenegro:** Still part of Yugoslavia as an autonomous Republic. Montenegrins are ethnically identical to Serbs; they differ only by geography. **Serbia:** Legally, Serbia is just one republic of Yugoslavia. But the Serbs have always been the dominant group in all of Yugoslavia since its formation; **Kosovo:** Remains a province within the republic of Serbia; **Vojvodina:** Also remains a province within the republic of Serbia.¹
12. Slobodan Milosevic came to power as Chairman of the Communist Party in 1986. His popularity increased greatly in 1987 after a speech in Kosovo strongly advocating

¹ Information mainly gathered at http://www.ontheissues.org/Background_War+_Peace.htm#Balkans

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Serbian nationalism (the speech was made on the site of a 14th century battlefield. This is the political basis for Milosevic not granting Kosovo independence). Milosevic was democratically elected President of Serbia in 1989, and elected as President of Yugoslavia in 1997. He was indicted as a war criminal in June 1999, the first time a sitting President has been indicted. His alleged crimes include genocide and ethnic cleansing. In April 2001, Milosevic surrendered to Serbian government forces.



© Serbian Newspaper Borba; Quotation from *Yugoslavya Milliyetçiliğın Provakasyonu*, Tanil Bora, Birikim Yay., 1995, İst. S.193

13. In 1990 thousands of Kosovo Albanians took part in riots. Belgrade strengthened Yugoslav Army and Serbian police presence in the province. Martial law was imposed. By September more than 100,000 Kosovo Albanian employees at state-run companies and institutions had been sacked. Kosovo Albanian cultural institutions were suppressed and education in the Albanian language was suspended, to be restored in 1994.

14. The following information was taken from a website replacing items 14-27 of the Turkish original²

- 1991 Jun 25, the civil war in Yugoslavia began when Croatia and Slovenia proclaimed independence from Yugoslavia.
- 1991 Jun 27, Yugoslav army tanks and helicopters attacked Slovenia. Fighting broke out between Serbian and Croatian militias.
- 1991 Sep 21, Yugoslav army tanks and artillery began an invasion of eastern Croatia. The Croats said that some 600 soldiers and 1200 civilians perished in the 3-month bombardment of Vukovar by rebel Serbs.
- 1991 Sep 25, The U.N. Security Council unanimously passed Resolution 713 that imposed a worldwide arms embargo against Yugoslavia and all its warring factions.
- 1991 Oct 8, Slovenia and Croatia began operating independently from Yugoslavia. Slovenia took over its own borders and began printing its own money.
- 1991 Nov 23, Yugoslavia's rival leaders agreed to a new cease-fire, the 14th of the Balkan civil war.
- 1991 Nov 27, The U.N. Security Council unanimously adopted a resolution paving the way for the establishment of a U.N. peacekeeping operation in war-ravaged Yugoslavia.
- 1991 Macedonia gained independence from the former Yugoslavia. Its president was Kiro Glogorov.
- 1991 Entities of Yugoslavia began to split off leaving Serbia and Montenegro.

² Information found at <http://timelines.ws/countries/YUGOSLAVIA.HTML>

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1992 May 2, Yugoslav Army seized Bosnian Pres. Alija Izetbegovic.

1992 Jul 7, Group of Seven leaders meeting in Munich, Germany, condemned the carnage in former Yugoslavia and warned Serb-led troops that U.N. military force would be used if needed to keep relief operations going.

1992 Jul, Yugoslavia was suspended from the Organization for Security and Cooperation in Europe (OSCE) for fomenting war in Bosnia.

1992 Sep 22, The U.N. General Assembly voted to expel Yugoslavia.

1993 Feb 22, The UN passed Resolution 808 that established the Hague International War Crimes Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia since 1 January 1991.

2001 Nov 23, In Belgium the UN war crimes tribunal announced that Slobodan Milosevic, former Yugoslav president, would stand trial on charges of genocide in the 1992-1995 war in Bosnia. Milosevic died in March 2006 while his trial was in progress.

2003 Jan 29, Montenegro lawmakers voted to abolish Yugoslavia and replace it with a loose union of semi-independent states called Serbia and Montenegro.

15. In July 1995 units of the Army of Republika Srpska (VRS) under the command of General Ratko Mladić conducted the so called Srebrenica Massacre killing an estimated 8,000 Bosniak males.³

16. The following timeline was taken from the website of the BBC (replacing item 28 of the original that quoted the same source in the Turkish language)⁴

6 - 8 July 1995: Bosnian Serb forces had laid siege to the Srebrenica enclave, where tens of thousands of civilians had taken refuge from earlier Serb offensives in north-eastern Bosnia. They were under the protection of about 600 lightly armed Dutch infantry forces. Fuel was running out and no fresh food had been brought into the enclave since May. Serb forces began shelling Srebrenica. Bosnian Muslim fighters in the town asked for the return of weapons they had surrendered to the peacekeepers but their request was refused. The Dutch commander called UN Headquarters in Sarajevo asking for "close air support" after shells and rockets landed close to refugee centers and observation posts manned by peacekeepers.

9 July 1995: The Bosnian Serbs stepped up their shelling and thousands of refugees fled to the town from southern camps ahead of advancing Serbs, who attacked Dutch observation posts, taking about 30 soldiers hostage. One peacekeeper was fatally wounded when Bosnian Muslims fired on retreating Dutch troops.

10 July 1995: Dutch Commander Colonel Karremans filed a request for UN air support after the Bosnian Serbs shelled Dutch positions. UN Commander General Janvier initially refused but agreed after another request from the colonel. Serb attacks stopped before the planes

³ See http://en.wikipedia.org/wiki/Srebrenica_massacre

⁴ Information can be found at <http://news.bbc.co.uk/2/hi/europe/675945.stm>

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arrived and strikes were postponed. Some 4,000 refugees were in the town by the evening and there was panic on the streets. Large crowds were gathered around the Dutch positions. The Dutch commander told town leaders that NATO planes would launch massive air attacks against the Serbs if they had not withdrawn from the safe area by 0600 the following morning.

11 July 1995: The Serb forces did not withdraw, but at 0900 Colonel Karremans received word from Sarajevo that his request for close air support had been submitted on the wrong form. At 1030, the re-submitted request reached General Janvier, but NATO planes had to return to base in Italy to refuel after being airborne since 0600. By midday, more than 20,000 refugees - mostly women, children and the infirm - fled to the main Dutch base at Potocari. At 1430, two Dutch F-16 fighters dropped two bombs on Serb positions surrounding Srebrenica.



General Mladic and Dutchbat Commander from UN Peacekeeping Force. ©AP

The Serbs responded with a threat to kill their Dutch hostages and shell refugees, causing the suspension of further strikes. The Bosnian Serb commander Ratko Mladic entered Srebrenica two hours later, accompanied by Serb camera crews. In the evening, General Mladic summoned Colonel Karremans to a meeting at which he delivered an ultimatum that the Muslims must hand over their weapons to guarantee their lives.

12 July 1995: Buses arrived to take women and children to Muslim territory, while the Serbs begin separating out all men from age 12 to 77 for "interrogation for suspected war crimes".

13 July 1995: The first killings of unarmed Muslims took place in a warehouse in the nearby village of Kravica. Peacekeepers handed over about 5,000 Muslims who had been sheltering at the Dutch base at Potocari. In return, the Bosnian Serbs released 14 Dutch peacekeepers, who had been held at the Nova Kasaba base.

16 July 1995: Early reports of massacres emerged as the first survivors of the long march from Srebrenica began to arrive in Muslim-held territory.



Work of Israeli artist Yossi Lemel Criticism on UN, it's Role in Bosnian war, 1995 because of 50th anniversary of UN

Following negotiations between the UN and the Bosnian Serbs, the Dutch were at last permitted to leave Srebrenica, leaving behind weapons, food and medical supplies.

17. In July 1995, a Serbian court sentenced 68 Kosovo Albanians, charged with setting up a parallel police force, to up to eight years in prison. In August 1995, a move by the Serbian authorities to settle several hundred Croatian Serb refugees in Kosovo sparks protests among ethnic Albanians.

18. In 1996, a separatist rebel group, calling itself the Kosovo Liberation Army (KLA), emerges for the first time, claiming responsibility for a series of bombings and attacks against Serbian police and state officials.

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19. In 1997, the KLA stages a number of attacks on Serbian leaders, police and Kosovo Albanians who collaborate with the Serbs. Ethnic Serbs are driven out of many mixed villages. October 1997, Kosovo Albanian student demonstrations crushed by Serbian police, prompting new KLA attacks.

20. In February-March 1998, Serbia began a major crackdown in Kosovo. Dozens of people were killed and hundreds of thousands of civilians, mostly Kosovo Albanians, were forced to flee their homes. In April 1998, 95% of Serbs voted in a referendum against international mediation in Kosovo. In May 1998, Milosevic and Rugova held talks for the first time, but following a Serb offensive in Decani that left several dozen Kosovo Albanians dead, the Albanian side refused to attend further meetings.



Work of Israeli artist Yossi Lemel on the massacre of Muslim Albanian in Kosovo. (1999)

21. In September 1998, twenty-two Kosovo Albanians were found massacred in central Kosovo following Serb attacks in the region. The UN Security Council adopted a resolution, calling for a ceasefire in Kosovo and warning the Belgrade authorities that they could face "additional measures" if they failed to comply. In October 1998, facing a NATO threat for air strikes against Serbian military targets and under a deal brokered by US envoy Richard Holbrooke, Milosevic agreed to pull out some troops and to allow 2,000 OSCE monitors into Kosovo. In December 1998, thirty-six KLA fighters were killed by Serbian forces in the worst clash since the ceasefire.

Six Serbs were killed in a cafe, prompting widespread Serb protests. Fresh fighting in the north left at least 15 dead.

22. The International Criminal Tribunal for the Former Yugoslavia (ICTY) passed final Judgement on the *Delalic, Mucic, Delic and Landzo* ('*Celebici*') case 16 November 1998. Mucic, the commander of the Celebici camp, was found guilty of command responsibility for, *inter alia*, murders, acts of torture and ill treatment. Delic and Landzo were found guilty of individual criminal responsibility for, among other things, willful killings, torture and cruel treatment. One defendant, Delalic, was found not guilty on all counts because the Prosecutor failed to establish command responsibility.



ICTYPoster: Goran Hadžić, Radovan Karadžić, Ratko Mladić, Stojan Župljanin

23. In January 1999, the bodies of 45 ethnic Albanians were discovered in the village of Racak. In February-March 1999, internationally-brokered peace talks with representatives of the warring parties were held in Rambouillet, France. The talks were suspended on March 19th after the Serbian representatives rejected the proposed deal, signed by the Kosovo Albanian side. On March 20th, international peace monitors evacuated, citing security and possibility of NATO air strikes. On March 24th, NATO launched air strikes against Yugoslavia. On June 10th, NATO Secretary General Javier Solana called off the air strikes. UN Security Council

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passed Resolution 1244, welcoming Yugoslavia's acceptance of a political deal, including an immediate end to violence and a rapid withdrawal of its military, police and paramilitary forces. Placing Kosovo under UN administration, the resolution also authorized the establishment of UNMIK and the deployment of a NATO-led peacekeeping force (KFOR).

24. In November 2001, Kosovo held its first democratic general elections, won by Rugova's Democratic League of Kosovo (LDK). In February 2002, Rugova was elected president of Kosovo, while Bajram Rexhepi became prime minister.

25. On 14 October 2003, Serbian and Kosovo Albanian leaders met in Vienna for their first face-to-face talks since the end of the 1998-1999 conflict. In December 2003, UN outlined a set of standards Kosovo must meet for talks on determining its final status to be launched in 2005.

26. On March 17 and 18, 2004, violent rioting by ethnic Albanians took place throughout Kosovo, spurred by sensational and ultimately inaccurate reports that Serbs had been responsible for the drowning of three young Albanian children. For nearly forty-eight hours, the security structures in Kosovo—the NATO-led Kosovo Force (KFOR), the international U.N. (UNMIK) police, and the locally recruited Kosovo Police Service (KPS)—almost completely lost control, as at least thirty-three major riots broke out across Kosovo, involving an estimated 51,000 participants. In October 2004, President Rugova was re-elected after the LDK won general elections, boycotted by Kosovo Serbs. Former KLA commander and leader of the Alliance for the Future of Kosovo Ramush Haradinaj headed the government as prime minister.

27. In March 2005, Haradinaj resigned as Kosovo prime minister to face war crimes charges at the International Criminal Tribunal for the former Yugoslavia (ICTY). Bajram Kosumi replaced him in the post.

28. On 21 January 2006 State President Prof. Dr. Ibrahim Rugova died. He was succeeded by Fatmir Sejdiu. On 20 February 2006, direct UN-sponsored talks between Serbian and Kosovo Albanian officials on the province's future status open in Vienna. The negotiations were led by UN Secretary General Kofi Annan's envoy, former Finnish President Martti Ahtisaari. In March 2006, facing criticism from his own party, Kosumi resigned as prime minister and was replaced by former KLA commander Agim Ceku. In October 2006, Serbian voters approved in a referendum a new constitution, describing Kosovo as an inalienable part of the country's territory.

29. The Albanians in the Kosovo as well as Serbia rejected the plans of Martti Ahtisaari on the status of the Kosovo. During demonstration in Kosovo in February 2007 demonstrators clashed with the police and two people died. On 20 February 2007 bombs exploded in Pristine damaging vehicles of the UN.

30. On 26 February 2007 the ICTY declared the incidents of Srebrenica to be genocide. However, Serbia could not directly be held responsible for it. In Bosnia-Herzegovina the decision was met with sorrow.ⁱⁱ

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31. Former General Zdravko Tolimir was arrested in June 2007 at the border crossing between Serbia and the Republic of Srpska and extradited to the Hague detention centre. He is known to be the right arm of Ratko Mladic, one of the prime suspects in this case, who together with Radovan Karadzic has not been detained yet.

32. According to the key figures of International Criminal Tribunal for the former Yugoslavia (ICTY) cases on 28 September 2007, 46 in custody at the UN ICTY Detention Unit (UNDU); 7 on provisional release; **Ongoing proceedings: 53 Accused:** 8 before the Appeals Chamber, 2 convicted and sentenced by a Trial Chamber, 1 acquitted by a Trial Chamber, 26 currently at trial, 12 at pre-trial stage, 4 at large which includes *Goran Hadžić, Radovan Karadžić, Ratko Mladić, Stojan Župljanin*; **Concluded proceedings: 108 Accused:** 7 acquitted; **52 sentenced:** 8 awaiting transfer, 26 transferred, 16 have served their sentence, 2 died while serving their sentence; 13 referred to national jurisdiction pursuant to Rule 11bis; **36 are deceased or had their indictments withdrawn:** 20 indictments withdrawn before transfer to the Tribunal, 7 reported deceased before trial, 5 indictments withdrawn after transfer to the Tribunal, 3 died in custody during proceedings which include *Slobodan Milošević*, 1 died while on provisional release from trialⁱⁱⁱ.



Newspapers in Bosnia-Herzegovine expressed their surprise about the judgement of the International Criminal Tribunal for the former Yugoslavia on 26 February.

Country Visits

III- Bosnia-Herzegovina

a) General Political Situation

— Security

33. Since 1992 the international community is responsible for security in Bosnia Herzegovina. Between February 1992 and December 1995 the UN Protection Force UNPROFOR was active. At the beginning it was based in Croatia in order to clean the area from soldiers. Later its duty was extended to Bosnia-Herzegovina to cover humanitarian aid and to observe regions "closed for flight" and "secure regions". Later



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UNPROFOR was stationed in Macedonia in order to carry out preventive inspections at the border. In March 1995 a split was made between UNCRO (Croatia), UNPROFOR (Bosnia Herzegovina) and UNPREDEP (Macedonia).

34. In 1995 the United Nations Mission in Bosnia and Herzegovina (UNMIBH) was formed under the United Nations Security Council Resolution 1035 and extended by Resolution 1357. UNMIBH's mandate was to contribute to the establishment of the rule of law in Bosnia and Herzegovina by assisting in reforming and restructuring the local police, assessing the functioning of the existing judicial system, and monitoring and auditing the performance of the police and others involved in the maintenance of law and order. It completed its mandate on 31 December 2002.

35. Since 1995 NATO has taken the most effective role in guaranteeing security in Bosnia-Herzegovina. Based on UN Security Council Resolution 1031 and the Dayton Peace Treaty the Implementation Force (IFOR) acted in 1995 and 1996. Between December 1996 and December 2004 the Stabilization Force SFOR acted under the lead of NATO in order to establish security and to rectify the damage created by the war. Since December 2004 NATO and the EU have worked under a new formation aimed at finding the war criminals and work against terrorism and for security. Apart from this a police force has been established in Bosnia-Herzegovina.

36. Bosnia-Herzegovina is a country where the wounds of war are slowly healing. When entering the capital Sarajevo it is very striking that the buildings still have the bullet holes. Day-to-day life is slowly returning to normal. However, words of people in the street such as "*we have forgiven, not forgotten*" or "*this is only a break*" show that the trauma created by the war is still continuing. It is also a clear indication that the international forces have the duty to carry on their tasks for quite a while.



The National Library in Sarajevo burning during the war



In protest against the war Vedran Smailović played Cello in the National Library in 1992 © Mikhail Evstafiev-OSCE Magazine April 2006



Situation in February 2007 of the Library that is being restored © IHGD

37. In order to gather information about the general human rights situation the HRAA talked to representatives of inter-governmental organizations, the government and organizations of civil society. Among them were the OSCE Bosnia-Herzegovina Mission, the Institute for an Open Society, Amor Masovic, chair of the Commission on Missing Persons, Sarajevo Bar Association, Balkan Human Rights Network, Reporting Network for Human Rights on the Balkan and Turkolog Amina S. Jesenkovic from the Sarajevo Oriental Studies Institute.

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- Political System

38. Bosnia and Herzegovina is a democratic State ruled by free and democratic elections under protection of laws. Apart from this the political system in Bosnia and Herzegovina is rather complicated. Bosnia and Herzegovina has several levels of political structuring under the federal government level. Most important of these levels is the division of the country into two entities: Republika Srpska and the Federation of Bosnia and Herzegovina. The entities, based largely on the territories held by the two warring sides at the time, were formally established by the Dayton peace agreement in 1995. Since 1996 the power of the entities relative to the federal government has decreased significantly. The Brčko federal district in the north of the country was created in 2000 out of land from both entities. It officially belongs to both, but is governed by neither, and functions under a decentralized system of local government.

- State Level^{iv}

39. The President: Bosnia and Herzegovina has a three-member (Bosniak, Croat, Serb) presidency elected by direct popular vote for a four-year term. The chairmanship of the tripartite presidency rotates every eight months. The chairman is the head of state. The functions of the presidency are primarily in the area of foreign policy, appointment of ambassadors, international treaties, coordination with international and non-governmental organizations, etc.

40. Legislative: The country's legislative power is in the hands of a bicameral *Parliamentary Assembly of Bosnia and Herzegovina*, which sits in the capital Sarajevo. Each house has a chairman and two deputies (one Serb, one Croat and one Bosniak). **The House of Representatives [Predstavnicki Dom]** is a 42-member body elected by party list vote from 2 multi-seat constituencies (28-seat Federation of Bosnia and Herzegovina, 14-seat Serbian Republic) for a term of 2 years. **The House of Peoples [Dom Naroda]** has 15 members (5 Serb, 5 Bosniak and 5 Croat) indirectly elected by the Federation's House of Peoples and the RS National Assembly for a term of 2 years.

41. Executive: A Council of Ministers charged with overseeing foreign, economic and fiscal policy, represents the national government. Its Chairman (also called Prime Minister) is nominated by the president and his/her appointment is subject to approval by the House of Representatives. The ministers and their deputies are nominated by the Chairman of the Council of Ministers, and must also be approved by the House of Representatives. Under the Constitution, no more than two-thirds of all ministers can be appointed from the territory of the Federation. Each minister has two deputies, who cannot be of the same constituent people as the minister. The Chairman, the ministers and their deputies form the cabinet, which currently includes 6 ministers and 12 deputies.

- Entity Level

42. The President: Each entity has a president and vice-president, who are members of the executive. President and vice president rotate every 6 months.

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43. Legislative: The Federation Parliament is the bicameral legislative body of the Federation of Bosnia and Herzegovina. Each house has a chairman and a deputy chairman. The House of Representatives has 140 members, and the House of Peoples has 80 members, including 30 Croats, 30 Bosniaks, and 20 others. The members of the Federation Parliament are elected for a two-year term. The Serbian National Assembly is a unicameral, 83-member body, elected by popular vote in the Serbian Republic by proportional representation. Members are elected for a two-year term.

44. Executive: The government of the Federation of Bosnia and Herzegovina is headed by the prime minister and his deputy and includes 12 ministers and their deputies, as well as two ministers without portfolio. The government of Republika Srpska is headed by the prime minister and includes his four deputies and 17 ministers.

45. Judiciary: The Constitutional Court consists of nine members: four are selected by the Bosniak/Croat Federation's House of Representatives, two members by the Republika Srpska's National Assembly, and three non-Bosnian members are selected by the president of the European Court of Human Rights. A new state court, established in November 1999, has jurisdiction over cases related to state-level law and appellate jurisdiction over cases initiated in the entities. Each entity has a Supreme Court and a number of lower courts. The Federation has cantonal plus a number of municipal courts and Republika Srpska has five municipal courts.

46. International Administration: *The Office of the High Representative (OHR):* The Office of the High Representative (OHR) oversees the implementation of the civilian aspects of the Dayton Agreement. The OHR has extensive powers of intervention and can, for example, remove politicians from office for failing to meet the terms of the Dayton accords. The High Representative is nominated by the Steering Board of the Peace Implementation Council (PIC) and approved by the United Nations Security Council. *The OSCE mission in Bosnia and Herzegovina:* The OSCE mission in Bosnia and Herzegovina was mandated in December 1995 to promote democratic values, monitor and further human rights, organize and supervise elections and to implement arms control and security building measures. *Communication Regulatory Agency - (CRA):* An independent local organization, whose directors are appointed by OHR. Function: regulating communications through distribution of licenses for TV, radio, mobile phones, etc. *The UN International Police Task Force (UNIPTF)* is not armed and is in charge of overseeing the local police.

b) General Human Rights Situation

47. Bosnia-Herzegovina is a member of the United Nations since 22 May 1992 and of the Council of Europe since 24 April 2002. On 1 September it ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. On 12 July 2002 Bosnia-Herzegovina ratified the European Convention of Human Rights. The only case on Bosnia-Herzegovina that the European Court of Human Rights concluded was on 31 October 2006 the case of *Jeličić v. Bosnia and Herzegovina* (application no. 41183/02) where the Court found a violation of Article 6/1 of the European Convention of Human Rights (right to a fair trial, access to a court) and Article 1 of Protocol No. 1 (right to property).

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48. The OSCE is conducting courses in Bosnia-Herzegovina on Article 5 (right to freedom and security) and Article 6 of the European Convention. There are no further educational measures of the international community held in Bosnia-Herzegovina.

49. No doubt that one of the most discussed topics in Bosnia-Herzegovina are the investigations and proceedings against war criminals. Six special courts are dealing with this question. At these courts local judges and prosecutors are busy. The special courts work with the ICTY: However, the special courts are not in a position to carry out effective trials. The files and cases are very complicated so that the courts are unable to pass directing verdicts.

50. Since the economic fundament of Bosnia-Herzegovina has been damaged dreadfully the activities in the filed of economic, social and cultural rights have been restricted mostly to rebuild the economic fundament. In this field the international community is working together with local municipalities.

51. Violence, torture and ill-treatment inflicted by the security forces is appalling. The targets of the violence are mainly drug addicts, members of minorities and in particular the Romani minority. There is no legal system to provide victims of torture and ill-treatment with legal aid free of charge. For legal counsel and qualified services one has to pay a good fee.

52. Work is being done on the prisons. There are 13 prisons in the country and estimates say that 3,000 people are imprisoned. Prison conditions are very bad. In particular members of the minorities and disabled people are subjected to ill-treatment.



Posters at the airport of Sarajevo on war criminal and women's trade

53. One of the problems that the country has to tackle is the trafficking of humans. At the airport in Sarajevo one poster concern trade with women and another people wanted by the ICTY. The problem of human trafficking is not restricted to women. The sale of Romani children to other countries is a problem that started recently. Within the OECD a unit to combat human trafficking has been established and is working.

54. The only organization of civil society dealing directly with human right is the Balkan Human Rights Network (BHRN)⁵. BHRN was founded in Copenhagen in October 1998. There are some 44 members from Montenegro, Kosovo, Macedonia, Albania, Bosnia-Herzegovina, Bulgaria and Croatia in the BHRN. The main areas of work are education in human rights, end the women's trade, prevent torture and ill-treatment, develop the capacity of human rights organizations, the rights of groups with disadvantages, access to rights, right to property and broaden the BHRN. The

⁵ The website of the BHRN is <http://www.balkan-rights.net/>

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BHRN is concerned with human rights problems in Bosnia-Herzegovina and all of Southeastern Europe.

55. During the visit to the BHRN we heard that human rights activist Dusko Kondor, member of the Helsinki Human Rights Committee in the Serb Republic of Bosnia-Herzegovina was killed on 22 February 2007. The HRAA wants to express its deep sorrow for such a despicable act.

c) Missing Persons

56. When the HRAA visited Amor Masovic, chairing the Research Commission for Missing Persons in Bosnia-Herzegovina, he told them that new graves were still found. Amor Masovic reacted calmly on the decision of the International Tribunal and said that it was a step forward that the events in Serbia during the war were called genocide. It was a political decision not to hold Serbia accountable for the genocide and added that all circles in Bosnia-Herzegovina would think so.

57. Mr. Masovic told us that graves could be found in all regions, but there were 4 really big ones. Unfortunately the victims had been dismembered and the remains had been put in different places. Therefore it had been difficult to identify them and it would need great efforts and time to complete the identifications. There was no clear figure, but the estimates were around 8,000 cases of missing persons. He was afraid that the number could rise, if new graves were found. So far the Serbs had paid 2 million dollars as compensation, but the money had not directly been given to the families of the victims.



Mass graves © Research Commission on Missing Persons

c) Minorities

58. The ethnic mosaic of Bosnia-Herzegovina includes many different minority groups. According to the 1991 census, Bosnia and Herzegovina had a population of 4,377,033. Ethnically, 1,902,956 (43.47%) were Muslims by nationality, 1,366,104 (31.21%) Serbs, and 760,852 (17.38%) Croats, with 242,682 (5.54%) Yugoslavs and 104,439 (2.38%) others and unknown. According to 2000 data from the CIA World Factbook, Bosnia and Herzegovina is ethnically 48% Bosniak, 37.1% Serb, 14.3% Croat, 5.54 Yugoslavs and 0.6% Other. There is a strong correlation between ethnic identity and religion in Bosnia and Herzegovina as is shown by the fact that 99% of Bosniaks are Muslims, 98% of Croats are Catholics whilst 99% of Serbs are Orthodox Christians.⁶ There is no recent data

⁶ See: http://en.wikipedia.org/wiki/Bosnia_and_Herzegovina#Demographics

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on how the groups populate the area. No count has been made since the war and should soon be realized.

59. The Constitution names Bosniaks, Serbs and Croats as the main group and accepts their languages as official languages. Only Romanis and Jews have no official status. In particular the situation of the Romanis is bad. There are serious prejudices against the Romani who are discriminated against. Many Romanis are badly educated and only few of their children benefit from education.

60. Only a small proportion of the population is ethnically unified. Most people have problems with accepting each other. The young generation has a dynamic that raises hopes that they will accept each other more than the elderly people do.

61. Although small in number the activities of the radical Islamic organization Vahabi give reasons for concern.

IV- Kosovo

a) General Political Situation

- Security

62. Since 1999 the security in the Kosovo is guaranteed by the international community. The United Nations Interim Administration Mission in Kosovo (UNMIK) and the NATO based Kosovo Force (KFOR) work together in this area. They were established with Resolution 1244 of the UN Security Council^v.

63. In particular, resolution 1244 has called upon UNMIK to perform basic civilian administrative functions; promote the establishment of substantial autonomy and self-government in Kosovo; facilitate a political process to determine Kosovo's future status; coordinate humanitarian and disaster relief of all international agencies; support the reconstruction of key infrastructure; maintain civil law and order; promote human rights; and assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.^{vi}



64. To implement its mandate, UNMIK initially brought together four "pillars" under its leadership. At the end of the emergency stage, Pillar I (humanitarian assistance), led by the Office of the United Nations High Commissioner for Refugees (UNHCR), was phased out in June 2000. In May 2001, a new Pillar I was established. Currently, the pillars are: Pillar I: Police and Justice, under the direct leadership of the United Nations; Pillar II: Civil Administration, under the direct leadership of the United Nations; Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE); Pillar IV: Reconstruction and Economic Development, led by the European Union (EU).^{vii}

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65. According to the Fact Sheet of UNMIK in October 2006 there were, 1374 International Police from 42 countries (as on 30 Sep '06) 7,203 Kosovo Police Service (KPS) officers: male-- 86.35%, female--13.65%; Albanian – 83.91%, Serbian – 10.32 %; other ethnic groups – 5.77 %^{viii}.

66. The delegation of the HRAA observed extraordinary security measures during the visit to the capital Pristina as well as on the way from the Kosovo to Macedonia. Jeeps and tanks of UNMIK and KFOR can be seen everywhere. In order to get information on the human rights situation in the Kosovo the HRAA visited the Center for Humanitarian Law, the Institute for an Open Society in the Kosovo, the Kosovo Ombudsman Hilmi Jashari and the expert Ibrahim Aslan and the deputy Minister of Justice Altay Suroy.

— Political System

67. The administration of the Kosovo is generally run under the leadership of the UN. The first step was taken on 15 May 2001 when the *Constitutional Framework for Provisional Self-Government of Kosovo* was passed.^{ix} The multiethnic provisional self-government is in place as of 13 June 2002, according to the Constitutional Framework of May 2001. A 120-member multi-ethnic Assembly was elected on 23 October 2004 for a three-year term. Until today, 114 laws have been promulgated. The administration consists of a State President, a Prime Minister, a deputy Prime Minister, the President of the Assembly and 15 ministers. In addition 30 municipalities and the correspondent parliaments play an important role in the multiethnic structure of the Kosovo.^x

68. In order to determine the final status of the Kosovo the United Nations Office of the Special Envoy for Kosovo (UNOSEK) was created.^{xi} The Albanians in the Kosovo and Serbia rejected the plan of the Special Envoy Martti Ahtisaari.^{xii} Talks on the fate of the Kosovo are still continuing. The Albanians in the Kosovo want complete independence while Serbia maintains that the Kosovo is part of its territory and Ahtissari granted too many rights to the Albanians.



Poster calling for protest to the Ahtissari plan on
Prestina on 3 March 2007 © HRAA

— Judiciary

69. Within the *Constitutional Framework for Provisional Self-Government of Kosovo* the judiciary is part of the interim institution on the way to self rule. Article 9.4 of the Constitution provides "There shall be the Supreme Court of Kosovo, District Courts, Municipal Courts and Minor Offense Courts. Unless otherwise specified in the applicable law, all Kosovo courts shall hold proceedings in public. According to the Constitution, each person shall be entitled to have all issues relating to his rights and obligations and to have any criminal charges laid against him decided within a reasonable time by an independent and impartial court."^{xiii}

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"According to the Constitution, judges shall be independent and impartial. They shall not hold any other public office. Judges of all courts of Kosovo shall be distinguished jurists of the highest moral character, with adequate qualifications. The membership of the judiciary shall reflect the diversity of the people of Kosovo. International judges and prosecutors shall serve within the judicial system according to rules established by the SRSG. There shall be an Office of the Public Prosecutor for Kosovo, as well as offices of district and municipal prosecutors.^{xiv} According to the Fact Sheet of UNMIK, there are 395 local judges and prosecutors, including 15 Serbs and 22 from other minority communities, and 25 international judges and prosecutors in Kosovo.^{xv}

70. In the *Constitutional Framework for Provisional Self-Government of Kosovo*, a Special Chamber of the Supreme Court shall decide at the request of the President of Kosovo, any member of the Presidency of the Assembly, any Assembly Committee, no fewer than five members of the Assembly, or the Government, whether any law adopted by the Assembly is incompatible with this Constitutional Framework, including the international legal instruments specified in Chapter 3 on Human Rights (9.4.11.a)^{xvi}.

b) General Human Rights Situation

71. Because of the uncertainty of Kosovo's status it is not a member of any international mechanism. The 3rd part of the constitutional framework of self-government relates to human rights.^{xvii}

72. The 3rd part of the temporary constitutional framework of self-government in Kosovo states "*All persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.*" (3.1). According to Article 3.2 of Constitution, the Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in: (a) The Universal Declaration on Human Rights; (b) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (c) The International Covenant on Civil and Political Rights and the Protocols thereto; (d) The Convention on the Elimination of All Forms of Racial Discrimination; (e) The Convention on the Elimination of All Forms of Discrimination Against Women; (f) The Convention on the Rights of the Child; (g) The European Charter for Regional or Minority Languages; and (h) The Council of Europe's Framework Convention for the Protection of National Minorities. And according to Article 3.3, the provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework.^{xviii}

73. Article 3.4 reads "*All refugees and displaced persons from Kosovo shall have the right to return to their homes, and to recover their property and personal possessions. The competent institutions and organs in Kosovo shall take all measures necessary to facilitate the safe return of refugees and displaced persons to Kosovo, and shall cooperate fully with all efforts by the United Nations High Commissioner for Refugees and other international and non-governmental organizations concerning the return of refugees and displaced persons.*"^{xix}

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74. There is no organization of civil society directly concerned with human rights working in the Kosovo. Activities on human rights are restricted to initiatives of academic circles. Groups of civil society are mainly concerned with the prosecution of war crimes and humanitarian aid. The humanitarian aid is mostly directed towards schools and municipalities. Besides organizations of civil society working on the problem of missing people the Office on Missing Persons and Forensics (OMPF) is working under the mandate of UNMIK.^{xx}

75. The prosecution of war crimes and the discovery of missing people are important subjects. According to sources of NATO at least 5,000 people lost their lives during the clashes.^{xxi} In the Fact Sheet of UNMIK, according to ICRC as of the end of August 2006, there were: a total number of 2,268 active cases of which: number of cases reported missing: 1,884; number of cases reported as dead but body missing: 384; number of persons for whom a Tracing Request was opened with the ICRC by the families: 5,977; total number of 3,709 closed cases out of which: visited in prisons by the ICRC: 946; confirmed dead and buried by the families: 2,130; found alive: 352 + 65 released/escaped but not visited while in detention closed for administrative reasons 216.^{xxii}

Pictures of missing people in front of Kosovo Parliament ©HRAA



76. One of the most important institution of Kosovo for protection and promotion of human rights is the Ombudsperson. According to Article 10 of the Constitution, natural and legal persons in Kosovo shall have the right, without threat of reprisal, to make complaints to an independent Office concerning human rights violations or actions

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constituting abuse of authority by any public authority in Kosovo. The Office, in accordance with UNMIK legislation in force, shall have jurisdiction to receive and investigate complaints, monitor, take preventive steps, make recommendations and advise on any such matters (10.1-2)^{xxiii}

77. The Office of the Ombudsperson in Kosovo has an autonomous status. The current Ombudsperson is Hilmi Jashari. The Office has no power of sanction, but is carrying out an important duty on investigating human rights question independently and impartially and announcing the findings in public. The annual reports are translated into the languages of the population.

78. The implementation of verdicts delivered by the courts is often delayed. There is a discrepancy between the law applied before the war and the laws of UNMIK applied after the war. The right to property is a basic problem. The legal system is in urgent need of being updated.

79. Fundamental problems are police brutality during social events, human trafficking and the lack of human rights conscience of civil servants. The laws are uncertain about people living in poverty, ethnic minorities, disabled persons, women (in particular, if they live on their own) and children. Discrimination stemming from the gaps in law is another basic human rights problem.

80. One of the hurdles to protect and spread human rights is the lack of protective mechanisms. The Team for Children's Right, the Team against Discrimination and the Unit for Sexual Equality in Society are constantly working in the Office of the Ombudsperson and report on the gaps in law and practice. But this is not sufficient to protect human rights in the Kosovo. An important problem is the fact that human rights violations committed under UNMIK cannot be investigated.

c) Minorities

81. According to the Fact Sheet of UNMIK, approximately 1.9 million live in the Kosovo (statistics are rounded) and are composed of about: Albanians - 90%; Serbs - 6%; Muslim Slavs (Bosniaks, Goranis) - 2%; Roma, Ashkali, Egyptians - 1.5%; Turks - 1% in Kosovo^{xxiv}.

82. According to Article 4 of the Constitution on Rights of Communities and Their Members, Communities of inhabitants belonging to the same ethnic or religious or linguistic group (Communities) shall have the rights set forth in this Chapter in order to preserve, protect and express their ethnic, cultural, religious, and linguistic identities. No person shall be obliged to declare to which Community he belongs, or to declare himself a member of any Community. No disadvantage shall result from an individual's exercise of the right to declare or not declare himself a member of a Community. The Provisional Institutions of Self-Government shall be guided in their policy and practice by the need to promote coexistence and support reconciliation between Communities and to create appropriate conditions enabling Communities to preserve, protect and develop their identities. The Institutions also shall promote the preservation of Kosovo's cultural

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heritage of all Communities without discrimination. Communities and their members shall have the right to:



Figures of OSCE on how the municipalities split in ethnic terms in 2005
Source: Wikipedia Dictionary.

Use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo; Receive education in their own language; Enjoy access to information in their own language; Enjoy equal opportunity with respect to employment in public bodies at all levels and with respect to access to public services at all levels; Enjoy unhindered contacts among themselves and with members of their respective Communities within and outside of Kosovo; Use and display Community symbols, subject to the law; Establish associations to promote the interests of their Community; Enjoy unhindered contacts with, and participate in, local, regional and international non-governmental organizations in accordance with the procedures of such organizations; Provide information in the language and alphabet of their Community, including by establishing and maintaining their own media; Provide for education and establish educational institutions, in particular for schooling in their own language and alphabet and in Community culture and history, for which financial assistance may be provided, including from public funds in accordance with applicable law; provided that, curricula shall respect the applicable law and shall reflect a spirit of tolerance among

Communities and respect for human rights and the cultural traditions of all Communities; Promote respect for Community traditions; Preserve sites of religious, historical, or cultural importance to the Community, in cooperation with relevant public authorities; Receive and provide public health and social services, on a non-discriminatory basis, in accordance with applicable standards; Operate religious institutions; Be guaranteed access to, and representation in, public broadcast media, as well as programming in relevant languages; and Finance their activities by collecting voluntary contributions from their members or from organizations outside Kosovo, or by receiving such funding as may be provided by the Provisional Institutions of Self-Government or by local public authorities, so long as such financing is conducted in a fully transparent manner.^{xxv}



Multilanguage board at the municipality of Prizen © HRAA

83. The Provisional Institutions of Self-Government shall ensure that all Communities and their members may exercise the rights specified above. The Provisional Institutions also shall ensure fair representation of Communities in employment in public bodies at all levels. Based on his direct responsibilities under UNSCR 1244(1999) to protect and promote human rights and to support peace-building activities, the SRSg will retain the authority to intervene as necessary in the exercise of self-government for the purpose of protecting the rights of Communities and their members.^{xxvi}

84. The Ombudsperson shall give particular priority to allegations of especially severe or systematic violations, allegations founded on discrimination, including discrimination against Communities and their members, and allegations of violations of rights of Communities and their members (10.3)^{xxvii}.

85. Organizations of civil society that the HRAA delegation visited drew attention to the fact that material on human rights and in particular of education in human rights printed in the languages of the ethnic groups in the Kosovo is missing.

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86. Despite the guarantees in the temporary constitutional framework of self-government in Kosovo a 5% hurdle was introduced for particular languages to be used at the municipalities. If an ethnic group remains below 5% that language will not be used by the municipality. This is one of the main problems related to minority rights in the Kosovo. During the talks the HRAA delegation was informed that earlier all languages of minorities were used regardless of the representation of ethnic groups in society. In that sense the 5% hurdle is a step backward.

87. As a general problem of the Balkans problems exist in the Kosovo for the Romani, Ashkali and Egyptian groups concerning access to schools, health and social aid.

88. An important fact is the Albanian nationalism existing in the Kosovo. The nationalism that follows the ideal of unification with Albania sometime leads to tension that is disturbing in relation to the ethnic mosaic. The striking side of the Albanian nationalism stems from the fact that Albanians are the majority in the country. Apart from that ethnic nationalism is a general problem in the region. Almost all clashes are based on ethnic motives.



On the graves of KLA fighters the flag of Albania flies and the flowers are renewed every day. ©HRAA

d) Refugees and Return

89. By the beginning of April 1999, the United Nations High Commission for Refugees estimated that the campaign of ethnic cleansing had resulted in 226,000 refugees in Albania, 125,000 in the Former Yugoslav Republic of Macedonia and 33,000 in Montenegro. By the end of May 1999, over 230,000 refugees had arrived in the Former Yugoslav Republic of Macedonia, over 430,000 in Albania and some 64,000 in Montenegro. Approximately 21,500 had reached Bosnia and over 61,000 had been evacuated to other countries. Within Kosovo itself, an estimated 580,000 people had been rendered homeless^{xxviii}.

90. The statistics after people started to return to the Kosovo and the ones that were taken during the conflict on people feeling to countries outside the Kosovo and refugees are different to those at the beginning. Between July 1999 and March 2001 a total of 176,457 Kosovo citizens returned to the Kosovo. Among them 17,546 people came from neighboring countries (Albania, Bosnia-Herzegovina, Bulgaria, Macedonia) and 158,921 came back from countries that have no border with the Kosovo (Germany, Switzerland, Norway, Austria, Belgium, USA, Australia, Great Britain, the Netherlands, France, Sweden, Denmark, Canada, Turkey, Slovenia, Spain, Ireland, Portugal, the Czech Republic, Croatia, Poland, Finland, Hungary, Luxemburg, Italy, Israel, Slovakia, Malta, Romania, Iceland, New Zealand and Japan). People continue to return.^{xxix} Between 1999 and 31 August 2006 15,615 members of minorities returned.^{xxx} According to the annual report of the Kosovo Ombudsperson UNMIK another 47,738 people have returned to the Kosovo.^{xxxi}

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91. In relation to the return of the refugees Protocol No. 6 on the Voluntary and Continuing Returns was renewed and broadened on 6 June 2006 among UNMIK, the temporary institutions of Kosovo self-government and the government of Serbia.^{xxxii} UNMIK is preparing a handbook on returns and continuing to work on the issue.^{xxxiii}

IV – Macedonia

a) General Political Situation

- Security

92. The acts of violence that occurred in the Republic of Macedonia in 2001 were put in second place by the positive intervention of NATO and the international community in South Serbia. The unrest of radical ethnic Albanians led to clashes between the security forces of the State and a group calling itself the National Liberation Army (NLA). The attempt to increase the violence resulted in huge human and material losses in Tetovo in March. At the beginning of the summer the Albanians had occupied large parts of land in the East and North of the country. Against this the government tried to counter this with unnecessary force. For the NATO it became highly probable that the destabilization would emerge again. The existence of the Republic of Macedonia was at stake.^{xxxiv}



93. On approval of the highest ranking officials the government in Skopje took responsibility for security. The operational plan for the NATO operation "Essential Harvest" was drawn up in response to a request for NATO assistance made by President Trajkovski on 20 June. The operation was approved on 29 June and implemented on the sole condition that the political dialogue between the various parties in the Former Yugoslav Republic of Macedonia had a "successful outcome" and a cease-fire was respected.

94. The Ohrid Agreement or the Ohrid Framework Agreement was the peace deal signed by the government of the Republic of Macedonia and Albanian representatives on 13 August 2001. The agreement ended fighting between the National Liberation Army and the Macedonian security forces and set the groundwork for improving the rights of ethnic Albanians in the Republic of Macedonia. Now Operation "Essential Harvest" could start. It was officially launched on 22 August and effectively started on 27 August. This 30-day mission involved the sending of approximately 3500 NATO troops, with logistical support, to disarm ethnic Albanian groups and destroy their weapons.

95. At the beginning of October the task was accomplished. Some 4,000 arms had been gathered and the NLA was no longer an armed



Stone bridge in Skopje © HRAA

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organization. The militants would benefit from a special amnesty and return to their jobs. After the Operation Essential Harvest NATO left a few hundred troops to protect the observers from the EU and OSCE. Since then the Task Force Fox of NATO is carrying out its duties, since 2003 under responsibility of the EU.^{xxxv}

96. During the visit the HRAA delegation observed that the atmosphere of peace and trust has reached an acceptable level and that with the help of the international community the Republic of Macedonia is quickly healing the wounds left by the clashes. The HRAA was able to conduct a limited number of talks with organizations of civil society. Talks were held at the Institute for an Open Society in Macedonia and the Union of Organizations of Turkish Civil Society in Macedonia.

- Political System

97. Macedonia is a parliamentary democracy. Power is divided between the legislature, the executive and the judiciary. The Constitution^{xxxvi} is the supreme law of the country. The president is elected by popular vote for a five-year term. The president appoints the prime minister. The cabinet or council of ministers is elected by majority vote in the Sobranje^{7 xxxvii}.

98. The president is the head of state, he represents the Republic, he is Commander-in-Chief of the Armed Forces of Macedonia and chairs the national Security Council. The president is elected by majority vote in general and direct elections, by secret ballot, for a term of five years, and no person may serve more than two terms as president. Some of the president's functions include: granting the mandate for the formation of the government; decreeing the appointment or dismissal of ambassadors and other diplomatic representatives abroad; proposing judges to sit on the Constitutional Court and the Republican Judicial Council; appointing members of the Security Council, etc.^{xxxviii}

- Executive

99. The executive power is vested into the government, composed of the prime minister and ministers. The president appoints the prime minister, subject to approval by the assembly. The government is elected by a majority vote of all the deputies in the assembly. It handles day-to-day government operations and is accountable to the assembly. The government submits bills to the assembly and decides on policies for the implementation of laws and regulations passed by the legislature. It is also empowered to adopt bylaws as well as other regulatory acts pertaining to the application of laws. It appoints and dismisses holders of public and other office determined by the Constitution and laws. The state administration consists of ministers and other administrative bodies and organizations as determined by law.

100. The legislative power is vested into the unicameral Assembly, or Sobranie, which has 120 members. Eighty-five of them are elected by direct popular vote, 35 from lists of candidates submitted by the parties based on the percentage gained from the overall vote.

⁷ Parliament of Macedonia.

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Members serve a four-year term. The Assembly sits in Skopje and it is in its power to amend the constitution and pass laws and resolutions, ratify international agreements, etc.

- Judiciary

101. Courts exercise judiciary power. According to the Law on Courts of 1995, there are 27 courts of the first instance, three courts of appeal, and a supreme court. There is also a constitutional court whose judges are elected by the Sobranie. The courts are autonomous and independent. Courts judge on the basis of the constitution and laws and international agreements ratified in accordance with the constitution. The types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law adopted by a majority vote of two-thirds of the total number of representatives. Judges are granted immunity. The Sobranie decides on the immunity of judges. The performance of a judge's office is incompatible with other public offices, professions or membership of a political party. Political organization and activity in the judiciary is prohibited. The Supreme Court of the Republic of Macedonia is the highest court in the republic, providing uniformity in the implementation of the laws by the courts.

b) General Human Rights Situation

102. Since April 1993 Macedonia is a member of the United Nations and since November 1995 it is a member of the Council of Europe. On 18 January Macedonia signed the International Covenant on Civil and Political Rights and the UN Convention on Economic, Social and Cultural Right. In April 1997 it ratified the European Convention on Human Rights.

103. The introductory section of the Constitution states that human rights, freedoms of the citizens and ethnic equality are guaranteed. The second section of Macedonia's Constitution is entitled Basic Rights and Freedoms for Individuals and Citizens and is particularly concerned with the protection of human rights and freedoms. This section has 45 Articles (Articles 9 to 54).^{xxxix}

104. There are several organizations of civil society in Macedonia with activities on human rights. Leading are the Human Rights Helsinki Committee and the Institute of Free Society in Macedonia. There are also groups formed by ethnic minorities that are concerned with human rights.

105. During the talks of the HRAA the delegation was informed that the leading problems in the area of human rights are police brutality, discrimination of ethnic groups and the right to property.

106. The mission of the OSCE and international community are active on the question of police brutality.

107. The Romani people is most discriminated against, like it is in the rest of the Balkan. Organizations of civil society in Europe are conducting effective work for the Romani people over the last 10



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years. Yet in Macedonia other minorities including the minority of Muslim Turks are facing similar problems as the Romanis. Although basic human rights treaties have been ratified they are not implemented and despite the fact that decisions were made on the right to property they are not put in practice. International mechanisms such as the European Court of Human Rights are not well known. Major problems relate to ethnic groups that cannot use their language in the press and problems with the right to education and education in the mother tongue.

c) Minorities

108. According to the 2002 census, 1,297,981 inhabitants declared themselves to be Macedonians, representing 64.18% of the total population. Approximately 535,000 inhabitants are declared as Albanians, representing 25.2% of the population. Smaller ethnic minorities include Turks (77,959 or 3.85%), Romani (53,879 or 2.66%), Serbs (35,939 or 1.78%), Bosniaks (17,018 or 0.84%), Vlachs (9,695 or 0.48%), and other (20,993 or 1.04%).⁸

Flag of the Association of
Turks in Macedonia. ©
HRAA

109. According to the introductory section of the Constitution all groups of the Macedonian people including Albanians, Turks and Vlachs equally enjoy the rights and freedoms of the Constitution and the Macedonian Republic is the national State of everyone.

110. The fact that the Romani are not mentioned in the introduction has resulted in discriminatory treatment of the group. In addition, many ethnic groups do not consider themselves a minority but an essential founding element. This being so, problems remain with education in the mother tongue and the use of the mother tongue in offices of the administration.

111. Despite the provision in section II of the Constitution on the economic, social and cultural rights there are problems in law and a confusion of terms. One of the reasons is the fact that the ethnic groups consider themselves to be founders of the State and not a minority. The problems need changes in law and practice.

Recommendations: No Peace without Human Rights!

112. The delegation of the HRAA holds that similar to other examples in the world and Turkey in particular there can be no lasting peace without human rights. Therefore, all countries in the region have to ratify international conventions on human rights without reservations and have to implement them.

113. All countries of Former Republic of Yugoslavia that declared their independence including the Kosovo and Serbia urgently need to carry out a census under control of the international community. Members of organizations of civil society and independent and impartial observers should be allowed to observe the census. The census should concentrate on the proportion of ethnic groups; reflect religion and national background in order to achieve the most accurate figures.

⁸ Cited from Wikipedia http://en.wikipedia.org/wiki/Republic_of_Macedonia#Demographics

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114. The census to be carried out in all countries of Former Republic of Yugoslavia that declared their independence including the Kosovo and Serbia should reflect the most accurate figures on women, men, children and disabled citizens.

115. The government of Serbia and the Serb Republic in Bosnia-Herzegovina has to cooperate with the international community to apprehend war criminals and deliver them to the ICYT.

Recommendations for the International Community

116. For the security and protection of human rights the UN, OSCE and EU have to continue their activities in the region.

117. The immunity of all security forces and officials working under the command of the international community in particular the UN has to be lifted and made liable in court.

118. Besides humanitarian aid the international community should emphasize its work related to the protection of human rights in the region. The situation of human rights in the region has to be watched by independent observers who make their findings public in reports.

119. Human rights education in the region in particular for the young population has to be increased as well as the dialogue between the cultures. The international community has to fund these activities in support of organizations of civil society that are active in the region.

120. Teachers and trade union of teachers can be a motor for human rights education and the dialogue between the cultures.

121. An important part of members of the legal profession working in the area unfortunately do not have sufficient knowledge of the ECoHR, the International Criminal Court or the ICTY. With the support of the international community members of the legal profession and in particular lawyers should be trained in issues relating to applications to the ECoHR, the ICC or the ICTY. The existing education has to be broadened.

122. Problems exist concerning access to justice in the region. One needs large sums to benefit from legal assistance, access to courts and appeals to international legal mechanisms. The people in the region do not have these resources. Therefore, a system of legal aid should be created with the support of the international community in cooperation with the bar associations active in the region.

Endnotes:

The endnotes were included in the Turkish original, while the footnotes point at sources additionally identified during translation.

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ⁱ A number of sources used for the Turkish version of the report were: *Yugoslavya'nın Dağılması ve Bosna Savaşı Kronolojisi(1986-1995)*, Hazırlayan: Erhan Türbedar, ASAM, Balkan Araştırmaları, available at www.asam.org.tr/belgeler/BOSNASAVASIKRONOLOJISI.doc; *Kosova ile ilgili önemli olayların kronolojisi, 15/12/2006,- (AP, BBC, CNN, Electronic Telegraph, ABD Dışişleri Bakanlığı)*, an English version is available at

http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/special/kosovo/contexts/timeline;
NATO'nun Karadziç operasyonu yine başarısız,

01 Nisan, 2004 available at http://www.bbc.co.uk/turkish/news/story/2004/04/040401_karadzic.shtml; *Eski Yugoslavya Devlet Başkanı Slobodan Milošević'in öldüğü bildirildi*, BBC, 11 Mart, 2006, available at http://www.bbc.co.uk/turkish/news/story/2006/03/060311_milosevic_update.shtml; *Slobodan Milošević öldü*, 14 Mart 2006 Salı, NTV, available at <http://www.ntvmsnbc.com/news/364802.asp>; *50 bin Sırp'tan Milošević'e gözü yaşlı veda*, Radikal Gazetesi, 19/03/2006, available at

<http://www.radikal.com.tr/haber.php?haberno=181791>; *NATO, Karadziç için baskın düzenledi*, 10 Şubat 2007, Cumartesi,

available at <http://www.zaman.com.tr/webapp-tr/haber.do?haberno=498598>; *Karaciç'e NATO baskını*, 20 Şubat, 2007

available at http://www.bbc.co.uk/turkish/news/story/2007/02/070220_karadzic_raid.shtml; *Mladiç'in sağ kolu tutuklandı*, 01 Haziran, 2007, BBC, http://www.bbc.co.uk/turkish/europe/story/2007/06/070601_tolimir.shtml,

available at; *Sırp'lar üç numaralı suçluyu teslim etti*, 02/06/2007, available at <http://www.radikal.com.tr/haber.php?haberno=223002>.

For the English version different sources such as Wikipedia were used. Therefore, this section is no literal translation of the Turkish text. However, summarizing evaluations have been kept.

ⁱⁱ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* - Judgment of 26 February 2007

available at <http://www.icj-cij.org/docket/files/91/13685.pdf?PHPSESSID=6cacc9727d828b970455c013db99110b>;

ⁱⁱⁱ *Key Figures of ICTY Cases*, Not an official document, Updated: 28 September, 2007, available at <http://www.un.org/icty/glance-e/index.htm>.

^{iv} To get a clear idea on the complexity of the political and judicial system one would have to visit every canton. The main information was taken from Southeast European Times (SET). The Southeast European Times (SET) is a web site sponsored by the US Department of Defense in support of UN Resolution 1244. SET highlights movement toward greater regional stability both through bilateral and multilateral co-operative arrangements and steps governments take toward integration into European institutions. Further information available at http://www.setimes.com/cocoon/setimes/xhtml/tr/infoCountryPage/setimes/resource_centre/countries/bih?country=BiH#geographyPeople.

^v UNMIK available at <http://www.unmikonline.org/intro.htm>; *Nato in Kosovo*, KFOR, available at <http://www.nato.int/issues/kosovo/index.html>.

^{vi} UNMIK, Mandate and Operational Framework, available at <http://www.unmikonline.org/intro.htm>.

^{vii} Ibid

^{viii} *Kosovo in October 2006*, available at http://www.euinkosovo.org/upload_facts/Fact%20Sheet%20October%202006.pdf.

^{ix} *Constitutional Framework for Provisional Self-Government of Kosovo*, UNMIK, available at <http://www.unmikonline.org/constframework.htm>.

^x *Kosovo in October 2006*, available at http://www.euinkosovo.org/upload_facts/Fact%20Sheet%20October%202006.pdf.

^{xi} UNOSEK, available at <http://www.unosek.org/unosek/index.html>.

^{xii} *The Comprehensive Proposal for the Kosovo Status Settlement*, available at <http://www.unosek.org/unosek/en/statusproposal.html>.

^{xiii} *Constitutional Framework for Provisional Self-Government of Kosovo*, UNMIK, available at <http://www.unmikonline.org/constframework.htm>.

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^{xiv} Ibid

^{xv} *Kosovo in October 2006*, http://www.euinkosovo.org/upload_facts/Fact%20Sheet%20October%202006.pdf available at.

^{xvi} *Constitutional Framework for Provisional Self-Government of Kosovo*, UNMIK, available at <http://www.unmikonline.org/constframework.htm>.

^{xvii} Ibid

^{xviii} Ibid

^{xix} Ibid

^{xx} *The Office on Missing Persons and Forensics (OMPF)*, available at http://www.unmikonline.org/justice/ompf/ompf_reports.htm.

^{xxi} *Facts and figures*, NATO, available at <http://www.nato.int/kosovo/history.htm>.

^{xxii} *Kosovo in October 2006*, available at http://www.euinkosovo.org/upload_facts/Fact%20Sheet%20October%202006.pdf.

^{xxiii} *Constitutional Framework for Provisional Self-Government of Kosovo*, UNMIK, available at <http://www.unmikonline.org/constframework.htm>.

^{xxiv} *Kosovo in October 2006*, available at http://www.euinkosovo.org/upload_facts/Fact%20Sheet%20October%202006.pdf.

^{xxv} *Constitutional Framework for Provisional Self-Government of Kosovo*, UNMIK, available at <http://www.unmikonline.org/constframework.htm>.

^{xxvi} Ibid.

^{xxvii} Ibid.

^{xxviii} *Facts and figures*, NATO, available at <http://www.nato.int/kosovo/history.htm>.

^{xxix} *Kosovo Humanitarian Update Office For The Co-Ordination Of Humanitarian Affairs*, Tuesday, 2nd May 2001 ISSUE No. 36

^{xxx} *Kosovo in October 2006*, available at http://www.euinkosovo.org/upload_facts/Fact%20Sheet%20October%202006.pdf.

^{xxxi} *Ombudsperson Institution in Kosovo Seventh Annual Report 2006 – 2007 addressed to the Assembly of Kosovo*, p.41, available at <http://www.ombudspersonkosovo.org>.

^{xxxii} *Protocol on Voluntary and Sustainable Return Between United Nation Interim Administration Mission in Kosovo*, available at <http://www.unmikonline.org/pio/returns/Protocol-on-returns-eng.pdf>.

^{xxxiii} *Revised Manual for Sustainable Return*, July 2006 Priština, available at http://www.unmikonline.org/srsg/orc/documents/Manual_ENG.pdf.

^{xxxiv} *NATO in Balkans, Briefing, Operation Harvest*, NATO, February 2005 available at <http://www.nato.int/docu/briefing/balkans/balkans-e.pdf>

^{xxxv} Ibid.

^{xxxvi} *Macedonia – Constitution*, Adopted on: 17 Nov 1991, available at http://www.servat.unibe.ch/law/icl/mk00000_.html.

^{xxxvii} *Facts, former Yugoslavian Republic Mecedonia*, available at http://www.setimes.com/cocoon/setimes/xhtml/tr/infoCountryPage/setimes/resource_centre/countries/macedonia?country=Macedonia#geographyPeople.

^{xxxviii} Ibid.

^{xxxix} *Macedonia – Constitution*, Adopted on: 17 Nov 1991 available at, http://www.servat.unibe.ch/law/icl/mk00000_.html.