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**THE UNITED NATIONS
MISSION IN KOSOVO
AND THE PRIVATIZATION
OF SOCIALLY OWNED PROPERTY**
**A critical outline of the
present privatization process in Kosovo**

Pristina, June 2005
2nd Edition

KIPRED

The logo for KIPRED features the word "KIPRED" in a bold, blue, sans-serif font. A yellow swoosh, resembling a stylized orbit or a dynamic line, curves around the letters from the bottom right towards the top right.

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Executive Summary

The Provisional Institutions of Self-Government (PISG) have recently been established as governmental institutions thereby representing the people of Kosovo and acting under the authority of the United Nations Interim Administration Mission in Kosovo (UNMIK). Regardless of their genuine democratic legitimacy, the competencies of the PISG to express the will of the people of Kosovo in political decision-making processes are limited and subordinate to the powers of the Special Representative of the Secretary-General (SRSG). The SRSG has retained key “state-powers”, such as foreign affairs, justice, public order and macro-economic development.

However, the PISG as the only legitimate representatives of the people of Kosovo have a right and the responsibility to at least discuss, evaluate, analyze and criticize political decisions of the SRSG, even if the matters in question fall under the reserved powers of the SRSG. The capacity to effectively monitor the political activities of the SRSG requires, in a first step, an adequate level of information and the political will to do so. The present paper intends to serve achieving the first requirement

The current economic situation, which is not very promising, needs emancipation from the socialist remains called socially owned property and socially owned enterprises, if it wants to develop to a viable and self-sustainable, free-market oriented economy. Privatization is therefore, as in other post-communist countries, the key-word. Since there is already experience with privatization, there would be no need to re-invent the wheel. The wheel, however, would have to be adjusted to the conditions of Kosovo, taking into account the specific political, historical, economic and social factors, especially the present open question of the final political status of Kosovo. However, difficulties in understanding the legal nature of socially-owned property have led to much theoretical contemplation about who is the real sovereign behind socially-owned property, which in the end did not help solving the problem. Thus, socially-owned property still remains a mystery for the international officials involved in this issue.

After the initial exercise of authority over SOE's by the municipalities in co-operation with UNMIK officials, the municipalities were more and more eliminated from their original supervisory function. The inefficiency of the Department of Trade and Industry in exercising effective control and management over the SOE's resulted in a situation of lawlessness, which was abused by the SOE's, which began - though legally very questionable - to rent out their assets. The first attempts to revive the economy of Kosovo through commercialization, which intended to attract domestic and foreign capital to Kosovo, failed. At the moment, the Kosovo Trust Agency (KTA) is tasked to administer socially and publicly owned enterprises. KTA's mandate also includes the privatization of socially owned enterprises through the so-called spin-off procedure. On the other side, KTA's (current) mandate does not permit the privatization of socially owned immovable property (land and buildings), which is the only valuable asset of

these enterprises and which is currently not used for industrial production but for renting-out purposes. Without privatization of these assets, any privatization of socially owned enterprises will be fruitless.

Privatization of socially owned immovable property is a more complex undertaking than the privatization of socially owned enterprises. Commercial and economic interests are only one aspect to be considered. Restitution of formerly expropriated owners as well as interests of municipalities and local administration are other important aspects, which need to be taken into account. Any serious attempt to privatize socially owned immovable property must reconcile all three aforementioned aspects. The model proposed in this paper is that of the German “Treuhand”, which was authorized to privatize the so-called “Volkseigentum” (people’s property), which - as a concept - is very similar if not identical with the socially-owned property in Kosovo. However, the present paper might serve as a basis for further thinking and discussion in this direction and the solutions presented do not intend to be “the” solution.

I. Political, Legal and Economic Background

The analysis of the present privatization process can only be understood in the context of the political and economic situation of Kosovo. Since Kosovo is temporarily administered by the United Nations it is not a “normal” situation comparable to any of the neighbouring ex-socialist countries, which were or are undergoing a transformation process from a socialist system into a democratic system with free-market economy.

1. Political and Legal System

With UNSC Resolution 1244 (1999) of 10 June 1999, the United Nations, acting through the United Nations Interim Administration Mission in Kosovo (UNMIK), have assumed the entire administrative responsibility over Kosovo. The powers of the Special Representative of the Secretary General (SRSG), who is the highest authority in Kosovo, are extensive and encompass all legislative and executive powers, including the administration of the judiciary.

In the performance of the duties entrusted to the interim administration by UNSC Resolution 1244 (1999), the SRSG is entitled to issue legislative acts in the form of regulations and subsidiary instruments (administrative directions).¹ The applicable legislation in Kosovo includes such legal acts issued by the SRSG as well as the domestic laws in force on 22 March 1989, the day before the suspension of the autonomy status of Kosovo by Serbia.² The domestic laws consist of federal, republican and provincial legislation. Laws, which entered into force after 22 March 1989 may be applied only if a subject matter or a situation is not covered by the laws in force on 22 March 1989 and if such legislation is not discriminatory or in violation of internationally recognized human rights standards.³

In case of a conflict between UNMIK legal acts and applicable domestic legislation, UNMIK legal acts prevail.⁴

As far as the administrative organization of the interim administration is concerned, UNMIK is headed by the SRSG as the highest civilian authority in Kosovo and who is assisted by four Deputy SRSG's. Each of the Deputy SRSG's is accountable to the SRSG and is the head of a so-called “Pillar”, which is tasked to fulfill certain administrative functions and which is managed by a specific international organization. The current four Pillars comprise Police and Justice under the UN, Civil Administration under the UN, Democratization and Capacity-Building under the OSCE and Economic Reconstruction under the EU.

With the deployment of the interim administration in June 1999, UNMIK's first challenge was to establish itself as the sole authority in Kosovo and to cope with the existing parallel structures of the Republic of Kosova, the Provisional Government of Kosova and the Serb parallel structures in areas where the Serb population formed the

majority. In early 2000, UNMIK managed to integrate these parallel structures into the Joint Interim Administrative Structure (JIAS). JIAS consisted of mixed international/local consultative bodies and administrative departments led by international and local co-heads. JIAS, however, operated under the full authority of the SRSG.

With the promulgation of the Constitutional Framework on 15 May 2001, Provisional Institutions for Self-Government (PISG) have been established. These institutions include governmental structures, such as the Assembly of Kosovo elected by the people of Kosovo, the Government and the Office of the President of Kosovo, while the previous JIAS administrative departments were transformed into ministries. Despite the set up of these self-government institutions and the transfer of certain but limited legislative responsibilities, the SRSG still remains the supreme authority in Kosovo. Laws, although prepared and adopted by the Assembly of Kosovo, enter into force only if promulgated by the SRSG. The same principle applies to international agreements. The reserved powers of the SRSG include the dissolution of the Assembly in case of a serious violation of UNSC Resolution 1244 (1999), minority protection, and a series of other sovereignty-related issues, such as monetary policy, defense, public order etc. After the initial difficulties with finding a viable compromise concerning the composition of the Government and the post of the President of Kosovo, the current and major political and legal struggle between UNMIK and the PISG centers around the clear definition of those responsibilities, which are transferred to the PISG, and those reserved powers, which are still with UNMIK. Although basic principles have been agreed upon in the context of economic and fiscal legislation and within the mechanism established under the Economic and Fiscal Council, a clear legal situation as regards legislative initiative and co-operation between the PISG and UNMIK is yet out of sight.

2. Economic Situation

The economy of Kosovo before 1999 was characterized by the Yugoslav socialist and centralized economy with social ownership and socially owned enterprises being the drivers of the domestic economy. However, this type of economy led to mismanagement and misallocation of resources and thus to poor economic performance.⁵ In addition to that, the political crisis since 1989 worsened the economic situation. The vast majority of the Kosovar population was dismissed from public and economic services and the access to proper education was limited. In parallel to the state economy, the Kosovar Albanian population engaged in shadow economic activities mainly on the black market with small enterprises mainly based on family relations. On the other side and alongside with the ongoing conflict, state and socially owned enterprises and assets were abandoned or devastated, which resulted in the deterioration of these assets.

With the deployment of the international presence it became obvious that the economy of Kosovo would need fundamental structural changes in order to develop into a

free-market oriented economy. Currently, on the surface, Kosovo is a hive of economic activity but it remains a consumption society, whose demands are met by the generosity of international donors and the Kosovo Diaspora.⁶ In fact, Kosovo's GDP, for example, grew by around 13 % in 2001 and it is expected to grow by 7-8 % for 2002. This growth has not been driven however by domestic commercial activities but by foreign aid inflows and remittances of the Kosovo Diaspora.⁷

The domestic economy can be described as an import-driven-economy. Imports grew from 1,963 billion € in 2000 to 2,097 billion € in 2001. For 2002, imports are expected to amount to 2,277 billion €. As regards the imported goods, processed goods (e.g. food and petrol) prevail over raw materials and equipment. On the other side, exports remain at a very low level (107 million € in 2000, 181 million € in 2001, 201 million € estimated for 2002). The result is an enormous trade deficit with the predominance of imports over exports.

The trade deficit is balanced by international donor aid and Diaspora remittances. Since 1999, international donors have contributed 2,1 billion € with 1,5 billion € having already been spent for reconstruction. The Diaspora remittances are estimated to amount to 500 million € per year. However, major international donors have recently announced to reduce the financial assistance for Kosovo.⁸

The existing domestic economy would not be able to fill in the gap caused by a withdrawal of international assistance and the aforementioned trade deficit would become a serious problem. The reason for this is the underdeveloped private sector in Kosovo. Private companies are mainly involved in wholesale/retail trade, construction and hotel/restaurant services and almost none in industry and agriculture.⁹ Industrial and agricultural production is almost non-existent. Investment in these sectors becomes difficult for these private companies because of the underdeveloped financial infrastructure. The recently established banking system is confronted with an absent legal framework for property titles, bankruptcy and weaknesses in the judicial system, all elements, which increase creditor's risks. This results in high interest rates (between 12.5 to 25 %) and very short maturities (maximum of two years) and thus makes private investment in industrial and agricultural sectors unattractive.

On the other side, SOE's, which under the socialist system were the flagships of industrial and agricultural development and production, hardly perform any industrial or agricultural function today. The main activity that SOE's are engaged in is renting out their assets, mainly land and premises, to private persons.

This situation explains the immense trade deficit with imports prevailing over exports: there is simply no significant industrial and agricultural production in Kosovo. Many analysts describe this situation as a process of the de-industrialization of Kosovo.¹⁰ In the context of reshaping the economy of Kosovo in order to strengthen it to become a self-sustainable economy driven by private domestic and foreign investment, privatization of socially owned property is regarded as the key-issue.

II. History and Concept of Social Ownership

Immovable property relations determine the conditions and the limits of the use and the exploitation of mainly land and buildings as vital resources in every society. The contents of such relations vary among different legal and political systems. Social property, as it is still manifest in Kosovo, is a left-over of the Yugoslav socialist system and differs from the classical Western European concept of property relations.

The classical Western European immovable property system recognizes private property and state/ public property as the two major categories of property. Private persons are entitled to use, transfer and encumber their immovable property. Limitations of this *ius utendi et abutendi re* are possible if provided for by law and if serving the general public interest. State/ public property is held by public authorities (state organs, municipalities, public agencies/ institutions and enterprises) and serves public interests.

Social property is a category on its own and cannot be conceived in the terms and concepts of the traditional Western European understanding of private and state/public property. Socialism is an ideological reaction to capitalism, which is founded on the concept of a free market economy with private property being the motor for economic progress and wealth. Considering the position of the difficult conditions of the labour force in the 18th and 19th century, socialism proclaimed an ideology of a classless society in which the workers are not exploited by those who privately own the means of production, i.e. land, premises, machines. The aim was to establish a society where all members of that society could use the available means of production for satisfying personal needs as well as the needs of the society. As a consequence, the first step was to abolish the category of private property, which was considered to be the root of the evil and the main cause for the ruthless exploitation of the labour force and the division of the society in classes of rich and poor.¹¹

In Yugoslavia, the process of converting private property into social property began at the end of World War II when the socialist forces under Tito appeared to become the strongest political power. However, this process went through a phase of nationalization, i.e. transformation into state property, before transforming it into social property. As of 1945, the private property of “enemies” and “collaborators” who belonged mainly to liberal and anti-communist groups was nationalized.¹² In addition, private ownership of agricultural land was limited with the land exceeding the limitation being nationalized.¹³ The Constitution of the People’s Federal Republic of Yugoslavia also provided that all natural resources were state property. The period after 1945 is known as the period of central economic administration since enterprises were obliged to operate under state control. The state exercised its control mainly through operational plans and by setting out economic objectives to be reached by the enterprises.

A state-controlled economy with crucial resources being state property was not the ideal and final goal of socialist Yugoslavia. Ideologically, the final goal of socialism was to develop a society ruled by the workers, which would at the end result in the disap-

pearance of the state as such. Thus, nationalization and a state controlled economy were considered to represent only an interim phase until reaching the final goal of full-fledged workers' self-administration. The second phase, which marked the beginning of the process towards workers' self-administration began in the late 50's. Through a series of legislation, enterprises were released from direct state administration and workers' councils were put in place to manage the enterprises.

At the same time, the transformation of nationalized property into social property began. This process reached its peak with the Federal Constitution of 1974, which provided that all means of production and other means of collective labour, the output of collective labour and the income earned through collective labour, the means required for satisfying public needs, natural resources as well as other assets designated for public use were social property. This included, but was not limited to construction land, agricultural land used by social enterprises and buildings and apartments constructed with the earnings drawn from the use of social property.

Social property as such was meant to be a legal category of its own, different from private and state property. The main feature of social property was that nobody was entitled to acquire any kind of ownership on an asset qualified as social property. The supreme title-holder of social property was the society as such. Private persons were only entitled to acquire a right of use of social property.

Since the society as such is an abstract being, there must be an organ acting as the agent of the society for the purposes of administering social property. If any individual wanted to acquire a right of use on construction land, as an example, an organ with the necessary legal capacity had to act for the society in order to grant that right of use. A report prepared by the German Professor Stephan Hobe outlined three potential organs, namely the state - whereby it is difficult to identify whether this would be the Federation of Yugoslavia, the Republic of Serbia, or the Province of Kosovo – the municipalities or the workers' councils themselves.¹⁴ Unfortunately, the result of the analysis was that all three organs could be considered as the agent of the society and that the legal situation in that respect is very uncertain.

With due regard to that situation, the majority of the arguments are in favour of the municipalities for qualifying them as the agents of the society with regard to the authority to administer socially-owned property for and on behalf of the society. The municipalities were the entities, which had the right to dispose of the right of use by granting it to private persons or SOE's (e.g. in the case of agricultural and construction land).¹⁵ It was also the municipalities, which were entitled to transfer – in the very limited cases as prescribed by law – social property into private property (permitted for buildings and apartments but expressly forbidden for construction land)¹⁶. When a municipality granted the right of use, it was also the municipality, which exercised control over how and for what purpose the social property was used. The obligations were enshrined either in the relevant law or in the concrete contract, by which the municipality granted the right of use. Thus, for example in the case of SOE's, the municipal-

ity had to intervene, if an SOE was not using social property in a proper way, if it was not maintaining and increasing the value of the social property, or if the SOE was using the social property in violation of the law or the relevant grant-contract. In such a case, the municipality had the authority to dismiss the executive board, to dissolve the workers' council, to appoint temporarily a new management and to limit the self-administration rights of the workers.¹⁷ It should also be noticed that in case of a liquidation of a socially owned enterprise, land and buildings belonging to that SOE were given back to the relevant municipality once all creditors' claims have been satisfied.¹⁸

These powers and responsibilities of the municipalities are strong arguments for concluding that the municipalities were acting for and on behalf of the society as far as the administration of social property is concerned. It should also be noted that according to socialist theory, which envisaged class- and stateless society where the workers ruled themselves, the state could not have been in charge with the administration of socially-owned property, unless the socialist system wanted to contradict itself. The state was about to be abolished and thus it could not have been entrusted with the administration of the basic resources of the socialist society, namely socially-owned property.

The system as described above was in place in 1989 and reflects the applicable law as defined by UNMIK when it entered Kosovo in 1999. However, during the ten years between 1989 and 1999 the entire administrative and political system, which made the social property system function, gradually degraded and in 1999 was entirely inexistent. UNMIK also promoted a free-market economy approach and did not reconstruct the socialist economy system, which was a precondition for the functioning of the social property system. As a consequence, social property and SOE's became the last puzzling left over of a non-existent socialist system in an emerging democratic and free-market economy system.

III. Social Property under UNMIK Administration

When UNMIK entered Kosovo, its first task was to establish itself as the only authority in Kosovo. Criminal law and public order were the primary issues UNMIK was dealing with. Only gradually UNMIK was forced to deal with civil and commercial issues and especially with socially owned property. The following part tries to outline the developments from UNMIK's deployment until present as regards administration of socially-owned property and the various shifts in approach to revive the economy of Kosovo.

1. Joint UNMIK-Municipality Administration

Pursuant to UNMIK Regulation No. 1999/1, UNMIK has the authority to administer

state, public and socially owned property. Regardless of the legal authority, in practice UNMIK has made little use of it.

When UNMIK took over the administrative authority of Kosovo in June 1999, it was confronted with a confusing political situation. The Serb authorities had withdrawn, the structures of the Republic of Kosova, though existent, were ineffective and the political vacuum was about to be filled with the structures of the Provisional Government of Kosovo. UNMIK's first steps were to ensure that it was the ultimate authority in Kosovo and by January 2000 it managed to integrate both structures into the Joint Interim Administrative Structure (JIAS). During this time, SOE's and social property were de facto under political party control rather than administered by UNMIK.

The situation began to change in 2000, when UNMIK municipal administrators together with the municipal councils attempted to re-establish the control mechanisms of pre-1989, which were at the same time in compliance with the applicable legislation. SOE's were supposed to submit regular financial reports, which were subject to municipal approval. The municipality was also entitled to exercise the rights as referred to above in the event of a violation of the law by an SOE.¹⁹ Although the results of the municipal control over SOE's and social property were rather poor, it is essential to note that the municipalities at least tried to regain their authority over SOE's and social property.

2. Centralization and Restoration of Workers' Council Socialism

Paradoxically enough, the period of municipal supervision of SOE's ended with the first municipal elections in December 2000.²⁰ Under the leadership of the Administrative Department of Trade and Industry (DTI), which was established in December 2000, UNMIK changed its policy towards administration of social property and in particular the administration of SOE's. The new policy approach was directed at eliminating the municipalities entirely from the control process and by that centralizing this process with DTI on the central authority level. The main problem thereby was, however, that DTI did not have the necessary administrative capacity, the experience and the sufficient legal knowledge to exercise this function.

Facing this difficulty, DTI initiated a process of re-establishing the workers' councils as an instrument of resolving conflicts in SOE's. The workers' councils were supposed to fulfill their function as they did in the pre-1989 period. But in the year 2000, the political and social situation was completely different. UNMIK was about to develop a democratic civil society with a free market economy. The communist party did not exist anymore in Kosovo but was replaced by a pluralist party system. Workers' councils were designed to operate in a socialist and centralized economy system and were therefore not fit for the new emerging political and economic situation in Kosovo. All system elements, which made the workers' council operational and effective, such as effective

municipal control and political control through the communist party, had disappeared. Under these circumstances, the re-establishment of the workers' councils and the elimination of the municipalities from the control process were not only a strange anachronism. It were rather two serious political mistakes, since they allowed the SOE's to operate without being de facto subject to any administrative and legal control.

This situation resulted, at the end, in the renting-out-of-assets policy of the SOE's, which was in fact a violation of the applicable law, and in the continuing process of the de-industrialization of Kosovo. Since no effective control was provided by UNMIK and especially DTI, SOE's did not run at risk suffering sanctions if they used social property for other than production purposes.

3. Commercialization

Despite the policy-shift as regards the administration of SOE's, UNMIK, acting through DTI, launched the so-called commercialization process. Commercialization was envisaged as an interim measure in order to attract investment and other resources to Kosovo's SOE's.²¹ It was supposed to be less than privatization, which at that time was strongly opposed by the UN Office of Legal Affairs.

In the context of commercialization, DTI offered long-term (ten years) concession contracts over selected SOE's through public tender. The successful investor gained access to the SOE's physical assets and labour force and acquired the right to operate and manage the enterprise. However, the investor did not acquire any ownership rights over the enterprise or its assets, which marks the key-difference between commercialization and privatization. The revenues from the concession contracts were held in trust in order to satisfy creditor claims against the enterprise. The new investor was, in general, exempt from any liability for debts of the enterprise which emerged before commercialization.

On the other side, the investor was obliged to pay an annual concession fee, to invest in the enterprise and in training programmes for the employees, to share profits with the employees and to return the assets of the enterprise in a good working condition at the end of the contract period.

Out of a total of 520 SOE's, DTI managed to commercialize only 13 SOE's, and that with only success.²² Out of the 13 only 5 can be considered as successful commercializations.²³ As a result, the expected economic boom did not occur through commercialization and the unemployment rate did not fall. In addition, the ownership question regarding SOE's and social property still remained open and thus uncertain, and with that acting as a discouragement to potential investors. On the other hand, the commercialization experiment, though a sad story, helped to raise the awareness for the inevitability of a full-fledged privatization process in Kosovo if capital and investment were to be attracted to Kosovo.

4. Privatization of SOE's under the Kosovo Trust Agency (KTA)

a. Legal Background

Privatization began in late 2002 after the promulgation of the Constitutional Framework and the establishment of the PISG. Pursuant to the Constitutional Framework, the authority to administer public, state and socially owned property as well as the regulation of public and socially owned enterprises is a reserved power of the SRSG.²⁴ The SRSG, however, is obliged to co-operate with the PISG with respect to the administration of public, state and socially owned property.²⁵ On the other hand, the regulation of public and socially owned enterprises requires only the consultation of the PISG according to procedures as set out under the Economic and Fiscal Council.²⁶ Consultation, in that context, does not mean obtaining an agreement.²⁷ Rather, it means giving the Economic and Fiscal Council and the PISG a reasonable time to comment on the draft texts and then carefully considering those comments in a final review of the text prior to its promulgation.²⁸ On the basis of this authority and following consultations with the PISG and the Economic and Fiscal Council, the SRSG promulgated on 13 June 2002 UNMIK Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency.

b. Administration of Publicly Owned and Socially Owned Enterprises

KTA is established - as a primary function - to administer Publicly Owned and Socially Owned Enterprises (POE's and SOE's) as trustee for their owners²⁹, bearing in mind that the ownership question is unclear and open to various interpretations.

POE's are defined as enterprises publicly-owned by the Province of Kosovo, a municipality or other public-political organization within the Province of Kosovo, the Republic of Serbia, or the Federal Republic of Yugoslavia.³⁰ SOE's are defined as enterprises created as socially owned under the Law on Enterprises, the Law on Associated Labour of the Federal Republic of Yugoslavia or any other applicable law.³¹

Administration as such includes any action that KTA considers appropriate to preserve or enhance the value, viability, or the governance of the enterprise concerned.³² Possible actions embrace a) the appointment and replacement of directors and managers of the enterprise, b) the assumption of direct control over an enterprise, c) the inspection of premises of enterprises, d) the approval of business plans and investment plans, e) the issuance of charters and by-laws of enterprises etc.³³

Assumption of direct administrative control over an enterprise is not considered to be the standard intervention. The standard is that KTA exercises general management oversight over the enterprise, while the existing management structures continue with the day-to-day administration of the enterprise but which are subject to the powers of KTA as outlined above.³⁴

c. Privatization of SOE's

The administration of SOE's and POE's has little to do with privatization. However, KTA is authorized to establish - on behalf of a SOE - one or several corporations in form of limited liability companies or joint stock companies and to transfer to such corporations the rights and interests in all or part of the assets of the SOE concerned. The shares of the established corporation are owned by the SOE concerned and are administered by the KTA.³⁵ Under this authority, the KTA is entitled to sell and transfer - on behalf of the SOE, which formally owns the shares - part or all of the shares in a newly established corporation.³⁶ Proceeds from the sale of shares will accrue to the SOE, which had owned the shares but will be held in trust by KTA for the benefit of creditors and owners of the SOE concerned. After the transfer of the assets of an SOE to a newly established corporation, the remaining SOE can then be liquidated.³⁷

This procedure is the so-called spin-off procedure³⁸ by which SOE are to be privatized. In fact, only the assets of an SOE are envisaged to be made available to the private sector while the SOE as such is supposed to be liquidated. However, the privatization form chosen for the KTA is limited to SOE's only. POE's cannot become subject to the spin-off procedure and remain under the administrative authority of the KTA. In addition, the assets of the SOE's do not change as far as their legal status is affected. Socially owned immovable property stays as it is and does not become private immovable property when transferred to the newly established corporation.

d. Management of KTA

The management of the KTA comprises the Board of Directors and the Managing Director.³⁹

The Board of Directors (Board), which has the general responsibility for the activities of the KTA⁴⁰, consists of eight directors, including four international directors and four residents of Kosovo.⁴¹ Three of the Kosovo directors are PISG ministers, including a minister from the Kosovo Serb community, and the fourth Kosovo director is the President of the Federation of Independent Trade Unions of Kosovo.⁴² All Kosovar directors are appointed by the SRSG. The international directors include a) the Deputy SRSG for Economic Reconstruction (EU) who is the chairman of the Board, b) the Deputy to the Deputy SRSG for Economic Reconstruction, c) the Deputy SRSG for Civil Administration (UN) and d) the Managing Director of KTA.⁴³

As regards the decision-making process within the Board, a quorum is reached if at least five directors are present.⁴⁴ In case of voting, decisions are made by a simple majority of the members present. If the qualified majority is required by regulation or by by-law, at least five affirmative votes are needed.⁴⁵ In case of an equal division of votes, the vote of the chairman is decisive.⁴⁶

The Managing Director and the two Deputy Managing Directors are appointed by the

Board on nomination by the chairman.⁴⁷ It is the task of the Managing Director to conduct the ordinary business of the KTA, to organize, appoint and dismiss the staff as well as to prepare the meetings of the Board and to ensure the implementation of the decisions of the Board.⁴⁸ In exercising his functions, the Managing Director is fully and only accountable to the Board.⁴⁹

e. Legal Status of KTA

The KTA is established as an independent body pursuant to section 11.2 of the Constitutional Framework. According to this section, independent bodies have the powers, obligations and composition specified in the legal instruments by which they are established. Such independent bodies carry out their functions independently of the PISG.⁵⁰ As a consequence, the KTA cannot be considered as an organ of the PISG and its acts cannot be attributed to the PISG. On the other side, the Board collectively and the directors severally are accountable to the SRSG, a legal construction, which makes KTA an UNMIK organ.

The question of the legal status of KTA is closely connected to the question whether UNMIK would be liable under public international law for any violation of international law by the KTA. Taking into account the privatization initiated by Serbia between 1989 and 1999, it cannot be excluded that certain private persons have acquired private rights in enterprises, which in Kosovo are still considered as socially owned enterprises. A “second” privatization by UNMIK could result in, as an example, the expropriation of foreign nationals, who are beneficiaries of the previous privatization conducted by Serbia. IF KTA does not fulfill the expropriation criteria as recognized under public international law (expropriation for public purposes only as well as prompt, adequate and effective compensation), such expropriation would be a violation of public international law.⁵¹ Then the question is raised, which subject of international law would be held liable for indemnification. In this case, the concrete question is whether the United Nations would be liable for such KTA activities.

Presently, there is neither a standard international practice nor sufficiently clear international case law concerning the liability of international organizations.⁵² Therefore, the principles applied for determining the international liability of states could be used by analogy. These principles require that there is a breach of public international law and that the activity causing that breach of law is attributable to a state. The United Nations, acting through the Security Council, established UNMIK as a peacekeeping operation, which is recognized as an organ of the United Nations. With the consent of the United Nations, UNMIK established KTA as a sub-organ. Consequently, any activity of the KTA, including a breach of international law, is attributable to the United Nations, regardless of KTA being an independent body according to the Constitutional Framework and being capitalized with 10 million €, which are meant to shelter UNMIK and the UN from liability.

f. Legal Remedies

In order to provide effective legal remedy with respect to issues of privatization, UNMIK established with UNMIK Regulation No. 2002/13 of 13 June 2002 the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereinafter the “Special Chamber”). The Special Chamber has the exclusive and primary jurisdiction for all suits against KTA.⁵³ This includes, but is not limited to

- challenges to decisions or other actions of KTA;
- claims against KTA for financial losses resulting from decisions or actions undertaken by KTA pursuant to its role as an administrator of an enterprise or a corporation;
- claims against and enterprise or corporation under the administrative authority of KTA;
- claims involving the recognition of a right, title or interest in property in the possession or control of an enterprise or corporation under the administrative authority of KTA.⁵⁴

No other court in Kosovo is entitled to exercise jurisdiction over such categories of claims.⁵⁵ The Special Chamber can, however, refer claims to a local court, which would have the jurisdiction over the claim if the Special Chamber would not exist.⁵⁶ In case of such referral, the decision of the local court can be appealed before the Special Chamber.⁵⁷ Though in the normal case the Special Chamber acts as the first and final judicial instance, in case of a referral it acts as an appellative judicial body (dual function).

The Special Chamber is composed of a panel of five judges of which three are international judges and two are Kosovar judges.⁵⁸ All judges are assigned by the SRSG after consultation with the President of the Supreme Court of Kosovo.⁵⁹ One of the international judges is assigned by the SRSG as the presiding judge of the Special Chamber.⁶⁰ Decisions of the Special Chamber adjudicating a claim or deciding on an appeal require the supporting vote of at least three judges.⁶¹

g. Critical Remarks

When the Government and the Assembly of Kosovo consented to the draft regulation on the establishment of the KTA, both institutions did not sufficiently take into account that Kosovo’s newly established corporations could be purchased - legally – by the Government of Serbia directly or through intermediaries (e.g. a private company). There is no clause in the regulation, which would prohibit such a transaction. It is likely that the privatization process could become exposed to serious danger when the major shareholder of a newly established corporation of Kosovo becomes the Government of Serbia.

In addition, none of the aforementioned Kosovar institutions has clearly understood that the income generated from the sale of shares of newly established corporations will not be used for development and infrastructure projects within Kosovo but will serve to pay debts owed to creditors of the previous SOE's. As a fact, the vast majority of these creditors are Serb companies or individuals. As a consequence, Kosovo itself will not benefit from the income generated from the privatization process (KTA is even exempt from paying taxes to the Kosovo Consolidated Budget) but Serbia will. In an extreme scenario, Serb companies or individuals could be enabled to purchase shares of Kosovo's newly established corporations with the money they received as creditors of previous Kosovo SOE's or at least be compensated for the purchase of shares newly established corporations with money owed by previous SOE's. Of course, this situation is exactly the opposite of what the PISG is envisaging to do with the income. It should be thought about possibilities for using the proceeds from the sale of the shares for the development of the infrastructure of Kosovo, regardless of delaying and finally useless theoretical contemplation about who might be the legal owner of socially-owned property. Kosovo is in an unfavourable economic situation, which requires swift and resolute action if this situation should not spill over to social and thus political unrest endangering thereby the United Nations Mission itself.

These developments and scenarios need to be monitored, controlled and harmonized with the PISG if serious political differences between UNMIK and the PISG are to be avoided. The situation might become politically risky when with privatization also rationalization begins within the corporations and the number of the unemployed increases. The Kosovar public and the PISG are expecting a wave of new employment through privatization, an expectation, which, according to all predictions, is very likely to be disappointed. Providing exact information to the PISG on the possible developments and consequences of the privatization process could have a conflict-absorbing effect and might serve avoiding future political confrontations between UNMIK and the PISG.

Another odd situation is created by the determination that the administrative authority of KTA would include all enterprises and assets within the scope of UNMIK Regulation No. 2000/45 of 11 August 2000 on Self-Government of Municipalities in Kosovo.⁶² Assets within the scope of this regulation include all municipal property meaning all land and buildings owned or occupied by the municipality.⁶³ A strict interpretation would result in the immediate exclusion of the municipalities from administering their land and buildings, even excluding urban and spatial planning and transferring this authority to KTA. Municipal property would, in fact, not exist anymore. Such a regulation would contradict severely with the purpose and the spirit of the envisaged privatization process as well as violate the right of local authorities to manage a substantial share of public affairs, including the administration and maintenance of municipal property.⁶⁴ Since wording and spirit of the provision in question contradict each other, an authoritative interpretation issued by the SRSG would be necessary to clarify the legal situation. Otherwise, a serious confrontation between KTA and the municipi-

palties seems to become inevitable.

As regards the Special Chamber, its composition illustrates the dominance of the international judges over the local judges. The international dominance is also underlined by the rules of procedure of the Special Chamber⁶⁵, which envisage the establishment of an administrative infrastructure of the Special Chamber completely separate from the rest of the Supreme Court. The Special Chamber would have a separate Registry with a separate Registrar, who is supposed to be an international. The separate Registrar, the separate Registry, and the separate rules of procedure indicate that the Special Chamber has, in substance, little to do with the Supreme Court of Kosovo. It is rather, in fact and in substance, a separate international court, which is only formally attached to the Supreme Court of Kosovo. But this situation bears a legal risk for the PISG and Kosovo as such, since the Supreme Court is an organ of the PISG. As a consequence, the PISG could be held liable for acts of the Special Chamber, although its activities are out of the PISG's control and influence. Considering the possibility that Kosovo might be currently a state *in statu nascendi* (state in birth)⁶⁶ and the fact that the Special Chamber will deal with legally delicate issues, such as the expropriation of foreign nationals, in a near or distant future Kosovo might be considered liable under public international law for actions, which were out of its control and influence.

IV. Privatization of Socially Owned Immovable Property

1. Background

As already outlined, the activities of SOE's are at present more or less limited to renting out their assets without using their assets for industrial or agricultural production as designated for. Consequently, the value of a SOE is not the SOE itself but its land and, to a certain extent, its buildings. Several commercialization cases have proved that private investors signed concession agreements with DTI in order to gain access to the land of the SOE concerned and not to use the facilities of the SOE for kind of production it was originally designated for.

When KTA transfers the assets of an SOE to a newly established corporation, this corporation only acquires socially owned immovable property. The nature of the asset transferred does not change simply by a transfer from a SOE to a private corporation pursuant to UNMIK Regulation No. 2002/12. Consequently, the newly established corporation would acquire a right of use on the socially owned immovable property transferred to it and not private ownership. According to the applicable law, the holder of a right of use is permitted to use and to exploit the immovable property. The major deficiency of such a right of use is, however, that it is hardly transferable to third persons and that real encumbrances (mortgages, servitudes) cannot be established on it. Thus,

a newly established corporation would not be able to sell the assets or to pledge them against e.g. a bank loan and so to monetarize them if required. This makes the right of use in its present legal form unattractive for commercial purposes, especially in the context of a private corporation, which is supposed to operate in free-market and competitive conditions. Without an efficient possibility to transfer and to encumber the immovable assets, such assets are worthless under free-market conditions.

Under the present legal regime concerning privatization it is therefore questionable whether international and local investors can be attracted to purchase the shares of the newly established corporations and to ensure thus a successful privatization process.

2. Present Legislative Activities

Being fully aware of the above described problem, UNMIK Pillar IV (EU) has initiated the preparation on a draft regulation on the right of use of socially owned immovable property.

In a first step, the UNMIK Office of The Legal Adviser (OLA) made its position very clear that a full transformation of the right of use of socially owned immovable property into a full-fledged private ownership right would not be acceptable. The unresolved issue of the final political status of Kosovo would deny UNMIK the competence to undertake such a transformation. The unclear notion of social property would expose the United Nations to immense risk of liability with respect to FRY for possible *ultra vires* activities or a possible violation of FRY sovereign rights.

In that light, OLA consented in preliminary discussions merely to a “reformation” or “redefinition” of the right of use of socially owned property. On that basis, UNMIK Pillar IV redefined the concept of the right of use in its draft with the following two main characteristics:

- the right of use would include the right to possess, to use, to transfer and to establish encumbrances on property⁶⁷; and
- the holder of such right of use would be entitled to exercise the aforementioned rights for the duration of ninety-nine years from the date of the draft regulation coming into force⁶⁸.

Any transfer or establishment of an encumbrance on a right of use must be in writing and must comply with the registration and procedural requirements for the transfer of or encumbrance upon ownership of real property.⁶⁹ However, a transfer of or an establishment of an encumbrance on a right of use would not extend or in any other way affect the duration of the ninety-nine year term.⁷⁰

The term “property” as used above means any type of land including any structures thereon and parts thereof classified as socially owned property.⁷¹ Holder of the right of

use means any legal and natural person or entity properly registered in cadastral records or other court-authenticated title documents as a holder of a right of use with respect to socially owned property.⁷²

3. Critical Remarks

The intention of such a redefinition of the right of use is to make it come close to a private ownership right without really transforming it into private ownership and which would be similar to the lease-hold concept known under common law. Under such a redefinition, the right of use would become more attractive for investment purposes since it would be fully transferable and encumberable.

The question is, whether it would be indeed legally beyond UNMIK's mandate to transform the right of use of socially owned immovable property into private ownership. Social property as such hardly exists any longer in any of the successor states of the former Socialist Federal Republic of Yugoslavia (SFRY). In Slovenia, the Law on the Privatization of Real Estate in Social Ownership of 1997 transformed social immovable property into private ownership. Any holder of a right of use acquired private ownership on the respective immovable asset. The same principle was followed in Croatia with the Law on Property and Related Rights of 1996. In contrast to Slovenia and Croatia, the Former Yugoslav Republic of Macedonia (FYROM) transformed by virtue of the Law on the Transformation of Socially Owned Enterprises of 1993 social immovable property into state property. Nevertheless, the concept of social property was abolished. Even in Serbia, the Law on Construction Land of 1995 considers urban land as state property and abolishes with that the concept of social property. And with the Law on Privatization of 2001, Serbia has initiated the privatization of socially-owned enterprises, too. Montenegro also considers previous social immovable property as state property. This permits the conclusion that all successor states of the SFRY have either transformed social immovable property into private ownership or they consider it to be state property. The unclear notion of social property has finally been eliminated. In Kosovo it is only UNMIK Regulation No. 1999/24 on the Applicable Law in Kosovo, which allows the ghost of social immovable property to exist further. The restoration of the legal regime of pre-1989 is only an artificial legal construction, which is - at least in the area of civil and commercial law - completely outdated and which does not match with the reality and the legal developments of the past decade. If UNMIK had not determined itself that the applicable law in Kosovo is the law in force before 1989, the problem of social property would be a non-issue today. Since UNMIK has itself revived the ghost of social property it is not understandable why it would exceed UNMIK's authority to regulate the remaining social property in Kosovo. When UNMIK has established a separate tax, customs, police and administrative system in Kosovo, when it has replaced the Dinar first with the Deutsche Mark and then the Euro, when it has established a "Central Bank" (Banking & Payments Authority) for

Kosovo, when it has introduced a different identity card, a different civil status registration, different license plates and even travel documents for Kosovars, when it is organizing and conducting elections separately from elections in the rest of FRY and finally when it has changed the entire constitutional and legal system of Kosovo without violating FRY sovereignty, why then would a transformation of social property into private ownership violate FRY sovereignty ?

However, considering the right of use of socially owned immovable property, a consequence of a redefinition as envisaged by UNMIK Pillar IV would be that with the draft regulation coming into force, the currently existing SOE's would automatically acquire a "modern" right of use, fully transferable and fully encumberable. This modern right of use would then be transferred to a newly established corporation. It would be unrealistic to assume that all SOE's will be privatized. It should be rather calculated that the majority of the current SOE's will be liquidated. The question is therefore, whether all SOE's are supposed to acquire a modern right of use or whether only newly established corporations of a successfully privatized SOE are supposed to acquire a modern right of use. The purpose and the spirit of the privatization process argue for the latter option.

In addition, it has to be noted that the municipalities are completely excluded from the process of transferring assets to the newly established corporations and the redefinition of the right of use of socially owned immovable property. This is in continuation of the ongoing "de-municipalization" process with respect to the administration of socially owned property initiated by DTI in 2000. Considering the former role of the municipalities in the administration of socially owned immovable property, the current approach absolutely neglects the municipalities.

Another aspect, which is completely neglected, is that of restitution. As already outlined, many land owners were expropriated without compensation because of having been classified as state or other political enemies. In many cases it is doubtful, whether adequate compensation was rendered and whether due process was respected. All these cases would permit restitution to the previous owners. Under the present draft regulation, illegal expropriation and nationalization of private property and ensuing transformation into socially owned property would be legitimized. However, restitution is an issue for the Kosovars and must not be neglected and left aside by UNMIK because of the complexity and difficulty of the issue.⁷³

Finally, it is questionable, which role the PISG are supposed to play in the redefinition process. The redefinition of the right of use of socially owned immovable property can be interpreted as a measure falling under Chapter 8.1 (q) of the Constitutional Framework, namely the administration of public, state and socially owned property. The authority to administer such property is a reserved power of the SRSG but it requires cooperation with the PISG. Cooperation is evidently more than merely consultation but it does not affect or diminish the powers vested in the SRSG and it does not give the PISG a veto right. However, the redefinition of the right of use of social-

ly owned immovable property is of such an immense importance for the economic system of Kosovo and for the future viability of the economy of Kosovo that the PISG as the only democratically elected representative of the people of Kosovo must play a substantive role in this process. Meaningful and substantial self-administration as guaranteed by UNSC Resolution 1244 (1999) includes, among others, also a high degree of economic self-determination, namely on how and by whom the economic resources of the country are to be exploited. This would give the PISG a de facto veto-right. Realistically speaking, the SRSG would never be able to implement the redefined right of use against the persistent objection of the PISG. Therefore, the consent of the PISG to a redefinition of the right of use is a constitutive element and it would, consequently, demand full participation of PISG representatives in the political process.

Unfortunately, the PISG have so far failed in formulating an official policy on the privatization process. It has taken a reactive role hiding itself behind the limitations of the Constitutional Framework thereby not realizing that political decisions made now will determine the economic system of Kosovo for perhaps future decades. Short-term political calculations of the Kosovar political parties and rivalries among them block the way for a rational and reasonable formulation of a political position of the PISG on Privatization taking into account the long-term interests of the people of Kosovo. The PISG are in fact only obtaining a draft regulation from the SRSG, they comment on it, demand some changes, whose integration into the text lies in the discretion of the SRSG, and then the SRSG promulgates the text. The PISG do not confront the SRSG and the international community with an official PISG project - or at least an idea - of privatization, supported by the legal argument, that this idea is an expression of the will of the people of Kosovo represented legitimately by the PISG. If the Kosovar political parties do not manage to overcome their short-sighted political approach, events might simply override the PISG and make them obsolete or at least not a serious representative of the people of Kosovo in relation to UNMIK and the international community.

V. Key-Findings

The outlined presentation of the privatization process in Kosovo reached the following key-findings:

The stagnation of agricultural and industrial production in Kosovo has turned Kosovo's economy into one that is import-driven with an immense trade deficit. This trade deficit is not sustainable in the mid-term and long-term perspective.

Kosovo is amidst a process of de-industrialization, which results in the present rent-out-of-assets policy of the SOE's.

DTI's policy of centralization through the exclusion of municipalities from the administrative supervision of SOE's, the restoration of workers council socialism in a non-socialist political environment and the administrative deficit of DTI itself created an environment in Kosovo where SOE's could operate without being under any effective administrative supervision. This resulted in the renting-out-assets-policy of the SOE's and the de-industrialization of Kosovo.

The commercialization of SOE's as undertaken by DTI has proved to be a failure though it raised the awareness for the necessity of the privatization of SOE's.

The current privatization of SOE's under KTA through the spin-off approach is unlikely to attract foreign and domestic capital and investment to Kosovo as long as socially owned immovable property and the right of use thereupon are not privatized.

The current plans for the privatization of socially owned immovable property do not involve sufficiently the PISG, they do not take into consideration interests and the role of the municipalities and they do not consider aspects of restitution of illegally expropriated private property. They are also limited to redefining the existent right of use and do not exhaust all legal and political possibilities for its transformation into full ownership.

VI. Policy Recommendations

The spin-off method for the privatization of SOE's is now codified and it is unlikely that this could be changed without causing a legal and political earthquake. However, the privatization of socially owned immovable property and the right of use thereupon is still open for discussion and this is where the subsequent policy recommendations will focus on.

1. Transformation of the Right of Use into Private Ownership (Option 1)

As a first option and despite the present opposition of OLA, the PISG as the only democratically elected and thus legitimate representative of the people of Kosovo should demand a transformation of the right of use of socially owned immovable property into full private ownership following models of Slovenia and Croatia. Such a solution would be legally clear, it would enhance legal certainty and it would be suitable to attract foreign and domestic investment. The PISG could argue that substantial and meaningful self-administration, as guaranteed under UNSC Resolution 1244 (1999), would give the people of Kosovo the right to determine the structure of its economy and legal regime. The PISG as the sole democratically legitimate representative of the people of Kosovo would - by demanding privatization through transformation into private ownership - express the will of the people of Kosovo.

2. Redefinition of the Right of Use (Option 2)

If the PISG does not succeed in achieving the targets as set out under option one, the PISG would have to ensure effective participation in the process of redefining the current right of use.

a. Procedural Aspects

From the very beginning, the PISG and the municipalities must be actively involved in the political decision-making process without challenging the authority of the SRSG. The participation of these entities would effect - whatever the outcome is – legitimacy to the final political decision on the method of privatization and ensure wide acceptance by all parties concerned (legitimacy through participation). A process, that would not allow the PISG and the municipalities to articulate their interests, needs and concerns would most likely result in political confrontation if not total political opposition and obstruction. Consequently, it is recommended that a joint working group consisting of representatives of UNMIK, the PISG and the municipalities be established in order to propose options for a political decision on the privatization of socially owned immovable property and to prepare, in a subsequent step, the necessary draft legislation.

b. Substantive Aspects

Privatization of socially owned immovable property in Kosovo would require the harmonization of the following elements:

- Establishment of commercially effective corporations;
- Ensuring effective self-administration of municipalities;
- Restitution for nationalized property.

The German “*Treuhand-Model*”, by which Germany after its reunification with East Germany privatized its peoples’ property (“*Volkseigentum*”) which is similar to the social property concept in Kosovo, offers a useful example of how the aforementioned elements could be comprehensively harmonized.

Germany’s privatization process was guided by the principle that privatized enterprises would acquire those immovable assets in form of private ownership, which were functionally necessary for the commercial activities of such enterprises. Other immovable assets would remain with the municipalities and either would serve municipal self-administration purposes or would be available for restitution of previously nationalized private ownership. Expressed in a ranking list, privatized enterprises would be served first, and then restitution claims and finally the rest would remain with the municipalities. *Bona fide* (good faith) acquisition of nationalized property would, however, exclude restitution claims.

These principles could also be applied in Kosovo. The KTA would determine which immovable assets were commercially necessary for a newly established corporation, and these assets would then be transferred to the corporation. The newly established corporation would then acquire either private ownership (option 1) or a fully transferable and encumberable right of use (option 2) on the assets in question. Decisions of the KTA in this respect could be challenged by municipalities or other persons affected by the decision before the Special Chamber. As far as restitution is concerned, a joint PISG/ municipality commission could be established to decide on restitution issues. Decisions of that body could be challenged directly before the Supreme Court of Kosovo.

This scenario offers only one possibility of how the elements involved could be harmonized. However, it might be a useful thinking exercise and facilitate the conception of more sophisticated solutions.

3. Commercial and Civil Law in General

Whatever privatization method will be finally chosen, the expected and needed economic revival will not launch unless the entire commercial and civil law system guarantees legal certainty to potential foreign and domestic investors. This requires, primarily, the creation of an effective and clear property rights regime, including a reliable and accurate property rights register, a sophisticated regulation of mortgages and pledges⁷⁴, and in general a modern contract and civil/ commercial procedure legislation.

These instruments, together with a professional, neutral and efficient judicial system, whose awards and decisions are promptly and effectively executed, would provide the necessary legal certainty and reliability for both investors and financial institutions to a) invest capital in costly industrial and agricultural projects, and b) to offer loans with acceptable maturities and interest rates and thus pump money into the industrial and agricultural sector.

As a supplement, a modern bankruptcy law would be required in order to be able liquidate the devastated and hopeless SOE's, which are not worth being privatized. The assets of these SOE's should be made available to private companies, especially medium and small enterprises, through public tender and after claims of creditors of the SOE's have been settled.

4. Effective Enforcement of the Law

Finally, both UNMIK and the local authorities have proved to be reluctant in applying the available legal instruments. The best political and legal solution will render useless, if sanctions are not enforced and if legal remedies against breaches of law are not provided effectively. Since many UNMIK legal instruments have remained law in books

and never managed to become law in action⁷⁵ there is concern that Kosovo might get a “nice” privatization legislation, which is not enforced in practice. It is therefore of utmost importance that all administrative and judicial bodies involved in the privatization process are effective and efficient in their application of the law.

Only a comprehensive and systematic approach taking into consideration the aforementioned elements would enhance the chances to pave the way for a successful privatization and economic revival in Kosovo, which might then become indeed one of the “success-stories” of modern United Nations Peacekeeping.

LIST OF ABBREVIATIONS

DTI	Department of Trade and Industry
EU	European Union
FRY	Federal Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
JIAS	Joint Interim Administrative Structure
KTA	Kosovo Trust Agency
OSCE	Organization for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government
POE	Publicly Owned Enterprise
SFRY	Socialist Federal Republic of Yugoslavia
SOE	Socially Owned Enterprise
SRSG	Special Representative of the Secretary-General
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council

Notes

¹ UNMIK Regulation No. 1999/1 of 25 July 1999 on the Authority of the Interim Administration in Kosovo, as amended by UNMIK Regulation No. 2000/24, section 4.

² UNMIK Regulation No. 1999/24 of 12 December 1999 on the Law Applicable in Kosovo, as amended by UNMIK Regulation No. 2000/59, section 1.1.

³ *Ibidem*, section 1.2.

⁴ *Ibidem*, 1.1.

⁵ Building the Medium-Term Economic Development Strategy for Kosovo (2003-2005) of 17 September 2002, p. 12. Unless otherwise referred to, the information and data on the current economic situation are extracted from this report.

⁶ *Ibidem*, p. 13.

⁷ *Ibidem*.

⁸ *Ibidem*.

⁹ *Ibidem*, p. 15.

¹⁰ *Lessons Learned and Analysis Unit of the EU Pillar of UNMIK in Kosovo (LLA): The Ottoman Dilemma – Power and Property Relations under the United Nations Mission in Kosovo*, Pristina: 2002, p. 8; *Lessons Learned And Analysis Unit of the EU Pillar/ ESI Kosovo Project (LLA): De-industrialization and the Collapse of Social Property – A Case Study of Peja/Pec*, Pristina/Berlin: 2002.

¹¹ *E. Hobsbawm: Age of Extremes – The Short Twentieth Century 1914 – 1991*, London: 1994, pp. 78-115.

¹² Official Gazette of the Democratic Federal Yugoslavia 2/1945; Official Gazette of the People's Federal Republic of Yugoslavia 63/46, 105/46.

¹³ Official Gazette of the People's Federal Republic of Yugoslavia 64/1945.

¹⁴ *United Nations Interim Administration Mission in Kosovo (UNMIK) Pillar IV (EU): Information Memorandum Provided to the Department of Peacekeeping Operations and the Office of The Legal Advisor on the Proposed Regulation on the Establishment of the Kosovo Trust Agency*, March 2002.

¹⁵ V. Misajlovski: On the Use of Objects Belonging to Socially-Owned Property, in: *Zakonitost*, Zagreb, 1958, p. 438; see also Kosovo Law on Construction Land, articles 38 and 39, (Official Gazette of Kosovo 44/76).

¹⁶ Misajlovski, p. 446.

¹⁷ Federal Law on Companies, articles 75 – 79, (Official Gazette of FRY 77/88).

¹⁸ Federal Law on Compulsory Settlement, Bankruptcy and Liquidation, article 135, (Official Gazette of FRY, 84/89).

¹⁹ LLA: *The Ottoman Dilemma*, p. 11.

²⁰ *Ibidem*, p. 13.

²¹ T. O'Neill: SOE Commercialization Means Jobs and Investment, in: *Focus Kosovo*, October 2001.

²² The companies in question are: Sharr Cement, Mirusha, Progress Meat, Progress Export, Fapol, Mustafa Goga, Alcon Sunflower, Betonjerka, Adi Poultry, Artizanati,

Kosova Brick, Termovent, Minex.

²³ LLA: The Ottoman Dilemma, p. 20.

²⁴ UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo, Chapter 8.1 (q) and (r).

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ Legal Opinion of the United Nations Office of Legal Affairs of 1 February 2002 on the draft regulation on Kosovo Trust Agency (non-paper), point 6.

²⁸ Ibidem.

²⁹ UNMIK Regulation No. 2002/12, sections 2.1, 2.2 (a) and 5.1.

³⁰ Section 3.

³¹ Section 3.

³² Section 6.1.

³³ The complete list of powers is contained in section 6.1 (a) to (s).

³⁴ Section 7.

³⁵ Section 8.1.

³⁶ Section 8.4.

³⁷ Section 9.

³⁸ *A. Shala*: Privatization – The Greatest Challenge, in: Focus Kosovo, June 2002; *A. Wittkowsky*: SOE's! It's Time for Privatization, in: Focus Kosovo, April 2002.

³⁹ Section 11.1.

⁴⁰ Section 15.1.

⁴¹ Section 12.1.

⁴² Section 12.2.

⁴³ Section 12.3.

⁴⁴ Section 14.3.

⁴⁵ Section 14.6.

⁴⁶ Section 14.7.

⁴⁷ Section 16.3.

⁴⁸ Section 16.1.

⁴⁹ Section 16.2.

⁵⁰ Constitutional Framework, section 11.1.

⁵¹ On expropriation under public international law see *P. Malanczuk*: Modern Introduction to International Law, London/New York: 1997, pp. 235.

⁵² *I. Brownlie*: Principles of Public International Law, Oxford:1998, p.686.

⁵³ UNMIK Regulation No. 2002/13, section 4.1. Subsequent sections, unless otherwise specified, are those of UNMIK Regulation No. 2002/13.

⁵⁴ Section 4.1.

⁵⁵ Section 4.2.

⁵⁶ Section 4.2.

⁵⁷ Section 4.3.

⁵⁸ Section 3.1.

⁵⁹ Section 3.1.

⁶⁰ Section 3.2.

⁶¹ Section 9.2.

⁶² Section 5.5 (b).

⁶³ UNMIK Regulation No. 2000/45, section 44.1.

⁶⁴ Preamble to UNMIK Regulation No. 2000/45, with reference to the European Charter on Local Self-Government.

⁶⁵ The rules of procedure of the Special Chamber are at present only available in form of a draft but are expected to be promulgated as an administrative direction by the SRSG.

⁶⁶ UNSC Resolution 1244 (1999) does not prejudice the final political status of Kosovo, with the consequence, that the possibility of Kosovo becoming an independent state cannot be excluded.

⁶⁷ UNMIK draft regulation on the right of use of socially owned immovable property of 8 October 2002, section 2.1. Subsequent sections, unless otherwise specified, are those of the UNMIK draft regulation on the right of use of socially owned immovable property.

⁶⁸ Section 3.1.

⁶⁹ Section 3.2.

⁷⁰ Section 3.1.

⁷¹ Section 1.

⁷² Section 1.

⁷³ Interview with the President of the Supreme Court of Kosovo.

⁷⁴ Draft laws on a property rights register and on mortgages are currently processed by the Assembly of Kosovo although it is doubtful whether these drafts indeed reflect a sophisticated and accurate regulation of the matters in question. An analysis of these topics would, however, exceed the scope of the present outline.

⁷⁵ The best example would be UNMIK Regulation No. 1999/3 on the Prohibition of Casino-T

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The Kosovar Institute for Policy Research and Development aims to support and promote democratic values in Kosovo through training and independent policy research.

The training pillar is focused on the development of political parties through the Internet Academy for Democracy, which was developed in cooperation with the Olof Palme International Center.

The research pillar focuses on producing independent policy analysis on issues such as good governance, administration, political party development, regional cooperation, political economy, and local government.

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