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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2383rd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 19 July 2006, at 3 p.m.

Chairperson: Ms. CHANET

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* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.2383.

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The public part of the meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT
(continued)

Report submitted to the Human Rights Committee by the United Nations Interim Administration Mission in Kosovo on the human rights situation in Kosovo since June 1999 (CCPR/C/UNK/1; CCPR/C/UNK/Q/1)

1. *At the invitation of the Chairperson, Mr. Šahović, Mr. Vukčević, Ms. Mitrović, Ms. Ivanović (Serbia), Mr. Borg-Olivier, Mr. McGowen, Ms. Elias and Mr. Gashi from the United Nations Interim Administration Mission in Kosovo (UNMIK) took their seats at the Committee table.*

2. The CHAIRPERSON invited the Serbian delegation to make a preliminary statement.

3. Mr. ŠAHOVIĆ (Serbia) thanked the Committee for having invited UNMIK to submit a report on the human rights situation in Kosovo, as the delegation of Serbia and Montenegro had suggested when the initial report of Serbia and Montenegro on the implementation of the Covenant was being considered. The report would make it possible to complete the review for the whole of Serbian territory and would also serve as an example for other United Nations missions which had a real responsibility in implementing international instruments.

4. The human rights situation in Kosovo-Métohija had been very difficult in 1999; and very little progress had been made despite the resources made available to the United Nations and other international organizations involved in implementing Security Council Resolution 1244 (1999). Since 2003, the human rights issue had become highly politicized, and respect for the fundamental rights of the province's minority ethnic communities, particularly the Serbs, was subject to the adoption of a very specific legal status for the province; and that was unacceptable.

5. The report submitted by UNMIK reflected that situation. While it contained a very thorough description of current legislation, it gave little information on the steps taken by UNMIK and the Provisional Institutions of Self Government to implement laws. Nor did it discuss the real situation on the ground or the practical implementation of the Covenant. Other reports provided a more realistic picture of the situation, such as the comprehensive review of the situation in Kosovo produced by Mr. Kai Eide, Special Envoy of the Secretary-General (S/2005/635), those submitted by former ombudsman, Marek Nowicki, or those of the Office of the United Nations High Commissioner for Refugees, the Organization for Security and Co-operation in Europe (OSCE), Amnesty International and Human Rights Watch. The overall human rights situation in Kosovo-Métohija was very serious, the level of protection of the rights of its inhabitants was below international standards, and discrimination against non-Albanian ethnic groups, Serbs in particular, was worrying. The rights most frequently violated were the rights to life and liberty, security of the person, and freedom of movement. There were also numerous problems relating to discrimination, property rights and economic and social rights, in which MINUK had failed to fulfil the mandate given to it by the Security Council.

6. The political and legal system in Kosovo-Métohija was marred by a climate of impunity; and the Secretary-General's Special Envoy, Mr. Eide, had singled out the

judiciary as Kosovo's weakest institution. Over the last seven years, virtually no progress had been made in inquiries and prosecutions relating to ethnic incidents and abductions of Serbs, Roma and members of other communities, which were without doubt the work of the Kosovo Liberation Army or Albanian extremists. The fate of 2,450 individuals (including 356 women and 234 minors), who had disappeared during the conflict of 1999 and after the arrival of KFOR and UNMIK, had still not been clarified. The UNMIK report did not provide any additional data on the number of prosecutions made for violent crimes committed against Serbs and non-Albanians since 1999, or the sentences imposed. Nonetheless, there had been about 7,000 acts of aggression against Serbs and 1,011 Serbs had been murdered, giving rise to 927 cases, in most of which the culprits had not been identified or prosecuted. No one had been convicted for incitement to ethnic violence and no representative of the media had been punished for having incited hatred or contributed to the violence of March 2004. Nonetheless, the transfer of powers to the Provisional Institutions of Self Government had gathered pace following the establishment of the police and justice ministries.

7. Lack of security was a major constraint on freedom of movement among minority communities and was hindering the already slow return of refugees and displaced persons. Despite the many initiatives undertaken by the Kosovo-Metohija authorities, there had been very few sustainable returns — according to the Office of the High Commissioner for Refugees (HCR), just 218 between 1 December 2005 and 31 March 2006, half of whom were Serbs resettling, overwhelmingly, in exclusively Serbian zones where contacts with Kosovo Albanians were practically non-existent.

8. Sexual exploitation of women and human trafficking were major causes for concern. The number of women victims of trafficking in the province itself was increasing, and Kosovo-Metohija seemed to be a crossroads for organized crime. Protection of property rights was still a major problem. For safety or other reasons, owners often found it difficult to gain access to their property; and illegal occupants refused to leave. Public enterprises were being privatized at the expense of all the Serbian and non-Albanian workers who had lost their jobs since June 1999. Since 1999, non-Albanians had been driven out of 90% of industrial premises. Just 5% of the economically active Serb population were working for the central and local authorities, and insignificant numbers of Serbs were employed by the public and private sectors. The Kosovo-Metohija Assembly had not yet legislated on linguistic issues; the Albanian and Serbian languages were seldom used in administration even though they were official languages. At school, children hardly ever came into contact with children from ethnic groups other than their own. The few initiatives aimed at ethnic mixing had merely created new situations of dissent. Protected cultural heritage included 467 sites, 206 of which were religious buildings, some of them of exceptional social, historical and cultural interest. Between 1999 and 2004, about 130 churches and Orthodox monasteries had been damaged or destroyed; very few of them had been rebuilt.

9. By presenting those facts, the Serbian delegation hoped to help UNMIK and the Provisional Institutions of Self Government introduce measures to improve the human rights situation in the province.

10. *The Serbian delegation resumed its seats in the room.*

11. The CHAIRPERSON invited the UNMIK delegation to present the report on the human rights situation in Kosovo since June 2009.

12. Mr. BORG-OLIVIER (UNMIK) said that the delegation of which he was the leader included a representative from the Provisional Institutions of Self Government, to which UNMIK was progressively transferring its powers. UNMIK had produced its report pursuant to the powers conferred upon it by Security Council Resolution 1244 (1999), and independently of the fact that Serbia was a party to the Covenant.

13. Security Council Resolution 1244 (1999) had given UNMIK major responsibilities for human rights protection, maintenance of public order and the return of refugees and displaced persons; and UNMIK had taken that into account in the legislation it had introduced. Thus, Regulation 2001/9 on a Constitutional Framework for the Provisional Self-Government in Kosovo and Regulation 2000/59 amending Regulation 1999/24 on the Law Applicable in Kosovo had incorporated universal rules on human standards into the law applicable in Kosovo. A complete legal framework and legislative process had then been implemented, and steps had been taken to ensure that the applicable legislation satisfied international standards in all areas, and that the law contained the guarantees and appeal remedies required by standards on human rights protection. Although the practical implementation of those provisions by the legal system was equally important, in early June 1999, Kosovo had not had functioning courts and there had been uncertainty regarding the law to be applied. This had resulted in the adoption of Regulation 1999/24. UNMIK had immediately undertaken to implement a legal system allowing persons arrested by KFOR to be tried. The legal apparatus, albeit imperfect, had been functioning since 2001. To deal with a climate of score settling, which was inevitable following a period of conflict, and the insecurity that undermined the independence and impartiality of the judiciary and prevented it from duly trying persons who posed a serious threat to the peace process and establishment of the rule of law, UNMIK had appointed international judges and prosecutors to work alongside the local counterparts. It had also wanted to set up a multi-ethnic judiciary, that would earn the trust of everyone. In that regard, recent laws relating to the creation of the Ministry of Justice contained important measures on the appointment of legal officers, including affirmative action in particular. Nonetheless, the courts were heavily encumbered, and the enforcement of civil rulings left much to be desired. Those problems would need to be tackled under new legislation, for which the necessary resources would need to be found.

14. The Kosovo Provisional Criminal Code and the Provisional Criminal Procedure Code had been promulgated In July 2003. Those bodies of law were consistent with international and European standards, and included certain offences defined by international instruments, including the Statute of the International Criminal Court (war crimes and crimes against humanity), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, terrorism-related offences were defined in the new code, which also contained up-to-date provisions on sexual offences and created a system of alternative punishments. The Provisional Criminal Procedure Code authorized the prosecutor to open, conduct and supervise inquiries, thus replacing the inquiry system operated by the prosecuting judge. In addition to expanding the powers of

the prosecutor, the law had been amended to protect the rights of defendants, the most important change being a strengthening of judicial supervision of detention. The new Criminal Procedure Code allowed a detainee or his/her counsel at any time to request that the judge verify the legality of the detention. After the new codes entered into force, a code of justice for minors and a law on the execution of criminal sentences had been promulgated, thus representing a significant stage in the progress of the rule of law.

15. Regulation 2001/4 on the Prohibition of Tracking of Persons in Kosovo, dated 12 January 2001, had been promulgated as specific legislation making it possible to prosecute and punish perpetrators of trafficking and related acts, and to assist and protect their victims. The offences covered by the law had subsequently been integrated into the Provisional Criminal Code.

16. On 20 December 2005, the Special Representative of the Secretary-General had promulgated Regulation No. 2004/54 setting out the framework and guiding principles for the Kosovo Police Service (SPK). That service, which had played a crucial role in guaranteeing security for minority groups, and would continue to do so, now reflected Kosovo's ethnic diversity. Legislation that was essential for good justice administration in Kosovo had been drafted in close consultation with local and international experts; and MINUK had prioritized co-operation with experts from the European Council and European Union in specialized areas of law, to adapt Kosovo's legislation to the European model, in conformity with the human rights standards proclaimed by the mandate of the United Nations Interim Administration.

17. UNMIK was also a party to many international agreements aimed at guaranteeing the rule of law in Kosovo. On 23 August 2004, the Special Representative of the Secretary-General and the Secretary-General of the Council of Europe had signed two agreements to oversee the implementation of important human rights principles established by the Council of Europe — the agreement on Technical Arrangements related to the European Convention for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment, which enabled a committee of independent experts to review the way individuals being held in custody were treated by UNMIK; and the Agreement on Technical Arrangements for the Framework Convention for the Protection of National Minorities, under which the Committee of Ministers of the Council of Europe oversaw respect for the Framework Convention in Kosovo, with UNMIK providing it with all necessary information. UNMIK had already submitted its initial report (posted on the Council of Europe website), in which the Committee of Ministers of the Council of Europe had made recommendations. Those recommendations had been reviewed by UNMIK and the Provisional Institutions of Self Government with a view to implementation. Legislative reform was currently underway, including Regulation No. 2006/25 on the regulatory framework of the justice system in Kosovo, and Regulation No. 2006/36 on legal assistance.

18. Pursuant to Security Council Resolution 1244 (1999) and in keeping with the constitutional framework, UNMIK had embarked upon a progressive transfer of its administrative responsibilities to Kosovo's provisional local institutions, which it was helping to strengthen. The process had relied on the smooth functioning of areas already transferred, and indicators had been prepared to measure the maturity of Kosovo society. The progress achieved had made it possible to create the Ministry of Justice and Ministry of Interior Affairs, whose responsibilities and

functions were specified in the regulation governing executive power within the Provisional Institutions of Self Government in Kosovo. Progress had also been made in the adoption of Standards for Kosovo and implementation of the plan for implementing the Standards for Kosovo with a view to creating a well-established multi-ethnic society living according to the principles of democracy, dialogue and inter-ethnic tolerance. That said, much remained to be done, because the standards in question were not being implemented uniformly.

19. Security Council Resolution 1244 (1999) required UNMIK to assure “the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.” It thus placed the emphasis on individual, with a view to promoting a human-rights-based approach and upholding the right of people to sustainable return; and it tried to provide returnees to Kosovo a normal life, in safety and without legal, political, social, economic or other discrimination. Nonetheless, it was also realistic: while all refugees were entitled to return, some did not wish to do so, or preferred to settle elsewhere in Kosovo; and that needed to be taken into account when evaluating the overall situation of the return of refugees and displaced persons. The signing of a protocol on the return of displaced people between UNMIK, Belgrade and Priština, on 6 June 2006, was a positive development. The riots that had occurred on 17 March 2004 throughout Kosovo, and the subsequent events, had nonetheless represented a major setback and had compromised the achievements since 1999 in creating a safe environment for all people and all communities in Kosovo. MINUK and the Provisional Institutions of Self Government had reacted swiftly to those problems to restore public trust in the capacity of UNMIK to fulfil its mandate. Nonetheless, the UNMIK reaction had to be carefully measured and proportional to the intended objectives, in strict respect for the law. Recent reports increasingly seemed to show that the relatively small number of returns was explained by economic problems rather than a lack of security: data from the Ministry of Employment and Social Protection reported an unemployment rate of 42.44% in 2005. In relation to security, it was encouraging that statistics on criminality in early 2006 suggested a significant drop in ethnically motivated offences, partly thanks to the implementation of the “strengthened security operations” programme in December 2005, which had been highly effective in targeting vulnerable communities and localities. As the Secretary-General’s Special Representative had commented to the Security Council in 2006, caution was needed when analysing supposedly ethnic offences in Kosovo. When the victim of an offence was a Kosovo Serb, it was often assumed, without evidence, that the offence was of an ethnic nature; but that was unfair and served to perpetuate a climate of insecurity among Serbian communities, which adversely affected the number of returns. UNMIK realized that protecting cultural heritage, particularly churches and cemeteries, was crucially important for the returns process and for the protection of religious rights generally. Repair and protection work on Orthodox Serb cultural and religious heritage had therefore been continued. In December 2005 the Reconstruction Commission had reported on protection and consolidation work carried out on 30 Orthodox religious sites damaged in March 2004; and in May 2006 it had adopted its programme for the current year. Starting August 2006, major works would be launched at six sites, reflecting the priorities of the Serbian Orthodox Church; and work would begin at Prizren in July.

20. The economy continued to grow very slowly, burdened by high unemployment, a large trade deficit and major budget constraints. In those

circumstances, the protection of property rights and privatization of the economy were essential for achieving satisfactory economic growth. The privatization process was based on experience gained from reforms in other economies. For example, the principle of compensation had prevailed over the restoration of property, and claims were being reviewed by the judicial system and by the Special Chamber of the Supreme Court. Steps had been taken to ensure that the process was conducted with diligence and transparency. As a result of progress made in that area, the private sector was already displaying a sustained expansion. Overall growth was forecast to reach about 3% in 2006, despite cuts and restrictions imposed on public spending; and the privatization programme envisaged the creation of over 6,000 jobs. Positive results such as those would clearly contribute to stability in Kosovo and in the region generally, and would encourage returns.

21. Much had already been done in Kosovo to establish a safe environment for all communities, supported by stable democracy and the rule of law; but there was still a long way to go. Regulatory policy and the continuous evaluation of its achievements had helped the authorities to function effectively and should lead to better inter-ethnic relations. Budgetary management in the Provisional Institutions of Self Government had significantly improved in 2005, despite a worsening of corruption in certain municipalities or at the central level. Nonetheless, participation in political, judicial, social and economic life by minority communities, particularly the Kosovo Serbs, remained limited. The initiative taken by the Priština authorities to reach out to all communities, particularly the Serbs, was welcome in that regard.

22. Steps taken by UNMIK to implement human rights protection policies more effectively had sometimes been hindered by a lack of resources and the complexity and constraints of the political situation, so life for many Kosovo Serbs remained hard. It needed to be recognized that UNMIK had not always received co-operation and constructive support from Belgrade, and that had seriously undermined the achievement of its objectives and generally hindered improvements in the situation in Kosovo. The isolationist policy being pursued by Belgrade was not helping the Kosovo Serbs at all: for example, the directive published by the Serbian authorities obliging Kosovo Serbs who worked for certain institutions to choose between their salaries from Belgrade or Priština, was fostering dissent and was a source of potential discrimination, because the involvement of the Kosovo Serbs and their participation in institutions were essential. The Provisional Institutions of Self Government were formally committed to continuing to take steps needed to protect human rights, prosecute the perpetrators of violations and diligently tackle the remaining problems and causes for concern. That political support and the continued implementation of human rights standards in Kosovo should make it possible to restore the necessary trust and consensus among all communities.

23. Mr. GASHI (MINUK) said that he was the principal legal counsel to the Prime Minister of the Provisional Institutions of Self Government in Kosovo. As the current situation was the direct result of intervention by the international community in response to the massive and systematic human rights violations committed in Kosovo in the 1990s, human rights protection was a priority for the institutions of self government. Although the UNMIK report covered a period prior to the implementation of those institutions, the latter would soon be tasked with producing future reports to the Committee. The transfer of responsibilities to the Kosovo Government, provided for by Security Council Resolution 1244 (1999), was underway, as shown by the creation of the Ministry of Justice and the Ministry of

Interior Affairs, which would be responsible for upholding the rights to due process and to freedom and security of the person.

24. The Special Representative of the Secretary-General still had certain powers, in particular to ratify human rights instruments, such as the International Covenant on Civil and Political Rights; but Kosovo later intended to abide by those instruments, which were directly and immediately applicable under the constitutional framework. The Government also wanted technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR), to establish genuine rule of law in Kosovo and contribute to peace and security throughout the Balkans. With regard to the Framework Convention for the Protection of National Minorities, the Provisional Institutions of Self Government were currently drawing up a procedure for implementing the recommendations made by the Advisory Committee of the Council of Europe. The Government also undertook to do the same with the Committee's recommendations, which would clearly help to overcome the problems and difficulties mentioned in the UNMIK report.

25. Mr. BORG-OLIVIER (UNMIK), replying to question No. 1 of the list of issues, said that the Kosovo courts had applied the provisions of the Covenant on just one occasion, in the case of Callixte Mbarushimana, an UNMIK employee accused of genocide and crimes against humanity, for whom Rwanda had requested extradition. A district court of first instance had applied article 7 of the Covenant, in conjunction with article 3 of the Convention on Human Rights and Fundamental Freedoms and article 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. On 20 occasions between 1999 and 2005, the district courts and Supreme Court had directly applied the European Convention and the jurisprudence of the European Court of Human Rights. Article 6 (the right to a fair hearing) had been applied in 15 of those cases, seven of which in the first instance, five times on appeal, and three times in both. Article 5 (the right to liberty) had only been applied twice in the first instance and once on appeal; and articles 2 (the right to life), 3 (prohibition of torture), 7 (no penalty outside the law) and 8 (right to respect for private and family life) had been invoked once each.

26. With regard to question No. 2, UNMIK had a general policy of transferring its powers to local institutions as soon as they were ready to assume them. Article 5 of Regulation No. 2006/6 concerning the Ombudsperson institution in Kosovo, dated 16 February 2006, provided that the Kosovo Assembly would choose an ombudsperson from among Kosovo residents involved in human rights issues. Under Regulation 2006/12 creating a human rights advisory group, dated 23 March 2006, complaints of human rights violations had been transferred to the provisional advisory group, which would be composed of three international jurists specializing in European law and the human rights system, appointed by the Special Representative of the Secretary-General following a proposal by the President of the European Court of Human Rights "during the course of the UNMIK mandate." Several complaints had been received and the group was currently being set up. Article 2 of the regulation also made the advisory group responsible for "complaints relating to alleged violations of human rights perpetrated after 23 April 2005, or those arising from earlier events when those events had given rise to continuous human rights violations." The President of the European Court of Human Rights had already put forward the names of three people who would be shortly appointed; and arrangements had been made for complaints to be registered henceforth, while waiting for the secretariat of the advisory group to begin work.

27. The Interim Ombudsperson was waiting for the Special Representative of the Secretary-General to decide whether the Ombudsperson institution would continue to handle 46 of those cases or whether they would also be transferred to the advisory group. Ten of the cases in question concerned the UNMIK police, seven related to the UNMIK civil administration, four to the UNMIK Department of Justice, four to the Kosovo Trust Agency and three to the Special Chamber of the Supreme Court for the Kosovo Trust Agency. There were 14 outstanding cases concerning the Kosovo police service, which until 2006 was a UNMIK responsibility; 54 other cases involving the Housing and Property Directorate, which on 4 March 2006 had become the Kosovo Property Agency, were the subject of an ongoing inquiry by the Ombudsperson institution when Regulation No. 2006/6 entered into force. The Special Representative of the Secretary-General should also clarify specific problems relating to minorities, such as in the northern part of Mitrovica. There were 13 cases linked to problems of minorities involving UNMIK and one case involving the UNMIK administration in the municipality of Mitrovica. The Interim Ombudsperson had suspended proceedings in 114 cases, pending instructions from the Secretary-General's Special Representative or the establishment of the advisory group, since article 13 of the UNMIK regulation on that group authorized it to invite the Ombudsperson to submit written comments if he had already taken up the issue and if the interests of justice so required. The fifth annual report of the Ombudsperson institution indicated that, until recently, access to certain dossiers (...) had been systematically denied by members of the UNMIK police; but that was no longer the case, quite the contrary. The processing of cases should therefore be quicker henceforth. With regard to cooperation with the Provisional Institutions of Self Government, the Ombudsperson institution had encountered ambiguity in the attitude of different ministries and municipalities, which might indicate a willingness to co-operate, but did not actually do so, either because of ignorance of the procedures to be followed, or else deliberately. For example, the President of the Municipality of Priština had not replied to any of the 25 questions sent to him by the Ombudsperson between March 2004 and October 2005. UNMIK could only encourage co-operation with the Ombudsperson and was ready to take the necessary steps to do so. The transfer of powers had also caused confusion over the respective responsibilities of UNMIK and the Provisional Institutions of Self Government, as regards demands for provisional measures. Whereas in 2002 the Ombudsperson institution had received a reply to all its requests, of which about half were favourable after 2003, the reply rate had since dropped steadily to just 25% in 2005. At that time, the Ombudsperson had published 10 special reports, 21 reports without consultation and 47 final reports on individual cases. UNMIK had followed up the recommendations contained in three special reports, amending legislation to come into line with international human rights standards. It had rejected one recommendation and was currently reviewing several others.

28. In the case of question No. 3, Yugoslavian laws had been applied in Kosovo until 1999. Since the promulgation of UNMIK Regulation No. 24/1999, no Yugoslav or Serb law promulgated after 22 March 1999 was applicable in Kosovo; but all legislation prior to that date remained in force, except where it had been replaced by subsequent UNMIK regulations. In the same regulation, UNMIK had also established a simple mechanism for dispelling any doubt relating to the applicability or interpretation of a law. Any court or institution in Kosovo that had to apply or interpret the current law could apply to the Special Representative of the Secretary-General, who was authorized to rule on such issues. The mechanism was

functioning well and the Special Representative of the Secretary-General had already issued several opinions. Moreover, the general principle was that the most recent law took preference over previous ones, and the application of that simple and universal principle had not caused any problem thus far.

29. UNMIK was not sparing any effort to ensure that the new regulations and administrative directives it adopted were consistent with the principles of the rule of law and generally accepted rules on legislative drafting. The inter-pillar workgroup responsible for human rights had been very active in dealing with issues likely to affect human rights before draft regulations and administrative directives were adopted and promulgated; and it had made a major contribution to the clarity of the corresponding texts and compatibility between the applicable laws. Legislation applicable in Kosovo had been rapidly amended whenever necessary. Moreover, the Office of the UNMIK Legal Counsel was always ready to provide verification and guidance on the interpretation of legal texts. It was intended to set up an independent body to review various laws, clearly define their scope of application and identify any gaps to be filled. Any suggestion that the Committee could make would be welcome.

30. Mr. BORG-OLIVIER (UNMIK), replying to question No. 4, said that the presence of parallel structures in the justice administration and security domains in Kosovo, particularly in Mitrovicë/Mitrovica, Zubin Potok, Zvečan/Zveçan and Leposavić/Leposaviq, was causing legal uncertainty that hindered full exercise of individual rights. For example, the existence of registry offices under Serbian authority and the non-application of UNMIK Regulation No.2002/22 concerning promulgation of the Kosovo Assembly cadastre law prevented people living in those towns from upholding their property rights and deprived them of all appeal mechanisms. In 2003, UNMIK pillar III, under OSCE direction, had published a detailed report on the problems created by that institutional situation, but its recommendations had not been effectively followed up.

31. Since the conflict, the proportion of properties that had been restored to their owners was very small (10.3% of rulings issued by the Housing and Property Claims Commission), mainly because restrictions on freedom of movement had led claimants from minority groups to sell their property since they were unable to return to their original place of residence. Moreover, in 35.1% of cases, the properties being claimed had been destroyed. Currently, 5,328 homes were still under provisional administration. The implementation of a property management and location system should enable displaced persons who had been unable to repossess their property to earn an income from it, for example through a rent paid by the new occupants. Illegal construction was proliferating with the tacit agreement of certain representatives of the Provisional Institutions of Self Government, particularly at the municipal level. Those institutions were unable in practice to enforce building regulations in accordance with international standards. Displaced persons in more remote parts of the country relied on reconstruction assistance programmes, of which there were several currently under way.

32. With regard to the UNMIK institutional framework in relation to implementation of its human rights responsibilities under Security Council Resolution 1244 (1998) (question No. 5), the creation of a human rights advisory group under Regulation No.2006/12 was a major step forward in terms of human rights protection in Kosovo, representing the culmination of a lengthy process of

consultations between the Office of Legal Affairs at United Nations Headquarters in New York, UNMIK pillars I and III, the Council of Europe and the Office of the High Commissioner for Human Rights. Although its mandate had been amended from the initial proposal made by the Venice Commission, to take account of UNMIK privileges and immunities, the group would offer people living in Kosovo an effective way to obtain redress for human rights violations imputed to UNMIK, which they had not been able to obtain under the European Human Rights Convention. The group's mandate made clear that the expression "human rights violations" also referred to violations defined in the European Convention on Human Rights and its related protocols, and those targeted by the International Covenant on Civil and Political Rights and its related protocols. Although it had not been easy to obtain the funds needed to set it up, the group was now ready to see the light of day, and several complaints had already been received. That totally new mechanism established a fundamental principle for future United Nations missions.

33. Mr. McGOWEN (UNMIK), replying to question No. 6 on case-law under the Anti-Discrimination Law and the Law on Gender Equality, said that several inquiries had been opened under those laws by the Anti-discrimination Unit of the Ombudsperson institution, and that the OSCE legal systems surveillance section had reported a case in 2005 in which the law on gender equality had been invoked to support a complainant's case, which had ultimately been rejected. As those two laws were still relatively recent, the courts had seldom referred to them thus far.

34. Ms. ELIASZ (UNMIK) added that to allow for a better application of those laws by the courts, the Kosovo Judicial Institute had organized training events on the subject for judges and prosecutors.

35. Mr. McGOWEN (UNMIK), in response to question No. 7, said that the UNMIK Gender Parity Office had taken steps to ensure that gender equality objectives were included in the Standards for Kosovo and placed at the heart of the public programme. On 5 October 2004, a Gender Equality Bureau had been created in the Office of the Prime Minister to ensure the mainstreaming of gender equality principles throughout the Provisional Institutions of Self Government. Parity laws had been enacted and equality issues had been included in the administrative directives applicable to many sectors of the civil service. The UNMIK Office had devised various instruments (summary listings, specific indicators) to help implement the objectives announced in the Standards for Kosovo and evaluate the results. It had also made sure that officials at all levels of administration received training on the objectives proclaimed in the Standards. In 2006, the UNMIK Gender Parity Office, in conjunction with the Gender Equality Bureau of the Office of the Prime Minister, had reconsidered the plan for implementing the Standards for Kosovo with a view to extending the scope of gender equality commitments to make them priorities within European partnerships. To ensure that the efforts made can be continued after the UNMIK withdrawal, a timetable of measures had been established and persons appointed within the Provisional Institutions of Self Government to ensure implementation. The UNMIK Gender Parity Office continued to provide technical and financial assistance to the Gender Equality Bureau of the Office of the Prime Minister, specifically for its work in preparing the Kosovo Development Strategy and the Kosovo Gender Equality Programme. Equal access to employment for men and women was encouraged by labour legislation in Kosovo (UNMIK Regulation No.2001/27) and the anti-discrimination law (Regulation No.2004/3). Civil society also played a key role in promoting gender equality. Thus,

the Kosovo Women's Network, supported by the United Nations Development Fund for Women (UNIFEM), had undertaken an extensive campaign to raise awareness of the rights guaranteed to women by law and the remedies available to them to uphold those rights. UNIFEM had also done much to support additional cooperation between NGOs working to defend women's rights and other sectors of society, such as the police services, for example. The latter had also made a major effort to recruit women.

36. Ms. ELIASZ (UNMIK) said that sexist discrimination in the education system persisted. In conjunction with UNMIK pillar III, the Ministry of Education, Science and Technology was working to implement a programme to address the specific problem of young girls who were not allowed to continue their studies after they married.

37. Mr. McGOWEN (UNMIK) referred Committee members to the statistics contained in the written replies showing women's representation in public services. With regard to school attendance, statistics from the Ministry of Education, Science and Technology showed that the proportion of girls was slightly below that of boys at all levels of education, and dropout rates were higher among girls. The introduction of an additional year in the secondary education cycle in 2002 had had a negative effect on school attendance by girls. In fact, as that year was not being offered in all secondary schools, students generally ended their schooling at the lower level because of the travel constraints involved in continuing their studies elsewhere, particularly in rural areas where school density was lower. The Ministry of Education, Science and Technology, and the Gender Equality Bureau were involved in numerous initiatives to raise awareness of the importance of girls' education and promoting equality between the sexes in Kosovo.

38. On the question of domestic violence, the subject of question No. 8, huge progress had been made in recognizing the problem in Kosovo. Before 2003, violence of that type was not considered an offence but had been treated merely as disturbance of public order, or did not result in prosecution unless the victim showed physical injury. UNMIK Regulation No.2003/12 on protection against domestic violence, and the new law on social services and family services, promulgated in 2005, had introduced measures to protect victims of domestic violence. Under the Provisional Penal Code of Kosovo, victims' defence counsels were authorized to act as their legal representatives. Psycho-social assistance was provided by social workers in collaboration with local NGOs. According to statistics for 2006 produced by the Ministry of Justice and the United States State Department, some 341 cases of domestic violence had been submitted for legal advice, compared to 592 in 2005, 414 in 2004 and 314 in 2003. In October 2005, 50 cases of rape had been tried and 60 convictions handed down; and victims had received assistance according to their needs: accommodation, psycho-social support, legal assistance or representation, vocational training or child-care services. A variety of protection measures could be requested by defence attorneys, social workers and local NGOs including provisional measures, protection measures with no special status or urgent measures. In 2005, the Centre for the Protection of Women and Children, a local NGO, had dealt with 3,650 requests for assistance filed by victims of domestic violence, and it had already received 4,700 requests in the current year. Between January and October 2005, 77 protection orders had been issued, and 341 people had been arrested, giving rise to 1,045 prosecutions. The defendants had been found guilty in 52 of the 53 cases that had been tried before

October 2005, and penalties had ranged from a warning to prison sentences. The traditional place of women in a male-dominated society such as Kosovo partly explained why domestic violence was so widespread yet so few cases had been brought. The figures nonetheless showed that the number of complaints was rising, which suggested that society and the perception of domestic violence were evolving, and that victims could lodge a complaint more easily than before. Despite those positive developments, domestic violence remained a serious problem in Kosovo and eradicating it would need further efforts. At the present time, four shelter homes, two of them run by local NGOs and the other two by international NGOs, provided refuge for victims of domestic violence and trafficking. According to the Kosovo police service, 66 victims of domestic violence had been taken in during the year; and several other national and international NGOs were working to provide protection for women. Nonetheless, many incidents still remained in the shadows. Apart from preparing new legislation providing additional protection to domestic violence victims, UNMIK, in conjunction with local institutions, had supervised the organization of many information and awareness-raising campaigns on domestic violence. The “Generation of change” campaign had been conceived particularly on the basis of a study on how adolescents perceived domestic violence, and was being implemented by the UNMIK Gender Parity Office, in conjunction with a local research institute that had close contacts with young people. OSCE, in partnership with the Education Department, had organized interactive training events for young people from Kosovo, on how to recognize violent behaviour and how to protect themselves and seek help. Courses on the new legislation had also been provided to police agents, judiciary staff and social service workers.

39. Ms. ELIASZ (UNMIK) reported that, in 2005, OSCE had published a manual on domestic violence for social services to inform them of the various protection measures that existed and thus enable them to effectively assist victims. Moreover, under the new legal aid law adopted that year, victims could apply directly to the courts for protection measures, particularly in cases where other issues (childcare, or inheritance, for example) were involved.

40. Mr. BORG-OLIVIER (UNMIK), replying to question No. 9, said that for the moment there were no statistics on measures taken to prosecute the perpetrators of ethnically motivated crimes, the ethnicity of the victims, the number of convictions, the sentences imposed and the compensation of the victims of those crimes. Nonetheless crimes perpetrated against people belonging to an ethnic minority were not necessarily ethnically motivated. More detailed data would be provided to the Committee as soon as possible. With regard to KFOR rules of engagement, as the mandates of KFOR and UNMIK were totally independent, UNMIK could not say what KFOR was authorized to do under its rules of engagement, which were also confidential. That said, as KFOR had a mission to ensure protection of its staff and the Kosovo population, which involved using force where necessary, one could legitimately assume that such protection, and the means to guarantee it, extended to all Kosovo citizens without discrimination.

41. With regard to complaints that KFOR and the UNMIK police services had used undue force (question No. 10), UNMIK had no knowledge of complaints against it, and had been informed by KFOR that no complaint had been reported to it.

42. Replying to the question on lead contamination (Question No. 11), Mr. Borg-Olivier said that, after the discovery of a high concentration of lead in the

blood of the members of some families living in the three camps for displaced persons in the north of Kosovo, the competent authorities had taken immediate steps to identify where the lead pollution came from, in order to rapidly intervene and devise a strategy to deal thoroughly with problem. The pollution had apparently been caused by the fact that certain families had been illegally smelting vehicle battery accumulators in their homes. To reduce the effects of air pollution on health, the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) had established a list of foods to be provided to all members of the communities concerned — particularly foodstuffs rich in calcium, fruit and vegetables. Advice had also been given on personal hygiene; and soap, toothpaste, washing powder and household maintenance products had been distributed. An initial group of poisoned children would soon receive the appropriate care. The treatment itself lasted 28 days, but medical follow-up could last for six months. At the same time, UNMIK had taken over the former KFOR camp at Osterode and had launched a wide-ranging programme aimed at temporarily rehousing the Roma, Ashkali and Egyptian communities living in the three polluted camps. The installations had been totally renovated, particularly in terms of sanitation, and prefabricated buildings would complete the facility, which should be ready within a few days. Measures had also been adopted in the area surrounding the contaminated zone, and two new buildings would soon receive some of the inhabitants. Some of them had already left the camps to settle in safer buildings to the north of Mitrovica, but 272 people had decided to stay in the camps despite the fact that other solutions had been proposed to them. The current facilities made it possible to accept all members of the displaced Roma, Ashkali and Egyptian communities, and contained a kindergarten, a Youth and Women's Centre, a dispensary and playing fields. An international NGO was also working at grass-roots level to meet everyday needs. Resettlement had been envisaged for early 2006, but severe winter weather had delayed the process.

43. No specific programme had been put in place on the policing of vendetta violence (question No. 13).

44. Mr. McGOWEN (UNMIK) said that, according to police records, 425 people had been victims of trafficking in 2004; 56 people had been arrested for that offence, and 10 others had been arrested for the less serious offence of prostitution. In 2005, 445 people had been registered as victims of trafficking, and 33 people had been prosecuted; 12 others had been prosecuted for prostitution, and another 15 for facilitating prostitution. In the case of international personnel, the UNMIK delegation knew of only one case in which a staff member had been taken to court. The person in question had been arrested, his immunity had been lifted and he was currently being prosecuted in Kosovo. In general, UNMIK considered that a member of international staff who engaged in criminal activities could not claim immunity by virtue of belonging to UNMIK.

45. A number of inter-agency work groups had been set up, along with a special group to combat child trafficking. They met at least once a month, chaired by the Coordinator of the Fight against Trafficking in Kosovo. In March 2006, a new policy had been implemented to directly assist victims, whether minors or adults. Repatriation, reintegration and social integration projects were currently being implemented, sponsored by the Ministry of Employment and Social Affairs, in conjunction with local NGOs; and research and data-collection activities were also ongoing. Information and awareness-raising campaigns had been carried out every

year since 2003 by OSCE, in partnership with various ministries and the International Organization for Migration. OSCE was also working in close collaboration with the Advisory Office on Good Governance to ensure full execution of the Plan of Action to Combat Human Trafficking in Kosovo. Although significant progress had certainly been made in that domain, a tremendous amount remained to be done.

46. Ms. ELIASZ (UNMIK) pointed out that very few cases of human trafficking prosecutions had led to convictions. That was partly explained by the inadequacy of witness protection measures, which did not provide women wishing to file a complaint sufficient guarantees against reprisals in Kosovo or of return being able to return to their country. The United Kingdom authorities were providing technical assistance under the witness protection programme (voice distortion device, private facilities and equipment for examinations) which ought to help women to give evidence in secure conditions. There were numerous victims of child trafficking, who were either sold within Kosovo itself or taken there to be sold. The World Bank had implemented a programme to combat poverty in Kosovo, which should make it possible to prevent some families having to sell their children to survive. Trafficking was a complex problem, for which the authorities were taking steps to provide both penal and social solutions; and UNMIK and the Provisional Institutions of Self Government would welcome the Committee's guidance on how to improve victim protection and combat the causes of trafficking, specifically poverty.

47. Mr. BORG-OLIVIER (UNMIK), replying to the question on detention without an arrest warrant by the UNMIK police services and KFOR (question No. 15), recalled that following the NATO incursion in 1999, the law and order system in Kosovo had broken down. Security Council Resolution 1244 (1999) had then given KFOR responsibility for maintaining order. At the start of its mandate, it had thus placed individuals of all ages in detention, but the number of arrests and detentions had declined significantly since October 2001. In the absence of structures guaranteeing the administration of penal justice, KFOR had been forced to act repeatedly outside the judicial framework, based on its Security Council mandate. Exercise of the power of arrest and detention by KFOR was subject to a number of restrictions; in practice, only persons representing a threat to KFOR or the civil authorities, in circumstances likely to threaten security, could be subject to such a measure. International human rights standards were respected and KFOR could not use its power to gather information that was a matter for the intelligence services. UNMIK had always maintained a policy of collaborating with KFOR, to enable the arrested suspect to be transferred to civil remand centres within 18 hours of arrest. KFOR only used detention as a last resort. In general, although there had been detentions of that type in the past, especially in cases where the KFOR commander did not want to pass to the court data that were a matter for the intelligence services; there were practically none any longer.

48. In 2002, KFOR had specified the rights of persons held in their custody (the right not to be arbitrarily arrested, to be informed of the reasons for the detention in a language that they understood, to communicate with the attorney of their choice, and to challenge the measure before the KFOR commandant). Unfortunately, the data needed to evaluate the number of cases of detention and respect for the rights of detainees were not available. In exceptional cases, the Secretary-General's Special Representative had been forced to order the arrest and expulsion of persons present in Kosovo. Nonetheless, he had done so respecting the provisions set out in

the memorandum he had sent for that purpose to the Secretary-General (such a decision could be taken in exceptional circumstances when there were no other legal solutions available, the facts of the case had to justify the decision, the person to be detained had to represent a public security risk that made intervention by the government authority essential). A detention order had been issued in a case about which several human rights NGOs had expressed major concern, since the individuals held in custody had not had the right to appeal the decision before a court, since it included sensitive information of interest to the intelligence services which was not susceptible to judicial review. The persons in question had been released following a ruling by a panel of international judges. In total, six people had been held under that type of order, and there had been no such case since 19 December 2001.

49. The UNMIK police services could only arrest a suspect without a warrant in special circumstances and for the purposes of establishing his or her identity or verifying an alibi, or for some other imperative reason. Since 2004, they had also been able to hold a person who was subject to prosecution. Prior to the adoption of the Provisional Criminal Procedure Code, they had also been able to arrest a suspect without a warrant in the framework of a judicial investigation of an offence involving organized crime or cross-border criminality. The period of detention was limited to 72 hours. Since 2004, anyone arrested without a warrant had to be brought before a judge immediately. There were a number of judges responsible for reviewing cases of arrest by the police services without a warrant. Apparently, however, suspects were still often held for the full 72 hours before being brought before a judge. Irrespective of whether the suspect was arrested in the framework of police powers or under a judicial warrant, he or she had to be informed of the reasons for their arrest and of their right to challenge the detention, together with the procedures for exercising that right. In the case of detention under police powers, the Provisional Criminal Procedure Code had shortened the notification period from 24 hours to six. When the detention was based on an arrest warrant, the authorization in question had to be shown to the suspect. OSCE had criticized the reasons invoked in judicial warrants. Under the Provisional Criminal Procedure Code, a suspect detained by the police services, or his or her counsel, could consult the register in which the reasons for the arrest were recorded. A *habeas corpus* remedy had been introduced in April 2004, which meant the legality of detention could be challenged at any time before the prosecuting judge or trial judge; the hearings in question were open to the public. The petition in question had to establish a *prima facie* case that the reasons for the detention had been invalidated by events or the discovery of new facts, or that the detention had been illegal for some other reason. If those requirements were satisfied, if the detention period ordered by the court was complete, or if the duration of detention exceeded the established deadline, the judge would order immediate release of the detainee.

50. Referring to the internal inspections of conditions of detention in correctional facilities and police stations (Question No. 16), Mr. Borg-Olivier said that the Inspection Bureau of the Kosovo Police Services, the creation of which had been decided upon in December 2005, was currently being set up. It would perform internal inspections with full independence and should be operational as from 2007. For its part, OSCE regularly controlled conditions in police cells and had produced a number of reports on the subject, which the police services had used as a basis for improvements. European Union inspectors and representatives of the International

Red Cross had visited Kosovo prisons in the past; and in January 2004, the UNMIK Justice Department had published two reports on conditions in correctional facilities in Lipljan and Dubrava.

51. The CHAIRPERSON invited Committee members to put their additional questions orally.

52. Mr. O'FLAHERTY noted first of all that it was the first time that an inter-governmental organization administering a territory had presented a report to the treaty body on the respect for human rights in that territory, and he applauded that fact. He also welcomed the inclusion of a representative of the Provisional Institutions of Self Government of Kosovo in the UNMIK delegation. Nonetheless, as those institutions played such an important role, he would have liked them to have had a larger representation in the delegation, and he would also have preferred to see a larger delegation as a whole, given the scope and diversity of the Committee's questions. While he welcomed the fact that the first part of the report consisted of the core document forming part of report submitted by UNMIK to the treaty bodies, it was regrettable that the report as such did not address the implementation of articles 1, 2, 3, 16 and 26 of the Convention. Moreover, it basically contained information of a legislative nature and did not say enough about the status of the facts. Continuing to refer to the report, Mr. O'Flaherty wanted to know whether the provisional institutions had participated in its production and, if so, how; and he wondered why all the suggestions made by the Ombudsperson for producing the report had apparently been rejected.

53. The UNMIK delegation had stated that it had known of only one case in which the Covenant had been invoked before a court. Mr. O'Flaherty wondered whether that meant that there were perhaps other cases that UNMIK did not know about. He also wanted more complete information on the reasons why the Ombudsperson had disqualified himself from reviewing the conformity of the acts of UNMIK agents with international human rights standards and, more generally, the reasons invoked for ending his mandate. On that point, eminent personalities and institutions, particularly the Parliamentary Assembly of the Council of Europe, had called for an international Ombudsperson to be maintained in Kosovo. It would also be useful to know why UNMIK saw the human rights advisory group as a suitable replacement for the institution of Ombudsperson, since the advisory group would enjoy much less independence and authority. As a United Nations structure, UNMIK should take its inspiration from the Paris Principles and be at the forefront of promoting good practices in that field. Mr. O'Flaherty also asked for clarification on the 114 cases currently suspended pending measures from the Special Representative of the Secretary-General. He also wanted to know more about the procedure that enabled UNMIK to re-examine the recommendations of the Ombudsperson and to be sure that they were all inspired by the aim of ensuring full protection of human rights. As the UNMIK delegation had said that a recommendation made by the Ombudsperson had been rejected, Mr. O'Flaherty asked for clarification on the subject.

54. In its replies to question No. 3, on measures taken to ensure the need for legal certainty, the UNMIK delegation had said it was unaware of difficulties in that domain; but that was contradicted by various sources, particularly an Amnesty International report that mentioned legal vagueness at different levels giving rise to multiple problems, particularly in criminal procedures. Mr. O'Flaherty also mentioned the case of two male victims of homophobic-motivated aggression in

December 2005, who had gone to a police station to file a complaint and had been told that the police services could not register their complaint because homosexuality was illegal in Kosovo. As that was no longer the case, Mr. O'Flaherty wanted to hear the opinion of the UNMIK delegation on the subject.

55. On the issue of knowing whether UNMIK was able to guarantee full respect for human rights in the north of Kosovo as well, the delegation's replies were insufficient and had not enabled the Committee to ascertain the situation in practice in that region. It would be useful to know what measures UNMIK planned to take to ensure that human rights were protected in practice in the north of Kosovo. It would also be useful to know what the provisional institutions were doing or intended to do to improve the human rights situation in that region, and what UNMIK and the institutions in question were doing or intended to do to engage the local authorities in the exercise of their human rights responsibilities. Lastly, Mr. O'Flaherty wanted to hear the UNMIK opinion on the parallel Serb structures and the problems posed by a very existence.

56. The delegation had only partially replied to the question on the institutional framework for implementing UNMIK human rights responsibilities under Security Council Resolution 1244 (1999), and Mr. O'Flaherty wanted further information particularly on how UNMIK was making sure that the commitment to human rights was reflected in all its institutions and all of its actions. As the Human Rights Oversight Committee apparently no longer met, Mr. O'Flaherty wanted to know why and whether alternative solutions had been put in place. He also wanted to know why the inter-pillar working group on human rights had not met for several months. The delegation had given highly detailed and useful information on steps taken to promote equality between men and women, and it would be good if it were to do the same with regard to other aspects of human rights. In particular, it should indicate how UNMIK was assisting the provisional institutions to develop their own capacity to promote and protect human rights and what role the Office of the Commissioner for Human Rights had to play in that domain. The delegation had given numerous and detailed pieces of information on human trafficking, showing that OSCE and UNMIK took the problem very seriously and were fully aware of the shortcomings and gaps in their actions. Mr. O'Flaherty also hoped that the Committee could accede to the delegation's request for assistance on that matter.

The meeting rose at 6.00 p.m.