

**NO LAW BUT ORDER:
JUSTICE AND SECURITY SECTOR REFORM
IN KOSOVO**

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ABSTRACT

Reforming the justice and security sectors in post-conflict countries can be extremely difficult. This paper seeks to examine the concept of justice and security sector reform and to analyze the process through the case of Kosovo. In particular, the paper seeks to answer the following question: why has there been more success in reforming the security sector than the justice sector in Kosovo?

Keywords: Kosovo; security sector reform; post-conflict reconstruction; police; judiciary

Subject Terms: Kosovo – History – Civil War, 1998-1999; Post-conflict reconstruction; Administration of – Kosovo; Internal security

To my husband Evan and my family:

I couldn't have done it without you

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INTRODUCTION

“Although security sector reconstruction must lay the groundwork for long-term reform, it must also build immediate capacity for the security sector to bring about order and stability.”¹

There are numerous challenges in post-conflict reconstruction. Most experts agree that in post-war countries the provision of security is a top priority and necessary precondition for rebuilding institutions. Reforming the security sector² aims to establish an environment based on development, rule of law, good governance and local ownership by security actors. The most basic definition of justice and security sector reform (JSSR) is the reconstruction of the structure, controlling organizations and missions of each sector.³ But what constitutes security? In a general sense, it is a concept similar to safety but the added emphasis is on the protection from physical violence. For the purpose of this paper, security is not only restricted to an individual’s safety, but also that of a group as a whole.⁴

This paper will examine the reforms undertaken in the security and judiciary sectors in post-conflict Kosovo and in particular, will seek to answer the following

¹ Seth G. Jones and others, *Establishing Law and Order After Conflict* (California: Rand Corporation, 2005), 4.

² Please note the terms justice and security sector reform, JSSR, and security sector (to encompass both the police and judiciary) are all used interchangeably throughout the paper.

³ Charles T. Call, “What we know and don’t know about post conflict justice and security reform,” in *Constructing Justice and Security After War*, ed. Charles T. Call, 9, (Washington, D.C.: United States Institute of Peace Press, 2007).

⁴ Call, *What We Know and Don’t Know*, 8.

question: why has there been more success in reforming the security sector than the justice sector in Kosovo?⁵ The reforms undertaken by the international community in the judiciary and the security sector began at almost the same time and yet “[t]he Kosovo justice system is generally regarded as the weakest of Kosovo’s institutions.”⁶ A review of the evidence presented in this paper will show there were a number of factors, both political and structural, which kept reforms in the judiciary from being implemented correctly. In particular, I would point to an unclear mandate in the territorial administration, a lack of forethought and planning in the judiciary, budgetary constraints, and the absence of partnership between locals and internationals as well as between international organizations in Kosovo. Together, these factors contributed significantly to the problems in the judiciary in Kosovo. All of these will be explored in detail in the paper.

It is important to understand not only how the judiciary encountered difficulties but also why. If security and justice reforms really are a prerequisite for reconstruction, why has the international community had so much trouble getting it right? The question is highly relevant to both Kosovo and the international community itself in view of future peace-building missions they may take on. Moreover, an analysis of what went right and wrong in both sectors can provide some important lessons for both Iraq and Afghanistan.

⁵ Please note while Kosovo declared independence on February 17, 2008 this paper will only examine UNMIK and its partners’ attempts at security and judiciary reforms. It is much too early to tell how Kosovo’s independence will affect these sectors.

⁶ Iain King and Whit Mason, *Peace at Any Price: How the World Failed Kosovo* (New York: Cornell University Press, 2006), 236.

The aim of this paper is to assess the reforms undertaken in each sector and reach some conclusions as to why the judiciary has encountered so many difficulties in comparison to the security sector. The first section will define the concept of justice and security sector reform and explain its importance in post-conflict reconstruction. The next section will introduce the Kosovo case study and examine the history of the conflict and how it led to the creation of the United Nations Mission in Kosovo (UNMIK). The sections thereafter will discuss the security and justice sectors in Kosovo and analyse what reforms were undertaken as well as how they were implemented. Finally, the paper will conclude with an examination of why the security sector has experienced greater success in reforming than the judiciary and what the international community can learn from Kosovo.

JUSTICE AND SECURITY SECTOR REFORM

Concepts Defined

It is important to define the term security sector from the outset. In a narrow sense, it is composed of organizations responsible for the protection of the state and its communities. In a broader sense, the security sector includes three primary groups: security forces, including the national police, who use force legitimately to protect the state and its citizens; oversight institutions which manage these groups; and lastly, the institutions responsible for guaranteeing the rule of law, including the judiciary.⁷ These three groups are interdependent. There is some debate about how widely the security sector should be defined but the judiciary is included in this paper because effective police reform cannot function properly without a good judicial and criminal justice system.⁸

Justice and security sector reforms consist of a broad range of activities but one of the unifying factors is the focus on democratic governance.⁹ This emphasis comes from the lack of attention by Western countries paid to the importance of accountability, rule

⁷ Hans Born, "Introduction," in *Security Sector Reform: Institutions, Society and Good Governance*, eds. Alan Bryden and Phillipp Fluri, 43 (Germany: Nomos Verlagsgesellschaft, 2003).

⁸ Marina Caparini, "Police Reform: Issues and Experiences," in *Security Sector Reform: Institutions, Society and Good Governance*, eds. Alan Bryden and Phillipp Fluri, 85 (Germany: Nomos Verlagsgesellschaft, 2003).

⁹ Nicole Ball, "Dilemmas of Security Sector Reform," in *Security Sector Reform: Potentials and Challenges for Conflict Transformation*, eds. Clem McCartney, Martina Fischer and Oliver Wils at Berghof Research Center for Constructive Conflict Management, <http://www.berghof-center.org/>.

of law, transparency and participation in the Cold War era.¹⁰ In the 1990s, it became evident security bodies needed to be part of the solution in post-conflict situations. Nicole Ball suggests that while an activity may contribute to enhancing security, it may not be part of security sector reform. This distinction is more than academic, as JSSR as a concept was designed and developed to ensure that governance-related aspects of security such as transparency and democratic civilian control over security forces – historically ignored – received enough attention.¹¹ Seth Jones argues that “[e]stablishing security is also important over the long run, since a state’s prospects for stability depend on viable police, security forces, and justice structures that can establish order.”¹²

A definition of what constitutes the justice and security sectors cannot have too narrow a focus – for instance one including only the military. This is because reforms in these sectors cannot only be about disarmament but security in the wider sense – of people within society. Conversely, too broad a focus – one including HIV and other human security issues – can create a lack of clarity concerning the core of needed reforms.¹³ The terms justice and security themselves also need to be defined. Security has already been described in the introduction as the safety of an individual or group from physical violence. The justice system is defined as the ability to resolve social

¹⁰ Ball, *Dilemmas of Security Sector Reform*, 46.

¹¹ Ball, *Dilemmas of Security Sector Reform*, 46.

¹² Jones and others, *Establishing Law and Order After Conflict*, 7.

¹³ Herbert Wulf, “Security Sector Reform in Developing and Transitional Countries,” in *Security Sector Reform: Potentials and Challenges for Conflict Transformation*, eds. Clem McCartney, Martina Fischer and Oliver Wils at Berghof Research Center for Constructive Conflict Management, <http://www.berghof-center.org/>.

disputes without resorting to violence even when the parties disagree with the specific outcome.¹⁴

Characteristics of Post-Conflict JSSR

German sociologist Max Weber held that the essential quality of a modern state was to claim the monopoly of the legitimate use of force within its borders.¹⁵ Providing security and rebuilding institutions in a post-conflict environment is vital. The immediate concern is to establish order to prevent criminal or insurgent groups from securing a foothold in society. Long-term security will depend on a viable police force and justice structures to deal with internal threats.¹⁶ A post-conflict environment is considered stable when the population is free from major threats to their safety and where national and international actors can rebuild political, economic and other governing institutions. Seth Jones suggests “[s]ecurity sector reform has been recognized as a vital precursor to the achievement of good governance and sustainable development.”¹⁷

There are different approaches to justice and security sector reform not only in the way it is defined but also how it is conceptualized. JSSR is meant to address security problems and improve the situation through institutional reforms.¹⁸ The reconstruction and reform of security and justice sector institutions in post-conflict societies has become

¹⁴ Call, *What We Know and Don't Know*, 8.

¹⁵ Max Weber, *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), 77-78.

¹⁶ Jones and others, *Establishing Law and Order After Conflict*, 2.

¹⁷ Jones and others, *Establishing Law and Order After Conflict*, 4.

¹⁸ Wulf, *Security Sector Reform in Developing and Transitional Countries*, 9.

a priority for the international community over the last decade. The concept has become popular because it has the ability to integrate a number of different policy objectives under one umbrella. The approach has to be comprehensive, however, taking into account all jurisdictions with the capacity to use force, the authority that manages them and the judicial and parliamentary systems which oversee them. Security actors must also operate efficiently and cost-effectively, and the sector as a whole must be subject to democratic control.¹⁹ Perhaps most important with respect to justice and security sector reform in post-conflict society is the focus initially is not on building institutions but creating the conditions required to make it possible.²⁰

It is difficult to generalize on the nature and required steps of JSSR as the political, economic, social, cultural and regional conditions of each country undergoing reforms must be taken into account.²¹ At the same time, however, a central prerequisite is the will to reform on the part of various actors. Herbert Wulf ranks Kosovo as a country in transition to democracy and suggests its prospects for reform are good but believes there is an element of danger in a society where adherence to traditional structures can constrain necessary reforms.²² He points specifically to the threatened loss of privileges by the security elite as a roadblock to reforms.²³ Moreover, local elites are often not interested in transparency, accountability, and legitimacy while external actors

¹⁹ David M. Law, "The Post-Conflict Security Sector," Geneva Centre for the Democratic Control of Armed Forces, <http://www.dcaf.ch/>.

²⁰ Law, *The Post-Conflict Security Sector*, 3.

²¹ Wulf, *Security Sector Reform in Developing and Transitional Countries*, 13.

²² Wulf, *Security Sector Reform in Developing and Transitional Countries*, 14.

²³ Wulf, *Security Sector Reform in Developing and Transitional Countries*, 15.

are often not interested in long-term commitment.²⁴ One of the biggest challenges in security sector reform in a post-conflict environment becomes local ownership. It is considered a condition for JSSR, if not, efforts can become counter-productive and yet there are inherent dangers in allowing too much local control too early as we will see in Kosovo's case. Before exploring this in greater depth, the paper now turns to an examination of Kosovo's past in order to fully understand what has led the country to its present situation.

²⁴ Albrecht Schnabel and Hans-Georg Ehrhart, "Post-Conflict Society and the Military: Challenges and Problems of Security Sector Reform," in *Security Sector Reform and Post-Conflict Peacebuilding*, eds. Albrecht Schnabel and Hans-Georg Ehrhart, 9 (New York: United Nations University Press, 2005).

KOSOVO

Background to the Conflict

Understanding the context of the Kosovo problem, and therefore the inherent challenges of justice and security sector reform requires some knowledge of Kosovo's history. King and Mason suggest "[b]oth Albanians and Serbs use history as a weapon in contemporary political struggles, but they use it differently."²⁵ Fighting in Kosovo goes back several centuries and revolves around the rightful ownership over land and the national ideologies of Albanians and Serbs. These are dominated by historical myths.²⁶ Serbia's Kosovo myth tells the tale of the 14th century Battle of Kosovo. It is a story of military defeat and moral victory – where the Serbs lost their kingdom to the Ottoman Empire. According to the myth, the Serb commander in chief, Prince Lazar, was given a choice by God between the two kingdoms and by choosing the heavenly kingdom, God made Serbs the 'chosen people.'²⁷ The battle gained more importance throughout the centuries and finally came to be seen as the birth of modern Serbia. Albanians in Kosovo counter they were there first, long before the Slav invasion of the Balkan Peninsula, in the 6th century in the form of Illyrians.²⁸ For Albanians, Kosovo also marks an important place in the development of Albanian nationalism. In 1879, a political organization

²⁵ King and Mason, *Peace at Any Price*, 25.

²⁶ Mark Winther, "Kosovo: A Gordian Knot," *Baltic Security and Defence Review* 9 (2007): 80.

²⁷ Lene Kühle and Carsten Bagge Laustsen, "The Kosovo Myth: Nationalism and Revenge," in *Kosovo Between War and Peace: Nationalism, Peacebuilding and International Trusteeship*, eds. Tonny Brems Knudsen and Carsten Bagge Laustsen, 20 (London: Routledge, 2006).

²⁸ King and Mason, *Peace at Any Price*, 25.

called the League of Prizren was formed to support the Ottoman Empire's control over Albanian-inhabited parts of the region. The aim of the League was to prevent the break-up of the Ottoman Empire by the Great Powers. From the 19th century onwards, the competing national movements of Albanian and Serb inhabitants increasingly shaped the story of Kosovo as did the majority and minority balance of the population. By the last quarter of the 19th century, there was an Albanian majority but still a sizeable Serb minority.²⁹

Control over Kosovo changed hands a few times during the First and Second World Wars until it became part of Yugoslavia as a province of Serbia. Kosovo's autonomy was enshrined in the Yugoslav Constitution of 1974³⁰ where the province was given equal status with other Republics, able to plan its own budget, direct its economic and cultural development and even some areas of foreign policy.³¹ The Constitution also expanded Kosovo's autonomy further by giving the province control over banks, the police, schools and the judicial system. Albanians in Kosovo could now study in their own language, practice their own religion and follow their own traditions.³² The differences between Albanians and Serbs in Kosovo are clearly visible. Albanians are non-Slav and primarily Muslims while Serbs are Slavs and Orthodox Christians. Each

²⁹ Paul Latawski and Martin A. Smith, *The Kosovo Crisis and the Evolution of Post-Cold War European Security* (Manchester: Manchester University Press, 2003), 5.

³⁰ Snezana Trifunovska, ed., *Yugoslavia Through Documents: From its Creation to its Dissolution* (Dordrecht: Martinus Nijhoff Publishers, 1994), 224-233.

³¹ Noel Malcolm, *Kosovo: A Short History* (New York: New York University Press), 327.

³² Stacey Sullivan, *Be Not Afraid, For You Have Sons in America: How a Brooklyn Roofer Helped Lure the U.S. into the Kosovo War* (New York: St. Martin's Press, 2004), 30.

community speaks very different languages and for Albanians to be able to follow their own traditions was very important.³³

The period leading up to the death of Yugoslav President Marshal Josip Broz Tito in 1980 was an optimistic time for educated Albanians. The province's League of Communists underwent rapid "Albanianization" after the constitutional reforms of the 1970s.³⁴ The proportion of Albanians in public sector jobs increased, especially in the police force, education, health and judicial sectors. A quota system enshrined in the 1974 Constitution led to the dismissal of Serbs in Kosovo and ensured Albanian dominance in these institutions. The quota system limited Serbs and Montenegrins, in 1971 20.9 percent of the population to 20 percent of jobs in the public sector.³⁵ In 1981, university students frustrated by overcrowding and bad food began protesting which spread to other cities outside Pristina. Their protests went on for two months until the university was closed and the students disbursed by tear gas. The unifying factor between their demonstration and the other protests in other cities in Kosovo was the slogan of a "Kosovo Republic" – that is, equal status with the other republics in Yugoslavia.³⁶ In the Serbian community, the 1980s were not kind to Kosovo Serbs. The Serb population in Kosovo began to complain more and more about ethnic discrimination, harassment and attacks by Albanians. The police ignored their complaints and feeling unsafe, Serb families started to leave Kosovo. Worsening economic conditions in Serbia and the

³³ Winther, *Kosovo: A Gordian Knot*, 80.

³⁴ Ken Simons, "Civil Society and the Kosovo Crisis, 1981-1999," in *The Lessons of Yugoslavia*, ed. Metta Spencer, 303-304 (New York: JAI/Elsevier, 2000).

³⁵ Simons, *Civil Society and the Kosovo Crisis*, 304.

³⁶ Simons, *Civil Society and the Kosovo Crisis*, 305.

political and social uncertainty created by Tito's death in 1980 had Serbs feeling victimized.³⁷

In 1987, Slobodan Milosevic, the recently elected President of the Communist Party of Serbia, went to Kosovo to listen to Serb grievances and assess the tensions between the two communities. There in Kosovo, Milosevic realized how he would ascend to the Presidency. In front of a large crowd, Milosevic spoke at length of the mythical status of Kosovo and the rights of Serbs living there. He also uttered, on camera, the words on which his entire political future would be built: "no one should dare beat you!"³⁸ and thus pledged that Serbia would never let go of Kosovo.

Exploiting the Serb situation in Kosovo turned Milosevic into a national leader and helped him take over the communist party machine. By the end of 1987, he became the President of the Serbian League of Communists and would spend the next year extending and consolidating his power. By the fall of 1988, Milosevic took steps in Kosovo by removing two leading Albanians in the provincial party machine and replacing them with more compliant figures who would cooperate in dismantling Kosovo's autonomy.³⁹ In January 1989, Milosevic's supporters, now dominating Kosovo's Parliament, put forward a proposal to abolish autonomy and give Belgrade control over the police, courts, defence, the economy and education. The proposal failed as Albanians went on strike and brought the province to a standstill. However, by March

³⁷ King and Mason, *Peace at Any Price*, 35.

³⁸ Malcolm, *Kosovo: A Short History*, 341.

³⁹ Malcolm, *Kosovo: A Short History*, 342.

23, 1989, Milosevic managed to get the resolution pushed through Parliament and revoked Kosovo's autonomous status.⁴⁰

While Albanians rioted in the streets, the Serbian Parliament crafted a series of anti-Albanian decrees designed to change to population ratio in Kosovo. They took control of the medical system, television and radio stations, shut down Albanian language newspapers, re-imposed a Serbian curriculum in schools, forbade the teaching of the Albanian language, removed all Albanian books from libraries, made Pristina University a Serb-only institution and fired all Albanian judges and police officers. In all, an estimated 80 000 Albanians lost their jobs.⁴¹ Over the next few months, "Kosovo became an apartheid province in which a tiny Serb minority ruled the province's two million Albanians with impunity."⁴² For Milosevic, Kosovo was central to the radical nationalism that brought him to power in the late 1980s and he intended to rule it with an iron fist.⁴³

After their autonomy was stripped, Kosovo's Albanian citizens began a campaign of passive resistance. With their assembly and government dissolved by Serbian authorities, Kosovo's Albanian leaders managed to meet secretly and hold province wide elections in 1992 using private houses as polling stations to re-establish a working government.⁴⁴ Dr. Ibrahim Rugova founded the *Democratic League of Kosovo* (LDK)

⁴⁰ Malcolm, *Kosovo: A Short History*, 344.

⁴¹ Sullivan, *Be Not Afraid*, 64-65.

⁴² Sullivan, *Be Not Afraid*, 65.

⁴³ Thijs W. Brocades Zaalberg, *Soldiers and Civil Power: Supporting or Substituting Civil Authorities in Modern Peace Operations* (Amsterdam: Amsterdam University Press, 2006), 291.

⁴⁴ Malcolm, *Kosovo: A Short History*, 346-347.

and became President of the Kosovo Republic. Rugova's policies were simple: prevent violent revolt, internationalize the problem, deny the legitimacy of Serbian rule by boycotting elections and create parallel state institutions.⁴⁵ The newly elected President toured the US and soon the LDK set up offices in New York, Boston, Detroit, Chicago and across Europe to collect a voluntary three percent tax on émigrés' income.⁴⁶

Aided by a large Albanian diaspora, they set up their own schools, medical clinics and even collected taxes developing a parallel society. Milosevic's purges made unemployment in Kosovo sky-high but the local institutions created by the Kosovo government made it possible for thousands of doctors and teachers to work.⁴⁷ Albanians and Serbs were living in co-existing worlds. Serbs controlled the police and judiciary which would thereafter have a major impact on post-conflict Kosovo. The international community paid little attention to the problems in the province despite Serbia's increasingly repressive conduct against regular Albanian citizens. The wars in Bosnia and Croatia occupied their attention.⁴⁸ Through the early 1990s, there was little violence in Kosovo but a dramatic shift occurred in 1995. The Dayton Peace Accords were signed to end the war in Bosnia but the Kosovo problem was not on the agenda. While the leaders of Bosnia, Croatia and Serbia met inside Wright-Patterson Air Force Base in Dayton, Ohio to make peace, "[o]utside, 200 Albanian-Americans demonstrated so

⁴⁵ Malcolm, *Kosovo: A Short History*, 348.

⁴⁶ Sullivan, *Be Not Afraid*, 76.

⁴⁷ Sullivan, *Be Not Afraid*, 77.

⁴⁸ Lene Mosegaard Sobjerg, "The Kosovo Experiment: Peacebuilding Through an International Trusteeship," in *Kosovo Between War and Peace: Nationalism, Peacebuilding and International Trusteeship*, eds. Tonny Brems Knudsen and Carsten Bagge Laustsen, 57 (London: Routledge, 2006).

loudly they could be heard inside the negotiating room.”⁴⁹ They were protesting their exclusion from the talks and demanding the US mediate talks between Rugova’s government and Belgrade to help bring an end to their oppression. When their protests went unheeded, it became clear to Albanians in Kosovo that six years of passive resistance had led to nothing. Albanians in Kosovo were especially upset to see that Bosnian Serbs had received a form of territorial recognition with the creation of Republika Srpska within the Bosnian state and began to ask themselves if violence did in fact pay.⁵⁰ Rugova’s policies of non-violent resistance would eventually lose out to more extreme nationalist forces – namely, a rising guerrilla army.

The *Kosovo Liberation Army* (KLA) was founded in 1993 but its character and intensity changed after the Dayton Accords.⁵¹ Fed up that Rugova’s non-violent resistance had led to nothing, the *Popular Movement for the Liberation of Kosovo* (LPK) emerged and from these initial cells came the KLA.⁵² Two months after the accords were signed, in February 1996, bombs went off in five refugee camps in Kosovo. These were Serb refugees who had fled from the wars in Bosnia and Croatia.⁵³ No one was injured but the KLA immediately claimed responsibility and continued to attack throughout the spring and summer of 1996. The guerrilla army grew in numbers and by 1997 had rapidly and violently escalated the conflict with Yugoslavia.

⁴⁹ Lee Michael Katz, “Talks Open on Frosty Note: Bosnia Foes Forced into Handshakes,” *USA Today*, November 2, 1995, 6A.

⁵⁰ William G. O’Neill, *Kosovo: An Unfinished Peace* (London: Lynne Rienner Publishers, 2002), 22.

⁵¹ O’Neill, *Kosovo: An Unfinished Peace*, 23.

⁵² Sullivan, *Be Not Afraid*, 95.

⁵³ Sullivan, *Be Not Afraid*, 95.

The catalyst which transformed the KLA into a paramilitary force was totally unplanned. Since 1991, the country of Albania had enjoyed a high rate of economic growth, in fact, one of the highest in Europe. But this record increase was deceiving as it was based on pyramid investment schemes which began to run dry by January 1997. By then, over two-thirds of the Albanian population had money tied up in the schemes. In March 1997, the pyramid collapsed and bilked hundreds of thousands of Albanians of their life savings. They began rioting in the streets and rather than put down the riots, the police and army abandoned their posts and state armouries. Overnight, hundreds of thousands of AK-47s, tons of explosives, bullets and shells could be found on the black market. The KLA reaped the benefits and bought up hundreds of weapons and were now able to expand their operation.⁵⁴ Thanks to the economic crisis in Albania, “[t]he KLA had overwhelming popular support; a steady supply of money, arms, and fighters; and a safe haven across the border in Albania, where the guerrillas could receive training.”⁵⁵ Perhaps one of the most interesting aspects of the funding for the KLA is that most of it came from an Albanian contractor from Brooklyn named Florin Krasniqi. He organized and raised money through the Homeland Calling Fund after his cousin Adrian was killed in Kosovo. Adrian was widely believed to be one of the first KLA guerrillas to die in uniform. By the time the North Atlantic Treaty Organization (NATO) intervened in Kosovo, Florin had raised 30 million US dollars and helped to arm the KLA with guns, radios, fatigues and satellite phones.⁵⁶

⁵⁴ Sullivan, *Be Not Afraid*, 123-126.

⁵⁵ Sullivan, *Be Not Afraid*, 183.

⁵⁶ Sullivan, *Be Not Afraid*, 5-6.

In the summer of 1998, tensions between the KLA and Serb police and paramilitary forces escalated into armed conflict. Serbian authorities responded to small scale KLA attacks with excessive force, destroying towns and forcing hundreds of thousands to leave their homes.⁵⁷ The UN began to take note of the problems between Belgrade and Kosovo and especially the growing violence between Serb paramilitary forces and the KLA. Thus, they passed Security Council Resolution 1199. The resolution created the Organization for Security and Cooperation in Europe's (OSCE) Kosovo Verification Mission (KVM) that helped monitor compliance of a ceasefire and withdrawal of Serb security forces in Kosovo.⁵⁸ On January 15, KVM monitors found the bodies of 45 Albanian civilians in Racak. Images of the Racak massacre were used by the media in the same way as the 1995 Srebrenica massacre to focus international attention on the escalating situation.⁵⁹ New York Times journalist Steven Erlanger wrote:

“Like the 1995 Srebrenica massacre of thousands of Muslims in Bosnia, which so horrified the world that it finally moved to end the killing, Racak has become a symbol of Serb aggression. And it has further hardened ethnic Albanian resistance to Serb control.”⁶⁰

NATO brought the Serbs and the KLA together to hold peace negotiations in Rambouillet, France in February 1999 in an attempt to diffuse the situation. But there

⁵⁷ Tom Perriello and Marieke Wierda, “Lessons from the Deployment of International Judges and Prosecutors in Kosovo,” International Center for Transitional Justice, <http://www.ictj.org/en/index.html>.

⁵⁸ United Nations Security Council, “Resolution 1199 (1998),” UN, <http://www.un.org/peace/Kosovo/98sc1199.htm>.

⁵⁹ Lenard J. Cohen, *Serpent in the Bosom: The Rise and Fall of Slobodan Milosevic* (Colorado: Westview Press, 2002), 307-308.

⁶⁰ Steven Erlanger, “Kosovo Killings Harden Resistance and Jolt West,” *The New York Times*, January 25, 1999, A1.

would be no direct negotiations between the Serb and Albanian delegations – envoys were used instead. The peace plan proposed included: an interim three year period of Kosovo ‘self-government’ where the province would still be *de jure* part of Yugoslavia and Serbia but would gain substantial political autonomy, separate legislative, executive and judicial institutions, representation in the Yugoslavian and Serbian assemblies, the demilitarization of the KLA over a four month period, the withdrawal of Serbian forces, a NATO-led international force authorized by the UN to provide security in Kosovo and after the three years elapsed, a conference on Kosovo’s future.⁶¹ US pressure got the Albanian delegation to accept the peace plan. The Serb delegation felt Albanians received special assurances from the US and rejected the plan. Detecting a Serbian offensive about to begin, the OSCE pulled the KVM monitors out of Kosovo.⁶² Faced with an escalating humanitarian crisis and with the UN Security Council paralyzed by permanent member vetoes and thus unable to assist, NATO decided to intervene and began bombing targets in Serbia on March 24, 1999 almost ten years to the day Serbia had revoked Kosovo’s autonomous status. Albanians in Kosovo finally had the international attention they had been looking for.

The Mandate

On June 9, 1999, after an 11 week NATO bombing campaign, Belgrade and NATO signed a Military-Technical Agreement that led to the withdrawal of the Federal Republic of Yugoslavia (FRY) forces from Kosovo.⁶³ Milosevic finally conceded to

⁶¹ Cohen, *Serpent in the Bosom*, 309-310.

⁶² Cohen, *Serpent in the Bosom*, 311-316.

⁶³ Jones and others, *Establishing Law and Order After Conflict*, 27.

NATO demands due to the prospect of a prolonged and escalating air campaign, the signs of a convincing ground attack and Russian pressure on Belgrade.⁶⁴ The Security Council passed Resolution 1244, and with that, the UN and its partners became responsible for the territory, people and society of Kosovo. UNMIK was not only charged with taking control of security, rule of law, education and civil administration for a period of time but also with the reconstruction of institutional preconditions needed to create a functioning domestic society.⁶⁵ UNMIK's other responsibilities were to promote the establishment of substantial autonomy and self-government, carry out basic civilian administration, organize and establish democratic institutions, support reconstruction, provide humanitarian aid, maintain law and order, protect and promote human rights and assure the safe return of refugees.⁶⁶ Albanians wanted independence but they had no international backing as it was feared to be a poor example to other dysfunctional multi-ethnic governments in the Balkans, particularly Macedonia which had a large Albanian minority.⁶⁷

To implement its mandate, the UN mission was divided into four Pillars led by different organizations but under the supreme authority of the Special Representative of the Secretary-General (SRSG). Pillar I, 'Police and Justice'⁶⁸ and Pillar II, 'Civil Administration', were placed under the leadership of the UN. Pillar III, 'Democratization

⁶⁴ Zaalberg, *Soldiers and Civil Power*, 294.

⁶⁵ Tonny Brems Knudsen and Carsten Bagge Laustsen, "The Politics of International Trusteeship," in *Kosovo Between War and Peace: Nationalism, Peacebuilding and International Trusteeship*, eds. Tonny Brems Knudsen and Carsten Bagge Laustsen, 12 (London: Routledge, 2006).

⁶⁶ Sobjerg, *The Kosovo Experiment*, 65.

⁶⁷ Zaalberg, *Soldiers and Civil Power*, 295.

⁶⁸ Please note until June 2000, Pillar I was called 'Humanitarian Affairs', but was phased out once displaced Kosovars returned home. The new Pillar, 'Police and Justice', was established in May 2001.

and Institution Building’, was led by the OSCE. The European Union (EU) led Pillar IV, ‘Reconstruction and Economic Development’. Additionally, the NATO-led Kosovo Force (KFOR) troops were responsible for enforcing the ceasefire and deterring hostilities, demilitarizing the KLA, de-mining, conducting border monitoring, establishing a secure environment for refugee returns, ensuring public safety, supporting the international civilian presence and ensuring freedom of movement.⁶⁹

In order to begin reconstruction, Kosovo would require a secure environment. Intervening troops were confronted with fragile peace, little order and groups who had been engaged in a violent struggle for years against each other. Indeed, in Kosovo “[t]he most pressing problem would turn out to be imminent confrontation between the Albanians and the Serb civilians, some of whom had left and some of whom stayed behind in fright.”⁷⁰

⁶⁹ Ilir Dugolli and Lulzim Peci, “Enhancing Civilian Management and Oversight of the Security Sector in Kosovo,” Kosovar Institute for Policy Research and Development, <http://www.kipred.net/>.

⁷⁰ Zaalberg, *Soldiers and Civil Power*, 298.

REFORMING THE SECURITY SECTOR

Post-Conflict Security Vacuum: Assessing KFOR and CIVPOL

Reform in the security sector did not start out well. With the Serbian pull-out in June 1999, no domestic police force remained to maintain law and order. As discussed, KFOR's military mission was to enforce the peace and deter new hostilities. They were charged with securing the withdrawal of the Yugoslav army, as well as the Serbian paramilitary and police forces. This was to create a secure environment to ensure refugees and internally displaced persons could return home safely.⁷¹ Kosovo was divided into five command zones with one multinational brigade responsible for each zone. The priorities of the lead nation in each zone made security principles vary substantially.⁷² Moreover, the civilian tasks for KFOR were less defined and ensuring public safety would become the most difficult part of their mandate.

Overlapping and contradictory responsibilities for security in Kosovo created trouble immediately. UNMIK deployed CIVPOL (UN Civilian Police) as soon as Yugoslav forces withdrew but it took several months to establish a viable police presence on the ground. In the first few weeks after the conflict, many CIVPOL officers were transferred from Bosnia to Kosovo. Establishing CIVPOL's presence was difficult because it took time for them to arrive in Kosovo, they had to undergo training and

⁷¹ Zaalberg, *Soldiers and Civil Power*, 295-296.

⁷² Andreas Heinemann-Grüder and Igor Grebenshikov, "Security Governance by Internationals: The Case of Kosovo," *International Peacekeeping* 13, no. 1 (2006), <http://www.informaworld.com/>.

testing before their deployment and they lacked basic supplies and equipment.⁷³ KFOR was on the ground immediately and since CIVPOL was not prepared to take on policing duties, KFOR was charged with doing so. They were unable to prevent in large part the revenge attacks against Serbs which began almost simultaneously with the Serbian and FRY pullout. Some KFOR troops were unwilling rather than unable to stop the Albanian desire for revenge believing that Albanians should be allowed some retribution due to years of repression.⁷⁴ The summer of 1999 was a season of vengeance and predatory violence. While some 800 000 displaced Albanians rushed back into Kosovo, the Serb minority felt extremely threatened. Hundreds were killed and many more were simply too scared to enter Albanian dominated areas. Faced with physical threats, unemployment, forced eviction and continuous harassment, as many as 100 000 Serbs abandoned Kosovo to live elsewhere, usually Serbia.⁷⁵

French KFOR action in Mitrovica also had lasting and negative consequences. French troops erected a checkpoint at the Ibar River. Albanians were not allowed into Northern Mitrovica (a mostly Serb area) or into Northern Kosovo. The French had essentially partitioned the city.⁷⁶ This division enraged Albanians and the bridge between the two sides would become a flashpoint for demonstrations from 1999 on. For Albanians and Serbs, “[t]he heavily guarded bridge spanning it [Mitrovica] has become

⁷³ Jones and others, *Establishing Law and Order After Conflict*, 33.

⁷⁴ Heinemann-Grüder and Grebenschikov, *Security Governance by Internationals*, 46.

⁷⁵ King and Mason, *Peace at Any Price*, 68.

⁷⁶ O’Neill, *Kosovo: An Unfinished Peace*, 44-45.

the focal point for communal enmity.”⁷⁷ Moreover, the *de facto* border between the city and the rest of Kosovo caused problems for the creation of institutions and reinforced the divide between Albanians and Serbs.⁷⁸ In the Serb enclave, the water, power, newspapers, food and state salaries still come from Belgrade.⁷⁹ Moreover, Serbs seem content to keep Mitrovica partitioned, seeing it as their last stand in Kosovo.⁸⁰

As mentioned, CIVPOL deployment was slow but with a force of 4718 personnel, they would be the largest UN police force ever. Fifteen months after the start of the mission however, that number had not been reached. But the emphasis on quantity can be misplaced – the more important factor is the quality of the officers. Pre-deployment screening, while slowing the process down made sure the force was competent and improved the quality of recruits. CIVPOL was made up of a largely motivated group who took their jobs seriously and after a slow start, they began to promote more assertive, visible patrols. Because they act as monitors and trainers of the Kosovo Police Service, it was important that CIVPOL be seen as effective.⁸¹

The Crown Jewel – The Kosovo Police Service (KPS)

The creation of the KPS was a key element to restoring law and order. The new police force was to be under UNMIK’s control and be trained by the OSCE’s

⁷⁷ Raymond Whitaker, “Kosovo Heads for Ethnic Partition; A River Runs Through it: The Bridge that Divides the Town of Mitrovica may Simply be the Start of a Much Broader Division,” *The Independent (London)*, February 27, 2000, 26.

⁷⁸ O’Neill, *Kosovo: An Unfinished Peace*, 46.

⁷⁹ Whitaker, *Kosovo Heads for Ethnic Partition*, 26.

⁸⁰ Kevin Cullen, “In Kosovo City, the Great Divide Land, Strife Separates Albanians, Serbs,” *The Boston Globe*, April 1, 2000, A1.

⁸¹ O’Neill, *Kosovo: An Unfinished Peace*, 100-104.

'Democratization and Institution Building' Pillar. The new police institution was purposefully named 'service' instead of 'force' to demonstrate to the citizens of Kosovo that the police were serving their needs rather than that of a regime.⁸² Soon after KFOR entered Kosovo, UNMIK began recruiting KPS officers. Initially, the KPS training school was marred by political infighting between the OSCE and UNMIK, as well as staffing shortages. Furthermore, former KLA guerrillas insisted on a role in vetting applicants. In fact, the KLA wanted its members to make up the entire police force. They argued they disbanded as part of a cease-fire agreement, that their fighters needed jobs and deserved a spot on the police force since they had sacrificed so much for a free Kosovo.⁸³ The UN resisted as they knew their presence would scare the minority and keep the KLA largely intact. Ultimately, the UN agreed former KLA members could make up 50 percent of new cadets. This quota, however, was restructured and ended in 2001.⁸⁴ The first batch of recruits graduated in October 1999. Per capita, the strength of the KPS more than doubled from 2000 to 2004. The growth of the KPS suggested UNMIK was making progress toward the final objective of transferring police authority to a professionally trained indigenous police force.⁸⁵

The KPS has been successfully built into a multi-ethnic, largely professional service and is considered the biggest achievement of international efforts in Kosovo. It is

⁸² Rachel Neild, "Democratic Police Reforms in War-Torn Societies," *Conflict, Security & Development* 1, no. 1 (2001), <http://www.informaworld.com/>.

⁸³ O'Neill, *Kosovo: An Unfinished Peace*, 111.

⁸⁴ Colette Rausch, "From Elation to Disappointment: Justice and Security Reforms in Kosovo," in *Constructing Justice and Security After War*, ed. Charles T. Call, 292 (Washington, D.C.: United States Institute of Peace Press, 2007).

⁸⁵ Jones and Others, *Establishing Law and Order After Conflict*, 35-36.

one of two institutions, the other being the fire department, where Albanians, Serbs, and other non-Serb minorities work together. From the very first class, the creators of the KPS sought minorities and recruiters even visited minority enclaves to urge eligible people to apply. Collegiality and cooperation are the ethos of the school. Classes are not segregated by ethnicity and the trainees eat, live, learn and play together.⁸⁶ In his examination of the police school, William O'Neill wrote "[t]he mission of serving all citizens as KPS officers, regardless of ethnicity, soon predominates."⁸⁷ Moreover, the recruits undergo rigorous screening including an oral interview, written exam, psychological test, medical exam, physical agility test, and background investigation. The KPS also made the representation of women a high priority and classes have averaged 18 percent female recruits.⁸⁸ About 25 percent of each class are former members of the pre-1989 police. They are older but have extensive policing experience.⁸⁹

The KPS has seen real and significant transfers of power from UNMIK to the local force. By the fall of 2000, the KPS started to conduct patrols on their own though most KPS officers were still accompanied by CIVPOL monitors. Internal oversight steps have also been taken, notably the creation of a Professional Standards Unit.⁹⁰ As of late 2006, there were 8000 KPS officers and 1800 CIVPOL monitors in Kosovo.⁹¹ William

⁸⁶ O'Neill, *Kosovo: An Unfinished Peace*, 112.

⁸⁷ O'Neill, *Kosovo: An Unfinished Peace*, 112.

⁸⁸ O'Neill, *Kosovo: An Unfinished Peace*, 111-113.

⁸⁹ O'Neill, *Kosovo: An Unfinished Peace*, 113.

⁹⁰ Dugolli and Peci, *Enhancing Civilian Management*, 12.

⁹¹ D. Christopher Decker, "Enforcing Human Rights: The Role of the UN Civilian Police in Kosovo," *International Peacekeeping* 13, no. 4 (2006), <http://www.informaworld.com/>.

O'Neill suggests that, "[d]espite numerous challenges, the KPS is clearly the crown jewel of the international community's initiatives in Kosovo."⁹²

Taming the KLA – The Kosovo Protection Corps (KPC)

The security sector's other creation, the KPC, is more of a problem. The KLA re-emerged as the KPC – essentially seen as a compromise which rewarded the KLA for disbanding as a fighting force after the 1999 NATO bombing campaign. For the West, the KPC was supposed to function as a rescue and emergency service, but for Albanians in Kosovo, it was seen as the nucleus of a future army.⁹³

Yugoslavia and Serbia, in accordance with the Military-Technical Agreement, withdrew their fighting forces within 11 days. KLA fighters were upset they were asked to disarm and were especially bothered that Kosovo had its autonomous status reinstated rather than being granted full independence. Moreover, in the confusion of getting CIVPOL on the ground and KFOR to perform policing tasks, members of the KLA tried to take over running as much of Kosovo as possible. They assumed responsibility in many towns, installed themselves as mayors and called themselves the civilian authority of Kosovo.⁹⁴ UNMIK's slow recruitment and deployment of civilian personnel allowed the KLA structure to grow and fill the governance vacuum.

On June 21, 1999, the political leader of the KLA, Hashim Thaci, reached an agreement with NATO to demobilize. The KLA pledged to reorganize into a 3600

⁹² O'Neill, *Kosovo: An Unfinished Peace*, 114.

⁹³ Heinemann-Grüder and Grebenschikov, *Security Governance by Internationals*, 46.

⁹⁴ O'Neill, *Kosovo: An Unfinished Peace*, 38.

member strong Kosovo Protection Corps. It was formally established by UNMIK Regulation 1999/8 calling the KPC a civil emergency service agency providing disaster response services as well as search and rescue functions.⁹⁵ They were also tasked with civil reconstruction, humanitarian relief and infrastructure repair.⁹⁶

The KPC was to remain under KFOR's direction and were to have neither a military nor policing role in Kosovo.⁹⁷ KFOR's commanders felt that creating the KPC was a better option than having the KLA loose in the hills of Kosovo.⁹⁸ KFOR and UNMIK chose not to confront the KLA and enforce disarmament. Their policy was dictated by the notion that weapons were easily accessible and too widespread to make disarmament effective.⁹⁹ The KPC was supposed to be multi-ethnic and reserve ten percent of its posts for minorities but few joined and not a single Serb has ever served in it. It is an open secret the KPC sees itself as an army in waiting. UN officials suggest the formation of the KPC was NATO's idea as they thought this would keep the old KLA under control and avoid confrontations. The KLA warmed to the idea because they were able to keep their old force structure, identity and influence.¹⁰⁰

The KLA's intentions were clear from the outset. It began with a dispute over the name itself – *Trupat e Mbrojtjes së Kosovës* (TMK) – which in Albanian has a distinctly

⁹⁵ Dugolli and Peci, *Enhancing Civilian Management*, 12.

⁹⁶ Jones and others, *Establishing Law and Order After Conflict*, 31.

⁹⁷ Zaalberg, *Soldiers and Civil Power*, 304-306.

⁹⁸ Heinemann-Grüder and Grebenshikov, *Security Governance by Internationals*, 46.

⁹⁹ Michael Pugh, "Crime and Capitalism in Kosovo's Transformation," in *Kosovo Between War and Peace: Nationalism, Peacebuilding and International Trusteeship*, eds. Tonny Brems Knudsen and Carsten Bagge Laustsen, 119 (London: Routledge, 2006).

¹⁰⁰ O'Neill, *Kosovo: An Unfinished Peace*, 117.

military and national defense connotation.¹⁰¹ The KLA also insisted on military rank titles rather than civilian sounding ranks appropriate for a civilian public service organization. Further, they wanted military style uniforms, including camouflage and high black boots.¹⁰² Unfortunately, all of their demands prevailed and while it appeared on the outside the KLA were contained, the gap between NATO's intentions and the KLA's attitude was revealed in General Ceku's speech in September 1999, which marked a 'farewell' parade through Pristina. General Ceku stated "[t]oday, we are ending the march of freedom but we are starting the march of the future for the independent Kosovo and its army."¹⁰³

Relations between the KPC and KFOR and UNMIK have deteriorated since the summer of 2000. The escalating crisis in Macedonia in 2001 led KFOR and UNMIK to take their responsibility *vis à vis* the KPC more seriously. Some well-known KPC commanders were finally indicted and arrested for kidnapping and participation in the murder of Serb civilians.¹⁰⁴ Enforcing the rule of law with the KPC was very difficult and almost resulted in a showdown in the summer of 2003. In the 2 years leading up to 2003, 27 former KLA commanders were detained on charges of violent crimes like murder.¹⁰⁵ Eleven were released but one was finally sentenced in March 2003 to ten years in prison. The KPC released statements declaring they respected the rule of law but there was a difference between what they were doing which was assisting UNMIK in the

¹⁰¹ O'Neill, *Kosovo: An Unfinished Peace*, 118.

¹⁰² O'Neill, *Kosovo: An Unfinished Peace*, 118.

¹⁰³ O'Neill, *Kosovo: An Unfinished Peace*, 118.

¹⁰⁴ Heinemann-Grüder and Grebenschikov, *Security Governance by Internationals*, 47.

¹⁰⁵ King and Mason, *Peace at Any Price*, 148.

reconstruction of institutions and what ‘Serb elements’ were doing which was sabotaging the entire process.¹⁰⁶ The disagreement shows how difficult it is to root out spoilers after they have become entrenched in society. KFOR should have imposed stricter standards from the outset.

Many UNMIK police also express frustration with the KPC whose behaviour includes arrests, detention, interrogation, search and seizures of property, eviction, crowd control as well as threats against judges. Moreover, many worry the KPC will try to gain more influence over the KPS or even take control once the international presence leaves Kosovo. The biggest problem with the KPC is that KFOR and UNMIK did not have any oversight mechanisms as they did with the KPS. The KPC was treated as an independent actor in a way the KPS never was. William O’Neill argues, “[t]he difference in results is clear: the KPS’ performance of its mandate and the trust it inspires among Kosovo’s population, including all ethnic groups, is vastly superior to the record and popular assessment of the KPC.”¹⁰⁷ The KPC continues to have an unclear role in the security sector.

Measuring Effectiveness

Perhaps the best way to analyse the effectiveness of security reforms is by measuring the rate of crime in Kosovo during UNMIK’s mandate. In the early part of the transitional administration, the so-called ‘emergency phase’, criminal activity ran the gamut. KFOR and UNMIK were not prepared to protect the minority population as they

¹⁰⁶ King and Mason, *Peace at Any Price*, 148-149.

¹⁰⁷ O’Neill, *Kosovo: An Unfinished Peace*, 122.

understood their mission was to create a safe environment for refugees to return rather than to protect Serbs and CIVPOL was not deployed at a time when they were needed the most.¹⁰⁸

Things began to change in the next phase of the administration from 2000 to 2002 as priorities shifted from humanitarian concerns to more political ones. Kosovo still remained quite volatile especially in Mitrovica where violence regularly broke out. But in other parts of Kosovo, the security situation appeared to have improved dramatically during the first 18 months.¹⁰⁹ In April 2003, two members of the KPC tried to lay explosives on a bridge in Northern Kosovo but were killed when the bomb went off prematurely. Incidents such as this one, however, were becoming rare. The murder rate was down to 68 people in 2002 compared with 250 people in 2000.¹¹⁰ Crime was beginning to decline thanks to an increasingly effective KPS. Eager recruits were being trained by veteran policemen from around the European Union and North America at the OSCE police academy. They had good salaries and the institution was blossoming and assuming increasingly important roles.¹¹¹ Other crime rates fell dramatically as well. Prior to the March 2004 riots, Kosovo saw a significant reduction in cases of assault and robbery, which meant the progress in security reforms was under way.¹¹² The United Nations Office on Drugs and Crime reported in early 2008 that murder rates in Kosovo

¹⁰⁸ King and Mason, *Peace at Any Price*, 54-55.

¹⁰⁹ King and Mason, *Peace at Any Price*, 94-96.

¹¹⁰ King and Mason, *Peace at Any Price*, 95.

¹¹¹ King and Mason, *Peace at Any Price*, 141-142.

¹¹² Sobjerg, *The Kosovo Experiment*, 67.

have been in steady decline, dropping by 75 percent since 2003 with the current recorded rate today under 3 per 100,000 people.¹¹³

Security Response to the March 2004 Riots

Any serious analysis of the reforms undertaken in Kosovo must also include an assessment of how the security sector responded to the March 2004 riots. On March 16, 2004, the 'War Associations', made up of KLA veterans, invalids and families of the missing, organized demonstrations to protest the arrest and detention of former KLA members.¹¹⁴ Just when things appeared to calm down, three Albanian boys drowned in the Ibar River. A fourth Albanian boy managed to make it out alive. He told others that he was chased by Serbs with dogs and that he and his friends tried to hide down by the river. All Kosovo TV stations broadcast the accusation which in the end, sparked the riots. The international prosecutor charged with investigating the deaths found no evidence to support that any individual had committed a crime.¹¹⁵ But underlying the riots was the persistent ethnic violence and tension, the uncertainty of the final status of Kosovo and the stagnant economy.¹¹⁶

In the 2 days of rioting, 19 were killed, 954 were wounded, 4100 were displaced, 730 homes were damaged and 36 Orthodox churches, monasteries and religious sites were burned, looted or damaged. More than 50 000 Albanians took part in the riots

¹¹³ United Nations Office on Drugs and Crime, "Crime and its Impact on the Balkans and Affected Countries," UNODC, <http://www.unodc.org/documents/>.

¹¹⁴ Heinemann-Grüder and Grebenshikov, *Security Governance by Internationals*, 53.

¹¹⁵ Humanitarian Law Center, "Ethnic Violence in Kosovo," HLC, <http://www.hlc-rdc.org/uploads/>.

¹¹⁶ Rausch, *From Elation to Disappointment*, 304.

which quickly spread throughout Kosovo.¹¹⁷ Thousands of Serbs left their homes and mobs attacked international staffers. Neither CIVPOL nor the lightly armed KPS had the capacity to stem the violence. Even the heavily armed KFOR had trouble halting the riots. The damage was done and “[w]hat everyone could agree on was that the scale and ferocity of the violence meant that Kosovo could not continue to be governed as it had been up until then.”¹¹⁸ The riots were a serious setback for the peacebuilding operation as they jeopardized the establishment of a multi-ethnic Kosovo.

Punishment for the riots became a politically charged key test for Kosovo’s new security institutions. While the KPS and CIVPOL had not been able to temper the violence, UNMIK did make policy changes with respect to the security sector. UNMIK’s most effective response to the March violence was to recruit Kai Vittrup to lead CIVPOL and the KPS. A former chief of police in Copenhagen, he understood the police had lost much of their credibility in the March riots.¹¹⁹ He implemented a three-pronged reform program. First, the system would have to change to respond quickly and effectively to any sign that riots were recurring. An exercise in the fall of 2004 brought 600 officers to headquarters from around Kosovo in just 75 minutes. To minimize confusion under stress, each officer was given three responsibilities in the event of a repeat riot. Second, he sought to create a community policing force and to improve the police’s image, especially among minorities. He did so by putting 400 KPS and CIVPOL officers on patrol in minority areas. Finally, he set about making local KPS officers, not CIVPOL,

¹¹⁷ Mark Baskin, “Local Governance in Kosovo: A Link to Democratic Development?,” in *Kosovo Between War and Peace: Nationalism, Peacebuilding and International Trusteeship*, eds. Tonny Brems Knudsen and Carsten Bagge Laustsen, 76 (London: Routledge, 2006).

¹¹⁸ King and Mason, *Peace at Any Price*, 189.

¹¹⁹ King and Mason, *Peace at Any Price*, 189.

the main face of authority.¹²⁰ Most importantly, the KPS would now become the frontline of any demonstration.¹²¹ In the year following the riots, there had been virtually no repeat inter-ethnic violence. Vittrup also wanted the police to focus on improving each community and response time and therefore introduced crime prevention councils in all municipalities. By the fall of 2005, all 32 police stations had been put under KPS authority. For many in Kosovo, however, the innovative community policing efforts and successes in reforming the security sector were undermined by the judiciary's failure to instil the rule of law.

¹²⁰ King and Mason, *Peace at Any Price*, 197.

¹²¹ King and Mason, *Peace at Any Price*, 197.

REFORMING THE JUSTICE SECTOR

When UNMIK took over in Kosovo, no formal court system existed. Prior to the bombing campaign, the judiciary consisted entirely of Serbs but these judges fled once Yugoslavia withdrew in June 1999. Existing organized crime groups, many linked to the KLA, stepped into the security and justice vacuum. UNMIK was tasked with establishing the rule of law in Kosovo. The UN defines the rule of law as a principle of governance where all persons, institutions and the state are held accountable to laws, equally enforced and independently adjudicated.¹²² But Irene Bernabéu warns “[i]n post-conflict societies, re-establishing the rule of law is generally a complex and frustrating task.”¹²³ UNMIK was unprepared to guarantee the rule of law at the start of the mission and their attempt to bring the judiciary closer to the rule of law as their mandate went on is mixed.

Problems from the Start: Applicable Law

UNMIK failed from the outset to establish political credibility in Kosovo – and this failure was compounded by the internal contradictions of the mission’s mandate. At Russia’s insistence, and in line with UNMIK’s mandate, Regulation 1999/1 established that the law in force prior to March 24, 1999 would apply, provided this law was

¹²² Irene Bernabéu, “Laying the Foundations of Democracy? Reconsidering Security Sector Reform Under UN Auspices in Kosovo,” *Security Dialogue* 38, no. 1 (2007), <http://www.prio.no/>.

¹²³ Bernabéu, *Laying the Foundations of Democracy*, 83.

consistent with international human rights standards and Resolution 1244.¹²⁴ This decision meant that FRY and Serbian laws would be in effect rather than the Kosovo Criminal Code.¹²⁵ Albanian judges and prosecutors strongly protested and argued that the revocation of Kosovo's autonomy in 1989 was illegal and that the Kosovo Criminal Code should be used. When their protests came to nothing, Albanian judges simply flatly refused to apply Serbian laws and continued to apply pre-1989 Kosovo laws instead. This lowered hopes that Serb judges would return and undermined local respect for UNMIK especially when it reversed its decision, passing Regulation 1999/24 in December 1999 and declared the laws in effect on March 22, 1989 would apply in Kosovo.¹²⁶ But the damage was already done.

UNMIK's reversal of their decision had both political and practical consequences. The initial adoption of Serbian law politicized the issue of justice. Even though UNMIK lawyers and KFOR were urging the adoption of a model penal code since September 1999 as the provisionally applicable one, this option was ruled out. The initial decision was made under diplomatic constraints and a desire to allow for continuity in the judicial sector which was supposed to contribute to legitimacy. But the majority of the population was emerging from a decade of oppression due in part to Serbian laws, and this obviously was not the best choice.¹²⁷ Making matters worse, the adoption of the pre-1989 laws further politicized the judiciary. UNMIK's reversal was important to get

¹²⁴ Simon Chesterman, *You, the People: The United Nations, Transitional Administrations, and State-Building* (Oxford: Oxford University Press, 2004), 166.

¹²⁵ Rausch, *From Elation to Disappointment*, 277.

¹²⁶ Chesterman, *You, the People*, 166.

¹²⁷ Bernabéu, *Laying the Foundations of Democracy*, 85.

Albanians to take part in the Joint Interim Administrative Structures (JIAS) and in consolidating UNMIK's control over Kosovo. But it had a very negative impact on UNMIK's authority and the image of the judicial sector.¹²⁸ In truth, “[g]enerating a situation where justice may be perceived as subject to political bargaining, especially when the ‘bargain’ does not involve all parties, could only contribute to eroding the credibility of Kosovo’s justice system.”¹²⁹

On the more practical side, the pre-1989 laws were less developed, lacked provisions about drug trafficking and war crimes and held no guarantees for the rights of the minority population.¹³⁰ Further, the confusion created uncertainty as to the applicable law in Kosovo which meant there was a significant difference between the law that was in force and the one that was actually applied in court, calling into question the validity of the trials conducted during this time.¹³¹ Moreover, the few remaining Serb judges who had returned to their posts continued to apply Serbian laws which meant the prosecution of individuals was different depending on the ethnicity of the judge handling the case.¹³²

Lack of Experience and Minority Participation

The UN was not prepared for the judicial vacuum and thus developed an *ad hoc* and reactive approach to respond to the latest judicial emergency.¹³³ Serb judges who

¹²⁸ Bernabéu, *Laying the Foundations of Democracy*, 85.

¹²⁹ Bernabéu, *Laying the Foundations of Democracy*, 85.

¹³⁰ Bernabéu, *Laying the Foundations of Democracy*, 85.

¹³¹ Bernabéu, *Laying the Foundations of Democracy*, 85.

¹³² Rausch, *From Elation to Disappointment*, 277.

¹³³ O’Neill, *Kosovo: An Unfinished Peace*, 77.

formed the majority of the judiciary up to 1999 left before UNMIK was even established. Those who stayed were incapable of continuing their work because of serious threats to their safety. Therefore, former Albanian judges and lawyers who had been fired during Serbian rule were hired, despite the fact that for the most part they had been poorly trained and there was a significant risk their conduct would not be impartial.¹³⁴ This decision of course was due to the urgent need to re-establish a working judiciary but failed to take appropriate measures to guarantee the new system would serve to consolidate rule of law in the province.¹³⁵ Many jurists had not worked in a decade and the experience they brought to the table was from their prior system which did not adequately prepare them for work in a transitional democracy.¹³⁶

The SRSG created an advisory council to appoint judges and prosecutors to three month terms. In September 1999, the Advisory Judicial Commission (AJC) began to submit lists of judicial appointments. From June to October 1999, 55 jurists were appointed. Of these, seven were Serbs but citing threats to their safety, would all resign by October 1999. Thus “[a] virtually monoethnic judiciary composed largely of Albanians emerged.”¹³⁷ The challenge to create a multi-ethnic judiciary would be seriously hampered throughout the mission. By September 2000, there were 405 judges but the lack of Serb participation in the judiciary continued.¹³⁸ The AJC was criticized for appointing judges based on personal relationships and ethnic background over merit.

¹³⁴ Bernabéu, *Laying the Foundations of Democracy*, 86.

¹³⁵ Bernabéu, *Laying the Foundations of Democracy*, 86.

¹³⁶ Rule of Law Institute, “Judicial Reform Index: Kosovo Volume III,” American Bar Association, <http://www.abanet.org/rol/publications.shtml/>.

¹³⁷ O’Neill, *Kosovo: An Unfinished Peace*, 77.

¹³⁸ Rausch, *From Elation to Disappointment*, 280.

The Kosovo Judicial and Prosecutorial Council (KJPC) replaced the AJC in May 2001.¹³⁹ In 2006, there were 14 Serb judges as well as 17 other minority judges working in the Kosovo court system.¹⁴⁰ The American Bar Association reported that in 2007 there were 15 Serb judges, 19 other minority judges and 274 Albanian judges bringing the total to 309 judges.¹⁴¹ Serbs are about eight percent of the total population in Kosovo but their representation in the judiciary is about half that number. Therefore, the lack of participation by Serbs in the judiciary continues today.

Ethnic Bias

The International Criminal Tribunal for Yugoslavia (ICTY) prosecuted only a small number of cases related to war crimes committed in Kosovo leaving the remainder to the Kosovo court system.¹⁴² But the fairness of trials was repeatedly called into question as most defendants were Serbs and most judges were now Albanian. As time went on, it became obvious Serbs lacked access to counsel and any prospect of a fair and unbiased trial.¹⁴³ Bias affected the course of justice in Kosovo in two ways. First, cases involving minority defendants presented challenges to the fair administration of justice.

¹³⁹ Rausch, *From Elation to Disappointment*, 281.

¹⁴⁰ Organization for Security and Cooperation in Europe, "Kosovo: Review of the Criminal Justice System 1999-2005," OSCE, <http://www.osce.org/Kosovo/publications.html/>.

¹⁴¹ Rule of Law Institute, *Judicial Reform Index*, 19.

¹⁴² The primary focus of the ICTY investigation in Kosovo was the prosecution of the five leaders of the Former Yugoslavia and Republic of Serbia who were indicted in 1999. The ICTY could also investigate other individuals on a case-by-case basis who had committed serious crimes during the conflict. But the ICTY did not have the mandate nor the resources to be the primary source for investigation and prosecution in Kosovo and it was left to UNMIK and the local courts to deal with. For more information, please see International Criminal Tribunal for the Former Yugoslavia, "Press Release: Statement by Carla Del Ponte Prosecutor of the International Criminal Tribunal for the Former Yugoslavia on the investigation and prosecution of crimes committed in Kosovo," ICTY, <http://www.un.org/icty/latest-e/index.htm/>.

¹⁴³ Rausch, *From Elation to Disappointment*, 283.

Serb defendants were sentenced more harshly than Albanian defendants. Second, cases involving former KLA members or other powerful members of society were ripe for abuse as these defendants were often released, even in the face of evidence they had committed serious crimes.¹⁴⁴ All of the problems about the presumption of collective Serb guilt and the polarization in society were magnified in the judiciary – especially when the judiciary was essentially monoethnic.¹⁴⁵ Judges could take out their revenge against Serbs in a different, non-violent manner by sentencing them to prison for even minute crimes.

Instances of bias emerged in the emergency judicial system period and have continued ever since. When pressed, some Albanian judges admitted they decided cases differently when they involved Serb defendants.¹⁴⁶ By contrast, Albanians arrested on serious charges, some caught red-handed by KFOR or UNMIK were frequently released immediately or not indicted and then released. Meanwhile, other minorities, arrested on even minor charges with little evidence were almost always detained and some stayed in detention even when they were not indicted. To counter Serb bias, some UNMIK police admitted they would not arrest Serbs for minor offences knowing they would be detained for a long time.¹⁴⁷ Despite many clear examples of judicial and prosecutorial bias, UNMIK did not remove, warn or discipline a single judge.¹⁴⁸

¹⁴⁴ O'Neill, *Kosovo: An Unfinished Peace*, 84.

¹⁴⁵ O'Neill, *Kosovo: An Unfinished Peace*, 84.

¹⁴⁶ O'Neill, *Kosovo: An Unfinished Peace*, 84.

¹⁴⁷ O'Neill, *Kosovo: An Unfinished Peace*, 84-85.

¹⁴⁸ O'Neill, *Kosovo: An Unfinished Peace*, 87.

Executive Detentions

As time went on, KFOR complained that local judges were releasing dangerous Albanian suspects including some who were accused of attacking KFOR soldiers.¹⁴⁹ As a consequence of UNMIK's lack of faith in the local judiciary and their own diminished credibility, officials felt they had to resort to detaining suspects by executive orders. The SRSG claimed he had authority to issue such orders under Resolution 1244 for 'security' reasons.¹⁵⁰ Additionally, KFOR instituted its own version of executive detentions called COMKFOR (Commander KFOR) holds where the commander could extend the detention of a suspect despite a release order from the local judiciary if he believed they had acted improperly.¹⁵¹ Some of these executive detentions were used even when a panel of international judges ordered the release of suspects. This led to inconsistent policies on the part of the international administration, in turn giving rise to contradictions as the body which was supposed to instill human rights values and the rule of law detained people in contempt of even international judges.¹⁵² Further, ruling by fiat would never encourage respect for an independent judiciary.

International Participation and the '64' Panels

It finally became clear to UNMIK officials that international judges had to participate in trials of ethnic violence, war crimes and crimes against humanity otherwise

¹⁴⁹ Rausch, *From Elation to Disappointment*, 276.

¹⁵⁰ Chesterman, *You, the People*, 167.

¹⁵¹ Rausch, *From Elation to Disappointment*, 276.

¹⁵² Chesterman, *You, the People*, 168.

the feeling was that attempts to create an independent judiciary would fail.¹⁵³ Since the KPS needed oversight and monitoring it stood to reason the judiciary would as well but at first UNMIK's officials at the highest level resisted. Some were afraid of offending Albanian judges as this would clearly show a lack of confidence in their ability to administer justice fairly.¹⁵⁴ But the tragic events of February 2000 forced UNMIK to find concrete solutions to the problems in the local judiciary. A UNHCR bus of Serbs was attacked by a rocket near Mitrovica prompting outbreaks of violence.¹⁵⁵ Former KLA members led revenge attacks against Serb civilians and were caught by KFOR and CIVPOL. After a local judge released them, UNMIK sprang into action. Regulation 2000/6 allowed for international judges and prosecutors to work in Mitrovica. The regulation was eventually amended to extend their participation to all districts.¹⁵⁶ Complaints abounded by the local judiciary that the regulation had been implemented without their consultation and that it infringed on the independent Kosovar judiciary.¹⁵⁷ While the accusation was true, "[i]t was finally clear that without international participation the judiciary could not operate freely and fairly, thus jeopardizing the security situation in Kosovo."¹⁵⁸

Unfortunately, the lesson took too long to learn and extremists on both sides continued to take advantage. Moreover, under applicable law, trials for all crimes with a

¹⁵³ O'Neill, *Kosovo: An Unfinished Peace*, 88.

¹⁵⁴ O'Neill, *Kosovo: An Unfinished Peace*, 89.

¹⁵⁵ O'Neill, *Kosovo: An Unfinished Peace*, 89.

¹⁵⁶ O'Neill, *Kosovo: An Unfinished Peace*, 90.

¹⁵⁷ Rausch, *From Elation to Disappointment*, 283-284.

¹⁵⁸ O'Neill, *Kosovo: An Unfinished Peace*, 90.

punishment of ten years or more were presided over by a five person panel. Of the five people, two were professionally trained international jurists and three were local jurists. This guaranteed that internationals would always be in the minority and no Serb judge ever served on these panels.¹⁵⁹ Thus the bias judgment continued. Serb defendants were still charged more severely than their crimes warranted while Albanians were treated more leniently.

UNMIK scrambled to find a way to put an end to ethnically bias judgments and passed Regulation 2000/64 which allowed the SRSG to have a particular case heard by a panel of three judges, with a minimum of two international judges instead of a five person panel with a local majority.¹⁶⁰ These ‘64’ panels, so named after the Regulation number, formed on an *ad hoc* basis and applied the same laws as Kosovo’s regular courts. This measure, however, was limited. When UNMIK tried to assign local judges to sit on the panel in controversial cases, Albanian judges either refused or made excuses to get out of it.¹⁶¹ The ‘64’ panel decisions could also be overruled by the all Albanian Supreme Court so the measure to stem judgment bias was still limited. Moreover, there remained a lack of transparency with respect to the criteria for choosing cases assigned to the ‘64’ panels. In some cases, international judges were assigned to cases which should have been heard by local judges.¹⁶² In others, international jurists also took on cases at their own discretion. The creation of these panels came with “...a far reaching power

¹⁵⁹ King and Mason, *Peace at Any Price*, 67.

¹⁶⁰ King and Mason, *Peace at Any Price*, 108.

¹⁶¹ King and Mason, *Peace at Any Price*, 108.

¹⁶² OSCE, *Kosovo: Review of the Criminal Justice System*, 65.

that led to some resentment from the local professionals whose cases had been removed, sometimes in an overtly demonstrative manner.”¹⁶³

UNMIK officials hoped that these international jurists could become on the job mentors for their local counterparts and they did have a positive impact at first.¹⁶⁴ But international jurists are no panacea. While UNMIK regulations served as the legal basis to introduce international jurists into the judiciary, it did not specify the role they intended to play.¹⁶⁵ As cases started to pile up, these international judges and prosecutors became over-worked and had little time to mentor their local counterparts. Unlike the KPS and CIVPOL monitoring system, local prosecutors never worked alongside international ones. The only local jurists to improve considerably were defence attorneys who regularly sparred with international prosecutors.¹⁶⁶ International judges and prosecutors were viewed as members of an almost parallel judicial system with their own administration, legal officers, different case procedures and greater levels of personal security which simply portrayed a picture of division between the two systems.¹⁶⁷ And still the rule of law was not developing in wider Kosovo society.

To a significant degree, the perception of international judges and prosecutors’ involvement in Kosovo’s courts is divided along ethnic lines. Not surprisingly, since the program was created to fight ethnic bias against Serbs in Kosovo’s courts, the Serb legal

¹⁶³ Perriello and Wierda, *Lessons from the Deployment of International Judges and Prosecutors*, 14.

¹⁶⁴ O’Neill, *Kosovo: An Unfinished Peace*, 90.

¹⁶⁵ Gregory L. Naarden and Jeffrey B. Locke, “Peacekeeping and Prosecutorial Policy: Lessons from Kosovo,” *The American Journal of International Law* 98, no. 4 (2004), <http://www.jstor.org/>.

¹⁶⁶ King and Mason, *Peace at Any Price*, 109.

¹⁶⁷ OSCE, *Kosovo: Review of the Criminal Justice System*, 66.

community generally supported international actors being involved in the judiciary. Albanians were more negative, believing the cases to be politicized in the way they were selected and assigned to international jurists. They felt the treatment of Serb and Albanian war crimes suspects was imbalanced.¹⁶⁸ While useful and necessary, the introduction of international jurists into Kosovo's judiciary was a reaction to justice needs, and not designed around a long-term vision. The public perceived UNMIK to be interfering in the justice sector, reinforcing the impression that the courts could be manipulated.¹⁶⁹ Moreover, "[t]he focus on how to prevent local judges from issuing biased decisions distracted attention from developing the capacity of the local judiciary as a whole."¹⁷⁰

Judiciary Response to the March 2004 Riots

The justice system's response to the March 2004 riots resulted in 100 cases being tried with 85 convictions.¹⁷¹ But the OSCE suggested over 50 000 people were involved in the riots though only 426 were charged.¹⁷² From a lack of evidence to the improper conduct of trials, to witness' reluctance to testify, the OSCE suggested the response of the judiciary to the riots was simply not strong enough. Overall, the OSCE stated "[t]he

¹⁶⁸ Perriello and Wierda, *Lessons from the Deployment of International Judges and Prosecutors*, 31.

¹⁶⁹ Perriello and Wierda, *Lessons from the Deployment of International Judges and Prosecutors*, 31.

¹⁷⁰ King and Mason, *Peace at Any Price*, 109.

¹⁷¹ King and Mason, *Peace at Any Price*, 194.

¹⁷² Organization for Security and Cooperation in Europe, "OSCE: The Response of the Justice System to the March 2004 Riots," OSCE, <http://www.osce.org/Kosovo/publications.html/>.

justice system failed to send out a clear message to the population condemning this type of violence.”¹⁷³

The inability of the justice sector to bring those responsible for the riots to account severely affected the minority’s confidence in the judiciary. In post-conflict situations, it is important that a population, or a section of it, does not perceive an institution as partial. It is also critical to the legitimacy of the state and any form of ethnic bias can cause enormous problems in the building of democratic institutions. The judiciary was supposed to guarantee the rights of the entire population regardless of ethnic background otherwise they contribute to marginalizing that population.¹⁷⁴ In this case, minorities may seek alternative sources of protection and indeed Serbs did.

Much like Albanians did when their autonomy was stripped in 1989, Serbs created parallel judicial structures or went to Belgrade courts for their justice. As time has gone on, UNMIK has demanded Serbs give up their parallel administrative structures but it is not surprising Serbs did not want to give them up as they were offered so few guarantees in the nearly entirely Albanian judiciary.¹⁷⁵

Public Perception of the Judiciary

The Kosovo judiciary is now made up of mostly Albanians as Serbs will not accept court appointments either out of fear or general resentment.¹⁷⁶ This has left Serbs

¹⁷³ OSCE, *The Response of the Justice System to the March 2004 Riots*, 4.

¹⁷⁴ Bernabéu, *Laying the Foundations of Democracy*, 87.

¹⁷⁵ Bernabéu, *Laying the Foundations of Democracy*, 87.

¹⁷⁶ Jones and others, *Establishing Law and Order After Conflict*, 41.

under-represented and hampers the reduction of ethnic conflict. The Albanian judiciary continually fails to apply the law equally to both Serbs and Albanians.¹⁷⁷ As a result, the court system in Kosovo lacks public confidence and legitimacy. In fact, almost six years into the mission, UNDP opinion surveys suggested some institutions carried the hearts and minds of civilians in Kosovo, while others did not. Most popular among Albanians was the KPC (96 percent satisfied), the KPS (88 percent satisfied) and KFOR (85 percent satisfied). But only two out of every five Albanians surveyed were satisfied with Kosovo's court system.¹⁷⁸

Another UNDP survey conducted in 2007 regarding public perceptions on transitional justice provided more of the same. The survey compiled results to gain perspectives on the attitudes of Kosovans regarding transitional justice mechanisms. They surveyed 1250 Kosovans, of which 850 were Albanian, 200 were Serbs and 200 others were non-Serb minorities. Albanian respondents had greater satisfaction with the ICTY (70 percent) than Kosovo's courts (50 percent). Serb respondents had only 25 percent satisfaction with Kosovo's judiciary.¹⁷⁹ It is a small scale survey but “[u]nlike other issues, there is a consensus amongst ethnic communities that the judiciary is not functioning properly.”¹⁸⁰

¹⁷⁷ Jones and others, *Establishing Law and Order After Conflict*, 42.

¹⁷⁸ King and Mason, *Peace at Any Price*, 200.

¹⁷⁹ United Nations Development Programme, “Public Perceptions on Transitional Justice: Report on Transitional Justice Opinion Polling Survey conducted in April-May 2007 in Kosovo,” UNDP, <http://www.ks.undp.org/>.

¹⁸⁰ UNDP, *Public Perceptions on Transitional Justice*, 18.

MEASURING SUCCESS AND EXPLAINING FAILURES

From a review of the case of Kosovo, it becomes evident that there is no single reason which can adequately explain the differences in reform of the judiciary and security sectors. Rather, there are a number of factors which together go a long way to account for why the security sector's reforms have been implemented far better than the judiciary. Some of these factors were political, some were more structural but together combined to create many roadblocks to reform in the judiciary.

Ambiguous Mandate

The case of Kosovo demonstrates just how complicated it is for an international administration to reform the judiciary. Some of these difficulties came from the security environment while others came from the politics of UNMIK. Resolution 1244 made Kosovo's political future ambiguous by 'authorizing' NATO's intervention but providing contradictory restraints. It specifically stated that Kosovo was to remain autonomous but this solution was not one that either Albanians or Serbs wanted.¹⁸¹ Kosovo could not be returned under Belgrade's control and yet official statements continued to emphasize respect for the territorial integrity and the political independence of Yugoslavia. This provided a serious barrier to re-establishing the rule of law in Kosovo – a problem that was further exacerbated by the security vacuum after the departure of Serb forces.¹⁸² The

¹⁸¹ Winther, *Kosovo: A Gordian Knot*, 87.

¹⁸² Chesterman, *You, the People*, 165.

resolution did not tackle the most substantive areas of disagreement namely, whether Kosovo should become a new sovereign state, the exact role of Belgrade and Kosovo Serbs in the administration of Kosovo and how long the interim arrangement would last. In the highly politicized and monoethnic judiciary, these problems were magnified to the detriment of reform implementation.

The uncertainty of Kosovo's future status meant that the security and justice sectors did not develop jurisdictions that would normally be integrated into a sovereign state.¹⁸³ Moreover, each side exploited the uncertainty of final status to 'justify' their violent campaigns. Albanian extremists encouraged the notion Serbs would return since Yugoslavia's sovereignty remained intact after Resolution 1244. Thus they suggested that Albanians try to expel as many Serbs as possible by burning their homes and chasing them out to make Kosovo ethnically 'pure'. This way, Serbs would have nothing to return to which would strengthen Kosovo's claim of independence. By contrast, Serb extremists told remaining Serbs not to cooperate with UNMIK or KFOR since Kosovo belonged to Serbia and all decisions regarding local administration and security should come from Belgrade.¹⁸⁴

The political factors which plagued UNMIK's mission from the beginning continued throughout the mission. While the rhetoric of the international community was of 'partnership', 'local ownership', and 'self-government', in the security and justice spheres, nearly sole and direct control remained in the hands of the international community. International officials still hold key decision-making positions in both

¹⁸³ Law, *The Post-Conflict Security Sector*, 1.

¹⁸⁴ O'Neill, *Kosovo: An Unfinished Peace*, 30.

sectors.¹⁸⁵ The KPS has continued to grow and carry out everyday security tasks but is still under *de facto* and *de jure* control of CIVPOL.

In Kosovo, new justice and security sectors were constructed quickly and did make clear and specific improvements over prior state institutions. But many became disillusioned with each sector. Reforms encountered obstacles, resources dwindled and there was widespread resistance to reforms. The population of Kosovo was disappointed as new forms of violence emerged.¹⁸⁶ In addition, personnel shortages dogged the mission from its inception. KFOR's credibility also suffered initially as they had trouble performing policing tasks. Most importantly, they did not anticipate that many Albanians would turn on their Serbian neighbours and attack them out of revenge in the early months of the administration. These problems contributed to increased lawlessness which continued even after CIVPOL began to assume responsibility for law and order policing activities. Attacks on Serbs and organized crime increased, Serb judges resigned sighting intimidation and threats, and accusations of Albanian judges showing bias against Serbs became the norm.¹⁸⁷ But the differences between the security and justice sectors were clear. The KPS and other security institutions made policy adjustments to problems while the judiciary was continually politicized and slow to adjust to impediments to reforms.

¹⁸⁵ Rausch, *From Elation to Disappointment*, 302.

¹⁸⁶ Charles T. Call, "Constructing Justice and Security After War," in *Constructing Justice and Security After War*, ed. Charles T. Call, 375-376 (Washington, D.C.: United States Institute of Peace Press, 2007).

¹⁸⁷ Rausch, *From Elation to Disappointment*, 276.

Herbert Wulf argues that peace-building and security sector reform are linked together and that “[s]ecurity sector reform will achieve little without a broader process of transformation of the society” – but the reverse is also true as “the political reform process will get stalled without a thorough transformation of the security sector.”¹⁸⁸ It is hard to achieve the deliberately vague objectives of Resolution 1244. When the international community intervened to stop human rights abuses in 1999, they assumed they could achieve this goal by getting Serb forces out of Kosovo. They failed to understand that the Kosovo conflict of the late 1990s was only the latest chapter in a long running competition between two communities for control over one territory.¹⁸⁹ This meant UNMIK and KFOR were oriented to protect Kosovo’s borders against Serbia but little thought was given on how to maintain internal order.

The experience in justice sector reform in particular reflects the ambiguity of Resolution 1244. It was unclear from the start what form of institution should be built by the interim administration. UNMIK used short-term solutions to long-term problems as the political will to remain began to dry up. The administration was slow to recognize the dangers in the justice sector and quick to tire.¹⁹⁰ Moreover, the establishment of a judiciary was never actually included in the wording of Resolution 1244 making it appear the creation and strengthening of the judiciary was merely an afterthought.

While Kosovo’s police force has been successful in incorporating former enemies into the KPS, getting real collaboration can be difficult. Kosovo has made progress in

¹⁸⁸ Wulf, *Security Sector Reform in Developing and Transitional Countries*, 24.

¹⁸⁹ King and Mason, *Peace at Any Price*, 243-244.

¹⁹⁰ King and Mason, *Peace at Any Price*, 255.

formal reforms of the security sector but simple ethnic representation does not necessarily ensure fair treatment or influence operational behaviour. Yet ethnic representation in the KPS carries symbolic importance and this symbol is missing in the judiciary. Moreover, the KPS has increased local ownership of their activities with CIVPOL acting as a monitor and guide. The challenge for the KPS, especially after the March 2004 riots, is to continue to deploy as a multi-ethnic institution in the Serb enclaves in Northern Kosovo created by French KFOR troops early on in the mission.¹⁹¹ In truth, up until Kosovo declared independence in February 2008, its political development was continually undermined by this uncertainty of its final status.¹⁹²

It is unfair, of course, to lay the blame for the judiciary's problems solely at UNMIK's feet. The transitional administration faced a daunting task – rebuilding institutions from scratch while governing, maintaining law and order and re-instilling the rule of law. With the exception of the UN Mission in East Timor, no other UN mission had ever been granted such an extensive mandate.¹⁹³ But in the end, “UNMIK was created without a clear purpose, a timetable or an exit strategy”¹⁹⁴ and this played a major role in the judiciary's difficulties in achieving reform.

¹⁹¹ Baskin, *Local Governance in Kosovo*, 80.

¹⁹² Chesterman, *You, the People*, 226.

¹⁹³ Bernabéu, *Laying the Foundations of Democracy*, 73.

¹⁹⁴ King and Mason, *Peace at Any Price*, 249.

Planning

Well in advance of the start of reconstruction, the US Department of Justice began detailed planning for a local Kosovo police force.¹⁹⁵ Originally, the OSCE was slated to be primarily responsible for the civil administration including establishing the rule of law and creating a new police force but the Security Council gave overall responsibility to UNMIK. With little time to create their own plan, UNMIK used the OSCE plan where they recruited potential police force members and the OSCE trained them.¹⁹⁶ Thus, while there were last minute changes, there was a plan in place for the reforms in the security sector.

The process and challenges of reforming the judiciary differs from police reforms. The justice sector was completely dysfunctional when UNMIK arrived in 1999. There are now 24 municipal courts, 5 district courts and a Kosovo Supreme Court in place. They have made progress in the justice sector but are hampered more than the security sector. Members of the judiciary need more education and the system itself cannot be expected to work properly after only a few weeks of reforms. Moreover, it is difficult to purge bad judges. Because there is very little actual independence in the judicial sector, it is much more difficult to implement change.¹⁹⁷ Suggests Charles Call, “[t]he main implication of these dilemmas is the need for promoting both judicial independence and

¹⁹⁵ Jeremy M. Wilson, “Law and Order in an Emerging Democracy: Lessons from the Reconstruction of Kosovo’s Police and Justice Systems,” *The Annals of the American Academy of Political and Social Science* 605 (2006), <http://ann.sagepub.com/>.

¹⁹⁶ Wilson, *Law and Order in an Emerging Democracy*, 159.

¹⁹⁷ Call, *Constructing Justice*, 394.

accountability and for establishing mechanisms of accountability *before* judicial autonomy becomes entrenched.”¹⁹⁸

Kosovo illustrates this challenge well. UNMIK allowed purged Albanian judges to resume their posts but these judges began deciding cases by discriminating against Serbs. Thus, the UN appointed international judges to sit on panels but they were routinely outvoted. When this failed, UNMIK put international jurists in appellate courts where they played a major role in deciding ethnic crime cases and decreed the SRSJ could override judicial decisions in certain cases.¹⁹⁹ Legal reforms cannot work without an institution which can guarantee freedom and enforce laws. Written guarantees have not protected Serbs in post-war Kosovo. In essence, “[w]ithout effective checks on state institutions, they [judges] are likely to continue to engage in discriminatory or corrupt behaviour, despite laws to the contrary.”²⁰⁰

Judicial reforms then were less accomplished than security reforms. They were less swift, ambitious, strategically planned and coordinated. Moreover, while the rest of the territorial administration was being handed over to local officials, the judiciary was increasingly being taken away as a direct result of ethnic bias in the system. This may be because the maintenance of stability, both among and within states, remains a top priority of international actors. The emphasis on policing means these actors are able to get their own peacekeeping troops out of harms way more quickly.²⁰¹ Furthermore, policing

¹⁹⁸ Call, *Constructing Justice*, 394.

¹⁹⁹ Call, *Constructing Justice*, 394.

²⁰⁰ Call, *Constructing Justice*, 397.

²⁰¹ Call, *Constructing Justice*, 395-396.

arguably has the most direct and immediate impact on the well-being of individuals and communities.²⁰² The police are by far the most visible institution in the security sector. They are also equally important as emblems and can hold a symbolic resonance especially when the community believes they can trust the police. The judiciary, on the other hand, is much less public than the police and thus do not become ‘the face’ of reforms.

UNMIK recognized the need to contain widespread violence using CIVPOL, KFOR and the KPS, but no consensus was ever reached in the judicial sector in the same respect. Even when international judges and prosecutors were brought in, the division of labour between international and local jurists was left ambiguous. This suggested UNMIK’s justice program was more about plugging holes than a comprehensive strategy to fight crime.²⁰³ Gregory Naarden and Jeffrey B. Locke suggest “[t]he United Nations missed an opportunity by failing to implement a strategically conceived and coordinated justice policy at the outset of the peace-building process.”²⁰⁴ There is a window of opportunity for institutional reform of the justice sector and it is almost limited to the transitional period because the judiciary shows strong resistance to change once the transition period is over.²⁰⁵

²⁰² Caparini, *Police Reform: Issues and Experiences*, 86.

²⁰³ Naarden and Locke, *Peacekeeping and Prosecutorial Policy*, 727.

²⁰⁴ Naarden and Locke, *Peacekeeping and Prosecutorial Policy*, 743.

²⁰⁵ Bernabéu, *Laying the Foundations of Democracy*, 83.

Mentoring

The KPS undergoes 20 weeks of training where they learn about democratic policing, human rights, patrolling, crime investigation, forensic evidence and traffic control. At the OSCE police school there are 60 international OSCE and 105 local KPS police instructors, as well as 200 local staff and 3 local legal experts to guide students through their training. Once their classes are completed, recruits get a further 20 weeks of field training with CIVPOL where they focus on the practical application of course work and community policing skills.²⁰⁶ We saw from a review of judicial reforms that international jurists first and foremost did not have the time to mentor their local counterparts as they were too busy dealing with the actual administration of justice. Moreover, the quick turnover of international personnel in UNMIK's Department of Justice impeded effective measures to remedy bias. There was no institutional memory, record of lessons learned and new recruits were thrown in without adequate preparation.²⁰⁷

Salaries and Budget

The OSCE undertook to review the entire criminal justice system in Kosovo from 1999 to 2005. One of their concerns is the low salary for jurists. They have increased since 1999 but remain low and have not been increased since 2002 when salaries were raised by five percent. Low salaries will not encourage good lawyers and judges to join

²⁰⁶ Organization for Security and Cooperation in Europe, "Police Education and Development Fact Sheet," OSCE, <http://www.osce.org/publications/>.

²⁰⁷ King and Mason, *Peace at Any Price*, 108.

and help prevent corruption.²⁰⁸ For instance, the monthly net income for judges is as follows: Supreme Court - €538; District Court - €479; and Municipal Court - €420.²⁰⁹ Judges salaries are so low, in fact, that they cannot support their families without another source of income.²¹⁰

As time has gone on, the international community's interest in Kosovo has waned which in turn has decreased the amount of money available for reforms. UNMIK's financial resources have been decreased substantially over the years. In 2004, the total amount budgeted for Kosovo's court system was only about 2.1 percent of UNMIK's budget.²¹¹ UNMIK's 2006 budget allocated just over €56 million for police services while the judiciary received only €16 million.²¹² Financial backing is obviously a critical practical component of reform. Kosovo is hampered by its non-status in this respect, unable to join economic cooperation organizations while it remains a territory under international administration. Kosovo's economy must rely on UNMIK and other international organizations for their economy to flourish and this has had a significant impact on its budget for JSSR.

Partnership

The partnership which should exist between the police and judiciary must be strategically coordinated from the outset. Successful post-conflict reconstruction requires

²⁰⁸ OSCE, *Kosovo: Review of the Criminal Justice System*, 44.

²⁰⁹ OSCE, *Kosovo: Review of the Criminal Justice System*, 44.

²¹⁰ Rule of Law Institute, *Judicial Reform Index*, 31.

²¹¹ Perriello and Wierda, *Lessons from the Deployment of International Judges and Prosecutors*, 25.

²¹² European Union, "Kosovo General Budget 2006," EU, <http://www.euinkosovo.org/>.

concurrent action on many fronts including measures to support economic recovery and foster reconciliation. Rachel Neild suggests, “[i]t is now clearly recognized that police reform requires parallel judicial reform and that it is frequently hampered, even endangered, by the slow pace or lack of judicial transformation.”²¹³ Judicial corruption or problems can trickle down and undermine police credibility when arrests never lead to trials. The continued failure of the judiciary in Kosovo undermined the credibility of the process of political change.²¹⁴ But without providing physical security and effective control of the legitimate means of organized violence, peace-building remains threatened by the recurrence of violence or even war. In Kosovo, “[t]he tension between establishing order and upholding international human rights standards emerged early in the mission and persisted.”²¹⁵

The objectives and instruments of security and justice sector reform do not really differ in post-war situations and what is found in ‘normal’ countries. But the priorities and balances of tasks are generally perceived as different. The re-establishment of the monopoly of violence attains great significance but other elements of reform, namely democratic governance over the security sector are crucial for long-term success of early measures.²¹⁶

²¹³ Neild, *Democratic Police Reforms in War-Torn Societies*, 31.

²¹⁴ Neild, *Democratic Police Reforms in War-Torn Societies*, 31.

²¹⁵ Rausch, *From Elation to Disappointment*, 298.

²¹⁶ Michael Brzoska, “Post-Conflict Reconstruction of the Security Sector: The Contribution of Conversion,” in *Security Sector Reform: Institutions, Society and Good Governance*, eds. Alan Bryden and Phillipp Fluri, 97 (Germany: Nomos Verlagsgesellschaft, 2003).

CONCLUSIONS AND LESSONS LEARNED

The struggle UNMIK faced to assert responsibility and effective policing provides some important lessons. First, given the character of the conflict in Kosovo, it should have been possible to anticipate the post-war ethnic problems and for KFOR especially to have a plan in place to make sure ethnic revenge did not occur. Second, cooperation between civil and military authority is important to be sure investigations and court cases are not conducted at cross purposes. This speaks to the lack of coordination between UNMIK and KFOR at times which worked against the international administration.²¹⁷

New forms of violence and insecurity emerged at the end of the conflict in Kosovo and other missions need to be prepared for this eventuality. Specifically, war ends but societal violence does not.²¹⁸ The end of war in Kosovo resulted in the rise of common crime. Insecurity can undermine negotiations, investment incentives and human rights reforms. Charles Call suggests “[c]ommon crime tends to weaken precisely what peace processes seek to achieve: consolidated peace, deeper democracy, justice and reconciliation.”²¹⁹ Over the long run, institutions will need to deal with the most significant internal threats. If they do not, these threats can undermine the stability and strength of the central government, and undercut social, political and economic frameworks for future stability. In this respect, the integration of the Serb and Albanian

²¹⁷ Rausch, *From Elation to Disappointment*, 292.

²¹⁸ Call, *Constructing Justice*, 377.

²¹⁹ Call, *Constructing Justice*, 378.

populations is critical to Kosovo's future as the creation of a multi-ethnic society remains one of the largest internal threats.

Some of the other lessons learned in Kosovo are not new and they have been taught before but are often ignored. One common lesson is that military forces need training to maintain law and order especially as new conflicts will increasingly require this as a component of peace-building. In Kosovo, KFOR was not trained for 'regular' policing. Missions also need to deploy a well-trained police force which is specifically trained for international operations.²²⁰ Moreover, these officers need to be posted shortly after the conflict ends because once control is lost it can take years to re-establish law and order.

Future missions will also have to recognize the inherent tensions which exist between the international goal of capacity building and order maintenance.²²¹ State-building and peace-building require long histories to develop institutional legitimacy as seen in already-established democracies. Yet, in today's post-war societies, the international community attempts to take short cuts to create revamped institutions in just a few short months. A rule of law institution like the judiciary is difficult to strengthen through external assistance because it is deeply imbedded in the social fabric and heavily influenced by cultural norms in society.²²² The partnership required between local and international efforts is very difficult to balance. The newly formed institutions need

²²⁰ Heinemann-Grüder and Grebenschikov, *Security Governance by Internationals*, 56.

²²¹ Rausch, *From Elation to Disappointment*, 285.

²²² Wilson, *Law and Order in an Emerging Democracy*, 155.

international financial backing and assistance, but locals must also take some form of control over these institutions to provide legitimacy to the rest of the population.

As Kosovo has illustrated, every post-conflict state will encounter obstacles to justice and security sector reform. Moreover, reforms undertaken will have to account for the critical political relationships both between and among key actors, how and why decisions are made and what the incentives and disincentives are for change. From Kosovo onwards, the international community will have to develop strategies to support reformers and minimize the impact of spoilers. This will require reformers to look beyond the formal legislative and organizational structures in order to see how local institutions actually function.²²³

From an examination of the reforms undertaken in Kosovo, two broad themes emerge in conclusion. First, the administration of justice should rank among the higher priorities of post-conflict reconstruction. Second, once the security environment allows the process of civil reconstruction to begin, sustainability should rank above temporary standards in the administration of basic law and order.²²⁴

Independence – What it could mean for JSSR

“The days ahead will determine if Kosovo is to become a peaceful, prosperous multi-ethnic state, at ease with itself and its neighbours.”²²⁵

²²³ Ball, *Dilemmas of Security Sector Reform*, 48.

²²⁴ Chesterman, *You, the People*, 181-182.

²²⁵ Internal Security Sector Review, “Kosovo Internal Security Sector Review,” ISSR, <http://www.issrkosovo.org/>.

In the nine years that UNMIK maintained full responsibility for Kosovo, the territory remained in a kind of legal limbo where it stayed a non-country ruled at once by everyone and no one. Up until Kosovo declared its independence on February 17, 2008, the SRSB reserved key functions including final approval of new laws and regulations, changes to existing ones, financial authority, control over security policies and over the KPC, and judicial appointments.²²⁶ Many will agree that Kosovo has been in a post-conflict transitional phase of development since 1999 and this has stunted the development of social, political and economic society. Many more will also suggest the public is frustrated by the roadblocks and difficulties encountered in reforms. With independence, UNMIK will no longer be a scapegoat for Kosovo's failures.²²⁷ Taking control over the police and the judiciary themselves may well solve some of the planning and budgetary roadblocks encountered by UNMIK. And with independence, UNMIK's ambiguous mandate no longer affects Kosovo. But it remains to be seen whether local control over the judiciary will move Kosovo's courts in a positive direction. Kosovo's government will also have to deal with some lasting security concerns the international community could not as it has become a centre for heroin, cigarette, fuel smuggling and human trafficking.²²⁸

There is an ancient Albanian proverb which states: "Vetim i zoti mund ta nxjerrë gomarin nga balta" which means only the owner can pull the donkey from the mud.²²⁹ It

²²⁶ ISSR, *Kosovo Internal Security Sector Review*, 8.

²²⁷ ISSR, *Kosovo Internal Security Sector Review*, 33.

²²⁸ Heinemann-Grüder and Grebenschikov, *Security Governance by Internationals*, 48.

²²⁹ Anthony Cleland Welch, "Achieving Human Security after Intra-State Conflict: The Lessons of Kosovo," *Journal of Contemporary European Studies* 14, no. 2 (2006), <http://www.informaworld.com/>.

is a simple analogy but very suitable in this case. Kosovo now has the chance to move the country from transitional democracy to full-fledged democracy with a strong security sector and they can finally do it themselves – just as they wanted from the start.

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