
Establishing the Rule of Law

The U.N. Challenge in Kosovo

Jean-Christian CADY

June 2012



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ISBN : 978-2-36567-035-7

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How to quote this article

Jean-Christian Cady, “Establishing the Rule of Law: the U.N. Challenge in Kosovo”, *Focus stratégique*, No. 34 bis, June 2012.

This text was previously published in French as “Etablir l’état de droit au Kosovo. Succès et échecs des nations unies”, *Focus stratégique*, No. 34, November 2011.

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Abstract

UNMIK was set up by UNSCR Resolution 1244 on June 10, 1999. Its purpose was to create new institutions in a war-torn territory in order to establish a democratic governance system. In this state-building process, security for individuals as well as property, and the creation of judiciary institutions that could be trusted by the population, were essential prerequisites. However, the international community only partially reached these objectives. Local difficulties linked to inter ethnic hatred, which created insecurity, and the weaknesses of international institutions were major handicaps for the creation of a local police force and the establishment of a judiciary system abiding by United Nations standards. The assistance of the international community still remains indispensable in the day to day running of Kosovo institutions and shows how fragile independence is. The assessment of UNMIK's action shows that peacekeeping operations can lessen the intensity of conflicts but are not able to eliminate their causes.

* * *

Créée le 10 juin 1999 par la Résolution 1244 du Conseil de sécurité, la MINUK avait pour objectif de refonder les institutions d'un pays dévasté par la guerre et d'établir une gouvernance démocratique. Dans le cadre de ce processus de *state-building*, la sécurité des personnes et des biens et l'existence d'un système judiciaire dans lequel la population a confiance étaient des critères essentiels. La communauté internationale n'est parvenue qu'imparfaitement à réaliser ces objectifs. Des difficultés locales, liées à la haine interethnique et à l'insécurité qui en découle, mais aussi des faiblesses inhérentes aux institutions internationales, ont représenté des obstacles majeurs à l'implantation d'une police locale et d'un système judiciaire respectueux des normes des Nations unies. Aujourd'hui, le soutien d'acteurs internationaux demeure nécessaire au fonctionnement du Kosovo, attestant de la fragilité de l'indépendance. Ce bilan de l'action de la MINUK démontre que les opérations de maintien de la paix peuvent atténuer les conflits sans pour autant en supprimer les causes.

Acronyms

ATNUTO	Administration Transitoire des Nations Unies au Timor Oriental
CICR	Comité International de la Croix-Rouge
CIU	Central Intelligence Unit
CIVPOL	Civilian Police
DDR	Désarmer, Démobiliser et Réintégrer
DOMP	Département des Opérations de Maintien de la Paix
EULEX	European Rule of Law Mission in Kosovo
ICMP	International Commission on Missing Persons
INPROL	International Network to Promote the Rule of Law
KCS	Kosovo Correctional Service
KFOR	NATO-led Kosovo Force
KJI	Kosovo Judicial Institute
KJC	Kosovo Judicial Council
KJPC	Kosovo Judicial and Prosecutorial Council
KOCB	Kosovo Organized Crime Bureau
KPC	Kosovo Protection Corps
KPS	Kosovo Police Service
LDK	Ligue Démocratique du Kosovo
MDU	Mouvement Démocratique Uni
MINUAD	Mission Hybride des Nations Unies et de l'Union Africaine au Darfour
MINUCI	Mission des Nations Unies en Côte d'Ivoire
MINUK	Mission d'Administration Intérimaire des Nations Unies au Kosovo
MINUS	Mission des Nations Unies au Soudan
MINUSTAH	Mission des Nations Unies de Stabilisation en Haïti
MONUSCO	Mission des Nations Unies pour la Stabilisation en République Démocratique du Congo
MSU	Multinational Specialized Units

MUP	Ministarstvo Unustrahnju Poslova (Ministère de l'Intérieur serbe qui dirige l'action de la Police)
OMP	Opérations de Maintien de la Paix
ONU	Organisation des Nations Unies
ONUCI	Opérations des Nations Unies en Côte d'Ivoire
OSCE	Organisation pour la Sécurité et la Coopération en Europe
OTAN	Organisation du Traité de l'Atlantique Nord
TPIY	Tribunal Pénal International pour l'ex-Yougoslavie
UNDP	United Nations Development Program
UNPOL	United Nations Police
PDK	Parti Démocratique du Kosovo
PNUD	Programme des Nations Unies pour le Développement
RSSG	Représentant Spécial du Secrétaire Général
SPU	Special Police Units
UÇK	Ushtria Çlirimtare ë Kosovës (Armée de Libération du Kosovo)
USAID	United States Agency for International Development

Introduction

More than twelve years after it was launched in 1999 the United Nations Mission in Kosovo (UNMIK) is still active, even though international support has taken a new form since Kosovo declared its independence in 2008. Nobody can foresee when this mission will end. Nobody can see how Kosovo, with its precarious existence and its limited resources, can function without the assistance of the international community. Among all the peacekeeping missions set up since 1948, UNMIK and UNTAET (United Nations Transitional Administration in East Timor)¹ were the most ambitious. Contrary to previous peacekeeping operations, their purpose was not only to maintain a fledgling truce between two enemies, but to create new institutions for a country or a territory that would be firmly committed to democracy and have a secure and stable environment for its population.

In order to reach this ambitious goal, never in the history of the UN were the special representatives of the secretary general (SRSG)² entrusted with such vast powers in the executive and legislative fields as well as the judiciary. This accumulation of powers would probably have horrified Montesquieu and had no parallel in democratic countries. Its justification was the huge and daunting task to be accomplished in a very short time.

In East Timor as in Kosovo, the two peacekeeping missions had a common purpose: to establish a democratic governance system. In order to reach this goal, peace and security had to be ensured in these territories and the rule of law firmly established. This was closely linked to the political context in which the international community initiated its intervention. From that view-point, UNMIK's action was jeopardized by the ambiguities of its mandate as well as the intervention of other international organizations.

A peacekeeping mission is in essence the implementation in the field of a mandate given to the UN Secretary General by the Security Council. Therefore, it is essential for the mission to receive a clear mandate in order to be successful. Very often the mandate is difficult to devise, as the views among the members of the Security Council rarely coincide. There was a consensus to bring East Timor to independence. This was not

¹ Dominique Lecompte, "L'ONU, Pygmalion malhabile La fragilité du *nation building* au Timor", *Focus stratégique*, No. 26, November 2010.

² SRSG (Special Representative of the Secretary-General) is the title used for heads of UN peacekeeping missions.

the case for Kosovo. UN Security Council resolution (UNSCR) 1244 of June 10, 1999, creating UNMIK was the result of a laborious compromise. It contains no definition of the future status of Kosovo, and the word independence never appears. UNSCR 1244 mentions only “substantial autonomy and meaningful self-administration”. These deliberately vague words enabled the Security Council to avoid a Russian veto. The absence of a clearly defined goal handicapped UNMIK from the outset.

Apart from the clarity of the mandate there is another important factor for the success of a mission: the number of international stakeholders. The Kosovo mission began with two international organizations: NATO and the UN. After having launched a campaign of air strikes against Serbia at the request of its members and without any mandate from the Security Council, and thus without complete legitimacy, NATO was given a mandate by UNSCR 1244 “to deploy an international security presence under unified command in order to establish a safe environment for the people of Kosovo”. For all that, the UN did not supervise NATO in its mission in Kosovo. UNSCR 1244, which gave an *posteriori* international legitimacy to NATO’s action and to the presence of KFOR (Kosovo Force), did not give any authority to the SRSG, head of UNMIK, over the KFOR commander. These two initial stakeholders were joined by the European Union (EU) in charge of economic development and the Organization for Security and Cooperation in Europe (OSCE) responsible for the training of policemen, judges, prosecutors and civil servants and the organization of elections. The heads of the EU and of the OSCE missions were under the supervision of the SRSG.

This framework was unsatisfactory and restrictive. Nevertheless, as for any mission whose purpose is to build and run a state administration, state-building in Kosovo can be assessed on the basis of four criteria. It must: ensure the security of the population and the respect of property rights; build a neutral, competent and efficient judiciary system perceived as such by the population; develop the economic potential of the territory promoting training and employment; establish democratic, non-corrupt and responsible governance.

The first two criteria are essential and are even a prerequisite for the success of the latter two. If security for population and property, and the existence of a confidence-generating justice system are not guaranteed, then it is pointless to contemplate economic development. That is why this paper focuses on the two fundamental criteria of security and justice, in other words, the building of structures and mechanisms leading to the establishment of the rule of law.

In that respect the ambitions of UNSCR 1244 were daunting. If all the expectations mentioned in this resolution had been fulfilled, Kosovo would have become a role model in the Balkans, reaching standards far exceeding those of its immediate neighbors. In order to achieve this ambitious goal, the international community put together considerable resources. For KFOR, NATO mobilized 42,000 soldiers. The UN deployed the most numerous task force in its history with UNMIK’s Pillar I (Police and

Justice) comprising 15,000 people.³ And yet, despite the huge human and financial resources, and even though Kosovo is a small territory within Europe, the international community did not fully meet its objectives. More than twelve years after UNMIK was launched, the time has come to analyze the reasons for this mitigated success. Was it because expectations were too high? Was it because UNMIK made mistakes - which no doubt could hardly have been avoided in the particularly distinctive context of the Balkans? Doubtless the long wait for a political decision on the final status of Kosovo also had a negative impact on the success of the mission. To answer these questions this paper will analyze the successive stages of the establishment of the rule of law in Kosovo in the fields of police and justice, starting from the inception of UNMIK to the progressive transfer of powers to local authorities, a transfer which is still incomplete today.

³ In July 2003, Pillar 1 comprised 15,076 people. 9,263 were locally hired staff including 5,373 KPS officers and 375 local judges and prosecutors paid on the Kosovo consolidated budget, which derived its resources from customs duties. Pillar 1 included also 1,533 local UN employees, 4,018 international police officers and 262 international UN staff. UNMIK, *Pillar 1, Police and Justice: Presentation Paper*, July 2003, p. 14, available at: http://www.unmikonline.org/justice/documents/Pillar1_Report_Jul03.pdf.

Ensuring Collective Security

The purpose of the international community's intervention in Kosovo in 1999 was to put an end to ethnic cleansing, to establish security throughout the territory and to enable all ethnic communities to live together in peace. This process took place in three stages. At first, KFOR had full responsibility for security. This competence was then shared between KFOR and UNMIK, the latter gradually taking an increasing share. The final stage was a progressive transfer from UNMIK to a local police force. This transfer remains incomplete today.

KFOR Control

KFOR was the first to be deployed as a consequence of the Military Technical Agreement signed in Kumanovo (Macedonia) on 9 June 1999 between KFOR and the governments of the Federal Republic of Yugoslavia and the Republic of Serbia.⁴ As they left Kosovo, the Serbian forces emptied prisons and transferred the inmates— some of them common law prisoners but most of them political detainees⁵ - to Serbian prisons. The departure of Serbian soldiers, policemen, civil servants and judges created an unprecedented security and judiciary vacuum. Kosovo became prey to uncontrolled armed gangs committing increasing numbers of atrocities. KFOR had to fill this vacuum as the Serbian troops retreated.

In September 1999, KFOR reached its maximum size with 48,000 soldiers from 39 countries, the 19 NATO members supplying roughly 80% of the contingent. KFOR's initial field organization was based on five multinational brigades (MNB). In each brigade one leader country supplied more than half the troops and four or five other countries supplied the rest, the Russian contingent being spread over all brigades.⁶ Thus France was

⁴ Art. 1 paragraph 4a of the agreement states that “under no circumstances shall any Forces of the FRY and the Republic of Serbia enter into, reenter, or remain within the territory of Kosovo or the ground safety zone”. Art. 2 plans the staged retreat of Serbian forces, the last stage ending 11 days after the signature of the agreement. The same article states that the bombing campaign of Yugoslavia will end after the full retreat of Yugoslav and Serbian troops.

⁵ One of UNMIK's tasks in 2000, 2001 and 2002 was to negotiate with the Serbian government the return of Kosovo prisoners who had been transferred to Serbia and had been detained for political reasons, many of them without being charged. Yugoslav forces moved approximately 2,000 prisoners to Serbia. The last batch of 148 Albanian prisoners returned in March 2002.

⁶ On the morning of 12 June 1999, quite unexpectedly, a unit of 200 Russian paratroopers from the peacekeeping assignment in Bosnia, was deployed around Pristina airport. Enraged that NATO had launched a military action without having a

nominated leader country for MNB North which is adjacent to Serbia proper and comprises the city of Mitrovica; the US was in charge of MNB East around Gnjilane; Germany led MNB South around Prizren; Italy led MNB West around Peć⁷ along the Albanian border and the UK led MNB center which included the city of Pristina, the capital city of Kosovo.

With its considerable logistical assets KFOR helped humanitarian organizations transport food and medicine and supplied military protection for the return of refugees. In July 1999 more than 58,000 Serbs, who had been living in Kosovo for generations, fled to Serbia proper, terrified by the wave of attacks, kidnappings and murders targeting their community. As Serbia had to manage this exodus, it started regrouping those who did not have a family, resources or a job, in refugee camps. Thousands of refugees remained for many years in those camps, unable to establish themselves in their own country.⁸ A few months earlier hundreds of thousands of Kosovars of Albanian ethnicity had taken refuge in Albania, Macedonia or Montenegro. At the time of KFOR deployment in June-July 1999, many Serbs left their homes in Kosovo and became displaced persons just as, at the same time, Albanian refugees returned to their homes.

During the following months the security situation in Kosovo remained precarious. As the UN deployed international policemen, administrators, technicians, judges and prosecutors, it appeared clearly that in the coalition formed by the KFOR commander and the SRSG, the real power of the mission remained in the hands of KFOR, which had arrived quickly, fully staffed and equipped, and therefore had considerable human and logistical resources immediately available. There is no doubt that in this initial phase, the internal and external security of Kosovo was ensured by KFOR and its commander.

In that capacity and in the absence of functioning civilian police and justice institutions, the commander of KFOR received the inordinate power to arrest and jail, without judgment, for a renewable period of three months, any individual suspected of threatening peace in Kosovo. The persons arrested by the military were detained in a military compound, Camp Bondsteel, built by the US Army in 1999 in eastern Kosovo. At the time,

Security Council mandate, Russia sought to strengthen its position by this move, as it had not been able to obtain the northern military sector bordering Serbia. If Russia had been given this sector, it would have been out of NATO military command. Surprised by this move and eager to avoid a confrontation, the KFOR commander, British general Mike Jackson, did not oppose the Russian troops' presence, against the orders he received from the NATO military commander in Europe, US general Wesley Clark. See General Mike Jackson's article, "My clash with NATO chief", *The Telegraph*, 4 September 2007, available at: <http://www.telegraph.co.uk/news/worldnews/1562161/Gen-Sir-Mike-Jackson-My-clash-with-Nato-chief.html>. Russian troops left Kosovo by mid-2003.

⁷ This paper uses the Serbian spelling for names of cities, as it is used more widely.

⁸ Refugee camps have been a focal point of Serb resentment towards the international community for years. The Serbian government was accused of capitalizing on the advantage it gave them in domestic politics and not putting enough effort into solving this problem.

Camp Bondsteel accommodated 7,000 soldiers. It had a prison whose maximum capacity of 100 detainees was never reached. The prisoners wore orange overalls. Even though they were suspected of terrorist or criminal acts in Kosovo, they had never seen a lawyer or a judge.⁹ As soon as UNMIK installed its own penal management and judiciary institutions, these detainees were transferred from the KFOR detention center to UNMIK prisons under the control of the UNMIK Department of Justice.

Many NGOs were extremely critical of these extra-judicial powers which were redolent of despotic practices in absolute monarchies. With hindsight, these exceptional powers appear to have been the only way to avoid total anarchy. However, the KFOR commander's power to arrest and detain without judgment was not sufficient to make Kosovo a secure territory. The first six months of the international presence in Kosovo were marred by a wave of abductions and murders. The Serbs were the first victims. The most extreme elements of the Albanian community – and in particular the members of the KLA (Kosovo Liberation Army) – were resolved to take revenge for the exactions of the preceding years.¹⁰ UNMIK statistics show that during the first six months of the peacekeeping mission, i.e. between June and December 1999, around 500 people were murdered, mostly for ethnic reasons.¹¹ In the Security Council report on UNMIK of September 16, 1999, the UN Secretary General wrote: “According to an

⁹ The French General Valentin, KFOR commander from 3 October 2001 to 4 October 2002 said: “In Kosovo as the chief of KFOR I had extraordinary powers. I could send whomever I wanted to jail, whenever I wanted for an indefinite period... As soon as I arrived in Kosovo my decision was to clear the detention center belonging to KFOR. I felt it was a bit too full and not always for the best reasons... I left the detention center empty of its prisoners for my successor as I did not want him to bear responsibility for my decisions in this field.” Emmanuelle Dancourt and Marcel Valentin, *De Sarajevo aux banlieues, mes combats pour la paix*. Chambray-lès-Tours, CLD Editions, 2006, p. 231. See also Hans-Jürgen Schlamp, “Everyone knew what was going on in Bondsteel”, interview of Alvaro Gil Robles, Council of Europe, Human Rights Commissioner, *Spiegel on line*, 12 May 2005, available at: <http://www.spiegel.de/international/clandestine-camps-in-europe-everyone-knew-what-was-going-on-in-bondsteel-a-388556.html>.

¹⁰ Founded in 1996 the UÇK (*Ushtria Çlirimtare ë Kosovës*), Kosovo Liberation Army (KLA) led guerrilla attacks against Serbian army and police and was based in the Drenica region in West Kosovo. The US started by including the KLA on the list of terrorist organizations, then considered it as a national liberation movement. The military head of KLA, Agim Çeku, became prime minister of Kosovo between March 2006 and January 2008. The political head of KLA, Hashim Thaçi, who had become the leader of PDK (Party of the Democrats of Kosovo), succeeded him. As prime minister, Thaçi declared the independence of Kosovo in February 2008. Thaçi and Çeku are under international arrest warrants at the request of Serbia for war crimes. Moreover, Thaçi is accused by the Council of Europe of being a major leader in Kosovo organized crime.

¹¹ UN Security Council, *S/1999/987, Report of the Secretary-General on UNMIK*, 16 September 1999, available at: <http://www.unmikonline.org/SGReports/S-1999-987.pdf>. An ICRC report published by UNHCR on 24 November 2011 says: “Well over 10 years after the events in Kosovo, out of the total of 6,019 persons reported to the ICRC as missing by their families, 1,799 remain unaccounted for”. International Committee of the Red Cross, *Kosovo: fate of over 1700 missing persons yet to be clarified*, 24 November 2011, available at: <http://www.unhcr.org/refworld/docid/4ecf455c2.html>.

ICRC report, 3,746 cases of missing persons have not yet been solved. Around 600 of these are Serbs and Roms, most of them being missing after June 4, 1999.” Bernard Kouchner, UNMIK’s first SRSG, said that he “had to face an increase in crime when UNMIK’s judiciary system was not yet operational.”¹²

Serbs, Roms, Gorani and Ashkali¹³ were definitely not the only victims. Kosovar Albanian members of the Democratic League of Kosovo (LDK) were murdered too, by UÇK fighters who considered the LDK’s doctrine of nonviolence tantamount to a form of collaboration. Faced with this burst of violence, KFOR troops, for the most part, did not intervene.

In spite of its limited success in the field of internal security, KFOR was undoubtedly efficient in guaranteeing the external security of Kosovo. With its massive presence and powerful armament, it facilitated the retreat of Serbian troops and was a deterrent to any attempt to renew fighting either by the Serbs or the KLA. The administrative boundary – the official term for what had, in fact, become a border – remained a tight separation. The border controls by the MNBs at the crossing points with Albania, Montenegro and Macedonia were efficient. They certainly discouraged arms and military equipment trafficking, although they were unable to stop it altogether, as mountains in this part of the Balkans have always facilitated smuggling.

Another rather positive element of KFOR presence was the protection of Serbian patrimonial sites. The presence of static KFOR guards protecting monuments, which are part of the Serbian heritage and highly valued by the Serbs, such as the monasteries of Gračanica, near Pristina and of Dečani in the western part of Kosovo (called Metohija by the Serbs) and the monument built by the Serbs and abhorred by the Albanians, commemorating the Battle of Kosovo Polje¹⁴, prevented these historical landmarks from being vandalized or destroyed by fire. However, static guards for monuments were very costly in manpower, and no doubt detrimental to the military presence in the rest of the territory. They became more difficult to maintain everywhere as the number of soldiers in KFOR began to diminish as of 2002, because some countries had commitments to send troops to other operations like Iraq or Afghanistan. Thus KFOR had to

¹² François Didier, “Priorité sécurité pour Kouchner. Criminalité en hausse. Premier bilan mitigé pour l’administrateur de l’ONU”, *Libération*, 14 December 1999. The journalist writes: “Two figures speak for themselves: 400 killings in six months and only 4 trials for homicide”.

¹³ Roms are gypsies who speak the Rom language. Ashkali are also gypsies but they speak Albanian. Gorani, who are sometimes called “Bosniacs”, are Moslem Slavs who speak Serbian. Other minorities are the Turks who did not leave Kosovo when it ceased to belong to the Ottoman Empire in 1912. Most of them live in the south of Kosovo. All minorities encounter discrimination from Albanians.

¹⁴ At the battle of Kosovo Polje (literally blackbird field) on 15 June 1389, the Serbs were defeated by the Turks. Nevertheless it is considered by Serbia as one of the foundations of the Serbian nation. For the 600th anniversary of this event, on 28 June 1989, Milosevic made a speech before a monument erected in 1953 on the battle site. This speech started the “Serbification” of Kosovo which was followed by ethnic cleansing.

remove static guards on some sites. The consequence was that during the riots of March 2004, dozens of churches and Serbian patrimonial sites were destroyed or set on fire. It was also in 2002 that KFOR began to transfer to the police the protection of Serbian enclaves which had become heavily guarded forts after the war.

KFOR was competent and efficient in ensuring the external security of Kosovo, but much less effective for internal security. Even though KFOR made frequent patrols on foot and in armored vehicles and set up numerous check points, it was unable to fight growing delinquency, to put an end to exactions and looting, and to prevent political, ethnic or common crime from proliferating in Kosovo.

Soldiers lacked the training and experience to investigate crime scenes, and they took insufficient precautions when collecting evidence. This almost systematically prevented investigations from being conclusive. For this reason the killings, abductions and violence which took place during the first six months of the mission led to very few judicial procedures. Amnesty International, to express its outrage, used the example of the murder of Mrs. Piljevic¹⁵ of Serbian ethnicity, who was abducted on 28 June 1999 in Pristina by three men dressed in KLA uniforms. Nevertheless, it would be unfair to blame KFOR for its lack of efficiency in police investigations. Policing is specific work for which soldiers are not trained.

International Police Force Capacity Building

The progressive build up of CIVPOL (UN civilian police) improved the situation but was not sufficient in itself to overcome the difficulties of establishing law and order. Practically no international police officer recruited to UNMIK had any previous knowledge of Kosovo or spoke a local language. Under these circumstances, it is hardly surprising that their interaction with the local population was reduced to a minimum, as they had to communicate through interpreters. What made things even worse was that many CIVPOLs had only a scant knowledge of English, UNMIK's working language, and thus CIVPOLs of different mother tongues also found it difficult to communicate among themselves.

By and large, the international police force was lacking coherence and homogeneity. CIVPOLs¹⁶ were from 49 countries. Each country had its own way of proceeding, and its own professional, legal and cultural references. The role of the police commissioner, who was the head of all international police officers, was to ensure that international police action was coherent, and that it was perceived as such by the population.

¹⁵ ICRC identified her body in August 2001 among those exhumed from mass graves by ICTY. In 2003 Amnesty International started a campaign sending more than 1,300 letters from all over the world to the head of UNMIK Pillar 1 (Police and Justice) to protest against the fact that the murderers had not been identified. This campaign is still going on and targeting EULEX. Sadly the Piljevic case is identical to hundreds of other cases.

¹⁶ CIVPOL: civilian police. Since 2005 the UN international police has been named UNPOL.

With hindsight, one could imagine that it would have been better to call on fewer member states to contribute to the international police force. It is probably one of the lessons learned from this mission. A smaller number of countries, selected for the homogeneity of their methods of policing, would have made CIVPOL more efficient¹⁷ and given it more credibility in the eyes of the population.

From the outset the slow deployment of CIVPOL appeared as a serious handicap. Of the 4,718 CIVPOLs authorized to be deployed in UNMIK, only 723 were actually present on December 13, 1999, six months after the beginning of the mission. In June 2000 there were only 3,626.¹⁸ Unlike military or riot control units which are deployed as functional units, each civilian police officer was hired individually by the UN headquarters in New York. This process slowed down considerably their field deployment. Furthermore, some developed countries were reluctant to lend policemen for any period of time as their absence would create a shortage in their home country. Understaffed in the early stages, CIVPOL was taxed with being inefficient. Only with the recruitment of local policemen did the situation begin to improve.

Progressive but Limited Transfer of Responsibilities to Local Police

When UNMIK arrived, police did not have a good reputation in Kosovo. The Albanian majority of the population was still traumatized by the painful memory of the actions of the Yugoslav police (MUP)¹⁹ which was unanimously seen as the instrument of Serbian oppression. Thus there was an urgent need to create a new police force from scratch, which would appear to everyone as respectful of human rights standards and serving the population as a whole and not the instrument of the rule of one ethnic group in particular.

The new police force, the *Kosovo Police Service* (KPS) was thus recruited on an inter-ethnic basis. The percentage of each ethnicity in KPS was intended to be the same as in the population. On the basis of a census carried out in 1981 which overestimated the numbers of the Serbian population, UNMIK decided that KPS should include 10% Serbs and 5% other minorities. Furthermore, in order to insure a fair gender

¹⁷ The recruitment criteria for UN CIVPOLs have been set by DPKO and are : to be proposed by a member state, to be over 25 years of age, to have 8 years of professional experience and at least 5 years as an officer, to be proficient in English, to have a valid driver's license, to meet the Organization's medical requirements. Report of the Secretary General on the activities of the Office of Internal Oversight Services. Management audit of the United Nations civilian police operations 1 March 2001, available at: http://www.un.org/Depts/oios/reports/a55_8_12.pdf.

¹⁸ UN Security Council, S/1999/1250, *Report of the Secretary-General on UNMIK*, 23 December 1999, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/387/03/IMG/N9938703.pdf>.

¹⁹ The Serbian Ministry of Home Affairs, *Ministarstvo Unustrahnji Poslova*, which runs the police, is known as MUP. Police forces stationed in the Serbian territory are also called MUP.

representation, KPS had to include 15% women, which was quite a challenge in a traditional society like Kosovo.²⁰

All inhabitants of Kosovo, men and women between 18 and 55, could apply for the KPS, provided that they were in good health and had no criminal record. At first, thinking that it could be an easy way to disarm and disband the KLA, UNMIK started integrating into the police the former Albanian guerrilla fighters. An agreement between UNMIK and KFOR allowed for 50% of KLA members to be hired as policemen. This was a very serious mistake. It jeopardized the credibility of KPS in the eyes of the minorities, the Serbs in particular. It soon became clear that many KLA members were compromised in trafficking and had been too involved in the fight against Serbia to be acceptable as policemen by all communities. This is the reason why a few months after they were recruited, most policemen from KLA had to be fired. They became members of the Kosovo Protection Corps (KPC), a civilian emergency services organization, set up to demobilize militias.²¹

Due to high unemployment, there were many candidates. Thus the entrance examination for the police academy became very selective. During their training, police cadets were regrouped in the police residential school in Vusshtri, 30km northwest of Pristina. All students attended the same courses given by international instructors, usually in English and translated into Albanian and Serbian. In the training, emphasis was put on human rights, to make it clear that KPS would in no way resemble the police force that it had replaced, with its pre-1989 Eastern European methods. The basic training was followed by practice in the field.²²

The buildup of KPS was gradual. The school's first intake of 176 new recruits began training on 6 September 1999. On 5 May 2006, 6,826

²⁰ UNSCR 1325 of 31 October 2000 requested an increase in the role and contribution of women in UN operations. Regulation 2004/2 of 19 February 2004 voted by the Kosovo Assembly and promulgated by the SRSG sets the legal framework for gender equality in all fields of social life in Kosovo. The target set by this regulation was 40% women. Available at: http://www.iwraw-ap.org/resources/documents/GE_Kosovo.pdf. It is interesting to note that among the 14,000 UNPOLs deployed in all the UN peacekeeping missions around the world, 10% are women.

²¹ Demobilization, disarmament and reintegration of former combatants was part of the strategy set in UNSCR 1244, as it was an essential step towards ensuring security in this territory. Enjoying the confidence and the gratitude of the population who saw them as heroes, the guerrilla fighters wanted to become a permanent army. This possibility was ruled out by the international community who wanted KLA members to form a civilian emergency services organization, the KPC (Kosovo Protection Corps) to provide a disaster response capability, conduct search and rescue operations and assist in demining. KPC was never effective, as its members were not motivated. It was dissolved in June 2009.

²² The current president of Kosovo, Atifete Jahjaga, who was elected on 7 April 2011 at age 36, is a former KPS policewoman who, like all KPS officers, was trained at the police academy in Vushtri.

KPS officers had been trained and deployed in Kosovo.²³ Progressively, the presence of local policemen from all ethnicities, speaking the local languages and thus having the confidence of the population, bore fruit. The level of delinquency declined. Trafficking diminished. The number of murders decreased. And there were more successful investigations.

The increased presence of trained local policemen enabled KFOR to transfer the control of borders and Pristina airport to civilian authorities (CIVPOL and KPS). Simultaneously, UNMIK reduced the number of international policemen. Out of 4,450 CIVPOL officers at the beginning of 2003, only 2,200 remained in March 2006.²⁴ At the same time, UNMIK progressively transferred responsibilities and operational control in police stations to KPS. This transition started in 2004 and was completed in 2005. At the end of 2005 all 33 police stations and five of the six regional police headquarters (with the exception of Mitrovica) had been transferred to KPS control, international officers having an advisory and monitoring role.

According to western diplomats and NGOs, the creation of KPS was a success story, all the more so as it enjoyed the confidence of the population.²⁵ In practice, policemen of Albanian and Serbian ethnicities worked well together. KPS could be considered as the only multi-ethnic institution in Kosovo. But this apparent success needs to be qualified.

Shortcomings of KPS

The first weakness of KPS was that it did not exercise police functions in North Mitrovica, (the Serbian part of the city), or north of the Ibar River. In this territory adjacent to Serbia, Serb participation in KPS could not be easily achieved. Serb militias, the self-styled “bridge watchers”, were set up to prevent Albanians from entering the northern part of Kosovo. With the political and financial support of Belgrade they quickly became an irregular force, recognizing no authority. They engaged in various activities closer to money extortion than to political patriotism. The “bridge watchers” and other nationalist militants put pressure on Kosovo Serbs to prevent them from joining KPS, which they saw as a future instrument of Albanian oppression.

UNMIK engaged in negotiations with Belgrade to stop this pressure on the Serbs of northern Kosovo. UNMIK pointed out that only a multi-ethnic police force could be neutral and could ensure the security of the Kosovo Serbs in a lasting way. However, this point was neither understood

²³ KPS comprised 86% men and 14% women. 84.5% of KPS were of Albanian ethnicity, 9.6% of Serbian ethnicity and 5.9% of other minorities. UN Security Council, *S/2006/361, Report of the Secretary-General on UNMIK*, 5 June 2006, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/359/64/PDF/N0635964.pdf>.

²⁴ This number includes 1,718 CIVPOLs, 2 in the penal management system and 500 in crowd control units.

²⁵ Arta Ante. *State Building and Development. Two Sides of the Same Coin? Exploring the case of Kosovo*, Hamburg, Disserta Verlag, 2010, p. 227. See also Jérôme Mellon, *Preparing for a Security Sector Reform. Lessons from Kosovo*, UNDP Bureau for Crisis Prevention and Recovery. Publication III, 2006, p. 2.

nor even heard. The objective of the Kosovo Serbs was quite obviously to remain part of Serbia. At all costs they refused to be integrated into Kosovo, with its overwhelming Albanian majority. They did not speak the same language, did not have the same alphabet, did not have the same religion, and did not share the same customs. The Serbs were getting older and poorer and dwindling in number. 60% of them lived in enclaves scattered over the territory south of the Ibar River, and they did not trust KPS which they saw as pro-Albanian. It took great efforts to establish a KPS presence in Serbian enclaves south of the Ibar River. This could never be done in northern Kosovo.

The second shortcoming of KPS was riot control. It quickly became evident that it was not feasible to set up riot control units within KPS. In public order disruptions in Kosovo there was always an ethnic factor. KPS with its real but fragile balance between ethnicities could not be entrusted to control demonstrations with an ethnic component, without the risk of falling apart. Such missions had to be carried out by the international police, as it was a core component of its mandate. Within KFOR there was also a multinational specialized unit (MSU) which brought together units with a military status and a specialization in police tasks, like the Italian *carabinieri*, the Spanish *Guardia Civil* or the French *gendarmes*. Most of the MSU staff were Italians. The MSU had a direct link to the KFOR commander, as its area of competency covered the whole territory of Kosovo. It was supposed to work closely with CIVPOL but in reality had its own agenda and priorities and was reluctant to coordinate with UNMIK.

The shortcomings in public order could not be blamed on the KPS itself, but rather on the inadequacy of the coordination between UNMIK and KFOR for such matters. This weakness proved to be disastrous during the riots of 17 -18 March 2004. The riots were triggered by two events. The first was the murder of a Serbian teenager in Caglavica, a Serbian enclave near Pristina. This was the latest in a series of attacks against Serbs attributed to the Albanians. This led the Serbs to organize demonstrations and block the road between Pristina and Skopje. The second event was the accidental drowning of two Albanian children in the Ibar River. This caused fury in the Albanian community, who held the Serbs responsible for murder, even though a criminal investigation led by an investigating judge was unable to prove it. In 48 hours Albanian protest riots spread throughout Kosovo, encouraged, at least in the initial phase, by a few politicians.²⁶

The riots killed 19 people (8 Serbs and 11 Albanians) and injured 700. The Albanian Kosovars destroyed or set fire to 800 houses belonging not only to Serbs, but also to Roms and Ashkalis, who were suspected by Albanians of being pro-Serb.

²⁶ UN Security Council, S/2004/348, *Report of the Secretary-General on UNMIK*, 30 April 2004, available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/331/80/IMG/N0433180.pdf>.

See also the articles of Jean Arnault Derens, "L'explosion que la MINUK n'a pas vu venir", *RFI*, 23 March 2004 and "Des émeutes concertées au Kosovo", *La Libre Belgique*, 24 March 2004.

The riots exposed two weaknesses. On the one hand, UNMIK alone did not have the capacity to deal with major simultaneous uprisings throughout the territory of Kosovo. KPS being excluded for the reasons mentioned above, UNMIK could only count on its own international crowd control units (SPU) which were not sufficient to intervene in many cities at the same time.

On the other hand, when UNMIK called on KFOR's assistance for this task that was well beyond its own capacity, KFOR's response was extremely slow. This was due to the fact that there were no standard rules of engagement within KFOR and that each national contingent had its own limitations, called "caveats", which meant each contingent had to request authorization from its national authority. It took time for the military to intervene and when they did, they did not have the professionalism of riot control specialists. Having no previous experience of such situations, often frightened by the confrontation for the first time in their lives with massive demonstrations, some soldiers overreacted, leading to an excessive number of casualties.

Lessons from the 2004 riots

Obviously, everyone was taken by surprise: the Kosovar Albanian politicians and the KFOR and UNMIK authorities. Even though intelligence units were well staffed²⁷, nothing had been anticipated. Many lessons can be learned from this uprising.

The first is that it is preferable to have a single line of command between the civilian and the military components in a peacekeeping operation. The sharing of power between the KFOR commander and the SRSG was counterproductive, as it slowed down the response to the riots.²⁸ If it had been dealt with in time this situation would not have degenerated into an insurrection. Some countries, like the United States, do not want to have their troops under UN command. The Americans have not forgotten the fiasco of Somalia. When, for political reasons, it is not possible to have a unified military command fully integrated in a

²⁷ KFOR had an intelligence unit working in its compound, mostly by phone tapping. The telephone network of Kosovo being still linked to the Serbian telephone system, the Serbs did a lot of phone tapping too. In addition, the Quint (France, Germany, the United Kingdom, Italy and the USA) established and financed an intelligence unit, the CIU (Central Intelligence Unit), quartered inside KFOR headquarters and working in cooperation with the KFOR intelligence unit. CIU was not part of UNMIK but passed on information to the police commissioner. One of the goals of CIU was to fight organized crime. In a territory where potential witnesses knew they were risking their lives if it became known that they had testified, phone tapping was the main source of police information. One should not forget that independently from the UN and KFOR, a few countries had their own intelligence units in Kosovo.

²⁸ There was a weekly meeting between the KFOR commander and the SRSG accompanied by their respective staffs. This meeting was held every day in times of crisis. Otherwise there were frequent meetings between the KFOR chief of staff and the police commissioner. However the KFOR commander was impeded by national *caveats* and did not have as much leeway as the SRSG.

peacekeeping mission, one must plan who will have the leadership in the case of a serious breach of the peace and the conditions in which a transfer can be made between the civilian and the military authorities. Nothing of the kind was planned in UNSCR 1244.

The second lesson is that the rules of military engagement have to be well defined and harmonized between the national components so that if the unexpected happens, the international military commander in the field has a wider margin of action. It is striking to see that the KFOR commander was at best a coordinator and that his authority over the national brigades was limited to the point of being nonexistent.

The third lesson is that, in a peacekeeping operation of this kind, the UN must have sufficient civilian manpower²⁹ to keep public order so as to avoid this task being performed by the military, with all the risks that this entails. The attributions of policing and law and order had not been thought through in the UN, as at the time they were not yet part of the UN culture.³⁰

In spite of these riots and the shortcomings they revealed, UN action concerning security can be assessed as positive. The crime rate went down. From 500 murders in the first six months of the mission in 1999, it dropped to 245 in the year 2000 and 68 in 2002. Abductions stopped. In 2004 the crime rate in Kosovo was close to the countries in Western Europe.³¹ Simultaneously, the number of criminals jailed in civilian prisons increased. This result was regarded as a success by the

²⁹ By « civilian » one should understand police forces under a civilian command. *Gendarmes*, who have a military status, are considered by the UN to be part of the civilian police as they are under the command of the police commissioner. The French contribution to CIVPOL consists only of *gendarmes*.

³⁰ The civilian police division was created in October 2000 in DPKO (Department of Peacekeeping Operations). Under-equipped and handicapped by insufficient staffing, this division only dealt with the most urgent needs, finding it difficult to address operational requests. After the Brahimi report, a reform of DPKO was launched in 2005 and approved in 2007 by the General Assembly. The civilian police division became a part of the DPKO Office of Rule of Law and Security Institutions. This office brings together the Police Division, the Criminal Law and Judicial Advisory Service (CLJAS), the UN Mine Action Service, the Disarmament, Demobilization and Reintegration Section and the Security Sector Reform Unit. This new organization applies the lessons learned from Kosovo and Timor. See UN Security Council, *A/55/305-S/2000/809, Report of the Panel on United Nations Peace Operations (Brahimi Report)*, 20 August 2000, available at: http://www.un.org/peace/reports/peace_operations/.

³¹ In spite of its bad reputation, Kosovo is far from being a country with a very high crime rate. The number of homicides was 11.8 for 100,000 inhabitants. It dropped to 2.9 in 2005. In 2009 it was 3.2. It is higher than the average in the European Union but much less than in the US (5.6 in 2005). See UN Office on Drugs and Crime, *Crime and its Impact on the Balkans and Affected Countries*, March 2008, available at: http://www.unodc.org/documents/Balkan_study.pdf. The UNODC study states: «The Balkan area is, surprisingly, one of the safest in Europe. The report *Crime and its Impact on the Balkans* by the United Nations Office on Drugs and Crime (UNODC) belies enduring stereotypes of the region as a hotbed of organized crime and violence. People are as safe, or safer, on the streets and in their homes as they are in most parts of the world”.

international community and by most Kosovars, i.e. the Albanians. The minorities – the Serbs in particular – had a different view, as they were still living in fear, cloistered in their enclaves.

Freedom of movement did not exist for everyone in Kosovo. As most of them do not speak Albanian, Kosovo Serbs can easily be identified and cannot leave their enclaves. In order to attend the meetings of the Kosovo Assembly the Serbian members needed a military or civilian escort and armored vehicles provided by UNMIK. In the same way, international judges and prosecutors needed a bodyguard in order to attend the hearings in courts outside Pristina. When the Serbs of Serbia proper planned a pilgrimage to a monastery in Kosovo for Christmas or Easter, their trip was heavily protected by numerous international security guards.

The Albanian Kosovars could travel freely within Kosovo. But crossing borders was difficult. They refused to use their Yugoslav passports, as they saw it as a sign of allegiance. So they received *laissez passer* from UNMIK. These documents looked like passports, but as they were not passports, they were not recognized by Kosovo's neighbors. One of UNMIK's tasks was to negotiate acceptance of these documents with these countries so that Kosovars who had many family ties in neighboring countries, Macedonia in particular, could visit them.

Thus, by and large, the security situation in Kosovo improved considerably, but this progress was undermined by the hatred between communities which had not abated since the war.

Missing Persons

This hatred was exacerbated by the recurring issue of missing persons. According to an International Committee of the Red Cross (ICRC) account, 3,528 people of all ethnic communities went missing between January 1998 and April 2001.³² Crimes were committed on all sides but each community saw itself as the only victim, forgetting about the exactions made by some its own members. Roughly two thirds of the missing were Albanian, one third Serbian.

As soon as the war stopped, the International Tribunal for the Crimes in Yugoslavia (ICTY) began the search for mass graves. ICTY was more interested in collecting evidence of war crimes than in identifying exhumed bodies.³³ The long and arduous task of body identification was one of UNMIK's missions, helped by ICRC and NGOs like the International Commission on Missing Persons (ICMP) which performed DNA tests. As long as the bodies were not fully identified, families still had some hope that somewhere the missing person was still alive. Legends were spread,

³² International Committee of the Red Cross, *ICRC Progress Report*, 28 August 2006, available at: <http://www.icrc.org/eng/resources/documents/publication/p0897>.

³³ In 2000, looking for evidence for mass murders committed in Kosovo, ICTY organized searches for mass graves and exhumed bodies. As there was not yet an adequate structure to house these bodies, many were reburied.

particularly among Serbs, that there were secret detention centers in Kosovo. Crooks exploited the grief of families by pretending to have received signs of life from the missing person and asking for money to give more information. As the years went by, progress was made in victim identification, in particular by using DNA tests more systematically. New mass graves were discovered, not only in Kosovo but also in Serbia, where bodies had been transported. In spite of this progress, it will take years before each victim is identified and for all families to begin their period of mourning.

Fighting Organized Crime and Corruption

International police made a specific effort to fight organized crime. Kosovo is only one link in the chain of trafficking in human beings, drugs and weapons. This chain includes all countries bordering Kosovo and beyond. Important resources were devoted to this fight. UNMIK created the Kosovo Organized Crime Bureau (KOCB) in 2002 by bringing together international policemen specialized in fighting organized crime, most of these police officers being German. They worked together with KPS officers who had been selected through a specific process. This was a step in the right direction. KOCB's mission was to fight trafficking in human beings, money extortion, trafficking of weapons, stolen vehicles and smuggling. Beyond its own activity, KOCB was useful, as it trained KPS officers and initiated the criminal police component that now exists in KPS. However, this program could only work with the long-term support of international personnel and could not be maintained today without the endorsement of the European Mission EULEX.³⁴

In the same manner, the fight against corruption started vigorously with the assistance of 15 officers of the *Guardia di Finanza (GDF)*, an Italian unit specialized in the fight against fraud, money laundering, financial crime and the control of procurement contracts. The Kosovo unit of the GDF investigated companies that received public money from government contracts. It discovered corruption cases which were handed over to justice. However, this program is overly dependent on assistance from international specialists and its long-term viability is problematic.

NATO and the UN moved into Kosovo to put an end to ethnic cleansing, but rapidly found themselves faced with the difficulties of state-building. The first of these was the creation from scratch of a dependable security system. First a NATO monopoly, internal security became an UNMIK competence, and was then progressively transferred to new inter-ethnic local institutions, like KPS. In spite of its shortcomings in public order, the new system managed to ensure the basic security which is essential to the smooth running of a territory. However, the establishment

³⁴ The Kosovo Assembly proclaimed independence on 17 February 2008. The day before, as part of the Common Security and Defense Policy, the European Union created EULEX to take over the UNMIK competencies concerning the rule of law. After a long negotiation with the UN Security Council, concluded on 26 November 2008, EULEX mission was finally installed in December 2008. See EULEX's website: www.eulex-kosovo.eu.

of the rule of law, which was the ambition declared by the international community, does not only mean creating a safe and secure environment, but also implies the creation of a neutral, competent and efficient judicial system.

Establishment of an Impartial Judicial System

A legal and judicial vacuum

In a peacekeeping mission with a mandate of governance, the credibility of the judicial system is an essential feature, as it underpins the population's trust in the mission. It is also the cornerstone of the stability of future institutions. It was a daunting task in Kosovo for many reasons. UNMIK started from a *tabula rasa* situation in which there were no judges, no applicable law and no detention centers, and where it was necessary to call in international judges and prosecutors.

A Judicial Vacuum

During the ten years of Milosevic's attempt to "cleanse" Kosovo of its Albanian population between 1989 and 1999, justice became a Serbian monopoly. Starting in 1991, judges of Albanian ethnicity were dismissed, as well as university professors and, more generally, all teachers. The Serbian judges were left to run the Kosovo justice system alone, but fled the territory when KFOR arrived in June 1999. In a legal fiction, Serbia established courts of justice competent for Kosovo in Niš in southern Serbia. These courts were obviously totally unable to enforce their decisions in Kosovo. The system of parallel courts merely aimed at destabilizing UNMIK by telling Kosovo Serbs that only decisions taken in Serbia had a legal value. At the same time, UNMIK looked for and put back to work Albanian judges who had been out of the courts of justice for the last ten years. These judges had only had professional experience within a communist country. This was not an asset for delivering justice in a fledgling democracy.

A Legal Vacuum

Kosovars steadfastly refused any suggestion of a return to Yugoslav law, as for them it was synonymous with repression. Even though it might have been desirable, UNMIK did not arrive with a criminal code or a code of criminal procedure which could have been immediately enforced. This idea of a basic legal kit available for peacekeeping operations is one of the proposals of the Brahimi report on United Nations Peace Operations.³⁵ In order to avoid a total legal vacuum, the first regulation taken by the SRSG on his arrival on 25 July 1999 declared in its section 3 that the laws prior to

³⁵ UN Security Council, A/55/305-S/2000/809, *Report of the Panel on United Nations Peace Operations (Brahimi Report)*, *op. cit.*

24 March 1999, i.e. before the beginning of the bombings by NATO, would remain applicable insofar as they did not conflict with internationally recognized human rights standards, the mandate given to UNMIK or any UNMIK regulation. Thus all international conventions on human rights became part of applicable law.

This decision was met by uproar in the Albanian population. They did not understand that the legal rules under Milošević would be retained even though the political context was totally different. UNMIK had to change its position. The regulation of 25 July 1999 was repealed on 12 December 1999. A new regulation was published by the SRSG on 27 October 2000, stating that the law applicable in Kosovo would be the law in force on 22 March 1989, i.e. when Kosovo still had the autonomy status granted by Tito in 1974. The new decision did not fully calm protests.

UNMIK wanted the justice system to be multi-ethnic, like all the institutions in the process of being created. After painstaking negotiations, a “Joint Declaration on recruitment of judges and prosecutors of Serb ethnicity into the multi-ethnic system in Kosovo” was signed on 9 July 2002 between Vladan Batic, the Minister of Justice in the Serbian government, and Jean-Christian Cady, the Deputy SRSG Head of Police and Justice in UNMIK. This document aimed to ensure a multi-ethnic representation in Kosovo's judicial system and to put an end to the parallel court system established in “Serbia proper”. This agreement did not fully meet UNMIK's expectations. The Serbian government continued to pay a salary to Serbian judges and prosecutors working in Kosovo, the Serbian salary being paid in addition to the UNMIK stipend. This accrual had not been part of the agreement. Nevertheless, few Serbs volunteered to work in Kosovo, as they feared for their safety. According to a UNMIK report, there were 317 local judges and 45 local prosecutors working in the 55 courts and judiciary institutions of Kosovo in July 2003. Only 15 judges and one prosecutor of Serbian ethnicity and 20 representatives of other minorities were among them.³⁶ An additional difficulty was that the few Serbian judges who returned to Kosovo in spite of security problems ignored the SRSG's regulation of 27 October 2000, and steadfastly applied the Yugoslav law of 1999.

UNMIK's legal system was also determined by emergency cases. UNMIK regulations drafted by jurists of another culture were grafted onto the Yugoslav body of laws, without much concern for coherence. In order to have a more coherent legal instrument UNMIK started preparing a criminal code and a code of criminal procedure. They were completed in April 2004 after a long period of consultation with judges, prosecutors and barristers. At long last criminal justice in Kosovo could be delivered on the basis of Kosovo law.

³⁶ See UNMIK, *Pillar 1, Police and Justice: Presentation Paper, op. cit.* See also International Crisis Group, *Finding the Balance: the Scales of Justice in Kosovo*, report No. 134, 12 September 2002, available at: <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/134-finding-the-balance-the-scales-of-justice-in-kosovo.aspx>.

The new element in the code of criminal procedure was the abolition of the investigating judge. In the very specific and partisan context of Kosovo it did not seem realistic to have a single magistrate in charge of investigating the evidence for both the prosecution and the defense. On the other hand, it was doubtful that impartial justice could be delivered only by Kosovar judges. The great majority of judges willing to work in Kosovo were of Albanian ethnicity. How could they be expected to remain neutral when an Albanian was the victim of a crime committed by a Serb? Experience showed in a few months that courts of justice manned only by Albanian judges almost systematically acquitted Albanian defendants even for serious crimes, whereas even for petty offenses Serbian defendants were heavily sentenced.

Penal Management Wasteland

Since the beginning of peace operations in 1948, the UN had never had to deal with the management of prisons. For UNMIK, as for UNTAET, it was unmapped territory. The Yugoslav prisons of Kosovo had been partially destroyed by NATO bombings. Firstly, they had to be repaired and UNMIK had to find international personnel competent in the management of correctional facilities. It was not an easy task. Next, local prison guards had to be hired and trained, bearing in mind that prisoners of different ethnicities had to be held in separate quarters. The Kosovo Correctional Service (KCS) was thus created. It was a multi-ethnic institution like KPS, closely watched by NGOs specialized in human rights. It received the bilateral assistance of many countries like Canada, Switzerland and the United Kingdom. Among the achievements of UNMIK, KCS is now unanimously considered as a success story as prisons of Kosovo comply with European standards.³⁷

Recourse to International Judges and Prosecutors

As soon as a case had an inter-ethnic component, international judges and prosecutors were indispensable. But selecting them and bringing them to Kosovo was not easy. Unlike soldiers who are on call and can easily be sent on overseas missions, judges and prosecutors are not immediately available. In most countries, before judges and prosecutors are appointed, an advisory body must be consulted, like the *Conseil supérieur de la magistrature* in France. This procedure can take a few months.

International judges appointed to a peacekeeping mission come from many different countries with different legal and judicial systems. Even if they are not familiar with Yugoslav law, judges and prosecutors from a civil law background have no difficulty in adjusting to Kosovo law, which is close to German law. On the other hand, judges and prosecutors from a common law background take longer to adapt. The criminal procedure is different and notions like investigating judges are totally foreign to their professional experience. It was first thought that the use of international judges and prosecutors in the Kosovo justice system would be temporary. It

³⁷ ISSR Research Team, *Kosovo Internal Security Sector Review*, 2006, available at: http://www.kosovo.undp.org/repository/docs/ISSR_report_eng_ver2.pdf.

is still going on today and has become a permanent feature in the institutional framework in independent Kosovo.

Another difficulty was the organization of the central administration of justice. Its name varied: it was first the Department of Judicial Affairs as it could not be called a ministry at the beginning of the mission. Then, in 2004, it became the Department of Justice (DOJ) when the Kosovo government did not yet have competence in judicial matters. When the DOJ was transferred to the government of Kosovo in 2007, it became the Ministry of Justice.

In the beginning of the mission, UNMIK' efforts to associate fully the population and avoid being charged with neocolonialism led to the appointment of two heads in each department: one international and one local. After a few months it became evident that this system did not work: one paralyzed the other. It was during this period that the DOJ was led by an international judge - who happened to be French - and a Kosovar lawyer, a highly respected woman whose husband and two sons had been abducted and killed by the Serbian police in 1999.³⁸ Obviously it was impossible for this woman to have a balanced approach towards Serbs.

The dual leadership in administration ended in April 2001, when UNMIK was divided into pillars.³⁹ The first pillar was the rule of law. It united justice and police under a single pillar head, a French prefect. Bringing together police and justice in a single unit was seen as anathema by some NGOs who thought it was a breach of the principle of the separation of powers and that it was a bad example to give to Kosovo for the future organization of its institutions. It was easy to reply to this criticism that countries considered as examples of a high standard of democracy, like Switzerland and Denmark, associate police and justice in one ministry. Moreover, the way UNMIK was set up did not preclude the future organization of Kosovo institutions. As a matter of fact, they have become separate ministries in independent Kosovo.

Organization of Criminal Justice

Criminal justice in Kosovo is based on three components. The first is the International Crime Tribunal for former Yugoslavia (ICTY) in The Hague. It deals only with the most egregious war crimes or inter-ethnic crimes. The criteria on which ICTY can request a national tribunal to hand over a case were not always clear to UNMIK. A number of Albanian Kosovo war leaders

³⁸ This lawyer, Nekibe Kelmendi, became the Kosovo Minister of Justice when this competence was transferred to the Kosovo government in 2006.

³⁹ The second pillar was Civil Administration. It disappeared gradually as the Kosovo administration developed. The third pillar was managed by OSCE and dealt with the support to democratic institutions and good governance, training of policemen, judges and prosecutors, the support and organization of all elections, the support of human and community rights, the support of independent, free, unbiased and professional media. The fourth pillar, led by the EU, was responsible for reconstruction and the support of economic development.

have been indicted. Among them there is Ramush Haradinaj⁴⁰ who was briefly the prime minister of Kosovo. ICTY has its own investigators who are independent of UNMIK. Even though ICTY had a liaison office in Pristina, it was extremely secretive on the progress of investigations and was desirous of avoiding leaks. From time to time UNMIK or KFOR received an order to arrest a suspect and transfer him to The Hague. The second component was - and still is - made up of UNMIK international judges and prosecutors.⁴¹ They are not numerous (around 15) and deal with cases linked to organized and inter-ethnic crime, including the war crimes that ICTY will not have time or availability to handle. International judges and prosecutors can request a local judge to hand over a case when it is too sensitive to be dealt with locally.

UNMIK international judges and prosecutors have been very active on inter-ethnic crime and organized crime. Their activity has been more limited on war crimes. The main reason is that in the absence of concrete evidence, prosecution relies mostly on testimony. Testimonies are difficult to obtain as witnesses feel threatened and must be protected.

The third component is made up of local judges and prosecutors. They are the most numerous. At the end of 2007 there were 89 local prosecutors and 308 local judges (including 15 Serbs and 19 from other minorities). These figures have not changed much since.⁴² Kosovo Albanian judges and prosecutors, who had been fired in 1991 at the beginning of the ethnic cleansing, were re-appointed by UNMIK. A considerable effort was put into recruiting Kosovo Serb judges, so that Serbs in the enclaves would have a justice system they could trust and would not turn to the parallel courts established in Serbia.

The local justices were entrusted with most of the cases. However they proved to be neither impartial, nor competent, nor efficient. Their salaries remained low, at around 600 euros a month for an experienced judge. These salaries, lower than those in neighboring countries, showed how judges lacked prestige in Kosovo society. Corruption in their ranks was not rare. Due to these low wages, few people sought careers in the judiciary. Lawyers were the least attracted, even though they would have been competent because of their training.

⁴⁰ Ramush Haradinaj was one of the leaders of KLA and became the head of a political party, the AAK (the Alliance for the Future of Kosovo, in Albanian *Aleanca për Ardhmërinë e Kosovës*). He was prime minister from December 2004 to March 2005. He had to resign because he was indicted for war crimes by ICTY. He was acquitted in April 2008 and returned to Kosovo. In May 2008 the ICTY prosecutor lodged an appeal and Haradinaj was arrested again in July 2010 to stand for trial a second time, the original trial having been marred by witness intimidation.

⁴¹ See Nicholas Booth and Jean-Christian Cady "Internationalized Courts in Kosovo: an UNMIK Perspective" in Cesare O. R. Romano, André Noelkaemper and Jann K. Kleffner eds. *Internationalized Criminal Courts: Sierra Leone, Kosovo and Cambodia*, Oxford, Oxford University Press, 2004.

⁴² UN Security Council, S/2007/768, *Report of the Secretary-General to the Security Council*, 3 January 2008, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/653/48/PDF/N0765348.pdf>.

Weaknesses of the Justice System

Kosovo's justice system performs badly. It is still very dependent on international assistance. It has basic flaws in recruitment and training procedures. It suffers from the widespread distrust in the population.

Justice in Kosovo remains dependent on international assistance, both for financial support and for training and yet the international community does not propose a coherent model. In the last ten years, considerable funding has been spent by the UN (in particular by the United Nations Development Program or UNDP), OSCE, and by some countries, on bilateral assistance programs (in particular USAID). The purpose was to create the Kosovo judicial institutions. However, these efforts were not made along the same guidelines. Donor countries are reluctant to have their bilateral action merged into the comprehensive plan conceived by the Mission. Every player plays his own tune. Thus Anglo-Saxon countries with a common law background have a tendency to propose methods and training that are not always relevant to what the Kosovo judicial system could become, anchored as it is in the European civil law tradition.

The recruitment of international judges and prosecutors could have been improved. As there was no budget to pay for candidates to travel to Kosovo, UNMIK had to make do with telephone interviews to assess the applicant's knowledge of English and of legal terms. This unsatisfactory hiring process should have been complemented by an induction course in Yugoslav law and the specific challenges of justice in peacekeeping missions in general and in Kosovo in particular. UNMIK was not able to do that, as it had always had a deficit of international judges and needed to fill vacancies urgently. Those recruited were sometimes excellent but sometimes clearly below UNMIK's expectations. Having little interest in international affairs, many countries' justice ministries did not encourage staff to volunteer for peacekeeping missions, feeling that they needed all their resources at home.

The poor performance of the judicial system was also due to the lack of training for local judges. It was probably an error to recruit systematically the judges and prosecutors who had been dismissed in 1991, without first updating their knowledge. With hindsight, it would have been preferable to proceed as the mission did for KPS, and to recruit only after training. There again, urgency did not allow this approach, all the more so as training judges takes much more time than training policemen.

Nevertheless, local judges and prosecutors did receive additional training after being hired. OSCE created the Kosovo Judicial Institute (KJI) on the model of the French *Ecole Nationale de la Magistrature* (ENM). Unfortunately, and unlike the police academy, KJI did not give systematic training of the kind found in ENM. From time to time, seminars were organized on specific subjects. Attendance was not compulsory. KJI was more a conference center than a real school. UNTAET in East Timor and UNMIK in Kosovo had the same setbacks in the establishment of a justice system.

Witness protection was necessary but difficult to implement in this confined territory with an area of 10,000 km² (2/3 of the size of Connecticut), in which clan connections were strong. These ties - and the ensuing reprisals when they were broken - were still governed by medieval customary traditions called the *Kanun*. Even though these traditions no longer have legal value, they still remain a cultural reference according to which a murder must be avenged by the death of a man of the murderer's family. Elsewhere this is called a vendetta.

The motto "the cooperative witness of today is the dead witness of tomorrow" was unfortunately borne out by the facts many times over. To protect a witness is to protect not only one person but also his partner, his children and his close relatives, who can become targets. UNMIK adopted two approaches to witness protection. One was to put the witness and his relatives in a safe house with a permanent guard. The problem was that it was tantamount to a deprivation of freedom for the people under protection. After a few months their situation became unbearable. It should also be added that it is costly in manpower and thus expensive in the long run. The second approach was to send the witness and his family abroad so that with new identities they could start a new life. The major obstacle was that although UNMIK made many requests, it did not find countries that would accept endangered witnesses and be willing to pay for their expatriation. The problem of witness protection has not found a solution and remains a permanent handicap to Kosovo justice.

Another weakness of the justice system was that the focus on criminal cases, in order to establish a secure environment with all speed, meant that civil law cases were neglected. Disputes over property were numerous, as during the war, there were many illegal occupations. Most cadasters disappeared during the war. In 1999, retreating Serbs took them to Serbia as well as court files and records. Often, Kosovo justice did not have the documents enabling it to make a decision on a property dispute. As there was no legal solution, these conflicts frequently turned violent. The lack of land registers is a permanent handicap for Kosovo's economic development, as investors – and foreigners in particular – need to be certain that their ownership of the land on which they intend to build will not be challenged later.

One last element was the weakness of the institutions charged with the oversight of the judiciary. Along the model of the French *Conseil supérieur de la magistrature*, UNMIK created the Kosovo judicial and prosecutorial council (KJPC) with an advisory role on the appointment of local judges and prosecutors. It also had disciplinary powers to fight corruption and cronyism and foster impartiality. The KJPC has become the KJC (Kosovo Judicial Council) which, unlike the KJPC, has no link to the Ministry of Justice and is totally independent.⁴³ Through the ministry of

⁴³ The composition of KJC is stated in art. 108 of the Kosovo Constitution. It comprises 13 members appointed for 5 years. Five members are chosen by judges, four by the Assembly (two of them must be judges and one a barrister). Two must be of Serbian ethnicity (including at least one judge), and two from other ethnicities are designated by the Assembly. KJC elects a chairman from among its

budget it makes its budgetary requests directly to the Kosovo Assembly without going through the Ministry of Justice. This absolute judicial independence, practically abolishing the role of the Ministry of Justice, was the wish of Kosovo judges supported in this opinion by American advisers. The UNMIK DSRSG for police and justice was strongly opposed to it, as he saw a danger of corporatism in such a measure. What has happened since shows that these fears were justified. Moreover KJC suffers from vacancies which handicap its work. As a result KJC is slow in examining cases alleging the corruption of judges.

The backlog of cases shows that the justice system is inefficient. As case registration is rudimentary in Kosovo, figures vary. According to KJC there were between 213,000 and 300,000 pending cases in 2009 immediately after the transfer from UNMIK to EULEX. Some of these cases dated back to 1999.⁴⁴ As a consequence, the participation of international judges is still essential, particularly for cases related to war crimes, inter-ethnic crime, corruption and organized crime. These are all matters on which a local judge cannot be impartial as he will be subject to pressure and threats and not in a position to resist.

More generally, the efforts of the international community to launch a national reconciliation process have been a failure. The two main communities still have a persistent hatred for each other. Multi-ethnicity is the keyword in international action, but remains just a word for the people of Kosovo. They do not believe in it and content themselves with lip service in official speeches without having any implementation program. In these circumstances no one knows for how long the participation of international judges will remain indispensable.

members. Every year the chairman of KJC presents a report to the Assembly regarding the judicial system. On a transitional basis, and for the duration of international supervision, two of the four members chosen by the Assembly must be international judges nominated by the head of the EULEX rule of law mission.

⁴⁴ International Crisis Group, *The Rule of Law in Independent Kosovo*, Europe Report No. 240, 19 May 2010, p. 14, available at: <http://www.crisisgroup.org/~/media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.pdf>. According to International Crisis Group, if no new cases were brought to the courts, it would take 30 months to deal with the backlog of serious criminal cases.

Unfinished Transitions

From the very beginning of the mission, one of UNMIK's priorities was to include all Kosovars and all ethnic groups in decision making. UNMIK wished to avoid the situation where peacekeepers were welcomed as liberators in the early stages, but seen as occupants confiscating power and leaving no room for locals, as months and years went by. This was clearly expressed in the mandate given by UNSCR 1244 which stated that the main responsibilities of the international civil presence included "organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections."⁴⁵ The Resolution added: "Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace building activities". This transfer process did not prejudice future status, a question that would not be addressed until Kosovo had met standards of good governance. Nevertheless, the progressive transfer of responsibilities paved the way to what was inescapable: the formal independence of this territory, even though Kosovo still remains very dependent on the international community.

Transfer of Powers to Local Authorities

Over the years UNMIK progressively transferred its powers to Kosovo authorities whose legitimacy was increased by the electoral process. As early as September 1999, the SRSG established a consultative commission, the Kosovo Transitional Council (KTC), which brought together all political parties and representatives of the Serbian community. In January 2000, the SRSG replaced KTC by a new body, the Interim Administrative Council, which was composed of 8 members (4 representatives of UNMIK and 4 Kosovo political leaders, including one representative of the Serbian community in Kosovo).⁴⁶ It was also in January 2000 that the administrative departments were set up, jointly led by a Kosovo and an UNMIK co-head of department. As mentioned earlier, this dual leadership did not work and often paralyzed the administration.

⁴⁵ UN Security Council, *S/RES/1244, Resolution 1244*, 10 June 1999, para. 11c, available at: <http://www.un.org/french/docs/sc/1999/99s1244.htm>.

⁴⁶ The Albanians were represented by Ibrahim Rugova, the leader of LDK (Democratic League of Kosovo), Hashim Thaçi, the ex-leader of the KLA who had become the head of PDK (Party of the Democrats of Kosovo) and Rexhep Qosja, leader of MDU (coalition of the United Democratic Movement). The Serbian representative was Rada Trajkovic.

More substantial progress was made in May 2001 when UNMIK promulgated the Constitutional Framework for the Provisional Self Government of Kosovo that established the provisional institutions of Kosovo (PISG), which would be the recipient of a progressive transfer of powers from UNMIK. The main feature of the constitutional framework was an Assembly elected by universal suffrage. This Assembly elected the president of Kosovo, who could serve only two 4-year mandates. The prime minister and the government were responsible to the Assembly. Many powers were transferred to PISG except the core competencies of the state (justice, police and diplomacy). These competencies could only be transferred after the decision on the final status of Kosovo.

The long wait for the international community's decision to determine Kosovo's final status gave the population no perspective for the future. This procrastination might, in the long run, trigger violent reactions from the Albanian community. To occupy the time, UNMIK invented the concept "standards before status", according to which Kosovo had to reach certain standards before discussions on the future status could begin.

Setting up benchmarks to assess the progress of Kosovo on the way to a democratic society was a worthwhile exercise. Specified in UNMIK's document "Standards for Kosovo"⁴⁷, the benchmarks were approved by PISG, published in Pristina on 10 December 2003 and endorsed by the Security Council on 12 December 2003. The ambitions heralded in this document were high, as the goal set on page 1 was: "everyone, regardless of ethnic background, race or religion can live, work and travel freely without fear, hostility or danger and where there is tolerance, justice and peace for everyone".

One could have legitimate doubts about whether this vision was realistic and whether, in just a few years, Kosovo would reach such a high level of democracy and freedom. How many member states in the UN could serve as examples? It was quite apparent that the concept of "standards before status" was above all a way to buy time before the international community decided on the future status, which obviously meant Kosovo's independence. It was also clear that the diverging views in UNSC were not linked to the progress this territory had made or would make on the path of a multi-ethnic and democratic society.

The riots of 2004 were an indicator and an accelerator, as it suddenly became obvious that it was impossible for Kosovo to reintegrate Serbia. This had been the opinion of the US and the UK for many years. These riots also helped to change France's position. After the riots, France – a long-standing friend of Serbia – which had been opposed for a long time to the independence of Kosovo, changed its position.

⁴⁷UN Security Council, *Standards for Kosovo*, 10 December 2003, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf>.

The riots of 2004 were also an accelerator for the transfer of powers to local authorities. In a report in August 2004, Kai Eide, a Norwegian diplomat and the special envoy of the UN secretary general, questioned the pertinence of the “standards before status” policy, saying: “The current ‘standards before status’ policy lacks credibility. The implementation of a highly ambitious set of standards before status talks begin is seen as unachievable”. A second report by Kai Eide, in October 2005, focused on the future status.

Without undue optimism and not hiding the fact that Kosovo's performance was very uneven, the judiciary system being the weakest part of the new institutions, the second Eide Report concluded that the time had come to start negotiations between Serbs and Albanians on the status of Kosovo. The negotiations were led by Marti Ahtisaari, a former president of Finland. This approach was supported by the Quint countries (United States, United Kingdom, Germany, France and Italy). The Security Council members wanted the UN, which had many peacekeeping operations in other parts of the world, to withdraw from Kosovo, which had become a protracted and costly operation, and pass the torch to the EU, a regional organization which was in a better position to carry on. The underlying idea was that Kosovo's independence was the only sustainable political option, but that the new country would need considerable international support, not only with substantial economic aid but also with assistance for the implementation of the rule of law. The presence of an international police force and international judges and prosecutors would remain fully justified. The protectorate must go on with other players. The duration was difficult to estimate but would probably be very long.

The Ahtisaari proposals were presented in January 2007. They met with opposition from Russia and China and with obstruction from Serbia, which accused the negotiator of being partial. Acknowledging this failure to reach an agreement, unsuccessful in direct negotiations without the mediator and encouraged by the United States, Kosovo declared its independence unilaterally on 17 February 2008. The transition to independence did not happen the way the UN had planned. With opposition anticipated from China and Russia, a new resolution terminating the mandate of UNMIK could not be presented to the Security Council. The original idea was that EULEX, the European Rule of Law Mission, would take over from UNMIK, which would be disbanded. This was not the case. From a legal point of view, Resolution 1244 still exists. Even though the bulk of its powers has been transferred to EULEX, UNMIK is still alive, reduced to a skeleton staff and a role of observer. As General MacArthur said, “Old soldiers never die, they just fade away”.

Independence under a Protectorate

Even if it was unavoidable and desirable, Kosovo's independence solved few problems. In particular, it is not certain that it helped to make progress towards the rule of law, as in that area Kosovo remains under international supervision. The former UN protectorate has become an EU protectorate. In the eyes of Kosovars the EU is quite legitimate and even more so as they cherish the hope of becoming members in the distant future. For the

time being it remains a wild hope, as some EU member states (Cyprus, Spain, Greece, Romania and Slovakia) have refused to recognize Kosovo's independence.

The transfer of the supervisory control of the rule of law to the EU has two advantages: it increases funds for international action and provides a more homogeneous international staff.⁴⁸ EULEX comprises 2,000 international personnel, including 1,400 policemen and a justice component of 420 people, among whom are 39 judges and 30 prosecutors from either EU members or contributing countries (US, Canada, Norway, Switzerland, Turkey and Croatia). Still present as an adviser and trainer, OSCE has its largest field mission in Kosovo, with a staff of 684, including 189 international personnel and 495 local employees and a budget of 23,546,000 euros.⁴⁹ However, the outcome of the international community's efforts to establish the rule of law remains that achieved by UNMIK.

Sergio Vieira de Mello⁵⁰ used to say: “the success for a peacekeeping mission is to become useless”, meaning that if a mission is successful in solving the problems for which it has been set up, its existence is no longer justified. Viewed from this angle, the action of the UN in Kosovo can hardly be seen as a success, as the protracted international presence has no end in sight. Some observers even see in Kosovo the seeds of a failed state, where corruption prevails and politics interfere permanently with justice. Pessimists also point out that the multi-ethnicity in police and justice is fragile and that immediately after independence the KPS Serbian policemen left at the behest of Belgrade. The judiciary is overwhelmed by an ever increasing backlog, and is unable to address the unsolved cases linked to the violence in 1999 and 2004.

Nevertheless, even if it may appear precarious, security in Kosovo has been established. Even if its present management leaves room for improvement, KPS, which was created from scratch by the UN, enjoys a capital of confidence in the population. It is easy to note that Kosovo still needs to make substantial progress in the establishment of the rule of law. But its situation is not noticeably different from its closest neighbors, the former republics of Yugoslavia: Macedonia, Montenegro, and Bosnia-Herzegovina. It is no different, either, from the situation of some countries that have become members of the EU, like Bulgaria. In the Balkan political context Kosovo is no longer an exception, even if it is far from meeting all the expectations – doubtless overly optimistic - the international community has invested in it.

⁴⁸ EULEX, *Annual Report on the Judicial Activities of EULEX Judges*, 2010, available at: <http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf>.

⁴⁹ 2011 statistics in OSCE, *OSCE Annual report 2010*, 2011, available at: <http://www.osce.org/sg/76315>.

⁵⁰ Sergio Vieira de Mello was the special UN envoy in Kosovo and headed the UN mission in Kosovo from June to August 1999 before UNMIK was established. In November 1999 he became SRSG of UNTAET. He was appointed head of the UN mission in Iraq and was killed in Baghdad on 19 August 2003 in a bomb attack against the UN headquarters.

Conclusion

UNMIK and UNTAET were both launched in 1999 and were the first peace-keeping operations (PKO) with a mandate of governance, in the absence of local authorities. They have become the reference for all PKOs started after 1999, even though all subsequent operations have taken place in territories where there was a government, often tottering but still standing.⁵¹ Following the example of Kosovo, most of these PKOs had a multiple mandate and included the establishment of the rule of law, the reform of the justice and police systems, the enforcement of human rights and the disarmament, demobilization and reintegration (DDR) of belligerents. PKOs have become more numerous and employ increasing numbers of staff: the UN had more than 100,000 uniformed personnel (military and police) in PKOs in July 2011 compared to 67,000 in 2005.

The examples of Kosovo and East Timor have shown that PKOs with this sort of mandate can only be successful if three prerequisites are met. The first is that there must be a consensus within the Security Council as to the operation's goal and its modalities. A clear and realistic mandate is essential. The second is that the UN intervention must be carefully planned and endowed with sufficient human and budgetary resources. The third is that the local government and population must accept the international presence and the modalities of its action.

This last prerequisite is probably the most difficult to meet. The international community's approach is often, at least at the beginning, somewhat naive. Sure of its legitimacy given by the Security Council Resolution, with altruistic intentions, confident in its own legal, cultural and political references, having considerable logistical resources at its disposal, not always able to conceive that other systems or other approaches are possible, the international community, particularly in its Western component, is often too optimistic and seen by the local population as arrogant. Frequently, internationals tend to underestimate the difficulties and the opposition of the local population to the way it acts in a territory not

⁵¹ Among the 16 PKOs deployed on four continents, let us mention: UN Operation in Côte d'Ivoire (UNOCI) launched in April 2004 which replaced the UN Mission in Côte d'Ivoire (MINUCI) started in May 2003, the UN Stabilization Mission in Haiti (MINUSTAH) created in June 2004, the UN Mission in South Sudan (UNMISS) created in July 2011, the African Union - UN Hybrid Operation in Darfur (UNAMID) established in July 2007, the UN Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) started in July 2010 which took over from an earlier PKO established in 1999, the Mission of the UN in Congo (MONUC).

prepared for this cultural shock. Besides, Western countries, that bear the bulk of the financial burden, are pressed by time as donor fatigue sets in. As a consequence, they try, within a few years, to rush through changes that took far longer to be achieved in the Western world, ignoring too often the weight of local history and traditions.

In fact, a peacekeeping mission can alleviate conflicts – or at least the way they are voiced and sort themselves out. It cannot, however, abolish the underlying causes. Inter-ethnic hatred has been present in Kosovo for centuries. It is not going to disappear any time soon unless, with incentives from the international community, a genuinely multi-ethnic approach is supported by local politicians in the place of mere window dressing. Bearing in mind all these limitations, one can agree with the words of Alain Le Roy, a former Under Secretary-General of the UN and head of DPKO: “however, everyone recognizes that – in all these challenging cases – the situation would have been much worse had the peacekeepers not been there.”⁵²

⁵² United Nations Organization, *UN Peace Operations: Year in Review. UN Peacekeeping enters consolidation phase. Interview with Alain Le Roy, Under-Secretary General for Peacekeeping Operations*, 2010, p. 11, available at: www.un.org/en/peacekeeping/publications/yi/yir2010pdf.

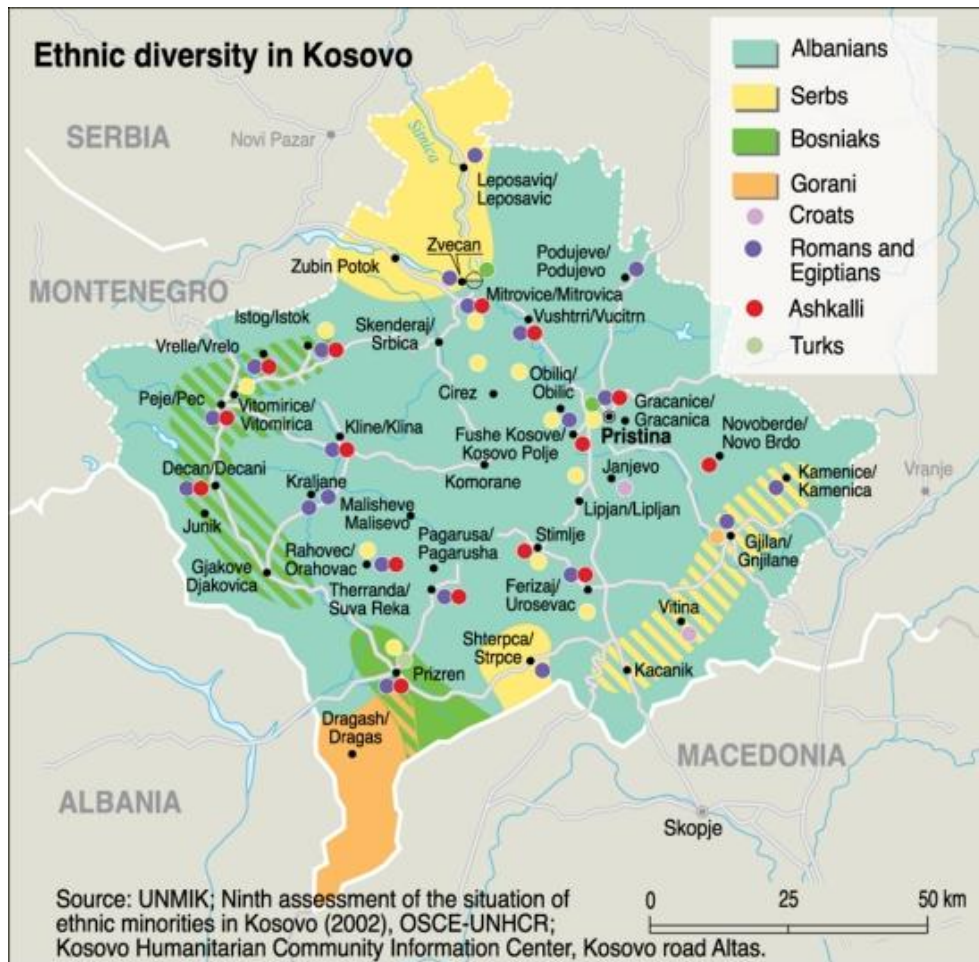
Appendices

Appendix 1: UNMIK in April 2011

Source: Department of Field Support Cartographic Section



Appendix 2: Ethnic diversity in Kosovo



References

Official documents

- INTERNATIONAL COMMITTEE OF THE RED CROSS, *ICRC Progress Report*, 28 August 2006, available at: <http://www.icrc.org/eng/resources/documents/publication/p0897>.
- UNITED NATIONS SECURITY COUNCIL, *S/1999/987 Report of the Secretary-General on UNMIK*, 16 September 1999, available at: <http://www.unmikonline.org/SGReports/S-1999-987.pdf>.
- UNITED NATIONS SECURITY COUNCIL, *S/1999/1250, Report of the Secretary-General on UNMIK* 23 December 1999, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF-CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/kos%20S1999%201250.pdf>.
- UNITED NATIONS SECURITY COUNCIL, *A/55/305- S/2000/809, Report of the Panel on United Nations Peace Operations (Brahimi Report)*, 20 August 2000, available at: http://www.un.org/fr/peacekeeping/sites/peace_operations/.
- UNITED NATIONS SECURITY COUNCIL, *S/2004/348 Report of the Secretary-General on UNMIK*, 30 April 2004, available at: <http://www.unmikonline.org/SGReports/S-2004-348.pdf>.
- UNITED NATIONS SECURITY COUNCIL, *S/2006/361 Report of the Secretary-General on UNMIK*, 5 June 2006, available at: <http://www.unmikonline.org/SGReports/S-2006-361.pdf>.
- UNITED NATIONS SECURITY COUNCIL, *S/2007/768, Report of the Secretary-General on UNMIK*, 3 January 2008, available at: <http://www.unmikonline.org/SGReports/S-2007-768.pdf>.
- UNITED NATIONS SECURITY COUNCIL, *S/RES/1244, Resolution 1244*, 10 June 1999, available at: <http://www.un.org/french/docs/sc/1999/99s1244.htm>.
- UNITED NATIONS SECURITY COUNCIL, *Standards for Kosovo*, 10 December 2003, available at: <http://www.unmikonline.org/standards>
- EULEX, *Annual Report on the Judicial Activities of EULEX Judges*, 2010, available at: <http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf>.
- INPROL, *Literature Review: Rule of Law Lessons Learned from the UN Mission in Kosovo (UNMIK) CR 09-006*, October 2009, available at: <http://www.inprol.org/node/4700>.

- INTERNATIONAL CRISIS GROUP, *Finding the Balance: the Scales of Justice in Kosovo*, Report No. 134, 12 September 2002, available at: <http://www.crisisgroup.org/~media/Files/europe/Kosovo%2032.pdf>.
- INTERNATIONAL CRISIS GROUP, *The Rule of Law in Independent Kosovo*, Europe Report No. 204, 19 May 2010, available at: <http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.pdf>.
- ISSR RESEARCH TEAM, *Kosovo Internal Security Sector Review*, 2006, available at: http://www.kosovo.undp.org/repository/docs/ISSR_report_eng_ver2.pdf.
- MINUK, *Pillar 1, Police and Justice: Presentation Paper*, July 2003, available at: http://www.unmikonline.org/justice/documents/Pillar1_Report_Jul03.pdf.
- UNITED NATIONS ORGANIZATION, *UN Peace Operations: Year in Review. UN Peacekeeping Enters Consolidation Phase. Interview with Alain Le Roy, Under-Secretary-General for Peacekeeping Operations*, 2010, p. 11, available at: www.un.org/en/peacekeeping/publications/yir/yir2010.pdf.
- OSCE, *OSCE Annual Report 2010*, 2011, available at: <http://www.osce.org/fr/sg/80512>.
- UN OFFICE ON DRUGS AND CRIME, *Crime and its impact on the Balkans and affected countries*, March 2008, available at: http://www.unodc.org/documents/data-and-analysis/Balkan_study.pdf.

Books and monographs

- ANTE Arta, *State Building and Development. Two sides of the same coin? Exploring the case of Kosovo*, Hamburg, Disserta Verlag, 2010.
- BOOTH Nicholas and CADY Jean-Christian, « Internationalized Courts in Kosovo : an UNMIK perspective » in ROMANO Cesare O.R., NOLKAEMPER André, and KLEFFNER Jann K., eds. *Internationalized criminal courts : Sierra Leone, Kosovo and Cambodia*, Oxford, Oxford University Press, 2004.
- CADY Jean-Christian, *A few thoughts on UNMIK Lessons Learned*, unpublished, July 2009, available at: <http://inprol.org/kosovo/LL-Jean-Cady-July142009-final.pdf>.
- CHARRETTE (de) Patrice, *Les Oiseaux Noirs du Kosovo : Un Juge à Pristina*, Paris, Michalon, 2002.
- CHEVALLIER Eric, *L'ONU au Kosovo : Leçons de la Première MINUK*, Occasional Papers, Institut d'études de sécurité de l'Union européenne, May 2002.
- DANCOURT Emmanuelle and VALENTIN Marcel, *De Sarajevo aux banlieues, mes combats pour la paix*, Chambray-lès-Tours, CLD Editions, 2006.
- DE GROEN Els, *Too Early To Get Along. Travel Reports from Kosovo*, Amsterdam, Press Now, 2001.

- HARDER Melissa Ann, *No Law but Order: Justice and Security Sector Reform in Kosovo*, Vancouver, Simon Fraser University, 2008.
- KING Ian and MASON Whit, *Peace at Any Price: How the World Failed Kosovo*, Ithaca, Cornell University Press, 2006.
- JUDAH Tim, *Kosovo, War and Revenge*, New Haven, Yale University Press, 2002.
- LECOMPTE Dominique, "L'ONU, Pygmalion malhabile. La fragilité du nation building au Timor", *Focus stratégique*, No. 26, November 2010.
- MALCOLM Noel, *Kosovo, A Short History*, New York, Harper Perennial, 1999.
- MEJEAN Virgile, *Ordre et Sécurité au Kosovo 1999-2002. Les Missions des Forces Terrestres*, Cahiers de la Recherche Doctrinale, Centre de Doctrine d'Emploi des Forces, Ministère de la Défense, September 2007.
- MELLON Jérôme, *Preparing for a Security Sector Reform. Lessons from Kosovo*, UNDP Bureau for Crisis Prevention and Recovery, Publication III, 2006.
- O'NEILL William G., *Kosovo, An Unfinished Peace*, Boulder, International Peace Academy, Occasional Paper Series, Lynne Rienner Publishers, 2002.

Journal and newspaper articles

- DERENS Jean-Arnault, "L'explosion que l'ONU n'a pas vu venir", *RFI*, 23 March 2004.
- DERENS Jean-Arnault "Des émeutes concertées au Kosovo", *La Libre Belgique*, 24 March 2004.
- DIDIER François, "Priorité sécurité pour Kouchner. Criminalité en hausse. Premier bilan mitigé pour l'administrateur de l'ONU", *Libération*, 14 December 1999.
- GUÉHENNO Jean-Marie, "Maintien de la paix : les nouveaux défis pour l'ONU et le Conseil de sécurité", *Politique étrangère*, vol. 68, No. 3-4, 2003, pp. 689-700.
- JACKSON Mike (Général), "My Clash with NATO Chief", *The Telegraph*, 4 September 2007.
- SCHLAMP Hans-Jürgen, "Everyone knew what was going on in Bondsteel", interview of M. Alvaro Gil Robles, *Spiegel Online*, 12 May 2005, available at: <http://www.spiegel.de/international/0,1518,388556,00.html>.

Interviews and unpublished sources

- La question du Kosovo: de la sortie du protectorat à la redéfinition de l'engagement international*, symposium organized 6 May 2008 in Dijon, France, by Sciences Po Paris.

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<http://www.ifri.org/downloads/fs34cady.pdf>
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<http://www.ifri.org/downloads/fs33brustlein.pdf>