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THE INTERNAL SECURITY CHALLENGE IN KOSOVO

by Espen Barth Eide

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1. Introduction: Public Security in the Absence of a Final Settlement

This paper discusses the current internal security in Kosovo as it has developed since the end of the Kosovo war this spring. The record so far gives ample reason for concern, and the current state of affairs hardly lives up to the standards originally expected by the countries that intervened into the war over Kosovo in order to stop ethnic violence and to defend human rights and multicultural cooperation. The paper argues that if a major reconsideration of the current allocation of tasks within the public security area does not happen soon, the situation may rapidly deteriorate even further. A continuation along the current path will reduce the international community's ability to influence the long-term development of effective and legitimate law and order mechanisms in Kosovo, and it may eventually appear that the international community has ended up failing in fulfilling its aims for Kosovo.

We should distinguish between the short to medium-term needs for law and order on the one hand, and the long-term requirements on the other. I will argue that the long-term goal of the international community must be that a local police, judiciary and penal system based on internationally recognised standards is institutionalised in Kosovo. There is no alternative to eventually handing the task over to some kind of local government. However, such a system cannot become effective without a political settlement, as law and order is one of the primary expressions of recognised, sovereign authority and not merely a 'service' that someone has to provide.

In the short to medium-term run, basic law and order functions must be provided by the international community's military and civilian presence in Kosovo. In contrast to the situation prevailing in most other cases of international peace support, there are no established local authorities and no local police to cooperate with in today's Kosovo. For the first time ever, the UN has attempted to take over the role of executive policing itself, which is very different from the traditional UN CIVPOL approach that has focused on supporting, monitoring, assisting, restructuring and training. This fundamental change in concept, however, took place rather haphazardly, and parts of the current problem may relate to this possibly over-ambitious attempt by the UN to relaunch itself after the marginalisation it experienced during the Kosovo war this spring. More importantly than the frequently heard complaints about the international police force's lack of personnel

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and resources this should be seen as a fundamental structural problem. The paper discusses the shortcomings of this model and suggests ways of improving the short- to medium term protection of public security by enhancing the role of KFOR and increase cooperation with UNMIK in these areas.

2. No Law, Little Order

Over half a year after the entry of KFOR and UNMIK, the law and order situation in Kosovo remains dire. Compared to the initial period after the Yugoslav withdrawal, the level of ethnic violence directed against Serbs, Roma and other minority groups may have been somewhat reduced, but only after a substantial number of the non-Albanian population has been forced to leave the province. In proportion to the total number of non-Albanians, it remains unacceptably high by most standards. Furthermore, the violence frequently flares up, as it did during the celebration of the day of Albanian flag on 29 November.² There is little doubt that some of this violence has been caused by despair and frustration as well as a desire to revenge atrocities committed during the systematic and violent expulsion conducted by Yugoslav authorities during the spring of 1999. This is, however, only part of the story. Much of the recent ethnic violence seems to have a strategic purpose as a contribution to the *de facto* cleansing of Kosovo's remaining minorities. Systematic targeting of individual Serbs and persons belonging to other minorities escalating from repeated warnings, intimidation, harassment, violent acts to murder, indicate a level of planning which can hardly be explained by emotional affect alone. Yet other parts of the current ethnic violence seem to be mere expressions of organised crime, which is benefiting from the near-absence of public order. For instance, a number of reported 'commercial evictions' – gangs forcing people to leave their homes after having been paid to do so by would-be occupants desiring to move in – merely illustrates the existence of a grey zone between the political and the criminal in today's Kosovo.

International media has understandably focused at this continuing *ethnic* violence, which frequently is referred to as 'reverse ethnic cleansing'. It is a serious challenge in itself to the international community, and in particular to those involved in the *humanitarian intervention* that followed the breakdown of the Rambouillet accords in March 1999.³ Needless to say, the situation in Kosovo is much better than it was during the months of war. But then again, one would also expect higher standards in a situation where NATO provides over 40.000 troops and the UN some 1.700 international police officers precisely in order to protect the victory claimed by the new international 'humanitarianism backed by force'. A continued impression of *reverse ethnic cleansing* obviously challenges this impression of a victory for human rights and multicultural tolerance, as it eventually merely comes to resemble the victory of one group over another. Hence, most of the critical light that has been shed on the internal security situation in Kosovo has focused only on the inter-ethnic dimension of the problem.

² During the week 27 November to 4 December 1999, 22 murders were reported in Kosovo.

³ On the lessons of the Kosovo war, see: Ivo H. Daalder and Michale E. O'Hanlon (1999): 'Unlearning the Lessons of Kosovo' in *Foreign Policy*, Fall 1999, Adam Roberts (1999): 'NATOs 'Humanitarian War' over Kosovo in *Survival* Vol 41 No.2, Autumn 1999, Michael Mandelbaum (1999): 'A Perfect Failure: NATO's War Against Yugoslavia in *Foreign Affairs* September/October 1999.

When taking a closer look at today's Kosovo, however, it appears that this is only a small part of a larger picture. It is not solely the remaining Serbs, Gypsies and other minority groups that are victimised. Ordinary Kosovars are also threatened. In the security vacuum created after the withdrawal of the Serbian forces, organised crime has taken a firm grip over substantial parts of the province. The informal networks and alternative power-centres that grew to noticeable wealth during the blockade of Yugoslavia, through specialising in smuggling and trafficking of people, are making sure that they have a comfortable level of control over the new situation. Nowhere else is this as strongly felt as at the municipal level, where the extent of effective control by the international community is significantly lower than at the central level.

The key reason for this structural security vacuum seems to lie in the combined effect of the absence both of an agreed path towards a final settlement and the simultaneous absence of an effective occupation government.⁴ It was indeed predictable that this situation had to create a very difficult situation in the public security area.

Today's Kosovo is impatiently spending its days in the 'waiting lounge', and it could hardly be otherwise. International efforts to support peace settlements have developed a long way from its Cold War focus on maintaining some kind of *status quo* to its contemporary focus on *managed change*. Protracted transitional periods are in many cases the best way to ensure that a particular country or region develops from something it wants to leave behind, into a new situation that is to be both different from and qualitatively better than the preceding one. The purpose of international support for such transitions is both to influence the direction of change and to make sure that this change takes place without (further) violence. In the post-Cold War, a number of UN-assisted transitional processes have actually proven relatively successful. Just to name a few, the international community assisted in the transition into democracy and majority rule in Namibia (UNTAG 1989-90), Cambodia (UNTAC 1992-93), Haiti (UNTMIH 1997-present), and in the return to Croatia of formerly Serbian controlled *Eastern Slavonia* or Danube Region (UNTAES 1996-1998). In all these cases, a substantial international military, civilian and police monitoring presence was required in order to keep an agreed process on track and to ensure that both the former and the new forces in charge lived up to their promises. These countries and regions had to spend time in the international waiting lounge too, but the major difference being that they all had got their ticket to the final destination issued before they went in. This meant that inhabitants and interested international players alike could start making preparations about their future already while in the midst of the transitional phase. Furthermore, it meant that while much political arguing would still have to take place, there was less reason to challenge the overall direction that the developments were taking.

Kosovo, on the other hand, has been sent into the waiting lounge with no ticket and no clue about its final destiny. In principle, the issue of final status that brought the province to war, remains as open as when the conflict erupted. Shall Kosovo stay an integral part of Serbia, become a republic in FRY, achieve independence, or even join Albania? These are, of course, issues of utmost importance for anyone planning for a future in the

⁴ The concept 'occupation' is here used to illustrate a situation where a foreign military force takes complete control over a territory with the intention to stay for a substantial period of time, and where an international administration is introduced instead of local government. The UN/NATO role in Kosovo should be understood, however, as a (at least intentionally) *benign* occupation. See below on the parallel to Germany or Japan. This argument runs contrary to, for instance, early statements by UN chief administrator Bernard Kouchner who insisted that 'we are not an occupational force'.

province. And as long as they remain open, the political process will continue to be centred around them. The assumption apparently held by several key international actors in Kosovo, that ‘normalisation’ will lead the inhabitants to think of more ‘practical’ issues than where the province is heading, seems rather optimistic in this light.⁵ It seems more likely that the situation will generate increasing rather than decreasing pressure for settling this overarching issue. Early signs of growing Kosovar discomfort with this permanence in an undefined transitional phase can clearly be seen. At the outset, most Kosovars saw NATO as liberators and the establishment of a UN administration (UNMIK), protected by KFOR, as a logical step on the way to full independence. At least at the highest level, the level of cooperation with the international administrators was extensive.⁶ The UCK and NATO were allies during the war, fighting against a common enemy, and apparently for a common cause. After the war, on the other hand, NATO and the UN are presiding over the formal continuity of Kosovo within Serbia against the will of most Kosovars, while Serbian sovereignty over the province is temporarily suspended. The initial perception of a joint cause is therefore increasingly substituted with a perception of working at cross-purposes. While disagreeing internally over methods and means, most Kosovars want the independence that the International Community is not prepared to give them. The resistance from the international community’s side is both based in the very sound concern for regional stability in the case of an independent Kosovo, and in defence of the principle that the solution to post-Yugoslav conflicts cannot be an eternal circle of further fragmentation into mono-ethnic states. The consequence for Kosovo, however, is that the current situation of non-settlement is unlikely to change for quite some time: It is rather unlikely that the international community will cede, at least in the short- to medium-term, on the recognition it made through Security Council Resolution 1244 (1999), which acknowledged the continued integrity of Yugoslavia’s borders and it is even more unlikely that during the same time-span, the majority of the Kosovars will renounce its claim to independence. Thus, a situation is evolving where the only thing that stands between the Kosovars and independence now that the Serbs are out, is the presence of NATO soldiers and UN administrators.

3. Law & order isn’t just a technical issue

Internal security is the *sine qua non* of stability, conflict prevention and long-term progress, in the Balkans as well as elsewhere. While much attention is devoted to the issue of policing and the provision of law and order, much of the discussion seems to reflect a fundamental misunderstanding of the nature of these issues. Therefore, a few general remarks should be made at the outset:

- First, internal security it is not only an issue of *policing*. Police service is just one (albeit very important) leg of the broader internal security spectrum, or the *triade* of

⁵ In October, the author conducted a series of interviews with key players at the various international institutions involved in the security field in Pristina (UNMIK HQ, UNMIK Police, OSCE HQ, the OSCE Police Academy, and KFOR HQ).

⁶ The UCK leadership has distanced itself from the acts of violence committed in its name. Still, a recent OSCE report suggests that the links between the UCK leadership and these activities requires further investigation. See OSCE Pristina: Human Rights in Kosovo: As Seen, As Told (available at www.osce.org/kosovo/reports/hr/index.htm).

police, judiciary and penal system. Reform efforts in any of these sectors must take the other sectors into account. There is little use in reforming one leg on its own. For instance, there is little use in apprehending criminals if there is no court to take them to, and a sentence imposed gives little meaning without a penal system. In fact, imbalances within the security sector may even lead to human rights violations, like for instance when the police (for lack of a due process of law or a legitimate penal system) takes care of its own sentencing or punishment.

- Secondly, the provision of law and order is not merely a technical service that has to be provided by someone. It is different from water supply or garbage collection. Legitimate and effective policing rest on a complex relationship between the citizens and the state, and require that the law is generally supported by the citizens (in practical terms, that means by most of the citizens most of the time) and that the citizens see the police as legitimate representatives of a government they recognise (if not necessarily agree with). If these conditions do not prevail, the police becomes either ineffective or an illegitimate instrument of oppression. It is practically impossible to build and train a police force without reference to the governmental structure within which it is going to work.

- Thirdly, in situations where there is no government you can not simply expect the police to emerge from nowhere, and one should indeed be concerned if it still does, as this typically will be the first step towards establishing a new, 'alternative' order.

There may, however, be cases where law and order cannot be performed by local authorities, either because such no longer exist, are completely illegitimate, or fractioned. Torn-apart or 'failed states' sometimes represent such a picture of total anarchy. In principle, the international community may then decide to introduce certain minimal state functions in the benefit of the local population and of a long-term return to peace. That route, however, should go via the establishment of a protectorate or trustee government and be based on an effective occupation. There are historical examples of such policing based on a military occupation. For instance, during the post-World War II occupation of Germany, the US Army established a US Constabulary (USCON), which was in charge of public security in most of the US-controlled sector. It's structure reflected the new German administrative structures (Länder, Regierungsbezirk, Kreis). It was a quite successful set-up but it is very important to note that this was based on a full occupation situation: Power resided with the US commanding officers, *not* with local German authorities.⁷ The occupational force did not only perform policing as such, but were also overseeing and in part responsible for the re-establishment of effective and legitimate judiciaries and penal systems. A legitimate, internationally mandated trustee government might combine these functions. There might be situations where the majority of the local population welcomes such an arrangement as the lesser evil, as it for instance keeps war from returning. Still, few people would want such a model to persist for a very long time.

⁷ For a thorough description of the US occupation of Germany, see Hans-Jürgen Schraut (1993): "U.S. Forces in Germany, 1945-1955" in: S. Duke, W. Krieger (eds.), *U.S. Military Forces in Europe. The Early Years, 1945-1970*, Boulder, CL: Westview Press, 1993. Germany was for an infinite number of reasons a different case from Kosovo: First of all, the war was definitely over as Nazi Germany had won. In the case of Kosovo, the Yugoslav government is still in power but has its sovereign control over Kosovo suspended. Secondly, it was made clear to the German population that the allied forces intended to stay for as long as it took to bring peace back to Germany. There was no other option than peace, so to speak. In Kosovo, the duration of the international presence is uncertain.

First, it easily becomes very costly to conduct, secondly, public support might easily deteriorate. If economic growth, for instance, is delayed for some time, the population might blame the foreign government, and the cry for expelling the foreign occupants might become an easy rallying-ground for local political leaders. The international community will therefore probably be reluctant to institutionalise such regimes. If it chooses to do so anyway, it will probably be in the form of a transitional authority that takes power but from the very first day starts planning for a future withdrawal and reestablishment of a locally founded government.

The purpose here is to underline that the international presence may *either* assist a local government in its law and order functions *or* choose to take over the government, but that *intermediate* solutions easily will prove futile. Involving oneself in actual policing, for instance, including the detention of perpetrators, but then leaving the detainee to the local authorities for punishment, may turn out to be disastrous either for the individual in question, the prestige of the international police force, or both. In Kosovo, no effective judiciary system has developed, hence most detainees are released in spite of ample evidence of guilt. If the international community involves itself in such acts, it must also take the moral responsibility for the future fate of the persons detained. In some settings, this means ensuring that the physical treatment and legal process against a detainee is consistent with international human rights covenants and legitimate local laws. In other settings, the local detainee might actually have committed an offence but is protected by a corrupt or politically governed local court system and hence freed instead of being put to trial. Both situations illustrate the problems of having a police force based on an international mandate and a judiciary and penal system based on local political realities.

4. Experiences from Security Sector Reform in Bosnia and Croatia

At the end of a decade that has seen numerous civil wars as well as internationally-brokered peace agreements, there is an emerging understanding of the role of *security sector reform* as an intrinsic part of any peacebuilding process. So far, CIVPOL has typically been understood as little more than yet another dimension of peacekeeping, closely related, but still separate, from the military side. Increasingly, this view of CIVPOL as a standard component of any peacekeeping operation is being supplemented with a vision of security sector reform as an essential feature of post-conflict reform and state-building. A third approach is to see international support for security sector reform as a way to come to grips with transnational problems like the issue of organised crime. The argument is that the international community should engage in the establishment of effective law and order services in the Balkans not only in the interest of peace in the region, but also in its own interest – the alternative is that the region remains a leading exporter of criminal activities to Western Europe.⁸ In other words, to the extent that there is a window of opportunity in influencing the shaping of the future security sectors of the countries in the Balkans, this is a chance Europe simply cannot let go.

The international community has now for a number of years been active in post-conflict security sector reform processes in Bosnia, Croatia and Albania. In particular, the

⁸ On the international extent of Kosovo-based organised crime, see Holm, Tor Tanke (1999): *Organised Crime and Corruption in the Western Balkans Region*. Contribution to the CPN/EUAELC study on security issues related to Balkan Stability (München: CPN/SWP, forthcoming-99).

experiences from Bosnia and Croatia merit a closer look in order to see which lessons have been learned so far. To a large extent, the efforts have been concentrated on the issue of policing. Only to a limited extent has the efforts been focused on legal and judiciary reform. Beyond human rights monitoring, the penal system has received the least attention of the whole law and order triad.

Although there have been international police officers serving with the peacekeeping forces in the Balkans since UNPROFOR was established in 1992, the relevant cases for this study are to be found in the operations that were institutionalised *after* the wars in Bosnia and Croatia had been terminated. In Bosnia, an United Nations *International Police Task Force (IPTF)* was introduced shortly after the entry into effect of the Dayton Peace Agreement. The entities that jointly constituted the new Bosnian state commanded existing police forces, on which the future reform process was to be built. These were excessive in size and overly militarised rather than under-resourced, hence an important part of the reform process was actually related to making the police forces smaller and more ‘civilian’. Since the Dayton Agreement stipulated that the parties themselves were to perform police functions, the UN’s IPTF was not given executive authority. In stead, it was supposed to assist the entity-based police forces (Federation Police and RS Police) in its transformation into modern and decent police services. Thus, they became involved in police reform as well as in traditional ‘monitoring’ of the behaviour of the local police forces.

Even so, the IPTF quickly came under criticism for not contributing sufficiently to upholding law and order in Bosnia. Formally, this was of course not the mandate the IPTF had been entrusted with, but as it became clear that the local parties were rather reluctant to effectively reform their police forces (and in particular, to steer away from the close link between the political leadership and the police) people began to talk about a *public security gap* existing in post-Dayton Bosnia. The recognition that such a gap actually existed, led to a discussion about the introduction of a ‘third force’ to be provided by the international community - an instrument in between the military peacekeeping force and the unarmed police observers. This argument was particularly emphasised by American protagonists, who were critical of the slow development on the public security side in Bosnia and Herzegovina. While recognising that there was indeed a ‘security gap’ between the local police not performing as expected despite being monitored by the IPTF on the one side, and heavily armed military peacekeeping troops being unprepared for ‘policing’ functions on the other, critics of the ‘third force’ idea argued that taking over the policing role from the local authorities is more easily said than done, and it should definitely not happen half-heartedly.⁹ This whole issue is closely related to the issue of sovereignty. In principle, the international community has two possible solutions to this. One can *either* ask the local authorities to do policing (according to certain agreed principles) *or* it can take on the role itself. There is no middle ground here. The police have to relate to sovereign power, i.e. either to the national authorities or to an occupational force. Secondly, if the UN IPTF or some other international organisation was to take over the role of policing in Bosnia, it would also have to take over responsibility for the other elements of the triad (judiciary and penal system).

The ‘third force’ idea was finally dropped. Instead, two developments took place: The IPTF increased the pressure on the local police and, from 1997 onwards, it entered into a

⁹ Calic, Marie-Janine and Espen Barth Eide (1998): *Was Kommt Nach der SFOR? Politische und Militärische Optionen der Internationalen Friedenssicherung auf dem Balkan*. SWP-AP 3063, März 1997. (Ebenhausen, Stiftung Wissenschaft und Politik).

much closer co-operation with SFOR in the conduct of their tasks. Examples could be found in joint checkpoint policies, joint patrolling, and in joint operations in disarming the local Special Police. Some battalions even used CIVPOL as advisors when SFOR had to take on crowd control and similar tasks in the grey area between policing and peacekeeping.

The second development came in the form of a re-thinking of what SFOR could actually do *within its mandate*. Originally, the emphasis on *no mission creep* had been very strong. Now, the underlying assumption that the military cannot perform police-type functions was challenged. As a consequence, a *Multinational Specialized Unit (MSU)* was set up within the framework of SFOR and manned with servicemen recruited from the French *Gendarmerie*, Italian *Carabinieri*, Spanish *Guardia Civil* and similar types of services. It should be noted, however, that this is *not* the third force discussed above. The MSU operates within the framework of the SFOR mandate. It is not a police force, but a specialised military force stepping in when the daily tasks of peacekeeping requires it.

One of the lessons to be learnt from Bosnia seem to be that, given a Dayton-type framework (which recognises the local parties as the legitimate rulers of Bosnia) one should not attempt to provide the police function in a foreign country. This would lead to an unhealthy compromise with sovereign authority, and, particularly in the Balkans, one should be aware that the day a third force is established, the international community will be blamed for mostly everything that happens in the country as it takes away much of the responsibility of the parties themselves. The only real alternative is, thus, an occupation or transitional administration, but that was not the model chosen in Dayton.

The experiences from Eastern Slavonia (Croatia) are quite different from those of Bosnia and Herzegovina. In the aftermath of the peace talks in Dayton in November 1995, negotiations were held in the town of Erdut in the easternmost corner of Croatia, more precisely in what was then known as Eastern Slavonia and which today is known as the Danube region. This was the last remaining part of the *Republika Srpska Krajina (RSK)*, which during the war in Croatia used to control as much as 1/3 of Croatia's territory. The *Krajina* and *Western Slavonian* parts of this self-styled republic had been taken back by Croatian military offences *Flash* and *Storm* earlier in 1995. But now that peace had been brought to Bosnia, there was little international support for further military action in Croatia and as an alternative, a non-violent solution was sought and indeed found in Eastern Slavonia. In what emerged as the *Erdut Agreement*, sovereign control over this part of the country was to be transferred to Croatia after two years, and the RSK should cease to exist. In stead, a UN transitional administration was to run the area in the meantime. Hence, the *United Nations Transitional Administration in Eastern Slavonia (UNTAES)* operation was launched as a *de facto* temporary occupation of Eastern Slavonia. One of its most innovative aspects was the active role it played in the establishment of a *Transitional Police Force (TPF)* consisting of roughly equal numbers of Serbs and Croats. This was to be the real police force in the region, providing an effective police service and thereby contributing to establishing a climate where both returning Croats and the Serbs that did not leave could live together. Despite serious problems underway in establishing such a multi-ethnic police force, the attempt largely did succeed, and what was established as a transitional police force is now integrated into

the ordinary Croatian police.¹⁰ It remains to be seen, however, whether its multiethnic composition will survive this shift in the longer run.

What seems to have been the key to the (relative) success in Eastern Slavonia is that the locally recruited police force (TPF) was established directly under the UN's control and in a framework where the UN Operation (UNTAES) was the only real power in the region. The Serbian forces had been disbanded, the structures of RSK abolished, and the military part of UNTAES had effective control over the territory (which after all is rather small and with an easily accessible topography). The Transitional Administrator - serving as a kind of Governor or *vice-Roy* of Eastern Slavonia - was in charge of the entire UN operation, i.e. both the military and the civilian parts of it. Other organisations working in Eastern Slavonia were simultaneously subject to UN coordination.

Thus, the set-up was substantially clearer than the rather messy Dayton model in Bosnia, and this seems to have provided better conditions for police reform in the area. UNTAES was an example of a region that was placed in a transitional situation for a defined period and with a clear and agreed goal: The eventual return of the province to Croatian control. Thus, while it had to pass through the metaphorical waiting lounge, it already had a ticket to its final destination when it entered. The practical task conducted under UNTAES' supervision was the introduction of Croatian personnel into the transitional police force while simultaneously reducing the number of Serb officers by vetting. The aim was to achieve a rough 50-50 situation in order to provide credible security to both the local population groups.

In 1998, the responsibility for internal security was transferred back to Croatian authorities, and a smaller observer group (the United Nations Police Support Group) was established to monitor the takeover and the first nine months of Croatian sovereign control. The 15 October 1998, this task was handled by the OSCE.

5. The Security Vacuum in Kosovo

By June 1999, Kosovo represented an arch-typical *security vacuum* situation. There had hardly been 'normal' policing in Kosovo for more than a decade, since the totally Serbian-dominated Yugoslav police (and in particular the special police, MUP) had been much more oriented towards controlling the local population than in serving them. Still, some rudimentary 'law and order' had resulted even from this starting point. Now, after the withdrawal of all Serbian security forces, there were no local institutions at hand to take care of the public security function. Immediately, a rush began between KFOR/UN and the UCK to fulfil this as well as most other functions related to the civilian administration of Kosovo. While the UN is formally in charge, the UCK and other political forces have the upper hand in several areas, and neither of the two has anything close to full control over the situation. A thin balance is maintained between cooperation and confrontation. In stead of the expected post-war normalisation, parts of the country have experienced the development of a rather anarchic state of affairs. It should be remembered that Kosovo was not a particularly well-ordered society *before* the war either. The police was an instrument of oppression, and on the other side, strong traditional structures of *kanun* laws

¹⁰ See Holm, Tor Tanke: 'UN CIVPOL Operations in Eastern Slavonia, 1992-98' in Tor Tanke Holm and Espen Barth Eide (1999): 'Peacebuilding and Police reform', special issue of *International Peacekeeping*, Vol. 6, no. 4.

emphasising blood revenge and self-styled ‘policing’ prevailed. The state – whoever was trying to set it up – has never been very successful in Kosovo. What to a certain extent did prove successful was the establishment of a parallel society and a parallel government in Kosovo from 1989-1990 onwards (*the Republic of Kosova*). The current self-styled takeover of public functions, this time by the UCK in opposition to NATO/UN, actually bears some resemblance to the 1989-1998 period of *parallel sovereignty* in Kosovo.

The absence of effective control has led to the continuation of some of the worst patterns of war. It is a repetitive pattern from conflicts around the globe that many warlords of the past become the magnates and political leaders of tomorrow, and Kosovo is only in one aspect an exception from the rule: In Kosovo, those *conflict entrepreneurs* that were active on the Serbian side have largely gone as there is no room for them in the current set-up.¹¹ Those on the Albanian side, however, have actively taking part in the war, and are now demanding their fair share of the victory. While wars, blockades and exceptional situations are devastating for the majority, they create breeding ground for certain types of economic activity that proves particularly effective in the absence of order. The people that benefit from such activities see few reasons to support the re-establishment of effective public control. Past warlords frequently become the *spoilers* of peace processes.¹²

Experience shows that if the internal security challenge is not handled early, these ‘old’ habits and structures will continue to prevail for a long time, undermining other efforts aimed at enhancing post-conflict settlement. The immediate aftermath of any civil war is the ideal breeding ground for organised crime, revenge attacks, arms proliferation, looting and theft. The structures that emerge may quickly reach a level where it will be difficult to combat them at a later stage.

The separation between political power and the greyer shades of the economy is not always very clear in the Balkans. Due to the exceptional situation that has prevailed in Kosovo and Serbia for a number of years, with vast unemployment, a very young population and many types of jobs inaccessible to Albanians, the Kosovar diaspora population is dramatically high. While in no way representative of the majority, it is no secret that some elements within this diaspora have been heavily involved in international organised crime, operating not the least in Western Europe.¹³ Clan- and family ties keep these activities within closed circles and inaccessible to police investigators in the host countries. This has led to a worryingly high level of Kosovar Albanian involvement in international criminal circles. Furthermore, the economic recovery and reconstruction assistance that is beginning to flow into post-war Kosovo and the neighbouring states is becoming a magnet not only for local criminals, but also for Albanian and other foreign Mafia structures. The same thing happened, for instance, in Bosnia and Herzegovina. This threatens to reinforce the political – criminal relationship, and even to bring it uncomfortably close to the international donor community. For these reasons, there is substantial interest in the further developments in Kosovo and elsewhere in the Balkans within international police quarters.

¹¹ Eide, Espen Barth (1997): Conflict Entrepreneurship: ‘On the ‘Art’ of Waging Civil War’ in Anthony McDermott (ed.): *Humanitarian Force*. (Oslo: PRIO report 4/97).

¹² On the phenomenon of *spoilers* in peace processes, see Stephen John Stedman: ‘Spoiler Problems in Peace Processes’ in *International Security*, Vol. 22:1, Fall 1997

¹³ See Holm, Tor Tanke *op.cit.* and Cilluffo, Frank and George Salmoiraghi (1999): ‘And the Winner Is... The Albanian Mafia’ in *Washington Quarterly* Vol 22:4 pp. 21-25.

6. Short-to-medium term: UN CIVPOL or KFOR Constabulary?

In the absence of a final settlement, Kosovo is *de facto* occupied by NATO's KFOR and formally administered by the UN through its UNMIK mission. In choosing such a model, the international community has taken a much wider responsibility than it normally does for the future of the province. Even in most of the more ambitious peace support operations that have been launched in the post-Cold War era, the normal 'mode' is that the international presence is in place to keep the war away and to *support* a transition process for which the local authorities are ultimately responsible themselves. This was, for instance, the case both in Bosnia (IPTF) and in Eastern Slavonia (UNTAES).

In the hastily drawn up structure of the UN administration in Kosovo, UNMIK, not KFOR, was to be responsible for the everyday maintenance of public order. KFOR's role in this area was only to establish rudimentary public security at the very outset of its campaign (until the UN could effectively take it over), and then to provide the general climate of security that would make UNMIK's operations possible. The UN was asked to provide an all-purpose civilian police force with full executive authority for law enforcement in Kosovo, and this force should be operational 'as soon as possible'. This is quite a novelty in the history of UN CIVPOL. While the UN has gathered substantial experience in the CIVPOL area, it has concentrated on supporting, monitoring, advising, reporting and training – the so-called *SMART* concept.¹⁴ The UN Secretariat in New York contains a specialised CIVPOL unit within the Department of Peacekeeping Operations (DPKO) that is responsible both for the practical administration of on-going police operations and for contributing to the conceptual thinking around this engagement. Together with most other relevant parts of the UN Secretariat, it has consistently, and probably wisely so, warned against actually taking over the day-to-day policing in the countries where it has been active. This is, in part, based on a number of important lessons learned. First, the contributing countries are never ready to send enough police officers for this kind of service. Personnel shortage is an endemic problem even for regular police monitoring, and attempting to recruit policemen to executive, armed policing was believed to prove even more difficult. Secondly, actually becoming the police of other people's countries has been understood as extremely difficult. UN CIVPOL contingents themselves represent a plethora of police cultures and policing concepts, which was believed to reduce efficiency and increase the danger of armed executive operations. Thirdly, it was assumed that international policemen would encounter overwhelming obstacles when trying to get sufficiently on the 'inside' of the sub-cultures of the country of operation in order to combat mafia-related and other forms of organised crime - or for that sake even petty crime. At the same time, the risk of being subject of revenge if one actually succeeded has been seen as too high to try. Fourthly, there has been a common understanding that if the UN took over this job, it would remove the responsibility from the local authorities, which would prove unhelpful in the peace stabilisation effort.

The well-established UN CIVPOL model was, however, not practicable in the case of Kosovo, where the UN and NATO were to take over a province without any kind of recognised government. Thus, the international community *had* to take on the exceptional

¹⁴ For an overview of a number of international CIVPOL operations during the 1990's, see Holm, Tor Tanke and Espen Barth Eide (1999): "Peacebuilding and Police reform", special issue of *International Peacekeeping*, Vol. 6, no. 4.

job of providing internal security itself. It was, to a certain extent, understood that this was not like Bosnia and Herzegovina. In Bosnia, there were recognised government structures to work with. The issue was, therefore, not one of *whether* but of *how* the international presence in Kosovo should prepare itself for performing this task.

Looking back at earlier examples of international occupations, the function of internal security has been associated with the role of the military occupational force. It is in part surprising, though, that internal security was not understood as an intrinsic element of the role of the KFOR.

Still, a large part of the explanation should be sought within NATO. As the war with Yugoslavia drew to an end, there was little enthusiasm in the alliance about taking on the task of policing. This job can arguably be seen as the most complicated and dangerous one, once the Serbian forces had been forced to leave Kosovo. It is also in this area where the interface with the Kosovars threatens to become most difficult. NATO was already strained internally after the war itself, and did not need new adventures beyond the provision of a peacekeeping force as such. Some NATO members, and in particular the United States, have for years been warning against mission creep in peacekeeping operations like the one in Bosnia and Herzegovina, and the same argument came up over Kosovo. Thus, a concentration on what is understood as more ‘military’ tasks is the preferred option.

Parts of the explanation should be sought at the UN Headquarters. Under normal conditions, the United Nations secretariat would clearly be sceptical about the proposed portfolio of tasks. For years, substantial pressure has been put on the UN in order to change its attitude from the one represented by the SMART concept to one of actively providing policing itself. The United States, among others, have argued for such a shift in the context of different ongoing operations, whereas UN officials and a number of member states contributing to peacekeeping operations have warned against. However, 1999 has not been normal for the UN, which feels marginalised by the US and NATO and which steadfastly has been trying to regain a leading role over the handling of Kosovo. In the settlement that ended the NATO-Yugoslav war, the UN suddenly got two major tasks to fulfil: organising the overall civilian administration of Kosovo and the role of police force. In this situation, the ‘offer’ to take on the police function was hard to refuse.

The OSCE could conceivably have been used as a platform for the police pillar, and it actually did begin to plan for a international Kosovo police force that could substitute its ill-fated *Kosovo Verification Mission (KVM)* experience. But to the surprise of its Chairmanship it was in the end not the body selected. After all, the OSCE’s record after this troubled year is not particularly encouraging, and parts of the explanation may simply be that this new policing job was too big for the OSCE at this stage. In stead, the OSCE was charged with the task of establishing a new local Kosovar police force.

It is unfortunate that NATO did not devote more time into discussing the nature of its post-war engagement in Kosovo. Indeed, a more comprehensive role could have been achieved already then. It appears that NATO’s understanding of how to work in a peacekeeping environment has improved substantially since the first NATO peacekeeping operation was launched on 20 December 1995 (IFOR). Then, the mantra of ‘no mission creep’ was the answer to all the questions raised by the civilian pillar of the implementation process, and only gradually, IFOR and later SFOR broadened its outlook to the wider issues involved in long-term peace-building. With KFOR, the understanding that KFOR is in place to help and underpin all the civilian reconstruction

efforts was introduced already with the first commander, General Michael Jackson, and continued with the second KFOR commander, General Klaus Reinhardt.¹⁵ Indeed, the whole KFOR operation is in several respects more 'European' than was IFOR, as the American quick-fix approach is much less visible in Kosovo than it was in Bosnia. Significantly, the first two commanders have been European, the force composition of KFOR is overwhelmingly European, and the operational concepts are much more European than American. A discussion about the further Europeanisation of KFOR is underway.¹⁶ This is a better starting-point, but it remains to be seen whether this will do the trick in keeping violent conflict out of Kosovo and the countries surrounding it.

7. Long-term: A Kosovar police force?

The international community cannot be responsible for policing Kosovo forever. A home-grown *internal security sector* - encompassing police, judiciaries and penal system, and representing a codified legal system - has eventually to be developed in Kosovo. The international community should assist in the establishment and formation of such services. There are many technical challenges in this area - who shall foresee the training, who shall select and 'vet' the officers, who shall pay them and which legal system shall be applied, just to name a few. In contrast to other post-conflict situations, the task is particularly huge in Kosovo, as there is hardly any pre-existing core of officers to build on. Practically all police officers used to be Serbs, and are now out of the province. A new police force must furthermore reflect the ethnic composition of the population, which today is overly Albanian. Most of the ethnic Albanian officers left or were decommissioned during the Serbian purges of Albanians in public service at the beginning of the 1990s. With a few exceptions - officers that served with the Yugoslav police for more than 10 years ago - new cadres have to be identified, vetted, and trained before an authentic Kosovar force is introduced. A specialised institution - the OSCE Police Academy in Vucitrn (Vushtri) - is already in place. It would probably be most cost- and time-effective to concentrate on a *train the trainers* approach, also in order to allow the development of an independent institutional identity. The first group of students are graduated from the School, which anyhow is substantially below schedule compared to the initial aim of producing 3000 local police recruits per year.

There is a clear danger that the important tasks relating to the recruitment, training and formation of a new local police force loses out in the competition for attention and resources in a situation like the one prevailing in today's Kosovo. The problem is that while being of paramount importance for the future, pitfalls and shortcomings on this side are not as visible today and thus will not lead to the same level of media critique as the failure to provide public security in the short term.

But yet again, the overarching problem in this area is not first and foremost an issue of models and resources, but of the same, underlying issue: the absence of a final settlement over Kosovo. The 'law and order' sector has to represent an established political and legal system, the full transfer of authority to competent local authorities is pending on, among

¹⁵ General Reinhardt confirmed his vision of a broad and encompassing operation, focusing on supporting the civilian side, in an interview with the author on 7 October 1999, the day before he took over as Commander of KFOR.

¹⁶ The issue of making the *Eurocorps* responsible for KFOR was discussed at the Franco-German summit of 30 November 1999.

other things, a settlement of the underlying political issue: What is to be the future status of Kosovo? Simply put, the new police officers need to know which government they represent, whom they are to report to, and which law to apply, and this has fundamental consequences also for those responsible for training them.

While the OSCE Police Academy is systematically, albeit belatedly, training an embryonic core of police officers, other institutions have also been referred to as pointing in the direction of a future police core as well. The September 1999 agreement between KFOR/UN and the UCK illustrates the point: Here, a *Kosovo Protection Force* (KPF) is established as a follow-up of the now formally disbanded *Kosovo Liberation Army* (UCK) but accounts vary about what it is to be used for: A disaster relief organisation, a reconstruction brigade, the embryo of a local police force, a ‘National Guard’, or the future army of independent Kosovo. In the difficult negotiations about its nature, much emphasis was placed on the issue of the number of small arms it was entitled to control. In a country where weapons abound anyhow this seems to be somewhat off focus. What remains is that a framework organisation is kept in the place of the old UCK and this organisation can then later be used for a variety of possible purposes, including that of re-establishing a military organisation at a later stage. The shape that the relationship between the Kosovo Protection Force, the embryonic local police force, that is to be trained by the OSCE, and the international security presence will take in the months to come, may become a key to the understanding of the future shape of a home-grown security sector in Kosovo.

8. The Lack of Judiciaries Further Deteriorates Public Security

There is little use, however, in even a well-functioning local police force, if the rest of the legal system is not up to the job. This sector also suffers from the limbo situation Kosovo finds itself in, where neither local authorities nor international administrators are able to perform a number of key public functions. Recent reports conclude that the judiciary sector in Kosovo is basically not working, and that detainees are released without punishment while others are not even brought in for questioning. The lack of legal response seems to have led to even more violence, killings, and criminal activity, while reducing the general perception of a ‘sense of security’ among the population in general and the minorities in particular.¹⁷ A recent report from the *Lawyers Committee for Human Rights* finds shortcomings across the board in this sector: It points at constraints, interferences and pressure against the rudimentary new justice system, to impartiality on behalf of certain judges, whereas others abstain from sentencing people because of fear of the consequences, a continued disunity on which version of Yugoslav legal code to apply (pre-1989 or current), non-payment of salaries and general lack of resources – just to name a few.¹⁸ UN sources admit that over 40% of the detainees are released more or less immediately, and only 24 individuals have made it to a courtroom trial while several hundreds have been arrested, and all of them have been in Prizren, which is the only city

¹⁷ International Crisis Group: *Violence in Kosovo: Who’s Killing Whom?* IGC Balkans Report #78, Pristina, 2. November 1999.

¹⁸ Lawyers Committee for Human Rights (1999): *A Fragile Peace: Threats to Justice in Kosovo and A Fragile Peace: Laying the Foundations for Justice in Kosovo* (Washington, Lawyers Committee for Human Rights).

in which a system of judges is actually working.¹⁹ Even if street policing improves, there is little hope of improvement in the general law and order situation as long as this sector remains in crisis.

9. A regional challenge

So far, I have focused on the situation internally in Kosovo. None of the issues discussed above are, however, unique to Kosovo. The entire Western Balkans region is characterised by a whole series of intertwined challenges, many of which can be meaningfully met only at a regional level. While politicians build borders and obstacles to normal inter-regional trade, criminal networks extend throughout the region as well as beyond. Attempting to combat crime in one country on its own only solves part of the problem. Beyond assisting in the security sector reform process as such, with the aim to help establish both effective and legitimate security sector triads at a country level, one of the most relevant contributions international actors can make lies in the support for international crime prevention efforts throughout the region. The challenge will be to help the emerging national authorities to communicate, share information, and cooperate in the investigation and prosecution of international crime. The ‘window of opportunity’ that is provided by the fact that the national authorities in most of the countries in the region currently allow for an international participation in the security sector should also be used to establish as good working relations as possible to the services working in this area. This might be a very fruitful way to get to grips with the high level of crime spillover that flows from the Balkans and westwards. This seems to be a suitable task for Europol, which therefore should be brought more directly into the efforts already provided by the UN and the OSCE in this area.

10. Conclusion: Time for Reconsideration?

Half a year into the UNMIK/KFOR operation in Kosovo, several signs indicate that the international efforts after the conclusion of the war have been largely unsuccessful, at least if judged by the hopes and aspirations for the future of Kosovo expressed in Western circles during the recent war. In this paper, I have argued that in the law and order area, as well as in several other important sectors, the absence of a final settlement and a vision about the way forward have had a dismal effect on the development both of local capacities in this area and on the ability and willingness of the international presence to perform its duties effectively. At one level, the conclusion is that the process towards a political settlement has to be speeded up. That is, however, easier said than done, given the current situation in Kosovo as such, as well as in Yugoslavia in general. The other conclusion is that a major review of the entire international effort in Kosovo is required.

With UNMIK, a whole set of new ideas and concepts concerning international police support were introduced. This was not the culmination of a long-term process of lessons learned and an international debate on possibilities and limitations, but an *ad hoc* attempt to respond to novel challenges. This is, often, the nature of political decisions and there are cases when there is no alternative at the time. The more important is the mid-

¹⁹ ‘In Kosovo, Legal Crisis Hampers Prosecutions’. *Washington Post*, December 5 1999.

term review: As the model applied to Kosovo is one that is never tested before, it should come as no surprise that it does not develop exactly as the proponents expected in the high-stress situation surrounding the initial deployment. Institutional prestige, however, easily comes to undermine such assessment efforts, as key individuals may feel that criticising the concept is equal to criticising them. Intra-institutional politeness in the public realm, combined with infighting and criticism in closed quarters, are unfortunately parts of the game of complex international involvement in peace processes. Thus, rather than stimulating oversight and periodical reassessment, the outcome is that the institutions defend their turfs and their prerogatives once they have achieved them.

The steady flow of bad news about the security situation in Kosovo may, however, make a fast reassessment unavoidable. On the issue of short- to medium-term policing, this may take two alternative paths. The radical path would be to recognise that the ambition of sending an all-purpose civilian police force for Kosovo, which would be an effective guarantee against further ethnic violence and escalation of crime, was overly ambitious, and hence hand parts of the task over to KFOR. This would mean that KFOR became a more 'normal' occupation force which recognised its duties in the public security field. In effect, this is to a large extent already the situation in several KFOR sectors.

Obviously, such a formal extension of KFOR's role would require substantial reorganisation of its military organisation. Ordinary soldiers are not trained as policemen. To a certain extent, existing units could be more effectively used for general patrolling, crowd control, etc. Still, new elements would have to be introduced into KFOR, as effective policing also requires investigation, prosecution, and police intelligence skills. While some KFOR contingents already have units with civilian police experience (Carabinieri, Guardia Civil, Gendarmerie), other troop contributors might consider recruiting police experts at home and introduce them as advisers and specialists into the KFOR chain of command. A Constabulary Unit, resembling the one provided by the US in post-1945 Germany, could be placed under the control of the Commander of KFOR, as his key asset in the public security area. Various synergetic effects could come out of such a set-up. First, KFOR already controls substantial manpower that is already involved in daily patrolling etc. Now, this work could be more closely related to the public security role. Secondly, unlike UNMIK, KFOR includes a large intelligence apparatus, which in the conduct of its regular duties relating to strategic assessment, force protection etc., produces 'surplus information', which the authority responsible for policing could use (today they cannot have this due to its NATO classification). Thirdly, the Constabulary would be better placed than UNMIK to draw on the overall authority of KFOR when necessary, both in a psychological and in a physical sense.

The moderate version is that the current division is maintained, but that co-operation between KFOR and UNMIK police is dramatically improved. The traditional UN CIVPOL approach of lumping people together all down to the lowest unit level works fine for monitoring, but presents serious shortcomings for executive police duties. National UNMIK police units could be co-located together with their national police contingents, a close liaison established between the military and the police contingent commanders, and *de facto* cooperation might be significantly improved. This 'moderate' rearrangement could be easier to achieve, as it can happen within the scope of existing mandates rather than by reshuffling the overall responsibilities.

It should be remembered, however, that whatever the solution found with respect to international provision of law and order, this can not be more than an intermediate solution. It should merely be an attempt to stabilise the situation in the period that Kosovo

remains in the 'waiting lounge'. In the long run, a local internal security system must take over the responsibility, and there is an urgent need to enhance the efforts in this area. The OSCE Police Academy has been able to graduate its first students but still it lies far behind schedule, and the UNMIK Police may have had too much to do within its attempts to perform everyday policing in order to concentrate on the other very important part of its job: To assist in the development of a local police force, which has to be selected, trained, equipped and monitored. A partial liberation of the executive part of its mandate could improve UNMIK's capacity to concentrate on this long-term effort. It might even prove to be a benefit that there is a certain separation of tasks between the force providing day-to-day internal security and the one responsible for the development of local capacities. Furthermore, substantially more attention must be given to the other legs of the internal security sector, i.e. the development of independent judiciaries and penal systems. All the efforts on the policing side will be in vain if performance within these sectors are not radically improved. This would also have to form part of a comprehensive reconsideration of the nature of the international effort in Kosovo.