

KOSOVO:  
LET'S LEARN FROM BOSNIA  
**Models and Methods of International Administration**

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**EXECUTIVE SUMMARY**

After almost three and a half years working in Bosnia to implement the Dayton Peace Agreement, the international community will soon face the prospect of establishing a presence in Kosovo. The model proposed at Rambouillet was very similar to that set up at Dayton, but the situation now is very different. This report examines the international effort in Bosnia to see whether lessons can be drawn for Kosovo and other possible future international administrations.

At Dayton it was assumed that military implementation would be harder than civilian, so the two were kept rigidly separate, and the role allotted to civilian implementation was to give a 'helping hand' to the Bosnian authorities, who were assumed to want to co-operate with implementation. The Rambouillet agreement preserved the same division between civilian and military implementation as Dayton. Yet experience in Bosnia has shown that a helping hand has not been enough since the Bosnian parties have not in fact co-operated among themselves or with the internationals. In response, the High Representative in Bosnia has gradually taken on extra powers, but his ability to use them effectively is limited because he still has no force at his disposal to back him up. However many powers he appears to have, he will always face this problem, even if a so-called 'protectorate' is established. Currently, influence over aid is his only real power.

Civilian implementation in Bosnia has further suffered from diffusion of responsibilities between implementing agencies, who have too often been rivals rather than partners. If the international community is going to become involved in collaborative efforts such as Bosnia and Kosovo, it needs to learn to work as a community. Putting organisational autonomy first is not the best way to do this. Rather, the international effort should become more like a government, with a single head and clear chains of authority within a single hierarchy. This should apply to both civilian and military implementation if possible. The report explores possible mechanisms for achieving this, and advocates the creation of a non-political inspectorate to ensure that work is being done to an acceptable standard.

The aid community has been less effective than it could because of a similar failure to create a culture of co-operation. The report advocates that leading donors set up a commission among themselves to try to work better together.

With refugees the main lesson from Bosnia is that refugees do not return when local authorities do not want them. This could still happen in Kosovo if existing authorities remain in place. But if they do not, as seems more likely, then the task will be a more traditional one of reconstruction, complicated by the destruction of documents and deliberate planting of

land-mines. Minesweepers will have to precede the return of refugees in all areas, and a Property Claims Commission will be needed to sort out claims to property in the absence of documentation.

If Serbian troops and administrations withdraw, the KLA is the organisation best placed to fill the vacuum left behind, but they have yet to show the will and experience to run a democratic society along Western lines. If the international community wants to work for a democratic and pluralist Kosovo it must prevent the establishment of provisional authorities who may be as hard to work with as elected authorities have been in Bosnia. The only way to do this is to adopt wide-ranging executive powers which might indeed justify the title of 'protectorate', and deploy military force as a clear declaration of intent to use those powers. This model would also permit elections to be delayed until the conditions were right for them.

The report concludes that, although one can still be agnostic about models which might have worked better in Bosnia, conditions in Kosovo are right for a protectorate-style model of administration, and in fact that the Dayton/Rambouillet 'helping hand' model is unlikely to be effective in a Kosovo now devastated and depopulated.

**Sarajevo, 17 May 1999**



## KOSOVO: LET'S LEARN FROM BOSNIA

### **Models and Methods of International Administration**

#### I. INTRODUCTION

The outcome of the fighting in Yugoslavia is still unpredictable, but it is likely to end with some form of international administration and armed military occupation of Kosovo. This was a central feature of the Rambouillet agreement, so since NATO military action against Yugoslavia was begun because the Yugoslav side refused to accept the terms of that agreement, anything less than armed occupation would be a defeat for NATO and would raise questions whether the intergovernmental alliance can ever act decisively and effectively to solve problems in Europe. It could even bring the future of NATO into question. So more is at stake than the future of Kosovo. That is why it is necessary to complete the job started on 24 March, when the NATO strikes began.

Two broad outlines for international occupation are still possible. The first is a negotiated settlement under which existing local administrations will remain in place for a transitional period, as foreseen at Rambouillet. This is now a most unlikely outcome, but could still occur if the NATO countries lose their nerve or if calls for negotiation become irresistible. The second possibility is an imposed settlement, whether or not after a land invasion, in which case the Serbian administration in Kosovo would probably not remain in place.

This paper examines the environment likely to face the future administrators and occupiers of Kosovo. It attempts to cover both possible models of occupation, but in general assumes that some form of the second will occur. It draws on the experience of post-Dayton Bosnia and Herzegovina to make recommendations about the composition and structure of the international effort in Kosovo, and offers comparisons between the cases of Bosnia and Kosovo in key policy areas such as refugee return, reconstruction and reconciliation. It also takes the opportunity to comment on aspects of the international performance in Bosnia which could still be improved.

## II. GOVERNMENT MODELS: HELPING HAND VERSUS PROTECTORATE

### A. Helping Hand: The Dayton Model<sup>1</sup>

The ostensible role assigned to the international community in civilian implementation of the Peace Agreement was that of helper to the Bosnian authorities, who would have the main responsibility for implementation. The following are extracts from Annex 10 of the DPA:

*I.2: In view of the complexities facing them, the Parties request the designation of a High Representative...to facilitate the Parties' own efforts and to mobilise and, as appropriate, co-ordinate the activities of the organisations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a UN Security Council resolution, the tasks set out below.*

*II.1: The High Representative shall:*

- (a) Monitor the implementation of the peace settlement;*
- (b) Maintain close contact with the Parties to promote their full compliance...*
- (c) Co-ordinate the...civilian organisations in Bosnia and Herzegovina to ensure the efficient implementation...*
- (d) Facilitate, as the High Representative judges necessary, the resolution of any difficulties...*
- (e) Participate in meetings...*
- (f) Report...*
- (g) Provide guidance to (the International Police Task Force IPTF).*

*V: The High Representative is the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace settlement.*

Despite the catch-all at (d) and (V), the expectation appears to be that the Parties will be doing most of the implementing, with the High Representative offering paternal or paternalistic guidance when difficulties arise<sup>2</sup>. The military force IFOR, on the other hand, had a much clearer brief, reflecting the fact that stopping the war was the top priority at the time. From Annex 1A to the DPA, article 1(a):

*"...deployed to Bosnia and Herzegovina to help ensure compliance..."*

The difference between 'promoting' and 'ensuring' compliance seems clear enough. In fact the High Representative has had to be continuously active, from the very start, to achieve any implementation at all. Far from simply 'facilitating' progress and 'promoting' compliance, the High Representative has had to involve himself in daily government at all levels, faced with the inability of the HDZ, SDA and governing parties in the Republika Srpska (RS) to come to any agreements at all spontaneously amongst themselves. Consequently the language of the Peace Implementation

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<sup>1</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina was initialled in Dayton on 21 November 1995 and signed in Paris on 14 December 1995.

<sup>2</sup> Cf. Principal Deputy High Representative Jacques Klein, speech at the Royal Institute of International Affairs on 21 April 1999, quoted in *The Economist*, 1 May: "We under-estimated the scale of the task, and we over-estimated the willingness of the local parties to achieve it."

Council, which meets regularly to oversee progress in Bosnia, has taken on an increasingly irritated tone. At Sintra on 30 May 1997 the PIC Steering board said:<sup>3</sup>

*“The Steering board wishes to makes it clear...(to Bosnian authorities)...that it demands a significant acceleration in their work towards implementing the Peace Agreement. In particular, the Steering Board urges the authorities of BiH...to stop blaming each other, or the international community, for the problems they encounter, and to work together and in a spirit of reconciliation for their common good.”*

At Bonn on 10 December 1997 the PIC invited the HR to take a more robust view of his role. From Section XI of the Conclusions:

*“1. The Council...emphasises the important role of the High Representative in ensuring the creation of conditions for a self-sustaining peace in BiH...”*

*2. The Council welcomes the HR's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement...by making binding decisions, as he judges necessary, on the following issues:*

- (a) timing, locations and chairmanship of meetings of the common institutions;*
- (b) interim measures to take effect when parties are unable to reach agreement...*
- (c) other measures to ensure implementation... Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the HR to be in violation of legal commitments...”*

Clearly the PIC here was offering a substantial reinterpretation of the HR's role as originally set out in 1995, in recognition of the lesson learnt through experience, that mediation was not enough: only the exercise of determined authority produced progress. The HR has since used his 'new' powers, most startlingly to dismiss the President of RS on 5 March 1999, but also to remove mayors. A flag, a national anthem, and (most helpfully) common vehicle licence-plates have been imposed when Bosnian politicians failed to agree. Even so, the civilian implementation of the DPA seems as sluggish as ever.

Some say the High Representative has not used his new powers enough. On the other hand, dismissed officials in Drvar and Stolac for example have resiliently continued to influence local events quite effectively behind the scenes, and the deposed President of RS has continued to sit in his office and write abusive letters on presidential stationery, even though the RS government has accepted his dismissal. It appears that the PIC has given the HR powers rather than power. Since he has no command over armed forces, he is still dependent on his own standing and prestige to achieve results. Ultimately, all that stops the Bosnian authorities from ignoring the HR is the common need for aid to continue to flow.

## **B. Protectorate: A Cure for Frustration?**

As the role of the HR in Bosnia has evolved in a direction which increases the expectation that he will take firm actions against authorities freely elected by Bosnians, some have claimed that an international protectorate has been established in Bosnia. Others, disagreeing, have called for a protectorate to be in fact set up, in

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<sup>3</sup> Sintra Political Declaration, points 6 and 7. All PIC texts are available on the OHR website.

the belief that this will be more effective than the 'helping hand' model in e.g. creating common institutions and helping refugees to return.

This word 'protectorate' has been in daily use in Bosnia for some time now, yet it is not found in the DPA or in any statement of the PIC. Nor is it a clear category in international law. Bosnia has been a protectorate before, under Austria-Hungary from 1878 until formal annexation in 1908. More recent models are the League of Nations mandates following World War I and the occupation of Germany and Austria after World War II. In the first case, German and Turkish colonies were taken over by other colonial powers, in principle to be prepared for independence – the 'mandate' covered the fact that the allies had declared that their war-aims were not territorial. In the latter case, the victorious allies were faced with the complete collapse of defeated states and the need to start them going again.

In both cases, the principle underlying government was that the protected territory exercised no sovereignty. Government was by foreign powers which ruled by decree. Gradually conditions were created for elections of bodies which would at first have perhaps an advisory or consultative role but over time would evolve into sovereign authorities. In the case of western Germany, regional (*Land*) parliaments were in place by 1947 and national elections were held in 1949. The Federal Republic gained full sovereign control of its foreign relations in 1955. Thus, ten years after the war, West Germany had been relaunched as one of the leading democratic powers of Europe. However, when one looks for similarities with Bosnia, Germany's 40-year partition comes to mind more readily than its economic and political miracle.

Against this background it is clear that Bosnia is not a protectorate, and that this was far from the intentions of the signatories of the DPA. Should it have been? This is not an idle question because (i) the model for Kosovo has yet to be finally established; (ii) Bosnia and Kosovo may be only the first two in a series of post cold-war international administrations; (iii) it is not inconceivable that the model for Bosnia could still be changed, either by evolution (via the PIC, see above) or as part of some new approach to the Balkan region following a solution in Kosovo.

It is tempting to list areas where implementation of the DPA would have been much easier without indigenous Bosnian authorities: refugee return, the establishment of a single customs authority, arrest of war criminals, etc. The political parties whose ethnic exclusivity had started the war could have been sidelined and a new political class given room to grow. The economy would have been freed quickly from communist controls and could have been in much better shape by now.

But would it have been so easy? Bosnia was neither a colony without indigenous authorities nor a smashed and defeated power with no surviving structures. Firstly it seems unlikely that the existing Bosnian authorities would have agreed to dissolve themselves at Dayton, so an imposed solution could have meant IFOR entering against military opposition from some or all of the parties. This was unthinkable in 1995, and still is. Even if US pressure at Dayton, and the parties' war-weariness, had been sufficient to get the various Bosnian authorities to agree to self-dissolution, the new administration (which would have been bigger and more expensive than anyone envisaged in 1995) would still have been faced with the wartime political structures and the adapted communist bureaucracy. The parties were still hugely popular – witness their performance at every election since the war – so their abolition would have been very unpopular unless each ethnic group could have been convinced that it was in the common interest that no ethnic group should be represented by a strong political party of its own. A public relations exercise on this scale, and so grimly



against the grain of public opinion, would be beyond the ability of the international community now and would certainly have been so in 1995. And reforming the bureaucracies, which had already become exclusively mono-ethnic in each of three areas, would have required micro-management on a scale unimaginable in 1995 and not possible even now. Every move would have been fought with tenacity and cleverness, just as has in fact been the case. It is possible that a High Representative with sweeping powers would have been bogged down just as badly, only in a different part of the swamp. He would still have had to bridge the gap between his powers and his ability to enforce them.<sup>4</sup>

The foregoing analysis does **not** purport to prove that a *de jure* protectorate would have performed no better than the 'helping hand' system, only that it would have faced the same problems in different forms, and not necessarily have been better equipped to deal with them, particularly if the forces devoted to military implementation had still not been under the protector's control.

### C. What Model for Kosovo?

The Rambouillet agreement of 23 February 1999<sup>5</sup> clearly shows that the 'helping hand' model is alive and well. At Rambouillet, of course, it was assumed that the FRY authorities would still be in place when the agreement started to be implemented (i.e. the first model of occupation identified in section I above). Under Chapter 5 article II of Rambouillet the Chief of the Implementation Mission (CIM) has the following responsibilities and powers:

- (a) *supervise and direct the implementation of the civilian aspects of this Agreement pursuant to a schedule that he shall specify;*
- (b) *maintain close contact with the Parties to promote full compliance with those aspects of this Agreement;*
- (c) *facilitate, as he deems necessary, the resolution of difficulties...;*
- (d) *participate in meetings of donor organisations...;*
- (e) *coordinate the activities of civilian organisations and agencies in Kosovo...;*
- (f) *report periodically...; and*
- (g) *carry out the functions specified in this Agreement pertaining to police and security forces.*

Also, under article V:

*"The CIM shall be the final authority in theatre regarding interpretation of the civilian aspects of this Agreement, and the Parties agree to abide by his determinations as binding on all Parties and persons."*

Comparing the CIM's powers with those of the High Representative, it is obvious that the drafters of Rambouillet had their Dayton texts with them. The CIM's powers are updated to take account of the evolution of the Office of the High Representative

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<sup>4</sup> "On their own, documents are of course meaningless" – Carl Bildt, *BiH Essential Texts*, May 1997.

<sup>5</sup> Accepted by the Kosovar Albanians but rejected by the Yugoslav government. The Rambouillet terms are now most unlikely to be implemented, but are instructive as an indication of the thinking of American policymakers trying to learn from Bosnia. This report will often refer to the International Mission and KFOR envisaged in Rambouillet as though they will actually come to exist. The assumption justifying this practice is that *some* international civil and military presence will eventually move into Kosovo. 'IM' and 'KFOR' are convenient terms to use to designate it, though it will in the end not be exactly what Rambouillet envisaged.

(OHR), but the model is still the same. In other detailed parts of the text the CIM is given powers to issue binding decisions and dismiss officers, again reflecting the present rather than the original mandate of the OHR.

So policymakers in capitals, specifically in Washington, are prepared to learn from experience, but there is no sign that they want to take on more powers to run colonial-style administrations. This perhaps reflects a view held in Washington and some other capitals that the Bosnia model could have gone a lot worse, and has been on the whole a success. This is a view shared by very few internationals in Bosnia itself, to whom the priorities of 1995 are history and who yearn for more powerful tools to cut through obstruction now. At the very least, the Bosnia model (civilian branch) has not been such a brilliant success that it cannot be improved, so is it likely to work any better in Kosovo? Is it even still available in a Kosovo depopulated and scorched, denuded of its economy and most of its society? Will the helping hand have anything left to help? We will return to this question at the end of this paper.

#### **D. Future of the Dayton Model in Bosnia**

Bosnians and others sometimes ask the question whether a protectorate could still be established over Bosnia. Outgoing High Representative Carlos Westendorp thinks it is 'too late'<sup>6</sup>. The PIC, as we have seen, prefers to proceed by gradually adding to the HR's powers. For reasons suggested above (and not purporting to be decisive), accretion of powers up to and including a protectorate model might be no more successful than the present, as long as the Protector was unable to call on force to implement his decisions. And that is difficult territory (see section III(b) below).

Ambassador Robert Barry of the OSCE has recently advanced the suggestion that the OHR and OSCE should merge, so that the arrangement in Bosnia would more or less mirror that envisaged at Rambouillet. This would be done by nominating the same individual as HR and head of OSCE, thus preserving the HR's powers and allowing the unification to proceed in an orderly way. Best practice from each organisation could improve the other. This suggestion would have the merits of reducing duplication and making budget savings. It would point the way to a permanent new leading role for the OSCE in sorting out the problems of eastern Europe (on which Ambassador Barry also has ideas: see section X). If done quickly it would eliminate the problem of finding a successor for Carlos Westendorp as HR, which is proving tricky at the moment. It would also prepare the way for a gradual winding-down of the international effort in Bosnia in response to diminishing funding. For all these reasons the suggestion merits serious consideration by the PIC.

But merger would not in itself make implementation of the DPA any easier. The OSCE's track record is not obviously better than OHR's. It has a wider field network but has too little control over the quality of its own staff, who are usually seconded by OSCE member governments, often for periods too short to give them time to understand Bosnia or learn any of the language. The arrangements for paying them are haphazard and unfair. Still, one main advantage of passing to the OSCE the poisoned chalice would be that it would give that organisation the opportunity and incentive to develop its capacities to run precisely this kind of operation. Such development was too easily assumed by the drafters of Rambouillet, when they gave the OSCE the lead role in Kosovo. Nonetheless, the OSCE (Organisation for

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<sup>6</sup> Dnevni Avaz, 7 May 1999.

Security and Co-operation in Europe) more than any other international organisation has a vocation to solve the post cold-war problems of Europe, so some effort should be made to help it grow into the role. Bosnia would not lose out through the transition, at a time when so little progress is being made there anyway. Suggestions for improving the OSCE follow later.

The question remains: is a better model for Bosnia still available? The answer is probably not. Three possible strategies exist if a civil-military unification is ruled out: (i) take on more powers and use them. But this increasingly looks like ramming square pegs into round holes; (ii) carry on as at present, which means that the problems of Bosnia will probably remain containable and stagnant until some external cataclysm or re-alignment of forces changes the ground rules; (iii) begin a constructive disengagement, recognising that Bosnia is an independent country which must eventually govern itself. However, no-one now working in Bosnia believes that its existing leaders have the will to co-operate among themselves spontaneously, so disengagement would be equivalent to quietly abandoning some of the goals of the DPA, and possibly dooming the country to formal partition.

One useful lesson from Bosnia is that, if the internationals can forge an alliance with the people against the politicians, unexpected progress can be achieved. The common vehicle licence plate, common passport and the introduction of the Convertible Mark (KM) as a national currency are good examples. A trickier attempt is now being made to popularise election reform. When the populace see real advantages flowing from an international measure, political obstruction melts away. But there have not been enough cases of this sort to change the political culture as a whole.

Short of identifying a whole series of common causes with the Bosnian people against their leaders, muddling through (strategy (ii) above) may be the only option the international community has left itself. It is hardly a triumph. It would be preferable not to do the same in Kosovo.

### III. INTERNATIONAL COMMUNITY OR JOB-CREATION SCHEME?

Everyone knows that the international organisations in Bosnia have not always worked together as well as they should. In the post-war period there have been four main centres of power in the international community in Bosnia:<sup>7</sup>

- (a) The Office of the High Representative, headed by a European, responsible to the Steering Board and PIC but in fact completely unsupervised.
- (b) The OSCE delegation, headed by an American, responsible to an OSCE headquarters in Vienna neither equipped nor staffed to supervise the delegation's work.
- (c) The UN mission, responsible to New York.
- (d) SFOR, commanded by an American but with national units enjoying much autonomy, responsible to NATO in Brussels.

Meanwhile the biggest aid donors (centres of money) have been:

- (e) USAID;

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<sup>7</sup> The US Embassy has been a fifth, but of a different nature.

- (f) The European Commission;
- (g) The World Bank.

These organisations all represent the same cluster of core governments. In detail this can be disputed (especially for the UN) but broadly policy is made in Washington and EU capitals, with one ear open for a dissenting Russian voice. Decisions on their respective activities are made in the same places, in the offices of the US Secretary of State, the British Foreign Secretary and so on (Defence ministries in the case of SFOR). Yet each organisation has an identity of its own, like a child who has grown away from its parents. Each has its own needs and bureaucratic methods and, whether for reasons of turf or of incompatible paperwork, they are incapable of sharing. Thus all have political departments, all have human rights departments, and whether they work together in rivalry or co-operation depends on personal relationships at working level rather than any natural synergy.<sup>8</sup>

In Rambouillet a rather simpler system was envisaged, with much more responsibility concentrated in the hands of the CIM, who would be appointed by OSCE.<sup>9</sup> The following table shows, as far as direct parallels exist, responsibilities allotted to different international agencies under Dayton and Rambouillet:

| <b>Function</b>                  | <b>Dayton</b>                  | <b>Rambouillet</b>  |
|----------------------------------|--------------------------------|---------------------|
| Police                           | UN                             | OSCE/IM             |
| Ombudsmen                        | OSCE                           | OSCE/IM             |
| Elections                        | OSCE                           | OSCE/IM             |
| Customs and Borders              | Not specified, later CAFAO/EU  | OSCE/IM             |
| Co-ordination                    | OHR                            | OSCE/IM             |
| All military aspects             | IFOR, later SFOR (NATO-led)    | KFOR (NATO-led)     |
| Reconstruction aid co-ordination | Not specified <sup>10</sup>    | European Commission |
| Refugee Return                   | UNHCR (but later OHR via RRTF) | UNHCR               |

The original role assigned to the OHR, to co-ordinate an international effort assumed to be otherwise adequate, proved to be insufficient as the High Representative frequently found himself drawn into executive tasks. The CIM would from the start combine the task of co-ordination with a wide executive responsibility, although he is given no more executive muscle than the HR in Bosnia.

It is sensible to hand the OSCE this job, given its vocation in the region and disadvantages attending the likely alternatives (the EU alone would shut out too many interests, including the US and Russia; the UN has too often failed to provide decisive leadership in troubled times in the Balkans). But the OSCE still has lessons to learn about running field operations. And supervision and accountability must be improved. International sponsors and paymasters need more than an annual plenary meeting to judge whether resources are being used properly or whether the whole effort is being mismanaged. Ideas on this follow in section IV.

<sup>8</sup> For more on this see ICG: *To Build a Peace: Recommendations for the Madrid Peace Implementation Council Meeting*, 15 December 1998.

<sup>9</sup> "In co-operation with the European Union", see chapter 5.1.1

<sup>10</sup> But at the first meeting of the PIC in London on 8-9 December 1995, the European Commission and the World Bank were named as co-hosts of donors' meetings.

Even on the Rambouillet model, with no OHR and a vastly reduced role for the UN, two inter-institutional questions remain which have never been perfectly resolved in Bosnia:

- (a) In Bosnia the UNHCR lacked the political weight necessary to carry out refugee returns against obstruction by host authorities. On the other hand, the PIC demanded rapid progress. As a result the Reconstruction and Return Task Force (RRTF) was created under OHR leadership, as a means of providing co-ordination and exerting pressure from a political rather than a purely humanitarian agenda. Will the IM have to colonise this area in Kosovo too? (see section V below, refugee return)
- (b) In the DPA the division between civil and military implementation was as sharp and brutal as possible.<sup>11</sup> IFOR was given rights but no duties in the area of civilian implementation. At an early stage in 1996 IFOR commanders took a clear decision not to exercise those rights. Even though it rapidly became obvious that, in a nation tired of war, IFOR's main task would be much easier than expected, leaving it under-employed, IFOR commanders declined to provide services in areas where, for example, impartial policing was needed, even though the UN International Police Task Force (IPTF) was having a much harder time fulfilling its own mandate. The over-sharp divide between civil and military has at various times been a source of frustration to the civilian side, while the military have been able to accept easy praise for the attainment of their own objectives.

The drafters at Rambouillet show no sign of acknowledging this. The CIM is given no authority over the KFOR, while the latter's participation in civilian implementation is described as follows:

*7.VIII.3. The Parties understand and agree that the KFOR shall have the right to fulfil its supporting tasks, within the limits of its assigned principal tasks, its capabilities, and available resources, and as directed by the NAC<sup>12</sup>, which include the following:*

- (a) to help create secure conditions for the conduct by others of other tasks associated with this Agreement, including free and fair elections;*
- (b) to assist the movement of organisations in the accomplishment of humanitarian missions;*
- (c) to assist international agencies in fulfilling their responsibilities in Kosovo;*
- (d) to observe and prevent interference with the movement of civilian populations, refugees, and displaced persons, and to respond appropriately to deliberate threat to life and person.*

*7.VIII.4. The Parties understand and agree that further directives from the NAC may establish additional duties and responsibilities for the KFOR in implementing this Chapter.*

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<sup>11</sup> DPA, Annex 10.II.9: "The High Representative shall have no authority over the IFOR and shall not in any way interfere in the conduct of military operations or the IFOR chain of command."

<sup>12</sup> North Atlantic Council, the ministerial body which gives political instruction and guidance to NATO forces.

The language in Articles VI.3 and VI.4 of Annex 1A of the DPA is so similar that it need not be repeated here. Yet IFOR and SFOR commanders repeatedly declined to exercise their 'right' to participate in civilian implementation. KFOR commanders are not being given any hint that a different approach is expected of them.

Common sense suggests that dividing up poles of power will make any activity less single-minded and less effective as a whole. So why is it seen as so necessary to keep the civilian and military implementation separate? Precedents exist for each to be in charge: in colonial administrations a civilian governor was often set over both civil service and army; while in occupied Germany and Austria military authorities ran civilian policy with success.

In modern cases, subordinating the military to the civilian runs afoul of the fact that the international community is not a community. A colonial governor of nationality *x* issuing orders to troops who are also *x* is one thing; a CIM of nationality *x* having authority over troops who are *y*, including authority to put them in danger, is harder for ministries of defence to accept – especially, and crucially, when the *y* troops are American. Even the difficulties of the US commanders of I/SFOR, in getting their orders obeyed by contingents of other nationalities, have been disguised by the easy success of military implementation. But there is a recent and local counter-example. The head of the UN Transitional Administration in Eastern Slavonia (UNTAES) was an American diplomat with a military background,<sup>13</sup> who had authority over both civilian and military forces. So with goodwill and determination the theo-military objections to civilian command are at least not insuperable.

The reverse case, of putting a military commander in charge of both arms, is usually criticised with the argument that soldiers should not be expected to understand the political aspects of delicate situations. This argument does not seem strong enough. If what is needed is an arbiter to adjudicate in cases where the interests of different organisations clash, a military arbiter need not be less well equipped to decide than a civilian. For the most part, daily work will carry on unhindered, and the civilian organisations will already employ the best available political talent. If what is needed is an overall sense of direction, rather than a ruck of the separate agendas of various organisations, a soldier advised by talented and informed civilians could provide it.

Two models of such a military governorship suggest themselves. Either the governor would himself be the head of KFOR with direct command responsibility; or the governor would be an independent authority with a small personal staff, placing the commander of KFOR on an equal footing with the main civilian actors. The latter model would be fairer and better. It would allow the governor to balance impartially the priorities of civilian and military implementation (and could function equally well under either a civilian or a military governor). But the former model would be easier to set up politically (it would look unbalanced if the governor and head of KFOR were both American, yet what other arrangement would be acceptable in the Pentagon?).

The idea of a multiethnic combined administration under a military or even civilian governor is not obviously hopeless. The main objection to it from the civilian side might be the unwillingness of organisations such as OSCE and the UN to accept formal subjugation to any other authority. Personalities at the top would play a decisive role, especially during the initial set-up stage.

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<sup>13</sup> Jacques Klein, see footnote 1.

The drafters of Rambouillet seemed content to tinker with the Dayton model, hoping that experience alone would cure the imperfections encountered in Bosnia. Yet as long as organisational vanity, and the difficulty of working together, are allowed to determine the form of international activity in such complicated tasks, the international 'community' seems likely to fall short of what it could achieve. How many governments would tolerate, in their own country, such a diffusion of powers in pursuit of what should be a common objective?

#### IV. SUPERVISION: AN INSPECTOR CALLS

In Bosnia and Herzegovina the various organisations have suffered from lack of supervision and accountability. This has occurred on two levels.

Firstly, at the level of the individual organisation, problems arose because the effort in Bosnia was unprecedented. The OSCE had never before run a permanent field operation, and the OHR was an entirely new creation. Even the UN had a bigger family of organisations than usual. Because these organisations had no model to conform to, and grew in response to need rather than to a plan, their growth tended to be chaotic and always increasing. Their results were not measured against their resources because no mechanism existed to do this. This is not a question of financial accountability. All organisations are subject to audit, and in the case of the OHR a permanent Committee of Financial Experts reports to the PIC to ensure that the budget does not grow unchecked. But no authority exists to say how well the actual job is being done except the Steering Board and the PIC, and they have no impartial mechanism to tell them except anecdotal reports from their countries' embassies and from their own seconded staff. With the OSCE the home organisation in Vienna has not evolved management structures capable of handling a large field office. The UN, with its longer experience of field operations, receives its usual supervision, each organisation treated separately.

Secondly, at the level of the total international effort, of interaction between the various agencies to establish where there was waste and duplication, no supervision existed because no one body had the authority or the mandate to examine this area.

This problem has not gone unrecognised or ignored. In late 1998 the Steering Board appointed a team of diplomats, led by the Sarajevo ambassador of the then EU presidency, Austria, to examine the overlap between the various organisations in Bosnia. However this one-off team only had a short time for its work, and was not granted full access to some organisations, and so was not able to make a thorough and detailed study.

All this means that staff are taken on, and resources disbursed, in accordance with the needs of the spending offices, an arrangement unusual in fieldwork. It is strange that the funding governments have been prepared to stand for this for so long, without even a chance to see whether their money is well spent. They do not tolerate it in their own bureaucracies. Bilateral embassies, and for example the European Commission delegations, are periodically inspected everywhere in the world to see if the resources available to them match the demands upon them. In theory this function could be carried out by management consultancies (who do the same sort of thing for firms), but because of the need to preserve some confidentiality most governments employ in-house inspection teams.

Why could the international effort in Bosnia/Kosovo not be subject to inspection in the same way as embassies? The task would be more complex but not unrecognisably so. Bearing in mind that an inspectorate needs to be independent of the entity being inspected (so for example it could not simply be part of OHR or subordinate to CIM), several models are possible:

- The Bosnia PIC could create an inspectorate independent of the OHR, and make the OHR subject to its scrutiny. The OSCE should also agree to be inspected. The UN should agree to inspection of those of its operations directly related to the DPA (i.e. at least the political mission UNMIBH, if not the more experienced technical organisations such as UNHCR and UNESCO). In the case of Kosovo, whatever body plays the role of the PIC could create a similar inspectorate, to cover the IM.
- A single inspectorate could be created to cover Bosnia (as above) and Kosovo, and any future cases in which a mixture of international organisations were involved in a common endeavour. But in this case it is harder to see who would be empowered to create it, and so to whom it would be responsible and who would fund it. On the other hand it is better not to create multiple inspectorates. This leads to a half-way suggestion:
- The Bosnia PIC could create an inspectorate which would work first in Bosnia and then offer its services to the IM and any future international efforts. Such a creation, if it proved useful, could rapidly take on a life of its own so that, should the PIC ever dissolve itself, it could persist under some new umbrella.<sup>14</sup>
- Management consultancy could be employed *ad hoc*. The possibility of this would depend on the attitude of governments towards private-sector evaluation of their work. It might be that the cultures were just too different. Consistency of approach might also be a problem over several inspections. Still, one would like to think that taxpayers' money was being spent as efficiently as best private sector practice.
- A sufficiently independent and respected NGO could be contracted to provide the inspectorate as a service.
- At a very minimum, the OSCE should create an inspectorate for its own field operations, using expertise and good models available from e.g. the UK diplomatic service or the European Commission.

Whatever model were adopted, the Inspectors' reports should be published, and preferably available on the Internet. There should be no right to secrecy simply to cover up inefficiency or bad work. The organisation subject to inspection should be obliged to carry out the inspectors' recommendations, although a right of written appeal would exist, to be adjudicated by the PIC (or equivalent).

The model that the inspectorate should report direct to the Steering Board or PIC should be used even if for example the OSCE is the only body being inspected, and even if the inspectorate is an OSCE creation. The main reason for this is to ensure direct accountability of the field office to political sponsors. A subsidiary reason is that nothing should be done to encourage the OSCE headquarters to grow fat simply because it has responsibility for more field operations. The example of the UN in

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<sup>14</sup> If the Bosnia and Kosovo operations shared a common PIC, this would be even simpler.



New York and Geneva is a model to avoid. Assuming that there will always be a Steering Board or PIC for an operation on the scale of Bosnia or Kosovo, and that that body will include the most interested governments, there is simply no need to duplicate in Vienna the work that these governments can do for themselves.

Furthermore a PIC, with explicit overall responsibility for the total international operation in a given field, would have powerful status to persuade recalcitrant organisations to subject themselves to the inspectorate. The problem of institutional *amour-propre* should decrease over time as long as the inspectorate is seen to be both fair and effective.

Staffing of an inspectorate would be taken from retired or seconded experienced inspectors from government. The senior inspector could be appointed by open competition - this would emphatically not be a political role or appointment, and the inspectors would be responsible to no national government. Nonetheless the person appointed would need an unusual combination of qualities. It would be important to be both flexible and precise. Flexible in order not simply to prescribe a familiar model of operation (British, European Commission) for organisations designed for different purposes. But precise in order to distinguish genuine dysfunctions from simple cultural differences. At first no doubt the inspectorate would be subject to a learning curve. It would hardly be unique in that, and this should not be an argument against its creation.

If a strong enough model is adopted, instant and welcome conclusions follow for the accountability of international organisations. All would be accountable to the Steering Board or PIC for their performance in a particular theatre like Kosovo, and the inspectorate would be the means of enforcing their accountability. No longer would an organisation be able to disguise its failures by appealing to a headquarters where, because of conflicting political agendas among the members of the organisation, no accountability in fact exists. It places a great responsibility upon the PIC, but a responsibility which the PIC should be discharging anyway: PIC member governments should welcome better tools to do the job.

## V. REFUGEE RETURNS AND DEMINING

The prospect facing refugees returning to Kosovo differs from the Bosnia case in several important respects.

In Bosnia the results of ethnic cleansing produced three homogeneous areas which still exist today. Incoming refugees were generally placed in properties abandoned by outgoing. A major complication in Bosnia is now that a refugee returning home will usually find his property inhabited by someone else, whom the local authorities will be unwilling to evict (because the sitting tenant has the 'right' local ethnic badge). Reconstruction of damaged homes has produced most of the success so far in helping people to return to areas where some other group is in the majority, but even in these cases hostility from local authorities and populations has kept results disappointing. The presence of mines has been a serious problem, but the mines have been concentrated in areas around the former front lines, and are comparatively rare elsewhere.

In Kosovo refugees will be returning to unoccupied properties, so one major headache of the Bosnian problem will not feature. But most of them will find their properties systematically rendered uninhabitable by the Yugoslav army and Serb

paramilitaries, and the productive capacity of the land will also have been destroyed, at least temporarily. So the international community faces a huge but straightforward problem of reconstruction and supply. Mines will be a complication, since the ethnic cleansers may well have deliberately sown them everywhere at random precisely to inhibit return, so minesweepers will need to be among the very first international representatives into Kosovo. An extra complication is introduced by the confiscation from departing refugees of identity documents, so that they will not be able to establish title to their properties. As a result, a Property Claims Commission will need to be established, with powers to make interim awards to claimants whose papers have been stolen. The interim awards could become permanent if no counter-claim is received within, say, a year.

These problems will be dreadful enough even if Serbian authorities depart from Kosovo, abandoning the territory to the incoming NATO occupiers. They will likely destroy property records as they go, so making the work of the Property Claims Commission even harder and more necessary. But at least in this case the presumptive lack of political opposition to return in a territory under international control makes it right to give UNHCR the lead role again: an RRTF should not be necessary (but let us not be too confident: the Balkans have revealed too often how simple-looking problems can rapidly become intractable).

However, if under some negotiated settlement Serbian authorities remain in Kosovo there is a clear lesson to be learned from Bosnia. Refugees cannot return in large numbers against the opposition of local authorities. Serbian authorities will do everything possible to prevent Albanian returns. If they control the borders it will be easy to make crossing difficult. Both there and inside Kosovo they will have a serviceable bureaucratic weapon in the large number of refugees without documents. Albanian 'war criminals' will be identified in every returning batch. Key records will be mislaid or lost, their destruction blamed on NATO bombing. Even with NATO troops on the ground, fear among the returnees of their 'host' authorities will be another factor inhibiting return, as it has been in Bosnia.

Village and communal arrangements among the Kosovo Albanians have a strong tradition. If they have survived or can be re-established, they can play a helpful role in providing support to returnees and information about who lived where. It should be possible to build up a co-operative relationship with 'authorities' at this level in a way that has not been possible in Bosnia. They can even, at best, provide a stable counterpoise to the likely power of the KLA. NGOs with existing experience in the territory should be valued for their experience and not forgotten when the big donors start to move in.

The rights of the Serb population will need to be respected. They are very likely to withdraw into Serbia proper as foreign forces move into Kosovo, abandoning their homes as did the Serbs of Sarajevo in March 1996, when government propaganda reinforced their own fears about what would happen to them once the 'Muslims' took over. Even so, their right to return must be as absolute as the right of Albanians. If possible, abandoned Serb homes should not be used to provide temporary accommodation to returning Albanians, lest such a temporary solution become all too permanent, as in Bosnia. Any Serbs who remain or return may need to be protected from armed Albanians – this must be a task for KFOR, since it is hard to see who else will protect them. If Serb police remain behind in a negotiated settlement, the Serb populace may feel a little safer – but then it will be the Albanians who need protection.

## VI. RECONCILIATION

The sad lesson from Bosnia is that reconciliation between former foes cannot be expected for years. The war produced no clear result, unlike in 1945, to allow for some form of de-nazification and a completely fresh start.

One approach to reconciliation, that it depends on the arrest and trial of indicted war criminals, or de-nazification in miniature, remains unproven as long as the most notorious cases remain at large. Lukewarm commitment to the war criminals issue, in both the limited numbers of indictees and the limited attempts to arrest them, leaves room to wonder what might have been. Mayors still hold office in some Bosnian towns whose record during the war merits indictment. Their removal from public life might have allowed a less stifled attempt at reconciliation to develop.

But those arrests which have been made do not suggest that the war criminals issue is the only one holding up reconciliation. They tend to bring glee in two communities and a sense of victimisation in the third. In 1996 it was possible to believe that Bosnia was a jigsaw puzzle which could be solved. Now it looks more like a vase which has been smashed – much more difficult to put back together.

The atmosphere in Kosovo will be at least as difficult. Serbs who were glad to see the Albanians leave will not be pleased to see them back (in fact – see above – they will probably not be there to see them at all). And the Albanians will be embittered for years to come against those who expelled them with such violence and enjoyment. Early efforts to promote reconciliation may be made by intellectual groups (as was the case in Bosnia, with groups such as Circle 99), but these will have little effect on society as a whole. The fact that the great majority of identified war criminals, in Kosovo as in Bosnia, will be Serbs will further nurture the well-fed Serb sense of grievance.

The CIM will have to work for years, either in an environment of high ethnic tension where the minority Serbs will be wildly paranoid yet genuinely vulnerable, or in a society consisting entirely of Albanians. In an atmosphere where institutions are weak and feelings are volatile, rule of law will be another high priority.

## VII. RULE OF LAW, THE POLICE AND THE KLA

In any ruined society, informal arrangements of power and money are likely to spring up to fill the vacuum created by the collapse of official networks.

In Bosnia, influence has tended to become concentrated in the hands of the ethnically-based political parties, who face no serious opposition or supervision in their own fiefs. The party elite have become the money elite, and the police too are heavily mono-ethnic and under party control. The courts, even when they retain some independence of judgement, are powerless as long as no mechanism exists to implement decisions unwelcome to local authorities.

For Kosovo the Rambouillet agreement foresaw the gradual establishment of communal police forces (chapter 2.2). After so much ethnic cleansing that will be a slow process, though re-establishing the communes will be a priority of the new administration. The likeliest result is that the Kosovo Liberation Army (KLA) will step into the hole left by departing Serbian police and soldiers. The KLA is likely to enjoy

great popularity among ethnic Albanians, given that more moderate ethnic Albanian leaders have failed to prevent the current disaster while the KLA has at least continued to put up resistance. But the KLA is itself a loose alliance of clans, and will be liable to splinter once the pressure of Serbian oppression is removed. The rosy scenario, that a suddenly-powerful KLA would nonetheless govern with full respect for human rights and impartial administration, looks altogether too optimistic. More likely, the problem will be to prevent the emergence of an armed Albanian dictatorship with vendettas against Serbs and Albanian 'collaborators', and internal conflict among contending factions.

Thus, ironically, the KLA may be the greatest problem facing a new administration, even after a military victory. Although, once the territory is under NATO occupation, there will in theory be no need for the KLA, it is hard to imagine them voluntarily disarming or disbanding. Rather, they will be eager for power. What attitude could the international administration adopt towards them? Forcible disarmament is one possibility, but it is hard to imagine Western spokesmen explaining on television why, having fought the Serbs so relentlessly, it is now necessary for NATO to take on the Albanians. Moreover, across such a leaky border as Albania-Kosovo, how long would the KLA stay disarmed? But if allowing the KLA to remain as both an armed and a political force is the alternative, what happens if they start to abuse their new power? A Bosnian scenario seems only too likely, of an ethnic government, supported by a frightened population, able to do what it likes, and an international administration chipping away at the margins to promote the Western agenda.

For example, how can an entire legal system and police force be reintroduced into an area which has been ravaged and depopulated, when the strongest local power has a clear interest in providing these services itself, to its own recipe? Yugoslavia, like other communist countries, was always a place where the police culture was to serve the state, not the citizen. In Bosnia the IPTF has struggled to change this culture, and now after three years patchy progress is discernible. The same problem will have to be faced in Kosovo. But complete bottom-up construction was not necessary even in Bosnia: in Kosovo it is hard to see what if any structures will survive NATO invasion, and even if a negotiated settlement were achieved immediately existing government structures would hardly be acceptable partners. Yet it is optimistic to expect structures set up by the KLA to conform to Western models. This suggests that something stronger than the 'helping hand' may be needed, both to establish structures quickly, independently of the KLA, and to ensure that their standards of behaviour are adequate. It also suggests a necessary and active policing role for KFOR troops.

This may of course be too pessimistic. The KLA may in the event prove to be a perfect partner, anxious to promote Western values in Kosovo. But it would be foolish to rely on it. Even ignoring the misgivings already expressed, inexperience alone suggests that KLA leaders should serve a period of apprenticeship before being given real power. Determined acceptance of the leadership role by the international community may be the only way to persuade the KLA leaders that the internationals mean business in Kosovo, so that it would be better to await developments rather than confront them. If the KLA can be intimidated in this way, they may become as harmless as the armed forces in Bosnia since Dayton: disarmament might not then be so urgent. This rosy scenario is still available, but the path to it is rocky.

## VIII. AID POLICY, RECONSTRUCTION AND DEVELOPMENT

### A. Aid Priorities and Policy

As in Bosnia, aid policy in Kosovo will at first concentrate on the reconstruction of housing, utilities and infrastructure. Given the scale of destruction, this phase is likely to last some time. But thought must also be given to reviving economic activity to give people some sort of work and gradual independence from foreign aid. In Bosnia, despite startling ostensible growth figures, progress towards economic sustainability has been slow. Prospects in Kosovo, with its tradition of greater poverty and industrial backwardness, are even less bright.

When Bosnian Serb forces withdrew from the Sarajevo suburbs in March 1996, they left behind an economic wasteland, taking with them anything they could carry and despoiling what remained. Similar behaviour on a smaller scale was seen in some parts of Eastern Slavonia before it was handed over to Croatian authorities. Serbian forces, if forced to withdraw from Kosovo, will surely do the same. They will destroy what NATO bombs do not. In other words, Kosovo's entire industrial base will disappear. This will include all mining equipment too large to be removed, and possibly the destruction of Kosovo's coal-fired thermo-electric power generating facilities. Under this worst-case and, unfortunately, highly probable scenario, Kosovo will be left with no surviving industry, no electricity or water, and no housing.

Emergency work will probably absorb all attention at first. But beyond that first phase of recovery the international community will wish, as in Bosnia, to turn its attention to reviving the economy. The two sectors which offer best hope are minerals and small-scale agriculture.

Kosovo has exploitable reserves of iron ore, chrome, zinc, magnesium, manganese, lead, and coal. Serbian forces will probably leave all extraction machinery unworkable or take it with them. So, given that the re-opening of activities at some of these mines may take at least a year, aid funds will have to be injected into them first. But later the international community should try to attract private foreign investment to resume and develop production. Over time, mining could provide a base for associated processing industries.<sup>15</sup> This will provide non-farming incomes for a substantial number of households throughout Kosovo.

Most returnees to Kosovo will engage in subsistence agriculture for the foreseeable future. For this reason, the international community needs to create programmes and policies which will encourage this sector, such as distribution of seeds and farming equipment. Yields per hectare need to be improved by the introduction of modern techniques. The presence of a strong agricultural sector will eventually provide a base for a small food processing industry.

Given that all structures of power will have been dismantled, the value of properties to be privatised will be small. Nonetheless, privatisation should proceed quickly, rather than either let state enterprises linger on as phantoms or build them back up again in the state sector.

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<sup>15</sup> Of course, the mines will have to be de-mined first...

## **B. Aid Co-ordination: Set Up a Commission to Do it Properly**

The aid effort in Bosnia has suffered from the same general problem as the political effort: too many organisations with incompatible systems and criteria. As noted above, the biggest players have been the European Commission, USAID and the World Bank, with UNHCR in the humanitarian field. Each has its critics (too soft, too slow, too bureaucratic), but the real problem has been lack of common focus. The international community has behaved more like an international crowd. Aid co-ordination, so-called, has been little more than an exchange of information. This problem has not been freshly discovered in Bosnia: it is a perennial of the aid industry. Sometimes lack of transparency is the problem – for example, government agencies may be working to unavowed agendas, NGOs may be competing with each other for funding. Sometimes it is bureaucratic incompatibility, so that agencies cannot collaborate even if they want to because their data and procedures are too different. Sometimes it is genuine differences of approach, reflecting contrasting analyses. Sometimes it is the old problem that budget-holders are expected by their home authorities to spend all their budget, no more, no less, so that unsuitable projects get funded. Sometimes foreigners, who may not speak the language and have to work through interpreters, do not know enough about the people they are dealing with and the way they think. And sometimes people are just too busy.

But the result has been that Bosnians are faced with a confusing range of choices when seeking funds, and each of these choices will lead them down a different chain of paperwork. At best this adds to the bureaucracy in which the country is mired. At worst it allows Bosnian authorities to play off different organisations against each other: “if USAID insist on conditions I’m not prepared to fulfil, maybe the EC will be easier”. This has resulted in a general failure to make effective use of aid conditionality, enlightened by some particular successful exceptions. The message has been too thinly diffused, and rivalry between different organisations has not resulted in optimal allocation of resources.

At Rambouillet the European Commission was given the task of co-ordinating aid, but this task has in the past usually meant little more than convening donor conferences. For Kosovo, and for all sizeable international donor efforts in the future, an aid commission should be created to draw up broad lines of policy and attempt to reach common criteria on such issues as conditionality. The European Commission, USAID and the World Bank, all likely to be significant donors in any operation, should be joint or rotating chairmen of the commission, and should share its administration among themselves in order not to create a new self-expanding bureaucracy. Bilateral donors, who might at first be too tenacious of their own political agendas to subject themselves to co-ordination, would be gradually shamed into compliance if the commission were successful. NGOs, significant as implementing agencies and sometimes even as donors in their own right, should not be left out.

On the question of conditionality, the usual case in Bosnia has been to encourage local authorities to permit minority refugees to return in exchange for inducements. In practice the extreme wiliness shown by Bosnian authorities over the last three years in side-stepping conditions imposed by donors suggests that the ideal method should be to use only retrospective conditionality, that is that aid be given as a reward for results already achieved rather than in exchange for undertakings and promises. This is too rigid in cases of emergency aid and reconstruction of basic utilities essential to modern life. But in any case where a local authority is seeking a ‘reward’ for allowing refugees to come home, or for any other co-operative behaviour,

experience suggests it should indeed be a reward and not an inducement, for too many promises have already been broken.

In the Kosovo case the structure of the problem will be different, but after some time the international community may again find itself dealing with unhelpful authorities, perhaps (looking ahead) Albanians preventing the return of Serbs. At the very least, it will be better prepared if it learns from the Bosnia case (and so many others) and learns to co-ordinate properly.

## IX. ELECTIONS

The preamble to annex 3 of the DPA on elections begins:

*"In order to promote free, fair, and democratic elections and to lay the foundation for representative government and ensure the progressive achievement of democratic goals throughout Bosnia and Herzegovina..."*

At least the optimism of those early days was admirable. General Elections were held in BiH in 1996 and 1998, as well as Municipal Elections in 1997. All three rounds only strengthened the ethnic division of the country, and gave the ethnic parties, including many politicians with notorious war histories, claims to democratic legitimacy – indeed, continuity with the will of the electorate from 1990. An exception was the RS National Assembly extraordinary elections in November 1997, where, following the defection of RS President Biljana Plavsic from the Serb Democratic Party (SDS), a new moderate government took power with the necessary help of the votes of Bosniacs and Croats exiled from RS, and broke the power of the SDS. Nonetheless, the majority of voters in RS, as well as in the Federation, still vote for parties with mono-ethnic appeal.

This will obviously happen in Kosovo. Neither Albanians nor Serbs (if any) will be voting for social democracy or US-style Democrats and Republicans for a long time to come. This leads to the thought: why hold elections in Kosovo at all? Why legitimise forces whose political agenda the West is unlikely to admire or support?

Yet the drafters of Rambouillet were as determined as the drafters of Dayton to hold elections as quickly as possible: Dayton annex 3:

*"II.4. Timing. Elections shall take place on a day six months after entry into force of this Agreement or, if the OSCE determines a delay necessary, no later than nine months after entry into force."*

Rambouillet:

*"3.2.4. ...the first elections shall be held within nine months of the entry into force of this Agreement."*

This is not now very likely, nor is it advisable. Quite apart from the technical problem of registering so many voters who are no longer in the country and who may have no identification (an effort heroically made but not completely successful in the case of Bosnia), the only likely result of an early election is an overwhelming victory for the political representatives of the KLA. Only two possible sequences follow such an event: happy cohabitation between the new government and the international

administration; or constant struggles as the different agendas of the two become apparent. To believe the former more likely would take a heroic effort in optimism.

The 'helping hand' model needs elections because it has to have something to help. Structures in place in Kosovo at the time of occupation will be either Serbian or non-existent. Once again something stronger than the helping hand is indicated. If the international community were prepared to take upon itself the whole burden of administering Kosovo, elections could be put off for a couple of years until conditions were more suitable.

If that happened then the last lesson from Bosnia would not need to be learned: don't try to pick winners. In no case in Bosnia has perceived international support for a given candidate improved that candidate's chances of winning: it may even have harmed them, most notoriously in the case of Biljana Plavsic's defeat in 1998. In Kosovo the international community is likely to hope that the moderate Ibrahim Rugova could come to power through the ballot box. Nothing in the Bosnian experience suggests that backing him will help him. Radicalised and terrorised people vote for radical parties, and everyone distrusts foreigners: the case for saying that Kosovo will be different has yet to be made.

## X. THE REGIONAL CONTEXT: GOOD NEIGHBOURS MAKE GOOD FENCES

Bosnia during and after the war had two strong neighbours with the power and the will to interfere in its internal affairs. This much was explicitly acknowledged in the fact that it was representatives of Croatia and Yugoslavia, rather than of the Bosnian Croats and Serbs, who signed the DPA<sup>16</sup>. Since then, implementation of the DPA has been troubled by the weak attachment of the Bosnian Croats and Serbs to the idea of Bosnia, in contrast to the strong pull of other homelands.

Kosovo looks superficially similar. The Albanians and Serbs both have alternative and neighbouring homelands. If Milosevic or someone similar is still in power in Belgrade he will have plenty of reason to be a difficult neighbour. Albania, despite its own severe internal problems, will always have an interest in and an appeal to the Albanians of Kosovo. But the difference may lie in this: that where Bosnia's neighbours had the power to destabilise Bosnia, Kosovo may be a source of destabilisation to its own neighbours. Weak Albania is already partly under the control of the KLA, multiethnic Macedonia is looking threatened by tensions raised by the presence of so many refugees, Montenegro is under threat from Serbia, and Serbia itself may fall into anarchy once the population look around them and see where Milosevic has led them.

What each country in the region really wants is the closest possible association for itself with the European Union. The EU realises this, but knows that it must reform itself over a period of years before it can grow much further – and that the reforms will reduce many of its attractions to new applicants, such as centralised agricultural subsidies and regional development funds. So the EU is probably not in a position to offer a short-term future relationship meaty enough to satisfy any country of the region, though it will certainly try.

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<sup>16</sup> The BiH Federation and Republika Srpska signed the annexes. Kresimir Zubak, president of the Federation at the time, was held to speak for the Bosnian Croats.



Ambassador Robert Barry, Head of the OSCE delegation in Sarajevo, has recently called for a leading role for the OSCE in the region, who would appoint a High Commissioner for South-Eastern Europe<sup>17</sup>. Such an official might be able to do something to help develop a new transitional relationship between the countries of the south-east and those of the West, though he or she will be either a lonely or an autocratic figure unless the OSCE builds up some institutional capacity to match its aspirations. To whom should the High Commissioner be accountable? Again the OSCE secretariat in Vienna provides an uninspiring model, a layer of bureaucracy to mediate between the Commissioner and governments. The Bosnia PIC provides a ready-made alternative with direct access to governments, if it can evolve into a Balkan PIC without diluting its effectiveness. The challenge, as always, is to evolve new structures to cope with complex problems, without simply buying more desks and photocopiers.

The call to look beyond Kosovo and adopt a regional approach to the Balkans is already very loud. A new Berlin Conference, a Regional Stability Pact, a "Super-Dayton", even a Marshall Plan, all constitute different forms of recognition of this fact. There is no enthusiasm in the countries of the Balkan region for any policy based on the assumption of a Balkan region. But the idea of a "regional approach" now appears to have enough momentum behind it to survive whatever messy solution is reached eventually in Kosovo. Bulgaria, Macedonia and the others are likely to go along with this as long as they see it as a means of keeping the EU and NATO actively engaged in helping them find a future. Only let everyone realise that the problem of Serbia needs to be found at least an interim solution before the problem of the Balkans can even be approached. Milosevic is the face of the problem, and must be removed, but the difficulty of developing an acceptable political culture in Serbia will persist for some time after him.

## XI. CONCLUSIONS

A negotiated settlement for Kosovo, between the international community, Belgrade and the Albanians, brings more problems than a military victory. It is now impossible to envisage any sort of co-operation between the three interests, whatever promises may be given on paper. Any surviving Serbian administration would be well placed to harry the foreigners in many ways, and in particular to slow or even prevent the return of refugees.

Life will be much easier for the new international administrators if the existing authorities no longer exist. But then they are faced with a choice between working with spontaneous Albanian administrations installed by the KLA, or shouldering the whole burden themselves: this last model would be a Protectorate in fact, for as long as it lasted.

Given the scope of the depopulation and destruction, and the difficulty of identifying local interlocutors who are neither too weak (Rugova) nor potentially too strong (the KLA leaders), this may be the ideal time to try the Protectorate or Mandate model, at least until political forces emerge which are ready for pluralist democracy, or until some new regional framework is constructed. The reasons to doubt whether such a model would have worked in Bosnia – entrenched and experienced local authorities equipped and determined to resist foreign interference – will be absent in Kosovo,

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<sup>17</sup> *Wall Street Journal*, 3 May 1999. Also *Dnevni Avaz*, 6 May.

and their very absence gives reason to doubt whether any model other than a protectorate will in fact work there now.

A successful Protector would have control over both the civil and military command. The worst-case alternative is an emasculated titular Protector engaged in a constant struggle with vigorous KLA provisional authorities interested in pursuing vendettas against Serbs and each other. The KLA was born as a response to Serb harassment, but it should never be forgotten that even the most sympathetic victims can become aggressors when the tables are turned. Disarming the KLA may be problematic (see section VII above). But if NATO accepts the responsibility of defending Kosovo, it will also need to be ready to keep the KLA neutralised just as effectively as SFOR has neutralised the armed forces of the Bosnian parties.

The OSCE should for now lead the international effort, in Kosovo and in the wider Balkans: it should be given the chance to mature in pursuit of its vocation. This need not exclude activity by benevolent outsiders such as Japan, who might be offered membership of OSCE's regional structures or even (why not?) membership of the OSCE itself. The OSCE will continue to have a role as long as security issues remain centre-stage – or to put it another way, until the various countries of the region can be sufficiently integrated into the European Union. This may mean a long time, despite the attention the subject is now receiving from the EU.<sup>18</sup>

But OSCE field operations must be accountable, otherwise budgets and personnel numbers will spiral out of control. There should always be a Bosnia-style PIC and Steering Board, an efficient mechanism which makes use of existing national resources – there is no reason why this should not function out of national embassies or delegations in Vienna. Staffing policy should be reformed: dependence on secondment is obviously inferior to recruitment on the open market (which can include requests for secondment of people known to be good). Standard rates of pay should be set for different levels of work. Contracts should be for at least a year and should include intensive local language training in-country (even two weeks provides a basis from which to progress). This should not be taken as a green light to construct a huge supervisory structure in Vienna, for a much less expensive and more elegant solution is available. An international inspectorate independent of any organisation, tasked to scrutinise them all, is the ideal mechanism, but if organisations are not prepared to subject themselves to impartial scrutiny then at the very least the OSCE must create some sort of self-assessment apparatus whose findings would be transparent, i.e. not locked away in cupboards if they are embarrassing. It should report to governments rather than to the secretariat of any organisation – a sure recipe for comfortably burying unwelcome results. An inspectorate in any form would be small and cheap, would rapidly pay for itself if heeded, and its power would be derived precisely from its public capacity to criticise.

In general the international 'community' should be prepared to find better ways to work together. Where a common goal is agreed, the key should be the effective achievement of the goal, not the preservation of organisations' 'autonomy within their spheres of operation'.<sup>19</sup>

Refugee return will face different problems from those encountered in Bosnia. If Serbian soldiers or paramilitaries have carried out a determined campaign of planting

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<sup>18</sup> See for example *Centre for European Policy Studies*, 'A System for Post-War South-East Europe', latest draft 3 May 1999, and the Stability Pact Conference planned for 27 May.

<sup>19</sup> DPA Annex 10.II.1(c). In Rambouillet Chapter 5.II.1(e) the CIM is to 'respect fully their specific organisational procedures'.

land mines, no return at all may be possible until clearance teams have visited each location. After that, the reconstruction effort will need to rebuild a whole territory from scratch. At least, without obstruction from hostile local authorities, the international aid effort can adopt a systematic approach: UNHCR's methodology has a better chance of working in Kosovo than in the politics-ridden environment of Bosnia. It will work best of all if commune-based local organisations are still available as partners, or can be re-established.

At the same time, returning refugees must have at least some chance of earning their own living. Despite the pressure on resources, economic development and reform cannot be simply left until later, or the results will be the stagnation now visible in Bosnia.

Despite the understandable wish of democracies to promote democracy, elections in Kosovo are best left alone until the situation is clearer. But in that case only the international community itself, and not Albanian provisional military authorities, has any claim to legitimacy in the interim.

Building up administrations, judiciaries and police forces with respect for human rights and tolerance for minorities, after all that Kosovo has been through, will be a daunting task. This and, on balance, the other factors above suggest that a full-scale protectorate might turn out in the end to be a cheaper and better option than the Rambouillet helping-hand model. Anyway it is surely too much to hope that Kosovo will be the last case of its kind: there will never be a better time to try a firmer model than has been tried in Bosnia, learning from experience gained there. Rambouillet, too obviously a copy of Dayton, was never going to be enough.

## XII. RECOMMENDATIONS

Any recommendations are provisional while the very existence of an international peace settlement for Kosovo is not yet assured. But policy-makers should be thinking about the following large issues:

- Abandon the 'helping hand' model in cases where the help needed is just too great. If there is ever going to be an ideal time to try the Protectorate model, Kosovo is it. But the stakes are high: success or failure may determine the whole direction of the post-cold-war order.
- Unify the civil and military aspects of what is supposed to be a single coherent international effort. Why balkanise the international community?
- Will KFOR keep the peace or impose it? To put it another way, are we simply handing Kosovo over to its Albanian majority or do we want to westernise it? This is only not the same question if the future KLA leaders of Kosovo turn out to be liberal democrats both in speech and deed.
- Are we ready for mine clearance on the scale that may be necessary? It may not be possible simply to make a fuss for a while and then neglect the issue, as in Bosnia.
- Does the will exist to create a true 'international community'? This means: are international organisations prepared to accept subordination to each other in the interests of a more focussed communal effort? Why should the world's taxpayers stand for anything less?

- Similarly, why is it so hard to admit that genuine co-ordination of both bilateral and multilateral aid organisations would be of benefit both to recipients and to donors? Create an aid commission to help donors work together better.
- Forget elections for now. Elections do not bring democracy, they are its expression. Democracy in the Western sense depends upon a civil society with some resilience. That does not yet exist in Bosnia, and will not exist for years in Kosovo.
- As an alternative, build up civil society from the grassroots, using the Kosovo tradition of commune-based self-help.
- Let OSCE take the lead in seeking an interim regional settlement for the Balkans, but let it be more accountable, specifically;
- Create an independent inspectorate to prevent waste, duplication and inefficiency in the international effort.