

STARTING FROM SCRATCH IN KOSOVO:

The Honeymoon Is Over

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EXECUTIVE SUMMARY

After an unprecedented, multilateral military intervention in Kosovo succeeded in expelling Serb forces and enabling the return home of more than a million displaced persons, the international community embarked on the ambitious, long-term project of securing, rebuilding, and establishing the rule of law in Kosovo, while setting the territory on the path to self-governance. Visionary promises were made to the people of Kosovo, and careful planning was undertaken at NATO and United Nations headquarters and in many European capitals. But six months into the mission, the international community has so far not been able to deliver on its promises. No Kosovars of any ethnicity feel secure, tens of thousands of people remain without adequate shelter as winter sets in, civil registration has yet to get underway, there is as yet no agreed-upon, functional system of justice, and criminals – including suspected war criminals – continue to operate with effective impunity.

There are many reasons for the slow start, ranging from widespread failure on the part of donors to meet their commitments, to intractable delays at the Macedonian border, which severely crippled the delivery of assistance, to the reluctance of NATO troops to vigorously enforce their mandate, spelled out in the UN Security Council Resolution 1244, to protect all Kosovar citizens until such time as an effective, trained police force is in the field. The lead international organisations have yet to stop violent hard-liners and corrupt, self-proclaimed local officials from threatening local populations, or to set aside their own counterproductive, internal turf struggles.

While Kosovars remain grateful to NATO and the international community for the peace and their new-found freedom from direct Serbian oppression, their faith has been strained of late by the absence of tangible progress despite the international community's overwhelming presence. Many Kosovars' frustration has been aggravated by the feeling that they are not being sufficiently consulted by the international community and that, after a decade of disenfranchisement and apartheid instituted by the Serbs, they are again being shut out of the process of rebuilding their homeland. This frustration, compounded by people's widespread experience of physical insecurity,

could jeopardise Kosovars' willingness both to work together with the international community toward inventing their own future structures and to be patient with the inevitable difficulties of trying to rebuild after a devastating and traumatic war.

The story of the international community's involvement in post-conflict Kosovo, however, is far from over. If action is taken now, there remains time enough to correct some early mistakes and to repair any ill will. With concerted leadership, a rapid infusion of sufficient funding, and the authority to make the decisions necessary to getting Kosovars back on their feet, the situation can improve very quickly, and this monumental international collaboration can result in success.

In this paper, the International Crisis Group (ICG) examines the performance of the international community in five key areas: security, the provision of basic services, civil registration and documentation, elections, and justice and the rule of law. The paper recommends ways to improve that performance, including: more robust enforcement by NATO's Kosovo Force of its protection mandate and the accelerated deployment of adequately trained international and local police; the acceleration as well of donor follow-through, the provision of basic services, civil registration, the creation of identity documents, voters' lists, and applicable criminal and civil legal codes; and a re-examination by the aid community of how best to achieve its desirable goals and outcomes in Kosovo.

Brussels, 13 December 1999



STARTING FROM SCRATCH IN KOSOVO: The Honeymoon Is Over

I. INTRODUCTION

Six months into its ambitious mission to secure and rebuild Kosovo, the international community has not been able to deliver on its promises. So far the multi-billion dollar international presence in Kosovo has failed to make Kosovars of any ethnicity feel safe, to provide regularly such basic services as heat, electricity, and water, to deliver sufficient reconstruction materials to areas in urgent need, to establish a functioning court system, or even to begin the population registration so critical for the production of identification documents and voter lists.

Explanations given by international administrators in various sectors centre on the lack of donor follow-through, poor management, logistical difficulties ranging from power cuts to border logjams, ubiquitous corruption, and internal turf struggles among both internationals and the Albanian leadership.

All of these explanations have some validity. However, at the core of the international community's failure to deliver is its refusal to take self-governance by the population of Kosovo as the desired end result of every initiative. Out of its keen desire not to empower the 'wrong' Kosovars and thereby jeopardise the outcome of future elections, the United Nations Mission in Kosovo (UNMIK), as the lead interim governing authority, has opted instead for a myriad of holding mechanisms, which include doing nothing, actively preserving the status quo, appointing deliberative commissions, and looking outside Kosovo for solutions to problems that could be solved locally.

In following such an approach, UNMIK, NATO's Kosovo Force (KFOR), the Organisation for Security and Co-operation in Europe (OSCE), and other international agencies have, to give a few examples:

- failed to set up a working court, where public trials could have shown from the outset that revenge crimes, hate crimes, and common crimes will not be tolerated;
- imported reconstruction materials from Serbia and other countries, rather than getting local brick and tile factories going again, simply because doing so might give a political boost to those in the self-proclaimed, Thaçi-led provisional government who pushed for such an arrangement;
- escorted Serb workers into the Mitrovicë/a battery factory (who proceeded to plunder it) and into the Stari Trg mine (ostensibly to drain it, which they did not do), which only served to reinforce the control over the Trepça complex by its former Serb director, Novak Bjelić, a trusted appointee of Milošević.

This paper attempts to give brief overviews of the status of the international community's effort in five critical areas: security, the provision of basic services, civil registration and documentation, elections, and justice and the rule of law. It then suggests ways in which, largely by rethinking the mission's operating assumptions, the international community's performance might be improved.

II. SECURITY: SINE QUA NON

While KFOR supervised the Serbian withdrawal and the demilitarising of at least large segments of the former Kosovo Liberation Army (KLA), KFOR has stopped short of enforcing its mandate under UN Security Council Resolution 1244, to carry out an explicit protection function until such time as the UN international and Kosovar police are ready to assume full responsibility for policing the territory.¹ KFOR has been extremely helpful in facilitating the delivery of humanitarian assistance; however, aid agency officials, from UN High Commissioner of Refugees (UNHCR) to the private volunteer organisations, feel that KFOR would win more hearts and minds by providing the civilian protection that is within its mandate than by furnishing roof kits.² Whether or not KFOR

¹ KFOR claims that as of the third week in November, the number of murders had diminished to one a day, and that despite widespread press coverage of revenge attacks on Kosovar Serb communities and those of other minorities, there have been only two attacks on Serb enclaves since the massive September exodus of fearful minorities (*Washington Post*, 24 November 1999). However, this positive trend is partly the result of the departure of minorities from the province, as well as their concentration into guarded enclaves. Moreover, the murderous attack by Albanians on three Serbs in downtown Prishtinë/Priština during the celebration of Albanian Flag Day on 28 November, and the shooting death on 30 November of an Albanian as he left his home, suggest that the apparent progress may be misleading. If a decline in violence can be demonstrated, against the personal impression of most residents, KFOR should publicise it vigorously, to counter continuous Serb claims of victimisation that play right into Milošević's hands and enable Belgrade to win the propaganda war regarding Serbs' security in Kosovo.

² ICG interviews with UNHCR, Office of Transition Initiatives (US AID), International Rescue Committee (IRC), late October-early November 1999.

continues to help out with the logistics of assistance delivery, the message from Kosovars and international agencies alike is clear: KFOR commands need to be more active both in patrolling their sectors³ and in arresting and detaining suspects of common crimes and war crimes.⁴ KFOR's presence, some 48,000 strong, is nearly 10,000 higher than originally planned. Yet in addition to the general insecurity felt by minorities, Albanians, too, feel unsafe, particularly in the French sector and in areas under Russian command where Serb populations are still well-enough organised to strike back (or strike first).

Mitrovicë/a remains a flashpoint. French troops patrol the bridge over the Ibar river that serves as the *de facto* line of partition of Mitrovicë/a. In one sense they keep the two sides from fighting, but they also serve to reinforce the partition. For example, French soldiers do nothing to stop the activities of young Serb vigilantes who have taken it upon themselves to patrol the northern, Serb-occupied part of town, signalling to each other on walkie-talkies as they intimidate and sometimes stop civilians from crossing into north Mitrovicë/a or stone passing vehicles.⁵ While Serb paramilitaries and The Serb Interior Ministry Police (MUP) have been reported in various localities in the Mitrovicë/a area,⁶ including inside the Trepça mining complex, and although this information has been passed on to the French KFOR by Albanian leaders,⁷ the French have not aggressively sought out these alleged rabble-rousers and insist that they do not exist.⁸ Serbs are clearly at risk in Gjilan/Gnjilane, in the American sector,⁹ and Kosovars of all ethnicities have complained that American troops do not venture out often enough beyond the gates of their vast new Camp Bondsteel to establish the visible presence that would make people feel more secure.¹⁰

An end has finally been negotiated to the months-long stand-off between Kosovar Albanians and the Russian troops in Rahovec/Orahovac, which had greatly exacerbated ethnic tensions there. Under the agreement, announced on 24 November, Russians must have permission of the residents each time they

³ The regular British foot-patrols, which almost all inhabitants of Kosovo's capital seem to find reassuring, provide an honourable exception and a model for others to follow.

⁴ It has been difficult for KFOR to keep suspects in detention, given the absence of a functional judicial system and legal safeguards against prolonged detention without having been charged. KFOR, the SRSG, and the UNMIK and Kosovar legal advisors should consider announcing an emergency regulation that would create an "indefinite detention" category for suspects believed to threaten public safety, under the authority of the SRSG to define Kosovo's governing "interim law."

⁵ On 3 November 1999, ICG staff were interrogated as to their ethnicity and later witnessed a Dutch colleague be forced to produce his documents and then be refused entry on the completely specious grounds that he must be Albanian. On 12 November ICG's vehicle was stoned. French KFOR troops were witness to, and ignored, all three of these incidents.

⁶ ICG interviews with local journalists, Mitrovicë/a residents, October 1999.

⁷ ICG interview with Dr. Bajram Rexhepi, the Thaçi government-appointed 'mayor' of Mitrovicë/a, 3 November 1999.

⁸ ICG interview, French KFOR spokesman, 3 November 1999.

⁹ See Roy Gutman, *Newsday*, 16 September 1999, "US Force in Kosovo Keeping Near Base: Troops' Security is a Top Priority."

¹⁰ Reuters, 23 November 1999, quoting US officials on the installation's cost.

wish to enter the town.¹¹ Albanians have long claimed that freelance Russians participated whole-heartedly in some of the atrocities in Rahovec/Orahovac and that they will never feel safe as long as Russian troops are based in the region.

The Italian KFOR has been slow to patrol remote mountain villages in the Rugovë/a canyon bordering Montenegro, where residents have reported nightly visits, shooting, and intimidation by Serb paramilitaries who have crossed the border. Villagers there feel so unprotected that they are considering taking their children to Pejë/Peć for the winter.¹²

While the German KFOR command has been praised by Kosovars for having quickly established some semblance of order in their AOR around Prizren, it has been criticised for its failure to protect the Turkish population there or to stop the intimidation, extortion, and protection rackets reportedly run by ex-KLA officials. People have been fined for speaking the Serbian language – allegedly five DM per word - in Gjakove/Djakovica;¹³ and shopkeepers throughout the German and Italian sectors report having been charged substantial sums simply to stay in business, with warnings not to reveal this fact to the local KFOR.¹⁴

Thus far, the two incipient police forces are not really helping. The international police personnel have been late in coming, are often poorly prepared and, not knowing much about the situation or even their way around, are not really up to the job. Even UNMIK officials are apoplectic about how slow governments have been to provide police which, at the current rate of at most 80-100 per week, has severely impaired both the force's start-up time and Kosovars' faith in its mission. There are certainly plenty of police in Prishtinë/Priština: shiny red-and-white police jeeps dubbed "Coca-Colas" by Kosovars contribute to the traffic congestion, and particularly in the central streets around UN Police Headquarters, dozens of friendly policemen can be seen any day. But they have as yet failed to gain respect for their performance, and beyond the capital their build-up remains so slow that they have not as yet been able to assume full control of policing work in any other place.

Currently around 1,800 international police are deployed throughout Kosovo; the head of UNMIK and Special Representative to the Secretary-General (SRSG) Bernard Kouchner has repeatedly urged that the eventual total be upped to 6,000. But between member nations' sluggish selection procedures and UN headquarters' apparent reluctance to intensify the recruitment effort, it is likely to

¹¹ Agence France-Presse, 24 November 1999.

¹² ICG interviews, Kosovar and Western human rights monitors, late October-early November 1999. The Italian contingent has also been faulted for its handling of the Montenegrin border traffic, which has been known to delay civilian passage for no apparent reason for as much as eight hours.

¹³ ICG interview in Prishtinë/Priština, Sonja Biserko, International Helsinki Commission, 31 October 1999.

¹⁴ ICG interview with Nataša Kandić, Humanitarian Law Center, 31 October 1999.

be a while yet before Kosovars are finally able to feel there are any police they can trust and turn to in an emergency.

The 173 Kosovar police who constitute the first cohort of the planned 3,500-member Kosovo Police Service (KPS) were released onto the streets in November and are now operating under supervision from UNIP "field training officers (FTO)."¹⁵

The human rights component of the training provided by OSCE to both the international and the Kosovar police was at first criticised as inadequate and lacking in vivid, practical training in protection strategies.¹⁶ But at least some parts of that program have already been revised to better prepare UNIP and KPS forces to uphold international human rights standards.

III. PROVIDING BASIC SERVICES

The onset of winter and the shortages of electricity, heat, and water have created a crisis of faith among urban Kosovars in the international community's commitment to rebuild Kosovo.¹⁷

Electricity had been a problem since the early days of the international deployment, but by common consent it seemed to get worse as time went on. When the power was turned off at the water pumps, tapwater, too, dried up, in addition to the regular cuts to ration supply. The situation has improved with the repair of Kosovo B power station at the end of November, but large parts of the province are still without regular power, and even in favoured areas such as Prishtinë/Priština (where some parts even have central heating) power and water cuts are still a regular feature of life.

The primary cause of the delays in delivering basic services, UNMIK officials say privately, has been poor judgement. The international experts tasked to repair the power plants underestimated what it would take to operate these facilities, which were not only decrepit and deteriorating from long neglect, but were ultimately pillaged and possibly sabotaged by the Serbs when they left. And, as

¹⁵ The original 6-week course was found to be too short and had to be extended by two weeks – new trainees will now undergo a 9-week course. After completing this induction course, KPS candidates are required to serve a 19-week apprenticeship under the tutelage of a UNIP FTO, who is likely to have received little additional training that would prepare him for mentoring and whose own experience and time served in Kosovo is likely to be quite limited.

¹⁶ See Lawyers' Committee for Human Rights report, October 1999, "A Fragile Peace."

¹⁷ "The question is, how long are you here for," said one Kosovar intellectual who describes himself and many of his colleagues as "very, very disappointed" in the international effort. "If someone gives you his house for the weekend, and you find there is a leak in the roof, you are not going to care very much; you will just put a bucket under the leak. If you are here to stay, you will build a new roof." (ICG interview, 3 November 1999.)

on a myriad of other issues, overwhelmed UNMIK administrators did not challenge their technical advisers' inaccurate assessments. Exacerbating the situation are the continually competing claims on virtually all the equipment needed for these emergency repairs - for instance, the 10 bulldozers necessary to pump in the coal to keep the power plant running must be borrowed from such critical KFOR reconstruction projects as road and bridge repair.¹⁸ Spare parts have been slow to arrive from abroad, causing lay-offs of workers who are already being paid next to nothing,¹⁹ and competitive friction between the French, who built the plants, and the British, who have said they would run them, has further impeded progress.

Obviously, the breakdown in these critical services has all but paralysed some agencies and has greatly inhibited efficient work and the delivery of other services. Moreover, the capital has the feel of a congested post-war dump. The international community has not succeeded in solving Prishtinë/Priština's chronic garbage problem, with rubbish, rubble and litter building up faster than local services' ability to remove it. And international vehicles have certainly exacerbated traffic congestion – while as late as November, with traffic signals either out of order or power-cut, policemen directing traffic remained a rare if welcome sight.

The impression given by the international community that it would fix everything has inhibited people from doing things for themselves – and for legal and political reasons, UNMIK administrators have regularly criticised the Thaçi-appointed local administrators when they have tried to take action on their own. Local electricians and plumbers shrug when their customers call them, insisting, "There's nothing we can do, the internationals said they were going to fix it."²⁰ But if donors would come through with the cash UNMIK needs to do its job, UNMIK could put these people to work. It could also provide dump trucks for people to cart away the garbage and post-bombing debris, or furnish the materials to fill the potholes. These are not extravagant undertakings from a budgetary point of view. Moreover, they would get people busy, make them feel better about their cities and themselves, and engender more interaction between the local and international communities. But then UNMIK would have to pay more local salaries, which UNMIK officials say they are too cash-poor to do.²¹

¹⁸ ICG interview, UNHCR spokesman, 29 October 1999.

¹⁹ ICG interview, early November 1999.

²⁰ ICG interview with Kosovar housewives, late October 1999.

²¹ The discrepancy between the local stipends for locals, which have been shrinking and tardily distributed, and the generous *per diems* paid to UNMIK's expatriate staff has caused no little resentment among Kosovars, who regard it as one glaring example of how much of the funding for UNMIK's mission will not redound to the benefit of Kosovo and Kosovars, but rather will end up in Western hands and government coffers. (ICG interviews, late October–early November 1999.)

IV. CIVIL REGISTRATION AND DOCUMENTATION

Because so many Kosovars' documents were destroyed by Serb forces in the course of the conflict, civil registration is a vital priority. Significant planning has been done, and strategies are in place for handling this enormous task, which is estimated to take four months at a minimum. But the registration process itself, which is an UNMIK responsibility, has been slow to start because, in the words of one top UNMIK official, "countries make commitments they do not fund."²² The problem seems to be lodged not in the field, but in headquarters – Brussels, for the European Union component, and Washington, for the US share – but the net result is that, critical as the issue of population registration is, nothing can move forward on an unfunded mandate. Those in charge estimate that it will cost between US\$5-6 million simply to meet the electronic data processing requirements, which is less than half the cost of the registration, and this does not include the voters' lists that OSCE must derive from the civil registration data gathered by UNMIK.

UNMIK officials estimate that between 10 and 40 percent of Kosovars have no identification,²³ although some of these are able to produce some record of credit, for instance, from the PTT or the electric company.²⁴ This high number of undocumented persons makes establishing eligibility more difficult, which will in turn delay the issuance of identity cards. UNMIK plans to use biometric and fingerprinting techniques to verify the integrity of its database, and will put its data through a custom-made, internal review mechanism. An appeals process is being readied for Kosovars wishing to contest UNMIK's verdicts on their eligibility for civil registration.

Early, crude attempts have already been made to resettle people, by both former KLA members and by Belgrade.²⁵ The former may be trying to influence the constitution of the future electoral lists, whereas the immediate interest of Yugoslav President Slobodan Milošević, at least in the Mitrovicë/a area and the region north of there, seems to be in infiltrating the province with Belgrade loyalists, reportedly including paramilitaries and police,²⁶ in the name of returning Kosovar Serbs to their homes.

The registration of internally displaced persons in Serbia presents special problems. No one knows how Belgrade will respond to attempts to register these people on the part of the International Organisation for Migration (IOM), despite

²² ICG interview with UNMIK official, 4 November 1999.

²³ ICG interview, 4 November 1999.

²⁴ ICG was told by a veteran OSCE official that fishing licenses would also be taken as valid forms of identification for issuing credentials.

²⁵ ICG interview, 4 November 1999.

²⁶ ICG interview with Mitrovicë/a residents, ex-residents forced to flee, and journalists, late October-early November 1999.

its Memorandum of Understanding with the FRY authorising it to carry out this task. UNMIK officials would prefer that IOM register those Kosovars living in the FRY in their current localities rather than at designated border locations, but Milošević's keen interest in returning Kosovar Serbs to Kosovo – and in moving Serb henchmen into Kosovo in the guise of genuine returnees – may mean the regime will use the civil registration as an excuse to try to push purported Kosovar Serbs to the Kosovo border and beyond. To guard against such abuse, the IOM should only register internally displaced Kosovar Serbs with documentation from the districts where they used to live and should declare any documentation produced in Serbia not germane. As for the several hundred thousand out-of-country Kosovars, UNMIK will attempt to register them in their current places of residence.²⁷

The passport issue is also a thorny one. Kosovar leaders are lobbying for some sort of international document to replace their detested Yugoslav passports. As one key Thaçi advisor put it, "It makes no sense now for us to go abroad with a passport from the same regime that was killing us."²⁸ While UNMIK has in fact issued international travel documents in a handful of medical emergencies, the UN authority has no intention of issuing international passports. "Until we receive instructions from New York, we are not in a position to issue regularised travel documents," explained an UNMIK official. "We are not in the nationality business."²⁹

Yet the current situation is not sustainable. Currently, the only place for Kosovars to renew their passports is at the Serbian foreign ministry office in Prishtinë/Priština's, which is located inside the somewhat seedy, KFOR-guarded, Serbian Centre for Peace and Tolerance.³⁰ But hard-liners within former KLA circles consider obtaining a FRY passport to be an act of treason, and ex-KLA observers are known to stake out the site and to intimidate Albanians who dare to renew their travel documents.³¹ Alternatively, people can travel to the Serbian foreign ministry office in Skopje, which is said to be more professional and less intimidating, but the trip is costly, and now, with the terrible traffic jams of convoys and goods, can take up to 10 hours round-trip. Given UNMIK's authority under UNSC Resolution 1244 to establish laws and regulations governing the administration of Kosovo, it would seem both practical and humane to recognise UNMIK documents as sufficient for international travel during this interim period.³²

²⁷ ICG interview, UNMIK official, 4 November 1999.

²⁸ ICG interview, 30 October 1999.

²⁹ ICG interview, UNMIK official, 4 November 1999.

³⁰ Belgrade recently reported having issued 5000 Yugoslav passports and 600 identity cards to Kosovars since September. (12/6 RFE/RL Newswire.)

³¹ ICG interviews with UNMIK and provisional government officials, late October-early November 1999.

³² On 4 December the self-proclaimed provisional government announced that it would soon issue passports, which, like the provisional government itself, will not be recognised by the international community. (12/6 RFE/RL Newswire.)

V. ELECTIONS³³

UNSCR 1244 is vague about the timing and purpose of elections, and the initial response of the international community was to suggest that it might be at least two years before any would be held.³⁴ But some of the newly arriving internationals, including SRSG Bernard Kouchner himself, and his American deputy, Jock Covey, were soon talking about holding elections as early as spring 2000.³⁵

The terms of the debate are at least partially influenced by technical problems such as the lack of voters' lists (see section V above), which would appear to rule out any voting before autumn 2000. Aside from these logistical matters, the key elements in the elections debate among internationals involve divining first, when criteria for fair elections might conceivably be met, and second, when political moderates³⁶ are likely to have a better shot at winning. Dr. Kouchner appears to regard elections as a useful way of providing him with interlocutors who have some democratic legitimacy.

A relentless turf struggle over whether UNMIK or OSCE should rightly plan the overall election strategy has slowed and even undermined actual election planning.³⁷ UNMIK officials maintain that it is their task to manage the elections and to write the electoral laws and that OSCE personnel should be the chief implementers; OSCE, having been tasked with leading the democracy-building component of the mission, wants to be involved from the very beginning of the election planning and not relegated to merely supervising the implementation of plans into which it had no input.

Among Kosovars the terms of the debate are somewhat different. "Early elections would be a disaster," said one Kosovar intellectual and founder of a political party. "Kosova has no institutions. We have lived 10 years under apartheid, and everything has been destroyed. How are we to run a country with 100,000 destroyed homes, a half-million IDPs (internally displaced persons), no electricity, no media, growing tensions between rural and urban populations, and no previous experience in a parliamentary democracy system?"³⁸

³³ A more comprehensive analysis of election-related issues will be the subject of a forthcoming ICG paper.

³⁴ Norwegian foreign minister and OSCE Chairman-in-Office Kurt Vollebaek, Reuters, 17 June 1999.

³⁵ ICG interviews, late-October-Early November 1999.

³⁶ Such as members of the popular Democratic League of Kosovo (LDK), for example, the party headed by Ibrahim Rugova, whose popularity apparently increased steadily during the autumn, as the increase in violence and chaos was attributed to KLA elements either under or out of the control of the Thaçi provisional government.

³⁷ ICG interview, high-ranking UNMIK advisers, 4-5 November 1999.

³⁸ ICG interview, 3 November 1999.

Moreover, as many Kosovars are eager to point out, the war is not over for many, rendering the notion of “free and fair” elections, in their views, to be almost wildly premature. Nearly two thousand Albanians are known to be in Serbian prisons,³⁹ while thousands more have been reported missing;⁴⁰ revenge attacks on Kosovar Serbs and Roma are still widespread, as is intimidation of Albanians who reach out to help the minorities;⁴¹ Mitrovicë/a is still only the most volatile of several flashpoints, and the final status of the province is far from resolved.

A key adviser to self-declared Provisional Government President Hashim Thaçi cautioned against the international community’s tendency to regard elections as a panacea and the beginning of an exit strategy. “There is an illusion, starting with Bernard Kouchner and other international diplomats and analysts, that through elections, Kosovo will start reconstruction and democracy. So elections are treated as a fetish which will pull Kosova out of this disaster. Having spent time both in the mountains (as a KLA commander) and in the city, I can say that free elections will only complicate even more the situation here. Only when there is adequate legislation and tolerance and co-operation among all factions in Kosova,” he said, should elections be considered. But he believes this will be a long time coming. “Since there is no tolerance among Albanians, it is an illusion to expect tolerance between Albanians and all the others.”⁴²

While criteria for fair elections must of course be met before any credible balloting can begin, Kosovars should not have to wait until the utopic Kosovo described above is realised before they are permitted to choose their own leaders. ICG is convinced that the educational value of working toward elections, even if they are not imminent, can be immense and will inevitably strengthen Kosovar civil society and the hand of the moderates. Most Kosovars agree.

“People need to learn that democracy is a process,” said one Albanian intellectual and human rights monitor. “One election does not make a democracy. Ninety-nine percent of the population has no idea what democracy is. People do not understand that they themselves must be responsible, that human rights are connected to democracy.”⁴³

The process of developing political structures, however, is clearly well underway. As of 12 November there were 24 political parties, which Thaçi’s political advisor

³⁹ As of 15 November 1999, after the release of 343 prisoners, 1,760 Albanian prisoners listed by the Serbian ministries of justice and interior remained in Serbian prisons, according to International Committee for the Red Cross officials in Prishtinë/Priština.

⁴⁰ Estimates of the numbers of missing range from 2,000 (Humanitarian Law Center) to 5,000 (Association of Political Prisoners, Prishtinë; UN High Commissioner for Human Rights, Geneva). The Humanitarian Law Center, ICRC officials, and many Albanians believe that most of these people are likely to be dead, rather than in Serbian prisons.

⁴¹ ICG interviewed numerous Albanians who had been threatened for helping Serb neighbours and friends.

⁴² ICG interview with Provisional Government Cabinet member, 1 November 1999.

⁴³ ICG interview, 30 October 1999.

described rather as “more like party secretariats” that, many Kosovars agree, are at least so far driven by personalities rather than policies. “It is almost impossible to differentiate” among their platforms, the *Thaçi* advisor explained. “They all have three key issues: number one, independence; number two, independence; number three, independence.”⁴⁴

This energy for democracy-building should of course be supported and nourished by international experts not only from the West, but also from eastern European states that have weathered post-communist transitions. But more importantly for Kosovo’s immediate future, UNMIK, OSCE, and other lead international agencies should take seriously their obligation, under UNSC Resolution 1244, with its reference to the Rambouillet accord, to do their utmost to further Kosovar self-governance in every possible arena.

The key to this empowerment, which must not wait for or revolve around elections, has always been widespread consultation with Kosovars as to how international actors might help them to solve the myriad problems they now face. However, countless internationals and Kosovars have complained that UNMIK administrators still do not reach out or even get out of their offices nearly enough, that, in general, Kosovars are not routinely consulted, and that those few whose views *are* solicited often seem to have been chosen more for the ethnic or political slot they fill than for their expertise in any particular area.⁴⁵

If the internationals’ concerns, as stated above, are really to strengthen the moderates, create conditions for free elections, and to bring about the eventual transfer of authority to the Kosovars, then the actual date set for the first ballot is less important than the attitude on the part of the international administration, which must work harder to treat Kosovars less like errant children in want of firm parenting and more like the self-respecting, accountable citizens on whose behalf it has been asked to serve.

VI. JUSTICE AND THE RULE OF LAW

As with other aspects of the international mission in Kosovo, the critical challenge of establishing a working judicial system for this essentially lawless province has been fraught with delays, funding shortages, some unfortunate appointments, and gaps between areas of responsibility carved out by the lead international actors, in this case, UNMIK and the OSCE.

UNSC Resolution 1244 does not spell out which law should be applied under UNMIK’s administration of Kosovo. In the interests of getting some form of criminal justice system up and running, UNMIK initially attempted to apply

⁴⁴ ICG interview, *Thaçi* adviser, 1 November 1999.

⁴⁵ ICG interviews, Prishtinë/Priština, late October-early November 1999.

Serbian and FRY law.⁴⁶ This decision outraged numerous Kosovar judges, prosecutors, and lawyers, who refused to apply the discriminatory Serbian Criminal Code, preferring to operate under the Kosovo Criminal Code, which the Serbian Parliament revoked, whether constitutionally or not, when it instituted a form of apartheid in the province in 1989.⁴⁷ Kosovar and international experts agree in principle that, as for criminal procedure, with the exception of certain provisions, the former Yugoslavia's Code of Criminal Procedures is adequate.⁴⁸ As yet, however, there is no universally agreed upon criminal code or set of procedures in Kosovo, which has resulted in the *ad hoc* application of different national laws in different KFOR sectors to handle a variety of legal emergencies.⁴⁹

The confusion and debate over applicable law has created a disastrous five-month legal vacuum which only now, with the drafting of a new, interim Kosovo law, is finally beginning to be filled. In mid-August SRSG Bernard Kouchner convened the Joint Advisory Council on Legislative Matters (JAC), consisting of more than 20 Kosovar and seven international legal scholars, to draft interim legislation in the areas of criminal, civil, property, economic, and administrative law. Thus far, draft texts of the fiscal authority, banking and payment authority, and the supervision and licensing of banks have secured approval from the Council of Europe, and more drafts are being drawn up to cover such areas as civil and property law.⁵⁰

⁴⁶ UNMIK's decision to apply Serbian and FRY law was based on its interpretation of the SRSG's Regulation No. 1999/1, Section 3, which leaves in place, assuming that they meet internationally respected human rights standards, "those laws applicable in the territory of Kosovo prior to 24 March 1999."

⁴⁷ The Kosovo Criminal Code, instituted when Kosovo achieved provincial status, was virtually identical to that of Croatia, Bosnia, Serbia, and other republics in the former Yugoslavia. However, the Kosovo Criminal Code does not include, as the Serbian code does, provisions addressing war crimes or crimes against humanity.

⁴⁸ The unacceptable provisions, which a panel of experts of the Council of Europe has recommended suspending or amending, regard detention, right to counsel, and freedom of expression. See October 1999 report by Lawyers' Committee for Human Rights, "A Fragile Peace."

⁴⁹ In one instance, when a German KFOR soldier brought victim's and suspect's statements in what he considered a closed case of kidnapping to a Prishtinë/Priština District Court judge, as would be the procedure under German law, he was informed that he must take the file to a prosecutor, who would have to open the case in order to close it. The German soldier was confused and annoyed; instead of being out in the field where this obviously competent, motivated professional might solve more criminal cases, he and a translator were forced to spend valuable time running around Prishtinë looking for the right office in which to report an already closed case. (ICG staff witnessed the encounter.)

In another instance, an Albanian criminal defence lawyer succeeded in securing a judge's release of 37 clients who had been arrested by British KFOR and charged, among other things, with stockpiling heavy weapons. But despite the lack of a right to appeal such rulings under the applicable FRY criminal code, the judge's decision was overruled by British KFOR, on public safety grounds. The lawyer, who litigated dozens of human rights cases under Serbian rule on behalf of Albanian clients, was outraged, claiming that the British KFOR had taken over where the Serbs had left off in subverting the rule of law with their arbitrary, imperial judgements. (ICG interview with Albanian defence lawyer, 5 November 1999; review of documents issued by British KFOR.)

⁵⁰ ICG interview, 5 November 1999.

UNMIK legal advisors insist that the criminal procedure code is their highest priority, and they remain optimistic that it can be finalised by year's end, once the Council of Europe has verified that it meets international human rights standards. Now the 542 articles of criminal procedure are being translated, after which they must be published and widely disseminated, all projects for which, incredibly, UNMIK has no current funding or system in place.⁵¹

UNMIK and Kosovar legal advisers claim that the absence of sufficient long-range planning and follow-through in an area that is clearly so urgent as the imposition of the rule of law has resulted from a series of administrative misjudgements and oversights, exacerbated by donor failure. Kosovar legal experts and ordinary Kosovars alike are frustrated at the delay in the administration of justice and wonder why they cannot simply go ahead and try cases using the pre-1989 Kosovo criminal law and Yugoslav code of criminal procedure, deferring to Serbian law in the several areas where it is in fact more liberal. That such a confused solution even appears plausible shows what a bad position UNMIK has fallen into, caught as it is between common sense (continuity plus reform) and many Kosovars' obstinacy (the insistence on abolishing ten years of law). Some Kosovars have gone so far as to suggest that the issue of which law to apply is a red herring concocted by the internationals "to justify their own existence," as one Kosovar defence lawyer put it.⁵²

This emerging, inauspicious cynicism with regard to the involvement in and commitment to establishing a viable legal system for Kosovo points back to what might be called the Achilles heel of the entire international mission. Given the limited mandate set forward in UNSCR 1244 - that is, to continue to respect the FRY's territorial and legal authority over the province - UNMIK administrators have been put repeatedly in the awkward posture of having to make ad hoc decisions on every possible topic which stop short of grappling with the critical question of Kosovo's final legal status. This issue lies at the heart of the international community's failure to have rapidly established a functioning, open, well-publicised court system which might have prevented some of the violence by making clear to the entire population that in fact those who commit revenge crimes, hate crimes, and common crimes will not go unpunished.

The same issue appears to have dampened the will for ardent international advocacy on another justice matter, that is, the thousands of Albanian prisoners who remain in detention in Serbia proper. In fact the international community has very little leverage over Belgrade on this issue, as it was left out of the 9 June military-technical agreement that ended NATO's air campaign. Nevertheless, it is not surprising that, with almost every Kosovar somehow personally connected to someone who is missing or known to be in prison, many insist that until the

⁵¹ Ibid. The American Bar Association's Central & Eastern European Law Initiative has financed the translation of the articles of criminal procedure.

⁵² ICG interviews, Kosovar judges and lawyers, late October-early November 1999.

prisoners are freed and the missing accounted for, they will not be able to move on, either to develop civil society structures, hold “free and fair elections,” or work toward any sort of reconciliation.⁵³ However, to hold the re-establishment of Kosovo’s civil society hostage to Belgrade’s release of the prisoners would be a mistake that would in fact return to Milošević some of the control over Kosovo’s future which he lost in the war.

VII. CONCLUSION

This brief survey of the international community’s performance in five critical areas shows that a combination of misjudgements and hostile factors has rendered the international occupation of Kosovo much less effective than had been hoped at the start.

Outside Kosovo donors have failed to come forward with money to fund UNMIK programmes, with personnel to fulfil the commitment to police Kosovo and administer it, and with clear policy guidance to allow field decisions to be taken within a coherent framework.

Within Kosovo the international community has consistently over-estimated its powers of performance, creating expectations on the part of Kosovars which have been inevitably disappointed (on winterisation, documentation, utilities, and law and order, among others).

Despite the set-backs, however, there are grounds for optimism. Provided Kosovo can get through the winter without major unrest, provided new organised criminal elements do not become so well entrenched that they can no longer be rooted out, then the UNMIK family has good reasons to look forward to the spring: its staff will be more numerous and more experienced; donor money will at last be coming on-stream; and the warmer weather and greater activity will at least create conditions for a feel-good factor in which better progress will be possible. But this can only happen if the right policies are followed.

VIII. RECOMMENDATIONS

- Until there is a more serious police presence, KFOR has to carry out its mandate to enforce the peace in a vigorous, vigilant fashion. The British experience around Prishtinë/Priština, where even regular patrols have failed to prevent harassment of minorities, shows how hard this task is, but it is still

⁵³ ICG interviews with ex-prisoners, families of prisoners, officials at the Association of Political Prisoners, human rights attorneys, Council for Defence of Human Rights and Freedoms director Pajazit Nushi, and officials from the International Committee for the Red Cross, late October-early November 1999. The missing persons/prisoner issue and the international community’s handling of it will be the subject of a forthcoming ICG paper.

vital. KFOR needs actively to seek out trouble makers, alleged war criminals, and weapons. Rules of engagement should be unified as much as possible among the various commands, to minimise differences between KFOR's compartment in Mitrovicë/a, Pejë/Peć and Prishtinë/Priština, for instance – it is an obvious source of instability that KFOR functions as an alliance of national units rather than a single force.

- The many KFOR troops currently performing stationary guard duty should be replaced as soon as possible by private security guards (in the absence of sufficient numbers of police), so that the highly trained NATO soldiers can take on more active, front-line duties worthy of their military training. Similarly, KFOR should leave the delivery of reconstruction or humanitarian assistance to the plethora of private volunteer organisations and should concentrate on arresting thugs and protecting civilians.
- Where necessary, KFOR should not hesitate to use force, call for reinforcements, and to impose a curfew or martial law to stop looters, arsonists, kidnappers, or other violators of human rights and the public order. Suspects determined to be threats to public safety should be detained until such time as their cases can be properly disposed of, under an emergency regulation to be drafted by KFOR, UNMIK, and Kosovar legal advisers and to be announced by the SRSG.
- Individual governments need to take seriously the obligation to accept a fair share of the general international responsibility. UN member nations should accelerate the recruitment and deployment to Kosovo of professional policemen and women capable of and committed to handling this difficult mission, up to Dr. Kouchner's revised target of 6,000. Until many more police are deployed and professionally trained, Kosovars' security will continue to be compromised, and KFOR will be unable to draw down its force strength without risking the fragile security already achieved. Training in human rights for both the UNIP and the Kosovar police force should be revised and refreshed to include the sorts of practical and ethical challenges they will face on a daily basis.
- UNMIK, its donors and technical advisers must move quickly to provide reliable access to such basic services as electricity, heat, and water. Donors should speed up the supply of essential spare parts, equipment, and the requisite cash to pay local technicians and labourers, most of whom have so far been working for free. Fairly or unfairly, in the coming winter months Kosovars' faith in the international community and in the path it has laid out for them will be predicated largely on their seeing signs of progress in those matters which touch their daily lives. As one Albanian intellectual and human rights monitor just back from a tour of remote villages put it, "Nobody cares

about elections. All that people care about right now is whether they are going to survive the winter.”⁵⁴

- The EU and the US must immediately meet their commitments to fund UNMIK’s civil registration program. The timely preparation of both identity documents and electoral lists depends on this program getting underway at the earliest possible date. To minimise fraud, voter lists should be drawn up according to where people lived at some designated, pre-1989 moment, before the revocation of autonomy. That criterion should apply not only to resident Kosovars, but also to internally displaced Kosovar Serbs and to out-of-country Kosovars. The UN should allow UNMIK identity documents to be used by Kosovars in lieu of Yugoslav passports until such time as Kosovo’s final status has been resolved. UN member states should be pressed to accept these documents as provisional passports.
- The international administration must consult more broadly with Kosovars on a wide range of issues and incorporate Kosovar professionals into all decision-making and implementation processes. UNMIK, OSCE, and other international officials should remain mindful that their mission is not to establish a colonial administration but rather to help the people of Kosovo get what they need to run their own territory.
- The SRSG must make clear to all political leaders that violence, intimidation, and bribery will not be tolerated and that alleged perpetrators will be arrested, charged, and prosecuted. UNMIK and KFOR must then back up the SRSG’s word by actively pursuing and detaining suspects and instituting at the earliest possible date a legal system capable of holding fair public trials. Salaries should be set at dignified levels and paid in a timely fashion to render civil servants as well as law enforcement and judicial officials less susceptible to financial pressures – this, too, is a message to donors as much as to UNMIK in the field.
- The international community should press harder for the release of Albanian prisoners still detained in Serbia and the arrest of all indicted war criminals throughout the former Yugoslavia. Western governments should also urge members of the Serbian opposition in the FRY, in the interests of peace, justice, and a clean slate for a new, untainted government, to commit to, and even to advocate openly for, the prisoners’ release and the arrest of all indictees. The release of all Albanian political prisoners should be among the criteria that must be met before any elections in Serbia or the FRY can be deemed “free and fair.”

⁵⁴ ICG interview, 30 October 1999.