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Synopsis

In March 1999, the North Atlantic Treaty Organisation (NATO) launched a military campaign in Kosovo without the prior endorsement of the United Nations Security Council (UNSC). The goal of the operation was to bring to an end increasing fighting between Serbian government forces and armed Kosovo-Albanian separatist groups that had a serious humanitarian impact. The Security Council had earlier been seized of the situation in Kosovo and adopted three resolutions which, among others, imposed a comprehensive arms embargo, condemned the excessive use of force by Serbian forces and acts of terrorism by Kosovo-Albanian groups, ordered the withdrawal of Serbian forces, and called for dialogue to reach a political solution to the crisis.¹ NATO's air campaign, starting on 24 March and concluding on 9 June, resulted in the withdrawal of Serbian forces from the territory, their replacement by international peace forces, and the massive return of the displaced Kosovo-Albanian population. In May, the G-8 foreign ministers agreed on a set of guiding principles designed to achieve a political solution to the crisis. After 78 days of bombardment and under pressure from Russia, Serbian President Slobodan Milošević accepted the ceasefire conditions and signed the Military-Technical Agreement on 9 June 1999.²

On 10 June 1999, the Security Council adopted resolution 1244 (1999),³ based on the G-8 agreed principles⁴ under Chapter VII authorising the deployment in Kosovo, under UN auspices, of an international civil presence – the United Nations Interim Administration Mission in Kosovo (UNMIK), established by the Secretary-General with the assistance of the United Nations High Commissioner for Refugees (UNHCR), the Organisation for Security and Cooperation in Europe (OSCE), the European Union (EU) and the UN Secretariat;⁵ and a security presence – the Kosovo Force (KFOR),


¹ United Nations Security Council resolution 1239 of 14 May 1999; United Nations Security Council resolution 1203 of 24 October 1998; United Nations Security Council resolution 1199 of 23 September 1998; and United Nations Security Council resolution 1160 of 31 March 1998; amongst others. Available at www.un.org/Docs/sc.

² Military-Technical Agreement between the International Security Force and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, signed in Kumanovo on 9 June 1999, available at www.nato.int/kosovo/docu/a990609a.htm.

³ United Nations Security Council resolution 1244 of 10 June 1999, available at www.un.org/Docs/scres/1999/sc99.htm.

⁴ Included as Annex I to United Nations Security Council resolution 1244, op.cit.

⁵ United Nations Security Council resolution 1244, op. cit., paras. 5, 6 and 10.



established by member states⁶ with substantial NATO participation and including forces from the Russian Federation. UNMIK and KFOR were required to coordinate their efforts to redress the grave humanitarian situation, create the conditions for the normal functioning of society for all inhabitants of Kosovo, and lay the ground for a political solution to the dispute about the future status of the province. Their responsibilities were to be discharged in compliance with the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY).

Resolution 1244 (1999) reflects a fundamental ambiguity that cannot gloss over the cleavages between the parties, within the Council and in the international community in relation to the final status of Kosovo. The resolution lays down the commitments undertaken by the Permanent Five (P5) on the need to put an end to the violence and address the humanitarian crisis, while laying the ground for dialogue. However, it falls short of admitting the eventuality of independence, the only mention of the problem of status being counter-balanced by the prescription on sovereignty.

While advances in the implementation of the transitional measures established by UNMIK and KFOR have been considerable, the basic disagreement over the crisis has impeded progress on the political process towards status dictated by the resolution. The Comprehensive Proposal for the Kosovo Status Settlement put forward by UN Special Envoy Martti Ahtisaari⁷ in 2007, almost eight years after the intervention, was rejected by Serbia and failed to obtain the Council's approval. On 17 February 2008, representatives of the Kosovo Provisional Institutions of Self-Government unilaterally declared independence, adding to the already complex political situation.

Unique in its character and not subject to renewal, resolution 1244 (1999) remains in force in the absence of a revision, due to the lack of consensus among the P5. Since its adoption in 1999, the Council has pronounced itself on matters of substance on the situation in Kosovo on barely a few occasions without altering the resolution. These include the condemnation of the ethnic violence of March 2004, the need to proceed with political status talks in October 2005 and, more recently, in November 2008, the endorsement of the Secretary-General's proposal on the reconfiguration of the civil presence thus far embodied by UNMIK. From the perspective of the Serbian government, this endorsement represents a turning point in the existing stalemate and opens the possibility of a more constructive dialogue with the international community. In Belgrade's view, despite earlier claims that UNMIK had helped to set up a 'para-state' in Kosovo,⁸ its presence remained crucial. Another consequence of the Serbian endorsement was its agreement to the unavoidable deployment of the European Union Rule of Law Mission in Kosovo (EULEX) – under the European Security and Defence Policy (ESDP) – which allowed the Serbian government to 'save face', to a limited extent, *vis-à-vis* its population.⁹

⁶ Ibid., paras. 5 and 7.

⁷ Comprehensive Proposal for the Kosovo Status Settlement, S/2007/168/Add.1: Letter Dated 26 March 2007 from the Secretary-General, available at www.unosek.org/docref/Comprehensive_proposal-english.pdf.

⁸ Interview with a Serb official.

⁹ A reflection implicit in one of the interviews held in the summer of 2008 with a Serb official.

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I. Background to the conflict

In order to understand the Security Council's decision to intervene and its choice of intervention, several factors need to be considered. These include the political situation of Kosovo, at national and regional levels; the eventuality of an expansion of the conflict to neighbouring countries having substantial Albanian minorities; and the absence of an 'administrative fabric' found by the international civil presence upon arrival on the ground, a circumstance that left it with no option but to undertake the difficult task of administrative and institutional reconstruction. In this context, resolution 1244 (1999) and the establishment of UNMIK signal a landmark in the history of the organisation: the Security Council charged the UN mission with the direct and comprehensive administration of the territory,¹⁰ temporarily suspending the sovereignty rights and attributes of the state concerned, the Federal Republic of Yugoslavia, and in fact creating an international protectorate.


Kosovo's political, legal and historical situation within Serbia lies at the core of the problem. The approval of the 1974 Federal Constitution entailed a big step towards decentralisation, giving the constituent republics powers similar to those granted to territorial units within a confederation. The province of Kosovo, while remaining part of the Republic of Serbia, enjoyed a very broad autonomous regime.¹¹

Tito's government policy was to restrain the nationalist movements that had plagued the region since the collapse of the former empires with the aim of maintaining the balance of power among the republics. A specific objective was to keep within bounds the ascendancy of Serbia, the most populous republic and the one having more weight in the officer corps of the Federal Army. The 1974 Federal Constitution was designed to mitigate discontent and to even out the competences of the republics' national groups. The Constitution also sought to satisfy the claims of the autonomous provinces of Kosovo and Vojvodina, both part of Serbia, by giving them a seat at the Council of the Presidency, an assembly, a police force and a banking system of their own, always under the control of the regional Communist Party. The provinces acquired a status similar to that of the republics, save in name and in the right to secede.

In the wake of Tito's death, Yugoslavia's unity began to collapse. In the summer of 1991, Slovenia issued a unilateral declaration of independence. Tension sprinkled resulting in violent incidents, only to relax after the Federal Armed Forces withdrew from Slovenia and the republic acquiesced to put its

¹⁰ Amongst the existing models of international administration of territories as a conflict or crisis management, and given that all of them imply intervention into the host country's sovereign affairs, this is the farthest reaching one, as it involves the complete and indefinite suspension of a state's (Yugoslavia) sovereignty over a portion of its territory. It is another step in the evolution of different models of international administration of territories ranging from the international trusteeship system, resulting from decolonisation, passing through a transitional supervisory role such as in Cambodia, up to 'indirect' administration – though with a high level of interference in the decision-making process – in Bosnia-Herzegovina or Eastern Slavonia.

¹¹ After the 1974 Federal Constitution, the territory of the Socialist Federal Republic of Yugoslavia was organised into six republics (Slovenia, Bosnia-Herzegovina, Croatia, Montenegro, Macedonia and Serbia) and two Serbian autonomous provinces (Kosovo and Vojvodina); the political status of these provinces being the same as the republics – including participation at federal institutions – save in the right to secede, exclusive to the republics.



declaration of independence on hold for three months. In October, Slovenia ratified its independent status, formally recognised by the EU and other countries in January 1992, without major confrontation. A member of the EU and NATO since 2004, Slovenia chaired the Security Council in 1999¹² at the time of the adoption of resolution 1244 (1999), and chaired the European Council during the first semester of 2008.

The independence of Croatia came next. The country had a strong and aggressive nationalist movement that, similarly to Serb nationalism, had ambitions over parts of Bosnia-Herzegovina where many Croats lived. Slovenia's unilateral declaration of independence and the ensuing proclamation of an independent Serbian Republic (Republika Srpska) in the Croatian territory of Krajina precipitated Croatia's secession from the Federal Republic of Yugoslavia. The war that followed since August 1991 displayed unusual cruelty and raised fears of regionalisation among international actors.

The Croatian and Slovenian declarations of independence precipitated that of Former Yugoslav Republic of Macedonia (FYROM) in 1991 with the support of 71 per cent of its population. While avoiding armed conflict, the birth of the new independent state raised conflicting views amongst its neighbours: Serbia did not oppose it; Bulgaria was supportive without caveats; Greece was adamantly opposed to it; and Albania was ambivalent, given its strong ties to the increasingly vocal Albanian minority opposing the FYROM government. The Security Council established a multinational force of a preventive nature – the United Nations Preventive Deployment Force (UNPREDEP)¹³ – to oversee and monitor Macedonian borders, thus reinforcing its precarious stability. In 1999, China vetoed a further extension of the mission following FYROM's formal recognition of Taiwan.

Bosnia-Herzegovina proclaimed sovereignty over its territory in October 1991, declaring independence on 1 March 1992, after a referendum that – though boycotted by many Bosnian-Serbs – counted on almost 100 per cent of a 64 per cent turnout. On 9 January 1992, the Bosnian-Serbs had proclaimed the Serbian Republic of Bosnia-Herzegovina, which became Republika Srpska later in August, while the Croatian Democratic Union (HDZ) had proclaimed in November 1991 the Croatian Community of Herzeg-Bosna as a separate entity with a supporting militia, the Croatian Defence Council (HVO). Armed conflict broke out in March and extended for more than three years during which Serb irregular forces, with the support of the Yugoslav army, fought against Croat and Muslim militias. Europe witnessed the worst atrocities committed in its territory since the Second World War. Various peace plans, some negotiated and others imposed, were drafted and discussed but none succeeded. It would only be with the Dayton Agreements in December 1995 (not until Croatian forces, with US support, had recovered control over the areas occupied by the Serbs) that the future and complex political map of the Republic of Bosnia-Herzegovina would be established, setting – both by action and omission – the basis of the problems and deficiencies that would since ail the rest of the territories of the extinct Federation.

¹² Danilo Turk, who represented Slovenia at the Security Council during the first semester of 1999, was recruited as United Nations Assistant Secretary-General for Peacekeeping Operations later that year.

¹³ United Nations Preventive Deployment Force in the Former Yugoslav Republic of Macedonia (UNPREDEP), established on 31 March 1995 to replace the United Nations Protection Force in Former Yugoslavia (UNPROFOR, February 1992-March 1995) in the territory of FYROM.

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It was at Dayton where a new Balkan map was drawn, with a new Federal Republic of Yugoslavia, constituted only by the Republics of Serbia and Montenegro and succeeding the former in its international rights and obligations. Ulterior conflicts in Albanian populated areas of the extinct FRY – and their consequences – were directly or indirectly related to the Kosovo-Albanian plight, be it the 2000-2001 conflict in the southeast of Serbia or the 2001 crisis in FYROM.


After Tito's death in 1980, Albanian claims to become the seventh republic resulted unacceptable to the Republics of Serbia and Macedonia. The Albanian-Serbian contention worsened. In 1987, Milošević was elected President of Serbia and in 1990 he declared the state of emergency, depriving Kosovo of its autonomy. This gave Serbia three – out of eight – seats at the Council of the Federal Presidency, along with Montenegro's permanent support. The decision was ratified through a poll where only Serbia's inhabitants (including Kosovo) cast their vote. Kosovo-Albanian nationalist leader Ibrahim Rugova organised a peaceful resistance movement and called for civil disobedience (boycotting taxes, population census and elections), setting up parallel structures to provide health, education and other basic needs to the Albanian population of Kosovo, along with parallel elections and a referendum followed by the proclamation in Kaçanik of the Republic of Kosovo, with himself as president.

For almost ten years (1989-1999), the only state administration present in Kosovo for the majority of Albanian descent was the police and the military forces redeployed in the territory from other areas in Serbia by the Belgrade government. Having for the most part been excluded by Milošević from the civil service, Kosovo-Albanians relied on the parallel structures established under Rugova's leadership to manage public goods and services. These structures, however, lacked the necessary basic infrastructure and had no solid technical and administrative support systems.

Slobodan Milošević's nationalist ambitions took Kosovo to a lengthy conflict that led to the NATO military intervention, the subsequent withdrawal of Serbian forces and the Security Council's adoption of resolution 1244 (1999), which placed the territory of Kosovo under the interim administration of the UN-led international civil presence under the protection of the NATO-led Kosovo Force.

Rugova's peaceful resistance approach could not prevent a growing sense of frustration among Kosovo-Albanians. The issue of Kosovo had not been addressed at Dayton in 1995 and reiterated requests to establish a UN force in the territory had gone unheeded. Armed cells claiming membership of a separatist insurgency, the Kosovo Liberation Army (KLA/UÇK),¹⁴ started operations on 22 April 1996, marking the beginning of hostilities with the Government of Serbia, by launching simultaneous attacks against civilian targets in four separate locations of Kosovo. The KLA adopted an 'action-reaction strategy' designed to attract international attention to what became an ever-increasing and disproportionate response of Serbian police and military, in the hope of eliciting growing sympathy for the Kosovo-Albanian plight and obtaining international support. The international attitude *vis-à-vis* the KLA was at the very least ambiguous. While some qualified it as a national liberation movement, many had strong reservations at what they perceived as a terrorist organisation. In resolution 1160 (1998), the Security Council had, *inter alia*, condemned 'all acts of terrorism by the Kosovo Liberation Army'.¹⁵

¹⁴ In Albanian: *Ushtria Çlirimtare e Kosovës*, UÇK.



Despite this, no financial or arms embargo was specifically aimed at restricting the KLA. On the contrary, the KLA was reportedly well funded and supported from outside, mainly by the United States (US).¹⁶ The institutional crisis in Albania allowed large amounts of war material from the Albanian army to be handed out to the KLA in 1997. Albanians from Kosovo moved to Montenegro, Albania and FYROM, posing a challenge to the fragile unity of the latter where a large Albanian minority was increasingly vocal and a civil war could give rise to territorial claims in neighbouring countries with the ensuing destabilisation of the entire region. Meanwhile, Milošević had become president of the new Federal Republic of Yugoslavia in 1997.

II. Context for UN intervention

The threat of international intervention led to the first Security Council resolutions,¹⁷ the brokering of a ceasefire agreement and the deployment of an international operation, the OSCE Kosovo Verification Mission (KVM), between October 1998 and March 1999. The KVM's working conditions and chances of success were precarious from the beginning, mainly owing to the negative attitude of the Serbian authorities and the expressed intention of the KLA to prevent agreement. KLA leaders had not been included in the ceasefire negotiation: their participation would have turned them into formal and legitimate interlocutors, a legitimacy unwanted by many (including not only the Serbian government, but other European states as well). No success, however, was possible without their concurrence. The situation in Kosovo worsened, as foreseen by KLA's 'action-reaction' strategy. Confrontation between Serbian forces and the KLA reached a point of no return for the international community with the events at the Central Kosovo village of Račak, on 15 January 1999, where 45 males of the same family were killed. Serbian forces were initially accused of the massacre. Notwithstanding the fact that its actual authorship was contested (and has still not been clarified to date) by a Russian and Finnish investigating team (it was not investigated by the KVM), it provided the trigger that the international community needed to decide on intervention, given the cruelty and indiscrimination of the Serbian forces' actions against the Kosovo-Albanian population. Memories of the massacre in Srebrenica were still fresh, sparking international outrage and influencing ongoing initiatives to solve the conflict (amongst which the talks that were being held at Rambouillet, in France).

These talks, held at the beginning of 1999, constituted a key precedent for resolution 1244 (1999). An Interim Agreement was proposed to the Government of Serbia and a delegation of representatives of the Kosovo-Albanian population. Yugoslavia refused to accept it, a fact that NATO used as justification to launch its 1999 air campaign. The proposed agreement contained provisions for Kosovo's autonomy that went further than what the Serbian government was willing to concede, including – as mentioned above – the implicit reference to a referendum finally to settle the issue of Kosovo.

¹⁵ United Nations Security Council resolution 1160 of 31 March 1998.

¹⁶ 'Moral Combat: NATO at War', *BBC 2*, 12 March 2000.

¹⁷ United Nations Security Council resolutions 1239, 1203, 1199, and 1160, *op.cit.*, amongst others.

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A particularly controversial point was the then secret Appendix B (in the drafting of which Russia had not participated), which stated, *inter alia*, that:

*NATO personnel shall enjoy, together with their vehicles, vessels, aircraft, and equipment, free and unrestricted passage and unimpeded access throughout the FRY including associated airspace and territorial waters. This shall include, but not be limited to, the right of bivouac, manoeuvre, billet, and utilisation of any areas or facilities as required for support, training, and operations.*¹⁸

The terms presented to the Government of Serbia at Rambouillet were considered intolerable and could not possibly be accepted. To many qualified observers, it seemed as a deliberate attempt to provoke a Serbian rejection that would legitimise a NATO intervention that had already been decided upon. In a comment to the press, former Secretary of State Henry Kissinger declared that:

*The Rambouillet text, which called on Serbia to admit NATO troops throughout Yugoslavia, was a provocation, an excuse to start bombing. Rambouillet is not a document that an angelic Serb could have accepted. It was a terrible diplomatic document that should never have been presented in that form.*¹⁹

In the end, on 18 March, the Albanian, US and British delegations signed the text while the Serbian and Russian delegations refused to do so. Talks were called off the following day. Events proceeded rapidly after the failure at Rambouillet. KVM international monitors withdrew on 20 March, for safety reasons ahead of the anticipated NATO bombing campaign. On 23 March, the Serbian assembly accepted the principle of autonomy for Kosovo²⁰ and the non-military part of the agreement. Nonetheless, the Serbian side had objections to the military part, Appendix B in particular, which it characterised as 'NATO occupation'. The full document was described as 'fraudulent' by the Serbs because the military part had only been offered at the very end of the talks without room for negotiation, and because the other side bluntly refused to hold direct negotiations with and even to meet the FRY delegation. The following day, on 24 March, NATO's bombardment began.

The Council's reaction to this turn of events was reflected in its meetings of 24 and 26 March, convened at the request of Russia.²¹ To a large extent, the debate laid down the main issues of the still unresolved debate over humanitarian intervention versus national sovereignty.


On the first day, Russian Ambassador Lavrov stated that his country was 'profoundly outraged' and expressed 'categorical rejection' towards the NATO action, which he said had long-term harmful consequences not only for Kosovo and the Balkans, but also for the entire 'modern multi-polar system

¹⁸ Paragraph 8 to 'Appendix B: Status of Multi-National Military Implementation Force' to the Rambouillet Interim Agreement for Peace and Self-Government in Kosovo, not signed by the Federal Republic of Yugoslavia, available at www.state.gov/www/regions/eur/ksvo_rambouillet_text.html. The accords contained in this agreement (also referenced as UN DOC S/1999/648) were to be fully taken into account when 'promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo', and when 'facilitating a political process designed to determine Kosovo's future status' as required by article 11 (a) and (b) of resolution 1244 (1999).

¹⁹ Henry Kissinger, *Daily Telegraph*, 28 June 1999.

²⁰ www.serbia-info.com/news/1999-03/24/10030.html

²¹ See verbatim reports of those meetings in S/PV/3988 and S/PV/3989, for following quotes.



of international relations'. Quoting the then President of Russia, Boris Yeltsin, he warned that his country 'reserved the right to take adequate measures, including military measures, to ensure its own and common European security'. He blamed '[their] partners in the Contact Group' for discussing military aspects with regard to Kosovo 'behind [their] backs, in the North Atlantic Treaty Organisation and not in the Contact Group'.

The Contact Group had been set up in response to the crisis in Bosnia in the early 1990s by four of the five permanent members of the Security Council (the exception being China) in addition to the two largest contributors in terms of troops and assistance to the peacebuilding efforts in the Balkans, Germany and Italy.

US representative Burleigh replied that it was 'only with the greatest reluctance' that NATO had taken action and justified the decision by the need to prevent 'a humanitarian catastrophe of immense proportions'. Ambassador Fowler, from Canada, a firm promoter of humanitarian intervention, said that 'We c[ould] not simply stand by' while innocents were murdered and an entire population was displaced. Ambassador van Walsum, of the Netherlands, an active participant in the NATO operation, was equally forceful. Ambassador Dejammet of France drew attention to earlier Security Council resolutions on Kosovo under Chapter VII. Sir Jeremy Greenstock, on behalf of the United Kingdom (UK), accused President Milošević and said that NATO 'had been forced to take military action because all other means of preventing a humanitarian catastrophe had been frustrated by Serb behaviour'. An opposing view was presented by India's representative Sharma, who took the floor to say that the military campaign was 'in clear violation of article 53 of the Charter'. In the name of the Non-Aligned Movement (NAM), he added that the UN 'c[ould not] be forced to abdicate its role in peacekeeping' to a regional organisation. Speaking on behalf of the European Union, German representative Kastrup said that the EU countries were under a moral obligation to ensure that indiscriminate behaviour and violence of the kind seen in Kosovo were not repeated. He also added that President Milošević had to stop Serb aggression in Kosovo 'and sign the Rambouillet Accords, which included the establishment of a NATO-led implementation force to provide stability'.

On 26 March, the Council met again to consider a draft resolution submitted by Russia that demanded the immediate cessation of hostilities and the urgent resumption of negotiations. After giving an account of past failed negotiations with President Milošević, the Canadian Ambassador referred to the expanding humanitarian crisis and said that those who supported the draft resolution before them would 'place themselves against the international consensus'. The statement prompted an angry reaction from Lavrov, who considered it 'bordering on blackmail'. Ambassador Turk from Slovenia spoke in favour of the NATO campaign, countering claims about its illegality with the argument that 'the Security Council had the primary, but not exclusive responsibility for the maintenance of international peace and security'. The draft resolution was eventually put to the vote and rejected by 12 Council members. Those voting in favour were China, Namibia and Russia.

International initiatives to end the conflict did not stop during NATO's air campaign. Negotiations were held outside the framework of the Security Council, within the group later known as 'the Quint'. The Quint was constituted by the foreign ministers of the US, Britain, France, Germany, and Italy and had

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started functioning on 29 March as an informal vehicle for debate among the key countries. In essence, it was the Contact Group on the Former Yugoslavia, but without Russia. At teatime each day in London (after lunch for Madeleine Albright in the US), they would review the progress of the war and discuss the prospects for a negotiated peace. The original Quint of foreign ministers was soon replicated at the level of the Ministries of Defence and chiefs of the defence staff and political directors from the five chancelleries, where teleconferences took place every evening during the war. It was the Quint – whose existence was kept under wraps during the war to avoid offending other Alliance nations – that first raised, at Germany's insistence, NATO's five conditions for an end to the war after Milošević's first offer of unilateral truce on 3 April, providing for a partial withdrawal of Serbian troops from Kosovo; an offer immediately rejected by the White House.

The Quint was the key to keeping the Western alliance together.²² This was important because, as the air campaign dragged on, some NATO countries seemed to have second thoughts. While the Alliance would ultimately stay together, any sign of internal disagreement or lack of resolve was grist to Milošević's mill, hoping as he did to ride out the bombing campaign as NATO's unity fractured around it. Milošević had put his hopes first on the Russians, and then on other members of the Alliance, such as Italy, Germany and Greece whom he believed lacked the necessary resistance for a prolonged war. Greece, in particular, was a source of concern to Quint leaders, since public opposition to a war against a Christian Orthodox sister nation was running at 95 per cent. The US became frustrated due to mounting public criticism against a campaign with no visible results. The KLA was not succeeding in their fight against Serbian forces. Milošević decided to push Kosovo-Albanians out as an air defence tactic: by doing so, he sought to undermine the KLA's backbone and destabilise neighbouring countries by provoking a humanitarian crisis. NATO realised the need to deploy ground troops, something that most Alliance members were not willing to do.

The Quint was aware that without some level of concurrence from the Russian Federation negotiations would drag on endlessly, putting in jeopardy the possibility of a timely solution. Russia had to be on board despite the fact that its position in the international arena had weakened considerably; in 1999, it was waging war in Chechnya and seeking to recover from the collapse it suffered in 1997.

Following an informal meeting of the heads of state and government of the European Union, with the presence of the UN Secretary-General, on 16 April, a G-8 proposal for a peace agreement in Kosovo was submitted at Germany's initiative. On 6 May, the G-8 agreed on a set of general guiding principles to achieve a political solution to the Kosovo crisis.²³ After a round of talks, the conclusions of the EU foreign ministers meeting on Kosovo were presented on 17 May. Two days later, G-8 political directors met in Bonn and on 27 May, the Preparation conference for a stability pact for Southeastern Europe took place. On 1 June, German Foreign Minister Fischer received a letter from President Milošević stating his readiness to withdraw forces from Kosovo and to accept a UN presence in the Serbian province. The Yugoslav government agreed to the G-8 proposal of principles to settle the Kosovo crisis.²⁴ The Serbian Parliament approved a Peace Interim Agreement on this basis on 3 June. During

²² According to Foreign Office and French officials in declarations to *The Observer*.

²³ United Nations Security Council resolution 1244, op.cit.; S/1999/516, annex 1.

a meeting held on 3-4 June in Belgrade, a peace deal with President Milošević was brokered by EU Special Envoy Martti Ahtisaari and Russian Federation Special Envoy Viktor Chernomyrdin, accompanied by Special Adviser Valentin Sergejev. On 5 June, representatives of NATO and of the Yugoslav government finalised the details in preparation of a Military-Technical Agreement. Finally, on 8 June, G-8 foreign ministers, at a meeting held in Cologne, reached an agreement on a draft resolution on Kosovo for the UN Security Council, and EU Special Envoy Ahtisaari met the Chinese president and the Chinese foreign minister in Beijing. After 78 days of air campaign and under Russia's pressure, Milošević accepted the ceasefire conditions and signed the Military-Technical Agreement, on 9 June 1999.²⁵

III. Mandate design and origin

On 10 June 1999, the Security Council adopted resolution 1244. Approved with 14 affirmative votes and one abstention (China), the resolution authorised the deployment of international security and civil presences in Kosovo under UN auspices and laid down the mandate for both operations. The table below sets out the main responsibilities assigned to KFOR and UNMIK.

Main responsibilities of international presences	
Security (KFOR) ²⁶	Civil (UNMIK) ²⁷
<p>To maintain and enforce the cease-fire;</p> <p>To ensure the withdrawal and to prevent the return of Serbian forces, except of those allowed to return to liaise with the international presences, to mark/clear minefields and to maintain a presence at patrimonial sites and key border crossings;</p> <p>To demilitarise the Kosovo Liberation Army and other armed Kosovo-Albanian groups;²⁸</p> <p>To establish a secure environment for those displaced to return in safety, for humanitarian aid to be delivered and for the international civil presence to operate;</p> <p>To conduct border monitoring duties;</p> <p>To ensure the protection and freedom of movement of international organisations;</p> <p>To ensure public safety and order and supervise demining until the international civil presence takes over those responsibilities.</p>	<p>To perform basic civilian administrative functions where and as long as required;</p> <p>To maintain civil law and order; including the establishment of local police forces;</p> <p>To protect and promote human rights and assure the safe return of all displaced people to their homes;</p> <p>To support humanitarian and disaster relief aid and the reconstruction of key and other economic infrastructure;</p> <p>To establish and oversee the development, consolidation and ulterior transfer of provisional self-governing institutions;</p> <p>To facilitate the political process towards status, in full account of the principles contained in Annex 2 of resolution 1244 (1999) and the Rambouillet Accords;²⁹</p> <p>At a final stage, to oversee the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.</p>

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As evidenced by the chain of events, resolution 1244 (1999) was conceived, negotiated and drafted in its entirety outside the multilateral framework of the United Nations. A German initiative at its outset, its content was discussed and agreed upon by the Quint in the form of general principles for a solution to the Kosovo crisis at the G-8 meeting of 6 May 1999. The final wording of the draft resolution was agreed upon at the G-8 meeting of 8 June and the text was sent to New York for the Council to vote. By the time that President Milošević started to withdraw forces from Kosovo,³⁰ the draft resolution counted on the tacit support of Russia.

Contrary to most Security Council resolutions, it can be argued that far from representing an understanding on the lowest common denominator, resolution 1244 (1999) created a reality that was subject to open-ended interpretation with a state-making element to it. Fully drafted outside the organisation – a case unprecedented in the history of the Security Council – it contains two principles that encapsulate the opposing positions at stake. On the one hand, an open-ended temporal framework that deprives the Federal Republic of Yugoslavia of all authority over Kosovo and leaves it under an international presence for an indefinite period of time and, on the other hand, the obligation to uphold the principles of sovereignty and protection of the territorial integrity of Yugoslavia.

The Rambouillet Agreement³¹ is an important factor in explaining the position of the Government of Serbia and its attitude towards the operations approved by resolution 1244 (1999). The body of the resolution includes four mentions to the Rambouillet Accords.³² However, only one directly relates to the future political status of Kosovo and omits the prescription of respect for FRY sovereignty and territorial integrity: 'the main responsibilities of the international civil presence will include [...] [f]acilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet Accords',³³ which implicitly include the holding of a referendum to determine the final political status, at the very end of the text:

Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement,

²⁴ Ibid.; and S/1999/649, annex 2.

²⁵ Military-Technical Agreement, op. cit.

²⁶ United Nations Security Council resolution 1244, op. cit., para. 9.

²⁷ Ibid., para. 11.

²⁸ Demilitarisation, demobilisation and further reintegration of the KLA took place mainly through the relocation of its membership in the Kosovo Police Service (KPS) and – most of them – in the Kosovo Protection Corps (KPC). The KPC would gather around 5,000 of these demobilised KLA members to perform civil protection functions within the provisional institutions established, the organisation and competences of which were to be under KFOR's and UNMIK's oversight.

²⁹ S/1999/648 of 7 June.

³⁰ The full text of the draft resolution was leaked and published by CNN on 8 June, available at www.cnn.com/WORLD/europe/9906/08/resolution.text/.

³¹ The full text of the agreement (later to be referenced as UN document S/1999/648) was not revealed to the public until after the beginning of NATO's campaign, when it was leaked to the press.

³² United Nations Security Council resolution 1244, op. cit., para. 11, items (a) and (e); Annex 1, item 6; and Annex 2, item 8.

³³ Ibid., para. 11, item (e).

*and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures.*³⁴

What is not clearly determined in the accords is the census that would be applied in the consultation, a key factor to determine its outcome. Worth mentioning is the binding character of the Helsinki Final Act regarding the determination of a final settlement for Kosovo in the text of the accords.

During the debate of 10 June, Ambassador Lavrov justified his country's support for the draft resolution by saying that it restored the Kosovo settlement to the political track, along with the central role of the United Nations. The resolution – he said – authorised the deployment of international civil and security presences with a clearly formulated, specific mandate. Later discrepancies on the mandate's true meaning and scope would put to the test the veracity of this statement. Abstaining China – a country whose embassy in Belgrade had been hit by NATO missiles during the air campaign – said that the 'human rights over sovereignty theory served to infringe upon the sovereignty of other states and to promote hegemonic power under the pretext of human rights'.

Elected members of the Council that had been sidelined from the negotiations were sceptical of a proposal that shed no light on the end point of the political process dictated by the resolution. Several disliked the fact that negotiations had been led by the Quint outside the Council's framework, but many – because of their strong views against separatist movements – showed no desire of taking part in the discussions once NATO's campaign had dramatically altered the situation on the ground. Such was the case of Indonesia, which preferred not to become involved in the matter.

The resolution was the result of a compromise between a number of Western countries and Russia to stop the cycle of violence in the Western Balkans. It was inspired by the values of Western democracies, at a time when the power of Russia had eroded considerably. Yugoslavia was thereby deprived of all its sovereignty attributes over the territory of Kosovo, while retaining a void nominal right, a situation to be later inherited by Serbia as the successor state upon the demise of the Federal Republic of Yugoslavia. The resolution became obsolete upon implementation and there was neither sufficient leverage nor political will on any side to review it.

While it is not unusual for draft resolutions to be negotiated prior to their presentation at informal consultations of the Security Council, this practice had become the rule in the case of the Balkans. The Contact Group for the former Yugoslavia, the informal grouping of influential countries with significant interests in the Balkans,³⁵ worked through the so-called Consultative and Coordination Process in New York relating to the Work of the Contact Group (CCP)³⁶ and acted outside the framework of the Council, while seeking retroactive UN blessing for their actions.

³⁴ S/1999/648, op. cit.; Rambouillet Agreement, Chapter 8, Amendment, Comprehensive Assessment and Final Clauses. Article I, para. 3. [Author's underlining].

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Kosovo-Albanian actors maintained regular, though bilateral, talks with some states of the Contact Group during the NATO campaign. The extent to which their views and needs were reflected on the mandate remains uncertain. There is no evidence of consultation with Kosovo-Serbian actors prior to the arrival in Kosovo of the international presence. The views of the Government of Serbia, despite permanent consultations via UN Special Envoy and former President Ahtisaari and Russian Special Envoy and former Prime Minister Chernomyrdin, do not seem to have been taken into account. The precedent of the mission in Bosnia-Herzegovina heavily influenced the process; some of the lessons learnt weighed considerably on the principles adopted to guide the drafting of the mandate for Kosovo. Formal consent from Serbia was achieved, cooperation was demanded. Serbia's real consent was never achieved neither was its government's full and permanent cooperation with the international presence.

In the process leading to the approval of resolution 1244 (1999), the position of Kosovo's neighbouring countries within the framework of multilateral organisations was guided by their own perceived interests. Slovenia voiced its strong support for the intervention at the Council; others that may have been more reluctant, avoided confrontation not to jeopardise the prospects of future EU integration. The situation of Montenegro and the possibility of its separation from Serbia weighted on the G-8 when drafting resolution 1244 (1999). FYROM's policy was influenced by its border dispute with Serbia and by European policies. Albania was cautiously active in support of Kosovo-Albanians. The Stability Pact, established at Germany's initiative, served as a forum to defuse potential regional tensions.

Close to the end of NATO's air campaign, on 20-22 May the UN Secretariat sent a needs-assessment mission to Kosovo. This assessment was undertaken prior to mandate formulation, but did not alter the text. Immediately after the adoption of resolution 1244 (1999), a small advanced team was sent to Kosovo to determine the entity and quality of the operation to be deployed. The team proposed the structure of the civil presence based on its own assessment; the structure foreseen did not substantially change over the period of implementation of the mandate. The assessment was carried out in the field in consultation with local actors present in the area of deployment. At this stage, these included Kosovo-Albanian representatives of the different political sectors, Kosovo-Serbs and even Serbian government representatives still present on the ground, as Žoran Andjelković, President of the Interim Executive Council of Kosovo-Metohija.³⁷

³⁵ United States, United Kingdom, France, Germany, Italy, and Russia.

³⁶ The members of the Contact Group for the Former Yugoslavia established the CCP, later renamed Consultation and Drafting Group on Kosovo (CDG), to move their policy on Balkan issues upward to receive the formal blessing of the Security Council, through settling differences outside the Council before a draft was introduced. See J. Prantl, 'The UN Security Council and Informal Groups of States: Complementing or Competing for Governance?', OUP, 2006.

³⁷ Interview with a member of the Advanced Team.

I. Why Chapter VII?

Resolution 1244 (1999) is the last of a series of UNSC resolutions addressing the situation in Kosovo. At least three of them included measures adopted under Chapter VII³⁸ – resolutions 1160 (1998), 1199 (1998) and 1203 (1998). Resolution 1160 (1998) carried a stronger enforcement provision than those that followed, through the imposition of an arms embargo, the termination of which was subject to the fulfilment of a number of conditions by the parties to settle the conflict. Resolution 1199 (1998) prolonged the embargo and contained a decision to consider further enforcement measures; and resolution 1203 (1998) endorsed KVM, demanded the parties to implement a ceasefire agreement and full cooperation with KVM, and reiterated the embargo, save for KVM needs. Resolution 1244 (1999) carries the strongest enforcement provision, through actions that require the Council's authorisation under Chapter VII, while the earlier resolutions rely on cooperation from the parties. Resolution 1244 (1999), however, does not constitute a traditional Chapter VII resolution *stricto sensu*. Intervention came after the use of force and not for the use of force. It was designed to act upon the reality engendered by the use of force, implicitly legitimising it. As evidenced from the debate surrounding the crisis, the rationale to circumvent the Council resulted from the conviction of major Western powers that obtaining authorisation for the use of force considered necessary in the circumstances would have never been possible within the UN framework.

The mandate contained in resolution 1244 (1999) is a Chapter VII mandate, not only due to its explicit mention, but also because of its 'terms of reference'. It prescribes – both explicitly and implicitly – responsibilities that require cooperation from the parties, while giving ultimate authority to the international presence. It establishes an interim administration with the power to legislate and execute government functions, thereby enforcing the suspension of the attributes of sovereignty of Yugoslavia (and of Serbia as its successor state), by placing administrative, policing and military custody of national borders, amongst other state functions, in the hands of an international authority. It dictates the establishment of a political process for the solution of a conflict in the territory of Serbia and for its nationals, and leaves the direction of such process outside the reach of the Government of Serbia, from which it only requires formal consent.

Resolution 1244 (1999) is still in force: no review has been possible since its inception. The Council has only managed to agree on a few occasions to make an official pronouncement through a presidential statement. Furthermore, there were only three truly relevant presidential statements – containing such a pronouncement – between 1999 and 2005:³⁹ in 2003, in support of the 'Standards before Status' policy; in 2004, condemning the violent events of March; and in 2005, as the Council welcomed the report prepared by the UN Secretary-General's Standards Review Envoy, Ambassador

³⁸ Chapter VII refers to 'Action with respect to the Peace, Breaches of the Peace and Acts of Aggression' and authorises enforcement measures – including the use of military force – to restore international peace and security in cases of threat or acts of aggression. The qualifying element of a Chapter VII operation lies, therefore, on the enforcement nature of its mandate and not so much on the use of force or threat of use of force, though the latter comes usually linked with the enforcement.

³⁹ S/PRST/2003/26 of 12 December; S/PRST/2004/5 of 18 March; and S/PRST/2005/51 of 24 October.

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Kai Eide, on the Comprehensive Review of the Implementation of Standards.⁴⁰ In December 2008, after three years of silence, the Council was again able to agree on a presidential statement to endorse the Secretary-General's proposal for the reconfiguration of UNMIK.

Resolution 1325 (2000) on women and peace and security, adopted a year after resolution 1244 (1999), bore the urgent need of mainstreaming the gender perspective into all matters related to conflict and conflict resolution, with particular emphasis on peacekeeping operations. Though in itself it does not carry any measure for enforcement, it places the issue under the brief of the Council.

IV. Mandate implementation

I. Structure and functions of the international civil and security presences

UNMIK


Following the approval of resolution 1244 (1999), two reports of the Secretary-General to the UNSC⁴¹ provided the framework and organisation of the United Nations Interim Administration Mission in Kosovo. Both reports were drafted by the advanced team headed by the Special Representative of the Secretary-General (SRSG) ad interim, the late Sergio Vieira de Mello. They outlined the structure, functions and competences of the mission and its various components, with special attention to security, law and order, and the rule of law. Soon thereafter, the first SRSG regulations were approved as regulatory tools for the provisional administration of Kosovo. Although UNMIK administration resembled that of a state, its departments and personnel were never accountable to the judiciary for their administrative acts, or subject to extra-judicial control.

The SRSG was to discharge his responsibilities with the assistance of five⁴² Deputy Special Representatives (DSRSG), one of whom, the Principal Deputy Special Representative (PDSRSG), without a specifically assigned portfolio, would act as *primus inter pares* and replace the SRSG when absent. The mission was structured into four components, known as pillars: Pillar I, Humanitarian Affairs, led by UNHCR and in charge of humanitarian assistance and demining activities; Pillar II, Civil Administration, led by the UN Secretariat and in charge of the administration of the territory; Pillar

⁴⁰ This report (S/2005/635) was forwarded by the Secretary-General to the Council, on 7 October 2005, as a continuation of the work started earlier in the year and represented by the Secretary-General's report of 23 May 2005 (S/2005/335) in which he initiated the Comprehensive Review conducted by Ambassador Eide.

⁴¹ S/1999/672 of 12 June 1999 and S/1999/779 of 12 July 1999.

⁴² Initially, only four DSRSG were foreseen, wielding the DSRSG Civil Administration representation powers in the absence of the SRSG, functions presently carried out by the PDSRSG, a figure already present on the aforementioned report of 12 July (S/1999/779).



III, Institution-Building, led by the OSCE and in charge of democratisation, elections and human rights; and Pillar IV, Reconstruction, led by the EU and in charge of economic and financial reconstruction. At the end of the emergency phase, UNHCR left UNMIK but remained in Kosovo in pursuit of its statutory mandate, and Pillar I eventually assumed police and justice functions until then exercised by the Civil Administration Pillar. UNMIK lost its EU Pillar at the end of June 2008. The Police and Justice Pillar would be replaced by EULEX, which has finalised deployment in March 2009.

KFOR

The Kosovo Force is a NATO-led operation initially composed of some 50,000 personnel from member countries, partner countries and non-NATO countries under unified command and control, within the framework known as the NATO+ format.⁴³

KFOR was initially structured into five regionally-based multinational brigades (MNB), with its main headquarters in Pristina and a rear headquarters and most national supporting elements in FYROM. The Force Commander (COMKFOR) reports to the Commander of Joint Force Command Naples (COM JFCN) in Naples, Italy. Its direct relationship with the Security Council is limited to reporting obligations that KFOR discharges through the Secretary-General.

In the summer of 2002, the five original MNB were reduced to four, with the merging of MNB West and MNB South. The setback represented by the violence that erupted in March 2004 was followed by the rapid deployment of additional troops to reinforce the existing KFOR strength. NATO defence ministers agreed at their meeting in Brussels in December 2004 to maintain a robust KFOR profile during 2005. In August 2005, the North Atlantic Council (NAC) decided to restructure KFOR, replacing the four MNB with five multinational task forces (MNTF). This change allowed for greater flexibility with the removal of restrictions on the cross-boundary movement of units based in different sectors of Kosovo. The move from brigades to task forces also placed more emphasis on intelligence-led operations. The task forces work closely with both the local police and the local population to gather information. The Alliance has promised to support the security provisions of any final settlement.

⁴³ *Ad hoc* cooperative mechanism for partnership developed between NATO and non-NATO countries.

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Resolution 1244 (1999) main accountabilities in a snapshot

It demands from the Federal Republic of Yugoslavia the immediate and verifiable end of violence and repression, and the withdrawal of Serbian military, police and paramilitary forces. It allows for the return of a small number (hundreds) of Yugoslav and Serbian military and police personnel to perform the following four functions: liaising with international presence; marking/clearing mines; maintaining presence at patrimonial sites; and maintaining presence at key border crossings.

Withdrawal of Yugoslav and Serbian forces was completed on 20 June, but the return to Kosovo of a small number of its police and military, as foreseen in the resolution, has not been implemented in practice.

It places Kosovo under an interim administration with directions to establish Provisional Institutions of Self-Government and to facilitate a political process towards the establishment of an interim political framework agreement providing for substantial self-government, and therefore authorises the deployment of a civil presence, led by the UN with the assistance of UNHCR, the EU and OSCE and the deployment of a security presence, a NATO-led peacekeeping force in Kosovo, both endorsed by the United Nations.

UNMIK remains the nominal administrator in Kosovo, though with no real authority at present, an authority which started to subside – amongst other factors – as a consequence of its reaction (or lack thereof) vis-à-vis the civil unrest of March 2004, which sparked status process by the end of 2004.

KFOR has in the past, and more now, adopted institutional and capacity-building functions, particularly in the case of the Kosovo Protection Corps (KPC) and now, though only performed by NATO countries with national approval, with the newly created Kosovo Security Force (KSF).

Provisional Institutions of Self-Government were successfully established, following the approval of a Constitutional Framework and the holding of Kosovo-wide polls. Kosovo-Serb participation was never fully achieved and Kosovo-Serb parallel institutions – unofficially led/supported by Belgrade – still administer the territory, north of the Ibar river.

It requires the UN to ensure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo and to secure conditions for a peaceful and normal life for all inhabitants of the province.

After 10 June 1999, in barely over three weeks, hundreds of thousands of refugees and internally displaced persons (IDPs) returned to Kosovo (though not necessarily to their homes), a figure that according to UNHCR rose to more than 800,000 by the end of October 1999.⁴⁴ As Kosovo-Albanians returned, the minority communities in the province, particularly Kosovo-Serbs and Roma, began their exodus fleeing acts of revenge and retaliation from the Kosovo-Albanian majority. An important part of the Kosovo-Serbian and other non-Albanian population of Kosovo were subsequently displaced in revenge. Shortly after the war, the number of ethnic Serbs in Kosovo was less than 25 per cent of the pre-conflict population figures.⁴⁵ According to UNHCR, there are still more than 220,000 displaced Kosovo-Serbs and Roma – over 207,000 of them in Serbia and the rest in Montenegro.⁴⁶ The non-Albanian exodus from Kosovo continues.

⁴⁴ Conference Documents and Reports, Kosovo International Human Rights Conference, 10-11 December 1999, p. 134, available at www.osce.org/documents/mik/2000/01/989_en.pdf.

⁴⁵ On 15 October 1999, the Yugoslav Red Cross and local authorities indicated that the total number of registered internally displaced persons from Kosovo in Serbia and Montenegro stood at 230,884.

⁴⁶ www.unhcr.org/news/NEWS/4513b490b.html.

It requires that the KLA and other armed Kosovo-Albanian groups be demilitarised.

Undertaken by the KLA on 20 June, who thereby committed to conclude on 19 September, it nominally took place on 21 September, following an agreement for its subsequent 'transformation' into the KPC; violence continued to be exerted by Kosovo-Albanian armed groups onto the population, both of Albanian and non-Albanian origin.

The political process to determine Kosovo's future status, its level and forms of autonomy shall be carried out taking full account of the Rambouillet Accords and in full respect of the principles of sovereignty and territorial integrity of FRY (to which Serbia is now the recognised successor state).

Launched following Kai Eide's reports, it began in late 2005 under the auspices of the United Nations that tasked Special Envoy Martti Ahtisaari, former Prime Minister of Finland, to find a negotiated final status solution for Kosovo. His proposal for status – of supervised independence – was not approved by the UNSC, due to reticence by the permanent members following the complete disagreement of the Republic of Serbia with the negotiation process and with the negotiator. The Council thereafter charged the EU, Russia and the US – commonly known as the 'troika' – to continue the negotiations. This latter process ended in December 2007.

a) Security

The mandate authorised the use of force beyond self-defence, whenever necessary to implement the mandate, that is, enforcing the ceasefire,⁴⁷ authorising the security presence to 'operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission.'⁴⁸ The lead in maintaining a stable and secure environment and other military duties was assumed by KFOR, a multinational operation willing to deploy forces under NATO, with robust rules of engagement (ROE), its own line of command and having obtained authorisation from the Security Council.

The Council defined no timeline for engagement on the ground; the Council only requested early deployment and demanded full cooperation from the parties.⁴⁹ The security presence synchronised its deployment with the phased withdrawal of Serbian forces.⁵⁰ The authorised use of force was relevant, timely and sufficiently forceful for the stated purpose of ensuring the withdrawal of Serbian forces and protecting the population of Kosovo. Completion of withdrawal of Serbian forces and their replacement by international troops was followed by the prompt and massive return of Kosovo-Albanian refugees to Kosovo.

The framework for the ROE⁵¹ established for the Kosovo operation went further than those that restrict the legitimate use of force to self-defence. The ROE extended the use of force to other situations, detailing the circumstances of such situations and determining who had the capacity to

⁴⁷ United Nations Security Council resolution 1244, op. cit., para. 9 (a).

⁴⁸ Point 2, Military-Technical Agreement, op. cit.; the particulars of the use of force are regulated by the applicable rules of engagement.

⁴⁹ United Nations Security Council resolution 1244, op. cit., para. 8.

⁵⁰ Ibid., para. 3.

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decide when to use it. KFOR was authorised to use force – subject to limitations and conditions – in, *inter alia*, riot control; the prevention of serious crimes⁵² occurring or about to occur; attacks demonstrating hostile intent or committing or contributing to a hostile act towards forces, friendly forces or persons designated with special status; or even in preventing the detention or seizure of property belonging to NATO-led forces, persons designated with special status or property designated with special status, including (but not limited to) when necessary and when explicitly stated in the rule, property of the local population.⁵³

In the first months following initial deployment, retaliatory and ethnic-based attacks against the physical integrity and property of minority groups, particularly the Kosovo-Serbs and Roma, were frequent. This led to an exodus of Serbs and other minorities that many critics labelled as 'reversed ethnic cleansing'. The fact that it happened in a territory under international administration and under the protection of some 50,000 well-armed and equipped troops was particularly harmful to the credibility of the international presence. The protection mandate was hampered by the initial failure to apply a robust enough intervention policy. International attention seemed exclusively focused on reaching an understanding among the Kosovo-Albanians and failed to prevent the murder of Serb villagers and other minority representatives. The gradual adoption of appropriate security measures and mechanisms for the protection of Gračanica and other minority enclaves and for the transportation of members of the local communities improved their situation substantially, but by the time these measures were implemented most of the Serbs and many Roma had fled, having left behind their homes and property.


During the subsequent period, minorities were regularly under the protection of international troops, and the security situation steadily improved. KFOR's strength and willingness to operate forcefully subsided as the situation improved. By the beginning of 2002, NATO had reduced KFOR troop levels considerably. A serious reversal took place in March 2004, when a renewed wave of violence resulted in the killing of more than 30 people, mostly Serbs, and the massive destruction of their personal and patrimonial property in several municipalities. The lack of an appropriate response from UNMIK and KFOR drew attention to insufficient planning, anticipation and appropriate mechanisms to respond to such situations.

The Council's reaction to these events was of strong condemnation. In a meeting that counted with the participation of German Foreign Minister Joschka Fischer, the representative of the democratically-

⁵¹ The ROE established provide political direction for the conduct of military operations, including authorisations for, and limitations on, the threat or use of force or actions which might be construed as provocative; ROE do not limit the inherent right of self-defence. National law may further limit the use of force by member states in certain types of military operations or in certain situations. ROE are directives to military forces (including individuals) that define the circumstances, conditions, degree, and manner in which force or actions which might be construed as provocative, may be applied. ROE are not used to assign tasks or give tactical instructions. The ROE established provided the sole authority to NATO-led forces to use force. The use of force, and in particular; the authority to use deadly force to accomplish a mission receives detailed scrutiny and attention.

⁵² Any act of arson or damage to ethnic, religious or cultural property constitutes a serious threat to the maintenance of a safe and secure environment in Kosovo. These acts are to be considered serious crimes.

⁵³ The specific rule on each case should specify who is authorised to decide on the determination of persons designated with special status or property designated with special status.



elected government that had succeeded Milošević in Belgrade, Foreign Minister Goran Svilanović, strongly denounced the attacks, which had happened 'almost five years after the establishment of an international presence'. He said the events seemed to show that 'there was no life for (the Serbs) in the province, and that they should leave'. Resolution 1244 (1999) and its commitment to the return of all refugees and the creation of a secure and safe environment for all communities would not be implemented. Condemning the riots, Joschka Fischer said the people of Kosovo faced a stark choice: either 'create a society based on tolerance, multi-ethnicity or democratic values', or 'live in chaos and misery'. More concretely, the representative of the UK, Sir Emyr Jones Parry, announced that his country was deploying a spearhead battalion to be on the ground that same night, the Operational Reserve Force.⁵⁴

Enforcement problems did not in fact derive from how robust the mandate was regarding the level of authorised use of force or from the difficulties in increasing the level of troops at a given moment (a good example of this was the UK 1,000-troop contingent that KFOR deployed on 18 March 2004 within 24 hours). They were the result of the caveats imposed by the troop-contributing countries that placed limitations on the rules of engagement. KFOR's response to situations faced in the areas of responsibility of the national contingents present in the territory of Kosovo varied in attitude, strength and involvement.

Even though resolution 1244 (1999) makes no mention of the role of the Commander Kosovo Force, it does establish the requirement of a unified command and control.⁵⁵ Most local interviewees expressed no doubts in their conversations with FRIDE about the unified character of the command; international civil servants and observers in Kosovo, in turn, considered the role of COMKFOR to be that of a coordinator rather than of a military commander.

In addition to the fulfilment of its mandated responsibilities, resolution 1244 (1999) implicitly required KFOR to report to the Council regularly,⁵⁶ through the Secretary-General. Its reporting was limited to that required by NATO's chain of command (JFC Naples, Italy; Allied Command Operations/Supreme Headquarters Allied Power Europe, ACO/SHAPE Mons, Belgium; and NAC, Brussels, Belgium), and to belated monthly activity reports to the Security Council through the UN Secretary-General. These reports on KFOR progress and activities were sent to the Secretary-General for their transmittal to the Council, prior approval through the NATO chain of command, usually with several months of delay. There seems to be no other record of direct relations between the Council and KFOR. KFOR has not regularly fulfilled its reporting obligations to the UNSC under resolution 1160 (1998).

Inadequate communication between UNMIK and KFOR did not help effectiveness in implementing the mandate. KFOR initiated and completed the transfer of policing and demining responsibilities to UNMIK through Memoranda of Understanding signed at KFOR Multinational Brigades/UNMIK Regional Administration, while retaining control of the overall security situation on the ground, not

⁵⁴ See S/PV.4928 of 18 March 2004.

⁵⁵ United Nations Security Council resolution 1244, *op. cit.*, para. 7 and Annex 2, point 4.

⁵⁶ *Ibid.*, para. 20.

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always in coordination with UNMIK. While the relation was officially reported as cooperative and efficient, some UNMIK officials complained of KFOR's alleged lack of transparency and the existence of a one-way flow of information, going exclusively from UNMIK to KFOR. KFOR officials, in turn, explained their reluctance to share information considered confidential or restricted on the grounds of the presumed porosity of UNMIK pillars and police, and seemed to lack guidance on the matter.

The responsibility over training received by KFOR military personnel prior to deployment was under the exclusive jurisdiction of their national authorities, as was the case of the military personnel deployed as liaison officers within UNMIK, the latter being tested upon arrival on a number of abilities necessary to perform their functions. The soundness of the tests was nevertheless strongly contested by many interviewees. The selection and training of police personnel was also under the responsibility of the respective contributing nation. Officers to be deployed would undergo a test prepared by the UN (known as SAT) and, upon arrival in the field, would be briefed, *inter alia*, on the peace operation, the situation on the ground, cultural traits of the local population, the UN code of conduct, appropriate behaviour, and basic norms of human rights, humanitarian and rule of law issues. Though brief and very general, the training programme aimed at covering the most fundamental human rights issues and served to underscore the basic rules of behaviour. Great emphasis was placed on mainstreaming the gender perspective in police work, though the focus centred on addressing internal rules, rather than the external behaviour of the police.

The operation's security plan was generally criticised for its failure to take into account the executive character of the mandate and the functions of direct administration it entailed for international officials. This deficiency became evident when, on the occasion of the ethnic-motivated riots of March 2004, UNMIK realised that it should not evacuate police or any other law enforcement or adjudicating officials, even in the event of an emergency, as foreseen in the plan.

b) Peacebuilding

The mandate carries an important peacebuilding commitment by both presences in areas as important as demobilisation, reintegration of former fighters (covering both male and female, as no distinction was designed or sought); the setting up of a democratic security sector; the establishment and reinforcement of the rule of law; and the development of the whole array of political institutions needed to proceed with the devolution of administrative competences, once the international mandate had come to an end, to the institutions established under a political settlement.⁵⁷

Deprived of its autonomy since 1989 by the Government of Serbia, since the approval of resolution 1244 (1999) Kosovo came to be administered by UNMIK, endowed with transitional legislative and executive powers on behalf of the international community. The resolution prescribes as a model a plural society (by implication, if not explicitly, multi-cultural and multi-ethnic),⁵⁸ under the guidance and supervision of an international civil presence. This approach met systematic resistance from the Kosovo-Serbs, who were reluctant to be part of the transitional public administration out of fear of

⁵⁷ Ibid., para. 11, item (f).

attacks by Albanian extremists and of reprisals from the government in Belgrade,⁵⁹ mainly of – but not restricted to – an economic nature, for being spotted as collaborating with the international occupation forces. In general, cooperation with the international presence worked better in the areas of security and police than in other areas of the civil administration.

Early staffing deficiencies delayed effective engagement and facilitated the emergence of self-appointed administrative structures.⁶⁰ This situation was largely redressed in subsequent stages through the gradual incorporation of representatives of local groups and parties into the interim administrative structures, particularly after the municipal and Kosovo-wide elections held in October of 2000 and November 2001, respectively, and the establishment of Transitional Self-Government Institutions at both levels of administration. Cases of incompetence, a perceived lack of direction in the absence of a temporal limit and instances of corruption by international officials in connivance with local partners did nothing to cement the trust that the people of Kosovo had placed on the international civil presence. The mechanisms to ensure accountability for misconduct were handled through standard Department of Administration administrative procedures and lacked transparency and publicity, proving ineffective to avoid abuse. There were nevertheless cases of serious crimes where immunity was almost automatically lifted and which were judicially investigated and criminally prosecuted before panels with a majority of international judges.

The more troubling fact, however, is that despite its many successes in developing an administrative structure where nothing existed, UNMIK failed to create an atmosphere where a multi-ethnic society would thrive, establishing credible political structures that would facilitate negotiations towards a final and agreed solution to the situation in Kosovo. Some forms of horizontal cooperation between the Serbian authorities and the international presences developed throughout the mandate at operational levels, depending on the personality of the individuals involved at each stage, yielding better results with KFOR and UNMIK police. UNMIK was nevertheless unable to extend its transitional administrative functions and those of the Kosovo Self-Government Institutions it helped to create

⁵⁸The Security Council requests the security presence to 'establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees', *Ibid.*, Annex 2, principle 4. It also authorises the Secretary-General to establish an international civil presence [...] which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo', *Ibid.*, para. 10; Annex 1, principle 4; and Annex 2, principle 5.

⁵⁹ A fact relevant to the attitude of Kosovo-Serbs and the Serbian government *vis-à-vis* UNMIK institution-building efforts in Kosovo, it is worth mentioning the agreement establishing the Joint Interim Administrative Structure (JIAS) signed by the international administration, on 15 December 1999, with three Kosovo-Albanian leaders, implicitly excluding Kosovo-Serbs, as well as other non-Albanian with an even more marginal presence in the territory of Kosovo.

They were later invited to participate in the resulting administrative structures. The Serbian National Council (SNC) of Gračanica – led by Bishop Artemije – publicly and officially denounced the agreement, stating that the Serbian minority had been called to legitimise a decision taken without its concurrence. All different branches of the SNC, at a meeting without precedent as it counted on the presence of the Mitrovica Branch, led by Oliver Ivanović, discussed the text of the agreement and concluded stating that they would not participate. They did participate at a latter stage.

⁶⁰ For a detailed account of how the substitution of the international administration's role (due to the initial power vacuum resulting from the quantitative and qualitative difficulties in recruiting) by the Kosovo-Albanian parallel structures operated, see International Crisis Group, 'Waiting For UNMIK: Local Administration in Kosovo', Europe Report 79, 18 October 1999, available at www.crisisgroup.org/home/index.cfm?id=1583&l=1.

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to the north of the Ibar river in the Mitrovica region, the only one in Kosovo where Kosovo-Serbs are the majority and the governmental, administrative and judicial structures from Belgrade still hold sway.

Disarmament and demobilisation of former KLA fighters was a task performed by the security presence, though administratively shared with the International Organisation for Migration (IOM) that assumed the task of registering demobilised KLA fighters. Reintegration was mainly channelled through the integration of those demobilised into the Kosovo Protection Corps (a civil protection body agreed upon in September 1999, the responsibilities of which would include tasks in disaster relief and certain tasks in demining) and the Kosovo Police Service; demobilised female fighters' participation in both structures was very small, when not marginal. Reintegration tasks were shared by KFOR and UNMIK to develop a coherent process of demobilisation and security sector reform.


The enforcement provisions had an impact on the implementation of the peacebuilding aspects of the mandate, which varied depending on the personality and profile of the SRSG and the political support he received from local actors. In the north of Kosovo, such support would have helped the UN to extend its influence and hence reduce the leverage of Serbian parallel structures *vis-à-vis* the local Kosovo-Serbian population.

Until the Serbian elections of October 2000, the government in Belgrade openly opposed and obstructed the international presence, an attitude that would only change little and gradually. Kosovo-Serbs also faced problems with Belgrade, which tended to see them as a pawn in a larger game to regain influence, rather than as its own citizens. During the initial period, their main shortcomings stemmed from the difficulties they experienced with regard to freedom of movement, weak security protection and insufficient protection and promotion of their rights by the international presence.

The situation changed in 2001 as conditions improved. The Civil Administration established structures for the protection and promotion of minority rights through Local Community Offices at the municipal level. This development and better relations with the new Serbian government resulted in the participation of a considerable percentage of Kosovo-Serbs, both residing in Kosovo or displaced to other parts of Serbia, in the first Kosovo-wide elections. This fact, which reversed an earlier policy of boycott and abstention from elections called by the international authority, gave grounds for hopes that Kosovo-Serbs would join the post-elections Provisional Institutions of Self-Government.

Relations between Belgrade and UNMIK, however, suffered a steady decline in the ensuing period. Returns of Kosovo-Serbs did not proceed as rapidly as expected. Important as it was, the improvement of the security situation did not occur to the extent necessary for returns to proceed in full safety. The necessary economic backing for the returns programme was not a negligible aspect of its partial failure. Responsibility for this did not fall exclusively on UNMIK's back: the actual disposition of the government in Belgrade to facilitate returns was not as categorical as could have been desired.

The inability of KFOR and UNMIK to foresee, prevent and efficiently counteract the widespread violence that erupted in March 2004 against Kosovo-Serbs, their property and patrimonial sites in Kosovo, raised sharp criticism and dealt a serious blow to any prospect of enhanced relations. The latter suffered a regression to pre-1999 levels, a time when the international community was seen and denounced by



Belgrade as an accomplice in the anti-Serb policies of the Kosovo-Albanian majority. Only in 2007, with the repositioning of Russia as a world power and the ensuing failure of the process to define the final status of Kosovo, due to deadlock at the Security Council, did the situation start again to revert.

Belated engagement of the civil presence on the ground, difficulties in identifying and recruiting personnel with knowledge of public administration and experience in post-conflict situations, the cases of corruption, and lack of accountability contributed –amongst other factors – to the increasing discredit of the international presence. The selection and recruitment of UNMIK personnel was slow and inadequate. UNMIK administrative structures began operating after June 1999 but only became fully operational in 2001 with the establishment of the Provisional Institutions of Self-Government, following the adoption of the Constitutional Framework for Kosovo. Similar problems affected the police contingents. Being seconded, police personnel's working conditions and remuneration were neither unified nor under UN authority. This had a negative impact on the coherence and cohesiveness of the police force.

In the opinion of several Kosovo-Albanian analysts and elected members of the Assembly, the international administration did not take into account and did not use to good effect the ten year-long experience of the Kosovo-Albanian parallel structures in administering health and education. According to these sources, incorporating such experience would have lessened the international administration workload and enhanced its institution-building role.

The resolution did not provide a clear definition of the role and profile of the SRSG, merely stating that his responsibility was 'to control the implementation of the international civil presence'. This has led to confusion and is, to a large extent, the origin of the misperception amongst Kosovars from all ethnic groups regarding the role of UNMIK. Furthermore, the mandate only mentions a generic political directive: the Secretary-General should 'instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner'.⁶¹ Given the undefined character of the figure, the perception of his role has varied depending on the personality and conception of the tasks of each particular SRSG, shifting from administrator to 'dictator', or negotiator. In general, SRSGs had strong political profiles and only one, Jessen-Petersen, was considered an experienced administrator. He was seen by many as the most respected SRSG, though criticism was voiced about his reportedly too clear allegiance to the Kosovo-Albanian side of the conflict.⁶² There is a common belief that the role assigned to the SRSG should have been clearly defined as a reflection of the main tasks he was required to take over: in the case of Kosovo, those of an administrator.

Personnel and other resources

A fact of relevance for the peacebuilding mandate and the most acute problem affecting the day-to-day operations of the international civil administration was staffing, a function initially under the

⁶¹ United Nations Security Council resolution 1244, op. cit., para. 6.

⁶² Interviews held with local Kosovo-Albanian media and international officials.

⁶³ International staff, of Balkan and non-Balkan extraction, of organisations present in Kosovo.

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exclusive responsibility of the Department of Peacekeeping Operations (DPKO) in New York. This and the lengthy procedures meant that the time between recruitment and deployment would average six months or more. Late in 2000 selection and recruitment were delegated to UNMIK, speeding up procedures. In the eyes of many,⁶³ this was done to the detriment of scrupulous respect for sound selection and recruitment criteria. Despite criticisms, the decision to delegate had a positive effect on mandate implementation inasmuch as it facilitated the incorporation of professionals that would hold crucial positions throughout the territory. UNMIK was the first operation where selection and recruitment were delegated to the field; a successful pattern to be followed while applying adequate mechanisms to respect UN rules of recruitment and correct possible abuse. The marginal representation of women at UNMIK is worth noting. At UNMIK police, this presence was merely symbolic, although it is important to mention that police officers' pre-selection was decided by police-contributing countries. On the purely civilian side, the number of female staff members remained very small in global terms,⁶⁴ falling to marginal or no representation at all senior levels.

Aside from the difficulties posed by slow procedures, it is commonly believed that recruitment failed to take into account the reality on the ground due to inadequate needs-assessments. Many of those recruited at the beginning of the mission, civilians and police, came from the downsizing of the mission in Bosnia-Herzegovina, a fact that may explain to some extent the mismatch between the qualifications offered and those required. Some of the international officials interviewed noted that many of these initial recruits coming from Bosnia-Herzegovina might have also had strong anti-Serb feelings that contributed to the adoption of non-neutral political positions in the exercise of their functions.

Many officers lacked appropriate experience. The worst deficiencies occurred in the areas of police and justice, with negative consequences for the maintenance of civil law and order in full respect of the rule of law. Given the general instability affecting Kosovo, and in particular its judicial system, the integration of international judges and prosecutors was deemed necessary to reinforce the fragile rule of law. The frequent ethnically-motivated incidents in the area north of the Ibar river were the trigger for the decision to integrate international personnel to take up such delicate responsibilities. Cases of violation of the right to a fair trial and to an impartial judge were first detected in the District Court of Mitrovica, in particular in instances where the accused was of Serbian ethnicity or had been directly or indirectly related to the recent conflict. UNMIK concluded that only the involvement of international judges and prosecutors would redress the lack of impartiality. Lack of impartiality of the law adjudicating staff was due, in most of the cases, to the coercion exerted on them by certain sectors of society. A substitution of the primacy of the 'elders' in the social, judicial and administrative fabric of the past, by that of certain socio-criminal groups born of the recent conflicts was operating in Kosovo and, along with it, a pretended return to feudal norms and customs⁶⁵ that covertly aimed at the replacement of the elders of the community by young 'commanders' resulting from the recent conflict.⁶⁶

⁶⁴ An interviewee mentioned data from 2000 – non-confirmed – whereby females represented 20 per cent of the mission staff, a figure that fell to almost zero when referring to middle senior staff, stopping there.

⁶⁵ Amongst these, the most relevant is the Kanun (or code) of Lekë Dukagjini, name of the feudal lord who promulgated it. Dukagjini being the region in Albania known nowadays as Mirditë (and not the one presently known under that name) and where this lord ruled. Lekë is the Catholic Albanian version of Alexander.



It is within this framework that the integration of international judges and prosecutors in the judicial District of Mitrovica was established by regulation, to be later expanded to all judicial districts of Kosovo.⁶⁷ This regulation permitted the appointment of international judges and prosecutors under the same conditions as their local counterparts save for the internationals' entitlement to choose the cases for adjudication, the phase of the process where they would intervene and the nature of their participation. The rationale behind this type of integration was based on the goals of oversight and capacity-building. It involved cases where the nature of the crime adjudicated, the notoriety of the subjects involved, or both, demanded the establishment of a special jurisdiction where the free exercise of the judicial function would not be impaired. The emergency solution adopted thereafter was to allow a majority of internationals in criminal panels: the controversial Regulation 2000/64⁶⁸ gave the SRSG the power to appoint prosecutors and/or international judges to any criminal case, at any phase of the proceedings and at any level of jurisdiction, all over Kosovo, and allowed him to change the venue with or without a formal change of jurisdiction. Participation of local judges was impaired by the need to obtain permission from the two District Court presidents involved and to get the endorsement of the President of the Supreme Court, as much as by the risk of being signalled out as 'sepoys' or servants of the occupation.

Fundamentally, the SRSG could decide who, when and in what cases the judicial function would be exercised. This regulation implicitly amended the Kosovo Law on Regular Courts⁶⁹ and undermined the purpose of capacity-building. A measure initially advanced in response to the need to ensure judicial impartiality wherever in jeopardy, was perceived as blunt interventionism by UNMIK's executive power into judicial affairs, and thus rejected by the local judiciary. Many of FRIDE interviewees raised concerns about the independence of international judges and questioned their capacity to promote the establishment of an impartial, professional judiciary. Most criticised the dangerous politicisation of the administration of justice that resulted from their dependency on the executive branch of the mission, because international judges and prosecutors were selected, appointed and had the term of their appointments determined by UNMIK. It was widely argued that this policy contributed to the marginalisation of the local judiciary, thus undermining the goal of re-building a credible judicial system in Kosovo.

In this respect, the situation of the international administration in Kosovo, where both judicial and executive powers were intimately concentrated in the person of the SRSG, was deemed to be in clear breach of the democratic principle of the division of powers, a basic foundation for the re-establishment of the judicial system and the rule of law – two fundamental pillars of UNMIK's institution-building efforts.

Particularly in – but not limited to – the area of justice, the selection and recruitment of required personnel was slow and insufficient. Training was practically non-existent and there was no guarantee

⁶⁶ D. García-Orrico, 'La internacionalización de la Administración de Justicia: Misión de Naciones Unidas de Administración Provisional de Kosovo', available at www.iugm.org.

⁶⁷ UNMIK regulations 2000/6 of 15 February and 2000/34 of 27 May.

⁶⁸ UNMIK regulation 2000/64 of 15 December.

⁶⁹ This regulation constituted a non-explicit amendment of the Law on Regular Courts in force in what it created, *de facto*, a jurisdiction *ad interim* that did not previously exist, with new and different rules of procedure, distribution of competences and personnel.

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to ensure the continuity of judicial actions taken by international judges and prosecutors once their contracts expired.


Regarding the police, criticism was voiced concerning the slow and meagre contributions, particularly in the first crucial months of the operation. Consequently, KFOR's policing activities were prolonged. KFOR contingents took over such duties to the best of their abilities, but soldiers were not trained or meant to police, investigate or execute judicial orders. KFOR succeeded in maintaining public safety, but it was not able to enforce civil law and order, nor did it in general conduct investigations to retrieve evidence that could thereafter be presented before a court of law.

Another frequently voiced criticism was the randomness of police selection and recruitment. This had a heavy impact on daily tasks, including their institution-building responsibilities: while many of those selected were experienced police officers, others were drawn from private security companies, the army and the labour market without having prior policing experience. Rather than being deployed in accordance with their education, training or experience, many police officers were assigned to positions that responded to the national interests of their country of origin. Some of them were posted to discharge specialised functions for which they were clearly unfit. Many interviewees from more privileged police contingents were of the view that police personnel should enjoy working conditions defined and implemented by the UN operation in accordance with common criteria. International police officers interviewed expressed their belief that police-contributing countries should be engaged at early stages and commit to minimum standards of staff quality and preparation and not merely use participation in UN operations as a tool to improve the experience and training of their officers or even their working and operational gear.

A very important point raised by many, including police personnel of the most favoured countries, refers to the fact that police officers were paid directly by their countries and were thus subject to comparative disadvantages that influenced their personal commitment and the quality of their work, depending on their nationality. To redress this situation, some interviewees argued that salaries should be established in the Memoranda of Understanding signed by contributing countries and the UN and be the same for all secondments, thus evening out the level of dedication and the quality of the service provided.

New tasks assumed by UNMIK were more than adequately backed. Budgetary issues were rarely a problem. The open-ended character of the mandate and the existing 'consensus' (at times based on different rationales) on the need for the operation's continuity facilitated the allotment of resources to an extent not comparable to other UN missions. Even for the approval of the 2009 budget, when global priorities had shifted and an important downsizing of the operation was in sight, the generally reluctant Western countries presented no opposition to the proposal.

Most of the local actors interviewed by FRIDE believe that UNMIK's public information campaigns did not have a significant impact on the local population and did not succeed in explaining the international administration's role, functions and goals. In contrast, to many international officials public information was frequently one of the best performing areas, with effective public information campaigns on issues of general interest, such as trafficking in women and domestic violence.



Unfortunately, a peacebuilding initiative from the Department of Public Information to assist in the establishment of a Kosovo-wide public radio broadcast service to meet local information needs on issues such as security did not bear fruit due to conflict of interests and inadequate intra-pillar coordination.

Mission integration was not always perceived as efficient. Coordination between UNMIK and KFOR and within UNMIK pillars was required in the resolution but not further detailed in subsequent agreements or memoranda. Success depended on the individuals in charge at each stage. Inefficiency and duplication of efforts were relatively frequent. Many observers and participants in the operation complained of the lack of real inter-pillar cooperation. In the absence of a consistent coordination policy, personal contacts were often the preferred means of communication. Coordination between the military and civilian components was also largely dependent on personality, and particularly on the leadership of UNMIK and KFOR.

Who is in the driving seat?

There is agreement, in general, on the main turning points and setbacks in the implementation of the mandate, but disagreement seems to appear when assessing their impact on the political developments in Kosovo, both with regard to the international presences and to intra- and inter-ethnic relations. The most important events include: the first regulations issued by the SRSG on the authority of the international civil presence and on the applicable law; the Prizren Judges' refusal to apply legislation in force and the subsequent UNMIK regulation changing applicable law; the December 1999 agreement on co-administration; the Constitutional Framework;⁷⁰ the 17-19 March ethnically-motivated riots; Kai Eide's Report containing a Comprehensive Review of the Standards before Status Policy;⁷¹ Ahtisaari's proposal on the Kosovo Status Settlement; and the declaration of independence. With the *placet* of the Security Council Presidential Statement of November 2008, the reconfiguration of UNMIK and the deployment of EULEX have already taken place. EULEX has replaced the UN-led Police and Justice Pillar, as well as its formerly EU-led customs functions. Nonetheless, some UNMIK rule of law personnel were initially retained in order to carry out residual functions relating to monitoring and reporting, facilitation of Kosovo's participation in international arrangements and facilitation of practical arrangements between Pristina and Belgrade. Some UNMIK police personnel are still operational finalising the transfer and fulfilling residual tasks.

Resolution 1244 (1999) was the last of the Security Council's resolutions on the intervention in Kosovo. Kosovo has been the subject of many briefings to the Council, most of them behind closed doors. The Council visited Kosovo four times. Three of these missions occurred in the period immediately following the decision to intervene. The fourth and last one took place in 2007, after submission by the Secretary-General of his special envoy's proposal on status. Mission reports included references to all meetings in the field, with international and local public authorities and different representatives of civil society.

⁷⁰ UNMIK regulation 2001/9 of 15 May on a Constitutional Framework for Provisional Self-Government in Kosovo.

⁷¹ S/2005/235 of 7 October. Letter from the Secretary-General addressed to the President of the Security Council transmitting the Report on a Comprehensive Review of the Situation in Kosovo presented by Kai Eide, Special Envoy of the Secretary-General (S/2005/335).

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UNMIK reported to headquarters periodically and whenever the situation so required. Many interviewees claimed that such reporting did not fully reflect the realities on the ground and instead responded to 'what headquarters wanted to hear'. Many also stated that UNSC monitoring and follow-up was too much of a one-way channel of communication: 'there was much information going to New York, but little returning'. The resolution contains a very generic clause⁷² that requests the Secretary-General to report regularly on implementation, without explicitly stating how often such reports are to be submitted.

The Security Council was never the driving force behind developments, being largely reactive and silent due to its internal divisions over the future of Kosovo. In the opinion of some observers, the mandate was immediately superseded by events and rapidly evolved through actions outside the sphere of the Council, either through regulations or decisions taken by UNMIK, to fill the gaps or through policies promoted by major international actors to address new circumstances. Several no-return situations emerged on issues such as privatisation of socially-owned or state property or new legislation approved without regard to the legal and judicial tradition of the region. The adoption of new criminal and procedure laws is a case in point. Among the actions that bore consequences to the evolution of the mandate were the introduction of Kosovar vehicle registration plates to replace those issued by Belgrade, or the issue of UNMIK travel documents. Although justified as merely administrative decisions taken to fill in existing *lacunae*, they required recognition by other countries, thus entailing international agreements. The intervention in matters that were under the sole responsibility of the Government of Serbia touched on its sovereignty over the territory of Kosovo. Responsibility for these actions was shared by the SRSG and his collaborators, the Secretary-General and other UNMIK (OSCE, UNHCR, EU, and UN) officials. These policies would be later legitimised by DPKO and reported to the Council where they did not elicit reactions.

The Security Council's long silence starting in 2005 ended in November 2008 with the presidential statement welcoming the Secretary-General's reconfiguration proposal. Seemingly, direct action from the Security Council presidency regarding the situation in Kosovo has been scarce as a reflection of the Council's deadlock over the Kosovo crisis. Even the wording of the presidential statements reflects this paralysis. All presidential statements regarding the Kosovo question issued prior to resolution 1244 (1999) referred to the matter as the Kosovo crisis, conflict, or situation, among others. From 2000 onwards, all discussions at the Security Council on the issue of Kosovo, all references in official documents, briefings and presentations are referred to as 'relative to Security Council resolutions S/RES/1239 (1999), of 14 May; S/RES/1203 (1998), of 24 October; S/RES/1199 (1998), of 23 September; and S/RES/1160 (1998), of 31 March', in the subject title.

There are diametrically opposed opinions regarding the evolution of the mandate. The absence of new resolutions that would modify, or merely add to, resolution 1244 (1999), as well as the paucity of the Council's statements, has led to the generalised perception that the Council has not been directly involved in ensuring implementation or setting the direction of the international presence. Other than the aforementioned exceptions, all official UN documents on Kosovo are those that come from the

⁷² United Nations Security Council resolution 1244, op. cit., para. 20.



Secretary-General and the SRSG. On key occasions, the SRSG would formulate policy to respond to new requirements and brief the Council on the new approach in informal sessions. For these reasons, it is often held that while the mandate did not evolve in the narrow sense, it did in practice, through its implementation on the ground.

Others⁷³ contend that the mandate did not evolve despite changing circumstances: Yugoslavia – and Serbia as its successor state – has been deprived of the attributes of sovereignty over Kosovo and will never regain them. KFOR's mandate remains the same, its role having only evolved as a consequence of a reassessment of needs, as foreseen by resolution 1244 (1999). UNMIK's present authority is considered merely nominal, the resolution being still in force. Nonetheless, not even other international organisations present in Kosovo recognise such authority, and least of all the Kosovo leadership. Transfer of authority from UNMIK's Pillar I to EULEX, concluded on 31 March 2009, took place with a degree of secrecy atypical of a respected international institution, no documents or Memoranda of Understanding being adequately publicised.⁷⁴

V. Resolution 1325 (2000)

There is not a single mention of women or women issues in UNSC resolution 1244 (1999). The first – and only – reference to women in relation to this operation, prior to the adoption of resolution 1325 (2000), appears in the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 12 July 1999, when establishing the democratisation and institution-building component, with regard to the strengthening of associations.⁷⁵

The existing societal deficit between males and females in Kosovo is significant, though with small variations depending on factors such as age, access to education or social and economic status. Women's access to jobs, education, and legal protection of their rights is directly tied to their ability – or lack thereof – to participate in formal decision-making structures. Crucial achievements notwithstanding (including the introduction of quotas for female candidates in central and local elections, which have rendered Kosovo a forerunner for women's representation throughout Europe), the low number of women nominated to political office or integrated in political party's senior levels indicates the need for profound changes to improve qualitatively and quantitatively women's participation in decision-making and to make their involvement sustainable.

Despite the binding character of education laws, just over half of Kosovar girls were reported to attend school three years after UNMIK's arrival, and girls' drop-out age was lower than that of boys', particularly in the transition from primary to secondary education. Illiteracy rates upon arrival of the

⁷³ Western officials of international organisations and Kosovo-Albanian political analysts interviewed in the summer of 2008.

⁷⁴ International officials currently present in the field.

⁷⁵ S/1999/779, op. cit., Part VI, section I, para. 80.

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operation were much higher for women (10 per cent) than for men (2 per cent). In rural areas, 26 per cent of women aged 16-19 were relatively illiterate and 9.5 per cent entirely illiterate.⁷⁶ Women's education and health continues to be an issue of concern, as is the question of equal opportunities in employment in qualified jobs, a situation that is even worse concerning middle or senior management positions.

Women remain largely absent from crucial activity sectors, with a more pronounced occupational segregation turnout in rural areas. In addition, women's access to financing is hampered by their inability to provide the necessary collateral to secure loans, mainly because they usually forego property for the benefit of their male relatives due to, *inter alia*, customary practices. It is not surprising that the number of companies headed by women remains modest, with remarkable exceptions found in first line media holdings, as is the case of Koha Vision, led by Flaka Surroi. Women's leadership is also present in civil society, where women's organisations with a gender perspective have increased considerably. These organisations have developed powerful networks, such as the Kosova Women Network (KWN), including women of different ethnic groups, and which helps them build capacities to work effectively on behalf of their communities.⁷⁷


The adoption of resolution 1325 (2000) turned the gender perspective into a requirement for all UN peace operations. Shortly after its establishment, UNMIK introduced a post of gender adviser. In the early stages of the mission and at middle-management level, the gender adviser was directly under the SRSG, as part of his staff. As the operation developed, the gender adviser's position was transferred to the Civil Administration Pillar, and then transferred back under the direct authority of the SRSG at a later stage of the mission. The availability of material resources for developing a gender programme increased, but human resources were never adequately provided, with regard to both the assignment of senior-level positions and the recruitment of specialised staff.

Plans for gender mainstreaming varied in focus depending on the person in charge, his/her experience and the ongoing events in Kosovo. Some plans included specific responsibilities and attached the resources required to implement them, but the resources never materialised due to conflicting priorities within the mission. The main problem was the absence of sufficient personnel allocated to the area and the junior level of those posted in the Gender Office, which diminished their chances of making a convincing case before the very senior mission staff⁷⁸ when requesting that gender issues be considered a priority and given sufficient resources. While there always was verbal support for gender mainstreaming, it did not translate into the delivery of resources and the adoption of policy measures.

⁷⁶ <http://www.unmikonline.org/pub/focuskos/aug04/focusksocaffair1.htm>

⁷⁷ The Kosova Women's Network (KWN), presently led by Igballe Rogova, was established in 2000 as an informal network of women's groups and organisations from all over Kosovo. Since its inception, it has grown into a key advocacy network on behalf of Kosovar women at the regional and international levels. It is now a leading network of more than 60 women's NGOs and groups, some of which are well established in the region and have over ten years of experience in community development while others were more recently formed after the arrival of the UN in Kosovo.

⁷⁸ During the interviews held in Kosovo in the summer of 2008, the author met a very helpful and well-qualified young UN volunteer (UNV) who had been in charge of the office for quite some time, since the departure of the last incumbent (reportedly a P3/P4).



Support from the top levels was rather weak or lacking. At a time when resources for the mission were not a contested issue, the scarcity of resources allocated to promote gender policies evidenced the meagre weight given to this goal by the mission's leadership.

In the opinion of international and local officials in the field, many efforts were undertaken, most of them successfully, particularly in the rule of law area of gender-based violence. However, there is no record showing that the resulting developments were the consequence of the adoption of the resolution in October 2000. There were positive trends in the areas of legislation and implementation, including the prosecution of violators and the establishment in 2002, within the Judicial Development Division of the Department of Justice, of a Victims' Advocacy and Advisory Unit, whose work was performed in coordination with local and international non-governmental organisations (NGOs).

Strategies to increase political representation of women in Kosovo through the application of quotas for female candidates and appointments to public office yielded poor or no results. Women did not have a significant presence at decision-making levels. In the view of most interviewees, resolution 1325 (2000) has not been implemented in practice despite its formal incorporation in official documents and working plans.

The mapping of gender-training needs was undertaken but randomly implemented. Mechanisms for the systematic gathering of sex-disaggregated data did not exist in the early stages of UNMIK, but were eventually put in place, including in the assessment of certain areas and at some intervals.

The UN is criticised for failing to set an example to local actors. Resolution 1325 (2000) was barely implemented internally: there were no women in most UNMIK senior positions; amongst the appointees for the positions of SRSG, PDSRSG and DSRSG, only one woman was nominated in nine years, while the number of women directors and other higher decision-making level positions was merely symbolic. Women associations and other civil society representatives disagree with the 30 per cent quota in politics ('why not 50 per cent or actual percentage in society?') if it is not accompanied by effective monitoring and control of the use of this measure by political parties and backed by an adequate training programme. Many claim that civil society in Kosovo provides better examples of promoting women to higher positions than the UN mission ever did: the three most important media in the territory are run by women. Examples can even be found within the local administration: the Kosovo Police Service is the only police force in Southeast Europe where a woman holds a commanding position. UNMIK police also had one woman of US nationality as deputy commissioner.

Regardless of Kosovo's final status, one overriding challenge remains: convincing local and international policymakers that the status of women is integral to economic growth, reconstruction and sustainable peace. Gender remains an essential element for a future peaceful multi-ethnic Kosovo.

VI. Is an exit strategy viable?

The mandate's fundamental ambiguity, its open-ended framework⁷⁹ and the fact that the solution to the crisis is subject to interpretation, made it particularly difficult to conceive and design a well-articulated exit strategy. The resolution seeks to solve this inherent tension by implicitly linking exit to the accomplishment of the institution- and peace-building processes.⁸⁰

In fact, the interim administration was to be exercised by the international presence for as long as required,⁸¹ having been given the authority to devolve responsibilities to Provisional Institutions of Self-Government, pending the final political settlement, which should nevertheless not delay or disrupt the establishment of those very institutions.⁸² The Council reaffirmed its commitment to the goal of a multi-ethnic and democratic Kosovo and called on all communities to work towards this end by actively participating in public institutions and in the decision-making process, and by integrating into society.⁸³ The final stage of the process required the international civil presence to oversee the transfer of authority from Kosovo's provisional institutions to the institutions established under a political settlement.⁸⁴

UNMIK linked its exit to the 'Standards before Status Policy'. In this case, as in others, the Council was merely reactive, but managed, at least, to reach a weak consensus to endorse it.⁸⁵ The policy postulated targets in eight key areas: functioning of the democratic institutions, the rule of law, freedom of movement, the return of refugees and internally displaced persons, the economy, property rights, dialogue with Belgrade, and the Kosovo Protection Corps. The fulfilment of these targets would open the door to negotiations on Kosovo's future political status. The Council later stressed that further progress would depend on a positive outcome in the comprehensive review of those standards,⁸⁶ a responsibility to be discharged by Special Envoy Kai Eide.

Eide's report on the Comprehensive Review of the Implementation of Standards of October 2005 was a step further in the building of UNMIK's exit strategy. Based on its findings, the Secretary-General stated to the Council that, despite the fact that more sustained progress was required and that the implementation of standards in Kosovo had to continue with undiminished energy and a stronger sense of commitment, the time had come to move to the next phase and set in motion the political

⁷⁹ United Nations Security Council resolution 1244, op. cit., para. 19.

⁸⁰ The responsibilities of the civil presence at the beginning of the process of transfer of the established institutions included its oversight and support to their consolidation, along the facilitation of the political process that would determine the future status of Kosovo, taking into account the Rambouillet Accords (which included a referendum on the issue of status); see United Nations Security Council resolution 1244, op. cit.

⁸¹ *Ibid.*, paras. 10 and 19.

⁸² *Ibid.*, paras. 10 and 11; Annex 1, principle 6; Annex 2, principles 5, *in fine*, and 8.

⁸³ S/PRST/2003/26, op. cit.

⁸⁴ United Nations Security Council resolution 1244, op. cit., para. 11.

⁸⁵ S/PRST/2003/01 of 6 February 2003; this support was first (merely) expressed on the Report of the Security Council Mission to Kosovo and Belgrade, Federal Republic of Yugoslavia, 14-17 December 2002 (S/2002/1376).

⁸⁶ S/PRST/2003/26, op. cit.

process to determine Kosovo's future status, as foreseen in resolution 1244 (1999). The Council welcomed Kai Eide's report and the Secretary-General's readiness to appoint a special envoy to lead the future status process.⁸⁷

The Comprehensive Proposal⁸⁸ submitted by the Special Envoy of the Secretary-General for the Future Status Process for Kosovo, former Finnish President Martti Ahtisaari, after more than one year of consultations with both sides, entailed the status of supervised independence for the territory. The proposal was unacceptable to Kosovo-Serbs and to the government in Belgrade, which considered it to be in violation of resolution 1244 (1999) and its prescription reaffirming 'the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia'. Kosovo-Serbs and the Government of Serbia criticised what they saw as lack of impartiality on the part of the special envoy, and requested his replacement as mediator. Ahtisaari's proposal limited the independence of Kosovo by placing it under international supervision and leaving the ultimate decision-making authority in the hands of the 'international community'. The proposal, submitted by the Secretary-General to the Security Council along with the report of the special envoy,⁸⁹ did not receive the necessary sanction due to irreconcilable positions amongst the Permanent Five.

The Kosovo authorities' unilateral declaration of independence further complicated the already difficult situation. The new government in Pristina claims to abide by the rules and limitations contained in Ahtisaari's non-approved proposal.⁹⁰ Its real authority is therefore subject to the self-imposed limitation and *sine qua non* condition for international recognition contained in the document: the supervisory powers of the International Civilian Representative (ICR), as well as the alienation – to a large extent – of Kosovo's judicial and police functions.

Following the stalemate that emerged over the proposal, the Contact Group established a troika with representatives of the US, the Russian Federation and the European Union, to conduct a limited period of further negotiations. As expected, these negotiations also failed to reach an agreed solution. In December 2007, the Secretary-General transmitted the report submitted on the negotiations, stressing that a solution to the situation of Kosovo was critical to the stability and security of the Western Balkans region and of Europe as a whole.

The Security Council presidential statement of 26 November 2008,⁹¹ the first to be issued on Kosovo since 2005, gave green light to the reconfiguration of UNMIK. This pronouncement constituted an important step towards UNMIK's exit strategy, since EULEX was to replace UNMIK by taking over the police and justice functions that had not yet been transferred to the Kosovo authorities. EULEX completed its deployment by the end of March 2009, while UNMIK's presence is limited to representative and monitoring functions, apart from a small number of UNMIK police officers that are still finalising different aspects of the transfer. At the moment of this report's conclusion,⁹² the UN retains some

⁸⁷ S/PRST/2005/51, op. cit.

⁸⁸ Comprehensive Proposal for the Kosovo Status Settlement, op.cit.

⁸⁹ <http://www.unosek.org/docref/report-english.pdf>

⁹⁰ Comprehensive Proposal for the Kosovo Status Settlement, op. cit.

⁹¹ S/PRST/2008/44 of 26 November 2008.

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personnel at its headquarters in Pristina, 16 political affairs/civil affairs officers in four field offices throughout Kosovo, and a representative in North Mitrovica along his staff.

Following the unilateral declaration of independence of Kosovo and upon the request of its leadership, a group of states formed the International Steering Group (ISG) on 28 February 2008.⁹³ They also decided on the establishment of the International Civilian Office (ICO) and appointed the already present EU Special Representative as International Civilian Representative. The ICO is to support of the ICR in Kosovo, head of the international presence in the territory as per Ahtisaari's proposal.

The EU is subject to strong movements within its membership that pull in opposite directions on the question of status, and it will be difficult for it to maintain the necessary attitude of neutrality within the reconfiguration endorsed by the Council. Kosovo-Albanians did not object to UNMIK's withdrawal but wanted EULEX to operate within their constitutional framework. Continued support from the parties to the conflict will depend on how the new mission continues to portray itself. If EULEX advocates for the implementation of Ahtisaari's Comprehensive Proposal, as his head of mission reportedly did on a statement to the media in July 2008,⁹⁴ it will face Serbian resistance; if it maintains a policy (even implicit) of status neutrality, it will stand a better chance in the exercise of its functions. Kosovo-Albanians perceive the mission as working in their favour; despite complaints of their authorities against the Council's approval of UNMIK's reconfiguration. Kosovo-Serbs see EULEX (and KFOR) as clearly favourable to Kosovo-Albanians and their drive for independence. Regardless of the option taken, it will face opposition once the population realises that the international presence will continue, a fact already voiced by the leaders of self-determination movements, including women's organisations.⁹⁵ While stating the monitoring status of the mission, EULEX's recent decision to start issuing identity documents to Kosovo-Serbs involves the assumption of direct administrative functions.

The fact that the EU Special Representative is also the ICR, whose policy is explicitly designed to support the implementation of Ahtisaari's proposal, adds to the confusion of international actors currently present in Kosovo. This double function places the EU in a difficult position and may create serious operational concerns, and thus needs to be resolved as soon as possible. The crisis is far from being over.

The situation in the Kosovo Serb-populated Mitrovica region is extremely volatile; incidents occur frequently; the security situation could soon worsen. EULEX has been officially deployed also in the North, but mainly works from the South. UNMIK's Police and Justice Pillar has finalised the transfer of its functions to EULEX, though a number of police officers are still in the field to conclude the transfer. In addition, Kosovo-Serbs are the victims of constant incidents everywhere else in Kosovo (stabbing, arson,

⁹² This case study was concluded on 11 May 2009.

⁹³ The International Steering Group comprises a number of states that support full implementation of Ahtisaari's proposal for status and have recognised Kosovo's independence.

⁹⁴ It was reported during several interviews held in Kosovo with international and Kosovo-Serbian officials in the summer of 2008, though without specific mention of the media concerned.

⁹⁵ Albin Kurti, Vetëvendosje (www.vetevendosje.org), and Igballe Rogova, in the non-delivered speech that she had prepared for the 'International Conference on Women and Governance in Eastern Europe and CIS', held in Istanbul on 1-3 December 2008 and posted on her organisation's webpage (www.womensnetwork.org).

damage of property, and threats, amongst others). 'UNMIK will quietly die away while EULEX, theoretically status-neutral, will be forced to operate under the Kosovo Constitution. EULEX executive powers will gradually become marginal, allowing Kosovo-Albanian institutions to take over and to create comparative disadvantages vis-à-vis the Kosovo-Serbian population'.⁹⁶ Some of the actions of public companies, such as the Energetic Corporation of Kosovo KEK, vis-à-vis the Kosovo-Serbian population, are perceived as discriminatory and aimed at their expulsion.

On 12 June 2008, NATO agreed to assist in the standing down of the Kosovo Protection Corps (KPC)⁹⁷ and the establishment of the Kosovo Security Force (KSF), as well as the civilian structure to oversee the KSF.⁹⁸ Reaching out to Kosovo's minority communities and encouraging them to apply for the KSF remains a priority. NATO assists the Kosovo authorities in establishing a ministry for the Kosovo Security Force.⁹⁹ Primary responsibility for this task rests with NATO headquarters in Brussels; KFOR is to support the NATO Advisory Team that has been established in Pristina.

In December 2007, NATO foreign ministers agreed that KFOR shall remain in Kosovo on the basis of resolution 1244 (1999), unless the Security Council decides otherwise. In addition, they renewed their commitment to maintain KFOR's national force contributions, including reserves, at current levels and with no new caveats.

At the Bucharest summit in April 2008, it was agreed that NATO and KFOR would continue to work with the authorities in Kosovo. It was also agreed that, bearing in mind its operational mandate, KFOR would cooperate with and assist the UN, the EU and other international actors, as appropriate, to support the development of a stable, democratic, multi-ethnic and peaceful Kosovo. They also stressed that NATO stood ready to play its part in the implementation of future security arrangements.

At their meeting on 2-3 December 2008, NATO foreign ministers reaffirmed that the robust, UN-mandated NATO-led KFOR presence would remain in Kosovo on the basis of resolution 1244 (1999). They reaffirmed that NATO would continue to work towards the standing down of the Kosovo Protection Corps and the establishment of the Kosovo Security Force on the basis of NATO's voluntary trust funds.

⁹⁶ Extracted from telephone interviews held with international officials present in the field, at the time of finalising this report.

⁹⁷ The KPC was conceived as a transitional post-conflict arrangement, under UNMIK's responsibility. Its mandate was to provide disaster response services, perform search and rescue, provide capacity for humanitarian assistance in isolated areas, assist demining, and contribute to rebuilding infrastructure and communities. Dissolution of the KPC is taking place in parallel with the creation of the Kosovo Security Force. The KPC ceased its operational activities on 20 January 2009 and will be formally dissolved on 14 June 2009. Those KPC members not recruited into the KSF will be resettled, reintegrated or retired. A resettlement programme funded by a NATO Trust Fund is being implemented by a local partner NGO (APPK) under UNDP supervision.

⁹⁸ The KSF shall be a lightly armed force and possess no heavy weapons, such as tanks, heavy artillery or offensive air capability. The KSF shall have primary responsibility for security tasks that are not appropriate for the police such as emergency response, explosive ordnance disposal and civil protection. It may also participate in crisis response operations, including peace support operations.

⁹⁹ The ministry for the KSF will be a civilian-led organisation that will exercise civilian control over force. The minister for the KSF, through his ministry, will exercise day-to-day responsibility for the force.

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The UK announced, earlier in 2009, its withdrawal from Kosovo by the end of the year. Spain also announced its withdrawal, due to fundamental disagreements with the current political developments in the territory. KFOR is currently in the process of downsizing its strength.

VII. Concluding observations


The case of Kosovo placed the Security Council at the centre of the ongoing debate surrounding intervention on humanitarian grounds versus the prescription of national sovereignty. While the Council could not surmount its existing cleavages on the matter, the discussion that followed the NATO air campaign in Kosovo brought to the world organisation an issue of essential relevance to international peace and security in today's world. Later efforts to achieve consensus within the framework of the policy of responsibility to protect owe a lot to this initial debate.

If no agreement was reached on the legality of the intervention, through the adoption and implementation of resolution 1244 (1999), the Council was able to chart a way for a transitional period, in the hope of preparing the ground for a political process that would define the final status of Kosovo. Expectations regarding the mandate's adequacy were relevant to the goals of stopping the violence and repression by Serbian authorities and paramilitaries, ensuring the withdrawal of their forces from Kosovo, providing humanitarian relief, and establishing a transitional administration under international authority. But the Kosovo-Serbs remained largely alienated from the process set in motion by the mandate. In this context, the resolution did not respond to all inhabitants of Kosovo. It reflected a partial interpretation of the crisis – that of the Western powers – without clashing with Russia's outright opposition.

The resolution was the basis for the construction of the Institutions of Self-Government which, following the approach of the major powers, sought to replicate the Western European model, often without an appropriate transition. Despite its many successes in developing an administrative structure where nothing existed, the international interim administration failed to create the necessary atmosphere for a multi-ethnic society to emerge and develop into a credible and more permanent political structure that would lead to a final and agreed solution for Kosovo.

The inability of the international civil and security presences to prevent the ethnically-motivated attacks of March 2004 – five years after the intervention – dealt a severe blow to their credibility and cast serious doubts on the prospects of a future peaceful and multi-ethnic Kosovo. KFOR's reaction only partially redressed the situation and showed that international presence and commitment would continue to be required in the near future. However, it did draw attention to the need better to coordinate, at both the design and implementation levels, the approved use of force and the rules of engagement adopted.

The absence of a common understanding within the Council on the scope and implications of resolution 1244 (1999) made it impossible to adapt it in response to new developments and thus turn



it into an effective tool for guiding the process of change. In the eyes of many, the resolution became obsolete upon approval. The Council was the largely passive recipient of information on initiatives and proposals originating in UNMIK or assumed by the Secretary-General to move the process forward without touching on the question of sovereignty.

The Secretary-General's role evolved considerably since the initial deployment of the mission in Kosovo. His interpretation of the powers vested in him has been advanced and extensive. At the crucial time of defining the future course of action after the rejection of Ahtisaari's proposal, he was confronted with a stalemate at the Council and irreconcilable divisions on the ground. The Secretary-General sought to respond, relating to events as they occurred, in a manner that would neither block nor facilitate the course of events, so as not to influence the balance of power in the face of a breakdown in the Council. Under great political exposure and pressure, he took an unprecedented step in proposing the reconfiguration of UNMIK. He was criticised –though not too forcefully – on the premise that the middle ground where he was moving would lead to a kind of equilibrium. Within this very line of policy of status neutrality, the Secretary-General engaged in a dialogue with Serbia that gradually involved the EU, the US, and Russia. This initiative was necessary to engage the Council and to accelerate talks with Belgrade, creating a situation where a new solution package counting on the support or acquiescence of all or most stakeholders could be submitted to the Council for approval.

Kosovo is an example of the dilemmas of state-building. Faced with the need to take over the direct public administration of a territory, a responsibility for which it was ill-prepared and lacked appropriate staff, the organisation had to adopt new and more flexible modalities for the selection and recruitment of personnel. The decision to decentralise this function to the field was one such modality.

Aside from the difficult operational challenges stemming from the establishment of an international protectorate, lie the tensions arising from the need to promote local and national ownership. UNMIK's experience in the appointment of international judges and prosecutors is a reminder of the risks posed by placing excessive or exclusive emphasis on international personnel. As evident from the case of Kosovo, doing so may jeopardise the very purpose of local institution-building, which is at the core of the mandate. It also raises serious questions of accountability and loss of credibility for the international authority.

