FINDING THE BALANCE:

THE SCALES OF JUSTICE IN KOSOVO

12 September 2002

ICG Balkans Report N°134
Pristina/Brussels

TABLE OF CONTENTS

ICG Balkans Report N°134 **12 September 2002**

FINDING THE BALANCE:

THE SCALES OF JUSTICE IN KOSOVO

EXECUTIVE SUMMARY AND RECOMMENDATIONS

An independent, effective, and transparent justice system will be the cornerstone of a stable and democratic society in Kosovo. Ensuring that such a system is developed in a sustainable manner must be one of the top priorities of the United Nations Interim Administrative Mission in Kosovo (UNMIK) and the Provisional Institutions of Self-Government (PISG). In this report, ICG argues that although progress has been made, serious obstacles and challenges remain.

When UNMIK entered Kosovo, it found that the previous law enforcement and judicial structure had collapsed. Since that time, the system has been completely rebuilt and reformed. Although much has been done – investigations are undertaken, indictments filed, and courts function – the judiciary still lacks the capacity to investigate crimes effectively. Critical instruments for the prosecution, including the witness protection program, will remain largely a shell until the right equipment and resources are provided.

While international judges and prosecutors are crucial for ensuring that justice is impartially delivered, the international community must continue to strengthen the justice system by building local capacity of judicial personnel. This includes the further training and mentoring of the local judiciary, as well as a timetable to gradually introduce local judges and prosecutors into sensitive cases such as war crimes, ethnically motivated crime, and organized crime.

Under the Constitutional Framework, authority for the justice sector – with the exception of the administration of courts - is reserved to the Special Representative of the Secretary General (SRSG). However, this does not absolve UNMIK of the responsibility to involve Kosovo officials in planning the system. The Department of Justice is currently developing a transition strategy for the implementation of UNMIK's benchmarks. ICG calls on the Department to include Kosovo officials in the development of this strategy. Moreover, Kosovo officials should be gradually introduced into policy and planning functions more generally, co-head positions should be established in the Department of Justice, and international staff dedicated solely to building the capacity of local officials should be seconded into the Department.

Finding the Balance also examines the prosecution of sensitive offences such as war crimes and ethnically motivated violence. Despite the significant resources devoted to the documentation of war crimes, they have largely gone unpunished as has subsequent violence against Kosovo's minorities. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has issued only one indictment for Kosovo, while investigations conducted by UNMIK suffer from the general weaknesses in the system. To increase the capacity of the judiciary to try these crimes, a Memorandum of Understanding, similar to the *Rules of the Road* in Bosnia, should be established to share evidence and technical advice between UNMIK and ICTY.

In August 2002 UNMIK arrested a number of individuals – including former members of the Kosovo Liberation Army (KLA) – for crimes committed during the 1998 and 1999 period. The arrests provoked an outcry from some of Kosovo's political leaders. The consequent prosecutions will test the capacity of the judiciary to investigate crimes and secure evidence, as well as its ability to

conduct free and fair trials while protecting the rights of victims, witnesses, and the accused. It will also test the commitment of Kosovo's politicians and public to an independent justice system that treats everyone equally before the law. The international community justified the NATO military intervention by citing the extensive violations of international law committed by Yugoslav forces in Kosovo. It would be highly paradoxical for politicians to now condemn the enforcement of this law for crimes committed by Kosovo Albanians during and after the conflict.

Given the potential divisiveness of these prosecutions, UNMIK should undertake a public information campaign to explain that the Geneva Conventions must be applied equally to all parties and that no-one is above the law. Moreover, UNMIK should seek to overcome the lack of public trust in the system by expanding this campaign to cultivate public confidence more generally. While public respect will only be truly secured with successful reforms that produce an effective and fair system, politicians and leaders of civil society need to value and promote judicial independence and freedom. Without that independence, the foundations of democracy in Kosovo will lack one of its most important pillars.

RECOMMENDATIONS

To the International Community:

1. Strengthen the current system's capacity to investigate and prosecute crimes by ensuring UNMIK has the technical, financial, and political support for judicial reform.
2. Support the development of a witness relocation program to other countries, and strengthen the witness protection program by improving police surveillance and providing much needed equipment.
3. Provide additional resources to support the efforts of UNMIK to resolve cases of war crimes and ethnically motivated violence.
4. Second experts to build Kosovo officials' capacity to administer the Department of Justice.
5. Encourage Belgrade to work with ICTY and UNMIK to develop a mechanism to ensure war crimes suspects charged by UNMIK are transferred to UNMIK courts.

To Belgrade:

6. Implement the agreement signed on 9 July 2002 to protect the professional status and pensions of judges and prosecutors who work with UNMIK and dissolve the parallel courts operating in Kosovo, including the parallel District Court in Mitrovica.
7. Amend the law on cooperation with the ICTY to eliminate its restrictions on indictments and make a public commitment to transfer to The Hague any new war crimes suspects the ICTY indicts.
8. Commit to the transfer of war crimes suspects indicted by UNMIK to Kosovo.

To ICTY:

9. Conclude with UNMIK a Memorandum of Understanding, based on the Bosnia Rules of the Road, to facilitate and institutionalise cooperation, including evidence sharing, technical advice on war crimes cases, and mechanisms to ensure that sufficient evidence exists before a case is brought to trial.
10. Build on the existing outreach program to share more war crimes-related information with Kosovo judges, prosecutors, and defence counsel.

To UNMIK Department of Justice:

11. Develop a transition and exit strategy, including a financial plan, for the gradual handover of power from internationals to local officials, including involvement of Kosovo officials in developing and implementing the strategy and an increase in Kosovo officials – of all ethnicities working in policy and planning at the Department of Justice, including, where possible, as unit co-heads.
12. Develop a long-term strategy and curriculum for the Kosovo Judicial Institute based on a needs assessment, and ensure that attendance is compulsory and evaluation procedures are established.
13. Provide legally binding guidelines for international judges and prosecutors, while using these officials only for extremely sensitive cases – war crimes, ethnically

motivated violence, and organized crime - so as not to impede development of local judicial capacity and responsibility. Gradually phase in a heightened role for local judges in such sensitive cases.

14. Create a clear hierarchy for international prosecutors which would ensure sufficient oversight of cases to verify that sufficient evidence exists before charges are filed.
15. Quickly promulgate into law the new Criminal Code and Criminal Procedures Code for Kosovo.
16. Ensure that forensic evidence is organised and stored properly so that critical evidence is not lost.
17. Intensify efforts to resolve cases of war crimes and ethnically motivated violence, delay in which impacts on the peace process.

To UNMIK:

18. Issue regulations simultaneously in English, Albanian and Serbian.
19. Undertake a public information campaign to increase public understanding of, and confidence in, the judicial system, and address in this campaign Albanian concerns about trials of former members of the Kosovo Liberation Army (KLA).
20. With the PISG (including Serb members), establish a working group to consider possible reconciliation mechanisms.

To the PISG:

21. Increase the justice system's transparency by using the Department of Judicial Administration to develop accurate and relevant statistics for court cases, particularly those involving minority victims or defendants.
22. Work with the Department of Justice to develop a judicial branch of government that ultimately will be independent from the legislative and executive branches.

To the Kosovo Albanians:

23. Political leaders must respect the independence of the judicial process.
24. Build public respect for the justice system through provision by civil society groups of information to the public on the importance of an independent and impartial judiciary.

To the Kosovo Serbs:

25. Take advantage of the 9 July 2002 agreement between UNMIK and Belgrade to participate in the judicial system.

Pristina/Brussels, 12 September 2002

ICG Balkans Report N°134 12 September 2002

FINDING THE BALANCE:

THE SCALES OF JUSTICE IN KOSOVO

I. INTRODUCTION

The establishment of an independent and effective justice system is key to building a stable and democratic society in Kosovo. To overcome the years of conflict and to prevent continuing instability, the judiciary must have the capacity to investigate sensitive criminal offences and prosecute the perpetrators of these crimes in an effective, unbiased, and unimpeded manner. Ensuring that a sustainable system of law and order is established must be one of the top priorities in Kosovo. However, such a system will remain an elusive goal unless the international community, the United Nations Interim Administrative Mission in Kosovo (UNMIK), the Provisional Institutions of Self-Government (PISG), and civil society overcome serious obstacles and challenges.

When UNMIK arrived in Kosovo, it faced the daunting task of completely recreating a judicial structure. The pre-existing system, including personnel, court equipment, files, and records, was largely withdrawn to Serbia. Most ethnic Albanians had been prevented from working in the civil administration during the Milosevic era and lacked experience, up-to-date knowledge and expertise. A climate of revenge, general lawlessness, and impunity added to the challenge of establishing a fair and independent judiciary. Moreover, the United Nations had never before had the responsibility for establishing a judicial system from scratch.

Since the summer of 1999, UNMIK has made significant strides. Investigations are undertaken, courts now function, and criminals are punished. All major offences, with the exception of rape, dramatically declined in 2002.[1]

Whatever the final status of Kosovo, - and it is important that this issue not continue to be deferred - it will have an autonomous judiciary and this judiciary will need to be strong and independent.[2] Much remains to be done to reach that objective. The current system lacks the full capacity to investigate and prosecute crimes in an effective manner. The presence of international judges and prosecutors is a necessary stopgap measure, but their efforts are hampered by structural weaknesses in the system.[3] Moreover, the use of international judges should not take the place of capacity building – through training and mentoring – of the local judiciary. Failure to effectively tackle current problems in the system will impede Kosovo's development into a normal society, particularly where war crimes and ethnically motivated violence are concerned.

In August 2002 UNMIK charged and arrested several high-profile individuals with crimes committed in 1998 and 1999.[4] The prosecution of

[1] UNMIK Police crime statistics note a 44 per cent decrease in murders between 2000 and 2001, and a 49 per cent decrease between the first six months of 2001 and the first six months of 2002.

[2] ICG's position that discussions on final status should commence sooner rather than later was outlined in ICG Balkans Report N°124, *A Kosovo Roadmap (I): Addressing Final Status*, 1 March 2002.

[3] International judges and prosecutors began working in Kosovo in February 2000.

[4] The most prominent of these was Rrustem Mustafa, known as Commander 'Remi" in the Kosovo Liberation Army (KLA), charged with the unlawful detention, torture, and murder of five persons. UNMIK also charged six former KLA members with unlawful detention and serious bodily injury, and one former KLA member with murder.

these individuals will try the credibility of the system and the success of reform efforts. The trials that follow these arrests will demonstrate the extent to which UNMIK has been able to strengthen criminal investigation, prosecution, and the trial process. They will also test the commitment of Kosovo's political leaders to international legal standards. Many Albanian politicians reacted strongly to the arrests, seeing them as a direct attack against the legacy of the Kosovo Liberation Army (KLA). These reactions are inappropriate and inconsistent with the core principle that everyone is equal before the law.

While this report outlines notable achievements, it also warns that the significant efforts of the international community and Kosovo officials in the judicial sector may bear little fruit unless more emphasis is placed on building long-term capacity. This will require a detailed transition strategy for the justice sector.

The Department of Justice has recently established a Transition Strategy Working Group. ICG believes that the group must take into consideration the following elements when developing their strategy:

- There is a tension between the immediate need to secure justice using international judges, prosecutors, and police, and the effort to strengthen capacity to build a justice system for the future. UNMIK's scarce resources and attention are currently split between both tasks.
- The crimes with the most potential to undermine Kosovo's long-term prospects – war crimes and ethnically motivated crime – must continue to be addressed through the involvement of international personnel. However this must go hand in hand with the effort to build local judicial capacity.
- While considerable progress has been made to increase the ability of the judiciary to investigate and prosecute crimes, more must be done to ensure that these efforts are sufficient and sustainable. Critical tools for the judiciary, such as the witness protection program, are of little use unless the appropriate equipment and support is provided.
- UNMIK has established a set of benchmarks for institutional development in Kosovo. While these benchmarks outline important goals for the judiciary, it is not clear how UNMIK and the new institutions of self-government will reach these goals. Therefore, UNMIK must develop a transition plan and an exit strategy to ensure that its reforms are sustainable, that its benchmarks are met, and that it will be able to hand over responsibilities to an autonomous Kosovo government in some confidence that the system will remain effective, impartial and independent. Local officials should be gradually introduced into the planning and policy functions of the Department of Justice, co-head positions could be established for units within the Department, and international personnel should be seconded, dedicated solely to building the capacity of local officials to run the system.
- Public confidence and respect for the law must be increased. Currently, the public has little trust in judicial institutions. Many believe that judges and prosecutors are corrupt, undertake politicised convictions, and that some members of the judiciary who participated in discriminatory practises remain in the system. These allegations must be addressed. However, politicians and leaders of civil society must also value the role that an independent judiciary plays in a democratic society. The Department of Justice and the PISG should make it clear that no one is above the law. UNMIK's success in building a sustainable and democratic society rests on these efforts.

II. THE JUSTICE SYSTEM

A. THE LEGACY OF DISCRIMINATION: THE PRE-1999 LEGAL SYSTEM

Kosovo's civil law-based judicial system received two key inheritances from the Federal Republic of Yugoslavia (the FRY): its legal framework and the legacy of the discriminatory policies of the 1990s.

Until 1989, the applicable criminal law was the Kosovo Criminal Code and the FRY Criminal Procedure Code of 1977. This system gave a strong investigative role to the judiciary through the position of the investigative judge.[5] The role of the police was limited to fighting rather than investigating crime, and statements received by the police were therefore not admissible in court.

After Kosovo's autonomy was revoked in 1989, ethnic Albanians were largely excluded from serving in the justice system, with the exception of working as advocates. The university did not permit Albanian students to attend law school in their own language. The bar examination site in Pristina was abolished, and Albanians were required to go to Belgrade if they wanted to sit the exam. This government-sanctioned discrimination produced a justice system where only 30 out of 756 judges and prosecutors were Albanian.[6] Moreover, the system received no new Albanian recruits.

The ten years of discrimination also engendered public distrust of the system. Prejudice was institutionalised with the courts, which in turn generated disregard and disrespect for the judiciary among society as a whole. Kosovo was therefore left with hardly any experienced professionals, and a general climate of hostility towards the judicial system.

B. THE POST-WAR ENVIRONMENT

These ten years of discrimination ended with a year of civil strife and four months of all-out war. The legacy of discrimination and serious violations of human rights by the Yugoslav Army, the police, and paramilitary units (including some Albanian groups), cast a shadow over the establishment of an impartial judicial structure. As KFOR and UNMIK entered Kosovo, most judges and prosecutors fled to Serbia, taking court equipment and documents with them. It became quickly evident that the previous law enforcement and judicial system had collapsed.

While the biased nature of the system would have created its own difficulties, this collapse came when the need for a functioning judiciary could hardly be higher. In the summer of 1999 Kosovo saw an extremely high number of crimes of revenge and retribution.[7] Approximately 250,000 people, including Serb, Roma, Ashkali and other minorities, were displaced from their homes after June 1999 – some fleeing to Serbia and Montenegro, while others remained within Kosovo.[8] Hundreds of murders took place, with Serbs forming a disproportionate number of the victims. The international police lacked sufficient presence to deal with these crimes. The initial task of establishing a safe and secure environment was left to the military. KFOR detained suspected criminals, and the jails quickly became full creating a huge backlog of cases. No court system functioned to ensure the right of habeas corpus.[9]

Under UNMIK Emergency Decree 1999/1 of 30 June 1999, the interim Special Representative of the Secretary General (SRSG), Sergio de Mello, appointed a Joint Advisory Council on Provisional Judicial Appointments charged with nominating

[5] An investigative judge uses the prosecutor's indictment to conduct investigation against the suspect. The investigative judge decides if the accused should be arrested and should be held in custody for 30 days before being formally charged, and gathers the evidence including witness statements and forensic evidence etc. against the suspect before the court case.

[6] Hansjorg Strohmeyer, "Collapse and Reconstruction of a Judicial System: The United Nations Mission in Kosovo and East Timor", *The American Journal of International Law*, vol. 95:46; p. 450.

[7] For an overview of human rights abuses, see, OSCE Mission to Kosovo, *Kosovo/Kosova: As Seen, As Told, Part II (June to October 1999)*, 1999.

[8] IDP estimates were obtained from UNHCR. These figures include all displaced ethnicities – Serbs, Albanians, Roma, Ashkali, and other minorities. UNHCR emphasises that in the absence of a complete registration process, such numbers remain estimates.

[9] The failure of the international community to prepare for the enormous challenge presented by the judiciary reflected the rapid preparations for UNMIK as a whole. The international community had not anticipated that the NATO airstrikes would result in a complete international administration over Kosovo.

temporary members of the justice system.[10] Through this procedure, the SRSG appointed nine judges and prosecutors – including five Albanians, three Serbs, and an ethnic Turk. These judges and prosecutors served as a mobile unit, hearing cases throughout Kosovo.

Contention arose over the judges selected to this mobile unit. Kosovo politicians considered that one Albanian judge in particular stood for the old Yugoslav order, and criticised him for issuing indictments relating to the 1989 student strikes in Pristina. One of the Serb judges was evicted from his apartment and threatened with death if he returned, and other Serb personnel resigned.[11] The Bosniak judge was also accused of collaboration with the Milosevic regime.[12]

Despite these problems, by mid-July the mobile court had conducted hearings on 249 detainees. While 112 detainees were released, serious questions arose about the fairness of the process that convicted the remaining detainees, particularly those who were members of minority communities.[13]

According to the report of the Secretary General to the Security Council in late 1999:

> Judges and prosecutors have received threats demanding that they not pursue investigations against certain suspects or that they release them, despite compelling incriminating evidence gathered by KFOR or UNMIK police. Impunity is emerging as a problem that undermines the substantial efforts to build an independent legal system and a police force that respects human rights.[14]

Although the SRSG had sweeping powers in relation to the judiciary, UNMIK's weak capacity to monitor the courts meant it could not intervene effectively.[15]

Moreover, judges were uncertain which laws to apply. UNMIK originally decided that the legal framework would remain the "laws applicable in the territory of Kosovo prior to 24 March 1999"[16] as long as they did not conflict with internationally recognised human rights standards. Albanians vigorously denounced this decision, because they saw the post-1989 laws as instruments of oppression.[17] In December 1999, Regulation 1999/24 changed the applicable law to the law in force on 22 March 1989, supplemented by regulations promulgated by the SRSG, and internationally recognised human rights standards.[18]

The applicability of human rights law added additional difficulties: "It required the lawyers, many of whom were inexperienced, to engage in the complex task of interpreting the penal code or the criminal procedure code through the lens of international human rights instruments, applying those provisions that met international standards, while disregarding those that did not, and substituting for the latter the appropriate standard under international law."[19] Initially very little training was available for judges to assist them in navigating the confusing melange of applicable law.[20]

C. UNMIK'S EARLY EFFORTS TO ESTABLISH JUSTICE

Gradually UNMIK took steps to put in place a permanent judiciary to replace the emergency one. An Advisory Judicial Commission (AJC) was created that recommended judges and prosecutors, and 238 lay judges were appointed on 29 December

[10] This advisory council included four from Kosovo and three internationals.
[11] United Nations Security Council (UNSC), "Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo", 23 December 1999.
[12] Strohmeyer, "Collapse and Reconstruction", op. cit., p. 53. This reflects the general failure in Kosovo society to accept the importance of an independent judiciary.
[13] Strohmeyer, "Collapse and Reconstruction", op. cit., p. 53.
[14] UNSC, "Report of the Secretary General", op. cit.
[15] As a result, the OSCE Legal Systems Monitoring Section was established to fulfill this role.
[16] See UNMIK Regulation N°1999/1 "On the Authority of the Interim Administration Mission in Kosovo", 25 July 1999. Regulations are available at www.unmikonline.org.
[17] ICG interview with President of Kosovo Supreme Court.
[18] For further discussion on the applicable law, please see ICG Balkans Report No 125, *A Kosovo Road Map (II): Internal Benchmarks*, 1 March 2002.
[19] Strohmeyer, "Collapse and Reconstruction", op. cit., p. 59.
[20] See OSCE, Department of Human Rights and Rule of Law, "Kosovo Review of the Criminal Justice System February to January 2000. OSCE reports on the justice system are available at: http://www.osce.org/kosovo/documents/reports/justice/; and UNMIK, "1st Anniversary Backgrounder – Reviving Kosovo's Judicial Systems – 5 June 2000". Available at http://www.unmikonline.org/ 1styear/unmikat18.htm.

1999.[21] A judicial administration, part of the Joint Interim Administrative Structure (JIAS), was established in January 2000,[22] with joint local and international staff. The responsibilities of the justice sector were divided between the Department of Justice (within UNMIK), which was responsible for development of the judiciary and penal management, and the Administrative Department of Justice (within the JIAS), which dealt with the administrative functioning of the courts. The international head shared responsibility with a Kosovo co-head only in the Administrative Department, not for the entire system. Because these two units shared staff and office space, their separation was not immediately obvious.

UNMIK's objective was to establish functioning courts to clear the backlog of cases and oversee the reform of the system to European standards. This task was complicated by several factors.

First, the judiciary suffered from a general lack of professionalism. Many Albanian judges and prosecutors had not worked for over ten years, and their experience was in a system where the independence of the judiciary was not respected. "In a society that had never before experienced respect for the rule of law, and in which the law was widely perceived as yet another instrument for wielding authority and control over the individual, the meaning of independence and impartiality of the judiciary had to be imparted gradually."[23]

Secondly, relations between the judiciary and international police were initially strained. Many international police officers came from countries where there is no tradition of having an investigative judge as in Kosovo, who is expected to have the lead role in criminal investigations. On the other hand, while the judiciary legally held the investigative role, it lacked the capacity to fully carry out that responsibility.

Thirdly, the judiciary continued to be put under pressure that was meant to influence their decisions. As noted by Amnesty International in February 2000:

> . . . unacceptable pressure, in the form of threat, intimidation and even violent attacks, is being exerted on some members of the judiciary by extremist elements of ethnic Albanian society. This pressure may be affecting the ability of some judges to take decisions impartially and independently based on legal, rather than political, considerations. During December, two former judges were murdered in Kosovo. Although the circumstances of their murders are not clear, the possibility that they were killed in connection with their prior judicial activities cannot be excluded.[24]

The impact of this atmosphere of coercion on the foundations of impartial judiciary, and on UNMIK's confidence in local professionals, was long-lasting.

As any convictions under these conditions had to be regarded as questionable, UNMIK decided in late 1999 to bring internationals into the system to curb bias, as well as to help clear the significant backlog of cases. Although this was an important initiative, it was not easy to find suitable international staff: they needed to be practising prosecutors and judges (not academics) familiar with civil law, fluent in English, keen to live in a challenging environment, and culturally sensitive.[25] By mid-February 2000, Kosovo only had one international judge and one prosecutor.[26]

UNMIK had hoped the inclusion of international judges would curb bias and enhance professionalism. However, in the Kosovo system, a panel of judges – from three to five - hears a case and the verdict is by majority decision. On the panel of three, the international judge often was simply outvoted by his two colleagues. Questionable convictions and heavy sentencing particularly in cases of Serb defendants continued. The quality of international judges was also variable, as were their

[21] UNSC, "Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo", 3 March 2000.
[22] For information on the operation of the Joint Interim Administrative Structure, see ICG Balkans Report No 100, *Kosovo Report Card,* 28 August 2000; and ICG Report, *Benchmarks*, op. cit.
[23] Strohmeyer, "Collapse and Reconstruction", op. cit., p. 55.
[24] Amnesty International, "Amnesty International's Recommendations to UNMIK on the Judicial System", February 2000.
[25] ICG interview with Sylvie Pantz, former Director of the UNMIK Department of Justice from November 1999 to December 2000.
[26] UNSC, "Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo", 3 March 2000.

levels of English language skills, cultural sensitivity and respect for their Kosovo colleagues.

A significant backlog of cases remained, with many defendants held in detention without a trial. Thirty Kosovo detainees began a hunger strike in Mitrovica on 10 April 2000 to protest their continued detention and the partiality of the courts. The majority of the hunger strikers were of Serb ethnicity and faced allegations of war crimes or ethnically motivated violence. Approximately twenty-five of the hunger strikers had been arrested and detained between August and September 1999, and the majority of cases had not yet been to trial.[27]

The hunger strike, the continuing reports of bias in the system, and the significant backlog of cases prompted UNMIK to revise the role of international judges and prosecutors. In December 2000, UNMIK passed Regulation 2000/64 that allowed for majority panels of international judges "if it determines that this is necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice."[28]

Despite these difficulties, UNMIK Department of Justice accomplished a great deal in the early days of its mandate. As judicial facilities required rehabilitation and equipment, a "Quickstart Package" was provided, and courts were functioning within a year.[29] The Organisation for Security and Cooperation in Europe (OSCE) established judicial and criminal defence training institutes. A group of international and local legal professionals wrote new Kosovo Criminal and Criminal Procedures Codes that are in line with European standards. The first bar exam was held in December 2001. These and other significant accomplishments ensured that in a very short time period a regular and functional criminal justice system was in place.[30]

D. THE CURRENT JUDICIAL PROCESS

Although much has been achieved, serious problems remain. A concrete strategy, including a financing plan, to strengthen the system is badly needed.

1. The Judiciary

The judiciary is now functioning[31] but it remains weak. Concerns include the institutional independence of the judiciary, the need for training for judges, the role of international judges and prosecutors, the integration of Serb judges into the system, and a general shortage of judicial personnel.

Judicial Independence. An independent judiciary should prevent political officials or other societal actors from controlling judicial decision making, act as a check on political power, function as the arbiter of all disputes, and ensure that the rights of all citizens – regardless of their ethnicity, gender, or social status – are safeguarded. However, ensuring that members of the judiciary are independent and perform their functions to a high set of standards is a difficult challenge in Kosovo.

One component of independence is institutional freedom. The judiciary should ideally be a separate branch of government, with the same status as the executive and legislative branches. Moreover, the appointment, performance and disciplinary accountability of the judiciary should be autonomous. This autonomy can be secured through transparent appointment and disciplinary procedures, security of tenure, and financial security.

Indefinite terms strengthen independence – a process which the Department of Justice began this year.[32] From their initial three-month contracts (later extended to nine months), judges will now receive contracts that terminate with the end of UNMIK's mission. While this has improved job security, poor remuneration makes it difficult to attract judges. Some judges on the Supreme Court

[27] OSCE, Department of Human Rights and Rule of Law, "Review of the Criminal Justice System February to July 2000". Since that time, all but three of these cases have been tried.

[28] See Regulation N°2000/64, "On the Assignment of International Judges and Prosecutors and/or Change of Venue", 15 December 2000.

[29] USAID funded the "Quickstart" project.

[30] OSCE Department of Human Rights and Rule of Law, Legal Systems Monitoring Section, *Report 9:* "On the Administration of Justice", March 2002.

[31] The current court system includes a Supreme Court (fourteen judges); a Commercial Court (ten judges); Five District Courts (43 judges); 22 municipal courts (131 judges); and 22 municipal courts of minor offences (107 judges). Appeals from these minor offences court are heard by the High Court of Minor Offences.

[32] OSCE Department of Human Rights and the Rule of Law, "A Review of the Criminal Justice System September 2001 to February 2002".

have left for other jobs or private law practice. Moreover, working conditions are less than ideal: even at the Supreme Court there is no adequate library, and the Court's fourteen judges occupy ten offices.[33] These factors demonstrate the resource constraints of the Kosovo Consolidated Budget.

While there is a delicate balance between judicial independence and accountability, a strong mechanism for oversight and discipline is critical particularly in the formative stages of the judiciary.[34] UNMIK faced the challenge of securing accountability while also safeguarding independence. The Kosovo Judicial and Prosecutorial Council (KJPC) and the Judicial Investigation Unit (JIU) of the Department of Justice were two mechanisms developed to meet that balance. While the JIU and KJPC cover judges and prosecutors, the Kosovo Chamber of Advocates is responsible for oversight and discipline of lawyers.[35]

The KJPC was established on 6 April 2001 to "advise the SRSG on matters related to the appointment of judges, prosecutors and lay-judges as required, and hearing complaints, if any, against any judge, prosecutor or lay-judge."[36] It is composed of nine legal professionals (five internationals and four Kosovo officials). While the European Charter on the Status of Judges requires that half the members be judges, the KJPC does not abide by this rule. The list of new judges and prosecutors is presented by the KJPC to the Assembly for its consideration but the final verification of their appointments remains the purview of the SRSG. Although its continued connection to the SRSG has been criticised by the OSCE,[37] the KJPC is an important step in the process of establishing institutionalised procedures to secure judicial appointments. UNMIK should continue to build on this progress to further develop the KJPC so it will eventually be fully independent of the executive branch of government.

The JIU was established in April 2001 as a unit of the Department of Justice[38] responsible for investigating accusations against judges and prosecutors. Such accusations may originate from the police, the OSCE, other judges and prosecutors, defence counsel, and citizens. Two international inspectors and three Kosovo inspectors currently work for the JIU - not enough personnel for the scale of the task. Local staff find it difficult to investigate their colleagues; inspectors risk intimidation, threats, and retribution if someone is dismissed from their job.[39] It is anticipated that in order to hand over responsibility to Kosovo officials, every year fewer internationals will work for the JIU, assuming that there are local inspectors willing to take on that responsibility.

Once the JIU has completed its investigation, if evidence of misconduct is found, the case is sent to the KJPC for a hearing.[40] To date the JIU has investigated approximately 64 cases. Twenty-three of these cases were submitted to the KJPC, with so far three acquittals, three reprimands/warnings, seven cases dismissals. In six cases the KPJC decided not to proceed, and four cases are still pending.[41]

UNMIK hopes that these oversight mechanisms will respond to accusations of corruption among judges and prosecutors, as well as allegations that judges and prosecutors currently working in the system have participated in discriminatory practises during their careers. The Department of Justice argues that these oversight mechanisms ensure grievances against members of the judiciary can be submitted to a transparent and effective process.

Although many elements of institutional independence are now in place, the judiciary is still not separate from the executive and legislative

[33] ICG interview with the President of Supreme Court.
[34] For a discussion of the tension between independence and accountability in South Africa, see Lazarus Kgalema and Paul Gready, "Transformation of the Magistracy: Balancing Independence and Accountability in the New Democratic Order", Centre for the Study of Violence and Reconciliation, June 2000. Available at: www.wits.ac.za/csvr/papers/paplk&pg.htm.
[35] Analysts of the legal system argue that a new disciplinary structure is needed. ICG interview with USAID.
[36] See UNMIK Regulation 2001/18, "On the Establishment of the Kosovo Judicial and Prosecutorial Council", 6 April 2001.
[37] OSCE Department of Human Rights and the Rule of Law, "A Review of the Criminal Justice System, September 2001 to February 2002".
[38] Since the Department of Justice is effectively part of the executive branch of government, and the JIU sits in the Department, this hinders the development of an independent judicial branch in Kosovo. ICG interview with USAID.
[39] ICG interview with Department of Justice officials.
[40] While the Codes of Ethics for Judges and Prosecutors were adopted in November 2001, they have not been publicised. Many judges and prosecutors under investigation for violations of the codes had never read them.
[41] ICG interview with Department of Justice official.

authority of UNMIK. During the period of institution building, UNMIK oversight is indeed necessary. However, a plan to develop the judiciary into a fully independent branch of government must be made.

Judicial Training. Many judges and prosecutors were appointed after a ten-year absence from their profession. Even those who worked during the 1990s do not have experience in a democratic society. They were trained to apply the law, and were never encouraged to interpret it. International judges report that when some judges encounter a new problem they are unable to construe from the law the appropriate legal response. For example in one case, the defence counsel wanted to use videotape evidence. Local judges objected because the procedural code does not address this issue.

Continued training of the judiciary to build capacity will be crucial. The OSCE formed the Kosovo Judicial Institute (KJI) to undertake this task. But the KJI has no formal training strategy. Due to the ad hoc nature of legislation, their training seminars have been largely reactive, conducted on an as needed basis, and with a strong emphasis on criminal law. Moreover, attendance is not compulsory and there is no testing to ensure that the knowledge has been absorbed.

This year will be the first time that the KJI has developed a yearly program for its continuing legal education. The KJI should continue this trend and develop a long-term strategy and a curriculum based on an assessment of needs. Such a curriculum should include interpretation of the law, training in new laws, basic courtroom and case management skills; as well as ethnic and gender sensitivity. The KJI is currently waiting for an UNMIK regulation on the selection and training of judges and prosecutors. This regulation will establish the KJI as an organ of government, either under the Police and Justice Pillar of UNMIK or as a separate entity. With this regulation, the KJI will become responsible for the establishment of a school for the initial education of judges and prosecutors, as well as continuing legal education. However, further work needs to be done to synchronise the work of the KJI with law faculty reforms underway at Pristina University and the bar exam. Qualification exams are needed, and attendance must be compulsory.[42]

International Judges and Prosecutors. Since their introduction in February 2000, international judges and prosecutors have become a crucial component of the justice system. As of June 2002, the system had fourteen international judges and twelve international prosecutors. They are needed to help clear the backlog of sensitive criminal cases. Moreover, because of the bias and lack of professionalism outlined above, internationals will play a crucial role in the fight against organised crime and the prosecution of war and ethnically motivated crimes.

While UNMIK expanded the role of international judges and prosecutors, the support structure needed for them did not keep pace. International judges face inadequate legal and administrative support.[43] Many of these judges are senior professionals in their country of origin, and are accustomed to high levels of administrative and professional support. Judges also face the challenge of learning an entirely new legal code and need training on the intricacies of the legal system. With support from the Department of Justice, OSCE, and the Council of Europe, KJI hosted an initial training program in June 2002 for internationals, a welcome step that should be continued.[44]

While the role of international judicial personnel – particularly with the low capacity of local officials – is currently crucial, their allocation to cases is problematic. The instructions outlining the criteria for the appointment of an international prosecutor, investigating judge, or a majority panel of international judges to a case remain vague and subjective. The Department of Justice guidelines, which have never been officially publicised, state that a petition for a case to be handled by an international panel can be made if there is:

---

[42] ICG interview with the Deputy SRSG, Pillar One, Police and Justice, and with the Director of the Kosovo Chamber of Advocates. The KJI currently has no power to make its training courses compulsory.

[43] Mark Baskin, "Lessons Learned on UNMIK Judiciary", commissioned by the Department of Foreign Affairs and International Trade Canada, Pearson Peacekeeping Centre, July 2001.

[44] OSCE Department of Human Rights and the Rule of Law, "A Review of the Criminal Justice System September 2001 to February 2002"; and ICG interview with Director of the Kosovo Judicial Institute.

- existence of or potential for intimidation or manipulation of the local judiciary and/or local prosecutors in the proceeding;
- actual or potential public demand for a judicial outcome;
- diversity among the accused, victims, or witnesses, on religious, ethnic, language, citizenship, or political affiliation; or
- any other factors that could affect judicial or prosecutorial impartiality.[45]

After a petition is issued for the use of internationals in a case, the Department presents its recommendation to the SRSG, who shall either authorize or reject the request. International judges and prosecutors can be appointed at any stage in a criminal proceeding.

With such broad criteria, coupled with the discretionary role of the SRSG, the use of international judicial personnel has become a panacea for what ails the justice system. However, an argument could be made that in most criminal cases judicial or prosecutorial impartiality could potentially be threatened. The establishment of clear and transparent criteria will be important to ensure that the role of international judges and prosecutors is confined to extremely sensitive cases – such as charges of war crimes, ethnically motivated crime, and organized crime. Without such limitations, capacity building of the local judiciary will be minimal, as they will not be given the opportunity to take on difficult cases to build their competence and test their impartiality.

Although initially reluctant, Kosovo judges have accepted their international colleagues. They recognise that pressure and paranoia produced biased decisions in 1999 and 2000, and that similar pressure is also possible in the future. Many have also acknowledged the critical role that international judges can play in the fight against organised crime – which could otherwise place the local judiciary at significant risk.[46] Moreover, there is also now a perception that they can gain from the experience of international judges.[47] However there is no mechanism for the mentoring of local judges by internationals. [48] In Pristina, international and local judges have offices in different buildings. Even at the district level, where offices are collocated, there is little interaction.[49] Moreover, both local and international judges are extremely busy with preparation for cases.

While international judges fit into the natural court hierarchy, UNMIK has not established such a system for international prosecutors. Before an indictment, it is crucial that the prosecution is reasonably confident of the merits of the case. However, the Senior Prosecutor does not have effective oversight over prosecutions to ensure sufficient evidence exists before charges are issued. Similarly, the Director or any other official in the Department of Justice are also not able to oversee the substantive work of individual prosecutors. This creates a lack of uniformity in prosecutorial policy, and heightens the risk that a person may be brought to trial without sufficient evidence.[50] The Department of Justice is trying to find a mechanism to address this issue.[51]

Although the role of international judges and prosecutors is almost universally recognised as necessary, there is a clear tension between the immediate need to secure justice through very expensive international personnel, and the long-term aim of building the capacity of the system. The extensive role of internationals delays the time when Kosovo judges and prosecutors are required to take full responsibility to ensure impartiality and independence in all cases. International judges and prosecutors cannot remain in Kosovo forever – they are extremely expensive and currently do not contribute to the development of local capacity.

The Department of Justice argues that the KJI and KJPC have established sufficient oversight of local judicial personnel to develop their impartiality and professionalism. UNMIK therefore needs to develop a strategy to phase out the role of

[45] Unpublished guidance issued by the Department of Justice, as outlined in OSCE Department of Human Rights and the Rule of Law, "A Review of the Criminal Justice System September 2001 to February 2002".
[46] ICG interview with the President of the Kosovo Supreme Court.
[47] Ibid.
[48] The mentoring process in East Timor met with limited success, as local judges perceived that internationals were infringing upon their independence. ICG interview with the Deputy SRSG, Pillar One, Police and Justice.
[49] OSCE Legal Systems Monitoring Section, Report 9, "On the Administration of Justice", March 2002.
[50] ICG interview with UNMIK prosecutor.
[51] ICG interview with Department of Justice Official.

internationals, and gradually phase in a heightened role for local judges in sensitive cases over a period of two years. This two year period would provide UNMIK with enough time to develop a clear training plan for locals, coupled with the mentoring by international judges and prosecutors of their local counterparts on difficult cases. As competence increases, local officials would gradually take over these cases – with the assurance that if there is any evidence of misconduct, the KJPC would have the capacity to take the necessary disciplinary measures. One critical component to the participation of local judges and prosecutors will be sufficient court security, as well as close protection for judicial personnel where the potential for risks exist.[52]

Judicial Integration. Despite extensive efforts by UNMIK to recruit minorities, currently only nine Bosnians, four Serbs, seven Turks, and two Roma work in the judiciary.[53] This hampers the goal of a multiethnic administration and impacts on the confidence of minorities in the system.

In December 2001, the UNMIK Department of Justice began a concerted campaign to recruit minority judges. Serb judges were concerned that if they work for UNMIK, they would lose their professional status and their pensions. This was a valid concern, especially given that the four Serb judges and prosecutors who worked for UNMIK lost their pensions and status when they signed their contract.[54] Minority judges were also concerned for their security, and the security of their families.

After many months of negotiations on these issues, especially as they related to Serbs, UNMIK and Belgrade signed the "Joint Declaration on Recruitment of Judges and Prosecutors of Serb Ethnicity into the Multi-Ethnic Justice System in Kosovo" on 9 July 2002.[55] The agreement addressed pensions, other social benefits, professional standing in Serbia, housing, and security. As a result, UNMIK received a substantial number of applications from Serb judges and prosecutors. UNMIK hopes that by the end of September 2002, the number of Serb judges and prosecutors in the system will reflect their composition of Kosovo's population.[56] However, technical details to implement this protocol remain to be worked out. The Serbian Justice Minister Vladan Batic warned that UNMIK had to adequately resolve the issues of personal security, employment for family members, and family housing before Serb judges would be willing to join the system.[57]

Because Serb judges fear for their security should they work in Kosovo, a clear commitment from Albanians is needed for their integration. There is resistance from some Albanians to the recent agreement with Belgrade, fuelled in part by the sadly typical misrepresentation of the agreement in the Kosovo press.[58] There is a fear that judges who participated in implementing the discriminatory polices of Milosevic will once again sit on the bench in Kosovo. This fear is largely unjustified. The KJPC will undertake the same screening of Serb judges as they undertake for all applicants, including an evaluation of their previous job performance. UNMIK Department of Justice is confident that this process will ensure that UNMIK is not recruiting Serb judges with records of politicised convictions against Albanians during the 1990s.[59] (It is not at all clear why such individuals would want to apply in the first place.)

Commitment from Belgrade to dismantle the parallel courts is also necessary for the integration process. The existence of parallel courts provides Serb judges and prosecutors with alternative sources of employment. Minor offence and municipal courts function in Mitrovice/Mitrovica, Leposavic/ Leposaviq, Zubin Potok, Zvecan/Zvecani, and Vushtrri/Vucitrn. The district court for these lower courts is in Kraljevo, where the (parallel) District Court of Mitrovica relocated in 1999 to hear cases

[52] USAID, Pristina, and OSCE, "Kosovo Justice Sector Assessment: Second Assessment Mission", January 2002.
[53] These numbers were obtained from the Department of Justice, valid as of September 2002.
[54] ICG interview with UNMIK Department of Justice official.
[55] The Declaration was signed on 9 July 2002 jointly by Vladan Batic, the Minister of Justice in the Serbian government, and Jean-Christian Cady, Deputy Special Representative for the SRSG for Police and Justice.
[56] B-92, "Protocol Agreed for the Return of Serb Judges to Kosovo", 6 July 2002.
[57] "Protocol for Integration of Serb Judges in Kosovo Judiciary Approved", *VIP*, July 8, 2002.
[58] An article in *Zeri* on 8 July 2002, "Will Milosevic Judges Sentence Again in Kosovo?", expresses fear that some judges who legalised the discriminatory policies of Milosevic will once again be allowed to participate in the Kosovo judiciary. Nikibe Kelmendi, the former co-director of the Department of Justice, stated, "I have information that in some regional courts in Kosovo in 1990s, judges were dressed in military uniform". However, she also emphasised that she is not against integration of Serbs into the judicial system.
[59] ICG interview with Department of Justice officials.

from Kosovo. These parallel courts employ a total of 34 judges, and create overlapping jurisdiction, which leads to the possibility of double jeopardy and general public confusion. They are also in clear violation of UNSC resolution 1244.[60]

Shortage of Staff. The courts at all levels need more judges and prosecutors. While the Kosovo Consolidated Budget anticipated a total of 420 judges and prosecutors working in fifty-five courts in Kosovo, as of September 2002, the justice system has 295 judges, and 46 prosecutors,[61] and has approximately 80 vacancies.[62] Some of these positions have been left deliberately vacant so as to provide employment for newly trained professionals. However, the poor salaries and working conditions,[63] combined with the previous reluctance of Serb judges to participate in the system are also important reasons for this shortfall.

This shortage creates a serious backlog of cases and in some cases impacts severely on the right of defendants, particularly those who are held in protective custody.[64] OSCE has documented cases where defendants spent over a year in detention awaiting trial while investigations into their case were made.[65]

Beyond staff shortages, case flow management is affected by structural deficiencies within the system. Examples include extensive delays in scheduling trials, the variable working hours of many court officials and the lack of adequate translation and interpretation during court proceedings.

2. Securing the Evidence

While the role of international judges ensures impartiality, weaknesses plague successful investigation and prosecution of some cases. Securing enough evidence to press charges challenges the current judicial structure for several reasons: the weak forensic capacity, the failure to establish a fully viable witness protection program, and the investigative role of the police under the legal framework. As a result of these weaknesses, UNMIK and KFOR have used extrajudicial detention in cases where they have been unable to secure enough evidence to lay charges. Some individuals have been held without charge for over a year. Extrajudicial detentions are not only violations of human rights law, they also demonstrate the inability of the police and judiciary to secure evidence.

Forensic evidence – such as fingerprints, DNA, and blood samples – is crucial to most investigations.[66] However, in Kosovo the capacity to gather and utilise forensic evidence suffers from infrastructure shortcomings, the low investigative capacity of the police, and the significant passage of time for crimes committed in 1999 and 2000. First, there is no centralised system to keep and organise evidence – no storage location and no system for numbering the evidence. Moreover, with the frequent turnover of UNMIK police and justice officials, many actors are involved in evidence gathering. There have been cases where critical evidence has been lost.[67] Secondly, the forensic capacity of UNMIK police is variable – police officers come from different countries, have varying levels of expertise, and lack necessary infrastructure to analyse evidence.[68] They also lack the necessary equipment to undertake some of their tasks. Local capacity has not yet been built: KPS officers have not yet received the intensive forensic training to enable them to play a key role in such investigations.[69] Thirdly, for investigations of crimes committed in 1999 and the

[60] OSCE Mission in Kosovo, "Background Report, Parallel Court Activity in Northern Kosovo", 27 November 2001.
[61] The numbers of judges and prosecutors were obtained from the Department of Justice. Current as of September 2002.
[62] OSCE Legal Systems Monitoring Section, Report 9, "On the Administration of Justice", March 2002.
[63] The monthly salaries are: Chief Prosecutor (Kosovo Prosecutorial Services): €628; Chief Prosecutor – District Court: €555; Chief Prosecutor Municipal Court: €481; Supreme Court Judge: €592; District Court Judge: €518; Municipal Court Judge: €444; Minor Offences Court Judge: €371; President of Municipal Court: €481; President of District Court: €555; President of Supreme Court: €628; Prosecutor – Kosovo Prosecution Service: €592; Municipal Court Prosecutor: €444; District Court Prosecutor: €518.
[64] OSCE, Report 9, "On the Administration of Justice".
[65] Ibid.
[66] See Michael E. Hartmann, "International Human Rights Training", in *Issues of Democracy*, March 2002, available at www.usinfo.state.gov/journals/itdhr/0302/ijde/hartmann.htm.
[67] ICG interview with UNMIK official.
[68] Confusion exists over two planned forensic facilities – the U.S.-funded crime lab, and the Kosovo Forensic Institute. The roles and status of each institute, and their relationship, remains unclear. ICG interview with USAID.
[69] See ICG Report, *Benchmarks*, op. cit..

year 2000, as we discuss below, forensic evidence is simply no longer available.

KFOR has gathered intelligence that provides insight into the individuals and their motives involved in many crimes but sharing it among the Multinational Brigades and transforming it into forensic evidence that is admissible in court is problematic. To enhance intelligence sharing, KFOR has created a Central Intelligence Unit at KFOR headquarters where the military shares their intelligence with UNMIK police. To turn this intelligence into evidence admissible in court and ensure the involvement of the judiciary earlier in the intelligence/evidence gathering process, the Department of Justice has created a Sensitive Information and Operations Unit.[70] This crucial unit is sorely understaffed. In the spring of 2002, almost three years after UNMIK entered Kosovo, a regulation on "Covert and Technical Measures of Surveillance and Investigation"[71] was passed. This regulation allows for information from intelligence sources such as wiretaps, video surveillance, and mail surveillance to be used as evidence. However, the capacity of the police to gather this intelligence without the help of KFOR is hampered by their lack of surveillance equipment.[72]

Because of the weak forensic capacity, much evidence in court consists of witness statements. Witness testimony in all settings is vulnerable to manipulation and corroboration with other pieces of evidence is required. In Kosovo, where many convictions rest on witness testimony, the potential for miscarriages of justice through intimidation of witnesses and perjury increases.

The weakness of witness statements is heightened by the minimal role of the police. The primary investigative responsibility for crimes went to the investigative judge, while the police played the role of securing the crime scene and finding criminals. However, interviews by the police conducted right after the crime tend to be the freest from influence, as long as they are not secured through means contrary to human rights standards.[73] Between the time of the crime and the investigation by the judge, witnesses and defendants often receive pressure – from the defendant or other interested parties such as political and community leaders – to change their testimony, decreasing the reliability of their statements and affecting the ability to secure prosecution.[74]

After much delay, Regulation 2002/07 "On the Use in Criminal Proceedings of Written Records of Interviews Conducted by Law Enforcement Authorities" ensured that under certain circumstance interviews taken by the police can be utilized in criminal proceedings.[75] As outlined below due to slow translation and distribution of regulations, many in the judicial structure remain unaware of its promulgation.

Inadequate protection of witnesses also affects their reliability. UNMIK's witness protection program[76] remains a shell. Essential equipment, such as closed circuit televisions and voice alteration devices, has not been provided. Moreover, as Kosovo is a small geographic area with very close-knit communities, it is extremely difficult to maintain witness anonymity, and almost impossible to adequately protect witnesses through relocation within the province. This relocation has to be done internationally, but requests are currently processed on an ad hoc basis and most countries are unwilling to accommodate UNMIK requests.[77] Currently witnesses in criminal cases who require protection live in a safe house with no certainty of where they will live in the future. The safe house is quickly becoming full.[78]

An additional difficulty is the lack of an established procedure to bring witnesses from Serbia to testify in Kosovo courts. They fear for their safety and are also afraid of arrest. A witness

[70] UNSC, *Report of the Secretary General on United Nations Interim Administration Mission in Kosovo*, January 2002.
[71] Regulation 2002/6, "On Covert and Technical Measures of Surveillance and Investigation", 18 March 2002.
[72] ICG interviews with police officials.
[73] ICG interview with UNMIK Department of Justice officials.
[74] ICG interviews with international judges and prosecutors.
[75] UNMIK Regulation N°2002/07, *On the Use in Criminal Proceedings of Written Records of Interviews Conducted by Law Enforcement Authorities*, 28 March 2002.
[76] See UNMIK Regulation 2001/20, "On the Protection of Injured Parties and Witnesses in Criminal Proceedings", 19 September 2001, and Regulation 2002/1, "Amending UNMIK Regulation N°2001/20 on the Protection of Injured Parties and Witnesses in Criminal Proceedings", 24 January 2002.
[77] ICG interview with UNMIK Director of Department of Justice.
[78] ICG interview with UNMIK Deputy SRSG, Pillar One Police and Justice.

in a case in Pristina was actually arrested in the courtroom.[79]

3. Problems in the Courtroom

Difficulties with forensic evidence and witnesses are compounded in the courtroom by continuing confusion over applicable law, slow translation of regulations, and the difficulty to implement new regulations.

Many judges remain confused over applicable law, which continues to be a compendium of the 1989 Criminal Code, UNMIK Regulations, and the European Convention on Human Rights. The New Criminal Code and Criminal Procedures Code has not been passed, and it is uncertain as to when these codes will be promulgated.[80] The incorporation of the European Convention on Human Rights into applicable law has caused additional confusion: there is little training or experience in its implementation.

Moreover, the slow translation of regulations adds to the confusion. Regulations take months to be translated into Albanian and Serbian, and distribution to all judicial personnel is inadequate.[81] This lack of legal certainty destabilises the judiciary. The President of the Supreme Court, in an interview with ICG, observed with frustration that he finds it difficult to understand why seven to eight months after a regulation has been promulgated by the SRSG, translations are not available even for members of the Supreme Court.[82] OSCE has recommended that no regulations should be forwarded to the SRSG for promulgation until they have been translated into all three official languages, and have been distributed to courts throughout Kosovo.[83]

While judges remain unaware of the existence of new legislation, new regulations are also often difficult to implement. Although all UNMIK regulations are screened by the Human Rights Oversight Committee to ensure that they are in compliance with human rights law, the SRSG is not required to consult other organisations or institutions before promulgating a regulation.[84] Because there is often insufficient consultation while drafting new legislation, some new laws do not fit into the existing system and breach human rights standards.

[79] ICG interview.
[80] ICG interview with President of the Kosovo Supreme Court.
[81] OSCE, "Kosovo: Review of the Criminal Justice System: September 2001-February 2002".
[82] ICG Interview with President of the Kosovo Supreme Court.
[83] OSCE, "Strategy for Justice", June 2001.
[84] OSCE, "Kosovo: Review of the Criminal Justice System: September 2001-February 2002".

III. INSTITUTION-BUILDING: TOWARDS AN AUTONOMOUS JUDICIARY?

While it is clear that measures need to be taken to give the current system the capacity to investigate and prosecute crimes, the current domination of internationals throws the sustainability of UNMIK's efforts into question. UNMIK must ensure that hand-in-hand with the strengthening of the system through international experts, it builds the capacity of Kosovo officials to assume responsibilities.

Under UNSCR 1244, UNMIK has responsibility to:

- organise and oversee development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections; and
- transfer, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities.[85]

On that basis, the SRSG promulgated the Constitutional Framework of May 2001, which paved the way for the establishment of Provisional Institutions of Self-Government (PISG) after province-wide elections on 17 November 2001. The Framework divided authority for the judicial system between the PISG and UNMIK. The government's Ministry of Public Services has responsibilities in the following areas:[86]

- decisions about the appointment of judges and prosecutors, organisation and proper functioning of the courts within existing structures, and provision, development and maintenance of court and prosecutorial services;
- provision of technical and financial requirements, support personnel and material resources to ensure the effective functioning of the judicial and prosecutorial systems;
- training (professional and vocational) of judicial personnel in cooperation with OSCE;
- organisation of examinations for qualification of judges, prosecutors, lawyers and other legal professionals through an independent professional body; and,
- appointment, training, disciplining and dismissing members of judicial support staff, ensuring coordination and cooperation with appropriate organisations and providing information and statistics.

UNMIK maintained the following powers:

- final authority regarding the appointment, removal from office and disciplining of judges and prosecutors;
- assignment of international judges;
- control powers and responsibilities of an international nature in the legal field; and,
- authority over law enforcement institutions and the correctional service, both of which include local staff.

However, a blanket clause in the Constitutional Framework allows the SRSG to "ensure full implementation of UNSCR 1244 including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244 or the Constitutional Framework."[87]

While transferred judicial responsibilities are now officially the purview of the Ministry of Public Services, how the division of power will manifest itself in practice and how the SRSG will use his sweeping powers remain unclear. In many UNMIK departments, international officials handed over some responsibilities to the new PISG Minister with the formation of the government in March 2002. While in some cases the subsequent power-sharing arrangements created tension between UNMIK officials and the new Ministers,[88] the Department of

[85] See United Nations Security Council Regulation 1244, 10 June 1999, 11 (c) and (d).

[86] See UNMIK Regulation 2001/19, "On the Executive Branch of the Provisional Institutions of Self-Government", 13 September 2001.

[87] For a full outline of the responsibilities of the PISG and UNMIK, see UNMIK Regulation 2001/9, "The Constitutional Framework for Provisional Self-Government", 15 May 2001.

[88] In the Ministry of Education, the Principal International Officer left his position, partly in protest at the activities of the new Minister.

Justice has been immune from that source of tension because there has been power sharing with the PISG in that department. International officials remain tightly in control of the main elements of the justice system, and firmly in charge of the Department of Justice.

A. THE DEPARTMENT OF JUSTICE

The Department is the only one within UNMIK where the number of international officials is increasing. This growth is seen as necessary to build the justice system, tackle organised crime and control extremist violence. Much of its new staff are operational, involved in the implementation of reforms and the management of the justice system, rather than providing technical advice and oversight to Kosovo officials. Nevertheless, resources remain stretched. The Department has been requested to prioritise the fight against organised crime, resolve the significant backlog in the system, integrate minority judges, recruit and manage international judges, ensure victim's rights are respected, increase the competency of the judiciary, and build local capacity to administer the justice system. These important initiatives are being undertaken with limited staff.

Few local officials work in high levels at the Department of Justice. Apart from administrative personnel, no local staff work in the Director's Office.[89] UNMIK legitimately cites security and confidentiality concerns to explain the absence of local participation at the top decision making levels. They fear that sensitive information about prosecutions will be leaked, and their efforts to crack down on organised crime, extremist violence, and their ability to prosecute sensitive cases such as war crimes will be compromised.

While these concerns are legitimate, UNMIK should incorporate more Kosovo officials – of all ethnicities – into the policy and planning functions of the Department of Justice without fear of compromising the prosecution and investigation of sensitive cases, which would in any case remain in the hands of internationals. The Department should follow the lead of UNMIK Police, where a detailed plan has been developed to build local managerial capacity, and a strategy for a staged hand over of policing responsibilities has been developed.[90] Moreover, some units in the department should have Kosovo officials as co-heads. Much has been done in one section of the Department – the Judicial Development Division – to hand over responsibilities to Kosovo officials for victim advocacy, missing persons, and forensic investigations. Such efforts should be expanded throughout the Department.[91]

To ensure international reforms are sustainable, the professional capacity of Kosovo officials, including members of minority communities, needs to be developed. As part of the transition strategy, the international community could second staff, dedicated solely to building the capacity of Kosovo professionals to administer the system.

B. KOSOVO INSTITUTIONS

UNMIK has recently produced a set of benchmarks to guide institutional development in Kosovo. Kosovo institutions have to reach these benchmarks before discussions on final status can begin.[92] In the justice system, these are:

- no mainstream toleration of extremism;
- international judges and prosecutors limited to supportive functions; and
- increasing judicial reliability and crime prosecution ability.

To achieve these benchmarks, the PISG is required to make a sustained budgetary effort to promote rule-of-law values and higher education and entrance examinations in the legal field, and office holders are required to refrain from extremist public statements.

Although the benchmarks themselves are admirable goals, they were produced with no local input; the new government has officially supported them but it could hardly do otherwise.[93] UNMIK should not

[89] ICG interview with Director of the Department of Justice.

[90] See ICG, *Benchmarks*, op. cit.

[91] USAID is developing plans to second specialists to the Department, including a position to develop, together with Kosovo officials, a justice sector transition strategy.

[92] See UNMIK "Standards Before Status", in *Focus Kosovo*, April 2002.

[93] These benchmarks were developed at an UNMIK retreat in Dubrovnik in April 2002 without any consultations with representatives of the PISG.

make the same mistake in their implementation. The Department of Justice is currently working on a strategy for achievement of these benchmarks, and Kosovo officials must be equal partners in its development. This strategy must include a financing plan.

Moreover, current UNMIK benchmarks do not take into account the investigative role of the judiciary or the need to build an independent system. Additional objectives are therefore necessary, such as a consistent legal framework in line with international human rights law, the impartial dispensation of justice in all courts throughout Kosovo; a fully independent judiciary that has the capacity to investigate crimes; and equal access to justice.[94]

In any case, the actions that the UNMIK benchmarks require of local entities are minimal – certainly not enough to ensure that the substantive investment of the international community in the justice sector will produce an adequate and sustainable system. Furthermore, much of the judicial sector remains in the reserved powers of the SRSG, and it is therefore unclear whether the benchmarks are for the UNMIK Department of Justice or for the PISG to achieve.

As outlined below, despite the significant work of UNMIK, the justice system remains far from meeting European standards. A strategy must be developed for the gradual transfer of competencies and the building of capacities within the PISG and Kosovo institutions.

[94] ICG outlined these benchmarks in *Benchmarks*, op. cit.

IV. THE CRIMES OF CONFLICT

Addressing war crimes and ethnically motivated violence is critical for the long-term stability of Kosovo, but in the short term it has the potential to be extremely destabilising. How UNMIK handles these issues tests the system, the international reforms, as well as public support and confidence in the judiciary.

A. WAR CRIMES

The issue of war crimes is understandably one of the most sensitive in Kosovo. It strikes at the heart of the divisions between Serbs and Albanians and indeed the cleavages within the Albanian community. Despite the thorniness of the issue, justice must be served. In a United Nations administered area, those who have committed crimes against humanity must be found and punished lest a mockery be made of international humanitarian law. However, the international community also cannot ignore the extreme divisiveness of war crime charges and the potentially disruptive consequences that these trials may have for the process of reconciliation in Kosovo.

International law is clear on the prosecution of war crimes: not only the perpetrators themselves, but also the military and political leaders who ordered the actions, or who fail to take steps to prevent a crime or punish the perpetrator, can be held accountable.[95]

The overwhelming majority of war crimes committed in Kosovo during the 1998 to 1999 conflict between the KLA and Yugoslav and Serb forces have not been prosecuted.[96] From March to June 1999, ninety percent of Kosovo Albanians were displaced from their homes with the forced expulsion of more than 850,000 people from

[95] Human Rights Watch (HRW), "Under Orders: War Crimes in Kosovo", October 2001.

[96] For an analysis of violations of international humanitarian law, see ibid; also, OSCE, "Kosovo: As Seen as Told, Part One – An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission October 1998 to June 1999", and Part Two, "A Report on the Human Rights Findings of the OSCE Mission in Kosovo June to October 1999"; and ICG Balkans Report, *Reality Demands: Documenting Violations of International Humanitarian Law in Kosovo 1999*, May 2000.

Kosovo.[97] Approximately forty percent of civilian houses were heavily damaged or completely destroyed. The total number of victims killed between March and June 1999 remains unclear – in part due to the deliberate efforts of the Yugoslav government to destroy evidence.[98] While ICTY has exhumed 4,300 bodies from mass graves in Kosovo, an estimated 3,500 Albanians still remain missing.[99] Human Rights Watch also found credible evidence of at least ninety-six cases of sexual assault.[100] A clear chain of command for these crimes – from the highest levels of the Yugoslav government and military - existed and has been documented.[101]

Members of the former Kosovo Liberation Army (KLA) are also suspected of committing war crimes, including abductions and murders of Serbs and ethnic Albanians considered collaborators with the state.[102]

As described in the section on ethnically motivated violence below, many of the crimes committed against the Serbian, Roma, Ashkaeli, and other minority populations, since the arrival of UNMIK and KFOR, have also gone unpunished. Within the first six weeks of KFOR's deployment, 150,000 Serbs and other minorities fled the province.[103] A total of 1,200 non-Albanians are still missing.[104] While there is little doubt that the intent of this violence was to force Serbs to leave the province, it does not seem to have been directed by the military or political leadership of the former KLA or other Albanian groups.[105]

Two bodies are responsible for the investigation and prosecution of war crimes in Kosovo: the International Criminal Tribunal for the former Yugoslavia (ICTY) and UNMIK – including both the Department of Justice and UNMIK Police.

1. The Role of ICTY

Article 1 of its Statute establishes the jurisdiction of ICTY: the court has the competence to prosecute persons responsible for violations of international humanitarian law committed in the territory of the Former Yugoslavia since 1991. This includes grave breaches of the Geneva Conventions of 1949; violations of the laws or customs of war; genocide; and crimes against humanity committed during armed conflict.[106] Article 9 of the Statute determines the primacy of ICTY over national courts. "At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statue and the Rules of Procedure and Evidence of ICTY."[107] The Office of the Prosecutor is charged with the investigation of these crimes as well as the prosecution of cases in The Hague.

ICTY's mandated jurisdiction is sweeping and the Office of the Prosecutor could theoretically investigate and charge scores of individuals for crimes in Kosovo, as well as throughout the former Yugoslavia. However, the court has made clear that it will not investigate all crimes under its jurisdiction. The Prosecutor has concentrated efforts on individuals at the command level and on the areas where the worst massacres have occurred; "many, many important crimes have therefore been left to be dealt with by national jurisdictions."[108] UNMIK will therefore be the primary investigator and prosecutor for the vast majority of war crimes and crimes against humanity in Kosovo. Although ICTY expects to be informed about the nature and status of investigations, no formal agreement exists to guide this cooperation.

To date, ICTY has issued only one indictment for crimes committed in Kosovo. This indictment, which included Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic, and Vlajko Stojiljkovic, was made public in May 1999 at the height of the NATO intervention. They were indicted, by virtue of their positions, on one

[97] UNHCR figures, as reported in HRW, *Under Orders*, op cit..
[98] Ibid.
[99] Figures from the Department of Justice.
[100] HRW, *Under Orders*, op. cit.
[101] It is on this basis that ICTY is proceeding with its prosecution of individuals such as Slobodan Milosevic. Ibid.
[102] OSCE, *"As Seen as Told"*, op. cit.
[103] UNHCR in HRW, *Under Orders*, op. cit.
[104] Figures from the Department of Justice.
[105] HRW, *Under Orders*, op. cit..

[106] See ICTY "Amended Statues of the International Criminal Tribunal for the Former Yugoslavia", June 2001. (Amended 30 November 2001 by Resolution 1329.)
[107] See Article 9 of ICTY "Amended Statute".
[108] Address by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Carla Del Ponte, to the UN Security Council, 27 November 2001.

count of violation of the laws or customs of war and four counts of crimes against humanity.[109]

To prosecute this indictment and to investigate other war crimes, ICTY engaged in extensive gathering of forensic evidence and collection of witness statements from the summer of 1999 until the summer of 2000. During that period, six hundred crime scene experts from 30 nations worked for the Prosecutor. These teams exhumed 4,000 bodies and parts of bodies from 429 sites.[110] After the bodies were examined for forensic evidence, they were handed over to the Victim Recovery and Identification Commission (VRIC) of UNMIK. Each national team sent the forensic evidence it gathered to the Office of the Prosecutor in The Hague. This office then entered the information from the various national teams into a standardised database. By the end of 2000, ICTY had finished its investigations on the ground, and ceased its forensic exhumations, although investigations continue to be conducted both in Kosovo and from The Hague.[111]

The tribunal is under pressure to appear balanced and issue indictments also against Albanians for war crimes in Kosovo. Russia and other nations have asked ICTY to ensure that its investigations include former members of the KLA so that the impartial nature of the court would be evident.[112] In a Security Council meeting on 10 November 1999, the Russian representative stated "The Tribunal must investigate crimes committed against Serbs and other non-Albanian groups. The Tribunal had so far focused primarily on crimes against Albanians. That situation must be corrected or there might be ground to accuse the Tribunal of adhering to double standards." Carla Del Ponte responded that her Office was dealing with cases where the perpetrators were Serbs, Muslims, and from the KLA.

However, for crimes committed against minority communities after UNMIK and KFOR entered Kosovo, the jurisdiction of ICTY was not clear-cut. In November 1999, the prosecutor stated:

> It is difficult to prejudge the matter of jurisdiction, and so the Prosecutor will continue to examine the factual and legal basis that may link offences to the armed conflict in Kosovo. Nevertheless, the limits of jurisdiction cannot be ignored.[113]

For ICTY to have jurisdiction for crimes against humanity committed after 10 June 1999, it has to prove that a state of armed conflict existed when KFOR troops were operating in Kosovo. To avoid this thorny issue, the Prosecutor asked the Security Council in November 2000 to amend Article 5 of the Statue and omit the reference to "state of armed conflict." With this change, she would be able to investigate crimes committed against minority populations after the entry of KFOR. She argued "We must ensure that the Tribunal's unique chance to bring justice to the populations of the former Yugoslavia does not pass into history as having been flawed and biased in favour of one ethnic group against another.[114]

Although in fact the statute has not been amended, in March 2001 Carla Del Ponte stated that "armed Albanian groups in Kosovo" will be investigated for offences allegedly committed in Kosovo and in southern Serbia from June 1999 until today.[115] She argued that "the continuing violence . . . does indeed satisfy the legal criteria for the definition of 'armed conflict' for the purposes of crimes set out in the

---

[109] See ICTY Case Information Sheet: Milosevic Case (IT-02-54*)* "Kosovo, Croatia, Bosnia and Herzegovina, 25 February 2002. Available at www.un.org/icty/glance/milosevic.htm; and ICTY Case Information Sheet, "Milutinovic et al. Case" *(IT-99-37)*, 2 May 2002. Available at www.un.org/icty/glance.milutinovic.htm.

[110] Lori Galway, "Milosevic Trial Spotlights the ICTY", *Focus* February 2002. See also Carla Del Ponte, Address to the Security Council by Carla Del Ponte, Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, to the UN Security Council, 24 November 2000. ICG deployed a team of experts to assist ICTY in documenting violations of humanitarian law in Kosovo. See ICG Report, *Reality Demands*, op. cit..

[111] If ICTY wishes to undertake further exhumations, it must first seek the permission of the UNMIK Department of Justice. UNMIK police and the Department of Justice are undertaking further exhumations and are searching for other mass graves.

[112] See UN Security Council Discussion, "Prosecutor for Former Yugoslavia, Rwanda Tribunals briefs Security Council, emphasising need for cooperation from States", 10 November 1999. Available from www.reliefweb.int.

[113] Statement by Carla Del Ponte, "Investigation and Prosecution of Crimes Committed in Kosovo", 29 September 1999.

[114] Address to the Security Council by Carla Del Ponte, 24 November 2000.

[115] ICTY, "Statement by The Prosecutor, Carla Del Ponte", 21 March 2001; Anthony Deutsch, "The ICTY to Investigate Crimes Committed by Albanians", Associated Press, 21 March 2001.

tribunal."[116] Therefore, ICTY will conduct investigations of crimes committed after 10 June 1999 on a case-by-case basis, with the jurisdiction of ICTY addressed in each case.[117]

Details of investigations of Albanian war crimes suspects were not public until April 2002. At a press conference in Pristina, Carla del Ponte stated: " . . . we have opened three investigations [on former members of the] KLA. We have in the past a lot of difficulties to achieve the truth of the commission of crimes. And the responsibility. But I hope, I'm sure, that this year we will issue the first indictment. And we hope by the end of the year to complete the other investigations."[118] Prime Minister Bajram Rexhepi provided the support of his government for this effort, stating that "We as a government are open and we have nothing to hide and everybody should respect the law. We have declared that no one is above the law and, of course, the Tribunal has its right to investigate in the case of wars."[119]

However, ICTY is under pressure in general to finish its investigations throughout the former Yugoslavia and develop an exit strategy. The costs of ICTY are enormous: the 2002-2003 budget is over U.S. $223 million.[120] Thus, in November 2001, the Prosecutor outlined the Tribunal's exit strategy to the Security Council; she plans to finalize its outstanding investigations by 2004, complete all trials by 2008, and all resulting appeals by 2010.[121]

An important component of its exit strategy will be the development of the competence of national courts to try war crimes. The President of ICTY stated that the Tribunal will "focus more on prosecuting those crimes constituting the most serious breaches of international public law and order, that is mostly, the crimes committed by the high-ranking military and political officials." The cases of lesser importance for the Tribunal could, under certain conditions be relocated to national courts. The Tribunal has already stated that, if appropriate reforms are taken and adequate witness protection measures are introduced, it would be willing to refer some of its existing cases to the jurisdiction of Bosnia-Herzegovina.[122] ICTY argues this would also make the trials more transparent and available locally, and could contribute to reconciliation.[123]

So far, such a process is foreseen only for Bosnia, not Kosovo or the Federal Republic of Yugoslavia (FRY).[124] Del Ponte has warned that "I would not ... be ready to hand over prosecution of such cases to national courts as they now operate. War crimes cases are still politically sensitive in the region, and the international community must promote equitable national jurisdictions and legal institutions."[125]

2. UNMIK and War Crimes

Given the number of violations of international humanitarian law in Kosovo, the inability of ICTY to prosecute all persons was obvious at an early stage. It was clear UNMIK would need to mount domestic trials. In a report documenting crimes against humanity in Kosovo released in early 2000, ICG argued that:

> Assistance is required to create a fully functioning judicial system within Kosovo, capable of mounting fair and expeditious trials of all persons who have committed violations of international humanitarian law, irrespective of ethnicity or allegiance, and in accordance with international law. Moreover, in order to facilitate such prosecutions, there must be a commitment on the part of all states and organisations to provide information within their possession relating to such crimes

[116] Carla del Ponte, as reported in HRW, *Under Orders*, op. cit.
[117] Interview with ICTY Chief Investigator for Kosovo.
[118] Carla del Ponte at UNMIK Press Briefing, 19 April 2002. Full text available at www.unmikonline.org/press/2002/trans/tr190402.htm.
[119] Weekend Broadcast Media Monitor, *The Monitor*, 21 April 2002.
[120] Budget figures obtained from ICTY website. http://www.un.org/icty/glance/index.htm.
[121] Address by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Carla Del Ponte, to the UN Security Council, 27 November 2001.
[122] As outlined in ICTY, "The Report on the Judicial Status of the International Criminal Tribunal for the Former Yugoslavia and the Prospects for Referring Certain Cases to National Courts", June 2002.
[123] "Address by his Excellency, Judge Claude Jorda, President of the International Criminal Tribunal for the Former Yugoslavia, to the UN Security Council", 27 November 2001.
[124] RFE Vol. 6, N°130, "Hartmann Cautious on War Crimes Trials in Serbia or Croatia", 15 July 2002. See also "Human Rights Concerns in the Federal Republic of Yugoslavia", Human Rights Watch Briefing Paper, 11 July 2002.
[125] Address by the Prosecutor, 27 November 2001.

> to those institutions seeking to investigate and prosecute the investigations.[126]

While ICTY focuses on military commanders and political leaders – so called 'big fish' - experience in Bosnia demonstrates that 'small fish' can be equally disruptive to the peace process through involvement in organised crime, by impeding returns, and threatening the democratic transition.[127] Investigating, apprehending, prosecuting, and convicting 'small fish' is therefore critical. Commentators also argue that domestic trials will be more favourable to the promotion of reconciliation. "Justice delivered close to the affected societies may encourage post-conflict reconciliation and emerging democratic forces far more effectively than justice delivered in the remote confines of The Hague."[128]

Article 142 of the Yugoslav Criminal Code currently provides the legal basis for the prosecution of war crimes and crimes against humanity in Kosovo.[129] There are two broad categories of war crimes suspects: Serbs who have largely fled the province – including paramilitary, police, and military officials; and Albanians - including members of the former KLA.

In the summer and fall of 1999, several Serb suspects were apprehended by KFOR and held in custody. As noted above, the domestic judiciary showed serious bias in its prosecution of these cases. OSCE reported that the courts demonstrated prejudice in pre-trial detention, failed to exercise due diligence including failure to call relevant witnesses, and allowed malicious prosecution.[130] While it was undoubtedly difficult for emergency judges to adjudicate these cases in an unbiased manner,[131] UNMIK could not tolerate, let alone facilitate, such serious breaches of justice.

Therefore, UNMIK proposed the establishment of a Kosovo War and Ethnic Crimes Court (KWECC) in December 1999. The KWECC would have had the authority to conduct trials on war crimes, genocide, crimes against humanity, and other serious crimes committed on grounds of race, ethnicity, religion, nationality, association with an ethnic minority or political opinion since 1 January 1998. The KWECC would have operated as an intermediary between local courts and ICTY. Because it would include both local and international judges and prosecutors, it could handle sensitive cases at the same time as increasing the capacity of the Kosovo judiciary.[132]

However in August 2000 a decision was made not to implement the KWECC. UNMIK administrative personnel had budgetary concerns: the court would have been a mini-ICTY with many international salaries and high start-up and administrative costs. The KWECC was also seen as unnecessary given the existing presence of international judges and lawyers.[133] UNMIK also believed that internationals working within the existing judiciary would be better placed than the KWECC to build capacity.[134]

The use of international judges and prosecutors has eliminated bias and helped curtail the injustices that took place in the first trials of the Emergency Judicial System. In all but one case of genocide and war crimes, retrials have been undertaken with panels of international judges. In these retrials, some defendants were acquitted due to incomplete establishment of fact; the inability of witnesses to attend the trial; inconsistent witness testimony; and insufficient evidence. In several cases the verdicts were upheld and the length of sentences increased, while most genocide and war crimes charges were diminished to murder (with only one charge of war crimes standing).[135]

However, local judges have not always embraced the retrials. The retrial of Sava Matic is one example. Matic, a Kosovo Serb, was arrested in December 1999 on suspicion of war crimes in the Prizren region. Citing a lack of evidence, particularly the incompatibility of witness statements, a majority

---

[126] ICG Report, *Reality Demands, op. cit.*, p. 253.

[127] For an analysis of how the failure to prosecute war crimes in Republika Srpska affected refugee return and the peace process, see ICG Balkans Report N°103, *War Criminals in Bosnia's Republika Srpska*, 2 November 2000.

[128] Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?", *The American Journal of International Law* vol 95:7, p. 18.

[129] The new (draft) Criminal Code contains similar provisions in Chapter XIV, "Criminal Offences Against Humanity and International Law".

[130] OSCE, "Review of the Criminal Justice System 1 Feb 2000 – 31 July 2000".

[131] Baskin, "Lessons Learned", op. cit.

[132] OSCE, "Review of the Criminal Justice System 1 Feb - 31 July 2000".

[133] International judges were first incorporated into the system in February 2000.

[134] ICG interview with Sylvie Pantz.

[135] ICG interview with UNMIK Department of Justice Officials.

international panel subsequently found him not guilty. The Albanian judge on this panel stated that this was "an absurd judgement, a masquerade. Kosovo justice has failed . . . there was enough evidence to convict him of war crimes." He added that he was "disillusioned by the decision of the two international judges sitting with him who decided not to push for a conviction on war crimes."[136] However, a second international panel upheld Matic's release.[137]

Statements from Kosovo Albanian politicians and their public indicate they have not accepted that the activities of former members of the KLA are also subject to scrutiny under the Geneva conventions. The most sensitive trials – those involving former KLA members accused of war crimes – are yet to come. The arrests of three Albanians in January 2002 for war crimes were met with a combination of anger that the KLA was being targeted, and fear that this was a signal that more apprehensions of KLA members were to come.[138] Although UNMIK had held a meeting with political leaders to explain the arrests on the day they took place, public demonstrations drawing 2,000 participants were held in Pristina, one of which resulted in the injury of five UNMIK police officers. One protestor accused UNMIK of "filling the prisons of Kosova with KLA superiors to realise the objectives of Belgrade to liquidate the movement for the independence of Kosova."[139] A spokesperson for the Kosovo Protection Corps (KPC) stated:

> It is very harmful and unacceptable, this tendency to draw parallels between the just war carried out by the KLA, and crimes carried out by the Serb criminals … Those who committed crimes against the Albanian people in Kosova should be sought only in the Serb side.[140]

In August 2002, UNMIK undertook several arrests for crimes committed in 1998 and 1999 – including murder, attempted murder, torture, and illegal detention. Those arrested included members of the former KLA and members of the Kosovo Protection Corps (KPC). This incited further public demonstrations, a media campaign against UNMIK and harsh condemnation from political leaders. Democratic Party of Kosovo (PDK) and the Alliance for the Future of Kosovo (AAK) members of the government issued a statement that accused UNMIK of "holding political prisoners and devaluing the liberation struggle."[141] Prime Minister Bajram Rexhepi argued: "Whoever thinks that these arrests will discipline the personalities that led the war for Kosovo's freedom and that are today engaged body and soul for the independence and democratisation of Kosovo are deceived."[142]

Many local commentators also claimed that UNMIK had no jurisdiction to investigate crimes committed before June 1999, as UNMIK had only been established on 10 June 1999.[143] This position was rebutted by ICTY as early as September 1999:

> . . . it is clear that the Office of the Prosecutor ICTY has neither the mandate, nor the resources to function as the primary investigative and prosecutorial agency for all criminal acts committed on the territory of Kosovo. The investigation and prosecution of offences . . . is properly the responsibility of UNMIK, through UNCivPol and the newly formed civilian police in Kosovo, assisted by KFOR.[144]

UNMIK agreed, stating most recently that "As the responsible judicial authority here, the Kosovo judicial system has the mandate to prosecute all crimes past and present for which the statue of limitations has not expired."[145]

The anger of politicians and the skepticism of the public intensified as little action was taken against

[136] "Decision to Acquit Serb for Kosovan War Crimes Absurd", Agence France Press, 30 January 2001.
[137] "Students in Przren Protest Against the Release of Matic", *Kosova Live*, 3 April 2002.
[138] ICG interview with UNMIK Deputy SRSG, Pillar One, Police and Justice.
[139] "Protesters Demand Release of Three Former KLA Members", *Kosova Live*, 30 January 2002.
[140] Lt. Col. Muharrem Mahmutaj the Press Officer for the Kosovo Protection Corps, as quoted in "Protesters Demand Release of Three Former KLA Members", *Kosova Live*, 30 January 2002. After this statement, KFOR insisted that Mahmutaj be suspended.
[141] The leaders of the PDK and AAK were prominent members of the Kosovo Liberation Army, unlike President Rugova, who leads Kosovo's largest party, the League for a Democratic Kosovo (LDK).
[142] Prime Minister Rexhepi, as quoted by Arben Qirezi, "Kosovo: UN Facing Backlash", *IWPR Balkan Crisis Report N°361*, 23 August 2002.
[143] ICG interview with Kosovo Politicans.
[144] Statement by the Prosecutor, 29 September 1999.
[145] UNMIK Press Release, 19 August 2002.

the "Bridgewatchers" of north Mitrovica – suspected of involvement in organized crime and violent attacks against Kosovo Albanians and the international community.[146] In early August, UNMIK failed in their attempt to arrest Milan Ivanovic, a suspect in the 8 April attack against UN Police in north Mitrovica. Prominent journalist Veton Surroi expressed the frustration of many in Kosovo, stating "More than 60 former KLA fighters have been detained in less than a year, yet Milan Ivanovic, leader of the infamous Mitrovica 'Bridge Guards' has escaped arrest and at the same time humiliated the UN by freely turning up in the town to hold a press conference."[147]

The reaction to these arrests underlines the legacy of public distrust in the judicial system, and foreshadows the response if charges are issued against higher profile individuals. As most Serb suspects have left Kosovo, the majority of new war crimes cases in the province will have Albanian defendants. UN officials fear that new arrests may lead to unrest. SRSG Steiner admitted, "The support [UNMIK has] might turn to the contrary. Of course there could be unrest, but I don't have a choice. I think I have to accept the risk because we have to follow instructions from The Hague."[148]

UNMIK therefore must as a matter of urgency ensure that the Geneva Conventions are widely understood, emphasising that these rules must be applied equally to all parties, and that no-one is above the law. The international community justified the NATO military intervention by citing the extensive violations of international law committed by Yugoslav forces in Kosovo. It would be highly paradoxical for politicians to condemn the enforcement of this law for crimes committed by Kosovo Albanians during and after the conflict. Moreover, UNMIK should emphasise that individuals will receive a fair trial with international prosecutors and judges, and that they are innocent until proven guilty – if individuals have nothing to fear, a trial will provide them with an opportunity to demonstrate their innocence.

It will also be a political priority – for UNMIK and for the international community – to ensure that suspects who fled to Serbia (and elsewhere) are brought to justice. Otherwise, the international community risks a scenario where ICTY and UNMIK are able to bring Albanian war crimes suspects to trial, while Serbian suspects remain at large – despite the extensive resources that have been devoted to the documentation of war crimes against the Albanian population.

3. ICTY-UNMIK Cooperation

As outlined above, UNMIK's capacity to investigate and try war crimes is stretched. Given that part of ICTY's exit strategy will be to strengthen domestic courts,[149] and that the majority of war crimes suspects ('small fish') will inevitably be tried in Kosovo courts, closer collaboration between UNMIK and ICTY will be increasingly necessary.

ICTY has undertaken millions of dollars' worth of war crimes investigations in Kosovo. Given its plans to wind down over the next six years, it seems quite possible that much of the forensic evidence and witness statements gathered may well never be used by ICTY. On the other hand, this evidence could potentially help UNMIK prosecutions. Some officials in UNMIK have criticized the level of cooperation between UNMIK and ICTY, citing difficulty in sharing of evidence and witness statements.[150] ICTY strongly reject these allegations, citing substantial sharing of forensic reports, photographs, intelligence information, and witness statements, as well as provision of forensic equipment to UNMIK.[151]

Lessons from the Bosnian experience for domestic war crimes trials may be relevant for the efforts to institutionalise UNMIK-ICTY cooperation. Under the Rome Agreement signed in 1996,[152] the "Rules of the Road" were created to prevent local

[146] See Balkans Report N°131, *UNMIK's Kosovo Albatross: Tackling Division in Mitrovica*, 3 June 2002.
[147] Veton Surroi, "Comment: Kosovars Say Judiciary Unfair," *IWPR Balkan Crisis Report,* N°361, 23 August 2002.
[148] SRSG Michael Steiner as quoted in: Nicholas Wood, "Arrests Provoke Unrest in Kosovo", *Washington Post,* 15 July 2002.
[149] The ICTY exit strategy currently contemplates that referral of some cases back to local courts in Bosnia. Referral of cases is not currently contemplated for Kosovo. Information provided by Office of the Prosecutor, The Hague, 4 September 2002.
[150] ICG interviews with UNMIK Prosecutors, Police, and former ICTY officials.
[151] Information provided by Office of the Prosecutor, The Hague, 4 September 2002.
[152] See The Rome Agreement, 18 February 1996, signed by President Izetbegovic, President Tudjman, and President Milosevic. Available at www.ohr.int.

authorities from using arrests in a politicised manner to block freedom of movement between Republika Srpska and the Federation. Under these rules domestic courts may try cases of war crimes that fall under the jurisdiction of ICTY under two conditions. First ICTY must clear the case, i.e. determine whether sufficient evidence has been produced that an individual has committed a serious violation of humanitarian law.[153] Secondly, if the Office of the Prosecutor does not exert primacy, domestic courts can try the case.[154] This process has ensured that serious breaches of justice have not occurred, strengthened ICTY's cooperation with Bosnian courts, and enabled Bosnia to gradually take on additional responsibilities in war crimes trials.[155]

The Rome Agreement covered only Bosnia. No similar instrument exists elsewhere in the former Yugoslavia. UNMIK and ICTY could use the Bosnia precedent to develop an institutionalised mechanism, such as a Memorandum of Understanding, to formally outline ICTY and UNMIK obligations and ensure closer collaboration and cooperation.[156] Such an agreement could address issues including evidence sharing, provision of technical advice on war crimes cases, and mechanisms to ensure that sufficient evidence exists before a case is brought to trial.

This agreement should also include a capacity building component. Sharing the significant knowledge and expertise ICTY has developed would be helpful to officials trying war crimes cases in Kosovo. Such a process has begun in a limited way with ICTY's Outreach Program which outlines the role of the Court - its jurisdiction, jurisprudence, and procedure - as well as the Court's limitations to the public living in the former Yugoslavia. The program has included ad hoc seminars and information sessions in Kosovo, where specialists from the Hague share their expertise with international and local officials in Kosovo.[157] These measures could be enhanced and institutionalised. International judges in Kosovo are not always appropriately trained to deal with war crimes. ICTY could therefore build on its existing activities with the outreach program to provide additional information to judges, prosecutors, and defence counsel on the issue of war crimes.

While such an agreement would enhance UNMIK and ICTY cooperation, the issue of prosecution of war crimes suspects at large in Serbia would remain. Belgrade's cooperation with ICTY for crimes committed in Kosovo and elsewhere has been problematic.[158] The Yugoslav federal government has not provided full access to witnesses and documentation, and is suspected of harbouring key suspects. [159]

The United States government has preconditioned their assistance on cooperation with ICTY. While not yet official policy, the Senate Appropriations Committee recently recommended that this measure remain in place:

> the Committee is very concerned that a predictable, consistent record of cooperation has not been established. Federal Yugoslav officials continue to flaunt the authority of the ICTY. The pace of surrenders and transfers of indictees, the continuing freedom of several notorious indictees, and highly circumscribed access to documents and witnesses suggests that conditioning US assistance is still, regrettably, necessary . . . The Committee has therefore continued, with modifications, the March 31 certification requirement . . .[160]

Such preconditions should also be applied by other major donors, such as the European Union.

Although the Yugoslav parliament adopted a law on Cooperation with ICTY on 11 April, this move was

[153] If the Office of the Prosecutor determines that grounds for suspicion have been demonstrated, it classifies the case as "Category A". "Category B" indicates that there is insufficient evidence, "Category C" that more evidence is required, and "Category D" that the ICTY will have precedence over that individual as a witness, and so on. See ICG Report, *War Criminals in Bosnia's Republika Srpska*, 2 November 2000.

[154] See ICG Balkans Report N°127, *Courting Disaster: The Misrule of Law in Bosnia and Herzegovina*, 25 March 2002, and ICG Report, *War Criminals*, op. cit.

[155] See ICG Report, *Courting Disaster*, op. cit.

[156] UNSCR 1244 "Demands full cooperation by all concerned" with ICTY. In 1999, Carla Del Ponte emphasised that "it will be helpful for an effective liaison to be maintained between [UNMIK] and OTP [Office of the Prosecutor]. Statement by Carla Del Ponte, 29 September 1999.

[157] ICG interview with ICTY Outreach Coordinator, Kosovo.

[158] See ICG Report N°126, *Belgrade's Lagging Reform: Cause for International Concern*, 7 March 2002.

[159] HRW Press Release, "Yugoslavia: Cooperation Law Inadequate", 12 April 2002.

[160] U.S. Senate Appropriations Committee, "Assistance for Eastern Europe and the Baltic States", 24 July 2002.

criticised in some respects by the tribunal itself and by human rights organisations.[161] The law states that those indicted after the date on which the law was adopted would not be transferred to The Hague, and would be tried in domestic courts. This law is in clear violation of the statutes of ICTY, which state categorically that ICTY has primacy over national courts, and can formally request these courts to defer to the competence of ICTY.[162] As Carla Del Ponte argued "That law . . . is incompatible with the international obligations of Yugoslavia . . . a state may not invoke provisions of its domestic law as justification for its failure to perform binding obligations under international law."[163]

However, the Serbian government argues that all war crimes trials should be held in domestic courts. On 8 July 2002 a Serbian court convicted former soldier Ivan Nikolic for committing war crimes against the civilian population in Kosovo, concluding the first such domestic trial.[164] While applauding the conviction, the Humanitarian Law Centre, a Belgrade-based NGO, cited several shortcomings in the trial including the absence of the victim's family members; the request by the prosecutor for a short sentence given the defendant's "youth and bravery;" and the short (eight year) prison term which was not proportional to the crime.[165] Moreover, organisations such as Human Rights Watch have expressed scepticism at the prospect of domestic war crimes trials:

> While the Belgrade authorities appear rhetorically committed to domestic war creams trials, there is scant evidence that they are prepared to follow through on this commitment. Hundreds of perpetrators of war crimes in Croatia, Bosnia and Herzegovina, and Kosovo live in the FRY, but only two war crimes trials have been held.[166]

Until conditions for fair and equitable trials are met, such trials will be met with suspicion and they will contribute little to reconciliation in Kosovo.

If and when UNMIK issues charges against war crimes suspects residing in Serbia, the Serbian government should be prepared to cooperate with UNMIK to arrest these individuals, transfer them to UNMIK custody, and allow them to be tried in Kosovo – with an international prosecutor before a panel of international judges.

B. ETHNICALLY MOTIVATED VIOLENCE

As noted above, the arrival of KFOR and UNMIK did not stop revenge attacks from being carried out against the province's minority population.[167] Approximately 235,000 ethnic Serbs left the province after NATO led forces (KFOR) entered Kosovo[168] due to fear, intimidation and direct physical violence against them. From KFOR's arrival in June until the end of November, there were 379 murders, including 135 Serb victims.[169] Between 30 January and 27 May 2000, there were ninety-five murders in Kosovo. Twenty-six of the victims were Serbs.[170] Considering that Serbs are a much smaller percentage of Kosovo's population, the ethnically motivated nature of this violence is easily apparent.

The justice system has not been able to find and punish perpetrators of this violence. The two worst attacks against Kosovo Serbs have never been solved. On 23 July 1999 in Gracko, a small village south of Pristina, fourteen Serb farmers were gunned down with AK-47s while harvesting their crops.[171] Although KFOR undertook investigations, no charges have been brought in this crime.[172]

The catalogue of failures in the other notorious mass murder case is much more serous. On 16 February 2001, a KFOR escorted convoy of civilian buses from Nis to Gracanica was attacked. Eleven were killed and 40 others injured.[173] One month later, KFOR detained four suspects. An international panel of the Pristina District Court released them citing lack of evidence.[174] UNMIK stated that they

[161] HRW, "Yugoslavia", *op. cit.*
[162] See Article 9 of Amended Statute of ICTY.
[163] Statement by Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia, Council of Europe Parliamentary Session, 24 April 2002.
[164] "Serb court finds ex-soldier guilty of war crimes in Kosovo", *B-92*, 8 July 2002.
[165] Humanitarian Law Centre Press Release, "Prokuplje Court Hands Down Sentence for War Crimes", 11 July 2002.
[166] HRW Briefing Paper, 11 July 2002.
[167] See ICG Balkans Report No. 78, *Violence in Kosovo: Who's Killing Whom?*, 2 November 1999.
[168] Figures obtained from UNHCR.
[169] HRW, *Under Orders*, op. cit.
[170] Ibid.
[171] OSCE "As Seen as Told", Part 2.
[172] Ibid.
[173] UNSC, "Report of the Secretary General on the United Nations Mission in Kosovo", 13 March 2001.
[174] Shaban Buza, "Release Ordered of Kosovo Bus Bombing Suspects", Reuters, 18 December 2001.

had secret evidence that could not be released in court and subsequently used its executive powers to detain them in the absence of an indictment. However, only one of the suspects was connected to the crime scene through DNA analysis of a cigarette butt.[175] This suspect escaped from Camp Bondsteel in May 2001, while the others remained held through an executive detention order until 18 September. The Detention Review Commission[176] extended their detention for a further ninety days. At that point, an international panel of judges at the Supreme Court ordered their release. The then SRSG, Hans Haekkerup, complied.[177]

The problems that plagued other investigations also impacted on the ability of the authorities to lay charges in this case. No arrests for this incident have since been made, and police officers involved in the investigation allege that the case was mishandled. Their request to commit a dedicated task force to the case was ignored. The frequent rotation of police and judicial personnel disrupted the continuity of investigations. The investigation was continuously scaled down and in August, only six months after the crime, one lone investigator was responsible for the case.[178] The police were unable to produce sufficient evidence to convince international judges that the suspects should remain in detention.

The lead investigator, Detective Stu Kellock said, "Technically we were in charge of the investigation, but it never seemed that way. Intelligence about the suspects was denied to us. Information was withheld by KFOR. We were always the last to be told what was going on." The police could not undertake surveillance of associates of the suspects, while witnesses were afraid to come forward. After the key suspect escaped from Bondsteel, Kellock commented, "it called into question the whole reason why we were in Kosovo, and many questions we had regarding the escape remain to this day unanswered."[179]

As a result, Kosovo Serbs show a high level of distrust towards the judicial system. In an opinion poll conducted by the National Democratic Institute (NDI) in October of 2001, 88 per cent of Serbs said they would not attempt to resolve a conflict with another person in court. If this conflict was taken to court, 43 per cent did not believe that it would be resolved in a fair and objective manner while 89 per cent asserted that a court would not resolve a dispute with a person of another ethnicity fairly, and 80 per cent of Serbs indicated they lacked confidence in judges and prosecutors.[180]

ICG has not been able to analyse how the judicial system as a whole handles ethnically motivated violence cases, or what further measures are needed to ensure Serb defendants and victims are treated equally in all courts. This is partly due to the lack of information and statistics from UNMIK Department of Justice, KFOR and OSCE.[181]

To increase Serb confidence in the judiciary, UNMIK began its campaign outlined above to recruit Serb judges and prosecutors into the system. However, UNMIK also needs to improve its public relation strategy. OSCE and the United Nations High Commissioner for Refugees (UNHCR) recommend that successful cases of arrest, trial and prosecution for ethnically motivated crimes should be widely publicised by the Department of Justice, the media and others involved in the justice system[182]. These two measures would work to increase the respect of the Serb community for the judiciary.

Violence towards minority communities decreased during the second half of the year 2001 and the beginning of 2002.[183] This drop in violence is partly a result of Serbs re-grouping in secure enclaves,

[175] Anthony Loyd, "A Very Dirty Little War", *The Times of London* 14 May 2002.
[176] This commission was established to review existing executive detentions as a limited purpose, limited duration body.
[177] Arben Qirezi, "Kosovo: Court Overturns Haekkerup Detention Orders", *IWPR Balkan Crisis Report, N° 308*, 11 January 2002.
[178] Loyd, "A Very Dirty Little War", *Times,* op. cit.
[179] ibid.

[180] National Democratic Institute, "Public Opinion Poll", by PRISM Market, Media and Social Research, November 2001.
[181] Between September 2001 and February 2002, the OSCE did monitor eleven trials of ethnically motivated crimes, which showed the weaknesses of the judicial system. Although the inclusion of international judges and prosecutors has stopped judicial bias, the lack of capacity to gather and use forensic evidence, and the difficulties of securing witness testimony, plagued the prosecution. ICG interview with OSCE officials.
[182] OSCE/UNHCR, Ninth Report, "Assessing the Situation of Ethnic Minorities in Kosovo" (Period Covering September 2001 to April 2002).
[183] UNMIK Police statistics show that in 2001, there were 30 Serb murder victims – eleven of whom were killed in the Nis Express bus attack. In the first six months of 2002, there was one murder victim.

restriction of movement, and their diminished population numbers in Kosovo; as one international official put it at the time, "They've stopped killing 'em because there are none of 'em left!"[184] UNMIK and KFOR are in the process of reviewing security measures for minority communities and will begin to reduce checkpoints and other fixed positions. Escort for Serb convoys will also be reduced.

C. RECONCILIATION

Commentators argue that "the ICTY and the ICTR[185] have significantly contributed to peace building in post-war societies, as well as to introducing criminal accountability into the culture of international relations . . . the ICTY indictment did not stem the deportation and abuse of ethnic Albanians during the NATO campaign, but it has at least marginally discouraged anti-Serb vengeance by the Kosovo Liberation Army (KLA)."[186]

Kosovo victims do not necessarily agree. For them, the Milosevic trial at The Hague contributes to opening wounds rather than healing them. At the beginning of the trial, a survivor of the Suhareka/Suva Reka massacre[187] – who lost her son, daughter, and husband - lamented, "There are many like Milosevic. He is not the only one to be blamed. Where are his henchman who fired on us? They are free."[188]

As noted above, war crimes and ethnically motivated violence in Kosovo have to date largely gone unpunished. The judicial system has not been able to effectively investigate and prosecute these crimes. Although measures are underway to increase this effectiveness, justice may be a long time in coming. Moreover, even in a perfect judicial system, trials may not be the most appropriate mechanism for dealing with all the subtleties of the past.[189]

Until Kosovo comes to terms with its history, it will continue to be haunted by the crimes of the past. Given its success elsewhere, some have recommended a "Truth and Reconciliation Commission" for Kosovo.[190] However, the most popular and successful such commission, the one in South Africa, grew out of a very different cultural and political context. While lessons can be learned from its process, the applicability of a similar process in Kosovo is questionable.

The South African Truth and Reconciliation commission was truly 'made in South Africa.' Those who established it had studied the successes and failures of Latin American truth commissions, and developed a model that suited their own experience and culture. The justice system in South Africa could not have afforded or absorbed the prosecution of all involved in apartheid. Moreover, the peace process was fragile, and such prosecutions risked sparking further bloodshed. But given the scale of the atrocities committed under the apartheid regime, the new government also could not propose a blanket amnesty. They resolved this dilemma by creating a forum where victims of human rights abuses were provided a platform to relay their experiences. Individuals who perpetrated human rights abuses were given amnesty if they fully disclosed the details of their crimes, and if they could convince the commission that these crimes were political in nature.

While all sides in the Kosovo conflict need a public recognition of wrongs, critics in South Africa argued that truth alone is not enough for reconciliation. More is needed, as is illustrated by a story told by one of the South African commission's critics:

> There were two friends, Peter and John. One day Peter steals John's bicycle. Then, after a period of some months, he goes up to John with outstretched hands and says, "Let's talk about reconciliation". John says, "No, let's talk about my bicycle". "Forget about the bicycle for now", says Peter, "let's talk about reconciliation". "No," says John, "we cannot

[184] ICG interview with senior UNMIK figure, March 2000.
[185] The Arusha Tribunal deals with cases related to the Rwandan Genocide of 1994.
[186] Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?", *The American Journal of International Law* vol 95:7, p. 9.
[187] This incident occurred in Suhareka/Suva Reka town, on 26 March 1999. The members of the Nexhat and Berisha families, who had rented out their house to the OSCE KVM mission, were chased into a café and subsequently killed by the police. See HRW, *Under Orders*, op. cit., p. 374.
[188] Adriatik Kelmendi, "Kosovars split over Milosevic Trial", IWPR Report N°317, 13 February 2002.
[189] Andrew Rigby, *Justice and Reconciliation* (Boulder, 2001).
[190] Louis Sell, "Kosovo: The Road Ahead", Public International Law and Policy Group, March 2002.

talk about reconciliation until you return my bicycle".[191]

This simple anecdote reveals that truth commissions are not a panacea to address the difficulties of post-conflict justice. Forgiveness and recognitions of wrongs committed will not work in isolation – prosecution of offences must accompany the reconciliation process. As this report outlines in detail, the judicial process at the level of ICTY and UNMIK has not been able to successfully find and prosecute the perpetrators of war crimes as well as crimes against minority populations.

While more must be done to end impunity for these crimes, the international community has also not paid sufficient attention to the need for reconciliation in Kosovo. It has placed too much hope on the ability of judicial institutions to contribute to reconciliation, but these institutions will be unable to investigate and prosecute all crimes of conflict. However, given the cultural specificity of Kosovo,[192] not all reconciliation experiences will be relevant. UNMIK and the new government should study the experiences of reconciliation in other countries and develop a Kosovo model for dealing with the crimes of the past.[193]

V. CONCLUSION: THE WAY FORWARD

UNMIK and Kosovo officials deserve credit for the commendable progress made in building the institutions of justice. However, as outlined above, the system is not yet capable of fully investigating and prosecuting crimes in an effective and impartial manner. This lack of capacity not only affects the credibility of the judicial system, it has a serious impact on the peace process in Kosovo. If war crimes and ethnically motivated violence remain largely unpunished, all ethnicities in Kosovo will find it difficult to come to terms with their shared history, and will be less able to focus on their shared future.

Specific measures can be taken to ensure that the considerable investment of time, human resources, and money of the international community builds a sustainable justice system. The current capacity to investigate and prosecute crimes must be increased. Within the Department of Justice, UNMIK should develop a transition strategy that outlines the gradual handover of power to Kosovo officials. In the courts, a strategy to phase out the role of international judges should be developed, and the local judiciary should be gradually given an heightened role in the most criminal sensitive cases. And perhaps most importantly, public confidence in and respect for the justice system must be cultivated. Civil society and political leaders need to value and respect judicial independence and freedom. If judges are not free from threats and other forms of intimidation, democracy will not be secured.

Pristina/Brussels, 12 September 2002

---

[191] Reverend Mxolisi Mpambani, as quoted in Rigby, *Justice and Reconciliation*, op. cit., p. 142.

[192] Local commentators emphasis that because Kosovo has a tradition of blood feuds and revenge killings, a truth commission could potentially create bloodshed rather than contribute to reconciliation. However, in the early 1990s, there was a widespread campaign to use local councils to end blood feuds. A reconciliation commission could potentially awaken this campaign.

[193] Much has been written on justice in post-conflict settings, as well as the role of truth commissions in promoting reconciliation. See Kritz, N. J. (ed.), *Transitional Justice: How Emerging Democracies Reckon With Former Regimes*, Volumes 1-3, United States Institute for Peace, Washington DC, 1996; McAdams, A. J. (ed.), *Transitional Justice and the Rule of Law in New Democracies*, Notre Dame, University of Notre Dame Press, 1997; Minow, M., *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*, Boston, Beacon Press, 1998; Ratner, S. R and Abrams, J. S., *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, OUP, Oxford, 1997; Sewell, J. P., "Justice and Truth in transition", *Global Governance*, v8, n1, Jan-March 2002. Teitel, R. G., *Transitional Justice*, OUP, Oxford, 2000. See also the work of International Centre for Transitional Justice at: http://www.ictj.org, and the Truth Commissions Project at www.truthcommission.org.

APPENDIX A

MAP OF KOSOVO

APPENDIX B

GLOSSARY OF TERMS AND ABBREVIATIONS

AAK:	Alliance for Future of Kosova
AJC:	Advisory Judicial Commission
FRY:	Federal Republic of Yugoslavia
JIAS:	Joint Interim Administrative Structure
JIU:	Judicial Inspection Unit
KFOR:	Kosovo Force
KLA:	Kosovo Liberation Army
KJI:	Kosovo Judicial Institute
KJPC:	Kosovo Judicial and Prosecutorial Council
KPC:	Kosovo Protection Corps
KWECC:	Kosovo War and Ethnic Crimes Court
ICTY:	International Criminal Tribunal for the Former Yugoslavia
NATO:	North Atlantic Treaty Organisation
NDI:	National Democratic Institute
OSCE:	Organisation for Security and Cooperation in Europe
PDK:	Democratic Party of Kosova
PISG:	Provisional Institutions of Self-Government
SRSG:	Special Representative of the Secretary General
UNHCR:	United Nations High Commissioner for Refugees
UNMIK:	United Nations Interim Administrative Mission in Kosovo

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is a private, multinational organisation, with over 80 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, *www.crisisweb.org*. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York and Paris and a media liaison office in London. The organisation currently operates eleven field offices with analysts working in nearly 30 crisis-affected countries and territories across four continents.

In *Africa*, those locations include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in *Europe*, Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East*, the whole region from North Africa to Iran; and in *Latin America*, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Austria, Canada, Denmark, Finland, France, Germany, Ireland, Luxembourg, The Netherlands, Norway, Sweden, Switzerland, the Republic of China (Taiwan), Turkey and the United Kingdom.

Foundation and private sector donors include The Atlantic Philanthropies, Carnegie Corporation of New York, Ford Foundation, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, The Henry Luce Foundation, Inc., John D. & Catherine T. MacArthur Foundation, The John Merck Fund, Charles Stewart Mott Foundation, Open Society Institute, Ploughshares Fund, The Ruben & Elisabeth Rausing Trust and Sasakawa Peace Foundation.

September 2002

APPENDIX D

ICG REPORTS AND BRIEFING PAPERS*

AFRICA

ALGERIA**

The Algerian Crisis: Not Over Yet, Africa Report N°24, 20 October 2000 (also available in French)

The Civil Concord: A Peace Initiative Wasted, Africa Report N°31, 9 July 2001 (also available in French)

Algeria's Economy: A Vicious Circle of Oil and Violence, Africa Report N°36, 26 October 2001 (also available in French)

BURUNDI

The Mandela Effect: Evaluation and Perspectives of the Peace Process in Burundi, Africa Report N°21, 18 April 2000 (also available in French)

Unblocking Burundi's Peace Process: Political Parties, Political Prisoners, and Freedom of the Press, Africa Briefing, 22 June 2000

Burundi: The Issues at Stake. Political Parties, Freedom of the Press and Political Prisoners, Africa Report N°23, 12 July 2000 (also available in French)

Burundi Peace Process: Tough Challenges Ahead, Africa Briefing, 27 August 2000

Burundi: Neither War, nor Peace, Africa Report N°25, 1 December 2000 (also available in French)

Burundi: Breaking the Deadlock, The Urgent Need for a New Negotiating Framework, Africa Report N°29, 14 May 2001 (also available in French)

Burundi: 100 Days to put the Peace Process back on Track, Africa Report N°33, 14 August 2001 (also available in French)

Burundi: After Six Months of Transition: Continuing the War or Winning the Peace, Africa Report N°46, 24 May 2002 (also available in French)

The Burundi Rebellion and the Ceasefire Negotiations, Africa Briefing, 6 August 2002

DEMOCRATIC REPUBLIC OF CONGO

Scramble for the Congo: Anatomy of an Ugly War, Africa Report N°26, 20 December 2000 (also available in French)

From Kabila to Kabila: Prospects for Peace in the Congo, Africa Report N°27, 16 March 2001

Disarmament in the Congo: Investing in Conflict Prevention, Africa Briefing, 12 June 2001

The Inter-Congolese Dialogue: Political Negotiation or Game of Bluff? Africa Report N°37, 16 November 2001 (also available in French)

Disarmament in the Congo: Jump-Starting DDRRR to Prevent Further War, Africa Report N°38, 14 December 2001

Storm Clouds Over Sun City: The Urgent Need To Recast The Congolese Peace Process, Africa Report N°38, 14 May 2002 (also available in French)

RWANDA

Uganda and Rwanda: Friends or Enemies? Africa Report N°15, 4 May 2000

International Criminal Tribunal for Rwanda: Justice Delayed, Africa Report N°30, 7 June 2001 (also available in French)

"Consensual Democracy" in Post Genocide Rwanda: Evaluating the March 2001 District Elections, Africa Report N°34, 9 October 2001

Rwanda/Uganda: a Dangerous War of Nerves, Africa Briefing, 21 December 2001

The International Criminal Tribunal for Rwanda: The Countdown, Africa Report N°50, 1 August 2002 (also available in French)

SOMALIA

Somalia: Countering Terrorism in a Failed State, Africa Report N°45, 23 May 2002

SUDAN

God, Oil & Country: Changing the Logic of War in Sudan, Africa Report N°39, 28 January 2002

Capturing the Moment: Sudan's Peace Process in the Balance, Africa Report N°42, 3 April 2002

Dialogue or Destruction? Organising for Peace as the War in Sudan Escalates, Africa Report N°48, 27 June 2002

WEST AFRICA

Sierra Leone: Time for a New Military and Political Strategy, Africa Report N°28, 11 April 2001

Sierra Leone: Managing Uncertainty, Africa Report N°35, 24 October 2001

Sierra Leone: Ripe For Elections? Africa Briefing, 19 December 2001

Liberia: The Key to Ending Regional Instability, Africa Report N°43, 24 April 2002

Sierra Leone After Elections: Politics as Usual? Africa Report N°49, 12 July 2002

Liberia: Unravelling, Africa Briefing, 19 August 2002

ZIMBABWE

Zimbabwe: At the Crossroads, Africa Report N°22, 10 July 2000

Zimbabwe: Three Months after the Elections, Africa Briefing, 25 September 2000

* Released since January 2000.

** The Algeria project was transferred from the Africa Program in January 2002.

Zimbabwe in Crisis: Finding a way Forward, Africa Report N°32, 13 July 2001

Zimbabwe: Time for International Action, Africa Briefing, 12 October 2001

Zimbabwe's Election: The Stakes for Southern Africa, Africa Briefing, 11 January 2002

All Bark and No Bite: The International Response to Zimbabwe's Crisis, Africa Report N°40, 25 January 2002

Zimbabwe at the Crossroads: Transition or Conflict? Africa Report N°41, 22 March 2002

Zimbabwe: What Next? Africa Report N° 47, 14 June 2002

ASIA

CAMBODIA

Cambodia: The Elusive Peace Dividend, Asia Report N°8, 11 August 2000

CENTRAL ASIA

Central Asia: Crisis Conditions in Three States, Asia Report N°7, 7 August 2000 (also available in Russian)

Recent Violence in Central Asia: Causes and Consequences, Central Asia Briefing, 18 October 2000

Islamist Mobilisation and Regional Security, Asia Report N°14, 1 March 2001 (also available in Russian)

Incubators of Conflict: Central Asia's Localised Poverty and Social Unrest, Asia Report N°16, 8 June 2001 (also available in Russian)

Central Asia: Fault Lines in the New Security Map, Asia Report N°20, 4 July 2001 (also available in Russian)

Uzbekistan at Ten – Repression and Instability, Asia Report N°21, 21 August 2001 (also available in Russian)

Kyrgyzstan at Ten: Trouble in the "Island of Democracy", Asia Report N°22, 28 August 2001 (also available in Russian)

Central Asian Perspectives on the 11 September and the Afghan Crisis, Central Asia Briefing, 28 September 2001 (also available in French and Russian)

Central Asia: Drugs and Conflict, Asia Report N°25, 26 November 2001 (also available in Russian)

Afghanistan and Central Asia: Priorities for Reconstruction and Development, Asia Report N°26, 27 November 2001 (also available in Russian)

Tajikistan: An Uncertain Peace, Asia Report N°30, 24 December 2001 (also available in Russian)

The IMU and the Hizb-ut-Tahrir: Implications of the Afghanistan Campaign, Central Asia Briefing, 30 January 2002 (also available in Russian)

Central Asia: Border Disputes and Conflict Potential, Asia Report N°33, 4 April 2002

Central Asia: Water and Conflict, Asia Report N°34, 30 May 2002

Kyrgyzstan's Political Crisis: An Exit Strategy, Asia Report N°37, 20 August 2002

The OSCE in Central Asia: A New Strategy, Asia Report N°38, 11 September 2002

INDONESIA

Indonesia's Crisis: Chronic but not Acute, Asia Report N°6, 31 May 2000

Indonesia's Maluku Crisis: The Issues, Indonesia Briefing, 19 July 2000

Indonesia: Keeping the Military Under Control, Asia Report N°9, 5 September 2000 (also available in Indonesian)

Aceh: Escalating Tension, Indonesia Briefing, 7 December 2000

Indonesia: Overcoming Murder and Chaos in Maluku, Asia Report N°10, 19 December 2000

Indonesia: Impunity Versus Accountability for Gross Human Rights Violations, Asia Report N°12, 2 February 2001

Indonesia: National Police Reform, Asia Report N°13, 20 February 2001 (also available in Indonesian)

Indonesia's Presidential Crisis, Indonesia Briefing, 21 February 2001

Bad Debt: The Politics of Financial Reform in Indonesia, Asia Report N°15, 13 March 2001

Indonesia's Presidential Crisis: The Second Round, Indonesia Briefing, 21 May 2001

Aceh: Why Military Force Won't Bring Lasting Peace, Asia Report N°17, 12 June 2001 (also available in Indonesian)

Aceh: Can Autonomy Stem the Conflict? Asia Report N°18, 27 June 2001

Communal Violence in Indonesia: Lessons from Kalimantan, Asia Report N°19, 27 June 2001

Indonesian-U.S. Military Ties, Indonesia Briefing, 18 July 2001

The Megawati Presidency, Indonesia Briefing, 10 September 2001

Indonesia: Ending Repression in Irian Jaya, Asia Report N°23, 20 September 2001

Indonesia: Violence and Radical Muslims, Indonesia Briefing, 10 October 2001

Indonesia: Next Steps in Military Reform, Asia Report N°24, 11 October 2001

Indonesia: Natural Resources and Law Enforcement, Asia Report N°29, 20 December 2001 (also available in Indonesian)

Indonesia: The Search for Peace in Maluku, Asia Report N°31, 8 February 2002

Aceh: Slim Chance for Peace, Indonesia Briefing, 27 March 2002

Indonesia: The Implications of the Timor Trials, Indonesia Briefing, 8 May 2002

Resuming U.S.-Indonesia Military Ties, Indonesia Briefing, 21 May 2002

Al-Qaeda in Southeast Asia: The case of the "Ngruki Network" in Indonesia, Indonesia Briefing, 8 August 2002

MYANMAR

Burma/Myanmar: How Strong is the Military Regime? Asia Report N°11, 21 December 2000

Myanmar: The Role of Civil Society, Asia Report N°27, 6 December 2001

Myanmar: The Military Regime's View of the World, Asia Report N°28, 7 December 2001

Myanmar: The Politics of Humanitarian Aid, Asia Report N°32, 2 April 2002

Myanmar: The HIV/AIDS Crisis, Myanmar Briefing, 2 April 2002

AFGHANISTAN/SOUTH ASIA

Afghanistan and Central Asia: Priorities for Reconstruction and Development, Asia Report N°26, 27 November 2001

Pakistan: The Dangers of Conventional Wisdom, Pakistan Briefing, 12 March 2002

Securing Afghanistan: The Need for More International Action, Afghanistan Briefing, 15 March 2002

The Loya Jirga: One Small Step Forward? Afghanistan & Pakistan Briefing, 16 May 2002

Kashmir: Confrontation and Miscalculation, Asia Report N°35, 11 July 2002

Pakistan: Madrasas, Extremism and the Military, Asia Report N°36, 29 July 2002

The Afghan Transitional Administration: Prospects and Perils, Afghanistan Briefing, 30 July 2002

BALKANS

ALBANIA

Albania: State of the Nation, Balkans Report N°87, 1 March 2000

Albania's Local Elections, A test of Stability and Democracy, Balkans Briefing, 25 August 2000

Albania: The State of the Nation 2001, Balkans Report Nº111, 25 May 2001

Albania's Parliamentary Elections 2001, Balkans Briefing, 23 August 2001

BOSNIA

Denied Justice: Individuals Lost in a Legal Maze, Balkans Report N°86, 23 February 2000

European Vs. Bosnian Human Rights Standards, Handbook Overview, 14 April 2000

Reunifying Mostar: Opportunities for Progress, Balkans Report N°90, 19 April 2000

Bosnia's Municipal Elections 2000: Winners and Losers, Balkans Report N°91, 28 April 2000

Bosnia's Refugee Logjam Breaks: Is the International Community Ready? Balkans Report N°95, 31 May 2000

War Criminals in Bosnia's Republika Srpska, Balkans Report N°103, 2 November 2000

Bosnia's November Elections: Dayton Stumbles, Balkans Report N°104, 18 December 2000

Turning Strife to Advantage: A Blueprint to Integrate the Croats in Bosnia and Herzegovina, Balkans Report N°106, 15 March 2001

No Early Exit: NATO's Continuing Challenge in Bosnia, Balkans Report N°110, 22 May 2001

Bosnia's Precarious Economy: Still Not Open For Business; Balkans Report N°115, 7 August 2001 (also available in Bosnian)

The Wages of Sin: Confronting Bosnia's Republika Srpska, Balkans Report N°118, 8 October 2001 (also available in Bosnian)

Bosnia: Reshaping the International Machinery, Balkans Report N°121, 29 November 2001 (also available in Bosnian)

Courting Disaster: The Misrule of Law in Bosnia & Herzegovina, Balkans Report N°127, 26 March 2002 (also available in Bosnian)

Implementing Equality: The "Constituent Peoples" Decision in Bosnia & Herzegovina, Balkans Report N°128, 16 April 2002 (also available in Bosnian)

Policing the Police in Bosnia: A Further Reform Agenda, Balkans Report N°130, 10 May 2002 (also available in Bosnian)

Bosnia's Alliance for (Smallish) Change, Balkans Report N°132, 2 August 2002 (also available in Bosnian)

CROATIA

Facing Up to War Crimes, Balkans Briefing, 16 October 2001

KOSOVO

Kosovo Albanians in Serbian Prisons: Kosovo's Unfinished Business, Balkans Report N°85, 26 January 2000

What Happened to the KLA? Balkans Report N°88, 3 March 2000

Kosovo's Linchpin: Overcoming Division in Mitrovica, Balkans Report N°96, 31 May 2000

Reality Demands: Documenting Violations of International Humanitarian Law in Kosovo 1999, Balkans Report, 27 June 2000

Elections in Kosovo: Moving Toward Democracy? Balkans Report N°97, 7 July 2000

Kosovo Report Card, Balkans Report N°100, 28 August 2000

Reaction in Kosovo to Kostunica's Victory, Balkans Briefing, 10 October 2000

Religion in Kosovo, Balkans Report N°105, 31 January 2001

Kosovo: Landmark Election, Balkans Report N°120, 21 November 2001 (also available in Albanian and Serbo-Croat)

Kosovo: A Strategy for Economic Development, Balkans Report N°123, 19 December 2001 (also available in Serbo-Croat)

A Kosovo Roadmap: I. Addressing Final Status, Balkans Report N°124, 28 February 2002 (also available in Albanian and Serbo-Croat)

A Kosovo Roadmap: II. Internal Benchmarks, Balkans Report N°125, 1 March 2002 (also available in Albanian and Serbo-Croat)

UNMIK's Kosovo Albatross: Tackling Division in Mitrovica, Balkans Report N°131, 3 June 2002 (also available in Albanian and Serbo-Croat)

MACEDONIA

Macedonia's Ethnic Albanians: Bridging the Gulf, Balkans Report N°98, 2 August 2000

Macedonia Government Expects Setback in Local Elections, Balkans Briefing, 4 September 2000

The Macedonian Question: Reform or Rebellion, Balkans Report N°109, 5 April 2001

Macedonia: The Last Chance for Peace, Balkans Report N°113, 20 June 2001

Macedonia: Still Sliding, Balkans Briefing, 27 July 2001

Macedonia: War on Hold, Balkans Briefing, 15 August 2001

Macedonia: Filling the Security Vacuum, Balkans Briefing, 8 September 2001

Macedonia's Name: Why the Dispute Matters and How to Resolve It, Balkans Report N°122, 10 December 2001 (also available in Serbo-Croat)

Macedonia's Public Secret: How Corruption Drags The Country Down, Balkans Report N°133, 14 August 2002 (also available in Macedonian)

MONTENEGRO

Montenegro: In the Shadow of the Volcano, Balkans Report N°89, 21 March 2000

Montenegro's Socialist People's Party: A Loyal Opposition? Balkans Report N°92, 28 April 2000

Montenegro's Local Elections: Testing the National Temperature, Background Briefing, 26 May 2000

Montenegro: Which way Next? Balkans Briefing, 30 November 2000

Montenegro: Settling for Independence? Balkans Report N°107, 28 March 2001

Montenegro: Time to Decide, a Pre-Election Briefing, Balkans Briefing, 18 April 2001

Montenegro: Resolving the Independence Deadlock, Balkans Report N°114, 1 August 2001

Still Buying Time: Montenegro, Serbia and the European Union, Balkans Report N°129, 7 May 2002 (also available in Serbian)

SERBIA

Serbia's Embattled Opposition, Balkans Report N°94, 30 May 2000

Serbia's Grain Trade: Milosevic's Hidden Cash Crop, Balkans Report N°93, 5 June 2000

Serbia: The Milosevic Regime on the Eve of the September Elections, Balkans Report N°99, 17 August 2000

Current Legal Status of the Republic of Yugoslavia (FRY) and of Serbia and Montenegro, Balkans Report N°101, 19 September 2000

Yugoslavia's Presidential Election: The Serbian People's Moment of Truth, Balkans Report N°102, 19 September 2000

Sanctions against the Federal Republic of Yugoslavia, Balkans Briefing, 10 October 2000

Serbia on the Eve of the December Elections, Balkans Briefing, 20 December 2000

A Fair Exchange: Aid to Yugoslavia for Regional Stability, Balkans Report N°112, 15 June 2001

Peace in Presevo: Quick Fix or Long-Term Solution? Balkans Report N°116, 10 August 2001

Serbia's Transition: Reforms Under Siege, Balkans Report N°117, 21 September 2001 (also available in Serbo-Croat)

Belgrade's Lagging Reform: Cause for International Concern, Balkans Report N°126, 7 March 2002 (also available in Serbo-Croat)

Serbia: Military Intervention Threatens Democratic Reform, Balkans Briefing, 28 March 2002 (also available in Serbo-Croat)

Fighting To Control Yugoslavia's Military, Balkans Briefing, 12 July 2002

REGIONAL REPORTS

After Milosevic: A Practical Agenda for Lasting Balkans Peace, Balkans Report N°108, 26 April 2001

Milosevic in The Hague: What it Means for Yugoslavia and the Region, Balkans Briefing, 6 July 2001

Bin Laden and the Balkans: The Politics of Anti-Terrorism, Balkans Report N°119, 9 November 2001

LATIN AMERICA

Colombia's Elusive Quest for Peace, Latin America Report N°1, 26 March 2002 (also available in Spanish)

The 10 March 2002 Parliamentary Elections in Colombia, Latin America Briefing, 17 April 2002 (also available in Spanish)

The Stakes in the Presidential Election in Colombia, Latin America Briefing, 22 May 2002 (also available in Spanish)

MIDDLE EAST

A Time to Lead: The International Community and the Israeli-Palestinian Conflict, Middle East Report N°1, 10 April 2002

Middle East Endgame I: Getting to a Comprehensive Arab-Israeli Peace Settlement, Middle East Report N°2, 16 July 2002

Middle East Endgame II: How a Comprehensive Israeli-Palestinian Settlement Would Look, Middle East Report N°3; 16 July 2002

Middle East Endgame III: Israel, Syria and Lebanon – How Comprehensive Peace Settlements Would Look, Middle East Report N°4, 16 July 2002

Iran: The Struggle for the Revolution´s Soul, Middle East Report N°5, 5 August 2002

ALGERIA*

Diminishing Returns: Algeria's 2002 Legislative Elections, Middle East Briefing, 24 June 2002

ISSUES REPORTS

HIV/AIDS

HIV/AIDS as a Security Issue, Issues Report N°1, 19 June 2001

Myanmar: The HIV/AIDS Crisis, Myanmar Briefing, 2 April 2002

* The Algeria project was transferred from the Africa Program in January 2002.

EU

The European Humanitarian Aid Office (ECHO): Crisis Response in the Grey Lane, Issues Briefing, 26 June 2001

EU Crisis Response Capability: Institutions and Processes for Conflict Prevention and Management, Issues Report N°2, 26 June 2001

EU Crisis Response Capabilities: An Update, Issues Briefing, 29 April 2002

APPENDIX E

ICG BOARD MEMBERS