



KIPRED

Enhancing civilian management and oversight of the security sector in Kosovo

Ilir Dugolli and **Lulzim Peci**

November 2005



Enhancing civilian management and oversight of the security sector in Kosovo

Ilir Dugolli and **Lulzim Peci**

KOSOVAR INSTITUTE FOR POLICY RESEARCH AND DEVELOPMENT (KIPRED)
AND SAFERWORLD

NOVEMBER 2005

Acknowledgements

This report was written by Ilir Dugolli and Lulzim Peci of the Kosovar Institute for Policy Research and Development (KIPRED). It was commissioned by Saferworld and edited by Simon Rynn (Saferworld) and Edward Rees (former consultant to the Office for Public Safety within the Office of the Prime Minister of Kosovo). Although it presents the views of the authors, the information contained in it is drawn from several sources including:

- interviews and consultations with a wide range of Kosovar and international stakeholders with knowledge of security sector governance in Kosovo carried out between July and September 2005;
- the proceedings of a roundtable event ‘Options for Civilian Management and Oversight of the Security Sector in Kosovo’, 21 June 2005, co-organised by Saferworld and the National Democratic Institute for International Affairs;
- and selected reports listed in the accompanying bibliography.

KIPRED and Saferworld are grateful to all concerned for their valuable assistance during the preparation for this report. Saferworld also wish to thank the UK Government’s Global Conflict Prevention Pool for funding the research and publication of the English language version of the report.

Acronyms

AAK	Alliance for the Future of Kosovo	LCS&CPC	Local Community Safety and Crime Prevention Council
AUS	Advisory Unit on Security	LDK	Democratic League of Kosovo
BCPR	Bureau for Crisis Prevention and Recovery	MUP	Ministry of Interior (Serbia)
CIVPOL	International Civilian Police Programme	MACP	Military Aid to the Civil Power
COMKFOR	Commander KFOR	NGO	Non-governmental organisation
DfID	Department for International Development	NATO	North Atlantic Treaty Organisation
DPKO	Department of Peacekeeping Operations	NDI	National Democratic Institute
DSRSG	Deputy Special Representative of the Secretary General	OKPCC	Office of the KPC Coordinator
EAR	European Agency for Reconstruction	OPM	Office of the Prime Minister
EU	European Union	OPS	Office for Public Safety
IICK	Independent International Commission on Kosovo	OSCE	Organisation for Security and Cooperation in Europe
ISSR	Internal Security Sector Review	PDK	Democratic Party of Kosovo
IHSOP	Institute for Strategic Research of Public Opinion	PISG	Provisional Institutions of Self-Government (Kosovo)
JNA	Yugoslav People’s Army	PSC	Private security company
KCBP-SG	Kosovo Community Based Policing Steering Group	SAPK	Socialist Autonomous Province of Kosovo
KFOR	Kosovo Protection Force	SFRY	Socialist Federal Republic of Yugoslavia
KIPRED	Kosovar Institute for Policy Research and Development	SHIK	Kosovo Information Service
KLA	Kosovo Liberation Army	SIA	Secretariat of Internal Affairs
KPC	Kosovo Protection Corps	SRS	Special Representative of the Secretary General
KPS	Kosovo Police Service	SSDAT	Security Sector Development Advisory Team
KSAG	Kosovo Security Advisory Group	SSPIU	Security Providers Inspection Unit
KSIP	Kosovo Standards Implementation Plan	UNDP	United Nations Development Programme
		UNMIK	United Nations Interim Administration Mission in Kosovo
		UNMIK-P	UNMIK Police

Contents

Executive summary	i
1 Introduction	1
2 Security provision and oversight before the NATO intervention	5
Oversight actors	7
Security provisions during the transition to conflict, 1981–1999	8
3 Security in Kosovo since 1999	10
Security providers	10
Kosovo Force (KFOR)	
CIVPOL and the Kosovo Police Service	
Kosovo Protection Corps	
Intelligence agencies	
Private security companies	
Oversight actors	15
UNMIK	
Department of Justice	
Assembly of Kosovo	
The executive	
New ministries	
Civil society	
Other actors	
4 Future priorities	21
Bibliography	26

Foreword

THIS REPORT SURVEYS THE MOST IMPORTANT SECURITY INSTITUTIONS IN KOSOVO, both providers and oversight bodies, and highlights the opportunities and challenges that lie ahead for their future development. Its main focus is on the neglected question of the management and oversight by civilians of the security sector as a whole. The report is the first of its kind to consider these questions in this way and has been published in English by Saferworld and Albanian and Serbian by the Kosovar Institute for Policy Research and Development (KIPRED).

Saferworld and KIPRED have co-operated on this report in order to remedy the lack of public debate on this subject in Kosovo at a time when Kosovars are facing both unique risks and opportunities to realise their right to effective and representative governance of their security sector. With final status talks looming, the current Special Representative of the Secretary General, Søren Jessen-Petersen, has recently commissioned a ground-breaking Internal Security Sector Review for Kosovo, which opens the way to a substantial overhaul of the territory's security institutions.

The report explores the roots and nature of the current deficit in civilian oversight of security institutions in Kosovo, contrasting current arrangements with those of recent history. It concludes by highlighting priority areas that must be urgently addressed if democratic governance is to be enhanced in Kosovo. Further work will be required by all those involved in the formulation and review of security policy in Kosovo, in order to elaborate the recommendations contained in this report and to consider specific options for the development of the security sector in the context of Kosovo's planned Internal Security Sector Review.

Ilir Dugolli, Lulzim Peci and **Simon Rynn**, September 2005.

Executive summary

Introduction

THIS REPORT SURVEYS THE PROVISION AND OVERSIGHT OF SECURITY in contemporary Kosovo, examining the ways in which the security architecture can be developed so that ordinary Kosovars have a meaningful say in its management and oversight. It begins by detailing the current deficit in civilian oversight in the territory before contrasting current arrangements with those of the recent past and identifying priorities that must be addressed if governance is to become more democratic in the future.

The argument is made that whatever its other merits, Kosovo's security architecture fails the democratic test since Kosovars continue to be at the receiving end of security services over which they have little ownership or control and they cannot therefore be said to be democratically or sustainably governed. Until the international administration in Kosovo deals with the exclusion and under-representation of Kosovars in the provision, management and oversight of security, the international community's peace support operation there cannot claim success. The avoidance of genuine local involvement and civilian democratic oversight after an initial period of stabilisation has come to inhibit the political development of the territory, probably to the detriment of its long-term stability.

The report comes at a time when final status talks are beginning on Kosovo's future and when the United Nations Mission in Kosovo (UNMIK) has commissioned a ground-breaking 'Internal Security Sector Review', which aims to lay the foundations for an effective and democratically accountable security system in Kosovo by opening the way to a substantial overhaul of the territory's security institutions. The difficult challenges that lie ahead for this review are a key focus for the report which is intended as a contribution to that process.

A great deal hinges on Kosovo's progress in this area. Handled well, security sector reform and development in Kosovo will contribute positively to final status talks and help to defuse the difficult politics of the region. If it is handled badly however, individuals and groups willing to work outside the established political framework will be strengthened and the prospects for democracy in Kosovo and peace in the region will look increasingly grim.

General findings

During the international administration's tenure in the territory, Kosovars have gradually been handed responsibilities in many areas. Yet while functions as diverse as education, trade and industry, health and local administration are now overseen by Kosovars' democratically elected institutions, the Provisional Institutions of Self-

Government (PISG), the management and oversight of security and justice institutions has by and large remained in the hands of the international administration. As a result there is almost no civil control of the security sector. In fact, with the notable exception of the Kosovo Police Service (KPS) which is now staffed primarily by indigenous personnel, Kosovars have a very limited involvement in the administration and operation of most of the institutions that exercise coercive force on their behalf.

The present situation has its roots in the peculiar diplomatic settlement reached at the close of conflict in Kosovo in 1999 – UN Security Council Resolution 1244/99 and the subsequent Constitutional Framework for Kosovo of May 2001 established only a limited framework for self-government in the territory. Oversight and management of Kosovo's public security apparatus were withheld as 'reserved power' areas falling solely within the executive mandate of UNMIK and NATO's Kosovo Force (KFOR). In this way short-term stability and security were given precedence over democratic empowerment and state-building.

As UNMIK and key members of the Contact Group appear to have belatedly recognised, the case for withholding powers in these areas has weakened considerably over time and that excluding Kosovars in this way is storing up difficult challenges for the coming months and years. By commissioning of a ground-breaking Internal Security Sector Review (ISSR) in February 2005 the incumbent Special Representative of the Secretary General Søren Jessen-Petersen signalled a major sea-change for the international administration which had until then kept such questions firmly off-limits.

The coming ISSR process provides a one-off chance to establish Kosovo's security sector on a secure, legitimate and effective footing over the coming months. It does however face real challenges if it is to succeed. These include the contradictions inherent in Kosovo's current political and security architecture; misperceptions and misunderstandings among Kosovars about security issues; low institutional capacities across the board; a lack of interest among the donor community; the uncertainties of final status talks; and ongoing intrigue among Kosovo's political parties. The ISSR is also taking place in parallel with the establishment of new ministries of interior and justice in Kosovo, an initiative led by a UN administration that is under pressure to cut back and prepare for withdrawal. It remains to be seen how the creation of these much-needed institutions will affect the ISSR and whether their establishment will be well enough planned to both make them robust enough to resist political manipulation and to genuinely empower Kosovars.

The report argues that while democratic accountability cannot be established entirely independently of final status arrangements, steps already undertaken in this area must be urgently reinforced and accelerated so as to enable the effective oversight of security policy, budgets and operations by parliament, civil society and other institutions. The urgent priorities identified by the report are as follows:

- Establishing the rule of law in this area by ensuring that all security institutions, whether formal or informal, indigenous or international, are established on a clear legal footing
- Conducting a comprehensive and strategic security sector review that begins with a full strategic environment review and which includes all existing or planned institutions in its remit
- Formulating a settled and public security policy for Kosovo so as to guide the long-term development of the sector
- Building trust among the population and political parties while conducting the ISSR and establishing new institutions by ensuring that decisions are made in an inclusive and transparent way
- Consulting widely and undertaking substantial public awareness raising to win acceptance for change

-
- Ensuring that the PISG and UNMIK exercise adequate budgetary control as security institutions develop
 - Building the capacity of institutions such as the parliament, future ministries and also of civil society so as to enable them to perform an oversight role
 - Re-doubling efforts to de-politicise the civil service so that newly empowered security institutions are administered by disinterested bureaucracies
 - Winning donor support and ensuring co-ordination of funds
 - Factoring in the final status negotiations while reviewing and developing security arrangements

Having identified these broad priorities for action, the report concludes that further work will be required by all those involved in the formulation and review of security policy in Kosovo so that specific options for the development of the security sector can be considered in detail in each of the above areas. The views of Kosovars must take centre-stage during this process.

1

Introduction

“If the population is distrusted, it is likely to repay like with like. ... [T]he people will not behave responsibly unless they are given responsibility.”

Independent International Commission on Kosovo, 2001.

SIX YEARS ON from the international military intervention in Kosovo, clarity on the territory’s future status has still to be achieved. The United Nations Mission in Kosovo (UNMIK) has so far been relying on its ‘Standards for Kosovo’ to guide Kosovo’s progress towards democratisation, leading ultimately to final status talks that will determine the territory’s future. Much ink has been expended analysing, predicting and criticising this process, but in all that is written on the topic there is one recurring blind spot – the continuing deficit of civilian oversight and management of the security sector in Kosovo by Kosovars.¹

During the international administration’s tenure in the territory, Kosovars have gradually been handed responsibilities in many areas. While functions as diverse as education, trade and industry, health and local administration are now overseen by Kosovars’ democratically elected institutions, the Provisional Institutions of Self-Government (PISG) are legally prohibited from monitoring internal security institutions operating in Kosovo. For example, although Kosovo now has a national parliament, the Assembly of Kosovo is not permitted any competencies whatsoever in the area,² and despite plans to establish them, ministries of interior and justice do not exist in the territory. Instead, the management and oversight of those institutions that comprise Kosovo’s security and justice sectors, and to a lesser degree their administration, has by and large remained in the hands of the international administration.³ As a result there is almost no civil control of the security sector. In fact, with the notable exception of the Kosovo Police Service (KPS) which is now staffed primarily by indigenous personnel, Kosovars have a very limited involvement in the administration and operation of most of the institutions that exercise coercive force on their behalf.

Until the international administration begins to grapple with the exclusion and under-representation of Kosovars in the provision, management and oversight of security,

¹ Throughout this paper the term is intended to refer to indigenous citizens of Kosovo whatever their ethnicity.

² The Provisional Institutions of Self Government (PISG) as defined by the Constitutional Framework of 2001 are prohibited from establishing executive bodies to oversee, manage and direct ‘reserved power’ organisations. As such they have cannot participate in the design of budgets or policy for such bodies.

³ Definitions of the security and justice sectors vary, but a wide range of institutions now tend to be grouped together under this heading. For example the UNDP Human Development Report 2004 includes in its list all those institutions authorised and organised by the state to use coercive force, including police services, defence forces, civil emergency organisations, intelligence services, paramilitary forces, border control, corrections and the judiciary. The sector is also taken to include civilian institutions charged with management and oversight such as Prime Ministerial and Presidential offices, National Security co-ordination bodies, legislatures and their committees, ministries such as defence, interior and justice and well as financial control mechanisms that will typically be managed by Ministries of Finance and parliamentary finance committees. Non-state security actors such as private security and military companies may also come under this definition.

the international community's peace support operation cannot claim success. So long as Kosovars continue to be at the receiving end of security services over which they have little input, ownership or control, they cannot be said to be democratically or sustainably governed. Were anyone to doubt the need for security sector development at this time, the much commented-on communal violence of March 2004, which a United Nations report called "a window into the real status of Kosovo: that of a stalled transition"⁴ should serve to demonstrate why progress is needed in this area. Ordinary citizens' alienation from the institutions legally permitted to use coercive force on their behalf doubtless played a part in that violence. Kosovars know too well from bitter experience that an unchecked public security apparatus is likely to dominate rather than empower citizens, creating an obstacle to development and a spur to violent conflict.

The international administration's failure to adequately empower Kosovars in this area may seem striking, for as events in other post-conflict environments such as Bosnia and Iraq have so recently demonstrated, the development of an indigenous security sector that is both effective in its work, and legitimate in the eyes of the public, is one of the central components of modern state-building.⁵ The lesson is obvious – the form of self-administration that ultimately emerges in Kosovo will be determined in part by the security architecture that underpins it. Since it is also widely recognised that civilian input into the management and oversight of security agencies can significantly boost their efficiency and responsiveness, one might have expected the international administration in Kosovo to pay more attention to the empowerment of Kosovars in this area.⁶

However, the present situation has its roots in the peculiar diplomatic settlement reached at the close of conflict in Kosovo in 1999. This settlement was encapsulated by UN Security Council Resolution 1244/99, issued under Chapter VII of the UN Charter which concerns not democratic state-building, but threats to international peace and security. UNSCR 1244/99, and the subsequent Constitutional Framework for Kosovo of May 2001 established a limited framework for self-government in the territory by the PISG. However it withheld oversight and management of Kosovo's public security apparatus as 'reserved power' areas falling solely within the executive mandate of UNMIK and NATO's Kosovo Force (KFOR). The ambiguous, or perhaps contradictory, mission of the international administration is summed up by UNMIK's mandate under UNSCR 1244/99 to "promote the establishment of substantial autonomy and self-government in Kosovo."⁷ While the notion of 'substantial autonomy' offered a creative diplomatic solution six years ago, it has, at least until recently, proved beyond successive international administrations to realise it on the ground.⁸

The context is further complicated by a lack of agreement on the territory's future end-state, leaving UNMIK "constrained in how much local participation it can solicit, or political power it can cede in the development and reform of Kosovo's security sector."⁹ The more liberal interpretation of UNSCR 1244/99 that could have paved the way for a larger role by Kosovars in the security sector in times past was not politically possible in the immediate post-conflict period. Consequently, in the early years of international administration, governance of the security sector was seen as an exclusive domain reserved for UNMIK/NATO, in which it is fair to say local representatives were

⁴ UN Document "Justice and Security Sector Advisory Mission Report – Kosovo", UNDP (BCPR), March 2004. According to this report the violence resulted in "19 deaths, over 800 injured, numerous acts of aggression against personnel and the wholesale destruction property". The point about transition is however seriously hindered by the lack of a final status end state, which begs the question – transition to what?

⁵ Stalled police reforms in Bosnia illustrate the point, 'Bosnia's Stalled Police Reform: No Progress, No EU', Europe Report N°164, 6 September 2005, available from <http://www.crisisgroup.org/home/index.cfm?id=3645&l=1>.

⁶ See for example Fischer, J, p 1.

⁷ United Nations Security Council Resolution 1244, 1999.

⁸ As early as 2001 the Independent International Commission on Kosovo concluded that the effect of 'reserved powers' in the hands of the SRS meant that, "instead of the substantial self-government promised the Kosovars under Resolution 1244, they will instead get very limited autonomy". Independent International Commission on Kosovo, 'The Follow-Up to the Kosovo Report – Why Conditional Independence?' (IICK, 2001), p 20.

⁹ Rees, E, Security Sector Reform and Peace Operations, p 20.

viewed with apprehension at best, and deep suspicion at worst. Security, in the view of the UN and key foreign governments, was too intrinsically bound up with sovereignty to allow for handover to nationals. Faced with the apparently irreconcilable contradictions of a mandate to both maintain the peace and build substantial but limited self-government in a contested territory, the early custodians of the international mission chose to err on the side of caution and limit local involvement in many areas in keeping with the macro-political atmosphere of the time. Short-term stability and security were given precedence over democratic empowerment and state-building, with the result that indigenous involvement not only in decision-making but even information-sharing in the security and justice sectors was tantamount to zero.

Today, some, but not enough of this has changed. Kosovars are still denied indigenous democratic civilian oversight of key public bodies such as the judiciary, intelligence services, police services, prison system and emergency services. Instead the sector remains under the purview of the Special Representative of the Secretary General (SRSG), with no accountability towards local institutions or citizens. A total of no more than half a dozen individuals within UNMIK Pillar I, including the Deputy Special Representative of the Secretary General (DSRSG), are responsible for providing civilian executive oversight and management of more than 10,000 international and indigenous security sector personnel at any one time. This is all the more striking when one considers that typically anywhere between one fifth and one quarter of Kosovo's 'Consolidated Budget' has been allocated for public order and security. The budgetary contribution that Kosovars make towards the sector is itself a compelling reason for indigenous oversight since the present situation might fairly be described as 'taxation without representation'.

Kosovo General Budget 2004, summary of appropriations

	Employees 2004	Employees 2003	Appropriations in Euro FY 2004–2005	Percentage of total appropriations
PISG organisations	17,286	16,357	289,045,594	45.71%
Reserved power organisations	17,968	16,371	167,498,508	26.48%
Municipalities	42,150	n/a	175,781,460	27.79%
TOTAL	n/a	n/a	632,325,922	100.00%

While the UNMIK holding pattern of previous years had its merits in a politically fractious and sometimes violent post-conflict environment, the case for withholding powers in this area has weakened considerably over time to the point where the status quo is no longer tenable. Since 2001, Kosovo has acquired nascent institutions of self-government that will have to shoulder the burden of security oversight sooner or later. There are now clear signals that UNMIK and key members of the Contact Group recognise that excluding Kosovars from this area is storing up difficult challenges for the coming months and years. For some time now international policy has favoured indigenous operational control of policing institutions, and substantial reductions in the numbers of international staff in the KPS and also justice departments, are ongoing. A changing macro-political environment has allowed a limited re-interpretation of UNSCR 1244, creating greater opportunities for Kosovars to manage and oversee security.

One of the most important moves in this direction occurred in June 2004 with the establishment of an Office for Public Safety within the Office of the Prime Minister of Kosovo, albeit with limited powers (see below). More important still though was the commissioning of a ground-breaking Internal Security Sector Review (ISSR) by the incumbent SRSG Søren Jessen-Petersen in February 2005. The decision to commission the a review was partly a response to the findings of a UN report to the Secretary General on the situation in Kosovo after the March 2004 events, though it was also based on recommendations by the British Government's Security Sector Development

Advisory Team (SSDAT).¹⁰ The stated purpose of the ISSR is to “engage stakeholders in a process that will deliver a security sector architecture that serves the legitimate security concerns of all in Kosovo”, providing a framework for the development of the sector.¹¹

The coming ISSR process provides a one-off chance to establish the security sector on a secure, legitimate and effective footing over the coming months. It faces some formidable obstacles to its success however. Firstly, it will have to neutralise some of the contradictions inherent in Kosovo’s current political and security architecture, within a brief timeframe. The Kosovo Standards Implementation Plan (KSIP), made public in March 2004 after consultation with the PISG as a roadmap for democratic development in Kosovo, provides a striking illustration of the contradictions in play. For example, “The ‘Standards for Kosovo’ describe a Kosovo where public institutions are representative and democratic, where the rule of law is effective, respected and accessible to all...”.¹² Yet, with the exception of references to the PISG’s obligation to provide public demonstrations of support for democratic and accountable institutions, the KSIP does not mention in what manner indigenous actors or institutions can directly participate in the design or direction of ‘reserved power’ organisations. The PISG is being required to support organisations whose design and operation they have barely been involved in.¹³ Secondly, the ISSR appears not to be the only game in town. UNMIK has recently pioneered other initiatives designed to develop Kosovo’s security sector, most notably its release in July 2005 of plans to create new ministries of interior and justice. Though the ministries themselves are badly needed, such plans do not sit easily with the idea of a single over-arching review process whose findings will dictate the shape of things to come. It remains to be seen whether they will complement or undermine the ISSR.

In summary, Kosovars are faced with unique risks and opportunities in the coming months to realise their inalienable right to effective and representative governance of their security sector. This paper surveys the most important security institutions in Kosovo, including both providers and oversight bodies, and highlights the opportunities and challenges that lie ahead for their future development. Although it touches on other areas such as the legislative basis for those institutions and the representation of Kosovars at the operational level, its main focus is on the neglected question of civilian management and oversight of the security sector as a whole. With final status talks looming, and the ISSR process underway, these matters are of pressing importance.

¹⁰ ‘Aide Report’, The Situation in Kosovo. Report to the Secretary-General of the United Nations, 15 July 2005. The team was called in at the behest of the Advisory Unit for Security (AUS) within the Office of the SRSG, and the UK Global Conflict Prevention Pool. The final report by the assessment team was approved by the SRSG’s office, DPKO and launched on 1 July 2005. It proposed the following generic stages for a security sector review in Kosovo: 1. Conduct Strategic Environment Review; 2. Determine Threats; 3. Develop Internal Security Policy Framework; 4. Develop Individual Institutions/Agencies Policy Framework; 5. Conduct Gap Analysis; 6. Establish Developmental Strategies; 7. Cost and Confirm Affordability; 8. Implement Security Sector Development Strategies. See ‘Kosovo Internal Security Sector Review Concept: Scoping Study’, May 2005, D/SSDAT/20/1/1/1.

¹¹ SSDAT report, p 9.

¹² UNMIK, Kosovo Standards Implementation Plan, 2004, p 2.

¹³ Rees, Justice and Security Sector Governance in Kosovo, 2003, p 5.

2

Security provision and oversight before the NATO intervention

ALTHOUGH SECURITY SECTOR OVERSIGHT in contemporary Kosovo is the preserve of internationals this has not always been the case. For example, the introduction of a new constitution for Kosovo in 1974 provided Kosovars with important competencies that have since been denied them. Up until 1989 when Kosovo was finally stripped of its autonomy, the new constitutional arrangements provided for an overall empowerment of Kosovo and its majority population after decades of grievances and limited self-governance.¹⁴ In the Socialist Federal Republic of Yugoslavia (SFRY) there was of course no clear separation of powers. The dominance of the communist party of the time¹⁵ ensured both that security and justice institutions were used for political ends and that there were few opportunities for ordinary Kosovars to bring influence to bear outside party channels. Despite this the security architecture had many positive features.

The basic legal framework for Kosovo was set out in clear terms by the SFRY and Kosovo constitutions of 1974. The federal constitution introduced radical changes to the internal organisation of the SFRY, decentralising key areas of governance including internal security and aspects of defence to eight federal units. Under these arrangements the Socialist Autonomous Province of Vojvodina and the Socialist Autonomous Province of Kosovo (SAPK) had equal representation within the supreme commanding body of the federation, a collective presidency of eight, comprised of a member of each federal unit of Yugoslavia. All representatives enjoyed the right to veto any decision over which the collective body had authority, including those relating to security.

The constitutional and legal framework of the time provided a clear division of responsibilities between federal units and the federation, allowing Kosovo's security

¹⁴ Although in an ideological spirit, the 1974 Constitution recognised the right (and duty) to Kosovars to protect independence, sovereignty, territory... (Article 259). Further, when enumerating the rights and responsibilities of the Socialist Autonomous Province of Kosovo, (Art 283. 10), it stipulated that Kosovo regulated and organised state security, the state security service, public security, the system of civil defence, public peace and order etc. Art. 310.2 also stated that Kosovo 'sets policies and decides about other issues on... national defence'; 310.15: exercises political control over Executive Council and provides guidance for organs of the latter. 310.23: appoints and dismisses provincial secretaries. Constitution of Socialist Autonomous Province of Kosovo, 1974.

¹⁵ The League of Communists of Yugoslavia.

institutions and assembly a high degree of autonomy.¹⁶ Kosovo's security institutions, including the State Security Service (intelligence service), were subordinated solely to the Federation and not to the Republic of Serbia. Federal affairs institutions could intervene in federal units (republics and provinces) only upon requests by a respective government of the federal unit. For example, the Federal Secretary on Internal Affairs had the legal right to dispatch any federal unit to the territory of a province or republic, but only at the request of the Secretary of Internal Affairs of the province in question. Within the Presidency of Yugoslavia (the collective head of state) a Council for Protection of Constitutional Order existed. This council also had powers to review the security and political situation in the federal units. After deliberations the Council could conclude that a situation in a federal unit was such that it needed certain federal assistance. But this conclusion would be made only with co-operation and not subordination of the federal units. As a matter of principle, the Council's conclusions were always accepted by the federal unit to which assistance was addressed. These arrangements were tested in practice in 1988–9 when the federation sent its Army and Police units as reinforcements to the Serbian side of the boundary between the SAPK and the Republic of Serbia. Only following a declaration of a state of emergency by the Yugoslav Presidency – as engineered by Milosevic in 1989 – could federal forces intervene fully. However, as in other communist countries, there were no clear criteria (such as legal guarantees, requirements of proportionality etc.) on how force might be used during a state of emergency. In practice this left the authorities with an open-ended range of coercive options that favoured the arbitrary use of force and contributed to the escalation of the conflict.

The defence forces of the federation were managed by the two-part Supreme Command of the Yugoslav armed forces, comprising the Yugoslav People's Army (JNA) – a centralised predominantly standing army formation, and decentralised and autonomous Territorial Defence units. Since the defence doctrine of the time was one of general national defence and self-protection, founded on the idea of mass civilian mobilisation in time of war, the corps of the latter was mainly composed of reserves, having only a limited number of core staff equipped mainly with light weapons. Civilian control over defence was provided for by the Ministry of Defence of SFRY and the federal parliament.

Internal management of security in the SFRY was the responsibility of the Federal Secretariat of Internal Affairs and the Federal Assembly. Within the assembly each of the units had veto power over issues falling under the scope of responsibilities of the Assembly. However, the Federal Secretariat of Internal Affairs had two pillars: police and intelligence. Republics and autonomous provinces were organised along the same lines as the federation – the Secretariat for Internal Affairs oversaw the work of two organisations: the police service (known as the 'militia'), which was charged with maintaining public order; and an intelligence agency called the State Security Service. The chiefs of the police and intelligence agencies were both Vice-Secretaries for internal affairs, and as with the full Secretaries of these departments, they were elected by their respective Assemblies.

Overall, subordination of provincial security forces to federal security bodies was limited primarily to information sharing so as to ensure that different parts of the system were properly informed. In practice the provincial level security agencies were independent from other levels,¹⁷ reporting annually to their respective assemblies.

.....
 16 "It shall be the right and duty of the ... Autonomous Provinces and the Republics and other socio-political communities, in line with the system of national defence, each on its own territory, to regulate and organise national defence and to direct territorial defence, civil defence and other preparations for the defence of the country, and, in the event of an armed attack upon the country, to organise and direct total national resistance." Art 239, para 2, SFRY 1974 Cons.

17 Interview, Vllasi, 23 June 2005.

Oversight actors

The highest civilian executive body for internal security management in Kosovo during this period was the Secretariat of Internal Affairs (SIA), a ministry overseen by the Assembly and, understandably, paid for by the SAPK budget. The SIA had considerable powers, administering the police (militia) and intelligence services¹⁸ for the entire territory of Kosovo, and along with the Secretariat of Defence, taking a role in civil protection activities administered through a special directorate. The civilian Secretariat of Defence of individual republics or autonomous provinces ran civil protection and territorial defence services across the federation.¹⁹ At the highest level within the SAPK, Kosovo's Territorial Defence Corps were under the command of the 'Provincial Main Staff of Territorial Defence', which was directly linked with the General Headquarters of the JNA without a command chain running via Serbia.

The SIA's control of the police and intelligence services made it the single most powerful authority in the territory. The police, organised along militia lines and with the 'militia' name, had a special role in controlling the population as part of a wider security sector whose overriding purpose was to protect the socialist political system and its leadership. The intelligence service (State Security Service) of SAPK was one of the federation's, and the province's, most important security actors. Its territorial spread was wide and deep and the agency maintained a considerable presence at municipal and regional levels. Even so, the State Security Service was administered at the level of each federal unit across SFRY, and the chief of the service (a position held by the Vice-Secretary for Internal Affairs) was elected by the Assembly of Kosovo and formed part of the government of the day.²⁰

Crucially, Kosovo's Assembly had law-making capacity in the area of security, within the overall framework of the federation. Although the SFRY security system was a single coherent system with a clear vertical configuration, the country's constituent republics and provinces had their own laws and were permitted to legislate on security issues within the framework of federal law. Internal affairs were regulated in detail under the Kosovo Law on Internal Affairs. Aside from its law-making responsibilities, the assembly also had specific rights to receive annual reports and to request other reports from individual secretariats. Government and security ministries (ie defence and internal affairs) were required to report more than once a year to the Assembly, or more frequently whenever the latter deemed it necessary to discuss the security situation.²¹ It is telling that in marked contrast to the Kosovo Assembly of 2005, the national assembly of SAPK had parliamentary committees on internal affairs as well as on national defence.²²

The justice sector was organised along similar lines to the rest of the security sector. At the executive level there was a Secretariat of Justice in place, equivalent to a ministry, and elected by the Assembly and accountable to it. Law courts operated at the municipal, district and Supreme Court levels with the Constitutional Court of Kosovo adjudicating on constitutional matters. As with other parts of the security sector, this nominally appealing architecture was driven, controlled and abused by the ruling party on a routine basis, particularly to suppress political dissent. In practice the justice system provided an open-ended mechanism for disciplining dissenters, or in the language of the time, those guilty of 'violation of legal and constitutional order', and 'involvement in counter-revolution.'

¹⁸ Interview, Qehaja, 22 June 2005.

¹⁹ Despite these arrangements the national doctrine of General National Defence and Social Self-Protection implied that in case of an emergency the police would automatically fall under the command of military.

²⁰ The Secretary had two Vice-Secretaries, one for public security and one for state security. All three were elected.

²¹ Interview, Vllasi.

²² "Administrative agencies shall be independent within the framework of their powers, and shall be responsible for their work to their assemblies and the executive councils." Art 149, para 2, SFRY 1974 Cons.

Security provisions during the transition to conflict, 1981–1999

Although the basic legal foundation pertaining to Kosovo's security management remained intact until 1989, political developments between 1974 and 1989 did not follow the same trend, with important implications for the security sector. Nevertheless, a common thread for the period was the dominant role of the Communist Party. As in other communist countries of the time, the entire Yugoslav state apparatus, including the security sector, was in the service of the Party. This entailed the extensive use of security structures to combat ideological dissenters and alleged enemies. In this way, the security structures served to protect the political leadership rather than citizens.

As described above, from 1974 to 1981 Kosovo's institutions experienced a wide-ranging empowerment and gained novel competencies with the introduction of new constitutions, at both federal and provincial levels. However, the strengthening of autonomous provinces within SFRY (Kosovo and Vojvodina) brought dissatisfaction in Serbia, where academic and nationalist circles nurtured grievances against the new constitutional arrangements while the Serbian communist party leadership focused its energies on reducing the powers of both autonomous provinces. The death of Tito in 1980 loosened the grip of the Party and made it easier for those opposed to substantial autonomy to campaign openly. Demonstrations by Kosovar-Albanians in 1981 served as a pretext to step up the campaign, and the riots were labelled as an 'attempt for counter-revolution and destruction of the constitutional order'. In the wake of this, Kosovo's *nomenclatura*, once credited for enhancing autonomy in 1974, was compelled to resign by pressure from Serbia and the collective federal leadership. A new, more loyal leadership was then elected. With the legal structure intact and Belgrade-loyalists in place on the ground, a period of fragile stability followed, maintained with politically motivated arrests, trials and punishments.

When Milosevic came to power in 1986, as a sign of resurrected Serb nationalism, Belgrade changed its tactics in an effort to further shrink Kosovo's autonomy. A reallocation of Territorial Defence weapons into JNA depots, quietly bringing the Territorial Defence force under JNA control, was the first step in this direction.²³ After a further reduction in 1989, autonomy was fully and unconstitutionally rescinded in 1990. Mass expulsions of Kosovar Albanians from the Territorial Defence force, police and provincial civil administration followed. This meant an end to the Assembly and consequently the oversight role it previously played. Albanians responded by leaving the Communist Party en masse and forming their own, non-Communist political parties. From then on until conflict broke out in 1997, Serbia kept Kosovo under full police control, stationing something in the order of 10,000 police officers and 6,000 troops on the ground, holding the line by means of systematic violations of civil and political rights.²⁴

Belgrade's domination of a repressive security apparatus, coupled with the strengthened position of Kosovar Serbs, nurtured a distrust and enmity between the two communities that has still to be overcome. The political and economic disenfranchisement of ethnic Albanians, coupled with repressive security measures, soon generated an ethnic-Albanian national self-determination movement whose non-violent strand was gradually supplanted by the Kosovo Liberation Army (KLA). Disappointment with the absence of results of non-violent strategy, especially after the Dayton Agreement in 1995, transformed civil disobedience into an armed response against systematic state oppression. From mid 1998 onwards the KLA rapidly established its presence on the ground, its ranks growing to an estimated 20,000 members only a year later.²⁵ At the same time Serbia continuously increased its military and police presence

²³ The decision in question was implemented fully in 1987 under the supervision of then Yugoslav National Army Chief of Staff.

²⁴ See eg, 'Raport mbi shkeljen e të drejtave dhe të lirive të njeriut në Kosovë gjatë vitit' 1998 and 1999, Council for the Defence of Human Rights and Freedoms; and 'Persecution Persists: Human Rights Violations in Kosovo', Human Rights Watch.

²⁵ Blerim Shala, "Vitet e Kosovës 1998–1999" Zëri, Prishtinë, 2000, p 347.

in Kosovo, stationing around 30,000 troops there by October 1998, a figure that had risen to some 100,000 security personnel by March 1999.

After the cessation of the 1999 conflict and the introduction of UNSCR1244, a 'Military-Technical Agreement' was reached between NATO and the Federal Republic of Yugoslavia, providing for the deployment of an international security force, the Kosovo Force (KFOR) and the withdrawal of Serbian forces on 12 June. The signing of an 'Undertaking on Demilitarisation and Transformation' on 21 June 1999 by the KLA command established the modalities and the schedule for the demilitarisation of the KLA.²⁶ This moment marked the end of the KLA as an overt organisation, channelling its recruits and energies into new institutions. However, many former combatants were integrated into a newly created civil emergency organisation, the Kosovo Protection Corps (KPC) that claims to be the KLA's successor. Others were subsequently to join the new Kosovo Police Service (KPS) or to join political formations that now exert considerable influence, predominantly the Democratic Party of Kosovo (PDK) that evolved from the KLA's Political Directorate, but also the Alliance for the Future of Kosovo (AAK) and a number of smaller parties.

²⁶ According to this agreement, the KLA had to be completely disarmed by 20 September 1999 and would cease to exist as a military organisation. For a very detailed explanation of this topic see 'What Happened to the KLA', International Crisis Group, full text available online at <http://www.crisisweb.org/projects/kosovo.html>.

3

Security in Kosovo since 1999

AS PREVIOUSLY NOTED, the current domination of Kosovo's security sector by international actors is a direct result of the 1999 conflict settlement. Together with the 2001 Constitutional Framework for Kosovo, UNSCR 1244 designates the entire public security apparatus, including the judiciary, police services, prison system and emergency services as reserved functions within the executive powers of UNMIK.²⁷ The 2001 Constitutional Framework explicitly prohibits Kosovo's PISG from establishing executive bodies to oversee, manage and direct 'reserved power' organisations. Civilian management and oversight of these bodies has remained the sole purview of UNMIK Pillar I (Police and Justice), COMKFOR and the SRSG, with the result that thousands of security practitioners costing hundreds of millions of dollars come under the control of a handful of foreign civilians.

Six years after the arrival of the international administration in Kosovo some efforts towards generating indigenous security provision have been made, including the creation of the KPS. However, the civilian management and oversight of the security sector is a severely retarded area. While there are some positive signs such as the development of the KPS administrative division, an Ombudsperson's Office and more recently the establishment of Community Safety Councils at the local level, too little strategy, substance or coherence has been in evidence during these tentative steps towards increased civilian oversight and management of security. With the exceptions of these areas, UNMIK retains executive authority over police services and other security institutions, sharing responsibility with KFOR for the Kosovo Protection Corps. The competencies, strengths and weaknesses of these and other institutions are outlined below with an emphasis on questions about civilian management and oversight.

Security providers

Kosovo Force (KFOR)

The Kosovo Force, a contingent of military forces from NATO and non-NATO countries, was established in 1999 to secure Kosovo in the wake of the international military intervention. Under the Military-Technical Agreement signed by KFOR and the respective governments of the Federal Republic of Yugoslavia and the Republic of Serbia at the close of conflict, the international security force is authorised to "take all

²⁷ The resolution "identifies the international community as the sole legitimate entity with a mandate to law enforcement and the use of force in the region." Muharremi R, Peci L, Malazogu L, Knaus V and Murati T, Administration and Governance in Kosovo, (KIPRED, 2nd edition, 2005), p 15. See also S/RES/1244 (1999), 10 June 1999, <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>.

necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission.”²⁸ KFOR’s mandate and objectives are set in UNSCR 1244, Annex 1 and Section 9 of which allocate it responsibility for:

- deterring hostilities and enforcing the ceasefire
- demilitarising the KLA
- establishing a secure environment for refugee returns
- ensuring public safety
- de-mining
- supporting the international civil presence
- conducting border monitoring, and
- ensuring freedom of movement.

KFOR therefore has a mixed external defence and internal security role: it provides a deterrent to any offensive irredentist sentiment in Serbia, secures parts of the border (although this is being transitioned to the police), provides static and mobile protection to minority communities as well as acting as a potential back-up to UNMIK Police UNMIK-P and KPS in the eventuality that military assistance to the civil power is required during large man-made or natural disturbances.

Initially the primary force in charge of security in Kosovo, KFOR has gradually ceded much of this role to other agencies. While in June 1999 there were approximately 50,000 soldiers within KFOR, with time this number has decreased considerably to around 17,000 personnel from 2003 onwards as conditions on the ground have changed. Today, KFOR has three main tasks: a) external defence, b) protection of enclaves and religious sites, and c) assisting the police services in the event that the latter are unable to adequately respond to internal security challenges. This latter task (known as ‘Military Assistance to the Civil Power’) is arguably KFOR’s most important role. It is telling however that there is no legislation stipulating how this extremely important, yet potentially problematic, assistance should be carried out. KFOR is not overseen by UNMIK, let alone Kosovars. In fact, the military segment of the international administration in Kosovo receives military and political guidance from NATO and the respective Ministries of Defence of its contributing nations.

CIVPOL and the Kosovo Police Service

UN SCR 1244 required the creation of an international civilian police service in Kosovo under UN administration, to be gradually replaced by local units coming under a Kosovo Police Service (KPS) over time. The UNMIK police organisation has taken on several responsibilities, including: routine policing and criminal investigation via its civilian police (CIVPOL) units; high-risk policing in situations such as crowd control during violent demonstrations and civil unrest, for which it employs special police units; and ensuring compliance with immigration laws and border regulations (the responsibility of its border police).

The gradual reduction in KFOR’s responsibilities has seen the police, both indigenous (KPS) and international (UNMIK police), being progressively equipped to take on internal security and border management. Although the relationship between the UNMIK police and KPS has suffered at the hands of a confused transfer process,²⁹ KPS has been successfully built into a multi-ethnic and largely professional service that enjoys increasing public confidence.³⁰ It is sometimes referred to as the ‘jewel in the crown’ of overall international efforts in Kosovo. UNMIK police, its police school, UNMIK Pillar I (Police and Justice) and Pillar III (Democratisation and Institution

²⁸ Military Technical Agreement between the international security force (“KFOR”) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, 9 June 1999. Available at: <http://www.nato.int/kfor/kfor/documents/mta.htm> (last visited: 5 June 2005).

²⁹ UNMIK police is widely held to have suffered from serious shortcomings such as a lack of planning and belated deployment that lie beyond the scope of this report. Muharremi R, Peci L, Malazogu L, Knaus V and Murati T, *Administration and Governance in Kosovo*, (KIPRED, 2nd edition, 2005), p 21.

³⁰ ‘Light Blue, Public Perceptions of Security and Police Performance in Kosovo’, p 21.

Building) jointly developed the organisation's capacities. KPS currently employs more than 7,000 staff and is organised along three main lines: operations (including public order, border police and special police units); crime (major crimes, criminal intelligence and organised crime); and administration (administration services, training and support services).

Since UNMIK Pillar I takes a combined justice and police portfolio, in an important respect CIVPOL and KPS can be considered the same structure. Both segments of the police, CIVPOL and KPS, are led by an international police commissioner. Although junior appointments within KPS (those up to the level of Major) follow well-standardised procedures and examinations, high-level appointments are made in a closed and centralised fashion by the Police Commissioner based on proposals that originate from the Commissioner's office. Despite these facts there has been a real and significant transfer of powers from UNMIK police to KPS in recent years, which exemplifies the changing nature of the security architecture in Kosovo. The UNMIK police presence in the territory has substantially decreased in parallel with a growth in KPS numbers and capacity to the point where KPS now has operational control of some 80% of police activities in Kosovo. Although many key positions remain in the hands of internationals, in numerical terms this makes the policing architecture almost entirely local.

Significant steps have also been taken to improve internal oversight of the KPS, notably the creation of a Professional Standards Unit. Upon receipt of complaints by civilians (mostly lodged in 'community boxes' located at every police station), the unit carries out an investigation. In such respects, information sharing between the police, communities and local institutions appears to be improving. KPS officers also cite well-publicised phone lines that citizens use to report crimes or file anonymous complaints as another example of this.³¹ Monthly meetings between the Police Commissioner and municipal presidents were introduced for the first time during the summer of 2005. KPS has also begun to submit regular written reports to municipal leaders on the security situation throughout Kosovo, and at the municipal level there is growing collaboration between different police inspectorates and municipalities.

There are however fundamental hurdles to overcome before the KPS can be said to be appropriately managed and overseen by civilians. In a fashion that is indicative of Kosovo's entire security architecture³² the KPS is not currently established or structured on a clear and authoritative legal footing, but rather exists as an attachment to UNMIK-P.³³ To resolve this problem UNMIK recently initiated the drafting of a 'Law on the Kosovo Police Service' which was to be developed and promulgated by mid 2005 according to the Kosovo Standards Implementation Plan (KSIP). In doing so however it has relied on its typical model of governance – from February 2005 onwards a limited number of Kosovars had an opportunity to review and comment on successive drafts of the document under the auspices of a temporary working group on the Kosovo Police Service law. Yet the draft text will not be debated and passed by the Kosovo Assembly, but promulgated by a SRSB decree instead.

Kosovo Protection Corps

The Kosovo Protection Corps (KPC), a civil protection organisation, was established following an 'undertaking' signed in 1999 by the KLA commander-in-chief and COMKFOR as a means to demilitarise and transform the KLA. The KPC was established under UNMIK Regulation 1999/8, which states that the KPC is "a civilian emergency service agency, the tasks of which shall be to: provide disaster response

³¹ The KPS spokesperson has stated that co-operation with citizens continues to improve and is contributing to a safer environment and "a decrease in crime". Morina R, Private correspondence, 14 September 2005.

³² Muharremi R, Peci L, Malazogu L, Knaus V and Murati T, Administration and Governance in Kosovo, (KIPRED, 2nd edition, 2005) p 18.

³³ Formal guidance for the responsibilities of UNMIK police are found in the Report of the UN Secretary General to UNMIK Police.

services; perform search and rescue; provide a capacity for humanitarian assistance in isolated areas; assist in de-mining; contribute to rebuilding infrastructure and communities.”³⁴ However, although the organisation has a clear mandate, successive attempts to enact a statute on Emergency Services through the Assembly of Kosovo have failed, with the result that there is no legal stipulation for how KPC co-ordinates with other security bodies in Kosovo, including other civil emergency structures.

Although its role as a civilian emergency service falls partially within the remit of the Ministry of Public Services’ Department of Emergency Management, the organisation is overseen by a combination of KFOR, the Office of the SRSG and a unit known as the Office of the KPC Coordinator (OKPCC), which effectively assumes the responsibilities of a ministry. The KPC’s management structure and lines of accountability are such that Kosovars have a significant, if inadequate degree of involvement in the organisation’s direction. For example, of the OKPCC’s 43 staff, 24 are Kosovar civilians who have a key role in areas such as finance, budgets, recruitment, procurement, logistics and emergency planning. Further, the KPC’s budgetary requests are reviewed by the Ministry of Finance and Economics along with that of other PISG institutions.

However, neither the Assembly nor other parts of the PISG are permitted legislative or executive oversight of its policies. In this important respect the KPC is publicly unaccountable. As it stands the organisation is expensive (some 15m Euros were appropriated from the Kosovo Consolidated Budget for the KPC in financial year 2004–5). It is overly large, and badly in need of reform. Yet its future remains completely opaque. Despite the existence of the KPC Development Group, the body which exists to give the organisation strategic direction, no policy, legislation or strategic development plan has been publicly articulated for the organisation thus far. In sum, Kosovo has a quasi-military civilian emergency organisation, largely comprised of former KLA personnel, that lacks clear legal guidance in its work and requires a more substantial civilian management and oversight apparatus. Despite new proposals to create Ministries of Interior and Justice for Kosovo, UNMIK does not appear to have a settled view on whether these bodies will take on the responsibility for overseeing the KPC. It is vital therefore that at the appropriate point, the upcoming ISSR makes the future of the KPC one of its central concerns.

Unfortunately, bringing the KPC under full democratic civilian control will not be easy. While the international community continues to regard the KPC as a civil emergency service as its current mandate dictates, the KPC’s self-perception, and that of Kosovar Albanians at large, is that of an army-in-waiting.³⁵ This perception is strengthened by the fact that it has military structure and military ranks. For their part, Serbs living within Kosovo or Serbia proper tend to regard it with deep distrust, in spite of a steady increase in the number of Serb recruits.³⁶ While the difference between these perceptions is huge it will only be resolved by placing the KPC at the centre of future security sector development.

Intelligence agencies

A wide array of intelligence services currently operate in Kosovo.³⁷ A recent report by the International Crisis Group described their existence of one of several problems that is being “swept under the carpet rather than addressed.”³⁸ Firstly, Serbia’s Ministry of Internal Affairs (MUP) and intelligence operatives are widely thought to be carrying out activities throughout the territory of Kosovo, though this would be in

³⁴ Crucially, KPC’s mandate also stipulates that it shall not have any role in law enforcement or the maintenance of law and order.

³⁵ For example at the march 2005 ceremony marking the Jashari family tragedy KPC was on display in what only could be described as a military demeanour.

³⁶ See for example ‘Directives for the survival of the Serbs and the creation of conditions for significant returns to Kosovo and Metohija’, The Parliament of the Union of Serb Municipalities and Municipal Units of Kosovo and Metohija, 25 February 2003.

³⁷ Presumably including those of western governments about which almost nothing is known.

³⁸ International Crisis Group, ‘Kosovo after Haradinaj’, Executive Summary.

clear and direct violation of the Military Technical Agreement.³⁹ In North Mitrovica for example the MUP runs a police station with a staff of 70 plain-clothed officers, roughly the manpower that KPS has in the area.⁴⁰ The activities of the intelligence and other MUP services are thought to be diverse and to go beyond those traditionally associated with intelligence services, ranging from intelligence gathering to issuing personal documents and licence plates. Involvement in these fields is a demonstration of Serbia's political campaign to maintain 'parallel structures' in Kosovo, as much as to gather intelligence. Allegations have also been made that the Serbian Ministry of Interior finances KPS officers of Serb ethnicity, with obvious implications for the professional integrity of the service.⁴¹ While the March riots of 2004 showed that a minority of KPS officers had uncertain loyalties,⁴² the possibility that operatives of intelligence services have penetrated the organisation raises serious questions about screening and clearance procedures in the service.

Yet Kosovar political parties and organisations such as the KPC are also believed to have acquired intelligence capabilities. The intelligence services of political parties are a public secret and a topic of regular media attention. For example recent news articles have discussed the innocuous-sounding Institute for Strategic Research of Public Opinion (IHSOP) which is apparently affiliated with the LDK, the biggest political party in Kosovo, as well as the Kosovo Information Service (SHIK), affiliated closely with the main opposition party the PDK.⁴³ While IHSOP owes its existence to the former Ministry of Defence (part of Kosovo's Government in exile), SHIK emerged from the KLA, having as its head a member of the cabinet of the Provisional Government established by Hashim Thaçi in 1999. The relationship between these groups is unclear, but their activities are thought to range from close protection of party officials to gathering information on and intimidating political opponents. Though they are widely supposed to carry out illegal activities, these agencies appear to be tolerated and apparently even used by different parts of the international administration in Kosovo.⁴⁴ This sensitive and largely neglected issue was recently rightfully raised in the report by the SSDAT, which judged these structures to be "significant in undermining confidence in security".⁴⁵ Aside from the fact that the presence of unregulated intelligence services in Kosovo demonstrates a failure by the international administration and KFOR to establish the rule of law, the prospect of Kosovo acquiring an official internal security service as an adjunct to a new Ministry of Interior needs careful consideration since the implications for internal security and oversight of such an institution would be huge.

Private security companies

Private security companies (PSCs) began operating in Kosovo shortly after UNMIK took over the administration of the territory in 1999.⁴⁶ In response to the emergence of

39 Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, 9 June 1999, Art. I, 3c and Art. II, 2.

40 'Building Kosovo's Mitrovica Divide', International Crisis Group, p 26.

41 See eg Danas 'Vojna bezbednost operativno prisutna na Kosovu i Metohiji'. 2 February 2004. Available at: <http://www.danas.co.yu/20040202/hronika1.html#0> (last visited: 15 August 2005); RTK, 'A ka shërbime informative serbe në Kosovë?' 2 shkurt, 2004. Available at: http://www.rtklive.com/site/news/news_view.php?id=13855 (Last visited: 15 August 2005).

42 The March 2004 riots saw 100 KPS officers defy orders leading many observers to conclude that they were somehow involved in the conspiracy which led to violence. Remarks by participants at a roundtable on 'Options for Civilian Management and Oversight of the Security Sector in Kosovo', 21 June 2005, co-organised by Saferworld and the National Democratic Institute for International Affairs.

43 See eg 'Partneriteti'[Partnership], Express, 15 April 2005, in which an internal UNMIK memorandum from Paul Niven, head of the CIVPOL regional crime squad, detailing a June 2004 interview with "the director of intelligence for LDK, Ramë Maraj", is reproduced. International Crisis Group, 'Kosovo after Haradinaj', p 5.

44 The International Crisis Group quote an UNMIK police memo reproduced by Express on 15 April 2005, which reveals routine information-sharing with one of the party intelligence structures, and a second source claiming that the rival party intelligence structures have had various taskings from KFOR. See International Crisis Group, 'Kosovo after Haradinaj', p. 15 and p 30.

45 SSDAT report, p 2.

46 This section draws heavily on the report 'Small Arms and Light Weapons and Private Security Companies in South East Europe: A Cause or Effect of Insecurity?', co-written by Saferworld and International Alert, pp 96–108.

new companies, UNMIK introduced legislation regulating PSCs in May 2000.⁴⁷ The industry now seems to be flourishing – official records showed 22 licensed companies employing some 2,579 guards between them as of February 2005. Some of these firms perform a public order role, helping to secure public events such as football matches and concerts, but the service most commonly offered is static security for buildings and goods, whether on behalf of public (embassies, ministries) or private clients. Given that current regulations prohibit the use of firearms by ‘local’ PSCs, close protection services tend to be provided not by PSCs but by Kosovo’s 89 registered bodyguards who are licensed to carry firearms to protect vulnerable persons.⁴⁸

All PSCs must be registered with, and issued a business licence by, the Ministry of Trade and Industry. However once a PSC has received a business licence, it must register itself and its employees with UNMIK’s Weapons Authorisation Section and Security Providers Inspection Unit (SSPIU) and then apply for an individual licence for each employee.⁴⁹ While the Ministry of Trade’s role is a promising basis on which to develop full indigenous civilian oversight of PSCs it is the SSPIU that manages and oversees the sector at present, performing background checks on would-be employees, inspecting companies periodically, and regulating the training that security guards undergo.⁵⁰ The control UNMIK currently exercises over the sector appears largely sufficient, but it remains to be seen how well a newly created Ministry of Interior will handle the oversight of these two and a half thousand additional security practitioners who may well acquire the right to carry firearms at some stage. The possibility of inappropriate links between PSCs and political parties and former paramilitaries makes the challenge all the greater.⁵¹

Oversight actors

UNMIK

In order to implement its mandate in Kosovo, UNMIK brought together four ‘pillars’ under its leadership. Civil control of security and the justice sector is exercised by UNMIK’s Pillar I which acts as a quasi Ministry of Justice and Interior.⁵² As previously noted, around half a dozen individuals within UNMIK Pillar I take responsibility for civilian executive oversight and management of over 10,000 international and indigenous security sector personnel at any one time, most of whom are armed. The most senior among UNMIK’s international civil servants is the SRSG, who in presiding over the four ‘pillars’ holds extensive powers (eg Kosovo’s police commissioner reports directly to the SRSG). Together with the Department of Justice and UNMIK Police, UNMIK Pillar I designs budgets and determines policy for Kosovo’s justice and security sector. Having one single body authorised to manage and set policies and oversee both justice and police is a highly inadequate formula of institutional design. Not only does it carry the risk that the two critical pillars of public authority will compete for attention, it also means that UNMIK both sets and oversees its own policies – a gross violation of the principle of a separation of powers that is fundamental to liberal democracy. It is from New York, the UN Security Council and the

⁴⁷ There are now four main regulations relating to PSCs in Kosovo: UNMIK Regulation No. 2000/33 on Licensing of SSPs in Kosovo and the Regulation of their Employees, 25 May 2000; UNMIK Police Policy and Guidelines On the Operation of Security Service Providers (SSPs) in Kosovo; Business Registration Unit Administrative Instruction No. JIAS/BRU/AI/2000/1 (On general requirements for license to operate a business); UNMIK Regulation No. 2001/7 on the Authorisation of Possession of Weapons in Kosovo. 21 February 2001 (includes licensing of Bodyguards).

⁴⁸ The private security sector in Kosovo is marked by the distinction between ‘local’ and ‘international’ PSCs, the different security services they offer and their client base. While there is some degree of overlap in the range of services offered by these two groups, the ‘international’ PSCs unlike their ‘local’ counterparts are licensed to provide armed security guards. UNMIK Reg. No. 2001/7 Sections 1(c) and (d) and Section 3.2. Although the KPS Protection Unit has been empowered to provide close protection service for VIPs since 2004, officials tend to retain their own bodyguards.

⁴⁹ UNMIK Reg/2000/33, Section 1: Issuance of Licenses and Section 2: Registration and Issuance of Permits. ‘UNMIK Police Policy and Guidelines on the Operation of Security Service Providers (SSPs) in Kosovo’, Section 3: General Regulations.

⁵⁰ UNMIK Reg/2000/33, Section 2.2. UNMIK Police Policy and Guidelines on the Operation of Security Service Providers (SSPs) in Kosovo’, Section 4a: Requirements for employment in Security Service Providers.

⁵¹ ‘Small Arms and Light Weapons and Private Security Companies in South East Europe: A Cause or Effect of Insecurity?’, co-written by Saferworld and International Alert, p. 103.

⁵² Apart from Pillar I there is also Pillar II, Civil Administration, Pillar III, Democratisation and Institution Building (led by the Organisation for Security and Co-operation in Europe (OSCE)), and Pillar IV, Reconstruction and Economic Development.

international Contact Group that UNMIK takes its instructions, without the substantive participation of indigenous political actors.

Department of Justice

Established in early 2000⁵³ and chaired initially by two co-heads (one local and one international), the Department of Justice is charged with “overall management of matters relating to the judicial system and the correctional service.”⁵⁴ In addition, the Department has the authority to formulate wide-ranging policy guidelines and recommendations “on an overall strategy and policies for the development, organisation and proper functioning of the judicial system and the correctional service in a manner that is non-discriminatory, efficient and consistent with internally recognised human rights standards.”⁵⁵ While the Department has remained in place since 2000, with the adoption of the 2001 Constitutional Framework for Kosovo, the local co-heads of departments were removed.

The Constitutional Framework and the Regulation on the Executive Branch of PISG allocate a number of responsibilities to the PISG in the justice sector, ranging across areas such as the appointment of judges and prosecutors and the development and maintenance of court and prosecution services.⁵⁶ In practice however the PISG (the Department of Judicial Administration established within the Ministry of Public Services) mainly exercises administrative and logistical responsibilities, while any substantial power remains firmly with the Department of Justice. Participation of Kosovars is limited in practice to the role they may play as lay-judges.⁵⁷ In addition, any party in a case before a court can report inappropriate behaviour by a judge or prosecutor to the Department of Justice Inspectorate. As discussed above, the SRSG has announced plans to create a Ministry of Justice by the end of 2005.⁵⁸

Assembly of Kosovo

Kosovo’s central legislative chamber, the Assembly of Kosovo, is the highest PISG institution, yet its law-making role is tightly circumscribed by the international legal/diplomatic framework provided by UNSCR 1244 and the 2001 Constitutional Framework. Legal supervision and law-making in Kosovo are presently conducted by a confused array of actors and processes. UNMIK regulations are signed off by the SRSG of the time. Depending on the matter in question, regulations may need the approval of the UN Secretariat in New York and the involvement of UN Departments of Political Affairs and Peacekeeping Operations and Legal Affairs. Lower-level administrative regulations may be passed without higher consultation. Where none of these laws are precedent, applicable Yugoslav law may apply, though this is not the case in practice within the security sphere.⁵⁹

The Assembly cannot legislate in the area of security, or for that matter in any of the reserved areas. Nor is it allowed to form committees⁶⁰ to oversee justice or security providers, call representatives of those providers to appear before it, or exercise any budgetary control over security organisations. This is all the more remarkable given that nearly one third of Kosovo’s General Budget is allocated to ‘reserved power’ organisations over which the Assembly has no authority or competencies.”⁶¹ As such the assembly is completely estranged from the expected transfer of security responsibilities from UNMIK to the PISG. The Assembly is the clearest most obvious

⁵³ UNMIK Regulation 2000/15 on the Establishment of the Department of Justice.

⁵⁴ *Ibid* Section 1.2.

⁵⁵ *Ibid* Section 2.1.

⁵⁶ Constitutional Framework, 5.3.; Regulation 2001/19 Annex IX, (xi).

⁵⁷ Appointment and removal of juries is governed by Regulation 2001/08 on the Establishment of the Kosovo Judicial and Prosecutorial Council.

⁵⁸ SRSG presents plan for transfer of police and justice competencies to the PISG. 19 July 2005. Available at: <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EVOD-6EGGMY?OpenDocument> (last visited: 10 September 2005).

⁵⁹ Fisher, J, p 7.

⁶⁰ The existing parliamentary committee on civil emergencies might be considered a partial exception to this rule.

⁶¹ Rees, Justice and Security Sector Governance in Kosovo, p 3.

expression of democratic political will in Kosovo and it is being ignored. As in the case of ongoing taxation without representation in Kosovo, this is inherently destabilising.

However, while parliamentary oversight of the security sector is a crucial component of broader civilian oversight, the Assembly of Kosovo, like parliaments in most transition countries, demonstrably lacks the institutional support and individual knowledge it needs to exercise proper oversight. Despite calls from Kosovo's political parties for new powers in this area,⁶² aside from a lack of legal competency, its members possess neither the research capacity, budget, or the knowledge that meaningful work on the issue requires. As one senior KPS officer remarked, "were parliament to send a delegation of MPs to my office in search of irregularities, I doubt they would have the skill to detect any".⁶³ While there are a range of actors lead by the Organisation for Security and Cooperation in Europe (OSCE), the European Agency for Reconstruction (EAR), United Nations Development Programme (UNDP) and the non-governmental National Democratic Institute (NDI) engaged in parliamentary development in Kosovo, none are conducting programmes in areas of 'reserved powers'. If action is not taken in the near future to remedy this problem, the international community will be setting Kosovo up for a heavily executive-dominated system when 'reserved' powers are finally handed over to PISG institutions.

The executive

The Kosovo-wide elections of 2001 led to the creation of the PISG institutions that govern in what may be termed 'transferred power' areas. These include education, health, some public services, spatial planning, trade and industry, finance and economy, the environment, transport, communications and since 2005, mines, local administration and minorities/returns. Executive powers in the field of security still remain with UNMIK Pillar I and KFOR. The Office of the Prime Minister (OPM) has however begun to develop capacity in this area following the appointment of a Kosovar to act as Director of the Office for Public Safety (OPS) within OPM.⁶⁴ UNMIK finally acceded to a long-standing request by the Prime Minister to establish such an office once the March 2004 riots had demonstrated the PISG's lack of capacity for crisis management. The OPS was initially conceived as a conduit for information exchange on security between UNMIK and PISG, serving as an advisory and co-ordinating body for the executive on issues relating directly or indirectly to public safety and security.

To date the OPS has convened consultative working groups on issues such as the proposed new Law on the Kosovo Police Service, KPS reforms and ministries of interior and justice, in which it liaises with Kosovo's other security actors. In June 2005 the Prime Minister directed that the Office was to house a new Secretariat that would aid implementation of the Internal Security Sector Review and the Office's capacity has been modestly increased with the help of the UNDP and the OSCE. The OPS has also proposed the creation of a more formalised Advisory Group on Security in Kosovo which it would convene together with the Advisory Unit on Security within UNMIK / O/SRSG.⁶⁵ Although like other PISG institutions the OPS has no oversight or policy formulation role, its creation is a welcome if belated contribution towards enhancing indigenous capacities in the security sector. However while OPS might play a stronger role in the future, at the present time it remains under-resourced and its future is unclear, particularly in light of plans for a new Ministry of Interior.

⁶² 'LDK calls for Assembly debate on security situation and missing', Zëri, 9 July 2005.

⁶³ Remarks by participants at a roundtable on 'Options for Civilian Management and Oversight of the Security Sector in Kosovo', 21 June 2005, co-organised by Saferworld and the National Democratic Institute for International Affairs.

⁶⁴ OPS is mandated by Administrative Directive No. 2004/16 'On Implementing the Regulation 2001/19 for the Executive Branch of the Institutions for Self Government', 30 June 2004.

⁶⁵ 'Office of Public Safety Strategy Paper, May 2005. In fact a high-level politico-security consultative group comprising UNMIK, KFOR, the PISG and other interested parties was first established in April 2004 immediately after the March riots. However the Kosovo Security Advisory Group (KSAG) was vaguely conceived and met only twice before a boycott by Kosovar Serbs de-railed it for good.

New ministries

On July 19 2005, the SRSG passed to Kosovo's Prime Minister a draft plan to create ministries of interior and justice. The plan is said to envisage the establishment of ministries by the end of 2005, in which Kosovars have limited policing and judicial responsibilities and UNMIK retains some form of supervisory role. The planned retention of powers by UNMIK reflects well-founded fears that a lack of capacity or internal politicisation may adversely affect the day-to-day workings of the new institutions (Kosovo's main political parties are already jockeying for positions in the new ministries, including the expected Kosovar Intelligence Service which many predict will be established within the future Ministry of Interior).⁶⁶

While the establishment of these ministries is probably long overdue, the plans for their creation have been drafted without the input of the Kosovo Assembly, political parties, or civil society and the wider community, and Kosovars have no indication that the process by which the ministries will be developed will become more transparent. This is regrettable since fundamental decisions about the future governance of the territory are being taken behind closed doors. For example the decision as to whether or not to create a Ministry of Public Order (a stand-alone police body) versus a Ministry of Interior with additional responsibilities such as emergency services and domestic intelligence is one of great political importance that ordinary Kosovars should be properly involved in. The almost total absence of public information about these plans is partly a reflection of the perceived sensitivity of the issue, but also UNMIK's political improvisation in an attempt to make up for lost time. Unfortunately such opaque decision-making matches the governance process in Communist-era Yugoslavia far too closely for ordinary disenfranchised Kosovars to distinguish adequately between the two.

Civil society

A vibrant civil society can play numerous important roles in the security sector:

- acting as a counterweight to the power of the state and any inclination towards authoritarianism
- monitoring and encouraging respect for the rule of law and human rights
- disseminating independent analysis and information on security issues
- putting security issues that are important for society as a whole on the political agenda
- contributing to parliamentary competence and capacity-building
- giving alternative expert perspectives on security policy, budgets and procurement, and
- fostering public debate.

However although there are currently between 2,000 and 2,500 registered NGOs in Kosovo today, 10% of them routinely active,⁶⁷ there are none working specifically on security issues. Non-governmental organisations (NGOs), citizens' groups, residents associations, academics and the media have no formal role either in the formulation of Kosovo's security policy, or in its application or review. Individual members of civil society often play very important roles, eg in the drafting of new laws, but because these roles are not codified it is arguable whether they have any useful oversight function or enhance transparency in decision-making. Since civil society "is both important to, and an expression of, the process of democratisation and plays a strong and increasing role in the functioning of established democracies,"⁶⁸ the role of these actors is as important as that of the assembly or executive.

⁶⁶ 'Kosovars Concerned New Ministries May Be Politicised', Artan Mustafa, Institute for War and Peace Reporting, No. 567, July 27, 2005.

⁶⁷ USAID NGO Sustainability Index 2004.

⁶⁸ Born H., Parliamentary Oversight of the Security Sector, p 36.

As is the case with other institutions, little attempt has been made to build the capacity of Kosovar civil society to contribute to democratic control of the security and justice sectors. While the international community has ploughed millions of dollars into civil society development in Kosovo in the last six years, almost no support has been provided in the realms of security or justice.⁶⁹ Consciously or otherwise, a failure to empower civil society in this area is to the detriment of the democratic operation of security organisations. Certainly Kosovar civil society members themselves have further to go in stepping up to this challenge, and their constructive engagement on substantive policy issues has all too often been absent. However, in order to be able to exercise their role in this field, NGO's and media have to be part of integrated and continuous efforts for building an overall capacity in Kosovo for security sector development. Gaps in experience and knowledge of the issues must be filled, and new forums that allow civil society to play a constructive role both in policy formulation and oversight must be created.

Other actors

The list of organisations considered above is far from exhaustive, and many other actors could conceivably play a role in enhancing democratic control of the security sector. For example the newly established KPS trade union, which currently confines itself to enhancing the economic and social position of police officers, could plausibly take on an advisory or consultative role once it is established on a sound legal footing. Other promising examples for advancing enhancing involvement in the security sector or promoting better oversight are the Local Community Safety and Crime Prevention Councils (LCS&CPC) and the Ombudsperson's office.

The Ombudsperson's Office, established under the 2001 Constitutional Framework for Kosovo⁷⁰ and the Regulation on the Establishment of Ombudsperson,⁷¹ is authorised to receive and review complaints on the actions of governmental bodies, including security actors, regardless of whether they are 'international' or 'local'. It is an important institution in the present context since it is essentially the only body empowered to scrutinise the actions of international administration and security forces in Kosovo in terms of local and international human rights standards. Yet the Office is essentially an international creature. Acting under an UNMIK Regulation and reporting to the SRSG rather than the Assembly, it is currently headed by an international and has no institutional links to Kosovar institutions.

Kosovo's LCS&CPC were introduced in late 2004 by UNMIK Pillar One with a view to strengthening public security management at the lowest level of government. They are consultative bodies on security issues comprised of representatives from civil administration, the police, KFOR and, most important of all, parts of civil society, including "each ethnic community residing in the municipality, orthodox Church and Islamic and other religious leaders/representatives, the business community, young people, NGOs working with victims of crime and any other parties interested in reducing crime and improving the quality of life of local people."⁷² Their assigned responsibilities include: building trust among communities through security enforcement measures; ascertaining communities views on crime and quality-of-life issues; prioritising issues with members, including those associated with ethnic tensions, freedom of movement and conflict; and formulating community safety, crime prevention and security initiatives.

⁶⁹ NGO's sector operating in Kosovo, both local and international between 2000 and 2002 received €809 million. Pula, *Civil Society in Transition*, p 12.

⁷⁰ Regulation 2001/9 on the Constitutional Framework for Provisional Self-Government.

⁷¹ Regulation 2000/38.

⁷² 'Safety Strategy for Kosovo', Version 5: For Implementation and Testing During 2005.

Although their creation was a requirement of the Kosovo Standards Implementation Plan,⁷³ the Councils were established largely on the initiative of the UK Government Department for International Development (DfID), OSCE and UNDP. The councils provide model channels for government institutions to involve local residents meaningfully on safety and security issues. Their role could be usefully enhanced in the future eg placing a legal requirement on KPS to report to them, in effect making them Civilian Review Boards. They report to the largely international Kosovo Community Based Policing Steering Group (KCBP-SG) that oversees, co-ordinates and supports community-based policing, crime prevention and community safety activities/initiatives in Kosovo.⁷⁴ Yet while the KCBP-SG retains authority at the strategic level, the Councils are gaining the interest and participation of local communities and public security providers despite their novelty. Though they do not yet operate in all municipalities they are emerging as a useful forum for communication and conflict prevention/management and are demonstrating the role civilians can play at local levels in a very practical way.

It should however be emphasised though that the LCS&CPCs and Ombudsperson's office are worthy exceptions to the general rule. There are few established procedures for governmental bodies to consult with outside actors, and in most cases co-ordination between governmental bodies themselves, both local and international, is not adequate to provide for it.

⁷³ Paragraph 5.2 of Section 2, of the KSIP states that all municipalities must develop and implement a 'strategy for community safety to include joint crime prevention councils' (see Appendix D). 'Safety Strategy for Kosovo', Version 5: For Implementation and Testing During 2005.

⁷⁴ The KCBP-SG is co-chaired by the Deputy Commissioner of UNMIK Police Operations (Pillar 1) or nominated representative and a member of the PISG or nominated representative.

4

Future priorities

WHATEVER ITS OTHER MERITS, Kosovo's security architecture clearly fails the democratic test. The lack of oversight by citizens and/or their elected representatives of security agencies that currently exists in Kosovo is not a novelty in the immediate aftermath of an armed conflict. Stabilisation, peace-building consolidation and control are the driving concerns in post-war environments. In Kosovo, the international community's immediate conviction was that it was unsafe to allow popular will and local representatives to manage internal security. Whatever the truth and wisdom of this conviction six years ago, today's environment, expectations and legitimate interests are different. As has already been argued, the operational priorities of 1999 have dominated thinking and practice in Kosovo for too long and the paramount concerns of the international administration should now be democratic consolidation and development. Flawed but functioning democratically elected institutions of the PISG are now in place, and the avoidance of genuine local involvement and civilian democratic oversight after initial stabilisation has come to inhibit the political development of the territory, probably to the detriment of long-term stability.

While a long overdue strategic review of the current architecture is now underway in Kosovo, its success depends on reversing an inertia that has kept the security architecture substantially unchanged since 1999. The challenges ahead are huge, and reform efforts carry a number of risks and challenges that should not be underestimated. The price of the existing lack of civilian oversight in the area is that local institutions and citizens have been left with a poor understanding of security issues. As a consequence, there is a limited understanding among the local leadership and other stakeholders in Kosovo of the ideas involved in a security sector review.⁷⁵ Capacities are probably low across the board, but are certainly so in the institutions most vital for effective external oversight.

The Assembly of Kosovo, which has been neglected and estranged from security issues since its creation, will for this reason be seriously handicapped in carrying out any future mandate vis-à-vis security mechanisms. Public knowledge and awareness of these issues is also far below what is required. Many outdated attitudes will need to be broken down if ordinary Kosovars are to engage meaningfully with their security sector. The previous misuse of security agencies for political ends that characterised the communist and nationalist periods still makes its presence felt in a lack of public trust. The historical association in the minds of Kosovar citizens between the police and communist-era militia is an impediment to establishing the KPS as a police service with a mandate to protect and serve the population. The public's understanding of security as synonymous with secrecy, a legacy of the majority population's

⁷⁵ SSDAT, Initial Fact Finding Visit Report: Kosovo Internal Security Sector Review Concept, 16 March 2005.

exclusion from the security sector from 1989 until now, also warrants attention. To some extent this attitude may account for the creeping and seemingly unchallenged power of illegal intelligence services.

Probably the greatest test facing would-be reformers in Kosovo however, is that of designing and implementing a handover that genuinely empowers the individuals and institutions involved. The danger is that in a rush to compensate for past inaction, UNMIK and the PISG end up erecting paper-thin arrangements for civilian oversight that result in institutional chaos because the norms, knowledge and culture necessary to sustain them have not been cultivated. This threat is all too real, given that the international political and strategic imperatives that have dictated the fate of Kosovo in the past now favour a speedy exit by the international community. Without a well-planned, developmental and genuine handover, institution building will surely fail. An improvised transfer of powers, particularly if it is attempted without an agreed legal framework, will feed unhealthy competition between institutions such as the presidency, executive, parliament and security agencies, and will also feed distrust between political parties and the public. The prospect that new ministries of interior and justice may be established in Kosovo before their mandate, staffing arrangements, and lines of oversight and reporting are fully developed is particularly worrying. There are already indications of a reversion to a communist logic on the use of intelligence and coercive force in Kosovan public life, and unless adequate safeguards are put in place, structures of this kind could easily come to serve narrow personal or party interests and be used to hunt political opponents rather than true law-breakers.

While the end-point for Kosovo as a whole remains unclear, the end-point for the security sector in Kosovo should be one in which institutions mandated to use coercive force are established on a clear legal footing with transparent and accountable controls on their activities. While democratic accountability cannot be established entirely independently of final status arrangements, steps already undertaken in this area must be urgently reinforced and accelerated to create the conditions for the effective oversight of the operations, policies and budgets of security organisations by parliament, civil society and other institutions. However, while civilian oversight of the security sector can be exercised through dedicated institutions such as parliamentary committees or police complaints authorities and ombudsman's offices, institutions alone are not sufficient. In order to function as designed they require an enabling environment in which civilian oversight is a settled legal and cultural norm. Among the elements that would enable effective oversight are:

- an established practice of governmental reporting to parliament and of parliament to the people;
- transparency regarding policy-making, planning and budgeting;
- the existence of a settled public security policy/strategy against which actual practice can be assessed;
- sufficient skills and capacities among those civilians who should provide oversight (eg a parliamentary research unit); and
- a responsible and engaged civil society that debates and critiques security policy and practice.

Setting priorities for what will likely be a difficult transition towards effective local management and oversight of the sector is necessarily an uncertain business, which to some extent risks pre-judging the outcome of the coming ISSR. However while definitive answers cannot be provided, it is possible to describe a number of obvious steps that must be taken to create an accountable security architecture in Kosovo in line with the envisaged ISSR, whether in regard to building the capacity of Kosovo's existing (and planned) institutions, changing public opinion and awareness on this issue, or establishing the security sector on adequate legal foundations. These are:

Establishing the rule of law: There is a pressing need to clarify the legal mandate of Kosovo's security institutions. While exact mandates need to be based on an objective threat analysis that has yet to be conducted, each and every security institution requires a clear legal remit and mandate. Democratic checks and accountability mechanisms need to be codified and embedded in such laws from the outset. Establishing the rule of law for all requires that all institutions in Kosovo, whether formal or informal, indigenous or international, be brought within the law. Decisive steps should therefore be taken to close down and prosecute transgressors.

A comprehensive and strategic security sector review: As recommended by the ISSR report, a strategic environment review and a thorough analysis of the threats that might affect Kosovo should be carried out at an early stage with the participation of all state institutions, civil society, communities and media. If conducted properly this will ensure that false threats do not influence policy and that effective and sustainable solutions are arrived at for real ones, such as organised crime and corruption. Since strategic environment reviews and threat assessments are points of departure for building a security architecture and determining its policies and operational framework, they should normally be carried out under strict democratic guidance. The conditions for this may not yet exist in Kosovo, but it is imperative that democratic accountability and civilian oversight of the security sector at all levels are taken as guiding threads for this work, and that current inadequate arrangements feature in the threat assessment. Yet it is also imperative that issues not currently on the table, such as the future of the KPC and the privatisation of security, are dealt with. At the same time a coherent approach rather than a collection of isolated efforts is critical. Current endeavours to establish new ministries, introduce a Law on the Kosovo Police Service, and discussion on creating a security committee within the Assembly, while welcome initiatives in themselves, have been initiated by different UNMIK pillars without joint planning and with insufficient consultation and co-ordination. UNMIK is working in parallel with the ISSR process, the spirit of which is to adopt concrete institutional arrangements only after a strategic review, threat assessment and a functional and gap analysis have taken place. A little genius may be required if the best aspects of UNMIK's institutional initiatives (eg the introduction of much-needed legal foundations for institutions like the KPS) are to complement rather than undermine the ISSR.

A public security policy: A settled and public security policy is urgently required, not only to fill the current gap, but to guide the long-term development of the security sector. This is a pre-requisite for meeting the defence and protection needs of Kosovars and also for democratic governance of the security sector.

Building trust and inclusiveness: security sector development is not an isolated endeavour. It should mirror the real needs for protection of Kosovo's population at the local level and support the effective implementation of the rule of law. Since the process of security sector development is inherently political, it requires sound leadership and respect for the principles of transparency and accountability. So as to build trust, steps should be taken to ensure that the process is inclusive and transparent enough to gain the trust of all stakeholders, including the political opposition and Kosovo's minorities. The decision-making bodies that drive security sector development in Kosovo will be a determining factor here, and their composition should reflect the need for inclusiveness and legitimacy.

Consultation and public awareness raising: New security arrangements will need to be accepted by the main segments of society, including civilian and security structures. This implies a long period of consultation and debate at all levels of society, both within and outside institutions. Kosovo's LCS&CPCs, NGO's and other structures can play an important role in this. Strong leadership from institutions and politicians, but also from civil society and the media will be needed to generate responsible discussion on these issues and help to overcome intellectual hangovers from the past and change the beliefs and attitudes of citizens, politicians and security providers alike towards security.

Budgetary control: As indicated above budgetary decisions on the security sector are entirely outside the purview of Kosovars and their institutions. There is an urgent need to remedy the current situation of taxation without representation in reserved power areas. At the same time, there are serious flaws in the assessment, implementation and monitoring of budgeting decisions and policies in areas overseen by Kosovars. In order to remedy this, Kosovo's initial strategic threat assessment needs to be followed by a review of capabilities and commitments while the subsequent design of policy must be kept in line with budgets.

Capacity building: Extensive capacity-building work with Kosovo's institutions, whether parliament, future ministries, or civil society is needed to prepare them for the management and oversight of security. This is essential and needs to begin as soon as possible to guard against a dangerous accountability vacuum immediately following the transfer of powers.

De-politicisation of the civil service: Democratic sustainability of security institutions depends on uncompromised de-politicisation and strong professionalism. Yet this is one key area where UNMIK and PISG have both failed. Robust recruitment policies and administrative checks will be needed to deal with this problem.

Donor support and co-ordination: One of the main problems that might face the current reform plans and ISSR is a lack of donor commitment for what amounts to a major political decision by DPKO/UNMIK. The support of international donors is vital if the envisaged ISSR process is to be completed in a timely manner, or if emerging ministries of justice and interior are to function effectively, since the Kosovo Budget does not provide for either. At the time of writing there is a fair chance that these crucial political and institution building processes will fail because of a lack of donor support.

Internal Security Sector Review and Final Status: It must be borne in mind that if it proceeds roughly to schedule, the coming ISSR will overlap with negotiations leading towards resolution of Kosovo's final status. The ISSR process will no doubt feed into those negotiations and Kosovo's new security sector architecture will only take final shape once agreement on final status has been reached. For this reason Kosovo's ISSR should be seen as a special case – several steps in the process may have to be reviewed repeatedly during negotiations. The ISSR will also help to define security threats and options, contributing towards a vision for the future. Sophisticated outreach plans will be needed to deal with the predictable degree of confusion and unrealistic expectations that the general public may exhibit once the review is fully underway.

For the time being it is the shared responsibility of Kosovars working through civil society and their political institutions to negotiate the above challenges, together with their international administration. The ISSR process is an excellent opportunity for this endeavour and one that Kosovars should seize by formulating their own concrete proposals for the future of their security institutions. Support will still be needed from the international community as reserved powers are further transferred. The international administration should retain some residual executive capacity on issues that Kosovars will have difficulty tackling alone, such as organised crime and terrorism. The international community should also provide policy guidance and should monitor the security sector in the run-up to Euro-Atlantic integration. That said, discussion and fresh agreement will be needed at a high level on what benchmarks are to be used to monitor Kosovo's performance in the civilian management and oversight of security and justice, on who should perform that role, and on how findings are to be taken up. Much rests on the outcome. Building effective local ownership of the security sector is a pre-requisite for a sound and sustainable relationship between citizens, the civil authorities and institutions charged with exercising coercive force on

behalf of the state. Successful security sector development in Kosovo can also contribute to confidence and peace-building in the region. Handled well, reforms could help to defuse the difficult politics of the region as a whole, polluted as it is by real and perceived security threats. If they are handled badly however, individuals and groups willing to work outside the established political framework will be strengthened and the prospects for democracy in Kosovo and peace in the region will look increasingly grim.

Bibliography

- 'Aide Report', The Situation in Kosovo. Report to the Secretary-General of the United Nations, 15 July 2005.
- Born H, Parliamentary Oversight of the Security Sector, (IPU and DCAF Geneva Centre, 2003).
- Born H and Leigh I, Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies, (DCAF, HLC – University of Durham and Norwegian Parliamentary Intelligence Oversight Committee, 2005).
- Constitution of Socialist Autonomous Province of Kosovo, 1974. (Prosveta, Belgrade, 1974).
- Council for the Defence of Human Rights and Freedoms, 'Raport mbi shkeljen e të drejtave dhe të lirive të njeriut në Kosovë gjatë vitit 1998'. Available at: <http://www.cdhrf.org/SHQIP/Vjetore/V1998sh.pdf> (last visited: 20 August 2005).
- Council for the Defence of Human Rights and Freedoms, 'Raport mbi shkeljen e të drejtave dhe të lirive të njeriut në Kosovë gjatë vitit 1999'. Available at: <http://www.cdhrf.org/SHQIP/Vjetore/V1999sh.pdf> (Last visited: 20 August 2005).
- Fischer J, 'Democratic Control of Armed Forces and Kosovo. Security in the Absence of State', 2001 (Paper presented at a seminar "Legal framing of democratic control of armed forces and the security sector: norms and reality/ies" organised by DCAF in Geneva, Switzerland, 4–5 May 2001).
- General Qehaja, Ramadan. Private Correspondence, 22 June 2005. Pristina, Kosova.
- Human Rights Watch, 'Persecution Persists: Human Rights Violations in Kosovo' (December 1996). Available at: <http://hrw.org/reports/1996/Serbia.htm> (last visited: 20 August 2005).
- International Crisis Group, 'Bosnia's Stalled Police Reform: No Progress, No EU', Europe Report N°164, 6 September 2005, <http://www.crisisgroup.org/home/index.cfm?id=3645&l=1>.
- International Crisis Group, 'Building Kosovo's Mitrovica Divide', (Europe Report N°165, 13 September 2005), <http://www.crisisgroup.org/home/index.cfm?id=3650&l=1>, 13 September 2005.
- International Crisis Group, 'Kosovo after Haradinaj', (Europe Report N°163, 26 May 2005), <http://www.crisisgroup.org/home/index.cfm?id=3474&l=1>, 02 June 2005.
- 'What Happened to the KLA', International Crisis Group, <http://www.crisisweb.org/projects/kosovo.html>.
- International Commission on the Balkans, 'The Balkans in Europe's Future', (April 2005), <http://www.balkan-commission.org/activities/Report.pdf> 20 May 2005.
- Independent International Commission on Kosovo. 'Kosovo Report' (Oxford University Press, 2000)
- Independent International Commission on Kosovo. 'The Follow-Up to the Kosovo Report – Why Conditional Independence?', (IICK, 2001).
- Kosovo Community Based Policing Steering Group, 'Safety Strategy for Kosovo', Version 5: For Implementation and Testing During 2005.
- Marten Zisk K, Enforcing the Peace – Learning from the Imperial Past, (Columbia University Press, 2004).

- Muharremi R, Peci L, Malazogu L, Knaus V and Murati T, Administration and Governance in Kosovo, (KIPRED, 2nd edition, 2005).
- Morina, Refki, Private Correspondence, 14 September 2005, Prishtina, Kosova.
- Mustafa, Artan, 'Kosovars Concerned New Ministries May Be Politicised', Institute for War and Peace Reporting, No. 567, 27 July 27 2005.
- NATO, 'Military Technical Agreement between the international security force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia', 9 June 1999, <http://www.nato.int/kfor/kfor/documents/mta.htm> , 5 June 2005
- Office for Public Safety, 'Office of Public Safety Strategy Paper, May 2005.
- Parliament of the Union of Serb Municipalities and Municipal Units of Kosovo and Metohija, 'Directives for the survival of the Serbs and the creation of conditions for significant returns to Kosovo and Metohija', The February 25, 2003. <http://www.kosovo.com/erpkim26feb03.html>, accessed 20 September 2005.
- Pula B. 'A Changing Society, A Changing Civil Society – Kosovo's NGO Sector After the War'. (KIPRED, 2nd edition, 2005).
- Regulation 2000/15 on the Establishment of the Department of Justice. Available at: http://www.unmikonline.org/regulations/2000/re2000_15.htm (last visited: 10 September 2005).
- Regulation 2000/38 on the Establishment of the Institution of Ombudsman in Kosovo. Available at: <http://www.unmikonline.org/regulations/2000/reg38-00.htm> (last visited: 05 September 2005).
- Regulation 2001/08 on the Establishment of the Kosovo Judicial and Prosecutorial Council. Available at: <http://www.unmikonline.org/regulations/2001/reg08-01.html> (last visited: 11 September 2005).
- Regulation 2001/9 on the Constitutional Framework for Provisional Self-government in Kosovo. Available at: <http://www.unmikonline.org/regulations/2001/reg09-01.htm> (last visited: 30 August 2005).
- Regulation 2001/19 on the Executive Branch of Provisional Institutions of Self-government in Kosovo. Available at: <http://www.unmikonline.org/regulations/2001/reg19-01.pdf> (last visited: 10 September 2005).
- Rees, E. 'Justice and Security Sector Governance in Kosovo, (unpublished paper).
- Rees E, 'Kosovo – Strengthening Parliamentary Oversight Capacity of the Security Sector', (unpublished paper).
- Rees E, 'Security Sector Reform and Peace Operations', (unpublished paper).
- 'Small Arms and Light Weapons and Private Security Companies in South East Europe: A Cause or Effect of Insecurity?', United Nations Development Programme–South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, August 2005.
- SRSG presents plan for transfer of police and justice competencies to the PISG. 19 July 2005. Available at: <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EVOD-6EGGMY?OpenDocument> (last visited: 10 September 2005)
- SSDAT, Initial Fact Finding Visit Report: Kosovo Internal Security Sector Review Concept, 16 March 2005.
- SSDAT, 'Kosovo Internal Security Sector Review Concept: Scoping Study', May 2005, D/SSDAT/20/1/1/1.
- United Nations Development Programme Kosovo, 'Light Blue, Public Perceptions of Security and Police Performance in Kosovo', June 2004.
- United Nations Development Programme, 'Human Development Report, Cultural Liberty in Today's Diverse World', 2004.
- United Nations, Security Council, Resolution 1244 (1999), 10 June 1999, <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>.
- United Nations Mission in Kosovo, Kosovo Standards Implementation Plan, 31 March 2004, http://www.unmikonline.org/pub/misc/ksip_eng.pdf
- USAID NGO Sustainability Index 2004, http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2004/kosovo.pdf
- Ustav SFRJ, Ustavi Socijalisti_kih Republika i Pokrajina, 1974. Prosveta, Beograd.
- Vllasi, Azem, Private Correspondence, 23 June 2005, Prishtina, Kosova.

The Kosovar Institute for Policy Research and Development aims to support and promote democratic values in Kosovo through training and independent policy research. The training pillar is focused on the development of political parties through the Internet Academy for Democracy, which was developed in cooperation with the Olof Palme International Center. The research pillar focuses on producing independent policy analysis on issues such as good governance, administration, political party development, regional cooperation, political economy, and local government.

Saferworld is an independent non-governmental organisation that works with governments and civil society internationally to research, promote and implement new strategies to increase human security and prevent armed violence.



KIPRED
Kodra e Diellit, Rr. III, Ll. 39
Prishtinë
Kosovë (UNMIK)

Phone/Fax: +381 (0) 38 555 887
Email: info@kipred.net
Web: www.kipred.net

Saferworld
The Grayston Centre
28 Charles Square
London N1 6HT
United Kingdom

Phone: +44 (0)20 7324 4646
Fax: +44 (0)20 7324 4647
Email: publications@saferworld.org.uk
Web: www.saferworld.org.uk

PO Box 909-00606
Nairobi
Kenya

Phone: +254 (0)20 3743830/3743840
Fax: +254 (0)20 3749780