

Men with Guns:

Explaining the Failure to Improve Human Rights Conditions in Post-Intervention Kosovo

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- "The point where men with guns come, no matter what your culture is, you do what the men with guns say." John Sayles, Director of *Men with Guns*¹

INTRODUCTION

In *Men with Guns*, director, screenwriter and editor John Sayles tells the story of Dr. Fuentes, who travels into the countryside of an unnamed country to learn what became of his former students, who had gone out to help the poor villagers. Along the way, Dr. Fuentes finds conditions in his own country worse than what he had ever known, and at each stop he is confronted with stories of terrible violence committed by "men with guns," which is the only way the villagers can often identify their oppressors. Sayles leaves open the question as to whether or not the violence is committed by the government army, the guerrillas, or simply roaming bands of thieves. For the people who suffer at their hands, there is only fear and death.

There are a lot of men with guns in Kosovo, and most of them are not under the direction of any state organization, international organization or NATO, which has the largest external military presence in Kosovo. One commonly held article of faith in the post-conflict peacebuilding (PCPB) literature is that security needs to be established, either by local actors, external actors or the combined efforts of both.² Part of securing a territory often involves a process of disarmament, demobilization, reinsertion and reintegration (DDRR) of former irregular fighting units involved in the civil war.³ In Kosovo, of the estimated 330,000 to 460,000 weapons that flooded the country during the nationalist Albanian struggle against Belgrade's control over

¹ <http://www.sonypictures.com/classics/menwithguns/production.html>

² For several articles on this topic see the "Special Section: Post-Conflict Peacebuilding: Security, Welfare and Representation," in *Security Dialogue* 36(4) (2005).

³ Mark Knight and Alpaslan Özerdem, "Guns, Camps and Cash: Disarmament, Demobilization and Reinsertion of Former Combatants in Transitions from War to Peace," *Journal of Peace Research* 41(4) (2004): 499-516.

Kosovo, the United Nations was able to collect only 155.⁴ The Kosovo Liberation Army (KLA or UCK) was supposedly demobilized and turned into the Kosovo Protection Corps (KPC or TMK), although this has by and large been window dressing for outside observers. The KLA has been able to maintain its structure within the KPC and has also sought to have influence in the Kosovo Police Service (KPS).⁵ Members of the KPC were regularly involved in some of the worst violence during the first three years of the international protectorate in Kosovo, although the UN Interim Administration Mission in Kosovo (UNMIK) and NATO officials regularly denied that this was the case. “Demobilized” KLA fighters later turned up as fighters in Macedonia in 2001.⁶ Nonetheless, misperceptions about the effectiveness of this demobilization and disarmament continue to appear in the scholarly literature.⁷

The core argument of this paper is that the early failure to establish security for all sides in Kosovo after June 1999, when the UN protectorate and NATO peace-enforcement mission took responsibility for the territory under UN Security Council Resolution 1244, has created the current deplorable human rights conditions in Kosovo. The failure to establish security first has created a serious credibility burden for the international mission in Kosovo. One primary reason for this was NATO’s reliance on the KLA in fighting the ground war against Belgrade’s forces in the March-June 1999 war. Because the outside national interests were so weak in the on-going civil conflict in Kosovo, the western powers, the US in particular, was unwilling to risk ground

⁴ Keith Krause and Oliver Jütersonke, “Peace, Security and Development in Post-Conflict Environments,” *Security Dialogue* 36(4): 447-462. Pg. 453. United Nations Development Programme (UNDP), 2003. Press Release, Pristina, 1 October.

⁵ William O’Neill, *Kosovo: An Unfinished Peace* (Boulder: Lynne Rienner, 2002) Chapter 8.

⁶ Robert Hislope, “Between a bad peace and a good war: insights and lessons from the almost-war in Macedonia,” *Ethnic and Racial Studies* 26:1 (January 2003): 129-151. Victor Roudometof, *Collective Memory, National Identity, and Ethnic Conflict: Greece, Bulgaria and the Macedonian Question* (Westport: Praeger, 2002) Chapter 6.

⁷ Christopher P. Ankersen, “Praxis versus Policy: Peacebuilding and the Military,” *Building Sustainable Peace*, eds. Tom Keating and W. Andy Knight (Edmonton: University of Alberta Press, 2004) p. 72 [71-92]. Richard Caplan, *International Governance of War-Torn Territories: Rule and Reconstruction* (Oxford: Oxford University Press, 2005) 154-155.

troops in the war and stuck to an all air campaign against Serbian targets, both civilian and military. After June 1999, NATO and the UN were either indifferent or slow to react to the wide ranging pattern of well-organized Albanian revenge killing and violence that spread throughout Kosovo. Both UN and NATO representatives excused the violence at the time as “understandable” and “spontaneous.”⁸ The end result today is that Kosovo is quickly moving toward a failed peace, despite being located in a so-called “good neighborhood” where the prevalence of western security interests should result in a fairly high level of sustained commitment to a liberal multi-ethnic democratic outcome.⁹ Instead, warlords now sustain themselves on a burgeoning criminal trade in drugs and women, which is worse than before the war,¹⁰ thus further weakening any hope of a centralized state authority being able to guarantee minority rights in Kosovo, let alone a rule of law.¹¹ If the western commitment to PCPB is so weak in a case where scholars have predicated a relatively high level of commitment, serious questions need to be raised about further support for such so-called humanitarian interventions. Kosovo is a critical test case of western commitments to post-conflict societies. Thus far the outcome is very poor and may require active interventionists to reevaluate their approach to developing an international regime of humanitarian intervention.

The end result of this failure to establish a monopoly on the legitimate use of violence in Kosovo by the international protectorate, led by the United Nations, partially funded by the European Union and guarded to a limited extent by NATO forces, has been a significant lack of security for the non-Albanian minorities living in Kosovo and the inability of those expelled

⁸ O’Neill Chapter 4.

⁹ Robert O. Keohane, “Political authority after intervention: gradations in sovereignty,” *Humanitarian Intervention: Ethical, Legal and Political Delimmas*, eds. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003): 278 [275-298].

¹⁰ Amnesty International, “*So does that mean I have rights?*” *Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo*, AI Index: EUR 70/010/2004, 6 May 2004.

from Kosovo by the Albanian nationalist forces after June 1999 to return. Of the approximately 200,000 Serbs and other non-Albanians forced from the province by KLA forces in 1999, only 12,500 or 6% have been able to return.¹²

Since June 1999, the United Nations has governed Kosovo as an international protectorate under UNSCR 1244, which maintains Serbia's legal sovereignty over the territory but moved administration of the province to the UN. It is unclear what the UN and NATO's initial plans for an exit strategy were, but these later became enshrined in the "standards before status" procedure. The first three years of UN administration in Kosovo were extremely shaky, and the human rights conditions for Kosovo's non-Albanian minorities became deplorable. Albanian nationalist attacks against non-Albanian minorities continued through 2000 and 2001 as did intra-Albanian violence.¹³ It was perhaps in response to these continued attacks and the inability of the Kosovo Police Service (KPS) and the Kosovo judicial system to investigate and prosecute these crimes that in April 2002 Special Representative of the Secretary-General (UN) Michael Steiner outlined the "standards before status" approach to the UN and the international press.¹⁴ The apparent hope was to offer a carrot and a stick to Kosovo's Albanian leadership, that sovereignty could only be obtained by first meeting targets for eight policy areas, including democratic governance, rule of law, freedom of movement, sustainable returns of expellees, economic stability, property rights, dialogue between Albanian and Serbian leaders and good behavior by the KPC.

¹¹ Achim Wennmann, "Resourcing the Recurrence of Intrastate Conflict: Parallel Economies and Their Implications for Peacebuilding," *Security Dialogue* 36(4): 479-494.

¹² Agence France Presse, "Solana warns Kosovo leaders over slow fulfillment of UN standards," 20 July 2005.

¹³ William G. O'Neill, *Kosovo: An Unfinished Peace* (Boulder: Lynne Rienner, 2002) Chapter 4.

¹⁴ SRSG Michael Steiner's speech to the UN Security Council, 24 April 2002. UNMIK website, <http://unmikonline.org/>. Michael Steiner, "Step by step in Kosovo; First things first," *International Herald Tribune* 24 July 2002, 6.

That review was held on schedule during the summer of 2005, and Kai Eide, the Norwegian diplomat that headed the review, deposited his review with the UN Secretary-General in September 2005.¹⁵ Whether or not the Provisional Institutions of Self-Government (PISG) had met these standards was a political decision, and the UN, under strong pressure from the US, decided it was now time to move to the next stage despite “uneven” implementation of the standards. However, my reading of Eide’s report and numerous reports from Amnesty International, the Organization for Security and Cooperation in Europe (OSCE), and the Ombudsperson for Kosovo leave me with the impression that none of the standards have been met in any significant fashion. Eide’s report is filled with so many negative images that I was left with the impression that the status negotiations were predestined to precede no matter what he put in the report. According to Eide, “the current economic situation remains bleak...the rule of law is hampered by a lack of ability and readiness to enforce legislation on all levels...The Kosovo justice system is regarded as the weakest of Kosovo’s institutions...With regard to the foundation for a multi-ethnic society, the situation is grim...At present, property rights are neither respected nor ensured...The overall return process has virtually come to a halt.”¹⁶

Eide’s observations are corroborated by other sources, which were not burdened with the responsibility for reaching a political decision to move forward with status negotiations. To quote one brief passage from the Ombudsperson’s July 2005 report, published at the time Eide was beginning his investigation,

“In addition to random killings, there have been assaults, bombings, thefts and incidents of arson and stoning. Seldom have perpetrators been identified or brought to justice, contributing to a perception that these acts can be committed

¹⁵ United Nations Security Council S/2005/635.

¹⁶ United Nations Security Council S/2005/635 p. 2.

with impunity...Although the human rights situation in Kosovo has, to a degree, improved in certain sectors, I must reiterate from the previous annual report that *the general level of human rights protection is still below minimum international standards* [emphasis in the original].”¹⁷

The failure to meet these standards has not prevented the process from moving forward. This paper seeks to help us understand why this is the case.

The rest of this paper proceeds as follows. I begin with a very brief history of the conflict in Kosovo over the course of the 20th century. The rest of the paper looks at the conditions in Kosovo since June 1999. Why has the UN mission by and large failed Kosovo’s minority populations? This paper argues that the war-time alliance forged between NATO, which lacked the political will to commit ground troops to the 1998-1999 conflict, and the Kosovo Liberation Army (KLA), which was fighting a secessionist war against Serbia and Montenegro has had long-term consequences for post-intervention peace-building in Kosovo. The end result is that today, Albanian nationalist extremists are setting the agenda in Kosovo rather than the western powers. This has been most clearly demonstrated by the western powers’ abandonment of the “standards before status” approach and the courting by the UN and the US of indicted war criminal Ramush Haradinaj as a “responsible politician” to help keep the peace in Kosovo. The men with guns remain in control.

HISTORICAL BACKGROUND

One can begin writing the history of different regions in the Balkans with either a long or short view of history, and in either case one will offend some party in not having arrived at the

¹⁷ Ombudsperson Institution in Kosovo, *Fifth Annual Report 2004-2005* (11 July 2005).
www.ombudspersonkosovo.org

true origins of the current situation. I will opt for the short view here beginning with the return of ethnic nationalism and state building at the end of the 19th century and the withdrawing of the Ottoman Empire from the region.¹⁸ As a result of Ottoman Empire's weakening, the European powers called the Congress of Berlin in 1878 to sort out the different territorial claims local national groups were making at the time. One result of the Congress was the recognition of a sovereign independent Serbian state for the first time in centuries. In 1912 and 1913, the Serb state fought successful wars with and against its neighbors and captured what today is Kosovo. This brought a significant ethnic Albanian population within the borders of the relatively new Serbian state. Both groups have legitimate historical claims to the land, and the competing nationalist claims to the territory have been the source of a good deal of conflict in the 20th century. Kosovo's Albanians have resisted their incorporation into the Serbian state from the beginning and have found themselves in the stronger position when outside forces have intervened and fought against the Serbian state. The Albanians found themselves in the superior position during World War I when they sided with the Austro-Hungarian Empire, and during World War II they profited from support from the Germans and Italians. In this manner, the dynamics of 1998-1999 replicated previous shifts in the local balance of power. Kosovo's ethnic Albanians continued to resist their incorporation into Tito's postwar Yugoslavia but eventually succumbed to the more powerful state. The Yugoslav leadership, which included Albanians, at various times tried to suppress, ameliorate and accommodate the ethnic tensions in the new federal state. What is important to understand is that for Albanian nationalists, autonomy was never enough. Even with the granting of additional autonomy under Tito's 1974 constitution,

¹⁸ I drew upon the following works in writing this history: John R. Lampe, *Yugoslavia as History: Twice there was a country* (Cambridge: Cambridge University Press, 1996); Tim Judah, *Kosovo: War and Revenge* 2nd ed. (New Haven: Yale University Press, 2000); Mark Mazower, *The Balkans: A Short History* (New York: The Modern Library, 2002).

nationalists continued to agitate for outright independence. After Tito's death in 1980, Albanian separatists rioted in Kosovo in 1981. This political activity led to the formation of the Popular Movement for the Republic of Kosovo (LPRK) in 1982 by a small immigrant group in Switzerland.

The importance of this history is to understand that the roots of Albanian nationalism exist in a longer struggle with Serbs for control of Kosovo that stretches back well before the arrival of Slobodan Milosevic in the mid-1980s. Western liberal theorists and commentators tend to treat nationalist movements as a symptom of malfunctioning or nonexistent liberal democratic institutions rather than a common feature of human political life. The dangerous assumption that many of these writers make is that nationalist competition for land and other powerful symbols can be overcome through elections and good institution building, which in fact usually reinforce ethnic divisions in deeply divided societies.¹⁹

There is no question that the situation deteriorated significantly again during the mid-1980s and especially after the rise to power of Slobodan Milosevic in Serbia after 1986. But it is important to recognize that Milosevic is not the sole creator or cause Albanian nationalism in Kosovo. Some western leaders appear to have been surprised that conflicts in the region did not disappear with his fall from power in October 2000. With the weakening of the Yugoslav state throughout the 1980s, due in large part to an economic crisis, Albanian separatists again organized within Kosovo, this time around the leadership of Ibrahim Rugova, who died in January 2006 from lung cancer. In December 1989, Rugova along with other nationalists established the Democratic League of Kosovo (LDK) and began again the struggle for an independent Kosovo via non-violent means. As Tim Judah notes, "Before 1989 most Kosovars

sympathized with calls for a republic but the idea of an armed uprising...seemed patently ridiculous, especially since the Serbs were not even running Kosovo.”²⁰ During the 1980s, the Albanian leadership within the Yugoslav League of Communists was in control of Kosovo.

With the arrival of the Yugoslav civil wars at the beginning of the 1990s, some within the Albanian nationalist camp began to make the move toward armed resistance to Belgrade’s rule, which had by this time expelled all Albanians from the public service and created a de facto segregation of Kosovo’s society. Yet little of great importance happened. As Tim Judah notes, little happened in Kosovo between 1992 and 1997. Serbian police sought to repress nationalist activity while at the same time Rugova was free to ride around Pristina in his chauffeured car and receive guests.²¹ Those Albanians unhappy with the passive resistance favored by Rugova began to prepare for a military conflict. In 1993, they established the Kosovo Liberation Army (also known by the Albanian acronym UCK) and made their first appearance on the battlefield in 1996 when they attacked Serb refugees fleeing the Krajina region after the Croatian Operation Storm. The idea of armed resistance began to appeal to more Albanians, especially after the disappointment of not having their legitimate concerns addressed at the Dayton Peace Accords.

The most dramatic change in the balance of power between Belgrade and the Albanians took place with the collapse of the government in Albania in 1997, which allowed the KLA to gain access to large amounts of weapons. In January and February 1998, there was a significant upswing in Albanian attacks against Serb targets in Kosovo. The fighting was particularly fierce in the Drenica Vally, west of Pristina, in February and March 1998. This upswing in violence began to gain more attention from western observers, and although the west originally identified

¹⁹ Roland Paris has written an important work which questions many liberal assumptions about PCPB, while trying to save the overall project of engineering liberal societies. Roland Paris, *At War’s End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004).

²⁰ Judah 108.

the KLA as a terrorist organization, most pressure was put on Milosevic to back down and restrain his forces. The most blatant example of this one-sided strategy was US representative Richard Holbrooke's agreement with Milosevic to withdraw Serbian forces in October 1998, in an attempt to separate the two sides. While Milosevic complied with the agreement, no attempt was made to restrain the KLA, which quickly filled the vacuum created by the retreating Serbian forces.²²

During this time, the NATO powers made no attempt to close the KLA training camps in Albania. Although the exact timing of when the US and NATO began to work closely with the KLA is unknown, there is evidence that the KLA was in communication with the American and British intelligence services in 1996 and several years earlier as well.²³ This would help to explain the outcome of the October 1998 Holbrooke agreement and the subsequent alliance between NATO and the KLA during and after the Kosovo war. At some point for the Americans, the main objective of their policy in Kosovo was regime change and the removal of Slobodan Milosevic from power.²⁴ After the arrival of NATO troops in Kosovo in June 1999, the American goal was to continue placing pressure on Milosevic. This included American pressure on a major international organization to withhold humanitarian assistance to Serbian refugees in the hope that the refugees would further destabilize the situation in Serbia.²⁵

Given these facts, one needs to think carefully about labeling NATO's war against Serbia in 1999 a humanitarian intervention. One definition of such an intervention offered by scholars read as follows,

²¹ Judah 73.

²² T.W. Crawford, "Pivotal deterrence and the Kosovo war: Why the Holbrooke agreement failed," *Political Science Quarterly* 116:4 (2001): 499-523.

²³ Judah 120.

²⁴ Susan L. Woodward, "Humanitarian War: A New Consensus?" *Disasters* 25(4) (2001): 335 [331-344].

²⁵ From a private conversation with the official involved, Washington DC, September 2005.

“the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.”²⁶

If those same intervening states have, however, helped contribute to the crisis in the first place, the claim to have arrived as defenders of human rights at the end is indeed dubious at best. After at least the appearance of trying to reach a negotiated settlement at Rambouillet, France in February and March 1999, NATO launched its air campaign against Serbia on the 24 March. As the western powers lacked the political will to commit ground troops to the conflict, they came to rely upon the KLA to fight the ground war against Belgrade’s forces in Kosovo. This pre- and post-war alliance has been the cause of many of the post-intervention problems Kosovo continues to face today. The men with guns continue to set the agenda in Kosovo.

KOSOVO POST-JUNE 1999

Robert Keohane has argued that the pre-intervention decision should in part be based upon the potential for success afterward in terms of institution-building and seeking a solution by unbundling the concept of sovereignty. Keohane argues that the measurement of success should vary from case to case, as one cannot expect the same the level of western commitment near and far. Keohane writes, “In good neighborhoods, the bar might be relatively high: significant movement towards an internally sustainable liberal democracy. We can hope for such a development in Bosnia and Kosovo, even though we may have to be satisfied with very slow

²⁶ J. L. Holzgrefe, “The Humanitarian Intervention Debate,” *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* eds. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003) 18.

progress.”²⁷ One cannot argue against hope, but is it realistic given the current circumstances? (As to what qualifies as a “good neighborhood,” scholars disagree. In the same volume, Michael Ignatieff identifies Kosovo as existing in a “bad neighborhood.”)²⁸

Kosovo therefore represents a critical test case for those who advocate in favor of humanitarian interventions. Whether Kosovo is in a good or bad neighborhood, US and European powers are concerned about stability in the region.²⁹ Therefore, we should expect a fairly high level of international commitment to Kosovo, compared to other cases. If Kosovo can be labeled a success, then advocates for humanitarian intervention will have a positive case they can point to.

If Kosovo can be labeled a failure, then one has to seriously question the potential for such interventions to bear the fruit of peace and stability. One can rightfully ask, if the western powers cannot make a serious long-term commitment to peace-building in Kosovo, then where? If Kosovo’s stability is achieved without significant improvements in minority human rights, and a Kosovo emptied of its minority populations can be relatively stable given the current conditions (i.e. NATO troop presence and a weak Serbian state), then what improvement has been made over the old imperial model of intervention in the Balkans in terms of peace-building?

One critical lesson that flows from Kosovo is the absolute necessity of establishing security first. However, this may require significant use of force and the loss of life on the part of outside interveners. Kosovo demonstrates what happens when the political will to establish security is insufficient in large part because the larger national interests, those that trump the

²⁷ Keohane 278.

²⁸ Ignatieff 303.

²⁹ Stefan Wagstyl, “Struggling towards stability: why Kosovo may hold the key to the Balkans’ future,” *Financial Times* 20 February 2006, 11.

humanitarian interventionist's concerns with human rights, can perhaps be more easily satisfied without substantial sacrifice. NATO's general overriding interest was to make sure that its troops were not harmed and that a basic crude stability could be achieved, i.e. open warfare with Serbian forces could be avoided. As later events demonstrated, the protection of minorities was not a priority worthy of great sacrifices and not necessary for the level of regional security desired.

The failure of NATO or the UN to provide basic security in Kosovo especially during the first three years but even until today requires some explanation. The failure to provide this security is at direct odds with the stated purposes of the international organizations responsible for Kosovo. O'Neill suggests that there was a fear on the part of NATO that the KLA could pose a danger to their troops and that the KLA should be given a fairly free reign over the postwar situation.³⁰ Is this simply bad policy-making or was some other purpose being served? Whatever the motives or misguided policymaking, a pattern became clear early on. O'Neill provides ample evidence that the Americans in particular were interested in working with the men with guns, rather than challenging their authority, disarming them and thus allowing more moderate forces to step in. O'Neill writes, "A prevailing and widespread perception in Kosovo was that [Hacim] Thaci, Agim Ceku (former military commander of the UCK), UCK zone commander Ramush Haradinaj and other major UCK leaders had the full backing and support of the United States."³¹ Richard Caplan notes that UNMIK had little choice but to deal with Thaci and other KLA leaders, due to "the KLA's power."³² But why was the KLA able to maintain that "power"? Today, Ramush Haradinaj has now become the political darling of the UNMIK and the US despite his indictment by the International Criminal Tribunal for the Former

³⁰ O'Neill 47.

³¹ O'Neill 46-47.

Yugoslavia (ICTY) in March 2005 for murder and torture in the 1999 war. Obviously the alliance with the men with guns remains important today as well.

Reflecting on the past, O'Neill continues, "A UN official notes, 'The Americans told us that we must deal with Thaci and Ceku, that these are 'our boys' and to forget about Rugova because he is a drunk.'" Another Kosovo Albanian analyst also noted the open intimidation of political moderates stating to O'Neill, "Instead of cracking down on the warlords, KFOR [NATO's Kosovo Force] and UNMIK allowed them to divide Kosovo into different zones where these warlords generate enormous wealth."³³ The profits from these criminal enterprises continue to feed these regional power bases and work against the securing basic standards of good governance in Kosovo.

The Albanian nationalist extremists had a clear goal of expelling as much of the non-Albanian population from Kosovo as possible. What burden of responsibility for this should be placed at the door of the international community? I would argue a great deal as NATO and the UN did little or nothing during the first years of the international administration to stop or reverse the process. Was this only incompetence and fear on the part of UNMIK and NATO, or did this serve some larger overriding interest in "regional stability"? Although it is unpleasant to even suggest a rationale behind this policy of inaction and accommodation, one must at least contemplate that some in the NATO leadership had determined that a clearer ethnic division of Kosovo between Albanian and non-Albanian regions might make the province more governable. If Kosovo could only be governed by one group or the other, it was perhaps better to simply side with the Albanians as they formed the clear 90% majority of the province's population.

³² Caplan 247.

³³ O'Neill 47.

Whatever the motivations, incompetence or uncertainty, the outcome is clear. The OSCE carefully documented the nature of these attacks between June and October 1999, which included murder, kidnapping, torture, beatings, arbitrary arrests and numerous acts of arson.³⁴ And the attacks continued. *Two years later*, in August 2001, a UN High Commission for Refugees (UNHCR) report noted, “Just looking through the police reports of the past month, arson, shooting incidents, and assaults directed at members of the Serbian, RAE [Roma, Ashkalia, and Egyptian], Bosniak and Gorani communities continue to happen on a daily basis.”³⁵ It was against this background of three years of almost unchecked violence against minorities that the UN launched its “standards before status” campaign.

STANDARDS BEFORE STATUS

In April 2002, the Special Representative of the Secretary-General (UN) (SRSG) Michael Steiner outlined the “standards before status” procedure that was to be used as a guide toward the future status of Kosovo, which was left unresolved by UNSCR 1244. The hope, clearly expressed at the time, was that the Albanian leadership would begin to discipline its members and work toward the standards demanded by the international community. Steiner wrote at the time, “Those Kosovo leaders who demand status [i.e. sovereignty] now must understand that substantial autonomy entails substantial self-reliance. Kosovo’s final status cannot be considered in a meaningful way until its institutions, economy and political culture have evolved so that it

³⁴ OSCE, *Kosovo/Kosova: As Seen, As Told*, part 2, Report on *Human Rights Findings of the OSCE Mission in Kosovo, June to October 1999* (Warsaw: OSCE, 1999).

³⁵ UNMIK press briefing, Aug. 9, 2001, available online at <http://www.un.org/peace/kosovo/briefing/pressbrief9aug01.htm>.

can administer itself without extensive outside support or interference. Our philosophy, standards before status, expresses a logical necessity.”³⁶

The great powers clearly stated their commitment to the standards before status approach. In the spring of 2003, the members of the Contact Group (US, United Kingdom, Germany, Italy, France and Russia), which was composed in 1994 to deal with the crisis in Bosnia, endorsed the approach and set the review to take place in mid-2005.³⁷ The public commitment to the approach was expressed time and again by representatives of the western powers in the UN Security Council and the media.³⁸ Then, finally, at the end of March 2004, UNMIK published the *Kosovo Standards Implementation Plan*.³⁹ But before the plan could even be made public, extreme Albanian nationalists had again seized the initiative from the international community with the riots of 17 and 18 March 2004. An estimated 51,000 Albanians took part in the riots, which swept through Kosovo over those two days. The attacks were directed at non-Albanian minorities, primarily Serbs. While the spark that allegedly started the riots may or may not have been staged, there is clear evidence that the violence was again orchestrated and organized, as has been the case since 1999.

MARCH 2004 RIOTS

The spark for the riots was the reported drowning of three Albanian children in the Ibar river on the 16 March. The Kosovo Albanian media reported the incident as an example of continued Serb aggression against Albanians and intentionally sought to fan the flames of ethnic

³⁶ Michael Steiner, “Step by Step in Kosovo; First things first,” *International Herald Tribune* 24 July 2002, 6.

³⁷ International Crisis Group, European Report 161, p. 2.

³⁸ UN Press Release SC/7958 (December 2003); UN Press Release SC/7999 (February 2004).

³⁹ www.unmikonline.org/standards/docs/ksip_eng.pdg

hatred.⁴⁰ A forth “survivor” claimed that Serbs with dogs had chased the children into the river, although an official investigation failed to find an evidence to collaborate the story.

The extent of physical, symbolic and psychological damage from the riots should not be underestimated. The rioters drove an additional 4,000 non-Albanians, mostly Serbs, from their homes, which were then burned. UNMIK officials have since made much of the rebuilding of these homes, although because the security conditions are so poor the former inhabitants are unable to return. The rioters also attacked and either destroyed or heavily damaged 36 Orthodox churches, monasteries and other religious sites. The attacks the symbols of Serbian heritage in Kosovo is significant, for it demonstrates the depth of the desire on the part of some Albanians to remove all historical and modern Serbian traces from the province, so as to be able to deny that they ever had any life or clam to the land. For the most part, the initial response from NATO forces was a disaster, although some forces did help Serbs escape and managed to defend property. The German government eventually had to admit that the failure of their troops to act and protect the lives and property of non-Albanians was a disaster, although it took them six months to do so.⁴¹

As in 1999 until the present, there was clear evidence that the riots had been organized by Albanian nationalist extremists. For some reason, UNMIK and NATO continue to wish to maintain a public façade which suggests otherwise. When Derek Chappell, a now former UNMIK Police Spokesperson, openly questioned the initial UN and NATO claims that the violence was spontaneous and a result of Kosovo’s unresolved international status (similar to claims that had been made between 1999-2002), he was fired. Chappell said in a later interview, “Shortly after it happened my many Albanian contacts started calling and giving me information

⁴⁰ OSCE, *An Inquiry into the Performance of Kosovo TVs*, 23 March 2004.

that there was a degree of organization and not entirely spontaneous, as many were saying, and I think my comments ran counter to the political wishes of Albanian political leaders and maybe some in the international community.”⁴²

O’Neill’s report about the conditions in Kosovo from 1999 to 2001 remained largely unchanged in 2003 and 2004. It would be wrong to characterize UNMIK’s responses as wholly passive, but they have been clearly ineffective. When UNMIK moved against ex-KLA fighters for some of this violence, they have been faced down by mass street protests by tens of thousands of Kosovo Albanians during which attacks against UNMIK property escalated.⁴³ These actions have been then encouraged by Albanian politicians, with a few exceptions, when they fail to condemn the violence or blame UNMIK and Serbia for all the province’s problems.⁴⁴ The Amnesty International report gives numerous examples of how Albanian political leaders were able to turn off the violence, when they did decide to intervene. These extremists are sending a clear signal to the international presence that they are the ones in control of the situation.

Perhaps there is little that the more moderate (moderate being a relative term, as the overwhelming majority of Albanians want complete sovereign independence from Serbia) Albanian leadership could have done to prevent the March riots. But what of the rule of law, perhaps the most important of the eight conditions set in the KSIP standards review process?

⁴¹ “Kosovo-Einsatz eine Katastrophe,” Neue Befehle für die deutsche Kfor-Truppe,” *Frankfurter Allgemeine* 26 August 2004, pg. 1.

⁴² Workman, Paul (2004). Kosovo: A Protectorate in Trouble.

<http://www.cbc.ca/news/background/balkans/workman.html>

⁴³ Amnesty International, *Concerns in Europe and Central Asia, June-December 2003*, AI Index: EUR 01/01/2004, April 2004.

⁴⁴ Amnesty International, *Serbia and Montenegro (Kosovo/Kosova): The March Violence: KFOR and UNMIK’s failure to protect the rights of minority communities*, AI Index EUR 70/016/2004, 8 July 2004, 24.

Could not the governing institutions in Kosovo begin to control the situation by 2004? What has been the response of the PISG to the riots? O'Neill pointed to numerous problems with the rule of law in Kosovo through 2001. What improvements had been made by 2004, one year from the mid-2005 review process?

According to a recent OSCE report, very few improvements have been made in dealing with the past impunity with which Albanians have been able to commit crimes against non-Albanian minorities. Of the estimated 51,000 participants in the riots, Kosovo's legal authorities have charged 426 with criminal offenses. Of this number, 209 have been convicted, 12 acquitted and 110 cases are still pending and in 95 cases the charges were dropped. The rate of conviction against the total number of participants is currently at 0.4%. The December 2005 OSCE report concludes, "The justice system failed to send out a clear message to the population condemning this type of violence. Such a response does not serve as a sufficient deterrent from engaging in public disorder on a similar massive scale and therefore does not fulfil [sic] the full potential of the preventive function of the justice system."⁴⁵

One reasonable solution to the problem of establishing the rule of law in Kosovo post-June 1999 would have been to extend the jurisdiction of the ICTY to Kosovo. Indeed, Carla Del Ponte, the chief prosecutor at the ICTY, asked for just such an extension. She was well that the failure of the tribunal to address abuses against minorities *after* June 1999 would seriously weaken the credibility of the court. O'Neill writes,

"Del Ponte recognized that what has happened in Kosovo since NATO and UNMIK assumed responsibility is not a 'different kind of killing.' She said the tribunal's 'forced inaction over what has happened in Kosovo since June 1999...

⁴⁵ OSCE Department of Human Rights and Rule of Law Legal System Monitoring Section, *Kosovo: The Response of the Justice System to the March 2004 Riots*, December 2005, 4.

undermines the Tribunal's historical credibility. We must ensure that the Tribunal's unique chance to bring justice to the populations of the former Yugoslavia does not pass into history as having been flawed and biased in favor of one ethnic group against another."⁴⁶

NATO leaders made sure that such extension would not be forthcoming as the Americans in particular are loath to find their troops under the jurisdiction of some international "rogue court," as the current US ambassador to the United Nations, John Bolton, has referred to the International Criminal Court.⁴⁷

Western leadership reactions to the riots split into two camps. One camp argued that the riots demonstrated that the international community must redouble its efforts to secure the position of minorities in Kosovo and make the Albanian leadership realize that the west would not abandon the "standards before status" procedure. Writing in the *Financial Times*, Carl Bildt, former Swedish Prime Minister and UN envoy to the Balkans, defended the standards approach writing, "There can be no question that this was a deliberate attempt to drive away as many Serbs as possible, to inflict maximum damage on the UN and to test how far Nato could be driven into accepting the new realities...Reasserting a demand for standards means reasserting the authority of the international community."⁴⁸ Bildt went on to warn that some policymakers, particularly in the United States, now saw no realistic future for Kosovo as a multi-ethnic state and that political reality dictated that status negotiations begin as soon as possible. One wonders if those holding such views ever saw any hope for a multi-ethnic Kosovo.

⁴⁶ O'Neill 53.

⁴⁷ John Hagan, *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal* (Chicago: University of Chicago Press, 2003) 206.

⁴⁸ Carl Bildt, "Why Kosovo must not submit to violence," *Financial Times* 22 March 2004.

Other leaders began to take very different lessons from the riots and began to argue for a weakening of the “standards before status” approach to take into account the “new reality” in Kosovo (although the riots simply demonstrated the old reality of serious security problems in Kosovo for the non-Albanian minorities). This line of argumentation quickly became apparent within the Bush administration and was echoed by reports coming from the International Crisis Group (ICG), a think-tank which is heavily funded by NATO countries. The ICG report released soon after the March 2004 riots blamed the uncertainty of Kosovo’s final status for the lack of economic development and stated that, “[t]he present policy of ‘standards before status’ is only half a policy.”⁴⁹ Less than a year later in January 2005, ICG released a new report favoring Kosovo’s conditional independence and began a full scale media campaign to back Kosovo’s drive toward independence.⁵⁰ This was a reversal from the earlier backing the ICG had lent the same standards based process in 2002, when that policy was favored by the same western elites.⁵¹ Flexibility in world politics is a necessity, but it is worth noting that the ICG tends to either follow the lead set by policy elites or to lead them in a direction they eventually choose. I will leave it to the reader to determine who the dog is and who the tail.

It is not wrongheaded of the ICG to point to the failure of economic development in Kosovo as a source of a great deal of frustration, but it is an illusion to believe that addressing Kosovo’s future status will unlock the economic potential of a historically poor region.

Unemployment is estimated to be over 50%, and a recent World Bank report states that 52% of

⁴⁹ International Crisis Group, *Collapse in Kosovo*, ICG Europe Report 155, 22 April 2004, p. ii.

⁵⁰ International Crisis Group, *Kosovo: Toward Final Status*, ICG Europe Report 161, 24 January 2005. Gareth Evans, “It’s time to talk independence for Kosovo,” *International Herald Tribune* 25 January 2005. Wesley Clark, “Set Kosovo Free,” *Wall Street Journal* 1 February 2005. Pat Cox, “Only full independence can save Kosovo,” *Irish Times* 14 February 2005. Lord Patten of Barnes, “Action is needed to keep Kosovo on track,” *Financial Times* 23 February 2005. Wesley Clark, “A Settlement for Kosovo,” *New York Times* 14 March 2005.

⁵¹ International Crisis Group, *A Kosovo Roadmap (1): Addressing Final Status* ICG Europe Report 124, 1 March 2002. International Crisis Group, *A Kosovo Roadmap (2): Internal Benchmarks*, ICG Europe Report 125, 1 March 2002.

the population lives in poverty, although the same World Bank report is on-side with other key western institutions in blaming the uncertainty surrounding Kosovo's future status rather than general lawlessness and a lack of security for the current situation.⁵² One cannot but help and be impressed by the ability of the United States to have so many international organizations speaking from the same perspective: the UN, the ICG and the World Bank as well. Apparently Kosovo's unresolved status is the source of all or at least most of its ills. This is a convenient conclusion, for it draws our attention away from the notable failures to address basic security and rule of law issues from the beginning of the UN and NATO post-conflict peace-building mission in Kosovo.

CONCLUSION: MEN WITH GUNS RULE KOSOVO

I have sought to highlight in this paper that the continuing problem of securing minority rights in Kosovo can be traced back to decisions made by UNMIK and NATO in June 1999 if not back in the fall of 1998. Whatever the point at which the decision was made, NATO's willingness to form an alliance with the KLA to remove Serbian forces from Kosovo has had serious long-term consequences. Either by design or through mismanagement, UNMIK and NATO have failed to provide security for Kosovo's minorities and basic rule of law structures. This failure to provide security first as a core tenant of PCPB will have serious long-term consequences for Kosovo's future stability.

After the October 2004 assembly elections, President Rugova decided that his LDK party would govern with the much smaller AAK (Kosovo Alliance for the future) headed by Ramush Haradinaj, who at the time was widely suspected to be under investigation by the ICTY for war

⁵² World Bank, Poverty Reduction and Economic Management Unit Europe and Central Asia Region, *Kosovo Poverty Assessment: Promoting Opportunity, Security, and Participation for All* (16 June 2005) Report No. 32378-

crimes committed prior to June 1999. The appointment came as a surprise to some, but US leaders quickly began to try and work with the new prime minister. The United State's UNMIK deputy chief Larry Rossin said that he was "pleasantly surprised" by Haradinaj's willingness to move forward with the KSIP "standards before status" document. SRSG Jessen-Petersen also claimed that it was a pleasure to work with the new prime minister.⁵³ As in the past, UNMIK, NATO and the US quickly began to make the necessary accommodations with the men with guns. With Haradinaj expecting to be indicted in March 2005, he had two choices. He could threaten new violence in the province or he could order his men with guns to remain calm - for which he could expect in return help from some western leaders in handling his case before the ICTY.

The US has long recognized Haradinaj as a key player who controlled some of the men with guns on the ground in Kosovo, and US forces have helped him in the past. Haradinaj and his family have long been involved in criminal activities in the Decan region of Kosovo, and he and his brother, Daut, were injured in an attack on a rival family in July 2000, during the period of violence described by O'Neill. UNMIK police tried to investigate the case, but the US removed Ramush Haradinaj from the scene and also covered up his involvement in the attack.⁵⁴ Daut continued to be involved in criminal activity, and UNMIK forces finally captured him in December 2002, from which point forward the AAK party led by his brother took a more radical anti-UNMIK stance throughout 2003 including the organization of protests.⁵⁵

Since his appointment as prime minister in October 2004 and the further deterioration of the security situation, as reflected in the March 2004 riots, Ramush Haradinaj has become a

XK, pg. i and iii.

⁵³ International Crisis Group, *Kosovo after Haradinaj* ICG Europe Report 163, 26 May 2005, p. 27.

⁵⁴ ICG *Kosovo after Haradinaj*, p. 10.

⁵⁵ ICG *Kosovo after Haradinaj*, p. 7.

highly sought after leader of the men with guns. A March 2005 ICG report went so far as to call for his pre-trial release from the ICTY so as to help maintain the “peace” in Kosovo. In September 2005, the American UNMIK deputy Larry Rossin testified before the ICTY for Haradinaj’s early release, which the court granted. As one journalist commented, “Now UNMIK is repaying the favor the favor.”⁵⁶ When the court went even further and permitted Haradinaj to return to political life, chief prosecutor Carla Del Ponte objected that this could lead to the intimidation of witnesses for the upcoming trial. Her objections were ignored.

Either UNMIK, NATO and the US have failed to learn from their past experiences in Kosovo, or they are following a consistent policy of collaborating with the men with guns to achieve their goals of stability, if not peace. Whether or not this continues to meet any sort of standards with regards to what one might term a humanitarian intervention remains an open political question, which can be debated. Whether or not the PCPB mission in Kosovo can be termed a success or may be labeled a success in the future also remains open. What is not in doubt is that the current human rights crisis in Kosovo has resulted from clear policy decisions made in key western capitals. The failure to establish security for Kosovo’s minorities and a functioning rule of law state to protect those minorities rests squarely with the UN, NATO and the United States.

⁵⁶ Laurent Abadie, “UNMIK pleads for Haradinaj,” *International Justice Tribune*, 24 October 2005.