Lessons Learned on UNMIK Judiciary

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Executive Summary

1) The UN Mission in Kosovo [UNMIK] is significant both because Kosovo is a lynchpin of Balkan politics and diplomacy, and because it provides a valuable laboratory for deriving lessons for future efforts at post-conflict governance and administration. The Department of Foreign Affairs and International Trade [DFAIT] of the Canadian Government contracted the Pearson Peacekeeping Centre for a study that would enable policy makers to “learn the lessons of capacity building for a judiciary as a part of the mandate of a peace support cooperation if similar work in the future is to be more effective”. It required that the paper describe problems at each stage of judiciary building, how they were addressed, how they could have been addressed more effectively, and what changes would facilitate such improvements.

2) This preliminary ‘lessons learned’ exercise focuses less on the provision of ‘justice’ than on the processes underlying institutional development in order to derive ‘lessons’ that would benefit the future development of the Kosovo judiciary system and that might have application in other post-conflict situations. It raises issues that require more thorough examination in developing a repertoire of tools and activities for the development of judicial systems in other complex emergencies. It described the developments in the judiciary during three periods:

a) The period of ‘Emergency Governance’ lasted roughly until the signing of the agreement creating a Kosovo-UNMIK Joint Administrative Structure on 15 December 1999. In this phase, UNMIK developed an institutional framework for the selection of judicial system personnel, a body of applicable law, and a provisional mechanism for developing legislation.

b) The phase of ‘Institution-Building’ lasted roughly though local elections on 28 October 2000 and was marked by UNMIK’s efforts to create a joint Kosovar-International administration. It saw initial deployments of international judicial personnel and rejection of a Kosovo War Crimes and Ethnic Crimes Court [KWECC]; refurbishment and supply of the courts; and efforts to address the training needs of currently serving and future judicial personnel.

c) The current phase of ‘Institutional Transformation’ UNMIK’s new leadership has adopted constitutional framework for provisional self government that would set the stage for Kosovo-wide elections in the Autumn of 2001. It is marked by UNMIK’s creation of a new Pillar I in Police and Justice that would encompass police, judiciary and corrections, and more effectively strike a balance between the requirements for justice and security.

3) The Report then assessed UNMIK’s strategic approach as the mission began; the cooperation and coordination of organizations in Kosovo; and prospects for improving the cooperation between Kosovar and international judicial personnel.
4) UNMIK has made an outstanding achievement in creating a judiciary since June 1999, when few officials had a clear vision of the needs and possibilities of this strategically important sector in building peace in Kosovo. UNMIK’s administrative evolution points to its growing capacity to function strategically to improve security in Kosovo at the same time that it lays the groundwork for the broader Kosovarization of administration under the newly adopted constitutional framework recently signed by the SRSG. As the new Pillar I takes shape, a major challenge will be to integrate these two dimensions of its mandate.

5) General Recommendations. This report supports the recommendations in the ‘quick deployment package’ contained in the Brahimi Report. These general recommendations appear essential in developing an effective ‘emergency judiciary’. It develops recommendations for the future of the Kosovo judiciary, as well as for the development of judiciaries in other complex emergencies.

6) Development of Kosovo’s Judicial System

a) Complete Currently Begun Initiatives to Strengthen Capacity. These include the establishment of court police; a witness protection programme; adoption of a procedure for including the lost generation into the bar and establishing procedures for a future bar exam; adoption of procedures for handling and accepting evidence from police and investigative judges; establishment of regular meetings between international and Kosovar judges throughout Kosovo; recruitment of Kosovar lawyers into the Department of Judicial Affairs; facilitate the full functioning of the Judicial Inspections Unit for Kosovar and international judges; and ensure that the door remains open to inclusion of Serbian judges and prosecutors into the system and that the judicial system can expand to cover today’s Serbian enclaves.

b) New Initiatives include a system of co-location of international judicial monitors with Kosovar and international judicial personnel; in establishing exchanges between the University of Pristina Law Faculty and European law faculties; in improving the salaries of Kosovar personnel; and in support to associations of Judges, of Prosecutors and of Defense Lawyers.

7) Considerations for Future Missions. The report is consistent with the deployment of lawyers in HQ in New York either in the civpol unit or in DPKO. It proposes that court monitoring in future missions be consistent with international standards, as well as with the implementation of the mandate. It suggests the need for improved capacity to understand the social, cultural and political situation on the ground. It agreed with the Brahimi Report on the desirability of developing a basic, common legal code to be applied in the initial phase of a mission. It suggests improved methods of recruitment and training of international and national personnel in the general operations of peacekeeping missions, in national law codes, and in the applicable law of the specific mission.
Lessons Learned on UNMIK Judiciary

Introduction

8) The UN Mission in Kosovo [UNMIK] is significant both because Kosovo is a lynchpin of Balkan politics and diplomacy, and because it provides a valuable laboratory for deriving lessons for future efforts at post-conflict governance and administration.1 The Department of Foreign Affairs and International Trade [DFAIT] of the Canadian Government contracted the Pearson Peacekeeping Centre for a study of UNMIK’s experience in creating a judiciary that would enable policy makers to “learn the lessons of capacity building for a judiciary as a part of the mandate of a peace support operation if similar work in the future is to be more effective”. It required that the paper describe problems at each stage of judiciary building, how they were addressed, how they could have been addressed more effectively, and what changes would facilitate such improvements. This task is especially challenging in view of the absence of a clear ‘lessons learned’ road map for building post-conflict judiciaries.2

9) Experience in recent multilateral interventions indicate that the establishment of a judiciary – together with that of a civilian police force that functions according to the norms of democratic policing – is a key component in establishing peace and ‘normalcy’ in a complex emergency. The development of security institutions that establish order and operate according to norms associated with the rule of law should be among the very first priorities of a post-conflict mission for they provide a basis for economic reconstruction and development, and for processes of democratization essential in the attainment of a stable peace and ‘human security’.3

10) SCR 1244 mandated that an “international civil presence” provide an interim administration for Kosovo that would oversee “the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo,” which involved activities in “maintaining civil law and order”. 4 The accompanying Report of the Secretary General reported the establishment of an “Office of Judicial Affairs” that is “responsible for the organization and oversight of the judicial system.” 5 The next report written one month

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4 S/RES/1244 (1999), paragraphs 10 and 11.

5 S/1999/672, paragraph 8.
later recorded the achievements of the UNMIK advanced team and established the Department of Judicial Affairs that would direct “the immediate re-establishment of an independent, impartial and multi-ethnic judiciary”. It would be responsible for “the administration of courts, prosecution services and prisons, the development of legal policies; the review and drafting of legislation” and “the assessment of the quality of justice in Kosovo, including training requirements.”

11) This preliminary ‘lessons learned’ exercise is not intended to supplant internal reviews of the judiciary written by the UN, or the extensive public assessments by the OSCE, the Lawyers Committee for Human Rights, Amnesty International, the US Government, and other organizations. It focuses less on the provision of ‘justice’ than on the processes underlying institutional development in order to derive ‘lessons’ that would benefit the future development of the Kosovo judiciary system and that might have application in other post-conflict situations. It will raise a number of issues that require more thorough examination in developing a repertoire of tools and activities for the development of judicial systems in other complex emergencies.

12) In my previous service on the UNMIK advance team and as Deputy Regional Administrator of the Prizren Region in Kosovo, I had first-hand acquaintance with a number of issues related to the development of a judiciary, especially in the early phases of its development. I am grateful for the cooperation and support from Canadian diplomatic offices in New York and Pristina, the United Nations in New York and in Kosovo, from the OSCE in Kosovo, and from Kosovar legal and judicial personnel. The text is based on public documents, on interviews with a broad range of individuals active in the judicial system in New York (from 28 February until 1 March 2001) and in Kosovo (from 6-23 March 2001), as well as on my own experiences. It focuses heavily on the reports and perceptions of individuals in the system. In order to ensure frankness in discussion of issues, I promised my interlocutors that the report would not cite them by name.

13) After outlining the broader context in which the development of Kosovo’s judicial system takes place, this assessment will describe chronological developments in the judiciary. It then turns to broader themes and patterns in the establishment of the judiciary by focusing on the specific challenges that most characterized the development of the judiciary at each stage and to some underlying patterns in the development of Kosovo’s judiciary; and concludes with some suggestions – both for the future of Kosovo’s judiciary and in other post-conflict administrations, as well.

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6 S/1999/779, paragraph 66.
7 Ibid., paragraph 67.
8 The term ‘Kosovar’ refers to an individual from Kosovo regardless of ethnic background, as in Kosovar Albanian, Kosovar Serb, Kosovar Turk, etc. For reasons explained in the text, the overwhelming majority of interlocutors for this report have been ‘Kosovar Albanian’, although I spoke with Kosovar Turks and Kosovar Bosniacs, as well. The term Kosovar is used accordingly.
14) The creation of a judicial system in Kosovo has addressed four distinct tasks: transforming a system based on socialist legal precepts to one rooted in rule of law; transforming the system from one rooted in discrimination and exclusion to one rooted in heterogeneity and inclusion; preparing the judiciary to address newly emerging issues, such as the proliferation of organized crime, that appear typical in post-conflict settings; and establishing a mechanism and process by which international legal personnel can work constructively with legal personnel from Kosovo in developing this new system. These challenges have been significantly complicated by three sets of circumstances that have made UNMIK’s responsibility of maintaining safety and security more difficult.

15) **Political Irresolution.** First, the conclusion of the relatively short and violent conflict in 1999 (that ended 10 years of governance that excluded majority Kosovar Albanians from meaningful participation) did not constitute a resolution of Kosovo’s ‘final status’, although all observers within Kosovo initially saw the entry of NATO and SCR 1244 as a victory for Kosovar Albanians. Even the recently concluded ‘Constitutional Framework for Provisional Self-Government in Kosovo’ is unlikely to end the political uncertainty concerning Kosovo’s final status.\(^9\) Consequently, in the near-to-mid term, it is as difficult to imagine genuine political reconciliation between any group of Albanian leaders and any group of Serbian leaders as it is to conceive of a political context in which the full independence of Kosovo might be achieved.\(^10\) At a minimum, this dilemma seriously politicizes the development of rule of law. Even with necessary caution in making comparisons, the mission in Kosovo may resemble pre-Dayton Bosnia more than post-Dayton Bosnia – in its open door to ‘hard-liners’ on all sides to maintain extremist agendas. Even the Secretary General recently cited Kosovo as an example of intractable conflict: “in Kosovo, the existence of hostile, multiple factions that lack coherent leadership complicates the problem of achieving self-enforcing peace.”\(^11\)

16) **‘The Serb Question’.** Kosovo’s unsettled final status has impeded UNMIK’s efforts to mediate constructive relationships between any group of Albanian leaders with a Belgrade government led by Slobodan Milosevic or the coalition currently headed by the constitutional lawyer Vojislav Kostunica, neither of whom has been perceived by Albanians as a ‘moderate’ on the issue of Kosovo. Kosovar Serb leaders have only participated in the post-SCR 1244 Kosovo with difficulty. This difficulty is seen in the transfer of Albanian political prisoners, as bargaining chips, from Kosovo for incarceration in Serbia as Serbian forces departed from Kosovo at the end of the

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\(^9\) Regulation 2001/9, 15 May 2001. It has not yet been posted on the UNMIK web site.


NATO bombing campaign; in the failure of Serbs to participate in local elections in 2000; in the on-again and off-again participation of Serbs in UNMIK-led institutions; in the inability for the developing UNMIK judiciary to extend its jurisdiction to Kosovo’s Serb-controlled enclaves; in continuing political-security dramas in Mitrovica and all other enclaves; and in continuing Serbian-Albanian conflict in Bujanovac-Presevo.12

17) Domestic Security Dilemma. This military insecurity is closely linked to the continuing violence throughout Kosovo, which is duly reported in each quarterly report of the Secretary General. Much violence is inter-ethnic, but the most telling incidents may be the intra-ethnic violence associated with organized crime, as well as violence and crime directed against international officials and organizations.13 In the beginning, this violence was associated with the euphoria of the ‘Albanian victory’ in Kosovo and manifest in house burnings and murders, as well as in intimidation of ethnic and political minorities. As the initial euphoria ended, Kosovo has continued to be stricken by a series of high-profile murders, violence against minorities, attacks on individuals and convoys, kidnappings, trafficking in women and other phenomena unheard of in the ‘golden years’ of Yugoslav self-management socialism. No Kosovar public figure feels entirely secure today. Minorities feel especially at risk. The call to enhance security as an essential precondition for further development has become a constant feature in meetings of the Security Council and in Reports of the Secretary General.

Chronological Development of Kosovo’s Judiciary

18) Stages of Development. The development of the judicial system is understood to be part of a broader complex that includes police and corrections. The judicial system developed within the three phases of UNMIK’s broader institutional evolution. In each phase, the mission was concerned with distinct tasks emerging out of its urgent strategic priorities, which shaped the activities of international organizations, Kosovar organizations, and relations among and between each of them.

a) The period of ‘Emergency Governance’ lasted roughly until the signing of the agreement creating a Kosovo-UNMIK Joint Administrative Structure on 15 December 1999.14 In this phase, UNMIK developed an institutional framework for the selection of judicial system personnel, a body of applicable law, and a provisional mechanism for developing legislation.

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12 Similarly, the failure of the nearby regimes to settle their ‘Albanian questions’ also contributes to a broader regional instability. For example, violent clashes between Albanian guerrillas and the Macedonian government serve to underscore the continuing regional instability and the unsettled character of the conflict.
14 S/1999/1250, paragraph 5.
b) The following phase of ‘Institution-Building’ lasted roughly though local elections on 28 October 2000 and was marked by UNMIK’s efforts to create a joint Kosovar-International administration. It saw initial deployments of international judicial personnel and rejection of a Kosovo War Crimes and Ethnic Crimes Court [KWECC]; reconstruction, refurbishment and supply of the courts; and efforts to address the training needs of currently serving and future judicial personnel.

c) In the current phase of ‘Consolidation and Transformation’, as the new municipal governments are establishing themselves, UNMIK’s new leadership has adopted a constitutional framework for provisional self government that would set the stage for Kosovo-wide elections in November 2001. The current phase is marked by UNMIK’s creation of a new Pillar I in Police and Justice that would encompass police, judiciary and corrections, and intended to strike a more effective balance between the requirements for justice and security.

**Emergency Governance: 10 June – 15 December 1999\(^\text{15}\)**

19) The moment of initial deployment was decisive, for the initial chaos and confusion provided fertile ground for existing networks of organized crime and political extremism to establish themselves in Kosovo and revealed the need for UNMIK to act swiftly and authoritatively to establish security and provide a framework for the system of justice. Conditions were far from ideal, however: only after the advanced team was on the ground, for example, was it completely clear that UN Civpol (later called UN International Police) would have executive authority with no local counterparts in the initial stage. The initial confusion gradually gave way to the establishment of institutional order within the international community.

20) **Time of Confusion.** The end to NATO’s air campaign and the UN Security Council’s adoption of SCR 1244 on 10 June 1999 led to large and spontaneous transfers of population. By 8 July over 650,000 Albanian refugees had returned to Kosovo from neighboring Macedonia and Albania, whilst hundreds of thousands of Serbs began leaving Kosovo.\(^\text{16}\) These transfers were associated with a tense humanitarian and security situation, and the onset of looting, arson, abductions, and appearance of organized crime. In a complete breakdown of existing institutions, the majority of Yugoslav police and judiciary quickly departed Kosovo towards the end of the NATO campaign – and left the system of court records in great disarray. And only 30 of 756 judges and prosecutors who had served prior to the NATO campaign and prosecutors were Kosovar Albanian and those who stayed behind faced serious security threats as individuals who had worked in the previous regime.\(^\text{17}\)

\(^{15}\) This section draws heavily on Strohmeyer, which gives an excellent, first-hand account of developments in this period.

\(^{16}\) S/1999/779/paragraph 9.

\(^{17}\) S/1999/779, paragraph 66.
21) **New Parallel Institutions.** The end of the fighting brought the beginning of new forms of political conflict in Kosovo.

a) Segments of the Kosovo Liberation Army [KLA], under the leadership of Hashim Thaçi, quickly established themselves as an ‘Interim Government’ that continued functioning in parallel to the institutions established by UNMIK until the 31 January 2000 the deadline for implementing the 15 December 1999 agreement. The KLA claimed to act in the name of all Kosovar Albanians and engaged in robust competition with UNMIK and with other Albanian parties to monopolize public life. At the same time that KLA political leaders were ostensibly cooperating in daily contact with UNMIK and KFOR officials, the Interim Government acted robustly in establishing local administration throughout Kosovo and even began publishing its own ‘Official Gazette’.

b) Although far more passive and less overtly competitive with international officials, elements associated with the Democratic League of Kosovo [LDK] also retained a separate formal identity from that of the ‘Interim Government’ and demanded that UNMIK establish a fully-articulated administration as quickly as possible. As with the KLA leaders, the LDK leadership has continued to speak of the multi-ethnic ideal as their guiding principle of social and political organization.

c) Amidst the progress in UNMIK’s institutional development, UNMIK’s daily work in Summer of 1999 was filled with efforts of KLA-backed institutions and individuals to gain control of Kosovo’s strategic assets (e.g., in profitable business, communications and local administration), as well as an atmosphere of intimidation, characterized by frequent interrogations (known in the socialist old regime as ‘informative conversations’) held by former KLA prosecutors with minorities and Albanians considered to have been collaborators, and other forms of warnings and coercion.

22) **UNMIK’s Approach.** The UNMIK advance team simultaneously addressed a wide range of issues, not least of which involved sorting out the distribution of responsibilities among the organizations designated as implementing partners in SCR 1244. This task was especially challenging in view of the uncertainty up until the last moment that the UN would even lead the civilian mission to Kosovo. (There had been a very real possibility that the OSCE-run Kosovo Verification Mission would be reconstituted to lead the post-NATO effort in Kosovo.) A relatively small team of international officials from each of the mission’s civilian components and KFOR was tasked with working out procedures for managing the mission, as well as for

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18 The Interim Government that existed in parallel to the UN administration continued the tradition of parallel institutions that began in the early 1990s when the Democratic League of Kosovo [LDK] organized parallel governance in systems of education and health throughout Kosovo. Following 31 January 2000, there have been charges that some former KLA elements have continued to act as a parallel state. See, International Crisis Group, “What Happened to the KLA?” 3 March 2000, which can be accessed via www.intl-crisis-group.org.
addressing emergency aspects of security, public health, and an initial political framework at the same time that the different organizations were setting up shop. The mission quickly established joint civilian commissions in key areas of administration and established the consultative Kosovo Transitional Council as an “initial step towards the creation of a framework of wider and more inclusive democratic structures covering all aspects of life in Kosovo”.

23) **UNMIK’s Organization.** Within a month, there was general agreement on working relationships within the international missions in Kosovo: a Humanitarian Pillar under the direction of UN High Commissioner for Refugees (UNHCR), Administration under the direction of the United Nations, Human Rights and Institution Building under the direction of the Organization for Security and Cooperation in Europe (OSCE) and Reconstruction under the direction of the European Union (EU). Pillars II (Administration), III (Institution-Building), and IV (Reconstruction and Finance) all would become involved in the judiciary system. The Department of Judicial Affairs was part of the Administration. OSCE was responsible for monitoring the court system and training the judges and prosecutors. Pillar IV ultimately developed the budgets on which the court system was administered. The original Pillar I withered away in Summer 2000 (although UNHCR remains active in theatre) and transferred most of its responsibilities to the administration in Pillar II – on the basis that the humanitarian emergency had ended. Unfortunately, the agreements on organizational arrangements were not supported by the rapid deployment of personnel or operational infrastructure within the mission.

24) **Urgent Need for a System of Justice.** The need for civilian judicial mechanisms was quickly revealed. KFOR was charged with ensuring “public safety and order until the international civil presence can take responsibility for this task” and had arrested over 200 people in the first two weeks for serious criminal offenses, as arson, violent assaults, murder, and violations of international humanitarian and human rights law. However, there was great confusion as to which law KFOR would apply – and KFOR was neither willing nor prepared, under its mandate, to exercise judicial functions. Strohmeyer reports that UN personnel considered it important “to observe fair-trial standards to the maximum extent possible” and quickly turned to the re-establishment of the core functions of the Kosovo judiciary.

25) **Selection of Personnel.** The advance mission quickly appointed a Joint Advisory Council on Judicial Appointments that was soon succeeded, more formally, by the Advisory Judicial Commission [AJC], which remained the primary mechanism for selecting judges through the beginning of 2001. On both commissions, Kosovar personnel (including minorities) outnumbered the international personnel.

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19 S/1999/987/paragraph 3.
20 To take one significant example, communications between Pristina and the regional centers remained tenuous for several months, and communications within regions remained bad well beyond the first year of the mission. This absence of communications significantly increased the transaction costs of operations.
21 SCR 1244, paragraph 9d.
22 Strohmeyer, p. 49.
Strohmeyer explains that Kosovar experts constituted a majority on the commissions in order “to empower them to overrule the international members so as to build a strong sense of ownership over the new judiciaries and to inject as much domestic expertise as possible into the process.”

26) Cooperation and Coordination. Not all international officials supported such empowerment. Differences in approach to this issue between newly deployed officials from UNMIK and OSCE Kosovo Verification Mission staff, who were returning from redeployments in Macedonia and Albania during the NATO operation, foreshadowed awkward moments in future collaboration.

a) OSCE officials reported that the OSCE had developed extensive plans for the development of a judicial system that would include 15 international judges. One UN interlocutor suggested that it was “unfair” to expect Kosovar Albanian judges to have the capacity to render fair and effective justice in cases involving inter-ethnic crime or suspected war crimes. An overwhelming majority of international interlocutors routinely say now that international judges should have been in place from the outset of the mission.

b) In the early days following SCR 1244, UN officials focused on the absence of genuine capacity to bring on international judges in mid-1999. They argue that it would have been necessary to find judges versed in civil law who spoke English and that there was no pool of international judges to draw on – “as if there existed an organization called ‘Judges Without Borders’.” These judges would have required a full support staff familiar with local circumstances, a set of interpreters who were competent as legal interpreters, and a body of law fully and accurately translated into English, Albanian and Serbo-Croatian languages. These conditions were absent at the time.

c) Not only were no international judges ready for deployment, significant numbers of international personnel did not arrive in the Department of Judiciary until late Summer and early Autumn 1999. OSCE officials reported that, despite the UN Administration’s rejection of OSCE pre-mission planning, they worked together with UN officials “to fill the gaps”. In the early stages, the OSCE and UN worked closely together in all aspects of developing the judicial system.

27) In search of balance on the Advisory Judicial Commission. Three factors made difficult the effort to find a constructive balance between “domestic ownership” and “domestic expertise” on the Advisory Judicial Commission and other joint Kosovar-International commissions that were formed in the early stages of UNMIK’s development. The Kosovar members on such commissions sought ‘ownership’ over the commission’s work by ensuring that the judicial system was staffed by ‘morally and politically fit’ individuals on the basis of their past support of the aborted

23 Strohmeyer, p. 52.
Rambouillet Accords.\textsuperscript{24} The emphasis on political fitness could preclude membership of individuals with ‘expertise’ if they were suspected of disloyalty to the cause of Kosovo independence. Consequently, the Commission had difficulty in achieving the desired balance in selection of personnel, and did not succeed in establishing itself as a mechanism of judicial discipline, as had been intended in Regulation 7 in 1999.\textsuperscript{25} The relationship between international and Kosovars on the committees was determined by four factors.

a) First, upon deployment, the typical international legal officer had little training or knowledge about the specific circumstances of the Kosovo legal system, although a few had worked on legal reform of a similar legal system in Bosnia-Herzegovina [BiH]. Previous experience in the Kosovo Verification Mission [KVM] or in BiH legal reform provided excellent preparation to work on legal reform in post-war Kosovo. Some lawyers confessed that, before deployment, they had no experience in peacekeeping, knew little about Kosovo’s political and legal circumstances, and generally required a good deal of time on the ground to acquaint themselves with the existing state of affairs. Others report that many lawyers (although far from all of them) who assumed great responsibilities were young and without experience in the type of work required by UNMIK.

b) The lack of information has weakened international legal officials’ capacity to bargain with Kosovar colleagues. In view of multiple demands on their time in the phase of ‘Emergency Governance’, UN lawyers found it necessary to develop relationships with engaging Kosovar Albanian lawyers who spoke English and seemed willing to cooperate, even when their familiarity with international law appeared fragmentary, at best. The steady turnover of incoming international legal officers have been continually forced to move up a learning curve from ground zero, which has contributed to the growing cynicism of the Kosovar interlocutors and which strengthened the resolve of hard-liners who sought to ensure that ‘moral-political fitness’ was a key criterion for appointment to the judiciary.

c) The assertive stance of the Interim Government towards all levels of the UN administration – viz., their desire to control the key elements of administration – from the outset made it difficult for UN officials to remain focused on “domestic expertise”. It was typical to hear public charges by relatively unsophisticated Albanian hard-liners that the UN administration had came into Kosovo to replace the Serbian regime as the “new occupiers”.

\textsuperscript{24} Some international officials explain that UNMIK’s English speaking interlocutors simply appointed their friends to the commission.
\textsuperscript{25} Section 7 of Regulation 7 allows the SRSG to consult the Commission for investigation of complaints against judges or prosecutors who might “engage in any activity with his or her functions”, such as “serious misconduct” or “failure in the due execution of office”. See UNMIK/REG/1999/7 and UNMIK REG/1999/18, which can be accessed at www.un.org/peace/kosovo/pages/regulations.
d) In view of the complete absence of agreement among the major Kosovar Albanian parties, UNMIK officials found it impossible to identify an effective and legitimate mechanism for discriminating between Albanian ‘moderates’ and ‘hard-liners’, between individuals linked to the KLA, LDK, and the full range of significant political forces in Kosovo.

28) **Expansion of Personnel.** With the mechanism for selection in place, the Advisory Judicial Commission succeeded in selecting personnel for the judicial system. By mid-Summer 1999, UNMIK had appointed 36 judges and 12 prosecutors, including Serbs, Slavic Muslims, Roma and Turks. A serious dispute over the character of applicable law impeded further appointments until the end of the year (see paragraphs 32-39). By June 2000, the SRSG had appointed more than 400 judges, prosecutors and lay judges, of which only 46 are non-ethnic Kosovo Albanian and seven of those are Kosovo Serbs. By September 2000, an additional 136 judges and prosecutors and 309 additional lay judges were appointed, of which 16 are from non-Albanian ethnic groups. In addition, 724 staff had been assigned to the judiciary.

29) By the end of 2000, the court system consisted of a Supreme Court, five district courts, 22 municipal courts, one commercial court, one High Court of Minor Offences, 22 minor offences courts and 13 offices of the Public Prosecutor. By the first half of 2001, it employed 325 judges, 51 prosecutors, 617 lay judges, and about 1,000 support staff in 69 judicial institutions.

30) **Minorities.** There were fewer non-Albanian professionals working than had been considered desirable, although not for the absence of international effort. UNMIK officials report that, of 21 appointed Serbs, three are working; of 19 appointed Muslims, 13 are working; of three appointed Roma, two are working; and of seven appointed Turks, five are working. Whilst it appears that approximately 10 per cent of appointees are minorities – a figure that would satisfy some current Albanian leaders in Kosovo – fewer are serving as a result of intimidation and because they have left Kosovo. In general, there is an appearance that Kosovar judiciary is exclusively Albanian and unbalanced politically. It appears that Serbs have faced the greatest challenges of serving in the judiciary. It is also significant that UNMIK has not succeeded in fully integrating people living in Serb enclaves into the judicial

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26 The term “Slavic Muslim” is not uniformly accepted in Kosovo, although all interlocutors understand it. Some prefer the term “Bosniacs”; others prefer regional terms “Gorani” or “Torbeshi” used frequently during the 1990s. “Slavic Muslims” were referred to as “Muslims” on censuses between 1961 (“in an ethnic sense”), and 1971, 1981 and 1991 (“in a national sense”). The first Congress of Bosniac Intellectuals held in Sarajevo in Autumn 1993 officially re-named Bosnian Muslims as ‘Bosniacs’ and supporters of the Bosnian SDA in Kosovo refer to themselves as Bosniacs – even among those Slav Muslims whose village language is not Serbo-Croat, but akin to Macedonian. A relatively small number of Slavic Muslims in the southernmost part of Kosovo consider themselves to be ‘Serbs of the Islamic faith’. Kosovars are generally familiar with this ethnographic history.

27 S/1999/987, paragraph 32.


29 S/2000/878, paragraph 44.

30 Information supplied by the UNMIK Department of Judiciary.

31 Information supplied by the UNMIK Department of Judiciary.
system, in good measure, because Serbs have continued to view themselves as part of the Yugoslav system centered in Belgrade rather than as part of the Kosovo governed under the authority in SCR 1244.

31) **Political Fitness.** The significant expansion of the judiciary and prosecution services immediately opened the door to questions of political fitness of the judges who were selected. Many Kosovar Albanian former judges had served in the 1980s during the period of ‘socialist differentiation’ following demonstrations at the University in Pristina and had judged many individuals who had subsequently joined the KLA and other separatist organizations. Locally-based leaders of Thaqi’s Interim Government (many of whom were former political prisoners) in Prizren frequently commented on the irony that such individuals were appointed to a post-socialist judiciary -- “on my way to work each day, I greet the judge that sentenced me to nine years of prison”. In the early phases of competition between UNMIK and the Interim Government, hard-liners frequently called for the withdrawal of such judicial personnel – on the radio and in public meetings in Prizren and Pristina. Such commentary contributed to a more general atmosphere of intimidation and there were instances of judges, who resigned, who decided not to serve, and who left Kosovo altogether.

32) **Legal Framework.** The initial appointments opened the floodgates to an enduring controversy over the nature of applicable law in July 1999, which considerably slowed the development of the judiciary for several months. Establishing a workable body of applicable law was crucial to the functioning to the entire legal system, as well as for the operations of police and judiciary. In the immediate aftermath of forming the emergency courts, the adoption of a legal code would end the improvisation whereby different contingents of KFOR had been haphazardly applying their national legal codes.

33) As the emergency courts were created, the SRSG promulgated the “mother of all regulations”, Regulation No.1, which established “the laws applicable in the territory of Kosovo prior to 24 March 1999” inasmuch as they do not conflict with “internationally recognized human rights standards” and do not “discriminate against any person on any ground such as sex, race, color, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status”. This formulation quickly encountered opposition among the judges in the Prizren emergency court – as it connoted acceptance of the FRY’s apartheid-like system of discrimination of the 1990s. From the beginning, Kosovar Albanian judges generally preferred the transition of Kosovo to begin from the moment they had lost autonomy in 1989 and not from the

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33 There were also cases of minority members of the Kosovo Police Service, who resigned in an atmosphere of intimidation.
34 UNMIK/REG/1991/1, Sections 3 and 2.
discriminatory basis of post-1989 legislation. They were unhappy that Regulation No. 1 left Kosovo inside of the Federal Republic of Yugoslavia (as did SCR 1244).  

34) Tactical splits quickly emerged among the Kosovar judges in the Prizren Emergency Court. A group of six moderate judges and prosecutors, who rejected the use of “Serbian law”, agreed to cooperate with UNMIK in the first steps towards the establishment of a new judicial system. This cooperation did not imply that they agreed with the interpretation of applicable law as it was contained in Regulation No. 1. However, the moderate judges and prosecutors reported at that time that they were under no compulsion, and had no intention, to apply discriminatory laws and that they sought a constructive evolution of applicable law in the near to medium term.

35) A second group of three hard-liners or ‘spoilers’ insisted upon the formal return to pre-1989 law and grew increasingly bold in their campaign against “the use of Serbian law” that was supported among other Kosovar and international personnel. The Prizren ‘spoilers’ decided to make of the issue a cause celebre and found support among some judges in Pristina. They politicized the issue in the media and rejected calm discourse as a means of resolving the difference. They incited others not to work: “why be handmaidsens to the international community, when you can be the bride in your own house”? They threatened those who opposed them, resigned and were reappointed, and led one group of hard-line politicians to threaten to cut off relations with UNMIK.

36) Strohmeyer reports that the formulation emphasizing continuity with Yugoslav and Serbian law in Regulation 1 was “made solely for practical reasons” to avoid a legal vacuum in the initial phase of the mission and to obviate the need for Kosovar lawyers to learn an entirely new legal framework. UN legal officials adopted a conservative approach in which continuity with Yugoslav law would be balanced by a firm insertion of international human rights principles and conventions. Others reported that New York’s Office of Legal Affairs played a significant role in drafting the Regulation. One reported that “we had blinkers and did not understand the political problems” involved in adopting applicable law. The UN legal officials, who viewed the position of the rebellious Albanian judges at the time as “total nonsense”, now regret their conservative and “politically uninformed” position. Still, others reported that during the drafting of Regulation 1, which lasted six weeks, UN lawyers consulted representatives of member governments who had opposed the NATO campaign and who have supported the clause of SCR 1244 under which Kosovo remains part of Yugoslavia.

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35 This was consistent with paragraph 10 of SCR 1244, which enjoined the Secretary-General “to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia….”


37 Strohmeyer, p. 58.
37) The first part of the controversy formally ended on 12 December 1999, with the adoption of regulations Nos. 1999/24 and 1999/25. They state “the applicable law in Kosovo will be the regulations promulgated by the Special Representative, including subsidiary rules, and the law in force in Kosovo on 22 March 1989. Federal law will continue to apply in any situation governed neither by UNMIK regulations or the law in force in Kosovo as at 22 March 1989. This includes the law of criminal procedure. Serbian law will apply only in rare cases where the applicable law or Federal law fails to cover a given situation or subject matter. In no case will laws be applied that contravene, in any aspect, internationally recognized standards of human rights.”

38) The passage of Regulation No. 1999/24 has not ended the confusion, as no one active in the mission is satisfied with the current legislation or current practice. Some international officials regret this reversal as politically determined and legally ill advised. Kosovar lawyers from Prizren report that some laws are being applied and others are not. An OSCE lawyer complained that there are “too many laws – from Kosovo, Serbia, FRY, UNMIK, European Convention. UN lawyers point out that it is impossible to determine which body of law, or which specific law, to invoke in a particular case. Even creating a common legal environment has taken a great deal time. Strohmeyer reported that the physical absence of the texts of laws, on which, the judges were supposed to work, seriously impeded the work of the courts in the early stages.” And the absence of the texts have not been easily overcome. The idea of an ‘official gazette’ that constituted an ongoing collection of extant regulations arose in late 99 and OSCE agreed to publish it, but publication was delayed until January 2001 in order to ensure that the quality of the translation was sufficiently high.

39) Differences in perspective among international officials reflect different roles they play in the mission: OSCE officials are concerned with establishing rule of law on the basis of international standards and UN officials are forced to create a system that would provide justice amidst security. Consequently, OSCE officials consider the absence of a habeas corpus remedy by which a detainee may challenge the lawfulness of his or her detention as the most significant problem with applicable law, and cite the absence of procedures to ensure effective access to defence counsel by detainees. On the other hand, some UN lawyers argue that the most significant difficulty with current ‘applicable law’ could well lie in its failure to address the
current security situation in Kosovo effectively. UN officials reported that currently applicable criminal law frequently does not provide penalties for newly emerging types of criminal activity; the criminal procedure law does not adequately incorporate the principles for a fair trial; nor does it provide law enforcement officials with the authority or flexibility to respond effectively. It points to the need for legislation reflecting the current circumstances of Kosovo.

40) Joint Advisory Commission on Legislative Matters. At a 15 August 1999 meeting on applicable law and the judiciary with all the ‘emergency judges’ in Kosovo, the SRSG said that future regulations would be most effective if they emerged from a process of consultation with Kosovar jurists and lawyers. He proposed forming the Joint Advisory Council (JAC) on Legislative Matters, which would be co-chaired by an international lawyer and Kosovar lawyer. The creation of this commission was intended to enable the mission to move ahead in the early phases with the adoption of regulations and consultation with Kosovar legal experts.

41) International lawyers report that Kosovar lawyers were initially very assertive on the question of applicable law and property issues. They maintained that such consultation did slow the process (sometimes considerably) but “always improved the quality of the regulations” and “saved us from embarrassment” that occurs when regulations passed by UNMIK. For example, they point out, regulations on business do not pass through the JAC and are “utterly alien and rooted in American business concepts.” It took two years and extensive consultation with experts from the Council of Europe (in Pristina and Strasbourg) to draft a criminal code and code of criminal procedure that commission members describe as the most contemporary code in the Balkans and one that is consistent with European standards.

42) Not surprisingly, Kosovar members of the JAC complained that work proceeds too slowly and that international members or the SRSG impeded progress in passing legislation. Other international advisers have criticized the functioning of the JAC by pointing to the haphazard self-selection of Kosovar membership on the committee, of the long and unproductive meetings in the initial phase, and of the production of mediocre draft legislation. And with the formation of the Interim Administrative Council, which was created as a result of the 15 December 1999 agreement on the development of a joint administration, the JAC has now become an ‘institutional orphan’ outside the emerging organizational framework of the Interim Administration. Over the past year, the majority of regulations have not been reviewed and vetted by the JAC, and it remains unclear whether the criminal legislation that was painstakingly developed in the JAC will be approved in their current form. The new SRSG may insist that such significant legislation be passed by the Kosovo parliamentary body that will be elected in November 2001 as part of the Interim Constitutional Framework.

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43) The agreement on joint administration among the Rambouillet partners, Ibrahim Rugova, Hashim Thaqi and Rexhep Qosja and signed by the SRSG on 15 December 1999 led to significant activity in building administrative institutions in preparation for local elections; formal elimination of parallel Albanian administrative and governing structures (whilst Serb enclaves continued to exist in parallel to UNMIK institutions); further establishment of key social institutions in education, health and social welfare. UNMIK also turned to the registration for automobiles and individuals, and to preparations for local elections on 28 October 2000.

44) Against this background, the expanding judicial system gave serious consideration to the establishment of a court responsible for war and ethnic crimes and introduced international judges and prosecutors into the Kosovo courts; and addressed problems, associated with physical infrastructure and social maintenance of the judiciary; as well as with training and preparation of personnel.

45) Kosovo War and Ethnic Crimes Court [KWECC]. Initially, the Secretary General reported in July that, “in view of the knowledge required in the domestic judicial system, UNMIK will continue to fill the judiciary and the prosecution service with professionals recruited from among local lawyers.”43 Relatively early in the mission, it became clear that the domestic judiciary would have difficulties with two sorts of cases which would not be tried by the International Criminal Tribunal for the former Yugoslavia [ICTY]: those involving possible war crimes during the fighting before SCR 1244 on 10 June 1999 and those involving subsequent inter-ethnic violence.44 In cases of Serbs arrested in August 1999 for war crimes committed during the war in Orahovac, only one defense lawyer stepped forward to serve as a defense counsel and there was a broader perception that the emergency judges were not in a position to adjudicate such cases in an unbiased way. And it also appeared that the judiciary was under pressure of extremists not to upset increasingly entrenched interests of organized crime and (especially Albanian) political extremism that was increasingly felt in Kosovo.

46) OSCE lawyers reported that, as a result of such developments, it was clear that the “number of judges needed for the Kosovo judiciary far exceeds the number of qualified jurists”, that “persecution against minorities” decreased the capacity of the judiciary to “proceed with international humanitarian law crimes in a fair and just manner.” UNMIK’s Technical Advisory Commission on Judiciary and Prosecution Service proposed the creation of a Kosovo War and Ethnic Crimes Court [KWECC] on 13 December 1999, that would be competent to try persons for war crimes,

43 S/1999/779, paragraph 68.
44 In practice, ICTY has not taken on all cases of suspected war crimes in Bosnia-Herzegovina, although it has been willing to assess evidence and give a recommendation on the merit of the evidence in particular cases for other courts. For one such exemplary case, see S/1998/227, paragraph 22 and S/1998/491, paragraph 28.
genocide, crimes against humanity and other serious crimes committed on grounds of race, ethnicity, religion, nationality, association with an ethnic minority or political opinion, committed in Kosovo since 1 January 1998.\(^{45}\)

47) It was anticipated that the KWECC would operate as part of a broader system of adjudication between the domestic courts and those of ICTY, and would handle difficult cases at the same time that it would increase the capacity of Kosovar judges. It would have concurrent jurisdiction with other regular courts, with its Chief prosecutor to determine that it would hear the case or remain in other courts. The KWECC would have primacy over other domestic courts, and would be able to assume jurisdiction over a case at any given point. It would have concurrent jurisdiction with ICTY and would defer to ICTY’s competence. The KWECC was to be composed of panels with both local and international representatives, but its President, Vice President, Chief Prosecutor, Deputy Chief Prosecutor, Registrar and staff would all be international. It was planned that the KWECC would work together with Kosovar judges and prosecutors on these difficult cases as one form of capacity building.

48) Initially the proposal to create the KWECC enjoyed good support and the UNMIK Department of Judicial Administration [DJA] spent a great deal of time and effort in developing operational plans to establish the court. Two successive reports of the UN Secretary General even recorded progress in its development. The first report had noted that “the support of the Member States in identifying and fielding expert personnel and in providing material and financial support will be essential.”\(^{46}\) The second reported that local and international response to the court was “favourable.”\(^{47}\) Such language in a Report of the Secretary general would seem to imply that the creation of the court was merely a matter of time. However, one international lawyer reported a general perception that “it was a mini-ICTY and very expensive” and several lawyers reported that that it encountered opposition from some of the member states. In the end, they convey, it fell victim to the budgetary concerns of the Advisory Committee on Administrative and Budget Questions [ACABQ] in August 2000. One UN official reported that ICTY commands an enormous budget and asked: “why pour money into a mini-ICTY that will cost a fortune?”

49) **International Judges and Prosecutors.** The KWECC may also have appeared unnecessary in view of the fact that international judges and prosecutors had already been working in Kosovo since February 2000 after the SRSG signed a regulation permitting him to appoint international judges and prosecutor to the courts in Mitrovica, as one part of the special measure to re-establish security there in view of

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\(^{45}\) See S/2000/177, paragraph 111. The Technical Advisory Commission created by Regulation 1999/6, was composed of ten Kosovar and five international members and was charged with advising “on the early re-establishment of the Supreme Court for Kosovo” after consultations with the AJC and JAC on Legislative matters.

\(^{46}\) S/2000/177, paragraph 111.

\(^{47}\) S/2000/538, paragraph 59.
a serious deterioration of the security situation there in the first half of that month. UNMIK officials relate that Regulations No. 2000/6 and 2000/34, which gave the SRSG the right to appoint and remove international judges and prosecutors, permitted international judicial personnel to play a constructive and active role in the investigation and prosecution of difficult cases, and to enhance judicial effectiveness in the face of systemic shortcomings in the local judiciary that could only be addressed through longer term institutional reform. By the first half of 2001, there were 12 international judges and five international prosecutors. By the end of 2000, international judicial personnel had completed a total of 35 trials and investigations, and another 45 investigations were underway.

50) The regulations on international personnel have created, in effect, a dual system of justice: one administered by Kosovar judges and one administered by international judges. The system has been refined by three additional regulations: Regulation 2000/46 ‘On the Use of Language in Court Proceedings in Which an International Judge or Prosecutor Participates’ was promulgated to establish English as an official language in court proceedings. Regulation 2000/64 enabled the DJA to employ the authority of the SRSG to appoint “a panel composed of only three judges, including at least two international judges, of which one shall be the presiding judge” and “to designate a new venue for the conduct of criminal proceedings” in order to “ensure the independence and impartiality of the judiciary or proper administration of justice”. Regulation 2001/2 enables an international prosecutor to re-open a case after it has been abandoned by a local prosecutor. These last regulations complete the current cycle of legislation that enhances the capacity of UNMIK to intervene effectively in judicial affairs so as to strengthen security as one element of rule of law.

51) It is no surprise that UNMIK officials report that international judges and prosecutors represent an essential component in the fulfillment of both the peacekeeping and institutional reform responsibilities of UNMIK. They claim that international judges are peacekeepers who provide the experience and neutrality to address the most difficult and important cases, while simultaneously catalyzing the local judiciary as it moves through the process of institutional reform. International judges are to wear blue berets and intervene in difficult cases and provide a role model for institutional reform. Several UN lawyers referred to the international judges and prosecutors as the “most interesting part of the whole judiciary.”

52) Kosovar Objections. Nor is it a surprise that Kosovar judicial personnel and lawyers have been slow to accept these changes that appear to challenge their sense of ownership over the developing judicial system. They have raised a series of

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48 S/2000/177, paragraph 111. See also paragraphs 20-21. The civil unrest began when a clearly marked UNHCR humanitarian shuttle bus carrying Serbs was shelled; continued in violence against Albanians in northern Mitrovica and against Serbs in southern Mitrovica, mutual displacements, KFOR and UN International Police intervention.
49 S/2001/218, paragraph 39.
50 S/2000/1196, paragraph 46.
objections to the currently existing programme of international judges and prosecutors: they point out that applicable law dictates that such councils must consist of five persons. Kosovar jurists add that the international judges and prosecutors are not necessarily experts on war crimes and several said that the international judges are “not very good jurists”. Kosovar judicial personnel report that they have little official contact with the international judges – although some international judges have tried to develop good relations with their local colleagues on the principle that such relationships are the only firm basis of progress in individual cases, as well as in the process of developing a self-sustaining judiciary. Kosovar jurists also complain that international judges are better treated than Kosovar judges – in salary, security and support. In view of the sensitivity of their caseload, the international judges and prosecutors often have substantial close protection: either for 24 hours per day or to reside on KFOR premises. Each holds a relatively high-ranking UN appointment, although their appointments are short term and subject to non-renewal leaving the international judge without recourse to an appeal within the Kosovo system of judiciary.

53) Kosovars also point to the absence of clear criteria or mechanisms for assigning cases according to Regulation 64, although DJA personnel reported that clear criteria for the imposition of ‘64 panels’ are now being developed. Kosovars propose that such commissions be composed entirely of international judges instead of a minority of one Kosovar on a three-judge panel. This would reflect the existing international control of the process of assigning sensitive cases and free Kosovar judges from being politically hostage to rulings imposed by international jurists. International officials suggest that assigning a minority Kosovar judge to a ’64 panel’ helps to create a sense of ‘ownership’; it provides a means by which capacity can be transferred to Kosovar judges; and point out that there are simply too few international judges to constitute all ’64 panels’. International officials point out that the opposition of Kosovar judges to ’64 panels’ has waned with their realization that it actually gets them off the hook of rendering unpopular decisions on sensitive cases. However, there has been at least one case where the one Kosovar judge on a ’64 panel’ has held a press conference denouncing the verdict.

54) As things stand, UNMIK officials report, Kosovar judges can and sometimes do impede procedures that could continue a court hearing by not providing local judges for panels. There have been instances of lost files, of appeals that are planned without the knowledge of international personnel; and until recently, international officials had difficulty in acquiring access to the Supreme Court Registry.

55) **Executive Orders and Witness Protection.** Most significantly from a perspective of legal development, Kosovar judicial personnel claim that Regulations 2000/64 and 2001/02 blur the distinction between the executive and the judiciary – because, they

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52 UNMIK sources indicate that the DJA has subsequently adopted such clear criteria for assigning international judges and prosecutors, and for changing venue of a case.

53 The case of this individual judge was referred to the recently created Judicial Inspection Unit of the Department of Judicial Affairs.
claim, these regulations allow the SRSG to act against applicable law to continue holding individuals in detention longer than. To an extent, this complaint conflates the provisions under the above-mentioned regulations with Executive Orders in which the SRSG has extended the detentions of individuals who were thought to pose some sort of public risk. UNMIK officials explained the criteria according to which such orders are issued in accordance with the perspective of the UN Office of Legal Affairs. They argue that executive action in matters relating to detention by the SRSG may be appropriate when the merits of the case are strong enough to warrant executive action; when it is established that a release of a suspect from detention would pose a menace to public security; and when allowing the case to proceed without executive intervention would result in manipulation of the case by involved officials.

56) UNMIK officials add that it is crucial that the SRSG employ authority to issue Executive Orders only on an extraordinary basis when all other legal avenues have been pursued and are considering additional procedural protections, such as provision of a reasoned basis for the actions in writing, and providing for judicial review of executive orders by an international judge or panel of international judges at the level of the Kosovo Supreme Court. On the other hand, a Kosovar Albanian judge in Pristina said that the SRSG’s employment of an Executive Order to detain suspects in a case of a bombing – after they had been released by an international judge – “is in contravention of all international norms on human rights”.54

57) By the beginning of 2001, UNMIK had clearly resolved to establish security as a basis on which to build the rule of law. It was intended to address the burgeoning anxiety attending the growth of organized crime and terrorism. Aside from improving the efficiency of operations of international judges, UNMIK officials have turned to creating a witness protection plan, and to identifying ways of utilizing evidence not collected in accordance with the provisions of currently employed applicable law, but collected by international military and other unconventional sources.

58) **Operational Impediments to International Judges and Prosecutors.** International personnel point to difficulties in existing operations – although not to the principle – of the system of international judges, as well. They say that the programme lacked comprehensive planning in its initial stages, but that it has incrementally developed an ‘emergency culture’ from one crisis to the next. They point out that it has been difficult to even find a sufficient number of well-qualified judges from civil-law systems who speak English – and report that the second wave of recruitment was desperate in an effort to bring in any one who formally filled the bill and these are with judges that often do not speak English well, have little prosecutorial experience, have little experience in criminal law or in war crimes. Even international judges and prosecutors emphasized that they are not well-versed in Kosovar or international war crimes and humanitarian law upon recruitment; that they were given no training at the outset of their missions; that they have been given are given little opportunity to build

54 *Koha Ditore*, as summarized in the 4 June 2001 UNMIK press summary.
their own capacity once appointed; and that they are appointed for too short a time
(several months at a time instead of the one-year contract that is standard practice at
ICTY) for them to work effectively. To date, not a single international judge or
prosecutor has been discontinued.

59) International judges argued that the absence of administrative support made their
work inefficient and more difficult. They reported the absence of detention record
books to control the cases; the absence of systematic record keeping; and that
complex administrative procedures meant that they could spend several days in vain
on a single administrative request. They reported waiting for months for standard
equipment such as mobile phones; business cards; computers with internet access;
materials from training sessions on the European convention of Human Rights or the
International Covenant on Civil and Political Rights; experienced and expert
translators. They recorded the absence of generators in municipalities where
electricity blackouts are common. They were forced to fight for everything they
received. Some judges were forced to contact the US office directly in order to
receive equipment intended for the courts.

60) International judges and prosecutors reported confusion as whether their activities fit
under the Kosovo Consolidated Budget devised for the Joint Interim Administration
or under the UNMIK budget devised for operations of the mission. Consequently,
there were instances where an international judge paid from his own pocket to clean
his own office in the courthouse, or where photocopiers could not work because there
was no extant allocation for toner under the Kosovo Budget and UNMIK
administration refused to purchase the toner under its own budget.

61) UN judiciary officials reported increasing difficulty in managing the operational side
of international judicial support activities, as establishing ’64 Panels’ is stretching
their current capacity “to the limit”, especially in view of the absence of international
interpreters and legal and administrative support for their work. One UN lawyer
reported that, under current conditions, it is possible for 10 international judges to be
involved in a single case. Another added “we are turning into a logistics machine and
should reconsider restructuring the judges and prosecutors into an international court,
similar to the KWECC. It would be a one-stop, quick stop programme.” Another
pointed out that the programme of international judges and prosecutors was expensive
in view of the costs associated with protection provided each individual judge.

62) There are substantive problems of policy, as well. UN lawyers generally recognize
the absence of mechanisms linking international and Kosovar judicial personnel –
from the absence of significant number of Kosovar employees in the DJA, which is
supposed to be a joint administrative body, to the need for an international registrar
on each court to give UNMIK a means of examining the incoming case load. Some
international judges agreed that it is not fair to the Kosovar judges to force them to sit
on ’64 panels’ that will adjudicate war crimes cases because they will have a hard
time to rule effectively in the current circumstances when they put themselves at risk
without any real security protection. They add that developing special procedures to
provide additional powers to international judicial personnel has exacerbated differences between international and Kosovar colleagues. It may be that successful intervention by international judicial personnel in providing fair outcomes in particular cases may undermine longer-term strategies of judicial development and reform.

63) International officials hold that a genuinely multi-ethnic judiciary would have obviated the need for complicated ‘64 panels’ by providing the potential for a self-regulation and discipline within the court, but no one expects this nostrum to materialize in the near future. As things stand, international judges and prosecutors are expected to remain active in the system over the medium term and their number is expected to grow as the mission actually begins to downsize more generally. Current conventional wisdom holds that the work of international judges and prosecutors enable the judicial system to address sensitive cases in a manner serving the long-term interests of the judicial system. It should be possible to improve their capacity to operate – logistically and in training -- in such a way as to enhance the quality of their work. As a generation of Kosovar judges reflecting the full range of communities in Kosovo emerges that is able to address these sensitive cases in the spirit of international legal standards, it will be possible to phase out the experimental programme of international judges and prosecutors altogether.

64) Training. A key element in improving the quality of justice and the judicial system will lie in the training undergone by judicial personnel. Training is especially significant in view of the tremendously varied population of available judicial system personnel over the next several years: first are the formerly socialist judges and prosecutors, the overwhelming majority of whom have not worked as judges in the decade of the 1990s, who been working in the judiciary since June 1999. One UN official called the current judiciary over-aged, with almost no one under the age of 45. Defense lawyers throughout Kosovo have a similarly mature age structure. Next come the generation of law student currently studying at the university in Pristina and who represent the ‘great hope’ for the future of Kosovar jurisprudence. Third are lawyers and judges who completed their education in the parallel university law faculty in the 1990s and who have not passed a bar exam that would legitimate their participation in the system. The international mission must approach each group differently – although Kosovar lawyers, who are not in the judiciary, believe that the only group worth serious attention are the students currently in the law faculty for they represent the future and are as yet untainted by past deformities. Training of personnel has fallen to OSCE Rule of Law Division as part of its institution-building mandate.

65) In summer 1999, the judges in Kosovar emergency courts quickly embraced the opportunities for training in international human rights conventions and instruments, as well as in matters concerned with war crimes. No one was satisfied with initial efforts at training that seemed to focus almost exclusively on doctrine, ethics, applicable law and all commented that Council of Europe trainers were not well-versed in practical issues of law in Kosovo. UN and OSCE officials reported that
Kosovar judges denied their need for general “training” as judges or prosecutors, but were willing to participate in academic-style seminars. Consequently, currently-serving judges and prosecutors agreed to attend sessions after the OSCE changed the name of the ‘Kosovo Judicial Training Centre’ to the ‘Kosovo Judicial Institute’ and re-name ‘training sessions’ as seminars and roundtables.

66) The agenda of training has significantly evolved, and this year’s training program at the Kosovo Judicial Institute includes property issues, war crimes, the applicability of the FRY’s Criminal Procedure Code, and human rights. There are plans to conduct training on court administration, the assignment of cases and train the trainers. It has also worked on establishing exchange programs and study trips for members of the judiciary in Europe. International personnel with experience in Bosnia reported the need for training in non-legal skills, as well: on forensic psychology and trial tactics. Kosovar and international personnel assessed the current programme positively with the only criticism that the training should have improved sooner. Some UN lawyers report that OSCE training has become quite good, but that much more should be done.

67) As the judicial system developed, the OSCE established institutions that would address the genuine training needs of current judges, as well as those who are just beginning their careers. As one aspect of training, the OSCE established the Kosovo Law Centre as an independent of NGO that became deeply involved with the curriculum at the university’s faculty of law. They worked closely with lawyers from the Council of Europe and from the law faculty in reforming the curriculum by working to eliminate the notorious oral exams. One former international instructor at the law faculty reports that a serious challenge will be to promote tolerance and human rights among law students who continue to focus exclusively on collective human rights. 55 In April this year, the Kosovo Law Centre opened its law library that benefited from assistance from the Council of Europe, the Austrian Constitutional Court, the OSCE and the German government.

68) Bar Exam. The tremendous gap in age between the currently serving judges and prosecutors and those still at university has made urgent a solution to the problem of certifying the “lost generation” of students who graduated from the parallel law faculties in the decade of the 1990s. 56 There are between 700 and 1,000 such individuals awaiting certification. One international lawyer pointed to the German Democratic Republic, where all the judges were fired and then hired provisionally for a year in the FRG’s judiciary, during which time they were examined and tested to serve again under new circumstances. Another international official remarked that the manner in which the generation emerging from World War II in Europe could represent a model, whereby all lawyers were simply allowed into the Bar. He added that the education then was also not considered high-quality, but that it was important

55 See Christopher Waters, “Legal Education in Kosovo”, unpublished manuscript, for background on formal legal education.

to move ahead: “as long as we cannot set up the Bar for the old generation, it is
impossible to set it up for the new generation.” Consequently, the establishment of
the Bar is one important test of creating a normal judicial system.

69) The differences on this issue between international and Kosovar personnel have
impeded a solution that would facilitate smooth progress in other areas of judicial
training. International officials have favored a process whereby those joining the bar
would be forced to take training, whereas Kosovar officials have insisted in voluntary
training and invoke years of discrimination. International officials point out that the
system does not have the capacity to perform the compulsory training for 700 to
1,000 mainly Albanian lawyers in a relatively short period of time and it also appears
that prospective members of the Bar will actually seek training on their own.
Consequently, a solution could be close at hand, hopefully one that preserves the
integrity of the system, as well as the dignity of those in the ‘lost generation’.

70) Physical Infrastructure. 57 Kosovo’s courts were in poor condition following the
departure of the Serbian authorities. Developments in administration and
maintenance of the courts have proceeded. A US inter-agency report from April 2000
summarized the problem succinctly: “Many courthouse buildings were damaged and
required immediate repairs. Almost all courthouses lacked heat, electricity, telephone
service, water, furniture and the most basic equipment, from typewriters and law
books, to pens and papers. A number of courthouses were quickly occupied by
international organizations, making it impossible for judges to begin their work58 (p.
11).” In addition, the courts lacked stamps, vehicles, drivers or any kinds of effective
transportation service with which to deliver documents or summons.

71) In the initial phases of the Emergency Courts, problems in infrastructure prevented
the effective functioning of the system: the nascent judiciary organization within
UNMIK had no resources with which to provide essential equipment. In Prizren, the
Regional Administration helped to finance emergency purchases by the District Court
of necessary documents that would enable it to begin working. It was more difficult
to begin operations with staff and equipment, for which there was no money from the
budget. The initial consolidated Kosovo budget was only written in Autumn 1999,
long after it was necessary to begin working. From the beginning of 2000 when a
variety of national governments began to address the problem directly and the UN
officials reported that the rehabilitation of judicial infrastructure has largely been
accomplished by the first half of 2001.

72) Two groups of issues remain unresolved. In matters directly affecting the physical
functioning of the courts, Kosovar judges complained about insufficient transport and
assistance to deliver summons and other documents. International officials report that
the absence of forensic capacity in Kosovo means delays in processing evidence in a

57 This section relies heavily on the US Government’s interagency assessment, “Kosovo Judicial
Assessment Mission Report”, April 2000. It can be accessed at:
58 Kosovo Judicial Assessment Mission Report, p. 11.
modern forensics laboratory in Bulgaria. They also reported the absence of a police force dedicated to protecting the courts – although UNMIK officials reported that they have begun planning for such a court police.

73) The second package of issues goes to the heart of the dual system of justice and concerns the dignity of the judges. Kosovar judges report that they work under difficult conditions. They are dissatisfied with their pay – at a monthly rate of 600 DM for a judge; 390 for staff \textit{[referenti]}; 330 for beginners; 180 for secretaries. Some international officials reported that the pay was roughly equivalent to that in other eastern Balkan countries. One Kosovar judge said that, everyone wanted to be a judge in the beginning in order to contribute to the re-establishment of order. No one thought of salary. However, some judges have already left the judiciary with good reputations and few regrets (as has at least one erstwhile President of a District Court) to find success in private practice. The judges add that that they lack social insurance, real physical security, guarantee of future employment and genuine voice in how the courts are run. They profess material and physical insecurity when they compare themselves to their international colleagues. Some international officials insist that the standard of comparison should be with other Kosovars and not with international officials. All Kosovar judges, prosecutors and lawyers (as well as some international officials) maintained that low salaries provided fertile ground for judicial malfeasance and corruption.

\textbf{Consolidation and Transformation: 28 October 2000 –}

74) In its current phase, UNMIK is moving to consolidate organizational gains in the Joint Administration. Municipal elections held on 28 October 2000 led to the formation of legitimate new local governments on the basis of Regulation 2000/45. The elections also marked a broader change in the mission as Dr. Bernard Kouchner was replaced by Hans Haekkerup as the SRSG at the beginning of 2001. The new SRSG quickly turned his team to the negotiation of a constitutional framework for Kosovo that would provide a basis for Kosovo-wide elections scheduled for 19 November 2001.

75) Under the new SRSG, UN officials have moved those activities comprising security and rule of law out of Pillar II Administration into a new Pillar I of Police and Justice in an effort to improve the quality of judicial administration, to strike an effective balance between the requirements for justice and security, and to define enduring mechanisms for selection and discipline of the judiciary in accordance with international norms in rule of law. The most recent report of the Secretary General suggested that this new pillar would ensure that “key strategic objectives in this sensitive area” of law enforcement and the criminal justice system were achieved, including “maintenance of effective international control and oversight” and “enhanced mission capacity in countering the most serious crimes that threaten peace-building efforts”.\footnote{59 S/2001/218, paragraph 38.} This is a response to the “persistent instance of ethnically and
politically motivated violence” that “continue to pose a tangible threat to the fulfillment of the Mission’s mandate.”

76) **Enhanced Judicial Inspection.** A key step in asserting ‘international ownership’ over the judicial system was taken in Autumn 2000 with the establishment of an inspection and disciplinary mechanism. In anticipation of establishing an appointments system whereby Kosovar Judges would gain 1-year appointments (a step beyond the current tenure of 6 months), the DJA’s Judicial Inspection Unit [JIU] was tasked with investigating complaints about judicial behavior. This commission is expected to perform strategically essential tasks in assessing the performance of current judges and prosecutors and to prepare a means to screen prospective candidates. In the period immediately following its establishment, it appears that the JIU has faced the typical challenges of completing staffing and finding an adequate budget. Nonetheless, it has already drafted codes of conduct for the relevant judicial system personnel and has begun to make direct recommendations on a good number of complaints to a newly constituted Kosovo Judicial and Prosecutorial Council [KJPC] that has replaced the Advisory Judicial Commission [AJC] under Regulation 2001/08. This Council will also advise the SRSG on appointments and discipline of judges. However, unlike the AJC, the KJPC reflects the recent muscular approach taken by international officials towards the local judiciary. It resembles ’64 Commission’ by establishing membership dominated by international personnel: five are international, three are Kosovar Albanian and one is Kosovar Serb.

77) One UN official reported that the Judicial Inspection Unit provided a mechanism to compel Kosovar judges to take responsibility. In the past, the vast majority of judges have routinely won extensions at the end of their contract in the absence of any serious review of their work. In the future, there will be a range of sanctions for misconduct between extension and dismissal. If the JIU is employed exclusively in cases involving Kosovar jurists, its operations could represent a step towards institutionalizing the differences between the two systems of justice – that governing Kosovar judicial personnel and that governing international personnel – a development that will depend in part on how the mission will approach the development of the new Pillar I.

78) **Police and Justice Pillar.** The creation of the new Pillar I represents UNMIK’s response to its past ‘emergency culture’ and incremental crisis management instead of a strategic approach to developing the judiciary. UN officials argue that bringing police, security and justice structures under a single pillar will facilitate internal coordination within UNMIK, as well as cooperation with key organizations, such as KFOR, OSCE, and individual governments. They report that this coordination would avoid duplication of effort and enhance UNMIK’s capacity to strengthen the system of law enforcement and criminal justice system. The objectives of the new pillar are to consolidate the law and order structure at the same time that it establishes an unbiased judicial process through international participation and reform of the judicial

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60 S/2001/218, paragraph 6.
system. UN officials also pointed out that this new pillar would give police and justice their own “seat at the table” of decision making and would facilitate the coordination of activities, and add that such a pillar could have helped to avoid many difficulties over the mission’s first 18 months, as well, by enabling it to establish UNMIK’s authority.

79) The press release announcing the new pillar said that “the priorities of Pillar I include increasing Kosovo Police officers and enhancing their capabilities; increasing the number of judges and prosecutors, and expanding detention and penal facilities to hold those convicted of crime.” The current interim head of the Pillar, Principal Deputy SRSG Gary Matthews added that “we will soon have much greater resources and legislative powers to deal with crime, terrorism and violence,” which include 4 June legislation addressing illegal weapons possession and weapons trafficking, pending legislation to deal with illegal border and boundary crossing and pending legislation to deal with terrorism and organized crime.

80) UN officials report a range of new issues on the horizon that will require enhanced capacity – especially in the increased deployment of international judges and prosecutors – as in Regulation 2001/7, which will significantly increase penalties for unauthorized possession of weapons. UN officials also report on the increasing importance of extradition and the use of statements taken by police in court proceedings. They add that the new pillar will develop regulations that set forth specific elements of an offense and provide for stiffer penalties, as well as coordinate the activities of the judiciary and the police in order to address difficult problems of investigation and evidence.

81) There is general agreement that the new Pillar I will face significant challenges of providing a system that can establish order as the basis for rule of law, economic and democratic development. At the same time, UNMIK must continue efforts to resolve tensions between the Kosovarization of administration more generally and the Police and Justice Pillar’s specific goal of enhancing the mission’s capacity to address crime authoritatively. It remains unclear the extent to which Pillar I will focus exclusively on developing a response to serious crime at the expense of building the capacity of Kosovar officials. However, it is clear that building confidence in the interim administration will require effective control of crime and effective cooperation with Kosovar personnel.

**Common Themes and Lessons**

82) UNMIK has made an outstanding achievement in creating a judiciary since June 1999, a time when few officials had a clear vision of the needs and possibilities of this strategically important sector in building peace in Kosovo. During the year 2000, District Courts completed 340 criminal matters, 725 civil matters, and completed 814 investigations. Municipal Courts completed 2,710 criminal matters, 2,363 civil matters and 1,545 investigations. Minor offence Courts have given 741 sentences of

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imprisonment in regular procedure, 8,051 fines in regular procedure and 993 reprimands in regular procedure.\textsuperscript{63} The caseload of the current year has substantially increased. UNMIK’s administrative evolution points to its growing capacity to act strategically to improve security in Kosovo at the same time that it lays the groundwork for the broader Kosovarization of administration under the newly adopted constitutional framework recently signed by the SRSG. As the new Pillar I takes shape, a major challenge will be to integrate these two dimensions of its mandate. The tension between these two elements will likely prove more challenging with the approach of November elections that promise to change the face of administration in Kosovo.

83) Against this background emerges a consideration of three broader themes in Kosovo’s judicial development: UNMIK’s strategic approach as the mission began; the cooperation and coordination of organizations in Kosovo as the judiciary developed; and prospects for improving the cooperation between Kosovar and international judicial personnel. These considerations lead to some ‘lessons’ – both for efforts to create judiciaries elsewhere at the beginning of missions and for the future of Kosovo’s judicial system.

84) \textbf{Strategic Approach.} In the period immediately following SCR 1244, UNMIK and KFOR faced an imperative to act swiftly and authoritatively or risk yielding the ground to the activities of hard-line ‘spoilers’ who opposed the principles and practice of SCR 1244. UN officials reported that UNMIK had lacked a strategic plan, that it created an ‘emergency culture’, and that it continues to ‘put out fires’ and respond to emergencies. In June 1999, the international missions in Kosovo could not effectively react to crime and disorder. The problem lay both in the absence of capacity and in the absence of effective planning between KFOR, the UN and OSCE in advance of the mission that would have provided a mechanism for addressing these matters. UNMIK had a mandate but no capacity to establish a judiciary. KFOR had capacity but no mandate or direction. In these circumstances, UNMIK turned to OSCE for assistance in establishing an emergency judiciary with great symbolic significance, but little practical capacity to adjudicate in the chaotic emergency culture that appeared early in the mission.\textsuperscript{64} Good civil-military cooperation at the early stages of a mission is essential in stemming the tide of chaos and disorder in civil life as well as in disarmament and demobilization of soldiers.

85) It is clear that UNMIK would have benefited from the improved pre-mission, inter-organizational planning, as well as pre-planned operational cooperation in its first phase, for such missions are necessarily interdisciplinary. Similarly, it would have benefited from an interim legal code as well as a roster of international judges and prosecutors that are quickly deployable – as has been suggested in the “Report of the Panel on United Nations Peace Operations”.\textsuperscript{65} In the absence of such complete

\begin{footnotes}
\item[63] Information supplied by UNMIK DJA.
\item[64] See Strohmeyer’s judicious conclusions in ‘Making Unilateral Interventions Work’, pp. 16-20.
\end{footnotes}
preparations, it appears desirable to deploy future operations in a three-phase development that would effectively provide security in a Chapter VII operation.

a) In the first phase of 90 to 180 days, judicial personnel (and police) would be deployed by the military and apply the national laws of the brigade in each battle area. Their activities would be subject to ex-post facto external review to ensure that individual rights were observed.

b) In the second phase, the judiciary would be under the leadership of international judges as national judiciary are preparing to take over. These personnel would be taken from a pool of experienced law enforcement officials — police, judges, prosecutors, and policy professionals — ready to deploy at a moment’s notice.

c) In the third phase, authority for the judiciary would transfer from international to national personnel.

86) **Cooperation and Coordination.** The preceding account shows that as UNMIK moved from the phase of building institutions to that of consolidating and transforming them, it has increasingly adopted a strategic approach that focuses on addressing the violence and insecurity that characterizes daily life in Kosovo as a step towards providing rule of law. It is also certain that good coordination with corrections, police and military is essential to an effective strategy of judicial development. The elements of such cooperation are likely to vary over time, but good institutional and personal relationships are essential to the development of a judiciary.

87) An account of cooperation and coordination must consider the relations between the key organizations – KFOR, UN and OSCE – involved in the development of the judicial system from the beginning of the mission. Other organizations have also played important supporting roles: the Council of Europe has helped to review legislation on the JAC, has hosted meetings in Strasbourg and has participated in developments of rule of law in Kosovo. The US Government Office has served as an umbrella for US (e.g., of USAID and ABA-CEELI) support to the nascent judicial system. The support of national organizations to refurbishment of courthouses, financing of training and other aspects of implementation of the mandate has been impressive. But this account must focus on the key relationships – that between the UN and OSCE.

88) The relationship between the UN and OSCE in developing a judicial system has rested on overlapping or even conflicting mandates: the UN is tasked with creating and administering a judicial system, as well as to develop applicable legislation, whilst the OSCE is tasked with monitoring the functioning of the judicial system and with establishing programmes of training for the personnel in the system. ‘Bumps

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along the road’ come from the competition to gain control of the mission as the NATO operation was still taking place, from the OSCE’s efforts to convince UNMIK to adopt its pre-SCR 1244 judicial and police planning, as well as its wide network of contacts in Kosovo, and from the differing mandates of the two organizations. The UN’s pre-mission planning paled in comparison, as did its networks of contacts. No formal mechanism existed to bring this planning smoothly into consideration in view of the OSCE’s mandate in training, and monitoring. Personnel in the two organizations mention with some regret the earlier “turf wars” between the two organizations that characterized the relationship in the early stages of the mission.

89) One area of interest has remained the OSCE Human Rights monitoring of the court system. It has issued two major reviews of the criminal justice system – in October 2000 and April 2001 – following a series of shorter reports completed in 1999. The reports have raised incisive criticisms “from the human rights law perspective” and the first one led to the formation of a joint working group between the UN and OSCE to implement the recommendations. The working group has resolved issues related to applicable law and police coordination, and have facilitated dissemination of information among key organizations. Some OSCE legal monitors have complained that they have not been given full access to UN sources. Some UN lawyers complain that the OSCE has become like Amnesty International and judges the UN harshly and critically as a disloyal opposition, although “we are here because terrible things happened here. It is not London or home.” Some UN and OSCE lawyers have lamented that public reports were less effective because they enable hard-line spoilers to play upon differences among international organizations.

90) **National-International Differences.** As the report described above, Kosovar officials systematically and predictably view developments in the judiciary differently than do international officials. These differences are reflected in some conflicting patterns of perception:

a) International judges focus more intensively on the impartiality of procedural regularity (which they refer to as “impartiality” and “unbiasedness”), whilst Kosovar judges focus on the establishment and functioning of an independent judiciary (which they sometimes confuse with “impartiality” and “unbiasedness”).

b) International judicial officials will refer to international standards as these are practiced in the countries of origins of the individual official, while Kosovar judiciary seek to begin constructing a judiciary from the point in which they ended their activity in 1989. On one hand, “international standards” has generally remained an abstract construct; on the other hand, “international standards” actually represent a version of some national legal code or other.

91) It is ironic that just as international agencies have begun to consolidate their capacity to address problems in the judiciary, the relations among Kosovar and international

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67 A few UN lawyers did have abundant experience with legal reform in the similar system in Bosnia and some other team members had good experience and a good set of contacts in Kosovo, as well.
personnel have begun to deteriorate and the social and political distance between national and international jurists have begun to widen. UNMIK might well have been able to impose its will authoritatively in mid-1999 in the interest of security with much less opposition than it has over the past year. At that moment, moderate judges from Prizren were willing to forgo immediate gratification in the interests of long-term institutional development. Since that hopeful moment in any number of areas, the social and political distance between Kosovar and international judicial personnel have widened, e.g., on the question of the bar exam, on the use of international judges, on the creation of ‘64 panels’, and on the use of the SRSG’s executive authority. International and Kosovar judges do not really work together; the DJA has had little significant input from Kosovar employees; and the increasing social distance has been attended by increasing mistrust and political opposition. The mission will have to take steps to bridge these physical gaps that underlie the perceptual and political differences if it is to avoid the institutionalization of a dual system of justice in Kosovo.

**Constructive Steps**

92) **General Recommendations.** This report supports the recommendations in the ‘quick deployment package’ contained in the Brahimi Report. These general recommendations appear essential in developing an effective ‘emergency judiciary’. It leads to some considerations for the effective development of the judicial system in Kosovo and, more generally, for future missions.

93) **Complete Current Initiatives to Strengthen Capacity of Judicial System.** The establishment of a new Pillar I can provide the basis on which to complete a range of initiatives that would strengthen the capacity of the Kosovo judicial system, as have been recorded throughout the body of the report. These include the establishment of court police; a witness protection programme; adoption of a procedure for including the lost generation into the bar and establishing procedures for a future bar exam; adoption of procedures for handling and accepting evidence from police and investigative judges; establishment of regular meetings between international and Kosovar judges throughout Kosovo; recruitment of Kosovar lawyers into the Department of Judicial Affairs; facilitate the full functioning of the Judicial Inspections Unit for Kosovar and international judges; and ensure that the door remains open to inclusion of Serbian judges and prosecutors into the system and that the judicial system can expand to cover today’s Serbian enclaves.

94) **Judicial Monitoring and Advising.** One way of improving capacity building would reside in a system of co-location of international judicial monitors with Kosovar and international judicial personnel. This co-location would facilitate improved working relationships and ensure that international officials are fully informed on the operations of the individual courts. Such co-locators would be managed by the DJA

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68 There are, of course, exceptions to this apparent trend in some regions, and everywhere the personnel claim to have “correct relationships”.

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in a manner resembling how IPTF [International Police Task Force] co-locators are managed within the UNMIBH mission in Bosnia-Herzegovina.

95) **Inter-university exchanges.** Kosovar and international personnel all appraised exchanges and fellowship and internship programmes for judicial personnel – as an effective way of building knowledge and social interaction with ‘developed’ countries. Such programmes could ultimately be part of a law school curriculum.

96) **Salary Relief** for national judges and prosecutors. The relatively low salaries of judges makes them available for corruption and bribery. This relief can best come in the short to medium term from direct donations by national governments. The improvement of salaries in the budget could be built in over a 5-10 year period.

97) **Support to Associations of Judges, of Prosecutors, and of Defense Lawyers.** The OSCE already provides some support to these groups, but further development of professional associations is essential in the establishment of a judicial system.

98) **Considerations for Future Missions.**

   a) **Deployment of Lawyers in HQ NY** either in the Civpol Unit or in DPKO in order to provide a link between the mission, DPKO, police and [OLA] Office of Legal Affairs. Under the broader direction of the mission’s support structure in New York, these lawyers or judicial specialists could address the needs of the judiciary at HQ.

   b) **Design Future Missions Coherently.** The UN was charged with administering the Department of Justice, whilst the OSCE was charged with organizing training and with monitoring the courts. It would behoove future missions to establish court monitoring that is consistent according to international standards, but also in manner consistent with the implementation of the mandate. Joint planning from all civilian agencies of monitoring from the start would diminish prospects for high-cost competition between two pillars of the mission.

   c) **Improved capacity to understand the situation on the ground.** Political officers with area expertise in the region would facilitate better understanding of the mission area, its legal traditions and enhance the international officials’ capacity to operate. Such officers would be in a position to advice on the political and cultural windows of opportunity in creating a judiciary, as well in formulating a politically informed approach to creating the judicial system. Such officers need not work directly in the courts or in its support system, but their expertise must be available to the mission’s decision makers.

   d) **Applicable Law.** The absence of acceptable criminal legislation and criminal procedure has seriously hampered efforts to operate a judiciary. Aside from the development of a basic, common legal code to be applied in the initial phase of a mission, international and national lawyers must sit down immediately to draft an
appropriate code that is in accordance with international principles at the earliest possible moment of a mission.

e) **Recruitment of international personnel.** Development of stand-by capacity of international judicial personnel to deploy at earliest possible moments. The value of individuals on the list would increase with their familiarity with civil law and common law systems, and previous deployment in legal reform in a similar system.

f) **Training international personnel.** All international personnel – International Judges, Prosecutors. UN and OSCE lawyers – must receive extensive training in the domestic law of the mission area as well as in international war crimes and humanitarian law before deployment. There can be programmes (e.g., in the form of workshops, roundtables, seminars, ongoing weekly training) for judicial personnel already deployed in mission.

g) **Training international and national police in applicable law.** The mission must make an effort to train police in applicable law at the first possible instance.

h) **Training national personnel.** Training programmes should begin at the start of missions with practical sessions taught by individuals who are well-versed in the domestic law of the mission area and in the appropriate international conventions.