

Disaster Colonialism: The United Nations Mission in Kosovo (UNMIK)

Ava Erfani

ABSTRACT

The international involvement in Kosovo since 1999 serves as a unique, contemporary case of what I refer to as “disaster colonialism.” Disaster colonialism in Kosovo, I argue, was a project, one which needed the fabrication of a “disaster,” (based on the historical event of the 1999 War of Independence) in order for a series of international organizations to establish missions that would proliferate following the end of the war. The conflict between Kosovo and Serbia over the ownership of territory was seized by the international community as a “disaster,” catalyzing a self-justifying mechanism that foreclosed the expression of popular democratic will in post-conflict Kosovo. Understood in this way, disaster colonialism is a programmatic, top-down method of building a state following a crisis that undemocratically implements techniques of governance imported by a colonizing power, bypassing the will or the consent of the populace. By manufacturing a “disaster”—which declares a populace no longer capable of deciding the future of their government or the shape of their own society—the international community was able to format a legal, economic, and political system in Kosovo that served the interests of a Western, liberal-democratic power structure. In this paper, I will trace the points in which the UN’s disaster colonialism, administered by technocratic governance experts, reveals the costs of occupation, the collateral damage that is part of the state-building mission, and the tensions between expert rule—even from a human rights-centered organization like the UN—and democracy.

Keywords: Kosovo, United Nations, post-conflict, interventions, democracy

Introduction

On March 24, 1999, the North Atlantic Treaty Organization (NATO) began Operation Allied Force, the 78-day bombing campaign targeting the Federal Republic of Yugoslavia (FRY). During the eleven weeks of bombing across Serbia and Kosovo, 400 Tomahawk cruise missiles were launched, 20,000 “smart” missiles were deployed, and 5,000 conventional bombs were dropped. After less than three months of NATO’s strategic aerial attacks, FRY president Slobodan Milošević agreed to withdraw troops. NATO ended the conflict in Kosovo, and for the first time in the history of warfare, military victory was achieved solely by air power.¹ The end of the NATO intervention was followed by the beginning of United Nations (UN) control over Kosovo with the establishment of the United Nations Mission in Kosovo (UNMIK). From 1999-2008, the UN held supreme legislative, executive, and judicial authority over Kosovo, creating a protectorate that was governed through international administration.² Though the international community had initially intervened to prevent human rights abuses against the ethnic Albanians of Kosovo, it would now be responsible for “prepar[ing] the province for substantial autonomy and self-government.”³ I will argue that the UN’s control over Kosovo during this era was part of a colonial project which

¹ Nick Cook, “War of Extremes,” *Jane’s Defense Weekly* (1999).

² Ray Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice* (Cambridge: Cambridge University Press, 2007), 80.

³ Independent International Commission on Kosovo, “The Kosovo Report: Conflict- International Response- Lessons Learned” (Oxford: Oxford University Press, 2000), 259.

utilized humanitarian intervention to undemocratically shape Kosovo towards a “European” model of society.⁴

The international involvement in Kosovo since 1999 serves as a unique, contemporary case of what I refer to as “disaster colonialism,” borrowing from Naomi Klein’s conception of “disaster capitalism.”⁵ In Klein’s vocabulary, “disaster” refers to the vulnerable condition of a populace wherein it is unable to express its popular will against undemocratic economic neoliberal reforms, usually due to its focus on survival and recovery following a widespread crisis. Disaster colonialism in Kosovo, I argue, was a *project*, one which needed the fabrication of a “disaster,” (based on the historical event of the 1999 War of Independence) for a series of international organizations to establish missions that would proliferate following the end of the war. The conflict between Kosovo and Serbia over the ownership of territory was seized by the international community as a “disaster,” catalyzing a self-justifying mechanism that foreclosed the expression of popular democratic will in post-conflict Kosovo. Without the watchword of “disaster,” I claim, the interventions in Kosovo, by NATO, the UN, and the European Union (EU) would not have been possible. Understood in this way, disaster colonialism is a programmatic, top-down method of building a state following a crisis that undemocratically implements techniques of governance imported by a colonizing power, bypassing the will or the consent of the populace. By manufacturing a “disaster”—which declares a populace no longer capable of deciding the future of their government or the shape of their own society—the international community was able to format a legal, economic, and political system in Kosovo that served the interests of a Western, liberal-democratic power structure.

Disaster colonialism, then, attempts to diagnose the ways in which a foreign governing body is established, exercised, and multiplied in post-crisis situations using universally accepted norms of international human rights discourse to justify the wide-scale modeling of a society to serve not so much the interests of the governed, but rather the interests of the global order. In the case of Kosovo, the 1999 NATO intervention began the project of disaster colonialism by claiming a stake in the future of Kosovo. The UN continued the project for eight years via direct governance over Kosovo. After Kosovo declared independence in 2008, the UN transferred the remainder of its authority to the EU which utilized indirect methods of control—financial imperatives, Kosovo’s lack of alternative sources of growth and aid—to finalize the mission of disaster colonialism.⁶

The origins of international involvement in Kosovo did not begin with NATO, but the NATO intervention allowed for the colonial mission to take place. It established that the conflict was out of the control of Milošević, Kosovo President Ibrahim Rugova, the KLA, and other regional actors. As it had done in Bosnia-Herzegovina only a few years prior, the international

⁴ The work of Ralph Wilde, Antony Anghie, and Roland Paris has informed my perspective on the colonial nature of UNMIK. All three authors have drawn parallels between modern UN missions and the practices of colonialism. See: Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away*, Oxford Monographs in International Law (Oxford: Oxford University Press, 2008), <https://doi.org/10.1093/acprof:oso/9780199274321.001.0001>; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005); Roland Paris, *At War’s End: Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004).

⁵ Naomi Klein, *The Shock Doctrine* (New York, New York: Metropolitan Books, 2007).

⁶ The roles of NATO and the EU in “Project Kosovo” are discussed in my forthcoming undergraduate thesis: “‘Project Kosovo’: Disaster Colonialism in Kosovo Since 1999.”

community coalesced around the new governance and peacekeeping project: Kosovo. Thousands of international staff members relocated to the new missions in Kosovo in the direct aftermath of the destruction from the 1999 war. Many Kosovar Albanians as well as Kosovar Serbs faced extreme brutalities during the war, including murder, assault, rape, and forced removal as part of the ethnic cleansing campaign. It was in this environment that the UN and other organizations stepped into Kosovo. UNMIK, the OSCE mission, the EU mission, and the permanent NATO presence combined to create the longest and most expansive trusteeship mission in history.⁷

Kosovo as a post-conflict site gave the international community a center to focus their operations. For organizations like the EC/EU, state-building was a new field in which they could test their power and efficacy. If the post-conflict missions in Kosovo could be successful in creating a European-oriented, stable state, the international organizations could gain greater reputation and power in their global endeavors. Each major international organization was placed into separate spheres of operation termed “pillars.” Pillar I, “Humanitarian Affairs,” originally fell under the UN High Commissioner for Refugees (UNHCR) and was responsible for the return and replacement of refugees; Pillar II, “Civil Administration,” was run by the UN and consisted of daily administrative management of the territory; Pillar III, “Democratization and Institution Building,” was led by the OSCE; Pillar IV, “Economic Reconstruction,” fell under the jurisdiction of the EU.⁸ Each partition of tasks made clear the primary objectives of UNMIK in terms of the type of society it aimed to create in Kosovo: a human rights-respecting, bureaucratic, and democratic government (UNHCR, UN, OSCE) as well as an investment-friendly market economy (EU).

This level of state-building had not been undertaken before by the UN, making Kosovo the site of the largest modern experiment in government planning and control. The “disaster” of the 1999 war provided the grounds for this colonial experiment, the purpose of which was to prove the efficacy and hegemony of the liberal-democratic humanitarian style of “good governance” and development. In this paper, I will trace the points in which the UN’s disaster colonialism, administered by technocratic governance experts, reveals the costs of occupation, the collateral damage that is part of the state-building mission, and the tensions between expert rule—even from a human rights-centered organization like the UN—and democracy.

The International Commission on Kosovo’s 2000 report on the Kosovo crisis found that the intervention was “illegal but legitimate... because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule.”⁹ The uncertainty surrounding the legality and morality of NATO’s actions in Kosovo was quelled by this consensus, paving the way for the international community’s colonial project to establish its

⁷ The UN had briefly assumed governing responsibility in Cambodia in the early 1990s and would go on to create a similar trusteeship to Kosovo in East Timor, though under different conditions—the East Timorese had voted for independence and Indonesia had relinquished sovereignty over their territory—and for a four-year period. William G. O’Neill, *Kosovo: An Unfinished Peace* (Boulder, Colorado: Lynne Rienner Publishers, 2002), 31.

⁸ *Ibid.*, 10.

⁹ The Independent International Commission on Kosovo, “The Kosovo Report: Conflict- International Response-Lessons Learned” (Oxford: Oxford University Press, 2000), 4. The United Kingdom House of Commons Foreign Affairs Committee stated that the use of force by NATO was of “dubious legality,” but was justified morally. UK House of Commons Foreign Affairs Committee, Fourth Report, Section 1999-2000, para. 138.

roots in Kosovo.¹⁰ The UN was able to establish UNMIK without request from Kosovo, bypassing its traditional insistence on consensual missions due to the “urgency” of the post-conflict situation which made its power as a humanitarian organization necessary, at least according to the international community.¹¹

It is my argument that UNMIK’s administration was fundamentally colonial: the international community worked to control and shape the people and society of Kosovo, implementing Western governance and economic styles, while working against and around the very systems that they implemented. The difference between the colonialism of “old” and the disaster colonialism of the UN in Kosovo is that the UN’s hypocrisy between its rhetoric and action was due to its prevailing belief in its own mission rather than an ulterior motive to attain economic wealth. Those in charge of UNMIK and international organizations in Kosovo could accept the fact that many of their policies went against European and international legal conventions—some costs were necessary, according to their logic, in order to build a stable state for the people of Kosovo. It is this axiom, I argue, which guided UNMIK and other missions in Kosovo and which made colonialism possible as a humanitarian system of governance in the 21st century.

The NATO intervention in Serbia and Kosovo was officially terminated on June 9, 1999 when NATO and the FRY government signed the Kumanovo Technical Agreement in Kumanovo, Macedonia. The document created a framework for dispelling Serb troops from Kosovo and for the establishment of a NATO security presence in the province.¹² However, in terms of addressing the roots of the territorial conflict, the agreement was much weaker than the agreement at Rambouillet. Milošević rejected the Rambouillet Agreement before the war began largely because of its proposal that a referendum on the issue of independence would be carried out after three years of foreign international intervention in Kosovo. The Kumanovo Agreement focused more on the establishment of international administration rather than on questions popular will or sovereignty. Prior to international intervention, the KLA aimed to gain national sovereignty and independence for Kosovo; this was, however, irreconcilable with the goals of the North Atlantic organizations. As Ray Murphy writes, “The ultimate goal of the KLA was independence, but this was inconsistent with European Union and United States policy. The latter considered that political autonomy and guaranteed minority rights formed the only internationally acceptable solution to the status of Kosovo.”¹³

The Kumanovo Technical Agreement focused on the security apparatuses in Kosovo, stating that a UN mission would be deployed under a Security Council resolution and that all

¹⁰ The definition of colonialism differs in usage. I will utilize Immanuel Wallerstein’s conception of the term as a situation with a specific regime of power: “By the term colonial situation we simply mean that someone imposes in a given area a new institution, the colonial administration, governed by outsiders who establish new rules which they enforce with a reasonable degree of success. It means that all those who act in the colony must take some account of these rules...” Immanuel Wallerstein, *Africa*, (University of Nebraska Press, 2005), 31.

¹¹ Traditionally, peacekeeping missions would need consent from the state in question in order for the UN to establish peacekeeping forces. Christine Gray, “Host-State Consent and United Nations Peacekeeping in Yugoslavia Symposium: The United Nations, Regional Organizations, and Military Operations,” *Duke Journal of Comparative & International Law* 7, no. 1 (1996), 242.

¹² Spyros Economides, “Kosovo,” in *United Nations Interventionism 1991-2004* (United Kingdom: Cambridge University Press, 2007), 238.

¹³ Ray Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice* (Cambridge: Cambridge University Press, 2007), 72.

Yugoslav military forces would be removed from Kosovo’s territory and air space. The agreement established NATO’s sole authority over the use of force in Kosovo, banning any return of the Yugoslav and/or Serbian militaries. The following day, the UN would establish sole governing authority in the region. On June 10, 1999, the UN Security Council (UNSC) adopted Resolution 1244 under Chapter VII of the UN Charter.¹⁴ Article 11 of the Resolution gave UNMIK its main objectives:

11. Decides that the main responsibilities of the international civil presence will include:
 - (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
 - (b) Performing basic civilian administrative functions where and as long as required;
 - (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
 - (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peace- building activities;
 - (e) Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords (S/1999/648);
 - (f) In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement;
 - (g) Supporting the reconstruction of key infrastructure and other economic reconstruction;
 - (h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
 - (i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
 - (j) Protecting and promoting human rights;
 - (k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;¹⁵

Resolution 1244 was the basis of the UN’s power in Kosovo. It ensured that the functions of Kosovo’s society as well as the design of its future would be in the hands of international staff. The scope of the mission was unprecedented; with no clear terminating clause, UNMIK would be responsible for both administration over Kosovo as well as the facilitation of the territorial dispute.¹⁶ In the span of two days, Kosovo lost local authority to self-govern as well as establish its own armed forces.

The Resolution was seen as the ex post facto endorsement of the NATO intervention—the subject of legal and ethical debates on foreign intervention and sovereignty among international

¹⁴ The resolution was adopted with broad consensus; only China abstained from the vote.

¹⁵ United Nations Security Council, “Resolution 1244,” June 10, 1999, 124.

¹⁶ Alexandros Yannis, “The UN as Government in Kosovo,” *Global Governance* 10, no. 1 (2004), 67.

law experts—by the UNSC which had not initially approved the intervention.¹⁷ However, some scholars of international law who did not accept the humanitarian premise of the NATO intervention also questioned the legal validity of post-intervention involvement in Kosovo. They argued that the Kumanovo Agreement, which Resolution 1244 refers to as part of its legal basis, was made in violation of the Vienna Convention on the Law of Treaties which states that “a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.”¹⁸ The crux of the critical argument centered on the use of unsanctioned force by NATO which was in violation of the UN Charter. Legal debates notwithstanding, the UN mission was able to expand its legal and executive reach after the passage of Resolution 1244.

Per Article 11 of Resolution 1244, UNMIK was to transfer its executive capacities over time to the local government by establishing democratic institutions and elections for the territory.¹⁹ The transition to local ownership proved to be less important to the mission in the first years of operation, however. Only a month after the adoption of Resolution 1244, the mission began to unilaterally issue legislative acts and executive orders.²⁰ This campaign was led by the Secretary General Special Representative, a UN envoy position.²¹ The SRSG was an appointee of the UNSC who was to “control the implementation of the international civil presence, and ... coordinate closely with the international security presence to ensure that both presences operate towards the same goals...”²² The SRSG served as the head of the mission and the executive authority on all other international missions, making the position the single most powerful in the governing of Kosovo.

Neither the Kumanovo Agreement nor Resolution 1244 addressed the territorial dispute at the core of the conflict. The Resolution in fact recognized Kosovo as part of FRY, though it called for “substantial autonomy” for Kosovo, essentially placing the country back into the political situation which led to the 1999 War of Independence. The UN was to be responsible for many of the processes which would decide the fate of Kosovo, and one of its most important roles was to facilitate diplomatic talks between Pristina and Belgrade on the question of independence. However, the organization’s primary organ, the UNSC, was itself divided on this question: Russia

¹⁷ The use of force by NATO was required to be approved by international law; the intervention was justified by NATO and legal scholars by the contention that the humanitarian crisis in Kosovo was too grave to wait for UNSC approval (or possibly have the intervention rejected by the UNSC due to Serbia’s diplomatic ties with Russia).

¹⁸ Vienna Convention on the Law of Treaties art. 52, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331. See Enrico Milano, Security Council Action in the Balkans: Reweaving the Legality of Kosovo’s Territorial Status, *European Journal of International Law*, Vol. 14, 2003. See also: Barbara Delcourt and Nina Wilen, International Administration of Foreign Territories and Sovereignty, an Impossible Equation?, *Finch Yearbook of International Law*, Vol. 18, 2007, p. 68..

¹⁹ United Nations Security Council Resolution 1244 *On the Deployment of International Civil and Security Presences in Kosovo*, S/RES/1244 (10 June 1999).

²⁰ Marcus Brand, “The Development of Kosovo Institutions and the Transition of Authority from UNMIK to Local Self-Government,” *Center for Applied Studies in International Negotiations*, January 2003, 9.

²¹ Milano, 1000. The resolution states that it “authorizes the Secretary-General, with the assistance of relevant international organizations, 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, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.” UNSCR 1244, 3.

²² UNSCR 1244, p. 2.

and China maintained that Kosovo was part of Serbia, while the UK, U.S., and France supported Kosovo’s independence. Further, many countries in the UN did not recognize Kosovo for fear of encouraging their own domestic separatist movements. One of the conflict’s central tenets—the question of territory—could not be approached by the UN itself, let alone solved by the peacekeeping mission.²³

On July 25, 1999, UNMIK established Regulation 1999/1, giving all legislative and executive authority as well as the administration of the judiciary in Kosovo to its own structures. The regulation invested these authorities in the SRSG who had ultimate exercising power.²⁴ In this way, not only did the UN prevent any local input on governance, but it also refrained from allowing power to be exercised in a diffuse way among its staff in Kosovo. The issues of popular sovereignty and democracy, though given special respect in the UN Charter and international conventions, seemed to be a foregone conclusion in the UN’s post-Cold War peacekeeping mission style. It is this disregard and simultaneous reputation for setting standards of governance which made it possible for the UN to have such a high level of control over Kosovar society:

At the time of its deployment, the transitional administration functions of UNMIK made it one of the most complex and ambitious operations that the United Nations had ever undertaken. UNMIK’s responsibilities extended well beyond peacekeeping and peacebuilding to comprise an exceptionally wide range of governance functions. So broad was the scope of UNMIK’s authority—encompassing plenary executive, legislative, and judicial authority—that UNMIK can be said to belong to a *sui generis* class of operations (soon to include the UN mission in East Timor) sometimes referred to as “neo-trusteeships,” ‘international protectorates,’ and, more accurately, ‘international territorial administrations.’²⁵

UNMIK was to be responsible for governance in Kosovo and for the transition to local authority, yet it expressly denied and inhibited many of the values, principles, and structures which it aimed to impose on the Kosovar people. The mission was centered around the power of the SRSG who was given complete authority to appoint any member of his or her office, essentially utilizing an executive cabinet-style government to rule over the territory rather than a democratic structure. The position of SRSG became increasingly powerful, moving from “basic civil administration functions” to all administrative functions including those of the law, commerce, security, currency, etc.

In order for the UN to claim sole legal, executive and judicial authority, it refrained from the outright denial of the existence of local parallel structures and preventing any locals from holding political power in Kosovo—a tactic which may have caused the political elite in Kosovo to mobilize against the mission. UN Regulation 1/2000 established the Agreement on a Kosovo-UNMIK Joint Interim Administrative Structure (JIAS) which agreed that the three major political parties in Kosovo would share administrative responsibility over Kosovo. The JIAS gave the local

²³ Koops, 623.

²⁴ UNMIK, “Regulation No. 1999/1, S/1999/987,” July 25, 1999, <https://undocs.org/en/S/1999/987>. Yannis, “The UN as Government in Kosovo.”

²⁵ Joachim Alexander Koops et al., eds., *The Oxford Handbook of United Nations Peacekeeping Operations* (Oxford, United Kingdom: Oxford University Press, 2015), 618.

political parties some authority, but the regulation required that all official parallel structures would have to be abolished. As the regulation articulated:

Current Kosovo structures, be they executive, legislative or judicial (such as the “Provisional Government of Kosovo,” Presidency of the Republic of Kosovo”) shall be transformed and progressively integrated, to the extent possible and in conformity with this agreement, into the Joint Interim Administrative Structure.²⁶

For UNMIK, it was necessary to end all threats to its governing legitimacy by integrating any local government into its mission. There could not be structures which claimed to “exercise public authority in Kosovo” outside of its mission, or else it would not be as effective or powerful. Additionally, the implementation plan for the legislation banned:

...issuance of “official documents,” certificates or registration plates; appointments of personnel for ‘official’ posts; collection of customs/taxes and license fees; policing/law and order activities; wearing of ‘official’ uniforms, carrying of ‘official identity cards, or otherwise impersonating officials’; ‘official’ contacts/negotiations with UNMIK and KFOR/international representatives; and occupying public buildings.²⁷

The issue of self-administration was not seriously addressed until the first municipal elections in October 2000. Later in May 2001, UNMIK also allowed the formation of a 120-seat Kosovar assembly, nonetheless requiring quotas for ethnic representation: ten seats for Serbs and ten seats for other minorities.²⁸ The assembly would elect a president, who would then choose a prime minister. The structure was modeled after the European parliament systems with the special addendum of assembly ethnic quotas to reiterate the importance of the ethnic-tension narrative as justification for foreign involvement in the region.

Though the European style of governance was used in the assembly and governmental structure in Kosovo, European legal conventions were shifted to fit the needs of UNMIK and other international organizations in Kosovo. Regulation 2000/47 provided immunity for both UNMIK and KFOR members, ensuring that they would not be subject to local laws and the judicial system for any official actions.²⁹ This was in accordance with previous international conventions which established immunity for those involved in UN or other diplomatic relations. However, this strict observance of immunity over all other considerations undermined the mission’s supposed purpose—if the primary impetus for intervention and occupation was to prevent crimes against humanity, how could the international staff be given protection from the same standards of culpability that were applied against Milošević?³⁰ The issue of diplomatic immunity was used by

²⁶ Regulation 1/2000 of 14 January 2000.

²⁷ Kosovo-UNMIK Joint Interim Administrative Structure- Implementation Plan, 7 February 2000.

²⁸ O’Neill, 32. The seat quotas for ethnicity were not based on population distribution, but the ideal of minority representation for the sake of “reconciliation,” supporting the idea that ethnic tensions were an ever-present threat which needed quelling.

²⁹ Regulation 2000/47, 1999 “On Privileges and Immunities of international presences in Kosovo.”

³⁰ The hierarchy in order between immunity and human rights violations was ultimately determined by the European Court of Human Rights in the case of the *Stichting Mothers of Srebrenica and others* involving the United Nations and the government of the Netherlands’ role in the Srebrenica acts of genocide. The international court ruled that the

the UN to prevent prosecution against the mission after a group of Roma activists filed an official complaint in 2008 on behalf of 138 Roma, Ashkali, and Egyptian victims in Kosovo.³¹ In 1999, over 600 members of the Roma, Ashkali, and Egyptian ethnic groups in Kosovo had been placed by the UN into refugee camps set up on land which was known to be prone to health risks as it was located next to a coal mining complex. A report by the Human Rights Watch found that the area contained highly toxic levels of lead, leading to miscarriages, premature births, increased seizures and cognitive/behavioral disabilities in children.³² For many in the camps, the lead exposure caused lifelong symptoms and medical conditions. The UN did not take action to move the refugees until 2005, and no official amends have been made regarding the complaint due to the legal protection enjoyed by UN staff.³³

Though the staff of UNMIK and other international organizations could not be prosecuted in courts of law, they were still responsible for establishing the courts in Kosovo. After the first year of the UNMIK project, the UN created and staffed a judicial system, but the efficiency and transparency of the courts were questionable. UNMIK had initially utilized an “Emergency Judicial System” from June to December 1999 while it struggled to find qualified judges. The judges that were hired during this time earned less than half of the salaries of UNMIK drivers and interpreters.³⁴ In a case in Pec, Kosovo, a judge requested that a case involving a former prominent KLA member be dropped from his docket for fear of his own safety.³⁵ The UN could not remove the judicial system from its surroundings, and UNMIK did not take measures to address the root of such security concerns. The KLA had a symbiotic relationship with UNMIK. This translated to direct political power for the group during and after the UN administration.³⁶

The most powerful and repeated threat to the judicial system, however, did not come from the KLA but from the SRSG. A series of events during the 1999-2008 period exemplify the contradictions between the stated goals of UNMIK—implementation of democracy, autonomy, self-government—and the executive actions of the SRSG. In 2000, during the case of Afrim Zeqiri, then-SRSG Bernard Kouchner repeatedly denied court rulings in favor of his own dictums of guilt. In May 2000, Zeqiri voluntarily turned himself into authorities after an arrest order was made for him. He was a suspect for the murder of three Serbs and attempted murder of two others. After nearly two months in detention, the international investigating judge ordered his release as it was found that there were no grounds to proceed with the prosecution. The next day, the SRSG issued an executive order to continue Zeqiri’s detention for another 30 days, which he renewed again at the end of the order. “On the request of an international investigating prosecutor, the international judge issued a decision permitting extension of detention without specifying the exact detention

case was inadmissible, arguing that immunity rules held supremacy over the gravity of claims like genocide. Murati, 128.

³¹ Human Rights Watch, “Poisoned by Lead: A Health and Human Rights Crisis in Mitrovica’s Roma Camps,” Kosovo, June 23, 2009, <http://www.hrw.org/node/83942>.

³² Ibid.

³³ Milica Stojanovic, “UN Urged to Finally Compensate Lead-Poisoned Kosovo Refugees,” *Balkan Insight*, September 22, 2020, <https://balkaninsight.com/2020/09/22/un-urged-to-finally-compensate-lead-poisoned-kosovo-refugees/>.

³⁴ O’Neill, *An Unfinished Peace*, 82.

³⁵ O’Neill, 83.

³⁶ Adem Beha and Arben Hajrullahu, “Soft Competitive Authoritarianism and Negative Stability in Kosovo: Statebuilding from UNMIK to EULEX and Beyond,” *SOUTHEAST EUROPEAN AND BLACK SEA STUDIES* 20, no. 1, SI (January 2, 2020), 108.

period or providing any information about available legal remedies to challenge the detention time.”³⁷ After the judge’s clearance, Kouchner issued two more executive orders to prevent the “threat that the accused posed to public safety,” invoking the notion of preventive detention which is prohibited as grounds for detention by international human rights conventions.³⁸

This practice of preventive detention was repeated against Cele Gashi, Avdyl Behluli, and Jusuf Veliu in the case regarding the bombing of the Nis Express bus where ten people were killed by a remote-controlled bomb as the bus traveled from Gračanica, Kosovo to Nis, Serbia. The individuals were detained without legal basis and stayed in custody due to the use of multiple consecutive executive orders.³⁹ The repeated interference in the judicial system by the SRSG was criticized, leading to the issuance of a regulation establishing an international commission for the review of extrajudicial detentions.⁴⁰ This commission, however, was marked by problems of clarity, independence, and impartiality.⁴¹

In another case of executive overreach, this time involving restrictions on freedom of speech, the SRSG used executive orders against *Dita*, the daily Kosovo newspaper publication, to temporarily shut down the newspaper’s operations. *Dita* published an article on April 27, 2000 containing a photograph of an UNMIK employee of Serbian ethnicity, Petar Topoljski, along with allegations that he was engaged with criminal activities against Kosovar Albanians during the war. Topoljski was found dead two weeks after the publication of the article. In the wake of the murder, the newspaper stated that it had attempted to warn UNMIK about the employee and his background, but that UNMIK failed to take action.⁴² On June 3rd, SRSG Kouchner issued an executive order ordering the newspaper to close for eight days, claiming that the publication violated the spirit of Resolution 1244.⁴³ Kouchner bypassed all judicial process in order to reprimand the publication for its role as a possible aid to vigilantes. Within a few weeks, Kouchner went further and enacted Regulation 2000/37 on the “Conduct of Print Media in Kosovo,” a regulation which was to govern the behavior of broadcast and print media, limiting their freedoms of speech—a direct contrast to the stated values of the democratic structures the mission was to implement and the general respect of the international organizations for journalistic freedom. The regulation created the role of a Temporary Media Commissioner (TMC) who was responsible for creating and enforcing a regulatory regime for Kosovo media by imposing sanctions on owners, operators, publishers, and editors who did not “refrain from publishing personal details of any person, including name, address of place of work, if publication of such details would pose a serious threat to the life, safety or security of any such person through vigilance or otherwise.”⁴⁴ The TMC was given free rein to determine such violations and impose sanctions.

³⁷ Gjylbehare Bella Murati, *UN Territorial Administration and Human Rights: The Mission in Kosovo* (New York: Routledge, 2020), 77.

³⁸ See para. 1 of Article 5 of the European Convention on Human Rights

³⁹ Murati, *UN Territorial Administration and Human Rights: The Mission in Kosovo*, 78.

⁴⁰ See UNMIK Regulation 2001/18 on the Establishment of Detention Review Commission for Extra-Judicial Detentions based on Executive Orders, promulgated on 25 August 2001.

⁴¹ Murati, 79.

⁴² Nicolas Wood, Kosovo, Newspapers Exposes of War Criminals Led to Murder, *The Guardian*, 21 June 2000.

⁴³ Regulation ED/2000/2

⁴⁴ Section 4 Regulation 2000/37.

UNMIK’s manipulation of executive power was not limited to SRSG Bernard Kouchner. In October 2004, SRSG Søren Jessen-Petersen issued an executive decision to cancel the tender process of the Slovenian mobile phone provider Mobikos. Mobikos and the Telecommunications Regulatory Authority (TRA) had signed a contract together awarding Mobikos tender for mobile telephone service in Kosovo after a competitive bid for the deal.⁴⁵ The SRSG claimed that the process was flawed and would negatively impact Kosovo’s “ability to attract investment,” rejecting the contract.⁴⁶ The TRA continued with the scheduled contract, noting that the process had followed standard European practices. The Municipal Court in Pristina had ruled that the contract was legally valid, supporting the TRA. UNMIK responded with a statement soon after which declared the agreement null and void, referencing the earlier executive decision.⁴⁷ The Mobikos ordeal was significant in that it exemplified the willingness of UNMIK to directly override the judicial system that it had helped put into place. For UNMIK, this was necessary according to the economic logic which they used to justify the decision; canceling the contract “was necessary in the best interests of Kosovo and its economic development, in particular its ability to attract investment.”⁴⁸ The concern for Kosovo was at the core of what invalidated the local judicial decision—in essence, the international government had to intervene to protect the people from themselves.

As mentioned previously, the disaster colonialism of UNMIK relied on the vulnerability of the local population to acquiesce to the takeover of control. In 2004, this aspect of the mission was challenged when the Kosova Action Network (KAN), an activist group in Pristina, protested against Resolution 1244 and protested for Kosovo’s independence from both Serbia and the UN.⁴⁹ Later in June of 2005, activists from the KAN organized a protest against the presence of UNMIK again, writing the slogan “No negotiations, Self-Determination” on the walls of UNMIK buildings in Kosovo. Kosovo and UN police arrested, jailed, and convicted hundreds of people linked to the protest, including Albin Kurti, the founder of KAN who would later become the head of “Vetëvendosja,” the self-determination party in Kosovo and the prime minister of Kosovo for a period in 2020.⁵⁰ After the 2005 protest, the Contact Group (France, Germany, Italy, Russia, the United Kingdom, and the United States) created “Guiding Principles” to find a resolution to the issue of Kosovo’s sovereign status, detailed below:

1. The settlement of the Kosovo issue should be fully compatible with international standards of human rights, democracy and international law and contribute to regional security.
2. The settlement of Kosovo’s Status should conform with democratic values and European standards and contribute to realizing the European perspective of Kosovo, in

⁴⁵ Murati, *UN Territorial Administration and Human Rights: The Mission in Kosovo*, 80.

⁴⁶ ED/ 2004/25 of 20 October 2004.

⁴⁷ UNMIK Press Briefing Notes, 23 March 2005, found in Murati, *UN Territorial Administration and Human Rights: The Mission in Kosovo*, 80.

⁴⁸ United Nations, Economic and Social Council, Implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UNK/1, 15 January 2008.

⁴⁹ Anita McKinna, “The Vetëvendosje Movement in Kosovo: An Increasing Focus on Nationalism,” *Balkan Analysis*, 2012, <http://www.balkananalysis.com/kosovo/2012/02/22/the-vetevendosje-movement-in-kosovo-an-increasing-focus-on-nationalism/>.

⁵⁰ *Ibid.*

particular, Kosovo’s progress in the stabilization and association process, as well as the integration of the entire region in Euro-Atlantic institutions.

3. The settlement should ensure multiethnicity that is sustainable in Kosovo. It should provide effective constitutional guarantees and appropriate mechanisms to ensure the implementation of human rights for all citizens in Kosovo and of the rights of members of all Kosovo communities, including the right of refugees and displaced persons to return to their homes in safety.

4. The settlement should provide mechanisms to ensure the participation of all Kosovo communities in government, both on the central and on the local level. Effective structures of local self-government established through the decentralization process should facilitate the coexistence of different communities and ensure equitable and improved access to public services.

5. The settlement of Kosovo’s status should include specific safeguards for the protection of the cultural and religious heritage in Kosovo. This should include provisions specifying the status of the Serbian Orthodox Church’s institutions and sites and other patrimony in Kosovo.

6. The settlement of Kosovo’s status should strengthen regional security and stability. Thus, it will ensure that Kosovo does not return to the pre-March 1999 situation. Any solution that is unilateral or results from the use of force would be unacceptable. There will be no changes in the current territory of Kosovo, i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country. The territorial integrity and internal stability of regional neighbours will be fully respected.

7. The Status settlement will ensure Kosovo’s security. It will also ensure that Kosovo does not pose a military or security threat to its neighbours. Specific provisions on security arrangements will be included.

8. The settlement of Kosovo’s status should promote effective mechanisms to strengthen Kosovo’s ability to enforce the rule of law, to fight organized crime and terrorism and safeguard the multiethnic character of the police and the judiciary.

9. The settlement should ensure that Kosovo can develop in a sustainable way both economically and politically and that it can cooperate effectively with international organizations and international financial institutions.

10. For some time Kosovo will continue to need an international civilian and military presence to exercise appropriate supervision of compliance of the provisions of the Status settlement, to ensure security and, in particular, protection for minorities as well as to monitor and support the authorities in the continued implementation of standards.⁵¹

The Contact Group made special notice in their statement of the people of Kosovo’s role in deciding the future of Kosovo. However, the principles centered on the European perspective and the maintenance of the European accession process, effectively deciding the larger orientation for the future of Kosovo before any vote could occur. The Contact Group’s statement exemplified the

⁵¹ Contact Group, “Guiding Principles of the Contact Group for a Settlement of the Status of Kosovo,” November 2005, https://www.esiweb.org/pdf/kosovo_Contact%20Group%20-%20Ten%20Guiding%20principles%20for%20Ahtisaari.pdf.

realization in the international community of the importance of a final decision on sovereign status after the KAN protests and other outbreaks of violence in Kosovo.⁵²

The UN envoy to Kosovo, Marti Ahtisaari, began final status talks between Serbia and Kosovo in 2006. After 17 rounds of futile talks, Ahtisaari abandoned the diplomatic process.⁵³ In February 2007, he proposed the Comprehensive Proposal for the Kosovo Status Settlement (CSP), known as the Ahtisaari Plan. The plan enforced the formation of the International Steering Group (ISG), the International Civilian Representative for Kosovo (ICR) and the EU Special Representative (EUSR) who would be appointed by the Council of the EU. The CSP was to exist as the superior legal power to the laws and constitution in Kosovo. Though the Ahtisaari plan was rejected in the UNSC by Russia due to its recommendation for eventual independence for Kosovo, the plan was explicitly mentioned in the February 2008 declaration of independence and effectively incorporated into the Kosovo constitution.⁵⁴ The “unofficial” CSP was terminated in 2012, four years after Kosovo’s official declaration of independence. KAN had organized a protest against the Ahtisaari Plan in 2007 which ended with two dead and dozens of injured protesters after UNMIK police fired out-of-date bullets at the crowd.⁵⁵ The leader of KAN, Albin Kurti, was arrested by the UNMIK police and spent nearly two years in jail for organizing the protest. Regardless of the popular protests, Kosovo’s political elite fully accepted the obligations of the CSP. The international missions would continue, though Kosovo would have more autonomy in its own governance.

The disaster colonial project in Kosovo is inextricably linked to the global system in which it took place. The end of the Cold War and the triumph of liberal democratic world-order led to an international consensus on state-building and peacekeeping at the time. “Good governance,”⁵⁶ one of the leading paradigms guiding the actions of international institutions, was used as the basis for the colonial governance structure in Kosovo, notably distilled into UNMIK’s motto of “standards before status.”⁵⁷ Kosovo was a laboratory for the international community to prove the efficacy of the new democratic world-order, through the design and implementation of an undemocratic humanitarian intervention. The intervention spanned legal, political, economic, and moral dimensions. In the case of Kosovo, UNMIK administered the adoption of a market economy, European currency, open capital controls, and parliamentary government ensuring that the territory would follow the North Atlantic model of a state.⁵⁸ The enforcement of this model was *part* of the

⁵² This includes the March 2004 riots in which 19 people were killed and Serb cultural heritage sites were destroyed. Denisa Kostovicova, “Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective,” *International Peacekeeping* 15, no. 5 (November 1, 2008), 635.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, 636.

⁵⁵ McKinna, “The Vetëvendosje Movement in Kosovo: An Increasing Focus on Nationalism,” 2012.

⁵⁶ See: Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005) 253.

⁵⁷ Bernhard Knoll, “The Kosovo Status Process and the Prospect of Sovereignty,” in *OSCE Yearbook 2008*, Yearbook on the Organization for Security and Co-Operation in Europe (OSCE) (Institute for Peace Research and Security Policy at the University of Hamburg, 2008), 121.

⁵⁸ The belief that liberal democracy was the only way to achieve development and progress in human rights was common after the fall of the Soviet Union, made especially popular in 1992 by political scientist Francis Fukuyama and his declaration of “The End of History” and the victory of liberal, capitalist democracy. See: Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992). A major line of challenges to this belief came from those who argued that the East and South Asian countries had achieved substantial economic development and

humanitarian project. Kosovo’s “disaster” provided the rationale for the state-building project, justifying its continued existence, and prepared the ground for the long-term occupation and design of Kosovo’s society.

later human rights protections through long-term economic protectionism and strict authoritarian rule. See: Robert Hunter Wade, “Japan, the World Bank, and the Art of Paradigm Maintenance: The East Asian Miracle in Political Perspective”, (May 1996) 217 *New Left Review*, 3-36.

Works Cited

- Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press, 2005.
- Beha, Adem, and Arben Hajrullahu. “Soft Competitive Authoritarianism and Negative Stability in Kosovo: Statebuilding from UNMIK to EULEX and Beyond.” *SOUTHEAST EUROPEAN AND BLACK SEA STUDIES* 20, no. 1, SI (January 2, 2020): 103–22. <https://doi.org/10.1080/14683857.2019.1709686>.
- Brand, Marcus. “The Development of Kosovo Institutions and the Transition of Authority from UNMIK to Local Self-Government.” *Center for Applied Studies in International Negotiations*, January 2003, 1–54.
- Contact Group. “Guiding Principles of the Contact Group for a Settlement of the Status of Kosovo,” November 2005. https://www.esiweb.org/pdf/kosovo_Contact%20Group%20-%20Ten%20Guiding%20principles%20for%20Ahtisaari.pdf.
- Economides, Spyros. “Kosovo.” In *United Nations Interventionism 1991-2004*, 217–45. United Kingdom: Cambridge University Press, 2007.
- Fukuyama, Francis. *The End of History and the Last Man*. New York: Free Press, 1992.
- Gray, Christine. “Host-State Consent and United Nations Peacekeeping in Yugoslavia Symposium: The United Nations, Regional Organizations, and Military Operations.” *Duke Journal of Comparative & International Law* 7, no. 1 (1997 1996): 241–70.
- Human Rights Watch. “Poisoned by Lead: A Health and Human Rights Crisis in Mitrovica’s Roma Camps.” Kosovo, June 23, 2009. <http://www.hrw.org/node/83942>.
- Independent International Commission on Kosovo. “The Kosovo Report: Conflict- International Response- Lessons Learned.” Oxford: Oxford University Press, 2000.
- Klein, Naomi. *The Shock Doctrine*. New York, New York: Metropolitan Books, 2007.
- Knoll, Bernhard. “The Kosovo Status Process and the Prospect of Sovereignty.” In *OSCE Yearbook 2008*, 121–57. Yearbook on the Organization for Security and Co-Operation in Europe (OSCE). Institute for Peace Research and Security Policy at the University of Hamburg, 2008.
- Koops, Joachim Alexander, Norrie MacQueen, Thierry Tardy, and Paul D. Williams, eds. *The Oxford Handbook of United Nations Peacekeeping Operations*. Oxford, United Kingdom: Oxford University Press, 2015.

- Kostovicova, Denisa. “Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective.” *International Peacekeeping* 15, no. 5 (November 1, 2008): 631–47. <https://doi.org/10.1080/13533310802396160>.
- McKinna, Anita. “The Vetëvendosje Movement in Kosovo: An Increasing Focus on Nationalism.” *Balkan Analysis*, 2012. <http://www.balkananalysis.com/kosovo/2012/02/22/the-vetevendosje-movement-in-kosovo-an-increasing-focus-on-nationalism/>.
- Murati, Gjylbehare Bella. *UN Territorial Administration and Human Rights: The Mission in Kosovo*. New York: Routledge, 2020.
- Murphy, Ray. *UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice*. Cambridge: Cambridge University Press, 2007.
- O’Neill, William G. *Kosovo: An Unfinished Peace*. Boulder, Colorado: Lynne Rienner Publishers, 2002.
- Paris, Roland. *At War’s End: Building Peace after Civil Conflict*. Cambridge: Cambridge University Press, 2004.
- Stojanovic, Milica. “UN Urged to Finally Compensate Lead-Poisoned Kosovo Refugees.” *Balkan Insight*. September 22, 2020. <https://balkaninsight.com/2020/09/22/un-urged-to-finally-compensate-lead-poisoned-kosovo-refugees/>.
- United Nations Security Council. “Resolution 1244,” June 10, 1999.
- UNMIK. “Regulation No. 1999/1, S/1999/987,” July 25, 1999. <https://undocs.org/en/S/1999/987>.
- Wilde, Ralph. *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away*. Oxford Monographs in International Law. Oxford: Oxford University Press, 2008. <https://doi.org/10.1093/acprof:oso/9780199274321.001.0001>.
- Yannis, Alexandros. “The UN as Government in Kosovo.” *Global Governance* 10, no. 1 (2004): 67–81.