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THE FORMATION AND ROLE OF THE KOSOVO SECURITY FORCE

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THE FORMATION AND ROLE OF THE KOSOVO SECURITY FORCE

Agilolf Kesselring

Although Kosovo declared its independence on February 17, 2008, its political status remained an object of dispute in an international context. While all the G7 states have so far recognized Kosovo, others have denied the existence of any independent state of that name, with Russia and Serbia the most relevant among these. The first threat assessment of the U.S. Director of National Intelligence, Dennis Blair, stated – pointing to Kosovo (especially Mitrovicë) and Bosnia-Herzegovina – that the events in the Balkans pose the greatest threat to stability in Europe during 2009.¹ Rearmament, i.e. the formation of a Kosovo Security Force (KSF), is a crucial issue with respect to the question of the sovereignty of the young republic. The force's mission is described in general terms as being “an instrument to support all the people of Kosovo”,² but it is exactly this claim which imposes the greatest difficulties.

The lightly armed force of 2,500 active members and 800 being on the reserve list conducts crisis response and civil protection operations in Kosovo and assists the civilian authorities in responding to natural disasters and other emergencies. The KSF is designed to be something less than a “fully fledged army”, but its outward appearance is one of an armed force carrying light weapons and able to serve in peace-keeping missions outside Kosovo while observing a military structure with a chain of command, military duties and military ranks.³ Such duties include

search and rescue operations, explosive ordnance disposal, the control and clearance of hazardous material, fire fighting and other humanitarian assistance tasks.”⁴ In the understanding of the Kosovo government, the KSF is a functional force that conforms to NATO standards. Its establishment is also seen as a success as far as the future Euro-Atlantic integration of Kosovo is concerned, as the weak economy of the new republic means that it is far from being able to seriously apply for EU membership. The Serb understanding is the inverse of this: as Kosovo's independence is unacceptable, the KSF cannot be lawful and is seen as a threat to Serbia's territorial integrity.

¹ *Balkans, the Biggest Threat to Europe in 2009*, Kosovapress, 13.2.2009.

[www.kosovapress.com/ks/?cid=2,2,64637 / 30.9.2009] *Five Top Fears (Other Than al Qaeda) of U.S. Spy Agencies*, U.S. News, 13.2.2009.

[www.usnews.com/articles/news/world/2009/02/13/ / 30.9.2009]

² *Kosovo Security Force, Invest in your future, join the KSF*, flyer by the Ministry for the KSF [www.mksf-ks.org/page=1,84 and www.mksf-ks.org/page=2,84 / 30.9.2009]

³ *Works on Kosovo Security Force Starts Jan*

21, *BalkanInsight*, 14.1.2009

[www.balkaninsight.com/en/main/news/15984 / 30.9.2009]

⁴ *The activation of KSF*, Ministry for the Kosovo Security Force, Public Affairs Office, 21.01.2009. [www.mksf-ks.org/page=2,24,16 / 30.9.2009]

The KSF's impact on ethno-territorial questions

Among the over 50 states which have recognized the independence of the Republic of Kosovo⁵ so far are all the G7 states and majorities among the members of the UN Security Council, the Council of Europe and the OSCE. All its immediate neighbours other than Serbia, i.e. Albania, Montenegro and Macedonia, have recognized the new state. Serbia maintains that Kosovo is still part of Serbia, and stated in the Security Council debate one day after the declaration of independence that "Serbia will never recognize the independence of Kosovo [...] For the citizens of Serbia and its institutions, Kosovo will forever remain a part of Serbia."⁶ Within the region, Serbia is supported by Greece,⁷ the other EU members opposed to the recognition of Kosovo being Spain, Slovakia, Romania and Cyprus - all of them states with significant national minorities. The most powerful state denying Kosovo's independence is Russia, which claims openly that it will not recognize Kosovo⁸.

⁵ For current information on recognitions, see the homepage of the President of the Republic of Kosovo [www.president-ksgov.net/?id=1,67,67,67,e / 30.9.2009]

⁶ Cited after: Alice Lacourt, *The Approach of the United Kingdom*, in: *Kosovo: International Law and Recognition*. A Summary of the Chatham House International Law Discussion Group meeting held on 22 April 2008. p. 3. [www.chathamhouse.org.uk / 30.9.2009]

⁷ *Greek FM: Position on Kosovo Unchanged*, B 92, 1.2.2009. [www.b92.net/eng/news/in_focus.php?id=91&start=0&nav_id=56842 / 30.9.2009]

⁸ *Kosovo: International Law and Recognition*. A Summary of the Chatham House International Law Discussion Group meeting held on 22 April 2008, p. 3. [www.chathamhouse.org.uk / 30.9.2009]

But beside the sovereignty aspect of the Kosovo question, there are at least two other threats to Serbia from the successful construction of the KSF: the internal danger to Serbia's territorial integrity and the external danger to Euro-Atlantic integration. Serbia is likely to fear that the strong Hungarian minority in its autonomous province of Vojvodina could be encouraged by the success of Kosovo's drive for independence.⁹ This is probably also the main reason why Slovakia, with its own Hungarian minority, has taken sides with Serbia on the Kosovo question.¹⁰

Probably the most difficult internal problem for Serbia concerns the Albanian minority, which forms a local majority population around the Preševo valley in the triangle between Kosovo and Macedonia in southern Serbia proper. This minority and the activities of the UÇPMB organization, local successor to the UÇK, up to 2001 at least, seem to have made the *de facto* secession of Kosovo from Serbia since 1999 impossible for Serb politicians to accept. Thus, even if Serbia – despite the Lazar myth – were to "jump over its own shadow" and accept Kosovo's independence, it would still not rid itself of the Albanian minority problem. Furthermore, it is not certain how the Hungarian minority would react if Serbia's disintegration were to continue.

⁹ About 300,000 ethnic Hungarians live in the Serbian province of Vojvodina, about 100,000 of them in the town of Subotica. *Ungarns Minderheit in der Vojvodina blickt nach Europa*, Deutsche Welle, 7.5.2009. [www.dw-world.de/popups/popup_printcontent/0,4233878,00.html / 30.9.2009]

¹⁰ A typical example is the refusal to name a square in Bratislava after St. Steve, the mythical Hungarian king.

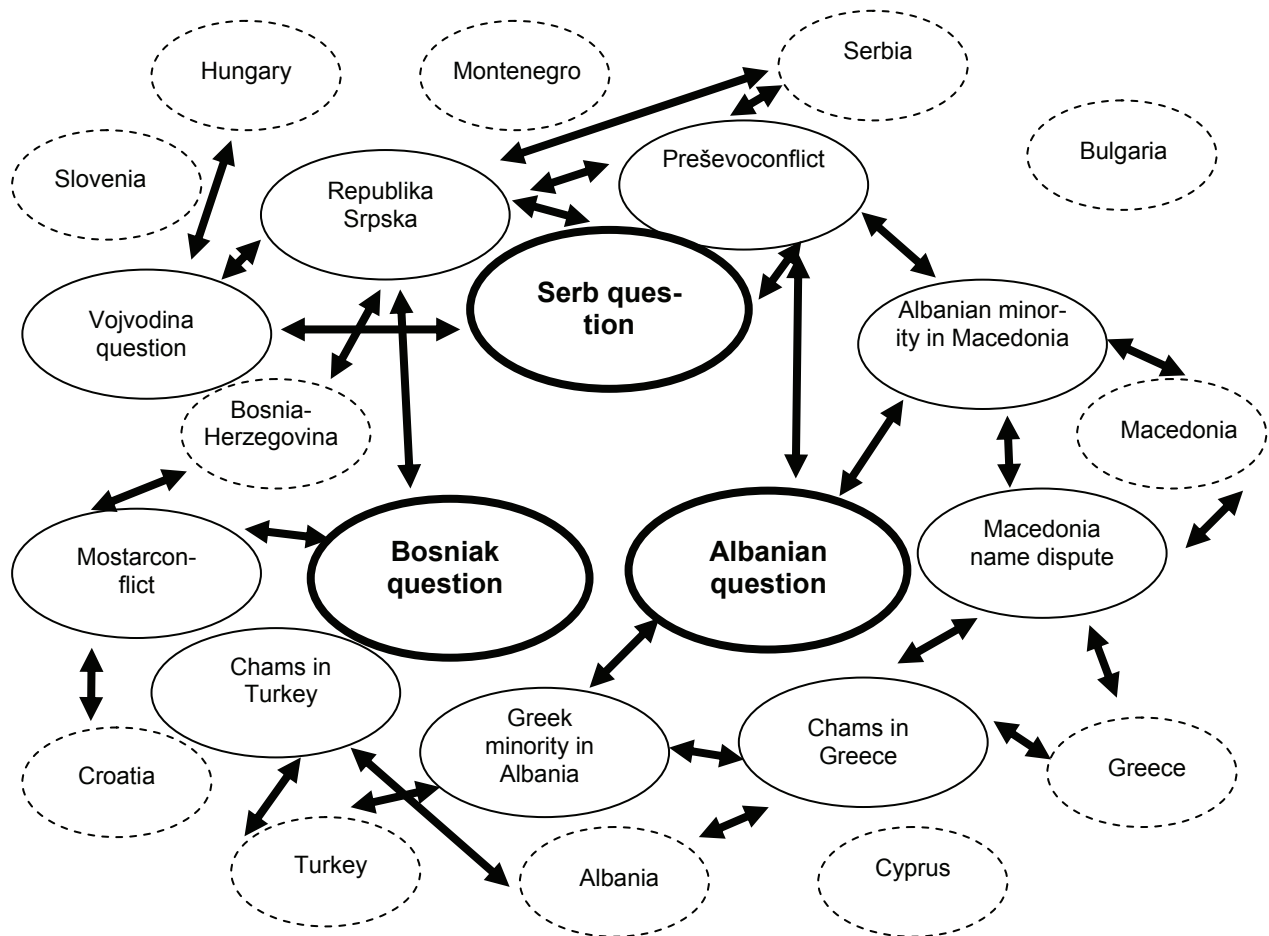


Fig. 1: Interdependence of population and territory problems in the Balkans

Macedonia, after a small-scale civil war in 2001, has accepted its Albanian minority by signing the treaty of Ohrid, and has therefore also recognized Kosovo, in order to calm the situation among the Albanians and to satisfy the United States and the EU countries, whose support is needed to break the Greek blockade of its Euro-Atlantic integration process. There is still a fear of Albanian separatism in Macedonia, however, as shown by the detention of the leader of the Kosovar “Vetëvendosje” (Self-determination) organization, Albin Kurti, at the anniversary celebrations for the Albanian “Zgjohu” movement.¹¹ The exterior “danger” for

Serbia is linked to the Euro-Atlantic integration process. If the KSF were one day to contribute to NATO missions, Kosovo would be even more closely identified with NATO than it is now. The existence of the KSF therefore makes the North Atlantic alliance even less popular nowadays than it already was.

The already complicated situation within the region is made even more difficult by the status of the Balkans as a traditional zone of Russian influence. In Russian eyes, the growing NATO interest in the region, which became evident in its military operations in

¹¹ *Macedonia Detains Kurti at the Border*, Balkan Insight, 6.5.2009.

[<http://balkaninsight.com/en/main/news/18677> / 30.9.2009]

Bosnia-Herzegovina and Kosovo, and also in the NATO enlargement to include Romania and Bulgaria, must remind them of the times of the Cold War,¹² when NATO tried to use historical anti-Soviet sentiments in Yugoslavia and Romania as an instrument in what was commonly known as its “roll-back policy”. This scenario was completed by the admission of Croatia and Albania to NATO membership in 2009.¹³ One example of how interlinked Balkan problems are with “world-power politics” of relations between NATO and Russia could be the attempted “calling off” of ethnically Serb soldiers from the 17-member Bosnian Army team participating in a NATO and Partnership for Peace exercise in Georgia by Milorad Dodik, the leader of the Republika Srpska in Bosnia-Herzegovina.¹⁴

A “Bosniaization” of Kosovo?

Probably the strongest interdependence is to be found between Serbian policies in Kosovo and Bosnia-Herzegovina. The latter – still under EU control – is an outcome of the Dayton Agreement and consists of two entities, the Bosnian-Croat Federation of cantons, following an extremely decentralized state model, and the Republika Srpska, which used to be Milošević’s puppet para-state with a clear Serb ethnic majority. While it is feared that the problems experienced in Mitrovicë in Kos-

ovo could lead to a “Bosniaization” of Kosovo, with the Serb minority in the north being able to block decisions in Prishtina on the orders of Belgrade,¹⁵ it is felt in Serbia that “giving up” in Kosovo would also have a negative influence on the Serbian stand in Bosnia-Herzegovina. As Bosnia itself is in effect divided into a Serb and a non-Serb block, it is impossible in that country to take a clear stand on Kosovo, which means, that Kosovo’s independence is not recognized but also it is not condemned, either. Although Bosnian EU membership is still a distant prospect, NATO is pushing for deeper relations with Bosnia, leading up to membership, as shown by the NATO military exercise “Joint Endeavour 2009” in Bosnia-Herzegovina.¹⁶ On the other hand, NATO membership is widely rejected within the Republika Srpska, as shown by the recent speculations by some Bosnian Serb officials that NATO might have a “hidden agenda” for bringing about the destruction of the Republika Srpska.¹⁷

¹² Alpo Juntunen, *Itään vai länteen? Venäjän vaihtoehdot*, Jyväskylä 2003, p. 165.

¹³ Agilolf Kesselring, *NATO – Towards a New Strategic Concept 2010*, National Defence University, Department of Strategic and Defence Studies, Series 4: Working Papers, No. 33, Helsinki 2009, p. 4-5.

¹⁴ Srečko Latal, *Bosnian Serbs Called Off from NATO Drill*, *Balkan Insight*, 8.8.2009. [<http://balkaninsight.com/en/main/news/18732/30.9.2009>]

¹⁵ The term “Bosniaization” is frequently used by the leader of the Vetëvendosje movement, Albin Kurti, to refer to the paralysing of Kosovo’s state-building process by establishing ethnically based structures which impeded national development. Kurti – a student activist in the 1997 protests – worked under Adem Demaçi as General Political Representative of the UÇK office in 1998. Albin Kurti, *What is happening, where are we going, and what should we do?*, 17.8.2007.

[www.vetevendosje.org/sh/images/stories/Gazeta/english_summary_%20albin_kurti.pdf / 30.9.2009]

¹⁶ Srečko Latal, *Bosnia Gears Up for NATO Exercises*, *Balkan Insight*, 21.4.2009.

[<http://balkaninsight.com/en/main/news/18352/30.9.2009>]

¹⁷ Srečko Latal, *NATO Exercise in Bosnia Prompts Concerns*, 18.8.2009.

[<http://www.balkaninsight.com/en/main/news/21670/30.9.2009>]

Albanians in the Balkans

Albania	approx. 3,600,000
Kosovo	approx. 2,100,000 (2007)
Macedonia	approx. 500,000 (2002)
Serbia (proper)	approx. 70,000 (estimated 2009)
Montenegro	approx. 30,000 (2008)
Greece	approx. 40,000 (Chams in 2003)
Turkey	approx. 1,300,000 (2008)

The KSF and the “Albanian question”

The Albanian impact on Kosovo and the impact of Kosovo on Albania have often been neglected, as Albanian policy seems to be of a rather passive nature. A closer look reveals that although Albania does not seem to be pushing for any pan-Albanian model, the dream of a greater Albania – sometimes as a kind of Albanian federation within Europe – is very much alive among some Albanians in Kosovo, Montenegro, Greece, Macedonia and Preševo, albeit as a diffusive feeling rather than a clear political agenda.¹⁸ A small country like Kosovo needs a stronger partner in the region, and as the only neighbour, who is able and willing to play such a role, future developments will be directed towards closer cooperation with Albania and could potentially lead some day to a form of merger – probably within an EU framework, either in the Benelux style or as a kind of Albanian “reunification”. Although such goals are not often overtly formulated by Albanian or Kosovo-Albanian politicians, many developments seem to be leading in that direction, including the ambitious Pan-Albanian road projects linking the harbours of Albania with the areas in Macedonia and Kos-

ovo that have an Albanian population. Due to its explosive nature, there is hardly any open discussion of the Albanian question, especially as it could also serve as a precedent for dealing with the Serb question in Bosnia-Herzegovina and re-opening the Bosniak or Croat question there. On the other hand, simply neglecting national questions has usually been seen in history to raise greater difficulties rather than solving the problems. Eventually national questions demand political settlements.

So far the “Badinter principle” – the principle of not breaking up the former republics of Yugoslavia any further – has prevented any open discussion of the above issues. The “Ahtisaari Plan” followed this principle, but interpreted the status of Kosovo up until the legal breach with the Milošević regime in Yugoslavia as “a republic in all but name”. The Constitution of the Republic of Kosovo follows the “Badinter principle” by prohibiting both the partition of Kosovo’s territory (e.g. the ceding of Mitrovicë to Serbia) and unification with other states (e.g. Albania) or parts of other states (e.g. the Albanian parts of Macedonia or the Preševo Valley in Serbia).

¹⁸ *Pan-Albanianism. How Big a Threat to Balkan Stability?* International Crisis Group, 25.2.2004.

The KSF as a problem in International Law

Not only Serbia but also Russia, Greece and Spain have claimed that the secession of Kosovo would contravene international law, the main argument being that Kosovo's independence would be an offence against Serbia's territorial integrity as safeguarded in UN/SC resolution 1244. Furthermore, it has been claimed that as the "Comprehensive Proposal for Kosovo Status Settlement" (the "Ahtisaari Plan") has not been approved by the United Nations Security Council – due to a predicted Russian veto – it should be regarded as invalid and in contradiction of UN/SC 1244. If this were the case, the "Ahtisaari Plan" could not serve as a legal basis for forming the KSF. This legalistic argument can be found, for example, in the statements by the Serbian Minister for Kosovo, Goran Bogdanović, that the "formation of the KSF runs counter to Resolution 1244."¹⁹

The main – and therefore most heavily disputed – question concerning UN/SC 1244 is whether it defends Serbian territorial integrity or whether, as seen from the other side, it states that Kosovo should have autonomy within Serbia or should be independent. Those scholars who claim that Kosovo's secession would be against international law refer to the words of UN/SC 1244 in the context of Article 2, Paragraph 2, of the UN Charter, which emphasizes territorial integrity.²⁰ State sovereignty

and territorial integrity have indeed been core values in international law for centuries.²¹ On the other hand, there is the position that secession is not incompatible with the principle of territorial integrity, but that secessionist claims rather involve disputed claims to territory.²² In the light of the history of the disputed Kosovo territory this is likely to be the case. The passage in UN/SC 1244 to which the advocates of the illegality of Kosovo independence refer reads "reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and Annex 2".²³ This passage is quite clearly part of the preamble to the resolution, however, and therefore does not have any legal impact but should rather be seen as a political statement. This is also shown by the reference to the Helsinki Final Act and to Annex 2 (both of which are political statements and not legal acts, as is similarly the case with Annex 1, which again mentions territorial integrity).²⁴ Furthermore, it can be claimed that the Federal Republic of Yugoslavia anyway ceased to exist with the seces-

¹⁹ *KSF is breach of Resolution 1244*, B92, 30.1.2009.

[http://www.b92.net/eng/news/in_focus.php?id=91&start=0&nav_id=56803 / 30.9.2009]

²⁰ Thomas Breitwieser, *Internationales Engagement im Spiegel des Völkerrechts*, in Bernhard Chiari, Agilolf Kesselring (eds.), *Wegweiser zur Geschichte Kosovo*. 3. Aufl. Paderborn 2008, p. 138 (136-151).

²¹ Milena Sterio, *The Kosovar Declaration of Independence: "Botching the Balkans" or Respecting International Law?*, Cleveland State University Research Paper 08-158, September 2008, *Georgia Journal of International & Comparative Law*, p. 6.

[<http://ssrn.com/abstract=1270637> / 30.9.2009]

²² Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 *Yale Journal of International Law* p. 177-202.

²³ For the full text of UN/SC 1244 see: [<http://www.nato.int/Kosovo/docu/u990610a.htm> / 30.9.2009]

²⁴ Thomas Breitwieser, *Internationales Engagement im Spiegel des Völkerrechts*, in Bernhard Chiari, Agilolf Kesselring (eds.), *Wegweiser zur Geschichte Kosovo*. 3. Aufl. Paderborn 2008, p. 144-146 (136-151).

sion of Montenegro in 2006,²⁵ and that Serbia, as its successor, has agreed to massive territorial changes, which have not been claimed to be illegal. If the legal assessment of a document on the basis of its wording does not lead to a clear decision, it is usual in international law to evaluate the document in terms of its genesis and the intention with which it was written. It has never been seriously doubted that the context of the UN/SC resolution in 1999 was the forced extradition of Yugoslav and Serb forces from Kosovo under the new concept of “responsibility to protect”²⁶ in order to stop the “ethnic cleansing” of Albanians. The status of Kosovo was to be defined later, as no agreement could be reached in the Security Council due to Russia’s power of veto. It was therefore stated that the territorial integrity of Yugoslavia should not be touched, as no settlement could be anticipated in the foreseeable future, and the matter was left open until a settlement was eventually reached. As is widely known – outside of political propaganda – the claim regarding the illegality of Kosovo’s secession from Serbia is not based only on an assessment of UN/SC 1244, as “the resolution does not rule out one outcome over the other”²⁷, but on the existence of UN-

MIK, with a mandate to maintain the status quo until a settlement is agreed upon. The argument is that secession is unlawful because there are no legal grounds on which Kosovo could have been granted secession.

Most scholars – including some of those who recognize the legality of a Kosovo state – deny that Kosovo’s independence can be justified in terms of the right of secession under international law, because they claim that it is no longer the case that the Kosovo Albanians would be threatened if Kosovo were under Serbian rule. On the other hand, it is claimed that Kosovo is a “non-state”, in terms of not having a defined territory, population, government or independence from external control.²⁸ This explains the logic of the Serb interest in obstructing the functioning of institutions in Kosovo, and especially in Mitrovicë. As long as there is instability in Mitrovicë, the Kosovo government – which is said to be illegal and therefore a “non-government” – has to rely on international police forces and KFOR to guard against further problems and in that way demonstrates its need for external help. The lack of control over Mitrovicë also places a question-mark over the territory, people and government of Kosovo. This means that Kosovo is not a state and therefore its independence is illegal. The blocking of multiethnic institutions, e.g. by expelling the Serbs from the Kosovo Police Service and not contributing to the KSF, has not done any good for the Serbs living in Kosovo, but it has done much to destabilize, and thereby de-legitimize, the Kosovan state. This also explains why Serbia is not in favour of any agreement

²⁵ Jean d’Aspremont, *Kosovo and International Law: A Divided Legal Scholarship*, Interest Group on Peace and Security 2008, p. 4-5 [<http://ssrn.com/abstract=1272194> / 30.9.2009]

²⁶ Thomas Breitwieser, *Ethnisch zentrierte Kriegsführung auf dem Balkan und ihre Auswirkung auf Völkerrecht und Völkerrechtspolitik*, in: Bernhard Chiari, Gerard P. Gross (eds.), *Am Rande Europas? Der Balkan-Raum und Bevölkerung als Wirkungsfelder militärischer Gewalt*, München 2009, p. 340 (337-345).

²⁷ Ralph Wilde, *Kosovo – Independence, Recognition and International Law*, in: *Kosovo: International Law and Recognition*. A Summary of the Chatham House International Law Discussion Group meeting held on 22 April

2008, p. 17. [www.chathamhouse.org.uk / 30.9.2009]

²⁸ *Ibid.* p. 17.

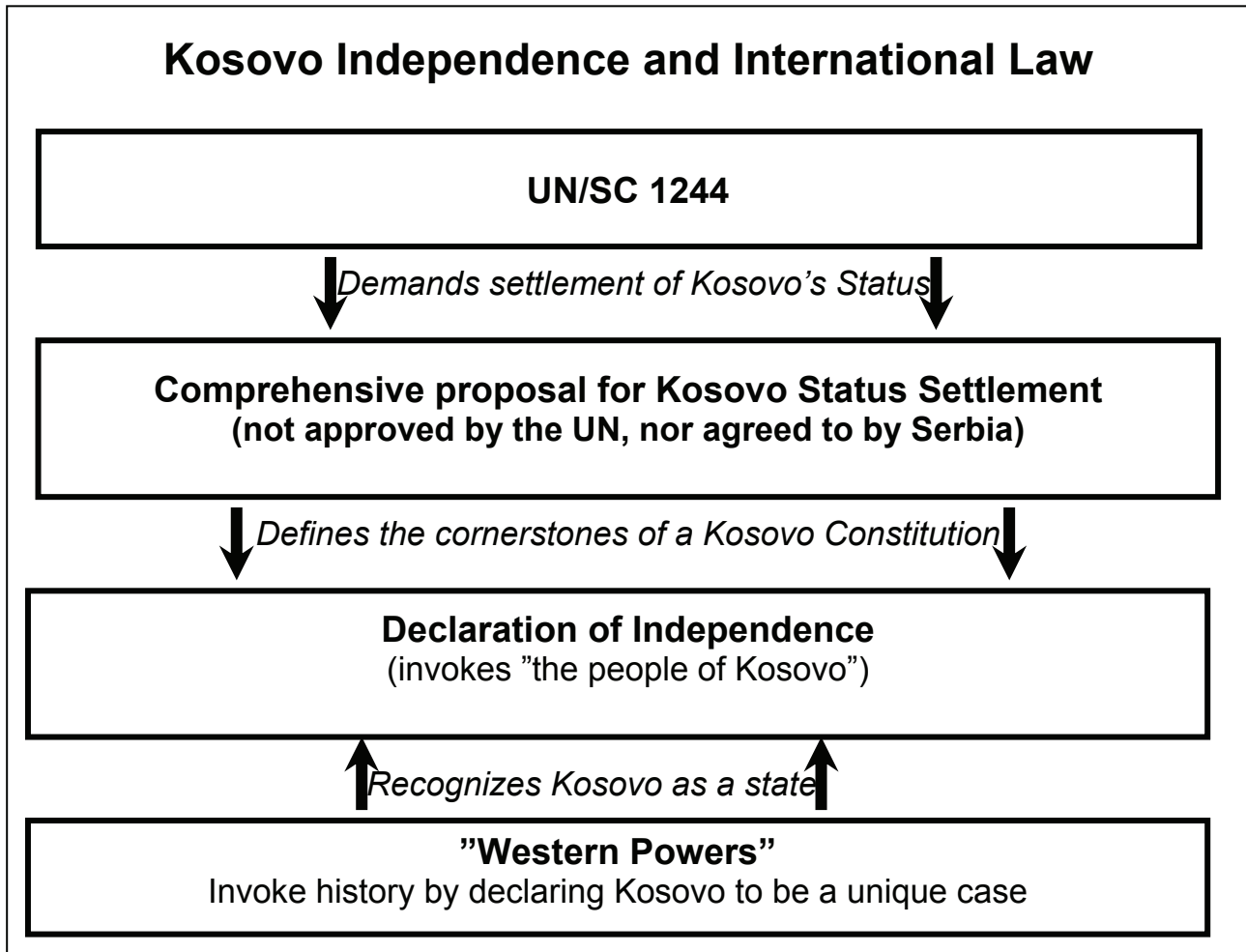


Fig. 2: Legal sources of Kosovo's independence based on international law

concerning the Serb minority, nor of the separation of Mitrovicë. This bears a sad resemblance to the case of the Krajina Serbs, who, after having been used against Croatia by the Milošević regime for its territorial and political goals, were either murdered or expelled.

Since the parliament of Kosovo proclaimed independence on February 17, 2008, the country has been in a crucial phase of state building, a process which, in spite of the legal terms in which the proclamation was couched, is far more of a political than a legal one. Legally there is no such thing as a "half-state", but in reality – as history teaches us – there is still a wide gap between a non-state and what we consider a "real state". Part of the declara-

tion of independence consisted of an assurance from the Kosovo Parliament that it would adhere to the "Ahtisaari plan", the "Comprehensive Proposal for Kosovo Status Settlement" drawn up by Martti Ahtisaari, the Special Envoy of the Secretary-General of the United Nations, for determining the future status of Kosovo. One can therefore perhaps speak best of a "conditional independence", any expression which did in fact find its way into the constitution. While the government in Prishtina sees the "Ahtisaari plan" as a part of international law, Beograd – as discussed above – stresses that it is just a proposal, one to which Serbia has never agreed and which contradicts UN/SC resolution 1244. In practise, however, the "Ahtisaari plan" forms

together with UN/SC 1244 the most important political and perhaps also legal document concerning Kosovo. It defines the conditions for independence and has therefore historically been the precondition for political recognition by most of the Western countries. It states that the Constitution of Kosovo among others must provide that “Kosovo is a multi-ethnic society based upon the equality of all its citizens [...] The official languages of Kosovo will be Albanian and Serbian; [...] Kosovo will have no territorial claims against and will not seek union with another State or part of any State; [...] The Government of Kosovo, including its civil service, will reflect the diversity of the people of Kosovo.”²⁹ The most important provisions concerning the KSF are that Kosovo is designated as a *multi-ethnic, bi-lingual state*, whose civil service – and also its military forces – will reflect “*the diversity of the people of Kosovo*”.

The more concrete part of the Ahtisaari plan related to the Kosovo Security Force reads as follows:

“The Settlement will significantly enhance the powers and responsibilities of the authorities in Prishtina with respect to Kosovo’s security. A new Kosovo Security Council, reporting to the Prime Minister, will be established to develop a comprehensive security strategy.

[...] A new professional and multi-ethnic Kosovo Security Force (KSF) will be established.

The KSF will have a maximum of 2,500 active members and 800 reserve members, without heavy weapons. Members of the KSF will be recruited from across Kosovo through a formal selection process developed jointly by Kosovo and the International Military Presence (IMP)

The KSF will initially be primarily responsible for crisis response, explosive ordnance disposal, and civil protection. The KSF will be designed and prepared to fulfil other security functions not appropriate for the police or other law enforcement organizations. The IMP, in coordination with the ICR, will decide when to authorize the KSF to engage in these new security functions.

The current KPC, having accomplished its goals, including the facilitation of Kosovo’s post-conflict recovery, will be dissolved within one year after the end of the transition period. The International Community will develop a Demobilization and Reintegration process for the KPC retirees.”³⁰ In addition the “Ahtisaari plan” states, that “for an initial period, the IMP [i.e. KFOR, A.K.] will also supervise, monitor and have executive authority over a new Kosovo Security Force”.³¹

Summing up so far, the Kosovo Security Force is designed to serve as the military force of a multiethnic, bilingual state, reflecting “the diversity of the people of Kosovo”, with a strength limited to 2,500 active members, without heavy weapons and under the executive authority of KFOR. All later documents concerning the KSF in the legal framework of the Republic of Kosovo refer to Kosovo’s “super-constitution”, the “Ahtisaari plan” and

²⁹ <http://www.unosek.org/docref/020707Constitutional%20Provisions-F.doc>

³⁰ *The Comprehensive Proposal for Kosovo Status Settlement*, 2.7.2007, Office of the Special Envoy of the Secretary-General of the United Nations for the future status process of Kosovo (UNOSEK) website [<http://www.unosek.org/docref/020707Security-F.doc> / 4.10.2009]

³¹ *Joint press conference by Special Envoy Martti Ahtisaari and NATO Secretary-General Jaap de Hoop Scheffer*, 16.2.2007, UNOSEK website [www.unosek.org/pressrelease/2007-01-16%20Fact%20Sheet%20ICR-ESDP.doc / 4.10.2009]

have to be regarded in the context of this.

The KSF and the Kosovo Constitution

Having stated the above, we should nevertheless follow the chain of legal acts based on the assumption that Kosovo is an independent state, for it is in the nature of entities in the process of state building that they are contested and branded as non-states by their adversaries. The substance of the relevant Kosovo laws on the KSF derives from the realities set out in the international documents – no matter whether these have been approved by the UN or not.

The Constitution of the Republic of Kosovo invokes neither the “Ahtisaari Plan” nor UN/SC 1244, but reads “the sovereignty of the Republic of Kosovo stems from the people”.³² On the other hand, it follows precisely the cornerstones for a Kosovo constitution as given in the “Ahtisaari plan”. It precludes any merger with Serbia, Albania or any Albanian-inhabited territory such as Preševo in Serbia proper or Tetovo in Macedonia: “The Republic of Kosovo shall have no territorial claims against, and shall seek no union with, any State or part of any State.”³³ Under Chapter XIII [Final Provisions] the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari plan) is defined as a “super-constitution” in the following wording:

“Notwithstanding any provision of this Constitution:

1. All authorities in the Republic of Kosovo shall abide by all of the Repub-

lic of Kosovo’s obligations under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. They shall take all necessary actions for their implementation.

2. The provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo.

3. The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail.”³⁴

While the “Ahtisaari- plan” is part of the “Final Provisions” of Chapter XIII, the constitution deals with the International Military Presence under Chapter XIV “Transitional Provisions”, in Article 153, which reads as follows: “Notwithstanding any provision of this Constitution, the International Military Presence has the mandate and powers set forth under the relevant international instruments including United Nations Security Council Resolution 1244 and the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. The Head of the International Military Presence shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in theatre regarding interpretation of those aspects of the said Settlement that refer to the International Military Presence. No Republic of Kosovo

³² Constitution of the Republic of Kosovo, Art. 2,1; the constitution can be downloaded at [<http://www.kushtetutakosoves.info/?cid=2,1 / 30.9.2009>]

³³ Ibid. Art. 1,3.

³⁴ Ibid. Art. 143.

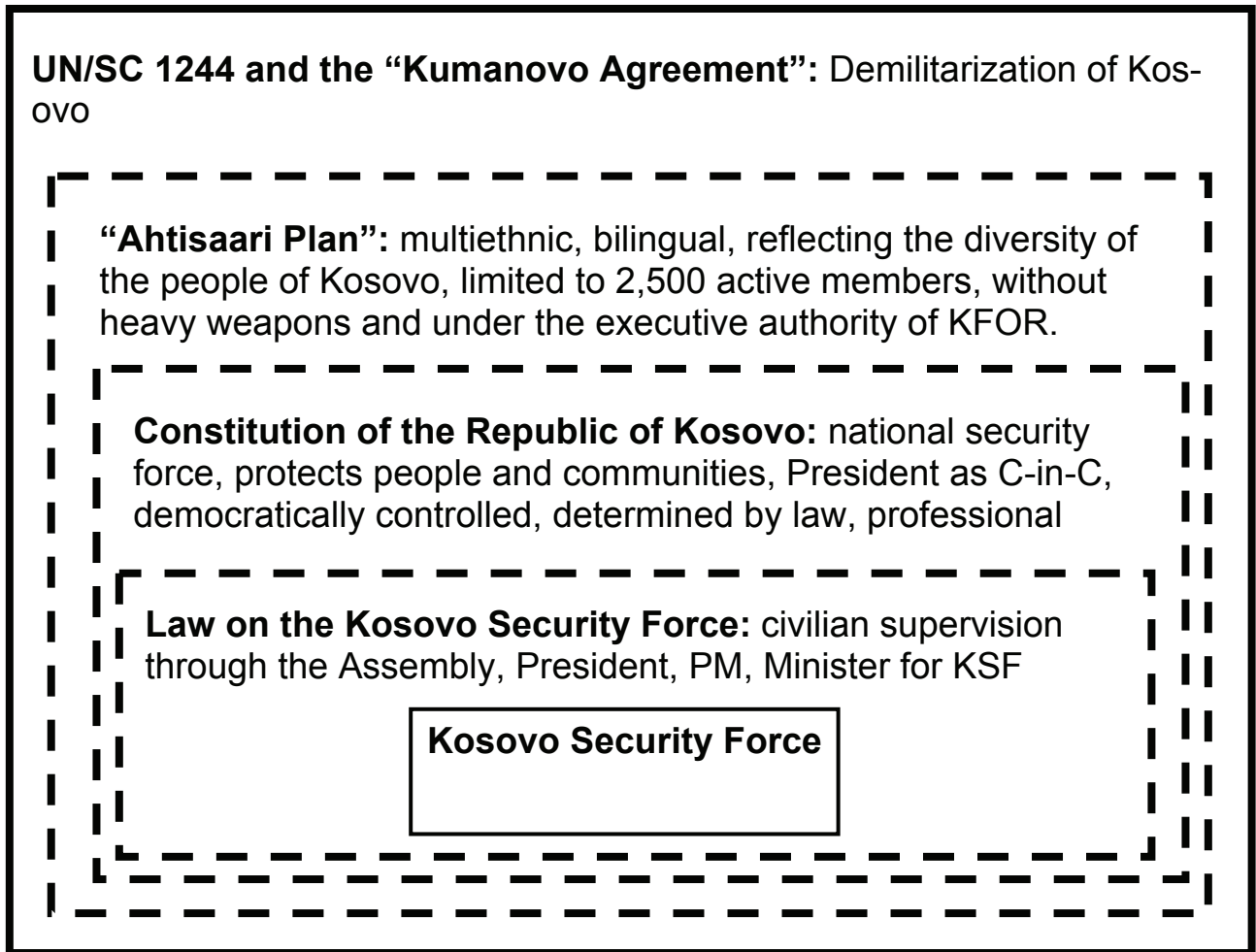


Fig. 3: Legal framework of the KSF

authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in this Article.”³⁵ It is significant that Article 153 is the only place in the constitution where reference is made to UN/SC 1244 and then only where the International Military Presence (IMP), i.e. KFOR, is concerned. Even then, it is not only UN/SC 1244 that is given as the source of the power of the Head of the IMP, but also the “Ahtisaari plan”. This is symptomatic of an interpretation of international law which sees UN/SC 1244 as outdated and the Comprehensive Proposal as having taken its place. The Head of the IMP stands above the constitution, but

only for a transitional period, until he himself (or the community which he represents, i.e. NATO) decides that this period shall be terminated.

Chapter XI of the Constitution of the Republic of Kosovo, entitled “The Security Sector”, comprises two pages dealing with issues concerning the security of the young state. The relevant articles for the present purpose are 125 [General Principles], 126 [Kosovo Security Force], 127 [Kosovo Security Council] and 131 [State of Emergency]. Articles 128 to 130 deal with the Kosovo Police, the Kosovo Intelligence Agency and the Civilian Aviation Authority. It is significant that words like “armed forces”, “military”, “defence”

³⁵ Ibid. Art. 153.

or “war” are consistently avoided in the constitution, although the defence task of the KSF is implicitly accepted under Article 131, as “the President of the Republic of Kosovo may declare a State of Emergency when there is a need for emergency defence measures”³⁶ and in this case he may also “upon consultation with the Government and the Assembly, order mobilization of the Kosovo Security Force.”³⁷ In Article 126, the KSF is defined as “a national security force for the Republic of Kosovo”, which is explicitly allowed “to be sent abroad”.³⁸ Its constitutional task is to “protect the people and communities of the Republic of Kosovo”.³⁹ The term “communities” emphasizes that the “people of Kosovo” are viewed as belonging to different communities (Albanians, Serbs, Bosniaks, Roma etc.). It is for this reason that its composition should “reflect the ethnic diversity of the people of the Republic”.⁴⁰

Besides this emphasis on ethnic diversity – derived from the “Ahtisaari plan” – the constitution also allows for “democratic control” over the KSF in many other ways. After stating the general principle that “civilian and democratic control over security institutions shall be guaranteed”,⁴¹ the constitution provides a system of checks and balances between the legislative and executive bodies of the republic. It gives budgetary power to the Assembly of the Republic of Kosovo,⁴² and it stipulates that the President of the Republic shall be the Commander-in-Chief of the KSF⁴³ and that he shall appoint the

Commander of the KSF upon recommendation from the Government⁴⁴ and develop a security strategy for the republic together with the “Kosovo Security Council”.⁴⁵ The latter “is chaired by the Prime Minister with the support of the government”⁴⁶

To sum up, the constitution follows the “Ahtisaari plan” explicitly in matters of democratic control, multiethnicity and the demand for a professionalized force. The restrictions on sovereignty, such as the exclusion of heavy weapons, personnel limits (2500 / 800) and the executive authority of KFOR over the forces, are implicitly reflected in Article 143 [Comprehensive Proposal]. Furthermore, Articles 153 [International Military Presence], empowers NATO in practice to be the watchdog for settlements to be arrived at under the “super-constitution”, i.e. the “Ahtisaari plan”, during the transitional period.

Below the level of the constitution, the relevant laws defining the Kosovo Security Force and its political and legal context are the Law on the Kosovo Security Force⁴⁷, the Law on the Establishment of the Kosovo Security Council⁴⁸, the Law on the Ministry for the Kosovo Security Force⁴⁹ and the Law on Service in the Kosovo Security Force.⁵⁰ Together these laws define the

³⁶ Ibid. Art. 131,1,(1).

³⁷ Ibid. Art. 131,7.

³⁸ Ibid. Art. 126,1.

³⁹ Ibid. Art. 126,2.

⁴⁰ Ibid. Art. 126,4.

⁴¹ Ibid. Art. 125,4.

⁴² Ibid. Art. 125,5.

⁴³ Ibid. Art. 126,3.

⁴⁴ Ibid. Art. 126,5.

⁴⁵ Ibid. Art. 127,1.

⁴⁶ Ibid. Art. 127,2.

⁴⁷ Law No. 03/L-046 on the Kosovo Security Force.

⁴⁸ Law No. 03/L-050 on the Establishment of the Kosovo Security Council.

⁴⁹ Law No. 03/L-045 on Ministry for the Kosovo Security Force.

⁵⁰ Law No. 03/L-082 on Service in the Kosovo Security Force.

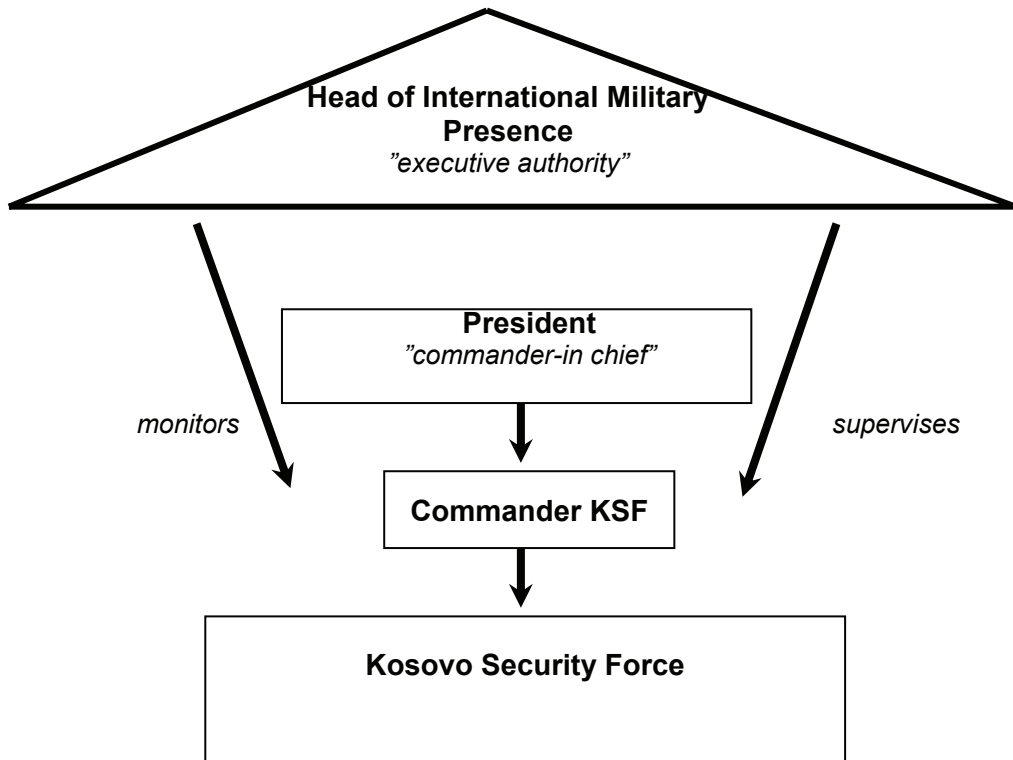


Fig. 4: Current structure of the KSF supreme command

President, who is referred to in the constitution as the “commander-in-chief”, as the “supreme commander” of the KSF,⁵¹ but give “general control” over the KSF to the Minister for the KSF,⁵² who can be seen as the central authority concerning the KSF, as he controls and oversees the KSF with power derived from the Prime Minister⁵³ and administers it “including all powers vested in the Commander of the KSF.”⁵⁴ He is also the only person who can order deployment of the troops, on authorization from the Prime Minister⁵⁵ and with the approval of the President and the Assembly.⁵⁶ The Minister for the KSF

⁵¹ Law No. 03/L-046 on the Kosovo Security Force, Art. 5.1.

⁵² Law No. 03/L-045 on Ministry for the Kosovo Security Force, Art. 3.1.

⁵³ Law No. 03/L-046 on the Kosovo Security Force, Art. 6.1.

⁵⁴ Law No. 03/L-045 on Ministry for the Kosovo Security Force, Art. 3.1.

⁵⁵ Law No. 03/L-046 on the Kosovo Security Force, Art. 6.2 a).

⁵⁶ Ibid. Art. 4.1 e) and 5.2 (in case of emer-

gency). also has a central position in terms of personnel, as he recommends the Commander of the KSF⁵⁷ to be appointed by the President and, following consultation with the commander, recommends the promotion of suitable persons to the rank of general.⁵⁸ He is also a member of the Security Council, which develops the national security strategy together with the President.⁵⁹ Bearing in mind that the Head of International Military Presence has “executive authority” over the KSF, this means that the Minister is also the main point of contact with the IMP, serving as a “switchboard” between the needs of the Prime Minister and the IMP. The

gency).

⁵⁷ Law No. 03/L-045 on Ministry for the Kosovo Security Force, Art. 3.6.

⁵⁸ Ibid. Art. 3.7 and 3.8.

⁵⁹ Law No. 03/L-050 on the Establishment of the Kosovo Security Council, Art. 3.1.

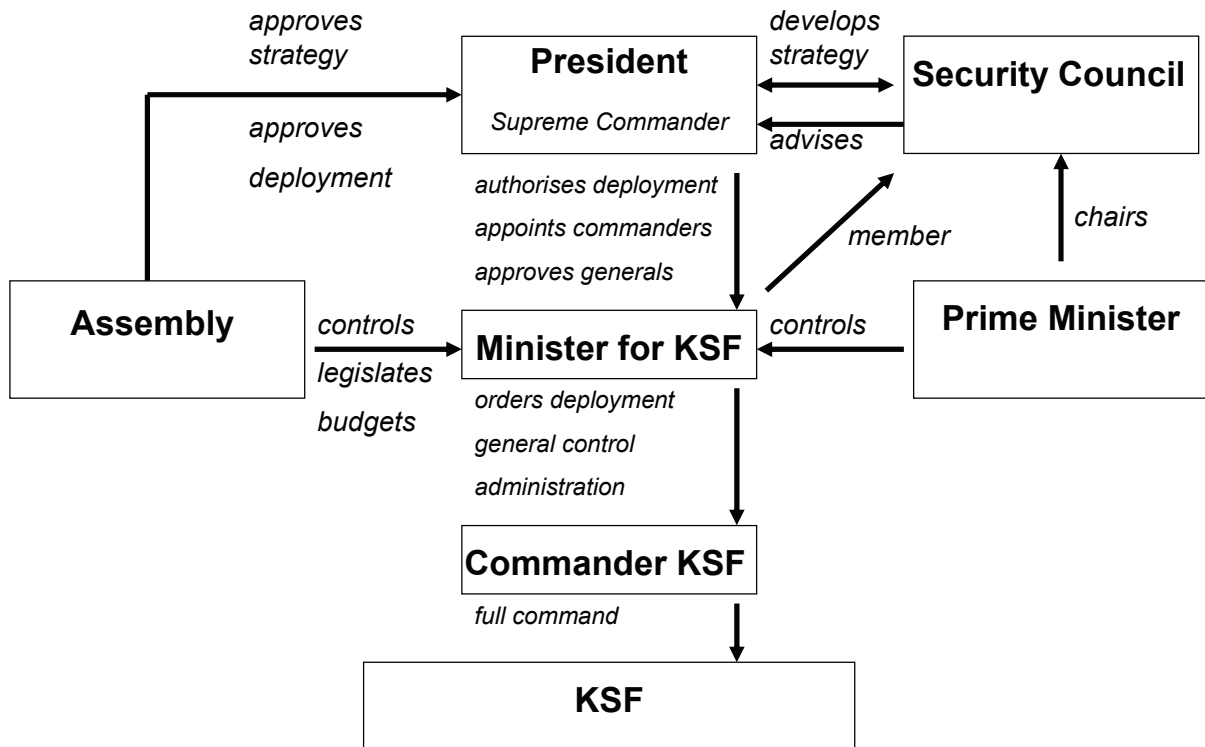


Fig. 5: Democratic control over the KSF, with checks and balances

powers of the President, which are emphasized in the constitution, seem far more modest if one regards the practical provisions laid down in the relevant laws. There could be also a certain degree of duality between the President and the Prime Minister, as the latter chairs the Security Council⁶⁰ which defines the security strategy, while the Assembly (parliament) is empowered with strong control functions, legislates in “all matters related to the organization, funding, manning, equipping and basing of the KSF,”⁶¹ and probably most important, approves “the annual budget and the continuous ten-year plan”⁶² for the KSF (to be ratified by the Government and reviewed by the Security Council⁶³). The Assembly

may also oblige the “Commander of the Kosovo Security Force to submit an annual report and to answer questions personally as required”⁶⁴, “demand the presence of the Commander [...] at its meetings and to answer any questions”⁶⁵ and inform the IMP about “sources of funds and equipment provided to the KSF”⁶⁶. As the chart above (Fig. 5) shows, checks and balances, parliamentary control and civilian supervision of the forces is defined in the corresponding laws. The functioning of the system is to be controlled by the IMP during the transition period.

⁶⁰ Ibid. Art. 4.1.

⁶¹ Law No. 03/L-046 on the Kosovo Security Force, Art. 4.1 c).

⁶² Ibid. Art. 4.1 d).

⁶³ Law No. 03/L-050 on the Establishment of the Kosovo Security Council, Art. 2.3.

⁶⁴ Law No. 03/L-046 on the Kosovo Security Force, Art. 4.2 a)

⁶⁵ Ibid. Art. 4.2 b).

⁶⁶ Ibid. Art. 4.2 e)

The KSF and its history through the KPC

After the war of 1998/99 some 17 348 UÇK fighters had been demobilized and transformed into the Kosovo Protection Corps (KPC),⁶⁷ with 3,000 active members (+ 2000 reserves).⁶⁸ Over the subsequent years the KPC was rated as the most hated organization among the Serb minority,⁶⁹ and correspondingly was the most trusted organization among the Albanian majority in Kosovo.⁷⁰ The KSF is not meant to be a direct successor of the KPC or the UÇK, but one cannot escape the fact that it has developed out of it.⁷¹ There are also striking similarities in the tasks of these organizations. Thus, where UNMIK Regulation No. 1999/8 defined the activities of the KPC as follows: to provide disaster response services, to perform search and rescue operations, to provide a capacity for humanitarian assistance in isolated areas, to assist in de-mining and to contribute to the rebuilding of infrastructure and communities,⁷² the “Law on Dissolution of the Kosovo Protection Corps” explains the similarities in as the words “in order to ensure the provision of such services without disruption, responsibility for

them shall be transferred to KSF”.⁷³ This means that *concerning its mission*, the KSF is a *de facto* follow-up organization to the KPC. The only new task mentioned is the possibility of deployment outside Kosovo in the framework of NATO crisis management operations.

While its mission has remained almost unchanged, the KSF differs greatly in structure from the KPC. While the KPC structure resembled the territorial structure of the UÇK, with the latter’s operation zones reorganised into Regional Task Groups, initially under the same commanders, the establishment of the KSF marks a clear break in organization. With its 2,500 active members, the KSF is no longer territorial but centralized, although with camps distributed all over Kosovo (Ferizaj, Gjilan, Mitrovicë, Pejë, Prishtinë and Prizren). Its main operative units are the Rapid Reaction Brigade and the Operations Support Brigade.

The values espoused by the KSF are “self-commitment, courage, *esprit de corps*, mutual respect and trust, discipline, integrity, loyalty and professionalism”. It claims to reject and oppose “anti-constitutional views, illegal drug use, criminal convictions, political party membership and unwillingness to work in a multiethnic environment”, and assigns itself the attributes “professional”, “multiethnic”, “equal in terms of gender”, “politically impartial” and “all-volunteer”.⁷⁴ On the other hand, the KSF is likely to represent some continuity of tradition with the KPC and

⁶⁷ Albanian: Trupat të Mbrojtjes së Kosovës, TMK.

⁶⁸ *What happened to the KLA?* ICG Balkans Report No. 88, Prishtina, p. 7.

⁶⁹ James Pettifer, *The Kosovo Protection Corps in Transition*, Conflict Studies Research Center, paper G112, July 2003, p. 3.

⁷⁰ *An Army for Kosovo*. ICG Europe Report No. 174, 28 July 2006, p.18.

⁷¹ Agilolf Kesselring, *Vom Terroristen zum Nationalgardisten? Bewaffnete Formationen im Kosovo 1994-2009*, in: Bernhard Chiari, Gerhard P. Gross, *Am Rande Europas? Der Balkan - Raum und Bevölkerung als Wirkungsfelder militärischer Gewalt*, München 2009, p. 321 (309-327).

⁷² UNMIK Regulation 1999/8.

⁷³ Law No. 03/L-083 on Dissolution of the Kosovo Protection Corps, Art. 4.2.

⁷⁴ According to the flyer “Kosovo Security Force, Invest in Your future, join the KSF” issued by the Ministry for the KSF; [www.mksf-ks.org/page=1,84 and www.mksf-ks.org/page=2,84 / 30.9.2009]

the UÇK. As the Minister for the KSF, Fehmi Mujota, expressed it in a meeting with the President of the UÇK War Veterans' Organization, Muharrem Xhemajli, the force continues to be committed to a readiness for cooperation on issues that are important to both, including documentation of the UÇK archives and maintenance of UÇK monuments.

In terms of insignia, the KSF has broken completely with the symbols of the UÇK and KPC. While the black Albanian eagle on a red background could be found in different interpretations on coats of arms etc. in the KPC, the KSF insignia show a golden lion on a blue ground, resembling the ethnically neutral blue-yellow flag of the Republic of Kosovo.⁷⁵ All insignia are intended to be ethnically neutral, and political or religious symbols are forbidden on uniforms, KSF property or other equipment.⁷⁶ The same principles apply to the names of KSF barracks.⁷⁷ Kosovo law also states clearly that former KPC members have no special rights and that no other insignia than those sanctioned by the KSF are to be worn.⁷⁸ Only photographs of the President of Kosovo or persons within the KSF chain of command are allowed to be displayed.⁷⁹ Nevertheless, given the high prestige enjoyed by the UÇK within Kosovo, it remains to be seen how these regulations will be complied with in practice. For example, the main barracks in Prishtina are called after Adem Jashari -

a founding father of the UÇK, which one could well argue is neither an ethnically neutral nor a non-political gesture.

Ethnic composition of the KSF

Out of the 2,500 vacancies for active members of the KSF, some 1500 were reserved for former KPC members and some 1,000 were to be recruited from civilians. In practical terms that means that some 50 percent of the KPC were selected for the KSF.⁸⁰ During the first round of recruiting, conducted by NATO, some 4,900 applicants competed for about 300 positions. A university degree was usually required for a career as an officer, and a high school background for an NCO.⁸¹ Of the KPC members who had applied for posts in the KSF by January 2009, 1,300 had been accepted, including some 100 belonging to minorities, but only 6 Serbs.⁸²

Recruitment among civilians did not lead to any Serb applications. In Klina 20 out of the 120 persons applying belonged to the Roma, Ashkali and Egyptian communities, 100 were Albanians, but there were no Serbs,⁸³ and similarly no Serbs applied in Gracanica.⁸⁴ The same picture also applied to Prizren, where there were no members of either the Serb or the Goran minority applying.⁸⁵ In the Serb village of Zvecan near Mitrovicë several hundred ethnic Serbs

⁷⁵ Regulation No. 06/2008 – MKSF on Insignia and Symbols for the Kosovo Security Force, Art. 5, Annex 1: Insignia Design.

⁷⁶ Ibid. Art. 2.

⁷⁷ Ibid. Art. 6.3.

⁷⁸ Law No. 03/L-082 on Service in the Kosovo Security Force, 15.06.2008, Art. 5.

⁷⁹ Regulation No. 06/2008 – MKSF on Insignia and Symbols for the Kosovo Security Force, Art. 6.2.

⁸⁰ Kosova.com, 16.1.2009.

⁸¹ *Zeri* (Kosovo newspaper), 16.2.2009.

⁸² *Koha Ditore* (Kosovo newspaper), 16.1.2009.

⁸³ *Koha Ditore* (Kosovo newspaper), 10.2.2009.

⁸⁴ KiM Radio (Serbian radio), 28.1.2009.

⁸⁵ Infopress(Kosovo newspaper), 11.2.2009.

Members of ethnic minorities from the KPC accepted for the KSF

(Source: BalkanInsight, 11.2.2009 [www.balkaninsight.com/en/main/news/16614 / 14.2.2009])

Serbs	6
Croats	6
Bosniaks	19
Ashkali	26
Not specified	44
Total	101

prevented the KFOR from holding a recruiting campaign for the KSF.⁸⁶

An examination of the key positions within the KSF shows that all the generals – including the commander, General Sylejman Selimi, are former UÇK commanders. One post is reserved for an ethnic Serb, and this is still vacant. The important question in terms of validating the KSF by means of serious research, however, is not whether there are any ex-UÇK fighters within its ranks, but rather the question of their positions within the system, their attitudes towards a democratic, multiethnic Kosovo and their commitment to political control, legality and the rule of law.

Could the KSF be a future NATO Army?

In the eyes of NATO the KPC was mostly an instrument for containing the UÇK. The organization served to prevent the spread of the still unsolved “Albanian question”. The UÇK fighters were more or less under KFOR control all the time they were in the KPC, and this was preferred over uncontrollable illegal structures. The KPC was always “the UÇK in a cage”; all efforts to turn it into a force corresponding to the idea of a multiethnic organization failed.

After the violent riots of 2004 the “standards before status” paradigm was turned into “status before standards” – a process which led to independence in February 2008. Since then the Western countries have been dedicated to state building in the framework of the “Ahtisaari plan”, which means, among other things, that the new state is bound to the territory of Kosovo and is forbidden to join other countries or regions in a Pan-Albanian alliance. Such a multi-ethnic state does not correspond to the goals of the former UÇK, but the Kosovo Security Force – in effect the country’s armed forces, even though they are not referred to as such – are committed to fitting into this paradigm. This explains the decision to abolish the nation-state-centred KPC. The idea is that through the KSF the former UÇK fighters are supposed to be transformed into a national guard as a partner within NATO, which corresponds to the attitude of the UÇK in 1999.

The KSF has basically the same mission as the KPC before it. The real difference lies in the fact that it is controlled by democratically legitimated institutions, although for an – as yet undefined – interim period the real control is executed by KFOR. Another new feature is the size of the force, only a half of that of the KPC. In exchange for that, however, many former key leaders

⁸⁶ B 92, 11.2.2009.

have been allowed to keep their privileges and ranks (8 generals for a total force of 2500!), the force has been modernized, with an input of foreign (USA, British and German) material and training methods and there have been vague promises of a future inside NATO. If we assess these facts honestly, they mean that the KSF is not a new force making a clean break with the KPC but its establishment was a *de facto* military reform of the KPC with reduction, professionalization and democratization elements.

Democratic political control is not likely to change the UÇK spirit within the KSF, however, as – after KFOR has left – the controllers themselves will be former UÇK members who have made their way into politics and public service. This makes the establishing of the KSF questionable in terms of an exit strategy. Multiethnicity has so far been achieved only where the Bosniaks and other minorities who were already on the Albanian side in 1998/99 are concerned. The Serb and Goran communities have so far refused to join. This means that while KSF was designed to be multiethnic, it has already failed to achieve this in practice. Even though the invitations to Serbs may have been meant honestly (which is likely to be the case), this does not alter the fact that the KSF is seen by most Serbs as a successor to the UÇK and therefore not likely to be potentially multiethnic in a real sense. One cause of this failure is the blockade policy that originated from Beograd, and another is that the aims of Kosovan (Albanian) nation building do not correlate with the Western aims of state building – even though theory demands that state building processes should be embedded in nation building processes. Given the professional and apolitical demands made on the KSF, it

is likely to become a “state within the state”, promoting Albanian national ideas.

Many Kosovo Albanians – probably the majority – do not wish for a multiethnic state but for a nation-state. It seems that only the ruling coalition of the PDK (Thaçi) and LDK (Sejdiu) is interested in a “Realpolitik” -style approach to Kosovo. Anyway, it is doubtful whether they sincerely envisage a multiethnic Kosovo. An alliance with NATO, though, is the only possible way to progress towards Atlantic, and probably European, integration, which offers the only opportunity for Kosovo to cope with its huge domestic problems and thereby survive as a state. In reality, the alternatives for Kosovo are not “a nation state” or “a multiethnic state”, but “a multiethnic state” or “no state”. Prime Minister Hashim Thaçi and his partners will know that. Another relevant point is that the former UÇK leadership has managed to ensure that “their people” remain in key positions in politics and in the KSF. Without the asset of Atlantic or European integration, though, the KSF will have little value in terms of deterrence or defence against the armoured forces present in Kosovo’s immediate neighbourhood.

Given this, there remains the question of whether such a contradictory construct will be able to survive into the future. Dissatisfaction with the *de facto* protectorate status of Kosovo and the placing of its forces under foreign command has already become an issue. Kosovo still favours the “Western choice”, but this could change. Kosovo’s “Western choice” has been influenced by the Western idea of democratic self-determination, so that stop-

ping half-way to self-determination is not likely to pay off.

Another important factor is the role of UÇK traditions and networks within the KSF and among the political leadership. While no institutional break was made between the KPC and the UÇK, there has been an official break between the KPC and the KSF, guaranteed by NATO's commitment to the transition process.⁸⁷ If a multiethnic force is to succeed in the future, however, its multiethnicity will have to be based on more than merely laws and quotas. It must entail the developing of an "*esprit de corps*", which should also be multiethnic and committed to democratic and legal values. Language skills in Albanian and Serbian will have to be required of all KSF members and a readiness to work in a multiethnic environment will form a key criterion for acceptance in the force. The Bosnian example shows that multiethnic forces will only succeed if they are also wanted from the "bottom up" and if no "parallel loyalties" exist. It seems that the Drenica network is still strong within the KSF. Serbs have not joined the force in significant numbers up to now, and they are not likely to do so in the future, given the existence of a UÇK identity under its "multiethnic" façade.

On the other hand, the reticence of the Goran and Serb minorities is a consequence of clear strategic aims, as failure of the multiethnic force in Kosovo would question the legitimacy not only of that force but also of the whole Republic of Kosovo. Allowing the KSF to fail would mean stopping half-way, and even worse, rewarding a Serb policy which is playing the ethnic card at

the risk of regional instability. This is why NATO cannot stop half-way in the process of establishing the Kosovo Security Force. The process of developing it into a factor for stability needs more than money, organizational help and laws. More than anything else it will need inner development, both within the force and within civil society. For Kosovo, the end of such a process could be future NATO membership, but this should not be taken for granted. To form part of the Western Alliance, the KSF should not only fulfil the criteria of professionalism on paper, but also "exude the spirit" of the Ahtisaari Plan.

⁸⁷ Law No. 03/L-083 on Dissolution of the Kosovo Protection Corps, 15.6.2008, Art. 7.

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