Making Multilateral Interventions Work: The U.N. and the Creation of Transitional Justice Systems in Kosovo and East Timor

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The test of any government is the extent to which it increases the good in the people.

— ARISTOTLE, POLITICES, D.322 B.C.

Our people have to believe in institutions, not in individuals.

— XANANA GUSMAO, APRIL 4, 2001

INTERVENTION AS A MULTI-FACETED PROCESS

Ever since early 1999, the debate on the legitimacy of coercive multilateral interventions has stood center stage on the world political landscape. Within the span of only a few months, military operations in Kosovo and East Timor prompted the resurrection of intervention as a global policy tool for the protection of civilian populations facing widespread and systematic violations of international humanitarian and criminal law.[1] The North Atlantic Treaty Organization (NATO) conducted an eleven-week air campaign against Yugoslav and Serbian security forces and paramilitary groups in response to an orchestrated attack on the Kosovar Albanian population. Only three months later the United Nations Security Council authorized the Australian-led International Force for East Timor (INTERFET)[2] to halt violence that erupted on the half-island, following the results of a popular consultation, between supporters of the integration of East

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Timor into Indonesia and those who favored East Timor's independence. The mandates of these missions, requiring the U.N. to create and operate interim governments in the two territories, have presented the organization with some of its greatest challenges in recent history.

Despite the high profile of these interventions, the important impact the civilian aspects of these operations have had on shaping the concept and understanding of multilateral action has been largely overlooked. The experiences of both Kosovo and East Timor have proven that coercive interventions are complex and multi-layered efforts extending well beyond the use of force.[3] Often, the military effort only marks the first phase of an engagement that eventually results in a long-term international involvement in transforming society, building institutions, and bringing about economic stability. Now, roughly two years after these missions got underway, it has become clear that the success of an intervention as well as the exit strategies for both international military and civilian personnel are ultimately defined by the civilian aspects of these interventions. Because of this, it seems clear that a coherent concept of intervention must take a holistic view, based on a sustained commitment to all aspects of the intervention, effectively bridging the gap between intervention and peace-building.[4] In this respect, military and civilian efforts should be complementary components in achieving the common objective of establishing conditions for durable peace and sustainable development. Nowhere has this truth applied more than in the fragile environments of Kosovo and East Timor. It is perhaps this understanding that led much of the U.N. staff in Kosovo and East Timor to gain a deep understanding of a new mantra informing multilateral peace operations: *You can force your way in but you have to build your way out.*

I. THE COMPLEXITY OF THE CIVILIAN CHALLENGES

In Kosovo and East Timor, the scope of immediate tasks and responsibilities awaiting military forces and civilian staff upon their deployment were daunting and unprecedented in the history of United Nations peacekeeping operations. When the U.N. arrived in these territories, both had fallen victim to widespread destruction, inviting comparisons with the devastation of post-war Germany or ancient Carthage. Towns and villages had turned into ghost-cities, emptied of virtually all of their inhabitants. At the end of the Kosovo conflict, out of a population estimated at 1.7 million, almost half (800,000) had sought refuge abroad, mainly in neighboring Albania, the former Yugoslav Republic of Macedonia, and Montenegro. In addition, an estimated 500,000 people were internally displaced within Kosovo.[6] In East Timor, where we arrived less than six months later, some 200,000 people had abandoned their homes, fleeing into the mountains of central East Timor or across the border into West Timor, as heavily armed militias

and regular Indonesian forces sympathetic to the integration of East Timor into Indonesia ransacked their homes, and wrought a destruction that shocked the world in its brutality.[6]

One of the consequences of this violence was that practically overnight, both territories were stripped of their entire administrative and executive superstructures. Their political and administrative classes, including the security and law enforcement apparati, were almost exclusively affiliated, or were at least perceived as being affiliated, with the previous Serbian or Indonesian regimes, and had fled along with the withdrawing security forces of these regimes. Prominent local political interlocutors, such as Ibrahim Rugova or Jose Ramos Horta, meanwhile, had not returned from exile. The international community, therefore, had to be cautious not to legitimize any political groups or individuals prematurely. It was in this situation that the "empty shell" metaphor later used so often to describe Kosovo and East Timor obtained its meaning. Identifying, building, and strengthening indigenous capacities was of the essence.

Against this backdrop, the United Nations Security Council on June 10, 1999, one day after the suspension of NATO's air strikes, adopted resolution 1244/1999, establishing the United Nations Interim Administration in Kosovo (UNMIK). Only a few months later, on October 25, 1999, the Security Council adopted resolution 1272/1999, establishing the United Nations Transitional Administration in East Timor (UNTAET).[7] Both resolutions provided the United Nations with a comprehensive mandate, in effect empowering it to exercise virtually all functions of government: legislative and executive authority as well as the administration of justice—a role unprecedented in the history of the United Nations.

In practice, these mandates led to an unimaginable abundance of tasks, all of which required our immediate attention. For one thing, each mission not only had to completely rebuild a public sector that had been devastated by conflict, but had to find staff to run public institutions after the exodus of skilled personnel. These tasks included the reconstruction and operation of public utilities, ports, airports, and public transportation systems; the creation of a functioning civil service; the establishment of a network of social services, including employment offices and health care; the reconstruction of road networks; and the resuscitation of the primary, secondary, and tertiary education systems. In addition, the interim governments had to create the conditions for economic development, a goal that meant establishing a banking system, formulating budgetary and currency policies, trying to attract foreign investment, and establishing a comprehensive tax, customs, and levies system. There was also the urgent need not only to develop public broadcasting, civil education, and mass media capabilities, but to establish a political system that allowed political parties to peacefully cooperate. In East Timor, the mission has the additional challenges of facilitating a

process for drafting the constitution and taking on certain foreign policy functions such as normalizing relations with Indonesia, integrating the new country into the ASEAN community, and negotiating with Australia the future regime that would govern petroleum exploitation in the Timor Sea, issues of vital importance to the future stability and prosperity of the half-island.

Above all, however, the U.N. had to create a legal framework within which these activities could be carried out. In order to exercise the legislative powers granted by the Security Council, each mission had to take immediate steps to draft, promulgate, and enforce a range of U.N. regulations that would have the force of law in the administered territories.[8] All these activities were embedded in the daily struggle to establish and sustain a constructive political dialogue with and among the local United Nations' interlocutors with a view to establishing political structures that would allow for self-government in both territories.

At the same time, the initial working conditions were hardly conducive to such work. UNMIK staff worked and lived in a rented family home during the first three weeks of operations, alongside the Kosovar Albanian landlord's family, with no regular supply of water or electricity and staff cramped into a few rooms that served both as offices and accommodation at night. The first legal texts were written on a laptop computer while sitting on the floor and meetings packed 30 to 40 people into the living room because the local government offices had yet to be cleared of booby traps and supplied with electricity. Dili's conditions were similar. For more than two months the U.N. staff there slept in small tents put up in the gymnasium of the former governors' palace or in their offices underneath their desks, with no running water and virtually no toilets or washing facilities left intact. (That gymnasium is now the home of the Constituent Assembly, which will become the Parliament of East Timor upon independence.)

II. ESTABLISHING A TRANSITIONAL SYSTEM OF LAW AND ORDER

Nowhere was the enormity of the challenge more tangible than in the law and order sector.[9] The arrival of more than 50,000 NATO troops in Kosovo and more than 8,000 United Nations peacekeepers in East Timor did not in and of itself put an end to ethnic or militia-related violence. The security challenge to troops—most of whom were not specifically trained or equipped to manage low-intensity civil conflict—was aggravated by a rising tide of organized crime and revenge-motivated violence, including arson and murder. Against this backdrop and in view of the complete breakdown of the previous judicial system, the U.N. was compelled to design and establish, within days of its arrival, a transitional law enforcement and judicial system that would observe a minimum of guarantees for detainees. This system was vital for the credibility and effectiveness of the mission. Given the implications for Kosovo's and East Timor's post-conflict societies, the U.N. had to expedite efforts to set up

mechanisms for the investigation, prosecution, and trial of individuals suspected of serious violations of international humanitarian and criminal law.

a. LEGAL FRAMEWORK

As a priority, both missions had to establish a basic legal framework within which law enforcement and judicial institutions in each territory could operate. Judicial appointments, legal training, and the carrying out of judicial, prosecutorial, and other legal functions were all dependant on the existence of a clear body of applicable law. The United Nations Civil Police (CIVPOL), which was entrusted with executive powers, needed legal certainty in its daily law enforcement activities.[10] In both territories, the U.N. had to draft a set of regulations indicating which previously existing laws still applied, or setting forth entirely new laws, before it could establish the corresponding judicial and other public institutions.[11]

As a first step, both UNMIK and UNTAET decided that the laws that applied in each U.N. administered territory prior to the adoption of Security Council Resolution 1244/1999 and 1272/1999 respectively, would apply *mutatis mutandis,* insofar as they were consistent with internationally recognized human rights standards, did not conflict with the mandate given to each mission by the Security Council, and were consistent with any other subsequent regulations promulgated by the mission.[12] This decision was made to avoid a legal vacuum in the initial phase of the transitional administration, and to avoid a situation in which local lawyers had to be introduced to an entirely foreign legal system. In both territories, virtually all of the local lawyers had obtained their law degrees at domestic universities. In both cases, however, these measures proved inadequate in meeting the challenges of the existing security situation.

As experience has shown, criminal activity often flourishes in post-conflict societies due to the breakdown of traditional social and institutional structures. In Kosovo, organized crime spread quickly, exacerbated by an abundance of readily available arms. Ethnically and politically motivated violence also became a severe daily phenomenon. Meanwhile, evidence of violations of international humanitarian and criminal law committed prior to or during NATO's military intervention was being destroyed while the perpetrators of serious crimes remained at large. From January to August 2000 alone, a total of 14,878 criminal offences were reported. CIVPOL and NATO peacekeepers arrested 3,734 people during the same period.[13] In East Timor, although figures did not rise as dramatically, criminal activity developed quickly: resurgent militias re-entered the territory, posing a worrying threat of destabilization. In some cases local vigilantes harassed, intimidated, and even illegally detained returning pro-integration supporters. Meanwhile, murder, rape, large-scale domestic violence, and even drug-trafficking grew. These problems remain today.

The criminal codes, and even more importantly the criminal procedure codes, inherited from the previous legal regimes could not be applied as they were since they contained numerous provisions inconsistent with international human rights and criminal law standards. In hindsight, the formula laid out in UNMIK and UNTAET Regulation No. 1—stating that the territories' previous law be applicable only insofar as it is not inconsistent with international human rights standards—proved inadequate in meeting the security challenges in practice. The formula neither spelled out the laws, nor specifically identified the elements that were inconsistent with internationally recognized human rights standards. It also did not provide international and domestic law enforcement and legal personnel with immediately applicable legal texts ("black-letter law"). Rather, it required that lawyers engage in the complex task of interpreting the Penal Code or the Criminal Procedure Code through the lens of international human rights instruments, applying those provisions that met international standards, while disregarding those that did not, and substituting, in their place, the appropriate standard under international law. De facto, this exercise amounted to rewriting virtually the entire set of previous criminal laws, constituting a serious impediment to quick action by the U.N. Civil Police force.

Practical difficulties were numerous. For example, whereas it is relatively easy to determine that a provision allowing detention for twenty or more days without a judicial hearing[14] is in violation of international human rights standards, it is significantly more difficult for lawyers applying such a provision to consistently define the standard that should apply instead. In both territories, the situation was further aggravated by the fact that only a few local lawyers were even familiar with the practical application of international human rights norms.

Hence, both U.N. missions ultimately had to conduct comprehensive reviews of all the legislation that was pivotal to the establishment of an independent and impartial judiciary, and the law and order sector more generally, and amend or supersede these laws through subsequent United Nations regulations. In the meantime, however, the U.N. Civil Police and the judiciary had to apply the existing legislation on a daily basis. Despite their best efforts, they struggled to do so in accordance with the requirements of UNMIK and UNTAET Regulation No. 1999/1.

In addition, the introduction of laws that were perceived as symbols of the just-ousted political regime in both Kosovo and East Timor led to considerable legal and political difficulties. In Kosovo, in particular, this decision prompted vigorous protest among local politicians and within the legal community. Yugoslavia's criminal laws, in particular, were considered to have been one of the most potent tools of a decade-long policy of discrimination and repression of the Kosovar Albanian population.[15] The political representatives of the Kosovar Albanian community thus threatened to cease their cooperation with the United Nations and a number of

newly appointed judges and prosecutors resigned, demanding an immediate return to the laws applicable in Kosovo before the revocation of its autonomy status within Serbia. This demand was made primarily for political reasons, since these laws were by no means more democratic than the Yugoslav criminal laws. However, the promulgation of an UNMIK regulation revising the formula in UNMIK Regulation No. 1 by introducing the law in force in Kosovo prior to March 22, 1989, eventually succeeded in providing some degree of legal certainty and allowed law enforcement action to take its due course.[16]

Finally, one of the greatest practical impediments in applying the formula of Regulation No. 1 was the lack of available legal texts of the laws to be applied. The destruction of public buildings had not spared law libraries and registries. Paradoxically, both missions therefore had to approach the same governments that had just been forced to withdraw from the administered territories, and request copies of the legislation comprising the body of applicable law. The responses were scarce. In the case of East Timor, the mission eventually established close cooperation with Indonesian and international law firms in Jakarta as well as universities and legal aid organizations in Australia to gradually improve its stock of applicable laws. Of course, most of these laws first had to be translated before international experts could assist their local colleagues in the practical application of the formula contained in Section 3 of UNMIK and UNTAET Regulations No. 1999/1.

b. JUDICIARY AND CORRECTIONAL SYSTEM

Both Kosovo and East Timor have proven that effective law enforcement, at the very least, needs a minimal judicial capacity from the outset of a mission. As mentioned earlier, criminal activity, public unrest, and militia resurgence pose daily challenges for the international civilian police forces and the military. Their ability to act swiftly while working within the framework set by international human rights law depends to a large extent on the ability to prosecute, try, and ultimately imprison perpetrators. In view of the complete breakdown of the administrative superstructures in both territories, the missions were essentially required to re-create judicial systems from the bottom up rather than reform the previous systems. Prosecutorial capacity, courts, and correctional facilities all had to be set up by the U.N.

i. IDENTIFICATION OF JUDICIAL PERSONNEL

Besides creating a credible legal framework, the search for skilled legal personnel was at the center of the U.N.'s efforts. The premises for this effort could not have been more adverse. The exodus from Kosovo and East Timor of virtually all lawyers, judges, and prosecutors who had previously served in the judiciary, as

well as of many law clerks and secretaries, left a huge void in experienced legal personnel. In fact, under Indonesian rule, no East Timorese lawyers had been appointed to judicial or prosecutorial office. As a result, there were no jurists in East Timor with any relevant experience in the administration of justice or the practical application of law. The situation in Kosovo was comparable. Following the abolition of Kosovo's autonomy status within the Serb Republic in 1989 and the subsequent closing of its autonomous institutions, out of 756 judges and prosecutors in Kosovo, only 30 were Kosovo Albanians.[17] The majority of those who had worked in Kosovo's courts were Serbs and had left the territory; the few remaining were considered to be collaborators with the previous regime.

At the same time, the demand could not be satisfied by international lawyers.[18] Neither the U.N. nor the international community at large was able to deploy, upon such short notice, an adequate number of international lawyers for this purpose, not to mention lawyers who were familiar enough with the legal traditions of the administered territories.[19] Yet, the U.N. had to act quickly in view of a growing number of arrests and detentions. In response to rising security concerns, KFOR in Kosovo started to carry out large-scale arrests to establish public peace and order in the territory. Within only two weeks this led to a backlog of more than two hundred detainees. Many of these suspects had been arrested for serious criminal offences such as arson, violent assault, and murder. Some had also been arrested for grave violations of international humanitarian and human rights law.[20] All of them were entitled to an initial judicial hearing by a judge or judicial authority.[21] Unfortunately, none of the military contingents deployed in Kosovo was prepared, at the outset, to provide this service as part of their mandate. According to Security Council resolution 1244/1999, the establishment of "civil law and order" and "civil administrative functions" was considered a non-military task, hence a task of the United Nations.[22] In East Timor, INTERFET interpreted its mandate "to restore peace and security"[23] more broadly. It established a temporary arrest and detention system that was run by military personnel, but was neither mandated nor equipped to try, convict, or sentence criminal offenders.[24] As INTERFET was to gradually withdraw from East Timor beginning in December 1999, UNTAET, like UNMIK, urgently needed to put in place a civilian mechanism based on local resources that would, at the very least, provide minimal judicial functions required upon the arrest and detention of suspects.

But finding trained lawyers in East Timor was not easy. Devoid of any media or mass communications outlet and not knowing how many trained jurists actually remained in the deserted towns and villages of East Timor, UNTAET had to work hard to find any remaining lawyers, law graduates, and law students. One solution to the problem was the use of INTERFET, which volunteered to drop leaflets from airplanes throughout the territory calling for qualified Timorese to contact any UNTAET or INTERFET office or outpost. The news was also spread quite literally

by word of mouth, through local staff and East Timorese civil society groups. Only a week later, this effort led to a remarkable response. An initial meeting was held behind the Governor's Building in Dili with a group of 17 jurists, most of whom seemed mesmerized by the possibility of serving as East Timor's first judges and prosecutors after almost 450 years of foreign rule. Two months later, more than sixty East Timorese jurists had formally applied for judicial or prosecutorial office. The challenge was far from finished, however. While all of these applicants had completed law school, none held any practical legal experience in the administration of justice.

In Kosovo, the search for appropriate judicial personnel was influenced by UNMIK's declared goal of establishing a judiciary that was reflective of Kosovo's various ethnic communities.[25] It was assumed that any reconciliation efforts, including the prosecution and trial of individuals suspected of grave violations of international humanitarian and criminal law, could not succeed unless an ethnically and politically independent and impartial judicial system existed which enjoyed the confidence of the population. Many of the Kosovar Albanian lawyers had been part of the persecuted intellectual classes and had thus either gone underground or taken refuge abroad in the weeks and months preceding the deployment of UNMIK. Even an immediate cross-organizational effort to screen refugee camps in neighboring Macedonia and Albania did not yield the results hoped for. Over the next few months, the time-consuming search for qualified legal personnel was taken up by the regional offices of the U.N. and the Organization for Security and Cooperation in Europe (OSCE)[26] in Kosovo, which worked by word of mouth, district by district, networking through the few remaining lawyers, and seeking nominations from the KLA and the Democratic League of Kosovo (LDK), Kosovo's main political forces at the time. Both missions are still faced with the challenge of finding a sufficient number of qualified lawyers.

ii. JUDICIAL SERVICE COMMISSIONS

As a next step, the U.N. administrations had to select from among these lawyers the most capable candidates for judicial and prosecutorial office. The appointments carried great political and symbolic significance because of the post-conflict situation, and because the U.N. wished to sharply contrast its own behavior with that of the previous regimes, in which judicial appointments had been highly political. It was essential for the U.N. to proceed in a manner that was both transparent and professional, and thus give legitimacy to the process. Both missions thus created judicial service commissions, which became the primary mechanism for the selection of judges and prosecutors. They served as an important safeguard for the establishment of an independent and impartial judiciary.[27]

The commissions were designed as autonomous bodies that received applications from jurists who were required to have, at a minimum, a law degree. The

commission would then select candidates for judicial or prosecutorial office based on merit and eventually make recommendations on appointments to the head of the U.N. mission. The East Timorese commission was also entrusted with drawing up codes of ethics for judges and prosecutors and serving as a disciplinary body reviewing complaints of misconduct.

Both commissions were to include local and international legal experts. In Kosovo, the Joint Advisory Council on Judicial Appointments,[28] later succeeded by the Advisory Judicial Commission,[29] was set up only two weeks after the arrival of the first UNMIK staff members. It initially comprised seven members, including two Kosovar Albanians, one Bosniak (Muslim Slav), and one Serb lawyer, all of whom had extensive previous experience in the administration of justice in Kosovo. Three international lawyers from different international organizations rounded out the ranks. In East Timor, the Transitional Judicial Service Commission was a five-member body, comprising three East Timorese and two international experts, and chaired by an East Timorese member of "high moral standing."[30] It was anticipated that over time the international membership of the commissions would be phased out, and that a suitable mechanism would have taken root through which future local governments could carry out non-partisan judicial appointments.

Following a rigorous interview and selection process conducted by the Transitional Judicial Service Commission, the U.N. Transitional Administrator appointed the first ever East Timorese judges and prosecutors on January 7, 2000.[31] Currently, there are 25 East Timorese judges, 13 prosecutors, and nine public defenders appointed to the four District Courts, four district prosecutor's offices, as well as to the court of appeals and the general prosecutor's office. All of them are trained on the job by international mentors. In Kosovo, on June 30, 1999, two weeks after the arrival of the first UNMIK staff in Pristina, the head of the U.N. mission was able to appoint nine judges and prosecutors, among them three Serb jurists. They served as mobile units with jurisdiction throughout the entire territory of Kosovo. By mid-July, these judges and prosecutors had conducted hearings of 249 detainees in all of Kosovo's five districts, releasing 112 people. The initial appointments were controversial because of a perceived over-representation of Serb lawyers in Kosovo's new judiciary.[32] Nevertheless, by July 24, 1999, as the mission had gradually identified more lawyers, the number of UNMIK-appointed judges and prosecutors had risen to 28, comprising 21 Kosovar Albanian lawyers, four Serbs, one Roma, one member of the Turkish community in Kosovo, and one Bosniak.[33]

iii. CORRECTIONAL SYSTEM

The establishment of a coherent system of law and order must necessarily include the establishment of a functioning correctional system. Unfortunately, donors

are reluctant to finance prison systems, considered the least attractive aspect of judicial reform programs. The difficulties encountered in both Kosovo and East Timor here by far surpassed any of the U.N.'s experiences in this area to date. Identifying suitable facilities and personnel to hold those apprehended and arrested by the international forces or police were among the most dramatic challenges faced by both missions.

The Yugoslav security forces withdrawing from Kosovo had emptied all the prisons and "transferred" the prisoners, among them many political prisoners of Kosovar Albanian origin, to unknown locations in Serbia proper.[34] Moreover, many prisons had been damaged or destroyed and all the prison guards had fled along with the withdrawing forces. As a result, the hundreds of individuals detained in the first few weeks after the U.N.'s arrival had to be held in makeshift military facilities, which usually consisted of army tents in NATO camps that were guarded by military officers with no experience in the administration of prisons and international standards on the detention of civilians.[35]

In East Timor, the situation was even worse. Not only had all the prison guards left during the exodus of the Indonesian security forces but the prison facilities had all been burned down, rendering them unusable.[36] The limited capacities of the makeshift detention center inherited by the United Nations from INTERFET had been stretched to the maximum and there was no space in which to house detainees and ordinary criminals. As a result, the number of arrests had to be limited. The U.N. Civil Police officers running the facility in the absence of skilled prison guards were at times forced to release individuals who had been arrested for serious criminal offences in order to make space for returning militia members implicated in the commission of grave violations of international humanitarian and criminal law in the course of the violence of August and September 1999. This was a difficult choice to make, but the failure to arrest such individuals would have been unacceptable in the eyes of both the general public and its political leadership.

The inadequacy of the interim facilities, combined with the fact that the U.N. Civil Police was neither trained nor equipped to carry out prison warden functions, made it clear that the U.N. urgently needed to reconstruct suitable facilities, identify experienced international wardens, and train local capacities. Carrying out these essential tasks was made difficult, however, due to the reluctance of donors to fund, either directly or indirectly, the reconstruction or erection of prison facilities, and of U.N. member states to provide contingents of prison personnel. In order to avoid resorting to private security firms, the U.N. had to quickly identify and train local capacities.[37]

c. PROSECUTION OF INTERNATIONAL CRIMES

Interventions must lead to accountability for past crimes, particularly where a multilateral intervention was prompted by widespread and systematic violations

of international humanitarian and criminal law. The U.N.-sponsored International Commission of Inquiry on East Timor concluded that "it is fundamental for the future social and political stability of East Timor, that the truth be established and those responsible for the crimes committed brought to justice."[38] In the absence of an international *ad hoc* criminal tribunal for East Timor, however, it soon became clear to UNTAET that one of the primary tasks of the new East Timorese judiciary was to establish a mechanism for the prosecution and trial of individuals responsible for the atrocities there. Despite widespread calls for reconciliation and forgiveness, East Timorese society also has a strong desire to hold perpetrators accountable for crimes committed during and prior to the violence following the popular consultation of August 30, 1999. With an estimated 1,500 to 2,000 people dead and some 200,000 left temporarily displaced, this initiative was a moral imperative for UNTAET.

We recognized that the prosecution of perpetrators of the September 1999 violence was generally going to be a matter for the domestic East Timorese judiciary and the Indonesian courts.[39] Given the potential impact on the reconciliation process within East Timorese society and Indonesia, it is essential that these trials be conducted expeditiously, professionally, and impartially. Credible and properly conducted investigations and prosecutorial processes are also vital. But despite the high level of anticipation, the international community and the East Timorese political leadership has to resist rushing the newly-appointed judges and prosecutors into speedy trials of the accused currently in detention for international crimes.[40] The prosecution and trial of legally and factually complex criminal offences such as crimes against humanity need careful preparation and should not be left solely to largely inexperienced lawyers, however committed they may be. In this context it is worth recalling that it took several years before trials began in the prosecution of similarly complex cases by the international *ad hoc* tribunals for the former Yugoslavia and Rwanda, and this despite the high level of experience of the personnel of those tribunals.

To reconcile the need for speedy prosecution with the requirement of ensuring experience and expertise in this process, UNTAET and UNMIK have established mixed panels comprised of both international and East Timorese judges at the district court level. This mixed composition also applies to the court of appeal in East Timor.[41]

In Kosovo, two international judges have been appointed to the Supreme Court.[42] In addition, UNTAET has established a prosecution service comprising a special department for the prosecution of serious crimes, which is headed by an experienced international prosecutor working alongside East Timorese and other international experts.[43] Recently, the General Prosecutor announced the first indictments against members of an East Timorese militia and the Indonesian army.[44] Most of the indictees are out of the reach of East Timor's authorities. Those imprisoned in East Timor are standing trial in Dili,[45] with the first verdicts

having been handed down this year: a 12-year and a 7-year sentence.[46] The Memorandum of Understanding between UNTAET and the Republic of Indonesia signed in April last year regarding cooperation in legal, judicial, and human rights related matters might help to facilitate criminal prosecution by allowing practical cooperation between courts and authorities in East Timor and Indonesia on such issues as sharing information, obtaining evidence from witnesses, witness protection, forensic examinations, and, most importantly, the transfer of suspects to the jurisdiction of authorities and courts in East Timor.[47]

Ultimately, however, the challenge for UNTAET and the East Timorese in this area will be to find the right balance between justice and reconciliation in a society that holds the principle of forgiveness at the core of its culture. The prosecution and trial of serious violations of international humanitarian and criminal law must be complemented by comprehensive truth and reconciliation efforts that make use of local customs and, where appropriate, amnesty for the perpetrators of lower level offences.[48] The current effort of UNTAET and the East Timorese civil society to establish an East Timorese Truth and Reconciliation Commission is an important step in this direction. A similar effort for Kosovo is not in sight.

In Kosovo, the need for investigation and fair prosecution of violations of international humanitarian law has been an equally pressing issue. Due to the limited capacity of the International Criminal Tribunal for the former Yugoslavia (ICTY) to try all perpetrators of international crimes committed in Kosovo, it was left to UNMIK to prosecute less high profile offenders.[49] The Technical Advisory Committee on Judiciary and Prosecution Service (TAC), established by UNMIK to advise the head of the U.N. mission on the structure and administration of the judiciary and prosecution service in Kosovo, recommended in its final report of December 13, 1999 the establishment of an extraordinary domestic tribunal with jurisdiction over war crimes, other serious violations of international humanitarian law, and serious ethnically motivated crimes. The proposed court was called the Kosovo War and Ethnic Crimes Court (KWECC). The KWECC was intended to have concurrent jurisdiction with domestic courts and was synchronized with the jurisdiction of the International Criminal Tribunal for the former Yugoslavia. As the establishment of the KWECC was significantly delayed because of lack of funding and other reasons, the cases of war crimes that would have fallen into the jurisdiction of the KWECC were handed over to regular domestic Kosovo courts.[50] The appointment of international judges and prosecutors to Kosovo's courts further removed the immediate need for the establishment of the KWECC.

d. RELATED CHALLENGES

In addition to the challenges outlined above, the U.N. has faced many other equally important tasks regarding law and order. Among these has been the

establishment of a Land and Property Commission in East Timor and the Housing and Property Directorate in Kosovo, bodies working to manage the enormously complex task of handling land and property claims; supporting the creation of independent associations and bar associations for judges and prosecutors; establishing a public defenders and legal aid system; identifying and training law clerks and secretaries; re-constructing a central law library; facilitating legal education in law school and providing assistance for law students to complete their disrupted law studies in neighboring countries; establishing a judicial police and installing bailiffs to enforce court decisions and orders in civil law cases; identifying translators to ensure due process for linguistic minorities; and mainstreaming traditional and customary law into the new judicial and legal system of East Timor. Above all, the U.N. had to help provide legal training and mentoring for newly appointed judges and prosecutors.

III. STRENGTHENING THE LAW AND ORDER ASPECTS OF MULTI-LATERAL INTERVENTIONS

As demonstrated above, the success of interventions largely depends on a close cooperation between military and civilian actors, and the resources provided to the civilian effort. This is particularly true where multilateral interventions lead to nation-building exercises. Several transitions take place in this phase: there are moves from disorder to order; from military to civilian policing; from arbitrary persecution to the rule of law. The rapidly available capacity to maintain law and order is of pivotal importance in this context and an inability to react swiftly to crime and public unrest, coupled with the failure to detain and convict suspected criminals promptly and fairly, can quickly erode the public's confidence in a mission.

a. DOCTRINAL SHIFTS

The challenges of establishing transitional administrations in Kosovo and East Timor have brought up the necessity of making a number of key doctrinal shifts within the organization, and the international community at large.

- First, it is essential that transitional administrations function within a framework of law and order. It is therefore vital that the international community create a justice system from the very outset of a mission that can carry out a minimum of judicial and prosecutorial functions, such as making arrests, detaining suspects, carrying out investigations, and conducting fair trials. Even before deployment, joint planning between military and civilian actors is necessary to ensure an immediate capacity to meet judicial needs once a mission is on the ground. Moreover, the effective

reconstruction of the justice sector requires a coherent approach that places equal emphasis on all its elements (police, prosecution, judiciary, and the correctional system) and is not considered simply an adjunct to civil police operations. For example, the provision of necessary financial and personnel resources to establish or maintain a functioning correctional system should be viewed not as a complementary effort, but as inextricably linked to the creation of a functioning law enforcement mechanism.

- While realizing the need to accommodate the different roles of the military and civilian law enforcement actors, the distinction between public peace and security, and civil law and order—as was made in Security Council resolution 1244/1999—seems to be artificial and of limited value in practice. Both realms describe concentric circles with substantive overlap. The practical relevance of this observation is apparent: contemporary conflict management in complex emergencies requires close cooperation of military and civilian actors from the outset of an operation. For example, effectively combating resurgent militias in East Timor or acts of terrorism in Kosovo requires an active international military presence as well as the participation of the newly established civil-legal authorities in detaining and prosecuting perpetrators. Military doctrines should be adapted accordingly: national armies should no longer be responsible for just winning a country's wars; where necessary, they should also support the civilian implementation effort in view of their own exit strategies.

- A third key shift regards human rights. While the promotion of human rights has been a centerpiece of U.N. efforts for the past 50 years, it should be clear that in complex emergencies such as Kosovo and East Timor the international community must balance the necessity of implementing human rights guarantees against the enormity and multiplicity of challenges facing a mission. Even international legal instruments such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms contain provisions on "public emergency" situations, permitting measures during a declared state of emergency that temporarily derogate some human rights standards.[51] In both Kosovo and East Timor, the situation in the first few months of the mission's deployment was similar to situations in which states would announce a "state of emergency." Indeed, the fact that the mandates of these missions were based on Chapter VII of the U.N. Charter, along with the employment of military force to ensure security in these territories was an expression of this assessment.[52] While striving to protect and promote human rights in all areas of administration and legislation early on, international agencies should be mindful of the practical constraints of the context

in which the operation will be working. In particular, this requires taking into consideration the security situations and the subsequent ability of these territories to finance themselves in the future.

b. REPAREDNESS GAP

- Justice—and law enforcement more broadly—must be seen to be effective from the first days of an operation. The inability to react swiftly to crime and public unrest, particularly in post-conflict situations in which criminal activity tends to increase, and the failure to detain and convict suspected criminals promptly and fairly, can quickly erode the public's confidence in the United Nations. It is thus mandatory for the U.N., and the international community at large, to improve its rapid response capacity in this area.[53] The U.N. has virtually no permanent infrastructure for emergency action. New, creative, and open-minded approaches are therefore required to allow the international community to reach across traditional lines of responsibility and create closer cooperation among international organizations, NGOs, academia, and military actors. In this respect, it is mandatory to develop a stand-by network of experienced and qualified international jurists that can be activated at any given time. In view of the significant practical differences between common law and civil law systems, a sufficient number of these experts should be recruited from among jurists of both systems to ensure that they can adequately respond to the specific needs of the territory to be administered.

- In order to avoid a law enforcement vacuum in the early days of a mission, it is crucial to establish *ad hoc* judicial arrangements facilitating the detention and subsequent judicial trial of individuals who are apprehended on criminal charges. As a short-term relief effort, the quick deployment of units of military lawyers in situations where a complete breakdown of the judicial sector has occurred and where civilian arrangements cannot be deployed rapidly, could fill the vacuum until the U.N. is staffed and able to take over what is ultimately a civilian responsibility.[54] It would be understood that any such *ad hoc* arrangements would have to be in strict compliance with internationally recognized human rights and other relevant legal standards, and should apply, once established, a set of U.N. sponsored interim rules on criminal procedure.[55]

- As stated above, it is necessary that legislation related to law enforcement be developed as part of a "quick start package" for U.N. administered territories. The need for a readily applicable set of minimum rules of criminal procedure (i.e. on arrest and detention) and substantive criminal law, as

well as rules governing the activities of the police, that are based on recognized international standards, has proven to be essential to the unimpeded and immediate functioning of the U.N. Civil Police component in peacebuilding missions. In areas other than criminal law, U.N. regulations from previous missions could, where applicable, serve as model regulations.

c. MORAL IMPERATIVE

- Arrangements for the prosecution and trial of individuals involved in serious violations of international humanitarian and criminal law, and, where appropriate, truth and reconciliation mechanisms, must be a moral imperative for any multi-lateral intervention, particularly when conducted in response to widespread and systematic violations of international law. The fair prosecution and trial of individual suspects can significantly help to build confidence and facilitate reconciliation in post-conflict societies by removing collective attributions of guilt against parties to the conflict. In particular, it is essential to provide the necessary financial and human resources for such arrangements from the outset of an operation. Adequate and reliable funding for these pivotal activities cannot be left to occasional voluntary contributions, but needs to be included in the regular mission budget.[56]

d. LOCAL PARTICIPATION

- It is at the local level that interventions ultimately succeed or fail. Thus practices and concepts employed in the first days of a mission are crucial. There is little doubt that the *conditio sine qua non* of an effective multilateral intervention is a nuanced understanding of the specific local context. There are no "one-size-fits-it-all" modules that the U.N. can simply transplant into any crisis. Any multi-lateral response must adapt to the specific requirements of the particular conflict situation and prevailing local dynamics. Local participation, however, depends on the availability and identification of appropriate interlocutors. But this creates a paradox for any multilateral intervention: while local participation is needed early on, international operations must be careful not to simply legitimize the most forceful actors in the territory and harm the final political objectives of a mission.
- Multilateral interventions that lead to the establishment of transitional administrations require early local participation in identifying and drafting new legislation. In East Timor, UNTAET planned early on for the establishment of a law reform commission with strong East Timorese participation to involve local traditions and expertise, build local community

ownership of new laws, and lend greater legitimacy and acceptance to the U.N.'s legislative efforts.[57] In Kosovo, a Joint Advisory Council was established on August 15, 1999 for an "all inclusive approach to reviewing the existing legal framework and to draft new laws."[58] It included 20 Kosovo lawyers with extensive experience in the practice and administration of law, and was co-chaired by UNMIK and a Kosovo Albanian law professor.

- Honoring the importance of local participation means putting vocational training at the center of transitional nation-building efforts. Professional legal training in both Kosovo and East Timor extends beyond technical assistance. It is a pivotal element of capacity building and empowerment for the creation of a stable society and a viable legal and political system. Given the lack of experience and expertise in the administration of justice, the U.N., in concert with its implementing partners, should ideally have been in a position to provide sustained and thoughtfully tailored training and mentoring programs on core issues such as pre-trial standards, courtroom management, and the drafting of detention orders immediately upon deployment. It was in this context that Xanana Gusmao, the charismatic East Timorese leader, reminded the international community: "For us transition essentially means capacity building."[59]

A FINAL OBSERVATION

There has been considerable progress in recent years on multilateral response to threats to peace, addressing violations of international humanitarian and human rights law, and conflict management in general. International agencies, non-governmental organizations, and states have moved closer towards coordinating their actions more effectively and using each other's comparative advantages more frequently. However, in order for interventions to succeed we must look beyond the short-term objectives of obtaining access to distressed populations through military action. Instead–where the international community does decide to act—it must take a long-term approach with a view to sustaining its funding of and supporting the civilian aspects of its interventions. As both Kosovo and East Timor show, it is the civilian component, and in particular its capability to meet emerging law and order challenges, that defines the success of an intervention and determines the exit strategy for military and civilian personnel alike. ■

NOTES

1 See "Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict," September 8, 1999, U.N. document S/1999/957, paragraph 67.

2 INTERFET was created by Security Council resolution 1264/1999, September 15, 1999.

3 See Danish Institute of International Affairs, *Humanitarian Intervention: Legal, and Political Aspects,* 1999, 11: "... humanitarian intervention is defined as coercive action by states involving the use of armed force in another state without the consent of its government, with or without authorization from the United Nations Security Council, for the purpose of preventing or putting to halt gross and massive violations of human rights or international humanitarian law"; and International Peace Academy, Conference report, "Humanitarian Action: A Symposium Summary," November 20, 2000, 3.

4 See Corell, "Address at the International Congress on Humanitarian Action and State Sovereignty," San Remo, August 31, 2000: "What has become increasingly clear is that humanitarian intervention also requires that some kind of civil administration is established... "

5 See "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo," July 12, 1999, U.N. document S/1999/779, paragraph 8.

6 To date, the exact number of refugees and internally displaced persons in East Timor in October 1999 has not been definitely established. It has been estimated, however, that more than one-third of East Timor's pre-September 1999 population of some 800,000 was at least temporarily dislocated. According to UNTAET sources, a total of 162,444 refugees had returned to East Timor from abroad by May 31, 2000. In addition, tens of thousands of people who had temporarily left their homes and escaped to safer locations in the mountainous regions of East Timor had returned to their places of origin. There is still an estimated number of between 60,000 and 100,000 refugees in camps in West Timor (Indonesia), most of them prevented from returning by pro-integration militias.

7 See United Nations Security Council Resolution 1244/1999, June 10, 1999, U.N. Document S/RES/1244 (1999), operative paragraph 11 (a), (b) and (i): "Promoting the establishment...of substantial autonomy and self-government in Kosovo," "performing basic civilian administrative functions where and as long as required," and "maintaining civil law and order..." Also, see United Nations Security Council Resolution 1272/1999, October 25, 1999, U.N. document S/RES/1272 (1999), operative paragraph 1: "Establish...a United Nations Transitional Administration in East Timor (UNTAET), which will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice." See also Section 1.1 of UNMIK Regulation No.1999/1, July 25, 1999: "All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General," and of UNTAET Regulation No.1999/1: "All legislative and executive authority with respect to East Timor, including the administration of the judiciary, is vested in UNTAET and is exercised by the Transitional Administrator." The above-mentioned Security Council resolutions as well as all regulations promulgated by UNMIK and UNTAET are available on each mission's web page: www.un.org/peace/kosovo/pages/regulations and www.un.org/peace/etimor/untaetR/UntaetR.htm.

8 The United Nations, which traditionally promotes international law, was actually mandated, both in Kosovo and in East Timor, to legislate and to create new law in areas that normally fall within the competence of a national legislature. By promulgating U.N. regulations that have the status of laws and supersede any other law on the regulated matter at issue, the head of the U.N. mission, in effect, becomes the exclusive legislator of the administered territory. See also Security Council resolution 1272/1999, operative paragraph 6: "...the Transitional Administrator will...have the power to enact new laws and regulations and to amend, suspend or repeal existing ones." As the experience in Cambodia has shown, many of these regulations remain in force even after the completion of the U.N.'s transitional administration, or serve as a blueprint for subsequent national legislation.

9 See Hansjoerg Strohmeyer, "Building a New Judiciary for East Timor: Challenges of a Fledgling Nation," *Criminal Law Forum* 11 (3) (2000): 259-285; also Hansjoerg Strohmeyer, "Collapse and Reconstruction of a Judicial System: the United Nations Missions in Kosovo and East Timor," *American Journal of International Law* 95 (1) (January 2001): 46-63.

10 Certainty of law is of great importance to troop contributing states, particularly where their troops may have to use executive power, as they want to protect their troops from accusations of violating existing law.

11 See UNMIK Regulations No. 1999/1, 1999/2, 1999/5, 1999/6, and 1999/7 (replacing UNMIK Emergency Decree 1999/1). See also UNTAET Regulations No. 1999/1, 1999/3, 2000/11, 2000/14, 2000/15, and 2000/16.

12 See Sections 2 and 3 of UNMIK Regulation 1999/1, July 25, 1999 and of UNTAET Regulation No. 1999/1, November 27, 1999. The wording of Section 3.1 of UNTAET Regulation 1999/1 (the factual statement "the laws applied" is used rather than "the applicable laws") carefully avoids the retroactive legitimiza-

tion of the Indonesian occupation as a lawful legal regime in East Timor.

13 See International Crisis Group, *Kosovo Report Card,* ICG Balkans Report No. 100 (August 28, 2000): 31, 44: "The criminal offences included 172 murders, 116 kidnappings, 160 attempted murders, and 220 grievous assaults."

14 See Articles 20, 24 of the Indonesian Code of Criminal Procedure (Act No. 8/1981).

15 See Matthew Kaminski, "U.N. Struggles With a Legal Vacuum in Kosovo, Team Improvises in Effort to Build A Civil Structure," *Wall Street Journal,* August 4, 1999.

16 According to Section 1.1 of UNMIK Regulation No. 1999/24, December 12, 1999: "The law applicable in Kosovo shall be: a. the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued there under; and b. the law in force in Kosovo on March 22, 1989." According to Section 3: "The present regulation shall be deemed to have entered into force as of June 10, 1999."

17 See "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo," July 12, 1999, paragraph 66.

18 As for the rational for establishing a primarily domestic judiciary, see Hansjoerg Strohmeyer, "Collapse and Reconstruction of a Judicial System: the United Nations Missions in Kosovo and East Timor," *American Journal of International Law* 95 (1) (January 2001): 46. Experiences from other United Nations missions have shown that the appointment of international lawyers leads to a myriad of practical concerns that could overburden missions in their set-up phases. Beyond the costly requirements of translating laws, files, transcripts, and even the daily conversations between local and international lawyers, there is the enormous time and expense that would have been incurred in familiarizing international lawyers with the local and regional legal systems.

19 Since the legal system in East Timor was based on civil law, potential international judges and prosecutors were required to have sufficient practical experience in the administration of justice in a civil law system. In addition, those lawyers had to be proficient in English—the working language of the mission—and able to make a longer-term commitment.

20 See ONASA, "Controversy Erupts as Kosovo Judges Sworn in," June 30, 1999.

21 See Article 9 (3) of the International Covenant on Civil and Political Rights; and Article 5 (3) of the European Convention on Human rights and Fundamental Freedoms.

22 See Security Council resolution 1244/1999, operative paragraph 11 (b) and (i), as opposed to operative paragraph 9 (d).

23 See Security Council resolution 1264/1999, September 15, 1999, operative paragraph 3.

24 Based on its mandate to restore peace and security in East Timor, the Australian INTERFET contingent created a temporary detention system. Individuals apprehended by INTERFET were submitted to a "Forced Detention Center" and granted an initial hearing by an INTERFET legal advisor within 24 hours. If not released, they were transferred, within 96 hours, to the "Detention Management Unit" for review of the detention order. The "Detention Management Unit" comprised four additional INTERFET legal advisors (one reviewing officer, one prosecutorial officer, one defending officer, and one visiting officer) who reported to the Commander of INTERFET on a daily basis. In addition, the International Committee of the Red Cross, the U.N. High Commissioner for Refugees, and family members were granted regular visits to ensure adherence to generally accepted prison standards. On January 14, 2000, the INTERFET-run Forced Detention Center handed over 25 detainees into the custody of the UNTAET Civilian Police and the East Timorese judiciary. Many had been detained by INTERFET on charges of serious violations of international humanitarian and criminal law.

25 See "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo," July 12, 1999, paragraph 66: "There is an urgent need to build genuine rule of law in Kosovo, including through the immediate re-establishment of an independent, impartial, and multi-ethnic judiciary."

26 The OSCE Mission in Kosovo forms one of the four integral components of UNMIK and is responsible for matters relating to institution-building, democracy-building, and human rights in Kosovo.

27 See Amnesty International, *Amnesty International's 16 Recommendations to the Parties at Rambouillet,* AI index: EUR 70/08/99, February 1999, paragraph III.

28 See UNMIK Emergency Decree No. 1999/1, June 28, 1999.

29 See UNMIK Regulation No. 1999/7, September 7, 1999. According to Section 2.1 of this regulation, the composition of the Commission was changed to eight local and three international lawyers, of different ethnicity and reflecting varied legal expertise.

30 See UNTAET Regulation No. 1999/3, December 3, 1999 on the Establishment of a Transitional Judicial Service Commission, Section 2.

31 The appointments made on January 7, 2000 included eight judges and two prosecutors. Their swearing-in ceremony in the still devastated shell of the courthouse in Dili was an emotional experience both for the East

Timorese and the internationals involved. Before some one hundred members of the general East Timorese public and numerous representatives of the international community, the UNTAET Transitional Administrator, Sergio Vieira de Mello, took the oath from each appointee and handed each of them a black robe.

32 The nine judges and prosecutors were made up of five Kosovar Albanians, three Serbs, and one ethnic Turk. See ONASA press clipping, *Controversy Erupts as Kosovo Judges Sworn In,* June 30, 1999.

33 See UNMIK press release, July 24, 1999, U.N. document UNMIK/PR/18; see also Lawyers Committee for Human Rights, *Kosovo: Protection and Peace-Building, Protection of Refugees, Returnees, Internally Displaced Persons, and Minorities* (August 1999): 5.

34 See Carlotta Gall, "Yugoslav Parliament Passes Amnesty for Jailed Kosovars," *The New York Times,* February 27, 2001.

35 The situation in Camp Bondsteel, the Headquarters of the NATO contingent of the United States in Kosovo, may serve as an illustration in this respect. See Michael R. Gordon, "Rebellion Poses Quandary for G.I.'s in Kosovo," *The New York Times,* February 3, 2001.

36 On this subject, see also findings of Human Rights Watch, *Unfinished Business: Justice for East Timor,* Press Backgrounder, August 2000.

37 UNTAET has recently appointed 131 local prison wardens who are being currently trained on the job by international experts.

38 See "Report of the International Commission of Inquiry on East Timor to the Secretary-General," January 2000, paragraph 155 (see also paragraphs 148 following).

39 See "Indonesia says Timor Trials to Start Soon," *Reuters,* May 10, 2000. Indonesian Attorney General Marzuki Darusman announced that if Indonesian generals were convicted "compensation will have to be addressed subsequently on a very specific case-by-case basis."

40 There are approximately 75 former militia members in detention in East Timor, arrested on suspicion of serious criminal offences as defined in Section 10.1 of UNTAET Regulation No. 2000/11, see Security Council, fifty-fifth year, provisional record of the 4191st meeting of the Security Council on August 29, 2000, page 5, UN document S/PV.4191.

41 See Section 10 of UNTAET Regulation No. 2000/11 on the Organization of Courts in East Timor, by which exclusive jurisdiction throughout East Timor in relation to the most serious crimes including genocide, war crimes, and crimes against humanity, has been vested in the Dili District Court. Regulation No. 2000/11 is further supported by UNTAET Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction for Serious Crimes, promulgated on June 6, 2000. This regulation grants the panels universal jurisdiction and contains, *inter alia,* the relevant penal provisions for war crimes, crimes against humanity and torture, and spells out internationally recognized principles of criminal law, taking into consideration the Statutes of the International Criminal Tribunal for the former Yugoslavia and of the International Criminal Court. See also Seth Mydans, "Modest Beginnings for East Timor's Justice System," *The New York Times,* March 4, 2001.

42 There are ten international judges and three international prosecutors serving in the five regions of Kosovo. They completed a total of 35 trials and investigations, see "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo," December 15, 2000, U.N. document S/2000/1196.

43 On August 4, 2000, Mohamed Othman, a Tanzanian who previously served as Chief of Prosecutions at the Office of the Prosecutor of the International Criminal Tribunal for Rwanda, was sworn in as the General Prosecutor for East Timor.

44 See indictment of February 6, 2001, Case No. BO-6-99-SC, on charges of crimes against humanity, murder, serious maltreatment, unlawful deprivation of liberty of persons, and rape.

45 See Seth Mydans, "Modest Beginnings for East Timor's Justice System," *The New York Times,* March 4, 2001.

46 According to UNTAET Regulation 2000/15, Section 10.1 (a) the maximum sentence for serious crimes is 25 years of imprisonment.

47 The Memorandum was signed on April 6, 2000 by the Indonesian Attorney-General Darusman and the UNTAET Transitional Administrator Sergio Vieira de Mello and allows *inter alia* for the enforcement of court decisions in Indonesia and the transfer of individuals from Indonesia to the jurisdiction and custody of the competent East Timorese judicial authorities.

48 See also Tina Rosenberg, "Truth Commissions Take on a Local Flavor," *The New York Times,* February 26, 2001.

49 According to the ICTY prosecutor, it was not the aim of the tribunal to act as the primary investigative and prosecutorial agency for all serious International Humanitarian Law offences committed in Kosovo, nor did it have the resources. See Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, "Statement on the Investigation and Prosecution of Crimes Committed in Kosovo," The Hague, September 29, 1999.

50 There are currently 18 cases of international crimes pending before regular domestic courts in Kosovo, including 13 cases of war crimes, four cases of genocide, and one case of crimes against humanity.

51 See Article 15 (1) of the European Convention on Human Rights and Fundamental Freedoms:

> 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Article 4 (1) of the International Covenant on Civil and Political Rights provides for a similar derogation clause in time of public emergency.

52 Chapter VII (Articles 39-51) of the U.N. Charter is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."

53 See Report of the Panel on Peace Operations (also known as the "Brahimi report"), United Nations document A/55/305-S/2000/809, in particular paragraphs 47 (b); 76-83, 86-91; 127-132; 224-225. See also Kofi Annan, "We the Peoples—The Role of the United Nations in the 21st century," (Millennium Report): "Our system for launching operations has sometimes been compared to a volunteer fire department, but that description is far too generous. Every time there is a fire, we must first find fire engines and the funds to run them before we can start dousing the flames."

54 See Hansjoerg Strohmeyer, "Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor," *American Journal of International Law* 95 (1) (January 2001): 60-61. The existence of the INTERFET-sponsored Detention Management Unit until early January 2000 allowed UNTAET more time to proceed with in depth planning of East Timor's future judicial system and to carry out the difficult search for East Timorese jurists.

55 See "Report of the Secretary-General on the Implementation of the Report of the Panel on United Nations Peace Operations," October 20, 2000, United Nations document A/55/502, paragraphs 30-35.

56 See "Report of the Secretary-General on the Protection of Civilians in Armed Conflict," March 30, 2001, UN document (S/2000/S2001/331), paragraph 11.

57 See Hansjoerg Strohmeyer, "Building a New Judiciary for East Timor: Challenges of a Fledgling Nation," *Criminal Law Forum* 11 (3) (2000): 276.

58 See UNMIK Press Releases, August 16, 1999 (UNMIK/PR/26), and August 18, 1999 (UNMIK/PR/28).

59 Remarks made during a presentation at Columbia University, New York, April 4, 2001.