THE EU AND CIVILIAN CRISIS MANAGEMENT:
A CASE STUDY OF EULEX KOSOVO
AND
BUILDING MULTI-ETHNIC RULE OF LAW

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Abstract

The European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, constitutes the largest and longest lasting manifestation of the Common Foreign and Security Policy in EU history. Deployed in 2008 following Kosovo’s declaration of independence from Serbia after nine years of administration by the UN, EULEX is tasked with monitoring, mentoring, and advising relevant local authorities in the reconstitution of a justice system conforming to European standards. EULEX personnel are deployed in capacities of policing, forensics, customs, prosecution, and judiciary. Despite 15 years of international assistance in this field, Kosovo remains a place plagued by inter-ethnic tensions, organized crime, and corruption. Following a brief, but costly ethnic war in 1998-99, and ensuing inter-ethnic violence, the Serb minority of Kosovo separated into defensible enclaves spread around the territory, the largest being north of the Ibar River, contiguous with Serbia. Since 1999, these enclaves have grown divergent from the central authorities in Prishtina and heavily reliant on Serbian-backed parallel structures of administration and security. Consequently in reforming a uniform rule of law system in Kosovo, EULEX faces the challenge of bridging an ethno-territorial cleavage, characterized by stark nationalism and embedded resistance to the other.

In this paper, I examine EULEX’s ability to act as a liberal peace actor in instituting a uniform rule of law system in post-war Kosovo. Although it portrays itself as a highly technical actor to appease all sides, EULEX’s ability to function is politically dependent. As a result, rule of law has become an overtly political process dependent on dialogue and compromise. This greatly empowers local illiberal elites, while largely failing to engage with Kosovo’s societal space and thus failing to engender local ownership of rule of law. The case of EULEX KOSOVO is important and can serve as an example for future Western civilian crisis management operations in post-conflict settings such as Iraq, Afghanistan, Georgia, and Ukraine.
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Abbreviations
AAK – Alliance for the Future of Kosovo
BIA – Bezbednosno Informativna Agencija; Serbian Security Intelligence Agency
BiH - Bosnia and Herzegovina
CFSP - Common Foreign and Security Policy
DSS - Democratic Party of Serbia
EEAS – European External Action Service
ESDP - European Security and Defense Policy
ESS - European Security Strategy
EU - The European Union
EULEX - European Union Rule of Law Mission in Kosovo
GoK - Government of Kosovo
FRY – Federal Republic of Yugoslavia
HoM - Head of Mission
IBM - Integrated Border/Boundary Management
IDP - Internally Displaced Persons
KFOR - Kosovo Implementation Force
KiM - Kosovo i Metohija: Serbian name for Kosovo
KIJI - Kosovo Judicial Institute
KLA - Kosovo Liberation Army
KP - Kosovo Police
LDK – Democratic League of Kosovo
MUP - Ministarstvo Unutrašnjih Poslova; Serbian Ministry of Internal Affairs
NATO - North Atlantic Treaty Organization
OSCE - Organization for Security and Cooperation in Europe
PDK - Democratic Party of Kosovo
PISG - Provisional Institutions of Self Governance
RoL - Rule of Law
ShIK - Kosovo Information Service
SPRK - Special Prosecution of Republic of Kosovo
SRS - Serbian Radical Party
UDI - Unilateral Declaration of Independence
UN - The United Nations
UNDP - United Nations Development Programme
UNMIK - United Nations Interim Administration in Kosovo
UNSC - The United Nations Security Council
UNSCR - United Nations Security Council Resolution
VJ - Vojska Jugoslavija; Army of Yugoslavia
ZSO KiM - Community of Serbian Municipalities of Kosovo and Metohija

Source Abbreviations
BCPS – Belgrade Centre for Security Policy
GLPS – Group for Legal and Political Studies
KCSS – Kosovar Center for Security Studies
KIPRED – Kosovar Institution for Policy Research and Development
KSI – Kosovar Stability Initiative
Section I – Introduction

How effective are international institutions in establishing rule of law following inter-ethnic conflict? In this study I will address this question through a case study of the European Union Rule of Law Mission in Kosovo (EULEX). The European Union took over the responsibility for reforming for the rule of law (RoL) in Kosovo after it declared its independence from Serbia in February 2008. This followed nine years as an internationally governed territory under the United Nations Interim Administration in Kosovo (UNMIK) from 1999. During 1998-99, Kosovo was the site of an armed conflict between the Federal Republic of Yugoslavia (FRY) and the Kosovar\textsuperscript{1} insurgency, the Kosovo Liberation Army (KLA; UÇK), but this was preceded by a decade of institutional oppression of Kosovars by the FRY under the leadership of Slobodan Milošević. Consequently in 1999 Kosovo was an entity lacking both centralized RoL institutions and a population that culturally accepted central authority as legitimate. After fifteen years of international RoL programming, however, Kosovo remains plagued by the effects of an inadequate justice system with a limited scope. Sometimes compared to Croatia, which achieved EU accession just 18 years after the end of its war for independence, Kosovo has failed to exhibit noticeable progress towards EU standards in the rule of law fields, despite consistently high investment on the EU’s behalf.\textsuperscript{2}

In this paper I will present EULEX within a framework of a RoL-based liberal peace actor (relevant theory to be presented in Section II). Once establishing a

\textsuperscript{1} In this paper I apply the nomenclature Kosovar to the ethnic Albanian population of Kosovo as to distinguish it from both the Serb population of Kosovo and the Albanians of neighboring Albania, who experienced a drastically different history in the second half of the 20\textsuperscript{th} Century.

\textsuperscript{2} By the 2012 European Court of Auditors’ report on rule of law progress in Kosovo, the EU had invested €116 per capita in assistance to Kosovo, more than double the next assistance recipient in the Western Balkans (Montenegro: €55). See, European Union Assistance to Kosovo as Related to the Rule of Law. European Court of Auditors Special Report No. 18//2012 (2012).
theoretical framework of liberal peace building, I present information collected in interviews carried out in Prishtina, Kosovo and surrounding municipalities in 2014 (more details on interview process in Section III). The analytical narrative in which this information is presented, begins by identifying the central themes of EULEX programming as being inherently politicized (Section V). The analytical narrative proceeds to examine those societal factors constraining an imported model of RoL development (Section VI). And the analytical narrative finishes by presenting EULEX as a model for RoL-based civilian crisis management operations (Section VII), including public opinion of it and ethno-territorially disparate practices. The conclusion (Section VIII) ultimately presents EULEX’s model of RoL building in an ethnically divided setting as a political practice, a process itself in conflict with RoL principles. It can further be concluded that through its failure to address societal obstacles to RoL and generate support through positive and successful practices, that EULEX is an indication of a flawed model of RoL-based civilian crisis management.

**EULEX KOSOVO**

The European Union Rule of Law Mission in Kosovo (hereafter EULEX) constitutes the largest and longest lasting manifestation of EU foreign and security policy (in its current form the Common Foreign and Security Policy: CFSP). EU foreign and security policy began a rapid evolution following the Yugoslav Wars in the 1990s, when it became clear that the normative transformation that had been successful in the Visegrad and Baltic states was not sufficient in the setting of former Yugoslavia.³

³ In first the Visegrad (Czech Republic, Hungary, Poland, Slovakia) and then the Baltic (Estonia, Latvia, Lithuania) states, the EU (then ECC) concluded Europe Agreements, which made official those states’
Beginning at the Cologne Summit in 1999 and continuing through 2003, the EU devoted considerable attention to the reform of its foreign and security policy, previously contained in Pillar II of the Maastricht Treaty, and produced both the European Security and Defense Policy (ESDP) and European Security Strategy (ESS). Both of these, and additional documents, made clear the EU’s preferred focus on civilian crisis management options, which privileged development and human rights. EU commitment to RoL-specific operations was manifested during this process, which included the acknowledgment of a need for judicial and prosecutorial advisors to be deployed in concert with any police mission. Provisions for financial assistance to the rebuilding of justice infrastructure were also included as was the explicit pledging of direct support in the RoL field to the ongoing UN administrations in Kosovo (UNMIK) and East Timor (UNTAET) (Santa Maria de Feira European Council, 2000).

UN Special Envoy to Kosovo Martti Ahtisaari’s Comprehensive Proposal for the Kosovo Status Settlement (hereafter Ahtisaari Plan) called for an ESDP-led RoL operation in Kosovo following independence. However it was vetoed in the UN Security Council by Russia in July 2007. The following February (2008), just days prior to the unilateral declaration of independence by Kosovo’s provisional institutions, the Council of the EU voted EULEX into existence as a strictly civilian crisis management operation and its deployment commenced in December 2008. EULEX’s professed mission was to assist the relevant Kosovo institutions in developing and strengthening a multi-ethnic

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justice system, police and customs service, and ensuring that they are free from political interference and adhere to best European practices (Council Joint Action 2008/124/CFSP). Without universal recognition of Kosovo’s independence, including by Russia and thus the Security Council, and five EU member states, EULEX was unable to deploy in the capacity it had planned for within the framework of the Ahtisaari Plan.\(^5\)

In order to legally deploy in the contested territory of Kosovo, EULEX was forced to reject the Ahtisaari Plan and work within the ‘status-neutral’ framework of UNSCR 1244, which had created UNMIK in 1999 and guaranteed the territorial integrity of Serbia, thus not recognizing Kosovo’s sovereignty. This was formalized in “The Six-Point Plan”, an agreement between the UN Secretary General Ban Ki Moon and the Serbian government, but rejected by the Government of Kosovo (GoK). Contained within the “Six-Point Plan” were provisions for extensive autonomy of the majority Serb populated areas of Kosovo. This included separate chains of command for Serb police, a justice system autonomous from the centralized Kosovar one, and responsibility for the protection of Serbian Orthodox sites being handed to the Serbian government (Džihić and Kramer, 2009; and, GLPS, 2012).

As a consequence of the “Six-Point Plan” confusion quickly arose around EULEX’s deployment. While the agreement between the UN and the Serbian government ‘legalized’ EULEX from the perspective of international law, it delegitimized the mission domestically. The Ahtisaari Plan, contained within the Constitution of the Republic of Kosovo is where the invitation for EULEX is explicitly stated. Furthermore the legal basis for EULEX’s operation, including all legal

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\(^5\) EU Member States Spain, Slovakia, Romania, and Cyprus all reject Kosovo’s independence, citing secessionist movements inside their own countries as reason. Greece also does not recognize Kosovo’s independence. Initially undecided, Greece eventually sided with its traditional orthodox ally Serbia.
conclusions reached, is the legislation of the Republic of Kosovo. However in the acceptance of status neutrality provided for in the “Six-Point Plan”, EULEX explicitly renounces both the Ahtisaari Plan and all legislation for Government of Kosovo. Thus by the letter of the agreement legalizing its deployment, EULEX must reject its own stated legal basis (Muharremi, 2010; KIPRED 1/13, 2013; KCSS, 2011).

Due to this confusion, EULEX has endeavored in its discourse to remove all political alignment and portray itself as a strictly technical and apolitical mission (KCSS, 2012). Despite this, however, it has continued to embed personnel within the central Kosovar RoL institutions and apply the laws of Republic of Kosovo, while striving to maintain its ‘status-neutral’ designation in the eyes of the Serb population and Serbian government – adopting what one think-tank labeled ‘chameleonic pragmatism’ (KIPRED 1/13, 2013). Such behavior, though, affected acceptance of EULEX by the local population. To Kosovars, it was seen as a product of compromise, and its warm welcome and hope surrounding its mission quickly dissipated (GLPS 05/2014, 2014; and interview Image 1: Political graffiti in Prishtina depicting UNMIK and EULEX as one and the same. Credit: Author’s photograph
Serbs never accepted the status-neutral guise, and instead viewed EULEX as a state-building operation (interview with Valdete Idrizi, Prishtina 2014; and, interview with Ilir Deda, Prishtina 2014).

Once deployed in Kosovo, a process that lasted from December 2008 to April 2009, EULEX has executed both strengthening and executive operations in concert with the relevant local authorities, with the ultimate goal of implementing the same RoL standards across the whole of Kosovo (interview with EU official, Prishtina 2014).

EULEX was officially divided into strengthening and executive divisions in 2012, with the strengthening division devoted to monitoring, mentoring, and advising (MMA) local authorities; and the executive division carrying out police or judicial operations, where the local authorities are deemed unable. In much of Kosovo EULEX performs primarily strengthening operations, but retains executive jurisdiction in cases of war crimes and organized crimes.

Working as a model for local authorities, EULEX prosecutors serve alongside Kosovars in the Special Prosecution for the Republic of Kosovo (SPRK) and judges sit on the Constitution Court, and the Kosovo Judicial Council (KCSS, 2011). However, despite the clear acknowledgement of the need for prosecutorial and judicial staff as early as 2000, these fields of the mission have been largely overshadowed by the police and

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7 Valdete Idrizi is director of CiviKos, a civil society platform in Prishtina, coordinating 140 civil society organizations. She has managed CiviKos for three years. Originally from Mitrovica, prior to CiviKos, she founded and managed Community Building Mitrovica.

8 Ilir Deda recently stepped down as managing director of the Kosovo Institute for Policy Research and Development (KIPRED) after being elected as a member of the assembly for the Lëvizja Vëtevendosje! party. Prior to KIPRED he worked at the Geneva Center for Security Policy and during the last presidential administration he served as the Chief of Staff for the President. Mr. Deda holds a BA in political science and an MA in international affairs.

9 This participant chose to remain confidential.
customs components. Only 13% of deployed EULEX personnel constitute these two fields, referred to as the ‘Justice Component’ (KIPRED 1/13, 2013). This small allotment has proved largely incapable of handling both the backlog of 1,187 cases inherited from the UNMIK justice system, and those new cases brought by EULEX (GLPS 05/2014, 2014). The fight against corruption has produced largely unsatisfactory results, including only a single prosecution of a high-level public official, despite overwhelming data suggesting systematic corruption in all sectors of public administration from the UN Office on Drugs and Crime (KIPRED 1/14, 2014).10

In Northern Kosovo (defined as that territory north of the Ibar River, which runs through Mitrovica/Kosovska Mitrovica) EULEX has traditionally discharged an exclusively executive mandate in the absence of local authorities. Here, both the GoK and EULEX have failed to establish authority since independence, as did UNMIK during its tenure (GLPS, 2013). Operations in the North [of Kosovo] include the maintenance of two formed police units, a response unit for riot control and breaching unit.11 In North Mitrovica EULEX is fully responsible for the operation of the court, even after its new mandate in 2014, aimed at decreasing executive operations in the rest of Kosovo (Interview with EULEX Executive Official, Prishtina 2014). The reasoning behind a different approach to RoL programming in the North is complex and rooted in historical, 

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11 “Breaching Unit”, the official terminology used by an interview participant from the EULEX Strengthening Division, refers to a unit specially trained in and armed for high-risk arrests, similar to an American SWAT team. Both formed units are composed entirely of members of the same nationality for operational straightforwardness. Currently the response unit is entirely Polish and the breaching unit is entirely French (interview with EULEX Strengthening official, Prishtina 2014).
political, and public opinion factors to be presented in the proceeding context and analysis sections.

Since its deployment began in 2008, EULEX has been largely unpopular with the local population and the object of extensive criticism. Some, which has already been presented, is aimed at EULEX’s “chameleonic pragmatism” of status-neutrality, rightly seen as compromise with Serbia, and often further attributed to division over Kosovo’s status within the EU membership. Further condemnation is leveled at the discourse of EULEX, including its mandate, mission statement, and those public statements made by its various heads of mission (HoM) throughout the course of its deployment. This discourse includes an abundance of ambitious, yet ambiguous objectives leaving the local population and local RoL counterparts unsure of what EULEX actually does or is charged with doing while in Kosovo, often including “helping”, “assisting”, “ensuring”, “contributing to”, “whenever needed”, and the common “best European practices”, which includes no elaboration (Forum for Security, 2011; KCSS, 2012; KIPRED 1/13, 2013). Criticism of excessive executive operations will be presented subsequently in the review of relevant literature and analysis sections, while further analysis of the public opinion surrounding EULEX will be presented in the “EULEX as a Model” analysis section.
Section II – Literature Review

Liberal and Post-Liberal Peace Theories

It is widely accepted that since the end of the Cold War the prevailing mode of post-conflict management by the international community has been liberal peace building. The Liberal Peace Thesis is founded on the notion that democracies, with a couple of exceptions, don’t go to war with each other (Paris, 2006; and, Muravchik, 1996). Joshua Muravchik (1996) argues in favor of democracy as something of a political cure-all, including for intra-state conflicts, which provides the means of civil dispute resolution “without recourse to violence” (Muravchik, 1996: 576). In doing so he rejects the argument that ‘hybrid polities’, characterized by David Roberts (2008) as displaying some aspects of democracy but not all, are at an increased risk of conflict. This claim by Muravchik is refuted in a broad sample of conflict literature. Most notably Jack Snyder (2000) finds that intra-state conflict is most likely to occur in these hybrid polities, which can be transitional or weak democracies. While in fully functional democracies, the population has civic means of dispute resolution other than violence, as noted by Muravchik. Authoritarian regimes tend to be characterized by repressive security institutions and media controls that prevent dissent or insurgency from being fostered (Snyder, 2000; Fearon and Laiton, 2003). Roberts further argues that one “cannot safely anticipate

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12 Muravchick identifies the notable exceptions of the UK declaring war on Finland during World War II and Lebanon going to war with Israel, however argues that these are ‘exceptions that prove the rule’ as the British and Finnish militaries never engaged each other and Lebanon served as a peace broker between the other Arab states and Israel.
that holding elections will result in durable democracy of any gravitas” (Roberts, 2008: 541).

One of those factors, which contributes to potential internal conflict in transitional democracy is prematurely hosted elections (Snyder, 2000; and, Roeder and Rothchild, 2005). Philip Roeder and Donald Rothchild (2005) argue the process of post-conflict democratization is best prescribed as a longer process of ‘nation-state stewardship’ by international actors. According to their argument, the focus in societally divided settings should be on the building of democratic institutions, starting at the lowest levels and delaying the building of institutions that govern from the center (Roeder and Rothchild, 2005). This emphasis on the building of institutions is a common tenet, omnipresent in the literature on liberal peace-building. In *An Agenda for Peace* (1992), UN Secretary General Boutros Boutros-Ghali writes that the most successful means of peace building is strengthening institutions that promote confidence and well-being between peoples, to be achieved through democracy and development (Boutros-Ghali, 1993). Roland Paris (2006) argues that in a post-war setting, ‘a robust framework of institutions’ is required to prevent local actors and elites from undermining the principles of democratic development. Paris further notes the importance of institutions to the (re)development of the market in post-conflict settings (Paris, 2006).

While the building of local institutions in post-conflict settings by international ‘stewards’ may seem relatively straight forward, as Boutros-Ghali (1993) suggests, especially in the security sector, institutional creation does not suffice for the fulfillment of liberal peace. Liberal peace building literature devotes
considerable attention to the conundrum that arises from bestowing legitimacy upon domestic institutions that are built and fostered by international actors. As Boutros-Ghali (1993) notes “Personnel, material, and technical and financial assistance are not enough to create a political culture of democracy” (329) and cultural acceptance of democratic institutions must be fostered especially in states lacking democratic traditions (Boutros-Ghali, 1993). However the question remains of how an international actor can achieve legitimacy and foster such acceptance in the institutions its builds. Bernhard Knoll (2006) identifies the same problem, arguing that a territorial administration cannot simply be the handiwork of a diplomatic process, but must resonate from those inhabitants under its guardianship. In order to achieve this, an international ‘trustee’ must first generate legitimacy through the successful provision of public services in a manner compatible with local ideology. Then ownership must be achieved through the transfer or promise of transfer of powers to local stakeholders (Knoll, 2006). However as Roberts (2008) argues and will be shown in Kosovo-specific literature, the simple transfer of competences to local stakeholders does not automatically confer legitimacy to internationally built institutions. That, Roberts argues, is dependent upon the extent to which the local elites to whom power is transferred are considered legitimate by the population, often achieved through the provision of core state functions, including territorial integrity and improvements to living conditions (Roberts, 2008).

In seeking to bestow the requisite local legitimacy, Roeder and Rothchild warn that international actors should avoid privileging the former combatants in
the new institutions (Roeder and Rothchild, 2005). This is especially important, though more difficult to achieve in post-conflict settings where the conflict developed along ethnic cleavages. In Kosovo, Jason Franks and Oliver P. Richmond (2008) found the bestowal of legitimacy to internationally built institutions was virtually impossible across the predominant Serb-Kosovar ethnic cleavage. The UN Interim Administration in Kosovo (UNMIK) devoted great energy, early on, to the creation of local institutions – a process viewed by Kosovars as state building, and by Serbs as an infringement on Serbian sovereignty. As a result, the coopting of local actors by UNMIK drew only from the Kosovar side of the ethnic cleavage. Franks and Richmond found this led to local elites “treading a fine line between cooperation with and manipulation of internationals” (98) in order to pursue ethnically motivated pre-conflict goals, within the new framework of liberal institutions (Franks and Richmond, 2008). In focusing on institutions in Kosovo, Elton Skendaj (2014) found that those institutions, which the international community transferred to local stakeholders early on, in accordance with Knoll’s (2006) prescription, displayed a high level of politicization and elite patronage.

These two case studies on the liberal peace in post-conflict Kosovo support the two previously presented points made by Roeder and Rothchild (2005). One, Skendaj’s conclusion supports the point that international stewardship should be long in duration to prevent the political capture of liberal peace built institutions. And two, Franks and Richmond’s (2008) conclusion supports Roeder and Rothchild’s conclusion that focus should be devoted to building lower level municipal institutions at the start of liberal peace building, rather than top-down
institutions of central administration that can be potentially ethnically exclusive. And what these cases further illustrate is the challenge of practical application of liberal peace building in post-inter-ethnic conflict settings.

In response to the practical application of institution-centric liberal peace building theory, the post-liberal peace theory has emerged more recently. Championed by Oliver P. Richmond, he defines post-liberal peace (2010) as seeking to develop a hybrid local-liberal peace. This, he argues, centers on the ‘everyday’ – a less formal concept distinct from civil society – in which local actors and communities of actors live and develop their own political strategies tempered to their cultural and environmental needs (Richmond, 2010). Porter et al. (2013) argue that engagement with these local processes and institutional arrangements rather than the importing of ‘best practices’ by external actors enhances institutional legitimacy. Conversely, though, they argue that failure to successfully engage with the everyday can lead to withdrawal of support for public authorities and a search within the everyday for means to redress security, political, or economic grievances (Porter et al., 2013). Similarly Roger Mac Ginty (2010) argues that when the domestic actors are marginalized and peace building dominated by the international stakeholders, peace becomes a process done to them rather than one they are full participants in. This leads to a focus on “ticking boxes, counting votes, and decommissioning weapons...” (152) instead of addressing the organic factors underlying the conflict in the first place (Mac Ginty, 2010).

Engagement with the ‘everyday’ in the process of post-liberal peace, however is not a guarantee of legitimacy or sustainability. In a study of post-conflict Sierra
Leone, Gearoid Millar (2014) argues that given the unique nature of those ritual, practical, and institutional arrangements which define ‘everyday’ engagement, the outcomes of hybrid institutions are unpredictable. He found this especially evident in cases in which the local and international conceptions of such notions as justice and adulthood were in conflict (Millar, 2014). As this overview of relevant liberal peace and post-liberal peace literature has made evident the organic ownership and credibility of internationally regulated institutions is paramount to the success of both liberal and post-liberal peace theories. However as Millar (2014), and Franks and Richmond (2008) found, the practice of engagement with local stakeholders does not spontaneously result in successful institutions. Rather, in accordance with Mac Ginty (2010) the prescription of local stakeholder engagement in liberal peace building initiatives has the potential to become a box that is ticked in meeting an internationally mandated timeframe rather than a guarantee of ownership.

*Rule of Law (RoL)*

The preceding section dealt with that literature related to the broader category of liberal peace intervention and exposed the themes of local ownership and engagement as consistent in the literature. This section will review relevant literature pertaining to liberal peace building focused more specifically on rule of law (RoL) operations and the liberal peace challenges affecting them.

Firstly, what is evident in the RoL literature is lack of consensus on a definition of RoL. Yvon Dandurand (2007) cites the United Nations definition as: 
A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards (Dandurand, 2007: 248-49).

Stromseth (2007) defines RoL as:

A state of affairs in which the state successfully monopolizes the means of violence, and in which most people, most of the time, choose to resolve disputes in a manner consistent with procedurally fair, neutral, and universally applicable rules, and in a manner that respects fundamental human rights norms. In the context of today’s globally interconnected world, this requires modern and effective legal institutions and codes, and it also requires a widely shared cultural and political commitment to the values underlying these institutions and codes (Stromseth, 2007: 1449).

Both of these definitions do address the organic level of society that Richmond (2010) deems the ‘everyday’, in requiring cultural commitment (Stromseth) or individual decision making (Dandurand) for RoL to be successful. However, both are primarily institutional in definition, addressing government control, international standards and norms, and laws and procedures. In this sense the ‘everyday’ is overshadowed by institutional importance.

As further review of the literature indicates, there is a further lack of consensus on what sectors of society RoL intervention is most applicable to. For example, Balakrishnan Rajagopal (2008) and Richard Sannerholm (2007) cite RoL
reform as stemming from economic development and the needs for property and contract rights and the court as a formal dispute resolution mechanism. Golub (2007) prefers a social mode of RoL, arguing for its importance in local empowerment. While others, Petersen (2010) and Betts et al. (2001), regard RoL intervention as a governmental reform and building administrative legitimacy.

Regardless of definition or societal sector addressed, the RoL intervention literature draws two close parallels with the liberal peace literature, namely: a focus on institutional reform, and the same conundrum of local ownership. Traditionally interventionist RoL programming focuses on what Sannerholm (2007) identifies as the ‘justice triad’ of legislative reform, judicial education, and police training. More specifically, Dandurand (2007) cites a more robust prosecutorial office as the key to RoL, in line with his earlier cited definition of RoL serving to protect the population from the state. Acceptance of RoL, like Boutros-Ghali’s (1993) conclusion about democracy, hinges on a cultural acceptance of the RoL principles as much as a political one (Chesterman, 2005). Betts et al. (2001) suggest that the confidence in the justice system is of the most importance post-internal conflict, when the possibility of revenge or vigilante violence is high. In such a situation, though, Sannerholm (2007) posits that confidence or trust in central justice authorities is exceptionally difficult, as police forces (and laws) have tended to be part of the repressive regime. Thus the challenge of not only local ownership of RoL institutions, but confidence in those institutions is very real.

To address this, Sannerholm argues that sustainable RoL institutions are the product of locally owned, bottom-up approaches, having already highlighted his
qualms with post-conflict justice institutions (Sannerholm, 2007). Stromseth (2007) also argues that the support of local populations and leadership are crucial to fostering RoL institutions that, most notably, will outlast the international presence. Stephen Golub (2007) advocates what can be classified, by Richmond’s (2010) definition, as a post-liberal peace building approach in his endorsement of ‘legal empowerment’. Legal empowerment, he defines as an emphasis on directly strengthening the roles, capacities and power of the disadvantaged and civil society, as opposed to focusing on state institutions (Golub, 2007: 56).

In seeking to foster RoL institutions from the organic level however presents the liberal peace builders with another serious challenge: leadership and politicization. Here Stromseth (2007) further warns that the short-term interests that may be forwarded by collaboration with local warlords or militias can ultimately spoil RoL in the long term. And while eschewing “warlords” or criminal or paramilitary figures from the RoL process may seem straightforward, it can be anything but in post-intra-state conflict societies. In applying Stromseth’s definition of RoL to Franks and Richmond’s (2008) findings (identified in the preceding section), what becomes evident is that the coopting of only one side of an ethnic cleavage to centralized authority means a monopolization of the means of violence by only one ethnic group. The literature indicates a resulting proliferation of informal or parallel means of violence on the opposite side of the ethnic cleavage.

Porter et al. (2013) argue that those not on the coopted side would seek to redress their participatory and security grievances through whatever means
available, including violence. Kristen Howarth’s (2014) findings support this, writing:

for those in post-accord societies who do not benefit from a peace dividend, they are more likely to turn to the informal or illegal economy, such as drug trafficking, gang violence and crime, illegal arms sales and prostitution rings, as they are the only opportunities available (268)

Mark Duffield (2002) defines this as a rise in “parallel extra-legal and transborder activity” (1057). And he argues that the facilitators of such activities are not regarded as criminal at the ‘everyday’ level at all. Rather, he argues, “the leaders of terror campaigns and ethnic cleansing, rather than being criminals or manipulative elites, are often perceived as saviours and the protectors of the essential elements of life itself” (Duffield, 2002: 1060). Thus what is evident is that an ethnically divided society that is the subject of liberal RoL programming, becomes characterized by political asymmetry. On one side of the cleavage is the ethnic group coopted by the liberal peace builders for the sake of local ownership. On the other side(s) is the marginalized group, seeking to monopolize its own means of violence through ‘everyday’ leaders outside the realm of centralized authority. Essentially the underlying traits of ethnic conflict continue to endure, without significant violence. This is a situation which Mac Ginty (2010) labels as ‘no war, no peace’.

What the literature ultimately depicts is a trend in interventionist RoL programming to be inherently liberal, rather than post-liberal, therefore preferring to focus its efforts on the centralized institutions, rather than Richmond’s (2010) ‘everyday’ space. Golub terms this focus on judiciaries and ministries, ‘rule of law
orthodoxy’ (Golub, 2007: 48). The result of this, widely indicated in the literature, is an inherent politicization of RoL intervention. Stromseth (2007) concisely sums up the aforementioned asymmetry: “Promoting rule of law is not politically neutral, although interveners often like to imagine that it is. In practice, the decisions interveners make necessarily empower some local actors at the expense of others” (Stromseth, 2007: 1449).

Jenny Petersen (2010) identifies international RoL stakeholders as striving to portray RoL programming as apolitical through images of blind, neutral, and democratic justice. Despite this, she argues, RoL programs are highly politicized bodies of reforms, characterized by illiberal coercive strategies designed at forcing RoL outcomes. This produces, she argues, a system in which elites receive impunity in the interest of stability (Petersen, 2010), consequently rejecting neutrality and ‘blind justice’ in support of Western foreign policy objectives (Duffield, 2010).

Likewise Rajagopal (2008) argues against the apolitical nature of RoL intervention, writing:

Underlying this “linkage” idea is a desire to escape from politics by imagining the rule of law as technical, legal, and apolitical. In other words, there is a tendency to think that failures of development, threats to security, and human rights violations could all be avoided or managed by a resort to law (1349).

He further argues, however, that addressing development, human rights, and security is best suited to remain political processes, and thus RoL programming is also best suited to remain a political process (Rajagopal, 2008).
Other scholars refute Rajagopal’s (2008) call for keeping RoL an inherently political process, which could be taken as a highly liberal peace view. Skendaj’s (2014) findings, for example, have already highlighted the potential for general ‘institution capture’ and political patrimony displayed by local stakeholders in a post-conflict setting. His findings further indicated an express loyalty to political leaders or parties by local actors, especially in the judicial system (Skendaj, 2014). And Sannerholm (2007) agrees, arguing that incomplete RoL principles lead to a culture of widespread corruption and embezzlement being fostered. More troubling for RoL are Petersen’s (2010) findings. In a case study of Kosovo, she found a culture in the international RoL stakeholders of impunity for local politicians, which she further found to include the tolerance of informal security and intelligence structures, independent of central oversight and loyalty solely to politicians or their parties. This phenomenon was not observed strictly on the side of the disenfranchised minority (Serbs), but the Kosovar side as well (Petersen, 2010).

What can be drawn from a review of the RoL-focused literature is that it displays the same problems as the broader process of liberal peace building. As the literature has demonstrated, RoL programming has focused more on the liberal institutional than the post-liberal ‘everyday’ space. Though the conundrum of ownership is omnipresent in the liberal peace literature, it is magnified in application to RoL institutions. As Sannerholm (2007) notes, those institutions of law and order were often times repressive organs under authoritarian regimes.

13 Phillips’s work identifies the Kosovo Information Service (ShiK) as a paramilitary intelligence service that remains a part of the Democratic Party of Kosovo (PDK), the ruling party of Prime Minister Hashim Thaçi. He identifies ShiK as being responsible for murder, extortion, smuggling, and espionage. See, David L Phillips. “The Balkan Underbelly.” World Policy Journal (2010).
Thus in settings characterized by a prominent ethnic cleavage, instilling trust and legitimacy in the institutions of state monopoly on the means of violence (Stromseth, 2007), is a great challenge on both sides, but even more so on the side not coopted by international actors. What is also present in such a setting, as evidenced by the literature, is an inevitable politicization of RoL, a subject often portrayed by its stakeholders as apolitical (see Section I, on EULEX ‘status-neutrality’). In Kosovo, even the selection of which legal code to apply by UNMIK, so courts and police could be begin to function, was a politically-charged decision that led to the early disaffection of the Serb minority (Betts et al., 2001).

**EULEX KOSOVO**

Peace building literature dealing with Kosovo as a case study is not rare, however the bulk of the literature dealing with EULEX does not evaluate it as a liberal peace building operation. Studies already presented in this review, including Jason Franks and Oliver Richmond (2008), Elton Skendaj (2014), Jenny Petersen (2010), Betts et al. (2001), and Simon Chesterman (2005) all examine UNMIK or general RoL reform in Kosovo within a liberal peace-building framework. Given EULEX’s denotation as the largest and longest running manifestation of the EU Common Foreign and Security Policy (CFSP), a theme in the literature has been to take EULEX as a case study of the constantly evolving CFSP.

For example, Monica Opriou (2011) overtly places EULEX in a framework of the evolving foreign policy developments in the EU that followed 1999, and presents EULEX as an example of changing foreign policy. EULEX, she argues, is the
archetypal mission for the region, as it has the effect of both deterring future problems through its presence, and signals the EU’s clear commitment to stability in the region (Opriou, 2011). Arnold Kammel (2011) similarly posits that EULEX is clear manifestation of the EU’s developed strategic culture, currently embodied in the CFSP. In his work he presents all four EU missions to the former Yugoslavia (BiH, two to Macedonia, and Kosovo) as ‘whole of government’ approaches that don’t just focus on police or judicial reform, but democracy, RoL, and human rights. Through this method of foreign intervention, the EU seeks to address three major threats in regional conflict, state failure, and organized crime (Kammel, 2011). These two works also constitute rare cases in which is not the focus of harsh (though often justified) criticism.

Labinot Greiçevci (2011) also evaluates EULEX through the lens of CFSP capabilities, but unlike Kammel (2011) and Opriou (2011), argues that it clearly makes evident the limitations of the EU as a foreign policy actor. He labels EULEX as an exemplar of ‘handicapped actorness’. EULEX is capable of imposing decisions, such as agreements with Belgrade on the population and institutions of Kosovo, however has been unable to demonstrate its wider control, especially in the Serb-dominated North. Greiçevci further argues that the failure of the EU to reach consensus on the status of Kosovo, and the issues arising from that has detracted greatly from its role as an international actor (Greiçevci, 2011).

Other critical works focusing on EULEX have tended to address its overall efficacy, legality or sought to make recommendations for its future operation. For example Nikolaos Tzifakis (2013) posits that EULEX’s policies have come to be
characterized by a legitimacy and efficiency deficit. Dimitris Papadimitriou and Petar Petrov (2012) argue that EULEX’s efficacy was greatly curbed prior even to its deployment, by virtue of adopting a status-neutral mandate to appease both Russia and the five non-recognizing EU member states – a point also noted by Kammel (2011). Robert Muharremi (2010), from a legal perspective, argues that due to EULEX’s shift to status neutrality both it as an entity, and any rulings it makes are technically illegal by Kosovo law. And, Andrew Radin (2014) argues that EULEX has been ineffective due to a lack of conditionality, stemming from a flawed assumption that EULEX would have been well received. Radin’s work further advocates an end to EULEX (Radin, 2014), a theme commonly found in the policy reports to be presented in subsequent sections.

Though these scholars present vastly differing themes, specific to EULEX, they do present aspects of EULEX that are analogous to the broader literature dealing with both liberal peace building and RoL. Namely Greiçevci (2011) addresses the issue of local ownership of EULEX. He argues, in accordance with liberal peace (Knoll, 2006; and, Boutros-Ghali, 1993) and RoL (Sannerholm, 2007; Stromseth, 2007; and, Golub, 2007) literature, that in order for EULEX to be successful it requires both local ownership and accountability. This, he argues, EULEX is devoid of in practice in Northern Kosovo, where EULEX continues to perform those functions that should be carried out by Kosovar central RoL authorities (Greiçevci, 2011). Though such behavior by EULEX is not unwarranted, as Opriou (2011) notes, it is taking over those functions (in the North) that the government of Kosovo is unable to perform. Padamitriou and Petrov (2012) argue
along with Greiçevci (2011) that the original plan of a ‘light mode’ for EULEX, with fewer personnel more embedded in Kosovar institutions would have fostered greater legitimacy and ownership. This, however, had to be deviated from for political reasons (Papadimitriou and Petrov, 2012).

Others, including Papadimitrou and Petrov, identify those aspects of EULEX that liken it to Golub’s (2007) nomenclature of ‘rule of law orthodoxy’ and place it within Stromseth’s (2007) and Petersen’s (2010) context that RoL programming is inherently political. Papadimitriou and Petrov (2012), argue that as a product of compromise, EULEX strives to portray itself as strictly apolitical. RoL literature, though, generally argues that RoL programming cannot maintain an image of blind or neutral justice. In agreement with Stromseth (2007), Muharremi (2010) argues that despite EULEX’s status-neutral label, its de facto cooperation with Kosovar institutions privileges the Kosovar side of the ethnic cleavage over the Serb side. Tzifakis (2013) argues that even through its mission statement, EULEX is focused on strengthening those institutions emblematic of Kosovo’s sovereignty, challenging Erika de Wet’s (2009) conclusion that EULEX and UNMIK are mutually reconcilable.

Status-neutrality in the UNMIK framework is not the only contradiction within EULEX. As Radin (2014) suggests, EULEX’s main objectives are in conflict with one another. He argues that prioritizing regional stability has led to risk-averse behavior, including avoiding transformative activities such as arresting popular political figures or strengthening RoL institutions in the North, that could lead to potential discontent or unrest for either Kosovars or Serbs (Radin, 2014). Tzifakis (2013) similarly argues that EULEX has focused on accommodating the
situation on the ground, and preserving stability, rather than instigating reforms in accordance with its mandate. As a result, EULEX has not pursued investigations or prosecutions against high-profile political figures (Tzifakis, 2013; and Radin, 2014), displaying the de facto impunity addressed by Petersen (2010).

The EULEX-specific literature displays qualities similar to both the broader liberal peace building and RoL literature, despite differing focuses of the works. What can be concluded is that those challenges to local ownership and legitimacy, local elites, and politicization are all present in studies of EULEX in Kosovo. What the studies of EULEX further make evident is the effect that internal divisions within the EU have on its crisis management capabilities (Kammel, 2011; Muharremi, 2010; and, Papadimitriou and Petrov, 2012). Having established a framework of relevant existing literature, this research will contribute to the base of EULEX-specific scholarship, by examining EULEX as an international RoL intervention within the larger context of liberal peace building.
Section III – Research Methodology and Limitations

Research Methodology

Though fifteen years removed from the formal end of hostilities between the
Kosovar insurgency and FRY, EULEX will be examined within the framework of a post-
conflict actor, as Kosovo continues to remain a state in transition. As demonstrated in the
preceding section, literature on EULEX tends to evaluate it in the framework of EU
international actor capacity. In this research, I will place EULEX within the framework
of a liberal peace-building actor, the literature on which is also presented in the preceding
section.

In order to do this, I make use of 20 qualitative interviews I conducted in
Prishtina, Kosovo and surrounding municipalities between June and August 2014;
primary observation of EULEX-operated trial proceedings, which I conducted in
Prishtina during the same period; public opinion data provided by UNDP, the OSCE, and
the UN Office on Drugs and Crime; as well as drawing on policy reports and research
produced by civil society organizations operating inside of Kosovo. In addition, news
reports from regional sources will be used as supplemental information. News sources
include Balkan Insight, published by the Balkan Investigative Reporting Network; B92
Radio, from Belgrade; and Radio KiM from Čaglavica, Kosovo, a Serbian language-only
source.

Participants were interviewed in a semi-structured setting, all in English. The
operational language of the EU, UN, and KFOR in Kosovo is English. Participants from
domestic civil society were given the option of having the interview conducted in either
Serbian or Albanian through a translator, but none chose to do so. Participants were asked a series of six open-ended questions regarding EULEX and RoL in Kosovo. Given the numerically small participant population, and the focus on ‘experts’ in fields related to RoL, this research does not code interview responses as statistical data. Rather the data acquired in interviews will be coded by topic of responses (i.e. ‘context’; ‘public opinion’; ‘cultural factors’; ‘relations w/ Serbia’). Through this approach, the research will build an analytical narrative of EULEX operations inside of Kosovo and place it within the liberal peace-building framework.

Information from policy reports and research, and public opinion polling, will be used as supplemental to the interview data. These reports come from a variety of sources with varying perspectives. Through preliminary examination of some of these reports, I have found a tendency to be overly and unrealistically critical of EULEX. And in conclusion, these reports tend to present a number of ‘policy recommendations’ for the restructuring or refitting of EULEX that tend to be equally as unrealistic or ideological for reasons of financing, logistics, or realpolitik. This acknowledged, they do contain a large amount of quality factual information. Included are quotes and analysis from Albanian language sources; accessibly presented historical information regarding specific topics; and, public opinion data regarding specific issues gathered by the authoring organization. It should also be noted that these reports are the work of either contracted scholars or research fellows and some have been submitted as policy review to the European Union itself.
Research Limitations

During my period of primary research in Kosovo between June and August 2014, my research was limited in a number of ways. The first of such limitations is the time in which field research was conducted. With only eight weeks in the field, the time for research itself was limited, especially considering that the first week was spent searching out potential interview participants and scheduling interviews. Likewise research during the period I was on-site was limited because of domestic and European vacation practices and holidays. Mid-July to mid-August is a popular time for vacation; and, the Islamic holiday Ramadan fell during the eight-week period as well. As a result certain officials and experts were unavailable, and court proceedings were reduced during this period.

The other three research limitations regard the interviews themselves. Firstly, I was limited in my language skills, speaking virtually no Albanian, and limited Serbian. While all participants chose to be interviewed in English, and many were fluent and very articulate, certain participants struggled with jargon. Potentially these participants could have had their meaning wrongfully presented. The second limitation has to do with recruitment. I found the press office of EULEX to be exceedingly unhelpful. After having numerous requests put on hold, I was instructed to submit any questions in writing for review. Following this request, acting head of the EULEX press office instructed me not to contact them again. While I was able to recruit EULEX participants through other means, this limited the population available.

Likewise trouble was experienced in recruiting Serbs. Both Serb politicians and civil society experts avoided contact and actively instructed me not to contact them again. As a result, my Serb perspective is limited to a single interview with a journalist.
operating in the village of Čaglavica in the Gračanica municipality, the large Serb enclave outside of Prishtina.

Lastly, due to security concerns of the Miami University study abroad program I was operating as a part of, I was prevented from conducting research in Northern Kosovo or the city of Mitrovica. A journalist from Serbian media outlet Tanjug; a civil society representative from Community Building Mitrovica; and a Serb employee of UNDP in Zvečan, agreed to participate in interviews if I could arrange transport to the North, however this proved to be not possible due to safety concerns regarding current events at the time. In late June, EULEX personnel removed the long-standing barrier on the main bridge in Mitrovica only for Serbs in the north half of the city to replace it days later. This resulted in violent rioting in the southern half of Mitrovica, which included cars and buildings being set on fire. In late July, EULEX issued an arrest warrant for the Serb mayor of Zubin Potok, Stevan Vulović. This also resulted in small-scale rioting in North Mitrovica and Zvečan. Given these two events, it was agreed upon that travel to the North was not favorable for the academic program I was operating with.
Section IV – Context

When EULEX inherited responsibility for reforming RoL in Kosovo, albeit by its own initiative, it found itself in a setting in which the post-conflict phase of the war was still evolving, nine years removed from the combat, or escalation, phase. Most notably Kosovo is characterized by a stark ethnic cleavage between Serbs and Kosovars that has exhibited few signs of diminishing following the war. In order to understand the rule of law (RoL) situation and those obstacles to it, it is important to briefly review the historical events influencing contemporary Kosovo.

Repression, War, and Aftermath

Kosovo’s golden period, which began with the granting of enhanced autonomy in 1974, came to an official end in July 1990 when the Kosovo assembly was dissolved. For years before though, its autonomy had been gradually eroding. The rise to power of Slobodan Milošević saw the top Kosovar politicians replaced by his loyal supporters. Likewise, Kosovars were removed from the state security and justice institutions, including the police and judiciary. This led to striking and subsequent rioting at the Trepča mining complex near Mitrovica in 1989. The Trepča Combine constituted the economic heart of Kosovo and the unrest quickly spread. In the wake of a massive

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14 In their study of EU crisis management, Antonio Marquina and Xira Ruiz (2005) identify three phases of conflict: pre-conflict, escalation/management, and post-conflict/resolution. They define the post-conflict phase as one managed by civilians without directly military threat, in which the risk of violence is still present, but the recurrence of war unlikely.

15 In addition to the mines outside of Mitrovica, the Trepča Combine included a chemical research and production plant, a battery factory, and an ammunition factory.
strike in September 1990, the Serbian government laid off the bulk of the Kosovar workforce at Trepča, retaining only 221 of the 6,471 Kosovar employees (KSI, 2012).

As war spread through Croatia and then Bosnia and Herzegovina (BiH) to the north, Kosovo remained for the most part pacific. Following the dissolution of the assembly by Belgrade in 1990, parallel political structures began to arise on the Kosovar side and Ibrahim Rugova, a writer by trade, was elected unofficial president. Parallel healthcare and education institutions were formed alongside the political ones. Rugova staunchly advocated non-violence, despite the Serbian government’s seizure of Kosovar schools and forcing Kosovars out of virtually all public sector jobs. To further deter violence, Milošević installed paramilitary leader Željko Raznatović “Arkan” and members of his entourage in the Kosovo government and allowed him to construct a paramilitary training camp outside Prishtina (Gërmia). Despite this and Rugova’s non-violent preaching, violent Kosovar elements had begun to emerge in the traditionally dissident Drenica region in central Kosovo, which was deemed a no-go zone for Serbian police. In 1991 the Serbian Ministry of Internal Affairs (MUP) had attempted to capture brothers Adem and Hamëz Jashari there and failed. And it was in Drenica in 1993 that the Kosovo Liberation Army (KLA) was founded by, among others, Hashim Thaçi. Small groups of KLA volunteers were smuggled into Albania where they received military training (as the Jasharis had after their attempted arrest).

KLA operations increased by 1997, as the collapse of the Sali Berisha government in Albania and the availability of military stores solved the KLA’s armament problem.¹⁶ Sporadic guerilla operations targeted at Serbian police digressed into an

¹⁶ The Albanian government led by President Sali Berisha collapsed financially in spring 1997 due to economic collapse resulting from investment in pyramid schemes. This was accompanied by mass
insurgent war in 1998 following another botched attempt at capturing the Jashari brothers at their home in Donji Prekaz. Following a nearby attack on Serbian police, the MUP and the army launched an attack against the Jashari compound that resulted in the deaths of both brothers and more than sixty other Kosovars. Subsequently the KLA rapidly transformed from a relatively small band of guerillas to full insurgency as thousands of Kosovars were sent to Albania for expedited military training.

After a year of fighting between the KLA and the FRY security forces, and a failed attempt by the US to broker a settlement at Rambouillet, US-led NATO commenced an air campaign against the FRY. Airstrikes, commanded by US General Wesley Clark, targeted both military and infrastructural targets, including power plants, factories, and bridges in Serbia-proper. Believing that Russia would come to Serbia’s aid, as it had done in a diplomatic capacity at Rambouillet, Milošević was undeterred by NATO’s superiority and used its campaign as a pretext to launch Operation Horseshoe – a mass ethnic cleansing of Kosovars. Serbian forces, including locally-recruited paramilitaries, conducted mass executions and used the Prishtina-Skopje railway to forcibly transfer large amounts of the population.17

By June 1999, the NATO air campaign had succeeded in dislodging Milošević’s security forces, which had not received the anticipated Russian support, from Kosovo and Norwegian and British paratroops entered Prishtina. That same month, UN Security Council Resolution 1244 was passed, placing Kosovo under the administration of the

desertion from the Albanian Army and stores of weapons were made available to the under-equipped KLA including massive quantities of AK-47 and SKS variant rifles, mortars, and grenades. See, Marko Hajdinjak. *Smuggling in Southeast Europe: The Yugoslav Wars and the Development of Regional Criminal Networks in the Balkans* (Center for the Study of Democracy, 2002).

17 MUP used specially brought boxcars to shift massive amounts of Kosovars from Prishtina to the Macedonian border, which was eventually closed. In Western Kosovo families were loaded on trucks and tractors and forced across the Albanian border. See, Tim Judah. *Kosovo War and Revenge* (United States: Yale UP, 2000).
UNMIK. And two months later, in August, NATO concluded a technical agreement with the FRY government, banning its security forces from operating within the territory of Kosovo, including MUP, the army, the ministry of intelligence (BIA), or any paramilitaries. The NATO-led Kosovo Implementation Force (KFOR) would assume responsibility for Kosovo’s security.

UNMIK, which was to assume its administrative role immediately, was divided into four pillars. Pillar I: police and justice; and Pillar II: administration of the region, were under the direct authority of UNMIK. Pillar III: institution building and democratization, was under the authority of the OSCE. And Pillar IV: economic stabilization and reform, including privatization, was placed under the authority of the EU (Canas/NATO, 2007). UNMIK’s work in reforming RoL was overly challenging, ambiguous, and controversial. Firstly, virtually all Kosovars had been expelled from the police and justice system by the Milošević regime, and the Serbian MUP personnel who had replaced them had fled [most of Kosovo] at the end of the war, leaving experienced personnel severely lacking (GLPS 05/2014, 2014). Secondly, the decision of which legal code to apply – contemporary Serbian or pre-1991 Kosovar – was never sufficiently addressed, and Kosovar judges’ application of pre-1991 law alienated the Serb minority. And lastly, having largely failed to initially incorporate Kosovo Serbs in the justice system, UNMIK relied on Belgrade to provide Serb prosecutors and judges in order to meet its minority thresholds. However parallel Serb courts continued to exist outside the UNMIK system in Serb dominated municipalities, while Serb judges remained scarce in the UNMIK justice system (KCSS, 2011).

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18 UNMIK established minority thresholds in the justice system, whereby no less than 15% of judges and prosecutors were to be of non-Kosovar ethnicity, with a minimum of 8% Kosovo Serbs.
In May 2001, the Provisional Institutions of Self-Governance (PISGs) were established under UNMIK’s authority, and the following year elections were held. At the level of the new bureaucracy, the coopted locals were virtually all Kosovar. Serbs resisted UNMIK and boycotted all elections held under its authority (KIPRED 8, 2008; KIPRED 15, 2009; KIPRED 16, 2009; and Kursani, 2014). With the exception of Rugova and his party’s (Democratic League of Kosovo: LDK) leadership, the new Kosovar leadership came almost exclusively from the leadership ranks of the KLA.  

This included Hashim Thaçi, who had represented Kosovo at Rambouillet and would become prime minister in 2010; Fatmir Limaj, who would become president of the ruling PDK (Democratic Party of Kosovo) and minister of transportation; Sylejman Selimi, who would serve as head of the Kosovo Protection Corps and then ambassador to Albania; Jukup Krasniqi, who became acting president of Kosovo and speaker of the assembly; Ramush Haradinaj, leader of the AAK Party and briefly prime minister in 2004-05; and, Agim Çeku, former chief of staff of the KLA who became prime minister and head of the Kosovo Security Force.

De Facto Partition in Kosovo

The idea of partitioning Kosovo along the Ibar River has been suggested, but overwhelmingly dismissed (GLPS, 2012). Ethnic partition, often referred to as the least

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20 Agim Çeku was an artillery officer in the Yugoslav Army before the war in Croatia. He joined the Croatian Army in 1991 and was one of the commanding officers of Operation Storm that retook Krajina in northern Croatia and displaced 170,000 Serbs in two days. In March 1999 he resigned from the Croatian Army to join the KLA. In 2006, the international community replaced the one-year serving Prime Minister Bajram Kosumi with Çeku, a move which angered both Serbs in Kosovo and the Serbian government in Belgrade. See, Shpend Kursani "Altering the Status Quo in the Northern Part of Kosovo after the First Brussels Agreement.” Kosovar Stability Initiative (January 2014).
bad solution to ethnic conflict, is founded on the transfer of population to ethnically homogenous locales (Kaufmann, 1996). However as Chapman and Roeder (2007) argue, partition is only successful if the outcome is two (or more) ethnically homogenous independent states. The partition of Kosovo between Serb and Albanian states was intolerable for both sides. Firstly, UN Security Council Resolution 1244 guarantees the territorial integrity of Serbia, thus making the partition of its southern province into ethnically homogenous states, as called for under Chapman and Roeder’s (2007) model, illegal. And secondly, ethnic partition within a single entity, as Kaufmann (1998) highlights in Cyprus, would have meant the *de jure* forfeiture of Kosovo by Serbia – at the very least in the majority of territory inhabited by the Kosovars.

However the *de jure* ideology of a heterogeneous society and the *de facto* reality of separation became quickly apparent. At the end of the NATO campaign, many of Milošević’s regime men and Serbs who had been resettled from Croatia or BiH fled.  

And as the more than 800,000 Kosovar refugees, expelled by Milošević’s ethnic cleansing, returned from Albania and Macedonia, revenge violence targeted at the Serb population became widespread. Serb property and homes were seized or razed by the returning refugees.  

This round of violence was a catalyst in the ‘enclavization’ of Kosovo, but Dahlman and Williams (2010) found that the majority of out-migration and gravitation to

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21 The Milošević regime resettled 15,000 ethnic Serbs in Kosovo after they were displaced from Krajina in Croatia during Operation Storm, which forcibly displaced 170,000 civilians in three days. They were sent to Kosovo to counter balance the demographic threat of a rapidly growing Kosovar population as a result of higher fertility rates. See; Corinna Metz. *The Way to Statehood: Can the Kosovo Approach be a Role Model for Palestine* (Bremen, Wiener Verlag, 2014): 43.

22 Tim Judah (2000) writes of French KFOR troops in central Kosovo having been ordered not to stop the systematic looting, theft, and violence. He further describes how attempts by moderate Kosovar personalities to speak out against the violence were marginalized and labeled as ethnic-defectors.
Serb enclaves occurred after the March 2004 rioting.\textsuperscript{23} The facts of March 2004 are that two boys drowned in the Ibar River in Mitrovica. The Kosovar media claimed that they were hounded into the river by Serbs with dogs, while Serbs argue that boys fell into the river while running from a Danish KFOR patrol after robbing a grocery store. Rioting rapidly spread across the whole of Kosovo resulting in the displacement of 4,100 Serbs, 550 Serb homes destroyed, and 28 Orthodox sites razed. In the village of Čaglavica near Prishtina, US and Swedish KFOR troops were forced to defend Serb homes with live ammunition and sustained wounded of their own (interview with Vorgučić, Čaglavica 2014)\textsuperscript{24}. In Mitrovica, where the rioting started, Kosovars attempted to cross into the Serb dominated northern section of the city, but were turned away (Kursani, 2014).

While at the governmental level, UNMIK and the PISGs continued to profess ethnic heterogeneity and inclusiveness, at the social level, de facto separation was becoming a reality. In short what occurred after 1999 and accelerated after March 2004 was a virtual un-mixing of Kosovo’s Serbs into their own enclaves. The population of Serb internally displaced persons (IDPs) in the North grew to outnumber the population of Serb residents prior to 1999 (KSI, 2012).

The enclaves provided the Serbs with innocuous enough cultural safe havens, protected, along with Serbian Orthodox sites, by KFOR.\textsuperscript{25} What eventually would prove

\textsuperscript{23} A 2011 UNDP survey found that 67% of North Mitrovica’s population had moved there post-1999. See: “Mitrovica Public Opinion Survey.” UNDP (March 2011).

\textsuperscript{24} Isak Vorgučić is the managing director of Radio KiM, a Serbian-language television station based in the village of Čaglavica in the Gračanica municipality. He began working for Radio KiM as a member of at the monastic brotherhood based at the Serbian Orthodox Gračanica Monastery, which he has since left. Prior to this he served in the VJ, during which time he was stationed in Kosovo since 1993.

\textsuperscript{25} Since the decentralization process, KFOR has begun its “unfixing process”: the gradual transfer of security for religious and cultural heritage sites under KFOR protection to Kosovo Police responsibility. By the end of 2013, KFOR had unfixed eight properties with Designated Special Status: the Gazište Monotwment, Gračanica Monastery, Zociste Monastery, Budisavci Monastery, Gorioc Monastery, the Archangel site, Devic Monastery, and the Pec Patriarchate. Only one
harmful, however was the creation and proliferation of parallel institutions by Belgrade in these enclaves after the war, outside of the UNMIK and PISG structures. These included a public administration that functioned inside the larger Serbian political system; justice, operating in the Serbian legal system and applying Serbian law; and security, staffed by MUP and BIA (ministry of intelligence) personnel, in defiance of the 1999 NATO agreement (KIPRED 9, 2008). The failure of central authority to first protect the Serb minority during the March 2004 riots, and then prosecute those responsible retrospectively, signaled a revitalization of the parallel system (KCSS, 2011). In addition ‘civilian defense committees’ were formed in the northern municipalities, technically unarmed, to serve as neighborhood watch-type groups (Kursani, 2014). Receiving salaries from both Serbian and Kosovo governments, and many receiving a 200% salary from the Serbian government for ‘hazard pay’, the employees of the parallel structures had little incentive to abandon their positions in favor of integration into the Kosovar system (Interview with Rreze Duli, Prishtina 2014; and, GLPS 1/2013, 2013). Police in the North actively distanced themselves from the central Kosovo Police (KP) command structure in favor of operating parallel to it and remaining under the command of the Serbian MUP and BIA. This left the Serbian government as the de facto sole provider of security in the North (BCSP/KCSS, 2014).

The unilateral declaration of independence by Kosovar institutions in February 2008, adamantly rejected by Serbia, changed the situation for the Serb enclaves.


26Rreze Duli has been employed by UNDP since 2008 during which time she has worked as a director on the decentralization project and currently works with Roma, Ashkali, and Egyptian (RAE) communities surrounding Prishtina. Prior to that she worked for the European Stability Initiative and UNICEF, and in 1999 for Mercy Corps in the refugee camps in Macedonia.
Especially in the North, the reconstitution of the former Mitrovica municipality (including the southern, Kosovar populated section of the city) was actively resisted, violently and politically. Radical Serbs attacked and burned customs gates 1 and 31 on the boundary with Serbia at Brnjak and Jarjine; and in North Mitrovica protesters forcibly occupied the municipal courthouse. The courthouse was eventually reclaimed by KFOR, but reopened only under the condition that it be staffed by international judges and prosecutors applying UNMIK law. The customs gates would remain a contentious subject (KCSS, 2011). The customs service was relocated to South Mitrovica, far from the boundary with Serbia. Serb police and officials were pressured to resign from KP and the public administration, and sign contracts with Serbian MUP (Džihić and Kramer, 2009; KIPRED 8, 2008). Thus the North entered a period of virtual lawlessness. Criminal elements began to flourish especially in smuggling, with the lack of customs enforcement (KIPRED 9, 2008).

While the Serbian government proposed ‘functional division’ of the North in a reactive attempt to maintain its influence, Kosovar authorities pushed forward with the decentralization project originally abandoned due to Serbian dissent in 2004. The Constitution of the Republic of Kosovo called for both decentralization at the municipal level of Serb majority municipalities and the disproportionate representation of the Serbs in the Government of Kosovo. Serbs were guaranteed 9% of seats in the assembly for roughly only 6% of the population. The UNDP-led decentralization project, which had been rejected by Belgrade prior to March 2004, was carried out in 2008-09. Six Serb majority municipalities were created, including North Mitrovica, north of the Ibar
River. North Mitrovica included three smaller municipalities in Zubin Potok, Liposavić, and Zvečan (Interview w/ Reze Duli). Here it is important to note the difference between the five southern municipalities and North Mitrovica (commonly designated the North). While those in the south proved more open to integration in the Kosovar system, the North resisted any attempts at consociational power-sharing and violently resisted attempts at integration by central authorities.

Even after the completion of the decentralization project, the Serb majority municipalities exhibited similar conditions to Chapman and Roeder’s (2007) qualification of a de facto separation, primarily in that the parallel structures of administration were not removed, including security. Thus by Kaufmann’s definition, the Serb municipalities, “demographically separated into defensive enclaves” (Kaufmann, 1996), constitute a form of partition. Having displayed sustained resistance to centralized authority (UNMIK, PISG, and Kosovar institutions), and having enjoyed an enhanced level of political and infrastructural patronage from ethnic kin in neighboring Serbia, the North has displayed a more pronounced level of what will be considered de facto partition than in southern municipalities.

The North again demonstrated its divergence from Kosovo’s central institutions in July 2011, and again the customs gates 1 and 31 were the object of the Northern Serbs’ resistance. The customs service hadn’t functioned in the North since independence, and it had become a contiguous free trade zone with Serbia. Ignoring the advice of EULEX, which had advised in line with Resolution 1244 that the Government of Kosovo (GoK) didn’t have the authority to operate north of the Ibar River, the Government dispatched

27 Serb majority municipalities south of the Ibar River are: Gračanica (south of Prishtina); Štrpce (near the Macedonian border); Novo Brdo, Ranilug, and Parteš (both near the eastern border with Serbia).
its ROSU special police units to gates 1 and 31 to enforce a reciprocal trade embargo with Serbia. Advised by Serbian officials and local mayors, parallel security structures were mobilized, erecting roadblocks and engaging the police (KIPRED 2012/2).

Violence broke out with EULEX and KFOR as they attempted to remove the roadblocks. The violence resumed in early September 2011, when, following a EU-brokered technical agreement on reciprocal customs stamps, EULEX again tried to take control of the customs gates at the administrative boundary. Again barricades were erected on the main roads and manned by mobilized networks of Serbs – many of which remained in place until the following February. Even at the urging of Serbian President Boris Tadić the roadblocks would not be abandoned. A roadblock still remains in place on the main bridge in Mitrovica and the customs gates 1 and 31 remain the objects of violence. The crossing at Brnjak was attacked again in 2012 and in September 2013, EULEX customs officer Audrius Šenavičius was ambushed and killed returning from the gates (GLPS 1/2013, 2013; and, Kursani, 2014).

Institutionally, progress, though slow, has been made in incorporating the Serb municipalities. Months after the unilateral declaration of independence in 2008 and the GoK’s subsequent rejection of a ‘functional division’ of the North, the Serbian government sponsored parallel elections in the North, the first since 1996, and formed a

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28 Following the unilateral declaration of independence in February 2008, Serbia imposed a trade embargo on Kosovo, by which Serbia refused Kosovo customs stamps and continued to ship goods to North Kosovo, without paying customs duties. See: “Freedom of Movement, Revisited: the Struggle to Instate Rule of Law and Trigger Effective Governance in the North of Kosovo.” Group for Political and Legal Studies 01/2013 (January 2013).
29 An agreement was reached in late October, between the Northern municipal leaders and KFOR to allow light vehicles to pass. No such agreement was reached for EULEX or KP (GLPS 01/2013).
30 Lithuanian customs officer Audrius Šenavičius’ vehicle was ambushed at approximately 7:30am the morning of September 19, 2013 near Zvečan. He was shot and killed by gunfire that ricocheted off the pavement and into the vehicle. Police experts claimed that the attack was meant to scare the officers rather than kill one. See, “Kosovo: EULEX Staff Member Audrius Šenavičius Killed near Zvecan.” InSerbia Network, Sept. 19 2013.
45-member assembly (GLPS, 2012). As they had done during the UNMIK-period elections, Northern Serbs continued to boycott Kosovo elections at the local and national level. But while Northern Serbs continued to boycott elections until November 2013, other municipalities began to participate earlier. As early as 2009, Serb turnouts in Gračanica, Ranilug, and Štrpce were higher in the Kosovo elections than the parallel elections sponsored by Belgrade. In Parteš and Novo Brdo, as well as the northern municipalities, parallel actors used intimidation to deter participation. Violence and verbal threats of violence or loss of financial benefits from Serbia were targeted at both those candidates hoping to run in the Kosovo elections, as well as the general population to deter them from voting. In Zvečan (in the North) the Union for European Future, a certified political party withdrew, from the 2009 elections after hand grenades were thrown at its leader’s home, and Northern Serb leaders threatened larger-scale retaliatory violence for participation in elections (KIPRED 15, 2009; and, KIPRED 2010/5, 2010).

An upsurge in violence occurred in the lead up to the 2010 Kosovo election in the North especially, targeted at political activists of all ethnicities with links to Prishtina. Serb Independent Liberal Party leader Petar Miletić was shot in the legs; Kosovar activist Hakif Mehmeti was murdered; Serb NGO leader Momčilo Arlov’s car was burned; and shortly before the election in December two Bosniak government officials were fatally attacked (EU EEM, 2011). Courthouses in the north remained either non-functioning or under the umbrella of the larger Serbian legal system (Kursani, 2014).

Serb participation continued to grow following 2009, as Serb leaders defiant of Belgrade, such as Rada Trojković, Randel Nojkić, and Vuk Drašković became more popular in the southern municipalities, and moderate Oliver Ivanović in the North.
In Parteš, which had been heavily subjected to intimidation by parallel actors in 2009, 65% voter turnout was recorded, in Kosovo national elections in 2010. And in Štrpce, in 2010, the newly elected mayor Branislav Nikolić expelled the parallel structures, and the administration elected in the Belgrade-sponsored 2009 parallel elections quietly stepped down (KIPRED 2010/5). Likewise, support for Belgrade declined south of Ibar for practical reasons. Attempts by the Serbian Coordination Center of Kosovo, based in Gračanica, in 2008 to consolidate full support for Belgrade’s policies in Kosovo failed as southern Serb municipal leaders feared they were being marginalized for political reasons (KIPRED 9, 2008). Serbs in those five municipalities feared Belgrade’s willingness to sacrifice them in order to partition the North, and further resented the North’s ‘privileged’ status. The southern municipals enjoy neither the political backing nor financial support from Serbia that the North does (Džihić and Kramer, 2009).

The year 2013 proved to be momentous in the integration of the Serbs into central institutions. The Brussels Agreement, reached in April 2013, (to be presented in depth in analysis sections) between Prishtina and Belgrade and brokered by the EU allowed for the formal creation of the ZSO KiM31, an official association of Serb municipalities, and began to systematically incorporate Serbian MUP personnel operating in the parallel security system into the Kosovo Police. Then in November 2013, all Serb majority municipalities, including those in the North participated in the municipal elections. However, despite the considerable progress achieved during 2013, it is important to note

31 Zajednica Srbine Opštine Kosova i Metohije: Community of Serb Municipalities of Kosovo and Metohija.
the dangers associated with those developments that constitute a degree of political detachment.

The ZSO KiM represents a unified Serb political entity, removed from the central system, with the power to make legally binding decisions. Thus there is the danger of this entity being ‘captured’ by Serb radicals in either the North or Serbia proper, still exhibiting influence over the Kosovo Serbs. This is especially true when considering that in the November 2013 elections, the Lista Srpska party won control of all but one Serb majority municipality. Based in Belgrade, Lista Srpska is a Serb interest party led by former pro-Serbia activists and parallel system employees. Its consolidation of power, is a means by which the Serbian government can exercise virtually uniform control over the Serb municipalities (Interview w/ Rreze Duli, Prishtina 2014; interview w/ Ilir Deda, Prishtina 2014; and, Kursani 2014).

The Government of Kosovo cannot annul municipal acts - legislative or executive - even if they are not in line with Kosovo law or with the Constitution. In such cases, the Government may request that the municipality re-examines such decisions or acts (KIPRED 2010/5 (July 2010): 6).


Lista Srpska demonstrated conflicting loyalties between authorities in Prishtina and Belgrade in February 2015. At the beginning of the month Serb Minister for Returns and Communities Aleksandar Jablanović was dismissed from the Government of Kosovo after his comments about violent Kosovar protesters on Orthodox Christmas sparked large-scale, and violent protests in Prishtina. Following his dismissal Lista Srpska ceased its participation in the Government of Kosovo and opened a period of consultation with authorities in Belgrade. This will ultimately determine if Lista Srpska will resume its participation in the Government of Kosovo. See, Una Hajdari. “Kosovo Serb MPs to Consult Belgrade Before Quitting.” Balkan Insight, Feb. 16 2015.
Section V – Analysis: EULEX and the Politicization of Rule of Law

This section will analyze data collected during the interview process in Kosovo in 2014 pertaining to the politicization of rule of law (RoL). Relevant literature reviewed in Section II indicates an inherent politicization of interventionist RoL programming as a facet of the liberal peace theory. Despite RoL stakeholders’ desires to portray RoL programming as apolitical and the vehicle of blind justice, the creation of institutions as a part of liberal peace building theory naturally privileges a coopted group, while marginalizing another (Stromseth, 2007), and is often achieved through illiberal, coercive means (Petersen, 2010). The narrative will be divided into two sub-sections pertaining to the two most prominent themes of RoL politicization identified in the interview process: the role of ethnic elites and the role of political dialogue.

Ethnic Elites

As was addressed in the context section of this paper, the end of the insurgent war in 1999 signaled a shift in the geographic and political structure of Kosovo. Having been officially ruled by ‘regime men’ from Belgrade, without the input of Kosovars, the situation reversed under UNMIK, and those previously parallel, underground Kosovar political structures emerged as the legitimate provisional government institutions (PISGs). On the opposite side of the cleavage, those Serb structures that had been official under the Milošević regime became parallel and illegal (by the NATO agreement in August 1999). Drawing from the already presented scholarship of Franks and Richmond (2008), the ‘ethnicization’ of institutions became readily apparent under
UNMIK. Thus a system was born in which both sides’ elites were deemed legitimate by their own group, and illegitimate by the other, contributing to stark institutional partition.

Despite the readiness of the elites on the Kosovar side of the ethnic cleavage to be coopted into the institutions of liberal peace, that has not been synonymous with a conformance to RoL standards. Organized crime, corruption, and political interference are all present in central institutions. Those elites that are both popular and powerful in post-war Kosovo have had and continue to have direct ties with organized crime (Interview with Avni Mazrreku, Prishtina 2014)35, and perhaps more importantly the KLA, which continues to be a powerful interest group in Kosovo (Interview w/ EU Official; and, Interview with UN official, Prishtina 2014).36 As a result, elites tread a fine line between resistance to and compliance with EULEX’s RoL programming.

On the one side, advancing the aims of RoL reform is highly detrimental to the cohabitation of organized crime and corruption with state organs. Ultimately this means political parties consenting to strengthening the organs to prosecute their members and possibly leaders (Interview w/ Armend Muja, Prishtina 2014).37 Consequently there is a lack of legitimate political will for RoL reform (Interview with Venera Hajrullahu, Prishtina 2014), and the notion endures that the Government of Kosovo (GoK) and EULEX are “partners in peace, but enemies in justice” (Interview with Deda).

35 Dr. Avni Mazrreku is currently a professor of European integration at ISPE, an independent university in Prishtina. Prior to this position he worked as a political advisor for the Prime Minister’s office under UNMIK. He earned his PhD in European integration at the University of Bremen. 35 UNODC findings support Dr. Mazrreku’s corruption claims, indicating that on average 11% of Kosovo’s population experiences having to bribe a public official yearly. See, “Corruption in Kosovo: Bribery as Experienced by the Population.” UNODC (2011); and, “Business, Corruption, and Crime in Kosovo: The Impact of Bribery and Other Crime on Private Enterprise.” UNODC (2013).

36 These participants have chosen to remain confidential.

37 Armend Muja is currently a PhD candidate and lecturer on political economy. In 2007 he served as a EU integration consultant and has also worked as a communication specialist for UNDP. He holds an MA in economics from the London School of Economics.
The lack of concrete political will has been evident during proceedings brought against former KLA personnel. Few cases have been brought against former KLA fighters or their families (Interview with Vorgučić).

When EULEX opened both corruption and war crimes proceedings against former KLA commander, minister of transport, and PDK leader Fatmir Limaj, there was uproar from both the public and central authorities that EULEX was persecuting Kosovo’s heroes (interview with UN official, Prishtina 2014; and, GLPS 05/2014, 2014), who by being tried are martyred in the public view (Interview with Valdete Idrizi, Prishtina 2014).

The same outcry resulted from the arrest of former KLA-fighters in connection with the Drenica Group case in 2013.

In the midst of this trial and that against Fatmir Limaj, the Kosovo assembly overwhelmingly voted for an end to EULEX (GLPS 05/2014, 2014). Though this was never realized in binding legislation, what it demonstrated is a public impunity of party members and former-KLA fighters, who capitalize on this distinction when beneficial. With the exception of the LDK, the party of Ibrahim Rugova, the prominent Kosovar political parties are dominated by former KLA leadership drawing almost exclusive regional support (see Section VI). For example, the Alliance for the Future of Kosovo (AAK) led by former KLA commander and Prime Minister, Ramush Haradinaj, consistently enjoys the bulk of its support from the Dukagjini region in western Kosovo (Interview with Muja). KLA leaders have thus managed to revitalize their dwindling

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38 There is perception that most KLA veterans and their families still possess weapons from the war, and a general fear of these people persists.
39 Valdete Idrizi is director of CiviKos, a civil society platform in Prishtina, coordinating 140 civil society organizations. She has managed CiviKos for three years. Originally from Mitrovica, prior to CiviKos, she founded and managed Community Building Mitrovica.
40 The Drenica Group trial regards war crimes perpetrated at a KLA-run detention camp in central Kosovo. Charges include the execution, torture, and maltreatment of non-Kosovar and Kosovar collaborators with the Serbian authorities. Sami Lushtaku, mayor of Skenderaj, and Sylejman Selimi, ambassador to Tirana are both on trial in the case.
influence, through attaining legitimate political positions, and hiding behind the impunity of their KLA pasts (Interview with UN Official, Prishtina 2014\(^{41}\); and, interview with Korab Sejdiu, Prishtina 2014).\(^{42}\)

Despite the lack of political will present for RoL reform, the elites tread a fine line, and it is far more beneficial for them to cooperate with the international presence than resist it. Politicians remain convenient and submissive partners to the international community, in exchange for being legitimized, which they gain considerably from (Interview with Florina Duli, Prishtina 2014).\(^{43}\) The 2010 elections, which resulted in PDK becoming the ruling party, were surrounded by serious discontent. Both the initial December election and January repeat election were avidly contested by all parties other than the victorious PDK. In certain locations traditionally loyal to the KLA and PDK, voter turnouts were reported as high as 147%, and despite acknowledging ‘flaws’ in the process the international community deemed the elections a success (EU EEM, 2011).\(^{44}\) Furthermore US and EU officials hailed the victors as heroes comparable to those of the American revolution, while ignoring indications of corruption in the interest of the

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\(^{41}\) This participant has chosen to remain confidential.

\(^{42}\) Korab R. Sejdiu is a partner at Sejdiu and Qerkini Law Firm in Prishtina. He holds a law degree from Widener University School of Law and an undergraduate degree in international business from the College of New Jersey. He is barred in New York, New Jersey, and Pennsylvania. Mr. Sejdiu returned to Kosovo in 2007 and worked as a legal advisor for the President on constitutional issues. He started with the firm in 2011.

\(^{43}\) Florina Duli is currently the director of the Kosovar Stability Initiative (IKS). She began work for IKS in 2012 having previously worked for DFID as a policy advisor in the fields of governance, public administration, rule of law, security, civil society, and elections. Ms. Duli participated in the evaluation of the EULEX mandate by the European Court of Auditors.

\(^{44}\) Prior to the election, the ruling PDK used its position of power in the existing government to achieve an advantage including, shortening the campaign period, favorably disproportionate media coverage, and reallocation government funds without budgetary approval. This included both funding municipal campaigns and increasing teachers’ salaries and thus securing their vote. During the voting process, conditional voting was allowed – the practice of a non-registered voter being permitted to vote if he/she presented valid ID – a common practice in post-conflict settings. Reported voter turnout in Skenderaj and Gllagovac was double what it had been during the previous municipal election and at one polling station in Skenderaj, ballots outnumbered signatures on the voting list. See, “Final Report.” European Union Election Expert Mission in Kosovo BENF 2009 lot nr. 7 (2011).
‘business of government’. The international community has rewarded leadership loyal to it and its policies, therefore making local government more accountable to the international community than the population (Interview with Mazrreku; and, interview with Fisnik Korenica, Prishtina 2014). What this case and others like it, including the unconditional international backing of Haradinaj during his trial at the ICTY, have allowed for is the time necessary for the entrenchment of a neo-patrimonial system in the upper echelons of government (Interview with Florina Duli, Prishtina 2014; and, interview with Muja).

This has led to a consolidation of power by political parties and a resurgence of power in the former-KLA loyal to them. The former leadership of the KLA is strong in politics, garnering unconditional loyalties from those parties it is represented in (Interview w/ Korenica). Patrimonial practices have seen former-KLA members implanted in the broader justice system, in which political interference has been reported to have increased since the 2010 elections. Concerns have been expressed by Kosovo’s interior minister, Bajram Rexhepi, over consistent telephone calls to law enforcement and justice authorities by high level officials and deputies, interfering with proceedings (KIPRED 1/14, April 2014). The justice system lacks protective mechanisms against such interference (GLPS 05/2014, 2014; and KIPRED 2010/8, 2010). And given

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45 This was a quote from US Ambassador Christopher Dell following the 2010 election process, in which he urged political parties to accept questionable results and get on with governing. See, “Final Report.” European Union Election Expert Mission in Kosovo BENF 2009 lot nr. 7 (2011): 56.
46 Fisnik Korenica is the executive director of the Group for Legal and Political Studies in Prishtina. His work focuses on institution building in post-conflict areas and constitutional design. He has been focusing on this for 7 years in Kosovo.
47 Ramush Haradinaj was tried at the International Criminal Tribunal for the former Yugoslavia (ICTY) for the persecution and poor treatment of the non-Albanian population of Kosovo during the war. He surrendered to the court after 100 days as Prime Minister of Kosovo. He was acquitted in both 2008 and the retrial in 2012. Key witnesses to the prosecution died in accidents before the trial began. His release enraged Serbian commentators. See, Fatmir Aliu and Marija Ristić. “Kosovo Welcomes Haradinaj’s Release, Serbia Complains.” Balkan Insight (May 11, 2012)
Kosovo’s current economic plight, the fear of losing office is high amongst civil servants, de-incentivizing resistance to patrimonial pressures (Interview with EULEX Strengthening Official, Prishtina 2014). The result is a general inability and unwillingness of local RoL institutions to handle difficult cases, due both to the issues of old loyalties and the obvious effect of intimidation or the perceived threat of it (Interview with Sejdiu; and, interview with EU official). In cases where EULEX handles the proceedings executively, direct top-down interference in the justice system is witnessed (Interview with EULEX Executive official, Prishtina 2014).48 Friends and families of elites or former-KLA go largely untried, and in those cases when they do, cases are brought by agreement with political parties (Interview with Albulena Sadiku, Prishtina 2014).49

In summation, it can be concluded that on the Kosovar side of the ethnic cleavage, political will for RoL building is weak, due to a seamless interaction between public administration and criminal and patrimonial practices. However, elites on this side of the cleavage continue generally to support limited EULEX programming in exchange for being legitimized by the international stakeholders. This has led to the entrenchment of a culture of neo-patrimony, corruption, and ultimately political capture in the justice system.

On the Serb side of the ethnic cleavage the opposite holds true in terms of legitimization of elites, but the result is the same: the institutional entrenchment of criminal practices, counter to RoL principles. As was demonstrated earlier, even before

48 This participant has chosen to remain confidential.
49 Albulena Sadiku is a project manager at the Balkan Investigative Reporting Network (BIRN) office in Prishtina. She has experience with civil society organization and election monitoring, and is a certified school instructor. She is currently pursuing a higher degree in political science at the University of Prishtina.
the unilateral declaration of independence and the arrival of EULEX, the Serbs, and especially those in the North, were highly resistant to centralized RoL. UNMIK’s limited reach allowed for the creation and entrenchment of parallel structures of education, health, administration, and security. This included a court system that was part of the larger Serbian system, which employed the Serbian legal code. This, coupled with a general failure of RoL to provide security to the Serb population after the war, resulted in a divergent RoL system and a general space of lawlessness (Interview with Mazrreku; and, Forum for Security, 2011).

In contrast to the prevailing mode of legitimization on the Kosovar side, Serb elites are publicly legitimized through active and open resistance to centralized law, which post-2008 means EULEX. As EULEX was deployed under status neutrality of UN Security Council Resolution 1244, its de facto cooperation with and participation in those central justice institutions emblematic of statehood has constituted a betrayal of the ‘Six-Point Plan’ with Serbia and the Serbs. EULEX is seen, rightly, as aiding in the development of strong centralized institutions, emblematic of Kosovo’s statehood. As a result it is viewed as an organization building independence (Interview with Deda; interview with Idrizi; interview with Korenica; interview with Florina Duli; and, interview with Sadiku). Consequently EULEX has become the most despised entity in the North of Kosovo, where it is seen as a group of political thugs carrying out a mission on the Kosovar government’s behalf (GPLS 01/2013, 2013). EULEX personnel are confined to armored vehicles and their secure compounds, and require close-quarter protection, thus drastically limiting their ability to function (Interview with UN official; and, interview with EULEX Strengthening Official). The resulting tactics, including
military-style operations with armored vehicles and long-barreled weapons, only compounds the general disdain for EULEX (Interview with EU official; and, interview with UN official). These opinions are corroborated by public opinion data collected by UNDP. In July 2010 only 12% of Serbs in Mitrovica reported trusting EULEX, a number which dropped to below 7% by that November. And in a 2013 UNDP survey, only 11% of Serbs reported satisfaction with EULEX, though it constituted a drastic increase from the 1% reported in 2012, in the wake of the 2011 violence over customs gates 1 and 31.

This highly negative perception in the North legitimizes those who openly resist or defy EULEX, even through overtly harmful criminal activity. Criminal interests in smuggling and money laundering are high in the North, and those figures in running them hold considerable power, and in no way benefit from an extended reach of EULEX (Interview with Deda; KIPRED 2012/02, 2012; and, Forum for Security, 2011). It was these criminal figures who organized and mobilized Northern Serbs to man the barricades in the 2011 unrest, and continued to encourage attacks on EULEX and on KFOR attempts to successfully operate customs gates 1 and 31 (Kursani, 2014). However, despite the open and violent resistance to EULEX, coupled with criminal gains, EULEX itself states it does not wish to go against the will of the people in the North (KIPRED 1/13, 2013).

By resisting EULEX for their own criminal interests these figures become patriots or heroes for the Serbs. Pursuing criminal investigations against them constitutes EULEX attacking Serb patriotism. The EULEX case against Oliver Ivanović provides a
strong example. Well respected by Kosovar authorities (Interview with Vorgučić), Ivanović was seen as too moderate and conciliatory in the North. However following his arrest and imprisonment by EULEX, his support among Northern Serbs suddenly swelled as they saw him as a patriotic martyr in EULEX’s ‘Serb hunt’ (Interview with EU official; interview with UN official; and, interview with Sadiku).

Two factors contributing to the proliferation of these elites are cross-border ties to Serbia and the information asymmetry between Northern Kosovo and Kosovo south of the Ibar River. Firstly, for those criminal figures in the North, the practice of VAT (value added tax) fraud through the use of unauthorized smuggling routes provides considerable financial incentives for those figures to stay in power on either side of the border/boundary with Serbia. Similarly cross-border ties have provided enhanced means to resisting EULEX. The armed quasi-militias that manned the barricades in 2011, and the ‘Bridge Watchers’ in Mitrovica have been organized, materially supplied, and politically represented by forces inside of Serbia proper. These provide further tools for already incentivized elites to resist EULEX’s reach. And secondly, there is the issue of information. It is a simple, yet damaging fact that those in power control the limited

50 Oliver Ivanović was arrested by EULEX in January 2014 on suspicion of carrying out war crimes in 1999 and a murder in 2000 while leader of the “Bridge Watchers”. Ivanović’s charges were not made public and he was held in pretrial detention until August 2014. In January 2015, Ivanović was accused in EULEX trial of leading a paramilitary group in the 1998-99 conflict that evicted Kosovars from their homes and carried out executions. He was identified by a witness who claimed to positively identify Ivanović from karate competitions. Additionally, as a leader of the “Bridge Watchers” in 2000, Ivanović is accused of leading paramilitary group to evict Kosovars from North Mitrovica. Ivanović and his defence refute these accusations and have called into question the credibility of the witness statements against him. See, “Oliver Ivanović Indicted for War Crimes in Kosovo.” Balkan Insight, Aug. 13, 2014; Una Hajdari. “Kosovo Serb Politician ‘Led Deadly Police Squad’.” Balkan Insight: Balkan Transitional Justice, Jan. 21, 2015; and, Marija Ristić. “Belgrade Urges Kosovo Serb Leader Ivanovic’s Release.” Balkan Insight: Balkan Transitional Justice, Jan. 28 2015.

51 In 2005, the Serbian government passed a law, removing value added tax from goods shipped to Northern Kosovo in an attempt to make them more affordable to the Serb population there. The practice of these goods leaving Serbia without paying the VAT, only to return again without paying VAT using unmarked crossings has become common. See, GLPS 01/2013, 2013.
flow of information in the North (Interview with Korenica). Formal education in the North is sub-standard by Kosovo’s standards and the population formulates views from information provided to them, often from political parties inside Serbia (Interview with EU official; and, interview with Furtuna Sheremeti, Prishtina 2014). The result is limited knowledge of integration initiatives or the illiberal figures the population legitimizes.

It can be determined that EULEX is a catalyst of the legitimization of illiberal elites on both sides of the ethnic cleavage. On the Kosovar side, its tolerated presence in institutions legitimizes the ruling elites through international plaudits, while allowing systems of neo-patrimony to capture those justice institutions it aims to reform. On the Serb side, resistance to its liberal peace programming patriotically legitimizes elites whose personal gains are enhanced by a general lack of RoL. These same elites play a crucial role in the political dialogue presented in the proceeding sub-section, a process with further systematically legitimizes and entrenches their positions.

**Political Dialogue**

As was made evident in the section reviewing literature relevant to liberal peace, RoL, and EULEX, the practice of international RoL programming is inherently political, despite stakeholders’ attempts to portray it as a vehicle of blind and neutral justice. As Papadimitriou and Petrov (2012) highlight, EULEX was forced to adopt a status-neutral approach to Kosovo and therefore operate outside of independent domestic institutions, achieving what they refer to as becoming ‘depoliticized’. However the alternative mode

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52 Furtuna Sheremeti is the head of the legal office and coordinator of the court monitoring team at the Balkan Investigative Reporting Network (BIRN) in Prishtina. She holds a law degree from the University of Prishtina and a MA in criminology from Oxford University.
of operation they present is that EULEX had to thus build consensus on RoL (Papadimitriou and Petrov, 2012), and EULEX itself has professed a wish not to act against the will of the Kosovo Serbs (KIPRED 1/13, 2013). What has become evident since EULEX’s arrival is that building consensus on RoL, so as to be amenable to both sides of the ethnic cleavage is a highly political process, which at times contradicts the principles of RoL.

In addition to executive and strengthening functions, the EULEX mission statement contains a provision for facilitating and supporting the EU-led Prishtina-Belgrade dialogue (EULEX KOSOVO Basic Facts). The first sequence of dialogue, which ran from March 2011 to October 2012, was intended to conclude strictly technical agreements. Issues addressed included: civil registry books, freedom of movement, customs stamps, cadastral records, university diplomas, regional representation (in the Balkans and Europe), and integrated border/boundary management (IBM) (KIPRED 2/13, 2013). The EU and EULEX had made the conscious decision to engage only with technical aspects in Kosovo, and strictly avoid political ones, especially in the North, where engagement with non-technical structures had proven unsuccessful (Interview with EU official). However this proved a flawed strategy. During and following the technical dialogue, attempts to implement its conclusions in the North devolved into violence. Parallel political and security structures were behind the engagements with Kosovar and international authorities. And EULEX’s attempts to implement the technical customs stamps and IBM agreements in September 2011 directly resulted in the resurgence of violence. Parallel structures prevented EULEX from moving freely in the North, despite
Serbian President Tadić’s calls to desist. Ultimately this period of technical agreements, which consciously avoided local political backing, caused the North to further diverge from the central authorities in both Prishtina and Belgrade (GPLS 01/2013, 2013; and, Kursani, 2013).

It became clear from the technical agreements, and the violence that resulted from attempting to implement measures denoted as ‘technical’ that the EU could not remain averse to political or ‘non-technical’ engagement. This was especially true as related to the supposedly technical issue of integrated border/boundary management (IBM). For the Northern Serbs this ‘technical’ issue had serious political ramifications. One, it further severed Kosovo from Serbia. And two, increased competency in IBM would undoubtedly be detrimental to those ethnic elites legitimized by smuggling (Interview with Korenica). As a result, the IBM issue was transferred to the agenda of the political dialogue, which commenced in October 2012 and remains ongoing (GLPS, 03/2013).

The “First Agreement of Principles Governing the Normalization of Relations” (hereafter Brussels Agreement) was concluded on April 19, 2013 as the first product of the political dialogue. In addition to the official creation of the Community of Serb Municipalities (ZSO KiM; addressed in Section IV), the Brussels Agreement profoundly influenced the development of RoL in the North in two respects. Firstly, it acknowledges the existence of a single police force in Kosovo, the Kosovo Police (KP), and allows for the integration of Serbian MUP personnel employed in the parallel security structures in the North into the KP. The review of MUP personnel was left up to the Government of Kosovo (GoK), and eventually 285 former MUP officers were transferred to the KP,

53 The mayors of the Northern municipalities concluded an agreement with NATO allowing its light vehicles to pass the roadblocks in October 2011, but refused to extend the deal to EULEX or KP.
increasing Serb representation in the KP to 12.6%. An additional 10 MUP personnel were rejected during the verification process upon discovery that their permanent residences were declared in Serbia proper. Those selected for the KP are to be paid solely by the GoK, and receive no parallel funding from the Serbian government (BCSP/KCSS, 2014). The integrated MUP officers are possessed of better training than their existing KP counterparts, and command considerably more respect in Serb majority municipalities. Those Serbs employed by KP prior to the Brussels Agreement were regarded as second-class citizens, and their authority largely discounted (Interview with EU Official; and, interview with UN Official).

The second development produced by the Brussels Agreement is the provision that the regional commander of KP North will always be a Kosovo Serb proposed by the ZSO KiM and approved by both Belgrade and Prishtina (BCSP/KCSS, 2014). This constitutes a highly political development in RoL, by which the Government of Kosovo in Prishtina has conceded power in its own RoL matters to a foreign government. This was made evident in the first appointment of KP North commander following the Brussels Agreement. Nenad Đurić was appointed commander, having already been a KP employee who had twice been dismissed from KP service since 2011 – first for refusing to confiscate Serbian registration tags on vehicles in the North, and again for allowing Serbian officials to cross into Kosovo against government orders. He was further suspected of relations with underground figures including Zvonko Veselinović (KIPRED 4/13, 2013). Upon his appointment, the former KP commander, and now member of

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54 Zvonko Veselinović was wanted by both NATO and EULEX for organizing attacks in summer and fall 2011 that led to the death of a KP officer and wounded KFOR personnel attempting to remove the roadblocks. He and his brother Zarko were believed to be principle funders and suppliers of the parallel quasi-militias and members of the “Bridgewatchers”. The operation to arrest him in 2012 was typical of
the assembly, stated that Đurić had always faithfully served the Serbian parallel institutions (Kursani, 2014). Officially, Đurić and those to come after him as KP North commander report to Prishtina, but in reality retain lines of communication for the Serbian minister for Kosovo and Metohija. The commander’s concerns are communicated up the line to the Serbian government, and in turn addressed in the political dialogue, thus requiring political consensus on disputed operational RoL issues (Interview with EU official). EULEX and KP’s ability to act in the North thus hinges on political consensus.

The Brussels Agreement has boosted both the operational capacity and public perception of the KP Northern Command. Since April 2013 it has improved from handling mainly petty crimes and relying on EULEX to handle cases of any magnitude, to handling serious police work, including intelligence-based policing. In achieving this, however, power in RoL matters in the North has been devolved to both Belgrade and the ZSO KiM. Thus the primary and secondary effects of the political dialogue are the increase in RoL capacity in the North and the political empowerment of the ZSO KiM and Belgrade in RoL fields, respectively.

In order for the dialogue to continue to be productive the prioritization of the preservation of stability has been exhibited as a tertiary effect – a philosophy rarely reconcilable with organic RoL principles (Interview with Muja). This premium on stability has been exhibited on both sides of Kosovo’s ethnic cleavage. On the Serb side, rather than unconditionally dismantling the parallel structures, illegal by both Security

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Council Resolution 1244 and the 1999 NATO agreement, they and their employees are welcomed into the central police and government structures (GLPS 03/2013). Consistent civil unrest has resulted from pursuing criminal cases against parallel leaders. This has heavily influenced EULEX’s ability to function in a purely technical manner. Following the arrest of Slobodan Sovrlić in March 2014 in the Zubin Potok municipality he was freed from custody by a mob that laid siege to the municipal police station. Instead of staging a manhunt using EULEX’s Mitrovica-based breaching unit, EU officials negotiated the return of Sovrlić with the mayor of Zubin Potok, Stevan Vulović, after two weeks (Interview with EU Official). The role of EULEX can be described as facilitating dialogue with the local institutions in the North to achieve RoL-related outcomes (Interview with EULEX Executive Official).

South of the Ibar, the need to preserve political stability in the Kosovar leadership, for the sake of the dialogue, has had even more damaging effects on RoL. Of the five security threats identified in the European Security Strategy (ESS), three are applicable to the Western Balkan region – regional conflict, state failure, and organized crime. Only one of these, organized crime, falls within the RoL competency of EULEX. Consequently, EULEX’s ability to pursue its mandate in combatting organized crime is constricted for the sake of stability and the reduction of the potential other two security threats.

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55 Slobodan Sovrlić was arrested in March 2014 in Zubin Potok for public unrest, and afterwards it was realized that he was on the EULEX wanted list for endangering UN, EULEX, and related personnel, among other criminal activities. After his arrest a mob formed outside the Zubin Potok KP station and a group of masked men entered. Material damages occurred to the station and Sovrlić was released by KP officers for fear of further violence.
Factors affecting the dialogue have taken clear primacy over the RoL-based issues (Interview with Venera Hajrullahu, Prishtina 2014; and, interview with Idrizi)\textsuperscript{56}, including basic functionality and the operational capacity of EULEX (Interview with EULEX Strengthening Official, Prishtina 2014).\textsuperscript{57} Leadership unpredictability in Kosovo casts a degree of uncertainty over the stability of the region, with the potential to induce regional conflict and state failure, especially in the fragile relationship between Kosovo and Serbia. EULEX has received pressure from Brussels not to disturb the dialogue or those involved (Interview with Agron Bajrami, Prishtina 2014).\textsuperscript{58} Corruption and organized crime cases against Kosovo’s political elites, especially given their status in the public eye, would risk widespread instability, while also eliminating the EU’s negotiating partners (Interview with Sejdiu). Consequently certain elites, critical to the dialogue, have received virtual impunity from the international community for the sake of stability (Interview w/ Florina Duli; interview with Korenica; and, interview with UN official). When Sami Lushtaku was arrested on war crimes charges, it was reported that a Brussels official ordered EULEX to release him, in order for him to take office as mayor of Skenderaj (GLPS 05/2014, 2014).\textsuperscript{59} In other cases, EULEX has rotated prosecutors

\textsuperscript{56} Venera Hajrullahu is currently the director of the Kosovar Civil Society Foundation, based in Prishtina. Prior to this post she was part of the initial European Integration project until the Ministry for European Integration was formally established.
\textsuperscript{57} This participant has chosen to remain confidential.
\textsuperscript{58} Agron Bajrami is currently the editor-in-chief of \textit{Ko}ha \textit{Ditore}, the only daily publication in Kosovo. He began working for the paper prior to the war and was instrumental in restarting its publication while in exile in Macedonia.
\textsuperscript{59} Sami Lushtaku, mayor of Skenderaj in north-central Kosovo, is accused of being a leader of the ‘Drenica Group’ during the war, a KLA cell responsible for running the Likovc detention camp in the Drenica valley, where non-Kosovar and Kosovar collaborators were held. Lushtaku himself is accused of executing one man and torturing and overseeing the torture of many. He along with five others were arrested in May 2013, sparking outcry by the Prishtina government. Since his arrest he has repeatedly fled EULEX custody, claiming to be receiving treatment at the hospital.
home while working high-level corruption cases and local media has been actively
discouraged from publishing details on such cases (Interview with Bajrami). 60

Success of the dialogue to date presents a conundrum to EULEX. The conclusion
of the Brussels Agreement in April 2013 has greatly enhanced RoL in the North, an
explicit priority in its mission statement, by both extending and strengthening the
competency of the KP Northern Command and increasing its legitimacy. However, in
order to achieve and sustain this, basic functionality of justice and the betterment of
quality of life for the population (Roberts’, 2008, ‘performance legitimacy’) has been
sacrificed in order to not rock the political boat (Interview with Deda). And this has left
certain sensitive fields untouched. For example, while the official MUP parallel security
personnel were integrated into KP, the civil protection units, or quasi-militias responsible
for unrest were left unaddressed. Their demobilization hinges on the cooperation of elites
largely unsupportive of the dialogue process for the jeopardy it presents their current
status, and potentially less conducive to Belgrade’s control as parallel funding and
support subsides (BCSP/KCSS, 2011). It can be determined that EULEX’s practice of
‘building consensus’ on RoL principles is tantamount to the empowerment of ‘local
warlord or militia’ figures Stromseth (2007) adamantly cautions against. As she argues,
their empowerment in the interest of short-term goals ultimately spoils long-term RoL
objectives (Stromseth, 2007).

60 In an interview with Agron Bajrami (Prishtina, 2014), he identified a EULEX prosecutor as being rotated
home immediately after publicly proposing sentencing options in the Fatmir Limaj corruption case. In the
same case, Mr. Bajrami himself was explicitly asked by EU officials to not publish details of the case in his
newspaper.
Section VI – Analysis: Cultural and Societal Influence on Rule of Law Programming

The preceding section of this paper identified the role played by EULEX’s rule of law (RoL) programming in the political space in Kosovo. This section will examine the two major obstacles to EULEX’s function and success in the everyday space. This includes a historically-rooted culture of resistance to central authority, and the systematic practices of nepotism and corruption.

Cultural Resistance to Central RoL and EULEX

Resistance to the central authority possessing a monopoly on means of violence is an enduring phenomenon in Kosovo. George Kastriot Skanderbeu, the national hero of Albanians whose double-headed black eagle adorns the Albanian flag, was a nationalist who first fought against occupation by the Serbs only to turn around and fight his Ottoman patrons. The accounts of journalists such Edith Durham, Rebecca West, Tim Judah, and Robert Kaplan all relay the tales of the culturally revered bandits of the Drenica Valley who terrorized the Ottoman and Serb occupiers for generations prior to Kosovo’s inclusion in Yugoslavia. Frederick Anscombe (2006) describes Albanian banditry in the Ottoman Empire as having reached ‘crisis proportions by the turn of the

61 Oliver Richmond’s notion of post-liberal peace theory (Section II) acknowledges the inherent politicization of liberal peace theory and seeks to combine its positives, such as the contributions of donor-driven programming with the ‘everyday space’. Richmond defines the ‘everyday space’ as that in which local communities live and develop political strategies in their own environment, often identified as including features of solidarity, local-agency, hybridity, and de-politicization (Richmond, 2010). Richmond (2010), Visoka (2012), and Richmond and Mitchell (2011) all identify Albin Kurti’s self-determination Lëvizja Vetëvendosje! movement as a site of ‘everyday’ politics in Kosovo. Founded in 2004 by Albin Kurti, Lëvizja Vetëvendosje largely opposes international stewardship in Kosovo and the current dialogue process with Belgrade, and advocates unilateral action. Early on it was an advocate of unification with Albania. Its tactics have included mass demonstration, defacement of international property, and graffiti. It is strongly opposed by the US Embassy in Prishtina.
19th Century. He argues that banditry was primarily economically motivated, but “provided the backbone of something akin to a local legal defiance bloc” (Anscombe, “Albanians and Mountain Bandits”, 2006: 90).62 By the early 18th century, the Drenica Valley in central Kosovo had become characterized by lawlessness and the refusal to pay taxes (Anscombe, “The Ottoman Empire”, 2006). As the Socialist Federal Republic of Yugoslavia (SFY/J) began to crumble following the death of Josip Broz Tito in 1980 and with it Kosovo’s autonomy (see Section IV – Context), resistance to authority again became prominent in Kosovar society. Contemporary Kosovo lore is rich with figures who resisted the Serbs in the 1990s, including Rugova, the Jashari brothers (especially Adem), and scores of others whose likenesses are iconized in the form of statues and murals in Kosovo’s cities or along the major roadways.

The artistic commemoration of those who resisted Serb authority is only a minor indicator of the cultural resistance to Serb authority during the repressive period of the 1990s. The result of this period has been a continued aversion to a law-affect society, in accordance with Richard Sannerholm’s (2007) argument, presented in Section II. Sannerholm argues that in cases of post-authoritarian liberal peace building projects, prevailing distrust of the justice system, due to its use for repression, constitutes a barrier to RoL prior to any deployment of RoL programming. Until 1999 in Kosovo, breaking

62 In his work, Frederick Anscombe rejected Eric Hobsbawm’s social banditry argument of extra-institutional movements or parties coupling with bandit groups to achieve political goals against an oppressor. Rather, he argues that Albanian banditry was self-motivated by economic gains and consolidation of power, and lacked a genuine political or ethnic dimension. Often times the Ottoman troops and administrators combatting the widespread banditry were also Albanian and mutual defection, both ways, between the army and bandit gangs was common. Hobsbawm’s social banditry thesis applies more directly to the actions of KLA whose armed resistance to the Serbian regime was tied to an extra-institutional political movement, and has come to be associated with the Jashari brothers, known brigands prior to the formation of the KLA. See, Frederick F. Anscombe. “Albanians and Mountain Bandits.” The Ottoman Balkans ed. Frederick F. Anscombe (London: Birkbeck e-Prints, 2006): 87-113; Pat O’Malley. “Social Bandits, Modern Capitalism and the Traditional Peasantry. A Critique of Hobsbawm.” Journal of Peasant Studies 6.4 (1979): 489-501; and, Eric J. Hobsbawm. “Social Banditry.” Rural Protest: Peasant Movements and Social Change ed. H.W. Landsberger(London: MacMillan, 1974): 142-57.
the law constituted a patriotic act, as they were the laws of the oppressor. And refusal to pay taxes was equivalent to refusing to fund one’s enemy. Thus society was conditioned by a lack of ownership of the laws in place (Interview with Sejdiu). Society was further conditioned to a lack of trust in rule of law institutions during this period as they were used as repressive instruments of the Serbian regime (Interview with Deda).

As a result of this period, stigmas continue to exist in both the justice organs of the government and the legislation it passes. Thus local ownership and societal consensus on RoL standards is lacking in contemporary Kosovo. EULEX and UNMIK before it, which have overseen the reform of the ‘justice triad’ are not local institutions. Likewise, Kosovo’s laws are drawn from an international framework, mandated to it by the international community (Interview with Muja). UNMIK itself developed the legal code during its administration, while currently the EU through its IPA (instrument for pre-accession assistance) programs sends experts to assist local counterparts in the drafting of legislation.63 As part of these 'twinning’ projects, EULEX provides experts in fields relating to those covered in its mandate (Interview with Edis Agani, Prishtina 2014).64 Since 1999, the justice triad (judicial system, police, and legislation) has been rebuilt in accordance with internationally promoted standards, but without local consensus on RoL in what could be considered the Richmond’s everyday space. The

63 Instruments for Pre-accession Assistance (IPAs) are funding programs by the EU aimed at specific reforms within a target state. They are carried out as twinning projects in which local government selects a partner member state, and then works in working groups with experts from these states. There are currently 300 IPA projects deployed in Kosovo, including RoL projects focused on anti-corruption, anti-laundering, anti-trafficking, migration, data protection and civil registry, forensic medicine, judiciary, and juvenile justice facility. These focus boosting training capacities, such as the Kosovo Judicial Institute and assisting in drafting legislation specific to law enforcement or justice matters. See also, European Union Assistance to Kosovo as Related to the Rule of Law. European Court of Auditors Special Report No. 18//2012 (2012).
64 Edis Agani is an employee of the EU Civilian Office in Prishtina. The office is divided into two sections – political and cooperation. Ms. Agani is a task manager in the cooperation section, working on the rule of law team and handling projects related to organized crime.
product of this has been a continued rejection of the central justice triad and lack of patience for its proceedings (Interview with UN Official; and, interview with EU Official).

Societal rejection and lack of ownership of the post-1999 central RoL system has significantly impeded RoL programming and reform on the behalf of EULEX. This has been manifested in both the practice of traditional justice and the systematic interference with justice proceedings in the central RoL system. Especially in rural Kosovo, community and family ties play a central role in ‘everyday’ relationships and interactions (Interview with Korenica). Certain issues, such as domestic violence, have traditionally been regarded as in-family issues, and thus are not brought before the justice system (Interview with Sadiku). The Kanun, a set of traditional social laws and guidelines dating from the Ottoman Period, and containing provisions for hospitality, kinship, right conduct, and honor, has been paradoxically cited in decisions. ‘Honor killing’ is permitted by the kanun, in the event a family is insulted, and revenge killings are obligatory for the oldest male family member, in the event a family member is murdered. Failure to carry out ‘honor’ or revenge killings results in disgrace for the family (Mangalakova, 2004). This traditional set of practices is not in conformance with contemporary RoL standards and can not be cited as a basis for legal decisions in a law-affect society (Interview with Sheremeti; and, interview with EU Official).

means of justice, such as revenge killings and attacks on property, permitted by the *kanun* have been practiced, primarily in the more traditional, rural settings (Interview with Vorgučić). Urban dwellers have proven to be more prone to using centralized justice means of dispute resolution (Interview with Sejdiu).

Within the central justice system, the traditional conceptions of community, clan, and family relations also play an interfering role. The nature of Kosovo’s society, both in its size and community relationships, coupled with the lack of adequate security capabilities, has resulted in widespread subjectivity and intimidation in legal proceedings (Interview with Sheremeti; and, GLPS 05/2014, 2014). Witness protection has proven nearly impossible. It is a commonly held suspicion that the families of former KLA fighters continue to be in possession of firearms, despite KFOR disarming after the war. Even in cases in which sufficient evidence has been gathered, they have been dismissed due to witnesses disappearing or changing their statements, or judges ordering the case not be pursued (KCSS, 2011). Initial insufficient protection for judges and witnesses led to a period in which intimidation flourished unpunished, and left a legacy of perceived intimidation, especially in handling cases involving former KLA fighters or their families. Judges and prosecutors don’t pursue certain cases even for fear of potential threats (Interview with Sejdiu). Fearing both physical threats or losses of their jobs, local judges and prosecutors have proven reluctant to take on cases dealing with high-level corruption, organized crime, human rights violations, or former KLA fighters. Rather these have been left to EULEX to handle (KIPRED 1/2014, 2014).

EULEX judges and prosecutors have the advantage over their local counterparts in this respect, as they are not nearly as open to intimidation or the pressures of
family/clan ties. Additionally, they have no background in the *kanun* or other traditional legal codes in conflict with modern RoL. Witnesses in EULEX cases, though, have proven to be just as susceptible to intimidation or prior loyalties. This was exposed with considerable embarrassment to EULEX during the 2011 trial of Fatmir Limaj, when ‘Witness X’, former KLA commander Agim Zogaj in EULEX’s protection was found dead in Duisburg, Germany. His death was officially ruled a suicide, but destroyed trust in EULEX’s capability.\(^6\) EULEX exclusively handling sensitive cases, though, is not desirable. Logistically, EULEX’s judicial component (judges and prosecutors: Section I – Introduction) is drastically understaffed, composing only 13% of deployed personnel, despite the evident need of more. A continued backlog of cases in the EULEX system only leads to increased incentives for individual justice (Interview with Sheremeti). This practice however does nothing to address the existing difficulty in local investment in law-affect society, or ownership of law and RoL organs.

The middle ground is the employment of mixed panels of judges, on which both EULEX judges and their local counterparts serve. This operational method has been employed successfully in Kosovo, but not in the most sensitive of organized crime, war crimes, or corruption cases (Author’s court observations).\(^6\) Early attempts at the use of

\(^6\) The majority of charges against Limaj’s involvement in war crimes at the Klecka detention came from testimony by Zogaj, who was responsible for KLA security in that region during the 1999-98 war. Zogaj surrendered to EULEX after an attack by unknown gunmen on his home in Prizren and was sent to live with his brother in Duisburg. He was found hanged from a tree in a park in September 2011. His family criticized EULEX for lack of physical security, and claimed that he wouldn’t have committed suicide unless forced to. His brother described Agim as being under immense emotional stress prior to the trial. See, Matthew Brunwasser. “Death of War Crimes Witness Casts Cloud on Kosovo.” NY Times, Oct. 6, 2011; and, “Witness in ex-KLA Trial Fears for Safety, Won’t Testify.” Radio B92, Sept. 29, 2011.

\(^6\) In Kosovo, in summer 2014, I observed two EULEX trial proceedings that occurred in the city of Prishtina. The first, which occurred at the ABC Cinema in Prishtina, was a human trafficking case, involving two defendants present and one not, who had been responsible for smuggling persons illegally into the EU using a bus service. This trial was presided over by a single judge from the EULEX mobile division, originally from Poland, and was prosecuted by a EULEX prosecutor from the SPRK, originally from the UK. The second trial observed was a case of abuse of official position, by the manager of a Credit
mixed panels in war crimes and organized crime cases by UNMIK largely failed. Kosovar judges, the majority on panels, often outvoted their UNMIK counterparts resulting in dubious rulings in cases involving ethnic minorities (GLPS 05/2014, 2014). This early practice dissuaded Serbs from participation in the Kosovo justice system and encouraged reliance on parallel and informal structures, as well as individual justice, such as the construction of barricades in Mitrovica (Interview with EULEX Executive Official).

**Systematic Nepotism and Corruption**

A newer phenomenon than the cultural opposition to central authority in the rural areas of Kosovo, is the systematic practice of nepotism and corruption within Kosovo’s public and administrative frameworks. Contemporary Kosovar society is characterized by a system of semi-tribal neo-patrimonial practices, in which loyalty to family, clan, and community ties trumps loyalty to the state. Loyalty within the social group is rewarded in the form of jobs, protection, or concessions for contracts (Interview with Muja).

Given Kosovo’s recent history, the political structures and legislative framework are very new institutions. This holds true for the political class. Virtually all Kosovar politicians were expelled from government under the Milošević regime. Parallel political structures failed to be consolidated under a single leader, and as the 1990s progressed into violence in Kosovo, the KLA became an increasingly potent political force. After all it was KLA political leader Hashim Thaçi who headed the Kosovar delegation at the Rambouillet peace talks, not the LDK’s Ibrahim Rugova. As was illustrated in the Mutual Bank branch in Gjakova/Đakovica. This trial occurred at the basic court in Prishtina and was provided over by a mixed panel of two Kosovar and one EULEX judge, and prosecuted by a EULEX prosecutor.
context section (Section IV), the political elite that emerged during the UNMIK period following the war came almost exclusively from the KLA and were backed by the US and European states. It is important to note that the original KLA and its leadership was drawn heavily from the rural areas of Kosovo, such as Drenica, where the shooting war began in 1998, and the Dukagjini region, which experienced some of the heaviest fighting and ethnic cleansing during 1998-99. The KLA leaders who emerged from these areas retain a strong base of support there, founded in community allegiance.

This is illustrated in figure 6.1, which depicts general party affiliation by region in the November 2013 elections. Party ideology and political platforms are worn loosely, while group and regional interests prevail. The overall trend is for a specific area to vote primarily for the party of the KLA commander from that area. For example the Alliance for the Future of Kosovo (AAK) draws the bulk of its support from the southwest,
Dukagjini region. This was where AAK leader Ramush Haradinaj commanded during the war. Likewise, the bulk of the Democratic Party of Kosovo (PDK) support is drawn from the central Drenica region, the region from which Hashim Thaçi and Sami Lushtaku hail (Interview with Muja). The party of Ibrahim Rugova, the LDK, which was not associated with the KLA and remained primarily non-violent, has maintained a base of support around Prishtina and Rugova’s hometown of Peja (western Kosovo, near the Montenegrin border).

What this means is that party allegiance and clan or community allegiance largely correspond. Thus loyalty to the political party, for the most part, trumps loyalty to the state of Kosovo. The bureaucracy has been politically linked since its post-war inception and those employed in it receive their posts or future promotions through cronyism as their party succeeds (Interview with Rreze Duli). Party loyalty is more ensured as the economic and unemployment situations in Kosovo remain dire. Reward for loyalty from the party leaders is a more likely means of employment in the public administration than merit (Interview with Mazrreku). And this holds true for the justice sector. The political elites are very adept at retaining structural influence within the justice system by appointing loyal supporters to key functions, which has been the case across all major parties, not just the ruling ones (Interview with Sejdiu).

Naturally this connected system of allegiance and patrimony influences the functioning of law-affect society, based upon successful RoL standards and institutions. The system of patrimony constitutes an open pathway for political interference with the functioning of RoL. Political pressure can be high in certain cases and judges,

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68 The EU EEM 2011 report cites an interview with Arbin Ahmeti of Koha Ditore newspaper in which he states political parties are run like ‘private businesses’, in which supports are rewarded with municipal or state administration jobs, licenses, or procurement contracts (EU EEM, 2011).
prosecutors, or witnesses run the risk of losing their elite party patronage in the
government or offending long-standing family, clan, community, or KLA allegiances. In
such cases against influential individuals, prosecutors have failed to submit indictments,
judges have postponed hearings for extended periods, and authorities and lawyers have
feigned ill for extended periods. A lack of disciplinary or internal control measures in the
justice system permits this (GLPS 05/2014, 2014; and KIPRED 2010/08, 2010). EULEX
officials have reported high rates of political pressure against Kosovar authorities in
major cases, with offers of reward made for interference with a case (KIPRED 1/14,
2014). Consequently few high profile corruption cases end in convictions. In cases that
do get prosecuted, usually at the hands of EULEX, lower level bureaucrats take the fall
for the elite patrimonial figures, often with promise of future reward (Interview with
EULEX Strengthening Official).

In addition to being used to obstruct investigations and proceedings, patronage
networks in the justice system can be used for revenge against political opponents.
Though not as overt as the honor and revenge killings permitted by the kanun, this
provides an institutional means for a clan or community, in this case represented by a
political party, to attack opposition. For example, Lëvizja Vetëvendosje! has pledged to
use the justice system to punish opponents when (if) it comes to power in the central
government (Interview with Muja). Similarly, after finally coming to power after a long
political stalemate, LDK Prime Minister Isa Mustafa in January 2015 has begun lobbying
the EU-run special war crimes court for Kosovo to pursue the murder cases of his
political allies. He asserts that agents of ShIK, the extra-institutional intelligence branch
of the long-ruling PDK, were responsible for the murders of LDK party members
between 1999-2003.  This constitutes an overt exhibition of attempted political influence over RoL that a party would not have if not in power.

The one major success to come from the fight against systematic corruption, was ironically the successful prosecution of the head of SPRK Special Anti-Corruption Task Force. In April 2012, Nazmi Mustafi was arrested by EULEX police and indicted by the SPRK for soliciting bribes from suspects under investigation for corruption. He and three of his subordinates were convicted by the SPRK (KIPRED 1/14, 2014). However this constitutes the only successful case concluded in a conviction against a high-level official, despite a widespread belief of corruption in virtually all sectors of administration (Interview with EULEX Strengthening Official; and, interview with Agron Bajrami).

What this case illustrates is that, when permitted to pursue high-level investigations, EULEX provides able means to combatting the embedded networks of patronage and corruption, by operating outside of a justice system which they compromise (KIPRED 1/14, 2014). However, as presented in the preceding section (Section V – Politicization of RoL), EULEX’s work in his field has been largely limited and unsatisfactory for political reasons (Interview with Mazrreku; and interview with Deda). The effect the current corruption allegations within EULEX, brought forward by Maria Bamieh, will have upon its ability to act in high-level anti-corruption cases is uncertain, but is likely to

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69 Among the ‘dozen’ LDK figures Mustafa is lobbying for justice for are Enver Moloku and Tahir Zemaj. Moloku was a journalist and LDK activist during the 1990s and was shot outside his home in 1999 by an unknown gunman. Zemaj was head of the LDK’s armed wing, which was at odds with the KLA. He was killed along with his son and nephew in an ambush in 2003. ShIK, or the Kosovo Information Service, was an informal intelligence and security organization that evolved out of the KLA and operated under the control of the PDK. In December 2009, EULEX arrested Nazim Bllaca, who turned himself in, claiming to be an assassin in the employ of ShIK. Bllaca claimed that ShIK specifically targeted LDK members for assassination. Officially ShIK was disbanded in 2008 and its leadership denies all knowledge of Bllaca. See, Petrit Collaku. “New Kosovo Court ‘Must Probe Political Murders’.” Balkan Insight: Balkan Transitional Justice, Jan. 12, 2015; and, Fisnik Minci. "Bllaca Case, Test for EULEX's Credibility." Koha Ditore, Dec. 10, 2009.
contribute to and justify already exceedingly negative public opinion regarding EULEX and its efforts to take down ‘big fish’ (see Section VII – EULEX as a Model). ⁷⁰

In October 2014, EULEX prosecutor Maria Bamieh accused EULEX judge Francesco Florit of accepting a bribe of €300,000 to release a Kosovar defendant in a murder case. Her accusation includes that Florit met with a lawyer in Durrës, Albania to discuss the release of three murder suspects: Besnik Hasani, Shpend Qerimi, and Nusret Cena. Besnik Hasani’s brother admits to paying Florit €300,000 for the release of Cena, but not the other two as the money was deemed insufficient. Bamieh asserts that her reports on his case were not pursued or disappeared and she was threatened with arrest before finally being dismissed from duty. See, “EU Kosovo Mission Accused of Tolerating Corruption.” Balkan Insight: Balkan Transitional Justice, Oct. 29, 2014; and, “BIRN Interviews Prosecutor and Judge in EULEX Scandal.” Balkan Insight: Balkan Transitional Justice, Oct. 30, 2014.

⁷⁰ In October 2014, EULEX prosecutor Maria Bamieh accused EULEX judge Francesco Florit of accepting a bribe of €300,000 to release a Kosovar defendant in a murder case. Her accusation includes that Florit met with a lawyer in Durrës, Albania to discuss the release of three murder suspects: Besnik Hasani, Shpend Qerimi, and Nusret Cena. Besnik Hasani’s brother admits to paying Florit €300,000 for the release of Cena, but not the other two as the money was deemed insufficient. Bamieh asserts that her reports on his case were not pursued or disappeared and she was threatened with arrest before finally being dismissed from duty. See, “EU Kosovo Mission Accused of Tolerating Corruption.” Balkan Insight: Balkan Transitional Justice, Oct. 29, 2014; and, “BIRN Interviews Prosecutor and Judge in EULEX Scandal.” Balkan Insight: Balkan Transitional Justice, Oct. 30, 2014.
Section VII – Analysis: EULEX as a Model of Rule of Law Intervention

The preceding two sections of analytical narrative have discussed EULEX’s operations in the political space in Kosovo and its effects, as well as EULEX’s inability to engender a sense of local ownership of law-affect society in the ‘everyday’ space. This section seeks to examine EULEX as a model for RoL intervention and programming in post-conflict societies. In so doing, public opinion concerning EULEX, its on-the-ground practices, and its sustainable legacy will be examined. All of these aspects of its deployment and operation serve as an example not only to the relevant local authorities it is tasked with mentoring and advising, but also future RoL-based missions in post-conflict societies.

Public Opinion

During the course of interviews all those interviewed were asked to comment on the public opinion or attitudes towards EULEX in Kosovo. Specifically, those interviewed from civil society were asked the following questions: “What is the public’s view towards EULEX in the Kosovo-Serb municipalities?”; and, “Is this view different than the public view towards EULEX in the rest of Kosovo. If so, in what way.” Those interviewed as officials of EULEX, the EU, and the UN were asked: “How do the publics in these [Serb] municipalities receive EULEX and European rule of law?” Not all public opinion information was gathered strictly from these questions, but responses to these and other questions conveyed an overall negative view of the mission by the population. EULEX’s deployment in Kosovo was initially surrounded by enthusiasm and high public
opinion in the Kosovar population. The hope was for rapid and dramatic improvements in the fields of justice that had been lacking under UNMIK. This was fed by overly ambitious pronouncements by EULEX officials, lofty goals in its mandate, and the promise to pursue cases against the criminal ‘big fish’ (Interview with Deda; KIPRED 1/13, 2013). High rates of arrests and convictions were expected in a society largely unsatisfied with the status of RoL (Interview with Sadiku). There was also an expectation of the stabilization of both inter-ethnic relations and the economy as a byproduct of successful RoL implementation (Interview with Muja).

The first blow to EULEX’s public image was suffered immediately, in its acceptance of a status-neutral mandate. This act, though necessary in order to be legally deployed, greatly damaged local legitimacy, as it rejected the Ahtisaari Plan, upon which Kosovo’s sovereignty was based, and had the appearance of conceding to Kosovars’ recent oppressor, Serbia (GLPS 05/2014, 2014). A perception grew from this that EULEX was acting as a defender of the Serb communities (Interview with Muja). Thus for Kosovar nationalists, EULEX came to represent a burden (Interview with Vorgučić).

For Serbs south of the Ibar River, EULEX, like KFOR served as a further guarantee against a resurgence of ethnic violence like that experienced in 2004 (Interview with Vorgučić). However for those Serbs in the North, and those south of the Ibar River clinging to nationalist hopes, EULEX’s deployment was emblematic of Kosovo’s sovereignty. Despite its claims of status-neutrality, its basis within Kosovo’s legal framework and work in concert with the KP and SPRK constitutes, for those Serbs, de facto cooperation with Kosovar institutions and a breach of status-neutrality (Interview with Deda; interview with Idrizi; interview with Korenica; interview with Florina Duli;
and interview with Sadiku). Likewise its manner of executive policing, using militarized tactics, in the North has further been a detriment to public support. There it is viewed primarily as political thugs functioning on the Kosovar government’s behalf, engaging in a ‘Serb-hunt’ (Interview with EU Official; interview with UN Official; and, GLPS 01/2013, 2013). A more detailed account of the influences on public opinion in the North and the effects it has on local elites and EULEX’s operational capabilities there is found in the section on politicizing RoL (Section V – Analysis: EULEX and the Politicization of Rule of Law).

Following the initial blow suffered by the adoption of status-neutrality, public support for EULEX on the Kosovar side of the ethnic cleavage has wavered with the execution of concrete actions in accordance with its mandate and those early pronouncements made by its officials (Interview with Idrizi). When big cases, such as the Nazmi Mustafi case, are concluded with a conviction, public support for EULEX’s actions increases. On the other hand, when high-profile cases are either not pursued or not concluded with a conviction, public support drops (Interview with Hajrullahu). When people see those figures they consider to be the criminal ‘big fishes’ running for or occupying public office, blame is attributed to EULEX and support for it declines (Interview with Sadiku). This, however, like public opinion among Serbs, is dependent upon one’s nationalist or patriotic disposition. People with a background in the war become highly agitated with EULEX’s pursuit of cases against former war heroes (see Section V). Conversely, people without the war background, view war crimes cases and those pursued against former KLA fighters as EULEX’s success (Interview with Korenica).
Data from polls conducted both by local universities and UNDP demonstrate a decline in public support for EULEX (Interview with Deda; and, interview with Mazrreku). The UNDP Public Pulse Survey IV, conducted in August 2013 supports assertions of overly negative public opinion. Kosovar satisfaction with EULEX was recorded at 19%, having continuously decreased since 2008. And perceptions of corruption in EULEX had increased from 22.9% in 2010, to 38.3% in 2013. These statistics are remarkably poor compared to KP, which recorded a 75% satisfaction rating, and 30.3% perception of corruption rating. Kosovo Serbs also recorded a higher satisfaction rating of KP at 29%, compared to 11% for EULEX (UNDP “Public Pulse IV”, 2013).

Ultimately this negative public opinion has stemmed from a failure by EULEX to deliver on its own pronouncements, and inability to live up to the high expectations surrounding its deployment. Because of this, it is viewed as the same ineffective institution as UNMIK. Graffiti around Prishtina equates the two missions and EULEX’s practice of hiring of out-of-work UNMIK personnel in 2008 undoubtedly fueled this negative perception (Interview with Idrizi).71 Its operation is seen as politically constrained and selective, displaying reluctance to pursue cases involving influential political or financial actors (Interview with Hajrullahu; and, interview with Bajrami). The broader authority that was hoped would be established has not yet been seen (Interview with Mazrreku). Furthermore, the judicial sector, which posed the greatest

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71 In 2008 UNMIK all but left Kosovo, leaving only its name for EULEX to legally operate under in conformance with the ‘Six-Point Plan’ and UNSCR 1244. Large numbers of UNMIK police and judicial personnel were transferred to EULEX due to familiarity with the situation on the ground. UNMIK buildings and vehicles were also transferred and the signage on them changed. Those personnel transferred had a poor reputation in Kosovo, as westerners taking advantage of the situation because of the low cost of living and high wages paid.
challenge to RoL in Kosovo, remains dysfunctional in the public view. UNDP identified it as the least approved of branch of government, with a rating of only 16.7%. Indicators such as this contribute to the perceived failure of EULEX, and raise questions in the public as to the justification for such an investment by the EU (Interview with Korenica; and, interview with Idrizi).

_EULEX Operational Practices and a Precedent of Duality_

This paper has already established an ethno-territorial disparity evident in EULEX’s operational programming. Different compositions of the ‘everyday’ space between the dominant Serb and Kosovar populations, made evident in Sections IV (Context), V (Analysis: EULEX and the Politicization of RoL), and VI (Analysis: Cultural and Societal Influences on RoL Programming) drastically differ both in terms of acceptance and rejection of an RoL system as well as predispositions towards justice, criminality, and RoL standards. Established in the context section (Section IV), the North constitutes a de facto partitioned entity within Kosovo, which EULEX has openly acknowledged with regards to RoL programming in its mandate. The dramatically different ‘everyday’ and political landscape in the North, as well as its stronger links with the Serbian government, has made necessary an operational model different from that south of the Ibar River. This includes a stronger executive mandate and the practice of more militarized police tactics in conducting arrests. Given the general aversion to EULEX and the inability of intelligence-based policing to function, these tactics are necessary (Interview with EU Official). Aside from the militarized tactics and political concerns already identified, EULEX has established a dangerous precedent of duality of
RoL standards between the North and the rest of Kosovo, which further concedes de facto partition, and further empowers those illiberal elites identified in Section V (Interview with Deda).

Northern Serbs’ early aversion to EULEX, and their political backing in Belgrade, made the North a no-go zone, while EULEX was able to deploy and operate broadly in the south. South of the Ibar River, EULEX could both prosecute lower-level Kosovar criminality and reform RoL institutions with greater ease. Consequently, it was deprived of the ability to treat all citizens uniformly (Interview with Bajrami). The perceptions among civil society experts of general EULEX operations in the North were as half-hearted measures. Police patrols stuck to the main streets, on fixed grids, for security concerns, and intra-ethnic crime cases, including homicides were not pursued (Interview with Idrizi). While south of the Ibar, EULEX judges served, and continue to serve, on mixed panels of judges with Kosovar colleagues; this is yet to be practiced in the North. Even under the new EULEX mandate – which is aimed at increasing local ownership by reducing the EULEX executive capacity – EULEX judges will continue to serve on strictly EULEX panels at the court in Mitrovica (Interview with EULEX Executive Official). Furthermore, in sensitive cases involving Northern Serbs, EULEX has displayed irrational procedures, which both dissuade local support and acknowledge de facto partition of a justice system. This was most notably illustrated in the case of Oliver Ivanović: he was arrested in Mitrovica, but transported to be charged and detained in Prishtina, where his family and legal counsel were unable to visit him, and he voiced serious safety concerns about being surrounded by all Kosovar detainees. After a lengthy
appeal, he was transferred to the prison in North Mitrovica, and his trial is underway at
the court there (Interview with EU Official).

The apparent lack of sense involved in the handling of Ivanović’s, and others’,
cases raises a number of issues about the model of the justice system that EULEX is
implementing, which is to serve as a sustainable model for local authorities. For instance
allocation for judges within the EULEX system is a highly subjective process, by which a
judge is selected through consultation between the president of the EULEX council of
judges and the chief judge of an operational region in which the case is being tried (BIRN
Interview with Mariah Bamieh, 2014). Kosovo’s court system in practice employs a
likewise subjective manner of case allocation. There is no uniform or transparent
process, but rather the system differs by court. In some, cases are allocated by intake
staff; in some by specialty of the judge; and in others, it is a strictly subjective decision
by the president of the court. Case reassignment is likewise as subjective and sometimes
done unofficially, without the knowledge or approval of the court president (American
Bar Association, 2010).\footnote{In a 2010 report, the American Bar Association Rule of Law Initiative report that despite legal provision for an objective system of lottery case assignment, this is not practiced. This report was produced using qualitative data obtained through interviews with judges in the Kosovo system. Instances of judges reassigning cases among themselves without permission or even filing a report were reported. Judges are held responsible for recusing themselves in cases where interests conflict. See, “Judicial Reform Index for Kosovo.” ABA: Rule of Law Initiative Vol. IV (Oct. 2010).} In a justice system identified as compromised with neo-
patrimonial networks (Section VI), this model leaves ample space for manipulation
(European Court of Auditors, 2012).

The character of EULEX as a mentoring, monitoring, and advising (MMA)
mission is that it provides a framework for the relevant local authorities to conform to.
However the model EULEX has and continues to profess in Kosovo is characterized by
judicial impropriety and inconsistency with both prior rulings and accepted European legal standards. By nature of the operation and its structure, questions have to be raised about the responsibility of judges and prosecutors and their accountability (KIPRED 1/13, 2013). Both EULEX judges and prosecutors, who serve within Kosovo’s institutional framework, report to the same EULEX head of mission (HoM). And none of the four HoMs to date have been RoL specialists. The first two HoMs to serve, Yves de Kermabon and Xavier Bout de Marnhac, were former French Generals and commandants of KFOR. The next two, Berndt Borchardt and Gabriele Meucci, were both career diplomats prior to their postings as HoM (Interview with Sejdiu; interview with Florina Duli; and, KIPRED 1/13, 2013).

The dubious relationship between EULEX prosecutor and judge has manifested itself in cases of detention on remand – the practice of holding a suspect in custody for risk of flight, committing further criminal acts, or attempting to influence aspects of the case against him. Detention on remand itself is not a dubious practice and is permitted under Article 5 of the European Convention on Human Rights (ECHR), which states:

The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

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73 EULEX has come under criticism for the symbolic nature of the HoMs. In defending itself from criticism, the argument was made that military HoMs were necessary in the beginning for their expertise in rapid deployment. However EULEX has failed to successfully deploy in the North. Likewise criticism has been leveled at the latter two HoMs. As diplomats they feed the perception that EULEX is a political entity.

74 The European Convention on Human Rights (ECHR) was first signed in 1950, by all members of the Council of Europe (CoE). Currently there are 47 parties to the ECHR, which include all member states of the EU. Belarus, Kazakhstan, and Vatican City are the only states that fulfill the geographic criteria for membership in the CoE, but are not members and thus not party to the ECHR.
ECHRight case law has even permitted prolonged detention on remand, or the refusal of bail, for the accused in cases of risk that the accused, if released, will fail to appear for trial; take action to prejudice the administration of justice; commit further offenses; or cause public disorder. The OSCE further provides a “three pronged test” for determining the propriety of detention on remands arguments:

- There is grounded suspicion that the person has committed a criminal offence;
- There is a risk that the suspected person: (i) will flee or his or her identity cannot be established; (ii) will destroy or forge evidence, influence witnesses or injured parties or accomplices; or (iii) will repeat the criminal offence; and
- The alternative non-custodial measures provided in the code are insufficient to ensure the presence of the accused, the successful conduct of the proceedings and prevent re-offending (OSCE, 2009; 4).

The impropriety however has arisen with the application of detention on remand. EULEX judges have consistently been quick to order detention on remand, demonstrating it to be a preferred option. In so doing they have placed the onus upon the defense to prove that the accused will not attempt to flee, tamper with evidence, or influence witnesses in the case, rather than on the prosecution to prove the existence of these risks (Interview with Sejdiu). By the case law of the ECHR – specifically Bykov v. Russia (2009) – the burden of proof, and the presumption of innocence, can not be reversed. It is not the burden of the accused to demonstrate existence of reasons warranting his release (Guide on Article 5 of the Convention, 2014: 14, 27).

Prior to EULEX deployment in Kosovo, impropriety with regard to detention on remand was already identified as an obstacle to RoL and the protection of basic human rights. The OSCE reported inconstancy with the principle of “presumption of liberty” and identified public prosecutors as rarely providing sound reasoning. Arguments for
detention on remand were reported as “vague, theoretical, abstract, and formulaic”. In some cases, defendants were not brought before a judge or provided with legal representation before detention on remand was ordered (OSCE, 2009; and, Kosovo Judicial Council, 2014). While EULEX’s impropriety in cases of detention on remand is a concrete case of providing a bad example of ‘good practice’, it further reinforces existing impropriety embedded in the justice system that is in conflict with both Kosovo’s laws and accepted international human rights standards (Interview with Sejdiu; and, OSCE, 2009).

**Sustainability of EULEX Reforms**

EULEX as a mission is founded upon the concept of building sustainability within the relevant local institutions it is responsible for mentoring, monitoring, and advising (EULEX Mission Statement). However, like much of EULEX’s employed rhetoric, sustainability is highly subjective. The concept of sustainability is dependent upon local ownership of “the internationals’ liberal vision”, a consistent concern in the liberal peace theory literature (Franks and Richmond, 2008). Accordingly the sustainability of EULEX’s ‘liberal vision’ of RoL is conditional upon the building of trust for local institutions in Kosovo’s society.

As was presented in Section VI (Analysis: Cultural and Societal Influences on RoL Programming), Kosovo is generally lacking a law-affect society. Serbs, especially in the North, remain resistant to the reach of Kosovo’s central institutions, while Kosovar society has not taken ownership of its new laws and institutions. Both sides of the ethnic cleavage lack the necessary political will to engender ownership. Elites’ ties to criminal
and patrimonial networks throughout the whole of Kosovo results in the lack of necessary political will to embolden RoL organs to pursue demanding or precarious cases against organized crime networks, war crimes, and high level corruption (Interview with Agani; and, interview with UN Official).

More detrimental to a sustainable RoL system in Kosovo than a lack of political will is the practice of political interference in justice proceedings (Interview with Florina Duli). The prolific networks of neo-patrimony, presented in the preceding section (Section VI), contribute to systematic interference, as does the current economic situation in Kosovo. Strong party loyalties, reinforced by the fear of losing one’s job for failing to comply with a superior’s order has led to a non-independence of all executive RoL structures. This includes the police, judiciary, and prosecution (Interview with UN Official; and, interview with EU Strengthening Official). RoL proceedings are regularly disrupted and interfered with by top-down pressure (Interview with EU Executive Official). In addition to the use of nepotistic networks to influence RoL-related personnel, the media, private interest groups, and public political rhetoric has been used to pressure RoL proceedings (Interview with Muja).

The Mustafa (2009), Limaj (2011), and Kiqina (2013) cases all provide examples of such pressure. When the Llapi Group retrial concluded in 2009 with a guilty verdict, Prime Minister Thaçi publicly pronounced defendant and former KLA fighter and PDK official Rrustem Mustafa innocent. The case was tried by a EULEX mixed panel of judges, which included one Kosovar and two internationals. Following the Prime Minister’s pronouncement, the Kosovar judge recanted his guilty verdict (EU EEM,
In the 2011 war crimes case against Fatmir Limaj, the Assembly acted to review MP immunity and asked the Constitutional Court to rule on it. Meanwhile MPs as well as the PM made public statements denouncing the EULEX case against Limaj, and proposed a vote to end EULEX’s mandate (See Section V – Analysis: EULEX and the Politicization of RoL). The Kiqina murder case pertained to a murder trial in 2007, but was addressed by the Assembly in 2013. The original case was a murder trial, in which five men were found guilty and it was concluded that the murders were part of a blood feud or revenge killings. One MP claimed that the five defendants in the case, all of whom were KLA veterans and all of whom were found guilty, were subjected to “grave procedural and human rights violations” during the investigation and demanded retrial.

In all cases, the Assembly or its members, which are not a RoL organs, presumed to act in function of one and exert pressure on the justice system (Interview with Sadiku).

Overt political interference such as these cases further contributes to bottom-up rejection of RoL principles and a law-affect society. In turn the public brands decisions reached

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75 The ‘Llapi Group’ consisted of defendants Lafit Gashi, Nazif Mehmeti, and Rrustem Mustafa. Originally arrested and tried in 2003 under UNMIK, a retrial was opened at the behest of the Supreme Court of Kosovo in 2009 under EULEX, the verdict of which has since been appealed. In the 2003 trial, Mustafa was found guilty of illegal detention, inhumane treatment of civilians, torture, and command accountability for others’ carrying out the same acts during the 1998-99 war. He was sentenced to 17 years in prison. In the 2009 retrial he was again found guilty of inhumane treatment and torture of Kosovo Albanian civilians in 1998-99 in pursuit of a joint criminal enterprise, and sentenced to four years in prison. See, “Case Report: The Public Prosecutor’s Office vs. Latif Gashi, Rrustem Mustafa, Naim Kadriu, and Nazif Mehmeti – the Llapi Case.” OSCE Mission in Kosovo (2003); and, “Verdict in Llapi Group Case.” EULEX Press Office, Oct. 2 2009.

76 In August 2001, Blerim Kiqina along with four other KLA veterans ambushed and killed five members of the Hajra family, including two children as they returned home from a wedding, using automatic weapons. UNMIK authorities issued a warrant for Kiqina’s arrest in 2002 and he was arrested in 2004, after returning from Sweden to visit his father. Kiqina also implicated Burim Ramadani, Arsim Ramadani, Arben Kiqina, and Jeton Kiqina. It was posited that the murders were potentially revenge killings as the father of the family Hamze Hajra had served in the police during the 1990s. During the parliamentary debate of the case, the US Ambassador in Prishtina stated it: “just confirmed the criticism of those who say Kosovo political leaders tend to interfere in rule-of-law procedures and undermine the independence of the judiciary. See; “Jeton Kicina Sentenced with 16 Years in Prison.” Kosova Press, Mar. 9 2007; and, Edona Peci. “Kosovo Parliament Rejects Family ‘Revenge’ Murders Probe.” Balkan Insight: Balkan Transitional Justice, Mar. 19 2013.
through acceptable and transparent processes as fraudulent if they are not favorable (Interview with UN Official).

Image 3:
Graffiti in Prishtina: “Shame to EULEX for the Kiqina Case”.
Credit: Author’s photograph.

In the presence of the prolific and systematic top-down interference exerted on Kosovo’s justice system, EULEX, as an international authority embedded within local institutions, constitutes an institutional resistance to interfering pressure. Despite the negative public opinion presented earlier in this section and the prevalent criticism for its executive operations, EULEX has contributed to preventing interference (KIPRED 1/14, 2014). EULEX’s ability to act rapidly and executively has pressured local authorities to do likewise in certain cases (Interview with Agani). It was EU advisors that renounced the Assembly’s actions on the Kiqina case. Additionally, EULEX’s mere presence alongside local authorities has deterred interference with RoL. Though EULEX customs officers don’t possess more notable expertise than their local counterparts, their presence
at checkpoints and on mobile customs teams is reported to have discouraged corrupt behavior by high-ranking officers for fear of prosecution (KIPRED 1/13, 2013).\textsuperscript{77}

While this represents a commendable function of EULEX’s operation, what it indicates is a lack of sustainability within institutions and within the RoL framework of Kosovo. Without active international supervision, local authorities would not be able to resist pressure from higher ups. Lower-level authorities wouldn’t have the ability to countermand dubious decisions or orders from superiors (Interview with Muja; and, interview with EULEX Strengthening Official). KP is regarded as the most sustainable and successful RoL institution (Interview with Idrizi). It is well regarded publicly and has demonstrated the ability to successfully execute general policing function, though has struggled with successfully developing intelligence-based policing (Interview with Agani). However KP as a general police force cannot solely maintain RoL and is reliant upon less-sustainable, higher up structures, and the political will of the government (Interview with Mazrreku).

According to the European Security and Defense Policy, (ESDP, 2009) in order for a police force, in this case a comparatively commendable one in KP, to properly function it requires equally well functioning judicial and penitentiary systems. In addition to KP, local judges and prosecutors have demonstrated their ability to handle minor claims of a lower magnitude. However, local investigative, prosecutorial, and judicial capacities have not been sufficiently built to handle cases of war crimes, organized crime, and high-level corruption involving the political elites (Interview with EULEX Executive Official; and, interview with Korenica). Likewise, though the prison

\textsuperscript{77} EULEX operates mobile customs teams in the North, which patrol the Kosovo side of the boundary with Serbia. They conduct random checks on vehicles that have passed the customs gates. Their operation is credited to have both reduced smuggling and corruption at the customs gates.
system has made great strides in reform, without international supervision, powerful figures won’t be detained or held in prison (Interview with EULEX Strengthening Official; and, interview with UN Official). This has been demonstrated in both the cases of Slobodan Sovrlić, who was released from custody in Zubin Potok (see Section V), and in the ‘Drenica Group’ case, during which three defendants were allowed to leave custody while at a hospital.78

    In addition to the inability of the local RoL framework to resist top-down interference in justice without EULEX oversight, the poor model of ‘best practices’ EULEX employs further cripples its sustainability. Identified earlier in this section are the irregular standards of ethno-territorial disparity in RoL, case allotment, and detention on remand. Through its functioning, EULEX has established a disparity in RoL implementation ethno-territorially. And, as Section V identified, the majority of progress in the Serb ethno-territorial space has been through political agreement. This is neither a consistent nor sustainable process that is dependent upon leadership stability and good faith on the parts of the GoK, Serbian government, and Kosovo Serb leaders (especially in the North). The subjective manner of case allotment within EULEX sets a poor example for local counterparts and leaves substantial opportunity open for nepatrimonial capture of judicial proceedings, without EULEX oversight. And lastly,

    78 Slobodan Sovrlić was arrested in March 2014 in Zubin Potok for public unrest, and afterwards it was realized that he was on the EULEX wanted list for endangering UN, EULEX, and related personnel, among other criminal activities. After his arrest a mob formed outside the Zubin Potok KP station and a group of masked men entered. Material damages occurred to the station and Sovrlić was released by KP officers for fear of further violence. Prior to the beginning of the trial of the so-called “Drenica Group” in May 2014, three defendants, Sami Lushtaku, Ismet Haxha, and Salit Jashari, walked out of custody while supposedly receiving medical treatment at a clinic in Prishtina. An arrest warrant was issued and the police began a search after the defendants did not appear for the trial. The defendants’ attorneys stated that this was a communication error and the police had not transported them to the court in Mitrovica for safety reasons. The disappearance from custody came shortly after Sami Lushtaku, the mayor of Skenderaj, had refused transfer to the prison in North Mitrovica. See, “Three ex-KLA Members Accused of War Crimes Escape.” Radio B92, May 22 2014.
EULEX’s identified impropriety with regards to detention on remand, in conflict with established human rights principles, sets a poor example. Likewise as does the failure to address it by EULEX or the constitutional court.

Ultimately what can be concluded is that the RoL framework EULEX is working to strengthen in Kosovo is not sustainable without EULEX’s continued presence. While it is successfully achieving short-term goals in Kosovo such as reducing smuggling in the North and pursuing minor criminal figures, it has not successfully invested in a long-term legacy, or product to leave behind (Interview with Korenica). This has been a shortcoming attributed to liberal peace projects in the relevant literature (see Section II). The result will be a lack of self-sustaining institutions when the current EULEX mandate expires in 2016, and the inevitability of a prolonged EULEX presence in Kosovo (Interview with EULEX Strengthening Official). However, given the public opinion information provided in this section, and in light of EULEX’s own questionable practices brought to light in the ongoing Bamieh scandal, its own sustainability and longevity are not certain.
**Section VIII – Conclusions**

In concluding this study it is important to acknowledge that Kosovo constitutes a unique case in the study of peace building and more specifically RoL intervention. Firstly it is unique by the territory of Kosovo’s geo-spatial position between the Republic of Albania and the Republic of Serbia, the national homelands of Kosovo’s two dominant ethnic groups between which Kosovo is ethno-territorially divided. This has had a profound impact on the Serb minority especially, within Kosovo. Rogers Brubaker (1995) describes this situation as a ‘triadic nexus’ between ethnic minority, domestic government, and external national homeland. This relationship itself is not unique, nor is it unique to the former Yugoslavia. Cases of this nexus are evident in the Serb population in northern Croatia (Krajina), the Albanian population in southern Montenegro, the Albanian population in southwestern Macedonia, and Bosnia and Herzegovina, legally divided along ethnic lines, is practically defined by such a relationship. The national soccer (football) teams of the former Yugoslav states are filled with players representing their ethnic homelands rather than their states of birth. What makes the case of Kosovo unique in this respect is that technically, under UN Security Council Resolution 1244, Serbia’s territorial integrity is guaranteed. De jure, the Republic of Serbia is not an external national homeland for Kosovo Serbs, nor is its government alien. Thus for those not recognizing Kosovo’s 2008 unilateral declaration of independence, including Serbia, the UN, and the majority of Kosovo Serbs, two domestic governments exist in Brubaker’s triad – the de jure, Republic of Serbia

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79 Hopes of Kosovo unification with Albania have been mostly discarded, so while its proximate relationship to Albania during the 1998-99 conflict was important, it is less so in the post-conflict setting.
government, and the de facto Kosovo government in Prishtina. As a result of this, and in spite of the 1999 agreement with NATO, Serbia has maintained a comparatively robust position within Serbian communities in Kosovo through parallel institutions of administration and security, while its government has acted as the chief advocate of the Serb population. Additionally the Kosovo Serb population has largely maintained claims of Serbian sovereignty over Kosovo.

Kosovo further constitutes a unique case by the distribution of the Serb minority throughout its territory. The four Northern Serb majority municipalities are territorially contiguous both with one another and with their national homeland, the Republic of Serbia. Those five Serb majority municipalities south of the Ibar River, however, do not enjoy such territorial continuity, but rather are isolated pockets surrounded by Kosovar-dominated territory. They are physically separated both from their ethnic minority kin and their national homeland, and thus far more reliant on the domestic government than their minority kin in the North. In terms of any resources (political, material, nutritional, medical, etc.) there is not only disparity between the ethnic groups, but within the Serb minority as well, divided by the Ibar River.

It is also necessary to acknowledge the toll taken by the 1998-99 conflict and the following years of continued inter-ethnic violence on Kosovo. Casualties during the war are currently tallied at 10,415 Kosovars, 2,197 Serbs, and 528 Bosniaks, Gorani. More significant are the figures of those expelled from or internally displaced within Kosovo. Roughly 850,000 Kosovars were expelled and an additional 590,000 internally displaced,

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80 These figures were published in the “Kosovo Memory Book” by the Humanitarian Law Center of Belgrade in 2015. See, Petrit Collaku. “Experts Greet HLC’s ‘Kosovo Memory Book’.” Balkan Insight: Balkan Transitional Justice, Feb. 5 2015.
amounting to roughly 90% of the Kosovar population.\footnote{See, Tim Judah. \textit{The Serbs: History, Myth, and the Destruction of Yugoslavia} (New Haven: Yale UP, 2000).} On the other side of the conflict, roughly 230,000 non-Kosovars were displaced, many internally to the North, during the war and ensuing bouts of revenge violence.\footnote{See, Tim Judah. \textit{Kosovo: What Everyone Needs to Know} (UK: Oxford UP, 2008).} Every war is a unique phenomenon; however, the war in Kosovo conforms to the trend identified by Benjamin Valentino (2014). Valentino argues that while violence against civilians, in times passed, was denoted as “collateral damage”, it has come to be the objective of war rather than a inevitable byproduct. War has increasingly come to resemble ethnic cleansing, dominated by material and political reward and prolific lethal and sexual violence (Valentino, 2014). The war in Kosovo, and the other Yugoslav wars, conforms to this pattern, and it can thus be concluded that in this respect Kosovo does not constitute a solely unique case.

On the one side Kosovo constitutes a unique case with respect to the disparate distribution of its ethnic groups and the ambiguous status of one’s national homeland (Republic of Serbia) within Kosovo. However on the other side, Kosovo’s population, on both sides of the ethnic cleavage, having been victimized during the war is not as unique, as civilians have increasingly become the target of war. Consequently in post-war societies, which like Kosovo, conformed to Valetino’s post-1990 trend, ethnic groups will remain bitterly disaffected by the out-group. Equally, as Sannerholm (2007) argued, these societies will be averse to central authority, as it was such authority that victimized them.

Though Kosovo, like all post-conflict settings, is unique in any number of respects it also displays characteristics endemic of modern post-conflict settings. These
characteristics, identified throughout various strands of literature, have been made evident during the ongoing period of international stewardship and programming in Kosovo. As a result of this, contemporary Kosovo constitutes a suitable case study for the analysis of the post-conflict normalization of rule of law. Similarly, the European Union Rule of Law Mission, EULEX, constitutes a prime case study for RoL-specific civilian crisis management operations in modern post-conflict settings. Lessons learned from EULEX’s operations in Kosovo can inform future civilian crisis management operations in similar settings such as Afghanistan, Iraq, Georgia, Azerbaijan, Armenia, and Ukraine.

Firstly it can be concluded from this research that EULEX is a highly politicized institution, despite seeking to present itself as a strictly technical and apolitical operation. The desire to rapidly and forcefully extend RoL into the North embittered the local population there, while empowering dominant illiberal elites, whose power was often times accrued through criminal and/or paramilitary activities resistant to central authority. The combination of a status-neutral mandate and the potential for violent reactions in the North pressed EULEX to adopting a strategy of building consensus on RoL – manifested in the dialogue processes between Kosovo and Serbia, which the EU mediates. The Brussels Agreement, signed in April 2013, is the single most tangible catalyst of extending uniform RoL into Northern Kosovo. Under it, Kosovo Serbs operating in the parallel MUP system have been integrated into a unitary Kosovo Police (KP) resulting in both increased operational capacity and public support for KP in the North. However, while in this respect the Brussels Agreement has unquestionably advanced RoL in the North and whole of Kosovo, it has also constituted a detriment to RoL construction.
Through various provisions it has conceded RoL authority to Serb majority municipality governments, thus empowering their candidly illiberal elites even more, and also granted substantial influence to Belgrade. On the Kosovar side, the need to reduce leadership uncertainty and solidify regional instability has likewise empowered illiberal elites who captain networks of political patrimony and enjoy the impunity of international support.

Secondly, in addition to EULEX’s empowerment of a largely militarized and illiberal political elite in the Government of Kosovo, its strict focus on top-down RoL building has left the ‘everyday’ space largely unaffected by its reforms and programming. The result of this has been a generally evident lack of local ownership of laws and RoL institutions. Especially in the rural spaces, the justice system of the ‘everyday’, remains grounded in such traditions as the legally-archaic kanun, by which such practices as revenge and honor killings are permitted. Aversion to ownership over the modern justice system has also led to the ultimate capture of justice institutions by those illiberal elites, whose position EULEX solidifies for the sake of necessary stability. Corruption goes largely unpunished in the compromised system. And, attempts to pursue high-level cases commonly fall victim to the pressures of intimidation or political and nepotistic interference. Thus it can be concluded that EULEX has ultimately failed to engender local ownership of the RoL system it builds, rendering its efforts not only vain, but also counterproductive.

And lastly, it can be concluded that the operational model and practices employed by EULEX, in Kosovo, are fundamentally flawed. Its overly bombastic and ambitious pronouncements upon deployment, coupled with ambiguous rhetoric and a failure to deliver on these fueled a plunge in public support – which has not recovered. EULEX
and the EU both identified the judicial component (judges and prosecutors) as both critical to RoL operations and lacking in Kosovo. Yet, this component only constitutes 13% of EULEX’s personnel, while considerably more are devoted to the already functioning police component. Issues within the limited judicial component, such as lack of independence, subjective case allotment, and consistent impropriety with regards to accepted European legal standards has greatly inhibited its function.

The poor model EULEX employs for their local counterparts to learn from, coupled with the solely political advances and failure to engender local ownership results in an unsustainable RoL product. Without EULEX personnel in place, the justice system would be completely compromised by corruption and patrimony. However, EULEX’s functioning in Kosovo has only increased the exploitability of RoL institutions. This includes empowering and entrenching illiberal elites, failing to deter ‘everyday’ extra-legal traditions, and employing a model unbecoming of modern rule of law.

Ultimately, from these three drawn conclusions, it can be determined that EULEX has conformed to a framework of traditional post-Cold War liberal peace theory. This model embodies the inherent shortcomings identified in the related literature. Evident in the first conclusion presented above is that EULEX has been unable to depart from politicization, despite its rhetorical portrayal of technicality and status-neutrality (Rajagopal, 2008; and, Petersen, 2010). In so doing, EULEX has advanced short-term goals at the expensive of a long-term product by empowering illiberal actors (Stromseth, 2008) and prioritizing western foreign policy (Duffield, 2010) rather than organic qualities (Mac Ginty, 2010). The second presented conclusion demonstrates EULEX’s inability to cope with one of the greatest challenges to a liberal peace project presented in
the literature, instilling local ownership over reforms (Knoll, 2006; Roberts, 2010; and Greičevci, 2011). In failing to do this and failing to successfully incorporate the ‘everyday’, RoL reforms have been largely rejected and citizens have sought to redress their grievances through traditional means (Richmond, 2010; Duffield, 2002; and, Porter et al., 2013). The third conclusion accordingly supports that literature arguing for EULEX’s ineffectiveness (Radin, 2014; Tzifakis, 213; Papadimitriou and Petrov, 2012; and Greičevci, 2011). All of these conclusions considered and coupled with the lack of prospects for a sustainable RoL product equate EULEX’s operation to date with Roger Mac Ginty’s (2010) description of technocratic peace exercise of “ticking boxes, counting votes, and decommissioning weapons.”

From observations, scholarship, and opinions voiced in interviews, the future functioning of Kosovo as a state is dependent upon a successful RoL system, currently not in place. In addition to preventing widespread criminality, ethnic assimilation and economic proliferation are dependent upon it. Before the EU deploys future RoL-based civilian crisis management operations in transitional settings EULEX must be evaluated as a paradigm upon which to develop. It is imperative that the three conclusions reached in this paper are addressed and the EU departs from the traditional liberal peace theory framework.
Appendix A – Timeline of Modern Kosovo

1974: Reform to Yugoslav constitution grants Kosovo (and Vojvodina) autonomous status as provinces of the Republic of Serbia.

March 1981: Student protests calling for increased autonomy at the University of Prishtina leads to rioting in Prishtina and Kosovska Mitrovica.

November 1988: Slobodan Milošević’s ‘Anti-Bureaucratic Revolution’ replaces top Kosovar politicians with loyal supports.

February 1989: Strikes begin at the Trepča Mines, ending in the resignation of more Kosovar politicians.

July 1989: Milošević delivers speech at Gazimestan (Kosovo Polje) commemorating the 600th anniversary of the Battle of Kosovo.

July 1990: Locked out Kosovar members of the assembly declare Kosovo a republic within Yugoslavia. Three days later the government in Belgrade dissolves the Kosovo assembly.

December 1991: Serbian MUP attempts to capture Kosovar rebels Adem and Hamëz Jashari in Donji Prekaz, but fails and the Jasharis flee to Albania.

May 1992: Ibrahim Rugova elected unofficial president of Kosovo in a parallel election.

December 1992: Serb paramilitary leader and organized crime figure Željko Raznatović, known as Arkan, is elected to the Kosovo assembly.

December 1993: Kosovo Liberation Army founded.

July 1997: The Albanian government led by Sali Berisha collapses during economic collapse. Looting of armories in southern Albania ensues and Berisha opens northern armories to the public. Mass amounts of automatic weapons and ordinance made available to the KLA.

March 1998: MUP special police and VJ attack Jashari compound in Prekaz, killing 63 and effectively starting the war with the KLA.

February-March 1999: Rambouillet talks held in France with the aim of ending the conflict in Kosovo.

March 1999: FRY government commenced Operation Horseshoe to expel the Kosovar Albanian population from Kosovo.

March-June 1999: NATO bombing campaign led by US General Wesley Clark targets military and hybrid targets in Kosovo and Serbia.

June 1999: Norwegian and British paratroops enter Prishtina. UNSCR Resolution 1244 passed, placing Kosovo under UN administration.

August 1999: “Military Technical Agreement” signed between KFOR and FRY preventing VJ or MUP from operating in Kosovo.

October 2000: First elections held in post-war Kosovo – Serbs boycott.

May 2001: Provisional Institutions for Self Governance (PISG) established under UNMIK, including the Kosovo Assembly, the President of Kosovo, and courts.

October 2002: Kosovo holds municipal elections, that are again boycotted by Serbs.

March 2004: Mass rioting targeted at the non-Kosovar population sweeps across Kosovo destroying 550 homes, 27 Orthodox sites, and displacing 4,100 people.

November 2004: Fatmir Limaj acquitted by ICTY and released.

November 2005: Former Finnish President and diplomat Martti Ahtisaari is appointed the Secretary General’s special envoy for the future status of Kosovo.
May 2007: the United States and European members of the UN Security Council approve Ahtisaari’s proposal for supervised independence.

July 2007: Russia vetoes the Ahtisaari proposal for supervised independence.

February 2008: Council of the EU approves ESDP mission EULEX within the framework of the Ahtisaari Proposal.

February 2008: Kosovo unilaterally declares independence from Serbia and is immediately recognized by among others, the US, UK, Albania, Turkey, and France.

February-March 2008: North Kosovo Serbs burn customs gates 1 and 31 on administrative boundary with Serbia.

April 2008: Former Kosovo Prime Minister Ramush Haradinaj acquitted by ICTY for lack of evidence. Primary witness died in a drunk driving accident during trial.

June 2008: Constitution of the Republic of Kosovo takes effect, with as an annex the Ahtisaari Proposal, which is to take primacy over any other GoK legislation.

November 2008: Six-Point Plan is reached between the UN Secretary General and Serbia, placing EULEX within the framework of UNSCR 1244 and status neutrality.

December 2008: EULEX begins deployment in Kosovo.

April 2009: EULEX becomes fully deployed in Kosovo under HoM Yves de Kermabon.

August 2009: Belgrade sponsors parallel elections in Peja/Peć and Gračanica.

November 2009: Elections held, including the new municipalities for the first – Northern Serbs boycott the elections, but Serb turnout in other municipalities is higher than in previous parallel elections. Serbs win in Gračanica, Ranilug, Klokot/Vrbovač, and Štrpe.

April 2010: EULEX raids Kosovo Transport Ministry and arrests Minister Fatmir Limaj on charges of corruption.

May 2010: Fatmir Limaj charged for war crimes by EULEX.

May 2010: Belgrade-sponsored parallel elections held in North Mitrovica, which the international community do not denounce.

October 2010: former commander of KFOR, General Xavier Bout de Marnhac, becomes EULEX HoM.

December 2010: Vote of no confidence leads to parliamentary elections, in which Hashim Thaçi is elected Prime Minister. Suspicion of fraud in the election process. The same day as the elections the Dick Marty Report is published alleging Thaçi’s participation in the “Yellow House Case” – a war time operation that harvested organs from kidnapped Serbs and Kosovars in northern Albania.

March 2011: EU-mediated technical dialogue with Serbia commences.

July 2011: violence in the North breaks out when KP special police attempt to seize customs gates 1 and 31.

September 2011: violence in the North resumes when EULEX attempts to implement customs stamps agreement with Serbia.


February 2012: last of the roadblocks in the North, excluding the main bridge in Mitrovica, removed by KFOR.

February 2012: EU-mediated technical dialogue with Serbia concludes, reaching 7 conclusions total.

March 2012: Fatmir Limaj acquitted of war crimes charges and released.
September 2012: Fatmir Limaj again arrested on war crimes charges by EULEX.
October 2012: EU-mediated political dialogue between Prishtina and Belgrade commences.
December 2012: former German Ambassador to Albania, Bernd Borchardt is appointed EULEX HoM.
April 2013: ‘First agreement of principles governing the normalization of relations’ (Brussels Agreement) reached in Prishtina-Belgrade political dialogue. Mediated by EU, but US diplomat Philip Reeker also present.
September 2013: EULEX Lithuanian customs officer, Audrius Šenavičius, shot dead in an ambush in Zvečan, becoming the first and only EULEX casualty.
September 2013: Fatmir Limaj acquitted of war crimes charges by EULEX.
November 2013: Serb majority municipalities participate in Kosovo elections at Belgrade behest, without holding parallel elections.
March 2014: Fatmir Limaj and Jakup Krasniqi form Nisma për Kosovën (Initiative for Kosovo) to oppose ruling PDK.
May 2014: Slobodan Sovrlić arrested in Zubin Potok, but broken out by a mob outside of the police station.
June 2014: EULEX renews mandate until 2016, assuming more responsible for MMA and reducing executive actions, except in the North.
June 2014: EULEX removes the barricade on the main bridge in Mitrovica and northern Serbs replace it with the ‘peace park’. Rioting in South Mitrovica follows.
September 2014: Serbia-Albania soccer match in Belgrade ends violently and is followed by attacks against Serb homes and property in Kosovo. Attacks against ethnic Albanians in Vojvodina and Montenegro also occur.
Appendix B – Kosovo Municipalities

Appendix C – Interview Protocol

Approved by the Institutional Review Board (IRB) at the University of Illinois at Urbana-Champaign, 2014.

Target Group: Participants from EULEX

1. Can you identify the three biggest obstacles to the rule of law in Kosovo?
2. Are the obstacles to the rule of law different in the Kosovo-Serb municipalities, and do relations with Belgrade present an obstacle?
3. Does EULEX have a more or less active role in the rule of law in these municipalities than in the rest of Kosovo?
4. Does EULEX interact more or less with local authorities in these municipalities than in the rest of Kosovo?
5. How do the publics in these municipalities receive EULEX and European rule of law?
6. What steps are taken to incorporate the local institutions in these municipalities with EULEX and the overall development of rule of law?
   a. Are these local institutions sustainable after EULEX leaves?

Target Group: Participants from media institutions

1. What is the public view of EULEX in the Kosovo-Serb municipalities?
2. How is this different than the public view of EULEX in the rest of Kosovo?
3. Does EULEX invite the help of local institutions in the Kosovo-Serb municipalities, or are they marginalized?
4. What obstacles to EULEX and the rule of law exist in the Kosovo-Serb municipalities?
5. Has the EULEX presence benefitted or harmed the rule of law in Kosovo?
6. Are the institutions EULEX is building sustainable when EULEX leaves Kosovo?


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