The Limits of State Building: The Politics of War and the Ideology of Peace

by

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University of Chicago, 2005

SUBMITTED TO THE DEPARTMENT OF POLITICAL SCIENCE IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN POLITICAL SCIENCE AT THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY JUNE 2012

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ABSTRACT

When can the international community build strong state institutions – such as security forces or electoral institutions – in post-conflict societies? An influential technical perspective argues that authority, resources, and expertise enable the international community to build its preferred institutions. In Bosnia, East Timor, and Kosovo, the international community established international administrations with executive powers and a state building mandate. Each international administration had extensive authority, resources, and expertise, which make them crucial test cases for the technical perspective. I examined seventeen reform efforts in these societies related to security, representation, and revenue. While some institution-building efforts succeeded, many failed and provoked violence or undercut political development.

To explain this variation, I propose a theory that specifies the mechanisms of the reform process. The theory is based on the interaction between the international administration, local elites, and the mass public of the post-conflict society. The mass public will protest when demands threaten nationalist goals, such as independence. Local elites, on the other hand, will privately obstruct reform to protect their informal patronage and corruption networks. International officials are ideologically committed to human rights and bureaucracy, which lead them to make overambitious demands. Moreover, competing goals and political friction among international organizations causes disagreement about which demands to make to local elites. The theory predicts that reform efforts only fully succeed when the international administration is unified and its demands threaten neither nationalist goals nor informal networks.

I test the theory by conducting causal process tracing in the seventeen reform efforts. The case studies draw from fieldwork in each of these societies, as well as primary and secondary sources. Within these seventeen efforts, I identify fifty-seven stages of reform. Of these, forty confirm the theory’s predictions and thirteen partially confirm the predictions. The case studies also demonstrate that the technical perspective, and other alternative hypotheses, cannot consistently explain state building. The dissertation has implications for broader state building efforts by the international community, and urges the adoption of an incremental approach to institution building that takes account of the realities of local politics and the corresponding limits of international authority.

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ACKNOWLEDGEMENTS

In working on this project, I have been the grateful recipient of assistance and support from many individuals both near and far away. Without them, this project would never have happened.

My dissertation committee at MIT has been highly influential. They have provided timely and helpful feedback, criticism when appropriate, and kind words when deserved. Roger Petersen, the chair of the committee, has made a tremendous contribution to the work. In addition to his countless substantive suggestions, his intellectual honesty, commitment to deep social inquiry, and humor inspired me. Without Roger’s encouragement and support, I would not have deployed an interest in the Balkans and conducted the fieldwork that proved so essential for the development of the project. Barry Posen encouraged my interest in intervention and state building. His insistence on intellectual rigor and policy-relevance were immensely helpful to me, as they have been for a generation of graduate students at MIT. His incisive commentary, tremendous intellect, and dry wit were vital for the project. Fotini Christia provided keen feedback and intellectual energy. Before I left to do fieldwork for the first time in Bosnia in Summer 2008, I met with Fotini, and her advice provided invaluable over my ten months in the field. Her encouragement to engage with the discipline of political science was essential in the development of the project.

Many of my colleagues have noted that interactions with their fellow graduate students were essential to their development as scholars. This is certainly the case for me. My discussions with my peers at MIT – both in my cohort and in the broader international relations, comparative politics, and security studies subfields – were essential for my intellectual development. In addition to our general discussions, a number of individuals at MIT have offered extensive commentary on the project. In addition to putting up with me in a shared apartment for a shocking five-year period, and tolerating vast quantities of bad grammar, Brendan Green was immensely patient and generous with me throughout the process of writing the dissertation. He provided feedback at several key junctures of the project, and offered suggestions that were invaluable for its development. As one example of the importance of his contribution, he deserves credit for the work’s subtitle. Kristin Fabbe, Nathan Cisneros, Reo Matsuzaki, Josh Shifrinson, Paul Staniland, and David Weinberg each patiently read multiple drafts of the work and offered major suggestions. Other students who influenced or offered feedback on the work include Austin Long, Jon Lindsay, Caitlin Talmadge, Llewellyn Hughes, Hanna Breetz, Gustavo Setrini, Miranda Priebe, Nathan Black, Benjamin Friedman, Alec Worsnop, Joseph Torigian, Keren Fraiman, and Akshay Mangla. One of the greatest pleasures of my time in graduate school has been to meet these individuals and others at MIT, and I look forward to long friendship and intellectual engagement with them in the future.

The MIT Department of Political Science, the Security Studies Program, and the Center for International Studies provided very generous support and a wonderful working environment over the last seven years. Through their classes and research, the faculty of the department have given me a unique insight into the discipline of political science and encouraged me to think creatively about the field. I would particularly like to thank Richard Locke, the chair of the Political Science Department, for his leadership and support. This dissertation also could not have been completed without the extensive help and endless patience of the administrative staff of the
Political Science Department, including Susan Twarog, Diana Gallagher, Adriane Cesa, and Paula Kreutzer; of the Center for International Studies, including Casey Johnson and Laurie Sheffler; and of the Security Studies Program, including Joli Divon Saraf, Lynne Levine, Harlene Miller, and Valerie Thaddeus. Without them I would have certainly starved, missed critical deadlines, and been generally lost. I would also like to thank Cody Zoschak for his valuable research assistance. Owen Cote deserves thanks for his humor and keen intellect, as well as fine taste in food and beverages.

I would also like to graciously thank all of those who funded my research. Without the generous support of the MIT Department of Political Science, the project simply would not have happened. The Smith Richardson Foundation and the MIT Center for International Studies also provided essential funding for fieldwork. I am also grateful to grants from the US Institute of Peace and the Woodrow Wilson Center, which enabled me tremendous flexibility to write up my research. Finally, Seminar XXI at MIT provided me with a critical year of funding to complete my dissertation.

In doing fieldwork, I relied extensively on the good will of strangers, to whom I owe a tremendous debt. The willingness of busy people to help a clueless and inexperienced American greatly impressed me and gave me great hope. I would like to especially recognize all of my interviewees in many different countries for their time, candor, trust, and honesty – I cannot thank them enough. There were also individuals in each country who got me started and provided friendship and essential support. Among other individuals, my thanks go to Jelena and Vlado Sesar in Bosnia; Pellumb Kelmendi, Ilir Deda, and KIPRED in Kosovo; and Tracy Morgan in Timor-Leste. To all of these people and others around the world I would like to offer them my great, if widely insufficient thanks for their generosity, hospitality, and assistance.

A variety of people have provided valuable feedback on the project. While I am certain that I have unintentionally overlooked many individuals, I would like to thank Monica Duffy Toft, Pellumb Kelmendi, Philippe Leroux-Martin, Jenifer Keister, Matthew Kocher, Shelby Grossman, Emily Lodish, Harris Mylonas, and Arthur Radin. I would also like to thank the participants in workshops and seminars at MIT, Harvard University, Yale University, as well as at the International Studies Association, American Political Science Association, and Association for the Study of Nationalities annual meetings.

Finally, I would like to thank my family for their love and understanding during this long project. My parents, Arthur and Miriam, were endlessly loving and supportive during this long endeavor, as they have been for my whole life.

My thanks go as well to everyone who I have been unable to include. I owe everyone a huge debt, and have greatly benefited from your contributions. Of course, the work’s many flaws remain my own.
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Chapter 1
Introduction

The international community is actively engaged in building state institutions—such as police, tax, or electoral institutions—in post-conflict societies. Creating strong state institutions is the international community’s central strategy for establishing peace, democracy, the rule of law, and development in countries such as Bosnia and Herzegovina, Kosovo, East Timor, Iraq, and Afghanistan. This dissertation examines when and why the international community is able to achieve its state-building objectives in post-conflict societies.

Existing work on state building by the international community has argued that success depends on a strong mandate and vast resources, following well-established best practices, or rapidly building institutions prior to democratization. From these arguments, a technical perspective on state building has emerged that believes the international community has the tools necessary to achieve state building, and that success is likely given the application of Western authority, resources, and expertise. This technical perspective is highly influential in contemporary state building efforts. Others claim that efforts by the international community to build democratic states are contradictory or impractical and that the international community should simply intervene less in post-conflict societies.

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1 Hereafter Bosnia.
4 David Chandler argues that there is little potential for state building without the freely expressed desire by individuals within the post-conflict society. David Chandler, International Statebuilding: The Rise of Post-Liberal Governance (New York: Routledge, 2010); Chandler, Empire in Denial; David Chandler, Bosnia: Faking Democracy After Dayton (London: Pluto Press, 1999), 193–199. Rory Stewart and Gerald Knaus also describe...
In Bosnia, East Timor, and Kosovo, the international community established international administrations. These international administrations had executive authority, great resources, and significant expertise, which make these societies crucial test cases for the technical perspective. Indeed, the Transitional Administrator in East Timor, Sergio Vieira de Mello, argued that the UN mission in East Timor presented a “pretty perfect petri-dish” for demonstrating the ability of the international community to build strong and democratic state institutions.  

I examine seventeen efforts to reform state institutions drawn from three international administrations. Some efforts did leave strong state institutions, while other efforts provoked mass protest, encouraged political radicalization, and delegitimized future action by the international community. These findings demonstrate that while the international community does have some ability to build strong state institutions, mustering greater authority, resources, and expertise is not sufficient to achieve its objectives.

I develop a theory that explains this variation by describing institutional reform as a political process. While international organizations seek reform, there may be resistance from within the post-conflict society. The theory makes detailed predictions about the mechanisms and outcomes of institution building based on two variables: whether the international administrations’ demands threaten nationalist goals or elites’ informal patronage and corruption networks, and whether the international administration is unified in its demands. In short, the theory claims that reform efforts are only fully successful when the international administration is unified and its demands threaten neither nationalist goals nor informal networks.

“futility” school of intervention, which claims that intervention is inherently impractical and unwise. Can Intervention Work?, xxvii, 157–171.

3 Samantha Power, Chasing the Flame: Sergio Vieira De Mello and the Fight to Save the World (New York: Penguin Press, 2008), 303, 305. James Traub in Foreign Affairs called East Timor a “laboratory” and noted that an “A-team of international technocrats” had arrived and the outcome of their efforts would demonstrate the ability of the international community to pursue “nation-building.” James Traub, “Inventing East Timor,” Foreign Affairs 79, no. 4 (July 1, 2000): 82.
The theory is based on empirically supported assumptions about post-conflict societies and international administrations. The assumptions about post-conflict societies relate to the longstanding importance of nationalism and informal patronage and corruption networks. Civil wars are often fought for nationalist goals, such as autonomy or independence. Nationalism, defined as the belief that the nation and state should be congruent, remains popular long after the end of the war. The mass public will protest demands threatening nationalist goals, which constrains elites to oppose such reforms and enables them to leverage public opposition. Reforms threatening nationalist goals consistently fail because the international administration respects popular sovereignty and cannot overlook public protest.

Furthermore, local elites form informal networks during the war, which evolve and remain important after the end of the war. These networks enable local elites to engage in activities beyond their official powers including attacking competitors, providing patronage, and using criminal activity to achieve their ends. Informal networks are relatively unpopular, so elites cannot leverage public dissent to protect them and must use private obstruction. International administrations can limit the effectiveness of private obstruction by making certain demands conditional for the transfer authority to local elites. However, if international organizations within the administration disagree about demands, local elites can play international organizations against one another and avoid difficult reforms. Hence, the international administration can only make progress against elite obstruction if there is internal unity about its demands.

It may be surprising that international administrations are not able to reform institutions given their authority, resources, and expertise. In addition to disunity, international administrations are limited by their ideology. International organizations believe in building
organizations that follow a minimum standard of human rights and follow formal bureaucratic procedures. These objectives, though desirable, grossly underestimate the importance of post-war nationalism and the role of informal networks and lead to demands that are infeasible or counterproductive.

The dissertation therefore offers three major contributions to our understanding of institution building by the international community, both in international administrations and in other post-conflict societies where the international community has less authority. First, pursuing technocratic institution building is insufficient to achieve success. Martialing authority, resources, and expertise cannot overcome certain forms of local resistance. Successful reform therefore depends on designing demands to take account of the political constraints of the target society. Second, the international community should avoid demands that threaten nationalist goals, since such demands are likely to provoke public protest and be counterproductive. Third, because of the longstanding impact of the war, existing elites cannot be replaced with moderates through international action. There is strong public support for nationalism, which forces candidates to align themselves with controversial wartime achievements. Furthermore, existing elites’ informal networks enable them to prevent reforms that would weaken their position.

This chapter proceeds in four sections. The first section explains the importance of studying institution building by the international community. The second section examines the literature on institution building, intervention, and peace building. This section surveys the major theories related to international intervention and then describes the technical perspective on state building. The third section defines the concept of an international administration and explains why international administrations are ideal for studying state building. A fourth section concludes and outlines the rest of the dissertation.

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I. Institution Building in Post-Conflict Societies

The international community’s main objective in post-conflict societies is the prevention of war. However, the goals of the international community are typically far more extensive than simply separating the sides and preventing the return of violence. Indeed, the prevention of violence in the long term may require the creation of a strong state, the rule of law, economic development, or democratization. Furthermore, some argue that the international community has an obligation to not only prevent the return of conflict but to address the deeper roots of conflict or pursue a positive conception of peace.

The construction of strong state institutions is perhaps the most important tool to secure peace, the rule of law, democracy, and economic development in the long term. The state is often defined as the organization with a monopoly over the legitimate use of force within a defined territory. However, the literature has gone from a singular focus on the state’s coercive capacity to its provision of basic services – including security, education, revenue,
representation, and so forth.\(^\text{12}\) In this dissertation, I evaluate the strength of the state by considering the activities of various formal institutions comprising the state. These institutions include organizations such as the police, military, and tax collection agencies as well as formal rules such as the constitution and laws.\(^\text{13}\) The ability of the state to provide for it citizens is a function of the existence of strong legal frameworks and strong organizations. Hence, below I use the terms *state building* and *institution building* interchangeably, with both referring to efforts to reform and improve state institutions. I also use the term *reform effort* to refer to a specific effort to reform a state institution, which is identified through the specification of international preferences for the design or functioning of that institution.

Many authors, especially in the United States, use the term nation-building to describe these activities.\(^\text{14}\) For example, Jason Brownlee defines “nation-building” as “a deliberate process of democratization administered through foreign intervention.”\(^\text{15}\) I do not use the term nation-building, since the term *nation* refers to a mutually recognized people or imagined

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\(^{12}\) This view of the state, and of state building, is elaborated in Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Ithaca, N.Y.: Cornell University Press, 2004); Ghani and Lockhart, *Fixing Failed States*.

\(^{13}\) An institution is “a system of rules, beliefs, norms and organizations that together generate a regularity of (social) behavior.” Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge University Press, 2006), 30. Some literature differentiates between institutions as rules and organizations as actors. Such a perspective is useful for understanding the impact and evolution of rules. My concern is the overarching functioning of parts of the state, as determined by changes in both the rules and functioning of organizations. Hence, I use a definition that includes organizations and rules as institutions. See Douglass Cecil North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press, 1990), 3; Francis Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution*, 1st ed. (Farrar, Straus and Giroux, 2011), 450, 530–1 (fn 15).

\(^{14}\) The RAND nation-building series, for example, explains that “nation-building, as it is commonly referred to in the United States, involves the use of armed force as part of a broader effort to promote political and economic reforms with the objective of transforming a society emerging from conflict into one at peace with itself and its neighbors.” See James Dobbins, *America’s Role in Nation-Building: From Germany to Iraq* (Santa Monica, CA: RAND, 2003); James Dobbins, *Europe’s Role in Nation-Building: From the Balkans to the Congo* (Santa Monica: RAND, 2008); James Dobbins, *The UN’s Role in Nation-Building: From the Congo to Iraq* (Santa Monica, CA: RAND, 2005); Dobbins, *The Beginner’s Guide to Nation-Building*, xvii.

\(^{15}\) Brownlee, “Can America Nation-Build?,” 316.
community rather than to the organization of the state. The terminology is especially confusing in the Balkans where the term nation consistently refers to a people, and many states contain multiple nations. Some literature does treat the specific question of the construction of a nation as a people, but this is a separate question from the reform and construction of institutions in post-conflict societies.

II. Literature Review

There is an extensive literature that examines when and how the international community can successfully intervene in post-conflict societies. By and large, this literature examines the determinants of peace and conflict in these societies. However, various works in the literature consider a number of different measures of success, including the prevention of violence, the likelihood of peace continuing without further international involvement, the creation of a minimum standard of democracy or human rights, and the implementation of the international community’s mandate.

In this review, I first discuss three main categories of theories that explain the success or failure of state building. These theories are drawn from the literature on state building and intervention. In the next chapter I draw on this review to develop alternative explanations for the trajectory of reform efforts.

I then describe the technical perspective, which claims that the international community has all the techniques necessary to succeed at state building, so failure is due to a lack of

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18 See, respectively, Virginia Page Fortna, Does Peacekeeping Work?: Shaping Belligerents’ Choices After Civil War (Princeton: Princeton University Press, 2008), 8; Paris, At War’s End, 55–57; Doyle and Sambanis, Making War and Building Peace, 72–75; Howard, UN Peacekeeping in Civil Wars, 6–8.
authority, resources, or expertise. In addition to several theories from the broader intervention literature, this perspective includes a wide swath of the policy literature on institution building, especially works on security sector reform.

**Explaining Success**

This section analyzes the prominent works on intervention and state building, and draws out three categories of theories that are most relevant to institution building. These are the structure and level of development of the target society; the character, size, and mandate of the international intervention; and the dynamics of democratization in the society.

First, many argue that state building depends on the structure and level of development of a society. The literature on state building examines the formation of the modern state, largely in Western Europe. This literature finds that state building is rare and historically contingent, but in some circumstances, due to the need to make war against neighboring societies or address internal political unrest, elites have an incentive to build a strong state.\(^1\) However, these theories may be of limited relevance to post-conflict societies, since elites rarely seek to build state institutions on their own and the pressure for state building largely comes from outsiders, such as representatives from the international community.\(^2\)

The literature on intervention similarly claims that the societies that were more developed prior to the war are the most likely to achieve better post-conflict outcomes. For example, Dobbins et al. emphasize that the most successful cases of ‘nation-building’ took place in societies that were highly developed before the war, such as Germany and Japan.\(^3\)


\(^3\) Dobbins, *America’s Role in Nation-Building*, xix.
Doyle and Nicholas Sambanis also argue that UN intervention in post-civil war societies is most likely to succeed if there is greater "local capacity" – measured as prewar economic development. More recently, Louis-Alexandre Berg argues that the success of security sector reform depends on the structure of informal networks within post-conflict societies. He argues that reform is relatively easier when there is fragmented political cohesion and dispersed sources of revenue.

The nature of the target society is undoubtedly important for the outcome of intervention and state building. However, identifying the characteristics that are more or less advantageous for success has limited benefit for understanding what the international community should do once it is deployed in a post-conflict society. The international community rarely has the luxury of deciding not to intervene in a society that it cannot help – indeed, existing research shows the international community is most likely to intervene in societies that are the worst off. Hence, it is critical to understand how the decisions and policy of the international community influence the trajectory and outcome of intervention.

Second, other theories claim that the size and mandate of international organizations in post-conflict societies influences the outcome of interventions. The size of an intervention could range from several hundred observers to tens of thousands of soldiers. The mandate of peacekeeping missions may also vary from observation, to supporting a peace agreement negotiated between the combatants, to actively enforcing the peace. The mandates of

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22 Doyle and Sambanis, *Making War and Building Peace*, 63–68. Similarly, Lise Morjé Howard cites "situational factors" such as the consent of warring parties, the existence of a peace treaty, and the support of neighboring states. *UN Peacekeeping in Civil Wars*, 8–11.
24 Fortna, *Does Peacekeeping Work?*, 45.
international organizations with civilian authority may also vary from running elections, to executive authority over selected institutions, to full sovereign authority.\textsuperscript{25}

In general, the literature argues that the larger the international intervention, and the more extensive its mandate, the more likely that the international community will achieve its goals. Most prominently, Doyle and Sambanis demonstrate statistically that the strength of the UN’s mandate is correlated with peace and democracy. They also claim that greater international financial assistance is beneficial. Finally, Doyle and Sambanis use several case studies, most notably the province of Brcko in Bosnia, to demonstrate that extensive international authority is more effective for achieving the international community’s goals.\textsuperscript{26}

Third, a substantial subset of the literature deals with the relations between democracy and political development. One commonly cited argument, known as the liberal peace, claims that liberalization, including elections and marketization, will lead to positive outcomes.\textsuperscript{27} These theories offer the international community the opportunity to simultaneously pursue stabilization with the normative goal of democratization. However, several critiques of the liberal peace argument have emerged. Most prominently, Roland Paris argues that the institutions necessary to support full liberal and democratic development – such as civil society, independent electoral institutions, and a free media – do not exist in post-conflict societies. Without these institutions,


rapid elections and democratization often have negative and unanticipated consequences, especially enfranchising the nationalist elites that fought the war. Paris proposes that the international community should pursue “institutionalization before liberalization,” which calls on the international community to rapidly build the institutions necessary for liberal democracy prior to holding elections. These changes, in his view, would enable the election of moderate elites who would be more likely to implement the international community’s goals for the society.

The problem with institutionalization before liberalization, and other arguments that seek to encourage the election of moderate elites, is that these arguments do not recognize the challenges posed by the post-conflict society. First, and most problematically, proponents of rapid institutional change appear to believe that Western institutions can be grafted onto the post-conflict societies. However, the theory chapter will explain how post-conflict societies pose unique challenges. While some individuals in the society may prefer moderate elites, there are many who prefer nationalist leaders, even if a level playing field could be created. Second, proponents of rapid institutional change underestimate the interests and ability of incumbent elites to prevent reform. Incumbent elites recognize that the reforms the international community calls for could be dangerous for their continued political control.

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Technical Perspective on State Building

The technical perspective is defined by the belief that the international community has methods that are universally applicable and consistently sufficient to build strong state institutions. State building, therefore, can be achieved by the application of sufficient authority, resources, and expertise to a society. Works from this perspective identify the techniques that are required or are helpful for state building and therefore often provide a useful resource for practitioners.

However, the technical perspective overestimates the ultimate capacity of the international community to overwhelm opposition within the post-conflict society. Indeed, according to the technical perspective, the failure of state building is ultimately due to the lack of international authority, resources, or expertise rather than to the inherent difficulty of reforming post-conflict societies. This is not to say that the technical perspective does not recognize that local politics may make state building difficult or that it claims that techniques do not have to be adapted to varying circumstances. Instead, the technical perspective argues that it is always possible for the international community to leverage greater authority, resources, and expertise to enable state building success.

To illustrate the technical perspective, I consider three sets of work. First, there is a broad literature on bureaucratic procedures, lessons learned, and best practices for international intervention. Some work takes for granted that bureaucratic practices are effective and focuses on when international organizations are able to “learn” – that is, to adapt their formal structure or functions according to the challenges they face. Organizational learning becomes almost

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30 Rory Stewart and Gerald Knaus identify two separate schools of thought: a “‘planning school’...which prescribes a clear strategy, metrics, and structure, back by overwhelming resources,... and a ‘liberal imperialist school’... which emphasizes the importance of decisive, bold, and charismatic leadership.” The technical perspective identified here blends these two related schools of thought, since the liberal imperialist school draws on the availability of technical resources and the technical perspective requires substantial political acumen and leadership. Stewart and Knaus, Can Intervention Work?, xvii–xviii.
synonymous with success in some accounts. While other works analyze previous missions in order to suggest "lessons learned" or "best practices." While the identification of mistakes or lessons is no doubt useful, this literature often fails to identify the particular conditions that might make these practices or lessons more or less applicable to different societies.

Second, Dobbins et al.'s *Beginners' Guide to Nation-Building* "presents a doctrine for conducting effective nation-building operations." The book draws from sixteen case studies from three previous books studies, on America's, the UN's, and Europe's, efforts at nation-building. Dobbins et al.'s book provide a useful starting point for any intervention, with guidelines such as the proper sizing of military and police relative to the population, the cost associated with state building efforts, and the proper management of government finances after conflict. However, Dobbins et al. tend to minimize the agency of local elites and role of local politics. They write that local "resistance can be overcome, but only through the application of


32 Howard, for example, argues that "organizational learning" is an overlooked determinant of peacekeeping success. She identifies first-level learning as "the increasing ability to engage in multidimensional peacekeeping," which includes a variety of technical skills that are associated with mandate implementation. These skills include gathering information, coordinating among different organizations, engaging with the environment, and leadership. She also identifies second-level learning as a "change in the organization's overall means, structures and goals, in response to new understandings of problems and their causes." She claims that peacekeeping is more likely to succeed when the peacekeeping institutions have been restructured based on previous missions. Howard, *UN Peacekeeping in Civil Wars*, 14–20. It is also common for accounts of specific missions to identify specific lessons. In East Timor, for example, see Nassrine de Ram-Asimi and Li Lin Chang, eds., *The United Nations Transitional Administration in East Timor (UNTAET): Debriefing and Lessons: Report of the 2002 Tokyo Conference* (Boston: Martinus Nijhoff Publishers, 2003); Ian Martin and Alexander Mayer-Rieckh, "The United Nations and East Timor: From Self-Determination to State-Building," *International Peacekeeping* 12, no. 1 (Spring 2005): 141–143; Paulo Gorjao, "The Legacy and Lessons of the United Nations Transitional Administration in East Timor," *Contemporary Southeast Asia* 24, no. 2 (2002): 313–336.


34 The author was a contributor to the *Europe's Role in Nation-Building* volume. See Dobbins, *America's Role in Nation-Building*; Dobbins, *The UN's Role in Nation-Building*; Dobbins, *Europe's Role in Nation-Building*.

personnel and money employed wisely over extended periods of time." This observation describes the essence of the technical perspective.

Third, there is a growing literature on technical security sector reform, such as the handbook by the Organization for Economic Co-operation and Development’s Development Co-operation Directorate (OECD-DAC). The handbook emphasizes the importance of technical processes such as planning, financial management, and training. While the handbook recognizes that security sector reforms “are inherently political processes,” the handbook urges international organizations to adopt best practices to overcome political opposition. For example, the handbook suggests that organizations refer to “reform” as “development” or “professionalization” to decrease local elites’ objections. Furthermore, while the handbook recognizes that local obstruction can block reform, it seems to equate “local ownership” with consultation with local elites. The handbook fails to recognize that security sector reform will rarely be truly locally owned, meaning that elites will not pursue the reform without international pressure.

III. International Administrations as Test Cases for the Technical Perspective

This section explains that based on the technical perspective, international administrations in Bosnia, Kosovo, and East Timor were best-case scenarios for successful state building, which makes these cases crucial test cases for the technical perspective. International organizations in

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36 Ibid., 4.
these societies had executive authority, significant resources, and substantial expertise. Richard Caplan calls international administrations the “Rolls Royce of conflict-management strategies,” which recognizes the expense and capacity of these missions. 39 Whatever led to the failure of institution building in these societies, it was not the absence of authority, resources, or expertise. Consequently, these societies are excellent opportunities to study the inherent limits of the technical perspective and thereby better understand how the international community can more effectively build state institutions in all developing societies.

Below, I define and describe the nature of international administrations. I then justify the study of Bosnia, East Timor, and Kosovo as the only societies, since 1990, with an international administration that extensively exercised its authority and mandate. Third, I discuss how these international administrations had extensive authority, resources, and expertise, which makes them crucial test cases for the technical perspective.

**Definition of International Administrations**

I define an international administration as an organization created by the international community to administer a post-conflict society with executive control and a state building mandate. 40 An intervention must therefore meet four criteria to be identified as an international administration. First, it must occur in a society emerging from civil war, defined as an internal conflict between a state and armed opposition group, with more than 1000 battle deaths on each side. 41 Second, an organization that will administer the society must be created by the international community, which means that there must be widespread agreement and

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40 Simon Chesterman defines a transitional administration as an operation that pursues state-building “by assuming some or all of the powers of the state on a temporary basis.” Richard Caplan focuses on transitional character of international administrations and does not require that international administrations pursue state building. Chesterman, *You, the People*, 5; Caplan, *International Governance of War-Torn Territories*, 3.
41 This is the standard definition of civil war in the broader literature. See Doyle and Sambanis, *Making War and Building Peace*, 31.
participation by major Western states and international organizations. Third, the administration must have executive authority, which is defined as authority that is ordinarily held only by the sovereign state. Executive powers in international administrations include vetoing laws, removing local officials from power, running specific functions of government such as the police or elections, or even full sovereign control. To be considered an international administration, an organization must do more than simply monitor the society, provide aid, or run elections – it must have legalized authority to rule. Fourth, the administration must have a mandate to pursue state building. By building the state, the international administration gives the society the capacity for responsible self-government. Organizations that have executive power, but that do not seek to reform the state in the target society, therefore do not fit the scope conditions.

Case Selection

The dissertation examines Bosnia, East Timor, and Kosovo, since these are the only societies since 1990 in which an international administration was present that extensively exercised its authority and mandate. Each of these societies experienced a civil war, after which the international community created an administration that exercised executive control and a state-building mandate. Other post-conflict societies with an international intervention lacked one of these elements.

Simon Chesterman gives a complete list of eleven peace operations with civilian administrative functions from 1990 to 2004: Namibia, Western Sahara, Cambodia, Somalia, Bosnia and Herzegovina, Eastern Slavonia, East Timor, Sierra Leone, Kosovo, Afghanistan, and Iraq (See Table 1.1). Of these cases, five did not have legalized executive powers – Namibia,
Western Sahara, Somalia, Sierra Leone, and Afghanistan. In two others, there were executive powers, but they were not used extensively to build a state. In Eastern Slavonia, the UN mission had extensive powers, but because Croatia would take over sovereignty over the territory following the mission, the mission did not engage in substantial state building. Similarly, in Cambodia, the UN mission had the mandate to control and supervise Cambodia’s civil administration in order to provide a “neutral political environment” for “free and fair elections.” However, the mission’s activities in the civil administration field were very limited and in practice it did not challenge the existing governance by the Cambodian Peoples' Party (CPP).

In Iraq, the civil war followed the Coalition Provisional Authority’s (CPA) administration. Furthermore, the US, rather than the broader international community, led the mission. Liberia is another example of a peace operation with civilian administrative functions, which started in 2003, but like Sierra Leone there were no organization with legalized executive powers.

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43 International officials Sierra Leone did have de facto control over the police through the appointment of officials to local organizations, and a judicial mandate to run the Special Court. There was no mandated organization that took over the main functions of the state, however. See UN resolution 1270 (1999).


<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Mission</th>
<th>Mandate</th>
<th>Reason why not selected</th>
<th>International assistance per capita in first two years*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Namibia</td>
<td>1989-1990</td>
<td>UNTAG</td>
<td>Elections</td>
<td>Weak mandate</td>
<td>$132</td>
</tr>
<tr>
<td>Western Sahara</td>
<td>1991-present</td>
<td>MINURSO</td>
<td>Referendum</td>
<td>Weak mandate</td>
<td></td>
</tr>
<tr>
<td>Cambodia</td>
<td>1992-3</td>
<td>UNTAC</td>
<td>Executive power to enable free and fair elections</td>
<td>Limited effective executive control; state building limited to elections</td>
<td>$28</td>
</tr>
<tr>
<td>Somalia</td>
<td>1993-1995</td>
<td>UNOSOM II</td>
<td>Creation of secure environment</td>
<td>Weak mandate, limited effectiveness</td>
<td></td>
</tr>
<tr>
<td><strong>Bosnia</strong>*</td>
<td>1995-present</td>
<td>Various organizations specified in Dayton Agreement</td>
<td>Various, including secure environment, free and fair elections, EU accession, and implementing Dayton Agreement</td>
<td>$679</td>
<td></td>
</tr>
<tr>
<td>Eastern Slavonia</td>
<td>1996-1998</td>
<td>UNTAES</td>
<td>Transitional administration</td>
<td>Limited state building due to Croatian sovereignty</td>
<td>$290</td>
</tr>
<tr>
<td>East Timor*</td>
<td>1999-present</td>
<td>UNTAET and later missions</td>
<td>Transitional administration</td>
<td></td>
<td>$233</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>1999-present</td>
<td>UNAMSIL</td>
<td>Security sector reform</td>
<td>No executive mandate</td>
<td>$25</td>
</tr>
<tr>
<td><strong>Kosovo</strong>*</td>
<td>1999-present</td>
<td>UNMIK, post-independence organizations</td>
<td>Transitional administration; various following independence including security sector and supervisory administration</td>
<td>$526</td>
<td></td>
</tr>
<tr>
<td>Afghanistan</td>
<td>1999-present</td>
<td>UNAMA, ISAF</td>
<td>Secure environment, security sector reform</td>
<td>No executive mandate</td>
<td>$57</td>
</tr>
<tr>
<td>Iraq</td>
<td>2003-2004</td>
<td>CPA, UNAMI</td>
<td>Various, including executive control by CPA and a limited UN mandate. Also later security sector reform.</td>
<td>Executive mission was not run by international community; no civil war prior to intervention</td>
<td>$206</td>
</tr>
</tbody>
</table>

Each of the remaining three cases in Chesterman's list met the scope conditions of the theory – there was an administration created by the international community with executive powers and a state building mandate. I examine state-building efforts in these societies in depth.

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in the following chapters. I summarize the mandates of these missions here to establish the applicability of these cases. In Bosnia, the Dayton Peace Accords created an administration, led by the Office of the High Representative, which had executive authority over the country. This authority was reinforced in 1997, when the Bonn Powers gave the High Representative the specific authority to remove politicians and to pass or veto laws. In East Timor, the UN Transitional Administration in East Timor (UNTAET) had full sovereign control from 1999 to 2002, while later UN mission retained varying executive powers in the security sector. In Kosovo, the UN Interim Administration Mission in Kosovo (UNMIK) had “all legislative and executive powers, including the administration of the judiciary,” meaning that UNMIK had executive control even though Yugoslavia retained sovereignty over the territory. In all three societies, the international administrations extensively used their authority to alter state institutions.

International Administrations as Crucial Test Cases for the Technical Perspective

The technical perspective implies that given authority, resources, and expertise, the international community should be able to build its preferred institutions. To evaluate the technical perspective, it is necessary to analyze societies where the international community had maximum authority, resources, and expertise. This section claims that international administrations had the greatest authority, resources, and expertise that the international community could effectively

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49 See also Caplan’s description of the UN missions. Caplan, _International Governance of War-Torn Territories_, 17–21.


provide in post-conflict societies, which makes them crucial test cases for the technical perspective. If state building is unsuccessful in these societies, there must be factors that limit the ultimate effectiveness of the technical perspective. These factors are likely to limit the effectiveness of state building in other societies.

International administrations’ legal authority was practically unconstrained. International administrations could impose laws or remove elected officials in order to pursue its objectives. Its decisions were not subject to appeal or review and the international administration was also the final arbiter of its own mandate. Indeed, several works criticize the apparent contradiction of using executive authority to build democracy: Simon Chesterman calls international administrations “benevolent autocracies,” Jarat Chopra describes East Timor as a “UN Kingdom,” and Gerald Knaus and Felix Martin call Paddy Ashdown in Bosnia the “European Raj.”

Furthermore, international administrations had extensive resources. The three international administrations studied here, Bosnia, East Timor, and Kosovo, received the highest international assistance per capita of post-conflict societies in the first two years (See Table 1.1 above). Budgets for these operations were substantial. In just the fiscal year from July 2001 to June 2002, for example, the UN appropriated $458 million for UNTAET and $400 million for UNMIK. The resources of the missions are particularly remarkable in comparison to the relatively small size of the post-conflict societies – Bosnia had a population of approximately 4 million, Kosovo 2 million, and East Timor 1 million. While it is certainly true that the

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54 This account is echoed by using other metrics. See Rham-Azimi and Chang, *UNTAET: Debriefing and Lessons*, 110.
55 See UN documents A/57/678 and S/2002/436
missions’ budgets were constrained, it is difficult to imagine how the international community could have fielded better-resourced missions.

Finally, there was substantial international expertise deployed to these societies. In East Timor, for example, one *Foreign Affairs* article describes the deployment of an “A-team of international technocrats.” There were certainly critiques of the personnel deployed, especially with regard the UN Civilian Police. Nevertheless, international officials in these societies were generally highly educated and the leadership often had substantial experience in previous missions. In the later reform efforts, senior officials were often well aware of previous “lessons learned” and sought to adjust their efforts accordingly. Prior to his appointment as High Representative in Bosnia, Paddy Ashdown carefully considered the efforts of his predecessors.

Sergio Vieira de Mello, the Transitional Administrator in East Timor, had extensive experience in Cambodia, Bosnia, and Kosovo. He brought some staff members with experience from these missions and even promised East Timorese leaders that he would not repeat the same mistakes from Cambodia.

To be sure, international administrations did have limits in their authority, resources, and expertise. The leaders of these missions were accountable to UN headquarters or other international organizations. Their resources were not unconstrained and not all officials appointed to these missions were as skilled as might be desired. International organizations faced practical limits in recruitment. Nevertheless, it is hard to imagine how the international community could have provided more to these societies. In theory, by arbitrarily increasing the

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57 Traub, “Inventing East Timor,” 82.
58 The missions were often rapidly planned and had limited time to recruit staff. Jose Ramos-Horta in East Timor observed, “I know many of them have no experience, no expertise, no academic qualifications at all. I asked one of them - an American lady - what her qualifications were, and she said only that she had worked in Yosemite National Park.” Power, *Chasing the Flame*, 309. Interviews with international officials and local analysts.
budget of international administrations or positing increasingly knowledgeable international officials, one could conceive of a mission with greater potential for success. The international community could not afford such a mission in the past and is highly unlikely to pursue one in the future.

*Other Reasons to Study International Administrations*

While the focus of the dissertation is to develop lessons for international state building efforts more broadly, studying international administrations is valuable for other reasons. There are several works that analyze international administrations and examine the dilemmas and contradictions associated with these missions. While these works do not provide generalizable theories of success or failure, many of their observations are relevant to understanding state building. Furthermore, studying international administrations is important for supporting ongoing international administrations and planning better for future ones.

The literature on international administrations closely considers that international administrations use autocratic means to build a democratic society. Indeed, international administrations have some characteristics of colonial administrations, including their unlimited authority and their claim of benevolent intentions. Some works criticize international administrations for violating the democratic principles they are trying to establish and thereby undermining the development of local capacity, while others note that international administrations have limited accountability to the society they are administering. Taking some

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63 Caplan, *International Governance of War-Torn Territories*, chap. 9; Chesterman, *You, the People*, chap. 4.
of the critiques of international administrations seriously would imply that the international community should not engage in state building using executive authority. However, I argue there are important differences from previous colonial efforts, especially that international administrations do not seek to extract resources and that they plan for their own exit. Indeed, as Chesterman writes, “the problem... is not that transitional administration is colonial in character; rather, the problem is that sometimes it is not colonial enough.”

While the number of active international administrations has diminished since the early 2000s, international administration remains a potential tool for the international community. As of the writing of this dissertation, the international community continues to have some amount of executive authority in each of the societies studied below – Bosnia, Kosovo, and East Timor. International administration was a possible solution for Haiti following the earthquake in 2010 or for Libya following the civil war in 2011. International administrations could be deployed in the future following secession, civil war, or natural disaster.

IV. Conclusion and Plan for Rest of the Dissertation

This dissertation examines the question of when the international community is able to build strong institutions in post-conflict societies. The introduction surveyed the literature, and explained the technical perspective of state building. I claimed that international administrations have great authority, resources, and expertise, which make them crucial test cases for the technical perspective. Finally, I identified Bosnia, Kosovo, and East Timor as the only international administrations since 1990 that actively used their executive authority to build the state.

64 On the desire of the international community to exit and the challenges associated with exit, see Fearon and Laitin, “Neotrusteeship and the Problem of Weak States,” 36–41.
65 Chesterman, You, the People, 12.
There are many works on intervention and state building, some of which even examine these three cases in detail. Nevertheless, this dissertation provides new insight for three main reasons. First, the dissertation provides evidence that the most common belief among policymakers—the technical perspective—has important limits. This finding urges a reevaluation of how the international community pursues state building. Second, much of the literature is written from the perspective of the international community and emphasizes international policy-making over the dynamics of local politics. Some of the work is written by or funded by organizations taking part in the state-building mission. These organizations have an incentive to hide their failures or ignore evidence that contradicts their point of view. This dissertation avoids these biases and seeks to examine all relevant reform efforts undertaken by international administrations. At several junctures below I note where the existing literature has ignored particular developments that question the efficacy or wisdom of previous international efforts. Third, unlike most of the work on international administrations, this dissertation provides a testable theory explaining the success or failure of reform efforts. The literature contains excellent case specific material and there are several empirically rich comparative studies of international administrations, but there are few theories that make falsifiable claims about the process of institutional reform.

The rest of the dissertation proposes and tests a theory of institution building. The next chapter describes the theory and its predictions. The theory makes predictions about the mechanisms and outcomes of reform efforts based on the balance between international unity and the threat of international demands to nationalist goals or informal networks. The chapter then discusses alternative explanations and explains how the seventeen case studies in the remainder of the dissertation test the theory.
The next three chapters consider reform efforts in Bosnia, Kosovo, and East Timor, respectively. Each of the chapters provides background on the war, international administration, and local politics as necessary to understand the case studies. The chapters then trace reform efforts drawn from these societies to test the theory's predictions. The conclusion of each chapter evaluates to what extent the reform efforts therein verify the theory's predictions.

The conclusion considers policy implications based on the theory and the empirical chapters. It examines the explanatory power of the theory as compared to the alternative explanations, and emphasizes that the empirical record of international administrations provides important reasons to doubt the ultimate effectiveness of the technical perspective. Finally, the conclusion lists the general and specific policy implications derived from the theory and record of institution building in the three international administrations.
Chapter 2

Theory: "We’re Trying to Make Their Lives Better – Why Don’t They Get It?"

This chapter offers a theory of institution building by international administrations. I argued in the previous chapter that international administrations had the greatest authority, resources, and expertise that the international community could reasonably be expected to provide. This makes international administrations crucial test cases for the technical perspective. However, the international community was only successful in seven out of seventeen reform efforts in these societies, and failed reform led to violence and prevented future state building. The theory presented in this chapter explains this variation, demonstrates why the technical perspective is insufficient, and thereby sheds light on the broader limitations of state building by the international community.

The theory explains that the reform process is inherently political. While the international community may desire major reforms, the post-conflict society often resists reform. The mass public remains attached to the nationalist goals of the war, which leads them to publically protest and block demands that threaten these goals. The local elites use informal patronage and corruption networks to maintain their office and privately obstruct demands that threaten their networks. Despite its expertise, the international administration cannot consistently optimize its demands to achieve success. Because of their beliefs in human rights and bureaucracy, international officials often make demands that threaten either nationalist goals or informal networks. International administrations also have internal disunity about demands, which prevents them from implementing robust reform since local elites can select the easiest demands made by different organizations.

Two variables therefore predict the trajectory and outcome of reform efforts: the relative unity of the international administration and the threat of the internationals’ demands to
nationalist goals or informal networks. International administrations have the greatest success when they are unified and avoid threatening nationalist goals, and have only partial success if they are unified and only threaten informal networks. The theory therefore implies that the international community should not try to transform post-conflict societies through ambitious reforms that attempt to alter the structure of society, but instead should pursue incremental and gradual improvements in state institutions.

This chapter proceeds in five sections. The first section describes the framework for evaluating reform efforts. The second section presents the theory. It describes the actors in post-conflict societies – international organizations, the mass public, and local elites. The second section also describes how I measure the two variables in the theory – the unity of the international administration and the threat of demands. The second section then describes the predictions of the theory, including the mechanisms of the reform process and the outcome predictions. The third section lists three alternative hypotheses drawn from the literature review in the previous chapter. The fourth section explains the research design for testing the theory as well as discussing sources and methodology. The fifth section briefly summarizes the findings of the dissertation and concludes.

I. Reform Efforts

The previous chapter defined a reform effort as an individual attempt to alter a given state institution. The theory explains both intermediate steps throughout the process of reform and the overall outcome of the reform effort. The theory evaluates the success of a reform effort based on whether the international community’s preferences are implemented into the design or practices of the target institution. To discuss reform efforts in more depth, it is first necessary to
describe an overall framework for political progress under international administration and the reform process.

In addition to its broader goals of achieving democracy, economic development, and the rule of law, international administrations seek to build a strong state in post-conflict societies so that the society can become self-governing and the international administration can exit. The international community established an international administration because the society was not able to have democratic governance that met international standards. Consequently, for the international community, the international administration’s mission is not complete until it reforms institutions to fulfill international standards. As institutions are reformed, the international administration can gradually turn over authority to local elites, culminating with the end of the international administration and the assumption of full sovereignty by the target society.

Some post-conflict societies also seek to join regional organizations in addition to assuming full sovereignty. In Eastern Europe, for example, joining the European Union was perceived to be critical to the future of post-conflict societies.\(^6\) To join these regional organizations, there is a clear road map of reforms that must be met. International administrations often play a key role in pursuing these reforms, especially since regional organizations are often one part of international administrations.\(^7\)

I refer to the end of the international administration or accession into the relevant regional organizations as political progress. The international administration pursues political progress by engaging in reform efforts. The reform efforts are each conditional for achieving political

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\(^7\) In Bosnia, for example, beginning in 2002, the High Representative was dual-hatted as the EU Special Representative. In Kosovo, the EU was one pillar of UNMIK. See respective chapters below.
progress – indeed, conditionality is the main tool the international community has for ensuring
the cooperation of local elites. Note, however, that the achievement of political progress and the
actual fulfillment of the reforms are independent. The international community retains the power
to grant political progress regardless of whether the reforms are completed – the connection
between the reforms and political progress is a political decision by the international
administration.

Local elites and the broader mass public share an interest in achieving political progress,
but often seek to achieve it without major reform. The theory specifies how nationalism and
informal networks provide incentives to avoid certain types of reforms. As such, local elites
negotiate with the international administration about what reform must actually be accomplished
to secure political progress.

The theory makes predictions about these negotiations. It conceptualizes reform efforts as
an iterated process of negotiation between the international administration, which is composed of
sub-organizations and officials and supervised by the international community; and the local
elites, who are constrained by the broader post-conflict society. The reform process is composed
of five steps (see figure 2.1). First, the international community develops preferences for what it
wants a given institution to become. Second, the international administration formulates the
preferences into particular demands. Third, the local elites react to the demands by accepting the
demands, opposing the demands publically, or obstructing the demands privately. Public
opposition involves the elites leveraging mass public support to block the reform whereas private
obstruction involves elites using their own informal networks to block the reform. Fourth, the
demands may be fully, partially, or not implemented, or not implemented. Fifth, the reform
either ends, or new demands are made and the process will return to the second step above.
II. Theory

The theory describes the trajectory and outcome of reform efforts based on a model of the interaction between the international and local actors. The model is based on several assumptions about the post-conflict society and international administrations. While the real world deviates from the model's expectations – as with any model in social science – the model is still useful for understanding institution building and for improving policy-making by the international community.

From the assumptions about the actors, the theory describes two types of expectations about reform efforts. First, the theory makes predictions about the observed causal effect, or outcome of reform efforts. The outcome of a reform effort is whether international preferences are ultimately reflected in the design and practice of the target institution. Second, and more importantly, the theory makes statements about the process of reform efforts. The process refers to the intermediate steps (or mechanisms) by which a particular outcome comes about. Reform processes may be described in varying levels of detail, ranging from a summary of the original objectives and outcome of the reform, to a specific day-to-day account of the activities of international and local officials. In this theory, the main mechanisms are the different stages of

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69 Alexander George and Andrew Bennett note that "The acceptable level of generality of causal mechanisms will vary depending on the particular research question and research objectives... No matter how far down we push the border between the observable and the unobservable, some irreducibly unobservable aspect of causal mechanisms remain." Case Studies and Theory Development in the Social Sciences (Cambridge, M.A.: MIT Press, 2005), 142–3.
the reform process, including the formulation of demands, the elite response, implementation, and the reformulation of demands. The theory also describes the sub-mechanisms through which the stages relate to one another.

Below, I first detail the assumptions and variables related to the actors in the post-conflict society and international administration. I then describe the predictions and key mechanisms of the theory.

**Post-Conflict Society**

The post-conflict society can broadly be understood as composed of local elites, defined as the leaders of the main political parties; and the mass public, which is the broad electorate that votes between the main political parties. The local elites can be understood as rational actors seeking to maintain their own position, which they gain through the support of the mass public and key interest groups. The preferences and attitudes of the mass public and the elites’ networks throughout society both constrain and facilitate elites’ responses to reform efforts. In particular, the war plays an important role in the politics of the post-conflict society in two ways – through the continuing importance of nationalism and through elites’ control of informal patronage and corruption networks. This subsection first defines and explains the importance of nationalist goals, and then discusses the origin and role of informal networks.

**Nationalist Goals**

Nationalism is defined as the belief that the state and the national unit should be congruent. The groups contesting the civil war often fight to achieve nationalist goals, including independence or

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70 Local is contrasted with international following common usage in post-conflict societies. Local does not mean village level in this context – indeed the local elites referred to here operate at the central state level.
autonomy. Nationalism here specifically refers to the political disposition of the nation and the state, not the rank or status of a particular national group or any other objective. For example, according to this definition, Serb nationalist goals during the Bosnian war were limited to Serb control of the Republika Srpska (RS).

There is an extensive literature about the relative importance of nationalism in civil war onset, and many prominent works claim that nationalist conflict was rarely the main cause of civil violence or war. Regardless of the role of nationalism in the onset or conduct of civil wars, nationalism becomes deeply ingrained within the population during the war, and remains important in politics long after the war has ended. The population is therefore likely to mobilize in opposition to demands that threaten nationalist goals. Furthermore, leaders from the civil war gain recognition for their nationalist achievements during the war and become the leaders of post-conflict parties. These political parties compete with one another in the post-war political arena based on their achievement of, or ability to pursue, nationalist objectives. Hence, elites engage in nationalist outbidding to convince the mass public that they are the strongest defender of nationalist achievements. Elites are therefore both constrained to oppose reforms that threaten nationalist goals and are able to take advantage of public opposition to block such reforms.

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74 Carrie Manning instead argues wartime appeals may be more or less effective in different post-conflict societies. In examples she gives, wartime appeals are ineffective because all competing parties have similar association with nationalist goals, rather than because such appeals are less important or inherently ineffective in a given society.
Nationalism remains popular among the mass public and politically important in post-conflict societies for four main reasons. First, once mobilized, nationalism is difficult to demobilize. Stuart Kaufman explains that nationalist politicians create a “myth-symbol complex” that is both “powerful and ubiquitous” and can provoke individuals to fight and die for a particular ethnic or nationalist cause. Leaders become dependent on the nationalist symbols they developed, and these leaders become trapped by the popularity of the nationalist discourse. Second, in the case of ethnic conflict, the literature on the ethnic security dilemma explains how once groups begin to fear one another, they will continue to fear one another until their security can be assured. Third, the experience of violence enables local elites to use emotional appeals to nationalism. Finally, local elites maintain the importance of nationalism in the discourse through their control of media and education.

The theory sees nationalism as a valence issue for politicians in post-conflict societies, meaning that the entire electorate views nationalism positively. Politicians are not differentiated on policy with regard to nationalist goals, but compete to become the most associated with nationalist objectives. Hence, nationalist goals become the “motherhood and apple pie” of post-conflict societies. If nationalist goals were fully achieved, a politician may try to claim

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credit by referring to his or her wartime record. In societies where at least some nationalist goals remained unachieved, leaders can blur the line between advertising their wartime achievements and promising to achieve nationalist goals in the future. In some societies, especially where there is ethnic conflict that ended with a peace treaty, there may be multiple electorates with competing nationalist objectives. In such cases, outbidding on nationalist goals can become particularly dangerous, as outbidding may reinforce ethnic divisions.

Some scholars and practitioners argue that nationalism is not desirable. They claim that nationalist leaders are not representative of the underlying society, and that moderate (i.e. non-nationalist) elites should replace them. They also claim that allowing nationalist elites to lead post-conflict societies is unnecessary, since peacebuilding, reconciliation, and other efforts can reduce the political importance of nationalism. The case studies demonstrate, however, that even parties that the international community supports as moderates face pressure to appear to become nationalists. Furthermore, peacebuilding or reconciliation efforts are rarely successful in reducing the importance of nationalism in the political discourse, at least in the time frame in which international administrations are present.

80 For example, in East Timor, “party candidates failed to convey coherent appeals to East Timorese voters. They were consumed instead with attacking one another’s past political records, while exaggerating their own contributions to the country’s liberation. Leaders of FRETILIN even demanded that the people vote for them or risk being wiped out.” Francisco da Costa Guterres, “Elites and Prospects of Democracy in East Timor” (Ph.D., Griffith Business School, 2006), 196-7.

81 In Kosovo, for example, political leaders simultaneously campaigned on their role in moving Kosovo towards independence during the war and their continuing efforts to achieve independence in the future. See Perritt, Kosovo Liberation Army, chap. 10.


83 See the manipulative leader theory described by Kaufman, Modern Hatreds, 5–7. See also Stedman, “Spoiler Problems in Peace Processes.”

To measure the threat to nationalist goals, I specify the goal related to making the state congruent with the nation for each society in Table 2.1. Elites often try to argue that demands threaten nationalist goals even if the demands are not objectively threatening. However, the theory claims that mass protest occurs only if the demands directly threaten nationalism – elites can take advantage of nationalist sentiment, but cannot create it where it does not apply. Note that in Bosnia, multiple competing wartime groups participated in the post-war government, so there were multiple sets of incumbent elites with competing nationalist goals. In Kosovo and East Timor, secessionist movements were relatively successful, so there was only one set of nationalist goals relevant in the post-war period. 85

<table>
<thead>
<tr>
<th>Society</th>
<th>Group</th>
<th>Post-war parties</th>
<th>Nationalist goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosnia</td>
<td>Bosniaks</td>
<td>SDA, SBiH, SDP</td>
<td>Unified state structures and elimination of ethnic group representation</td>
</tr>
<tr>
<td></td>
<td>Serbs</td>
<td>SDS, SNSD</td>
<td>Autonomous RS, Serb representation in state institutions</td>
</tr>
<tr>
<td></td>
<td>Croats</td>
<td>HDZ, HDZ-1990</td>
<td>Croatian representation in state institutions, local autonomy in Croat-dominated areas</td>
</tr>
<tr>
<td>Kosovo</td>
<td>Albanians</td>
<td>PDK, LDK, AAK</td>
<td>Independence</td>
</tr>
<tr>
<td>East Timor</td>
<td>N/A 87</td>
<td>FRETILIN, CNRT</td>
<td>Independence</td>
</tr>
</tbody>
</table>

**Informal Networks**

Informal patronage and corruption networks, defined as connections between elites and groups outside of the elites' official job description, are vital for elites' political power. Informal networks involve licit and illicit associations with businesses, interest groups, and criminal organizations that enable local elites to gather resources, compel voters, and to limit opposition. Unlike nationalist goals, which apply to all parties competing for an electorate in the same way, informal networks frequently vary across different parties. While control of informal networks

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85 While the Serbs in Kosovo were still present, they were never a key player in the PISG or post-independence governments.
86 These are the parties that represented the combatant groups in post-war elections. I limit this to parties that at one point participated in the government at the state level.
87 Because East Timor was a case of successful secession, there were no group divides in the post-conflict political arrangement.
may indirectly further collective goals by strengthening particular parties, informal networks provide benefits to relatively few individuals. The theory claims that local elites’ control of informal networks is unpopular within the society, which means that local elites cannot take advantage of popular support to block reforms that threaten informal networks.  

Informal networks play an important part in politics in nearly every society, but are particularly important in in post-conflict societies for three reasons. First, post-conflict politicians were wartime leaders and built informal networks over the course of the war to gather resources and exercise control. Informal networks persist after the war and become an integral part of the political culture of the society. Second, many scholars have observed that patronage is more common in ethnically divided societies. In both Bosnia and Kosovo, post-war patronage networks were directly tied to different ethno-nationalist movements. Third, post-conflict societies have other characteristics that encourage the development of clientelism and patronage, including lower levels of economic development, weak rule of law, and a legacy of a communist or authoritarian political economy. 

Informal networks serve three general political functions for incumbent elites. First, informal networks provide resources to politicians and dominant political parties. Parties can

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91 Kitschelt and Wilkinson, Patrons, Clients, and Policies, 44–45.

92 See also Steven Levitsky and Lucan Way, Competitive Authoritarianism: Hybrid Regimes After the Cold War (New York: Cambridge University Press, 2010), 27–28.
gain resources from informal networks in many ways, including kickbacks from government contracts, funding from illegal smuggling operations, and corruption from government appointments. So long as incumbents control the police and justice system, it is unlikely that they will be arrested and prosecuted for their illegal activities. Second, informal networks can distribute resources to individuals who help the party. Resource distribution includes patronage in the sense of a “direct exchange of a citizen’s vote in return for direct payments or continuing access to employment, goods, and services.” Not all of these exchanges are illicit. The payments may be to a broader group of voters, such as veterans or pensioners. Third, the networks can be used to attack opponents. Parties and politicians may use their local networks to monitor, intimidate, or physically harm politicians, parties, and voters that oppose incumbents.

To determine the threat of reform demands to informal networks, I first identify the parties’ wartime informal networks and connect these networks with particular state institutions. I also identify informal networks that are believed to be central to the financing or political success of particular political parties. Reforms that attack these informal networks are threatening because if these networks were dismantled, parties would be likely to lose future elections. For each reform relevant to one of these networks, there is a potential for the demands to threaten informal networks. I then evaluate whether the demands posed a real threat. Measuring the specifics of elites’ informal networks is more difficult than nationalist goals, since elites have an incentive to keep the details secret. Nevertheless, there is a great deal of

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95 On Bosnia, see Timothy Donais, Division and Democracy: Bosnia’s Post-Dayton Elections (North York, ON: Centre for International and Security Studies, York University, 1999), 16.
knowledge about elites' informal networks, including journalistic reports and accounts from well-placed individuals.\textsuperscript{96}

\textbf{International Administrations}

International administrations are mandated to pursue state-building, exercise extensive formal authority, and are composed of highly educated and experienced international officials. One might expect that international officials would have sufficient expertise to ensure that the international administration only makes demands that are likely to succeed. However, international administrations have two characteristics that prevent them from making effective demands. First, international administrations tend to demand too much, because they believe in minimum institutional standards based on human rights or bureaucratic procedures. These demands often threaten nationalist goals or informal networks. Second, international administrations are sometimes internally divided in the demands they make to local elites, which I refer to as international disunity. Unity enables the international administration to make demands truly conditional for political progress, and to monitor and punish local elites' non-compliance. Without unity, elites can play international organizations against one another and avoid implementing threatening demands. Below, I explain three characteristics – ideology, multiple organizations, and principal-agent problems – that lead international administrations to make overambitious demands and to not be unified. I then describe how I measure international unity.

\textit{Ideology}

International officials within an international administration have shared beliefs about the organization and its mission, which is defined in the literature as an organizational ideology.\textsuperscript{97}

\textsuperscript{96} On the use of narratives about informal networks, see Andreas, \textit{Blue Helmets and Black Markets}, xii–xiii.
These beliefs lead international officials to have preferences for particular objectives outside of their mandate and to prefer particular strategies for achieving their goals. While the broad ideology is shared across organizations, there may be differences among officials or sub-organizations. The international administrations tend to have two sets of beliefs – in human rights and in bureaucratic rules and procedures – that constitute the their ideology and frequently inform their demands for reform.

First, international organizations in general, and international administrations in particular, have a deeply embedded commitment to human rights. The commitment to human rights is specified in the foundational documents of prominent organizations, and specifically mentioned in each of the mandates that created the four international administrations examined below. The essence of the human rights agenda is to universally secure individual rights. Rights can range from “basic” rights such as “everyone has the right to life, liberty and the security of person,” and to broader rights such as education, political self-determination, and social security. The scope of human rights treaties is so great that human rights implementation in post-conflict societies is necessarily partial. While violations of certain rights, especially the security of person, take clear precedence, international administrations have some flexibility in deciding which human rights issues to address.

99 The concept of ideology here draws from Severine Autesserre’s description of a “dominant international peacebuilding culture” that shapes “ideologies, rules, rituals, assumptions, definitions, paradigms, and standard operating procedures.” *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding* (Cambridge: Cambridge University Press, 2010), 11.
100 See for Bosnia, Annex 6 of the Dayton Agreement; for Kosovo, UN Resolution 1244, Clause 11j; for East Timor, UN Resolution 1272.
The belief in human rights is associated with two preferences for specific institutional forms. First, it requires democratic institutions. The Universal Declaration of Human Rights states that “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections.” The belief in human rights therefore adds to a consensus view within the international community that any society that international organizations rebuild has to be democratic.

The requirement for democracy also poses specific limits for international administrations. International administrations are inherently undemocratic, since international officials, who are not directly accountable to the population, have executive authority. While the international community justifies international administrations as necessary and benevolent, international administrations still have an obligation to transfer power to local authority as soon as feasible through elections or other types of popular consultation. Furthermore, if there are clear signs that international administration is acting counter to the desires and interests of the local population, the international administration has an obligation to change its behavior.

The second preference for institutional form related to human rights is that international administrations prefer integrative over consociational institutions to manage ethnic conflict. Consociational institutions accept the development of ethnic parties and include institutions that protect ethnic groups’ political rights, such as ethnic vetoes, reserved positions, and local autonomy. Alternatively, integrative approaches hope to break down the political salience of

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102 UDHR, Article 21.3.
ethnicity and to encourage the development of inter-ethnic political parties. A belief in human rights emphasizes individual rights, which is contrary to the group rights required by consociationalism. However, while the international administration might prefer integrative approaches to consociationalism, the international administration recognizes that diplomatic agreements and popular sovereignty take priority over its ideology.

Second, international organizations believe that bureaucratic practices, meaning formal rules and procedures, are both desirable for institutions in post-conflict societies and are effective means for achieving. International administrations have a clear preference for building institutions that operate using formal rules and bureaucratic procedures. Marina Ottaway writes that “For the international community, rebuilding institutions in collapsed states means organizing government departments and public agencies to discharge their functions both efficiently and democratically, following models found in Weberian states,” where Weberian means that the state has “an effective administrative apparatus and is characterized by the rule of law.” Bureaucratic institutions agree with a growing academic consensus that Weberian institutions governed by formal rules lead to positive outcomes such as peace democracy, and development. Furthermore, most senior international officials are from developed countries

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with complex bureaucratic institutions. Officials tend to suggest the institutions with which they are most familiar as best practices, even if complex bureaucratic institutions are inappropriate for a particular context.

International administrations also believe that formal procedures are sufficient for achieving their reform objectives. The literature emphasizes that international organizations are bureaucracies and work through formal impersonal procedures themselves. They tend to believe that establishing committees, planning processes, or other rule-based procedures will be effective in enabling institutional reform. Several works on organizational learning within the international community provide evidence for the claim that bureaucratic adaptation increases effectiveness.

While formal procedures are typically dominant in the functioning of large organizations and developed societies, they may not be appropriate in post-conflict societies. Keith Krause and Oliver Jutersonke, for example, criticize international peacebuilding efforts as “piecemeal social engineering” that

“follow a donor-driven, bureaucratic-institutional logic that conjures into existence a social field on which policies can be imposed by experts defined not by their local knowledge but by their grasp of institutional imperatives and pseudo-scientific models of society and social change. These can in some circumstances have unintended or perverse outcomes, beyond just representing a waste of energy and resources.”

Furthermore, informal processes are often the dominant mode of governance in underdeveloped post-conflict societies. As I explained above, civil wars force rebel movements to develop robust informal networks in order to govern their groups and fight the war. Informal networks remain


prominent after the end of the war and limit the effectiveness and desirability of bureaucratic methods.

**Multiple Organizations**

International administrations are differentiated into multiple organizations. There are either multiple organizations with different mandates that comprise the international administration, or there is a single organization composed of sub-organizations. Multiple organizations with different mandates can increase the resources and legitimacy of the international administration, but it is difficult to coordinate policy across them. However, in some cases, the entire international administration is contained within a single organization. In these international administrations, there is a hierarchy that specifies the final authority of the leader of the international administration and that ensures effective delegation among component organizations. While a hierarchical organization has advantages in term of coordination, hierarchy does not eliminate disagreements.

**Principal-Agent Relationship**

The mandate of an international administration comes from a supervisor, which is either an *ad hoc* group of states (such as the Peace Implementation Council in Bosnia) or an international organization such as the UN. The relationship between the international administration and the supervisor is that of an agent to its principal. The international administration pursues state building on behalf of its supervisor, while the supervisor appoints and manages the international administration. While the international administration may have a great deal of discretion, it is subordinate and ultimately responsible to the supervisor. The supervisor selects the leadership of organizations.


the international administration, who must make regular reports of its activities, obtain permission for major policy initiatives, and obey the supervisor’s direct orders.

The relationship between the international administration and its supervisor can be problematic for institution building for three reasons. First, the supervisor may have different ideology, information, or incentives from the international administration. Even if the international administration might be willing to make compromises on human rights or bureaucracy for the sake of greater effectiveness, the supervisor might limit the international administration’s freedom of action. The supervisor might not have knowledge of the true situation on the ground, or might be under different political constraints. For example, in the case of Kosovo, the broader international community was unwilling to accept the independence of Kosovo, which meant that UN headquarters prevented UNMIK from transferring certain authority to local elites, to the detriment of the broader state-building mission.¹¹⁴ Second, officials have an incentive to be risk averse when it comes to state building. Officials have an incentive to pursue clearly observable short-term goals to the detriment of long-term, less tangible goals. Officials typically have a two-year or less term of office. The prevention of violence is the most easily observable short-term outcome, while state-building success usually takes longer to develop. Third, the multiple organizations that comprise an international administration may have an incentive to compete with one another for resources. International organizations within international administrations may have overlapping mandates and will seek prominence within the administration with the goal of gaining resources and prestige.¹¹⁵


¹¹⁵ The competition between international organizations is similar to the competition between different government agencies in Allison and Zelikow’s model of governmental politics. Graham Allison and Philip Zelikow, Essence of Decision: Explaining the Cuban Missile Crisis, 2nd ed. (New York: Longman, 1999), 255–258.
International Unity

International unity, defined as agreement across the international administration about what demands to make, was one of the key determinants of successful reform. The broader literature on international development and institution building often cites the lack of donor coordination as a major constraint.\textsuperscript{116} Several assumptions noted above lead to disunity, including the presence of multiple organizations, varying ideology, and the principal-agent relationship.

Measuring the relative international unity independently of the success of the reform effort may be difficult, however, since international officials may retroactively agree on a successful policy. I therefore measure international unity by considering several characteristics that enable unity prior to the start of the reform effort. International unity is considered high if at least one of three conditions is met. First, the international administration has an effective hierarchical structure. A hierarchical structure enables the leadership of the international administration to ensure that all officials and organizations make similar demands. Second, responsibility for the reform effort is effectively delegated to a particular organization. The problems of multiple organizations are minimized when there is a division of labor and one organization takes sole responsibility for a particular reform effort. Third, strong leadership can ensure effective coordination between multiple organizations. Strong leadership may be difficult to identify \textit{ex ante}, but it is clearly important in the function of international administrations. Even if there are multiple organizations with overlapping mandates, if one organization has effective leadership, the international administration can overcome these limitations. Leadership

may lead to greater unity through delegating responsibility or through generating pressure from the supervisor onto different international organizations.

**Predictions and Mechanisms**

Figure 2.2: Mechanisms of the Reform Process

The theory makes two types of predictions about reform efforts: process predictions and outcome predictions. The process predictions consist of statements about the mechanisms of how one stage of the reform process leads to another. The main mechanisms are the main stages of the reform process: how the threat of demands determines the behavior of elites and the mass public, how the behavior of elites and the mass public, in combination with international unity, determine the implementation of demands, and how the presence of violence and international unity determine the strength of demands in the next stage of reform. There are also sub-mechanisms that specify the connections between the intermediate stages of the reform process. For the theory to be confirmed, the mechanisms and sub-mechanisms must be observed in the
relevant case studies below. The absence of the correct mechanisms, even if theory correctly predicts the outcome or trajectory, indicates that the theory has less explanatory power. Below, I explain the various mechanisms and sub-mechanisms of the reform process, which are graphically represented in Figure 2.2 and summarized with the outcome predictions in Table 2.2.

**Threat to Nationalist Goals**

When demands threaten nationalist goals, the demands will be blocked through a combination of elite public opposition and the mass public’s protest.

The mass public is willing to protest international demands only if the demands threaten nationalist goals. To be sure, certain members of the public may be willing to protest lesser threats, but only with a clear threat to the nationalist goals such as independence and autonomy will a sufficiently large segment of the population engage in protest. Protest may include demonstrations, riots, or large rallies. Mass protests can effectively block reform because they indicate to the international administration that it is violating popular sovereignty. The international administration is constrained by its belief in democracy, so if a substantial set of the population is clearly opposed to its demands, the international community must back down.

The public’s opposition to reforms threatening nationalist goals both constrains elites to block reform and makes it easier for elites to do so. Because elites must gain votes through associating themselves with nationalist goals, they must oppose reforms that threaten these goals. The willingness of the mass public to demonstrate makes it feasible for elites to effectively block reform, however. Elites often emphasize the threat to nationalist goals in their rhetoric and can play a role in instigating particular protests. Given a threat to nationalist goals, elites can also use the threat of public protests to convince the international administration to weaken its demands.

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Elites can then gain credit in the next election for their efforts in protesting nationalism. Elites may attempt to bluff and publically oppose reforms even if there is no clear threat to nationalist objectives, with the hope of convincing the international community that there is strong opposition to the demands. Without the backing of public protest, however, this strategy will not be effective.

**Threat to Informal Networks**

Elites consider the potential threat of nationalist goals prior to other considerations because of the political importance of nationalism in elections. If there is no threat to nationalist goals, elites then consider whether there is a threat to informal networks. If there is a threat to informal networks, elites engage in private obstruction, which is described in this subsection. If there is no threat, elites accept the reform, which is described in the subsequent subsection.

If there is no threat to nationalist goals, elites cannot leverage mass protest to block reforms that threaten informal networks. Elites can attempt to publically oppose the reform without the possibility of mass protest, but this bluff will only have limited effectiveness. Elites can more consistently block reform using private obstruction, which involves preventing the practices of the target institutions from changing in accord with international demands. Techniques of private obstruction including not attending meetings, privately telling local officials not to attend trainings, using criminal networks to block reform, or continuing with existing practices despite orders to change. Private obstruction is independent from public opposition – an elite may for example vote for a law and then use her influence to prevent the law from impacting the target institution. Without international unity, private obstruction is effective at preventing reform.
International unity can enable the international administration to improve implementation of demands through three mechanisms. First, unity is necessary for monitoring non-compliance with demands. Monitoring implementation is costly, especially for changes in informal practices, and organizations that do not believe that a demand is necessary are unlikely to expend the necessary resources. Second, once non-compliance is noted, unity is necessary to punish elites. Punishment, especially removing a politician from office, is effective because it directly challenges elites’ main goal – maintaining office. However, removing an official for failing to implement international demands often means removing a democratically elected official without due process. Since removing elected officials is counter to democratic principles, broad agreement from within the international administration is required. If any organization within the international administration disagrees that particular demands are necessary, the international administration will not be able to remove an elite for failing to implement those demands. Third, unity is required to make political progress conditional on the implementation of particular demands. If the organizations that comprise the international administration disagree about what demands are necessary for political progress, elites will be able to implement the least arduous demands and still expect political progress to happen.

However, these three mechanisms are insufficient to fully overcome private obstruction. International organizations are outsiders, which makes it difficult for them to fully reform the society. Ultimately, reform requires individuals from within the post-conflict society to change their behavior. Elites recognize that the international administration is leaving in the near future and that international officials have even more rapid turnover. Even with punishment and conditionality, the international administration’s toolkit is limited.
**Elite Acceptance**

If the local elites accept the reform, high unity leads to full implementation while low unity leads to partial implementation. Full implementation of demands may be costly, even if it does not threaten elites’ political survival. The three mechanisms associated with international unity also encourage local elites to fully implement the demands when they accept the reform. Without international unity elites will only be able to partially implement the demands and expect to reap the benefits of political progress.

Table 2.2: Process and Outcome Predictions

<table>
<thead>
<tr>
<th>Demands threaten nationalist goals</th>
<th>Demands do not threaten nationalist goals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>High threat to informal networks</td>
</tr>
<tr>
<td>High international unity</td>
<td>Process</td>
</tr>
<tr>
<td></td>
<td>• Possible mass protest, elite public opposition</td>
</tr>
<tr>
<td></td>
<td>• No implementation</td>
</tr>
<tr>
<td>Outcome Failure</td>
<td>Process</td>
</tr>
<tr>
<td></td>
<td>• No mass protest, elites privately obstruct</td>
</tr>
<tr>
<td></td>
<td>• Partial implementation</td>
</tr>
<tr>
<td>Low international unity</td>
<td>Process</td>
</tr>
<tr>
<td></td>
<td>• Possible mass protest, elite public opposition</td>
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<tr>
<td></td>
<td>• No implementation</td>
</tr>
<tr>
<td>Outcome Failure</td>
<td>Process</td>
</tr>
<tr>
<td></td>
<td>• No mass protest, elites privately obstruct</td>
</tr>
<tr>
<td></td>
<td>• No implementation</td>
</tr>
</tbody>
</table>

**III. Alternative Explanations**

The introductory chapter presented a literature review of international intervention after civil wars. Several theories from that review, with some modification, are applicable to institution building in international administration. I list three existing hypotheses about state-building processes and explain how these hypotheses might be expected to influence the reform process.
Resources and Authority

There are several works that argue that the success of state building is largely a function of the authority, resources, and expertise of the international community. According to these works, which are linked to the technical perspective, when the international community has more authority, greater resources, and more experience, state building should be more successful. According to this hypothesis, even if elites publicly or privately block reform, international administrations should be able to wield their authority, buy off elites, or use best practices to successfully implement their demands.

Democratic Institutions

This alternative hypothesis draws both from the liberal peace argument and critiques of the liberal peace argument. Proponents and critics of the liberal peace disagree about how the international community should encourage the election of elites the international community identifies as moderates. Both, however, agree the election of moderate elites is possible and that moderate elites are more likely to accept international demands for reform. I test these claims in two ways. First, I consider whether the election of moderate elites was feasible or likely. The election of moderate elites, according to Roland Paris, should be especially likely if there were efforts to build liberal institutions prior to elections. Second, I consider the behavior of parties identified by the international community as moderates. These parties ought to be significantly more likely to implement reform than their nationalist counterparts.

Key Donors and Regional Organizations

Many observers have argued that the support of particular states or regional organizations can lead to successful institutional reform. Though these states or regional organizations often

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118 See Doyle and Sambanis, Making War and Building Peace, especially the Brcko case study, 234-243. Dobbins, America's Role in Nation-Building; Fortna, Does Peacekeeping Work?.
119 Paris, At War's End, 187-199.
participate in the international administration, they may also have independent influence on the local elites. For example, when the EU makes progress with accession specifically conditional on a given reform, implementation of the reform is said to be especially likely.\textsuperscript{120} The impact of the EU is likely to be greater than that of other organizations because of the impressive benefits of membership, but other organizations such as NATO or ASEAN may also be relevant. Additionally, a reform effort may have a better chance of succeeding if a key donor country backs it. The United States played a major role in Bosnia and Kosovo after the end of the war, as did Australia in East Timor. This prediction therefore expects elites to accept reforms that are conditional for the EU or NATO, or backed by the key state, regardless of whether the demands threaten nationalist goals or informal networks.

**IV. Research Design and Methodology**

In this section I describe the research design for testing the theory and address several methodological concerns. First, I define the universe of cases. The universe of cases includes reform efforts that were conditional for political progress and were relevant to three issue areas: security, representation and revenue. Second, I explain the methodology of the case studies and why process tracing is the only appropriate method for testing the theory. Third, I describe the sources and data collection procedures. Fourth, I address a potential problem for causal inference.

**Universe of Cases**

Each of the international administrations studied below pursued a wide variety of efforts to reform state institutions. I limit the relevant cases to reforms that were conditional for political progress and relate to three issue areas – security, representation, and revenue.

I examine only reform efforts that were explicitly conditional for political progress, including either the end of the international administration or accession into regional organizations. Both internationals and locals had a stake in the outcome of conditional reforms. The international officials hoped to use the offer of political progress to build a strong state, while local incumbents sought to achieve political progress while protecting their position.

I limit the case selection to reform efforts targeting state institutions in three issue areas: security, representation, and revenue. Security sector institutions are critical for reestablishing basic law and order, vital for preventing the outbreak of war, and a useful resource for local elite’s political control. I focus especially on the police and military since these are the largest and most essential components of the security sector.\(^\text{121}\) In representation I include elections and the constitution. Electoral reform has the potential to affect local elites’ political viability. Similarly, since the constitution specifies the basic structure of the state, the development of the constitution is essential for positive political development. Revenue is the final necessary component of the state. Greater revenue can help strengthen the state and provide resources for elites’ informal networks, while changes in how revenue is collected can have major political consequences.

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\(^{121}\) The reform of the justice sector is another key part of the security sector. Justice has some different characteristics from these other issues. Other researchers have focused on justice in more depth and it will remain an area for future research. See especially Carolyn Gardner Bull, *No Entry Without Strategy: Building the Rule of Law Under UN Transitional Administration* (Tokyo: United Nations University Press, 2008).
I examine these issue areas because they are vital to the political development of post-conflict societies. The international community sees strong institutions in these issue areas as critical for peace, democracy, the rule of law, and economic development. Incumbent elites focus on these issue areas because they are most likely to affect their ability to rule in the future. No reform in these issue areas is expected to be easy, straightforward, or uncontested. Restricting the universe of cases to reforms in these issue areas therefore makes comparisons between reform efforts within and across societies more meaningful. There are certainly many other important efforts to reform institutions in other issue areas, including health, education, justice, infrastructure, and so forth. Many of the insights raised in the theory could also be used to understand these reform processes.

Case Studies and Theory Testing

The dissertation tests the theory by examining the trajectory of the reform process in seventeen case studies. For each reform effort, I provide a detailed narrative of the reform process through each stage of demands, actors' response, and implementation. Based on three methodological principles, I argue that these case studies provide a compelling test of the theory. Furthermore, alternative methodologies would be ineffective.

First, the case studies are structured, focused comparisons of institutional reform efforts. Alexander George and Andrew Bennett argue that structured, focused comparisons of case studies can be used to test theories. I ask a similar set of questions about each reform effort. Who were the main players in the reform effort, both on the international and local sides? What were the international preferences for the institution and where did they come from? How were the preferences made into demands and how did these demands change throughout the process?

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122 Examples of accounts of reform efforts of these types are cited in the empirical chapters.
123 George and Bennett, *Case Studies and Theory Development in the Social Sciences*, chap. 3 and 6.
Which demands were implemented and why? What were the political concerns of local elites? How did these local elites react to the reform? How did the mass public respond to the reform effort and were they willing to publicly protest? Were the assumptions laid out in the theory, such as the international administration's ideology or the political importance of nationalism, borne out in the reform efforts? Were there other factors that I did not theorize that influenced the reform process?

Second, the case studies use causal process tracing to describe why the reforms happened the way they did. For each reform, I trace the chain of events throughout the reform process, from the expression of international preferences to the final outcome of the reform. At each stage, I consider what determined the actors' decisions and caused intermediate outcomes. I compare the causal process observations with the mechanisms suggested by the theory and alternative explanations, and judge which of the theories, if any, the evidence from the reform effort supports. Causal process tracing is essential because it is the only method that can differentiate whether the hypothesized mechanisms were applicable or not.124

Third, using the variation in the seventeen reform efforts, I make at least two sets of comparisons between different reform efforts that help to eliminate competing explanations. First, I compare several reform efforts, with different outcomes, within a given international administration. While constitutional reform in Bosnia may fail, military reform succeeds. This variation is a puzzle for existing theories that only consider cross-country variation. Comparing reform efforts within a society also means that variables that change across international administrations - such as the structure of the administration, the level of pre-war development, and so forth - are held constant. Second, I compare reforms in the same issue area, or with

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similar characteristics, across different international administrations. The three post-conflict societies vary across different historical, economic, and political contexts. If similar tendencies are observed across cases from different contexts, we can have greater confidence in the theory’s validity.

Finally, alternative methods, including experimental and statistical analysis, are impractical. While statistical methods might be useful for evaluating the outcome predictions across a wide range of reform efforts, statistical analysis would also be difficult due to data limitations, identification challenges, and non-independent observations. An experimental design would require randomly varying the demands posed by the international administration, or their unity. This would be impractical, and most likely immoral, given the importance of these reform efforts for the target society and the negative consequences of failure.

**Data Gathering and Sources**

To construct the reform narratives, I conducted fieldwork in each of the four post-conflict societies and cross-referenced my findings with primary and secondary sources.

The fieldwork consisted of interviews with international officials, local politicians, and analysts. These interviews were necessary for developing complete and accurate reform narratives. To the extent possible, I sought to speak with individuals representing different actors to make sure that my reform narratives incorporated all of the different viewpoints. I completed a total of 171 interviews over the course of ten months of fieldwork across all four international administrations, as well as five additional interviews with US-based experts (see table 2.3). Because of the need to protect interviewees’ confidentiality, I identify them only by their general position, and wherever possible provide a published source to confirm their account.
Table 2.3: Interviews and Fieldwork

<table>
<thead>
<tr>
<th>Location</th>
<th>Total Interviews (171)</th>
<th>Dates of Fieldwork</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosnia</td>
<td>64</td>
<td>6-8/2008; 10-11/2009</td>
</tr>
<tr>
<td>Cambodia</td>
<td>13</td>
<td>6/2009</td>
</tr>
<tr>
<td>Kosovo (and Serbia)</td>
<td>46</td>
<td>11/2009-2/2010</td>
</tr>
<tr>
<td>Timor Leste (and Indonesia)</td>
<td>43</td>
<td>7-8/2009; 8/2010</td>
</tr>
<tr>
<td>Additional US interviews</td>
<td>5</td>
<td>Various</td>
</tr>
</tbody>
</table>

The difficulty with interviews, however, is that individuals may have a biased view of the events, may selectively describe events to protect themselves or their organization, or may simply have forgotten what happened. To deal with this limitation, I triangulate between interviews and cross-reference all interview data with evidence from primary or secondary sources. Relevant primary sources include publically released documents by international administrations, such as UN resolutions, progress reports, and press conferences. These documents are essential for determining the timing and content of reform efforts. There is also a substantial secondary literature, including think tank and NGO reports, academic articles, and books, which provides political context and sometimes detailed accounts of certain reform efforts. In each chapter, I discuss in depth the sources used.

Inferential Problem

I evaluate the success and failure of reforms based on whether or not international demands for the institution were eventually implemented. If there were a confounding variable that influenced both the selection of international demands, international unity, and the success or failure of reforms, the theory would have less explanatory power. For example, a critic of the theory might claim that there is a selection problem: Consider an example in which the international administration decided that it wanted an easy victory in a given reform. The international administration would select demands that were not very different from the status quo, which would lead all international organizations to rally behind these demands and ensure high unity.
Such a reform would be fully implemented. The critic would correctly claim that the theory would not have much explanatory power in such an example.

To address this concern, the case studies examine the origin of international demands and preferences. The case studies show that administrations rarely select preferences to achieve greater success. Instead, preferences typically originate from three other sources. First, preferences are often specified in the state-building mandate. Mandates emerge from peace negotiations, in which the negotiators have an incentive to come to an agreement to end the war rather than to make the post-conflict administration easier. Second, preferences are often derived from the international administration’s ideology. Just as the ideology leads to overambitious demands, it can lead to a preference for unachievable institutions. Third, the international administration’s supervisor often sets reform preferences without knowledge of whether or not these preferences are achievable. The principal-agent dilemma posits that agents have different information from their principals. The supervisors’ decisions may be based on flawed information about the society, or may be based on day-to-day policy concerns rather than the long-term state-building goals.

Furthermore, the measurement criteria described above is carefully designed to avoid this critique. International unity is determined and measured prior to the beginning of the reform effort, so it is not possible for unity to be increased through the selection of easy demands. Similarly, the threat to nationalist goals or informal networks is measured independently of the outcome of the reform.

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125 The negotiation of Dayton Peace Accords about Bosnia is a good example of this dynamic. See Caplan, *International Governance of War-Torn Territories*, 17–21; Chesterman, *You, the People*.
126 Reo Matsuzaki, for example, argues that foreign officials are far more effective at developing appropriate and long-lasting local institutions when they have autonomy from headquarters. “Institutions by Imposition: Colonial Lessons for Contemporary State-Building,” forthcoming.
Finally, there are good reasons to evaluate reforms based on the achievement of international preferences rather than other metrics. Using fixed metrics for success at the societal level—such as a specific level of GDP or polity score—means that societies that have the greatest level of prewar development are more likely to achieve success.\textsuperscript{127} Analyzing state building using these metrics is therefore biased against countries with worse prewar development levels. Evaluating success based on these metrics also emphasizes the preexisting conditions in the society and provides little insight into which policies the international administration should adopt if it is in a society with poor preexisting development.

V. Summary of Findings

To summarize the findings of the individual reform efforts, I code the stages of reform efforts based on what extent the mechanisms specified by the theory agree with the causal process observations in the case study. If the causal process observations indicate that the mechanisms and sub-mechanisms specified by the theory are directly applicable, the stage of the reform effort is coded as fully confirming the theory. If the causal process observations within the stage of the reform effort indicate that at least some of the mechanisms of the theory were applicable, even if the sub-mechanisms were not precisely correct, then the stage of the reform effort is coded as partially confirming the theory. If the causal process observations indicate that the mechanisms and sub-mechanisms offer no explanatory power about a stage of reform, that stage is coded as not confirming the theory. I list the summary of the results of this coding in Table 2.4.

I also aggregate the results of the different stages of reform to consider whether the trajectory of an entire reform effort confirmed the theory. I code the reform effort as confirming the theory if most of the stages of the reform effort fully confirm the theory's predictions, and no

\textsuperscript{127} See especially Doyle and Sambanis, \textit{Making War and Building Peace}, 86–93.
stages do not confirm the theory. I code the reform effort as partially confirming the theory if most of the stages only partial confirm the theory, and no more than one stage of the reform effort does not confirm the theory. I code the reform effort as not confirming the theory if more than one stage of the reform does not confirm the theory. I listed the reform efforts, organized by the initial coding of variables, in Table 2.5.

Table 2.4: Theory Testing Summary

<table>
<thead>
<tr>
<th>Stages of Reform Efforts</th>
<th>Confirmed</th>
<th>Partially Confirmed</th>
<th>Not Confirmed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosnia</td>
<td>17</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Kosovo</td>
<td>15</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>East Timor</td>
<td>8</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>40</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Aggregate Reform Efforts</td>
<td>12</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 2.5: Reform Effort Summary

<table>
<thead>
<tr>
<th>Demands threaten nationalist goals</th>
<th>Demands do not threaten nationalist goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>High international unity</td>
<td>High threat to informal networks</td>
</tr>
<tr>
<td>Expectation is Failure</td>
<td>Expectation is Partial Success</td>
</tr>
<tr>
<td>• Bosnian Police Reform (C)</td>
<td>• Kosovo UNMIK Police (C)</td>
</tr>
<tr>
<td>• Kosovo Standards before Status (C)*</td>
<td>• East Timor UNTAET Police (PC)</td>
</tr>
<tr>
<td></td>
<td>• East Timor UNTAET Military (C)</td>
</tr>
<tr>
<td></td>
<td>• East Timor Elections (C)</td>
</tr>
<tr>
<td>Low international unity</td>
<td>Low threat to informal networks</td>
</tr>
<tr>
<td>Expectation is Failure</td>
<td>Expectation is Partial Success</td>
</tr>
<tr>
<td>• Bosnian Entity Constitutional Reform (C)*</td>
<td>• Bosnia Military (C)</td>
</tr>
<tr>
<td></td>
<td>• Bosnia VAT/ITA (C)</td>
</tr>
<tr>
<td></td>
<td>• Kosovo Basic Representative Institutions (C)</td>
</tr>
<tr>
<td></td>
<td>• Kosovo KPC (C)</td>
</tr>
<tr>
<td></td>
<td>• Kosovo Customs (C)</td>
</tr>
<tr>
<td></td>
<td>• East Timor UNTAET Representative Inst. (C)</td>
</tr>
<tr>
<td></td>
<td>• East Timor Elections (C)</td>
</tr>
<tr>
<td></td>
<td>Expectation is Full</td>
</tr>
<tr>
<td></td>
<td>• Bosnia April 2006 Constitution (PC)</td>
</tr>
</tbody>
</table>

VI. Conclusion

This chapter has presented a deductive theory of institution building by international administrations. The theory argues that the interaction between international officials and local

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128 Key: Successes are in bold typeface, partial successes are in plain text, and failures are in italics. C is Confirm theory, P is Partially Confirm, and NC is Not Confirm. Notes: *While the outcome predictions expected failure, demands were rapidly weakened, so the theory accurately predicts the reform effort. Abbreviations: UNPOL is UN Police, VAT/ITA is Value Added Tax/Indirect Taxation Authority, PISG is Provision Institutions of Self-Government, KPC is the Kosovo Protection Corps, and UNTAET is the UN Transitional Administration in East Timor.
incumbents explains the process of institution building. The ideology and organizational incentives of administrations lead them to not be unified and to make overambitious demands. Local incumbents seek to maintain power, which leads them to oppose or obstruct demands that threaten nationalist goals or informal networks. International administrations therefore only fully succeed when they are unified and their demands do not threaten nationalist goals. The next chapters demonstrate and test the theory across the seventeen reform efforts in three international administrations – Bosnia, Kosovo, and East Timor.
Chapter 3
Institution Building in Bosnia and Herzegovina: The Promise of Peace

“After nearly four years, two hundred and fifty thousand people killed, two million refugees, and atrocities that have appalled people all over the world, the people of Bosnia finally have a chance to turn from the horror of war to the promise of peace.”

– President William Clinton²⁹

“One of the most frightening aspects of my job was that, in order to get things moving, I often had to challenge the opinions of elected representatives – and sometimes use my powers to overrule them... This is, on the face of it, an undemocratic thing to do... It is also a very scary thing to do. Because, when a politician representing an ethnic interest threatened that his people would be out on the streets if we did X, we had to have sufficient confidence in our own judgement about what the people of Bosnia really wanted, or at least were prepared to tolerate, to be able to push ahead nevertheless.”

– High Representative Paddy Ashdown¹³⁰

The Dayton Agreement ended the war in Bosnia and Herzegovina.¹³¹ The agreement created a highly decentralized state that recognized the legitimacy of ethnic politics and enabled wartime ethnic elites to quickly consolidate control over the country. Elites of all three major ethnicities – Bosniak,¹³² Croat and Serb – continued to pursue many of the goals they fought for in the war through peaceful political means. To oversee peace implementation, the Dayton Agreement also created an international administration, which had extensive authority including the ability to remove politicians and pass laws. The international administration sought to reform state institutions in order to prevent future violence, encourage the creation of a multiethnic society, and build a more effective central state.

This chapter systematically analyzes six reform efforts that were at the heart of the international state-building effort in Bosnia. Following the theory, the chapter asks why some succeeded, incrementally strengthening the state and advancing political development, and others

¹³¹ I refer to Bosnia and Herzegovina hereafter as Bosnia. The formal name of the Dayton Agreement is the General Framework Agreement for Peace in Bosnia and Herzegovina.
failed, delaying international exit, unintentionally reinforcing ethnic divisions, and
delegitimizing future international efforts.

The six reform efforts traced below largely confirm the theory and offer significant
evidence against the technical perspective and the three competing theories of institution
building. The international administration frequently justified its reforms as technical
requirements, but local elites recognized the political consequences of these reforms and blocked
them accordingly. There is also little support for the argument that a strong mandate or extensive
resources will achieve success. In Bosnia, the international administration frequently used its
authority to intervene into local politics, but these interventions had decidedly mixed results. The
international community may have had authority, but power remained largely in the hands of the
local elites. This chapter further questions the effectiveness of EU conditionality – parties were
willing to forgo EU integration to protect their nationalist goals. Finally, few internationally
recognized moderate parties were able to win elections. Those moderate parties that were elected
often campaigned on nationalist goals and sometimes pursued more radical policies than their
competitors.

While there is a great deal of literature on post-war Bosnia, few works compare across
reform efforts to develop and test theories about the success and failure of institution building.
Much of the existing work on Bosnia consists of evaluations of the overall success of the
‘peacebuilding’ effort, single case studies of particular institution-building efforts, or
normative arguments about particular institutional strategies for state building in Bosnia.

133 For example, Paris, At War’s End, 97–107.
134 See a number of studies on individual reform efforts cited below, including those by Sofia Sebastian, Donald
Hays, Ric Bainter, Gulner Aybet, and Thomas Maehlman, as well as several International Crisis Group (ICG)
Utilities Policy 17, no. 1, 2009: 49-64.
135 There have been a large number of policy papers advising particular strategies for the international community in
Bosnia. See, inter alia, Kurt Bassuener, “An Agenda for Bosnia’s Next High Representative,” Democratization
Analysts who claim that the intervention in Bosnia has been a success note continued peace, economic improvements, and progress towards European integration. Critics argue that reconciliation is limited, politicians use fear to mobilize voters, high-level corruption is unpunished, political parties question the basic integrity of the state, and the possibility for a return to war remains. Unlike many of the existing accounts that judge international efforts based on politicized expectations about what the country should be, and I instead evaluate different institution-building efforts by what the international administration’s goals were in each case.

The chapter has nine sections. The first section briefly introduces the history of the war, the debates within the international administration, and the nature of local politics in Bosnia. The second section introduces the reform efforts and describes the sources used. The third through eighth sections describe the six reform efforts: electoral reform, entity constitutional reform, defense reform, police restructuring, the VAT/ITA tax reform, and the April 2006 constitutional reform. A final section concludes by evaluating the theory’s predictions in Bosnia and discussing implications for future state-building efforts.

I. War, Intervention, and Political Context

This section describes the context of the international administration and local politics in Bosnia based on a review of the literature and insights from the interviews. This context is helpful for understanding the international post-war state-building efforts in Bosnia and confirms the assumptions in the theory chapter. This section first briefly describes the war in Bosnia and the Dayton Agreement that ended it. It then explains the structure, ideology, and internal divisions of

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the international administration. Finally, it describes the local politics of Bosnia after the war, with a focus on the divisions between and within the three major ethnic groups.

Bosnian politics before, during, and after the war were highly complex. Accounts of these events are also inevitably politicized. For space constraints and because of the high quality of the existing literature, this section only summarizes the context of the war and the intervention that ended it. I strive to avoid describing the war or the post-war context from the perspective of any side or political agenda. A depoliticized account may be impossible, however, since any statement about the war may imply some normative goal for the post-war society.

*The War in Bosnia – 1992 to 1995*

The war and international intervention in Bosnia fits the theory’s scope conditions of an international administration. The international community intervened to end to a bloody civil war, after which the international community established a powerful international administration to enforce the peace agreement and build the state.

Bosnia was one of the constituent republics of multi-ethnic Yugoslavia following World War II. The war in Bosnia developed out of the breakup of Yugoslavia. While the literature identifies a number of causes of the war, one key cause was the reemergence of aggressive ethno-nationalist political movements. In particular, the Serbian nationalist movement, led by Slobodan Milosevic, sought to reunite all Serbs within a Serb-controlled state. These desires directly conflicted with nationalist movements in the rest of Yugoslavia, and lead to declarations of independence by Slovenia and Croatia.

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In Bosnia, which was largely comprised of three major ethnic groups who were dispersed throughout the territory, inter-ethnic relations quickly became acrimonious and the territory spiraled into ethnic war. Three nationalist parties – the Bosniak SDA, Serb SDS, and Croat HDZ – won the elections in December 1990. On March 3, 1992, the Bosnian government, which was led by SDA, declared independence. In response, Bosnian Serb leaders declared the independence of the Republika Srpska (RS), or Serb Republic. The war between the Bosnian, RS, and Bosnian Croat armies would continue for the next four years. Ethnic cleansing, or the effort to make a particular area ethnically homogenous, was central to the conduct of the war, and involved tactics such as violent expulsion, rape, and murder. According to initial estimates, 278,000 persons were killed or missing and 2.3 million became refugees or displaced persons, though later research has indicated that only approximately 97,000 people died in the conflict.

The war in Bosnia ended with the Dayton Agreement, which specified the constitution of the new Bosnian state and created an international administration to implement the peace agreement. The constitution was a carefully negotiated compromise between the international community and the three warring groups. Bosnia would be an intact and independent state, but highly decentralized. The Dayton Agreement created a consociational political system that

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139 I refer to the 1992 government as the Bosnian government since even though the supporters of the government were mainly Bosniaks, its official title was the Republic of Bosnia and Herzegovina.
encouraged individuals to vote based on their ethnic identity. Several measures were created at the state level to protect the vital interests of the ethnic groups and most authority was given to two “entities.” The first entity, the RS, comprised 49% of the country, and was predominantly Serb. The second, the Federation of Bosnia and Herzegovina (FBIH), comprised 51% of the country, was predominately Bosniak and Croat, and had its own decentralized system of ten cantons. The agreement did include measures to reduce the dominance of ethnic parties, such as encouraging refugee return, but these measures would prove to be difficult to implement. The constitution has been particularly criticized due to the size and complexity of the government it created. Bosnia has the “highest number of presidents, prime ministers and ministers in the entire world.” The international administration, discussed in the next section, would play a major role in the political development of Bosnia.

International Administration – Organizations, Mandates, and Strategies

The international administration in Bosnia closely follows the depiction of international administrations in the theory chapter. The international administration in Bosnia was composed of several organizations with overlapping mandates to implement the peace agreement (known as “peace implementation”) and pursue state building. Many officials within these organizations had strong beliefs about pursuing ethnic integration in Bosnia and thereby enfranchising human rights. The complexity of the international administration, combined with officials’ varying beliefs and objectives, led to frequent and often debilitating internal disagreements. Below, I first

144 The system was further complicated by the status of Brcko district, which was self-governing, had its own international administrator, and was formally part of both districts. The Dayton Agreement is accessible on OHR’s website at http://www.ohr.int/dpa/default.asp?content_id=380. For commentary and description of the Dayton constitution, see Sumantra Bose, *Bosnia After Dayton: Nationalist Partition and International Intervention* (New York: Oxford University Press, 2002), 60–89; Bieber, *Post-War Bosnia*, chap. 4. On Brcko, see Matthew Parish, *A Free City in the Balkans: Reconstructing a Divided Society in Bosnia* (London: I. B. Tauris, 2010).
145 Belloni, *State Building and International Intervention in Bosnia*, 44.
explain the structure of the international administration in Bosnia and then discuss two key strategic debates: how much the international community should seek to ethnically integrate Bosnia, and to what extent the international administration ought to use its authority to intervene in Bosnian politics. I demonstrate, following the theory, how the organizational and strategic disagreements facilitated overambitious demands and disagreement about demands.

While the Dayton Agreement mandated a variety of organizations to participate in the peace implementation efforts, four main organizations were most influential in the reforms discussed below. First, the Office of the High Representative (OHR) was the lead organization for the civilian aspects of peace implementation. OHR was led by the High Representative, who was always a senior statesman from a European country. While OHR was nominally the lead organization for the civilian implementation efforts, it had the formal authority only to coordinate among the other organizations. OHR was supervised by the Peace Implementation Council (PIC), an ad hoc body of states, led by a Steering Board of eleven influential countries and organizations. At the 1997 meeting in Bonn, the PIC gave the High Representative the explicit authority to legislate or remove politicians from office if peace implementation was

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147 Dayton Annex 10; Cousens and Cater, Toward Peace in Bosnia, chap. 2; Bieber, Post-War Bosnia, chap. 4.

148 Technically, the OHR was supervised by the entire PIC, which included 55 countries. The PIC Steering Board is composed of Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organization of the Islamic Conference (OIC), which is represented by Turkey. See http://www.ohr.int/ohr-info/gen-info/#6 (accessed May 26, 2012) as well as Annex 10 of the Dayton Agreement. Note that the last time the entire PIC met was in May 2000 and that the PIC Steering Board regularly issues instructions to OHR.
obstructed. OHR’s use of these powers varied greatly from 1997 to 2008, depending in large part on who was the High Representative.

Second, the Organization for Security and Cooperation in Europe (OSCE) was responsible for a variety of different tasks, most prominently running elections. The OSCE’s functions would also eventually include human rights, education, democratization, civil society, and security cooperation. Many of these functions were duplicative of OHR’s responsibilities, though after 2002 OHR and the OSCE more clearly delineated their respective responsibilities. While OHR was led by a European, the Head of Mission of the OSCE mission was always an American.

Third, the North Atlantic Treaty Organization (NATO) deployed a military force to help implement the peace. The force was initially approximately 60,000 strong, but its size rapidly decreased after the end of the war. In 2004, the European Force (EUFOR) took over responsibility, and by 2011 there were only 1,600 troops deployed. NATO would play a lead role in military reform, as NATO specified the conditions necessary for Bosnia to become a member of the Partnership for Peace (PfP) and eventually NATO itself.

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149 The precise wording of the Bonn Powers was: “The Council welcomes the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary, on the following issues: a. timing, location and chairmanship of meetings of the common institutions; b. interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned; c. other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation.” OHR, “PIC Bonn Conclusions,” December 12, 1997, http://www.ohr.int/pic/default.asp?content_id=5182 (accessed April 23, 2012).
152 Cousens and Cater, Toward Peace in Bosnia, 46.
Fourth, the European Union (EU) gradually became one of the most important international actors in Bosnia when the country began the process of European integration. In 2002, Paddy Ashdown became the first High Representative to be double-hatted as the EU Special Representative. Starting with the EU Feasibility Study in 2003, the requirements for accession to the EU began to guide many reform efforts.\textsuperscript{154}

The existence of multiple organizations, combined with their overlapping mandates and lack of hierarchical organization, led to serious problems of disunity from 1995 to 2002. When Paddy Ashdown took over as High Representative in 2002, he greatly improved the coordination between the various international organizations, and unity improved. However, as the EU integration process took greater prominence, a new tension within the international administration developed. The international administration had begun to seek two types of political progress— the completion of the peace implementation phase, and accession to the EU. The international administration had to decide whether to prioritize the state-building requirements stated in or implied by the Dayton Agreement, or the EU’s \textit{acquis communautaire}.

Officials and organizations also had ideological disagreements about what to strategy to adopt. While some officials believed in aggressively pursuing the implementation of human rights, others emphasized the importance of local popular sovereignty. There were two of the especially prominent policy debates. The first debate considered whether to seek to (re)establish an integrated multiethnic society. According the \textit{integrationist} school of thought, Bosnia’s ethnically divided politics were inherently anti-liberal,\textsuperscript{155} delayed reconciliation, and predisposed


\textsuperscript{155} Sabrina Ramet offers an elaboration and critique of the integrationist and liberal agendas before the war, after the war, and in the scholarly literature. See Ramet, \textit{The Three Yugoslavias}, 424–427, 471–5, 491–495; Sabrina P. Ramet, \textit{Thinking About Yugoslavia: Scholarly Debates About the Yugoslav Breakup and the Wars in Bosnia and Kosovo} (Cambridge University Press, 2005), chap. 8. See also Paris, \textit{At War’s End}, 105–6.
Integrationists argued for substantial reforms to Bosnia’s institutions, including strengthening the central state at the expense of the entities, eliminating group-based political rights in favor of individual rights, and consequently weakening the dominance of ethnic nationalist parties. The pursuit of ethnic integration derived in part from the international administration’s belief in the universality of human rights, since the institutions proposed by the integrationists were based on individual rather than group rights. Those who opposed an active integrationist policy tended to argue that peace could be maintained without substantial changes, that creating a multiethnic society was infeasible, and that Bosnia’s ethnic parties had been democratically elected.

The second key debate considered the means the international administration should use. Interventionists supported the aggressive use of the Bonn Powers to intervene in Bosnian politics. They argued that intervention was essential given the power and obstructionist attitude of the nationalist wartime parties. Paddy Ashdown, High Representative from 2002 to 2006, best exemplifies the interventionist approach. For example, Ashdown made 447 official decisions, far more than his predecessors Wolfgang Petritsch, who made 250, and Carlos Westendorp, who made 76. While Ashdown acknowledges, “by any standard [the Bonn Powers], which are not subject to appeal or review, are extraordinary,” he emphasizes that exercising them...

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158 Interviews with analysts and international officials, Sarajevo and Washington DC, Summer 2009 and 2011.

required both the agreement of the PIC Steering Board and public consent.\textsuperscript{160} On the other side, a number of analysts critique the interventionist approach as undemocratic and ineffective. Gerald Knaus and Felix Martin compare the relationship of OHR to Bosnia with “that of an imperial power over its colonial possessions,” and argue that international intervention will not be effective at changing the society.\textsuperscript{161} High Representative Christian Schwarz-Schilling, who took over from Ashdown, adopted the anti-interventionist perspective and explained, “I may have the authority to impose legislation, but I cannot impose reconciliation, and I cannot impose prosperity. That is up to you and the leaders you will elect.”\textsuperscript{162} Schwarz-Schilling’s anti-interventionist policies, however, would prove as controversial as Ashdown’s interventionist policies.

The organizational disagreements and strategic debates are interconnected, but distinct. International organizations in Bosnia tended to adopt strategies based on their mandate and available tools. The EU was more inclined to use demands that were conditional for progress with EU accession, while OHR was often inclined to use the threat of imposing a reform or removing a politician. Similarly, holding an interventionist perspective was often tied to integrationist agenda. However, it was perfectly consistent for an international official to pursue integration while not believing that intervention could bring it about, or to adopt interventionist means without trying to achieve integrationist goals.

The organizational structure and strategic disagreements of the international administration in Bosnia confirm the assumptions in the theory. The international administration

\textsuperscript{160} Ashdown, \textit{Swords and Ploughshares}, 219; Ashdown, \textit{A Fortunate Life}, 352–3.


had strong beliefs about integrating Bosnian society in accord with human rights. International organizations had an incentive to compete over “implementation market-share,” and disagreed based off their varying mandates. Consequently, the international administration was frequently limited by overambitious demands and disunity, as the theory would predict.

Local Post-War Politics – Or War by Other Means

Post-war politics in Bosnia also supports the theory’s assumptions about the importance of nationalism and elites’ use of informal networks.

Table 3.1: Main Political Parties

<table>
<thead>
<tr>
<th>Party</th>
<th>Ethnicity</th>
<th>Wartime?</th>
<th>Orientation</th>
<th>State Presidency</th>
<th>Prominent Leader/Other Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>SDA</td>
<td>Bosniak</td>
<td>Yes</td>
<td>Bosniak nationalist</td>
<td>1996-2000, 2002-2006</td>
<td>Harris Silajdzic</td>
</tr>
<tr>
<td>SDP</td>
<td>Bosniak</td>
<td>No</td>
<td>Former communist</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HDZ</td>
<td>Croat</td>
<td>Yes</td>
<td>Croat nationalist</td>
<td>1996-2010</td>
<td></td>
</tr>
<tr>
<td>HDZ-1990</td>
<td>Croat</td>
<td>No</td>
<td>Anti-HDZ/Croat nationalist</td>
<td>None</td>
<td>Created 2006</td>
</tr>
<tr>
<td>SDS</td>
<td>Serb</td>
<td>Yes</td>
<td>Serb nationalist</td>
<td>1995-2006</td>
<td>Milorad Dodik</td>
</tr>
<tr>
<td>SNSD</td>
<td>Serb</td>
<td>No</td>
<td>Serb nationalist, social-democratic</td>
<td>2006-</td>
<td></td>
</tr>
</tbody>
</table>

Bosnian politics was dominated by ethnic parties associated with the three “constituent” peoples – Bosniak, Serb, and Croat. These ethnic parties mainly competed with other parties associated with the same ethnicity, so three ethnic party subsystems were formed (see Table 3.1). The wartime parties – SDA, SDS, and HDZ – dominated the early

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163 That is, organizations sought to achieve the greatest role in the peace process. Cousens and Cater, Toward Peace in Bosnia, 45–6.
164 While a focus on bureaucratic procedures was mentioned in the theory, did not play a prominent role in Bosnia due to Bosnia’s post-communist history. Local officials had great experience with complex formal processes, and were often more eager than international officials to implement bureaucratic processes. Interviews with analysts and local and international officials, Sarajevo, Summer 2008, Fall 2009.
165 The description of politics in the post-conflict Bosnia as “war by other means” turns around the Clauswitzian statement that “war is politics by other means.” See Belloni, State Building and International Intervention in Bosnia, 78.
166 For a more complete list, see Bieber, Post-War Bosnia, 49, 152.
168 Bieber, Post-War Bosnia, 148.
These parties were successful in part because following the wartime ethnic cleansing post-war Bosnia was divided into three largely ethnically homogenous territories. The Dayton constitution reinforced ethnic politics by politically dividing the country along the ethnic territorial lines. The wartime parties were eventually replaced by parties such as SNSD (Serb) and SBiH (Bosniak) that had initially been identified as moderates by the international community. However, these so-called moderate parties had similar ideologies to the wartime parties they replaced – they also campaigned based on nationalism and sometimes pursued even more hardline stances than their competitors.

In post-war Bosnia, political office was largely contested by referencing nationalist goals. The violence of the war created deeply seated fear, and parties used their control over the education system and the media to instill nationalist rhetoric after the end of the war. In this context, parties used nationalist rhetoric gained the parties votes. Though the international community was reluctant to admit it, nationalism clearly remained popular in post-conflict Bosnia.

For Bosniak parties, the key nationalist goals were the integrity of the Bosnian state, the eventual centralization of the state, and the elimination of ethnic political rights. During the war, Bosniaks focused on preventing the secession or segregation of territory along ethnic lines.

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169 For the sake of brevity, I refer to Bosnian Serbs and Bosnian Croats as Serbs and Croats, respectively. The only possible non-ethnic party winning an election is Social Democratic Party (SDP), which led the government from 2000-2002. SDP however gains the vast majority of its vote share from Bosniaks, and pursues a unifying agenda similar to that of other Bosniak parties. Ibid., 41.
170 Ibid., 29–30.
174 See the reform efforts below, and Manning, “Elections and Political Change in Post-War Bosnia and Herzegovina,” 72–75; Bieber, Post-War Bosnia, 41–43; Ramet, The Three Yugoslavias, 491–493.
However, at Dayton, Bosniak parties compromised and accepted the entity structure. Nevertheless, they retained the goal of creating a centralized state with no specific political rights for different ethnic groups. Hence, reforms that prevented this goal from being reached in the future threatened Bosniak nationalist goals. Bosniak parties pursued their nationalist goals during the post-war period by trying to move authorities delegated to the entities to the central state, and to deconstruct the group rights guaranteed in the Dayton constitution.

For Serb parties, the key nationalist goals were the autonomy of the RS, the Serb character of the RS, and the protection of political rights for Serbs at the state level. Bosnian Serbs had fought the war in order to ensure that all Serbs were within a Serb state. Following Dayton, Bosnian Serbs recognized that union with Serbia was not feasible and eventually accepted, and later even embraced, their autonomy within the RS. Serbs’ key goal in the post-Dayton environment, therefore, was to protect the autonomy and Serb character of the RS. To protect the RS, it was essential that the state government remain weak and unable to unilaterally assume entity authorities. Furthermore, Serbs need to ensure that political rights were based on ethnicity in order to protect the Serb character of the RS. Reforms that eliminated the political rights of ethnic groups or attacked the RS’s autonomy therefore threatened Serbs’ nationalist goals.

For Croat parties, nationalist goals were the Croats’ political control over Croat-majority areas and the protection of political rights for Croats at the state level. During the war, the Croat army had fought to bring all Croatians together within a greater Croatia, but these goals were

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175 See Holbrooke, To End a War, 97.
176 Interviews with international and SBiH officials, Sarajevo, Summer 2008, Fall 2009. See also Bieber, Post-War Bosnia, 41; Manning, “Elections and Political Change in Post-War Bosnia and Herzegovina,” 74–75, 77.
177 Ramet, The Three Yugoslavias, 419–421. The nature of the Serbian nationalist goals is controversial, but the establishment of an ethnically dominated Serbian state by military means is a fundamental goal. For a historiography on this issue, see Ramet, Thinking About Yugoslavia, 13–14.

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largely abandoned at Dayton. Croatian politicians emphasized to Bosnian Croats that they were Bosein citizens and would have to seek governance from the Bosnian state. At times, however, Bosnian Croat politicians were strongly nationalist and sought the creation of a third entity or self-government. The creation of a third entity, however, did not mobilize large-scale public support. Croats in general played a smaller role in the reform negotiations than the Bosniaks and Serbs. The smaller role for Croats came in part from the declining proportion of Croats in the overall population – from 17.3% before the war to an estimated 13% after the war – and in part from the Croats’ position inside of the Federation rather than having their own entity.

Bosnian politicians of all ethnicities used informal criminal, patronage, and corruption networks to gain support and resources. These networks were initially developed to fight the war, but politicians continued to use them after the war to maximize their political power. Politicians engaged in corruption, including by manipulating government contracts and appointments. Parties also used their control of economic assets to distribute resources to their supporters, through mechanisms such as paying off key interest groups and offering government jobs for supporters. Finally, parties used violence against returning refugees and political opponents to secure their position. Elites’ informal networks were particularly present in

180 Interviews with international and local officials, Summer 2008, Fall 2009; Bieber, Post-War Bosnia, 29, 32.
182 Ramet, for example, describes how a company owned by Karadzic was found to be smuggling cigarettes and oil, and how the HDZ was using the Herzegovacka Banka to embezzle money intended for veterans. Bakir Izetbegovic, the son of the wartime SDA president, was also reportedly involved in corruption. The Three Yugoslavias, 484.
183 See Manning, “Elections and Political Change in Post-War Bosnia and Herzegovina,” 68. See also sources cited in footnote 53.
184 See, for example, the attacks against Bosniaks trying to return to the RS in 1996 described in Gerard Toal and Carl T. Dahlman, Bosnia Remade: Ethnic Cleansing and Its Reversal (Oxford University Press, 2011), 167–9. And
electoral, military, police, and tax institutions, which meant that there was a potential threat to informal networks in reform efforts related to these institutions.

Elites and the mass public also sought political progress in terms of the transfer of authority from the international administration to local institutions and accession into the EU and NATO. While the international community had mainly supervisory rather than executive authority, local elites typically sought to accelerate the transfer of what limited executive authority the international administration did have. The desire to join the EU was particularly widespread, cutting across individuals of different ethnicities and echoed by the political elite.185

II. Introduction to Reforms: Selection and Sources

The reform sections below establish the history of the reform, trace the trajectory of demands and implementation in detail, and thereby test the theory's predictions. Recall that theory predicts that international unity and the threat to nationalist goals or informal networks explains the trajectory of reform. Following the six case studies, the conclusion summarizes the extent to which the six cases confirmed the theory.

I selected the six reform efforts – electoral reform, entity constitutional reform, defense reform, police restructuring, the April 2006 constitutional reform, and the VAT/ITA tax reform – based on four criteria. First, as the theory specifies, these reforms were all conditional either for transferring power from the international administration to local institutions, or for joining the EU or NATO. Second, these reforms targeted state institutions and were in the issue areas of representation, security, and revenue. The exception is the entity constitutional reform, which

attacks against political opponents described in Timothy Donais, Division and Democracy: Bosnia's Post-Dayton Elections, Centre for International and Security Studies, York University, 1999, 16.

185 According to one survey, for example, the EU also had the highest level of trust of any international organization. UNDP, "The Silent Majority Speaks," July 2007, 31, (http://europeandcis.undp.org/cpr/show/1619AC57-F203-1EE9-B7D02E9FEA6E48C1 (accessed April 24, 2012)).

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only altered the entity constitutions, but was fundamental to the basic relationship between the state and the entities. Third, these reforms occurred after 1997, which is when the full scale state-building effort began. Fourth, according to participants and analysts, these were the reforms that were most important for the functioning of the state. Because of space limitations, and the large number of reforms in Bosnia, there were additional reforms, such as the UN-led police reform and the creation of State Information and Protection Service, which could have been considered, but will have to be left to future work.

To develop these case studies, I make use of interviews, released documents and other primary sources, as well as secondary sources. The main sources are 65 interviews I conducted over four months of fieldwork in Summer 2008 and Fall 2009 in Sarajevo, Banja Luka, Mostar, Belgrade, and Pristina. I interviewed international officials who worked for OHR, the EUPM, the European Commission, OSCE, the Council of Europe, the American embassy, and the UN. I also interviewed members of local think-tanks, politicians, and local officials in various state institutions. I also conducted five additional interviews in Cambridge, MA and Washington, DC in 2011. In general, I used the interviews to better understand different actors' interests and perspectives, and relied on primary documents, particularly the online OHR archive, for the content and timeline of reforms. I also use the secondary source literature, such as academic articles or NGO reports, especially when these sources focus on specific reform efforts.

III. Electoral Reform

The international administration sought to use its executive authority over elections to weaken the dominance of wartime parties and encourage the election of moderate parties. The international administration's attack on wartime elites in the electoral reform was unique in its...
transparency. Initially, the international administration sought to weaken the wartime parties by running large number of elections and carefully managing electoral rules. Bosnia became “the world leader in number of internationally administered elections,”\textsuperscript{186} but the multiple elections did not reduce the dominance of the wartime parties. By 2000, the international administration adopted a new strategy of creating a permanent election law that would transfer authority to a local election administration and simultaneously pass new rules that would make it harder for the wartime parties to win. While the international community attempted to claim that these were technical demands, local elites recognized and responded to the demands’ political ramifications.

I summarize the failure of the early efforts on elections and then trace the permanent election law in depth below. While a law was eventually passed that did successfully transfer authority to a competent local institution, it failed to achieve the most ambitious international goal of encouraging the election of moderate parties.\textsuperscript{187} This reform effort was a partial success that largely confirms the theory, since it demonstrates how international disunity enabled local elites to block implementation and forced the international administration to accept a weaker reform. The theory does not, however, expect the international administration to transparently attack incumbent elites, so predictions are only specified for reforms that threaten nationalist goals or informal networks. These threats did not apply to the electoral reform. Nevertheless, the threat to incumbent elites’ electoral prospects was effectively similar to a threat to informal networks, since the demands threatened particular parties rather than the broader electorate’s preferences. Interpreting the reform in this way, the theory explains the elites’ private obstruction, the initial failure of the reform, and the eventual implementation of significantly weakened demands.

\textsuperscript{187} Tansey, Regime-Building, 182–196.
The electoral reform case study proceeds in five parts. The first part briefly describes the early international efforts on elections in Bosnia, explains the origins of the permanent election law reform, and codes the variables. The second part explains the drafting and negotiation of the permanent election law and the initial failure to pass the draft law. The third part discusses the use of the draft law’s provisions in the 2000 elections. The fourth part explains how a law was eventually passed, and local electoral administrative institutions formed, and how these institutions do not fulfill the international administration’s initial goals. A fifth section concludes.

**Origins of Permanent Election Law**

The international administration in Bosnia had full authority over the running of elections, but could not prevent wartime elites from dominating the early elections. The international community’s original plan was that the first election would happen within six to nine months, after which the newly elected local authorities would take over, and the international administration could be concluded.\(^{188}\) The OSCE, which was mandated to run the elections, voiced fears that the election would become a “pseudo-democratic legitimisation of extreme nationalist power structures and ethnic cleansing,” but accepted the proposed time frame.\(^{189}\)

When the general elections were held in September 1996, the OSCE’s fears were borne out. The wartime parties – HDZ, SDA, and SDS – won at both the entity and state levels.\(^{190}\) The wartime parties won in part by campaigning on nationalist goals and in part by using their informal

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\(^{188}\) This policy was particularly supported by the Clinton administration due to congressional opposition to the US intervention in Bosnia. One joke among international staff was that OSCE stood for “Office for Securing Clinton’s Election.” Manning, “Elections and Political Change in Post-War Bosnia and Herzegovina,” 64. Interviews with former OSCE officials, Sarajevo, Fall 2009.


\(^{190}\) In the FBiH election for the state House of Representatives, SDA took 57.1% and HDZ took 28.6, while in RS election SDS took 64.3% and SDA took 21.3% of the vote. Bieber writes that as a result of the elections “the three national parties could control all key positions in both entities and at the state levels.” Bieber, *Post-War Bosnia*, 91-93.
networks to take advantage of the electoral rules. Following the first elections, the international administration reconsidered its exit plan, since many officials believed that the victory by the wartime parties was contrary to human rights and could lead to a return to war. The international administration also shifted its approach to more integrationist approach that directly challenged the wartime parties.

The international administration, led by the OHR and OSCE, pursued this new integrationist approach in two ways, neither of which was effective due to the popularity and power of the wartime parties. First, the international administration believed that the victory of the wartime parties was contingent on the ethnic homogeneity of different regions within Bosnia, and sought to restore the pre-war ethnic distribution by getting refugees to vote in, and eventually return to, their pre-war homes. However, refugee voting and return was not very successful. Many people preferred to vote and stay in the current residence, especially given the encouragement of the wartime parties and violence against returning refugees.

Second, the international administration used its executive authority as election supervisors to directly attack the wartime parties. The OSCE tried to limit the use of the media by wartime parties, tried to reduce their control of illegal property, and even removed candidates from the election list. Some analysts began to criticize these efforts as undemocratic, as the

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191 In particular, the nationalist parties used the regulations urging refugee to vote in their pre-war homes to enable individuals to vote multiple times. The ICG estimated that turnout was greater than 100%, based on calculations of the total number of registered voters and subtracting the voters who were physically unable to vote. ICG, “Elections in Bosnia & Herzegovina,” Bosnia Report No 16, 22 September 1996, 57; Donais, Division and Democracy.
192 The ICG notes that the OSCE was “actively involved in the international community's efforts to unseat the SDA, HDZ and the Serb nationalist bloc, most notably the SDS and SRS,” “Is Dayton Failing?: Bosnia Four Years After The Peace Agreement,” Balkans Report N°80 Sarajevo, 28 October 1999, 15.
193 On refugees voting in their prewar homes, see Annex 3 of the Dayton Agreement and Cousins and Cater, Toward Peace in Bosnia, 114–115; Belloni, State Building and International Intervention in Bosnia, 75. On refugee return, see Annex 7 of the Dayton Agreement; Toal and Dahlman, Bosnia Remade, chap. 6; Cousins and Cater, Toward Peace in Bosnia, 72–79; Belloni, State Building and International Intervention in Bosnia, chap. 6.
international administration appeared to be stating that it did not believe the wartime parties could be elected legitimately.\textsuperscript{195} These interventionist policies were also ineffective. Despite some small victories in municipal elections, the wartime parties remained in control of the state level.\textsuperscript{196} Influential analysts, such as the International Crisis Group, began to argue that only “a fundamental redesign of the electoral system,” could deal with the “vicious cycle of hatred and fear” that enabled the wartime parties to continue winning elections.\textsuperscript{197}

The international administration therefore began focus on the permanent election law, which is the main reform effort examined here. The goals of the reform were to transfer authority for running elections away from the OSCE to Bosnian institutions and to establish electoral rules that encouraged the election of moderate parties. These goals did not specifically threaten nationalist goals or informal networks, but clearly threatened the ability of the wartime parties of all ethnicities to win elections. I argue that the threat was more similar to a threat to informal networks than to nationalist goals, since the threat was to particular parties rather than the political status of the central state or entities. The one exception was for the Croats. At one point, the OSCE demanded changes to the rules governing the selection of the Federation House of Peoples, which would have weakened the ability of Croats to block legislation in the Federation. This in turn would have threatened Croat autonomy within the Federation, which was a key nationalist goal. I therefore analyze the reform based on the predictions relevant for a threat to informal networks, except in the case of the Croats, for whom the reform threatened nationalist goals.

\textsuperscript{195} David Chandler offers an extensive critique of the contradictions of attempting to promote democratization through arbitrary authority in Bosnia. See \textit{Bosnia: Faking Democracy After Dayton} (Pluto Press, 2000), chap. 5.

\textsuperscript{196} Note that even once elected, local officials from minority groups often had difficulty even going to work. Cousens and Cater, \textit{Toward Peace in Bosnia}, 116.

International unity about the demands was low. There was no clear division of labor between the OHR and OSCE and overlapping mandates encouraged them to make different demands and disagree openly with one another. Neither was there clear leadership from either organization. Given low unity, the theory therefore expects the elites to privately obstruct the reform and the reform to not be implemented. Once the reform weakens to the point that it no longer threatens informal networks, the theory expects the reform to be partially implemented.

Negotiation of the Permanent Election Law

Initial negotiations about the reform began in 1998 between the OHR, the OSCE, and the Council of Europe. Carlos Westendorp, the High Representative, formally launched the effort in August 1998, with an OHR decision that created a “Permanent Election Law Working Group” (PELWG) composed of local experts. At the December 1998 PIC meeting, and in remarks by Westendorp, the international administration articulated the goal of weakening the monoethnic nationalist parties.\(^{198}\) A second working group, composed of several scholars, was later created to provide an alternative set of suggestions for the electoral system.\(^{199}\)

The content of the draft law derived from the preference for consociationalism among the local members in the PELWG and combined with disagreement within the international administration. The local members of the PELWG, of all ethnic groups, accepted the existing proportional representation voting system, and believed any electoral system in which members of different ethnicities competed against one another would lead to conflict. While the

\(^{198}\) Tansey, *Regime-Building*, 188. The PIC specified that “the principles of the Election Law should: promote the concept of a multi-ethnic state; promote the respect of democratic principles by candidates, elected representatives and political parties; establish the independence of the Election Commissions from political influence; encourage candidates, parties and coalitions to seek a broad base of support amongst all citizens of Bosnia and Herzegovina; preserve the rights of refugees and displaced persons to vote in the municipalities of their pre-war homes; favour political pluralism; reinforce the accountability of the elected representative to the electorate and to all citizens of Bosnia and Herzegovina;” PIC Steering Board, “Reinforcing Peace in Bosnia And Herzegovina - The Way Ahead,” Madrid, 16 December 1998. http://www.ohr.int/pic/default.asp?content_id=5191

\(^{199}\) The group included Professors Jorgen Elklit, Pere Vilanova, and Donald L. Horowitz. Interview with international official, Fall 2009, Summer 2011.
international community preferred an electoral system that would encourage moderation, international officials worked at cross-purposes. OHR- and OSCE-appointed officials disagreed within the PELWG about the draft law, which delayed progress. Eventually, the OSCE became frustrated by the PELWG’s lack of headway. With OHR’s consent, the PELWG was revamped in spring 1999. The OSCE took over greater responsibility and a new international chair of the committee was appointed.

According to one participant, Westendorp was aware that the draft law was too weak to achieve international preferences. Furthermore, Westendorp allowed the OSCE to take over the process because he believed that the OSCE would bear the blame for the failure. Inter-organizational disagreement thereby led to the international administration’s failure.

Later, the PELWG would finally develop a draft law, but one that was unlikely to challenge the incumbent wartime parties or to lead to the election of moderate parties. The draft made four major changes intended to encourage moderation. First, in elections to the state and entity parliamentary chambers, the draft created a system of multi-member districts and compensatory mandates. Second, the draft specified that the alternative vote (AV) would be used for the elections of the entity and state presidency. Third, an open list system was created for legislative elections so voters could select which candidate from the party list they preferred. Fourth, at least one-third of the party’s list of candidates would have to be women.

202 Interview with international official, Fall 2009. One article notes, there was “a silent war between OHR and OSCE was fought for a long time about who would have jurisdiction over [the PELWG’s] work.” “Dossier: Election Law in B&H, Part One.” AIM Sarajevo.
203 For details on the compensatory mandates and alternative vote, see Bieber, Post-War Bosnia, 95-8.
However, these changes did not substantially reduce the electability of nationalist parties. The draft kept many the existing characteristics of the electoral system, including homogenous voting districts and proportional representation. The academic group argued that the multi-member districts would make it difficult for smaller parties to win seats, even with the compensatory mandates, and that the open lists gave incentives for candidates to compete against one another on the basis of nationalism.\footnote{205} The ICG claimed that the draft “is not likely to achieve the international community’s aims,” and that parts of the draft “legalise ethnic discrimination.”\footnote{206}

The draft law was presented to the state parliament for ratification in October 1999. The state parliament rejected the law twice, in January and February 2000, based on opposition from Bosniak and Croat parties. Consistent with the theory, to justify their opposition, these parties cited a threat to nationalist goals, even though the real threat of the law was more similar to informal networks. The SDA objected that the law would make it easier for displaced persons to vote in their new homes, while the more multi-ethnic SDP objected that the law continued to recognize political rights based on ethnic groups. The Croat nationalist party, HDZ, “alleged that the law would threaten the very existence of the Croats in Bosnia.”\footnote{207} The international administration did try to connect the passage of the law with accession to the Council of Europe, and strongly lobbied for the law’s passage. However, the inter-organizational disputes between the OHR and OSCE made it impossible for the international administration to punish elites for failing to implement the demands.\footnote{208}

\footnote{205} Letter to Wolfgang Petritsch from Professors Elklit, Vilanova, and Horowitz, undated.\footnote{206} ICG, “Is Dayton Failing?” 18.\footnote{207} Tansey, \textit{Regime-Building}, 191.\footnote{208} Interviews with international officials, Sarajevo, Fall 2009.
The 2000 Elections and the Draft Law

After the failure to pass the draft, in May 2000 the PIC instructed the OSCE, which was still running the elections, to incorporate the draft law into the rules and regulations for the 2000 elections. The international administration hoped that the changes would encourage the election of moderates that would prove more willing to implement the demands.

At the behest of Robert Barry, the Head of Mission of the OSCE, one additional measure was added to the rules and regulations for the 2000 elections. The so-called “Barry Rule” changed the election of members of the Federation House of Peoples so that all members of the Cantonal legislature would vote for the delegates to the House of Peoples rather than having members of a particular ethnicity elect their coethnics. The measure was intended to hurt the Croat party HDZ by enabling Bosniaks to select which Croats would be elected to the reserved seats for Croats. The Barry Rule thereby threatened Croat nationalist goals, since it challenged the ability of the Croats to veto legislation in the Federation, and thereby attacked the autonomy of Croat-dominated areas within the Federation.

Overall, the outcome of the 2000 elections did not fully achieve the international community’s goals of substantially weakening nationalist parties. Still, internationally recognized moderate parties did have some success. With the support of the British and American ambassadors, a coalition of non-wartime “moderate” parties called the “Alliance for Change” took over the state and FBiH government. The election of moderate parties is contrary to the predictions of the theory, though the weakness of the Alliance and the character of the component parties mitigate the failed prediction. The three wartime parties still won

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209 Tansey, Regime-Building, 190–2.
210 Belloni, “Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina,” 344.
“approximately half their community’s votes,” which meant that the Alliance was only barely able to control a majority government. Additionally, many of the moderate parties elected did not act as the international administration would have liked. Several parties within the Alliance for Change continued to justify their actions based on nationalism because of continuing competition with the wartime parties.

Furthermore, two of the new integrative electoral rules adapted from the draft election law failed to achieve their objectives. First, in the initial stage of a broader dispute between the HDZ and international community, the Barry Rule provoked heavy opposition and widespread public protest among Croats. The HDZ held a referendum on Croat rights simultaneous with the election, which the OSCE declared illegal and removed ten HDZ officials from the Cantonal assemblies. When Croat institutions declared themselves self-governing in March 2001, OHR dismissed the Croat member of the Bosnian state presidency. The crisis would culminate with violence around the NATO takeover of the Herzegovacka Banka, which the HDZ leadership was accused of using for a variety of illicit activities. In the wake of this controversy, the Barry

213 The ICG colorfully criticizes the Alliance for Change: “Theirs, however, was a marriage of convenience between parties of disparate size, ideological hue, history and national composition. It was also a shotgun wedding, presided over by the importunate British and American ambassadors, who also did most of the courting of the coquettish but indispensable bride, Haris Silajdzig. Unsurprisingly, therefore, the Alliance’s ability to hang together was to depend more on its parties’ relish of office than on their shared determination to push through coherent reforms.” ICG, “Bosnia’s Alliance for (Smallish) Change,” Balkans Report No.132, August 2, 2002, 3.
Rule was eventually dropped, which demonstrates how violent public opposition leads to failed reform.\textsuperscript{216}

Second, the preferential voting system for the RS presidency did not make a substantial difference in the outcome of the election. Sumantra Bose demonstrates that the SDS candidate won a near majority and thereby was not affected by the switch to a preferential voting system.\textsuperscript{217} The system did not even encourage the minority Bosniak voters to prefer the moderate Serb candidate – 98% of the voters that selected a Federation-based party that came in last-place gave their votes to other Bosniak parties rather than to moderate Serb parties. The failure to elect moderates in the RS presidency election led the international administration to drop the AV entirely from the election law.\textsuperscript{218} In sum, the international administration failed to implement strong demands due to disunity in the negotiation of the draft law, imposed the negotiated changes in the 2000 elections, and these weakened changes failed to substantially achieve the international community’s objectives.

\textit{Passage of the Electoral Law}

Following the 2000 election, the Alliance for Change government did pass a permanent election law in August 2001. The law was similar to the 1999 draft, but a number of provisions that were intended to encourage moderation were removed, including the Barry Rule, the alternative vote for entity presidency, as well as other measures regarding voters living in illegal housing and requirements for parties to gather signatures from both entities.\textsuperscript{219} The threat of the law thereby diminished, since the content of the law no longer effectively challenged the election of the wartime parties. To encourage the parliament to pass the law, the international administration


\textsuperscript{218} Election Law of BiH, Chapter 12. See also Bieber, \textit{Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance}, 96-98.

used both the threat of imposing the law and the conditionality of Bosnia’s entry into the Council of Europe. Even though the law would not substantially challenge their electability, the wartime parties voted against the law and criticized the supporters of the legislation for being soft on nationalist goals. 220

While the law did not achieve the international community’s goal of challenging the control of nationalist parties, it did achieve the other goal of transitioning control to local electoral institutions. By and large, the local takeover of the election administration was seamless. The massive reduction in OSCE election staff did not weaken the execution of elections on the ground. Local and international election observers remained confident that subsequent elections were free and fair. 221 The theory explains the successful transfer of authority to local institutions, since the transfer of authority did not threaten either nationalist goals or informal networks.

Conclusions

The international administration in Bosnia failed in its effort to use electoral authority to weaken nationalist parties, or to create electoral institutions that would do so in the future. The electoral institutions established were quite similar to the electoral institutions in place before the beginning of the reform. While the international administration did succeed in getting different parties elected, these parties pursued similar policies as the wartime parties. For example, the parties that won elections in 2006, SBiH and SNSD campaigned based on nationalism, and were criticized by the international community as nationalists, even though the international

220 For example, the SDS “accused the PDP [a smaller Serb party and member of the Alliance for Change] of betraying Serb interests, lead to speculation that the SDS was preparing to dump Ivanic and his party. Ivanic promptly pledged that he would stray no more.” ICG, “The Wages of Sin: Confronting Bosnia’s Republika Srpska,” Balkans Report Nº 118, October 8, 2001, 4.
221 Interviews with OSCE staff, Sarajevo, Summer 2008.
administration recognized these parties as moderates in 2000. \footnote{Interviews with international officials, Sarajevo, Fall 2009. Dodik and Silajdžić have both gone from being perceived moderates to “cardboard nationalists.” See Tihomir Loza, “Cardboard Nationalists,” Transitions Online, September 23, 2010.} Nevertheless, the international community was able to establish permanent election institutions in Bosnia, making the reform a partial success.

Table 3.2: Electoral Reform

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early Elections</td>
<td>Weaken nationalists</td>
<td>Low</td>
<td>Direct threat to parties ◆ threat to informal network</td>
<td>Failure: Nationalists win</td>
<td>Confirmed: Wartime parties block international efforts</td>
</tr>
<tr>
<td>Law negotiations</td>
<td>Weaken nationalists and transfer institutions</td>
<td>Low</td>
<td>Direct threat to parties</td>
<td>Failure: Locals negotiate law weakening demands, and then do not pass it</td>
<td>Confirmed: Disunity weakens demands and does not force passage of law</td>
</tr>
<tr>
<td>2000 Elections</td>
<td>Weaken nationalists and transfer institutions</td>
<td>Low</td>
<td>Direct threat to parties, except Barry Rule threatens Croat nationalist goals</td>
<td>Failure: AfC elected, HDZ violent protests, ineffective new rules</td>
<td>Partially confirmed: Moderates are elected though they do not abide by international desires, Croat’s protest blocks demands. However, election of AfC unexpected</td>
</tr>
<tr>
<td>2nd law negotiations</td>
<td>Transfer institutions</td>
<td>Low</td>
<td>Low</td>
<td>Partial success: Law passed</td>
<td>Confirmed: Highly weakened law passed</td>
</tr>
<tr>
<td>Implementation of law</td>
<td>Transfer Institutions</td>
<td>Low</td>
<td>Low</td>
<td>Partial success: Law implemented, Bosnian authorities run elections</td>
<td>Confirmed: Highly weakened demands implemented</td>
</tr>
</tbody>
</table>

The mechanisms specified by the theory largely explained the trajectory of the reform effort (see Table 3.2). Ambitious demands were undermined by disagreements between key international actors and were blocked by local elites. A law was ultimately passed, but only after all threatening measures had been dropped. The law threatened nationalist goals for the Croats, who used public protest to block the reform. For other elites, the main reason for opposing the law was that the measures specifically attacked their future electoral prospects. While the theory
does not specifically mention electoral rules, the reaction by elites makes sense in the context of
the theory, and so the reform largely confirms the theory’s predictions.

The electoral reform effort is particularly relevant as many scholars have used the
electoral reform in Bosnia as a “lesson learned” for future international management of elections.
A commonly cited lesson is that elections should be delayed to avoid empowering nationalists.223
While it is clear that the wartime parties took advantage of the early elections, this case study
provides evidence against the claim that delaying elections will increase the likelihood of
electing moderates. The wartime elites continued to retain their dominance long after the election
and it is unlikely that they would not have won even if elections were delayed. Furthermore,
parties that challenged the wartime parties quickly adopted a nationalist ideology. The long-term
salience of nationalism in the Bosnian politics further indicates that there is little advantage in
delaying elections. Finally, the electoral reform effort speaks to the literature on designing
institutions to manage ethnic conflict. Several scholars have used the international management
of elections in Bosnia to adjudicate between the two competing theories for managing ethnic
conflict: Lijphart’s consociational theory vs. Horowitz’s integrative theory.224 This section does
not answer the typical question in the literature on electoral institutions, which is what
institutions best moderate ethnic conflict. Instead, electoral reform in Bosnia demonstrates in
detail that the international community has a limited ability to implement electoral rules of its
choosing and that elites can successfully fight against institutions that threaten their future
political success. While replacing elites may be desirable, it is often not possible given the local
political context.

223 Dobbins, America’s Role in Nation-Building, 107.
224 See for example Nina Caspersen, “Good Fences Make Good Neighbours? A Comparison of Conflict-Regulation
Strategies in Postwar Bosnia,” Journal of Peace Research 41, no. 5 (2004): 569 –588; Belloni, “Peacebuilding and
Consociational Electoral Engineering in Bosnia and Herzegovina.”
IV. Entity Constitutional Reform

“I simply cannot accept the continuing obstruction on the side of these nationalistic dinosaurs.”
—Wolfgang Petritsch

Florian Bieber, in his book on post-war Bosnia, calls entity constitutional reform “the most substantial reform effort relating to post-war institutional arrangement in Bosnia.” With hindsight, the reform effort is perhaps more remarkable for what it might have done than for what it eventually accomplished. Many international officials hoped that the reform would diminish the prominence of ethnicity in the Bosnian political discourse. However, the international administration was internally divided about what to demand, and the early demands threatened nationalist goals. Consequently, the reform ended up further entrenching ethnicity within Bosnian politics.

I trace the reform in four sections. First, I describe the origins of the reform and explain the coding of the relevant variables. Second, I trace the efforts of the constitutional commissions, composed of local officials, to negotiate an agreement. Third, I discuss OHR’s imposition of the agreement and the implementation of that agreement. Fourth, I evaluate the reform effort in terms of the theory and its impact on Bosnian society.

Origins of the Reform

In 2000, the Bosnian Constitutional Court ruled that the constitutions of the two entities, the RS and FBiH, were both in violation of the state constitution. While Dayton had effectively accepted that each of the entities would be dominated by the leading ethnic groups, the court ruled that “ethnic separation through territorial delimitation does not meet the standards of a democratic

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225 Belloni, State Building and International Intervention in Bosnia, 64.
226 Bieber also notes that one journalist compared the discussion about the reform to “medieval discussions on the number of angels able to dance on the head of a pin.” Bieber, Post-War Bosnia. The quote in the text is from page 121, and the quote in this footnote from page 131.
and pluralist society." By the court’s observation, Serbs were not effectively represented in the Federation, Bosniaks and Croats were not effectively represented in the RS, and people who were not a member of any of the three main constituent people – commonly referred to as Others – were not effectively represented anywhere. The court also insisted on the recognition of the Bosnian, Croatian, and Serbian language, which are all essentially the same language, at all levels of government. The decision was passed by the two Bosniak justices with the three internationally appointed justices, and opposed by the two Croat and two Serb justices. 227

The Court, with the support of many in the broader international administration, hoped that the decision would alter the basic consociational framework in Bosnia. The goals of the reform, therefore, were to reform the entity constitutions in order to weaken the dominance of ethnicity in Bosnian politics. 228 The Court and other commentators used the language of human rights and the equality of individuals to justify the reform, in accordance with ideology described in the theory. 229 The ruling also set the additional goal of improving representation for non-dominant ethnic groups in the entities. Indeed, prior to the reform, individuals that were not Bosniaks and Croats from the Federation or Serbs from the RS could not be elected to many posts and were generally not represented in the entity governments.

The goal of weakening the political importance of ethnicity was directly threatening to the nationalist goals of the Serbs and Croats. For the Serbs, the goal of reducing the ethnic character of politics threatened nationalist goals since it would implicitly attack the Serb

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227 Bieber analyzes the decision in more detail. Ibid., 121-128. The quote is on page 124. See also ICG, "Implementing Equality: The ‘Constituent Peoples’ Decision in Bosnia & Herzegovina," Balkans Report Nº 128, April 16, 2002, 2-5.
228 Interview with Wolfgang Petritsch, Washington, DC, June 28, 2011. One ICG report explains: "Therefore, if the ruling is fully implemented, it will be both a major step towards realising the constitution’s guarantees to citizens of freedom from discrimination and the right to return and an enhancement of the authority of the state." "Implementing Equality," 2.
character of the RS. While Serb parties preferred to avoid any changes to the RS constitution, some increased minority representation was acceptable so long as Serbs remained in control of the entity. For the Croats, nationalist goals were connected to the explicit recognition of Croat rights. Hence, demands reducing Croat control over Croat-dominated Cantons, or eliminating reserved positions for Croats in the state government, threatened nationalist goals. For the Bosniaks, the elimination of ethnic group rights was consistent with nationalist goals, so the reform posed little threat. Indeed, Bosniak parties desired weakening the RS and strengthening the position of minorities within the RS. The threat to informal networks was minimal for all sides, since the reform of the constitutions was largely a legal matter.

International unity for the entity constitutional reform was low. Different analysts and organizations had different perspectives over how much to pursue the goals of weakening the salience of ethnicity. These disagreements stemmed from differences in international officials’ perspectives on ethnic integration and human rights. These disagreements were compounded by the inability of OHR to exercise leadership and coordinate the relevant international organizations.

The international administration was under similar constraints as in the electoral reform, so unity remained low. The theory therefore predicts no implementation so long as the demands threatened nationalist goals. Once the reform is weakened to the point that it no longer threatens nationalist goals, the reform should be partially implemented.

*Constitutional Commissions*

The entities initially did little to address the Constitutional Court’s decision. In January 2001, Petritsch created two commissions to study the entity constitutions and provide amendments for reforms. While previous reform efforts had involved a prominent international role, Petritsch
decided to encourage “local ownership” by creating committees composed of local politicians and experts. To ensure a broad range of opinions, each commission was composed of sixteen members, four from each of the three main ethnicities, and four members from other ethnic communities. Petritsch did not instruct the commissions to implement the Court decision in any particular way, in part because there was no clear international consensus about what to demand. Disunity, combined with local ownership, enabled the local officials to draft constitutional amendments that suited the their interests, rather than the international administration’s preferences.

The commissions focused on the recognition of minority groups rather than on reducing the importance of ethnicity. The local parties, by and large, were not interested in the international community’s vision of civic representation, and preferred representation based on group rights. In their negotiations, the commission therefore ignored the goal of weakening the salience of ethnicity, which effectively weakened the reform. The debate turned instead to the details of how minorities would be represented in the entities, in particular whether the RS and the Federation would have symmetric institutions or not. Serb representatives favored minimal changes, and an allowance for asymmetric institutions, while Federation representatives wanted to make the structure of the RS match the complexity of the Federation. Petritsch, with the support of the PIC, supported “symmetry in form,” which meant that the entities could have different structures but had to provide identical protections for minorities. Other international

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230 Bieber, Post-War Bosnia, 128–129.
231 “The decision is neither intended as, nor shall it in any manner or at any time be treated as an indication, express or implied, as to the way in which the said partial Decision of the Constitutional Court shall be implemented by way of constitutional amendment.” OHR, “Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination,” January 11, 2001, paragraph 12.
232 Tansey, Regime-Building, 178.
233 The discussion included whether there would be a House of Peoples added to the RS and whether group representation would be based on the status quo or pre-war population. See Bieber, Post-War Bosnia, 128–9. ICG,
observers insisted on more ambitious fully symmetrical reform, in part with the idea of weakening the autonomy of the RS. Since the international administration was not unified in its demands, Serb and other local officials sought to implement the least ambitious demands.

After intensive negotiations in March 2002, eight parties signed the Sarajevo Agreement specifying a series of changes to the two entity constitutions. The agreement would 1) create a Council of Peoples and Vice Presidents in the RS to ensure representation of non-Serbs, 2) expand representation to include Serbs and Others in the Federation, and 3) protect the “vital interests” of the different constituent peoples through a second parliamentary chamber in both entities. The negotiations did represent successful international mediation, since the international administration had found a compromise, even if it did not meet international preferences. Acceptance of the agreement, however, was not universal. Serb parties PDP and SDS representatives signed only with “reservations,” while the Bosniak SDA rejected the agreement for not going far enough, and Croat HDZ supported stronger minority veto rights.

The proposed amendments did provide some opportunities for increased minority participation in the RS. However, the amendments would not substantially reduce the Serb’s control over their entity, and therefore were not threatening to nationalist goals. For the Serbs, the RS National Assembly would still dominate decision-making, and the new second parliamentary chamber, the RS Council of Peoples, would have only limited ability to block legislation. Nevertheless, some Serb elites did claim that the agreement threatened the

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"Implementing Equality," 5-7; Valerie Perry, "Constitutional Reform and the Spirit of Bosnia and Herzegovina," 3-11.

234 See for example Ibid, 12.


236 Belloni, State Building and International Intervention in Bosnia, 64; Tansey, Regime-Building, 180.

237 See OHR, “Agreement on the Implementation of the Constituent Peoples’ Decision of the Constitutional Court of Bosnia and Herzegovina,” Articles 4 and 5; interviews with international officials, Fall 2009, Summer 2011.
autonomy of the RS in order to attack their opponents. For example, a veterans group in the RS argued that the agreement represented "the destruction of results achieved during the fight for the fatherland," and SDS leader Mirko Sarovic argued that the "measures achieved no less than the abolition of the RS through the back door." These pressures led the RSNA to adopt constitutional amendments that did not fulfill the Sarajevo Agreement. Likewise, SDA criticized other Bosniak parties, and the international community, for accepting too little reform. The Federation parliament also rejected the Sarajevo Agreement following the RSNA's actions.

In response, Petritsch used the Bonn Powers to impose the Sarajevo Agreement in April 2002. He argued that "I simply cannot accept the continuing obstruction on the side of these nationalist dinosaurs" and that "this is an imposition, but... the largest part of the job was done by the domestic authorities." Petritsch's imposition of the agreement has been criticized as "probably unwarranted," and "in contradiction with self-government." Still, the parties largely accepted the imposition without major protest, in large part because the agreement had already been weakened and did not threaten the parties' nationalist goals.

The Sarajevo Agreement was only partially implemented. It did increase the official representation of minorities, though not to the extent legally required. By the account of one official, fully implementing and monitoring the ethnic distributional requirements of the amendments was impossible given the lack of qualified individuals and complexity of the quota requirements. Furthermore, the increase in minority representation did not change the way the entities were ruled. Forty-five percent of ministerial positions in the RS were reserved for non-

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238 Quoted, respectively, in ICG, "Implementing Equality," 9 fn; and Belloni, State Building and International Intervention in Bosnia, 64. Belloni and the ICG disagree with my interpretation, and argue that the nationalist response demonstrates that the Constituent Peoples' decision was indeed highly threatening to the Serb nationalist goals.

239 ICG, "Implementing Equality," 8-11.

240 Belloni, State Building and International Intervention in Bosnia, 64, 65, 67.

Serbs, for example, but the actual power of non-Serbs within the RS was extremely limited. Minorities within the RS could not effectively block legislation and could not influence the way the entity was ruled.\textsuperscript{242}

The greatest impact of the reform was that the entity governments became even less efficient. The cost of governance in Bosnia increased because of the added layers of entity government and the need to translate documents into three languages. Proponents of the reform, including Petritsch, argued that the added complexity from the reform would encourage the entities to eventually simplify their institutions. However, the simplification did not occur, and as I discuss below in the account of the April 2006 constitutional reform effort, further constitutional reform remained unlikely.\textsuperscript{243}

\textit{Conclusion}

The entity constitutional reform largely confirms the predictions of the theory for a reform with low unity and a threat to nationalist goals. The international administration developed the highly ambitious goal of reducing the prominence of ethnicity, which threatened Serb and Croat nationalist goals. Divisions within the international administration about what to demand enabled local parties to negotiate an agreement that removed the threat to nationalist goals. After the Serb parties refused to implement the agreement, because of intra-elite nationalist outbidding, OHR imposed the agreement. Despite the outbidding, the content of the imposed agreement did not in fact threaten the key Serb nationalist goal – autonomy of the RS – so the imposed agreement was partially implemented. With the implementation of the agreement, the reform did succeed at the lesser goal of greater legal enfranchisement for minorities within both entities. However, given


\textsuperscript{243} Ibid. Interviews with international officials, Sarajevo and Washington, DC, Fall 2009, Summer 2011.
the weakness of the negotiated agreement, the reform was ultimately counterproductive for the broader and more important goal of reducing the importance of ethnicity in Bosnian politics.

Table 3.3: Entity Constitutional Reform

<table>
<thead>
<tr>
<th>Preferences</th>
<th>Weakening the political importance of ethnicity</th>
<th>Protecting the position of minorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase of reform</td>
<td>Demands</td>
<td>Unity</td>
</tr>
<tr>
<td>Court Decision</td>
<td>Weakening the salience of ethnicity and protect the position of minorities</td>
<td>Low</td>
</tr>
<tr>
<td>Constitutional Commissions</td>
<td>Weakening the salience of ethnicity and protect the position of minorities</td>
<td>Low</td>
</tr>
<tr>
<td>Negotiation and imposition of Agreement</td>
<td>Protect the position of minorities</td>
<td>Low</td>
</tr>
<tr>
<td>Implementation of agreement</td>
<td>Protect the position of minorities</td>
<td>Low</td>
</tr>
</tbody>
</table>

V. Bosnian Defense Reform

Defense reform, which consisted of the unification of the two entity militaries into a single state-controlled military, represents one of the most successful reform efforts in post-war Bosnia. The success is particularly impressive given the close connection between the military and nationalist achievements. While local elites sought to weaken the reform to fulfill their political interests, international demands were substantially achieved in two different sets of defense reform negotiations. The reform confirms the theory, since the reform succeeded because of international unity and because the demands did not threaten any party’s nationalist goals.
I analyze the reform in four stages. First, I discuss the origins of the reform and code the relevant variables. Second, I discuss the Defence Reform Commission’s (DRC) first set of negotiations and the successful creation of state defense institutions. Third, I discuss the DRC’s second negotiations, in which the parties accepted the creation of a unified state military. Fourth, I evaluate the overall effort and discuss alternate explanations for the success of the reform.

**Origins of Defense Reform**

Richard Holbrooke called the continued existence of two entity militaries the “the most serious flaw” of the Dayton Agreement. While Bosnia was perhaps the only peaceful country in the world to have multiple independent militaries under the same state. While there had been a substantial decrease in the size of the entity militaries since the end of the war, the militaries still retained large numbers of personnel and obsolescent equipment, and were perceived as costly and inefficient. By 2001, international officials had decided to address the problem of multiple militaries, but needed a way to start the process.

High Representative Paddy Ashdown used Bosnia’s desire to join NATO’s Partnership for Peace (PfP), combined with a political scandal, to begin the defense reform process. In October 2002, it was found that the Orao arms company, which was closely associated with the RS government, had been selling weapons to Iraq in violation of a UN arms embargo. OHR traced the blame for the scandal to the senior leadership of the RS, and Ashdown forced the

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244 Holbrooke, *To End a War*, 361.
245 While there was some disagreement about whether the state presidency had ultimate official command, the entities governments retained effective control over each of the entity militaries. The setup at the time of the first reform is described in depth in Chapter 5 of the First Defense Reform Commission’s report. The exact lines of command were not quite resolved prior to the reform. See DRC, “The Path to Partnership for Peace,” Sarajevo, September 25, 2003, Chapter 5; DPA Annex 4, Article 5, Paragraph 5.
resignation of the Serb member of the State Presidency, Mirko Sarovic, in April 2003. During the same period, with some international urging, Bosnia pledged its desire to join the PfP and to reform defense institutions as necessary to achieve that goal.

The international community’s preferences for this reform were the establishment of effective state command and control over the entity militaries. For NATO, effective state command and control was a critical accession requirement. State command and control would also address the fundamental problem of multiple militaries and the rule of law problems revealed during the Orao scandal. The initial demands to achieve this goal were the creation of a state ministry of defense, parliamentary oversight over defense, and the subordination of the entity militaries to state decision-making.

State control of the entity militaries did not threaten the nationalist goals or informal networks of either the Bosniaks or the Serbs. For the Bosniaks, the key nationalist goal was the continuing strengthening of the central state, which would not be threatened so long as the reform left open the possibility of continued reform. Some Bosniak politicians believed that a reform eliminating conscription would be threatening so long as an RS army existed. According to the theory, and to most Bosniak politicians, however, conscription was not in fact necessary to protect the Bosnian state. During the war, conscription enabled the less well-armed ARBiH to fight the RS army. As a consequence of the Dayton Agreement, the RS army became smaller.

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248 The pledge was made in January 2003 by the Secretary General of the Standing Committee of Military Matters (SCMM), which was the state body that coordinated between the two entity militaries. See the full pledge in Annex 10.4 of DRC, “The Path to Partnership for Peace.” Interviews with OHR officials, Sarajevo, Fall 2009; Graeme P. Herd and Tom Tracy, “Democratic Civil-Military Relations in Bosnia and Herzegovina: A New Paradigm for Protectorates?” Conflict Studies Research Centre, November 2005, Available at: kms.lins.ethz.ch/serviceengine/files/ISN/39247/.../2005_Nov.pdf (Accessed July 2011), 9-11; Aybet, “NATO Conditionality in Bosnia and Herzegovina,” 26–27.

than the Federation’s, and a train and equip program substantially strengthened the Federation army. By the time of the defense reform, the RS army could not actually threaten the integrity of Bosnia, especially given the NATO security guarantee. Conscription still had an emotional and political significance among the Bosniak elites, and could be used for ethnic outbidding. With respect to informal networks, the veterans were a more important source of support for the Bosniak parties than the military, and since veterans had been provided for, the reform did not threaten informal networks.

For the Serbs, the main concern was the political impact of the reform rather than the existence of the RS military. Serb politicians, analysts, and international officials repeatedly emphasized in interviews that the political guarantees of Dayton, and the weakness of the RS army, made the army more of a financial burden than a political asset. While the Serb population did have some lingering political attachment to the RS military due its role in the war, the RS army was more important as a symbol than as a real tool for protecting RS autonomy. Consequently, the reform would only threaten Serb nationalist goals if it created a precedent that would change the balance between the entity and the central state, or if it eliminated the Serbian character of the entity and its military. As described below, the international administration avoided demands that posed such a threat. With respect to informal networks, military reform was not threatening because earlier international efforts had diminished elites’

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250 The Army of the Republic of Bosnia and Herzegovina (ARBiH) was the mainly Bosniak military during the war. The Serbs had an equipment advantage during the war, so Bosniak leaders believed they need to maintain a large manpower base if war returned. Interviews with international officials, Sarajevo, Summer 2008.
251 Interviews with international officials, Sarajevo, Fall 2009.
informal networks within the army, and Bosnian Serb elites were more concerned that factions in Serbia proper informally controlled elements of the RS military.\(^{253}\)

The international administration was unified about its demands. Ashdown closely coordinated the defense reform process with NATO and the key Western states. The US took leadership of the process by funding the effort and suggesting US Assistant Secretary of Defense James Locher chair the DRC. The EU and the rest of the international administration effectively delegated responsibility to the DRC.\(^{254}\) Ashdown declared early on that he would not use the Bonn powers to impose the agreement, which meant that the Bosnian politicians would have to pass the necessary legislation.

The theory therefore predicts that defense reform will be accepted by elites and implemented, due to the combination of unity and the lack of threat to nationalist goals or informal networks. The theory further expects that the key to successful implementation will be the flexibility of international demands to the political concerns of Serb and Bosniak officials. The account of the first and second Defence Reform Commissions largely bears out these predictions.

**First Defence Reform Commission**

The first stage of the defense reform process was formally launched in May 2003, with Ashdown’s decision creating the first Defence Reform Commission (DRC). The key initial

\(^{253}\) Louis-Alexandre Berg writes, “After the force resignation of the Serb member of the BiH Presidency, Mirko Sarovic, RS President Dragan Cavic delivered a dramatic speech to a special session of the RS National Assembly accusing senior army officers of greater loyalty to Belgrade than to Banja Luka, saying ‘it is time for the Serb Republic Army officers to realize that their fate is here in the Serb Republic.’” “Local Networks and the Limits of External Influence: Security Sector Reform in Liberia and Bosnia and Herzegovina,” Paper presented at the International Studies Association in San Diego, April 3 2012, 40. Interviews with SDS politicians and international officials, Summer 2008, 2009.

\(^{254}\) Ric Bainter, who was a legal counsel to the DRC, writes “The international members of the DRC presented a unified front in their insistence on meaningful defense reform.” See “The Elephant in the Room: Defense Reform in Bosnia and Herzegovina,” in *Deconstructing the Reconstruction: Human Rights and Rule of Law in Postwar Bosnia and Herzegovina* (Burlin: Ashgate, 2008), 254. Interviews with international and local officials, Summer 2008.
demands of the first DRC were to reform state and entity defense institutions to create central state command and control over the entity militaries.\textsuperscript{255} Other possible demands, such as the elimination of the entity militaries or the ethnic integration of the militaries, would have threatened nationalist goals and led to a less successful reform.

The initial debate within the commission focused on the legal basis for reform. Locher and other international officials claimed that the state, without the need for entity consent, had the right to take authority over defense since defense was “necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina.”\textsuperscript{256} Serb officials, concerned that defense reform would become a precedent for further unilateral transfer of entity authorities, insisted that the entity parliaments would have to vote on the DRC’s agreement before it could be adopted.

As the negotiations continued, local elites of all three ethnicities eventually accepted the creation of central state command and control, but sought to adjust the reform to pursue their ethnicity’s particular interests. Serb negotiators focused on ensuring continued symbolic recognition of the RS and the continued medium-term existence of the entity militaries. Croat officials sought to maintain an equal distribution of positions for the different ethnic groups in the new state military institutions. Bosniak officials opposed the end of conscription and sought to shift the entity militaries under state control as much as possible. Sulejman Tihic, the Bosniak member of the Presidency, at one point insisted that the reform eliminate the entity militaries. He

\textsuperscript{255} The High Representative’s decision also emphasized compliance with standards necessary to join the PfP, democratic oversight, interoperability, and reducing the size of the military. OHR, “Decision Establishing the Defense Reform Commission.”

\textsuperscript{256} Dayton Annex 4 Article III.5a; interviews with OHR officials. See also James Locher and Michael Donley, “Reforming Bosnia and Herzegovina’s Defense Institutions,” NATO Review (Winter 2004).
only backed down after being assured by the US and Turkey that defense reform would continue and that conscription would only be ended once the entity militaries were eliminated.257

By September 2003, the DRC came to an agreement that substantially fulfilled the initial demands258 while making some concessions to the various ethnic interests. The state presidency would have operational command over the entity militaries, through a new state Ministry of Defense, and the state parliament would have oversight. The entity militaries and ministries of defense would be preserved, and each of the entities would be responsible for “manning, training, and equipping” its military. Entity presidents would also retain the ability to use the entity military forces for short-term natural disasters and accidents within the entity borders.259 The report also required reducing the size of the entity militaries, which would substantially reduce their cost.260 Maintaining the existence of the entity militaries enabled Serbian politicians to claim that they were protecting the Serbian character of the military while simultaneously fulfilling international demands.

The legislation to implement the agreement was passed by December 2003. To protect their ability to subsequently decide which powers the state would assume, the Serb representatives used their veto to block progress at the state level until the RS had approved the relevant legislation.261 In November 2003, NATO issued fourteen benchmarks necessary for joining the PfP. By late 2004 Bosnian officials had implemented the DRC’s first report and the

257 These two countries are key allies for Bosniak politicians. Bainter, “The Elephant in the Room: Defense Reform in Bosnia and Herzegovina,” 248. Interviews with OHR officials, Fall 2009.
258 The state would take over ultimate “operational and administrative command and control of all armed forces of BiH.” Defense Reform Commission, “The Path to Partnership to Peace,” Sarajevo, September 2003, 8.
NATO benchmarks, with the exception of full cooperation with the ICTY. Failure to fully cooperate with the ICTY, especially the failure to capture Radovan Karadzic and Ratko Mladic, would lead NATO to not allow Bosnia’s entry into the PfP in 2004.

The Second DRC

In December 2004, Ashdown announced a new round of defense reform based on the “systemic” weaknesses in the RS security institutions. In addition to the problems with the ICTY, it had also been found that the RS Army had been secretly paying Mladic before 2003. Ashdown promulgated decisions removing a number of RS officials from office, creating a Police Reform Commission, and issuing a new mandate for the DRC.

The DRC’s new mandate explicated a new set of goals and demands for reform: the elimination of the entity militaries and their incorporation into a new unified state military. The goal of eliminating the entity militaries, while it had been in the minds of policy-makers, was not attempted during the first round of defense reform, and emerged only out of the process of the first DRC’s effort. The new goal of eliminating the entity militaries included several specific demands including strengthening of the state ministry of defense, eliminating the entity militaries and ministries of defense, and restructuring the military to be more compatible with NATO. Although the new goal was more ambitious, the threat to the parties remained limited. For the Serbs, so long as the elimination of the entity militaries did not become a precedent for further

262 Aybet, “NATO Conditionality in Bosnia and Herzegovina,” 27–8. Interview with OHR official, Sarajevo, Fall 2009.
263 See OHR, “Statement by the High Representative, Paddy Ashdown at today’s Press Conference,” December 16 2004; OHR, “We Must Now Turn NATO’s No into a Yes,” June 29, 2004. See also ICG, Bosnia’s Stalled Police Reform: No Progress, No EU (Sarajevo/Brussels, September 6, 2005), 2–4.
264 Note that paying Mladic a salary before 2003 did not specifically justify an additional defense reform, since the previous reform had ended the problem. See DRC, “AFBiH: A Single Military Force for the 21st Century,” Sarajevo, September 2005, 187-188.
265 Interview with international official, Sarajevo, Fall 2009.
shifting of entity authorities to the state, and the Serbian character of the military was somehow preserved, the demands would continue to not threaten Serb nationalist goals.

The second stage of the DRC’s negotiations also successfully achieved the international demands. Local participants had gained experience during the first stage of negotiations that enabled them to understand each other’s redlines. The negotiations therefore focused more on technical issues than on disputes about nationalism. With the elimination of the RS military, Bosniak officials agreed to end conscription, which would professionalize the military and make it more capable to participate in NATO operations.

The main point of controversy, however, was how to continue to recognize ethnicity within the new unified military. With international assistance, parties negotiated a substantial reorganization to create a unified military while recognizing the desire amongst the Serbs and Croats to retain the ethnic character of the military. The military would be organized into three brigades, three regiments, and nine battalions. The brigades were each composed of three battalions following the standard NATO structure. The regiments had no operational role and were instead intended to “maintain a military heritage and identity.” Effectively, the three regiments, corresponding to the three constituent peoples, preserved the ethnic character of the military. Each brigade was composed of one battalion from each of the three regiments to ensure integration and interoperability. While the regiments were generally associated with a particular ethnicity, there was no specific ethnic identification and individuals of any ethnicity could join any unit.

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267 Interviews with OHR officials, Sarajevo, Summer 2008, Fall 2009.
270 Interviews with international officials, Sarajevo, Fall 2009.
After the negotiation of each defense reform, the parliament passed the appropriate laws and the laws were largely implemented, though NATO membership was delayed pending further reform. Bosnia was admitted to PfP in 2006, and even deployed forces to Iraq in support of Operation Iraqi Freedom. In April 2010, Bosnia was granted a NATO Membership Action Plan (MAP), which will eventually bring Bosnia closer towards NATO membership, with the caveat that Bosnia could only begin the plan once defense property had been accounted for. Another benefit of defense reform was that since the military was partially integrated along ethnic lines, it would more be difficult for the military to play a major part in future war.

Conclusions and Alternative Explanations

Table 3.4: Defense Reform

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRC 1</td>
<td>State command and control</td>
<td>High</td>
<td>None</td>
<td>Success: General elite acceptance; Negotiated agreement establishing state control; Generally implemented agreement</td>
<td>Confirmed: Flexibility of demands avoids threatening nationalist goals</td>
</tr>
<tr>
<td>DRC 2</td>
<td>Elimination of entity militaries</td>
<td>High</td>
<td>None</td>
<td>Success: General elite acceptance; Negotiated agreement for complicated restructuring</td>
<td>Confirmed: Flexibility of demands enables military structure accommodating ethnic interests</td>
</tr>
<tr>
<td>Implementation</td>
<td>Elimination of entity militaries, join NATO</td>
<td>High</td>
<td>None</td>
<td>Success: Military reform largely implemented, but NATO requires progress on defense property</td>
<td>Confirmed</td>
</tr>
</tbody>
</table>

As predicted, defense reform was one of the most successful reforms in post-war Bosnia. The reform largely confirms the theory, as the major demands of the reform were all implemented. In particular, the specific objectives and compromises of the reform negotiations were

271 Interviews with OHR and NATO staff members July 30, 31, and August 1, 2008, Sarajevo.

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accomplished because the demands did not threaten nationalist goals and the international administration was unified.

There are two main alternative explanations for the success of defense reform in the literature—NATO conditionality and the nature of the personal interaction in the defense reform process. First, Gülner Aybet argues that NATO conditionality, especially the “clarity of NATO benchmarks,” had important advantages over EU-led reforms, such as the police restructuring effort described below. The clarity of NATO demands did encourage greater implementation, but the clarity of the demands was largely a function of the unity of the international administration. Furthermore, if NATO had made demands threatening nationalist goals, as the EU did in the case of police reform below, it is probable the Serbs would have opposed NATO accession in the same way they opposed police reform.

Second, analysts have made three arguments about how the specific context and individual interactions determined the outcome of the reform. Aybet highlights “the particular culture of the military profession,” and argues that the military professionals understood the demands and pushed reform more effectively than their civilian counterparts would have. A related argument was made by one participant, who claimed that senior officers may have preferred a smaller and more professional military that gained the respect of their regional and NATO colleagues over the existing entity militaries. Finally, Ric Bainter argues that Serb representatives had difficulty opposing reform because they were unable to point to another

273 Aybet, “NATO Conditionality in Bosnia and Herzegovina,” 23.
274 The ICG makes a related argument that the success of defense reform “stem[s] from NATO having a strong mandate to begin the reforms; NATO giving no hint it would leave before the job was finished; and the NATO inducement (at least the PfP portion) being far closer to hand than the promise of eventual EU membership.” “Ensuring Bosnia’s Future: A New International Engagement Strategy,” Europe Report Nº180, 15 February 2007, 15-17
276 Interviews with international officials, Sarajevo, Summer 2008 and Fall 2009.
country or model where two militaries existed.\textsuperscript{277} Contrary to these arguments, the behavior of Serb officials in police restructuring below demonstrates that Serb officials would have found a way to block defense reform if they believed it threatened RS autonomy, even at the cost of delaying NATO integration or risking embarrassment in front of other professionals. The absence of a threat to nationalist goals was necessary to enable greater inter-ethnic cooperation.

Two additional factors, which were not part of the theory also contributed to success. While it was not part of the initial strategy, the fact that the international community pursued defense reform in two stages was highly beneficial for gaining local acceptance. Furthermore, negotiations with local elites forced the international administration make significant modifications that ultimately benefited the achievement of international goals. For example, the international administration would not have initially suggested that the entities retain emergency powers in the first stage of the reform, nor would the international administration have demanded retaining recognition for ethnic groups in the form of the regimental system in the second stage. International flexibility thereby turned out to be essential for the success of the reform.

VI. Police Restructuring in Bosnia

The effort to restructure the police in Bosnia would prove to be one of the longest lasting and least successful reform efforts. OHR hoped to strengthen the central state by moving authority over policing away from the entities to the central state. Even though the EU made accession conditional on the completion of police restructuring, local elites blocked the reform during each stage, and forced the international community to eventually accept an effectively cosmetic reform. Police restructuring is particularly useful for testing the theory because of over the course of reform there was variation in international unity and the threat to nationalist goals and

\textsuperscript{277} Bainter, "The Elephant in the Room: Defense Reform in Bosnia and Herzegovina," 243–250.
informal networks. The ultimate failure of the restructuring also demonstrates the dangers of failed reform, including the development of a more radicalized party system and the delegitimation of the EU accession process and Bonn Powers.

I describe and evaluate the police restructuring effort in five sections. First, I describe the policing status quo in 2004, trace the origin of the international preference for police restructuring, and code the relevant variables. Second, I trace the efforts by the Police Restructuring Council during the tenure of Paddy Ashdown and explain its lack of success based on the threat to nationalist goals. Third, I discuss the police restructuring effort under Ashdown’s successor, Christian Schwarz-Schilling, who adopted a less interventionist approach, and under whose leadership the international administration lost its unity. Fourth, I discuss the failed effort by Miroslav Lajcak, Schwarz-Schilling’s replacement, to achieve police restructuring through the aggressive use of the Bonn powers. A final section concludes and explains in depth how the failure of police restructuring hurt political development in Bosnia.

Origins of Police Restructuring

The Dayton Agreement made policing the responsibility of the entities, and established an International Police Task Force (IPTF) to help improve the police. In the RS, a centralized and Serb-dominated police force was created. In the Federation, each canton had its own police force, which meant that most of the cantons had mono-ethnic police forces, though a few had ethnically divided and contentious police forces. The IPTF had a weak mandate, but did ease the transition from the wartime paramilitary police to a more democratic police. Their activities included training large numbers of police, vetting the police force, and reducing the overall size of the entity police forces. Still, at the completion of the IPTF mandate, observers argued that
Bosnia’s police force remained ethnically divided, controlled by political interests, and failed to arrest war criminals.\textsuperscript{278}

While police restructuring developed out of Ashdown’s tenure as High Representative, it was not part of his initial plan. While Ashdown did focus on the rule of law, his initial ideas about police reform focused more on improving the quality of the police rather than changing its organization. By 2004, however, Ashdown set into motion an ambitious effort to shift policing away from the entities to the state. The motivation for the restructuring is somewhat contested. Ashdown and the European Union officially noted the continuing freedom for ICTY indictees and the high politicization of policing. However, many analysts claim, and as Ashdown to some extent admits in his memoir, OHR was pursuing the highly integrative and contentious goal of weakening the autonomy of the RS. The success of defense reform and other earlier efforts offered some evidence that a more aggressive challenge of the entities, in a highly politicized issue area such as police, was likely to succeed.\textsuperscript{279}

The international community’s preferences for the police restructuring were the transfer of policing competency to the state level and the simultaneous weakening of the RS.\textsuperscript{280} International unity for achieving these preferences was initially high. Ashdown had dramatically improved the coordination between the different international organizations, both because of his experience as a British politician and his contacts with the leaders of other organizations.


\textsuperscript{280} OHR publically argued that this was not the case in “5 Common Misconceptions about Police Restructuring” (Available at http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/default.asp?content_id=34263_: “MYTH ONE: Police restructuring is a step towards abolishing the Entities. Fact: No it isn’t. Police re-structuring is only about establishing a professional police service and will not abolish the Entities. There is no plan to abolish the Entities.” In private, international officials claim “the entity’s key institutions would be either abolished or divested of all meaningful powers and Republika Srpska would end up an empty shell.” Loza, “Police Reform Held Hostage,” Transitions Online, March 2, 2007.
Coordination between OHR and the EU was particularly good not only because Ashdown was dual-hatted as the EU Special Representative, but also because of his good relationship with European Commissioner for External Relations Chris Patten. 281

The preferences were explicated into demands in the form of three conditions: “i) All legislative and budgetary competencies vested at the State level; ii) no political interference with operational policing; iii) functional local police areas determined by technocratic policing criteria.” 282 The condition about functional local police areas was interpreted by the international administration to mean that police boundaries could no longer be coterminous with the inter-entity boundary line (IEBL). Moving budgetary and legislative competencies to the state level would further diminish entity control. Based on the requirement for police reform in the 2003 EU Feasibility Study, the European Commission made these three conditions requirements for Bosnia’s progress with EU accession. 283

However, these demands threatened the autonomy of the RS and hence the Serbs’ nationalist goals. Unlike the military, control of the police within the RS was viewed as a critical to the entity’s autonomy. The importance of police in the minds of Serbs derived in part from the greater role of the police and paramilitaries during the war. There was fear that non-Serb police might abuse their position and discriminate against the Serb citizens of the RS. Hence, the existence of RS police and Serb control over the police within the RS territory was essential for the autonomy of the RS. The demand for cross-entity boundaries was therefore particularly threatening, since it would weaken Serb control over the territory of the RS. The international demand for cross-entity boundaries is also an excellent example of how “technical” demands by

283 Letter from Olli Rehn to Adnan Terzic, October 6, 2005.
the international community may in fact seek to achieve political goals. Any party that accepted cross-entity boundaries, or that the state or other ethnicities would take over the RS police, would be seen as a weak protector of Serb national interests and would be vulnerable in the next election. Furthermore, as in the case of military reform, Serb politicians were concerned about the precedent of transferring entity authorities to the state level.

Even if the threat to nationalist goals were avoided, the police reform would continue to threaten Serb politicians’ informal networks. Policing was highly politicized, which enabled politicians to use the police as a tool to attack their opponents and protect their allies. Some Serb politicians were also corrupt, and used their position to distribute state resources to supporters. Maintaining entity control over the police would thereby become essential for these politicians to protect themselves from prosecution. 284

For the Bosniaks, demands for moving policing to the state and weakening the entities accorded with nationalist goals. A potential threat of insufficient reform did exist, however. The RS police was a particularly despised organization among Bosniaks, especially after the International Court of Justice ruling in February 2007 that the RS was a genocidal organization. While the continued existence of the RS police did not in itself interfere with the key Bosniak goals of unifying the state, Bosniak politicians would be able to use the existence of the RS police to inflame ethnic tensions and speak against the reform, even if they could not count on widespread public protest. As Bosniak politicians’ informal networks were not as closely tied with their illicit control of state resources, the restructuring of policing would not threaten their informal networks.

284 Interviews with international officials, Fall 2009, Summer 2011; Ashdown, Swords and Ploughshares, 294–5. Allegations of corruption, and of using control over the RS police to prevent prosecution, were particularly prominent in the case of Milorad Dodik. See, for example, Dan Bilefsky, “Bosnian Serb Leader Accused of Corruption,” New York Times, 24 February 2009.
The theory therefore predicts that Serb officials would block police restructuring in the initial stage. So long as the demands remained strong, Bosniak support should be expected, but weakened demands that legitimize the RS police are likely to provoke ethnic outbidding and opposition to police reform by Bosniak parties.

_Ashdown and the PRC Process_

The official reform process was launched with the creation of the Police Reform Commission (PRC). The PRC was included as part of the attempt in December 2004 to strengthen the rule of law following Bosnia’s inability to capture various individuals indicted by the ICTY. The PRC’s mandate was to develop proposals for “a single structure for policing in Bosnia and Herzegovina under the overall political oversight” of the state, and Wilfred Martens, a former Prime Minister of Belgium, was appointed as chairman.

The greatest contention within the PRC was whether or not the boundaries of police districts should cross the IEBL. Senior international officials took the position that the reform required boundaries crossing the IEBL by focusing on technical criteria such as population, size, and traffic patterns. While some Serb officials may have acknowledged that these boundaries would be more technically efficient, they argued that unlike in the case of military reform, there were few examples of countries where political and police boundaries were different. The Serb parties maintained a unified front that policing should not cross the entity boundary line, and the Martens Commission could not achieve consensus.

Martens nevertheless issued a report of the PRC’s work, which offered several options for the new structure of policing, with the options specifying various ways for the policing

285 Serb politicians emphasize that Ashdown mainly used this as an excuse, as the RS was in full compliance with ICTY investigations and few inductees turned out to be in the RS. Interview with SDS official, Banja Luka, Fall 2009.

286 Martens was believed to be a particularly good choice because of Belgium’s ethnically divided institutional setup. See Muchlmann, “Police Restructuring in Bosnia-Herzegovina,” 42.

regions to cross the IEBL. The international efforts to encourage Serb agreement continued, with a large public campaign and pressure from the EU insisting that Bosnia would be left behind if it failed to accept the EU conditions. OHR also attacked the SDS by removing its members and freezing of its funds for failure to help arrest war criminals.\(^{288}\) Negotiations continued throughout 2005, moving from Mount Vlasic to Sarajevo to Banja Luka. At times, the SDS seemed willing to bend to international pressure and accelerate EU accession. However, Serb politicians were obliged by the repeated votes by the RSNA to oppose any agreement that specified that police regions cross the entity boundary line or that required amendments to the RS constitution.\(^{289}\) Ashdown could not impose the demands since he had already stated that he would impose any requirements for EU accession. Some observers do note that Ashdown’s ability to compel the Serbs to agree may have been limited by the Serbs’ increasing cooperation on the ICTY.\(^{290}\)

Dragan Cavic, the leader of the SDS, eventually pushed an agreement through the RSNA in October 5, 2005 to move the police reform forward and thereby progress with the EU Stabilization and Association Process (SAP). The agreement formally accepted the international demands, but did not specify how the demands would be implemented. The agreement did not state that new policing boundaries should cross the IEBL and sought to avoid having the police reform taken as precedent for other reforms. The agreement’s lack of specificity meant that it did not threaten Serb nationalist goals.\(^{291}\)

The international administration accepted the agreement even though it did not fully implement international demands. Thomas Muehlman argues that the international

\(^{288}\) Anes Alic, “For Love of Karadzic,” Transitions Online, 6 July 2004; Interviews with international and SDS officials, Sarajevo and Banja Luka, Fall 2009.

\(^{289}\) Muehlmann, “Police Restructuring in Bosnia-Herzegovina,” 46–49.

\(^{290}\) Interview with OHR and SDS officials, Sarajevo and Banja Luka, Fall 2009.

administration accepted the agreement because Serb opposition risked the entire EU accession process in Bosnia. If the Serb elites rejected the EU to keep the RS police, and the Serb elites had public support for their actions, it would imply that EU demands were not legitimate and would question the entire EU integration effort in the whole region.\textsuperscript{292} Serb refusal thereby forced the hand of even a unified international administration, which also demonstrates how the threat to nationalist goals outweighs international unity.

Ashdown’s tenure as High Representative finished with the creation of the new commission, the Police Reform Directorate (PRD), which would continue negotiations about police restructuring and continue to try to implement the international community’s preferences.\textsuperscript{293} While the PRD’s mandate was vague, the potential for strong reform remained.

\textit{Police Reform under Schwarz-Schilling: A Return to Local Ownership?}

Over the course of 2006 and 2007 police restructuring negotiations continued. However, international unity decreased, which enabled elites to implement weaker demands. Christian Schwarz-Schilling replaced Ashdown as High Representative. While Ashdown pursued an aggressively interventionist strategy and closely coordinated the various organizations comprising the international administration, Schwarz-Schilling was avowedly anti-interventionist.\textsuperscript{294} The EU instructed Schwarz-Schilling to finish the police reform process, but the European Commission was no longer fully behind the demands. The Commission began to recognize that there was little precedent for policing boundaries crossing political boundaries in the rest of Europe, and hints of disunity began to appear in meetings with local officials. Greater

\textsuperscript{292} Muehlmann, “Police Restructuring in Bosnia-Herzegovina,” 49–61.
disunity was therefore the product of Schwarz-Schilling’s different ideology, his failure to command a consensus among the different organizations in Bosnia, and the change in the European Commission’s perspective.295

On the local side, two parties took over in the 2006 elections that were less willing to compromise about police reform.296 On the Serb side, Milorad Dodik (SNSD) took over leadership of the RS from Dragan Cavic (SDS). The fall of SDS was accelerated by the perceptions of corruption and strong international sanctions, as well as by perceptions that Cavic had given away too much on police reform in his negotiations with Ashdown.297 On the Bosniak side, Haris Silajdžic (SBiH) took over from Adnan Terzic (SDA). Silajdžic was far more inclined than Terzic to make greater demands for stronger reform and the elimination of the RS police.298

While the PRD met and produced a report in late 2006, Serb parties boycotted the PRD negotiation process and had little confidence in the group’s report.299 The international demands effectively weakened during this period, since the international administration no longer insisted that the restructuring include policing districts that crossed the IEBL. This shift in demands substantially weakened the threat to Serb nationalist goals.

In March 2007, Dodik made a one-day temporary offer to fulfill the rest of the demands and accelerate EU accession. Dodik’s offer would put control of the RS police under the state level, while maintaining some level of RS influence through the appointment of Serb officials to

295 Muehlman cites the origins of disunity to the end of Ashdown’s tenure, but according to my interviews the public disagreement became much more problematic from the beginning of Schwarz-Schilling’s tenure. The Commission’s hesitation was apparently in part based on hesitation about the European Council (via the EUSR (whose office was dual hated as High Representative) dominating accession policy. Muehlmann, “Police Restructuring in Bosnia-Herzegovina,” 60–61. Interviews with OHR and EUPM officials, Sarajevo, Summer 2008 and Fall 2009.

296 See also the description of these parties in the account of the April 2006 Constitutional Reform below.


298 ICG, “Ensuring Bosnia’s Future,” 19-20; TOL “Shades of Yugoslavia” and “Bosnian Serb Leader on Top”; Interviews with analysts, international officials, and SBiH and SDS officials, Sarajevo and Banja Luka, Summer 2008 and Fall 2009.

299 Interview with senior EUPM and OHR officials, Summer 2008 and Fall 2009.
the state policing agency. Silajdžić rejected the offer, apparently because the RS police would retain their name, and which would mean that the reform would recognize the continued existence of a genocidal organization. Schwarz-Schilling and other international leaders did not pressure the two leaders to come to a deal, and from the perception of participants no senior international official had leadership over the international reform effort. Dodik’s willingness to come to an offer was in part based on the perception that the international administration was unified and strong. The incident would lead Dodik to question the strength of the international administration and would diminish his willingness to compromise in future negotiations.300

_Police Reform Under Lajcak: An Aggressive Approach Ends in Failure_

In July 2007, Slovak diplomat Miroslav Lajcak replaced Schwarz-Schilling as High Representative. Lajcak argued that Bosnia was at a “standstill”301 and urged the local parties to address the main existing obstacle to EU integration – police reform. With the PIC’s support, Lajcak also adopted a more interventionist approach than his predecessor. To put pressure on the parties, Lajcak set a deadline of September 30 for approving his draft on police reform. Negotiations in September and October between the local parties failed to arrive at a compromise. While the SDA accepted Lajcak’s draft, Slijdžić and Dodik continued to reject it, even after Lajcak extended the deadline.302

Lajcak then began a “shock and awe” or “step-change” approach to convince the parties to comply, which ended up backfiring. Lajcak instructed the parliament to amend the rules of the state government, and stated that he would continue to impose new measures until the parties

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300 There are a variety of theories about Dodik’s offer. Some claim that Silajdžić apparently ignored the fact that the offer specified that the name of the police could be changed later, while others claim that the offer was never meant seriously, especially given the one day time interval. Interviews with senior OHR and EUPM officials, Sarajevo, Summer 2008 and Fall 2009.
began to cooperate.\textsuperscript{303} In response, Serb officials boycotted state institutions, and a standoff between OHR and the RS officials developed. International unity for imposing the demands, however, was weak. The US was engaged in Kosovo’s upcoming declaration of independence, while the EU increasingly sought to avoid controversy about police reform. OHR also soon realized that it did not have the military force to impose its decision if the RS continued to resist. In December, OHR backed down, and negotiated a compromise about the new parliamentary rules.\textsuperscript{304}

After OHR backed down from its “shock and awe” campaign, it accepted highly watered down reform that made only cosmetic changes, as specified by the Mostar Declaration of October 2008.\textsuperscript{305} The declaration specified that police would be brought under state control, but only after constitutional reform. Constitutional reform was unsuccessful in 2006, and it remained unlikely afterwards. This meant that the Mostar Declaration was largely meaningless with respect to OHR’s original demands for police reform. Despite the weakness of this agreement, the EU agreed that it met the standards for police restructuring, and Bosnia soon signed the SAA.

\textbf{Conclusions}

Police restructuring largely confirms the theory’s predictions. The various stages of the reform are good test for the theory because the reform involved several combinations of international unity and threats to nationalist goals or informal networks. Under Ashdown, there was international unity and a threat to nationalist goals, which led to no implementation but no

\textsuperscript{304} Interview with former OHR official, Summer 2011. See also ICG, “Bosnia’s Incomplete Transition: Between Dayton and Europe,” Europe Report No.198, March 9, 2009, 12-14; Philippe Leroux-Martin, Diplomatic Counter-Insurgency forthcoming.
\textsuperscript{305} The Declaration is available at http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-key-doc/default.asp?content_id=40748
weakening of the reform. Under Schwarz-Schilling, unity decreased, and with the subsequent weakening of the reform the threat to nationalist goals decreased as well. Threats to the informal networks remained, however, and Bosniak officials began to reject compromises. The result was weakened reform and no implementation. Under Lajcak, international unity remained low and the reform weakened further after the shock and awe campaign. The cosmetic changes in the Mostar Declaration did not threaten nationalist goals or informal networks and were necessary for the EU to save face, which led to the completion of the reform.

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRC &amp; Post PRC negotiations</td>
<td>Move policing to state, boundary cross IEBL</td>
<td>High (Ashdown)</td>
<td>Serb nationalist goals</td>
<td>Failure: Serbs oppose reform; International maintain strong demands; No implementation</td>
<td>Confirmed: Serbs oppose police reform because of nationalist goals despite EU conditionality</td>
</tr>
<tr>
<td>PRD</td>
<td>Move policing to state level</td>
<td>Low (Schwarz-Schilling)</td>
<td>Serb informal networks &amp; Bosniak outbidding</td>
<td>Failure: Elites accept principal of police reform but cannot agree on specifics</td>
<td>Confirmed: International disunity enables elites to block reform despite decreased threat</td>
</tr>
<tr>
<td>Lajcak shock and awe</td>
<td>Move policing to state level</td>
<td>Low (Lajcak)</td>
<td>Serb informal networks &amp; Bosniak outbidding</td>
<td>Failure: OHR tries to impose reforms; Dodik forces OHR to weaken demands</td>
<td>Confirmed: Theory expects failure of Lajcak’s imposition</td>
</tr>
<tr>
<td>Mostar Agreement</td>
<td>Implement cosmetic agreement</td>
<td>Low</td>
<td>Low</td>
<td>Partial Success: Mostar Agreement signed, EU accepts</td>
<td>Confirmed</td>
</tr>
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Police restructuring in Bosnia is also a counterexample for each of the alternative explanations for institutional reform specified in the theory chapter. First, police restructuring

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306 This argument is also made by Muehlman. See “Police Restructuring in Bosnia-Herzegovina.”

307 Raffi Gregorian explains, “it now seems clear that neither man wanted to give up the control of police they currently exercise through their parties’ participation in government.” See Gregorian, “Testimony to Helsinki Commission.” Available at http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewWitness&ContentRecord_id=893&ContentType=D&ContentRecordType=D&ParentType=H&CFID=18849146&CFTOKEN=53
demonstrates the limits of international authority to compel reform. Neither the Bonn Powers, nor OHR's attack on the SDS, convinced the Serb parties to cooperate, because the reform threatened nationalist goals. Second, police restructuring represents the best counterexample for the effectiveness of EU conditionality. Dodik, for example, stated that he would block restructuring "even if that means giving up the SAA negotiations,"\(^{308}\) which is specifically contrary to the prediction that EU conditionality should lead to compliance by local elites. Third, so-called moderate parties such as SNSD and SBiH were even less inclined to accept the reform than their wartime competitors.

Finally, police restructuring demonstrates three negative consequences of failed reform. First, the failure of police reform delayed EU accession and thereby hurt Bosnia's economic and political development. Second, the reform discredited the international community and diminished the possibility for future reforms. For the EU, the police restructuring process made clear that the EU would back down on reforms that it had previous said were conditional for accession. For OHR, the reform discredited the Bonn Powers. In the course of the shock and awe campaign, Lajcak was forced to negotiate with Dodik about the enforcement of the High Representative's demands.\(^{309}\) Third, police restructuring is closely connected with the rise of the uncooperative and entrenched local elites, Dodik and Silajdžić. The unwillingness of Schwarz-Schilling to compel an agreement in 2007 helped both of them recognize that they could gain local political support by opposing the international agenda and that the international community had no tools to force them to compromise.\(^{310}\) The police restructuring reform thereby

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\(^{308}\) ICG, "Ensuring Bosnia's Future," 19.

\(^{309}\) ICG, "Bosnia's Incomplete Transition," 13; Interview with international official, 2011.

\(^{310}\) On the dynamic between Dodik and Silajdžić see especially Thomir Loza, "Cardboard Nationalists," Transitions Online, September 23, 2010, Tihomir Loza and Christophe Solioz, The Two-Step Program, 22 October 2009, Transitions Online, and other articles in the same publication.
demonstrates how less ambitious earlier demands would have had a more positive long-term effect on political development in Bosnia.

**VII. Indirect Tax Administration (ITA) and Value Added Tax (VAT) Reform**

The ITA/VAT tax reform, which Ashdown believed to be “our biggest reform,” created a single rate, country-wide added value tax, and a state-controlled indirect tax administration. The tax reform is also an example of a fundamentally different type of political interaction, in which the local political elites cooperated to achieve mutual aims instead of competing over zero-sum nationalist goals. Indeed, the reform dramatically increased government revenue both for the state and the entities. However, after the creation of the tax, RS politicians began to threaten to block implementation as they recognized that further progress would diminish the RS’s share of revenues.

I describe the reform in four sections. First, I discuss the status quo of the tax system prior to the reform, the origins of the reform, and the potential for a threat to nationalist goals and informal networks. Second, I discuss the negotiations about the creation of the VAT Commission and the Commission’s work. Third, I discuss the passage of the VAT and ITA legislation, and the implementation of the reform. A fourth section concludes.

*The Origins of the Reform*

Prior to the reform, Bosnia’s tax system hindered economic and political development. According to the Dayton Agreement, the state government was dependent entirely on contributions from the entities – two-thirds from the Federation and one-third from the RS. Differences between the entity tax systems also led to a geographically divided economic

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space. Furthermore, high tax rates and low collection rates encouraged the creation of large grey sector economy. While a series of internationally sponsored technical assistance projects did increase tax collection, many believed that the country’s economic situation could only be improved by a fundamental change to the tax system. 313

Ashdown proposed just such a change after his arrival in Bosnia, as part of the broader “Jobs and Justice” campaign. Ashdown argued that the high tax rates and lack of a single economic space was a drain on Bosnia’s economic growth, and he included tax reform in his first Mission Implementation Plan. 314 The international community’s goal for the reform, therefore, was to create a country-wide VAT that was administered at the state level. 315 OHR pursued this goal by making two key demands: the creation of an Indirect Tax Administration at the central state level and the creation of EU-compatible VAT with a single rate.

The international administration was unified about these demands, in large part due to Ashdown’s close coordination with European Commissioner Chris Patten. The goals for the VAT were included in the 2003 EU Feasibility Study, which meant that EU accession was explicitly conditioned on tax reform. A division of labor between the US Treasury, who would work on direct taxation, and the EU CAFAO 316 team, who worked on indirect taxation, avoided further disagreements. 317

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316 Customs and Fiscal Assistance Offices
317 Interviews with current and former OHR, IMF, EU CAFAO, and ITA officials, Sarajevo and Banja Luka, Fall 2009.
These demands did not threaten the nationalist goals or informal networks of the Bosniaks or Serbs. For the Serbs, the potential threat was that the RS would become reliant on the state for its budget instead of state being reliant on the RS. However, as one Serb politician explained, the entities retained direct taxation authority, and the indirect tax reform would provide additional revenues that would strengthen the entities. The Bosniaks supported the reform, as it would strengthen the state and thereby achieve nationalist goals. With regard to informal networks, the reform might have hurt politically connected grey-sector businesses on both sides. However, the benefit of increasing government spending outweighed this risk, since incumbents could use the increase in spending to support other informal networks. Unlike other reforms, the VAT reform meant increasing the size of the pie, rather than arguing over the how the pie was divided.

The theory therefore predicts, given international unity and no threat to nationalist goals or informal networks, that the demands should be accepted and fully implemented.

*The VAT Commission*

After Ashdown’s arrival in Bosnia, negotiations began between various international and local actors about the basic framework of state-level indirect taxation. OHR eventually established consensus, though there were some initial disagreements from both international and local actors. On the international side, the US Treasury Department, and later the IMF, argued that two entity-based tax systems were sustainable. Unity about the demand for a single state-wide tax was eventually achieved in part due to EU financing for the reform and the resulting delegation of leadership to EU CAFAO. On the local side, additional opposition came from Mladen Ivanić, who “knew there would be political advantage in outflanking the Serb nationalist SDS Party by

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318 Interview with Dragan Cavic, Banja Luka, Fall 2009.
319 The pie metaphor was offered by an international official. Interviews with leaders of several political parties, OHR officials, local analysts, Summer 2008, Fall 2009.
opposing VAT.” Ashdown could not successfully argue that the international demands threatened nationalist goals, so he sought to claim that international demands for tax reform were excessive. Ashdown “arranged for the Bosnian Muslims to attack me viciously for having given too much to the Serbs in the negotiations – and then went ahead as planned,” thereby circumventing Ivanic’s objections. Ashdown also stated that he would not impose the tax reform, since the demands were conditional for EU accession.

After achieving local agreement for the reform, Ashdown issued a decision creating the Indirect Tax Policy Commission (ITPC). The Commission’s work was largely technical, as the decision contained the basic framework for what the indirect tax system would become. The decision called for the creation of a “single State-wide value added tax” administered by a state-controlled indirect tax administration (ITA). Revenues would be placed in a “single account.” From the single account, the state budget would be paid first, then the state’s debt payments, then the ITA’s costs, then the Brcko district, and only after that would funds be distributed to the entities based on the amount of final consumption – and hence taxes paid – in each entity. Two laws were presented to the Bosnian parliament over 2003 and 2004, and were adopted, which achieved the international demands.

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320 Ashdown, Swords and Ploughshares, 268.
321 Ibid.
323 The first was the Law on Indirect Taxation System, which passed the parliament on December 29, 2003, and created the Indirect Tax Administration (ITA) and based in the RS capital Banja Luka. The second was the Law on VAT, which established a country-wide 17% added value tax. Many European countries have multiple tax rates for different types of goods, but Ashdown had insisted on a single tax rate for all goods and services in Bosnia, and European Commission supported this interpretation. The fear was that allowing any exemptions for goods such as medicine or books would lead to a slippery slope where a variety of societal actors would demand further exemptions. See Anes Alić, “A Tax Reform for Bosnia,” Balkan Reconstruction Report, no. 01/12 (2004). Rajko Tomas, “Bosnia: Percentage Game,” Transitions Online, no. 01/11 (2005).
Implementing the Indirect Tax Reform

Implementation of the laws on the VAT and ITA was a partial success, since the ITA and VAT were quickly established, but distribution of revenues became contested. By 2007, the ITA was successfully established, and sales tax/VAT revenue jumped from 10.8% of GDP in 2005 to 14.2% in 2006 and 13.4% in 2007. The increase in revenue helped finance a variety of state and entity institutions and activities.

In 2006, however, RS politicians began to realize that further implementing the agreement might lead to a loss of revenue for the RS. The distribution of VAT revenues to the entities was supposed to be based on the proportion of final consumption in each entity as determined through a technical process. Whenever the coefficients changed in favor of, for example, the Federation, the RS’s share of revenue would diminish. However, for the distribution to fund to the entities to go forward, the ITA Governing Board needed to approve the coefficients on a quarterly basis. RS members of the Board recognized that they could threaten to refuse to accept the coefficients and block distribution of the tax revenues. The result of these incentives was that the Governing Board agreed only to temporary coefficients from 2006 to 2008, and there continued to be fears that the allocation of the revenues would be frozen.

At the same time, RS officials became more aware that for two reasons, any increase in the state budget would decrease their own share of tax revenues. First, the state budget was paid out of the single account first, so the amount remaining for the entities would decrease the larger the state budget became. Second, most state consumption happened in the Federation, so the RS’s share of final consumption would decrease as the state took over greater authority. Consequently, following the tax reform, RS officials had a financial reason to oppose moving

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325 Interviews with international and local officials, Sarajevo and Banja Luka, Fall 2009.
authority to the state, in addition to the need to protect the RS’s autonomy as a nationalist goal.\textsuperscript{326}

Conclusions

Table 3.6: VAT/ITA Reform

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<tr>
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<tbody>
<tr>
<td>Pre-ITA Commission</td>
<td>Country-wide single-rate VAT; State administration of indirect taxation</td>
<td>High</td>
<td>Low</td>
<td>Success: Elite acceptance of demands except for PDP; Elites negotiate agreement and pass law establishing state ITA and single VAT</td>
<td>Confirmed: International unity forces implementation of demands; expansion of pie ensures elite agreement</td>
</tr>
<tr>
<td>ITA implementation 1</td>
<td>Country-wide single-rate VAT; State administration of indirect taxation</td>
<td>High</td>
<td>Low</td>
<td>Success: ITA created; VAT dramatically raises revenues</td>
<td>Confirmed: Unity and low threat lead to implementation</td>
</tr>
<tr>
<td>ITA implementation 2</td>
<td>Country-wide single-rate VAT; State administration of indirect taxation</td>
<td>High</td>
<td>Low</td>
<td>Partial Success: Serbs recognize that specific structure of ITA can reduce their revenues, threaten to obstruct, but otherwise implemented</td>
<td>Partially Confirmed: Unexpected failure of international administration to anticipate Serb incentives to obstruct</td>
</tr>
</tbody>
</table>

The indirect tax reform is often cited with defense reform as two of the most successful reform efforts in Bosnia. The international community met its goal of establishing a state-wide VAT administered by an institution at the state level. The state found a secure source of funding and the entities’ revenue substantially increased. Bosnia met the EU’s standards for taxation, and EU conditionality helped accelerate state building. For the theory, the reform indicates the importance of international unity and the possibility of ambitious reform in Bosnia. When compared with defense reform, tax reform also indicates that reform can succeed when the EU, rather than US, is in the lead.

\textsuperscript{326} Interviews with international and local officials, Sarajevo and Banja Luka, Fall 2009.
Two issues, however, are remarkable. First, the EU insisted on a single tax rate, while many European countries have multiple tax rates. Few local officials were knowledgeable about taxation, which made it easier for the EU to insist on such a condition. Second, the difficulties related to the distribution of revenues to the entities are also telling. My interviewees claim that the reform was completed with such speed that the international community did not fully realize that the tax system would establish a conflictual fiscal relationship between the entities.  

VIII. April 2006 Constitutional Reform

Ten years after the Dayton Agreement, the international administration turned its attention to addressing the inefficiencies if the central state. Their attempt, in April 2006, to make the state more functional by amending the Dayton constitution failed. Disagreements within the international administration about the importance of the reform effort made it easier for local elites to oppose the reform. Bosniak and Croat parties engaged in ethnic outbidding, despite relatively unthreatening international demands, and blocked the reform. The failure of constitutional reform therefore largely confirms the theory. The result of the failed reform was the continuing inefficiency of the Bosnian state, the delegitimation of the international community, and the continued polarization of ethnic politics.

I describe this reform in four sections. First, I explain the origin of the reform and code the key variables. Second, I describe the negotiation of the reform. Third, I discuss the failure of the reform in the central state parliament. A fourth section concludes.

327 Interviews with international officials, Sarajevo, Fall 2009.
328 I summarize the negotiations since much of the detail is well described in the secondary literature. See in particular the papers cited below by Don Hays, Bruce Hitchner, and Sofia Sebastian.
The international administration began the 2006 constitutional reform based on ongoing observations about the inefficiency of the state government in Bosnia. A report by the Venice Commission identified two main problems. First, in the state executive and legislative process, ethnic elites had “too many possibilities of blocking the taking of any decision.” For example, Serb politicians could block the state institutions through the vital national interest veto, the entity veto, the House of Peoples, and the Serb member of the Presidency. Second, in violation of the European Convention on Human Rights, certain political offices were not open to all citizens. In particular, Others—defined as people from none of the three main ethnic groups—were excluded from the state House of Peoples and state presidency. Addressing these two problems, making the state more efficient and enabling individuals of any ethnicity to be elected to any office, became the goals of the reform effort. These goals were posed as international demands during negotiations in April 2005.

The unity associated with these demands was low, because of disagreements about the content, advisability, and importance of the reform. As Sofia Sebastian explains in depth, the EU was deeply divided about the constitutional reform. Key actors, such as former High Representative Ashdown and Javier Solana, believed constitutional reform was unwise.331 While the US favored an aggressive internationally-led approach, many in the EU favored a more

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329 Don Hays and Jason Crosby, “From Dayton to Brussels: Constitutional Preparations for Bosnia’s EU Accession” USIP Special Report 175, October 2006, 3-4.
331 Sebastian quotes Solana and explains “I do not think it would be good time to open Dayton again at this moment...I very much hope that as time goes by you will have the discipline and the energy to do this alone, without the need for pressure and impulse from the international community. Sofia Sebastian, “The Role of the EU in the Reform of Dayton in Bosnia-Herzegovina,” Ethnopolitics 8, no. 3 (2009): 343–4, 348–50.
locally owned approach, since they believed that it was inappropriate to make demands about Bosnia's constitutional development. The EU was also ambiguous as to whether the reform was required for EU accession. Finally, during Schwarz-Schilling's tenure as High Representative, coordination with the international administration weakened. Indeed, Schwarz-Schilling created an alternative group to work on constitutional reform that did not coordinate with the main international effort, and he apparently even fell asleep in Parliament while the reform was being debated.

The goals of the reform — making the state more efficient and enabling individuals of any ethnicity to be elected — threatened neither the nationalist goals nor the informal networks of the Bosniaks, Croats or the Serbs. However, particular parties did use the apparent threat of the demands to engage in nationalist outbidding. For the Serbs, the greatest threat was the elimination of the entity veto, which they believed was necessary to prevent the state from attacking the RS autonomy and other Serb interests. So long as the entity veto was not part of the package, the autonomy of the RS would be protected. For the Croats, the demands did not affect Croat nationalist goals of ruling Croat majority areas or Croat representation in the state. Instead, the reform was politically salient among Croats since it legitimized the RS and reminded Croats of their desire for their own entity. For most Bosniak parties, so long as constitutional reform strengthened the state and was expected to continue, the reform accorded with nationalist goals. For SBiH, however, the International Court of Justice's decision that the RS military was guilty of genocide altered the potential threat of international demands. SBiH argued that any reform that legitimized the RS was unacceptable, thereby engaging in nationalist outbidding even on

332 Ibid., 347–8.  
333 Interview with international official, Sarajevo, Summer 2008. On Schwarz-Schilling falling asleep in meetings, see also ICG, "Ensuring Bosnia’s Future," 7.  
334 The entity veto was the requirement for a majority of representatives from the RS to pass legislation in the state House of Representatives.
demands that were not objectively threatening. Informal networks were not a concern for any of the parties, since the measure was entirely a legal and constitutional matter.

Since the unity was low and there was no threat to nationalist goals or informal networks, the theory expects the reform to be partially implemented. However, the ability of Bosniak and Croat parties to engage in ethnic outbidding on these issues was more extensive than the theory would predict and led to the failure of the reform.

**Negotiations**

Negotiations began in early 2005 and were led by former Principal Deputy High Representative Don Hays and a US-based NGO, the Dayton Project. Representatives of the major parties met in Washington, DC to try and develop a draft to meet the reform goals. Leaders of the different ethnic groups predictability argued for their preferred institutions, as Sofia Sebastian explains: “Bosniak leaders, for example, asked for the establishment of a majority-based government, a parliament with no entity voting and the abolition of the entities... Serb parties [sought] a rotating collective Presidency, the maintenance of entity voting and no change to the status of the RS... Croats showed a great deal of ambivalence, [though] there were voices in favor of a third entity or a three-tier structure for all levels of authority.”335 By December 2005 the negotiations were close to failure.

At this point, the US Embassy in Sarajevo took over leadership of the project, and shifted to bilateral meetings rather than multilateral discussions. The US, EU member states, and various NGOs tried to pressure the parties, and by March 2006 an agreement was reached. The key elements of the agreement were that the Presidency would be elected by the state House of Representatives rather than directly, the House of Representatives would be doubled in size and would have nominating authority for the House of Peoples, and the areas of competency for the

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state would be expanded to include, among others, the requirements for European integration. By shifting nominating power for the Presidency and House of Peoples to the House of Representatives, the agreement would enable individuals of any ethnicity to be elected to any position. However, in practice the parties would continue to elect members of their respective ethnicities to the positions. By enabling the state to fulfill the requirements for EU accession, the agreement addressed the failure to adopt the legislation necessary for EU accession, even as the agreement failed to address the overall inefficiency of the central state legislature. Consequently, the agreement partially implemented international goals, as the theory would predict given low unity and low threat to nationalist goals and informal networks.

SBiH refused to cooperate with the process after January 2006 since the agreement did not include the elimination of the entity vote. Following the March 2006 agreement, the Croat HDZ splintered, and a new party was formed. This party, which ran as HDZ-1990 in the next elections, also insisted that the reform go further towards eliminating the entity veto and weakening the RS. These parties claimed that the demands threatened to nationalist goals and engaged in ethnic outbidding because of that threat, even though according to the theory the demands did not objectively threaten their nationalist goals.

Parliamentary Failure

Despite last minute lobbying by the US, EU, and finally Schwarz-Schilling, the constitutional reform failed in parliament in April 2006. The reform required a two-thirds majority in the state parliament and failed because two parties – SBiH and HDZ-1990 – opposed the reforms. The international administration also made promises that constitutional reform would continue after

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April 2006, but were unsuccessful in convincing the parties to vote for the reform. Both SBiH and HDZ-1990 used their opposition of the constitutional reform to campaign in the October 2006 elections. Both parties vote share increased, which demonstrates that their reframing of nationalist goals was at least partially accepted by the population.\textsuperscript{337}

Conclusion

Table 3.7: April 2006 Constitutional Reform

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negotiation</td>
<td>Increasing state legislative efficiency, All individuals can be elected to all positions</td>
<td>Low</td>
<td>Low</td>
<td>Partial Success: Elites push for their particular goals but eventual reach an agreement partially implementing international goals</td>
<td>Confirmed: General elite acceptance, International disunity leads to partial implementation</td>
</tr>
<tr>
<td>Parliamentary process</td>
<td>Increasing state legislative efficiency, All individuals can be elected to all positions</td>
<td>Low</td>
<td>Low</td>
<td>Failure: SBiH and HDZ-1990 invoke nationalist goals to engage in outbidding and block the reform</td>
<td>Partially Confirmed: SBiH and HDZ-1990 were able to invoke nationalist goals when there was no objective threat</td>
</tr>
</tbody>
</table>

The April 2006 constitutional reform confirms many of the theory’s predictions, especially with regard to international disunity. Sebastian quotes an SBiH official observation that “domestic actors did not perceive unity. The EU was still ambivalent, and domestic actors used this to play [the internationals off of] each other.”\textsuperscript{338} As the theory predicts, the failure of unity thereby led the actors to have more freedom to reject the reform without fear of punishment. The April 2006 reform also demonstrates that nationalist goals can sometimes be invoked by political leaders, especially in the case of international disunity, even if there is no objective threat to nationalist goals.

\textsuperscript{337} Interviews with international and local officials, Sarajevo, Summer 2008 and Fall 2009. See also Sebastian, “The Role of the EU in the Reform of Dayton in Bosnia-Herzegovina,” 351.

\textsuperscript{338} Ibid., 350.
The main consequence of constitutional reform was the development of an intransigent ethnic political system. Following the negotiations, Milorad Dodik of SNSD began to take advantage of the unwillingness of SBiH to compromise. A dynamic emerged in which each leader took an intransigent nationalist position in order to gain support from their own ethnic group and block further reform. The dynamic would happen again at Butmir in Fall 2009, when the international community would attempt another round of constitutional reform. Dodik refused any changes based on the rights of the entities, and Silajdžić refused any reform that did not make progress towards eliminating the RS. 339

IX. Conclusions

Theory Testing

The reform efforts described above largely confirm the theory. The case studies above offer repeated verification of the mechanisms described in the theory, including elite outbidding on nationalist goals, elites’ effective use of public protest to block reforms, as well as how disunity prevents the administration from making effective conditional demands, from monitoring compliance, and from punishing elites. The case studies also verify the predictions about the trajectory and outcome of the reform efforts. For all of the case studies, the outcome of the reform generally followed the theory’s expectations based on the overall level of unity and threat. The strength of institutions, and the contribution to Bosnian political development, were consistently higher when the international administration was unified and when the reform avoided threatening nationalist goals or informal networks.

To be sure, the theory did not precisely explain the trajectory of all of the reforms precisely. As a result of its relative parsimony, the theory cannot accurately predict all of the

339 Interviews with international officials and analysts, Sarajevo, Fall 2009.
details of the case studies. However, even where the theory’s specific predictions were not borne out, elements of the theory such as nationalist goals and international ideology could explain the general trajectory of the reform. As shown in Table 3.8 below, the theory sometimes underestimated the willingness of the international community to engage in ambitious integrative demands. The international integrationist ideology was particularly strong in Bosnia, in part because of the experience of many international officials during the war and their desire to remake the society to counter the war’s effects.

Table 3.8: Theory testing

<table>
<thead>
<tr>
<th>Reform</th>
<th>Confirm</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elections</td>
<td>Partially confirm</td>
<td>Direct threat to elites through the manipulation of electoral institutions; Election of semi-moderate Alliance for Change</td>
</tr>
<tr>
<td>Entity</td>
<td>Confirm</td>
<td>Partial implementation of international preferences came only because of imposition</td>
</tr>
<tr>
<td>Constitutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defense</td>
<td>Confirm</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>Confirm</td>
<td>Unexpected strong demands under Lajčak</td>
</tr>
<tr>
<td>ITA/VAT</td>
<td>Confirm</td>
<td>Institutional design encourages Serbs to obstruct revenue distribution</td>
</tr>
<tr>
<td>April 2006</td>
<td>Partially confirm</td>
<td>Unexpected ability of SBiH and HDZ-1990 to invoke nationalist goals to block reform</td>
</tr>
</tbody>
</table>

The theory also sometimes underestimated the ability of local elites to invoke nationalist goals and engage in outbidding when the demands did not objectively threaten nationalist goals. The ability of elites to invoke nationalist goals may be greater in Bosnia than other international administrations, however, because the opposing sides continued to politically interact after the end of the war. In Kosovo or East Timor, the opposing side of the civil war was less present in politics, which may have made it more difficult for local elites to invoke nationalist goals.

Policy Implications

Based off of the account of institution building in Bosnia, the chapter offers three suggestions for the future of international state-building in Bosnia and elsewhere. First, the chapter demonstrates that successful international-led institutional reform requires consensus and coordination within the international community. The key to success was not the extent of international authority, nor
the aggressive use of that authority, but close coordination and agreement. Before attempting any reform, OHR, or any similar organization, should first ensure that all key international actors agree on the demands. While this might seem obvious, the record is replete with examples of the failure of international coordination, including in the case of elections, entity constitutional reform, the April 2006 constitutional reform, and especially police reform. There is probably no straightforward way to consistently achieve higher unity, the leadership of the administration is clearly important. Note that the only period of consistent unity was under the leadership of Paddy Ashdown. The international community has sometimes been overcautious about appointing strong and independent leaders, such as Ashdown, for fear that the mission will exceed its authority. The caution of the international community is counter-productive to the greater goal of achieving strong state-building.

Second, this chapter demonstrates the flaws of an ambitious integrative agenda. There are those who argue that the international community has simply not tried hard enough in Bosnia, and that a renewed aggressive effort to integrate Bosnia would achieve great dividends. This chapter has sought to disprove this argument by repeatedly demonstrating, though a variety of historical circumstances, how the popularity of nationalist goals trumped any international demands that challenged nationalist goals. The cases of electoral reform, police reform, and the April 2006 constitutional reform clearly demonstrate how the failure of ambitious demands can hurt the society. Furthermore, the legitimacy of aggressive international administration diminishes as the memory of the war fades into the past.

Third, well-defined demands that were backed by international unity greatly improved Bosnia. In the cases of defense reform and the VAT/ITA reform, for example, lingering

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problems from the Dayton Agreement were addressed and corrected. The account above does not
dispute the desirability of ethnic integration or of replacing wartime political objectives. Instead,
I argue that the international community’s broader goals of implementing human rights,
spreading democracy and the strengthening state are often better served by working with, rather
than against, the incumbent elites.
Chapter 4  
Institution Building in Kosovo: Great Expectations

“The Security Council, in its resolution 1244 (1999), has vested in the interim civil administration authority over the territory and people of Kosovo. All legislative and executive powers, including the administration of the judiciary, will, therefore, be vested in UNMIK... The Special Representative of the Secretary-General as the head of UNMIK, is the highest international civilian official in Kosovo. He will enjoy the maximum civilian executive powers envisaged and vested in him by the Security Council in its resolution 1244 (1999), and will also be the final authority on their interpretation.”  

The UN Interim Mission in Kosovo (UNMIK) is one of the most long lasting and ambitious efforts to construct political institutions in a post-conflict society. UNMIK was created following the war in Kosovo, in which the Kosovo Liberation Army (KLA) fought against Serbia for Kosovo’s independence. The UN resolution ending the war recognized Serbia’s territorial integrity and mandated UNMIK to govern the territory and to establish interim state institutions prior to the determination of Kosovo’s status. Many UNMIK officials had experience in Bosnia or other previous interventions, and they believed that UNMIK’s extensive authority, resources, and expertise would enable successful state building. However, the success of UNMIK’s institution-building efforts was mixed. On one hand, UNMIK successfully established basic representative institutions, a customs administration, and a civilian protection force. On the other hand, the key effort to strengthen Kosovo’s institutions as a prelude to independence, the Standards before Status reform, provoked widespread riots in March 2004.

The theory explains the observed variation in reform trajectory. UNMIK was largely unified throughout its administration. Based on the lessons from Bosnia, UNMIK had a hierarchical pillar structure that placed international organizations under the formal authority of the Special Representative of the Secretary-General (SRSG). Variation in UNMIK’s success was therefore largely determined by the relative threat of demands to nationalist goals and informal networks. When UNMIK made demands that threatened the key Albanian nationalist goal of

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independence, as in the case of the Standards before Status reform, mass protest occurred and elites blocked implementation. When demands did not threaten independence but did threaten the parties' informal networks, UNMIK was partially able to implement its demands. The Kosovo Albanian elites developed strong links with informal criminal, patronage, and corruption networks prior to and during the war, and these networks remained important following the war. UNMIK was unable to diminish the importance of informal networks in the broader society, but it was able to strengthen state institutions to some degree. When UNMIK made demands that did not threaten either nationalist goals or informal networks, international unity led to the full implementation of the demands.

The chapter also provides evidence against the major alternative explanations. First, scholars have written that certain reform efforts, especially the police and customs service, demonstrate that proper bureaucratic procedures lead to positive institutional outcomes. Instead, the chapter demonstrates that it was international unity that enabled the use of good bureaucratic procedures and that the success of these reforms depended on the threat to local elites. Second, the demands from major donors, such as the US or the EU, were not sufficient to cause elites to support reforms that threatened nationalist goals or informal networks. Third, international efforts to build liberal institutions did not strengthen moderate parties, nor were parties recognized by the international community as moderates any more likely to accept international demands.

This chapter examines only the reform efforts pursued by the international administration from June 1999, when UNMIK deployed, to February 2008, when Kosovo declared independence. While resolution 1244 remained in force after February 2008, the international administration was reorganized and the political context changed significantly. The chapter
proceeds in nine sections. First, I describe the context of the international administration, including the war in Kosovo, the mandate and character of UNMIK, and the post-war domestic context within Kosovo. Second, I briefly introduce the reform efforts and discuss the sources used. I make use of 45 interviews with international officials, local officials, and policy analysts conducted in Kosovo from December 2009 to February 2010. The third through the eighth sections trace the various reform efforts – the initial establishment of representative institutions, the Standards before Status reform, electoral reform, police reform, the creation of the Kosovo Protection Corps, and customs reform. The conclusion summarizes the testing of the theory in the different reform effort and discusses policy implications from UNMIK.

I. War, Intervention, and Political Context

This section describes the context for the international administration in Kosovo in three parts. The first part examines the conflict in Kosovo in the late 1990s, including the origins of the conflict, the conduct of the war, and the development of UN resolution 1244. The second part addresses the mandate, structure, and ideology of UNMIK. The third part outlines the domestic politics of Kosovo after war. The Kosovo Albanians, who constituted a clear majority of the population, were the main participants in UNMIK’s institution-building efforts. The major Kosovo Albanian parties campaigned on the achievement of independence and retained influential informal networks. While some Serbs remained in Kosovo, they by and large boycotted the institutions UNMIK established and played little role in the effort to reform these institutions.
Politics before, during, and after the war in Kosovo are complex and highly contested. Indeed, as Tim Judah notes, history for both Serbs and Albanians is “war by other means”\textsuperscript{342} – both sides use opposing accounts to support particular political claims. I have sought to avoid bias in describing the war or post-war political context, although such an account may be impossible.\textsuperscript{343}

\textit{The War and Intervention in Kosovo}

As discussed in the Bosnia chapter above, in the 1980s and early 1990s, a Serbian nationalist movement, led by Slobodan Milosevic, rose to prominence in Serbia.\textsuperscript{344} Kosovo played an important role in the Serbian nationalist discourse because of the long history of Serbs in the territory, the presence of important Serbian cultural monuments in Kosovo, and the increasing dominance of Albanians in the territory.\textsuperscript{345} In the early 1990s, Milosevic’s regime undertook a campaign “designed, in the short run, to reduce the Albanians to second-class citizens and, in the long run, to drive them from the province.”\textsuperscript{346} Kosovo’s political autonomy was abolished. Albanians’ position and freedoms within Kosovo were attacked through measures including eliminating funding for education in Albanian; purging Albanians from various government institutions, including the police force; shutting down the Albanian language press; and passing

\textsuperscript{344} As explained in the Bosnia chapter, \textit{Bosnia} refers to Bosnia and Herzegovina. \textit{Serbs} and \textit{Serbian} refers to the ethnicity or nationality. \textit{Serbia} throughout to the polity dominated by Serbs with its capital in Belgrade. After 1992, the official name of this polity has included the Federal Republic of Yugoslavia, the State Union of Serbia and Montenegro, and the Republic of Serbia.
\textsuperscript{345} For a discussion of the role of Kosovo in the Serbian nationalist discourse, see Malcolm, \textit{Kosovo}, xxx–xxxii; Ramet, \textit{The Three Yugoslavias}, 342–346; Branimir Krstić, \textit{Kosovo Facing the Court of History} (Amherst, N.Y: Humanity Books, 2004), chap. 3.
\textsuperscript{346} Ramet, \textit{The Three Yugoslavias}, 510.
various measures to discourage Serb outmigration from Kosovo. Several accounts detail how Kosovo Albanians were killed or arrested for resisting Serbian authority.

In response to the political oppression, two prominent Albanian political movements were established and eventually sought independence for Kosovo. The first movement was non-violent and organized a system of “parallel institutions” under the “Republic of Kosovo.” This movement organized a semi-secret election in May 1992, which the Serbian authorities declared illegal. The Democratic League of Kosovo (LDK), with Ibrahim Rugova as the President, won 76% of the vote. LDK insisted that only non-violence would be effective and adopted several measures to improve the life of the Kosovo Albanians and work towards independence. First, LDK supported the creation of parallel public services, especially in the area of education and health. In addition to providing services to Albanians, the parallel structures would delegitimize the Serbian authorities. Second, a government-in-exile, linked with LDK, created a “Three Percent Fund” that channeled money from the significant Albanian diaspora in Western Europe and the United States to fund the parallel institutions. Finally, the LDK sought to gain international support. The LDK had hoped that Kosovo’s status would be discussed at Dayton in 1995. When international support for the Kosovo Albanians failed to materialize, LDK’s nonviolent position became less popular.

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349 The specific desire for independence did not emerge for several years. See Judah, Kosovo, 65; Clark, Civil Resistance in Kosovo, 92–3.
350 Judah, Kosovo, chap. 3; Clark, Civil Resistance in Kosovo, 64–69, 80–84.
351 Clark, Civil Resistance in Kosovo, 84–119.
The second political movement, which was willing to use violence, came to be called the Kosovo Liberation Army (KLA (also known by its Albanian acronym UCK)). Throughout the 1990s, Albanians both within Kosovo and abroad sought to establish a more aggressive resistance movement against Serbia. After 1995, the KLA began to attack particular Serb officials and steadily gained popularity at home as well as resources abroad. The organization remained secretive and few had confidence that it would be successful. Until late 1997, the KLA was loosely organized and included leaders such as Hashim Thaci and Ramush Haradinaj. In 1998, aided by funding from the diaspora and the flow of weapons from Albania, the KLA increased their attacks against Serbian police.

The Serbian authorities initially responded to the attacks by targeting the KLA leadership and calling the group a terrorist organization. When the KLA’s attacks persisted, Serbian police attacked Albanian civilians in several prominent massacres, including against the Jashari clan in March 1998. The Serbian attacks generated greater public support for the KLA, and the KLA escalated their campaign. The Serbian police attacked the KLA-held territory in response. Reports in August 1998 estimated that 200,000 to 300,000 Kosovo Albanians were displaced as a result of the violence.

Alarmed by the events in Kosovo, and motivated by previous disagreements with Milosevic, the United States began to get involved. US diplomats, led by Richard Holbrooke, began negotiating with the Albanian leadership and Milosevic. The violence continued through February 1999, when the international community organized a conference at Rambouillet. At
Rambouillet, three Albanian leaders – Rugova, Thaci, and Rexhep Qosja of the LBD party – created a provisional government that negotiated on behalf of Kosovo Albanians. An agreement was negotiated that would provide Kosovo with autonomy and while the American negotiators eventually convinced the Kosovo Albanian leadership to sign the agreement, the Serbs argued that the agreement would allow it to be occupied by NATO and refused to sign.356

After Milosevic rejected a final ultimatum from Holbrooke, NATO began bombing Serbia on March 24, 1999. There was no UN resolution approving the bombing, since Russia supported Serbia and would have vetoed such a resolution. Serbian forces soon began forcibly displacing large numbers of Kosovo Albanian and thereby created a major refugee crisis in neighboring countries. The bombing would last for 78 days, far longer than NATO had originally anticipated.357

The terms ending the war were formalized in UN resolution 1244, which was passed on June 10, 1999. As the next section explains, the resolution ended the war and created an international presence to secure the peace and temporarily govern Kosovo. However, the resolution reaffirmed Serbia’s territorial integrity and set no specific timeline for resolving the issue of Kosovo’s independence.

*International Administration in Kosovo – Mandate, Structure, and Ideology*

This section outlines the formal structure, informal practices, and internal divisions of the international administration in Kosovo. I demonstrate that the international administration closely conforms to the scope conditions specified by the theory – UNMIK was created by the international community, and had executive power and a state-building mandate. The section


discusses resolution 1244, the authority of UNMIK, the issue of Kosovo’s uncertain status, the structure of UNMIK, the overall unity of the international administration, and the international administration’s ideology.

Resolution 1244 ended the war in Kosovo, mandated an international military presence, and established an international administration. The resolution formalized the agreement between Milosevic and NATO that stopped the bombing. It also called for an immediate end to violence, the withdrawal of all Serbian security forces, and the disarmament of the KLA. Resolution 1244 further demanded full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). To enforce the agreement, an international security force of 50,000 personnel, called the Kosovo Force (KFOR), would be deployed. KFOR would be led by NATO but several non-NATO countries, most notably Russia, would also participate. 358

Resolution 1244 stated that Kosovo was still part of Serbia, but established UNMIK “to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy.” Its purpose was to temporarily govern Kosovo, build strong democratic institutions, help determine Kosovo’s final status, and transfer authority to whatever institutions were created by the final status agreement. 359 In the meantime, UNMIK had “full legislative and executive powers, including the administration of the judiciary” and the head of

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358 See UN resolution 1244 (1999), paragraph 9 for the detailed mandate. See also Daalder and O’Hanlon, Winning Ugly, 175–176; Larry Wentz, Lessons from Kosovo: The KFOR Experience (DoD Command and Control Research Program, 2002), 35–41.
359 UN resolution 1244 (1999), paragraph 10.
360 The specific responsibilities for UNMIK were detailed in Paragraph 11 of Resolution 1244: “a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648) b) Performing basic civilian administrative functions where and as long as required; c) Organising and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections; d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peace-building activities; e) Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords; f) In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement.”
UNMIK, the SRSG, was given the power to interpret his own mandate. UNMIK would there effectively take over the power and authority of the sovereign state.361

UNMIK’s administration of Kosovo was the temporary solution to the irreconcilable problem of whether or not Kosovo should be independent. Nearly all Kosovo Albanian political leaders insisted on independence, while the Serbian leaders refused to accept it. Ambiguity on independence had been necessary to secure broad agreement among the key actors, including the US, Russia, Serbia, and the KLA.362 Furthermore, many countries, including Russia, China, and even Spain, had ongoing secessionist disputes and were disinclined to support Kosovo’s independence for fear that it would create an international precedent supporting violent rebellion. Resolution 1244 therefore finessed the issue by recognizing that Kosovo was part of Serbia and by making no statement about whether Kosovo would be independent in the future. The resolution insisted that the parties take account of the Rambouillet Agreement, but that agreement only included vague language about the determination of Kosovo’s status.363 Hence, there was no clear plan for when and how the final status of the territory would be determined.364

The lack of a clear plan for Kosovo’s status was a hindrance to UNMIK’s efforts to build strong and democratic institutions. Any institution or governance system would have to be “provisional,” “interim,” or “pending a final settlement” in order to respect Serbia’s

362 The territorial integrity of Yugoslavia, and hence the independence of Kosovo, were not dispute during the negotiations. See Judah, Kosovo, 274–285; Daalder and O’Hanlon, Winning Ugly, 169–175.
364 The report of the Independent International Commission on Kosovo argued, “It might be better to leave questions about the future in limbo, since a constructive ambiguity about the political future of the province might make it easier for all sides to overcome their reluctance to work together.” The report gave the example of how process between Israel and Palestinians has depended on postponing the fundamental status issues. The Kosovo Report (Oxford: Oxford University Press, 2000), 261.
sovereignty. At the same time, the majority of Kosovars, who were Albanian, would consistently demand the establishment of institutions leading to independence. There was little precedent for how to establish institutions that would fulfill standards of democracy and governance but would not imply the independence of the territory. Sergio Viera de Mello, the first temporary SRSG in Kosovo, and later the SRSG in East Timor, would call the situation “an effort to combine motherhood with virginity.”

Despite the complexities of the mandate and status issue, UNMIK was generally unified in its demands. The UN adopted a unified, hierarchical structure for UNMIK in part based on the lessons of Bosnia. In Bosnia, different international organizations took over the different roles in the international administration without a clear chain of command, which led to competition and disagreement. According to one account, one UN official observed, “We looked at the civilian structure in Bosnia and said whatever happens, don’t do that again in Kosovo.” Another problem in Bosnia was the initial failure of civilian and military organizations to coordinate their efforts. Though there were some examples of tactical coordination problems in Kosovo, KFOR and UNMIK were careful to clearly delineate responsibilities and coordinate their efforts.

UNMIK was under the overall authority of the SRSG and his office. Although the SRSG had full authority over the mission, he was required to get certain decisions, including all legislation, approved by UN headquarters in New York. One participant explains that international officials within UNMIK began to think of the organization as a “little country.”

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366 Power, Chasing the flame. For commentary on this point, see Stahn, “Constitution Without a State?,” 538–542; Judah, Kosovo, 298.
368 The Quest for Viable Peace, 81–88. See also the discussion of the 2004 riots and reform of the KPC below.
UNMIK developed its own relationships with donors and other organizations and sought to avoid consulting UN headquarters except when absolutely necessary.  

UNMIK was composed of four pillars, which were led by different organizations and were responsible for specific elements of UNMIK’s mandate. In practice, the pillars had significant autonomy. The first pillar was initially called “Humanitarian Affairs” and run by UNHCR. After a year, major tasks including the resettlement of refugees were largely completed, and Pillar I was disbanded. In May 2001, a new Pillar I, “Law Enforcement and Justice,” was created and was run directly by UNMIK. The second pillar was “Civil Administration” and was run directly by UNMIK. This pillar included functions such as health, education, banking and finance, and telecommunications. The third pillar was “Institution Building” and was run by the OSCE. It would include democratization, elections, and human rights. The fourth pillar was “Economic Reconstruction” and was run by the EU.

In line with the ideology described in the theory chapter, international officials within UNMIK were guided by a desire to establish human rights and build institutions that followed bureaucratic procedures. With regard to human rights, UNMIK’s efforts focused on the protection of minorities. While UNMIK was heavily criticized for its failure to prevent violence against Serbs and other minorities, UNMIK quickly adopted substantial measures to protect the rights of minorities and establish multiethnic institutions. For example, UNMIK adopted

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369 Ibid., 80–81.  
371 William O’Neill, the senior advisor to the SRSG for human rights, is highly critical of the failure of the international community to address the immediate post-war violence. He writes, “Albanians have no right to wreak revenge, even if it is on a lesser scale or does not have the formal backing of a state. Former secretary of state Albright misses the point when she dismissed ongoing violence against minorities in March 2000 by noting, ‘after all that has happened, we do not expect rival communities in Kosovo to immediately join hands and start singing folk songs’. Is it ‘starry-eyed naivete’ or ‘Western human rights-style neocolonialism’ to promote tolerance and respect for diversity? Perhaps. But if so, I think it is the lesser of two evils.” O’Neill, Kosovo, 9, 53.
human rights treaties into the Constitutional Framework, reserved seats for minorities in parliament, encouraged the participation of minorities in the civil service, and regulated the use of minorities’ language in education and public broadcasting. However, efforts to establish multiethnic institutions would be difficult given the strong ethnic antipathy between Serbs and Albanians following the war.

UNMIK also emphasized formal bureaucratic procedures in building institutions. UNMIK itself was a large and complex organization with elaborate formal internal decision-making processes. UN headquarters also tended to appoint individuals largely based on their skill at operating within the complex formal processes that constituted the UN system. UNMIK’s actions further indicated its underlying adherence to the technical perspective. UNMIK frequently brought in outside experts to impose ‘best practices’ without gathering detailed knowledge of the situation in Kosovo. Some observers claimed that international officials were sometimes hesitant to interact with Kosovar authorities because they believed the local elites were too ‘political,’ and their demands would bias UNMIK’s technical decision-making ability. Perritt notes that UNMIK officials often rejected Kosovo’s politics as “corrupt or violent or primitive,” and tended to operate as if there were no existing institutional framework. UNMIK’s bureaucratic approach would prove inappropriate for Kosovo’s political and cultural context.

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372 Gunnar Simonsen writes, “While the international community can be criticized for many decisions over Kosovo, and for lack of success in various endeavours, it is difficult to deny that since 1999 the interim administration has poured much effort into securing the multi-ethnic character of Kosovo.” Sven Gunnar Simonsen, “Nationbuilding as Peacebuilding: Racing to Define the Kosovar,” International Peacekeeping 11, no. 2 (2004): 295. King and Mason, two participants in UNMIK, observe, “with multi-ethnicity so clearly an objective of the UN-led mission, there were a number of deliberate efforts to combat the drift towards segregation.” Peace at Any Price, 111.

373 See Petersen, Western Intervention in the Balkans, chap. 8-10; King and Mason, Peace at Any Price, 68–73.

374 Perritt writes “Because the international did not understand the informal folkways, it was easy for the international organizations to churn out policies among themselves that had relatively impact on the way Kosovo actually worked.” The Road to Independence for Kosovo, 66.
Post-war Local Political Dynamics

The local post-war political dynamics also align with the theory. Kosovo remained divided along ethnic lines and political parties campaigned only to their own ethnic group. Political parties campaigned on nationalist goals and relied on connections with informal networks. Albanian political parties actively participated in the institution-building processes, so will be discussed in depth, while Serbs mainly boycotted the political process.

On the Albanian side, all major parties’ power was based on their achievement and connection with the struggle for independence. As the context section explains, the two major Albanian political movements – the LDK and KLA – sought Kosovo’s independence in the 1990s. The movements developed into political parties whose main platform was achieving independence. An adviser Thaci observed, “It is almost impossible to differentiate’ among the [various parties’] platforms. They all have three key issues: number one, independence; number two, independence; number three, independence.”

The political parties also developed strong informal networks before and during the war, although parties had different networks based on their background and regional support. The most important division in Kosovo Albanian politics, in line with the pre-war political cleavage, was between the non-violent LDK and the two main successor parties of the KLA.

The LDK had gained prominence through its leadership over the “Republic of Kosovo” parallel institutions. During UNMIK’s administration, the LDK largely campaigned on its efforts to achieve independence. In one speech, Rugova explained, “As you know, we declared independence in 1991 and we have built our state for more than ten years. Therefore we ask for the official recognition of Kosovo’s independence by the United States, the EU, and the

international community." Because of its pacifist ideology, many in the international community perceived the LDK to be a more moderate party that the KLA successor parties and supported it accordingly. The LDK’s pre-war activities meant that it had one of the strongest grassroots political networks throughout the whole of Kosovo. With regard to informal networks, the LDK had raised money through the Three Percent Fund and had developed a reputation for corruption and patronage associated with the parallel institutions. The party later reportedly funded itself through smuggling networks and other criminal activities.

Two major political parties emerged out of the KLA, which was extremely popular among Kosovo Albanians immediately after the war. During the war, different regional KLA groups acted largely independently of one another and the movement was divided into factions based on loyalty to the different leaders. Thaci formed a political party out of the political wing of the KLA, which was initially called PPDK, and then later called the PDK (Democratic Party of Kosova). Ramush Haradinaj, another KLA leader, would form an alternative KLA oriented party in April 2000, called AAK (Alliance for the Future of Kosovo). Observers initially described the PDK and AAK as personalist followings behind Thaci and Haradinaj. By 2004, however, PDK had established a far more extensive political organization. A division between the KLA “old wolves” and the younger intellectual wing developed. There was also a regional variation in the parties’ support – the PDK was especially popular in the Drenica region, while

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377 King and Mason, *Peace at Any Price*, 120.
379 The amount of money raised by the government-in-exile, for example, is contested. Perritt explains, “Serb sources claim that up to $5 billion was collected through the fund. Bujar Bukoshi (who ran the fund) estimated the correct figure to be $260 million. Intermediate figures approximate more than one billion Deutschmarks (about $500 million) by the end of the war.” Perritt notes that the KLA’s “Homeland Calls” fund raised perhaps ten percent as much as the government-in-exile fund. *The Road to Independence for Kosovo*, 89. Interviews with local analysts, Pristina, Winter 2010.
380 Ibid, 59-60.
381 Perritt, *Kosovo Liberation Army*, 156–158.
the AAK dominated the Dukagjini region. PDK and AAK campaigned in large part on their achievements towards independence during the war and their ability to achieve independence in the future.

The KLA had extensive connections with informal networks during the war, which carried over to the PDK and AAK after the war. Indeed, the most serious problem these parties faced was their reputations for being thuggish and corrupt. The KLA had largely been funded by contributions, but many observers argue that the movement armed itself through smuggling and may have engaged in other illegal activity, such as drug trafficking. The KLA-associated parties were also implicated in a number of politically motivated murders against LDK officials in the period immediately after the war. Several interviewees, both international officials and local analysts, alleged PDK and AAK participation in protection rackets, corruption, election fraud, and the smuggling of drugs, cigarettes, and oil. Finally, different elements of the KLA had been recruited from different regions and retained political strength in those specific areas. Thaci, and the PDK, had its strongest base in Drenica and would favor the region in their

382 Skendaj, “Building State Bureaucracies and Democratic Institutions,” 54.
383 See the reform efforts below. King and Mason note, “The PDK and AAK emphasized their war records, often in rallies where AK-47s were enthusiastically fired into the sky.” Peace at Any Price, 120.
384 Perritt, Kosovo Liberation Army, 152–158.
385 One USIP report explains “Criminal activities played a significant role in developing a resource base for the political and military struggle of the KLA. Estimates vary, but up to half of the funding for the KLA may have come from drugs.” Michael Dziedzic, Laura Rozen, and Phil Williams, “Lawless Rule Versus Rule of Law in the Balkans,” USIP Special Report 97, December 2002, 10. See also Radoslava Stefanova, “Fighting Organized Crime in a UN Protectorate: Difficult, Possible, Necessary,” Southeast European and Black Sea Studies 4, no. 2 (May 2004): 261. Perritt, Kosovo Liberation Army, 93, 120–125; Hedges, “Kosovo’s Next Masters?,” 36, 38. Interviews with local analysts, Pristina, Winter 2010.

The theory predicts that the parties’ associations with informal networks would have consequences for their reaction to reforms efforts. The PDK and AAK would continue to have strong associations with KLA veterans and would seek to ensure veterans’ employment in the security services. All parties, but especially the PDK and AAK, could be threatened by the strengthening of the police and attempts to address high-level corruption and organized crime. Similarly, parties could be threatened if the custom institutions were strengthened to address smuggling.

While the Kosovo Albanians actively participated in UNMIK’s state-building efforts to further their goal of independence, the Kosovo Serbs largely boycotted the new Kosovo institutions. Many Serbs rapidly left Kosovo and the position of the remaining Serbs was precarious. The Kosovo Serbs were clearly worse off after the war and many feared for their safety in the post-war Albanian-dominated Kosovo. Roger Petersen claims that ethnic stigma constrained the Kosovo Serbs from cooperating with Albanians in the new institutions, and instead led them to pursue strategies of boycott and parallel systems.\footnote{Petersen, \textit{Western Intervention in the Balkans}, 101, 170–171.} Because of the nationalist incentives in Serbian politics, Serb political parties based in Belgrade insisted that Serbia retain sovereignty over Kosovo. Some Serbs, especially those in isolated municipalities in the south of Kosovo, gradually became inclined to accept the existence of the Albanian-led Kosovo institutions. Most Kosovo Serbs, with the support of Belgrade, were not inclined to participate in the new Kosovo institutions and even sanctioned Kosovo Serbs who did. The influence of the major Belgrade-based Serbian political parties also stymied the creation of

independent Kosovo Serbian leaders. Given the boycott of UNMIK-led Kosovo institutions by Kosovo Serbs, the case studies below focus mainly on the interaction between the various Albanian parties and international organizations.

II. Introduction to UNMIK Reform Efforts

The case studies below examine six reform efforts undertaken by UNMIK in the areas of representation, security, and revenue. This chapter examines only the period prior to Kosovo’s unilateral declaration of independence in February 2008.

I examine the six reforms: the creation of basic political institutions, the Standards before Status reform, running elections, police reform, the Kosovo Protection Corps, and customs reform. I selected these reforms surveying the literature, identifying reforms that were conditional for political progress, and confirming the selection with international officials and local analysts. As the theory specifies, the international community made the implementation of international demands conditional for the achievement of political progress, which in the case of Kosovo referred to status negotiations.

The case studies below draw on three types of sources. First, I conducted fieldwork in Kosovo in December 2009 to February 2010. I did 45 interviews with international officials, international and local analysts, local officials, and other individuals. The interviews were all

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391 Other reform efforts commonly identified as important include the judiciary, the public administration, and the privatization of state owned enterprises. These institutions do not fit the criteria specified in the theory, but should be examined in future work.
conducted in English, which was widely spoken by international officials as well as by many local officials and analysts. My interviews included officials from all of the major international organizations, including UNMIK, OSCE, the EU, and NATO. I also spoke with representatives from a variety of political parties, including LDK, AAK, and Vetevendosje. My interviews with local analysts were particularly helpful for understanding the political context. Finally, I had a large number of informal interactions with Kosovars who had worked in a number of organizations and all of the major political parties. These interactions were invaluable for understanding the structure and role of informal networks and better understanding the biases of my other interviewees. To protect the interviewees, and ensure their candor, I use anonymous source citations. Second, I used a variety of primary sources, including press releases, regulations, and reports issued by UNMIK and other organizations. Finally, I refer to secondary sources including policy reports, books, and academic articles. Many of these sources are extremely detailed and some of them were even written by participants in reform efforts. This chapter focuses on a ten-year period of international involvement in Kosovo, ranging from June 1999 to February 2008. I rely on the interviews most heavily for the period after March 2004 due to the timing of the fieldwork, the replacement of international officials, and the limits of human memory.

III. Basic Political Institutions

UNMIK’s first major reform effort was the establishment of basic political institutions. Immediately following the war, central authority broke down, which led to criminality, ethnic cleansing against Serbs, and intra-Albanian political violence. UNMIK’s initial challenge was

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392 I spoke with individuals from a wide range of think tanks and NGOs, including the International Crisis Group, Kosovar Institute for Policy Research and Development (KIPRED), the European Centre for Minority Issue in Kosovo, the GAP Institute for Advanced Studies, and the Kosovar Stability Initiative (IKS).
therefore to establish itself as the interim administration specified in resolution 1244, begin to build the institutions of self-government, and avoid implying that Kosovo was independent.

UNMIK was largely successful in these endeavors. By early 2000, UNMIK had secured the agreement of the major Kosovar political parties was recognized as the supreme civilian authority. UNMIK then ruled Kosovo, with only minimal local participation, under the Joint Interim Administration Structure (JIAS) until the promulgation of the Constitutional Framework in 2001. Under the Constitutional Framework, elections were held and certain authority transferred to a democratically elected government.

The theory largely explains UNMIK’s success in establishing basic political institutions. UNMIK’s demands did not threaten Kosovo Albanians’ nationalist goal of independence, since establishing temporary representative institutions was necessary to move forward towards independence. The major Albanian parties pressed UNMIK to make compromises towards implying independence, but because of international unity, they eventually accepted the proposed Constitutional Framework. Following elections, however, Albanian parties did not participate in the newly established institutions as UNMIK had intended and continued to press for independence.

This section proceeds in five parts. First, I discuss the period of anarchy following the war, explain the international preferences for basic political institutions, and justify the coding of key variables. Second, I trace the creation and implementation of the JIAS. Third, I explain the negotiation of the Constitutional Framework. Fourth, I discuss the implementation of the Framework. A fifth part concludes.
After the War: Absence of Authority, Violence, and the Need for Basic Governance

To implement its mandate, UNMIK had to establish its own authority and basic political institutions. The establishment of political order, however, depended on addressing the absence of security in Kosovo immediately following the war. Though security was mainly KFOR’s responsibility, the establishment of political authority and security were interlinked.

In June 1999, Serb forces, in accord with resolution 1244, departed Kosovo. There was no remaining state authority and the immediate post-war period was highly chaotic. According to one UN official, Kosovo at the time was “like the Wild West now, except they didn't have grenades and AK-47s in the Wild West.” Albanian refugees who had been expelled from Kosovo during the war rapidly returned. Seeking vengeance for Serb actions during and prior to the war, many Albanians began to attack and ethnically cleanse Serbs and other minorities. Violence included “murder, disappearances/abductions, torture, beatings, arbitrary arrest and detention, and severe restrictions on freedom of movement.” Some argue that “overwhelming evidence points to a concerted campaign to expel from Kosovo most of its ethnic minorities, especially Serbs.” Within a year of the mission’s start, approximately 150,000 Serbs had left Kosovo. As noted above, there was also politically motivated inter-Albanian violence, especially against individuals believed to be collaborators with the Serb regime and also against LDK officials.

KFOR had responsibility for establishing peace and security in the initial post-war period, but came under heavy criticism for its failure to prevent violence. The international intervention had been premised on protecting the Albanians from the Serbs and KFOR did not

394 O’Neill, Kosovo, 61.
396 See footnote 44 above.

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expect to have to protect Serbs from the Albanians or Albanians from other Albanians. Still several units within KFOR were more effective than others. British troops, given their experience in Northern Ireland and Malaysia, and KFOR’s Multinational Specialized Unit, made up primarily of Italian carabinieri who had trained to deal with the Italian mafia, had more success in stopping ethnic violence and organized crime. By early 2000, peace and security had largely been established.

In this context, UNMIK had four preferences with respect to creating basic political institutions. First, UNMIK needed to establish its own authority. Kosovo Albanians retained the primary nationalist goal of achieving independence and had not all agreed to an international administration. Second, there would need to be some sort of constitutional document specifying the rules of the new institutions and there would need to be Kosovo-wide elections. Third, the international community preferred institutions that would encourage the development of a multiethnic society. While there was no specific mention of multiethnic institutions in resolution 1244, the resolution did emphasize that UNMIK should “protect and promote human rights,” and supporting documents emphasized multiethnic institutions. Fourth, the institutions should in no way imply that Kosovo was, or would necessarily become, independent.

UNMIK was largely unified about its demands throughout the reform process. The content of basic representative institutions had been worked out in the peace negotiations and the

399 Dobbins, America’s Role in Nation-Building, 118.
400 The goals for Kosovo’s institutions were specified in the mandate as “provisional institutions for democratic and autonomous self-government pending a political settlement.” See resolution 1244 (1999) Clause 11a.
401 The Secretary-General’s report explained, “The civil administration component will establish the multi-ethnic governmental structures essential for the sustainable delivery of public services where and as long as required.” S/1999/799, paragraph 55. See also O’Neill, Kosovo, 31, 51–73.
key countries, including the US, France, Germany, and the UK, were largely in agreement about how to proceed in Kosovo. The threat of these demands to nationalist goals for the Albanian parties was generally low, but there was some ambiguity and potential for the parties to invoke nationalism. The parties were ultimately willing to accept temporary political institutions under UNMIK so long as these institutions put Kosovo on a path towards independence. The parties recognized, however, that outbidding each other by demanding greater progress towards independence could resonate with the Albanian electorate. The establishment of basic representative institutions did not threaten the parties’ informal networks since these networks could continue to function under the proposed institutions. Given high unity and low threat to local elites’ interests, the theory predicts full implementation of international demands.

Establishing Initial Non-Democratic Governance under the JIAS

UNMIK’s initial effort focused on building up its own strength, negotiating with local elites, and creating a governance structure led by international officials.

UNMIK would require a large organization to effectively govern Kosovo. However, the UN Secretariat had little time to plan for the mission and was slow to appoint and deploy the necessary staff. Sergio Viera de Mello was appointed temporary SRSG in June 1999. He brought a team with experience in Bosnia and sought to rapidly build infrastructure to support UNMIK’s administration, including appointing staff, finding premises, coordinating with other international organizations, and commencing discussions with local stakeholders. However, aside from creating a few temporary bodies led by UNMIK officials, Viera de Mello took little action in terms of institution building. Indeed, only six weeks later, on July 15, 1999, Viera de Mello

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402 For details on this period, see especially S/1999/779 and Power, Chasing the Flame. Viera de Mello did create the Joint Advisor Council of Provisional Judicial Appointments (JAC/PJA) to quickly reestablish a judicial system. The JAC/PJA appointed many Albanian officials who had not served in the legal system for ten years. The various
was replaced by the first permanent SRSG, Bernard Kouchner, a French politician and co-founder of a major French NGO, Médecins sans Frontières. Kouchner issued the mission’s first regulation, which proclaimed his own authority: “All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General.”

From July to December 1999, UNMIK began to appoint international officials to run the ministries and provide government services, although the Kosovar political parties exercised strong informal authority. Kosovar political elites were included in the UNMIK-led institutions in only an advisory capacity through the Kosovo Transitional Council.

The body had little real authority, however, and functioned largely as a “soapbox.” While Serbs initially participated in the council, the Serbian representatives walked out when attacks on Serb civilians persisted, and Thaci later walked out of the council as well. Kosovar-led governance structures included an interim government established at Rambouillet, the LDK-led parallel structures, and a variety informal governance structures that were not necessarily linked with the major political parties. Some mayors in some rural areas, for example, refused to acknowledge UNMIK’s authority. Albanian elites hoped to force UNMIK into giving Kosovo independence and sought to retain as much of their informal authority as possible. UNMIK quickly began to recognize that faults in the Kosovo judicial system were later traced to this decision. Interviews with international officials and local analysts, Pristina, Winter 2010. See also O’Neill, Kosovo, 77–78.

Furthermore, “The Special Representative of the Secretary-General may appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such person. Such functions shall be exercised in accordance with the existing laws, as specified in section 3, and any regulations issued by UNMIK.” UNMIK Regulation No. 1999/1, 25 July 1999, 1.1-2.

The purported purpose of the body was to “ensure participation of the people of Kosovo in the decisions and actions of UNMIK.” S/1999/799, paragraph 20.


effective governance would require the participation of local elites and began extensive negotiations with Albanian authorities.\footnote{Brand writes, “It was clear that UNMIK could only gain recognition by the Kosovo population, in particular its political elite, if it shared administrative responsibility with local representatives.” Ibid., 10–12. On UNMIK’s process of negotiation, see The Quest for Viable Peace, 107–110. On this period, see also King and Mason, Peace at Any Price, 73–79; Perritt, The Road to Independence for Kosovo, 54–62.}

On December 15, 1999, UNMIK and the main Albanian leaders negotiated a compromise designed to create a new joint administrative structure and eliminate the existing parallel structures. The agreement was beneficial for Thaci, who wanted to dismantle the LDK-led parallel structures, and for Rugova, who sought increased recognition of the LDK in an UNMIK-led government. UNMIK needed the participation of Thaci and Rugova to legitimate its administration and help disband the parallel governance structures. To be sure, both local and international negotiators also compromised. Thaci wanted the LDK-led parallel structures to hand over remaining funds to UNMIK, while Rugova tried to delay the end of the parallel structures. UNMIK conceded by changing the applicable Yugoslav law in Kosovo from laws issued before 1999 to those issued before 1989, which is when Kosovo began to lose its autonomy within Yugoslavia.\footnote{While Rugova did agree to disband the parallel structures in the December 15th agreement, the “Republic of Kosovo” assembly delayed disbanding itself. After UNMIK delayed the implementation of the JIAS, however, Rugova complied with the agreement and issued a statement saying that the “Government, the Parliament and the Presidency of the Republic of Kosovo with all its political, economic and security structures have ceased to exist as of 1 February 2000.” Perhaps unsurprisingly, the LDK-associated parallel institutions did not hand over funds to UNMIK. Ibid.}

On January 14, 2000, Regulation 2000/1 established the new political institutions, the Joint Interim Administrative Structure (JIAS). JIAS had three main principles. First, the “representatives of political forces of Kosovo share provisional administrative management with UNMIK.” Second, other existing governance would be integrated into the JIAS or eliminated.
before January 31, 2000. Third, “all communities of Kosovo shall be involved in the provisional administrative management.”

The JIAS fulfilled UNMIK’s demands for the period by establishing UNMIK’s authority, eliminating existing governance structures, and by being at least nominally multiethnic. However, the JIAS did not transfer significant authority to Kosovar officials. The most powerful body of the JIAS was the Joint Interim Administration Council, composed of the four heads of the different UNMIK pillars and four local elites. The SRSG mainly consulted the council to gain approval for previously drafted regulations. Although some regulations were amended based on recommendation of the council, the SRSG did proceed with the regulations despite the council’s objections. The JIAS also consisted of twenty “Administrative Departments,” each with a local and international co-head. These departments were intended to function as ministries, but in practice few Administrative Departments exercised much authority, and many were created for the sake of appointing important Kosovar officials. The international co-heads typically had parallel jobs in UNMIK’s administrative structure and many important decisions about the governance of Kosovo were made in meetings that were attended only by international officials. Albanian elites began criticizing UNMIK for failing to run Kosovo-wide elections and transfer authority to elected officials.

Negotiation of Constitutional Framework

With the establishment of the JIAS, UNMIK turned towards creating more permanent democratic institutions. In mid-2000, Kouchner began discussions with the Contact Group and various international organizations about a “pact” or “contract” that would specify how self-

409 There were actually four principles in the regulation, the fourth of which being that the administrative directives would be in accordance with the applicable law. Regulation 2000/1, Section 1, available at http://www.unmikonline.org/regulations/2000/re2000_01.htm
410 See Brand, Development of Kosovo Institutions, 15–27; Tansey, Regime-Building, 123–4.
government in Kosovo would function. Kouchner created a Joint Working Group (JWG), composed of both international and local experts, to discuss a document specifying Kosovo’s future governance structure. Soon, the international community sidelined the local interlocutors and the details of the document amongst themselves. By early 2001, the international community had secured broad agreement about a draft document. To avoid questioning Serbia’s sovereignty, the document was called a “legal framework” though in practice it would serve a similar function as a constitution. Several observers have criticized this process as secretive and compared it to the colonial practices of 19th century empires. Nevertheless, by keeping the negotiation process within the international community, UNMIK avoided public disagreement and maintained international unity about demands.412

In March 2001, Hans Haekkerup, the new SRSG, reinitiated the JWG to discuss the internationally developed draft legal framework with local officials. In the meantime, the Kosovar experts had developed a draft of their own. UNMIK rejected it, since in its view the locally produced document tended too much towards giving Kosovo independence.413 Negotiations between international officials and local elites continued for the next several months, during which the Albanian officials tried to convince UNMIK to compromise in several areas.

The draft framework did not threaten independence, but the framework also did not facilitate independence. The draft reiterated UNMIK’s neutrality towards Kosovo’s status, so it was indeed possible that UN administration Kosovo would soon lead to independence. However, Albanian politicians could also argue that the draft was contrary to independence, since according to the draft there was no clear process towards status negotiations. Ultimately,

412 Ibid., Brand, Development of Kosovo Institutions, 31.
413 Ibid., 30–31.
independence would require the support of the international community, especially the US and EU, and the international community was unified that the draft framework was the only way forward. Consequently, the Albanian elites recognized that accepting international demands was necessary for political progress. Nevertheless, PDK would attempt to outbid the other parties by arguing the draft framework was incompatible with independence.

During the negotiations of the draft framework, international officials were able to set the agenda and establish clear red lines, though the Albanian representatives did achieve some compromises. The length and detail of the eventual framework reflects the Albanian negotiators’ efforts to maximize the transfer of authority to locally elected officials and thereby enable political progress without greater reform. The negotiation of three issues demonstrate in detail how despite UNMIK’s superior formal authority, Kosovo Albanian representatives retained significant influence on the proceedings.\(^4\)

The first and most controversial issue discussed in the JWG was how the framework would relate to the ultimate status of Kosovo. The international officials maintained that nothing that might prejudice independence should be included. Albanian representatives made three notable demands and did achieve some level of compromise. First, Albanian representatives argued that the document should be called a constitution rather than a legal framework, since Kosovo had already had a constitution when it was a part of Yugoslavia. The JWG eventually reached a compromise and the document was called the “Constitutional Framework.”\(^4\) Second, Albanian representatives sought the creation of a Constitutional Court. UNMIK objected, since the existence of such a court might limit the authority of the SRSG in addition to implying the independence of Kosovo. Third, Albanian representatives pushed for a time limit for the

\(^{414}\) ICG, “Kosovo: Landmark Election,” 8; Tansey, Regime-Building, 124–29.
\(^{415}\) Brand, Development of Kosovo Institutions, 29–31; Tansey, Regime-Building, 129.
international administration of Kosovo and for the ability to call referenda about any topic. International officials rejected these claims since they might force final status negotiations while Kosovo’s institutions were still weak or before the international community was ready to proceed.\footnote{See ICG, “Kosovo: Landmark Election,” 4}

The second issue of contention was how minorities would be represented in the 120-seat Assembly of Kosovo. The international draft included twenty reserved seats for minorities – ten for Serbs and ten for other minorities – in addition to what minority parties won in elections. Albanian negotiators believed this level of representation was excessive, and that the twenty seats should be the minimum representation for minorities, rather than in addition to what they won in elections. In the belief that greater minority representation in the parliament would encourage greater participation in elections, the international officials ignored these objections and kept to the initial draft.\footnote{Tansey, Regime-Building, 128.}

The third contentious issue was the relative powers of the different components of the government. Different political parties sought to design the new structures to maximize their own post-election power based on their perceptions of the relative popularity of individuals and political parties. Rugova was widely believed to be the most likely to win the presidency, so representatives of PDK and AAK sought a weak president who was elected by the parliament. The international negotiators approved the weak president based on a belief that a directly elected powerful president might imply independence.\footnote{Ibid., 126–8. ICG, “Kosovo: Landmark Election,” 4-7.}
The international and local interlocutors never came to a final agreement about the Constitutional Framework.\textsuperscript{419} Thaci, engaging in nationalist outbidding, opposed the Constitutional Framework because it would “hold hostage the aim of the people of Kosovo, which is independence.”\textsuperscript{420} Haekkerup, after gaining the approval of UN headquarters used his executive power as SRSG to pass the Constitutional Framework over local objections as Regulation 2001/9. The new institutions were formally known as the Provisional Institutions of Self-Government (PISG). The structure of government was quite complicated, as the framework detailed that certain competencies were reserved to UNMIK and others delegated to the PISG.

The Constitutional Framework did fulfill UNMIK’s four goals for basic representative institutions. First, UNMIK secured its continued authority in Kosovo. Chapter 12 stated that the framework would not impact the SRSG’s authority, and he could continue to take “appropriate measures whenever [the PISG’s] actions are inconsistent with UNSCR 1244(1999),” including passing legislation and removing elected officials.\textsuperscript{421}

Second, in Chapter 5, the framework established an autonomous and democratic government that would have authority over many areas of domestic policy in Kosovo, including education, roads, municipal cooperation, the appointment of judges and prosecutors, and so forth. Chapter 8, however, specified that UNMIK would retain final authority over fiscal and monetary issues, including administering customs; full authority over the security institutions,

\textsuperscript{419} Sources differ as to whether local authorities signed the Constitutional Framework. According to Tansey, the Albanian leadership was never asked not sign, and would not have if they had been. According to Brand, Rugova and Haradinaj signed the Constitutional Framework, but Thaci refused. UNMIK’s record of Regulation 2001/9 contains only Haekkerup’s signature. See Brand, Development of Kosovo Institutions, 31; Tansey, Regime-Building, 129; http://www.unmikonline.org/regulations/2001/reg09-01.htm

\textsuperscript{420} King and Mason, Peace at Any Price, 121. The ICG reports that “PDK was the most outspoken critic of the Constitutional Framework.” “Kosovo: Landmark Election,” 10-11.

\textsuperscript{421} UNMIK Regulation 2001/9. For commentary see also Tansey, Regime-Building, 128-9; Stahn, “Constitution Without a State?”.
including the Police and Kosovo Protection Corps; and exclusive authority to conduct Kosovo’s international relations.

Third, the Framework created the formal groundwork for multiethnic institutions through several measures. Minorities were overrepresented in the parliament through guaranteed seats. The framework also recognized an extensive list of minority’s rights. Chapter 3 of the Constitutional Framework specified that the PISG would observe eight different human rights treaties, as well as that all refugees would have the right to return to their homes and recover their property. Chapter 4 explicitly guaranteed rights to minority communities, including the use of minorities’ language, access to education, equal opportunity for employment in public institutions, use of public broadcasting, preservation of religious sites, and so forth. Finally, the SRSG would “retain the authority to intervene as necessary in the exercise of self-government for the purpose of protecting the rights of Communities and their members.”422 The belief that human rights could help protect minorities and achieve multiethnic institutions concurs with the theory’s description of the international administration’s ideology. However, in practice, minorities found they still had little voice in the Albanian-dominated PISG, and UNMIK was unable to ensure that all of the various rights were upheld.

Fourth, the framework also avoided recognizing, implying, or in the future necessarily granting independence to Kosovo. The framework’s only concession was to note, “Kosovo is an entity under interim international administration which, with its people, has unique historical,

422 See Regulation 2001/9, Chapter 3, 4. The treaties specified in Chapter 3 included “the Universal Declaration on Human Rights; The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; The International Covenant on Civil and Political Rights and the Protocols thereto; The Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination Against Women; The Convention on the Rights of the Child; The European Charter for Regional or Minority Languages; and The Council of Europe’s Framework Convention for the Protection of National Minorities.” Many of the rights specified in Chapter 4 overlap with the rights included in these documents.
legal, cultural and linguistic attributes." The framework contained no specific process by which the PISG could accelerate status negotiations or the end of the international administration.

While the PISG was limited in its powers, it still represented a dramatic step forward for Kosovo. King and Mason observe, “the Assembly could always be overruled by the SRSG. But the SRSG was under strong pressure from New York to avoid interfering in the affairs of the PISG except where they impinged on security, interethnic relations or Kosovo’s political status. The international community had a strong interest in seeing the PISG succeed.” Albanian elites were far from satisfied, however. Thaci had invoked nationalist goals during the Constitutional Framework negotiations and other parties would continue to demand progress on independence in the next stage of reform.

*Implementing the Constitutional Framework*

The Constitutional Framework mandated Kosovo-wide elections, which were held in November 2001. LDK won 46% of the vote, PDK won 26%, AAK won 8%, and a coalition of Serbian parties won 11%. A broad coalition government, which included the Serbian coalition, was formed after several months of UNMIK-mediated negotiations.

While UNMIK recognized that the PISG’s authority was limited, it hoped that the Albanian parties would accept the Constitutional Framework. The new SRSG, Michael Steiner, insisted that the Albanian parties follow the defined limits of the Constitutional Framework rather than attempting to use the institutions to demand the greater transfer of authority. While Steiner had the legal power to remove politicians for exceeding their authority, such as move would require the support of UN headquarters. However, the UN was hesitant to take action.

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423 See Regulation 2001/9/1.1
425 For details see the electoral reform effort below.
against a democratically elected politician unless there was a major crisis. Steiner resorted to speeches exhorting the Albanian politicians to accept the PISG and act within their powers. Steiner’s rhetoric was often paternalistic in tone. 426

While the Constitutional Framework did not threaten independence, which prevented the possibility of public protest, Albanian political parties would regularly invoke the goal of independence. Indeed, over the next two years, each of the major parties would demand independence and object to the limitations on their authority. For the first six months, the only things the Assembly debated and passed were resolutions beyond its authority. 427 The first such resolution was related to Kosovo’s boundary with Macedonia. The UN Security Council had accepted an agreement between Serbia and Macedonia about the boundary between Kosovo and Macedonia. 428 Kosovo’s elected politicians were frustrated that they had no say in the agreement and passed a resolution that asserted the territorial integrity of Kosovo and opposed the treaty. UNMIK, with the support of UN headquarters, overruled the resolution. Steiner argued that the Assembly had no authority over external relations and noted that he had warned the Assembly

426 Steiner explained his view in a speech to the Assembly on May 9, 2002 (http://www.unmikonline.org/press/2002/pr732.htm): “We are in the business of transferring step by step authorities and responsibilities from the international community to institutions of provisional self-government. It’s the simple truth that the better you handle the authority you already have, the more authority will come and that’s my program and that’s what we want all to achieve. I fully understand that the Assembly wants to discuss important issues for Kosovo – and the issues you have discussed here are important issues for Kosovo, even if it is not your responsibility and even if the Constitutional Framework very clearly prescribes that in these areas of reserved responsibility, there are no resolutions or decisions which can have the quality of validity. I’ve listened carefully to this debate and I do not agree with everything that has been said here. But I must say this was a very dignified and very professional debate. So I respect that and I think that you should have the opportunity in the future to express the wishes of those who have been elected from the people of Kosovo. But I would also urge you not to be sidetracked from the urgent tasks which are in your competence. And please, even if you don’t see it in this room, don’t forget there’s also an international community out there. Don’t antagonize the international community whose support I’m fighting for daily and whose support is not easy to win and keep.” See also King and Mason, Peace at Any Price, 162–4.

427 Kind and Mason write, “six months after it was elected, the Assembly had yet to pass, or even debate, a piece of legislation within its competence.” Ibid., 161.

428 I refer here to the countries by their colloquial name. Serbia, at this point, was the Federal Republic of Yugoslavia (FRY) and Macedonia was the Former Yugoslav Republic of Macedonia (FYROM). Since Serbia believed Kosovo to still be part of it, it negotiated the treaty without consulting Kosovo.
not to pass the resolution. A second resolution approved of the wartime values of the KLA, while a third nullified all Serbian laws passed during the 1990s. UNMIK immediately declared these resolutions null and void, but could do little to diminish the bad publicity or convince Albanian parties to change their agenda.

In late 2003, Albanian parties in the Assembly began drafting a set of amendments to strengthen the PISG institutions. The amendments proposed many of the same structures demanded by Albanian representatives in the initial JWG negotiations. These proposals included changing the name of the Constitutional Framework, creating a Constitutional Court, and instituting the ability to declare referenda. However, as the Constitutional Framework specified that the SRSG’s agreement was necessary for any amendments, UNMIK rejected these proposals. Overall the PISG did not perform the functions UNMIK had intended – it was more a soapbox for local elites than a functional democratic government. Furthermore, Albanian elites’ frustration with the PISG would continue and escalate during the next reform, the Standards before Status.

Conclusions

In all, the effort to develop a basic representative structure for Kosovo was partially successful. The reform largely follows the process and outcome predictions of the theory. UNMIK’s demands did not threaten nationalist goals, though elites did engage in nationalist outbidding during the reform process. Given international unity, the theory expects full implementation. Indeed, UNMIK demands for establishing the JIAS and Constitutional Framework were fully implemented, while the implementation of the Constitutional Framework was only partially

\[431\] Ibid., 137–8.
successful. The reform also confirms sub-mechanisms specified by the theory, including that international unity leads local elites to recognize that implementing international demands is necessary for political progress, as well as that without a clear threat to nationalist goals public protest will not happen.

Table 4.1. Kosovo Basic Representative Institutions Reform

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immediate post-war</td>
<td>UNMIK’s authority, temporary international-led governance</td>
<td>High</td>
<td>Low</td>
<td>Success: UNMIK establishes authority, negotiations with local elites, ends parallel institutions</td>
<td>Confirmed: Temporary UNMIK government believed necessary for independence</td>
</tr>
<tr>
<td>JIAS</td>
<td>UNMIK’s authority, local participation, multiethnic institutions, no independence</td>
<td>High</td>
<td>Low</td>
<td>Success: JIAS accomplishes main goals. Still dominated by international officials, locals protest failure to transfer authority</td>
<td>Confirmed: Temporary UNMIK government believed necessary for independence, negotiations with local elites essential for success, institutionalization before liberalization infeasible</td>
</tr>
<tr>
<td>Negotiation of Constitutional Framework</td>
<td>Create framework meeting all preferences</td>
<td>High</td>
<td>Low</td>
<td>Success: Internal international negotiations on Framework, locals push for independence, UNMIK imposes framework.</td>
<td>Confirmed: Temporary UNMIK government believed necessary for independence, Thaci opposes CF to outbid other elites.</td>
</tr>
<tr>
<td>Implementation of Constitutional Framework</td>
<td>Implement framework, create effective locally-elected governance</td>
<td>High</td>
<td>Low</td>
<td>Partial Success: Albanian parties pass resolutions beyond authority, attempt to amend PISG. UNMIK overrules them. PISG provides limited governance.</td>
<td>Partially Confirmed: Albanian parties invoke nationalism, but given lack of threat to nationalist goals there is no public protests. Only partial implementation of demands.</td>
</tr>
</tbody>
</table>

The effort to establish basic institutions also demonstrates that local elites can influence international decision-making despite full international authority. Local elites’ demands for greater authority led UNMIK to more quickly develop representative institutions and to increase the powers of the PISG. Paris’s theory of institutionalization before liberalization urges the international community to build extensive institutions prior to elections. However, this reform
effort demonstrates that local elites exert influence over international decision-making prior to elections and the international community’s freedom-of-action in the so-called “golden hour” after the war is limited.432

IV. Standards Before Status and the Riots of 2004

Following the establishment of the PISG, UNMIK’s next steps were unclear. Once UN missions in East Timor and Cambodia had established self-governing institutions, their mandates were completed. In Kosovo, UNMIK’s mandate would only be finished once status negotiations were completed, but in 2002 there was little will within the international community to begin status negotiation. UNMIK therefore developed the “Standards before Status” policy, which stated that Kosovo’s status could only be determined once its institutions had fulfilled specified standards.

By 2004, UNMIK had specified standards that were widely viewed as unachievable and Kosovo Albanians became increasingly concerned that independence would never happen. The Standards before Status therefore began to threaten the nationalist goal of independence. By 2003, Albanian politicians began to make speeches against the standards policy and to encourage public protest. In March 2004, major riots broke out and attacks against UNMIK and minorities took place. While the Albanian elites did not orchestrate the protests, their public opposition to the standards played a role in setting the stage for the riots, and they took advantage of the violence to urge the beginning of status negotiations.

The riots took the international community by surprise, and forced a major reconsideration of its policy towards Kosovo. The riots made it clear that indefinitely delaying status negotiations was no longer feasible and lead the international community to begin status negotiations in 2006. UNMIK also reduced its demands to a set of “priority standards” that

emphasized issues of minority participation in government and were clearly linked to the status negotiations. The implementation of international demands significantly improved. In February 2008, despite the objections of Serbia and Russia, Kosovo unilaterally declared independence.

The Standards before Status reform repeatedly demonstrates the proposed causal mechanisms and confirms the theory's predictions. Because of the threat to nationalist goals, public protest occurred and elites blocked implementation of demands. The theory also correctly predicts that the international administration's weakened demands following the violence would be implemented.

The case study below proceeds in seven parts. The first part discusses the origins of the Standards before Status policy and codes the key variables. The second part traces the development of international demands, the growing threat of the demands to nationalist goals, and the reactions of local elites. The third part examines the March 2004 riots. The fourth part describes the international administration's response to the riots including the reformulation of demands and the beginning of status negotiations. The fifth part discusses the implementation of international demands following the riots. The sixth part explains the circumstances of Kosovo's declaration of independence in February 2008. A seventh part concludes.

Origins of the Standards before Status Policy

In early 2002, following the creation of the PISG, a debate emerged within the international community about whether or not to begin status negotiations. Carl Bildt, the former Prime Minister of Sweden and High Representative in Bosnia, argued that delaying status negotiations would serve no good purpose. Bildt, writing in an op-ed in July 2002, observed that there was a belief in the international community “that time would be a healing factor, that small steps would pave the way for the big jump.” However, he noted, “As long as the core issues are open, we see
how expectations concerning a final settlement on one side fuel fear on the other. There is no issue too small not to be seen, by both parties, in this perspective, and to be fought over with this is mind.” Delaying status negotiations, in his view, would impede political development and risk violence. 433

The SRSG, Michael Steiner, argued in response that Kosovo was not ready for status negotiations. He wrote in response to Bildt, “Kosovo’s final status cannot be considered in a meaningful way until its institutions, economy and political culture have evolved so that it can administer itself without extensive outside support or interference. Our philosophy, standards before status, express a logical necessity.” In Steiner’s view, Kosovo did not have the capacity for self-governance. It would be irresponsible for the international community to allow Kosovo to either be independent or an autonomous province of Serbia before it achieved “the standards that the international community and its own people demand.” 434

The philosophy that Steiner articulated was not the only reason that UNMIK pursued the Standards before Status policy. The policy was the only logical solution to UNMIK’s strategic challenge. The international community was still undecided about whether Kosovo should be independent. UN headquarters was under pressure from Russia, for example, to ensure that UNMIK’s institution building efforts did not imply Kosovo’s independence. Furthermore, continued human rights violations against minorities and powerful organized crime and corruption networks made it clear that Kosovo’s institutions remained weak. Hence, the most obvious way forward, within UNMIK’s political constraints, was to attempt to improve Kosovo’s institutions in the short term and hope that status negotiations would become more feasible in the long term.

The goals for the Standards before Status were initially announced in April 2002. Steiner explained that since the time for status negotiations “has not yet come,” UNMIK was “embarking on a benchmarks process.” The benchmarks included the “existence of effective, representative and functioning institutions; enforcement of the rule of law; freedom of movement; respect for the right of all Kosovans to remain and return; development of a sound basis for a market economy; clarity of property title; normalised dialogue with Belgrade; and reduction and transformation of the Kosovo Protection Corps in line with its mandate.” By July 2002, the benchmarks were renamed the “Standards before Status” and UNMIK made clear that achievement of the standards were conditional for status negotiations. I evaluate this reform effort by focusing on the overall accomplishment of the standards, which I divide into three main goals: multiethnic institutions and human rights, addressing organized crime and high-level corruption, and the overall functioning of the government. I evaluate the Standards reform as the general requirements for status negotiations rather than the requirements for specific state institutions. Indeed, many of the standards related to specific institutions that are studied below, such as elections, customs, the KPC, or police. I evaluate the specific goals listed in the standards for these institutions in the respective reform efforts.

The international community was not unified about what Kosovo’s status would be, but it was unified about the Standards before Status. Steiner held extensive negotiations prior to announcing the benchmarks to achieve consensus within UNMIK and with UN headquarters. In the broader international community, there was perhaps a hope that delaying status negotiations would bring about conditions that would make the negotiations easier, including the election of moderates in Serbia or a reduction in ethnic hatred within Kosovo. Even if such improvements

were not forthcoming, the policy was a convenient middle ground. So long as Kosovo’s institutions were improving, and the territory was not granted independence, broad agreement could be achieved. Some might argue that UNMIK was aware that the policy of Standards before Status was impossible and was simply pursuing the policy to please its undecided supervisors. However, Steiner and others within UNMIK clearly articulated how greater institutional strength was necessary for Kosovo’s future, whatever that future might hold.437

The requirements for achieving the standards and the international evaluation of Kosovo’s progress changed over the course of the reform. The threat posed by the Standards before Status to the key nationalist goal – independence – therefore varied. On one hand, if the standards were straightforward, and the international community accepted Kosovo’s progress, the policy could facilitate independence. On the other hand, if the standards were vague, ambitious, and unachievable, the policy would make independence impossible. Indeed, the nature of the threat to independence varied over the course of the reform from low to high to low. There was some potential threat to informal networks in the overarching standards reform, even excluding the threats to informal networks related to specific state institutions studied below. However, when this threat was realized, prior to 2004, the threat to independence took priority to the threat to informal networks. The theory predicts that the threat to nationalist goals will lead to public protest and the failure of the reform.

Explication of Benchmarks and the Prelude to Riots

The initial set of demands posed by Steiner and the international administration was the achievement of the eight benchmarks listed above. Albanian elites criticized these demands in two ways. First, they noted that there were no clear metrics in place for evaluating the achievement of the benchmarks. Hence, the international community could indefinitely assert

437 King and Mason, Peace at Any Price, 70, 174; Perritt, The Road to Independence for Kosovo, 75–76.
that Kosovo had more to do before status negotiations should begin. Second, Albanian elites noted that many of the standards referred to competencies that were under the control of UNMIK officials, even though they had been delegated to the Kosovo Assembly in the Constitutional Framework, or referred to competencies that were specifically reserved to UNMIK. Even a willing Kosovo government would be impotent to make progress in these areas. These critiques were compounded by UNMIK’s public relations campaign. UNMIK campaigned for the achievement of the standards with a variety of TV and print advertisements, which compared the achieving the standards to children memorizing poems or playing basketball. The campaign came off as condescending and emphasized the paternalistic character of the UN administration.

In early 2003, the international administration recognized the extent of Albanian opposition and tried to gain support for the standards policy in three ways. First, in January 2003, UNMIK sub-divided the standards into thirty-two sub-goals to make them more achievable. Second, UNMIK created the Transfer Council in March 2003, which was to transfer competencies controlled by UNMIK to the PISG. While Albanian elites sought additional competencies that were specifically reserved to UNMIK in the Constitutional Framework, UN headquarters blocked any further transfer of powers. Third, Steiner pushed the UN to name a date when Kosovo’s progress would be evaluated. According to one account, “Steiner came to recognize that unless the Albanian majority saw some light at the end of the tunnel, relations between the mission and the local population would become increasingly sour.”

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439 ICG, “Two to Tango”, 17. While the name and content of the Standards would shift, the patronizing quality of the advertising remained. See especially [http://www.unmikonline.org/standards/priorities.htm](http://www.unmikonline.org/standards/priorities.htm)
440 Tansey, *Regime-Building*, 139.
441 ICG, “Two to Tango”, 18-20
442 Indeed, Kofi Annan sent Steiner and official reprimand for not consulting with UN headquarters before proposing a review date for Kosovo status to the Contact Group. King and Mason, *Peace at Any Price*, 172–3.
clear date and mechanisms of evaluation, the achievement of standards would be impossible, and
the policy would become more threatening to the nationalist goal of independence. However, UN
headquarters rebuffed Steiner’s request. The international community did not want to cede
control of determining when status negotiations could begin.

Throughout 2003, Albanian protests against UNMIK began to escalate. While much of
the Albanians’ frustration was focused on the failure to move towards independence, weak
economic progress and continuing unemployment rates at approximately 50-60% exacerbated
the public’s frustration. UNMIK’s failure to begin privatizing large public companies, because of
legal complications, was especially unpopular.443 Early in UNMIK’s mission, there were many
attacks by Albanians against minorities, but there had been few attacks against UNMIK or
international staff. In 2003, protests and attacks against UNMIK began to occur. The Albanian
National Army (AKSh), a small and “shadowy” nationalist group, attempted to bomb a bridge in
April 2003. However, the bombers, who included a KPC officer, bungled the operation and
ended up killing only themselves. KLA veterans also began to protest more vocally, at times
directly opposing KFOR troops. There were protests against the UNMIK-organized dialogue
with Serbia on October 14, and against UNMIK in general on November 12. A homemade bomb
was planted near UNMIK headquarters during the visit of a senior UN official. There were also
large anti-UNMIK protests related to the indictment of Albanians by the ICTY in March 2004,
days before the major riots broke out.444

443 Many interviewees specifically highlighted the failure of privatization as a major source of frustration. Serbia
was involved in the ownership of state-owned enterprises, which meant that privatization might impact status. UN
headquarters refused to grant the Kosovo Trust Agency staff legal immunity. This made it impossible for UNMIK to
conducted privatization and slowed the development of the local economy. Ibid., 184–188. ICG, “Collapse in
Kosovo,” 22 April 2004, Europe Report No155, 6. Interviews with international and local analysts, Pristina, Winter
2010.
444 Whit Mason, “Kosovo: Unraveling the Knot,” World Policy Journal 23, no. 3 (Fall 2006): 90. ICG, Collapse in
Kosovo,” 8-9.
Local elites began to increase their anti-UNMIK rhetoric. Prime Minister Rexhepi explained his view of the October 14 demonstrations: “We don’t like to see those protests or those placards, but if UNMIK continues to ignore our needs, if it refuses to transfer more power to us, then the internationals here will face big demonstrations and everyone will be crying ‘UNMIK go home.’”\(^{445}\) Rexhepi also took a World Bank contingent to a restaurant in Serb-dominated Northern Mitrovica, which provoked Serb protest. Finally, according to some accounts, Albanian elites influenced the activities of the more secretive and violent nationalist groups.\(^{446}\)

By November 2003, UNMIK launched a major revision of the Standards before Status demands. The Standards before Status would be renamed the “Standards for Kosovo” and would include 109 sub-goals under the eight original benchmarks. UNMIK also announced that Kosovo’s progress with the standards would be evaluated in mid-2005. To further specify the steps necessary for achieving the standards, UNMIK created the Kosovo Standards Implementation Plan (KSIP). The 117-page KSIP contained 400 actions, offered a timeline, and specified responsible institutions. While the plan was released on March 31, 2004, several weeks after the riots, UNMIK had been negotiating the plan with the Kosovo authorities for several months.\(^{447}\)

The KSIP was highly ineffective and demonstrates the dangers of the international administration’s beliefs in human rights and bureaucratic procedures. First, the KSIP adopted a highly ambitious rights-based approach. The document was filled with vague, aspirational


\(^{446}\) Petersen, *Western Intervention in the Balkans*, chap. 11.

demands such as “Public figures (both centrally and in municipalities) unequivocally condemn statements condoning or likely to incite violence, inter-ethnic hatred or any other form of extremism... KPC [Kosovo Protection Corps] ensures that no current or potential KPC member is discriminated against on account of his or her race, ethnicity, gender, or sexual orientation.”

Some international critics even believed that the KSIP was so ambitious that even Western democracies such as France could not achieve the standards, while other participants joked that “if Kosovo met Steiner’s standards, it should be immediately granted the chairmanship of the Council in Europe, because its human rights record would surpass that of any Western European country.” Consequently, even if the Kosovo Albanian elites were dedicated to fulfilling the standards, it was unlikely that they would be able to achieve the requirements in the KSIP.

Second, the bureaucratic complexity of the document was inappropriate for Kosovo. The KSIP seemed to assume that specifying a long list of requirements would be sufficient to deal with political objections. The document was written by a variety of different committees within the international administration and by foreign consultants. The plan therefore paid little attention to the attitude of locals and was long, complex, and of varying quality. While local officials nominally participated and approved the document, few actively contributed to, or even read, the document. Instead, the process was “captured by the UN’s mid-level bureaucrats.”

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448 Other requirements include: “Adopt and implement Anti-Corruption Strategy for Kosovo, including an Anti-Corruption campaign... Set up, make functional and/or strengthen mechanisms for gender mainstreaming envisaged by the Law on Gender Equality... Media criticise any form of hate speech and refrain from broadcasting or printing it. Media encourage tolerance among the communities and report in an unbiased way, especially when dealing with situations of inter-ethnic tension. Ensure that an ethnic and gender awareness component is integrated in all training provided to police officers, judges, lawyers, prosecutors, and penal system managers, and that it is an integral part of programmes for continuing professional education.” UNMIK, “Kosovo Standards Implementation Plan.”

449 Perritt, The Road to Independence for Kosovo, 75. Interview with former UN official, New York, Spring 2010.


451 Interview with local analyst, Pristina, Winter 2010
UNMIK intended the KSIP to make the standards more achievable by specifying what had to be done to implement them, but the process instead made it clear that UNMIK’s objectives for Kosovo were effectively unlimited. The continuing prevarication on when Kosovo would be evaluated on its achievement of the standards, combined with the difficulty of the benchmarks and implementation plan, meant that the Standards before Status process was effectively threatening Kosovo’s independence. Kosovo would not become independent so long as the process continued. Elites’ reaction was to begin to outbid one another on objecting to UNMIK, as occurred in the protests in October 2003. In March 2004, this outbidding would result in major violence.

**Riots**

In March 2004, the Albanian majority’s frustration came to a head. On the evening of March 16, the public television channel reported that in Northern Kosovo a group of Serbs had chased several Albanian boys into the Ibar River. The story claimed that several of the boys were missing and presumed drowned. While an UNMIK police spokeswoman urged calm, an Albanian “human rights” activist called for action against the “Serbian bandits.” In the morning, several newspapers repeated the story with similar outrage. Major riots throughout Kosovo broke out the next day. Approximately 19 people were killed, 900 injured, and 36 Serbian churches and 700 homes were damaged or destroyed.

The theory predicts that when international demands threaten nationalist goals, public protest becomes feasible and will enable local elites to block implementation. Examining the role of elites in the March 2004 riots therefore provides an opportunity to evaluate the theory and investigate the mechanisms of how elites might play a role in escalating violence. However, the

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history of the riots is contested and politicized. There are two competing interpretations of the role of elites in the violence.

The first interpretation, supported by some international officials in UNMIK and many commentators on the Serb side, claims that the riots were pre-planned and executed by Albanian elites. As evidence for close elite leadership, this school of thought notes the rapid start and systematic targeting of the riots. They also note the reported discovery by an intelligence agency, in November 2003, of a secret plan for Kosovo-wide riots. The second interpretation, which is mainly on the Albanian side, argues that the elites neither instigated nor planned the violence. Instead, the riots were a broad popular response to the report of the Serb attack on Albanian civilians, combined with underlying social frustration about the lack of political and economic development. This interpretation notes that Thaci was out of the country, and that other party leaders seemed be steadily behind the news. These leaders were also instrumental in calming and ending the riots on March 18, 2004.

Neither school of thought is completely correct. Rather, in the words of one report, the riots were “both spontaneous and organized.” There were elements of the riots that were orchestrated by ex-members of the KLA, or by groups such as the AKSh, some of whom had links to the major political parties. Many of the 50,000 rioters, however, did not riot because they were part of a predesigned plan, or were provoked by a specific elite’s call to protest. Indeed, accounts of the protest make clear that there were a number of informally and locally organized

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454 SRSG Harri Holkeri “stated that Albanian extremists “had a ready-made plan” for the violence.” Human Rights Watch, “Failure to Protect: Anti-Minority Violence in Kosovo, March 2004” Vol. 16 No. 6 (July 2004), 27.
456 Human Rights Watch, “Failure to Protect,” 27. The ICG explains: “The two days of violence were not centrally organised, but were a vortex which different radical, extremist, and criminal structures poured in and out of, an impromptu market place of violence to which each brought their wares and found their niche.” ICG, “Collapse in Kosovo,” 17. This evaluation was confirmed by my interviews a variety of interviews with international officials and local analysts, Pristina, Winter 2010.
simultaneous protests in different parts of Kosovo. Protestors communicated with each other through text messages, for example, rather than taking orders from a central organization. 457

Nevertheless, elites played a substantial role in bringing about the conditions for the riots. The major political parties — including PDK, LDK, and AAK — used rhetoric that blamed the international community and UNMIK for the lack of progress towards independence. During the crisis, some Albanian political leaders justified the violence based on the lack of progress with status negotiations and the continued existence of Serbian parallel institutions. Later, however, the main political parties did condemn the violence, and some politicians played a personal role in calming the protestors. 458

The account of the riots as partly spontaneous and partly mobilized by elite rhetoric is consistent with the theory and further specifies the mechanisms that elites use to escalating protest. The account emphasizes that elites rely on the mass public for their power and that elites can shape the way that the mass public interprets international demands.

_Eide Report and the Start of Status Negotiations_

The theory predicts that in response to violent protest, the international administration will recognize the illegitimacy of its demands and weaken them. Indeed, the riots showed that continuing to delay status negotiations could have serious negative political consequences. Kai Eide wrote a report reviewing UNMIK following the riots in mid-2004, which suggested weakening UNMIK’s demands. Eide’s suggestions were largely adopted, and he would later

457 Perritt interviews one participant about the protest: "‘How did you know about it? How did you know where to go and what to do?’... ‘That was no problem... We simply called each other on our cell phones or sent text messages to each other. It wasn’t too hard to agree that Caglavica was where the action should be... We were fed up and we wanted to do something. Most of us were too young to have been part of the KLA, but we are not too young now to show that we have some pride, and that there are limits on what the Serbs and UNMIK can do to us.’" The Road to Independence for Kosovo, 9–10.

458 Notably, Thaci was one of the first Albanian politicians to issue a statement specifically condemning violence against the Serbs, rather than just the violence against UNMIK. Human Rights Watch, “Failure to Protect, 57-61; ICG, “Collapse in Kosovo,” 25.
write a second report, in October 2005, reviewing Kosovo’s achievement of the standards and preparedness to begin status negotiations.

Eide’s reports were frank assessments of the problems with UNMIK’s extant approach to Kosovo. Eide’s first report argued that UNMIK lacked political “perspective.” He observed that UNMIK’s insistence that status negotiations should only begin after all of the standards had been implemented was counterproductive for the achievement of any standards at all. Eide noted that the ambition and complexity of the standards led Kosovo Albanians to believe that the standards were not implementable. While many international and local critics had previously argued that the Standards before Status policy was not feasible, UNMIK and UN headquarters were only willing to reevaluate their demands after the riots. 459

Eide made a series of recommendations about how to adjust the international approach in Kosovo. Eide recommended prioritizing certain standards, especially those related to the protection of minorities. The other standards would remain on the table, but would become part of a longer-term effort to integrate Kosovo into the European Union. Eide also proposed transferring further authority to the PISG. Finally, Eide recommended commencing the status negotiations. He noted that while there was no good time for status negotiations, the political situation in Kosovo would continue to degrade so long as status negotiations were delayed. In an addendum to the report, Secretary-General Kofi Annan approved of Eide’s main recommendations. Annan proposed a comprehensive review of Kosovo’s achievement of the standards in 2005 as a prelude to status negotiations. In order to better monitor and encourage the

459 For Eide’s full report, see “Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council,” S/2004/932. Several analysts have noted that Eide’s reports are far more clearly and bluntly written than typical UN reports, which is one sign that the reports accurately reflect that UN’s opinion of its own situation. See Tim Judah, Kosovo: What Everyone Needs to Know (Oxford University Press, 2008), 111; King and Mason, Peace at Any Price, 209–211.
achievement of standards, he also instructed UNMIK to begin technical evaluations of Kosovo’s achievement of the standards in UNMIK’s quarterly progress reports to the Security Council.⁴⁶⁰

Many of the theory’s claims are echoed by Eide’s report. The report recognizes that a technical or bureaucratic approach is unlikely to succeed with reform efforts that impact independence. Eide also observed that UNMIK could do little to change the center of gravity of Albanian politics away from the goal of independence. Finally, one of Eide’s main recommendations for improving UNMIK’s efforts in the future was to improve the unity of the international community overall, and to reorganize UNMIK to improve inter-organization coordination.⁴⁶¹

The adoption of Eide’s recommendations amounted to a major weakening of the demands related to the standards. A new SRSG, Søren Jessen-Petersen, was appointed to oversee this change in strategy. In early 2005, UNMIK specified certain of the standards in the November 2003 document as “Priority Standards.”⁴⁶² The priority standards deemphasized multiethnic institutions in favor of protecting minorities through decentralization and minority vetoes. UNMIK did not completely abandon its goals beyond the priority standards, but shifted responsibility for implementing these goals to the European Union in the long run.

Kosovo Albanian local elites reacted quite favorably to the weakened demands. General elections in October 2004 led to the creation of an LDK and AAK coalition, with Ramush Haradinaj, the popular leader of AAK, becoming the Prime Minister. Haradinaj was a more enthusiastic supporter of the Standards than previous Kosovo Albanian leaders. He created an office to supervise the PISG’s implementation of standards and criticized Albanian officials who

⁴⁶¹ S/2004/932, para 30, 55-57, 61
came unprepared to meetings or left technical details to their international counterparts. Several international and local officials believed that Haradinaj’s influence shifted the standards process from being a primarily internationally dominated process to one with greater local involvement.\(^{463}\) However, in March 2005, Haradinaj was indicted by the ICTY for war crimes and stepped down as Prime Minister after only approximately 100 days in office. Bajram Kosumi was appointed to replace him as Prime Minister. While many feared that Haradinaj’s indictment would lead to violence, Kosovo remained calm. Albanian elites recognized that the international community’s perspective toward independence had shifted and that further violence risked undermining international support.\(^{464}\)

In late 2005, Eide led a comprehensive review of the standards process and issued a second report. While Eide observed that implementation of the standards was “uneven”, he recommended commencing status negotiations.\(^{465}\) The UN then appointed Martti Ahtisaari as a Special Envoy and began the status negotiations. At the beginning of the talks, Ahtisaari even told Serbia’s leadership in Belgrade that Kosovo’s independence would be the inevitable result of the negotiations.\(^{466}\) While the UNMIK remained careful not to publically state that the independence of Kosovo was inevitable, many UNMIK officials believed that it was. This belief was heightened since many UNMIK officials took part in the status negotiations and helped design new institutions for an independent Kosovo. Furthermore, for many UNMIK officials, the establishment and strengthening of Kosovo’s institutions only made sense if Kosovo was going to become independent. Finally, Albanians, who constituted a clear majority of the population,

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\(^{463}\) Interviews with former UNMIK officials and local officials, Pristina, December 2009, January 2010.


\(^{466}\) James Ker-Lindsay, Kosovo: The Path to Contested Statehood in the Balkans (I. B. Tauris, 2009), 28; Perritt, The Road to Independence for Kosovo, 120.
had made it clear that they both supported independence and would violently oppose continued Serbian sovereignty.\footnote{Interviews with several former UNMIK officials, Pristina, winter 2010. See also Perritt, The Road to Independence for Kosovo, 170.}

The international community, however, remained divided about Kosovo’s independence. Five countries from the Contact Group – the United States, Germany, France, the UK, and Italy – composed a group called the Quint that generally supported independence. Russia, the other member of the Contact Group, remained Serbia’s main ally, and continued to oppose Kosovo’s independence. The Quint, led by the US, believed that if Kosovo’s institutions ensured the continued rights of minorities in Kosovo, other more skeptical countries might be encouraged to accept Kosovo’s independence. The Quint therefore pressed UNMIK to work harder to build stronger institutions to protect minorities while UNMIK was still in place. The Quint, supported by Ahtisaari, also sought to use the status negotiations to convince Kosovo Albanians to accept a restructured international administration that would continue to supervise Kosovo’s institutions after independence.\footnote{Ibid., 119–140. Interviews with several former UNMIK officials, Pristina, January 2010.}

\textit{Implementation of Standards during Status Negotiation}

The commencement of status negotiations provided Kosovo Albanians with a clear narrative about how implementing the priority standards would lead to greater international support for independence. UNMIK’s priority standards focused largely on providing Serbs with greater public services, increasing the power of minority-dominated municipalities, and increasing the representation of minorities in Kosovo’s institutions. While the Albanian political elite would not have agreed to these measures without international pressure, they were willing to implement them as a condition for independence. These measures posed little threat to Albanian elites’ informal networks, which were largely centered on central institutions and Albanian-dominated
municipalities. UNMIK’s reports provide a record of slowly, but steadily, improving institutions related to protecting minorities. The Assembly approved a variety of priority standards related to the use of languages, media, public services, transportation, electricity, municipal governance, and other measures. The implementation of standards was especially rapid when the international community proposed a relatively small number of changes with a clear deadline.

UNMIK also had some success implementing the non-priority standards, which were associated with the EU accession process. Over the course of 2006, Kosovar, UNMIK, and EU authorities worked together to develop a European Partnership Action Plan (EPAP), which specified the actions necessary to make progress with Kosovo’s EU accession process. Many of the outstanding standards and specific actions from the KSIP were included in the 122-item, 135-page EPAP, which was released in August 2006. Unlike the KSIP, local officials participated in the creation of the EPAP and supported its implementation. The overarching reason for greater acceptance of the EPAP was that it was no longer linked to the politically untouchable issue of independence. The PISG had also developed greater capacity to react to complex and bureaucratic international demands.

While Albanian participation in the standards process improved, Serbs boycotted Kosovo’s institutions. Indeed, the lack of Serb participation became one of the primary impediments to achieving greater implementation of the priority standards. Many of the standards dealt with minority recruitment and participation in government, which meant that the Albanian-dominated government depended on active Serb participation to meet these standards.

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470 In June 2006, the Contact group proposed 13 priority areas, which were largely implemented by the government. UNMIK, “The Kosovo Standards Process 2003-2007,” 5-6; S/2007/134, 8-9.
472 See, for example, S/2006/45, paragraph 18; S/2007/134, paragraph 22.
The government had difficulty with minority recruitment and was forced to lower hiring standards to ensure adequate minority representation.\textsuperscript{473} UNMIK’s reports eventually began to note that Serb lack of participation was to blame for Kosovo’s limited implementation of particular standards, rather than Albanian intransigence. These observations frustrated Serbia and its allies, especially Russia, and heightened the perception that UNMIK was biased in favor of Kosovo’s independence.\textsuperscript{474}

\textit{Kosovo’s Declaration of Independence}

By late 2007, the status negotiation process had stalled. The Kosovo Albanian authorities would only accept an agreement that granted independence, while the Serbian authorities would not accept any such agreement. Still, Ahtisaari’s team, with the help of UNMIK, developed a plan for post-independence Kosovo. Ahtisaari’s plan specified the creation of a restructured international administration, which would retain executive authority to ensure that the Kosovo continued to meet international standards, especially with regard to the rule of law and protection of minorities. According to the plan, UNMIK would cease to exist after a 120-day transition period, at which point a new organization, the International Civilian Office (ICO), would take over supervision of the international administration.

On February 17, 2008, Kosovo unilaterally declared independence. Under the threat of a Russian veto, the Security Council did not accept Ahtisaari’s plan or Kosovo’s independence. Kosovo’s leadership, however, agreed in the Declaration of Independence to abide by the requirements contained in the Ahtisaari plan. Without any action by the Security Council, however, UNMIK continued exercise executive power in Kosovo under resolution 1244. UNMIK, however, downsized its operations and effectively ceded power to Kosovo’s

\textsuperscript{473} Interview with former member of the Standards Implementation office, Pristina, January 2010
\textsuperscript{474} Interview with former UNMIK official, Pristina, December 2009.
institutions. Two new organizations, an EU-led rule of law mission (EULEX) and the International Civilian Office, took over the international supervision and reform of Kosovo’s institutions.

**Conclusions**

<table>
<thead>
<tr>
<th>Preferences</th>
<th>Improvements in:</th>
<th>Overall function of state</th>
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<tbody>
<tr>
<td>Human rights and multiethnicity</td>
<td>Organized crime and high level corruption</td>
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### Table 4.2: Kosovo Standards before Status Reform

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
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<tbody>
<tr>
<td>Statement of benchmarks</td>
<td>Improvements in institutional functions</td>
<td>High</td>
<td>Low</td>
<td>UNMIK cannot commence status negotiations, so hopes to improve institutions</td>
<td></td>
</tr>
<tr>
<td>Response to benchmarks</td>
<td>Improvements in institutional functions</td>
<td>High</td>
<td>Low</td>
<td>Failure: Kosovo elites seek greater authority and clearer evaluation of standards. UN creates Transfer Council but does not set date for evaluation</td>
<td>Partially Confirmed: Elites attempt nationalist outbidding. Limited implementation with uncertain threat</td>
</tr>
<tr>
<td>Eide Report “Priority Standards”</td>
<td>High</td>
<td>Low</td>
<td>Success: Violence leads to international reevaluation of strategy, Weaker demands through priority standards</td>
<td>Confirmed: Protest blocks reform, forces weaker demands.</td>
<td></td>
</tr>
<tr>
<td>Implementation of demands after riots “Priority Standards”</td>
<td>High</td>
<td>Low</td>
<td>Success: Beginning of Status Negotiations, Generally good implementation of Priority Standards except lack of Serb participation in government</td>
<td>Confirmed: Unity combined with lack of threat leads to greater implementation</td>
<td></td>
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</tbody>
</table>

The Standards before Status process was a rational attempt to improve Kosovo’s institutions within UNMIK’s political constraints. It largely failed. UNMIK could not overturn the fundamental desire of the Albanian majority in Kosovo to achieve independence. UNMIK tried to respond to Albanian complaints about the standards process by making its demands more specific, but the effort was counterproductive since it revealed that UNMIK’s goals were
effectively unlimited. Albanians’ frustration with the lack of progress on standards, and hence unwillingness of the international community to grant independence, led to the riots of 2004. These riots forced the UN to reevaluate its strategy in Kosovo, and recognize that it was necessary to weaken demands and begin status negotiations. Once UNMIK’s demands were more clearly linked to international recognition of Kosovo’s independence, the implementation of the standards accelerated.

The Standards before Status reform closely conforms to the expectations of the theory and offers substantial support for the theory’s claims (see Table 4.2). The reform effort demonstrates several mechanisms and sub-mechanisms specified by the theory. Public protest occurred once the demands threatened nationalist goals and forced the international community to weaken its demands. The new demands did not threaten nationalist goals or informal networks, so with unity, they were fully implemented.

The reform effort also discounts the alternative explanations. First, the reform effort questions the efficacy of international authority, resources, and technical proficiency. UNMIK had supreme authority in Kosovo. Though the standards prior to 2004 were not perfect, they largely represented bureaucratic best practices. Nevertheless, UNMIK’s effort to implement the standards largely failed and therefore demonstrates that international authority and expertise cannot trump the local political context. Second, the support of key donors was not sufficient to implement the standards. The EU and the United States were steady supporters of the standards, but their demands did not trump concerns about independence. Third, there was little evidence of the existence of moderate parties with alternative political views. All major parties sought to associate themselves with independence and competed in their opposition of UNMIK leading to the riots.
V. Electoral Reform under UNMIK

As a means to establish interim democratic institutions, UNMIK's mandate included holding elections. Responsibility for elections was under Pillar III of UNMIK, the OSCE Mission in Kosovo (OMIK).\textsuperscript{475} OMIK attempted to implement the international community’s preferences, which included free and fair elections, the election of moderate parties, the participation of Serbs, and the eventual transfer of authority to locally run institutions. The OSCE had run elections in Bosnia and many of its decisions in Kosovo were guided by “lesson learned” from Bosnia, including delaying general elections as well as adopting a modest approach for encouraging the election of moderate and multiethnic parties. Overall, the reform would be partially successful. OMIK conducted elections that were widely viewed as free and fair, moderate Albanian parties were sometimes elected, and local electoral institutions were established. However, Serbs only rarely participated in elections.

The theory only partially explains the trajectory and outcome of the electoral reform. Since authority over elections was delegated to OMIK, unity was high. Outside of the conduct of free and fair elections, OMIK generally made limited demands for reform, so the threat of the demands was low. The theory predicts full success, while only partial success was observed. Furthermore, the mechanisms of the process were sometimes different from the mechanisms specified by the theory. The conduct of elections and the transfer of authority to local institutions did follow the specified mechanisms of the theory. The election of moderate Albanian parties and the participation of Serbs in elections, however, were determined by domestic trends within Kosovo and the rest of Serbia rather than by the activity of the international administration.

\textsuperscript{475} OMIK’s responsibilities would be “strengthening the capacity of local and central institutions and civil society organizations, as well as promoting democracy, good governance and respect for human rights.” S/1999/779, para 79.
The case study proceeds in five parts. The first part describes the origins of the international administration’s preferences for elections and codes the key variables. The second part describes the development of rules for the municipal elections in October 2000. The third part describes the first Kosovo-wide elections in 2001. The fourth part describes several subsequent developments in electoral institutions, including a debate about the open and closed lists and the transfer of authority to local institutions. A fifth part concludes.

Origins of UNMIK’s Efforts at Election Reform

Although the context and purpose of the elections in Kosovo would be guided by the overall negotiation about political status, as described in the previous reform efforts, the technical conduct of elections still had the potential to influence the development of politics in Kosovo.

The international community had four preferences with regard to elections in Kosovo. First, OMIK sought to hold elections that were recognized internationally and locally as free and fair. The running of elections was a legal and logistical challenge that involved specifying the rules for the elections, monitoring, and supervising the campaigns, and then actually holding the election. If elections were not viewed as legitimate, the UNMIK and the elected leaders would be discredited. Free and fair elections were therefore of primary importance, since a variety of other objectives depended on the legitimacy of locally elected leaders.

Second, OMIK sought to encourage Serb participation in elections. OMIK’s initial mandate included bringing “about mutual respect and reconciliation among all ethnic groups in Kosovo” and establishing “a viable multi-ethnic society where the rights of each citizen are fully and equally respected.” This preference for multiethnicity follows the belief in human rights described in the theory and led OMIK to have a preference for integrative over consociational institutions. However, OMIK quickly realized that cross ethnic voting was unlikely in Kosovo.

Since Serbia and Russia were both OSCE members, OMIK was particularly attentive to the position of Serbs in Kosovo and primarily sought to ensure Serb participation in elections.\(^{477}\)

Third, the mission sought to encourage the election of moderate Albanian parties. UNMIK was suspicious of the parties emerging from the KLA, especially PDK, given their association with violent nationalism and alleged connections with organized crime. The LDK was seen as a pacifist, popular, and more moderate alternative.\(^{478}\) The AAK was seen as a possibly useful counterweight to the popularity of the PDK, even though its leader Haradinaj had close links with the KLA. The international community also favored smaller moderate Albanian parties, such as the ORA party led by Vetton Surroi.\(^{479}\)

Fourth, later in UNMIK’s administration, the international community sought to gradually transfer authority over elections to local institutions. Because of status concerns, the international community was willing to retain authority over elections in Kosovo for longer than in other societies. But given the cost of running elections, and long run desirably of locally-run institutions, UNMIK attempted to transfer authority as soon as was practical. The creation of an “independent, representative and multi-ethnic Central Election Commission,” was included in the Standards, although it was not made a priority standard in 2004. Even as local institutions took over responsibility for running elections, the quality of elections remained critical, so international advisors and monitors remained present.\(^{480}\)


\(^{478}\) Perritt explains that the international community’s “goals were peace and a multiethnic government, no matter how much that slowed economic development and the emergence of local institutions. Towards that goal, Rugova [the leader of LDK] was a better bet than anyone from the KLA.” The Road to Independence for Kosovo, 154; Tansey, Regime-Building, 118.

\(^{479}\) Tansey, Regime-Building, 118; King and Mason, Peace at Any Price, 120–121. Interviews with international officials local analysts, Pristina, Winter 2010.

Throughout the election reform, the international administration was unified in its demands. Authority over elections had been largely delegated to OMIK, though the SRSG retained final authority. One international participant emphasized that OMIK was largely in control of election policy and did not have to negotiate its demands with other organizations. OMIK’s connection with the rest of the mission was limited to a weekly meeting, and while the SRSG did occasionally make rulings relevant to elections, his decisions were closely guided by advise from OMIK.481

The threat of OMIK’s demands was generally low. Indeed, OMIK’s overriding concern was simplicity and stability. Even though having elections was tied to independence, the specific election rules had little meaning for its achievement. Specific electoral rules did have the potential to make it hard for specific parties to win elections. Such rules would be equivalent to a threat to informal networks.482 However, while some of OMIK’s proposed rules did have consequences for the parties’ vote shares, none of its proposed rules had the potential to significantly weaken any of the major parties. OMIK’s ambition later in the mission was further diminished by the decreasing international staff, from approximately 1500 in 2004 to 150 in 2007 to 24 in 2009.483 I therefore code the threat of the reform as low. Hence, given low threat and high unity, the theory predicts successful implementation of international demands.

**Municipal Elections of 2000**

OMIK decided to delay general elections (also called “Kosovo-wide elections”) and hold municipal elections first for several reasons. First, a key “lesson learned” from Bosnia was that rapid elections tend to enfranchise nationalist parties. The OSCE was concerned that

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481 Interview with international officials, Pristina, Winter 2010.
482 See the electoral reform in Bosnia for an explanation of why such demands threaten informal networks rather than nationalist goals.
483 Interview with local analysts and international officials, Pristina, Winter 2010. See also Taylor, “Electoral Systems and the Promotion of ‘Consociationalism’ in a Multi-Ethnic Society.”
immediately after the war nationalist Albanian parties closely associated with the popular KLA would be victorious. OMIK was also concerned that rapid general elections would imply independence. By holding municipal elections first, the OMIK hoped to focus on local-level governance and thereby deemphasize the political status of Kosovo and encourage greater Serb participation. Finally, OMIK had concerns about the technical challenges of quickly holding general elections. Holding municipal elections first would give OMIK time to gain experience working in Kosovo and develop its electoral infrastructure.  

In early 2000, negotiations began about rules for the municipal elections. UNMIK created the Central Election Commission (CEC), which was largely made up of local representatives, but was chaired by the head of the OSCE. The CEC negotiated two major issues - the proposed electoral system and whether there would be open or closed party lists.

The CEC favored a proportional representation (PR) system. The head of OMIK wrote that “the selection of the proportional system encouraged a more moderate political climate, prevented the formation of a bi-polar reality and assured small and minority parties of achieving some representation without needing a large share of the votes.”  

The OSCE further argued that proportional representation (PR) was the only technically feasible system given the lack of reliable census data. The PDK and LDK opposed the PR electoral system in favor of a first-past-the-post voting system. As the two largest parties, they hoped to eliminate the smaller competitors. The PDK spokesman even threatened to boycott the elections. In July 2000, Kouchner, the SRSG, stuck with the CEC proposals despite the objections of PDK and LDK.

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While PDK and LDK did have a preference for a different electoral system, the choice of PR was hardly threatening to their dominance in Kosovo.⁴⁸⁷

There was also disagreement about whether to have open or closed party lists, an issue that would reappear several times in the future. In closed list systems, voters can only select their preferred party. The parties submit a list of candidates prior to the election and, depending how many votes the parties receive, a different number of candidates from the list are elected. In an open list system, voters can reorder candidates from the party’s list. OMIK’s initial preference was for a closed list system, largely for the sake of simplicity. Without a stable voter registry prior to the elections, verifying a candidate’s credentials would be difficult. However, based on the desire of representatives from the major political parties, OMIK adopted open lists for the municipal election. OMIK also ruled that one-third of the positions throughout the list be reserved for women.⁴⁸⁸

The municipal elections were held in October 2000. There were a number of irregularities in the election, including attacks against LDK members. As OMIK had expected, the credentials of some 100 candidates were impossible to verify and the candidate list was still being finalized only hours prior to the election. Nevertheless, the elections were generally viewed as legitimate by local and international authorities. The three main Albanian parties, LDK, PDK, and AAK, dominated the elections by together winning a total of 93% of the vote. The major surprise of the municipal election was the impressive performance of LDK, which won a total of 58% of the votes cast and a majority in 22 municipalities.⁴⁸⁹

LDK’s victory stemmed from domestic political conditions rather than the behavior of the international administration. LDK retained the strongest political organization throughout the country and the influential older generation of Kosovo Albanians was still largely loyal to LDK. Also, only a small percentage of Albanians had actively participated in the KLA and many believed that the KLA veterans did not have the education or experience necessary to rule the territory. Finally, the electorate was soured by the period of violence and attacks against LDK immediately after the war.490

While the international administration encouraged Kosovo Serb participation, the Serbs boycotted the elections. Observers cited the Serbs’ refusal to accept the loss of the war and Milosevic’s continuing influence. Given the boycott and low turnout, UNMIK appointed Serbs to municipal councils in northern Kosovo. While UNMIK considered holding subsequent municipal elections in these areas in 2001 to confirm its appointees, UNMIK did not do so because it was afraid that nationalist parties would dominate the elections.491

The municipal elections partially achieved international objectives – they were generally viewed as free and fair, the moderate LDK party was elected, but few Serbs participated. However, the theory provides only limited insight. Locals opposed international demands even though they were not particularly threatening. With the exception of the quality of the election itself, UNMIK’s achievements and failures were largely unrelated to its demands or unity.

November 2001 Kosovo-Wide Elections

Holding Kosovo-wide elections depended on the promulgation of the Constitutional Framework, which did not happen until May 2001. Nevertheless, soon after the municipal elections, OMIK

began to discuss the rules for the Kosovo-wide elections. OMIK hoped to encourage the election of small and minority parties and to simplify the election logistics. The size of the Assembly was fixed at 120 members and the electoral system would remain PR. There were two key contentious issues – the district structure and whether to have open or closed lists.\(^4^9^2\)

OMIK considered two plans for the district structure, either multiple districts or a single district. In the multiple district system, 30 members of the Assembly would be elected from each of the municipalities, 60 would be elected from Kosovo as a whole, and 30 would be reserved for minorities. In the single district system, all of the non-reserved seats would be elected from the whole of Kosovo. Although the three main Albanian parties preferred multiple districts, OMIK decided on a single district for several reasons. First and foremost, having a single electoral district was simpler. Due to continuing refugee returns and the obligation to allow refugees to vote in their pre-conflict homes, a multiple district system would make the registration and voting process significantly harder. Also, OMIK was concerned that multiple districts would solidify the regional fiefdoms of the different parties. Finally, since some municipalities were quite small, there were concerns that seats in the Assembly would be out of proportion to the number of votes. The OSCE agreed that a single electoral district had the disadvantage of weakening the connection between the members of the Assembly and local voters. Still, they believed that the parties would retain the incentive to select candidates from diverse regions.\(^4^9^3\)

The second major issue was whether to keep the open lists from the municipal elections or to have closed lists. OMIK preferred closed lists, largely for the sake of simplicity. Open lists required complicated ballots, which were costlier and had the potential to decrease the secrecy of the ballot if voters needed to ask for help. OMIK also believed that closed lists would provide

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\(^{4^9^2}\) Taylor, “Electoral Systems and the Promotion of ‘Consociationalism’ in a Multi-Ethnic Society,” 446.

\(^{4^9^3}\) Ibid., 448–9. ICG, “Kosovo: Landmark Election,” 5.
parties with an incentive to include candidates from across Kosovo. As with the municipal elections, parties were required to include one woman in every group of three candidates over the first two-thirds of the list. With closed lists, the gender quota would be far more restrictive, which led parties to object that Kosovo was being held to standards “imposed by international officials which are not applied in Western democracies and which Kosovo is allegedly unready.”\(^{494}\) Over the objections of the major parties, OMIK instituted a closed list system with the gender quotas.

The major Albanian parties accepted the election rules despite disagreeing with OMIK’s choices. While the parties did prefer multiple districts and open lists, OMIK’s choices were not specifically targeted at any of the major parties and did not substantially threaten their ability to win votes. The parties sought to accelerate the transfer of power from UNMIK to locally elected officials and knew that insisting on open lists or other changes would have delayed the elections.\(^{495}\)

OMIK’s final concern was whether or not Serbs would boycott the election. The ICG writes, “Among all the contentious issues in the run-up to the election, the greatest amount of political energy on the part of the international community was devoted to the question of whether the Kosovo Serbs would participate.”\(^{496}\) UNMIK had made a number of efforts to encourage Kosovo Serbs to vote, especially overrepresentation in the Assembly. Serb participation was not determined by the electoral rules, but by the overarching political dialogue between Belgrade and UNMIK. Serbs felt that voting in the election would legitimate the Albanian-led Kosovo government. Kosovo Serbs also continued to be troubled by attacks on returning refugees and the lack of freedom of movement. By not voting, they hoped to more

\(^{494}\) Ibid., 450-451. ICG, “Kosovo: Landmark Election,” 5.
\(^{496}\) Ibid, 13.
effectively express their displeasure with UNMIK’s administration. However, on November 3, 2001, an agreement between Belgrade and UNMIK that enabled Serbs to vote in the election. The agreement stated that the new Kosovo institutions would not have the power to determine Kosovo’s status and noted the need to improve the quality of life for the Kosovo Serbs. Kosovo Albanian leadership rejected the agreement and were frustrated that they were not consulted. 497

Elections were held on November 17, 2001. Again the results were dominated by the three major Albanian parties, which together captured almost 80% of the vote, though a Serb coalition party participated and won 11% of the vote. LDK continued to have a plurality of votes, 46.3% to PDK’s 25.5% and AAK’s 7.8%. 498 As the theory expects, nationalist goals played a prominent role in electoral campaigns. All of the parties campaigned largely on their wartime record and there was little differentiation amongst the parties on policy. 499

498 Ibid, 8.
499 King and Mason describe in depth the various parties’ campaigns, including the tendency towards personalist politics and attempts to associate itself with independence: “At a rally in Klin, Rugova stated the [LDK’s] core position: ‘As you know, we declared independence in 1991 and we have built our state for more than ten years. Therefore we ask for the official recognition of Kosovo’s independence by the United States, the EU and the international community’... The PDK and AAK emphasized their war records, often in rallies where AK-47s were enthusiastically fired off into the sky... The PDK was most critical of the Constitutional Framework, which Thaci argued ‘will hold hostage the aim of the people of Kosovo, which is political independence’... Ramush Haradinaj, leader of the AAK, distinguished himself from Thaci’s PDK by not only avoiding political issues like his rivals but
The international administration largely achieved its objectives in the 2001 elections. The elections were agreed by international and local monitors to be free and fair, the more moderate LDK continued to be successful, and Serbs widely participated. However, the achievement of international objectives had little to do with the international demands related to elections. While the international administration overruled the parties on closed lists and a single district for all of Kosovo, neither of these rules had a major impact on the outcome of the elections. The theory only partially explains the success of this stage of the reform effort.

Subsequent Elections under UNMIK

OMIK continued to supervise elections after 2001 with mixed success. OMIK seems to have been guided more by a desire for simplicity and stability than for major reform. OMIK based its decisions for electoral rules largely on the preferences of the major parties, which ended up weakening smaller moderate parties. Serbs continued to boycott major elections because of continuing concerns about Kosovo’s status. Finally, OMIK was also partially successful at transferring authority to local institutions, though the quality of elections appears to have declined as local institutions took over greater authority.

Prior to the 2004 Kosovo-wide elections, a coalition of 300 NGOs called Reform 2004 advocated for changes to the electoral system including open lists and multiple voting districts. Reform 2004 sought to encourage greater regional representation and to “democratize” the

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500 The Chief Executive of the CEC Secretariat observed in OMIK’s newsletter: “All-inclusiveness was my main concern and by that we meant participation of all ethnic groups in the elections, in particular participation by the Kosovo Serbs. Me and my deputy, Mr. Bogoljub Staletović did our best to ensure that all-inclusiveness becomes a reality. And, I believe that from the operational aspect we managed to achieve this, despite the fact that we are not happy with the extent of Serb participation.” Hence, technically there was the ability for Serbs to vote although few chose to. Hasan Sopa, “We did our best – Interview with Adnan Merovci,” Details, Vol. 8, Ed. 4, December 2004, 9.
internal functioning of the major political parties. While Reform 2004 submitted plans in September 2004 for changes in the electoral rules, the OSCE refused to implement the changes in the 2004 elections because of time and budget constraints. One Reform 2004 member claimed that the OSCE did have the budget to implement the new rules, but that it would have been more expensive and time consuming. He noted that US advisors favored the new rules, but continued to support a closed list for the sake of stability. The 2004 elections therefore used similar electoral rules as the 2001 elections.501

The overall results of the 2004 elections were also similar to the 2001 elections. The three major parties retained similar shares of the vote, with LDK taking 45%, PDK 29%, and AAK 8%. Vetton Surroi, a writer and intellectual favored by the international community, created a new political party called ORA that only took 6% of the vote. A coalition of LDK and AAK was formed, with Ramush Haradinaj becoming Prime Minister.502

After the 2004 elections, the debate on electoral rules continued. Reform 2004 organized public protests in February 2005 to encourage the OSCE to revise the electoral rules for subsequent elections. Women's groups argued in favor of open lists, even though the change would decrease the number of female MPs, with the hope of increasing the transparency and accountability of political parties. OMIK downplayed its own role in the process, with one representative claiming that “Civil society had representatives in the election working group and they were certainly consulted, as the OSCE is only an administrator, not the decision maker.”503 OMIK eventually yielded and implemented open lists for subsequent elections.

501 Interview with Reform 2004 member, Pristina, December 2009. See also Tansey, Regime-Building, 133.
502 ICG, “Kosovo After Haradinaj,” 13-20
The major Albanian political parties had begun to recognize the consequences of the reform and blocked the establishment of multiple electoral districts. Without multiple electoral districts, the impact of open lists was limited, as voters were less likely to recognize the names of candidates from different parts of Kosovo. OMIK also adopted a 5% minimum threshold for receiving seats in the parliament because of the preferences of the major parties. Hence, while Reform 2004 was successful at getting its main demand for open lists accepted, it did not achieve its overall goals. OMIK accepted rules that effectively weakened small moderate parties.\(^5^0^4\)

In 2007, the Kosovo Albanian political system shifted decisively in favor of PDK, which received 34% of the vote. LDK remained seriously divided following the death of Rugova in January 2006 and received only 23% of the vote. A new party, AKR, led by Behgjet Pacolli, a wealthy businessman living in Switzerland, received 12%. AAK, despite the indictment of its leader Haradinaj by the ICTY, received 10% of the vote. The moderate ORA gained only 4% of the vote, and therefore did not gain any seats in the parliament because it failed to meet the 5% threshold. The 2007 elections happened shortly before the unilateral declaration of independence and a coalition of PDK and LDK, with Thaci as Prime Minister, was formed and led Kosovo into independence.\(^5^0^5\)

Beginning with the 2004 elections, OMIK began to transfer authority to local electoral institutions – the CEC and its operational arm the CEC Secretariat. The CEC had certain responsibilities in the 2004 elections, including running field operations, certifying political parties, and verifying the credentials of election observers. However, OMIK continued to

manage the voters’ list and the counting of votes.\textsuperscript{506} The CEC supposed to run the 2007 elections, with the OSCE providing only monitoring and advice. However, the OSCE stepped in to provide substantial assistance. Following the declaration of independence, the OSCE continued to provide assistance for elections.\textsuperscript{507} Several analysts noted that elections under the CEC were more prone to corruption and manipulation than the OMIK-run elections. In particular, there were serious allegations of fraud in the 2010 elections.\textsuperscript{508}

The CEC Secretariat was unable to fully take over elections due to two problems. First, as one OSCE elections official explained, there was a conflict between the tactical requirement of ensuring free and fair elections and the long-term objective of building effective electoral institutions. The overriding incentive for the international community was to ensure free and fair elections, which made OMIK step in to provide support. Every time OMIK provided support however, an opportunity for improving the self-sufficiency of the CEC was lost. Second, unlike in Bosnia, the CEC staff was not recruited from former OSCE employees. Instead, the CEC staff was newly recruited as Kosovo civil servants. While there were political advantages from this choice, the CEC was perceived to be substantially weaker than the OSCE. In particular, low salaries made it difficult to recruit the best personnel.\textsuperscript{509}

\textit{Conclusions}

The OSCE’s administration of elections in Kosovo was partially successful. The trajectory and outcome of reform only partially aligns with the theory’s predictions. With the exception of

\textsuperscript{508} In particular, in two municipalities with strong ties to PDK, there was 94% and 87% turnout, compared with a national average of 48%. See Paul Lewis, “Kosovo Election Fraud Suspicions Undermine PM’s Victory Claim,” \textit{The Guardian}, December 13, 2010, sec. World news, http://www.guardian.co.uk/world/2010/dec/13/kosovo-election-fraud-claims. Interviews with local and international analysts, Pristina, December-January 2010.
\textsuperscript{509} Interview with an OSCE official and local and international analysts, Pristina, January 2010.
running free and fair elections, the achievement of international preferences was not driven by the unity or demands of the international administration. OMIK tended not to make aggressive demands to encourage multiethnic institutions and instead issued demands based on simplicity and stability. Many of the outcomes related to elections were driven by domestic politics in Kosovo and Serbia rather than the interaction between international officials and local elites.

Table 4.3: Kosovo Electoral Reform

<table>
<thead>
<tr>
<th>Preferences</th>
<th>Free and fair elections</th>
<th>Serb participation in elections</th>
<th>Moderate and small party representation</th>
<th>Creation of Kosovo election institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase of reform</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000 Municipal elections</td>
<td>Free and Fair elections, Serb participation, Limit PDK’s power</td>
<td>High</td>
<td>Low</td>
<td>Partial Success: PR and open list rules. LDK does better than expected, largely because of Kosovo politics rather than international pressure. Serbs boycott.</td>
</tr>
<tr>
<td>2001 Kosovo wide elections</td>
<td>Free and fair elections, Serb participation, Limit PDK’s power</td>
<td>High</td>
<td>Low</td>
<td>Success: UNMIK imposes closed lists and a single district over the major parties’ objections. Serb participation. LDK does well. Parties campaign on nationalism.</td>
</tr>
<tr>
<td>Subsequent period</td>
<td>Free and fair elections, Serb participation, Transfer of authority to local institutions</td>
<td>High</td>
<td>Low</td>
<td>Partial Success: Serb boycott. Debate over open/closed lists, CEC takes over gradual authority, generally free and fair elections but some irregularities with CEC takeover</td>
</tr>
</tbody>
</table>

While the electoral reform does not directly confirm the theory, neither does it offer evidence in support of competing explanations. First, the authority of the international administration played little role in securing success. Oisin Tansey examines the electoral reform in Kosovo and argues that it demonstrates the extensive authority of international administrations. He writes, “even if negotiation and consultation are pursued, international administrators are in a position to draft their own measures and, when domestic agreement is not
forthcoming, to impose the solutions that best suit their preferences. I argue that while Tansey is correct that the international administration did impose its decisions in the case of the electoral reform, it was able to do so because its decisions had little impact on local elites. UNMIK was able to overrule the parties’ objections because it challenged them only on minor issues that posed little threat. Second, the case study offers evidence against arguments related to democratization and moderate parties. LDK, even though it was identified as a moderate party, campaigned on nationalist goals. Furthermore, institutionalization did not encourage greater moderation. Indeed the incumbent parties managed to manipulate the structure of electoral institutions to protect themselves, which demonstrates how hard it is for international organizations to build institutions that will elect moderate parties.

VI. Police Reform by UNMIK

The maintenance of peace and security and the establishment of the rule of law were essential elements of UNMIK’s mandate. Though international military and police forces were initially responsible for these tasks, UNMIK hoped to transfer responsibility to a locally recruited police force. Indeed, UNMIK was broadly successful at establishing and maintaining law and order in Kosovo and in creating a locally recruited Kosovo Police Service (KPS). The KPS was one of the only multiethnic institutions in Kosovo. By 2006, it had taken over day-to-day policing operations, was generally well respected, and was effective at dealing with everyday crime. However, despite repeated attempts by the international administration, neither the international police nor the KPS were able to address politicized crime such as interethnic violence, organized crime, or high-level corruption. I therefore judge police reform to be a partial success.

510 Tansey, Regime-Building, 133.
Existing accounts attribute the relative success of the policing effort to the existing level of development in Kosovo, the scale of international investment, and the use of good bureaucratic procedures. While these arguments do provide context and help explain the relative success in setting up the KPS, they fail to explain the consistent failure to address politicized crime. I argue instead that the relationship between international unity and the threat of demands to informal networks best explains the trajectory of the reform effort.

The case study proceeds in six parts. First, I describe the origin of the police reform effort in Kosovo and explain the coding of the key variables. Second, I trace the international efforts related to policing in the initial post-conflict period, including the establishment of law and order, the creation of the UNMIK Police, and the standup of the KPS. Third, I describe the development of the police up to March 2004. Fourth, I examine the performance of the police in the March 2004 riots. Fifth, I trace the reform of the police following the riots up to the declaration of independence in February 2008. A sixth part concludes.

Origins and Goals of Police Reform in Kosovo

According to resolution 1244, UNMIK’s mandate required “Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo.” Two different organizations within UNMIK had responsibility for different elements of the policing effort. First, the UNMIK Civilian Police (UNPOL) was responsible for actually policing the territory, as well as supervising the locally recruited KPS. The second organization was the police school, which was run by the OSCE

512 UN resolution 1244 (1999), paragraph 11i.
Mission in Kosovo. The OSCE’s responsibility in Kosovo included elections, democratization, and institution-building – the police school fell under the institution-building effort. UNMIK’s pillar system meant that while both UNPOL and the OSCE police school fell under the responsibility of the SRSG, in practice they were largely autonomous.513

UNMIK adopted a three-phase plan for police reform in Kosovo. In the first period, since UNPOL would be slow to deploy, KFOR was to take responsibility for basic security. In the second phase, UNPOL would take over responsibility from KFOR, and international police would deploy throughout Kosovo. At the same time, UNMIK would begin to develop the KPS. In the third phase, UNPOL would begin to gradually transfer authority to KPS “once properly trained and selected local police in sufficient strength are available.” UNMIK would retain formal executive authority and remain present in a mentoring and advising role.514 In effect, there would be three main organizations responsible for public security, with an implicit rank order of capabilities – KFOR, UNPOL, and then the KPS.515

The international community had three main preferences relevant to policing in Kosovo. First, the overriding objective was the maintenance of stability and basic law and order. The prevention of violence was the overriding objection of the intervention and necessary for the achievement of any other goals. Second, the international community sought to build a Kosovo police force that could take over policing from UNPOL. The new police force should be multiethnic and meet basic standards of democratic policing, including respect for the rule of

513 Seth Jones et al., Establishing Law and Order After Conflict (Santa Monica CA: RAND, 2005), 31–2, 35–6. UNPOL was initially part of Pillar II, which was responsible for Civil Administration. In May 2001, the pillar system was rearranged, with Pillar I becoming the Police and Justice pillar, and UNPOL became part of Pillar I. The OSCE Mission in Kosovo was Pillar III of UNMIK. Interviews with former OSCE officials, Pristina, January 2010. 514 UNMIK Police Annual Report 2002, (Available at http://www.unmikonline.org/civpol/reports/Police%20Report%202002%20-%20Book.pdf, accessed January 4, 2012), 3; S/1999/779, paragraphs 61-65. 515 Interviews with international officials and local analysts, Pristina, Winter 2010. A fourth organization was the Kosovo Protection Corps, which did not have a formal mandate for providing security. ICG, “An Army for Kosovo?” Europe Report No. 174, 28 July 2006, 12.
law. Third, the international community sought to address three types of politicized crime in Kosovo — interethnic violence, high-level corruption, and organized crime. These crimes were politicized since they were associated with the war and often perpetrated by individuals with close associations with the major political parties. For the international community, preventing and punishing these politicized crimes was critical to establishing the rule of law in Kosovo and integrating the territory into the larger European community.

These preferences and the demands associated with them were not threatening to nationalist goals but were threatening to elites' informal networks. Independence required the support of the international community, which was at least partly contingent on the rule of law in Kosovo. Hence, the establishment of law and order, the creation of a capable and responsible police force, and the prevention and prosecution of politicized crime were all compatible with, and even necessary for, independence.

However, these goals challenged the incumbent parties' informal networks in two ways. First, the major Albanian political parties sought the recruitment of their supporters into the new police force. The successor parties of the KLA, PDK and AAK, had close associations with KLA veterans and needed to ensure that veterans were recruited into state institutions. Second, all of the major Albanian parties allegedly made use of politicized crime to maintain their own power. While interethnic violence was not in itself helpful to maintaining power, many individuals who committed such crimes were closely connected with the various parties. Furthermore, all of the


\[518\] Interviews with OSCE officials, Pristina, January 2010; ICG, “What Happened to the KLA?,” 2-18; Brand, Development of Kosovo Institutions, 41–43.
parties were purportedly engaged in corruption, smuggling, and other illegal activities.\textsuperscript{519} Third, the parties sought to control the activities of the police. Many of the leaders were socialized in former Yugoslavia, in which there was a perception that it was acceptable for the ruling party to use the police as a tool to maintain its own power.\textsuperscript{520}

The international administration was unified about the content of its demands throughout the police reform. One potential source of disagreement was the division between the OSCE and UNPOL. In interviews, OSCE officials, former UNMIK officials, and local analysts noted that while there was a separation between the two organizations, both organizations largely agreed on overall demands. Authority over the police school was fully delegated to the OSCE, while UNPOL retained authority over policing operations, including training in the field. Interviewees focused their critiques on different organizations' internal problems rather than inter-organizational coordination. However, there were cases when tactical coordination failures led to serious problems, especially during the 2004 riots.\textsuperscript{521}

\textit{Initial Post-War Period and the Establishment of the KPSS}

As discussed above, the immediate post-war period of the summer of 1999 was highly chaotic with substantial violence against Serbs and between Albanian political factions. UNMIK sought to establish its own authority, create law and order, and begin to establish local security institutions. However, UNMIK was challenged by the presence of informal policing structures and by efforts of Albanian political parties to gain control over the new police institutions. By late 2001, UNMIK had largely achieved its objectives of establishing law and order and creating the foundation for a depoliticized indigenous police institution.


\textsuperscript{521} Interviews with OSCE, EULEX, and UNMIK officials and local analysts and officials, Pristina, Winter 2010.
While UNMIK did expect the slow deployment of UNPOL, and KFOR had partial responsibility for establishing peace and security, the absence of international police still seriously hurt UNMIK’s objectives. Bernard Kouchner called the failure to deploy more international police a “scandal,” and UNMIK was heavily criticized in the local media.\(^{522}\) UNPOL was initially authorized a maximum of 3125 international police officers and later a maximum of 4700. There were very few international police officers deployed during June and July 1999 and only 1100 were deployed by September 1999. It took until December 2000, eighteen months after the start of the mission, for more than 4000 international police officers to be deployed. The first of ten formed Special Police Units, expected to provide riot policing, only arrived in April 2000.\(^{523}\)

The slow arrival of UNPOL enabled informal policing structures associated both with Albanians and Serbs to maintain control. These groups engaged in activities ranging from unofficial roadblocks to the torture and murder of political opponents.\(^{524}\) KFOR did have an extensive intelligence gathering capability, and did identify individuals suspected of crimes such as smuggling or inciting violence. However, the evidence was generally not admissible in court, and UNPOL had difficulty coordinating with their KFOR counterparts.\(^{525}\)

By late 2000, basic security had improved. The deployment of increasing numbers of UNPOL was one factor, but the increasing acceptance of UNMIK by key Albanian political groups was probably more significant. In September 1999, the Kosovo Protection Corps was established, which would employ many former members of the KLA. In December 1999, the key

\(^{522}\) King and Mason write, “Local newspapers published weekly figures of international police on the ground compared to the number promised. The number of police became the yardstick for measuring the gap between the international community’s promises and its actions.” Peace at Any Price, 55–6.

\(^{523}\) The failure to rapidly deploy police to Kosovo was largely due to bureaucratic issues within the UN and the slow contributions of member states. O’Neill, Kosovo, 100. See also Perito, Lone Ranger, 194–205. ICG, “The Policing Gap: Law and Order in the New Kosovo,” Balkans Report N° 74, 6 August 1999, 6-9.

\(^{524}\) Brand, Development of Kosovo Institutions, 43; Dziedzic, “Policing from Above,” 40–41.

Albanian elites accepted the establishment of an UNMIK-led interim government and began to buy-in to the institutions UNMIK was creating. Indeed, UNPOL in particular municipalities began to coopt preexisting informal policing structures.\textsuperscript{526}

The quick establishment of the KPS and the OSCE-run Kosovo Police Service School (KPSS) also facilitated the development of basic law and order. The KPSS was widely acknowledged by a variety of scholars, international officials, and local analysts as one of UNMIK's major successes. The first group of 176 cadets was inducted into the KPS in September 1999, and by September 2001 the school had trained 4106 members of the KPS, including 356 ethnic Serbs. The school was widely praised for the high quality of training, which ranged from basic procedures to specialized skills. The successful recruitment and training of Serbs, which would make the police one of the only multiethnic institutions in Kosovo, was also unique. While the school was run by the OSCE, UNPOL mentored KPS officers after their graduation and regularly participated in trainings at the school.\textsuperscript{527}

Kosovo Albanian elites sought to obstruct the creation of a police force that was independent of existing informal networks and political influence. The KLA sought to have the entire KPS recruited from former KLA members, and according to several interviewees PDK members sought to gain influence within the organization. Over 19,500 applicants applied for positions within the KPSS in September 1999. However, only three of the first 200 members of the force were former KLA members, as UNMIK sought to create a depoliticized organization. After significant pressure and protest from PDK, however, UNMIK backed down and agreed

\textsuperscript{526} Brand, Development of Kosovo Institutions, 12–14, 43.
\textsuperscript{527} Brand observes that “The development of the Kosovo Police Service and the Kosovo Police Service School has been one of the few outright successes of the international presence in Kosovo so far, due mainly to the efforts of the OSCE-run police school in Vushtrri and the professional attitude of the local cadets.” Ibid., 43–44. See also Stodiek “The OSCE and the Creation of Multi-Ethnic Police Forces in the Balkans,” 18-25; O’Neill 109-114. Perito, Lone Ranger, 190-192. Also interviews with OSCE and UN officials and local analysts, Pristina, Winter 2010.
that 50 percent of the positions within the KPS would be guaranteed to former KLA members. The OSCE continued to ensure the recruitment of qualified personnel by vetting applicants with their neighbors, and even according to one account, with the PDK’s intelligence service. Furthermore, the OSCE ensured that members of the former Yugoslav police were also included in the KPS, even though many Albanians perceived them to be collaborators with the Serbian regime.

Even partial success by the OSCE and UNMIK at limiting the influence of informal networks was impressive, and local perceptions of the KPS became quite positive. UNPOL gradually began to include KPS in its operations, and by fall 2000 KPS began to conduct patrols on their own and made arrests. In mid-2001, the planned size of the KPS was increased from 5300 to 6000, and UNPOL developed a plan for transitioning from UNMIK to the KPS by 2006. Violence and serious crime substantially diminished through 2000 and 2001, and by 2001 Kosovo had become a “more normal” policing environment.

UNMIK was successful in meeting some of its objectives by establishing law and order and establishing the KPS. However, during the period from 2000 to 2001 the international administration was not able to effectively prevent or prosecute interethnic violence. The case of an attack in February 2000 on a UNHCR bus transporting Serbs in Mitrovica is particularly telling. The bus was struck by an anti-tank missile, which killed three and wounded several others. In response, Serbs in Mitrovica burned UNMIK and UNHCR vehicles. Revenge attacks

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531 UNMIK Police Annual Report 2001, 3, 56-57. The UN regularly argued that Kosovo’s crime rate was lower than that of many large cities in America.
by both Serbs and Albanians continued into the spring. KFOR was able to determine the likely perpetrators and UNPOL arrested three Albanians for the attack. However, the prosecution failed because much of KFOR’s intelligence was inadmissible in court and one of the three suspects escaped from KFOR detention.\textsuperscript{532}

The weakness of the judiciary also contributed to the failure to address interethnic violence or other types of politicized crime. UNMIK created a new judiciary in late 1999 that was dominated by Albanian lawyers who had not worked since 1989, and there were disputes about the set of relevant applicable law. Furthermore, Albanian lawyers and judges were reluctant to prosecute attacks by Albanians against Serbs.\textsuperscript{533}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure42}
\caption{Police Officers in Kosovo}
\end{figure}

\textit{Developments 2002-2004}

From 2002 to 2004, there were substantial improvements in the KPS, and law and order was largely maintained. However, the police remained unable to effectively prosecute high-level


\textsuperscript{533} On the applicable law issue see O’Neill, \textit{Kosovo}, 109; King and Mason, \textit{Peace at Any Price}, 62–63. On the problem of ethnic bias King and Mason write, based on interviewing a senior UNMIK prosecutor, “Even if [Albanian members of the judiciary] managed to suppress whatever bias might naturally result from such trauma, many Albanian jurists feared negative social and professional consequences if, in the words of extremists, they ‘went easy’ on Serbs or seriously prosecuted former KLA fighters described as ‘war heroes’. More direct intimidation took the form of phone call from powerful figures or actual threats of bodily harm to the judge or his family.” Ibid., 64–65.
corruption and interethnic violence. Hence, police reform effort verifies the theory’s predictions of partial success, given international unity and a threat to informal networks.

UNMIK began to transfer additional authority to KPS from 2002 to early 2004. By July 2002, there were more KPS officers than UNMIK officers. In 2002, UNMIK promoted 206 officers to management positions, ranging from Sergeant through Colonel. UNMIK began to hand over executive authority to KPS in certain locations in late 2002, with UNMIK police remaining present as monitors and advisors. KPS also began to deploy police to volatile Serb-majority areas, including northern Mitrovica. While in the most volatile Serb areas the local police were monoethnic, there were 18 communities where multiethnic police patrols occurred. The crime rate and occurrence of interethnic violence substantially diminished in 2002 and 2003.\textsuperscript{534}

Throughout 2002 and 2003, UNMIK also attempted to arrest individuals responsible for interethnic violence, some of who were also believed to be significant figures in organized criminal networks.\textsuperscript{535} Many of the individuals that UNMIK sought to prosecute, however, were key leaders within the KLA, and remained closely associated with the KLA successor parties – PDK and AAK. The arrests did not threaten the achievement of independence but did threaten PDK and AAK’s informal networks. The theory predicts that PDK and AAK would try to escalate protests, that the mass public would not join protests, that LDK would oppose the protests, and that because of international unity the demands would be partially implemented.

\textsuperscript{534}UNMIK Police Annual Report 2002, 3-9; S/2004/71, para 19-24; Jones et al., Establishing Law and Order After Conflict, 49–54.
\textsuperscript{535}King and Mason, Peace at Any Price, 144–5. See for example one UN report from April 2003: “There were developments in six cases involving Kosovo Albanians accused of ethnic extremism, organized crime or war crimes. District Court panels convicted two high-ranking former KLA members of committing serious crimes against other Kosovo Albanians. One former KLA commander was arrested for illegal possession of a large amount of weapons, and he is also suspected of involvement in terrorism. A war crimes trial began in the case of a former KLA zone commander, who is also reputedly a major organized crime figure. A terrorism trial commenced in the case of two Kosovo Albanians accused of leading an ethnic Albanian extremist group that advocates the armed insurrection in the Albanian-majority area of the former Yugoslav Republic of Macedonia.” UN S/2003/421, para 23.
The pattern of arrests, public discourse, and protest throughout 2002 verify the theory's predictions. In January 2002, three former KLA members, including a KPS member and a party secretary in PDK, were arrested for war crimes. The arrests sparked a protest of approximately 5000 people who were mainly ex-KLA members or other hardliners. After arrests continued in August 2002, PDK and AAK attempted to escalate protests by invoking nationalism in order to force the international administration to cease investigating war crimes. PDK and AAK officials called the arrested individuals “slaves of the current rulers of Kosovo [i.e. UNMIK]” and stated that UNMIK was “holding political prisoners and devaluing the liberation struggle.” The LDK, on the other hand, opposed the protests. Rugova stated, “We are determined to build a democratic state in Kosovo, and therefore we must respect the values that will lead us along that path.” The LDK also did not vote for a PDK-supported resolution that opposed UNMIK’s investigation of war crimes. Although one protest near the Decani monetary injured 50, protests remained small in scale and dominated by ex-KLA members and other individuals closely linked with PDK and AAK. By late August, the United States had joined the rest of the international community in speaking out against the protests, and insisting that final status could not be achieved unless war crimes were fully investigated, both by the ICTY and UNMIK. Given international unity, and the failure to provoke more widespread public protests, Thaci backed down from public opposition and observed, “all those who have violated the law must not think that their participation in war will give them immunity before judicial bodies.”

PDK and AAK were therefore ultimately unable to use public protest to block UNMIK’s effort to prosecute politicized crime. Still, they were able to block UNMIK’s efforts through

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private obstruction. Efforts to prosecute ex-KLA members were stymied by the assassination of key witnesses and by bias within the judiciary. Given their cultural and linguistic constraints, international police and prosecutors had difficulty fully penetrating the Kosovar informal networks. One ICG report observed, “The three political parties have essentially consumed the government, divvying up and factionalising the ministries, subjecting government to their patron-client networks.” UNMIK did make some limited progress, such as making arrests for drugs and smuggling and improving the criminal code. Despite the continuing success at maintaining basic security and improving KPS, the failure to deal with politicized crime demonstrates the partial success of police reform.

**Police Response to March 2004 Riots**

As described above, there were major riots in Kosovo in March 2004. Unlike earlier protests, the riots were driven by a threat to the key Albanian nationalist goal – independence. In particular, the UN’s Standards before Status reform implied that Kosovo was in an indefinite holding pattern and would not reach independence. UNMIK’s failure to transfer additional responsibility to KPS was part of the critique, but was not the central issue. While the police reform did not start the riots, the riots did test the strength and effectiveness of the police forces.

Overall, the performance of international and local security organizations during the riots

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539 One UN report observed “The problem of ethnic bias, both actual and perceived, is deeply rooted in Kosovo and is one of the main reasons for the presence of international judges and prosecutors. They are also indispensable to fight organised crime, as Kosovo local judges are vulnerable and susceptible to undue pressures.” UNMIK Pillar I, “Presentation paper,” July 2003, (Available at www.unmikonline.org/justice/documents/PillarI_Report_Jul03.pdf accessed January 6, 2012), 13. King and Mason, *Peace at Any Price*, 144-5.

540 One former translator in Skenderaj observed “they were trying to investigate some cases that were reported in our area. But it was hard because everybody knew—it was clear to everybody that they couldn't investigate so easily because they were working there most probably for two months or something. When the KPS got engaged, more cases were solved.” Arthur Boutellis, “Interview with Faton Hamiti,” Oral History Program, Innovations for Successful Societies, (http://www.princeton.edu/successfulsocieties/oralhistories/view.xml?id=218 accessed December 16), 3. See also Stodiek, “The OSCE and the Creation of Multi-Ethnic Police Forces in the Balkans,” 32-33; Perito, *Lone Ranger*, 224-231; King and Mason, *Peace at Any Price*, 141-146. Interviews with international and local officials, Pristina, Winter 2010.

541 ICG, “Collapse in Kosovo,” 34.

was weak, though some individuals and organizations did respond effectively. The three main security organizations – KFOR, UNPOL, and the KPS – all had similar objectives of preventing violence, but failed to tactically coordinate their efforts. In addition to the specific weaknesses of particular organizations, this tactical disunity led to the overall poor response to the riots.

KFOR’s response to quell the violence was uneven and it distrusted the other security organizations, especially the KPS. There were several examples of KFOR failing to protect communities or individuals close to its deployed troops. French KFOR in Mitrovica also “treated CIVPOL and KPS as best as impediments,” according to one ICG report. Based on rumors of escalating riots, KFOR ordered CIVPOL and KPS to leave their headquarters and burn it down.

UNPOL’s reaction to the riots was perceived as incoherent and weak. Analysts blamed the incoherence of UNPOL on its multinational structure and the international police officers’ short deployment times. While some UNPOL officers did respond well to the riots, others remained in their police stations, or relied on KPS to defend them against the rioters.

The KPS’s reaction to the riots was also mixed. There were accounts of Albanian KPS officers joining the riots and even throwing petrol bombs, while in other locations KPS prevented Albanian rioters from attacking Serbs. Many KPS officers felt that they were disrespected by the international administration. One officer observed “If this blows up again and the internationals treat us like they are doing now, then KPS officers will simply throw away

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546 According to the Human Rights Watch’s account, “Some KPS officers performed with great courage and professionalism during the crisis, working tirelessly to protect or evacuate Serbs from their homes and doubtlessly saving lives. Many other KPS officers stood by passively, refusing to take steps to protect ethnic Serbs and other minorities, or participate in their evacuation. In a number of cases, KPS officers showed a bias against minorities, arresting Serbs or Ashkalis who tried to defend their homes while ignoring the criminal actions of Albanian rioters. Some KPS officers took an active part in the violence, allegedly participating in the burning of homes in Vucitrn, Obilic, and Kosovo Polje.” “Failure to Protect,” 22.
their uniforms. 547 KPS officers felt as if they alone had the ability and resolve to stop the riots, but were not trusted to do so.

After the Riots until Independence

The riots came as a major surprise to the international community. As part of a larger change in policy, UNMIK began rapidly transferring responsibility over the police to local authorities. The outcome of these efforts was similar to the earlier police reform efforts. Law and order was maintained but the KPS was not much more capable of dealing with politicized crime than UNPOL had been. Concerns about politicized crime remained present and led to major EU-led rule of law mission following the declaration of independence.

The international community reformulated its overall political strategy, including its policy towards the police, following the riots. Eide’s first report articulated the international community’s conclusions about the riots, and what changes ought to be made in UNMIK’s approach. Eide noted that a lack of coordination between KFOR and UNPOL had significant negative consequences during the riots and urged closer coordination. While Eide recognized that UNMIK, rather than PISG, would continue to retain overall authority over the police, he urged the transfer of substantial power to the KPS, noting that “The KPS leadership is generally of high quality and the personnel are well trained. Ways should be found for KPS to take more control of its activities in regular operations.” UNMIK had been reluctant to transfer authority to the KPS prior to the riots because of concerns that any significant transfer would imply that Kosovo was independent. Eide’s report explained that not transferring authority had failed both tactically and strategically. Tactically, KPS would have been better able to respond to the rioters than UNPOL or KFOR. Strategically the failure to transfer responsibility exacerbated Albanians’

frustration with UNMIK’s continued administration of Kosovo. A new leader of UNPOL, Kai Vittrup of Denmark, was appointed to execute the new strategy. As reported by King and Mason, Vittrup recognized that the UNMIK policing effort had lost legitimacy during the riots, and “adopted a three-pronged reform programme. First was a system for responding quickly and effectively to any sign that riots were about to repeat themselves. Second was community policing and improving the image of the police, particularly among minorities. Third was making local KPS officers, not CivPol, the main face of authority.” Vittrup sought to counter UNPOL’s pre-riot tendency to undervalue the engagement with Kosovar society. Vittrup received death threats from Albanian organized crime, which was one sign of the threat of the new strategy to informal networks.

Beginning in 2005, UNMIK began turning over authority to local institutions. A number of individuals were promoted to senior leadership positions and by early 2006 KPS was running day-to-day operations in all municipalities excluding Mitrovica. UNPOL remained present, but took on mainly an advisory or monitoring role. In December 2005, UNMIK for the first time issued regulations governing the KPS and specifying regulatory powers for the PISG. A police inspectorate was created to verify that the KPS was meeting its objectives and to conduct investigations into disciplinary offences. UNMIK created two new ministries to oversee the police and justice institutions, although executive authority remained with UNMIK.

S/2004/932, quote from paragraph 38. See also paragraphs 17-19, 33-37.
King and Mason, Peace at Any Price, 197.
http://www.balkanpeace.org/index.php?index=article&articleid=9749
Finally, an Internal Security Sector Review (ISSR) was completed in 2006 and made suggestions about the post-status governance of Kosovo’s security institutions.554

One international official argued that the transfer was at a “breakneck” speed. In his view, while UNMIK had been too reluctant to transfer authority before the riots, after the riots it paid too little attention to the quality of the resulting police. Other officials observed that the promotions were based on favoritism by UNMIK rather than education or expertise, and that the new institution had weak bureaucratic practices, such as poor management of the vehicle fleet.555 Interviewees also believed that political parties, especially PDK, were increasingly able to exert influence on the KPS. Many local analysts argued that the problems in policing stemmed from UNMIK’s lack of planning and reluctance to hand over control to KPS.556

Eide’s second report, in October 2005, observed KPS’s continuing limitations and was more circumspect with regard to transferring power. He wrote, “The work the KPS has undertaken in relation to common offences within one ethnic community is increasingly respected by the community.” However, “Combating serious crime, including organized crime and corruption, has proven to be difficult for the KPS and the justice system. It is hindered by family or clan solidarity and by the intimidation of witnesses as well as of law enforcement and judicial officials. For serious inter-ethnic crime, the law enforcement record is also weak. Far too few serious crimes are ever brought to justice.”557 Eide argued that an international security presence remained essential for dealing with these politicized crimes.

Throughout the rest of UNMIK’s administration, the KPS remained effective at basic

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556 Interview with international police officials and local analysts, Pristina, Winter 2010.
557 S/2005/635, para 36.
policing but unable to address more politicized crimes. Public opinion towards the police remained quite positive. The population believed that KPS was one of the least corrupt organizations in Kosovo, and except for a period in early 2007, more than 70% of the population was satisfied with the KPS.\textsuperscript{558} International police and prosecutors had been largely unable to address the complex informal networks within Kosovo and effectively prosecute corruption and organized crime. While KPS officers were more able to understand these informal networks, they had low salaries and little overtime, and any investigation of politicized crime meant putting themselves and their families in danger. Kosovar police therefore had little incentive to address the high-level corruption or organized crime, despite the demands of the international administration.\textsuperscript{559}

An incident in February 2007 would seriously diminish the public perceptions of UNPOL. During an anti-international administration demonstration, two individuals were killed and dozens were wounded.\textsuperscript{560} It was later determined by that the deaths had been caused by rubber bullets fired at protestors by Romanian UNMIK Special Police. The incident, and the failure by UNMIK to fully investigate and punish the UNPOL responsible for the incident, led to

\begin{itemize}
\item A survey in June 2007 found that KPS were much less likely than other organizations to demand bribes. Forum for Civic Initiatives and Saferworld, "Policing in Kosovo," February 2008, 16; Early Warning Report 17, April-June 2007, USAID/UNDP, 15; Early Warning Report 19, January 2008, USAID/UNDP, 17. See also other Early Warning Reports, available at http://www.kosovo.undp.org/?cid=2,4; and Skendaj, "Building State Bureaucracies and Democratic Institutions," 126–133.
\item On example is the failed attempt to prosecute corruption surrounding the LDK leadership, as explained in a February 2006 ICG report: “UNMIK had planned to clear away the network that surrounded President Rugova and emanated from his security chief, Rame Maraj, before it set up the interior ministry, but did not. Initially spurred by the dossiers of alleged evidence the PDK handed it in March and April 2005, UNMIK established a police task force to investigate corruption and organised crime in the high echelons of the PISG. Deliberately setting a target for investigators, policing and justice chief Jean Dussourd told a newspaper to judge him by results before the end of September 2005 but the anticipated high-profile arrests did not materialise. While the police commissioner expressed bemusement at the attempt to decree results, Dussourd in frustration replaced his justice department chief. UNMIK is now embarked on an improbable parallel process: a countdown to handing joint control of the KPS to an interior minister largely chosen by Maraj, and continuing attempts to gather enough evidence to break up the LDK’s racketeering and kickback network with arrests. ‘We always knew it would be like this’, remarked an UNMIK police and justice official.” ICG “Kosovo: The Challenge of Transition,” 6.
\item Albin Kurti, the leader of the Vetevedosje organization that had organized the protest, was detained by UNMIK. Amnesty International later questioned his prosecution by the international administration as political motivated. See http://news.amnesty.org.au/news/comments/7098/ (accessed December 9, 2011).
\end{itemize}
significant distrust of international policing that would continue after the declaration of independence.  

**Conclusion**

Table 4.4: Kosovo Police Reform

<table>
<thead>
<tr>
<th>Preferences</th>
<th>Law and order</th>
<th>Transfer to an effective multiethnic local police force</th>
<th>Reduce and prosecute politicized crimes, including interethnic violence, organized crime, and high-level corruption</th>
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</thead>
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<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial post-war period (to November 2001 (CF elections))</td>
<td>Law and order, Create UNMIK police, begin to establish local police force</td>
<td>High</td>
<td>Informal networks</td>
<td>Partial Success: KFOR initial police force, UNPOL soon secures presence, begins school</td>
<td>Confirmed: Creation of institutions, but little prosecution of politicized crime</td>
</tr>
<tr>
<td>Late 2001-Early 2004</td>
<td>Law and order, Transfer to multiethnic local police, Address politicized crime</td>
<td>High</td>
<td>Informal networks</td>
<td>Partial Success: Gradual transition and growth of local police. KPS takes over increasing role in patrol and investigation. Failure to prosecute politicized crime</td>
<td>Confirmed: Informal networks and private obstruction lead to partial implementation. Pattern of protests in 2002 consistent with mechanisms</td>
</tr>
<tr>
<td>Riots March 2004</td>
<td>Maintain law and order, Prevent interethnic violence, Involve KPS</td>
<td>High, but tactical disunity</td>
<td>Informal networks</td>
<td>KFOR distrust UNPOL and KPS, UNPOL fails to fully deploy, some KPS members join riot</td>
<td>Riots reveal continuing problems with KPS, failure to transfer power</td>
</tr>
<tr>
<td>After the riots-Independence</td>
<td>Law and order, Transfer to multiethnic local police, Address politicized crime</td>
<td>High</td>
<td>Informal networks</td>
<td>Partial Success: Transferred responsibility to KPS and maintained law and order. Continuing failure to deal with politicized crime.</td>
<td>Confirmed: Informal networks and private obstruction block full implementation.</td>
</tr>
</tbody>
</table>

561 The rapid departure of the Romanian police contingent in March 2007 prior to the completion of the investigation was particularly problematic. The report does note that determining and prosecuting the individuals responsible would have been difficult “The available eye witness testimony and film footage likewise could not provide any clear and unambiguous evidence as to which police officer(s) fired the fatal shots...it is acknowledged that there is a likelihood that – in the general mêlée of the disturbance - an officer would not know if he had struck a particular person and, if he did know, would be unlikely to admit this during examination by the Public Prosecutor. Without clear and unambiguous evidence from an independent source, the Public Prosecutor was unlikely to create the basis for a prosecution for homicide.” See Police Inspectorate of Kosovo, “Annual Report 2007,” 35-46. Interviews with local elites and local analysts, Pristina, Winter 2010.
The police reform in Kosovo was partially successful, and followed a similar pattern, throughout UNMIK’s administration. UNMIK was able to provide law and order and transferred increasing authority to the KPS. The Kosovo police became viewed as one of the least corrupt and efficient police force in the region.\textsuperscript{562} However, both UNMIK and the KPS were unable to prosecute politicized crimes including corruption, organized crime, and interethnic violence. Despite repeated attempts to address the prevalence of these crimes in Kosovo, concerns about politicized crime remained present throughout 1999 to 2008 and led to a large EU Rule of Law mission after Kosovo’s declaration of independence.

The case study of police reform confirms the theory’s prediction of partial success and demonstrates the expected mechanisms. Despite the separation between the OSCE and UNPOL, the international administration remained unified about its demands throughout the reform effort. To be sure, there were a number of incidents of tactical disagreements, especially in the case of the 2004 riots, which did have negative consequences. The international administration sought to ensure the maintenance of law and order, to create a democratic local police force, and to address politicized crimes. These demands threatened informal networks since Albanian political parties had close connections with organized crime and used corruption and patronage to secure their position. The threat to informal networks enabled the local elites to privately obstruct international demands and to be unable to rally public protest.

The main conventional explanation for the success of police reform highlights effective bureaucratic procedures, especially with respect to the police school. Skendaj notes that the police did not receive significantly more funding than other bureaucracies and instead attributes the success of police reform to the police’s insulation from politics. He claims that the insulation of the police from politics stems from international officials learning lessons from Bosnia,

\textsuperscript{562} Skendaj, “Building State Bureaucracies and Democratic Institutions,” 123–134.
paying careful attention to recruitment and training of police officers, and using good bureaucratic procedures. Skendaj’s claims, as well as similar arguments by interviewees, focus mainly on the effectiveness of the police school. The police school was undoubtedly one of the more successful efforts in Kosovo. I would argue that a necessary condition of its success was international unity, which enabled the OSCE to take responsibility for the school, and to effectively monitor and improve the KPS. Furthermore, Skendaj’s argument does not explain the limitations of the police in Kosovo. The KPS were unable to deal with politicized crimes, since the prosecution and prevention of these crimes threatened local elites informal networks.

VII. Creation and Reform of the KPC

The creation of the Kosovo Protection Corps (KPC) was largely successful. The international community sought to avoid future violence by demobilizing the KLA and incorporating the ex-combatants into a semi-military successor that did not imply the independence of Kosovo. At the same time, the Kosovo Albanians sought the creation of an army that would secure independence in the future. The KPC was effectively a compromise in which both sides interpreted the mandate of the KPC differently. For the international community, the KPC was a civilian civil protection force that would work on natural disasters and reconstruction. For the Kosovo Albanians, the KPC was the successor to the KLA and an army-in-waiting for an independent Kosovo. The success of the reform effort depended in large part on these differing interpretations. NATO also chose a limited set of goals with regards to the development of the KPC by not attempting to replace the ex-KLA members within the organization. This meant that the threat to informal networks was low. Hence, given the unity of the international administration, the reform effort confirms the theory’s prediction of success.

\footnote{Ibid., 143–150, 170–171.}
The KPC case study proceeds in four parts. The first part describes the origin of the KPC and explains the coding of the key variables. The second part examines the creation of the KPC and the period up to early 2004. The third part considers the performance of the KPC during the riots and the development of the organization up until the declaration of independence. A fourth section concludes, and notes that while the reform was successful, serious weaknesses within the KPC remained.

**Origin and Goals of the Creation of the KPC**

With the departure of Serb forces from Kosovo in early June 1999, the KLA rapidly moved into positions of authority. However, the KLA had always been a highly decentralized organization, and the leadership exercised only limited control over the various KLA-associated groups. Furthermore, there were many individuals that claimed association with the KLA despite not having fought in the war.\(^{564}\) There were only an estimated 8,000 to 10,000 KLA members during the war, but by November 1999 more than 25,000 Kosovo Albanians had registered as combatants.\(^{565}\)

Resolution 1244 required the demobilization of the KLA and other armed Albanian groups and made KFOR responsible for the demobilization.\(^{566}\) On June 20, 1999, the KLA leadership came to an agreement with KFOR on an “Undertaking of demilitarisation and transformation by the UCK [KLA].” In addition to specifying a 90-day timeline for the demobilization of the KLA, the document also stated that “the international community should take due and full account of the contribution of the UCK during the Kosovo crisis.” As such, the KLA would “propose individual current members to participate in the administration and police

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\(^{564}\) Perritt explains that “Everyone who had fought, and thousands who had not, made sure to get fatigue jackets and hats, and sew ‘UCK’ patches on them.” *The Road to Independence for Kosovo*, 153.  
\(^{566}\) UNSC resolution 1244 (1999), 9b.
forces of Kosovo, enjoying special consideration in view of the expertise they have developed [sic].” Furthermore, the international administration would give consideration to “the formation of an Army in Kosovo on the lines of the US National Guard.” This “Army” came to be the Kosovo Protection Corps (KPC).

The international community had three main preferences with respect to the KPC: the maintenance of peace and security, the demobilization of the KLA, and the creation of a force that included KLA veterans but did not imply Kosovo’s independence. The overriding purpose of the international intervention in Kosovo was the prevention of future violence. The demobilization of the KLA was essential for ending the war, but the international administration was concerned about what the ex-combatants would do after the KLA was disbanded. There were fears about the creation of a “Kosovo Taliban” or other insurgent forces in Kosovo following the end of the war. International officials hoped that by creating an official organization, the ex-combatants would have a future in the society and be less likely to engage in violence. However, because of the recognition of Serb sovereignty in resolution 1244, the new force could not imply the independence of Kosovo. Consequently, the creation of a standing army for Kosovo or similar organization was out of the question.

At the same time, the creation of a successor organization to the KLA was politically sensitive among Kosovo Albanians. The creation of an army was seen as a critical step towards independence. Furthermore, many Kosovo Albanians, especially those within the KLA, believed that the KLA was victorious and had earned the right to become an army. If the international community had insisted that Kosovo was part of Serbia and could never have its own army,

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568 International Organization for Migration (IOM), Kosovo Protection Corps Training Program (Pristina, 2004), 31–33.
569 ICG, “What Happened to the KLA?,” 6–8; King and Mason, Peace at Any Price, 57–58.
Kosovo Albanians’ nationalist goals would have been threatened. However, Kosovo Albanians understood that independence might not happen immediately and were willing to accept that the eventual army might first have another name.\textsuperscript{570}

The key problem therefore was to create an organization that would not imply Kosovo’s independence, yet would satisfy Albanian concerns. The creation of the KPC dealt with this dilemma by ensuring that the international community and the Kosovo Albanians had radically different views of the KPC. For the international community, the KPC was a strictly civilian organization. Regulation 1999/8 in September 1999 mandated the KPC as “a civilian emergency service.” Its tasks included disaster response, humanitarian assistance in isolated areas, demining, and rebuilding infrastructure. The KPC was forbidden “any role in law enforcement or the maintenance of law and order.”\textsuperscript{571} For Kosovo Albanians, the KPC was essentially an army-in-waiting. In Albanian, the word used for “Protection” translated more as “Defense,” which made the KPC sound far more like an army. Furthermore, the KPC had military ranks and fatigues, a patch that was only slightly different from the outlawed KLA emblem, and maintained a similar organization as the KLA.\textsuperscript{572} The only missing element of an army was equipment, since the KLA had officially turned in their weapons to KFOR. However,

\textsuperscript{570} Interviews with international officials and local analysts, Pristina, January 2010. Ceku explained that “One part [of the KPC] will become part of the police, one part will become civil administration, one part will become the army of Kosovo, as a defence force. And another part will form a political party.” ICG, “An Army for Kosovo?,” 17; ICG, “What Happened to the KLA?,” 1-2, 6-7.


\textsuperscript{572} Agim Ceku, the Commander in Chief of the KPC writes, “Kosova also has the KPC, which the local population see as the future defense force and it already has an almost military structure, a military look, and it thinks like an army and it lives like one and has the vision to become an army.” “Security Forces: A Segment in the Status Negotiations,” Helsinki Monitor 16, no. 4 (2005): 315. See also ICG, “What Happened to the KLA?” 6-10; ICG, “An Army for Kosovo,” 12-16.
rearmament was expected to be relatively straightforward, because many believed that the KPC maintained arms caches and had access to the black market.\textsuperscript{573}

While the international community was aware of the ambiguity and varied interpretations, they made pains to publicly insist that the KPC was a civilian organization. One international official acknowledged that the mandate was “irrelevant,” emphasized that the central purpose of the organization was for disarmament, demobilization, and reintegration. Furthermore, the international administration was well aware that the organization was seen as an army-in-waiting, though international officials took pains not to say so publicly.\textsuperscript{574} While the demobilization agreement did include the word “Army,” the international administration could also insist “in lawyerly fashion” that there was no direct link between the KPC’s mandate and the KLA demobilization agreement.\textsuperscript{575} The establishment of the KPC as a civilian organization therefore posed little threat to Kosovo’s independence and met the limitations of the international community.

The creation of the KPC did have the potential to threaten informal networks, although KFOR would not select demands that would prove threatening. The PDK and AAK political parties had close associations with the members of the KLA, and needed to ensure their future employment. Indeed, before Ramush Haradinaj created the AAK he was a senior officer in the KPC. Many of the senior officers in the KPC had allegedly participated in smuggling and other criminal enterprises prior to and during the war and maintained close links with organized crime.

\textsuperscript{573} Recall that the KLA armed themselves largely through arms smuggling. A number of arms caches were found over the course of UNMIK’s administration. See for example BBC News, “Kosovo peacekeepers find arms cache,” 28 August, 2002, http://news.bbc.co.uk/2/hi/europe/2220633.stm. Perritt, \textit{Kosovo Liberation Army}, 120–125.


\textsuperscript{575} ICG, “An Army for Kosovo,” 13.
after the end of the war.\textsuperscript{576} KFOR could have chosen an aggressive strategy of replacing individuals within the KPC who engaged in violence or who were accused of organized crime, but as I explain below, KFOR chose a more limited strategy to limit the risk of violence and protest.

According to Regulation 1999/8, UNMIK would have final authority over the KPC, while KFOR would be responsible for KPC’s day-to-day activities. In practice, the commander of KFOR, known as COMKFOR, would run the organization with little interference from UNMIK. Over the course of UNMIK’s administration of Kosovo, KFOR would adopt a relatively limited set of objectives for the KPC, especially when compared with UNMIK’s objectives for the police. To be sure, international officials within KFOR and UNMIK had more ambitious goals, including creating a more multiethnic force, the prosecution of individuals for interethnic violence, and more effective reconstruction activities. However, the prevention of violence took priority over these more extensive objectives, at least in the eyes of KFOR. While reforming the police, UNMIK tended to try to prosecute individuals who had committed crimes during the war or continued to have close connections with organized crime. KFOR would instead use its extensive intelligence network to gather information and then informally use its influence with the KPC leadership to remove malefactors from the organization or change the organization’s practices. While many international officials within UNMIK were frustrated by the limited change in the KPC, KFOR retained authority and ensured a unified set of demands.\textsuperscript{577}

\textit{Establishment of KPC to Early 2004}

During the initial period, KFOR was successful at demobilizing the KLA and establishing the KPC. The international administration did remove certain officers within the KPC for interethnic

\textsuperscript{576} See especially ICG, “What Happened to the KLA?” 7-10. Mason and King claim that KPC members “were involved in illegal trade in prostitutes, cigarettes, fuel, weapons and appliances,” \textit{Peace at Any Price}, 59.

\textsuperscript{577} Interviews with former NATO and UNMIK officials and local analysts, Pristina, January 2010.
violence and participation in the insurgency in Macedonia. Nevertheless, KFOR’s efforts to dramatically change the KPC were limited, as KFOR’s predominant goal was stability and the avoidance of violence. The theory’s prediction of success, given low threat and high unity, would largely be confirmed.

The International Organization for Migration (IOM) took the lead in identifying and screening individuals to join the KPC. By November 1999, more than 25,000 individuals had registered as ex-combatants. After testing and screening, IOM presented a list of 13,739 members to a joint commission of UNMIK, KFOR, and KPC who selected the final members. The size of the force was limited to a total of 5052 members, of which 3052 would be active duty members and 2000 would be reservists. 500 positions were allocated to civilians and minorities.578

The KPC was effectively the direct successor of the KLA. The vast majority of the members were drawn from the KLA, and the KLA leaders, who went on to form the PDK and AAK, handpicked the senior officers. The military force associated with the LDK, the FARK, only had a few members recruited. Furthermore, the structure of the KPC closely followed the structure of the KLA at the end of the conflict. In particular, the KPC was composed of six Regional Training Groups (RTGs) that closely followed the regional zone structure of the KLA. Finally, the KPC continued to have a highly decentralized command structure. During the war, the different KLA zone commanders coordinated strategy through occasional meetings but operated largely independently. Similarly, the different RTGs had substantial autonomy, although the central headquarters did set common standards. KFOR reinforced these tendencies

by appointing units from different nations to train different RTGs, which led to substantial variation in the capabilities of the various RTGs.579

While the KPC received extensive training on civil defense tasks, the actual reconstruction role was not the main purpose of the organization. In February 2000, the IOM launched a major KPC Training (KPCT) program to train the new recruits for their new duties. While training for civil protection tasks was included, the training focused instead on keeping the KPC members busy, educating them about human rights, and encouraging the force to stay within the limits of its mandate.580 Furthermore, KPC members rarely mentioned the civil defense role when interviewed about why they joined the organization and were far more likely to cite their desire to be a part of the future army of Kosovo. The members of the KPC were frustrated by the lack of military training and inconsistencies across the different RTGs, but accepted KFOR’s efforts because they saw them as consistent with the eventual formation of an army.581 Finally, the KPC was often undersupplied with equipment for fulfilling its reconstruction role and a 5000-person civil defense organization was decidedly uneconomical since Kosovo’s entire population was only 2 million people.582 King and Mason write, “tasks found for [the KPC] tended to be more mundane, from fixing plumbing to clearing roads. They refused many of these tasks, on the grounds that they were not suitable for a victorious army. In the end, ‘most of them just ended up drinking coffee all day.’”583

579 ICG, “What Happened to the KLA?,” 6-10; ICG, “An Army for Kosovo?,” 12-17. 580 Criticisms of the IOM program include that there was also no training assessment program and the IOM reported the effectiveness of its programs based on how many man-hours were devoted to the training, rather than the final capabilities of the KPC members. Some training was clearly directed at increasing the size of the curriculum. For example, all members received training in firefighting, for example, even though only a small percentage would go on to be firefighters. Özerdem, “The ‘Transformation’ of the KLA,” 86–88; International Organization for Migration (IOM), Kosovo Protection Corps Training Program. 581 Interviews with former NATO official and local analysts, Pristina, January 2010. 582 Özerdem, “The ‘Transformation’ of the KLA,” 92, 94–95. 583 King and Mason, Peace at Any Price, 59. See also Özerdem, “The ‘Transformation’ of the KLA,” 95.
The KPC quickly developed a reputation as a hard-line Albanian nationalist force that had associations with political violence and organized crime. A newspaper article in 2000 cited a confidential UN report accusing the KPC of "criminal activities – killings, ill-treatment/torture, illegal policing, abuse of authority, intimidation, breaches of political neutrality and hate-speech."\(^{584}\) Illegal detentions and beatings were also noted in several sources.\(^{585}\) However, the UN and KFOR were reluctant to aggressively prosecute KPC members for fear of threatening stability within Kosovo. Mason and King make this argument extensively, citing interviews with KFOR and UNMIK officials who "worried privately that challenging Albanian militants would provoke them to turn against KFOR itself." They cite another UN official who claimed that "the judiciary was not allowed to work independently. The reason, he said, was that NATO and UN officials feared they 'would put their lives at risk' by acting against former members of the rebel group."\(^{586}\) US officials responded to the arrest of KPC members for murder by saying "these arrests do not in any way reflect badly on the KPC and its important role in Kosovo."\(^{587}\) US officials were willing to accept some level of criminal activity by the KPC to limit the likelihood of a backlash against the international community.

Later, KFOR did take some measures to remove individuals accused of violence, but only in a limited fashion. In July 2001, five KPC officers were suspended after they were accused of participating in the Albanian insurgency in Macedonia, although it was widely believed that participation in the insurgency was more widespread. Violence against ex-FARK members was also largely unprosecuted. In April 2003, a KPC regional spokesman, and member of the Albanian National Army (ANA), blew themselves up in a botched attempt to bomb a railway

\(^{585}\) O’Neill, Kosovo, 118, 120.
\(^{587}\) O’Neill, Kosovo, 121.
bridge. KFOR began a more aggressive inspection regime and demanded that Ceku hand over a list of suspected officers. Though he only handed over one name to KFOR, Ceku “reportedly sent strong internal messages that there was no room for the ANA in the KPC,” and 70 officers subsequently resigned. KFOR investigated a further 54 and suspended 12 of those officers. KFOR was far more willing to use its intelligence network and influence with Ceku to make changes in the KPC, rather than using legal or formal institutional means to reform the organization.

While there were requirements for the KPC included in the Standards before Status, UNMIK had generally low expectations about the ability of the KPC to meet the standards. The standards relevant to the KPC specified that the organization would only perform tasks within its (non-security) mandate, would have better disciplinary standards, and would make progress recruiting minority members. Prior to 2004, there was indeed little progress on the standards related to the KPC. For example, although ten percent of places within the KPC were reserved for minorities, few Serbs were willing to join the organization and minorities represented only 4.9 percent of the KPC in July 2004.

The international administration did meet its goals, including maintaining overall peace and security, demobilizing the KLA, and creating a new organization that incorporated the ex-KLA members but did not imply independence. The achievement of these goals stemmed first from delegating control over the KPC to KFOR and thereby achieving unity of effort. More importantly, however, the reform succeeded because of the limited nature of the goals. The international administration cleverly constructed a compromise by which the KPC would neither threaten nor imply independence. Furthermore, the international administration was concerned

about connections with violent nationalist organizations and organized crime, but adopted limited demands for reform. Local elites therefore accepted the international administration’s vision for the KPC and did not obstruct the reform effort.

March 2004 Riots to February

The next stage of the reform effort followed the riots of March 2004. The KPC behaved well in the riots and thereby improved its reputation among the international community. However, the future of the organization depended on the outcome of the status negotiations. No coherent future plan for the organization could be made until it was clear whether the KPC would become an army for the newly independent Kosovo. The international administration continued its limited and unthreatening demands for the KPC. The international administration’s demands were largely implemented, but the KPC began to stagnate.

The KPC was one of the few organizations in Kosovo to have performed well in the riots. While the KPC was explicitly forbidden any role in public security according to Regulation 1999/8, several US KFOR units called upon KPC during the riots. The KPC help disband mobs in Ferizaj, Gjilan, and Prizren, though in other locations they were ordered to stay in their barracks.590 As a result of the KPC’s behavior during the riots, KFOR commanders and other international officials’ opinion of the KPC improved.591

Following the riots, however, the strength of the KPC began to erode. While KPC members remained committed to the organization as an army-in-waiting, the international community was unable to commit to the KPC’s future so long as Kosovo’s status remained uncertain. Less funding was available for training and construction projects. The KPC also had excessive numbers of senior officers, and was described as “the biggest former officer support

591 The ICG quotes KFOR official “The KPC is the only organisation that did not fail in March 2004...only afterwards [we] started to understand the role of the KPC in Kosovo.” “An Army for Kosovo,” 21.
scheme in the Balkans.\textsuperscript{592} While the international administration sought to modernize the KPC, any major decision hinged on the determination of Kosovo’s future status.

Nevertheless, the KPC was one of the most successful institutions at meeting the revised priority standards.\textsuperscript{593} Priority standards focused on compliance with the rule of law and the representation of minorities within the organization. In particular, minority representation improved to 6.7\% in July 2006 because of a major recruiting campaign and some reduction in standards for minority KPC members. The KPC also expanded construction projects in Serb areas. Nevertheless, Serbs remained suspicious of the organization, explaining to one American “the KPC is for us what al-Qaeda is for you.”\textsuperscript{594}

Public perceptions of the KPC in surveys also improved. Among Albanians, the KPC was the most popular security organization in Kosovo, with between 78.4 and 96.4\% of the Albanian population satisfied with the KPC’s performance. Among Serbs, only 5\% of the population was satisfied with the KPC’s work in June 2007.\textsuperscript{595} In several interviews, Albanian analysts credited the KPC’s local development work for its popularity. While this might be true among some Serb communities, the popularity of KPC remained closely connected to its identity as an army-in-waiting.\textsuperscript{596}

\textit{Conclusion}

The establishment of the KPC closely met international preferences, so according to the theory the reform effort should be judged a success. Peace and security was largely maintained, since with the exception of a few incidents, the ex-KLA members contributed to the provision of security rather than encouraging violence. The KPC incorporated the ex-KLA militants while not

\textsuperscript{592} Quote from international official, ICG, “An Army for Kosovo?,” 15.
\textsuperscript{593} UNMIK Press Release 1556, “KPCDG congratulates KPC on efforts to reach out to ethnic minorities,” 31 May 2006.
\textsuperscript{594} ICG, “An Army for Kosovo?,” 19.
\textsuperscript{595} Early Warning Report 17, April-June 2007, USAID/UNDP, 17.
\textsuperscript{596} Interviews with local NGO leaders, Pristina, January 2010. See also ICG, “An Army for Kosovo?,” 18-19, 29-30.
threatening or implying independence. Local elites were encouraged to participate in the reform because of KFOR’s influence, and were willing to accept the international administration’s demands because these demands did not threaten nationalist goals or informal networks. This case study therefore verifies the predictions of the theory and demonstrates the mechanisms specified therein.

Table 4.5: Creation and Reform of the KPC

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formulation of KPC</td>
<td>Demobilize KLA and create new force that does not imply independence</td>
<td>High</td>
<td>Potentially high, but low after KPC created</td>
<td>Success: KPC created. Civilian protection organization to internationals, army-in-waiting to locals</td>
<td>Confirmed: Careful framing of demands avoids provoking local opposition</td>
</tr>
<tr>
<td>1999-early 2004</td>
<td>Create KPC as civilian organization, avoid violence</td>
<td>High</td>
<td>Low</td>
<td>Success: KPC recruited and trained. Some work on civilian protection tasks. Some participation in crime and violence, but minimal international prosecution</td>
<td>Confirmed: Organization is well established and meets international objectives</td>
</tr>
<tr>
<td>2004 Riots-Independence</td>
<td>Create KPC as civilian organization, avoid violence</td>
<td>High</td>
<td>Low</td>
<td>Success: Positive role in riots improves image. Stagnating organization. Best fulfillment of Standards</td>
<td>Confirmed: Continued implementation of international demands</td>
</tr>
</tbody>
</table>

The KPC still had many critics. Interethnic violence and organized crime were rarely fully investigated and when they were, members who perpetrated these crimes were at most forced to resign. While I argued above that the perception of the KPC as an army-in-waiting was beneficial for the reform effort, it naturally made many international officials uncomfortable. Although the KPC did not directly imply Kosovo would be independent it was highly suggestive. It was difficult to recruit Serbs and there was little real expectation that such an organization
could be truly multiethnic. While not threatening informal networks may have reduced the risk of a backlash, it left many suspect individuals in a position of power.

These critiques of the KPC are certainly valid. But they fail to recognize that the central purpose of the KPC was to incorporate the KLA, a guerilla rebel army, into a civilian organization. KFOR was attentive to this central purpose. There is often pressure for more ambitious demands that are more in line with human rights and bureaucratic practices. The success of the KPC reform effort demonstrates that nationalist goals and informal networks are real constraints on reform. In some highly politicized reform efforts, only when demands are limited can the central preferences be implemented.

VIII. Creation and Reform of Customs

The Kosovo customs institution has been cited by many observers as one of the most effective state institutions in Kosovo. It collected approximately 70-90% of Kosovo government’s revenue from 2000 to 2007 and was widely viewed as depoliticized and efficient in comparison with other institutions in Kosovo and other customs services in the region.597 The Kosovo customs reform is also the poster child for the argument that effective bureaucratic procedures can build strong institutions. Elton Skendaj argues that the customs service followed “best practices in public administration” and that its success was due to “insulation from political interference and promotion of a public service ethos.”598

This section agrees with the claim that the customs reform was successful, but provides a different explanation. I argue instead that the success of the customs reform is due to the

relationship between international unity and the limited threat to local elites’ interests. The international demands for customs and taxation were narrowly focused on revenue, rather than on stopping smuggling or otherwise threatening local elites’ informal networks. While local elites would have preferred to have gained greater control of the custom service, as they did with domestic taxation institutions, they benefited from the collection of revenue. International unity enabled proper bureaucratic procedures to be used in building the customs service, which led to the practices Skendaj observes. The customs reform effort thereby provides deep insight into the relationship between the international administration and local elites. Institution building is successful when it acknowledges and strengthens incumbent elites’ power and when unity enables effective policy-making by international officials.

This section proceeds in four parts. The first part explains the origins of the UNMIK Customs Service, including the post-war economic conditions and the preferences of the international administration. The second part describes the creation and initial efforts of the UNMIK Customs Service. The third part traces later developments of the customs service up to independence. A fourth part concludes.

Post-War Economic Context and the Origins of the UNMIK Customs Service

In the immediate post-war period, governance within Kosovo broke down. The Yugoslav trade and customs regime ceased to function when Serbian troops left Kosovo in June 1999. Except for some random checks for arms and hazardous materials by KFOR, there were no customs or border checks until September 1999. Traders transported goods into Kosovo with no restrictions. In the same period, armed groups, some of whom were associated with the KLA, began to extort
money for imports, fuel distribution, and other goods. There was no effective taxation by a central authority.599

Resolution 1244 made no specific mention of the collection of government revenue in Kosovo. However, it was widely recognized that Kosovo would need a source of revenue to fund government expenditures. The international community’s main preference for revenue therefore was the rapid establishment of a simple, neutral, and effective taxation system. While the major donors were willing to fund some amount of Kosovo’s budget for a limited period of time, they were unwilling to fund large deficits over the long term. It was therefore critical that a simple system be rapidly established in order to limit donor’s expenditures. International officials also sought to ensure that Kosovo’s taxation system should be in line with international best practices, which meant the creation of neutral trade regime that did not bias the economy.600

The solution to this problem was the creation of a tax system based on border taxes. There was little internal production following the war. Imports rapidly grew in size, since Kosovars had funds from remittances and international support. Border taxes were simple to set up and reflected the practices of many developing countries. The need to collect border taxes therefore led UNMIK to establish a customs service. UNMIK would later adopt additional goals with respect to customs and revenue, including the prevention of politicization, corruption, and fraud within the customs service; the transition to non-border taxation; and the transfer of control to Kosovar officials.

The establishment of a customs service supported nationalist goals, since the Kosovo institutions required some sustainable source of revenue and the customs service might

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eventually be transferred to the new independent state. There was a potential threat of the new taxation system to the major Albanian parties’ informal networks. During the war, the KLA had reportedly engaged in smuggling to import arms and gather revenue. The parties that emerged from the KLA, PDK and AAK, allegedly remained linked to smuggling activity. Later, the smuggling of oil became an increasingly prominent element of all three major political parties’ financing. Oil had a relatively high excise tax, which made smuggling particularly profitable. International officials and local analysts believed that each of the major parties were engaged in oil smuggling, though some disputed the relative importance of smuggling for the parties’ finances. Finally, each of the political parties sought to ensure the recruitment of individuals within their informal networks into the customs service. Politicization and penetration of the customs service would ensure jobs for political allies and facilitate criminal activity by the parties’ informal networks.

International unity was high since authority over customs was largely delegated to Pillar IV of UNMIK. While there were relatively few international officials within the UNMIK Customs Service, these officials had effectively full authority over administering the organization, hiring and firing staff, and setting policy. One senior local customs official stated that there was informal understanding that customs would be delegated to the British officials, which led to the adoption of a largely British structure for the customs service. Local and international officials both emphasized that delegation was critical for the success of the customs service.

\[602\] Interviews with former UNMIK Customs officials, Pristina, January 2010.
\[603\] Interviews with former UNMIK Customs official and Kosovo Customs Service official, Pristina, January 2010.
UNMIK’s main goals were the collection of revenue rather than attacking the role of informal networks, so it made few demands that threatened informal networks over the course of the reform. One account observes, “UNMIK’s initial focus was on efficient revenue collection and not on the constriction of illegal revenue flow to obstructionists. The primary concern was ensuring that revenues would not be diverted by carelessness, incompetence, theft, or corruption.”\textsuperscript{604} Hence, the customs administration would seek to limit smuggling as much as possible, but it did not have the resources or intention to fully prevent it. The main concern about corruption and patronage was inside the customs administration, where corruption could prevent revenue collection. While later efforts did widen the collection of customs, they failed to substantially threaten oil smuggling or other core political interests. Given international unity, the theory predicts full implementation of international demands.

\textit{Initial Post-war Period and the Establishment of the KCS}

Regulation 1999/3 established a border taxation system that came into force in September 1999. The tax system included three types of taxes collected at the border: a 10\% uniform customs tariff, a 15\% sales tax, and excise taxes on particular items. Since the sales tax was levied after the 10\% tariff, the effective tax rate on most goods was 27\% percent of value. However, many goods, including anything imported by international organizations or NGOs, many food products, and medical products and pharmaceuticals were exempt from the customs and sales tax.

The UNMIK Customs Service was mandated to collect new taxes. Although the UN originally imagined recruiting international customs officials, a British official with experience in Bosnia urged the recruitment of local officials under an internationally administered service. The fear was that international officials would have been unable to effectively operate and that

\textsuperscript{604} The Quest for Viable Peace, 230.
there would be limited local acceptance of the international customs service. Consequently, when the customs service was created, 37 Kosovar employees were recruited. Initially, these officials were unpaid, which gave them a significant incentive to engage in corruption. This policy, in the view of one participant, meant that the organization began with a legacy of corruption that it would have to work hard to counter.

The legality of the customs tax was somewhat complicated due to Kosovo's status under resolution 1244. Since collection of taxes at international borders is typically reserved to the sovereign state, the Kosovo government could not run its own customs service. The customs service therefore had to be under the direct administration of UNMIK, which made it the first ever customs service run by the UN. Furthermore, UNMIK did not establish customs posts on the border with Serbia, for fear of implying that Kosovo was independent. Eventually, the UNMIK Customs Service successfully argued to the Security Council that there were other examples of countries with multiple customs zones, including China and, perhaps more relevantly, Serbia and Montenegro.

The customs service was highly effective at its key goal of collecting revenue. The UNMIK Customs Service quickly established border posts along the Macedonian border, which was the source of most imports. Taxes collected at the border reached 121.5 million euros in 2000 and 243.4 million euros in 2001. However, tax evasion and smuggling were common. Border posts were few in number and easily evaded by experienced traders. There were a variety

606 Interview with former UNMIK Customs Official, Pristina, January 2010.
607 Ibid.
of ways for tax evasion, including Serbia’s preferential trade agreement with Macedonia and the exemption for NGOs.608

Subsequent Developments

Following the establishment of the UNMIK Customs Service and the border tax regime, UNMIK pursued several other goals. These goals included improving the tax code and collection of taxes at the border, shifting the tax burden away from border taxes to domestic taxes, preventing the corruption and politicization of the customs service, and transitioning the customs service to Kosovar control. With the exception of the creation of domestic tax institutions, these demands posed little threat to local elites’ informal networks. Consequently, with the exception of failing to create strong domestic tax institutions, the international administration was largely successful with the remainder of its demands.

In 2000 and 2001, the prominence and ease of tax evasion led UNMIK to try to broaden tax collection. Tax points were first established on the Montenegrin boundary in 2000, though the mountainous terrain and limited resources made it possible for tax evasion to continue.609

With the fall of the Milosevic regime, sanctions on Serbia were removed, and trucks could easily bypass paying taxes by entering Kosovo directly from Serbia. In 2001, UNMIK attempted to deal with this problem by establishing customs posts on the border between Kosovo and Serbia. Kosovo Serbs protested the customs posts as they implied the relative independence of Kosovo and led them to be taxed double on goods coming from Serbia. By spring 2001, a compromise

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608 Recall that the Federal Republic of Yugoslavia, which included Serbia and Montenegro, existed until 2003, after which the country was renamed the State Union of Serbia and Montenegro. Montenegro seceded in 2006. Mitra, Kosovo, 60–67; Moalla-Fetini, Kosovo, 75. Interviews with Kosovo Customs official and former UNMIK Customs Official, Pristina, January 2010.

609 A 2001 World Bank report describes the border crossing: “The office in Site 1 is a van with a small table inside. A marked police SUV with two policemen parked on the other side of the road provides security. This may not be inadequate [sic] if two or more traders collude to avoid customs...Dirt roads ...offer opportunity to enter the UNMIK territory without customs clearance.” Mitra, Kosovo, 66.
was reached by which Serbia avoided double taxation and the customs posts were called “tax” rather than “customs” posts. 610

UNMIK also attempted to widen the tax burden by increasing domestic taxation. The intention was to remove the distortions associated with the collection of all taxes at the border. During 2000, a hotel and restaurant tax was created and excise taxes were extended to local production of goods, though collection of domestic excise taxes did not begin until 2003. In 2001, the sales tax was switched to a value added tax (VAT). The VAT included larger domestic firms, though most of the taxes were still largely collected at the border. In 2003, a wage-withholding tax was introduced. 611

However, domestic taxation remained weak, reaching only 27% of revenues in 2007. 612 The collection of domestic taxes was delegated to the PISG in 2001, but the institution was reportedly corrupt and ineffective. One international official argued that the political parties prevented the strengthening of domestic taxation in order to maintain the border tax regime and the associated high profit margins from smuggling. However, some local analysts disputed the importance of oil smuggling revenue for the political parties and questioned whether the emergence of weak domestic tax institutions was intentional on the part of local elites. 613

The UNMIK Customs Service was largely successful at avoiding internal politicization and corruption. To address the initial problem of unpaid officers, the customs service established several policies that prevented the penetration of the customs service by local elites’ informal networks. Only individuals under 35 years of age, with a secondary education, who spoke either German or English were eligible for recruitment. The Director-General of the customs service,

611 Moalla-Fetini, *Kosovo*, 52–58.
612 By comparison “In Southeastern Europe in the early stages of transition [taxes collected at the border] counted for 6.2%, as opposed to the very high share in Kosova of 83.4%.” Riinvest, “Kosova Budget System - Policies And Sustainability,” June 2003, 27.
613 Interviews with former UNMIK customs official and local analysts, Pristina, January 2012.
an international official, retained full authority over hiring and firing. Customs officials only had one-year contracts, which facilitated firing officials suspected of corruption without a criminal investigation. An UNMIK inter-pillar human rights working group viewed the policy of one-year contracts as a potential human rights violation. However, the UNMIK Customs Service justified their policy on the grounds that customs was a unique institution that needed full authority to prevent internal corruption. \(^{614}\) Skendaj writes that the customs followed best practices in its recruitment policy, training programs, and promotions, which ensured that the customs service was insulated from politics. \(^{615}\)

Collaboration with former smugglers also strengthened the customs regime. In one widely repeated anecdote, Lluka, a major alleged smuggler of cigarettes, approached the customs service. Lluka proposed several measures to improve the customs service’s ability to prevent smuggling, including having an initially small tax on cigarettes and moving customs posts nearer to the Montenegrin boundary. The changes would enable established smugglers to secure the trade in cigarettes and block the competition. \(^{616}\)

As with other institutions in Kosovo, the 2004 riots had a profound effect on the customs service. Prior to the riots, the customs service was largely ethnically integrated, in part because UNMIK recognized that ethnic integration made corruption more difficult. However, Serb customs officials were in danger during the riots and had to be evacuated. Following the riots, the customs service ceased to be ethnically integrated. The customs service in the north of Kosovo became dominated by Serb officials and acquired reputation for corruption. \(^{617}\)

\(^{614}\) Interview with former UNMIK Customs Service official, Pristina, January 2010.
\(^{616}\) King and Mason, Peace at Any Price, 146.
\(^{617}\) Interview with former UNMIK Customs Service official, Pristina, January 2010.
Following the riots, the customs service also began to transfer increasing authority to local officials. In April 2007, a local official was appointed as the Director General, although he was still part of UNMIK and reported to the SRSG through Pillar IV. International officials remained present in an advisory and monitoring role. NGO surveys, as well as my own interviews, confirmed that the customs service remained effective, transparent, and relatively free of corruption and patronage. Going into independence, the customs service was believed to be one of the strongest institutions in Kosovo.618

**Conclusion**

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment of Customs Administration</td>
<td>Specify tax system; establish customs service</td>
<td>High</td>
<td>Potential threat to informal networks</td>
<td>Success: UNMIK Customs established as locally recruited organization; begins collecting border revenue</td>
<td>Confirmed: Focus on revenue rather than preventing smuggling boosts effectiveness</td>
</tr>
<tr>
<td>Developments to 2005</td>
<td>Generate revenue; gradually shift away from border collection</td>
<td>High</td>
<td>Low</td>
<td>Success: Shifts in tax structure, including adoption of VAT. Shift towards compliance, but still weak compliance</td>
<td>Confirmed: Continued focus on revenue limits threat to informal networks. International unity enables service to prevent political penetration</td>
</tr>
<tr>
<td>Later developments</td>
<td>Generate revenue; gradually shift away from border collection; shift towards local leadership</td>
<td>High</td>
<td>Low</td>
<td>Success: Continuing improvements in monitoring. Other sources of tax collection remain weak. Local authorities take over.</td>
<td>Confirmed: Continued focus on revenue limits threat to informal networks. International unity enables transfer to local authority and avoids political penetration</td>
</tr>
</tbody>
</table>

The customs reform effort represents one of the more successful institution-building efforts by UNMIK. The customs service fulfilled its primary role of gathering revenue, was relatively

618 Interview with former UNMIK Customs Service official and Kosovo Customs Service official, Pristina, January 2010; Skendaj, “Building State Bureaucracies and Democratic Institutions,” 139–140.
uncorrupt and transparent, and was successfully transferred to local leadership. The reason for
the success of the reform effort was the unity of the international administration and the limited
threat to local elites’ informal networks. The reform effort demonstrates how delegation led to
unity, which in turn enabled UNMIK to monitor the customs institution, to execute policies that
couraged the development of an autonomous and accountable institution, and to fulfill the
broader goals for the reform effort. At the same time, the success of the customs reform
depended on the reform’s limited objectives. Local elites developed an interest in the strong
functioning of the customs service both because they depended on the revenues raised and
because the customs service did not attack their informal networks based on smuggling.

Furthermore, I argue that the customs reform does not demonstrate that bureaucratic best
practices are sufficient for successful reform. While the use of good bureaucratic procedures was
clearly important, I argue that it did not determine the success of the reform for two reasons.
First, the development of bureaucratic procedures depended on international unity, which was in
turn related to the delegation of authority to Pillar IV and the selection of effective leadership.
Second, the ability of UNMIK to use effective bureaucratic procedures within the customs
service depended on the cooperation of local elites. Elites recognized that the demands related to
customs did not threaten nationalist goals or informal networks and in certain ways the reform
would secure their power. If alternative demands that threatened informal networks had been
selected, the reform is unlikely to have been so successful, even with similar use of bureaucratic
procedures.
IX. Conclusion

Theory Testing

This chapter sought to test the theory by examining the international administration of Kosovo from 1999 to 2008. The chapter traced six critical reform efforts by the international administration related to representation, security, and revenue. The chapter also demonstrates that the international administration in Kosovo supports the assumptions in the theory. UNMIK had extensive executive powers and a state-building mandate. International officials believed in spreading human rights and in the effectiveness of bureaucratic procedures. Local elites campaigned on nationalist goals and had close associations with informal patronage and corruption networks. The major parties reacted to reform based on their concerns with nationalist goals and informal networks. Because of the international administration’s hierarchical structure, international unity for each of the reform efforts was high.

<table>
<thead>
<tr>
<th>Reform</th>
<th>Confirm Theory?</th>
<th>Unexplained events</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Political Institutions</td>
<td>Confirm</td>
<td>Temporary UNMIK leadership was essential for independence, so low threat and success.</td>
</tr>
<tr>
<td>Standards before Status</td>
<td>Confirm</td>
<td>Implementation depends on threat to nationalist goals. After the standards ceased to be achievable, riots occur, blocking reform. Post-2004 demands cease to threaten nationalist goals, which increases implementation</td>
</tr>
<tr>
<td>Elections</td>
<td>Partially Confirm</td>
<td>Partial success despite unity and low threat, observed mechanisms only match theory for certain demands.</td>
</tr>
<tr>
<td>Police</td>
<td>Confirm</td>
<td>Threat to informal networks leads to an effective KPS, but an inability to prevent and prosecute politicized crime</td>
</tr>
<tr>
<td>KPC</td>
<td>Confirm</td>
<td>Creation of security force that does not imply independence, successful given limited demands that did not threaten informal networks</td>
</tr>
<tr>
<td>Customs</td>
<td>Confirm</td>
<td>Customs collects revenue, avoids obstruction by not attacking smuggling, unity enables customs service to avoid corruption</td>
</tr>
</tbody>
</table>

The chapter is highly supportive of the theory. Five of six reform efforts confirm the mechanisms and predictions specified by the theory (See Table 4.7). To be sure, the theory cannot explain the precise events, given its parsimony, but the overall trajectory of each of these reform efforts strongly supports the theory’s claims. In the case of electoral reform, however, the
theory was only partially relevant. OMIK adopted a modest approach, based on its experience in Bosnia and avoided threatening nationalist goals or informal networks. Objectives related to elections, however, were only partially achieved and the mechanisms specified by the theory were only relevant to a few of the demands.

Policy Implications

The international administration in Kosovo is often taken as an opportunity for learning lessons about institution building. However, the applicability of Kosovo to other societies may be limited by its unique political status. Indeed, the dispute about Kosovo’s future status was perhaps the primary limitation of the international community’s institution-building efforts in the society. While there are other countries with disputed sovereignty, Kosovo had a unique history given its status within former Yugoslavia, the specifics of resolution 1244, and the establishment of an international administration to address its disputed independence.

Nevertheless, there are elements of UNMIK’s experience in Kosovo that are more widely relevant. First, the chapter demonstrates how UNMIK’s unified and hierarchical structure facilitated international unity and led to greater success. UNMIK’s pillar system enabled the delegation of efforts to separate organizations without creating competition between them.

Second, the chapter shows the limits of formal authority for building strong state institutions. UNMIK’s mandate included effective sovereign authority over Kosovo. However, UNMIK did not have sovereign power, since its policies were ultimately subject to elite reactions and popular sovereignty. In particular, the riots demonstrated that UNMIK’s preferred Standards before Status policy was infeasible and had to be changed. Furthermore, the above account of UNMIK demonstrates that it is difficult if not impossible for an international administration to use its authority to engage in widespread institutional change prior to elections.
Even before general elections, local elites exerted extensive influence on UNMIK's decision-making and limited its freedom of action. "Institutionalization before liberalization" is not a feasible strategy and may provoke a backlash.

Third, the chapter demonstrates the continuing strength of nationalist goals and informal networks. For example, Steiner hoped to convince the Kosovo Assembly in 2002 to use its authority to address economic and social problems. However, the importance of independence in Kosovo politics meant that Albanian elites focused their energies on outbidding each other and passing resolutions beyond the technical authority of the Assembly. Furthermore, local elites depended on their associations with informal networks. Political parties adapted their wartime resources to the post-war period, and reacted to protect these resources from international reform efforts. The chapter repeatedly demonstrates that local elites act to protect their own political power over fulfilling international standards, even when the international community has overwhelming leverage and political authority.
Chapter 5

Institution Building in East Timor: Welcome to the Terra Nullius

“U.N. officials in Kosovo used to refer to the bombed-out territory they administered as ‘the empty shell.’ Then many of them were moved to East Timor, the U.N.’s latest hardship case, where they discovered the true meaning of emptiness... Yet today this impoverished island is the laboratory for what is known at the United Nations as ‘nation-building.’ The U.N. Transitional Administration for East Timor (UNTAET) is not just helping the new country’s government—it is that government.”
—James Traub 619

“The unprecedented powers to be assumed by the UN attracted the very type of individual who would be intoxicated by that thought. The mission itself was corrupting, even for individuals who were not already pursuing power for its own sake. Put in a certain structure and context, foreign staff exhibited colonial-style behaviour. The economic disparity was so great, the local people were so weak, it was difficult to resist the temptation of superiority (thus, chalking up to the angry scholars of racism their point). Many felt that the Timorese could not be relied on, that they lacked skills and were not ready for self-government, that the UN should stay and its personnel could keep their jobs for longer. Some officials even attempted methodically to prevent the participation of Timorese in the transitional government of the country. They wanted to wield unfettered their newfound authority and spend the hundreds of millions of dollars committed by the world’s donors.”
—Jarat Chopra 620

“We are witnessing another phenomenon in East Timor; that of an obsessive acculturation to standards that hundreds of international experts try to convey to the East Timorese, who are hungry for values: democracy (many of those who teach us never practised it in their own countries because they became UN staff members); human rights (many of those who remind us of them forget the situation in their own countries); gender (many of the women who attend the workshops know that in their countries this issue is no example for others); NGOs (numerous NGOs live off the aid ‘business’ to poor countries); Youth (all those who remind us of this issue know that in their countries most of the youth are unemployed...)”
—Xanana Gusmao, “New Year’s Message,” 31 December 2000 621

On August 30, 1999, a “popular consultation” was held in East Timor 622 to determine whether the territory would remain part of Indonesia and receive greater autonomy or would become independent state. Approximately 78.5% of voters selected independence, after which pro-autonomy militias, backed by the Indonesian military, engaged in violence. Approximately 1400 people were killed and 70% of East Timor’s already limited infrastructure was destroyed. An estimated 500,000 people were displaced, including 150,000 forcibly moved to western

619 “Inventing East Timor,” 74.
621 Available at http://www.etan.org/et2001a/january/01-06/01xanan.htm (accessed February 14, 2012)
622 The present name of the country is Timor-Leste, which is Portuguese for East Timor. I use the name East Timor for consistency, since this this was the initial name of the territory when the UN mission first began. Timorese here refers to the people of East Timor rather than of the entire island. For more discussion on these issues, see Kingsbury 2009, x.
Timor.\textsuperscript{623} An international military force, led by Australia, intervened within several weeks and prevented further violence. According to the negotiations prior to the consultation, in the event of a vote in support of independence, the UN would temporarily administer East Timor. However, the UN had not planned for the mission, since Indonesia was concerned that any such planning would prejudice the vote. Given the limited time for planning, the UN applied the same framework as it had for the recent operation in Kosovo.\textsuperscript{624} The UN Transitional Administration in East Timor (UNTAET) was created and would have full sovereign government over East Timor until May 2002.

For many international officials and observers, East Timor represented a laboratory for state building. In addition to authority, the mission also had experienced leaders and extensive resources, which together the technical perspective suggests should lead to successful state building. Within a relatively short time the UN had brought thousands of personnel to East Timor. Many senior officials had extensive experience in previous missions, although some of the recruits were perceived as unqualified. In addition to approximately $1.3$ billion in UN assessments to fund UNTAET, $518$ million was spent on reconstruction and development, which made East Timor one of the highest aid recipients per capita among post-conflict countries.\textsuperscript{625} The country was relatively small, with only approximately one million people. For some, the destruction of the war meant that the country presented an empty land, or \textit{terra nullius}, with few existing institutions. The UN hoped that East Timor would become a positive test case and demonstrate its ability to build strong institutions.

\textsuperscript{623} On the violence following the referendum, see “Report of the Secretary General to the Security Council,” 4 October 1999, S/1999/1024.
As in Bosnia and Kosovo, however, institution-building efforts had only mixed success. UNTAET was able to build representative institutions and to transfer power to a democratically elected government. The main failure of the mission was in building security institutions. Weakness in the accountability and effectiveness of the military and police eventually led to violence in April and May 2006.

The theory offers significant insight into the trajectory of all but one of the key reform efforts in East Timor. The success in building representative institutions was driven by high unity and demands that accorded with nationalist objectives. The failure of the police and military reform was driven by private obstruction from local elites' informal networks. The theory offers less insight for the effort to create sustainable revenue for East Timor, since local elites truly owned that reform effort and the international administration did not make demands of them.

The chapter proceeds in eight sections. The first section provides political context, including East Timor's struggle for independence; the structure, mandate, and ideology of UNTAET; and Timorese domestic politics. A second section introduces the case studies and describes the sources used. The third through seventh sections describe reforms undertaken by UNTAET, including the transition to independence, elections, military, police, and revenue reforms. The eighth section concludes by evaluating the theory's predictions in East Timor and suggesting policy implications.

I. Conflict, Intervention, and Local Politics

This section describes the political context of the international administration in East Timor. It first briefly discusses the history of East Timor prior to the independence referendum in 1999. It
then discusses UNTAET’s mandate, structure, and ideology. Finally, it discusses local politics in East Timor during the UNTAET period.

* A Long Struggle for Independence – Historical Context

Following World War II, East Timor remained a Portuguese colony, while the rest of the island of Timor became part of Indonesia. In 1974, the Carnation Revolution in Portugal began the process of decolonization in East Timor. A violent conflict broke out between three parties supporting different political outcomes for East Timor. The first party was Fretilin, which had a Marxist-Leninist political philosophy and supported full independence. The second was the more conservative UDT, which supported continued links with Portugal. The third was the small Apodeti, which supported integration into Indonesia. At the same time, Indonesia, led by President Suharto, developed plans for the invasion and annexation of East Timor. UDT, encouraged by Indonesia, launched a coup in August 1975. A short but violent civil war began, in which Fretilin was largely victorious. Fretilin took control of the capital, Dili, and declared independence in November. Indonesia then invaded and occupied East Timor. Australia and the United States accepted the invasion, apparently for the sake of maintaining good relations with Indonesia and preventing the spread of Communism.

Indonesia annexed East Timor and ruled for the next twenty-four years. Falintil (Forcas de Defesa de Timor Leste), Fretilin’s armed wing, resisted Indonesia’s occupation through an armed insurgency. By 1989, the Indonesian military had largely put down the rebellion and


627 Fretilin is the Portuguese acronym for the Revolutionary Front for and Independent East Timor. The party was initially called ASDT – the Timorese Social Democratic Association. Fretilin is also often capitalized.

forced Falintil underground. Nevertheless, the exiled Fretilin leadership, as well as a growing international solidarity movement, sought independence for East Timor. The independence movement emphasized the brutality of Indonesia’s rule over the territory, especially following the 1991 Santa Cruz massacre in which the Indonesian military opened fire on a crowd of unarmed protestors.

The politics of the resistance movement would have consequences for East Timor after independence. By 1981, Xanana Gusmao had emerged as the leader of Falintil. Although Gusmao was captured in 1992 and imprisoned, he developed a reputation as a visionary leader and extraordinarily effective guerilla commander. Many Timorese wanted to be part of the independence movement, but were reluctant to join Fretilin because of its Marxist politics and history of violence during the 1975 civil war. In order to present a united front to the international community, a new umbrella resistance group was formed, which was initially called the CNRM, and later renamed the CNRT. The group encompassed all parties supporting independence. Falintil was also dissociated with the political party Fretilin and became a non-partisan army. Several other important leaders of the independence movement emerged, such as Jose Ramos-Horta who, with Bishop Carlos Belo, won the Noble Peace prize in 1996 for their efforts towards “a just and peaceful solution to the conflict in East Timor.”

In the late 1990s, a series of circumstances brought about the end of the Indonesian occupation and a transition to independence through UN administration. Suharto, the leader of Indonesia, began to lose power. The Indonesian military, which had never been completely under

630 Fernandes, The Independence of East Timor, chap. 4–5; Dunn, East Timor, chap. 11–12.
632 Dunn, East Timor, 274.
civilian control, became frustrated by the corruption and nepotism of the Suharto regime. The international community also increased their criticism of Indonesia’s human rights violations in East Timor.\(^{636}\) The 1997 Asian financial crisis weakened Suharto’s regime and led to his downfall in May 1998. Suharto’s successor, B.J. Habibie, struggled with major economic problems in Indonesia in addition to the escalating international pressure to address the situation in East Timor. Following extensive negotiations with Portugal and the UN, Habibie signed the 5 May Agreements, which called for a “popular consultation” in which the people of East Timor would vote on whether to become an autonomous region of Indonesia or to become independent following temporary administration by the UN.\(^{637}\) Habibie and his advisors apparently believed East Timor would vote for autonomy and recognized that continued occupation of the territory weakened Indonesia’s reputation abroad. The Indonesian military, on the other hand, was dead set against Timorese independence.\(^{638}\)

The UN Mission in East Timor (UNAMET) was created on June 11, 1999 to organize and conduct the “popular consultation.” The situation for the vote was not ideal. The Indonesian military\(^ {639}\) believed that it still had sufficient leverage to compel a vote for continued integration in Indonesia. To this end, the military backed pro-autonomy militias, which engaged in threats, selective attacks against pro-independence supporters, and occasional indiscriminate violence.\(^ {640}\) Despite the security problems and repeated warnings from UNAMET, the registration and vote


\(^{638}\) James Dunn writes, “President Habibie may have had no strong feelings about East Timor, but to his military commanders, especially Kopassus officers, it was hallowed ground. Thousands of Indonesian lives had been lost in the twenty-four year campaign to crush the Falintil resistance.” *East Timor*, 341–342.

\(^{639}\) Some of the Indonesian-backed militia forcefully recruited Timorese, which was one reason for the population displacement before and after the referendum. *Chega!* 84. For details on the recruitment of the militias, see Geoffrey Robinson, *If You Leave Us Here, We Will Die*: *How Genocide Was Stopped in East Timor* (Princeton: Princeton University Press, 2010), 99–109; Dunn, *East Timor*, 342–350.

went ahead, and the consultation was held on August 30, 1999. Several very tense days followed, after which the UN announced that with high turnout the population chose independence with 78.5% of the vote. Pro-autonomy militias, without little opposition and some support from the Indonesian military, initiated wide scale violence in a “scorched earth” campaign.

In response to the violence, extensive negotiations began between Habibie, the UN, and various states, including Australia, Portugal, the US, the UK, and Japan. The UN Security Council, with the agreement of President Habibie, authorized the deployment of an Australian-led multinational force called INTERFET. INTERFET had approximately 8000 soldiers and a mandate to “restore peace and security in East Timor.” The force deployed on September 20, and rapidly restored basic security in the whole of East Timor. At the same time, the UN began to plan a mission to take over temporary administration of East Timor. The Indonesian parliament voted to approve the results of the popular consultation on October 20. On October 25, the UN Security Council adopted Resolution 1272 which established UNTAET to temporarily govern East Timor prior to the territory’s independence.

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641 Note that East Timorese leaders were in support of continuing the vote despite the risks. Martin and Mayer-Rieckh, “The United Nations and East Timor,” 127–131, 133.
642 Dunn explains, “much is known about the TNI’s [the Indonesian military] commanding role in relation to events in East Timor from April to September. At most of the major killings TNI officers were present, in some cases playing a leading role. TNI troops openly assisted militia attackers. During the Liquiça attack, for example, they obligingly hurled tear gas grenades into the church. During the Suai massacre Kopassus Colonel Sediono stood outside the church in uniform, carrying an M16 and, according to witnesses, he was giving orders... In the past the TNI had often used paramilitary groups to spearhead the attacks, and this technique was apparent during the wanton killing of hundreds of East Timorese in August and September 1999.” East Timor, 352–3. See also Robinson, If You Leave Us Here, We Will Die, 162–184.
643 The Report of the CAVR notes, “The comprehensive ‘scorched earth’ tactics employed by the TNI and the militia groups after the Popular Consultation, marked by threats of violence, killings, mass forced deportations and the destruction of public and private buildings throughout Timor-Leste, caused the bulk of the population to become displaced, either internally or externally.” Chega!, 44–46, 68–70, 84–85. Quote page 85. See also UN S/1999/1024.
International Administration in East Timor

This section demonstrates that UNTAET fulfills the scope conditions and assumptions of the theory. In particular, UNTAET had executive power and a state-building mandate, a unified hierarchical structure, and believed in spreading human rights and in the effectiveness of bureaucratic procedures. UNTAET also had several unique dysfunctional characteristics, including insufficient time for planning, an internal UN headquarters dispute, and a belief in the absence of existing institutions in East Timor.

Although the 5 May Agreements stated that the UN would supervise East Timor’s transition to independence in the event that the Timorese voted for independence, Indonesia had insisted that the UN could not plan for such a mission, as doing so would prejudice the outcome of the referendum. Astri Suhrke writes, “ideally, the UN needed six months to prepare a multi-purpose mission like UNTAET... in fact, planning for UNTAET was completed in about one month.”646 One DPKO officer observed that planning for UNTAET was “planning with no time to plan.” The UN’s planning capacity was further diminished by the reduction of professional staff within UN headquarters and by the requirements of several large ongoing UN missions in Kosovo, Sierra Leone, Ethiopia, and Lebanon.647 Recruitment was also slow, because only “one person in DPKO was assigned the task of hiring all civilian staff for the mission.”648

At the same time, there was a dispute within UN headquarters about who would lead the planning effort. The Department of Political Affairs (DPA) had run UNAMET and was “virtually the custodian of the Secretariat’s knowledge about East Timor.”649 Given their experience, knowledge, and consultation with Timorese leaders, DPA and UNAMET officials

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646 Suhrke, “Peacekeepers as Nation-Builders.”
648 Ibid., para. 165.
sought to participate in the planning for UNTAET. However, the Department of Peacekeeping Operations (DPKO) had jurisdiction over large post-conflict operations, and ignored DPA’s request for a joint planning mission. Kofi Annan resolved the disagreement by putting DPKO in charge of planning and giving it instructions to coordinate with DPA. Nevertheless, DPKO largely ignored DPA. DPKO developed its own perspective of East Timor as a *terra nullius*, or empty land, which “need[ed] to be invented from scratch.”

DPKO’s takeover of the planning process and the limited time for planning would have serious consequences for UNTAET’s conduct. First, UNTAET would not recognize the CNRT as the legitimate local authority. CNRT was seen within East Timor, and by DPA, as a coalition of all East Timorese parties that could be treated as broadly representative. DPKO, however, saw CNRT as one political faction and believed that that official recognition of CNRT “would amount to political favourtism and encourage corruption.” This policy stemmed from DPKO’s experience with traditional peacekeeping missions, in which the standard policy was for the mission to be impartial with respect to the local authorities. Second, DPKO adopted standard models from other missions, most notably Kosovo. Many DPKO staff had worked on Kosovo and, given the short time frame, were told to “rejig” the Kosovo plan for East Timor. Senior UN officials, most notably Lakhdar Barahimi, criticized the application of the plan from Kosovo to East Timor. They claimed that international administration was unnecessary in East Timor.

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650 Ibid., 6, 20 (fn 30); Traub, “Inventing East Timor.”
651 Suhrke, “Peacekeepers as Nation-Builders,” 11.
652 Suhrke observes, “a long-established institutional perspective in the UN that allowed for only two kinds of representative authorities: sovereign governments and factions. In so far as the CNRT was not a sovereign entity, it was relegated to the conceptual category of ‘faction’ and treated accordingly (the pro-Indonesian integrationists being another faction).” Ibid., 6–10. See also, Martin and Mayer-Rieckh, “The United Nations and East Timor,” 133; Goldstone, “UNTAET with Hindsight,” 85; Howard, *UN Peacekeeping in Civil Wars*, 272–275.
since there were Timorese officials who were capable of running the country. \footnote{Power writes that Brahimi declined to become SRSG of the mission on these grounds. She writes that he told Annan “I know nothing about Kosovo or Timor, but the one thing I’m absolutely certain of is that they are not the same place,” and joked to Vieira de Mello, “Sergio, instead of you being the dictator and Gusmão your adviser, why don’t you make Gusmão the dictator and you be the adviser?” Power, Chasing the Flame, 300, 302.} Third, DPKO did not coordinate well with planning efforts by other international organizations, most notably the Joint Assessment Mission by the World Bank, UNDP, and several other organizations. \footnote{The Joint Assessment Mission would come to radically different conclusions from DPKO and propose working with existing Timorese institutions rather than starting from scratch. The King’s College report explains, “DPKO seems to have wanted to maintain an arm’s-length relationship with the Bank.” “A Review of Peace Operations,” para. 24.} UNTAET’s mandate was specified in resolution 1272 and explained in more detail in the Secretary-General’s report of October 4, 1999. The mission’s mandate and structure was similar to that of UNMIK, but simplified due to the absence of the status problem and the presence of fewer international organizations. UNTAET would be “endowed with overall responsibility for the administration of East Timor and [...] empowered to exercise all legislative and executive authority, including the administration of justice.” \footnote{UNTAET’s mandated tasks were “(a) To provide security and maintain law and order throughout the territory of East Timor; (b) To establish an effective administration; (c) To assist in the development of civil and social services; (d) To ensure the coordination and delivery of humanitarian assistance, rehabilitation and development assistance; (e) To support capacity-building for self-government; (f) To assist in the establishment of conditions for sustainable development.” UNSC Resolution 1272 (1999), paragraph 1-2.} Both the Secretary-General’s report and Resolution 1272 encouraged “consultation and cooperation with the people of East Timor.” Nevertheless, the mandate gave effective full sovereign control to the SRSG and did not specify the measures by which the East Timorese would take over authority from UNTAET. Observers described the mandate as unprecedented, and one critic wrote, “The organizational and juridical
status of the UN in East Timor is comparable with that of a pre-constitutional monarch in a sovereign kingdom. 658

UNTAET had a unified structure similar to that of Kosovo, with some simplifications. In particular, there were not separate international organizations subordinated to the SRSG. Instead, the UN would run all of component pillars. The SRSG was dual-hatted as the “Transitional Administrator” and had full authority over the mission. Under the office of the SRSG there were three pillars. The first pillar was “governance and public administration,” which included creating sustainable state institutions for East Timor, judicial affairs, civilian police, economic development, elections, and district administration. While the district administrators were in practice the executive authority in much of the country, they were several levels removed from the SRSG in the bureaucracy. The second pillar was “humanitarian assistance and emergency rehabilitation,” which was responsible for all aspects of the substantial humanitarian response. The third pillar was the “military component,” since unlike in Bosnia and Kosovo the military was under the command of the SRSG. 659

Sergio Vieira de Mello was selected for the key role as the SRSG. Though he had no expertise in East Timor, Vieira de Mello had worked in many previous UN missions such as Cambodia, Bosnia, and Kosovo. Vieira de Mello explained his vision of the UN’s role in a briefing to the Security Council in February 2000: “...our mission is to work not so much as the interim administration appointed to govern but as co-architects, along with the East Timorese, of a national administration that will serve the country long after UNTAET’s departure.” A native Portuguese speaker, he would also develop a close relationship with the Lusophone elite who were rapidly returning to the country.

658 Chopra, “The UN’s Kingdom of East Timor,” 29.
While the internal disagreement between DPA and DPKO, “was real and damaging,” to the mission, UNTAET would generally have high unity. The hierarchical structure of the mission, combined with Vieira de Mello’s leadership, would ensure all elements of UNTAET would agree on its demands. Vieira de Mello also had the trust of UN headquarters, and despite occasional disagreements was able to prevent the outward appearance of disunity. 661

UNTAET officials also generally believed the ideology described in the theory. First, UNTAET sought to spread human rights. Resolution 1272 and the Secretary-General’s report emphasized human rights and a human rights office was created that directly advised the SRSG. The human rights office focused on the post-referendum violence, though the Secretary-General’s report also highlighted concerns about child and gender-related provisions of the human rights treaties.

Second, international officials believed in the effectiveness of formal procedures and sought to encourage the new institutions in East Timor to follow good bureaucratic practices. The bureaucratic ideology reinforced the view that East Timor was a *terra nullius*, since it led international officials to disregard existing informal institutions. 662 Given the *terra nullius*, UNTAET believed it could establish its preferred bureaucratic institutions by building the country from the ground up. James Traub, for instance, writes that the UN “sent out a kind of A-team of international technocrats” who attempted to build East Timor’s institutions from scratch. 663 Astri Suhrke echoes Traub’s assessment and emphasizes that the UN’s attitude and

660 Goldstone, “UNTAET with Hindsight,” 86.
662 The King’s College report observes, “In addition, politically, for almost all the incoming UNTAET senior officials, East Timor was *terra incognita*, an unfamiliar political landscape full of potential pitfalls in which it was necessary to tread warily. Many of them also assumed that in political terms it was also a *terra nullis* [sic], politically an empty quarter, which it most certainly was not.” “A Review of Peace Operations,” para. 296. [emphasis in original]
663 Traub describes one of the technocrats, Hans Strohmeyer. Strohmeyer’s job “is both to invent a Timorese legal system and to help devise a body of laws for this embryonic country... it was Strohmeyer who talked about the
approach alienated the Timorese.\textsuperscript{664} Jarat Chopra, a scholar who was appointed to the UN’s district administration, was high critical of the UN’s assumption of \textit{terra nullius} and its bureaucratic tendencies.\textsuperscript{665} He described several examples of “UNTAET’s preoccupation with control at the expense of the local community’s involvement in government” and observed, “The defensive brand of bureaucratic ‘force protection’ employed by UNTAET was not an effective approach to establishing a credible new government or preparing the Timorese for full independence.” In Chopra’s opinion, “The UN’s internal bureaucracy is too rigid for dynamic operational environments, and blocks the necessary psychological and organizational shift from managing missions to leading countries.”\textsuperscript{666} The tensions between the real or imagined lack of Timorese capacity and the UN’s bureaucratic ideology would appear repeatedly throughout the institution-building efforts described below.

UNTAET was extensively criticized for its organizational and ideological limitations, but these flaws in themselves rarely prevented the achievement of successful reforms. Indeed, it

\textsuperscript{664} Suhrke, “Peacekeepers as Nation-Builders,” 6–18.

\textsuperscript{665} Chopra observes that the \textit{terra nullis} perspective hailed from two factors: “The first was a blind ambition borne of bitter experience in Somalia, Afghanistan and elsewhere. The disarray of disparate international actors — divided amongst themselves amidst resilient warlords in the area of operation — was to be overcome by unifying the intervenors under a single political authority. Underlying causes of conflict were to be tackled by taking control of their political source and fundamentally transforming its dynamics. By taking power actually on the ground, it could then be transferred to a newly minted state machine and its head and its officials. …The second factor was malevolence on the part of international officials. The unprecedented powers to be assumed by the UN attracted the very type of individual who would be intoxicated by that thought. The mission itself was corrupting, even for individuals who were not already pursuing power for its own sake. Put in a certain structure and context, foreign staff exhibited colonial-style behaviour. The economic disparity was so great, the local people were so weak, it was difficult to resist the temptation of superiority (thus, chalking up to the angry scholars of racism their point). Many felt that the Timorese could not be relied on, that they lacked skills and were not ready for self-government, that the UN should stay and its personnel could keep their jobs for longer. Some officials even attempted methodically to prevent the participation of Timorese in the transitional government of the country. They wanted to wield unfettered their newfound authority and spend the hundreds of millions of dollars committed by the world’s donors.” Chopra, “Building State Failure in East Timor,” 981.

\textsuperscript{666} Chopra, “The UN’s Kingdom of East Timor,” 30, 33, 35.
appears that on sufficiently important issues, UNTAET was forced to rationalize its demands, which helped enable success. Nevertheless, UNTAET’s weaknesses, such as the *terra nullius* belief, were still damaging to political development in the country.

*Local Politics*

The achievement of independence was perhaps the most important political issue in East Timor. The struggle for independence had been underway since the mid-1970s and independence was broadly popular within the society. Furthermore, with the arrival of INTERFET, pro-autonomy militias had largely fled and so there few if any remaining supporters of integration with Indonesia left in the country. Indeed, nearly all of the political elite had participated in some way in the struggle for independence and would campaign based on their wartime role. The CNRT was initially a unified organization, but splits rapidly emerged, many of which were based on preexisting divisions within East Timor’s society.\(^6\)\(^6\)\(^7\)

Prior to the independence referendum, the CNRT leadership was largely in favor of a UN mission. The leadership believed that the CNRT would govern East Timor while the country was under the UN’s supervision, rather than the UN governing East Timor directly. CNRT officials met in Melbourne and Darwin in April and October 1999 to discuss their plans for the future. They submitted a proposal for the creation of a seven member Transitional Council that would become UNTAET’s partner. In this framework, UN supervision would continue for a period of approximately five to ten years. As discussed above, DPKO largely ignored their proposal, in large part because DPKO planners considered CNRT to be one political faction, rather than a broadly representative umbrella organization.\(^6\)\(^8\)

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Two of the main leaders of the independence movement remained especially influential in the post-conflict period, Xanana Gusmao and Jose Ramos-Horta. Indeed, during the initial period, UNTAET apparently believed that if it had the approval of both Gusmao and Ramos-Horta, there was sufficient local acceptance of a particular policy. 669 Gusmao was the leader of the clandestine movement and the president of CNRM/CNRT. In 1981, Gusmao was one of the only two surviving members of the Central Committee of Fretilin who remained in East Timor and he became the Commander in Chief of Falintil. Fretilin had alienated many Timorese during the 1975 civil war, and many individuals were suspicious of its Marxist ideology. Gusmao engaged in several efforts to broaden the independence movement beyond Fretilin. In 1982, Gusmao created the CNRM in order to encourage the participation of the Catholic Church and other individuals who did not want to be under the Fretilin’s leadership. To encourage greater unity and participation in the armed resistance, in 1987, Gusmao separated Falintil (the armed wing) from Fretilin (the party) and resigned from Fretilin. These actions, however, created a divide between Gusmao and the rest of the leadership of Fretilin, especially Mari Alkatiri. Through Gusmao’s leadership, CNRT remained unified throughout the independence struggle, with even Alkatiri joining CNRT in 1997. However, many Fretilin leaders remained opposed to Gusmao, and following independence, Gusmao would become Fretilin’s main political adversary. 670

Ramos-Horta was one of the founding members of Fretilin. He won the Noble Prize for his long efforts as the representative of East Timor’s independence movement at the UN. Ramos-

669 Interview with former UNTAET officials, Dili, Summer 2009 and 2010.
Horta was highly critical of the UN’s administration in East Timor and argued that Timorese should play a larger role.671

The other key political actor in the post-conflict period was the political party Fretilin. In August 2000, Fretilin split from CNRT under the leadership of Mari Alkatiri.672 While Gusmao might have personally been the most popular leader of the independence struggle, many Timorese recognized Fretilin as the party that was most responsible for independence. After the popular consultation, Fretilin rapidly developed a strong grassroots political network throughout the country.673 Fretilin also drew from a wide range of Timorese leadership, including individuals within Falintil, exiles in Mozambique and other Lusophone countries, business elites, and youth leadership.674 While Fretilin began as a socialist party, and many continued to oppose the party on those grounds, Fretilin abandoned its Marxist ideology in 1982. After 1999, the party became a broader nationalist party, with conservative, pragmatic, and authoritarian tendencies. The party’s leadership appeared to believe that Fretilin was the only legitimate ruling party in East Timor.675 Fretilin allegedly engaged in a number of activities to intimidate voters and physically attack opposition parties.676 In writing the constitution, Fretilin’s view was that

673 Tanja Hohe explains: “Fretilin was again consolidating its influence at the grassroots as a result. It started to spread its presence throughout the country, establishing structures on all administrative levels. From January 2001 onwards, a census of all Fretilin supporters and elections for party, youth and women representatives was conducted in every hamlet, village, sub-district and district up to the national level. Soon Fretilin had a party network covering the entire country. The position of CNRT village representatives, who had so far been bound in a working relationship with UNTAET, were now in some cases challenged by their Fretilin counterparts on the local level, who requested UNTAET to recognise them as local leaders instead of the CNRT representative.”
676 Guterres gives several examples of Fretilin’s threats. During the 2001 campaign, “Leaders of FRETILIN even demanded that the people vote for them or risk being wiped out.” Later, in early 2005, “supporters of FRETILIN in the subdistrict of Uato Lari assaulted and destroyed houses of PSD leaders. The most recent case took place in the village of Bucoli, district of Baucau, in which FRETILIN members in that village ransacked the secretariat of Partido Unidade Nacional Democratica da Resistencia Timorense, UNDERTIM (National Unity Democratic of
“compromise is not ‘a sign of rationality and good will but a signal of weakness and lack of resolve.’”677 Finally, following their loss in the 2007 elections, Fretilin officials insisted that the opposition parties’ victory was not legitimate.678

The leadership of East Timor was drawn from a relatively small portion of the population, which meant that key elites had known each other for a long time and that politics was often based on personal rivalries. Francisco Guterres observes that nearly all of the Timorese elites were drawn either from descendants of Portuguese mestizos or the children of liurai (the traditional rulers).679 Furthermore, many of the key leaders, including Gusmao, Alkatiri, Lu Olo, and Rogerio Lobato gained their position based on their role in the founding of Fretilin and the early struggle for independence.

All of the major political actors used informal networks to secure their power, with many of these networks originating from the war. Gusmao, for example, retained close associations with Falintil members who were eventually incorporated into the new East Timorese army. Fretilin had a more varied base, since the party had a number of leaders with different areas of support. Some individuals, such as Rogerio Lobato, drew on associations with disgruntled Falintil veterans. Other members of Fretilin had particular regional bases of support, especially in the eastern part of the country. The legacy of the clandestine networks enabled elites to continue to organize influential informal networks. The density, opacity, and importance of informal networks meant that for all reforms of large organizations, such as the police or military, there was a potential threat to informal networks, which I evaluate on a case-by-case basis.

677 Ibid., 203.
678 Gunn, “Timor-Leste in 2009.”
II. Sources and Methods

The remainder of the chapter examines five reform efforts undertaken by the UN in East Timor: the establishment of basic representative institutions, elections, the establishment of the police, the establishment of the military (F-FDTL), and the creation of the petroleum fund. Though most of the reform efforts took place under UNTAET, in the case of the police and military reforms, successor missions also played a role after East Timor’s independence in 2002.

I examine these reform efforts because they fit the scope conditions of the theory. Each of the reform efforts was relevant to security, representation, or revenue. The international administration had executive power and their demands were conditional for political progress, which in the case of East Timor meant the turnover of authority to Timorese officials. I selected the specific reform efforts I examine here by surveying the literature and confirming the choices with area experts and local officials. Naturally, there are a number of reform efforts that were important for the political development of East Timor that I do not cover here, including justice, land reform, education, and health.

The reform efforts below draw on three types of sources. First, I conducted a total of two months of fieldwork in East Timor in July to August 2009 and in August 2010. I did 43 interviews with a variety of international and local officials and analysts. The interviews were all conducted in English. English was not as widely spoken in East Timor among local officials as it was in Bosnia or Kosovo. However, I was successful at gathering a wide range of opinions from different political parties. I also spoke with officials who had participated in UNTAET or successor missions. Second, I relied on written primary sources, including UN documents, regulations, and press releases. Third, I made use of a variety of secondary sources cited below. There are a number of excellent academic theses written in Australia on UNTAET and later UN
missions. I also refer to two systematic evaluations of UNTAET, including a 144-page report on UNTAET issued by the Conflict, Security and Development Group at King’s College and a debrief of UNTAET by the UN Institute for Training and Research. Finally, for background and information about specific reform efforts, I used a range of books, articles, and NGO reports.

III. Representative Institutions and Independence

UNTAET’s effort to establish representative institutions in East Timor and bring the country to independence was largely successful. UNTAET was criticized, however, for failing to transfer authority soon enough to Timorese officials, for establishing overly centralized institutions, and for failing to address the society’s low level of development. Regardless, UNTAET largely achieved its goals – East Timor had multi-party elections in August 2001 and officially declared independence on May 20, 2002.

The theory both predicts the generally positive outcome and offers insight into the limitations of the effort to establish representative institutions. While internal divisions within the UN did lead to early disagreements about the planning process, once UNTAET deployed it was largely unified in its demands because of its hierarchical structure and strong leadership. Furthermore, UNTAET’s goals did not threaten the fundamental nationalist goal of independence or elites’ informal networks. The theory therefore correctly predicts the implementation of UNTAET’s demands. However, UNTAET’s tendency towards formal bureaucratic processes and its failure to recognize existing Timorese authority led UNTAET to be criticized for being autocratic and for creating an overly centralized government.

This case study proceeds in six sections and in some regards provides context for the subsequent reform efforts. The first section explains UNTAET’s goals for building representative institutions in East Timor and discusses the coding of key variables. The second section discusses UNTAET’s initial governance effort, from November 1999 to June 2000, and outlines how growing criticism from local elites led UNTAET to begin to “Timorize” its administration. The third section describes the period of the first East Timor Transitional Administration (ETTA) and the development of a timeline for Timorese independence. The fourth section examines the second ETTA and the drafting of the constitution. The fifth section considers UNTAET’s legacy and concludes.

Political Context and Goals

UNTAET’s goals for the mission were only partially articulated in resolution 1272 and the Secretary-General’s report. The Secretary-General’s report explains that UNTAET “would need to be responsible for the administration of the territory of East Timor during its transition to independence,” and that “it is envisioned that the process will take two to three years.” However, the mandate and plan for the mission were largely adapted from UNMIK in Kosovo, where the future status of the territory was uncertain. The planning documents therefore did not clearly specify how UNTAET would transfer authority to the Timorese or bring the country to independence.

Nevertheless, it is clear that UNTAET officials, especially Vieira de Mello, clearly understood that their mission was to build an independent country with strong institutions. I specify three relevant goals. First, UNTAET sought to effectively administer East Timor, including fully controlling the territory, providing basic government services, and establishing

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682 UN S/1999/1024, para 27.
683 Vieira de Mello observed, “There was no instruction manual attached to the mandate.” Quoted in Kingsbury 2009, 80.
some level of the rule of law. Second, UNTAET sought to bring East Timor to independence. While UNTAET had no specific process in mind, it was clear that at a minimum, independence would require a constitution and elections. Third, UNTAET sought to create institutions that would endure after its departure and ensure a basic standard of governance, rights, and prosperity in the future. Hence, the mission would not be considered successful unless East Timor could provide a basic level of services to its citizens and become a responsible member of the international community after the conclusion of UNTAET.

Several accounts of the mission emphasize the extent of UNTAET’s objectives. As Vieira de Mello later observed, the mission was the UN’s opportunity to “practice what it had been preaching” in terms of democratization and state building. As James Traub writes in Foreign Affairs, the mission would answer the question of whether the UN can “foster political stability, economic development, and reliable and responsive democratic institutions” in post-conflict societies. UNTAET’s success therefore hinged on its effectiveness in building stable and just representative institutions.

The East Timorese leaders were frustrated by UNTAET, but did not view UNTAET’s goals with respect to representative institutions as a threat to nationalist goals or informal networks. East Timorese leaders had consulted with UN DPA and the World Bank for several

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684 See UNSC resolution 1272 (1999), 2b.
685 The Secretary General’s report specified to implement its mandate, UNTAET would have “To assist the East Timorese in the development of a constitution; [and] To organize and conduct elections and build the institutional capacity for electoral processes.” UN S/1999/1024, para 29 e, f.
686 Resolution 1272 states that UNTAET’s mandate is “to assist in the development of civil and social services; …to support capacity-building for self-government; to assist in the establishment of conditions for sustainable development.”
687 Power, Chasing the Flame, 303, 305.
689 Interviews with ex-UNTAET officials, and representatives from various local parties, Dili, August 2009 and 2010. Vieira de Mello does write, “Clearly, we cannot succeed, in the time allotted us, with many of the tasks laid out in resolution 1272 (1999) the creation of an effective administration; the development of civil and social services; the establishment of conditions for sustainable development and so on.” Rham-Azimi and Chang, UNTAET: Debriefing and Lessons, 99.
months and were surprised that the UN had created an international administration that would rule directly. Samantha Power reports that Gusmao was “livid” about the extent of UN authority, while Ramos-Horta observed, “Imagine a transition in South Africa, where Mandela wasn’t given the ultimate authority. Imagine if some UN official were given all the power and told it was up to him whether he felt like consulting Mandela or not.”

Nevertheless, the Timorese leadership recognized that UNTAET’s intention was to relatively quickly bring the country to independence. UNTAET’s efforts to build representative institutions therefore posed low threat to nationalist goals. To be sure, the Timorese leadership would push for progress toward independence and would sometimes outbid one another on criticizing UNTAET’s autocratic tendencies. However, as soon as Timorese elites were included in UNTAET’s administration, criticism of UNTAET rapidly diminished. Finally, the establishment of representative institutions posed little threat to informal networks since UNTAET’s reforms focused largely on formal institutions. The institutions UNTAET sought to build would not impact Timorese leaders’ informal networks, since these networks could be incorporated into the new formal institutions.

International unity about demands was high throughout the reform effort because of UNTAET’s unified structure and Vieira de Mello’s leadership. Given UNTAET’s unified structure, the main source of disunity was between UNTAET and UN headquarters. While there were complaints about UN headquarters’ interference with the mission, especially on issues of funding, there were few major political disagreements. Vieira de Mello had a long and distinguished record within the UN and had extensive autonomy.

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691 One DPKO official observes, “In my experience the relationship between UNTAET and Headquarters was the most sensible and most productive of any of the Missions that I have been involved with. UNTAET and SRSG...
SRSG of UNTAET throughout the entire transition period, which gave him greater control. Indeed, critics of UNTAET focused on the centralization of power rather than international disunity.\(^{692}\)

Given high unity, and a low threat to nationalist goals and informal networks, the theory predicts successful implementation of the demands. The establishment of representative institutions in East Timor would follow these predictions. The reform effort consisted of the progressive establishment of new governing bodies that incrementally transferred increasing authority to Timorese officials, eventually culminating with independence.

*Initial Period*

The UN Security Council passed resolution 1272, which established UNTAET, on October 25, 1999. INTERFET, the Australian-led military intervention, had been deployed since September 20, and the situation in East Timor was rapidly evolving. Gusmao had returned to Dili on October 21 and quickly began to give speeches emphasizing the achievement of independence.\(^{693}\) Vieira de Mello did not arrive until November 16 – a full two months after the initial INTERFET intervention. During this time there was no official government, though in reality Fretilin and traditional authority structures retained control and influence.

Vieira de Mello recognized the need to consult with Timorese elites and he met with Gusmao soon after arriving. Vieira de Mello agreed with Gusmao that CNRT would be the UN’s main interlocutor, but insisted that the arrangement could not be publically acknowledged prior to elections. Vieira de Mello shared DPKO’s concern that supporting CNRT would be seen as

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\(^{693}\) Gusmao stated, “They tried to kill us. But we are still here, crying and suffering but still alive. We will rebuild our Homeland. Nothing can stop us.” Sarah Niner, *Xanana: Leader of the Struggle for Independent Timor-Leste* (North Melbourne, Vic.: Australian Scholarly Publishing, 2009), 210.
favoritism for one particular faction, even though there was no coherent pro-autonomy political establishment following the referendum.\textsuperscript{694}

For the first weeks of the mission, there was limited political development, since UNTAET was focused on restoring security and establishing its own organization.\textsuperscript{695} By early December 1999, however, Vieira de Mello had established initial representative institutions through regulations 1999/1 and 1999/2. These regulations specified UNTAET’s demands for the initial period: securing UNTAET’s authority and maintaining a purely consultative role for Timorese officials. Regulation 1999/1 established the legal framework for the rest of UNTAET’s tenure: “All legislative and executive authority with respect to East Timor, including the administration of the judiciary, is vested in UNTAET and is exercised by the Transitional Administrator.” Regulation 1999/1 also required any individual exercising public office in East Timor to abide by a number of internationally recognized human rights treaties. Finally, regulation 1999/1 specified the applicable law in East Timor. Indonesian law prior to October 1999 would apply, though laws that conflicted with the recognized human rights treaties would be null and void.\textsuperscript{696} Regulation 1999/2 created the National Consultative Council (NCC), which was initially envisioned as the main means of Timorese involvement in UNTAET’s administration.\textsuperscript{697} The NCC’s entire function was advisory. The body had fifteen seats, including four UNTAET officials, seven CNRT members (selected largely by Gusmao), three representatives from pro-autonomy factions, and one representative from the Catholic Church.

\textsuperscript{697} The NCC was “the primary mechanism through which the representatives of the people of East Timor shall actively participate in the decision making process during the period of [UNTAET], and through which the views, concerns, traditions and interests of the East Timorese people will be represented.” UNTAET Regulation 1999/2, para 1.2
Timorese officials were generally unsatisfied with the NCC, especially with the advisory role of the Council. Timorese officials’ objections lead to a “crisis of legitimacy” for UNTAET—local elites began to argue that the UN would never incorporate the Timorese into the government and that the country would indefinitely continue as an UN autocracy.698 Despite Timorese officials’ criticism of UNTAET, the NCC approved all of UNTAET’s proposed legislation, indicating that their distrust of UNTAET was limited.699 Vieira de Mello’s decision to prioritize consultations with Gusmao also began to have political consequences. According to interviewees, most decisions during the initial period were settled privately between Gusmao and Vieira de Mello “over coffee.”700 Fretilin, as well as NGO groups and Falintil members, began to protest the NCC’s limited membership, since they believed that representatives on the body were close allies of Gusmao. However, UNTAET had intentionally limited the membership of the NCC to facilitate rapid decision-making.701 Finally, observers criticized other elements of UNTAET’s administration, including its difficulty recruiting staff at a sufficient rate, dispersing money to the Timorese government, and failure to address unemployment. A public disagreement between the World Bank and UNTAET over the Community Empowerment and Local Governance Project also damaged UNTAET’s reputation.702

UNTAAET only began to address Timorese concerns about representation at the Tibar Conference in May 2000.703 Vieira de Mello proposed two options for “Timorization,” a

698 Tansey, Regime-Building, 78–79.
700 Interviews with Fretilin officials and former UNTAET officials, Dili, July 2009.
703 One Fretilin representative observed that they had pushed UNTAET for more representation for 6 to 7 months, but that the Tibar conference was the first movement towards Timorese authority. Interview with Fretilin official, Dili, July 2009.
"technocratic" or "political" model. The technocratic model would involve gradually recruiting Timorese officials into the UNTAET administration. The political model would involve the creation of a "co-government" between UNTAET and the Timorese - a new, enlarged consultative council would be established and Timorese officials would be appointed to a joint cabinet. Timorese officials accepted the political proposal. Timorese participants complained that UNTAET took credit for the co-government plan "as though it was a UN initiative; but it was what we had been asking for all along."\(^{704}\) It is notable that some UNTAET officials criticized the increased participation of Timorese based on the argument that UNTAET's mandate was to govern rather than to hand over authority.\(^{705}\)

For the first six months of the mission, UNTAET was too absorbed in dealing with the post-conflict crisis to plan for the later transition. After the Tibar conference, UNTAET began rapidly transitioning to Timorese authority and moving the country towards independence.

Table 5.1. Chronology of key events

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Popular Consultation&quot; – referendum on East Timor’s independence</td>
<td>August 30, 1999</td>
</tr>
<tr>
<td>INTERFET enters country following violence</td>
<td>September 20, 1999</td>
</tr>
<tr>
<td>UN resolution 1272 (1999) creates UNTAET</td>
<td>October 25, 1999</td>
</tr>
<tr>
<td>SRSG Sergio Vieira de Mello arrives</td>
<td>November 16, 1999</td>
</tr>
<tr>
<td>National Consultative Council created</td>
<td>December 2, 1999</td>
</tr>
<tr>
<td>Formation of 1st East Timor Transitional Administration</td>
<td>July 14, 2000</td>
</tr>
<tr>
<td>Election of Constitutional Assembly (CA)</td>
<td>August 30, 2001</td>
</tr>
<tr>
<td>Official Independence Ceremony</td>
<td>May 20, 2002</td>
</tr>
</tbody>
</table>

The First East Timor Transitional Administration (ETTA)

Following the Tibar Conference, UNTAET established the first East Timor Transitional Administration on July 14, 2000, in which for the first time Timorese officials would participate "as equal partners" in governing the country. Regulations 2000/23 and 2000/24 created the


\(^{705}\) Power, Chasing the Flame, 329–330.
Cabinet of the Transitional Government and the National Council, respectively. Although Timorese officials would play an increased role, the SRSG retained full authority and both bodies were still directly accountable to him. The cabinet was comprised of four Timorese officials and four international officials. Gusmao was largely able to choose the ministers and selected two Fretilin members to join the cabinet. The National Council (NC) was composed of 33 East Timorese representatives from a wide range of civil society groups. The NC would become a “proto-parliament” with expanded powers to amend and initiate legislation, although the SRSG still had final authority to overrule the NC.

At this juncture, the CNRT began to splinter along the pre-war divisions between Fretilin and Gusmao. Fretilin, led by Alkitiri, believed itself to be the rightful ruling party of East Timor and was also the only political party with strong, countrywide local networks. Alkatiri became increasingly frustrated with Gusmao’s influence with Vieira de Mello and felt that Fretilin was being ignored by UNTAET. Consequently in August 2000, claiming that it was acting “for the sake of democracy,” Fretilin formally withdrew from CNRT and began to campaign as an independent party.

In mid-2000, Vieira de Mello briefed the UN on the minimal requirements for East Timor to achieve independence, and by late 2000 UNTAET accelerated the process towards

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706 For a simplified organizational chart, see Gutierres, “Elites and Prospects of Democracy in East Timor,” 190.
independence. UNTAET backed a short timeline for independence both to accelerate its own exit, and based on the belief that Timorese officials should make the decisions about the country. In December 2000, Gusmao, with the urging of Vieira de Mello, proposed the timeline for independence to the NC. The timetable specified that there would first be an election of the Constituent Assembly (CA), which would write the constitution, and then an election of a parliament that would lead the country after independence. The elections of the CA were scheduled to occur on August 30, 2001, the two-year anniversary of the "popular consultation." The NC objected that there had been insufficient time to consider the timeline. Nevertheless, under the threat of Gusmao’s resignation, the NC approved the draft timeline. There were substantial public negotiations of the timeline in January 2001. Church leaders opposed the timeline, and the CA elections, since they feared that the Timorese voters would not understand what they were voting for. Ramos-Horta agreed, arguing that there should be more time for Timorese institutions to develop. Fretilin, however, believed that it would dominate elections and supported the timeline.\footnote{See King’s College, “A Review of Peace Operations,” para. 300–304; Beauvais, “Benevolent Despotism,” 1130–1131; Randall Garrison, “The Role of Constitution-Building Processes in Democratization” (International IDEA, 2005), 11–12; Tansey, Regime-Building, 83–85.} The UN proceeded to organize elections for the CA in August 2001, as explained in the election reform effort below.

Despite the increased role of the Timorese in the government, the first ETTA was subject to many of the same criticism of the NCC. Timorese officials remained unsatisfied with UNTAET’s continued authority. Gusmao’s New Year’s address, quoted at the beginning of the chapter, demonstrates his frustration with the UN’s continuing administration. Four of five ministers within the Transitional Cabinet (Ramos-Horta did not agree) wrote in a letter to Vieira de Mello, “We continue to be used as a justification for the delays and confusion in a process which is outside our control. The East Timorese Cabinet members are caricatures of ministers in
a government of a banana republic. They have no power, no duties, nor resources to function adequately.” 711 One account by Timorese participants noted that “The East Timorese started to have a role, and some East Timorese became ministers... However, in terms of policy, the East Timorese did not have any power. It turn out that sometimes the East Timorese only became interpreters for the internationals.” 712 Fretilin and other parties also continued to protest UNTAET’s continued close relationship with Gusmao. One radical party, the CPD, criticized Gusmao’s “privileged position” and demanded immediate independence. 713

Second ETTA and the Drafting of the Constitution

Fretilin was widely successfully in the CA election winning 55 of 88 seats. A second ETTA was created, with a new cabinet based on the results of the elections and solely composed of Timorese officials. Fretilin’s success in the election meant that it dominated the new cabinet. Under the second ETTA, Timorese officials were effectively in charge of the government, although the SRSG retained final legal authority and certain key positions were reserved to international officials. 714

The key effort during this final period of UNTAET’s administration was the drafting of the constitution. Fretilin used its power to dominate the drafting process and develop a constitution that would benefit Fretilin in two ways. First, Fretilin attempted to limit the extent of public consultation about the constitution. In March 2001, Fretilin blocked a measure in NC creating national and district constitutional commissions. In response, Gusmao resigned from the NC and UNTAET overruled the NC’s objections. Thirteen commissions were created, one for

711 Beauvais, “Benevolent Despotism,” 1130; Tansey, Regime-Building, 81.
712 Joao Saldhana and Marcelino Magno in Rham-Azimi and Chang, UNTAET: Debriefing and Lessons, 163.
713 Tansey, Regime-Building, 84.
each district, and organized public hearings about the constitution. Nevertheless, Fretilin largely
ignored the report of the commissions.715

Second, Fretilin used its majority in the CA to draft a constitution that it believed would
favor its future electoral success and political control. Tansey writes, “Although five separate
draft constitutions were presented to the Assembly by five different parties, Fretilin’s position
ensured that debate was soon centered on its own document.”716 Fretilin used a draft constitution
that was initially written in Melbourne in 1998 and was based in part on the Mozambique
constitution. The draft constitution gave the prime minister extensive powers, limited the ability
of the courts to check the parliament and the prime minister, and created a weak president. The
reason for these measures was that Fretilin believed that Gusmao would win the presidency
while Fretilin would continue to win a large share of votes in parliamentary elections.717 Hence,
Fretilin wrote the constitution to secure its own power in the future, rather than to secure
democracy.

Gusmao, Bishop Belo,718 and a number of smaller political parties complained about the
constitution writing process and urged greater consultation with the communities. Fretilin did
agree to an additional consultation period of one week. The CA divided into thirteen groups to
consult with the districts and a report with 45 recommendations was submitted to the CA, of
which only four were accepted. On March 22, 2002, the constitution was then approved by a
vote of seventy-two in favor, fifteen against, and one absent. According to Regulation 2001/2,

716 Tansey, Regime-Building, 94–95.
717 “FRETILIN ... forced through constitutional measures by which the prime minister gained far more power than
the president, an office which was commensurately reduced to a ceremonial role. This action stemmed mainly from
the fierce political rivalries that were brewing between FRETILIN leaders and Xanana Gusmao.” Guterres, “Elites
718 Belo was particularly concerned with two articles, “one explicitly adopting the separation of church and state and
the other mentioning divorce. Both of these references were removed.” Garrison, “Constitution-Building Processes,”
20.
sixty votes were required to approve the constitution, so the constitution was ratified.\textsuperscript{719}

Following the ratification of the constitution, an election was held in April 2002 for the President of East Timor. As expected, Gusmao won a clear majority of 87\% against the only opponent, Xavier do Amaral. East Timor formally gained independence on May 20, 2002.

While Regulation 2001/2 limited the CA’s authority to drafting the constitution, in April 2002 the CA voted to transform itself into the new parliament.\textsuperscript{720} The decision required reducing the size of the body, since the CA had 88 members while the parliament only had 65.

International officials who participated in the civic education program noted that they had clearly instructed the voters that the CA’s only purpose was to write the constitution and that a new election would be held to select the first parliament. Interviews with representatives of different parties revealed strikingly different interpretations of this event. Fretilin representatives attributed the decision to UNTAET and argued that it would have been logistically infeasible to have another election. An official in an opposing party argued that the decision to convert the CA into the first parliament was fundamentally undemocratic and set a bad lesson that leaders can “ignore rules and promises when convenient.” He discounted the idea that UNTAET had made the decision to abandon the additional election.\textsuperscript{721}
Conclusions and Critiques of UNTAET

Table 5.2: Representative Institutions and Independence

<table>
<thead>
<tr>
<th>Preferences</th>
<th>Effective administration of East Timor</th>
<th>Create process leading to independence, including running elections and writing the constitution</th>
<th>Create conditions for effective governance after independence</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Period</td>
<td>UNTAET</td>
<td>High</td>
<td>Low</td>
<td>Success:</td>
<td>Confirmed:</td>
</tr>
<tr>
<td>Nov 1999-June</td>
<td>authority, basic security, Timorese in advisory role</td>
<td></td>
<td></td>
<td>Create NCC and largely effective governance, but increasing criticism about UN autocracy, Gusmao as main interlocutor</td>
<td>Unity enables effective governance, though some problems from late planning, Timorese public protest for legitimacy leads to greater role.</td>
</tr>
<tr>
<td>1st ETTA</td>
<td>Approval of timeline, run elections, NC</td>
<td>High</td>
<td>Low</td>
<td>Success:</td>
<td>Confirmed:</td>
</tr>
<tr>
<td>June 2000 to</td>
<td></td>
<td></td>
<td></td>
<td>Pressure for timeline from Gusmao leads to acceptance, UN priorities guide timeline.</td>
<td>Relationship between unity and threat lead to Timorese acceptance, UN bureaucratic incentives evident.</td>
</tr>
<tr>
<td>Aug 2001</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd ETTA</td>
<td>Write constitution, Transition to Timorese leadership</td>
<td>High</td>
<td>Low</td>
<td>Success:</td>
<td>Confirmed:</td>
</tr>
<tr>
<td>Aug 2001-May</td>
<td></td>
<td></td>
<td></td>
<td>Frelin wins elections based on wartime role, takes over government, writes constitution for own benefit, Gusmao as weak President</td>
<td>Nationalist rhetoric in campaigns, self-interested elites, use of informal networks to achieve goals.</td>
</tr>
<tr>
<td>May 2002</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independence</td>
<td>Effective governance without UNTAET</td>
<td>High</td>
<td>Low</td>
<td>Success:</td>
<td>Confirmed:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Centralized government similar to UN administration</td>
<td>Local elites use centralized UN government for their own benefit</td>
</tr>
</tbody>
</table>

By and large, UNTAET was successful at building representative institutions in East Timor. UNTAET established its own authority, held elections, transferred power to Timorese elites, and brought the country to independence. The theory largely explains the success of the reform effort. UNTAET’s demands aligned with nationalist objectives and did not threaten elites’ informal networks. Elites at times opposed UNTAET’s administration based on nationalist rhetoric, but in the end supported the reform process because they recognized that UNTAET supported independence. Elites consistently manipulated the reform process to strengthen their political strength in the future. Finally, international unity enabled UNTAET to establish necessary conditions for achieving independence.
Despite the relative success of the reform effort, several criticisms of UNTAET’s efforts on representative institutions do indicate the underlying limits of state building by international administrations and question the technical perspective. First, several interviewees claimed the government UNTAET created was inappropriately centralized. Following independence, the structure of the East Timor government closely mirrored UNTAET’s highly centralized and bureaucratic structure. The problem was that East Timor was relatively rural and had few qualified officials to take over the many positions in the central government. Indeed, a longstanding complaint about UNTAET was that it had paid too little to district administration. Consequently, the UN’s tendency towards bureaucratization and formal procedures had produced a top-heavy government that was inappropriate for the target society.

Second, the government after independence had limited bureaucratic capacity. This critique, however, demonstrates UNTAET’s bureaucratic objectives and some officials’ misunderstanding of Timorese society. One UN official extensively criticized ineffective bureaucratic procedures in the Timorese government:

“office systems across government were generally not well developed... poor management of the flow of paper in Ministerial offices worked against a whole-of-government approach to decision-making and a capacity to track implementation of decisions or to follow up action. While such systems are in themselves elementary, good administration is dependent on effective information flow and management.”

She also noted “the need to re-engineer a bureaucratic culture which, under the Indonesian administration, was characterized by the acronym KKN (corruption, collusion and nepotism).”

Hence, from this perspective, informal processes were inappropriate and dangerous for East Timor’s development. East Timorese officials, however, were not able to take over a complex

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722 One interviewee explained that the only difference with the structure of the government before and after independence was that the former was in English and the later was Portuguese. Former UNTAET official, Dili, July 2009.
723 Interviews with international and local analysts, Dili, July 2009 and July 2010.
724 Rham-Azimi and Chang, UNTAET: Debriefing and Lessons, 89.
Western-style bureaucracy and did not share the UN's concern. The question is whether the international community ought to insist on high standards of governance, or whether getting East Timor to a regionally comparable level of governance should be instead be the objective.

Third, a central critique of UNTAET is that it was too slow to transfer authority to local elites. This critique was offered both by local elites and by international officials. Indeed, Vieira de Mello writes:

"We should have moved more briskly in bringing national partners on board from the very beginning in a more truly substantive fashion. While our consultation (and desire to do so) in these early days was genuine, our approach towards achieving that failed truly to bring in the Timorese on all aspects of policy formulation and development. The strategy we eventually developed and implemented (in short the two-phased devolution of executive power through the First and Second Transitional Governments) was, I think, the right one: we just had to feel our way, somewhat blindly, towards it, wasting several months in doing so." 725

The critics of UNTAET are probably correct that the mission was unnecessarily autocratic at its outset. 726 However, the critiques fail to recognize that in relatively short order UNTAET acknowledged Timorese complaints. If UNTAET had too quickly handed over authority to Timorese officials, no doubt UNTAET would have been criticized for too readily accepting poor governance by yielding to Timorese officials.

Fourth, UNTAET failed to create Western-style multiparty democracy. Jarat Chopra writes, "The purpose [of UNTAET] was to rebuild the country and to take control politically to break with the past. UNTAET did not take control in real political terms, however, and any kind of transfer of authority has been to a party [Fretilin] that took power by itself during the transition, replicating precisely what international administrations had been intended to solve." 727 Indeed, the next reform effort, on elections, explains how Fretilin was able to protect itself from...

725 Ibid., 19.
726 Chopra, "The UN's Kingdom of East Timor"; Goldstone, "UNTAET with Hindsight."
727 Chopra, "Building State Failure in East Timor," 996.
challenge by the international community. Chopra is correct that the international community could not create a fundamental political break from the past or to encourage the election of a moderate party. This failure demonstrates the fundamental limitations of the international community’s ability to reform post-conflict societies, however, rather than some deficiency of UNTAET.

IV. Elections under UNTAET

“The history of the Third World is repeating itself: the leader of the resistance will end up as president, even if he is not up to the task; guerrilla commanders will be generals and politicians will strive to become ministers. All because we were the heroes; all because we worked hard, suffered more than others! If this were to happen, it would be an outrage to the whole meaning of our struggle, the whole meaning of the sacrifices made by our people. It would be a betrayal!”

—Xanana Gusmao, 1999 New Year Address

Running elections was essential for transferring authority to Timorese representatives and achieving independence. Some international officials within UNTAET, however, had preferences beyond technically well-run elections – they sought to construct a democratic society along Western lines. To pursue these this more ambitious goal UNTAET initially planned a voter education effort almost entirely run by international officials. After a backlash from NGOs and other Timorese elites, UNTAET backed down and adopted an education program that incorporated Timorese officials and had less transformative goals. The elections were eventually held in August 2001, and while the poll was declared to be free and fair, observers questioned whether the elections were truly democratic. There was highly limited understanding of the purpose of the election among the population and parties campaigned mainly on their role in the struggle for independence. The subsequent presidential election was also ruled to be free and fair. Xanana Gusmao, as was widely expected, won a large majority of the vote.

728 Quoted in Niner, Xanana, 219.
The theory largely explains the outcome of the electoral reform. The initial UN civic education program threatened local elites' informal networks by potentially weakening their connections with the voters. Even though the program probably would not have been effective, Timorese officials blocked it. In the subsequent civic education programs and elections, UNTAET focused on the technical administration of elections, which was largely successful since it did not threaten the local elites' informal networks. The reform effort also supports several theoretical assumptions – elites campaigned on their achievement of nationalist goals and used informal networks to gather additional support and attack opponents.

The case study proceeds in five parts. The first part introduces the electoral reform and codes the relevant variables. The second section explains the origins and failure of the initial civic education program. The third section explains the conduct of the CA elections with a focus on the campaign. The fourth section describes the presidential election. A fifth section concludes.

*Origins of the Preferences for Electoral Institutions*

Resolution 1272 and the Secretary-General’s report did mention that UNTAET would need to run elections, but provided little insight into the timing or purpose of the elections. Hence, while it was clear that elections in East Timor would have to meet certain standards, there were few other firm guidelines.

UNTAET would pursue two sets of goals with regard to elections. First, UNTAET sought to conduct elections that were recognized as free and fair. As in other societies, elections had to meet this standard to ensure the legitimacy of the new government. Second, UNTAET hoped to establish a functioning democracy in East Timor. The precise nature of this goal was unclear, although certain characteristics were in clear violation. In particular, campaigns that focused on nationalist goals, personalism, clientalism, and so forth did not meet this goal.
International officials apparently hoped to create an electoral system composed of moderate parties similar to that in Western countries. As in the previous reform effort, UNTAET was unified because of its hierarchical structure and effective leadership.

The threat of international preferences to Timorese elites varied from a threat to informal networks to low threat. Independence was effectively guaranteed by resolution 1272, by the specification of the timeline towards independence, and by the mere existence of elections for a body to write a constitution for an independent East Timor. However, there was a potential threat to informal networks if the reform would weaken political parties’ informal connections with the electorate. By contrast, simply holding free and fair elections was not threatening to the parties, since it would enable them to use their networks and gain power.

Initial Civic Education Program

In mid-2000, prior to the development of the specific timeline for elections and independence, UN officials began work on a civic education program. Unlike voters in Bosnia and Kosovo, the East Timorese had little experience with elections or democracy – indeed the August 1999 popular consultation was many voters’ first election. UNTAET’s initial civic education program therefore sought to employ international officials throughout East Timor to broadly educate voters about the meaning of democracy and human rights. The program had a budget of $7 million and included goals related to “political education, basic rights and democratic elections.” International officials who participated in UNTAET claimed that the program was poorly conceived. For example, the program included a large budget for posters and other printed material despite the fact that much of the target audience was illiterate. Indeed, a survey

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conducted by the National Democratic Institute (NDI) in March 2001, which was used to design the later civic education that was actually deployed, observed, “While Tetum is widely used and Indonesian widely understood, people feel most comfortable speaking their local languages, many of which are not written languages. The oral transmission of civic education messages will be very important.” 731 One interviewee described the proposed civic education program as an attempt to “proselytize democracy” and gave the program as an example of how international officials did not understand the political context of East Timor. 732

The civic education program was not stopped because it was poorly designed, however. Instead, the program was blocked by the opposition of the NGO Forum, a group of more than 400 NGOs, and by other local elites. The NGO Forum objected to UNTAET’s lack of inclusions of, and consultation with, Timorese officials. 733 For Timorese elites, the dominance of international officials would not only have made the program ineffective and wasteful, but also threatened elites’ informal networks with their constituents. For example, voters might have been taught to select candidates based on Western conceptions of democracy. Based on Timorese objections, the program was delayed from its initial start in October 2000 and renegotiated. A new civic education program was launched in March 2001, only five months before the elections for the CA were to be held. Because of the delay, the subsequent program was criticized for being too short to accomplish its goals. 734

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Conduct of the CA Election

In March 2001, UNTAET promulgated Regulation 2001/2 specifying the legal framework for the CA election. As explained above, the CA was mandated to write the constitution. Eighty-eight members would be elected to the CA – thirteen from each of the districts, and seventy-five from the country at large. The UN had initially favored electing all members from the entirety of the country, for the sake of maximizing participation from different political parties. Fretilin, however, believed that it would receive at least a plurality of votes in many jurisdictions and successfully lobbied for the inclusion of some type of majoritarian voting system in the districts. An Independent Electoral Commission (IEC) was created to oversee the election, including registering parties, managing the voter list, supervising the campaigns, and adjudicating any electoral irregularities. The activity of the IEC was widely commended by a number of observers. Since many members of the NC, the parliamentary body of the first Transitional Government, were also participating in the election, the body was dissolved in July 2001 as well.

Sixteen parties would register and contest the CA. Some Timorese leaders sought to prevent parties that had campaigned against independence from being included in the election. UNTAET sought to ensure the widest possible participation, so did not prevent parties that had supported autonomy from registering, but did insist that all parties make written declarations asserting their intention to proceed with independence. CNRT, the umbrella group supporting

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735 Tansey, Regime-Building, 86–7.  
737 First, the parties agreed that they were running “for the purpose of nominating candidates for election to a Constituent Assembly to prepare a constitution of an independent and democratic East Timor,” rather than for integration back into Indonesia. Second, all representatives agreed that they would “continuously reside in East Timor for at least three (3) months prior to the date of the election, and that they are habitual residents of East Timor as defined in an UNTAET Regulation on civil registration,” which prevented militia members residing in West Timor from participating. Regulation 2001/2, Section 22; Tansey, Regime-Building, 89–90.
independence, was officially dissolved in June 2001. Gusmao, as the former leader of CNRT, remained neutral in the CA election, though he traveled across the country and urged people to participate peacefully in the election. Many parties that contested the election emerged out of CNRT. Several parties that had initially been created in the 1970s were reformed, including Fretilin and UDT. Several newer parties were also created, including Partido Democratico (PD), which drew its support from a mixed group of intellectuals, resistance leaders, and participants in clandestine youth networks; and Partido Social Democrata (PSD), which was formed as a new centrist party by former UDT leader Mario Carrascalao and drew much of its support from former civil servants.738

Analysts criticized the campaign on several grounds. First, many participants noted that the Timorese electorate had little understanding of the purpose of the election. The concept of electing an assembly to write a constitution was difficult to explain to a largely illiterate population with little experience with democracy. Sarah Niner writes, "As the UN and NGOs carried out civic education programs to familiarize people with new election processes one thing became clear: people did not understand the reason for the election – many commented that they had already voted for CNRT with Xanana as President during the 1999 ballot."739

Second, observers were frustrated that parties campaigned largely on their role in the war rather than on substantive policy issues. Their observations confirm the theory’s expectations that parties in post-civil war elections will campaign largely on the nationalist achievements rather than by differentiating themselves on particular policy measures. Tanja Hohe demonstrates this clearly in the case of the 2001 elections. She notes that "party programmes were a minor

aspect of the election campaign,” and instead, “the historical resistance fight was a detailed and elaborated feature of the campaign.” For example, she writes,

“The PD started campaigns by calling up clandestine fighters onto the stage with their code names. The PSD leaders described their personal connections to the resistance fight and called out family members they had lost. The content of the Fretilin campaign was virtually exclusively based on the independence movement. Fretilin went as far as demanding that ‘people should not vote for themselves but for the ones that fell in the struggle’. This call was very powerful. Ancestral sanctions in case of human misbehaviour are a dreaded fear amongst the population. Voting for a dead person therefore becomes a duty!” 740

Hohe’s discussion of the campaign is part of a larger argument that the 2001 election was a “totem poll…rooted in the manipulation of indigenous values, symbols and the history of the resistance fight” rather than a true democratic election. 741

Third, as Hohe demonstrates, the basic concept of multiparty democratic elections was in some ways incompatible with traditional Timorese culture. Hohe notes that traditional leaders gain legitimacy based on the approval of ritual authorities, who validate the leaders’ ancestry. Elections, which are based on popular approval rather than the existing hierarchical relationships, do not convey the same legitimacy. 742 Furthermore, political opposition had different content in traditional Timorese society. Hohe explains that according to the preexisting local concept of opposition, “Opposed elements must be in a hostile/violent relationship with one another or they

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740 Hohe, “‘Totem Polls’,” 76. An election observer, Curt Gabrielson, writes, “I attended a rally for Fretilin in a small village near Dili. The fiery speeches went on and on. Who bled for East Timor? Who died in the mountains for 24 years defending East Timor? Who will lead East Timor to a strong and proud future? FRETILIN! The main thrust was clearly emotional, and not at all related to Fretilin’s platform. Vague promises were made, different speakers were called on to say approximately the same things, and the other parties, ASDT especially, were slammed and slandered. These campaigners seemed to have been taking lessons directly from the politicians in the United States. Meanwhile, ASDT pointed out on many occasions that Fretilin did not have a monopoly on dying for the cause: over 200,000 East Timorese died in the occupation. Our neighbor Pedru is an avid ASDT supporter, originally from Maubisse, and read me from an info sheet put out by ASDT. The party writer described do Amaral as divinely chosen in addition to intelligent beyond the imagination, and put forth ASDT as the one true path to an independent East Timor.” Gabrielson, “The First Election,” 4.
741 Hohe, “‘Totem Polls’,” 70.
742 Hohe also notes that local elites attempted to explain democracy to the population “through the Tetum term biti boot [big mat]. The reference was to woven grass mats that traditional elders sit on when they meet to discuss problematic issues.” Ibid., 78, 81–82.
must be reconciled in a blood or marriage tie.” Consequently, “If one hamlet supported Fretilin, its enemy-neighbor hamlet had to join another party to reaffirm the conceptual dualism.”

Interviews with analysts confirmed that particular hamlets had selected their political affiliation based on traditional enmity rather than the particular platforms or leadership of the parties. Finally, many Timorese perceived political unity as essential to lasting peace. Some Timorese believed that political opposition would lead to violence, while others claimed, “we are all Fretilin here, there is nothing else,” to avoid violence.743

Observers and analysts particularly criticized Fretilin for using its informal networks during the campaign, as some of its tactics were clearly incompatible with international conceptions of democracy and human rights. These tactics were connected with Fretilin’s overarching belief that it was the only legitimate party in the country. First, Fretilin effectively threatened communities that did not select it. Anthony Smith explains,

“Fretilin spokespeople regularly talked of dasa rai (sweeping the ground clean)—a phrase notoriously associated with the genocidal actions of the Indonesian army in the 1970s—in order to describe what the party planned to do to its opponents... The three international electoral experts who made up the Independent Electoral Mediation Panel issued a statement calling the use of dasa rai a ‘disturbing form of apparent verbal harassment.’ Senior Fretilin leader Mari Alkatiri then accused the panel of ‘intellectual dishonesty,’ and charged that its real aim was to save the other parties from total defeat and humiliation.”744

Second, one participant in the civic education program claimed that the Fretilin members of the program used their position to campaign for Fretilin. Although these behaviors were against the electoral rules, UN officials were reluctant to remove Timorese officials.745 Third, Fretilin designed its campaign to take advantage of local traditional culture. For example, Fretilin officials referred to younger parties as “still breast-sucking,” which according to Hohe

743 Ibid., 81–82.
745 Interviews with former UNTAET official, Dili, July 2009 and August 2010.
“emphasizes the connection to values of fertility and femaleness, the opposite of political authority.”

The election was held August 30, 2001. Given the absence of violence, the election was widely held to be free and fair. While Fretilin did not meet its pre-election predictions of four-fifths of the vote, it did win a clear majority of 57.4%. As discussed above, Fretilin’s majority enabled it to effective control the CA. The PD came in second place with only 8.7% of the vote. Some interviewees claim that the relative success of Fretilin took UNTAET by surprise, and led it to more extensively include Fretilin officials in the second Transitional Administration cabinet.

**Presidential Election**

Following the election of the CA and negotiation of the constitution, there was a subsequent election for the President of East Timor. While Gusmao was widely viewed as the most popular and likely candidate for president, he initially insisted that he was not interested in the office. Nevertheless, given the encouragement from Vieira de Mello, Bishop Belo, and Ramos-Horta among others, he agreed to run shortly before the CA elections in August 2001. According to several accounts, Gusmao’s only opponent in the election, Xavier do Amaral, ran only so that there was a democratic alternative. While support for Gusmao was so widespread that the result appeared largely predetermined, Fretilin nevertheless campaigned against Gusmao. Alkatiri explained, “because of [Gusmao’s] opposition to Fretilin, Gusmao could no longer claim to be a national leader.” Alkatiri stated that he would cast a blank ballot and urged Fretilin supporters to

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746 Hohe, "‘Totem Polls’," 77.
748 Niner, Xanana, 218–219.
do the same or vote for Amaral. Nevertheless, Gusmao was elected with 82.7% of the vote in April 2001. The elections went quite smoothly and were certified as free and fair. Power writes that Vieira de Mello told his head of elections, “Thank you for the most boring elections of my life.”

Conclusions

Table 5.3: Electoral Reform

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial civic education program Mid 2000-March 2001</td>
<td>Teach democracy and human rights, preparation for CA elections</td>
<td>High</td>
<td>Informal networks</td>
<td>Failure: UNTAET creates wasteful program dominated by international officials with vague content. NGO Forum objects, forcing UNTAET to change program.</td>
<td>Partially Confirmed: Desire for human rights leads to demands threatening to local elites. Reform blocked in part because of threat to informal networks and in part because of too little consultation with Timorese officials</td>
</tr>
<tr>
<td>CA Campaign and Election March 2001-August 2001</td>
<td>Civic education program, party registration, free and fair elections</td>
<td>High</td>
<td>Low</td>
<td>Success: Campaigns focus on nationalist goals. Fretilin threatens voters, manipulates traditional culture, and focuses on wartime achievements. Wins elections.</td>
<td>Confirmed: Weakened international demands focus on technical elections. Parties’ activities accord with theory</td>
</tr>
</tbody>
</table>

The electoral reform effort was a partial success and largely confirms the theory’s predictions.

UNTAET was initially driven by its belief in human rights to select an inappropriate civic education program that was heavily opposed by local elites. During the campaign for the CA, parties largely referenced their association with nationalist goals and used their connection with informal networks to gain votes. Although Fretilin did not completely dominate the election, it

750 Power, Chasing the Flame, 336; Shoesmith, “Timor-Leste,” 243.
won a sufficient majority of the votes to enable it to control the CA and the constitution-writing process. Both the CA and the presidential elections were technically sound and were ruled free and fair. UNTAET was not to implement its broader goals of building Western-style democracy in East Timor.

The election reform is also a striking example of the need for careful and independent research on post-conflict state building. Much of the literature on the CA election, especially documents written by international organizations, ignores the limitations of the electoral reform. The report by UNTAET’s Office of Public Information, for example, states,

“The election results—a large but not sweeping victory for Fretilin and a respectable showing by a handful of other parties—attest to the informed basis on which people voted. An overwhelming victory by Fretilin would have signaled that the electorate voted out of blind loyalty and had little knowledge of other viable options. The results suggest the opposite, an informed voter population that was well aware of its options.”

This account does not reflect the actual meaning of the election within Timorese society.

Furthermore, accounts of the civic education program obscure the program’s limitations.

Finally, the electoral reform demonstrates the difficulty of building democracy in post-conflict societies. It is likely that no matter what UNTAET did, the democratic standards of the elections would have limited. UNTAET could not dramatically alter the political culture of East Timor or compel Fretilin and other parties not to reference the war. UNTAET was almost inevitably subject to criticism for failing to achieve its objectives in the electoral arena.

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752 The official UN debriefing, for example, explains, “The success of the elections showed the East Timorese that the vote could be both secret and safe. The United Nations Volunteers (UNV) played a critical role in both voter education and voter turnout, as well as in the overall preparation and conduct of the electoral operations. The low rate of invalid votes reflected the political maturity of the people and, in the end, the success of voter education programs. It was highlighted however, that at the initial stages, voter education and communication of information to the districts/rural areas could have been better. For instance, during the elections for a Constituent Assembly, polls revealed that some people though they were actually electing a President, although this too was eventually corrected through voter education efforts.” Rham-Azimi and Chang, UNTAET: Debriefing and Lessons, xxxii.
V. Military Reform by UNTAET and Successor Missions

The UN sought to build a defense force in East Timor in order to help maintain peace and security. Their effort was only partially successful. UNTAET had initially intended not to create a military in East Timor. However, due to strong nationalist support for Falintil, the armed group that had fought East Timor’s independence, UNTAET agreed to create a new military recruited largely from Falintil veterans. However, strong informal networks led to politicized recruitment, weak civilian oversight, and neglect. The result was a military that was not ruled by law and contributed to violence in 2006.

The theory partially explains the trajectory of the reform effort. The presence of wartime informal networks explains many of the major problems in the military, including the friction between the military and veterans’ groups, the choice of weak leadership in the defense ministry, and the development of tensions between soldiers from the east and west part of the country. Indeed, the threat of the reform to informal networks most directly led to the weakness of the military and eventually contributed to the outbreak of violence in 2006. International unity, however, was less influential in the reform effort. Inattention and poor decision-making on the part of the international organizations, rather than disunity, contributed to the limited success of the reform effort.

This section proceeds in four parts. The first part describes the status quo with regards to Falintil in 1999, the development of the international preferences and plan for F-FDTL, and codes the relevant variables. The second part describes the initial creation of the F-FDTL, recruitment of ex-Falintil members, and the accompanying security problems. The third part describes the largely unsuccessful efforts by successor missions to UNTAET to develop the F-FDTL. The fourth part concludes.
Falintil was a highly politicized organization in East Timor. Its history from the civil war played a major role in the trajectory of its development in the post-war period. Falintil was initially founded in August 1975 as the armed wing of Fretilin, and fought in the bloody civil war that immediately preceded Indonesia’s invasion. Although Falintil for a time put up effective resistance against the Indonesian forces, by 1981 the organization was largely decimated.

Xanana Gusmao took command of Falintil and significantly altered its political orientation. Several leaders, Commanders Mauk Moruk, Ologari Aswain, and Kilik Wai Gai opposed Gusmao’s leadership and decision-making, especially his attempt to negotiate a cease-fire with Indonesia in 1983. These individuals apparently attempted to lead a revolt of Falintil against Gusmao, but the effort failed. While these individuals either surrendered to Indonesia, disappeared, or were killed, their followers retained influential followings in East Timor, especially Mauk Moruk’s younger brother, known as L-7. In 1987, Gusmao delinked Falintil from Fretilin and began a “policy of resistance based on upon National Unity, rather than founded simply upon Fretilin partisanship.” Falintil would become the “true ‘military arm of the Maubere People’ and not just the guerrillas of Fretilin.” Gusmao recognized that Fretilin was distrusted because of its Marxist ideology and sought to create a wider basis for the resistance movement. However, many Fretilin members, including future Minister of Interior Rogerio Lobato, believed in the Marxist orientation of the party and they did not want to abandon leadership of the pro-independence movement.

Gusmao and his close associates, including his Deputy Commander Taur Matan Ruak, took over command of Falintil. In 1992,

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754 Ibid., 40.
755 Niner, Xanana, 111.
756 Ibid., 111-119.
Gusmao was arrested and imprisoned in Jakarta but remained the political leader of the resistance. At this point, Ruak took effective command of Falintil, although “Falintil had been reduced to a mere 150 men and some 60 weapons.”

During the run up to the May 1999 “popular consultation,” the Indonesian military was heavily opposed to Timorese independence. The Indonesian military armed pro-autonomy militias, though these militias retained no official association with the Indonesian military. UNAMET recognized the threat that the militias posed and demanded that they be disarmed. However, the Indonesian military stated that it would not take action to disarm the pro-autonomy militias until Falintil had been disarmed. Gusmao then agreed to the voluntary and unilateral cantonment of Falintil and by August 12, Ian Martin, the commander of UNAMET writes, “Falintil achieved their final cantonment, declaring to the visiting MLOs [UNAMET military liaison officers] a disposition of 260 guerrillas at Uai Mori [Viqueque district], 70 at Atalari (Baucau), 153 at Poetete (Emera), and 87 at Aissa (Bobonaro).” While the Indonesian military did subsequently disarm some pro-autonomy militias, the militias remained well armed and would go on to perpetrate major violence after the referendum.

Once the violence began, Falintil’s ranks swelled to approximately 1500 to 2000, and there was increasing pressure to fight the pro-autonomy militias. However, Gusmao insisted that Falintil not engage the militias, based on the theory that the Indonesian military was encouraging the militias to engage in violence in order to provoke a Falintil response that would create the illusion of a civil war rather than solely pro-autonomy militia-provoked violence. Observers

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758 Martin, Self-Determination in East Timor, 72–73.
759 On the role of the militias and their relationship with the Indonesian military, see especially Dunn, East Timor, 342–353.
were generally impressed at Falintil’s discipline during the entire crisis. Once INTERFET arrived, Falintil moved all of its personnel to a central cantonment at Aileu. Caroline Hughes writes, “INTERFET’s rules of engagement called for the ‘disarming of armed elements,’ which they interpreted to include FALINTIL.” Consequently, INTERFET treated Falintil as just another armed group, even though Falintil had fought for independence and had wide support among East Timorese. Falintil insisted on remaining armed within its cantonment, which INTERFET eventually accepted.

On UNTAET’s arrival, there was little clear idea of what to do about Falintil. UNTAET’s only clear preference at the beginning of its mission was to avoid violence. Because of the dispute within UN headquarters, UNTAET had been rapidly planned and its leadership had limited understanding of Falintil’s role in East Timor, and remained suspicious of the organization. The Secretary-General’s report urged UNTAET to pursue disarmament, demobilization, and reintegration (DDR), but did not specifically mention Falintil. While UNTAET recognized that the pro-Indonesia militias posed the main threat, it was also concerned with the possibility of Falintil leaving its cantonment and provoking violence. Initially, as explained below, UNTAET sought to disband Falintil and not create Timorese military, but later in the mission the international community clearly expressed preferences for the creation a new Timorese military force out of Falintil, and for the new military to abide by the constraints of law. UNTAET was a hierarchically organized mission, under the clear leadership of Vieira de Mello, so was relatively unified about its demands.

760 Michael Geoffrey Smith and Moreen Dee, Peacekeeping in East Timor: The Path to Independence (Boulder, CO: Lynne Rienner Publishers, 2003), 48-49; Martin, Self-Determination in East Timor, 97.
761 Hughes, Dependent Communities, 114–115.
763 UN S/1999/1024, para. 75.
The key nationalist goal, independence, was largely assured. UNTAET’s initial plan to avoid creating a military did provoke some concern among Timorese elites, however. Falintil had long fought for independence, and had strong support among the Timorese population. Any attempt to disband the organization would provoke significant public opposition. One Timorese interviewee observed that while it might be objectively preferable not to have military, Falintil’s importance in fighting for independence meant that it would have been politically infeasible to disband the organization.⁷⁶⁴

Once UNTAET decided to create a military out of Falintil, the potential threat to nationalist goals was eliminated. However, the specific nature of the creation of the military posed an almost inevitable threat to informal networks. There remained major internal divisions within Falintil relating to the disagreement in the 1980s between Gusmao and the factions of Falintil who preferred to retain a strong connection with Fretilin. According to Edward Rees, Falintil’s main commanders in 1999 were “Gusmao loyalists,” and the effective commander of Falintil, Taur Matan Ruak was a long-time associate of Gusmao. Gusmao’s allies would end up selecting many of the recruits for the new military, as explained below, which ensured that F-FDTL retained linked to Gusmao. However, other Falintil veterans opposed Gusmao and retained separate associations with other Timorese leaders. The limited selection of veterans for F-FDTL meant there were a large number of individuals who believed they deserved a job in the government for the role in the fight for independence. The creation of the military was highly politicized, and inevitably had consequences for the informal political networks of Fretilin, Gusmao, and other Timorese elites.⁷⁶⁵ Furthermore, any effort to limit elite control over the

⁷⁶⁴ See especially Rees, “Under Pressure,” 1–5. See also Hughes, Dependent Communities, 115; Power, Chasing the Flame, 311. Interviews with Timorese and international officials, Dili, July 2009 and 2010.
⁷⁶⁵ The development of the informal networks are explained in more detail below. See especially Rees, “Under Pressure,” 44–55.
military by instituting the rule of law would provide an additional threat to elites’ freedom of action.

Given high unity and a threat to informal networks, the theory predicts partial success. Indeed, UNTAET would be able to create a military, but the existing informal networks would weaken the development of the institution.

_Cantonment of Falintil under UNTAET and Formulation of Plan for F-FDTL_

Initially, UNTAET sought to maintain peace and security by disbanding Falintil. Power writes that Vieira de Mello believed that supporting Falintil would intimidate pro-autonomy voters. Indeed, CNRT’s policy up until 1999 had been that Falintil would cease to exist once independence had been achieved. UNTAET’s desire to disband the organization also stemmed in part for its general suspicion of armed rebel groups and lack of knowledge about Falintil’s history. In several incidents, armed members of Falintil left their cantonment, which provoked incidents with UN and Australian peacekeepers.766

Though Timorese leaders at first considered the not having a military, for nationalist and external security reasons, they eventually insisted that a new military be created and recruited out of Falintil.767 Local elites particularly cited the historic role of Falintil and the need to combat the militia incursions from West Timor. One interviewee observed that Falintil saw themselves, and were seen by the rest of the country, as “custodians of independence.” In his speeches, Gusmao

766 Power, _Chasing the Flame_, 311–2; Smith and Dee, _Peacekeeping in East Timor_, 80–81; Hughes, _Dependent Communities_, 114–115.
767 The Report of the Secretary-General on July 26, 2000 (S/2000/738, para 58) explains, “It was not originally envisaged that East Timor would have armed forces, except for security personnel associated with the police. Initially, CNRT supported this view, bearing in mind the country’s limited resources. CNRT has changed its position and now advocates the establishment of a national security force, initially based on members of FALINTIL. East Timor will, of course, be free to decide this matter after independence. However, CNRT leaders regard the establishment of such a force as a necessary element in the transition to independence so that East Timor is able to guard its borders when UNTAET leaves.”
emphasized the role of Falintil in the struggle for independence and complained that they should not be "encaged like chickens." \footnote{Power, Chasing the Flame, 311; Hughes, Dependent Communities, 115. Interview with UN official, Dili, August 2010.}

UNTAET was also driven to take action because of the increasingly volatile situation in the Aileu cantonment. Gusmao loyalists and other factions of Falintil had never been in close quarters for an extended period of time. The conflict between the factions was exacerbated by the very poor living conditions within the camp. Donor organizations were prohibited from providing support to Falintil because of rules preventing support for armed organizations. Hughes writes, "FALINTIL soldiers went hungry and malaria and tuberculosis became rife in the camp." \footnote{Hughes, Dependent Communities, 115–116.} Due to the political rivalry and poor conditions, approximately 700 Falintil veterans left the cantonment, including L-7 and his men, \footnote{Elle Sette (L-7), born Cornelio Gama, was purged from Falintil after his brother joined a coup attempt against Gusmao in the 1984. Elle Sette went on to form "a cult-like organization, Sagrada Familia," based around Baucau. ICG, "Resolving Timor-Leste’s Crisis," Asia Report No120, 10 October 2006, 3.} and by June 2000, Gusmao stated that Falintil was "almost in a state of revolt." \footnote{Rees, “Under Pressure,” 44–47; Desmond Ball, “The Defence of East Timor: A Recipe For Disaster?,” Pacifica Review: Peace, Security & Global Change 14, no. 3 (2002): 176.}

It was at this point that UNTAET developed a plan for the creation of the new defense force. UNTAET and CNRT requested King’s College, London to conduct a review of options for the creation of a new military. In November 2000, UNTAET and CNRT approved of a plan to create a military with 1500 active duty soldiers and 1500 reservists. This plan was selected largely because it was the most affordable. \footnote{Ball, “The Defence of East Timor,” 177–179.} 650 members of “older but none the less physically fit Falintil with exemplary records” would be selected to join the first battalion of the new force. The remainder of the Falintil veterans would be demobilized and reintegrated into the society
through the Falintil Reinsertion Assistance Program (FRAP). An independent Office of Defence Force Development (ODFD) was established to help build the new force. The ODFD was led by Roque Rodrigues and staffed by internationally funded and appointed military and civilian defense experts.

**Creation of F-FDTL**

UNTAET issued Regulation 2001/1 on January 31, 2001, which created a new defense force and specified its mandate. UNTAET thereby made two new demands for defense reform – the creation of a defense force and its obedience to law. Regulation 2001/1 specifies “The mission of the Defence Force consists of: providing for the military defence of East Timor, its people and its territory; and providing assistance to the civilian community at the request of the civilian authorities during natural disasters and other emergencies.” The regulation also proscribes the defense force from “matters linked to internal public order, police issues or social conflicts,” except in times or “war or defense emergency.”

On February 1, 2001, a ceremony was held in which Falintil was officially disbanded and the F-FDTL was officially created. The recruitment process for the F-FDTL had begun in November 2000 and had largely been completed prior to February 2001. Rees describes the process of the creation of F-FDTL in detail and emphasizes the role of informal networks in the creation of the new military. Falintil had never been formally organized, and there were many individuals who claimed to be members of Falintil even though they had not served in many years. He notes that the senior leaders of Falintil had secured the authority to determine who would be permitted to join the F-FDTL “in exchange for their cooperation in retiring the
majority of FALINTIL.” He claims that Gusmao loyalists within Falintil therefore dominated the selection process, and excluded Fretilin leadership and their supporters. In particular,

“The Falintil Commanders who were admitted to the F-FDTL form a cadre of Gusmão and Taur Matan Ruak loyalists. These Commanders hold a highly personalized sense of allegiance to Gusmao, their former Commander, and President of the republic. Of those FALINTIL, commanders and otherwise, who were excluded from F-FDTL there is a sizable minority who have an acrimonious relationship with Gusmao and the F-FDTL High Command. Many of these individuals find a political home both historically, and recently, with elements of FRETIILIN.”

Consequently, UNTAET’s decision to choose Gusmao its key interlocutor resulted in the selection of a defense force with strong ties to Gusmao.

Given the high unemployment in the rest of the country, former Falintil members who were not recruited into the F-FDTL were in a particularly difficult situation. The FRAP was intended to provide support for these individuals, but the identification of recipients of the program was politicized in much the same way as the recruitment to F-FDTL. Rogerio Lobato, the first Falintil commander, attempted to use this situation to his advantage by creating a power base of resentful veterans. During the CA election campaign, Lobato claimed that Fretilin would develop “a new concept” for the defense force that would help the disgruntled veterans. Lobato also created the Association of Ex-Combatants 1975 (AC75), which competed with other veterans’ organizations that had ties to Gusmao. The AC75 had links with informal armed “political security groups,” such as the L-7’s Sagrada Familia and the CPD-RDTL. Rees writes, “While most [political security groups are] politically oriented, others have more criminal motivations. They rapidly became focal points for anti-UN, anti-UNPOL and anti-F-FDTL

rhetoric and political activism.” Rees emphasizes that these groups did not find political representation with the mainline Fretilin leadership, including Mari Alkatiri and Lu Olo. 778

Timorese elites’ informal networks also weakened governance at the cabinet level. Rogerio Lobato sought to join the Fretilin government formed after the CA election, but was rebuffed. Lobato then began to organize greater numbers of alleged Falintil veterans. Marches in May 2002 “were a thinly veiled threat by Lobato that he could mobilise large numbers of men if he was not given a share of political power.” 779 The Fretilin government decided Lobato “was a lesser threat inside the government than outside of it” and made Lobato the Minister of Internal Administration with control over local government and the PNTL. 780 The head of the ODFD, Roque Rodrigues, an early Fretilin member who had fallen out with Lobato while in exile, 781 was selected as Secretary of State for Defense. Aside from international observers, Rodrigues was the only civilian charged with overseeing the F-FDTL and initially had no staff or resources. 782

The development of the defense force under UNTAET achieved the basic international objectives. Peace and security was maintained and a new defense force was created. Prior to independence, training began for the approximately 600 members of the F-FDTL recruited from Falintil. F-FDTL also began to recruit individuals less than 21 years of age. The broader effort to ensure that the new force abided by the constitution remained uncertain, and the international community remained concerned about the development of security institutions. Hence, after East

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780 ICG, “Resolving Timor-Leste’s Crisis,” 5.
781 Niner, Xanana, 28. Rees call Rodrigues “an old political sparring partner” of Lobato and writes “Lobato and Rodrigues were both on a mission seeking foreign assistance/recognition when Indonesia invaded Timor Leste in December 1975. [They] lived in exile in Mozambique and Angola during the Indonesian occupation of Timor Leste and fell out subsequent to Lobato’s 1983 conviction for diamond smuggling in southern Africa.” “Under Pressure,” 51.
Timor achieved independence on May 20, 2002, the UN gave UNTAET’s successor mission, the UN Mission in Support of East Timor (UNMISET), a strong mandate for continuing to reform the defense force.\textsuperscript{783}

\textit{Development of F-FDTL After Independence}

UNMISET was mandated to provide external defense, reform the F-FDTL, and gradually transfer responsibility over external defense to the F-FDTL. The UN remained concerned about militia attacks from West Timor, but believed that the risk of militia incursions would gradually diminish. The peacekeeping force would gradually downsize from 8950 in May 2002, to 2780 in July 2003, with a complete withdrawal of peacekeepers by June 2004.\textsuperscript{784}

The ODFD, which had run all aspects of the creation of the defense force under UNTAET, continued to provide technical assistance after independence. Even though the ODFD was quasi-independent, it had closely coordinated with UNTAET and had the support of the SRSG. ODFD had uncertain status under UNMISET, however, and “ODFD officers were forced (despite donor support for their cause) to spend considerable time negotiating with the UNMISET political leadership and civilian bureaucracy to secure basic office support such as telephone lines and access to the UN hospital.”\textsuperscript{785} However, ODFD’s ability to support the development of defense policy and civilian oversight was limited.

There were several major problems in the development of the F-FDTL from 2002 to 2006, which together contributed to the violence in 2006. The first problem was the tendency by the F-FDTL to illegally become involved in internal security problems. Interviewees described the F-FDTL’s perspective as similar to the militaries of Indonesia and other Southeast Asian

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\textsuperscript{784} See Secretary-General’s report of April 17, 2002, S/2002/432, para 87-95.
\end{flushleft}
countries – the F-FDTL saw themselves as a more competent version of the police. The constitution, however, specified that the police would be responsible for internal security while the military would be responsible for external defense and “shall not intervene in political matters.” Despite these legal constraints, there was generally strong public support for the F-FDTL playing some role in public security.

The second problem was the weakness of civilian oversight. UNTAET had no formal oversight over the nascent F-FDTL and did not train Timorese civil servants in administering the defense force. Rodrigues had no staff and, according to interviewee, was “incompetent and dangerous” due to his failure to address simple complaints by F-FDTL soldiers related to issues such as leave, housing, and food. Furthermore, Ludovic Hood writes that “The National Parliament’s Committee B for National Security and Defence was, and continues to be, ill-prepared and powerless to effectively monitor the security sector, given not only the governing [Fretilin] party’s commanding majority in the legislature, but also the MPs’ and secretariat’s inexperience in security sector oversight.”

Related to the problems of civilian oversight and tendency to undertake internal security functions, the F-FDTL had very weak defense policy planning. The basic mission of the organization was underspecified and had little to do with where the F-FDTL was stationed or what the soldiers did. Following the constitution, the F-FDTL was supposed to be responsible for external defense. However, the organization was not stationed, trained, or prepared to assume this mission. Most prominently, the main external security threat came from militia incursions

787 One farmer from Bobonaro observed, for example, “In my opinion the main task of F-FDTL is to provide security for the people East Timor from the Eastern to Western end of the country, apart from helping the people when they are in trouble. F-FDTL should be responsible to counter internal and external threats. External defense to defend against foreign threats - aimed at disturbing the nation’s stability, while internally they have to be alert of potential enemies lurking among the people, and this demands cooperation with CIVPOL.” Ibid., 15–16.
from West Timor. The F-FDTL, however, was not stationed in a position where it could adequately respond to the threat, since the entire force was based in the east of the country. 789

While the international community, especially Australia, sought to strengthen the F-FDTL and enable them to take over security, Australia was also concerned that stationing F-FDTL along the border would increase the possibility of conflict between Indonesia and East Timor. 790

The problems of the unclear F-FDTL mission and its inability to address internal security were demonstrated in an incident in 2003. Following riots in December 2002, F-FDTL began to assert its role in internal security. In January 2003, an attack in Atsabe (Emera district) led the F-FDTL to deploy. The attack appeared to be linked to the Colimau 2000 militia, which included a diverse range of “Falintil veterans, poor rural farmers and youth.” 791 The F-FDTL’s conduct called into question the competency and effectiveness of the organization. Somewhere between 59 and 90 people were arrested and held without charges, and all but three were later freed.

International analysts, including Amnesty International, criticized the behavior of the F-FDTL especially with regard to its lack of respect for the rule of law. The failure of the F-FDTL to respond effectively to the militia led to the creation of the Police Reserve Unit (URP) within the PNTL. 792

The third problem was the antipathy between the factions of the security forces, which was often connected to overarching political divisions. The first such division was between the

789 From 2002 to early 2006, the First Battallion, which was composed of ex-Falintil members, was stationed in the far eastern province of Lautem. In early 2006, the First Battallion moved to its new base in near Baucau, which is still in the eastern part of the island. The Second Battallion, composed of newly recruited soldiers, is based in Metinaro, which while more centrally located, is still far from the Indonesian border. Rees, “Under Pressure,” 29–32.

790 Rees explains that Australia’s overriding interest in avoiding conflict between East Timor and Indonesia lead it to oppose stationing the F-FDTL on the border, although Australia is also the largest trainer and funder of the F-FDTL. Ibid., 59–61.


F-FDTL and the PNTL. Among many Timorese, especially those who fought in Falintil, the F-FDTL was perceived as the defenders of freedom while the PNTL were collaborators with the Indonesian authorities. Although only a relatively small number of PNTL officers were recruited from the Indonesian police, the POLRI, as the next case study explains, the PNTL remained linked with the POLRI in minds of many East Timorese.793

The second division was between the F-FDTL and other veterans' organizations. There were demonstrations associated with "fringe Fretilin veterans groups" in opposition to the F-FDTL in August, November, and December 2002. Note that these groups were also anti-PNTL, although their nominal leader, Lobato, was the head of the ministry that supervised the PNTL.794

The third division was between the "easterners" and "westerners" within the F-FDTL. Opposition to Indonesian rule and support for Fretilin was greatest in the eastern part of the country. F-FDTL disproportionately recruited ex-Falintil members from the eastern part of the country, especially with respect to the officer corps. In 2001, easterners were 56% of F-FDTL as a whole, compared with 85% of the officer corps. Many newer recruits were from the western part of East Timor. Following the 2006 violence, many analysts argued that the differences between easterners (lorosae or Firaku) and westerners (loromonu or Kaladi) had become an effectively ethnic cleavage that led to violence.795 Some attributed major political significance to the division and claimed the cleavage was a "major impediment to the potential for creating a

795 Sven Gunnar Simonsen claims the distinction has been around since the 1940s and writes, "Stereotypes describe Lorosae as volatile, vocal, confident, entrepreneurial, and strong characters, whereas Loromonu are seen as more stable, passive, quiet, and calm." Simonsen, however, emphasizes that the distinction had little political meaning prior to 2006 and "that it would be a mistake to view it in primordial terms." Sven Gunnar Simonsen, "The Role of East Timor’s Security Institutions in National Integration – and Disintegration," The Pacific Review 22, no. 5 (2009): 578. See also ICG, “Resolving Timor-Leste’s Crisis,” 6.
unified nation centered on state institutions. Such claims exaggerate the social and political significance of the division, which played little if any divisive role prior to 2006. There were political divisions within East Timor, some which did tend to vary along regional lines, but the regional division was not in itself significant. For example, in the extensive Commission for Reception, Truth, and Reconciliation (CAVR) report, there is no mention of the East-West division. Many analysts and officials emphasize that they had heard nothing about this cleavage until 2006.

The main consequence of these problems within the F-FDTL was the development of the petitioners, which became the catalyst for the violence in 2006. In late 2002, complaints about the treatment and recruitment of westerners in the F-FDTL began to emerge. One key problem was that the First Battalion’s base was in the far eastern district, so soldiers from western districts had a difficult time going on leave and making it back to the base on time, especially given East Timor’s poor road networks and transportation infrastructure. Squalid conditions in the F-FDTL’s barracks also worsened discipline. In December 2003, 42 soldiers, mainly westerners, were discharged for disciplinary problems related to absenteeism. After an F-FDTL attack on a police station in August 2004, a presidential commission issued a report urging changes in the F-FDTL, but little was done. Resentment, worsening living conditions, and

797 Dwight King offers a highly problematic analysis of the importance of the East-West division in the CA election: “If the districts are grouped into these two geographical regions, and simple unweighted averages are calculated from the percentages ... FRETILIN averaged 67% in Firaku and 46% in Kaladi. ASDT averaged 3% in Firaku and 13% in Kaladi. The differential between the two regions is much smaller for both the PD and PSD. We can infer that this regional cleavage influenced voting support for FRETILIN (higher in Firaku) and for ASDT (higher in Kaladi).” There is little reason to believe that Timorese individuals identify as Easterners or Westerns led them to vote for the particular parties. Instead, parties had support bases that varied across the regions, and that variation led to the observed differences in the vote. There was little mention of the apparent ethnic division in other sources, written during the election, about the political importance of being from the East or West. King does write that the Firaku-Kaladi division is “one possible starting point for searching for lines of potential political difference,” rather than claiming the division is strongly ingrained in the society. “East Timor’s Founding Elections and Emerging Party System,” Asian Survey 43, no. 5 (October 1, 2003): 753.
Inaction by the government, especially Roque Rodrigues, the Secretary of State for Defense, continued throughout 2005.\textsuperscript{799}

In January 2006, 159 soldiers, drawn from across the military, petitioned Gusmao as the President and F-FDTL’s supreme commander. They listed 28 points of complaint, largely to do with discrimination against westerners in recruitment, promotion, and treatment. Although Gusmao urged the F-FDTL commander, Taur Matan Ruak to respond, the F-FDTL was in the process of a long planned move of the First Battalion from Lautem to Baucau. Ruak claimed that he was too busy to meet with the petitioners, and no response was made to the petitioners until February 2. Discussion between Ruak and the petitioners did not alleviate the problem, however, and hundreds of soldiers abandoned their barracks, leaving their weapons behind. Gusmao and several other officials met with 418 petitioners on February 8, contrary to the wishes of Ruak, and established a commission to investigate the petitioners’ complaints. The commission also failed to address to concerns of the petitioners, who claimed that the commission was biased since it contained officers whom the claims were against. The petitioners were given leave on February 17 but did not return. On March 16, Ruak dismissed 594 individuals, approximately 40% of the total force. While Alkatiri supported the dismissal, Gusmao opposed it in a speech on March 23. Gusmao noted that the dismissal of so many individuals from the organization would indicate that the F-FDTL was discriminating against westerners and were indicative of larger problems in the organization. By mid-April, the petitioners’ protests had escalated into major violence.\textsuperscript{800}

The development of the petitioners was most prominently due to the weakness in the overall defense institution, especially with regard to civilian oversight. Interviewees emphasized


\textsuperscript{800}ICG, “Resolving Timor-Leste’s Crisis,” 6-7; Report of Commission of Inquiry, para 33-36.
that the complaints could have been dealt with, especially with regard to issues of living conditions and absenteeism by westerners due to insufficient time for leave. However, the Timorese defense institution repeatedly failed to address these concerns, more because of incompetence rather than bias.\textsuperscript{801}

\textit{Conclusion}

Table 5.4: Creation and Reform of the F-FDTL

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<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
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The creation of the F-FDTL was only partially successful. While UNTAET did create a defense force, the institution had serious weaknesses. In particular, the F-FDTL had an unclear mandate,

\textsuperscript{801} The criticism of Roque Rodrigues's performance as Secretary of State for Defense was particularly strong. Interviews with international official and analysts, Dili, August 2010.
weak civilian oversight, and a poor relationship with other veterans. These problems, combined
with the various divisions among the security forces were largely responsible for violence in
2006, as described below.

The theory largely, but not fully explains the trajectory of F-FDTL development. The
outcome of the reform, partial success, confirms the overall prediction due to high unity and
threat to informal networks. Many of the problems within the F-FDTL developed through the
mechanisms specified by the theory. Although UNTAET had initially intended not to create a
Timorese military, the importance of Falintil to the achievement of independence led to the
creation of the F-FDTL and incorporation of the Falintil veterans. Informal networks within
Falintil also led to the creation of a force that was closely connected to Gusmao and enabled
Lobato to support the creation of armed groups of ex-veterans. Finally, informal networks within
the government contributed to the weak civilian oversight of F-FDTL and the failure to attend to
the concerns of westerners within F-FDTL.

However, there are several elements of the case study that do not reflect the theory’s
predictions. Most importantly, the failure of the international administration to address the
problems in the military did not stem from disagreement about demands. Instead, the problem
was that neither UNTAET nor UNMISET appeared to take leadership over military reform.
While reducing the size of the peacekeeping force was a priority, Australia and other donors
failed to strengthen the F-FDTL sufficiently to take over responsibility for security. The
international administration was also limited by a broader unwillingness to support the creation
of military organizations. UNTAET had always been hesitant about the creation of the F-FDTL,
and the UN remained reluctant to arm weak state institutions. One international official claimed
that international organizations saw military reform as "dirty." The problem therefore was lack of effort and complacency by donors, rather than disunity.

VI. Police Reform under UNTAET and Successor Missions

The creation of a police force in East Timor was one of the most problematic reform efforts by UNTAET and its successor missions. The UN fell under particular criticism because the police force came to be seen as a source of insecurity rather than a provider of law and order. After the end of UNTAET, the police were involved in a series of incidents that questioned their adherence to democratic standards and the rule of law. Most problematically, formed police units played a major role in the violence of 2006. Indeed, the perception that the UN had failed to build a sufficiently strong police institution led to a new mandate for police and security sector reform after 2006.

Certain elements of the reform effort were successful, most notably the creation of formal policing institutions, so the UN’s effort with respect to policing is coded as a partial success. Nevertheless, the failures in the police reform effort were particularly damaging. The theory offers the most insight with regard to how informal networks incentivized local elites to prevent the construction of strong policing. Rogerio Lobato’s actions present a clear demonstration of the effectiveness of private obstruction. He developed informal networks within the police and among veterans, undermined the international community’s formal demands, neglected the development of the police, and provoked violence between the police and military. Although the international administration was unified, it failed to monitor and punish noncompliance. The UN made a series of mistakes unrelated to unity, including poor recruitment of international police

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802 Interview with international official, Dili, August 2010.
officers, and failing to take into account the longstanding antipathy between the Indonesian police (POLRI) and the supporters of independence.

The case study proceeds in five parts. First, it describes the international community’s preferences for policing and codes the key variables. Second, it describes the initial period of policing under UNTAET and the creation of the East Timor Police Service. Third, the case study traces the trajectory of the police reform after independence up until the 2006 riots. It describes various signs of the weakness of the police institution, including the riots in December 2002, the creation of formed police units, and negative impact of informal networks. Fourth, the case study discusses the violence of April and May 2006 and the role of the police in starting the violence. The fifth part concludes.

**Origins and Goals of Police Reform in East Timor**

Resolution 1272 and the Secretary-General’s report mandated UNTAET to ensure basic law and order and to rapidly establish a “credible, professional and impartial East Timor police service.” The goals of the international community, therefore, were threefold. First, the overriding priority was the maintenance of basic internal law and order. Without some provision of security, the mission and subsequent efforts would have clearly failed. The Secretary-General’s report called for 1640 UN Civilian Police (UNPOL or CIVPOL) to be deployed to maintain law and order in the short-term. Second, the international community sought to create a police force that would take over responsibility after East Timor declared independence. Creating a police force would require recruiting, training, and equipping the new police force. Third, the international community sought to build a police force that met international standards for democratic policing. While the Secretary-General’s initial report only emphasized “credible, professional and impartial,” subsequent documents make clear that the international community

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803 UN S/1999/1024 para 57-59; UNSC resolution 1272.
had higher expectations for police. Indeed, the plan for UNMISET stated that the East Timor Police Service ought to be able to “provide all basic police functions, including crime prevention and detection, traffic police, crowd management and community policing, and to attend to the special needs of vulnerable persons and victims of domestic violence in particular.” Resolution 1410, which established UNMISET, emphasized that human rights principles would play an important role in strengthening the security sector. Since East Timor was an opportunity for the UN to demonstrate its ability to build strong institutions, it had high standards, especially for the key institutions such as the police. 804

UNTAET was unified about the demands it made to local elites. The mission had a hierarchical structure as well as effective leadership. UNPOL was under the direct authority of the SRSG, under the governance and public administration component. Hierarchical organization continued under UNMISET, with UNPOL continuing to operate under the direct authority of the SRSG. Still, international organizations and officials made other types of errors. Most prominently, UNPOL officers were criticized for having short deployments, for limited relevant language or mentorship skills, for lack of respect for Timorese police, and for coming from countries with questionable police practices (such as Ghana or Zimbabwe). To be sure, UNPOL was subject to these criticisms in a number of missions. Nevertheless, these problems limited UNPOL’s efforts to strengthen the East Timor police. 805

The international community’s goals with respect to police reform were mainly threatening to local elites’ informal networks. The creation of a police force was clearly necessary for the achievement of independence, so there was no threat to nationalist goals. On

the other hand, East Timorese elites had extensive informal connections within the police. The networks were by and large not associated with particular political parties, but relied on individual connections. For example, Rogerio Lobato developed an extensive network within the police of veterans and other fringe Falintil members. Other elites retained links to individuals within the Timorese police, in some case based on long-standing connections from the war. Policing was also highly politicized, with the Minister of Internal Administration – Lobato – playing a major role in police operations. Establishing the rule of law and bringing in practices from Western countries would substantially weaken the influence of elites in the behavior of the police, which would undermine their ability to maintain power.

Given high unity, and a threat to informal networks, the theory predicts partial implementation of international demands. It expects that international unity will enable the international administration to monitor and punish elites for not implementing international demands. The theory further predicts that elites will use private obstruction to block, including accepting formal demands while preventing their implementation, cultivating personalist networks within the institution, or simply ignoring international demands.

Initial Period and Development of East Timor Police Service by UNTAET

Following the violence in September 1999, the intervention by the Australian-led INTERFET quickly reestablished basic security in East Timor. Although UNTAET’s mandate began in October, INTERFET retained responsibility for security through February 2000. Two elements of UNTAET then took over from INTERFET – the UN peacekeeping force (PKF) and the UNPOL. The PKF was large reconstituted out of INTERFET, with approximately 70% of forces remaining in their position and changing “to UN blue headdress.” While INTERFET had a
UN mandate, it was led and organized by member states. The PKF, on the other hand, was constituted by the UN and responsible to the SRSG. The greatest threat that the PKF faced was militia incursions from West Timor, which continued through 2000 before diminishing in number through the next year.\(^{808}\)

UNPOL was intended to take over responsibility for internal security and quickly establish policing and the rule of law. UNPOL were mandated a maximum of 1640 police officers, including two 120-officer rapid reaction units and a 150-officer border/marine unit. The UN initially intended not to arm the UNPOL, but following several incidents of civil unrest, all UNPOL were authorized to carry side arms.\(^{809}\) Although UNPOL were generally successful in achieving their limited goal of maintaining law and order, they faced three major criticisms. First, CIVPOL was criticized for their slow deployment. UNPOL was initially established with 400 international police officers in January 2000. By July 2000, 1270 total police had deployed. These officers were particularly slow to deploy from Dili to rural districts and subdistricts – indeed the failure of UNPOL to move beyond the capital would become an ongoing complaint throughout the UN’s time in East Timor.\(^{810}\) Second, there were several criticisms of UNPOL that echoed complaints about UN policing in other missions. According to reports and analysts, UNPOL had limited local language skills and understanding of Timorese culture, were not consistent in their application of the law, had insufficient training, and were recruited from countries with poor human rights records.\(^{811}\) Third, Major General Michael Smith, the deputy

\(^{808}\) Ibid., 68–71.
\(^{809}\) Indeed, the Secretary-General’s report specified that UNPOL “will carry side arms on law enforcement duty when deemed necessary by the Police Commissioner.” After civil unrest in Dili in February 2000, some UNPOL began to carry side arms, and by April 2000 all UNPOL were authorized to carry side arms. The UN remained hesitant about armed foreign security forces, which was initially an impediment to the visit of the Indonesian President in 2002. UN S/1999/1024, para 59; Ibid., 74–75. Interview with ICG analyst, Jakarta, July 2010.
\(^{810}\) King’s College, “A Review of Peace Operations,” para. 73–79.
\(^{811}\) Ibid., para. 76. The report also notes (para. 75), “a number of officers who did not meet minimum language, driving or firearms requirements had to be repatriated. The slow procurement of equipment, in particular vehicles
commander of the PKF, criticized the police for their inability to consistently coordinate with the PKF. A joint planning center proved to be ineffective and ad hoc planning groups were formed when necessary. 812

UNPOL quickly recognized it did not have sufficient personnel to be an effective police force, and in February 2000813 began to recruit Timorese to the Police Assistance Group (PAG). The PAG, which grew to include 800 officers, was recruited from former members of the POLRI. The POLRI had a generally poor reputation among Timorese, especially those who had fought for independence, due to their record of using torture and generally poor adherence to international human rights standards. UNTAET's press statement announcing the recruitment to the PAG emphasized,

"the Police Assistance Group is an interim arrangement. They are not members of CIVPOL [UNPOL] neither of the future East Timorese Police Force. They will not have powers to arrest, but will provide assistance and advise to the CIVPOL officers on aspects of the community structure and the local culture relevant to law and order enforcement. They will also provide, with their experience, information on traditional patterns of criminal behavior."814

Nevertheless, the individuals that participated in the PAG were "given a head start" and many rose to leadership positions within the new force.815

At the same time as it recruited former POLRI members to deal with the immediate security situation, UNPOL began the longer process of recruiting and training a Timorese police service. UNPOL began distributing applications for the new force in January 2000 and in March

812 Smith and Dee, Peacekeeping in East Timor, 75-76.
813 The program officially began in March 2000, but initial recruitment occurred in February. See UNTAET Daily Briefing Notes, February 7, 2000.
814 UNTAET Daily Brief Notes, February 7 2000.
the first training class of fifty police officers had entered the policing college. The four major issues with the recruitment and training of the police were identified. First, recruitment and training was based on Western technocratic criteria for policing, which were perceived as inappropriate to East Timor. The recruitment standards and interview process emphasized the experience, education, age, and ability to perform well in a Western style interview process.

Second, the training was also perceived to be too brief and ineffective. The training course was only three months long for new recruits and one month for ex-POLRI members. While the academy-based training appeared to cover critical subjects such as human rights and firearms use, observers noted that the human rights training was not applied to practical situations, and the firearms training covered technical skills such as safe handling and target

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816 UN Daily Briefing Notes, 28 January 2000 and 27 March 2000.
817 Specifically, the requirements were that the police were “of good character and a resident of East Timor; not less than 18 and not over 35 years of age; able to speak, write and understand one or more of the languages of East Timor; pass the required physical and medical tests; pass a selection interview.” Eirin Mobekk criticizes the interview process in depth: “The questionnaire was culturally western. It contained questions that the candidates had difficulty answering due to this bias. This led to unease in the candidate. This was found to be the case especially in relation to questions regarding identifying personal strengths and weaknesses, being a team player and using initiative. By using a culturally western questionnaire it reduced the quality of the interview and diminished the possibility for the candidates to show their abilities... The point summary chart underlined the western bias. The candidate received point scores for age, languages, work experience, as well as, the interview and fitness test. The candidate would receive three points for knowledge of English and three points for knowledge of three other languages; English not being the national or the official language of East Timor. This was not a reflection of needs of the PNTL.” UNTAET Regulation 2001/22, para 16.3; Mobekk, “Law-Enforcement,” 8–9.
818 Hood notes that “the selection system was heavily biased towards those who spoke some English – the value of this in an East Timorese police officer is dubious when less than one per cent of the population has any command of the English language.” Hood, “Security Sector Reform,” 64.
practice rather than when the weapons should be and should not be used. Following the academy-based training, officers were deployed to the field. Hood writes that the field-training program "was an uneven affair: there was no coherent, structured strategy, and the programme was essentially dependent on the quality and motivation of the CIVPOLs stationed in the PNTL cadet’s home district." 

Third, the police recruits were improperly vetted. In the initial recruitment process, UNPOL took suggestions from CNRT, which enabled future political parties to establish strong informal connections within the police. Later, when UNPOL had adopted a more standardized recruiting system, vetting and evaluation took place in Dili. The final list of candidates was posted in subdistrict police stations and villagers were encouraged to inform UNPOL if any candidates should not be accepted. The major problem was that there were highly limited interactions between UNPOL and villagers. UNPOL officers had limited language skills and UNPOL officers were rarely present in many villages. When UNPOL officers were present, they mainly interacted with local leaders. There were allegations of corruption in the recruiting process, and local elites were able to secure their position by establishing informal networks in the post-independence police force.

Fourth, the recruitment of ex-POLRI provoked resentment against the police. As of June 2002, only 350 members of the police service were ex-POLRI, which amounted to approximately 20% of the force at independence. Nevertheless, they had an outsized influence. The commander of the new force, Paulo Fatima Martins, for example, was a former POLRI officer. Ex-Falintil or young members of the clandestine movement were especially frustrated by

\[821\] Hood, "Security Sector Reform," 64.
the selection of the POLRI, since they sought jobs in the police force. Certain Timorese political elites, especially Rogerio Lobato, encouraged their frustration. Even seven years after independence, one Fretilin MP emphasized that the police were not to be trusted because they had been recruited out of the POLRI. Furthermore, the POLRI received only a one-month abbreviated training course, with a focus on the use of firearms and human rights. The training was perceived to be insufficient to change the ex-POLRI’s perspective on policing. Finally, the poor vetting process made many suspicious of the ex-POLRI in the police force.

Although the security situation in East Timor remained relatively stable under UNTAET’s administration, UNPOL was not successful in achieving its broader goals of creating the rule of law. The greatest limitation was that UNPOL had a very limited presence in rural districts and subdistricts. Hence, in most of East Timor, the chief of the village remained in charge of policing and security, and the traditional systems of justice remained intact. Ronald West quotes one chefe de suco (village chief) in Viquque district saying, “I am responsible for security here. Nobody can go past me to the police.” UNPOL adopted a plan for “community policing,” but, as Mobekk writes, community policing meant “anything from getting closer to the community to letting the community police themselves with limited involvement by the police force.” Where UNPOL were present, they interacted primarily with the village chiefs, and even relayed complaints from residents to the village chiefs to be dealt with using traditional systems of justice. The problems of policing were compounded by the failure of UNTAET’s formal justice systems. There were extremely limited resources for trials, international judges

823 Interviews with Fretilin MP and international analysts, Dili, August 2009.
827 According to Mobekk, there was “simply not enough resources or possibilities to deal with all crimes in the judicial system.” Mobekk, “Law-Enforcement,” 26.
had difficulty communicating with Timorese, and there was limited knowledge about the applicable law. Justice according to one account remained "the weakest of East Timor's state structures."

International officials were aware of the limitations of the police reform effort under UNTAET and developed a strong two-part mandate in this area for the successor mission, UNMISET. First, UNMISET would continue to have executive policing powers after independence. Second, UNMISET would be charged with mentoring and training the Timorese police, in preparation for turning over full authority. The mission would initially call for 1250 international police following independence, which would be downsized to 100 officers, mainly in advisory positions, by January 2004.

UNTAET's effort to build a police force was limited both by failings among international officials and by the difficult of local conditions. On the international side, the key problems included a lack of long-term planning, the failure to recruit suitable UNPOL officers, and a lack of local knowledge. These factors led to the recruitment of the POLRI and the inability of UNPOL to effectively recruit and train local officials. Analysts attribute UNTAET's failure to plan to a disagreement between the UNDP and UNDPKO described above. While better

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831 The King's College report blames the problems of policing on UNPOL's failure to develop a long term plan for institutional development: "UNTAET initially focused on personnel recruitment and training while neglecting the development of the ETPS as an institution and the handover process from UN to East Timorese control. The failure was a direct result of inadequate strategic planning and institution-building know-how at the UN Secretariat and mission level. UNPOL was left to its own devices to set up an administrative and budgetary framework for the ETPS. Lacking the necessary expertise in institution-building, strategic planning and budget development (in democratic countries, these activities are usually performed by civilian administrators), UNPOL has produced an institution that is unsustainable and weak. All these factors have contributed to the slow development of the ETPS, and the current situation of a continued UN executive mandate in a sovereign country. UNTAET would have benefited from an early independent study on policing options. In addition to technical police expertise, when the mandate includes police development responsibilities, UNPOL requires civilian experts with project management,
planning might have led to some improvements, it probably would not have led to the
recruitment of different international police officers, so international disunity in the planning
process does not explain the reform’s failure. On the local side, the complexity of East Timor’s
existing society made it very difficult, if not impossible, for the international community to
rapidly construct a police force that would establish the rule of law as in Western countries. The
strength of existing traditional policing and judicial measures meant that UNPOL had little
influence in much of the country. Part of the weakness of the police stemmed from the negative
impact of informal networks on recruitment, although misuse of power by political authorities
was only a small part of the story. Hence, while the theory provides some insight into the
trajectory of police reform under UNTAET, not all of the mechanisms specified were observed,
so the theory is only partially confirmed.

*Development of PNTL Under UNMISET*

Following independence, the East Timor Police Service became known as the *Police Nacional
de Timor-Leste* (PNTL) and UNMISET continued the effort to reform the police. Its major
goals were to maintain basic law and order and strengthen the rule of law. UNMISET, however,
was not successful in these goals. There were several incidents of violence related to the poor
police performance from 2002 to 2004, the police continued to violate basic standards of
democratic policing, and most problematically, the police play a major role in the violence in
2006. The same issues that had prevented reform under UNTAET continued to play a role under
UNMISET. Poor recruitment and lack of expertise continued to plague UNPOL. However, the
major cause for the failure of the reform was the threat of the demands to elites’ informal

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832 Hood notes that “The lack of emphasis on institutional development was manifest in the failure to develop a clear
long-term vision and mission for the PNTL, including in the maladroit attempts at identity formation: the police
service had three names in the space of a few months in 2002: the East Timor Police Service (ETPS), the Timor-
Leste Police Service (TLPS) and finally the PNTL.” Hood, “Security Sector Reform,” 65.
networks. Local elites, most notably Rogerio Lobato, used informal obstruction to block reform and even weaken the adherence of the police to law. In combination with the development of the F-FDTL petitioners described above, the weakness of police directly led to the violence in 2006.

The precise activities of UNMISET with respect to policing were specified by the Timor-Leste Police Service Development Plan, which was developed in early 2002. PNTL officers would increase from about 1800 in May 2002 to a total of 2830 officers. UNMISET would retain overall authority over policing, with the PNTL commander reporting to the UNPOL commander. The hope was that UNPOL would engage in on-the-job training of PNTL officers while they were engaging in executive policing. At the same time, international advisors would be appointed to key ministries to engage in capacity building. However, only a handful of international officials and UNPOL were appointed based on their knowledge of the country or experience in building a police force. 833

The main problems with the police organization and the extant UNPOL effort were described in a series of reports issued in early 2003, especially the Joint Assessment Mission (JAM) report and the King’s College report. These reports identified the main problems within PNTL, including the problems with planning, the poor training of police, and the lack of clear rules and standard operating procedures. These reports also identified problems within the international community, especially with regard to a lack of planning and short deployments of under qualified UNPOL. 834 The JAM observed that the overarching problem within the PNTL was “limited management capacity” and urged the creation of an “institutional strengthening

833 JAM, 4.7-8; Ibid., 65–67.
working group for the TLPS [PNTL].” These observations fit into the theory’s description of the bureaucratic ideology, since the JAM effectively criticized the absence of formal procedures and developed a formal procedure to solve the problem.

Following the JAM’s recommendations, an Institution and Capacity Building (ICB) Committee was created and was closely managed by the Deputy SRSG’s office. UNMISET began to make demands for a variety of changes designed to improve adherence of the PNTL and overarching institution to formal rules. These demands, as stated in the JAM report, would be to develop “standardized national records management and field training programmes,” to improve training curriculum,” to “approve and disseminate a TLPS Code of Conduct,” to “develop a police manual,” and to “Review policies and procedures to provide an impetus for the consolidation and dissemination of standardised policies to all parts of the TLPS at this important stage of institutional development.” The focus of UNMISET’s efforts, therefore, was on strengthening the bureaucratic capacity of the police.

Hood blames UNMISET’s failure to reform the PNTL on poor bureaucratic practices and leadership, specifically “inadequate planning and deficient mission design, unimaginative and weak leadership, [and] negligible East Timorese ‘ownership.’” Ownership, for Hood, appears to mean consultation with Timorese elites. While it is certainly true that UNMISET continued

835 In full, the report explains, “The JAM recommends that there be established an institutional strengthening working group for the TLPS [PNTL]. This group should be led by the TLPS with membership determined by the GoTL [Government of Timor-Leste]. Consideration should be given to representation from other justice sector agencies, key government departments (such as MoPF [Ministry of Planning and Finance]), civil society and the community. UNPOL should have a representative on the working group to provide police technical advice. To support this working group, an appropriately qualified and experienced institutional strengthening technical adviser should be engaged for a period of at least 12 months. Further provision should also be made for shorter term inputs from at least three other technical advisers in the areas of human resources management, finance and logistics.” JAM, 37.


837 JAM, section 7.

with several poor practices, most especially recruitment of unqualified UNPOL officers, Hood is incorrect that better bureaucratic practices would have been sufficient to achieve success. Indeed, local elites played an active role in the failure of police reform because they perceived a threat to their informal networks and used private obstruction to block the reform. While not all of UNMISET’s demands were feasible, the adoption of formal procedures would have weakened the influence of powerful local elites over the nascent policing institutions.

Local elites reacted to the demands by privately obstructing the reform in several ways. One example is that PNTL officers appeared to participate in the international reform effort in order to gain equipment and resources, while at the same time ignoring international calls for changes in procedures. During the JAM, PNTL officers consistently responded to international queries by seeking more equipment. The JAM report therefore emphasized that the international community paid too much attention to the equipment requirements of the police and urged more attention to police procedures. Despite the report’s emphasis on rules and procedures, it nevertheless concludes with a 16-page appendix of required resources totaling $4,158,096. Hence, in order to secure greater Timorese participation in their reform effort, international officials continued to supply equipment, but had more difficulty altering Timorese police practices.

The best-documented and most destructive examples of private obstruction were the actions of Rogerio Lobato, who was the cabinet member in charge of the police initially as Minister of Internal Administration and later as the Minister of Interior. Lobato established

839 "During every meeting in Districts and with other Units the JAM was given lengthy equipment lists. Many of these appeared to be trying to replicate UN equipment while others were extremely unrealistic 'wish lists.' The development of service-wide standards, policies, records and procedures is even more critical in view of the limited budget capacity. Any decisions on materials will need to be made within an agreed and sustainable policy framework. The expectations of the TLPS members have been raised to standards which cannot be met and this will have to be explained and demonstrated as part of the development of resource management capacity.” JAM, section 5.7.
“parallel chains of command” and “secured a particular kind of personal loyalty” through favoritism of officers from the western part of the country.\textsuperscript{841} Accounts of the PNTL make clear that there was only a very limited sense of professional loyalty to the organization. Lobato also undermined the police organization, by criticizing the police for recruiting ex-POLRI. Recall further that Lobato had been cultivating his relationship with ex-Falintil members and criticized F-FDTL for failing to recruit Falintil veterans. Finally, according to several accounts, Lobato’s neglect of the police institution was highly destructive. The minister played a direct operational role in policing and institutional reform. His main accomplishment appeared to be the creation of armed formed police units loyal to him, rather than adhering to the rule of law.\textsuperscript{842}

On November 28, 2002, Gusmao gave a speech urging Lobato’s resignation “on the grounds of incompetence and neglect.”\textsuperscript{843} Several days later, major riots broke out, which were probably partially instigated by Lobato, and resulted in “the complete breakdown of law and order” in Dili. Two protestors were killed, the Prime Minister’s house was burned, and approximately seventy arrests made.\textsuperscript{844} The police’s actions were criticized as alternating between the use of excessive force and inaction. Apparently at the height of violence, “PNTL officers were seen hiding in the principal government offices, the Palacio Governo, where they

\textsuperscript{841} Wilson, “Smoke and Mirrors,” 86.
\textsuperscript{842} Bowles and Chopra write, “Lobato contributed to the fragmentation of the PNTL, as well as tensions between east and west, by promoting police officers from the west and fostering client-patron relations with circles of officers personally loyal to him. Further, there was little development of the Ministry of Interior as an institution and neglect of ministry responsibilities other than the police, such as civil security and disaster relief.” Bowles and Chopra, “East Timor,” 296. Interviews with international analysts, Dili, July-August 2010.
\textsuperscript{843} Gusmao stated, “November 28th 2002 is celebrated, with a feeling of grief because of the problems in Uatu-Lari, the problems in Dili, the problems in Ualili and Baucau, the problems in Same and Ainaro, the problems in Ermera and Liquica and the problems in Suai and Maliana. Unfortunately, it seems that by creating problems, one can rise to become a Minister, and these same people, after becoming Ministers, only know how to increase existing problems. Some weeks ago, I swore in another Vice-Minister of Internal Administration, and I urged that Ministry to start rigorously solving, the problems that affect the stability and security of our country. The fact is that these problems have been accumulating. If independence belongs only to FRETILIN, I have no comments to make. If independence belongs to all of us, to all the Timorese, I seize this opportunity to demand of the Government to dismiss the Minister for Internal Administration, Mr. Rogério Lobato, on the grounds of incompetence and neglect.” Quoted in Rees, “Under Pressure,” 53.
\textsuperscript{844} The deaths were investigated by UNMISET in UNMISET, “Executive Summary of Investigations of Police Response to Riots on 4 December 2002,” 14 November 2003.
were attempting to dispose of their uniforms so that they could not be identified as police."\(^{845}\)

While the initial riot began because of an arrest of a student, Rees explains, “anti-government political actors/groups ‘hijacked’ the riot and launched attacks against the Prime Minister’s residence, among other politically sensitive sites.”\(^{846}\) In effect, Lobato had simultaneously weakened the police and started the riots.\(^{847}\) This was the first of several incidents in which Lobato encouraged the development of conflict between the police, veterans, and military in order strengthen his own personal power.

Following the F-FDTL’s actions in Atsabe in January 2003, Lobato took advantage of the weakness of the F-FDTL to create new police units that would further worsen the relationship between the police and military. Lobato initially created three formed police units, the Border Patrol Unit (BPU); the Rapid Deployment Service, which was later renamed the Police Reserve Unit; and the Special Police Unit (SPU), which was designed to be in charge of crowd control in the cities and later renamed the Rapid Response Unit (UIR). These units were heavily armed with semi-autonomic and automatic weapons. Since F-FDTL was attempting to become the foremost provider of security, major tensions quickly developed between the F-FDTL and the various formed police units.\(^{848}\)

Lobato also played a role in undermining UNMISET’s attempt to change formal practices within the PNTL and ministries. East Timorese leaders played little role in the JAM process. Lobato, with the support of Alkatiri, disbanded the ICB Committee, which was intended to implement the JAM’s recommendations.\(^{849}\)

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\(^{845}\) Wilson, “Smoke and Mirrors,” 82.

\(^{846}\) “Under Pressure,” 54.

\(^{847}\) See ICG, “Resolving Timor-Leste’s Crisis,” 5.


In May 2004, UNMISET transferred full executive policing authority to the PNTL. UNMISET continued until 2005, with a more limited mandate to provide capacity building. In May 2005, UNMISET was replaced by the UN Office in Timor Leste (UNOTIL), which had a similar but scaled down mandate. 850 Unfortunately, the PNTL remained weak. Legislation was passed in 2004 specifying the structure and role of the PNTL as well as creating disciplinary regulations. 851 However, this legislation created no effective oversight over the police. Indeed, the Minister of Interior, Lobato, retained “operational control” and final authority over the police force. While the police commissioner could recommend dismissals or other actions against members accused of violations, only the minister could carry out those actions. Furthermore, according to one analyst, the PNTL commissioner was undermined by the extended period of international executive power. While the PNTL commissioner had nominally been in command since 2002, the UNPOL commander exercised authority, and the PNTL commander’s power had gradually eroded. 852

Indeed, there remained serious concerns with police abuse after the Timorese police took over executive control in 2004. A Human Rights Watch report in April 2006 detailed a number of incidents of police abuse. The report makes clear that the police were beating and intimidating citizens who had committed no crimes, were committing crimes themselves, and were acting with consistent impunity. The specific incidents of police abuse included brutality, arbitrary detention, excessive use of force (including the use of firearms), torture of prisoners, and rape. 853

850 UN News Center, “UN peacekeeping mission in Timor-Leste comes to an end,” 19 May 2005.
851 Prior to this point, UNTAET regulations were still in force. Bowles and Chopra, “East Timor,” 295–296.
853 The report provides a variety of accounts of police abuse, none of which were investigated. Ibid., 16–37.
The accounts make clear that the various UN missions failed to establish a police institution that followed the rule of law.\footnote{On the weakness of the police institution at the time, see also Wilson, "Smoke and Mirrors," 84–86; Bowles and Chopra, "East Timor," 294–296.}

The technical perspective of institution building believes that with proper institutional practices and sufficient resources success is possible. Hood, for example, identifies extensive problems with UNMISET that led to the failure of the police reform. While some of these problems are no doubt real, it is unlikely that even if Hood’s recommendations were fully implemented police reform would have been fully successful. Indeed, one of Hood’s key recommendations was greater Timorese “ownership” over security sector reform. The above section demonstrates that the minister nominally in charge of the police was intentionally undermining its reform through private obstruction. Greater “ownership” would have therefore had little positive impact. The implication is that there are inherent limits to police reform posed by the relationship between international demands and the structure of political authority in post-conflict societies. When reform threatens the informal networks local elites use to maintain their political power, they will undermine reform.

\textit{Violence and Disintegration of Police in April-May 2006}

The violence between factions of the police and military in April and May 2006 was a direct consequence of the earlier failure of police reform. As discussed in the military reform section above, in March 2006, a group of approximately 600 petitioners were dismissed from the military. After President Gusmao criticized the petitioners’ dismissal in a speech on March 23, there was limited violence against easterners in Dili, with approximately seventeen houses
burned. The situation then calmed for several weeks, until April 24, when the petitioners began demonstrations in front of the main government building. 855

On the fourth day of the protests, April 28, the situation escalated. To address sporadic fighting and increasing tension among the protestors, there were efforts to deploy several different security units. There were clear problems in the chain of command and coordination between different police organizations, however. Only limited numbers of the specially trained riot police (UIR) were deployed, along with six military police officers (part of F-FDTL), and some ordinary uniformed police. The protesters quickly overran the police and entered the government building. According to the UN Commission of Inquiry, Lobato soon arrived at PNTL headquarters “wearing a flak jacket and in a highly agitated state, yelling “kill them all.” The PNTL signed automatic weapons and 2,000 rounds of ammunition to Lobato, who apparently used these weapons to arm his civilian supporters. After the petitioners dispersed from the government building, there were skirmishes between the protesters and the UIR and F-FDTL. Five people were killed and approximately 100 houses destroyed. 856

Over the next month, conflict continued between factions of the police and military. The conflict between easterners and westerners became more prevalent. For example, Major Reinado, the head of the military police, deserted on May 3 with several military police officers and members of the UIR. Reinado asserted that he did not “want to be a part of the (army) that shot westerners,” though according to the ICG, he did not witness the east-west violence he claimed

855 The ICG notes that World Bank President Paul Wolfowitz visited East Timor during this period and observed, “The bustling markets, the rebuilt schools, the functioning Government—and above all the peace and stability—attest to sensible leadership and sound decisions.” “Resolving Timor-Leste’s Crisis,” 7-8.
to have seen. For the next several weeks, various Timorese leaders attempted to negotiate between the various groups and end the violence. 857

Following a shootout between Reinado’s group and F-FDTL soldiers, violence returned in late May. A number of different groups of civilians were armed and began to engage in violence. Several allegations were made that Gusmao, Alkatiri, and other political elites were directly involved in provoking the violence, though none of these allegations were confirmed. The crisis came to a head on May 25 with a gun battle between the PNTL and F-FDTL at the PNTL’s headquarters. F-FDTL soldiers surrounding the building open fired on an unarmed column of the police who had surrendered under a UN flag. Following the incident, the PNTL virtually disintegrated within Dili. 858

Over the course of the crisis, approximately 1650 houses were destroyed and approximately 150,000 persons were displaced to IDP camps. The East Timorese leadership requested international support from Australia, New Zealand, Malaysia, and Portugal on May 24. These countries soon deployed military and police to help reestablish security in Dili. 859

In the wake of the crisis, Alkatiri resigned as Prime Minister in June, and Ramos-Horta was sworn in. To address the security problem in East Timor, the UN created a new mission, the UN Integrated Mission in Timor-Leste (UNMIT). UNMIT had a mandate to “support the Government by maintaining law and order through the provision of executive policing as may be necessary throughout the country... and in initiating a phased reconstitution of PNTL.” 860 UN officials recognized that previous missions had failed to build an effective police force. They

858 For a detailed account of the incident, see Ibid, 33-37. See also ICG, “Resolving Timor-Leste’s Crisis,” 11-13.
believed that by reestablishing executive authority over the police, the UN could build an effective and democratic police force from scratch.

Conclusions

Police reform by UNTAET and its successor missions represents one of the most problematic state building efforts in East Timor. UNTAET did manage to establish basic law and order and a new police force, albeit without making a major difference in the practice of policing and justice in much of the country. However, the key effort of ensuring that the police followed the rule of law was a failure and violence returned in 2006 because of the weakness of the police force. Despite more than four years of UN executive control, the PNTL remained the perpetrators of major abuses. The failure by UNMISET is particular troubling, since UNMISET had significant resources and was aware of the problems of UNTAET.

The theory offers significant insight into the reform effort, although it ultimately can only partially explain the trajectory. The theory offers the greatest explanatory power with regard to informal networks. Local elites’ private obstruction of police reform had a major negative impact on the development of the police force. The presence of informal networks meant that even if international organizations had acted according to the best practices suggested in the literature, Lobato would still have been able to block reform and the police would have remained weak.

The theory is less persuasive with regards to international unity. Both UNTAET and UNMISET were unified about their demands, but unity did not enable either organization to convince local elites to implement their demands. Both organizations were plagued by the recruitment of rapidly rotating UNPOL with inappropriate skills. For UNMISET, part of the problem was that was that UNMISET’s executive authority was limited to executive policing. UNMISET could not make political progress conditional on successful reform, since it had to
hand over authority in May 2004 regardless of how much reform had actually happened. Nor could UNMISET remove senior Timorese officials who were blocking reform. Consequently, Timorese elites were able to wait out UNMISET and obstruct reform.

Table 5.5: Police Reform 1999-2006

<table>
<thead>
<tr>
<th>Preferences</th>
<th>Maintain internal law and order</th>
<th>Create police force</th>
<th>Police force follows rule of law</th>
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<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial period 1999</td>
<td>Establish basic law and order, create police force</td>
<td>High</td>
<td>Low</td>
<td>Success: Slow deployment of UNPOL. Recruitment of POLRI. Security reestablished largely by PKF.</td>
<td>Partially Confirmed: Disunity within UN headquarters partially responsible for lack of planning, but slow recruitment endemic to UN efforts.</td>
</tr>
<tr>
<td>Creation of ETPS Aug 2001-May 2002</td>
<td>Establish basic law and order, create police force; police force follows rule of law</td>
<td>High</td>
<td>Informal networks</td>
<td>Partial Success: Recruitment of POLRI provokes opposition from Fretilin and others. Limited effective training. Mixed UNPOL quality. Lobato controls elements of PNTL</td>
<td>Partially Confirmed: Outcome correct, but mechanisms only partially relevant. Informal networks are important, but failure of international organizations caused by poor recruitment and planning, which was only partially attributable to international disunity.</td>
</tr>
</tbody>
</table>

VII. Revenue in East Timor – Oil Treaty and Sovereign Wealth Fund

East Timor’s main potential revenue source was the oil and gas resources between East Timor and Australia. The effort to develop these resources is the key reform effort related to government revenue. The reform effort consisted of negotiating with Australia to secure a larger share of these resources and creating a petroleum fund to invest the money. This reform

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861 Interviews with international officials, Dili, July-August 2009 and 2010.
effort had a significantly different structure than the framework proposed by the theory. International officials did not make demands to local elites. Indeed, Timorese elites and international officials cooperated in the treaty negotiations and in the development of the petroleum fund. Furthermore, following UNTAET, Timorese officials largely took over leadership of the reform process. The reform effort was largely successful. East Timor gained a substantial share of the oil and gas revenue and created a petroleum fund, which gave the country a strong foundation for encouraging economic development in the future.

The theory provides little insight into the process, trajectory, or outcome of the creation of revenue institutions in East Timor. Nevertheless, examining this reform effort provides an important insight into institution building—it shows how under certain circumstances local elites can lead the institution-building process. These efforts demonstrate a better conception of the commonly used term "local ownership" and show an alternative route to successful state building.

The reform effort below proceeds in five parts. The first part discusses the background of the reform and the applicability of the theory. The second part considers the negotiation of the Timor Sea Arrangement by UNTAET and briefly summarizes the negotiations between East Timor and Australia about the revenue for the Greater Sunrise field. The third part discusses the creation of the Timor-Leste Petroleum Fund. A fourth part concludes.

*Background on Petroleum Resources*

There are substantial oil and gas reserves in the Timor Sea, which lies between East Timor and Australia. While several petroleum fields lie geographically closer to East Timor, Australia has claimed control of the seabed up to the Timor trough, which would imply Australian control over the oil and gas resources.
Following Indonesia’s annexation of East Timor, Indonesia and Australia negotiated the Timor Gap Treaty. The treaty created a Zone of Cooperation, in which three different areas would be divided between the countries. In Area A, revenue would be split 50/50, in Zone B 90% would go to Australia and 10% to Indonesia, and in Zone C 90% would go Indonesia and 10% to Australia. The East Timor independence movement insisted that Australia had negotiated with a criminal regime and that both countries were in effect stealing East Timor’s resources. Nevertheless, prior to the “popular consultation,” Australia gained assurances from Timorese

leaders, including Gusmao, that they would continue the treaty’s terms upon East Timor’s independence. 863

In February 2000, soon after UNTAET’s arrival, an Australian delegation sought to gain UNTAET’s approval to substitute East Timor for Indonesia in the existing treaty. UNTAET staff argued that the treaty was unfavorable to East Timor, and that according to international law, East Timor should have a greater share of the petroleum revenue. In the Exchange of Notes on 10 February 2000, UNTAET agreed to continue the terms of the Timor Gap Treaty during UNTAET’s mandate, but insisted that a new treaty would have to be negotiated between East Timor and Australia over the disbursement of the resources. 864

UNTAET and East Timorese elites shared an interest in increasing East Timor’s share of the petroleum revenues. Power writes that “Vieira de Mello knew that UNTAET would be considered a failure if it did not manage to persuade the Australians to return what rightfully belonged to the Timorese.” Furthermore, the petroleum revenue had the potential to triple East Timor’s GNP and make the country financially independent. 865 UN headquarters, possibly based on pressure from Australia, urged Vieira de Mello not to negotiate on behalf of the Timorese since, “It will be for East Timor, as an independent nation, to define its national interest.” Vieira de Mello insisted that UNTAET was responsible for pursuing East Timor’s interests and

864 Ibid., 50–55.
865 Peter Galbraith, at the time the head of UNTAET Political Affairs, explains, “No industry is more important to East Timor than petroleum. Let me give the scale of its significance. East Timor’s annual recurring budget is $45 million. $45 million to pay for teachers’ salaries for 400,000 school children; $45 million to pay the salaries for 3000 policemen; $45 million to maintain 3,500 kilometres of paved roads; $45 million to operate an airport and port; $45 million to cover the expenses of a small army to deter new aggression and militia infiltrations; $45 million to cover the costs of government. The Bayu-Undan liquids project currently underway will generate $100 million a year for East Timor by the middle of the decade. A gas pipeline could increase the government take to $150 million. Laminaria and Buffalo operating under Australian license, but in an area to which East Timor has a compelling claim to the continental shelf, could generate up to $1 million a day – $365 million a year for East Timor as current oil revenues. Imagine what this means to a country where every building was burned to the ground, where there are 70 students for every teacher, where teachers have no opportunity to develop further their skills.”
emphasized the importance of unity between UNTAET and East Timor in the negotiations.\textsuperscript{866} The Timorese leadership also clearly understood the importance of the resources for the country’s financial future and repeatedly insisted that nearly all of the resources below the Timor Sea belonged to East Timor. They also regarded the Timor Gap Treaty as a continuing symbol of Indonesia’s occupation, and sought to invoke their rights as an independent state.\textsuperscript{867}

Contrary to other reform efforts, the international and local goals for the reform were therefore aligned. There was no threat to nationalist goals, since an independent East Timor would require money to spend. There was no threat to informal networks, since greater revenue would enable Timorese elites to support all government activities, both formal and informal. Since the international administration was negotiating in cooperation with the Timorese elites, the structure of the reform effort is significantly different from other reforms. Consequently, the theory makes no clear predictions for the reform effort. Indeed, the trajectory of the reform effort would be determined by a variety of other factors, none of which aligned with the stated alternative explanations.

\textit{Negotiation of Timor Sea Arrangement}

Following the Exchange of Notes in February 2000, UNTAET and international donors established the Timor Sea Office, which would support East Timor in the negotiations with Australia.\textsuperscript{868} In March 2000, UNTAET informed Australia that it was prepared to negotiate the treaty on behalf of East Timor.

\textsuperscript{866} Vicira de Mello wrote, “These gains should not be jeopardized by an eleventh-hour lack of unity on the part of East Timor and the United Nations, particularly if this were to become public, which, as we all know, is regrettably a risk within the United Nations.” Power, \textit{Chasing the Flame}, 335–6.
Many observers criticized Australia for aggressively negotiating with East Timor. Several international officials noted that Australia had significantly greater level of development and that the resources would mean a great deal more to East Timor than they would to Australia. One Australian lawyer working for UNTAET observed, “As an Australian citizen I was appalled by my country’s leadership and their effort to stick their snouts in the trough of this country we’d liberated. They were talking about Australia’s generosity. As welcome as InterFET was, it’s not a gift when there’s a heavy price attached.”

Australia also attempted to undermine the UN negotiating team by apparently attempting to have Peter Galbraith removed and to convince UN headquarters to not permit UNTAET to negotiate on behalf of the Timorese. Paul Cleary provides one example of Australia’s negotiating tactics in an account of a meeting in November 2002:

“Downer [Australia’s Prime Minister] pounded the table as he bluntly warned that Australia could leave all of the Timor Sea resources in the ground until it got is way: ‘We don’t have to exploit the resources. They can stay there for 20, 40, 50 years.’ Towards the end of the meeting, Downer warned Alkatiri that he had no time for his “brinkmanship.” Downer said he was a captive of his western advisers and in need of a tutorial in politics.”

While Australia remained committed to supporting East Timor’s independence, Australia hoped to maximize its share of the oil and gas revenues.

Negotiations between UNTAET and Australia began in October 2000 and continued through July 2001. In July 2001, an agreement known as the Timor Sea Arrangement was reached. The Arrangement applied only until East Timor became independent. Following

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869 Peter Galbraith also writes, “East Timor is a desperately poor country. Australian children go to school in classrooms connected to the Internet. East Timorese schools don’t have electricity; thanks to the Indonesian organised orgy of violence, many still do not have roofs. Neither Mari Alkatiri nor I can bring back East Timor a treaty that would give East Timor less economic benefit than that which it is entitled under international law. This does not simply mean a share of the revenue, but also the ability to design and implement a tax and petroleum regime suited to East Timor’s particular circumstances.” Peter Galbraith, “East Timor’s Rights in the Timor Sea,” Maritime Studies, no. 118 (June 2001): 1–5; Cleary, Shakedown, 58.
870 Cleary, Shakedown, 53.
871 Ibid., 82.
independence, the Arrangement would have to be approved by East Timor and would become the Timor Sea Treaty. The Arrangement created a Joint Petroleum Development Area was created out of Area A in the Timor Gap Treaty. The other areas specified in the Timor Gap Treaty were eliminated. Both sides insisted that the Arrangement was without prejudice to permanent maritime boundaries, which had yet to be negotiated. The Timor Sea Treaty was signed in May 2002 by both Downer and Alkatiri.

Following independence, negotiations continued over several issues related to the petroleum resources. The first set of negotiations focused on the unitization of the larger Greater Sunrise oil and gas field – that is, how much of the field was in the JPDA. The Timor Sea Treaty required that both sides ratify a separate International Unitisation Agreement regarding the Greater Sunrise field. An initial IUA specified that approximately 20% of the Greater Sunrise field was within the JPDA, so East Timor would have approximately 18% of the revenue associated with the field. While this IUA was signed in April 2003, it was not ratified by the respective parliaments. A second set of negotiations then began, which culminated in the treaty on Certain Maritime Arrangements in the Timor Sea (CMATS). CMATS gave East Timor 50% of the revenue from the Greater Sunrise field, and delayed determination of the sea boundary. Although some Timorese NGOs criticized the Fretilin government for giving away too much, East Timor did increase its petroleum revenue from approximately $8.4 billion to $24 billion over the course of the negotiations.

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Creation of Petroleum Fund

While the treaty negotiations increased East Timor’s government revenue, it did not by itself ensure a long-term sustainable income. The petroleum reserves were expected to run out within several decades, leaving the East Timor with few other economic resources. The solution to this problem was the creation of a petroleum fund. The fund would invest revenue and help ensure that the country would save enough for future generations.

By 2005, the Fretilin government had successfully created a petroleum fund closely modeled after the Norwegian Petroleum Fund that fulfilled these requirements. East Timor did gain assistance from other countries, especially Norway. Surprisingly, however, the creation of the petroleum fund is perhaps the most “locally owned” reform studied in this dissertation. Local elites, most notably Mari Alkatiri led the process and set the objectives, and even specified the scope of international assistance. Indeed, the petroleum fund would not have been as successful without Timorese leadership.

The creation of a petroleum fund was initially discussed in 2001 to 2003. Alkatiri, as head of the first ETTA, formally requested assistance from Norway in developing East Timor's petroleum sector and creating a fund to manage the revenue. In 2002, an IMF team advised East Timor to develop a petroleum fund along the lines of the Norwegian model. The Norwegian model specifies a petroleum fund that essentially a government savings account. Revenue that accumulates in the petroleum fund is invested, while government expenditure remains controlled by the parliament. Hence, for the fund to effectively save money for the future, the parliament must exercise restraint and limit current spending.875

Following independence, the Fretilin government, with assistance from international advisors, began drafting legislation in 2003 and 2004. Interviewees emphasize that the Prime Minister, Alkatiri, had a strong role in the drafting process. Alkatiri declared his intention to use a “Norway Plus” model for the petroleum fund, which involved adopting the Norwegian model with some improvements such as greater transparency and parliamentary approval for removing money from the fund. In October 2004, the government began public consultation on the petroleum fund. Alkatiri stated, “Our aim is that the Petroleum Fund will be a tool that can contribute to the wise management of Timor-Leste's petroleum resources, to the benefit of both current and future generations.” Public consultation lasted for six months and discussed many of the key issues related to the petroleum fund that would later become controversial. The law was passed unanimously by the parliament in June 2005.

The law and consultation explained the purpose, structure, and investment strategy of the petroleum fund. First, the purpose of the fund was to address the risks to petroleum wealth. The public consultation paper notes that petroleum can enable poverty, corruption, and unrepresentative government. Alkatiri further explained, “Experiences from other countries show that petroleum wealth can easily become a curse instead of a blessing. In order for Timor-Leste to ensure the petroleum resources are well managed, it is important that people are well informed and that we can establish a strategy with as broad an agreement as possible.” Second, as in Norway, the structure of the fund meant that ultimately parliament was responsible for saving for the future. The Petroleum Fund Law requires that the parliament be informed about the estimated sustainable income (ESI) from the fund. While this information might inform parliament’s

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decision, nothing in the Petroleum Fund Law formally restrained the parliament. Indeed, the
consultation paper emphasizes that there may be good reasons for the government to spend more
than the ESI to build physical infrastructure or human capital. The government would have to
decide on the wisdom of particular investments and on the limits of the country to absorb capital
investment. Excessive spending had the potential to lead to inflation rather than greater
development. Third, the fund would be invested in low-risk foreign assets. There were limited
opportunities for investment in East Timor, and investing abroad would reduce the potential for
inflation or asset bubbles. While the fund was initially entirely invested in US Treasury bonds,
the law did permit ten percent of the fund to be invested in other liquid foreign assets with higher
yield after several years. Finally, the law specified mechanisms for the fund to be transparent and
accountable.878

Following the passage of the petroleum fund, revenue began to dramatically increase.
Initial estimates were based on oil priced at approximately $50 per barrel. By 2008, oil prices
were over $100 per barrel. Consequently, petroleum revenue increased from $266 million in
2004-2005 to approximately $2.4 billion in 2008. Interviewees insisted that the increase in
revenue was unexpected and that Timorese officials initially had limited understanding of how
much money was available.879

Following the violence in 2006 and elections in 2007, the Fretilin government lost power.
A coalition government led by Gusmao and known as the Alliance for Parliamentary Majority
(AMP) took control of the government. Fretilin officials insisted that the new government was

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878 Ministry of Planning and Finance, “Establishing a Petroleum Fund for Timor-Leste,” October 2004 (available at
also Ibid., 81–100.
No. 08/202; June 2008, 27; Democratic Republic of Timor-Leste: 2011 Article IV Consultation—Staff Report,”
illegitimate, since Fretilin won a plurality of votes in the 2007 elections and in their view a coalition could not be legally formed following the elections. The new AMP government substantially increased the size of the budget, from approximately $74 million in 2004-2005 to $341 million in 2008 and $1.3 billion in 2011. The new expenditures went to increased social benefits as well as a new National Development Plan. Fretilin officials were highly critical of the new expenditures. They argued that the AMP government was corrupt, that the National Development Plan was flawed, and that the spending was unsustainable. One Fretilin MP explained that Fretilin had intended to remain in control of the government indefinitely. Hence, they would have structured the fund differently to prevent competing parties from being able to spend the money so easily. 880

Conclusion

Table 5.6: Petroleum negotiations and fund

<table>
<thead>
<tr>
<th>Phase of reform</th>
<th>Demands</th>
<th>Unity</th>
<th>Threat</th>
<th>Outcome</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negotiation of Timor Sea Arrangement January 2000-July 2001</td>
<td>Greater share of oil and gas revenue for East Timor</td>
<td>High</td>
<td>Low</td>
<td>Success: East Timor gets 90% of revenue from JPDA.</td>
<td>Not Confirmed: Structure of reform effort does not fit theory. Local elites share international officials’ preferences and demands.</td>
</tr>
<tr>
<td>Negotiation of Greater Sunrise treaty 2003-2006</td>
<td>Greater share of oil and gas revenue for East Timor</td>
<td>- (Limited international role)</td>
<td>Low</td>
<td>Partial Success: 50/50 division of Greater Sunrise field, delayed negotiation of maritime boundary</td>
<td>Not Confirmed: Limited international role and no executive power. Negotiations led by Timorese. Structure of reform effort does not fit theory.</td>
</tr>
<tr>
<td>Creation of Petroleum Fund</td>
<td>Long-term sustainable income for East Timor</td>
<td>- (Limited international role)</td>
<td>Low</td>
<td>Success: Creation of petroleum fund and sustainable future income</td>
<td>Not Confirmed: Limited international role and no executive power. Reform led by Timorese. Structure of reform effort does not fit theory.</td>
</tr>
</tbody>
</table>

The effort to create a sustainable revenue source for East Timor does not fit the theory’s framework. International officials did not make demands of local elites, and it was local elites’ actions that were most influential in driving the reform process. The alternative hypotheses drawn from the literature do not explain the reform effort any better. First, the international community put very little resources into the reform effort and had minimal authority. Second, the key donor to East Timor, Australia, was the main adversary in the reform process, rather than contributing to the reform’s success. Third, Alkatiri and Fretilin were not moderate politicians – indeed, Fretilin exhibited authoritarian tendencies and campaigned largely on nationalism. Nevertheless, Alkatiri was personally responsible for the successful negotiation of the treaties and creation of the petroleum fund.

The reform effort indicates that under certain circumstances, local elites may have the incentive to work for good public policy in absence of the intervention by the international community. To be sure, local elites are only likely to engage in such behavior if it is clearly in their interests. The negotiation of a more favorable share of the resources and the creation of a petroleum fund to save the excess revenue clearly benefited East Timor in the long run. Since Fretilin believed it would remain in control of the government indefinitely, these institutions also benefited Fretilin.

The spending of the petroleum fund is like to remain controversial within East Timor, no matter which party is in the government. One international official observed that many people in the rural areas were opposed to increased spending for infrastructure, largely because they did not trust the politicians in Dili and believed them to be corrupt. Indeed, Fretilin repeatedly criticized the AMP government’s National Development Plan. Some of the criticism was likely due to concern that AMP supporters would benefit more from the plan’s spending than Fretilin’s
supporters. It is also difficult to imagine that future governments will be able to reign in spending once it has been increased.\textsuperscript{881}

VIII. Conclusion

Theory Testing

Table 5.7: Theory Testing

<table>
<thead>
<tr>
<th>Reform</th>
<th>Confirm Theory?</th>
<th>Unexplained events</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representative Institutions and Independence</td>
<td>Confirm</td>
<td>Problems with international unity prior to mission’s deployment. Otherwise unity and lack of threat to nationalist goals explains trajectory.</td>
</tr>
<tr>
<td>Elections</td>
<td>Confirm</td>
<td>Failure of initial civic education program partly due to lack of consultation with Timorese elites rather than threat to informal networks.</td>
</tr>
<tr>
<td>Military</td>
<td>Confirm</td>
<td>Problems with post-UNTAET missions partly due to poor leadership and inattention rather than disunity</td>
</tr>
<tr>
<td>Police</td>
<td>Partially Confirm</td>
<td>Threat to informal networks was major problem. Limitations of UNPOL in terms of recruitment and skills was the main problem among international organizations rather than disunity.</td>
</tr>
<tr>
<td>Revenue</td>
<td>Not Confirm</td>
<td>Reform effort was locally owned. Elites and international officials collaborate so theory’s framework does not apply.</td>
</tr>
</tbody>
</table>

This chapter tested the theory by examining UNTAET’s institution building efforts in East Timor and their legacy. The chapter largely supports the theory. There was limited threat to nationalist goals, although nationalism was influential in guiding the trajectory of several different reform efforts. Timorese elites’ informal networks determined their response to reforms, and their private obstruction led to failed reform. Although the revenue reform does not demonstrate the theory’s mechanisms, it had a unique structure and was clearly exceptional.

To be sure, other factors beyond the theory did play a role in the trajectory of institution building in East Timor, including the recruitment of unqualified international police officials, inattention to key institutions by the international community, and intra-headquarters disunity. The theory is relatively parsimonious and cannot explain all reform efforts in depth. Furthermore, none of the alternative hypotheses can consistently explain the observed variation.

\textsuperscript{881} Interviews with international officials, Fretiin politician, international analysts, Dili, August 2010.
The authority and resources of the international community were not sufficient to achieve success in the face of local opposition. Pressure for reform by Australia and other key donors did not make elites more eager for reform – indeed, Australia was pitted against East Timor in the revenue reform. Moderate parties were no more likely to accede to international demands. Timorese elites faced clear incentives to associate themselves with nationalism and they actively challenged reforms that would threaten their power, even though these actions threatened the stability of the society.

*Policy Implications*

The record of UNTAET and successor missions clearly indicates the limits of the technical perspective. Vieira de Mello and others saw UNTAET as a test case for UN state building – they believed that it was an ideal place to demonstrate the UN’s effectiveness in building institutions in post-conflict societies. UNTAET had sovereign authority, extensive expertise, and substantial resources. While UNTAET did achieve some success – including maintaining peace and achieving East Timor’s independence – the violence in 2006 indicated the underlying flaws of the mission. The Timorese elites had strong informal connections within the police and military that weakened these institutions and led to the development of the petitioners and the resulting violence.

Based on the 2006 crisis, the UN reestablished executive control over the police with the hope of addressing its mistakes. Recreating executive control, however, was unlikely to solve the problems in the East Timor security forces. This misunderstanding follows from the technical perspective, since the UN believed that greater authority and resources would be sufficient to address the problems in the security forces. However, the weakness of these institutions was due to the particular political circumstances – the recruitment of a select group of Falintil veterans by
F-FDTL, the intentional undermining of the PNTL by Lobato, and the failure to address the petitioners' crisis by the civilian leadership. Greater executive authority only had the potential to help address the third concern. Indeed, interviewees emphasized that the planning for UNMIT, the UN mission following the 2006 violence, did not carefully examine the politics behind the crisis or take seriously the recommendations of country experts.\textsuperscript{882} For example, UNMIT focused on rebuilding the police throughout the country. However, the crisis had mainly weakened the police in Dili, and as in early missions, UNMIT would have difficulty exerting authority outside of the capital.

There are several specific policy implications that come out institution-building efforts in East Timor. First, there is a clear benefit to longer-term deployment of international officials. Vieira de Mello was probably more effective than other international officials, in part because he was the SRSG for the entirety of UNTAET. While he was clearly frustrated by the length of his deployment in East Timor,\textsuperscript{883} it enabled him to gain a deep understanding of the local political dynamics and to structure the international administration's demands accordingly.

Second, even in societies where there is no remaining ethnic division after the war, nationalism remains important in post-conflict politics. In Bosnia and Kosovo, the groups that fought each other in the war remained politically active, which might have explained the prevalence of nationalist politics in those societies. However, in East Timor, the absence of powerful pro-autonomy parties did not decrease the importance of the nationalism in politics. All major parties and leaders won elections in large part based on their wartime records.

Third, there is no society that should be treated by the international community as a \textit{terra nullius}. It is certainly true that East Timor was destroyed following the popular consultation and

\textsuperscript{882} Interviews with international analysts, Dili and Jakarta, August 2010.
\textsuperscript{883} Power, \textit{Chasing the Flame}, 319.
that there were no functioning formal state institutions. However, informal associations remained operative. Indeed, a variety of longstanding political relationships, some of which went as far back as the civil war in the 1970s, were influential in the development of Timorese politics. The international community could not simply start from scratch – its failure to recognize the importance of existing political relationships led to the failures in state building and subsequently to violence. Any future efforts at institution building ought to begin with a careful analysis of existing political factions and institutions.
Chapter 6
Conclusion: Theory Testing and Policy Implications

The international community is engaged in many efforts to reform state institutions in post-conflict societies in order to encourage peace, democracy, the rule of law, and economic development. The prevailing view of state building, which I refer to as the technical perspective, believes that the international community has the tools necessary to build strong state institutions and that with sufficient authority, resources, and expertise the international community can achieve its objectives.

To examine state building, and evaluate the technical perspective and other existing theories of state building, this dissertation considered institution building by the international community in Bosnia, Kosovo, and East Timor. The international community established international administrations in these societies, which had executive authority and a state-building mandate. These international administrations had the greatest authority, resources, and expertise that the international community could be reasonably be expected to provide, which makes them crucial cases for the technical perspective. While some reform efforts did improve state institutions, others failed and left weak institutions, provoked violence, or slowed political development.

This dissertation explains this variation by providing a theory that describes institution building as a political process. When international demands threaten nationalist goals, the mass public in the post-conflict society will protest and thereby prevent reform. When demands threaten elites’ informal patronage and corruption networks, elites privately obstruct the reform, which prevents implementation unless there is unity within the international administration about demands. Furthermore, international administrations faced serious constraints. Their belief in human rights and bureaucracy created unreasonable minimum standards for the institutions they
sought to reform and prevented them from taking full account of the politics of the post-conflict society. Disunity between international organizations also enabled local elites to avoid reform by implementing the weakest demands posed by different organizations.

The theory and empirical findings have three major policy implications for state building by the international community beyond international administrations. These implications provide direct insight for international efforts in states emerging from civil war, such as Syria, Libya, Afghanistan, Iraq, and South Sudan. First, the international community should better optimize its demands based on the politics of post-conflict societies. The international community should not make demands that threaten nationalist goals, since this will provoke a backlash that blocks reform. Rather, by carefully designing incremental demands for reform, state institutions in post-conflict societies can be significantly improved. Second, the international community should structure international interventions to ensure unified demands. When specifying mandates for international organizations in post-conflict interventions, the international community should ensure that there is a hierarchy containing the different international organizations deployed and avoid giving multiple organizations overlapping mandates. Third, the international community should take measures to increase international officials’ knowledge about the target society. Officials that have long-term engagement in the target society can understand local elites’ incentives better and better optimize international demands.

This concluding chapter proceeds in three sections. The first section examines the record of institution building in the three international administrations studied in the dissertation. It discusses the overall testing of the theory, the extent to which the case studies provided evidence in support of the theory’s assumptions and mechanisms, and applicability of the alternative hypotheses. The second section specifies directions for future research. The third section
discusses the dissertation’s policy implications, not only for ongoing and future international administrations, but also for any effort by the international community to build state institutions in a post-conflict society.

I. Empirical Findings

This section evaluates how the empirical record of institution building in international administrations conforms to the assumptions and predictions of the theory. First, I summarize the overall confirmation of the theory. Second, I discuss to what extent the political context of international administrations supports the theory’s assumptions, including the importance of nationalism and informal networks in post-conflict societies, and the character of international administrations. Third, I discuss specific empirical examples that demonstrate the explanatory power of each of the mechanisms specified in the theory. Fourth, I discuss several findings that agree with the general observations of the theory, but do not precisely match the mechanisms specified by the theory. Fifth, I consider the applicability of the three alternative explanations raised in the theory chapter.

Overall Theory Testing

<table>
<thead>
<tr>
<th>Stages of Reform Efforts</th>
<th>Confirmed</th>
<th>Partially Confirmed</th>
<th>Not Confirmed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bosnia</td>
<td>17</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Kosovo</td>
<td>15</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>East Timor</td>
<td>8</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>40</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Aggregate Reform Efforts</td>
<td>12</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>

The theory explains the trajectory of many, but not all, of the reform efforts examined within the dissertation. As shown in Table 6.1, which also appears in the theory chapter, out of fifty-seven stages of reform, forty fully confirmed the theory, thirteen partially confirmed it, and only four
did not confirm it. While there may be multiple ways to divide reform efforts into stages, and some of the coding may be controversial, the summary of the empirical findings provides substantial support for the theory.

Assumptions

The theory makes several assumptions about post-conflict societies and international administrations that underlie the mechanisms specified by the theory. For post-conflict societies, the theory claims that nationalist goals, such as independence and autonomy, are popular and dominant; and that informal patronage and corruption networks are a vital source of power for local elites. For international administrations, the theory claims that there is an organizational ideology that emphasizes human rights and bureaucratic procedures, that there are multiple organizations comprising the international administration, and that international administrations have a principal-agent relationship with their supervisor. Since the mechanisms specified by the theory are based on these assumptions, greater empirical support for these assumptions offers greater confidence that the theory’s causal mechanisms apply to the international administrations.

There is significant evidence from the three chapters on international administrations in support of these assumptions. In all three societies, nationalism and informal networks were important in politics during the war. In Bosnia, the three main ethnic groups competing nationalist goals dominated electoral politics. Bosniak parties campaigned on their ability to strengthen the state and reduce the power of the entities, while Serb parties campaigned on their ability to maintain the autonomy and Serb character of the Republika Srpska. Parties competed to be the strongest defender of their respective nationalist goals, and outbid one another in opposing reforms that threatened these goals. Similarly, in Kosovo, Albanian parties competed by referencing their wartime record and ability to achieve the key nationalist goal of independence.
in the future. Furthermore, each of the Kosovo Albanian parties had varying informal networks that bolstered their political power, including connections with KLA veterans, smuggling operations, or other groups. In East Timor, elites also campaigned on their connection with the independence struggle, and used a variety of informal connections, especially with veterans, to maintain political control.

The empirical record also offers support for the assumptions about international administrations. First, international officials are committed to human rights, and believe in the effectiveness and desirability of bureaucratic procedures. In Bosnia, for example, international officials sought to build multiethnic institutions based on their belief in individual rights rather than collective rights. In Kosovo and East Timor, international officials insisted on constructing institutions that used formal bureaucratic procedures, even when it was infeasible. Each of the international administrations was also divided into multiple organizations. In Bosnia, the coordination between these organizations was particularly problematic, since there was no clear hierarchy between them, while in Kosovo and East Timor there was a hierarchy that facilitated international unity. Finally, each international administration had a principal-agent relationship with its supervisor. In Kosovo, for example, disagreements between the international administration and the supervisor sometimes impeded reform efforts.

*Causal Mechanisms*

Based on the theoretical assumptions, the theory specifies a number of mechanisms and sub-mechanisms that determine the reform trajectory, as shown in Figure 6.1, which also appears in the theory chapter. The mechanisms provide substantial insight into institution building in post-conflict societies. The case studies provided evidence in support of each of the causal
mechanisms. Here, for the three main causal chains specified by the theory, I discuss examples from the case studies that particularly demonstrate the explanatory power of the mechanisms.

Figure 6.1: Mechanisms of the reform process

First, the theory claims that when international demands threaten nationalist goals, there is a potential for mass public protest, which will block implementation since the international administration is constrained by popular sovereignty. Two reform efforts demonstrate how a threat to nationalist goals not only prevents implementation, but also may have other negative effects. First, in the police reform in Bosnia, the international administration insisted on demands that would have weakened the autonomy and Serb character of the RS. Because of widespread public opposition to the demands, it was clear that any Serb leader that accepted the reform would lose an election. Given the extent of Serb opposition, the international administration eventually backed down and weakened its demands. The failure of the reform effort delegitimized the international administration in Bosnia and made future reform more difficult.

Second, in the Standards before Status reform in Kosovo, the international administration
insisted that Kosovo implement a seemingly impossible set of demands in order to progress with status negotiations. The result was widespread riots with violence against minorities and international officials. The riots led the UN to recognize that its approach to Kosovo was infeasible, and to begin status negotiations about Kosovo's independence.

Second, the theory claims that when there is not a threat to nationalist goals, but demands threaten informal networks, local elites will privately obstruct the reform. However, the theory predicts that a unified international administration will be able to partially implement its demands through the use of conditionality, monitoring, and punishment. Two case of police reform especially demonstrate how informal networks and private obstruction can limit the effectiveness of reform. In the case of police reform in Kosovo, the international administration sought to create a new police force and address politicized crimes, including interethnic violence, high-level corruption, and organized crime. The international administration was able to establish an effective police institution that could address day-to-day crime, in large part because of international unity. However, neither the UN police nor the new Kosovo Police Service could address politicized crime, because of the influence of informal networks. Similarly, in the case of police reform in East Timor, the Minister of Interior’s personal networks within the police force weakened the institution and facilitated violence in 2006. In both of these cases, international unity enabled certain improvements within the institution, but international officials could not compel elites to fully implement international demands.

Third, if international demands threaten neither nationalist goals, nor informal networks, the theory predicts that international demands will be fully implemented only if the international administration is unified. In several cases, international administrations avoided threatening nationalist goals and informal networks, and were thereby able to fully implement reform. For
example, in the case of the creation of the Kosovo Protection Corps (KPC), the international administration accepted an ambiguous name for the organization that in English did not imply Kosovo’s independence, but that in Albanian implied that the organization was an army-in-waiting – thus preserving nationalist goals. The international administration also did not attempt to replace ex-KLA members within the organization, which prevented the reform from threatening informal networks. As a result, the international administration fully achieved its goals of avoiding violence, demobilizing the KLA, and avoiding implying impendence. While the KPC reform was more successful than the police reform because of weaker demands, the police reform did achieve greater improvement in the target institution. The comparison between these two case studies demonstrate that the international administration can in certain circumstances make demands that threaten informal networks and still achieve substantial reform.

Relevant Findings Beyond the Theory’s Specified Mechanisms

The theory provided a relatively specific set of mechanisms about the process of institutional reform. There were several findings in the case studies that are relevant the theory, but which did not match the mechanisms specified by the theory. Three of these findings are relevant to the broader applicability and implications of the theory.

First, international institution-building efforts in the immediate post-conflict period – what some call the “golden hour”\(^8\) – were often successful. International administrations in both Kosovo and East Timor faced significant difficulties in the immediate post-conflict phase. There was violence, the international administrations were only partially formed, and local elites remained powerful. Nevertheless, the development of initial representative institutions in both

societies was relatively successful, and indeed provides a model for future efforts. The constraints of the early period forced the international administration to abide by the limited demands specified by the theory. In particular, international officials were forced to negotiate with local elites and avoid threatening nationalist goals. Later, once the international administration was fully established, it had more freedom. Its beliefs in human rights and bureaucracy then lead the international administration to make more ambitious demands, which took less account of the politics of the target society, and were more likely to threaten nationalist goals or informal networks.

Second, the case of revenue reform in East Timor demonstrates that local elites may sometimes take ownership of a reform effort. Mari Alkatiri, then the Prime Minister and leader of the Fretilin government, negotiated a greater share of revenue with Australia and established a petroleum fund to invest the revenue. The term “local ownership” is widely used in the literature, and is believed to be essential for achieving reform, but it is somewhat unclear what this term means in practice.\textsuperscript{885} For some, local ownership seems to mean consultation with local elites. In other reform efforts in East Timor, such as the police reform, there was extensive consultation with local elites, but continued opposition to international demands. The relative success of the revenue reform, compared with the police reform, indicates that understanding local ownership as consultation is problematic. Instead, scholars should identify reforms as locally owned only if local elites lead the reform effort and would pursue it without international influence. The dynamics of locally owned reform efforts with this definition are different from reform efforts described here. Indeed, locally owned reform efforts would be better described by the traditional

\textsuperscript{885} Chesterman, "Ownership in Theory and in Practice"; Donais, "Empowerment or Imposition?".
state-building literature, which focuses on the incentives of elites to strengthen the state based on
issues such as the threat of revolution by the mass public or concerns about inter-state war. 

Third, in some cases where demands did not explicitly threaten nationalist goals, elites were able to use nationalist outbidding to block reform. The theory specifies that a threat to nationalist goals will prevent reform because of the possibility of public protest. Without a threat to nationalist goals, the theory claims that elites should at most be able to bluff and will not be able to public opposition to effectively block reform. However, in the case of the April 2006 Constitutional reform effort in Bosnia, the Bosniak party SBiH blocked a reform that did not threaten nationalist goals without reference to the possibility of protest. Instead, the SBiH used nationalist outbidding to justify its parliamentary opposition, and won the next election based on its actions. The theory appears to be correct that protest is infeasible without a threat to nationalist goals, but it appears that nationalism may be used to block reform in other ways, especially in societies such as Bosnia where ethnic conflict pervades politics.

Evaluation of Alternative Hypotheses

The reform efforts studied provide less support for the three alternative hypotheses. There is only partial evidence that two of the hypotheses – the presence of authority and resources, and the demands of key regional organizations or donors – can explain the trajectory of reform efforts. The third hypothesis, the presence of moderate parties, provides little explanatory power.

First, the record of institution building in international administrations repeatedly demonstrates that authority and resources are not always sufficient for institution building. Even Paddy Ashdown, a major proponent of more aggressively using of international authority, admits that he could not effective impose reforms if the people of Bosnia would publically

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demonstrate. The limits of international authority are also demonstrated by the failure of Miroslav Lajčák, Ashdown’s eventual successor, to use the power of the High Representative to pressure concessions on police restructuring. In Kosovo, the international community’s refusal to progress with status negotiations eventually led to the 2004 riots and concessions from the international community. In East Timor, local elites’ complaints about their lack of inclusion led UNTAET to increase Timorese participation in the government.

Nevertheless, the provision of international authority and resources is effective in certain “technical” reform efforts. In such reforms, it was clear to both local elites and international officials that the reforms would improve the functioning of the target institution, and that the reform did not threaten local elites’ power. Examples of technical reforms include the creation of tax institutions, in which increased revenue would benefit local elites; the conduct of elections, which would improve local elites’ legitimacy; and day-to-day policing, which was necessary for basic security. There is therefore evidence that the technical perspective is most relevant for such technical reforms.

Second, support from key regional organizations or donors was not always sufficient to achieve reform. As the theory chapter explains, many scholars believe that EU conditionality is sufficient to achieve reform. The case of police restructuring in Bosnia clearly demonstrates that fallacy of this claim. EU conditionality could not trump concerns about nationalist goals. Furthermore, the demands of key donors – such as the United States in Bosnia and Kosovo, or Australia in East Timor – could not convince elites to implement reform. Support from key donors did influence local elites in these societies, but were more relevant as a tool for achieving their objectives rather than a constraint on their behavior.

This is not to say that external conditionality is never effective. Indeed, conditionality for accession to the EU and NATO was often helpful for securing reform in Bosnia, and key donors played an important role in East Timor and Kosovo as well. Conditionality was effective only when reforms posed some costs but did not threaten elites’ political survival. Conditionality also relied on the presence of international unity. Without international unity, local elites recognized that they could implement the weakest available demands and still expect political progress.

Third, there is little support for the hypothesis that the international community can manipulate democratic institutions to encourage the election of moderate elites. The continuing importance of nationalism in the politics of post-conflict societies consistently led major parties to campaign based on nationalist achievements. There are also several examples of parties that the international community supported as moderates, but which became more nationalist in campaigns and remained reluctant to implement international demands. For example, the SNSD in Bosnia and the LDK in Kosovo were recognized as moderate parties but did not agree to internationally-demanded reforms and in some ways were more nationalistic than their opponents. Furthermore, political parties can obstruct efforts to build institutions that encourage moderation prior to elections. Roland Paris’s strategy of “institutionalization before liberalization” is infeasible, since in addition to the longstanding popularity of nationalist parties, the empirical record demonstrates that local elites can obstruct reforms that are intended to weaken their power. Moreover, local elites can force more rapid elections by pointing out that delaying elections is anti-democratic.
II. Areas for Future Research

The dissertation has offered a variety of insights for improving our understanding of state building by the international community. Nevertheless, there are at least three areas that deserve further investigation.

First, future work should examine other state institutions, such as education, health, and justice. This dissertation has focused on only a few issue areas, including basic representation, elections, police, military, and revenue. While these institutions are most essential for the functioning of the state, other institutions are also important for promoting the rule of law and economic development. Future work should examine to what extent the theory’s framework and predictions apply to these other issue areas and whether there are major differences between different issue areas.

Second, future work should study the applicability of the findings of the dissertation to state building in post-conflict societies where there was not an international administration. Theoretically, the dissertation may have two different levels of applicability depending on the nature of the post-conflict society. First, the general framework of studying institution building as a negotiation between the international officials and local elites may be applicable. However, the determinants of the reform trajectory may differ from the theory – nationalist goals, informal networks, and international unity will not explain the reform trajectory in all cases. For example, many cases of international development efforts may have a framework of this nature, but different theoretical trajectories. Second, if the theoretical assumptions about the importance of nationalist goals, informal networks, international ideology, and international unity apply, the theory’s predictions should directly travel to other cases. For example, accounts of institution building in Iraq and Afghanistan note the importance of informal networks, the presence of a
similar international ideology, and problems of international disunity in these societies. Future work should examine reforms in Iraq and Afghanistan to determine whether the theory’s predictions do indeed apply.

Third, future work should do more to examine the structure and nature of informal networks. Because this dissertation considers a broad range of reform efforts in a number of different societies, its ability to examine informal networks embedded in particular institutions is limited. Informal networks are more complex, however, and the structure, character, and durability of these networks may influence the feasibility of reform in other ways.

III. Policy Implications

This work has examined the question of when and how the international community can build state institutions in post-conflict societies. It examined international administrations because these are crucial test cases for state building for the technical perspective. The theory’s findings – that state building is limited by the politics of post-conflict societies – are likely to apply beyond international administrations to other interventions, especially when nationalism, informal networks, and international ideology influence political development. These factors are clearly important in societies that have recently experienced civil wars, such as Syria, Libya, Egypt, Iraq, and Afghanistan. By taking greater account of the importance of local politics, of the danger of ideology, and of the problems of international disunity, the international community can significantly improve its ability to assist post-conflict societies. I describe three major categories

of policy implications and draw out more specific implications for future international interventions.

*Optimize Demands*

The theory describes how the politics of post-conflict societies limit the international community’s ability to pursue state building – the international community cannot implement demands that threaten nationalist goals or, if they are not unified, informal networks. Hence, the main way to increase the success of reform efforts is to better match demands to the political constraints of post-conflict society. Making demands that are too weak wastes an opportunity for reform, while making demands that are too strong prevents reform and may provoke a backlash that further weakens existing institutions.

The theory provides specific insight into how to optimize demands. First and foremost, the international community must avoid demands that threaten nationalist goals. Nationalism, the belief that the nation and the state should be congruent, remains powerful in post-conflict societies for all of the reasons specified in the theory chapter – nationalism during the war creates a myth-symbol complex, the ethnic security dilemma provokes continued nationalist identification, the experience of violence makes the mass public susceptible to emotional appeals, and local elites manipulate media and education to maintain the importance of nationalism. Demands that threaten nationalist goals therefore have the potential to provoke widespread public protest. This public protest indicates that the international administration’s demands are contrary to popular sovereignty and thereby blocks the demands. Making demands that threaten nationalist goals is therefore counterproductive for the international community’s broader goals.

One might ask why the international community would even propose such demands. The empirical record of international administrations provides several such examples. In Bosnia,
many international officials sought to (re)establish a multiethnic society and to eliminate the ethnically based political system that the Dayton Agreement created. Many international officials believed that the ethnically based system was discriminatory, segregationist, and based off of genocide. Nevertheless, throughout the international administration in Bosnia, the autonomy of the Republika Srpska remained non-negotiable for many Bosnian Serbs. Bosnian Serbs thereby forced their elite representatives to negotiate accordingly. The international community’s goals of peace, the rule of law, development, and European integration in Bosnia were not served by its desire to establish a multiethnic society. In Kosovo, the international community also threatened nationalist goals by attempting to indefinitely delay Kosovo’s independence, which provoked the riots of March 2004. The international community tends to believe it can alter the content and importance of nationalism in post-conflict societies. This dissertation has demonstrated that the international community’s ability to do so is limited.

Second, the international community should make demands that threaten informal networks if it is unified. As the theory chapter explained, elites created informal networks during the war and these networks remain influential in politics following the end of the war. Informal networks are contrary to the international community’s objectives of establishing a democratic society ruled by law. When the international community is unified, and all international organizations make consistent demands, the international community can compel elites to partially implement their demands. This partial implementation is the best the international community can hope for and has the potential to improve the society in the long term. For example, in Kosovo, UNMIK established a Kosovo Police Service that could address day-to-day crime, even though it could not address politicized crime such as interethnic violence, organized crime, or high-level corruption. Despite its limitations, the Kosovo Police Service had the
potential to strengthen the rule of law in Kosovo in the long term, and represents the successful optimization of demands. On the other hand, the international community should not pursue demands that threaten informal networks if it is not unified. Without international unity in Kosovo, elite obstruction would have seriously undermined the new police institution.

These implications directly apply to current and future international interventions in post-civil war societies. In countries where nationalist objectives remain in doubt, such as Bosnia and Kosovo, the international community should not make any demands that threaten such objectives. In countries where the deployed international organizations cannot achieve unity, such as Afghanistan, the international community should not make demands threatening informal networks. Attacking corruption and patronage, for example, will threaten the incumbent elite and provoke them to privately obstruct reform and weaken the target institution. Instead, the international community should seek to reform state institutions to strengthen their ability to carry out tasks that are mutually beneficial to incumbent elite and the international community, such as day-to-day policing and revenue collection.

_Improve Unity_

The theory emphasizes that international unity is essential for achieving successful reform, especially if there is elite obstruction. One could simply urge international organizations to engage in better coordination and work harder to come to agreement about demands. Such calls have been made in the international development literature for several years, but there has been little improvement in either unity or coordination.  

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The theory chapter observed that unity was most affected by three factors: whether the international administration is hierarchically or horizontally organized, the ability of the international administration to delegate responsibility, and the presence of good leaders. The most malleable elements are creating a hierarchically structured administration, and clearly delineating tasks to different organizations. When international organizations lack a clear hierarchy, organizations will tend to compete in order to gain resources and influence. When international organizations have an overlapping mandate, they frequently develop disagreements about which demands to make. Avoiding these two problems when designing international interventions will greatly improve international unity.

While this policy implication may seem obvious, it has not been followed. In Kosovo, for example, in the post-2008 restructuring of the international administration, the new administration was less hierarchical and organizations had overlapping mandates. Prior to 2008, UNMIK was hierarchically organized, and the SRSG had final authority over all decisions the international administration made. Following 2008, certain international organizations in Kosovo recognized the independence of the territory while others were neutral about Kosovo’s status. None of the status neutral organizations would follow the leadership of the International Civilian Representative, whose office officially recognized Kosovo’s independence. Multiple organizations, with fundamental disagreements about their mandates, were therefore making different demands of some Kosovo institutions. For example, the EU Rule of Law Mission (EULEX), the OSCE, and the International Civilian Office (ICO) were all responsible for improving the police institutions in Kosovo after 2008. There were clear overlapping mandates and no hierarchy between the organizations. The result was unclear demands to local elites and
the general failure of police reform following 2008. These problems happened despite the apparent “lessons learned” about disunity in Bosnia.

Improving International Officials’ Local Knowledge

The final policy implication is to improve the knowledge of international officials of the society they are working to improve. Greater understanding of the politics of post-conflict societies will enable these officials to optimize their demands, in accordance with the first implication described above. International officials are often selected based on technocratic skills related to the bureaucracy of international organizations, rather than knowledge about the society they were trying to build. To improve the local knowledge of international officials, I urge a fundamental shift in the training, selection, and deployment of international officials away from quick rotations and general knowledge, towards long-term deployments and deep engagement with the target society. These suggestions align with those of Rory Stewart, who identifies certain characteristics of colonial administrations that are worthy of merit. Stewart urges “reform of ‘the corporate culture’ of international bureaucracies to allow the recruitment, retention, and promotion of … ‘a cadre of superior officers who are willing and interested to serve extended tours out there.’” Two specific measures would be especially productive for achieving this goal.

First, instead of one-year deployments, officials should be deployed for at least a two-year period. While this recommendation applies for all levels of international officials, it is most relevant for senior leadership positions. For example, two of the most effective leaders of international administrations, Paddy Ashdown and Sergio Vieira de Mello, were deployed in their positions for three and a half years and two and a half years, respectively. Longer periods of deployment enable the leaders of international organizations to develop a better understanding of

the politics of the post-conflict society and creating stronger relationships with local elites. To be sure, longer deployments are not a panacea – Ashdown’s least successful reform effort came at the end of his tenure. Nevertheless, they are the best hope for enabling international officials to understand post-conflict societies and optimize their demands accordingly.

Second, international officials should be selected more for their knowledge of the relevant society than for possessing general technical or bureaucratic skills. In several reform efforts, interviewees lamented that international officials had been selected based on their skill at navigating the international bureaucracy, rather than their substantive knowledge of the society that they were trying to build. Lack of language skills and cultural knowledge prevented international officials from understanding the perspective of local officials and from rendering effective training and mentoring.