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Following Foucault's continuum between war and law in Kosovo: 'hybrid policing' and selective criminalization in international policing

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Abstract: This article examines the case of Kosovo as an important precedent in the development of practices of policing beyond borders—whereby military and policing practices are extended beyond borders with the aim of producing security at a distance. It examines how these practices, led by the global north, implemented as a result of humanitarian military interventions actually worked locally in Kosovo, placing it in the wider theoretical context of Foucault's work on the continuum between war and law, and critically challenging the representation of the international as a space of law and justice (MacMillan, 2016). It argues that even if the representations of crime and justice have a crucial function in expanding practices of policing beyond borders, contributing to exporting liberal forms of criminal justice to foreign countries to build peace and a liberal society, and support for international criminal justice, the results are far from straightforward. It suggests that these practices of policing beyond borders may be contributing to the production of hybrid forms of policing in which violent contestations to policing and criminalization are prevalent, rather than integration of different forms of justice. This aspect be the re-emergence of war within legal processes but may also be seen as attempts to void the establishment of the liberal peace and of law.

Introduction

Twenty years ago, in March 1999, NATO countries militarily intervened in Kosovo to protect the ethnic Albanian population who were under violent attack from Serbian leader Slobodan Milosevic's armed

forces because they were trying to retrieve some level of the autonomy taken from them in 1989¹. The International Community (IC) reacted against Milosevic's attempt at ethnic cleansing following humanitarian ideals and appealing to human rights norms. After the previous failure of the IC to stop violence in Bosnia, the public had widely agreed such atrocities should never happen again. Consequently, NATO intervened. However, the rhetoric that authorized the military intervention was strongly centered on the need to intervene to react against the gross human rights violations to protect the ethnic Albanian population. Human rights were used as global norms through which to censure Milosevic's actions; i.e. they were used to signal 'crimes' in a Durkheimian way (Aitchinson, 2013) to mobilise solidarity in the global audience and to legitimate the Global North's (GN) reaction.

A 78-day NATO bombing campaign led to a peace agreement and the withdrawal of Serbian forces. International actors were deployed and took on the role of policing authorities protecting Kosovo Albanians. Further, local police forces were trained in liberal policing principles and crime was punished as a way of shaping scales of justice. Through intervention, the GN aimed to export the rule of law and liberal peace in Kosovo, shaping its Constitution and its criminal justice system. The province autonomously announced its independence as a state in 2008; although its status is now recognised by 116 states worldwide, it remains contested by others, including Serbia and Russia. Kosovo is currently attempting to establish its defence forces.

Some scholars say such military interventions can introduce liberal peace and democracy into foreign cultures that were not previously democratic (Dobbin et al, 2003; 2008; Bayley and Perito, 2014). Others argue they are simply exporting the neoliberal project to the periphery of the global market economy in ways that merge security with development to govern surplus populations (Dillon and Reid, 2009; Duffield, 2007; Neocleous, 2014). In criminology, many have pointed out how these operations export Western policing and criminal justice expertise to foreign territories as a central component of 'state-crafting' (Goldsmith and Shepycki, 2007; Ellison and Pino, 2012) suggesting they also aim to produce 'security at a distance' (Aas, 2012; Abrahamsen and William, 2009). Practices of exporting criminal justice and policing expertise are criticised for adopting a 'one style fits all' (Pino and Ellison, 2012) approach, mostly denying or overlooking local cultural heritage. Such practices are also considered contradictory, as their neo-liberal policies undermine the same state power they are meant to build (Ellison and Pino, 2012). Importantly, these exercises, often based on the reform of the security sector (SSR), are now seen as tangentially contributing to the development of global and transnational policing (Goldsmith and Shepycki, 2007; Bowling and Sheptycki, 2015; Ryan, 2013).

Building on these insights, I follow the military intervention in Kosovo as an attempt to bring justice to bear on human rights violations. I also argue it represents a continuum between war and law (qua Foucault, see Degenhardt, 2013). I review the extensive literature on the structuring of the state following the military intervention and place it in a wider theoretical context, suggesting it is characterised by a form of hybrid policing in which violent challenges to the rule of law and human rights are evident. I suggest the criminalization of Milosevic's violence was crucial in the expansion of international policing practices, and I review those practices of policing and criminalization of war for their effects on the ground. By so doing, I suggest the Global North has brought its neo-colonial power to bear on the Eastern borderland, first through military force and then through law and policing. I review some of the problems that have emerged in Kosovo as a result of the incorporation of militarised policing and the inclusion of former combatants within the institutions of the state. I challenge the representation of the international as a space of justice and law (MacMillan, 2016) and posit a continuum between war and law (Foucault in Degenhardt, 2013), thus illustrating some of the difficulties involved in exporting policing and criminal justice into post-conflict societies.

By International Community² (IC), I refer here to the Global North's representation of itself as an imagined political community acting in the name of 'humanity', especially through reference to human

¹ The history of Kosovo and its quest for autonomy is long and complex. It is not within the scope of this article to cover it. Briefly stated, Kosovo – mostly populated by ethnic Albanians – became part of Serbia in 1913 and part of Yugoslavia later on; in that context, it became an autonomous province in 1974; Milosevic took away that autonomy in 1989, tapping into Serbs' grievances in the region; the loss of autonomy led to extensive protests, culminating in the armed conflict in 1998-1999.

² The term international community is often used in UN political speeches and debates and is exposed in international relations as representing imperialist humanitarian interventions (see Chandler, 2006). This specific characterization is mine.

rights norms. When I speak of Global North (GN), I think of the most powerful states globally (especially the US and Europe, but also Canada and Australia) who support a Western liberal agenda, but I include actions taken by inter-governmental agencies (e.g. UN, NATO, OCSE, EU) influenced by these states, along with private actors within these states, and international non-governmental organizations. In other words, as I see it, these actors are involved in an imperial constitutional project in which certain powerful states – those in the GN - dominate the agenda internationally, even if they portray themselves and their actions as products of ‘the international community’. These states who call themselves the International Community are, in fact, mostly representatives of the Global North³. I use the term liberal peace to refer to practices of exporting democratic institutions, mostly centred on building institutions of criminal justice, along with human rights norms and rule of law, as central tools to establish democratic states and facilitate security and stability within and beyond the state.

I first present a theoretical overview placing transnational policing and the hybrid nature of governance in post conflict societies within a broader literature on changes in forms of war and the continuum linking the military and the police. Then I analyse how the military intervention in Kosovo led to the organisation of policing through networks and layers of global and local militarised forces, not all committed or able to respect liberal peace principles. I follow this by explaining how the label of criminality triggered some violent local challenges and how it was applied selectively as a result of the GN preoccupation with security and stability.

Placing hybrid policing in wider theoretical context

As frequently noted in the literature, war has assumed a new format (Kaldor, 1999; van Creveld, 1991). A growing number of conflicts around the globe do not resemble the model of warfare by which one state confronts another. Rather, conflicts are increasingly internal to the state, or across states, with external military forces intervening as policing forces with the role of establishing internal order (Mueller, 2004; Holmqvist, 2014). Military and police forces are increasingly placed on a continuum, as some wars are criminalised through notions of war crimes, crimes against humanity and, in general, gross human rights violations, whilst other wars are launched as policing operations. This context is compounded by a discourse in which sources of insecurity are no longer confined by national borders and variously comprise international terrorism, criminal organisations, and drug trafficking, together with political instability, wars, and rogue regimes’ violence (Bigo, 2005: 5). To be sure, the blurring of the distinction between the use of police inside and the use of war outside the state is not a new phenomenon (Neocleous, 2014). It is typical of colonial contexts (Brogden, 1987) and a feature of the war on crime in the US (Beckett, 1997; Parenti, 1999), now intensified by the war on terror (Huq, and Mueller, 2008).

Along similar lines, I have previously argued in this journal that war and crime can be seen as placed on a continuum, as both shape the social order (qua Foucault in Degenhardt, 2013). The identification of criminality is useful to the legitimation of forms of power and to the control of the population. In his work, Foucault shows the continuity between the military and the police in practices against the enemy and the criminal. In that context, law is not the product of consensual politics but the product of victories and battles (Foucault, 2003).

The case of Kosovo is a very interesting example to review, as 20 years have passed since the military intervention by the IC. Moreover, this GN effort to export human rights norms, policing, and criminal justice was the first to be legitimated for humanitarian reasons post-Cold War and the first to deploy multinational policing forces in an executive capacity. It remains an excellent example of crafting of transnational policing after a war, illustrating Foucault’s point of the continuum between military might and the determination of law.

Katja Franko Aas suggests we trace exports of criminal justice and police expertise to understand new processes of ‘security at a distance’ (Aas, 2012). By security at a distance she means a modality of

³ To be sure, the Global North should not be seen as a homogeneous territorial and ideological entity. Although most of the global power and wealth is concentrated in the GN, these states are increasingly marked by pockets of poverty and social exclusion. This is mirrored in reverse by the notion of the Global South, which should not be seen exclusively as those states in which poverty and exclusion are located, but as locations with small sections of wealth and privilege (Duffield, 2014). Put otherwise, all states should be seen as traversed by networks of power and control and networks of dispossession and exclusion that extend beyond the state territory.

establishing security beyond borders through the conjunction of networks of transnational policing and military forces across states and institutions, public and private actors, concurring in the re-drawing of the scales of justice within the international, whilst, at the same time, re-shaping what is global and what is national (Sassen, 2008). Drawing on these insights, and the ones on the emergence of forms of transnational policing linked to military actions (Holmquist, 2014, Ryan, 2013), I trace the conjunction of the GN humanitarian military interventions with crime control policies exported in the local context as a way to im/export forms of liberal policing laws on human rights and liberal norms in post conflict societies. I suggest that by looking closely at how these practices are implemented, tracing how lines of power are established, negotiated, and challenged on the ground, we can see the tensions created and the derivation of what some scholars call hybrid forms of policing (Boege, Brown, and Clements, 2009; Baker, 2013; Albrecht and Wiuff Moe, 2015).

Western intervention may result in 'hybrid political orders' or 'hybrid peace' in which previous customary traditions, kinship relations, and emerging warlords or other groups and forces may co-exist and intertwine with Western states institutions, at times competing for the resources and fostering a different style of peace (Boege et al, 2009, MacGinty, 2010). Hybridity is a term that comes from post-colonial study, and it challenges the notion of cultural essentialism. Hybrid policing suggests the presence of multiple actors in the provision of security and the existence of different modalities of policing. Some modalities comply with the policing introduced by the Global North, and others resist, adapt, or even subvert it (MacGinty, 2010). Hybrid policing is sometimes seen as linked to the notion of plural policing (Johnston, 1992; Loader, 2000), but if plural policing emphasises the co-existence of public and private actors in policing, the notion of hybrid policing (Baker, 2013) is linked to the presence of simultaneous forms of authority (Albrecht and Wiuff Moe, 2015) or the interpenetration of alternative forms of policing with the incorporation of local non-state actors or former combatants within the liberal institution of the state. The notion of hybrid policing is generally used with reference to Africa and Asia, but I argue it sheds light on policing in post-conflict Kosovo.

In the next section, I illustrate how policing was introduced into Kosovo by the Global North as an attempt to export the rule of law and democratic policing. I highlight some of the contradictions and challenges.

The Global North's architecture of policing? The use of militarization, hybrid policing and violence against minorities

At the end of the bombing campaign, Serbian forces were made to withdraw immediately. Given its previous policy of ethnic cleansing, the Serbian policing system was obviously inadequate. In addition, Serbia was a Communist country and, as such, its policing practices and laws were undemocratic by definition.⁴ NATO forces (KFOR) stepped in to provide security (NATO Technical Military Agreement, 1999; Bayley and Perito, 2014). These troops were granted exceptional authority: not only did they have immunity on the ground, but the military commander had ultimate control over the interpretation of the agreement. The UN, despite not having formally taken part in the military campaign, contributed to the effort by providing forces to set up an interim administration with the aim of constructing effective democratic institutions and developing the economy, the two pillars of liberal peace (UNSC Resolution 1244, 1999). At this point, Kosovo did not have its own police⁵ and as policing is seen as a central component in the deployment of peace-building practices⁶ and in the establishment of liberal democracy

⁴ I do not deny that practices of policing in Serbia were corrupt. My point is that the whole previous apparatus was seen as violating human rights just because it was different (Mertus, 2004). While some Kosovars, who had also engaged in paramilitary activities, were allowed to keep on policing their country, Serbs were viewed with suspicion, at least initially. Only at a later date (especially in the northern province where the majority of the population is Serbian) were some Serbs reinstated, as a way of guaranteeing the rights of the Serb minority and the legitimacy of the IC plan.

⁵ Police in Kosovo traditionally constituted Serbs especially after Milosevic took the area's autonomy away in 1989 (Green, Freedman, Bennet, Foreign Policy, 2012); they were responsible for a number of violations of human rights; for this reason, these forces had to withdraw, under UN SC Resolution 1244.

⁶ Since the Butros Ghali Report (1992), peace-building interventions have been linked to state building as a way of providing the institutional framework to forestall violence. The Brahmini Report (2000) goes a step further by pragmatically suggesting interventionist efforts should centre on building the police forces and the security sector.

after conflict (Goldsmith, 2005), these international actors stepped in with their own forces to act as police services for the people of Kosovo. In Kosovo, these international actors exercised full policing authority and executive control of the territory as a result of the military intervention (Bayley and Perito, 2014),⁷ manifesting the sovereign power of the GN in a foreign territory and epitomising a new modality of transnational policing by which multiple states forces, representing the international community, were *de facto* responsible for policing a specific territory.

Local police training was organised by international organizations following the paradigm of what is now known as 'democratic policing'. The paradigm's stress on human rights and protection of the public (Bayley, 2001; Dobbins et al., 2008) makes it a pillar of liberal peace. The training of the police was regarded as a success story for the length and modalities of the training, the inclusion of women and minorities, and the consideration of human rights and gender issues (Bayley and Perito, 2014: 460; Neill, 2012; Dobbins et al., 2003, 2008; for a contrary view, see Rausch, 2007). At this stage, many considered Kosovo a success story in terms of democratizing policing forces.

Even if considered by some to be oxymoronic, democratic policing is generally seen as important in the reform of policing abroad and as a paradigmatic form of 'practicing the rule of law' and importing human rights norms (Call, 2007; Bayley, 2001). Democratic policing refers to a police force that respects human rights norms, is accountable, and serves individuals and groups rather than the government, attending to the rule of law (Manning, 2010). In this framework, policing and military tasks are characterised as fundamentally distinct: the former uses minimum force and the latter maximum force in the exercise of its operations (Brodeour, 2010; Bayley, 2001; Bittner, 1970). This understanding is mostly ideological, however, and many scholars have highlighted the military-police continuum in colonial contexts and beyond (Brogden, 1987; Brodeour, 2010; Neocleous, 2014). Police forces can be lethal inside the state (exceptional cases), and military violence can be minimal outside (counter insurgency). Nevertheless, peace building operations are often based on the idea that training forces in democratic policing is necessary to guarantee human rights to the local population (Pino and Ellison, 2012).

In Kosovo, this distinction was not maintained on the ground. Even though training in democratic policing did indeed take place, police with paramilitary status were deployed as well, following what Ryan calls 'a hallmark of such military interventions' (Ryan, 2011). The military is seen to add strength (and possibly spectacle and drama) to the performance of authority (Hansen, 2002), while the police add 'rationality' or 'consent' to the exercise of force (Ryan, 2011). This was the case in Kosovo, where because of issues of an 'enforcement gap'⁸ in the prior intervention in Bosnia, military and civilian forces had to cooperate from the start. In fact, they had virtually indistinguishable roles, pointing to the colonial dimension of these practices and the contradiction engrained in the project of crafting democracy and democratic policing in post-conflict societies.

Militarised forces were accused of failing to uphold human rights standards in their policing function and in the maintenance of order. For example, on 13 February 2000 in response to a shooting in the area of Mitrovica, they detained 49 people, including two juveniles, for five days in a freezing and unsanitary gymnasium, without informing them of their rights, giving them access to lawyers, or notifying their families (Amnesty International, 2000). In another case, NATO American soldiers used live ammunition to disperse a crowd at the Serbian border (McLaughlin, 2011). The lofty ideals of human rights the international is meant to uphold were not always followed or indeed never materialised in the practices of these militarised forces.

Despite the 'reinforced' dimension of policing, GN forces also failed to enact their policing capacity when they had to protect the population. Immediately after the Serbs had withdrawn, a violent campaign led by hard-line Albanians against the minorities, mostly Serbs and Roma, attacked moderate Ibrahim Rugova's Democratic League of Kosovo, enacting what some scholars call 'ethnic cleansing in reverse' (Hansen, 2002) or 'commercial evictions' so that the new elites could 'acquire' their preferred accommodations (Barth Eide, 2000; Bennet, Friedman and Greene, 2011; O'Neill, 2012; Innovation for Successful Societies, 2011). Even though the political leaders denied their involvement, the level of

⁷ Until this point, CIVPOL was used only to monitor, assist, and train local police forces.

⁸ In Bosnia, issues of the different competencies of the military and the police led to 'enforcement gaps', i.e. a lack of response in crucial violent situations. In Kosovo, NATO forces (KFOR) were to help the UN police mission (UNMIK) and step in if needed in issues of law enforcement traditionally seen as related to civilian competency.

organisation of the violence suggests otherwise: up to 50 people were killed every week (Janssens, 2015: 106; Rausch, 2007: 276; Hansen, 2002: 90). If this was indeed the case, some extremist elements of the forces who had won the conflict (Kosovo Liberation Army) engaged in the use of violence, a form of 'policing' ultimately aimed at establishing a specific political rationality that can hardly fit within a liberal paradigm and the idea of human rights or protection of minorities. Even if these attacks can somehow be seen as violence the international policing forces were not prepared to face, the violence of 2004 cannot be seen in the same way.

In 2004, violence against Serb, Roma, and Ashkali minorities again flared up following the 'inflammatory news reporting' of the alleged drowning of 'at least two' Albanian children in the Ibar River, in the Mitrovica region, and the possible prior killing of a Serb youth in Pristina region (UNSG Report 348/2004). The result was 19 people dead, 954 wounded, 4100 displaced, and 730 houses and 36 Orthodox Churches destroyed (UNSG Report 348/2004). NATO military forces (KFOR) and UN police (UNMIK) not only failed to stop the violence, leaving minorities unprotected; they too were attacked: 65 police officers were killed, and 58 Kosovo Police Service officials and 61 KFOR were injured. The violence seemed to be an effort by some KLA members 'to drive out Kosovo Serbs' (UN SG 348/2004: 14, see also HRW, 2004). According to the UN Secretary General Reports, it followed the arrest by UNMIK forces of former KLA combatants in conjunction with war crimes (UN SG 348/2004). If that is true, these acts manifested the discontent with the international presence and law, and raw violence was used to manifest another form of order.

Kosovo political leaders did not condemn the violence. Rather they used it to request independence and the transfer of operations from international forces, suggesting the incidents were the result of ethnic hatred and the double structure⁹ (UN SG 348/2004). The violence was eventually halted by the intervention of one KLA commander (Janssens, 2015), thus exposing the weakness of the international actors and the level of control of former combatants (ICG, 2004; HRW, 2004).

Local and the international forces failed to use their enforcement capacity to protect minorities in this instance. It further appears that some elements of the new policing forces not only did not intervene to stop the violence against minorities but also seemed to have contributed to it (HRW, 2004; UN SG 348/2004). Once again, the violence can be seen as a form of policing that integrates raw force and brutality to fight against 'political opponents'. In spite of a number of arrests, nobody was charged, mostly because the witnesses were reluctant to testify (UN SG 2006/70).

These violent outbursts may partly be explained as the result of hybrid policing, given the inclusion in the new police of former combatants. After conflict, an important task in the maintenance of peace is the decommissioning and demilitarisation of paramilitaries (SC Resolution 1244, 1999). The Kosovo Liberation Army (KLA) who had fought to defend the ethnic Albanian population during the conflict were privileged actors with the GN both during and after the conflict. They were enrolled in the GN's tactics of 'governance at a distance', despite KLA's relative unpopularity (Hainemann-Gruder A and Paes, CW, 2001, ICG, 2001)¹⁰, and to the detriment of the non-violent movement that won the first post-conflict election (Marsavelsi, Sheremeti and Braithwaite, 2018).¹¹ As a way of overcoming KLA resistance to decommissioning, as many as 50% of KLA former combatants were allowed to join security forces (Janssens, 2015; O' Neill, 2012; Innovation for Successful Societies, 2011; Bekaj, 2010). As a result, KLA combatants were *de facto* incorporated into the formal structures of control of the population the GN legitimated in Kosovo.

This enrolment of the KLA by the GN happened in spite of knowledge of KLA involvement in criminal activities and the drug market in Europe (Cencich, 2013). Extra-legal activities are generally considered part of contemporary wars (Kaldor, 2012) and, to some extent, they were a relevant part of the state economy during the socialist regime (Strazzari, 2008; Strazzari and Kamphuis, 2012; Arsovska, 2015). Trafficking allowed access to goods when there were no alternatives. During the war, such activities became crucial to survival. The war business created large and profitable networks, linking well-

⁹ They refer here to the presence of Serbian institutions in the North of Kosovo.

¹⁰ In the first elections, Rugova's LDK party won 58% of the votes, whilst Thaci's PDK won only 27.3% (Hainemann-Gruder A and Paes, CW, 2001)

¹¹ The selection of KLA as collaborators on the ground has two possible explanations: on the one hand, the IC's focus on abuses and violations led to an adversarial understanding of human rights and justice in Kosovo (Mertus, 2004). On the other, the Coalition fought together with the KLA: The Coalition provided aerial forces and the KLA ground troops. It is military practice to support the most convenient group to advance one's goals.

known criminals abroad to some combatants, and the KLA was a key part of these mechanisms. Yet the GN agreed to the KLA role in the governance and policing of Kosovo. In effect, the GN allowed the group to assume authority at different levels in the newly founded state. It was a simplistic solution to the thorny question of governance in a post-conflict society¹² and the difficult matter of decommissioning of former combatants in a post-conflict transition. This solution *de facto* enabled the establishment of a network of different policing forces that can be seen as an example of hybrid policing, the product of hybrid peace, but one in which the aim of governance and security trumped that of the rule of law. Rather than seeing these as positive forms of integration of different forms of authority or modalities of doing justice, I suggest they are deeply problematic.

These arrangements are not unusual in post-conflict societies, as the issue of reintegration of paramilitaries is among the most difficult to pursue. We can see how the GN military intervention aimed to contribute to the establishment of some form of liberal policing, but when we look more closely, we see forms of policing through raw violence to secure a specific ethnic national project, presenting the network of transnational policing as the hybrid product of negotiation between various actors, not all of them aligned to the lofty ideals of a liberal peace. Recent literature has suggested most practices of international intervention enrol a number of private actors and different organizations to govern at a distance, sometimes rendering the implementation of the aims of intervention more complex and difficult (Duffield, 2000; Abrahamsen and William, 2009). Yet it is evident that in Kosovo, the involvement of former combatants in the policing system not only made the implementation of democratic policing more complex, but even challenged it.

Fractures in the fabric of international policing: abuses of use of force and different policing cultures

As noted previously, the notion of hybrid policing is usually reserved for post-conflict situations and countries receiving police assistance in Africa and in Asia (Bagayoko, Hutchful, Luckham, 2016; Baker, 2013). It typically refers to the presence of local traditions of doing justice that may be accommodated or used to grant legitimacy to the international intervention. It usually makes a clear distinction between local and international, where local is seen as spatially and temporarily remote, and international is universalistic. I suggest the network of international policing forces involved in Kosovo may be similarly characterised by 'hybridity': i.e. the result of encounters of different policing cultures and practices, challenging the view of a 'liberal' Global North as representative of universalism and human rights.

For one thing, the international forces in Kosovo included troops from many different countries which do not easily qualify as liberal democracies (e.g., Cameroon, Bulgaria, Bangladesh, Ghana). The result was a hybrid policing system, as the international forces were characterized by different levels of sophistication in democratic policing and were driven by different understandings of what policing required or indeed offered them. Even recruits from well-established democracies might well have lacked the required skills for policing or become involved in actions that were not purely and simply devoted to upholding human rights. For example, the UNMIK Police Commander noticed some were not interested in contributing to the mission: 'They were there as a result of kudos back in the home country to be involved in a mission and it was also very financially attractive for officers who were poorly paid in their home countries...they had not wish to be involved in policing and they had to be led and pushed and prodded into actually working' (Kearney, 2015: 229). A Police Commissioner remarked: 'A few American officers who had basically done five years as university campus security guard and were turning up in a place like Kosovo and all they really had to rely on was their gun and a loud voice and the result was not nice to watch' (ibidem: 230). Many officers had very limited experience and had not joined the mission on the basis of their expertise. In many cases, officers would earn in a month more than they would earn in a year at home or they would be allowed to quickly rise in rank (Kearney, 2015).

This meant the international police forces did not always follow the same rules. More crucially, they were not held accountable if they failed to attend to human rights norms. They followed different normative regimes, often the ones they knew best (Janssens, 2015: 127), with frequent differences in

¹² The issue of governance post-military intervention and during reconstruction is not new; scholars suggest that in Japan, the post-WWII solution of keeping the Emperor in power for a short transitional time represented the first instance of such an attempt (Dobbins et al., 2003).

the use of force (Kearney, 2016). For instance, the Norwegians and Swedish were seen shooting in an attempt at crowd control; in the same situation, the Irish tried to form a line but lacked tear gas and water cannons (MacShane, 2011: 78). In one case, two Romanian officers killed two demonstrators, as they were not using rubber bullets properly (Amnesty International, 2009). In general, many among the international forces were prone to use force in ways that contradicted and violated the principles of the rule of law for which they were actually deployed.

To the local population, the international mission was characterised by a lack of accountability. As one person commented: 'The mission had a reputation for drinking coffee and not doing a lot of work. By the way in which they measured it, you could show progress every week, every month and actually never have any chance of delivering the overall outcome' (interview with head of Eulex, Kearney, 2015: 224). Kearney suggests the presence of 'mission junkies' whose lives revolved around a mission, who would lie, and who showed no desire to demonstrate progress as progress would mean no job left for them (Kearney, 2015: 223). The two Romanian officers who killed two demonstrators were simply repatriated, leaving the local population with a strong sense of injustice (ibidem: 230). In general, officers were accountable only to their nation state.

Worse yet, some international officials who were meant to be ambassadors of the rule of law, members of the UN police forces (UNMIK) and NATO (KFOR) were involved in trafficking and illegal activities, notably sex trafficking (Rausch, 2007). Similarly, the EULEX mission was under investigation for corruption in 2014; it was solved internally, so we know few details (Borger, 2014). The modality by which policing was exercised by international forces was far from the ideal of exporting the rule of law.

Conflict between international actors was also common. Functionaries and officials had different understandings of the meaning and extent of organised crime (Friesendorf, 2011). In fact, fighting crime became a 'turf war', with the various agencies fighting for primacy, both inside the state structure and within the international mission (Janssens, 2015: 160). International organisations did not always share information because of a well-established suspicion of other countries and different organisations. The military NATO units (directed by France, UK, US, Italy, and Spain) often privileged their relationship with their own countries, sending information to their central units, rather than sharing it with others in the communal effort of policing and producing order. In one instance, NATO forces raided a brothel without informing UN agencies, even though the latter organisation was investigating it as well (Friesendorf, 2011: 55; see also Ryan, 2011). This example sets the authority of NATO in direct conflict with that of the UN, despite their theoretical alignment in the context of the reconstruction and policing of the country.

Resentment of some organisations' involvement in law enforcement was another issue. For example, the EU was not happy with the NATO involvement in criminal investigations, again highlighting the tensions and conflicts between policing units. Conflict and tensions were typical among different logics of policing and different policing actors, as was competition among multiple authorities fighting for political primacy, reviving statist and organisational logics, and, at times, local ideas of group membership.¹³

Rather than setting an example of how transnational policing ought to be done, in Kosovo, the network of policing forces was marked by fractures and tensions, showing the simultaneous presence of multiple sources of authority and cultures – in short, displaying the downside of hybridity. To conclude, hybrid policing is often a notion reserved for the characterization of policing in which local and traditional forms of doing justice are present in countries subjected to police assistance. In the case of Kosovo, the international forces meant to represent the universal and export ideals such as the rule of law and human rights suffered from the co-existence of different cultures and practices that were not easy to coordinate and had some dubious consequences. As I will show in the next section, tensions and fractures were also evident in the process of accounting for crime.

The Global North's pursuit of crime: challenges and strategies

As mentioned previously, the call to sanction human rights violations was crucial to the expansion of policing practices in Kosovo. Milosevic was the first head of state labelled a criminal after the end of the

¹³ This complication was exacerbated by the turnaround in personnel.

Cold War; as a result of the GN military intervention and subsequent negotiations, he was brought to court and questioned by the International Criminal Tribunal for the Former Yugoslavia (ICTY). This Tribunal can be seen as a milestone in the establishment of a system of international criminal justice, culminating in the creation of the International Criminal Court. Milosevic died before he could be charged for his crimes and human rights violations in Bosnia and in Kosovo. Yet the referral to the ICTY contributed to the criminalisation of human rights violations and the representation of the GN as some sort of policing authority within the international. This crime framing allowed the GN to police the territory of Kosovo and permitted a very selective interpretation of what kind of violence was to be scrutinised as criminal – the topic of this section.

The Kosovar military campaign was supported to stop Serbia's violent actions and human rights violations, with the GN's military intervention considered necessary for to protect vulnerable populations and prevent a humanitarian catastrophe. Milosevic, of course, needed to be stopped for killing minorities within Kosovo, but in its attempt to confront violence, NATO bombed and killed, causing what at that time was considered 'collateral damage'. This aspect of the campaign was recognised as illegitimate by some parts of the global population (Mandel, 2005), but never enough to question the actions of the GN leading the intervention. For the most part, the understanding was that all possible strength should be mustered to stop Serbian violence; human suffering required prompt intervention. In other words, the GN was sanctioning international crimes in Kosovo. This enabled the GN to enter Kosovan territory, almost taking it under GN jurisdiction, as it arrogated onto itself the capacity to tell right from wrong within that territory. In effect, by labelling Serbian violence a human rights violation and Milosevic a criminal, the GN extended its authority by arrogating jurisdiction. It not only enabled and legitimated forms of transnational policing in the local territory, as mentioned in the previous section; it also led the restructuring of the local criminal justice system. Kosovo was thus *de facto* policed and governed at least initially by international actors.

As Kosovo was seen as a 'hotbed of violence and organized crime' (Friesendorf, 2011: 47; Rausch, 2007) and lacked an autonomous criminal justice apparatus, the international organizations assumed greater responsibility. Crimes were divided into those relevant to the international community and those important to the local community, creating different scales of justice and representing the two as hierarchically constituted.

NATO and UN forces were assigned to serious crimes, such as ethnic violence and incitement to public disturbances (Rausch, 2007). The UN was in charge of the Organised Crime Directorate, the Central Investigation Unit, and was allowed to intervene through the Special Representative of the UN Secretary General in recalcitrant cases (Ryan, 2011: 81). When the EU assumed leadership of the GN mission through the European Union Rule of Law Mission in Kosovo (EULEX) in 2008,¹⁴ it retained jurisdiction of organised crime, terrorism, corruption, economic crimes, war crimes, and inter-ethnic crimes (Eulex, 2008, art 3). It also retained the power to intervene and the leadership of crucial agencies, showing the greater executive power of the GN and its presumed effectiveness in administering criminal justice. All other (lesser) crimes could be assigned to the local. As a result, the state of Kosovo was constituted by scales of justice, even if its criminal justice system was supposedly structured around human rights norms. The GN was seen as attending to issues of global concerns and higher level forms of criminality, and the locals were assigned minor and local issues. The sphere of justice was thus hierarchically constituted as layered according to a familiar topos of globalisation (MacMillan, 2016), with the Global North directing the game of justice and the locals learning from it.

Yet the international actors seem to have occasionally used justice selectively – as a tactic, if you will, not necessarily to export the rule of law, but rather to manage and guarantee governance. Capussela, former economic director of the International Civilian Office, laments in a recent study that the UN forces (UNMIK) 'generally declined to administer justice in sensitive cases. On all matters of importance, the judiciary was essentially employed as an instrument to strengthen the mission's hand in negotiation with the elite, or more rarely, to arbitrate conflicts between its factions' (Capussela, 2015:44). In his analysis of cases of war crimes allegedly committed by Kosovo elites, Capussela finds only three were prosecuted out of the 2,000-3,000 war crimes reported in the 1999-2000 period. Similarly, when 1,187 cases were transferred by UNMIK to EULEX, only 15 prominent ones were actually initiated, and this was only after it became clear they would have been exposed anyway. In one case,

¹⁴ EULEX is an EU agency dedicated to establishing the rule of law.

EULEX advanced the interests of the local government in accessing privatisation proceedings by removing the Central Bank governor who was against it, on the basis of some rather dubious allegations, which were eventually cleared (Capussela, 2015:122). Capussela believes the GN was afraid the elites would create instability. He claims the general population lost trust in the international mission because of its inability to challenge criminality. In the eyes of the people, UNMIK specifically and the GN in general became *de facto* components of Kosovo elites, abandoning the aim of accountability and opting for appeasement to exercise some degree of control (Capussela, 2015: 53-54). To Capussela, this reveals the weakness of the international mission. If Capussela's analysis is to be trusted, this suggests the order the GN constituted in Kosovo was not necessarily that of a superior GN in charge of establishing the rule of law. This conclusion is echoed by a Kosovar politician, who says of EULEX:

When they say the rule of law, they do not mean much justice or rights. They rather mean stability and security...they use justice as a mechanism for discipline to make obedient our politicians, to keep them as submissive, instance in the power structure rather than to bring in justice. That is the reason why they fight organised crime or when they fight corruption they neither touch parallel structures of Serbia nor high officials of our institutions because their first and last goal is stability. (Kearney, 2015: 239)

Again, these examples signal how human rights and liberal norms on criminality were imported only selectively by the GN: security and stability were more important.

The Global North may have been aiming to pursue war crimes and crimes against humanity in Kosovo, but the results were not straightforward. The ICTY set out to condemn crimes committed during the conflict. It was important to at least attempt to account for war crimes not only committed by the Serbs but also by the ethnic Albanian during the 1998-99 conflict to demonstrate to Belgrade it was not turning a blind eye to KLA crimes. Yet the challenges were formidable. Take, for instance, the accusation of Fatmir Limaj for the abuses and deaths in the prison camp in Lapusnik. Former detainees who managed to escape talked of brutality and executions. When called to testify in The Hague, they expressed their ongoing fear. One said: 'Thank you... [for] mentioning names...I can tell you that I feel very much endangered now, even more so than in the past' (Farquhar, 2004). Witnesses said they received calls or texts saying they would suffer retaliation if they testified (*ibidem*). Some witnesses were apparently found dead despite being under GN protection (Brunwasser, 2011).

Similarly, in the case of Ramush Haradinaj, former KLA combatant and once Prime Minister of Kosovo, witnesses were allegedly killed. It is alleged the UNMIK chief was involved in protecting the accused, destroying evidence, and helping secure his provisional release from prison (Del Ponte cited in Mitchell, 2008). Haradinaj was acquitted twice by ICTY on the basis of a lack of conclusive evidence (in 2008 and in 2012). In other cases, judges freed people accused of being dangerous (Rausch, 2007: 277). Some witnesses changed their testimony, even accusing the courts of having provoked some statements (Ristic, 2015).

In general, accusations of KLA combatants still face local protesters who call these former combatants 'liberators'. They are heroes, and there is even a state fund to support legal expenses against international prosecution (IWPR, 2005). In other words, the pursuit of crime or the criminalization of conflict violence is not straightforward. Even if the Global North imposed its military might, the law established as a result has not always established order (as Foucault argues). The internationals may pursue crime and justice, but conflict forces and narratives produce unexpected results.

Recently, some prominent Kosovar political figures were accused of involvement in trafficking. Former Prime Minister Thaci (among others) was described in a Council of Europe Report, informally called the Marty Report (2010), as 'one of the most dangerous of criminal bosses' and accused of overseeing beatings and assassinations, as well as profiting from trafficking in organs, a crime organised in detention facilities during and after the conflict (Marty, 2010: 15)¹⁵. The Specialist Task Force (2014) confirmed accusations of crimes against humanity, war crimes, and criminal wrongdoings, such as the murder and disappearance of Serbs and Kosovo Albanians opponents, and a small number of killings for

¹⁵ Thaci and others suggest Serbia's geopolitical interests are at play; they argue Russia, possibly operating through the Council of Europe, may be advantaged by the return of Kosovo to Serbian rule (MacShane, 2011: 99).

the purpose of organ harvesting committed by some elements of the KLA. Importantly, the Task Force stressed a substantial amount of witness intimidation.

In 2015, the Kosovo Specialist Chambers and Prosecutor's Office were established to investigate the matter, looking especially at conflict-related crimes committed between 1998 and 2000. The Specialist Chambers belong formally to Kosovo but are in The Hague and work through international personnel. At a local level, after a quick approval by Parliament (under pressure from Europe and the US), many contested the creation of this Court, proposing new measures for transitional justice processes be conducted locally instead. Thaci was indicted by the Specialist Chambers in July 2020. The indictment was characterised by Human Right Watch as 'advancing justice' (HRW, 2020), but local supporters lamented attacks against the liberation war and highlighted the purity of the war Thaci conducted.

The HRW Report states the prosecutor sent the indictment few days before a US meeting between Thaci and the Serbian President who were about to discuss the Kosovo-Serbia relationship – possibly striking an important deal for stabilization of the area. However, the prosecutor believed Thaci was about to overturn the law that created the court and to continue a number of other actions in that direction. The prosecutor claimed: 'By taking these actions, Mr. Thaci and Mr. Veseli have put their personal interests ahead of the victims of their crimes, the rule of law, and all people of Kosovo' (Ristic, 2020). Thaci interrupted the trip to the US, so negotiations for resolution of difficult relations between the two countries were halted once again.

Kosovo elites are clearly aware of their role and power in the peace negotiations and use them to affirm their vision of historical events. Against Foucault's argument, crime here is not helpful at ordering society. Rather, it seems to steer the most violent contestations of the law inserted and pursued by the global north, suggesting the possible re-emergence of war.

These are all attempts at pursuing justice and security beyond the state but also and crucially at a distance. They once again represent the GN as a powerful actor directing policing and upholding the rule of law, keeping with the liberal project of instilling human right and the rule of law into local contexts. This is not really an accurate picture, however. These events suggest the existence of unexpected results that I have conceived as forms of hybrid policing: sometimes the liberal model seems to be taking over, and other different forms of policing seem to prevail in direct challenge to the ideal of the rule of law and human rights. Thus, the GN may be performing its superiority by establishing courts, training policing forces, and initiating procedures, but this is mostly a performance. The semblance of justice remains 'at a distance,' almost an illusion, and the global audience cannot see the conflicts and tensions on the ground. This can be conceived as a form of hybrid policing, in which multiple actors negotiate the terms of policing in different matters according to contingent interests. In this instance, hybridity is a way of describing the challenges to and violent contestations of the pursuit of policing and justice by the Global North, evidencing the constant resurfacing of war within law.

Concluding Remarks

The military intervention in Kosovo almost 20 years ago initiated a new international political rationality by which the International Community – led by the Global North – engaged in policing beyond borders as a way to stop crime and end human rights violations in foreign countries, exporting the liberal peace through various international organisations and popularising the idea of security beyond the state. This article highlights how labelling certain conflict dynamics and actors as criminal was crucial in the expansion of forms of policing by the GN in Kosovo. In Kosovo, some events were defined as criminal and of interest to the International Community more broadly, meriting its intervention, expanding the GN jurisdiction and signalling its policing capacity in both the global and local context. As part of the policing activity, the GN aimed to build peace and structure the state by transforming and leading the local security sector, exporting human rights and the rule of law, de-nationalising some aspects of the local criminal justice system and establishing them as pertaining to the liberal world.

Policing was thus organised in contradictory ways: on the one hand, training was provided in democratic policing and human rights norms, whilst on the other hand, police forces were mostly militarised. The use of militarised forces, seen as essential to add strength to the police in a post-conflict situation, had some contradictory effects. In Kosovo, the militarised forces responded with excessive use of force to issues of disorder. Yet the militarised aspect was not enough to control outbursts of violence

against minorities and political opponents by some former KLA rogue elements who were allowed to join the new local police. To explain this anomaly, I argue Kosovo should be seen as a case of hybrid policing in which the incorporation of former combatants as a pragmatic way to ensure governance, inadvertently legitimised some forms of social control contradicting the liberal model principles that the military intervention aimed to export.

The concept of hybrid policing usefully represents the negotiations involved in typical post-conflict arrangements and the difficulties of those negotiations. In Kosovo, the multiple forms of social control rendered visible different understanding of norms, policing or authority and created fractures and tensions. I argue the concept of hybridity should be used to describe what is happening in Kosovo, to highlight the multiple contestations of and at times violent challenges to the peace and policing system organised by the Global North. These hybrid formations presented forms of policing that contradicted the ideals of the liberal project, such as militarisation of policing, and included practices of ethnic violence, even the use of raw force to contest criminality. In Kosovo, hybridity also included international policing, supposedly representing universalism, as policing power was exercised according to different cultures and practices not always clearly linked to human rights norms.

Much has been written on Kosovo and on hybrid policing. My contribution is to place Kosovo within the literature of hybrid policing, stressing the element of violent contestation. I also place hybrid policing and the post-conflict processes of institutionalisation of the criminal justice system in a wider theoretical context: Foucault's work on the continuum of war and law. Foucault's work allows us to understand the processes by which crime and war may function as tools of governance – enabling the ordering of society - but crime is not effective in the same way in Kosovo. Even if it permits liberal forms of policing to be applied at the global borderland, the effects are not so neat. Pursuing criminality can be contested by the local population or violent forces (i.e. former combatants). To some extent, there is no straightforward continuum linking war and law. Attempts to account for criminal behaviour may bring back elements of war and conflict.

Whilst the military intervention in Kosovo purported to challenge the human rights violations experienced by the Albanian population and protect the populations under attack, and in spite of the good will of many who participated, the result was only partially successful in exporting the rule of law or human rights justice. Law and justice are pursued strategically, and they are abandoned whenever security and stability are at stake. These issues may not be unique features of Kosovo, as stability and security are given precedence to the rule of law in other post-conflict society such as Iraq, where militias were introduced in the Police Department with dreadful effects on the rule of law and protection of minorities (Amnesty International, 2014). But we can also think of current events in the United States where security is invoked as a reason to use military might against protesters, with similarly dreadful effects on democratic values.

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