CHAPTER 6

Security Detention Practices during the International Territorial Administration of Kosovo

1 Introduction

The detention of civilians for reasons of security by international actors charged with the transitional administration of post-conflict territories has been a very troubling issue in international law. The mandate of such international entities—mostly derived from the UN Security Council—includes the fostering and maintenance of stability, and security detention emerged as a common practice aimed at fulfilling this objective. However, the procedure has not been free from controversy. The main difficulty has been a lack of clarity and certainty in detention policies and practices, and determining the scope of human rights standards to be adopted in relation to security detentions has proven difficult. The previous chapter suggested that the relevant rules of the law of occupation, which are more suited to a post-conflict environment, ought to be used when construing human rights norms, including the right to liberty. However, establishing the appropriate relationship between the law of occupation and human rights law for this purpose should be dealt with on a case-by-case basis, in order to determine what can be learned from each situation.

This chapter focuses mainly on security detention practices during the international territorial administration of Kosovo. Two types of international actor were deployed in Kosovo: a civil administration and a security presence. Examining the detention policy and practices of the former entity calls for an initial discussion of the concept of international territorial administration, and how international law can be applied to such bodies. The chapter then examines the security practices of both these international entities in relation to human rights law, which gave rise to similar problems from which lessons can be drawn for future post-conflict administration cases.
The Background to the Kosovan Case

Kosovo serves as a typical illustration of how the pursuit of self-determination can so often morph into violent armed conflict.1 The seeds of the problem date back centuries. Kosovo was controlled by the Serbs during the Medieval period, before the Ottomans began to exercise sovereignty over the territory, beginning in 1389. However, after declaring their independence from Ottoman rule in the early years of the nineteenth century, the Serbs attempted to regain control of Kosovo. Their efforts to do so included using force against the Albanians, the other major ethnic group resident in Kosovo, with the aim of driving them out of the region. However, in spite of Serbian attacks, the Albanian population continued to increase, and this was to lead to further confrontations between the two groups. The 1974 Yugoslav Constitution granted Kosovo autonomy,2 giving Albanians, as the largest ethnic group in Kosovo, a degree of independence from the rest of Serbia. This was the state of affairs when Slobodan Milošević came to power in 1989. The new leader paid particular attention to Kosovo,3 and vowed to defend ruthlessly the rights of the Serbian minority resident there. This, in turn, was to prompt serious inter-ethnic violence, resulting in the death and displacement of many Albanian Kosovars, with the fighting particularly intense during 1991–1992.

This was also the period during which the Former Yugoslavia disintegrated. Since the Soviet Union itself was undergoing radical transformation at this time, it was the Western states, particularly the US and the European Union countries, which were increasingly drawn into attempts to solve the Yugoslav crisis. Violent armed conflicts were ongoing between the Serbs and the other republics of the former Yugoslavia, particularly Bosnia. Many of these republics eventually declared their independence, gaining recognition from the international community. Yet, this was not the case in respect of Kosovo.4

---