

From Post-conflict Emergency Towards Longer Term Sustainability: Restructuring Kosovo's Customs Service Administration

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***Abstract.** This paper highlights the relevance of the AIC methodology of institutional design to ensure that post-conflict reconstruction efforts will have a lasting impact. In this case, the challenge was how best to integrate Kosovo's Customs Service (UCS) – an agency created and administered by the UN Mission to Kosovo--within the Province's future administration, while ensuring its continued professional competency and integrity. Designers unfortunately chose a “control approach” which led to a conflict with national authorities. Instead, argues the paper, they should have first searched for common ground on objectives with UCS' key stakeholders, agreed with them on the agency's location within Government, and only then designed external linkages and internal arrangements. The case also illustrates the risks for a key stakeholder to act as the institutional designer, rather than rely on independent professional assistance.*

Introduction

This paper examines the process of institutional design adopted by the United Nations Mission to Kosovo (UNMIK) to reposition the Kosovo Customs Service (UCS) that it had established at the beginning of its mandate, and the reasons why the proposed design was vigorously opposed by the Kosovo Government (KG) and other government agencies. The paper also proposes an alternative approach through the use of the AIC framework that will hopefully lead to a more sustainable institution².

Background

"UNMIK was created on June 10, 1999 when the Security Council authorized the Secretary-General of the United Nations in resolution 1244 to establish in the war-ravaged Serbian Province of Kosovo an interim civilian administration led by the United Nations under which [Kosovo's] people could progressively enjoy substantial autonomy"³. UCS was established immediately after the end of the war in 1999 under UNMIK's Reconstruction and Economic Development Office⁴ and is responsible for collecting taxes and duties at the border points.

After six years of existence, UCS has become one of the most important public organizations in Kosovo. In its first year, UCS generated 99 % of Kosovo's public revenues and in 2004, about 80 %. UCS has two categories of personnel: (i) UCS employees who are hired locally and whose wages are paid out of Kosovo's budget, and (ii) UCS upper management who are hired by UNMIK from European Union (EU) countries, whose salaries are paid by UNMIK, and who report to UNMIK through its Reconstruction and Development Office.

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² The AIC methodology approaches institutional design from two perspectives: one is spatial and focuses on the institution's external environments; the other emphasizes the sequence of steps necessary to carry out the design process in relation with each of the institution's external environments. See ODII, <http://www.odii.com/>

³ <http://www.unmikonline.org/intro.htm>, 11/08/2005

⁴ Four Offices known as “Pillars” carry out UNMIK operations. UCS reports directly to UNMIK's Pillar IV (also known as the EU Pillar), which is responsible for reconstruction and economic development.

KG has had no oversight over UCS so far, and this despite its repeated requests for involvement in the management of such a strategic organization for the Province. For example, in 2002 KG attempted to place UCS under its authority but was prevented from doing so because according to Kosovo's Constitutional Framework, UCS should be under the authority of UNMIK until the end of its mission, or until UNMIK had determined what the future of UCS should be. In late 2005, however, when the UN Security Council supported the Secretary-General's recommendation that talks on Kosovo's future status should be launched, it became clear that the time had come to plan for the necessary institutional changes to UCS. Reaching a common agreement between KG and UNMIK on such changes, however, will not be an easy matter, in view of the complexity of the current institutional arrangements and the tensions between the two organizations. Their contrasting viewpoints can be described as follows:

- According to UNMIK, UCS should be an independent organization with a broad autonomy to design and implement Kosovo's customs policies: (i) it should be managed by a Board of Directors appointed by the Oversight Board of Kosovo (OBK)³; and (ii) its policies should be established by its Board of Directors in consultation with the Ministry of Economy and Finance (MEF) and KG. The rationale behind UNMIK's proposal is that it is essential to ensure the professional soundness and efficiency of such an important public organization as the customs service. To that intent, and in particular to avoid the risk of corruption, UCS should be reasonably free of political influence and therefore fully independent from the Province's Executive.
- In contrast, KG has been against this plan for a number of substantive and process reasons: (i) KG has argued that an independent organization would be unaccountable, ineffective and expensive to maintain; (ii) it is concerned that UCS would adopt customs policies inconsistent with Kosovo's macroeconomic framework; and (iii) it objects that UNMIK's planning process took no account of the Government's views. In addition, it anticipates that problems would arise from the conflicting demands of several Government Ministries, namely the Ministry of Economy and Finance (MEF), the Ministry of Trade (MT), and the Tax Administration (TA) each of which wants to put the Customs Service under its control because of CS' close relation to its own activities. Finally, it argues that the UNMIK plan had not benefited from the inputs of international organizations, even though during the preceding six years, international organizations such as the World Bank, International Monetary Fund (IMF) and World Trade Organization (WTO) had played a crucial role in facilitating Kosovo's transport infrastructure at border crossings and in improving the Province's economic framework; and that there had been no consultations with the business community which bears the largest burden of taxes, nor with the local NGOs which had their own concerns.

All the above indicates that while KG and UNMIK had recognized the importance for the future of Kosovo and its people of ensuring viable institutional arrangements for UCS, there was such a diversity of interests and visions among the key stakeholders that coming up with acceptable arrangements to all would be a major challenge. The following two charts show respectively the present and the proposed institutional structures for UCS.

³ Kosovo Civil Service Regulation 2001/36 provides for the establishment of the Oversight Board of Kosovo (OBK) to ensure that selection and recruitment of civil servants is based on merit.

Chart 1. Current Institutional Structure

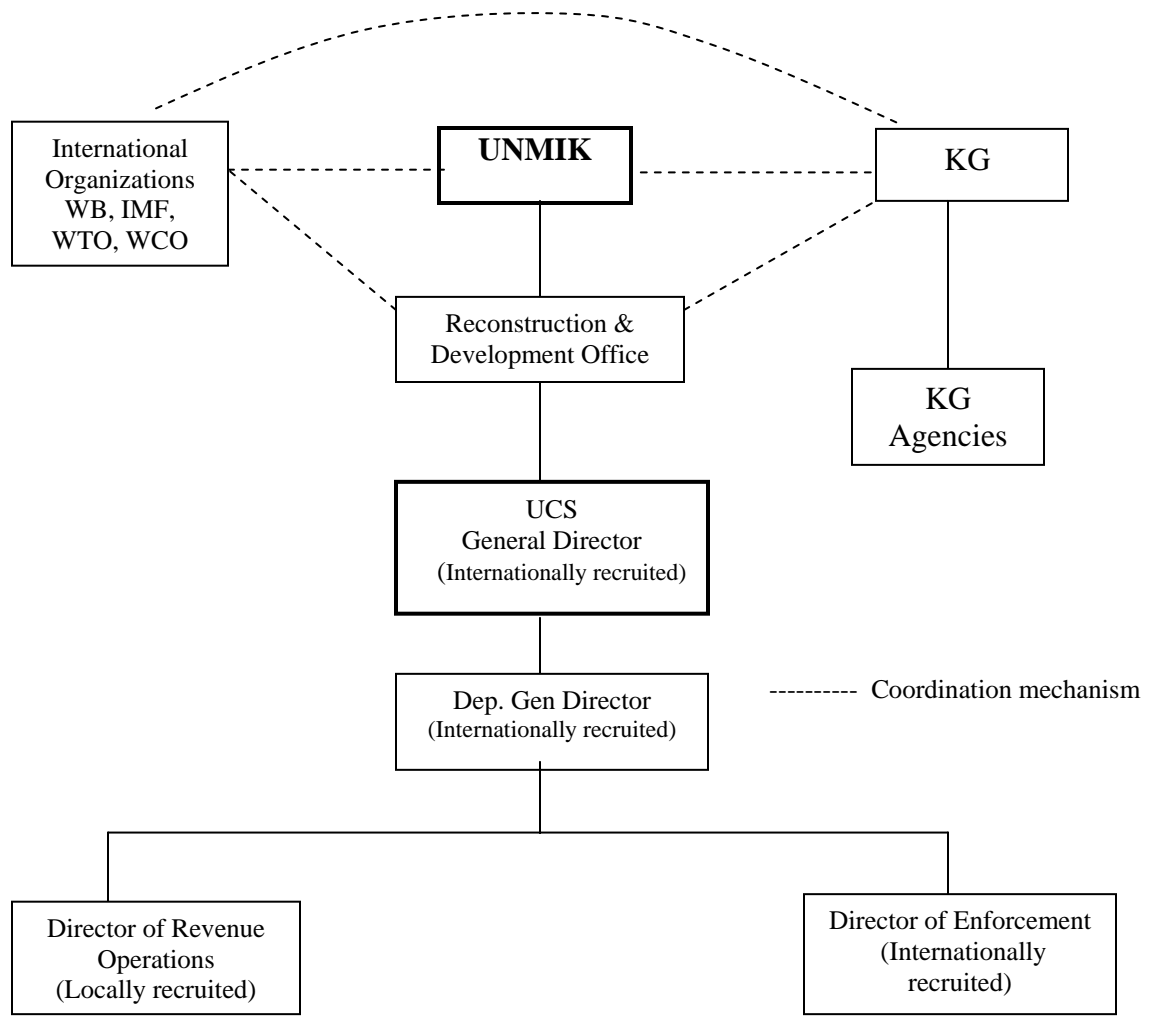
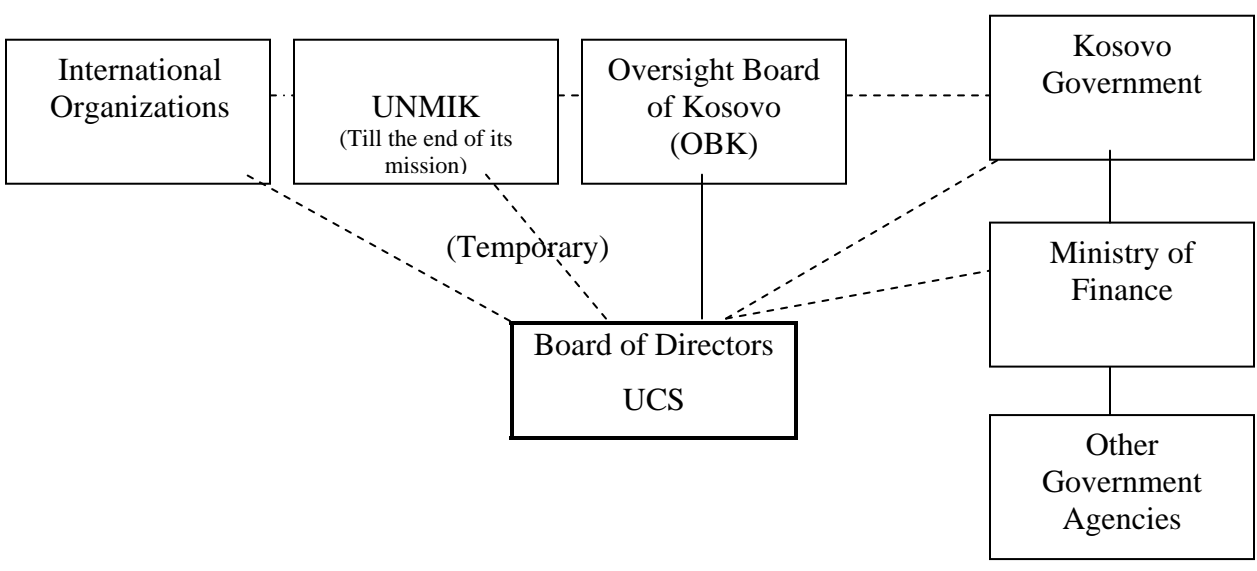


Chart 2. The UNMIK plan for UCS after the end of the UN Mission



Institutional diagnosis: Poor process leads to poor design

Appreciative stage of design

According to the AIC institutional design framework, the design process should start with an appreciation of the external forces affecting the viability of an organization so as to ensure its legitimacy. In particular, the design must be responsive to the views and needs of the key stakeholders, who should be seen as the designer's main clients. Next would be a negotiation (or influence) stage during which the organization's boundaries and external coordination mechanisms are defined. Finally, the detailed (or control) stage of design would deal with internal arrangements where classical organization theory would apply.

In this case, UNMIK, the organization's designer turned out also to be one of its main (**though temporary**) stakeholders and to have had legal authority over Kosovo's administration – which was therefore theoretically part of its “internal” or “controlled” institutional environment. Within that framework, UNMIK must have assumed that it could ignore KG's policy and institutional concerns, and start the design process in classical fashion by prescribing the design objectives and working out the detailed institutional arrangements while presumably expecting that KG, the other key – **and permanent**—stakeholder would become convinced later on of the wisdom of the design. In other words, UNMIK put the AIC process on its head: start with detailed design, ignore the other key stakeholders, and hope that they would ultimately agree.

As theory had predicted, this approach did not work, but rather led to a controversial design and unnecessary conflict. Sadly, even if the designers had not been familiar with the AIC framework, as a UN organization, UNMIK should have been aware that since the early 1970s, United Nations resolutions had encouraged the practice of participation⁵. In this case, unfortunately, UNMIK either lacked the skills to apply such resolutions, or had chosen to ignore them. Ironically, while it failed to involve KG and the various Ministries that were hoping to get control over UCS, it also ignored other key stakeholders who might have actually supported its design proposals, including (i) the representatives of the business community which was affected by both the payment of taxes and duties and the delays that resulted from inappropriate institutional arrangements; and (ii) international organizations such as WTO, the World Bank, the IMF and the World Customs Organization (WCO), which would have brought to bear the credibility of their regional and international experience.

Finally, UNMIK ignored another lesson of experience in project design, namely that the chances of sustainability are much greater when those most likely to be responsible for project implementation are closely associated with the design—an observation which is consistent with the AIC framework since implementers should obviously be seen as important stakeholders in the design process.

As a result of UNMIK's approach, we can expect that once its mission comes to an end, KG will reorganize UCS once more to achieve its own objectives, or disband it altogether and replace it with a new organization such as a Kosovo Customs Service (KCS). In summary, a poor

⁵ MacNeil James D., [The AIC Process: Generating Shared Visions For Community Development in Southeast Asia](http://www.odii.com), www.odii.com

design process led to institutional conflict and an agency without legitimacy -- therefore undermining its future sustainability.

Influence stage of design and influenceable environment

Few agencies can perform all their functions without the cooperation of other agencies, with which they need to establish linkages of various degrees of intensity. The organization chart proposed by UNMIK for UCS shows few linkages, and rather conveys the image of an isolated, inward-looking organization:

- At the policy level, this technocratic design intended to insulate UCS from political pressures assumes that UCS' Board would determine customs tax policy "in consultation" with Government and the Ministry of Finance (see page 2 above) and thus fails to acknowledge the political nature of tax policy. In addition, it overlooks the need for close interaction between UCS and the Ministries of Trade and Tax Administration, which are responsible for the Province's economic policies and, as mentioned earlier, felt that UCS should therefore be under their oversight.
- At the operational level, the design fails to link UCS with a number of government agencies without the support of which it is unlikely to achieve its objectives. Experience from other customs agencies shows indeed that without coordination and even synchronization between customs service and other enforcement agencies (which are under KG's authority), tax collection will be inefficient. Furthermore, any attempt by UCS to expand its boundaries and perform functions that are the responsibility of such enforcement agencies will unavoidably lead to conflict.

Control stage of design and controllable environment

The strategy of repositioning UCS without consultation with KG and other key stakeholders, and of insulating it from its external environment including essential government agencies is also bound to have a negative impact on UCS' internal environment – unanticipated by UNMIK designers. Indeed, the resulting constant conflicts with KG, the fragility of UCS and its uncertain future, and the risk that UCS' management would no longer be able to provide financial incentives to its employees (since such wages are paid by MEF), could be expected to affect UCS staff morale, work ethics, and encourage corruption – which is precisely one of the risks that UNMIK's design had hoped to prevent.

As to UCS' internal structural arrangements, which follow the pyramidal/ hierarchical/ "command and control" model of organization, they remain appropriate for routine customs work. On the other hand, for policy and research work, which requires creativity and initiative on the part of the staff, a more participative model of organization should be adopted. Liaison positions with essential government agencies, especially in the enforcement field, should also be provided for.

Conclusions and Recommendations

Having identified the key structural and process weaknesses of the UNMIK design, let's now use the AIC methodology for redesigning UCS.

Appreciative stage of design and appreciative environment

UNMIK should first appreciate the current and future political context within which UCS has to operate, and to that intent it needs to identify key stakeholders especially the KG as the lead agency together with other government agencies, and obtain their agreement to involve the participation of international organizations such as the World Bank, WTO, WCO, and the IMF, as well as national non-government stakeholders including the business community. Second, it should orchestrate a "visioning" process whereby all these stakeholders would express their vision for the UCS of the future, perhaps after UNMIK would have conducted with KG a joint research exercise (including field visits) to review regional and international experience. The results of the review might be publicly presented at some kind of "search conference" and hopefully lead to an overarching common vision that would give legitimacy to the follow-up plans. Such a vision would hopefully consist of a recognition of UCS' dual mandate of revenue generation and trade facilitation and of the need to have an agency with high competency, morale and integrity, protected from undue political influence, though also able to influence other government agencies and be influenced by them.

Influence stage of design and influenceable environment

The next step would then be to create linkages between UCS and its influenceable environment. The joint leadership of the two key stakeholders, UNMIK and KG in the design process would be crucial towards establishing the necessary inter-agency linkages between UCS and other government agencies including permanent liaison positions or more formal contracts, e.g. with the government's enforcement agencies. In addition, incentives mechanisms such as periodic financial audits and ex-post management reviews should be introduced in order to maintain UCS' cooperation with other agencies and ensure the transparency of its operations.

One way of minimizing political influence on UCS operations would be to provide for its management to be elected or appointed by the OBK, free from the Executive's influence. At the same time, UCS should probably be located under the MEF, as is the experience in most EU countries. The customs and tax collection policies should be designed by MEF in cooperation with OBK and with the support of their respective policy units within the context of the macroeconomic framework designed by MEF and TA.

Control stage of design and controllable environment

Having gone through these steps should lead to a legitimate institution with mutually agreed objectives and sound linkages with its influenceable environment. Internal structures would most likely be designed according to the "contingency" model of organization, with some parts adopting a more hierarchical management structure and style, while others would experiment with self-managed teams (quality circles) though in both cases there would probably need to be a strong "inspection" system and a feedback mechanism from the users/ public. Other parts might be more open to their external environment and manage by influence, while

integrative mechanisms might be established to link the various parts of the organization as necessary. Last but not least, since from the beginning, UCS' management had focused almost exclusively on internal management issues and had little concern for its influenceable and appreciative environments, it would need to be trained to deal with these new managerial dimensions, both through formal methods and informal ones such as reciprocal professional exchanges with other Customs Services already practicing the recommended approach.

In conclusion, this case has shown that skipping one, or worse, the first two of the three stages of institutional design under the AIC framework, may lead to institutional conflict rather than legitimacy, negatively affect the organization's ability to obtain essential resources from its environment, and ultimately undermine staff morale and ethics. Proper use of the AIC framework should help overcome these risks, starting with the achievement of a common vision among all key stakeholders. The case also shows the technical and political risks when a major stakeholder acts as his own institutional designer rather than rely on professional institutional and process consultants. The two charts below illustrate an alternative vision of UCS' future relations with its environments.

Chart 3 a. Potential outcome of the joint design of UCS by UNMIK and KG, in consultation with international organizations and other local stakeholders.

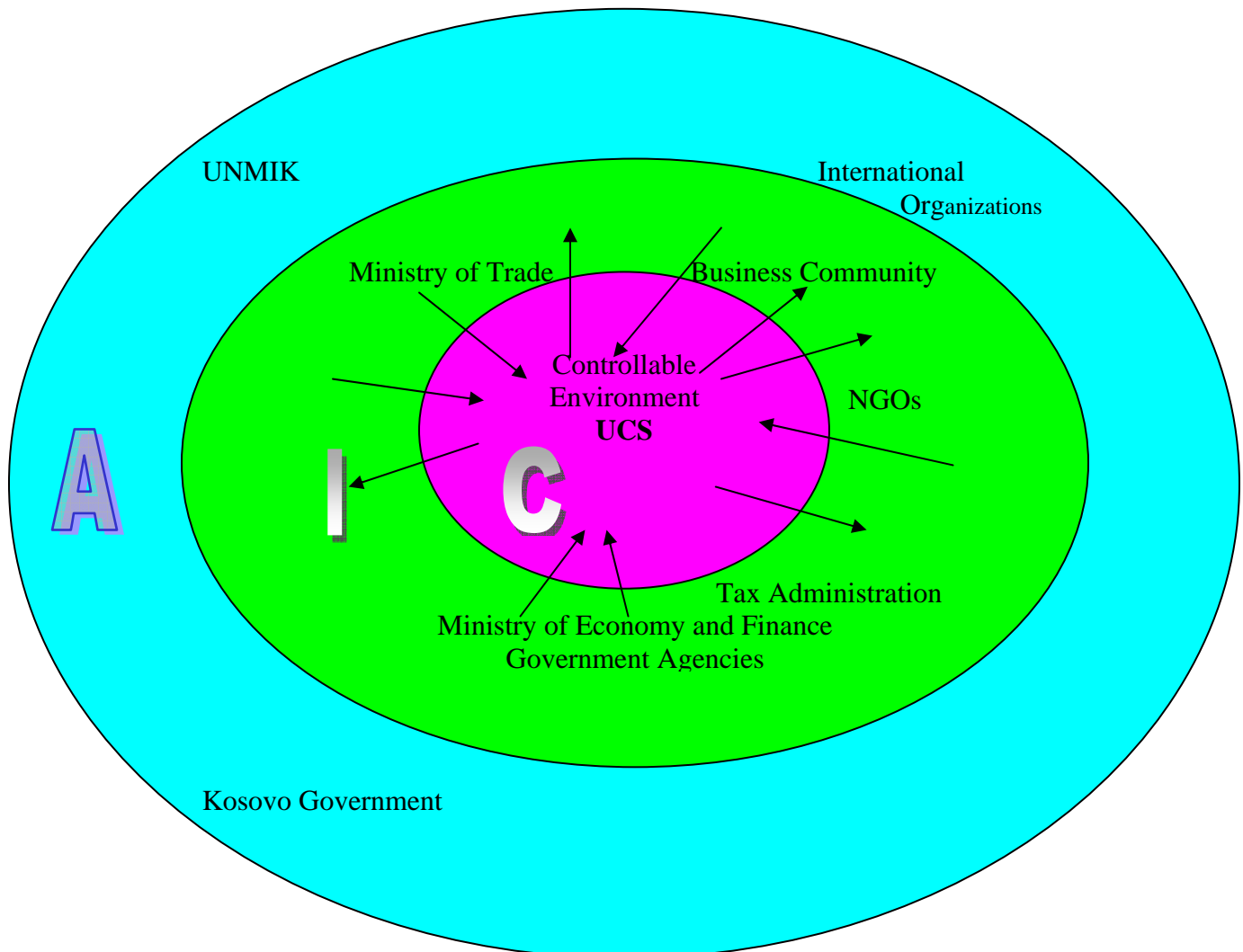


Chart 3b. Illustrative design of the recommended relations between UCS and other agencies

