

REFLECTING PEACEBUILDING IN PRACTICE: UNITED NATIONS
TRANSITIONAL ADMINISTRATIONS

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ABSTRACT

REFLECTING PEACEBUILDING IN PRACTICE: UNITED NATIONS TRANSITIONAL ADMINISTRATIONS

Utsukarçi, Şefkat

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The main aim of this dissertation is to analyze the idea and practice of handing over the administration of a territory to the United Nations on a temporary basis in response to manage and settle the consequences of a dispute concerning the future status of that territory. The United Nations Interim Administration Mission in Kosovo (UNMIK) and the United Nations Transitional Administration in East Timor (UNTAET) are novel examples in this respect since they present both the opportunities offered and the challenges experienced by the international administrations and give clear guidelines for the future state-building engagements. Since the end of the Cold War, there emerged a definitive trend toward accepting a more interventionary role for the UN. Taking the changing nature of interventionism into account, within the scope of this dissertation, the foremost focus will be on the post-intervention period where peacebuilding and state-building processes take place in war-torn societies. Thereby, international transitional administrations which represent the most complex and comprehensive peace operations attempted by the United Nations will be the focal point of the study. Since such administrations assume some or all of the sovereign powers of an independent state, in a period when neo-interventionism and suspended or conditional sovereignty are debated, the degree of executive, legislative and judicial authority assumed by transitional administrations is worth to consider.

Keywords: United Nations, Peacebuilding, International Transitional Administrations, Kosovo, East Timor

ÖZ

BARIŞIN İNŞASININ UYGULAMADAKİ YANSIMASI: BİRLEŞMİŞ MİLLETLER GEÇİCİ YÖNETİMLERİ

Utsukarçi, Şefkat

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Bu tezin temel amacı, bir bölgenin idaresinin o bölgenin gelecekteki statüsü hakkında ortaya çıkmış olan bir uyuşmazlığın sonuçlarını yönetmek ve nihai bir çözüme bağlamak üzere geçici bir süre için Birleşmiş Milletler'e devrinin fikrinsel düzeyde ve uygulama alanında incelenmesidir. Bu çerçevede, Kosova Birleşmiş Milletler Geçici Yönetimi Misyonu (UNMIK) ve Birleşmiş Milletler Doğu Timor Geçici Yönetimi (UNTAET) çok önemli örnekler teşkil etmekte olup, uluslararası geçici yönetimleri tarafından sunulan fırsatlar ve aynı zamanda tecrübe edilen zorluklar bakımından gelecekte ortaya çıkabilecek benzer yapılanmalar için önemli ipuçları vermektedir. Soğuk Savaş'ın sona ermesinden itibaren, Birleşmiş Milletler için daha müdahaleci bir rolü kabul eden belirleyici bir akım ortaya çıkmıştır. Müdahale kavramının bu değişen yapısı göz önünde bulundurulduğunda, bu çalışmanın temel odak noktası, müdahale sonrası süreçte savaşların yıkımına maruz kalmış topluluklarda gerçekleştirilen barışın inşası ve devletin yeniden imarı aşamalarının incelenmesidir. Buradan hareketle, Birleşmiş Milletler tarafından yürütülmüş olan en kapsamlı ve karmaşık barış operasyonları niteliğinde değerlendirilen uluslararası geçici yönetimleri bu tezin en temel ve öncelikli konusunu oluşturmaktadır. Yeni müdahalecilik ve askıya alınmış veya şartlı egemenlik gibi kavramların tartışıldığı bir dönemde, bu yönetimlerin bağımsız bir devletin egemen yetkilerine benzer şekilde üstlendikleri yasama, yürütme ve yargı erklerinin boyutları incelenmeye değerdir.

Anahtar Kelimeler: Birleşmiş Milletler, Barışın İnşası, Uluslararası Geçici Yönetimler, Kosova, Doğu Timor

To my father...

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LIST OF ABBREVIATIONS

CNRT	National Council of Timorese Resistance
DPA	Department of Political Affairs
DPKO	Department of Peacekeeping Operations
ETTA	East Timor Transitional Administration
FALINTIL	Armed Forces for the National Liberation of East Timor
FRETILIN	Revolutionary Front for an Independent East Timor
FRY	Federal Republic of Yugoslavia
INTERFET	International Force in East Timor
ITA	International Territorial Administration
JIAS	Joint Interim Administrative Structure
KFOR	NATO Kosovo Force
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
KTC	Kosovo Transitional Council

NATO	North Atlantic Treaty Organization
NCC	National Consultative Council
OHR	Office of the High Representative for Bosnia Herzegovina
ONUC	United Nations Operation in the Congo
SRS	Special Representative of the Secretary General
UNAMET	United Nations Assistance Mission in East Timor
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIT	United Nations Integrated Mission in Timor Leste
UNMIS	United Nations Mission of Support in East Timor
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium
UNTAET	United Nations Transitional Administration in East Timor

CHAPTER 1

INTRODUCTION

Notwithstanding the importance of the prevailing norms of non-intervention and state sovereignty for the sake of the preservation of international order and peaceful coexistence among states, the practice of intervention has never ceased to exist on the international arena. According to Hedley Bull, intervention has become a ubiquitous feature of modern international relations, perhaps even an inherent feature of it.¹ Although the use of force is prohibited and the sovereign equality of states and non-intervention in the internal affairs of a state are established as universal norms under the existing Charter of the United Nations (UN), the understanding and practice of intervention are strongly influenced by the changing political and theoretical context of international relations. The nature of the international system, the distribution of power and the moral foundations of the international society are very influential in determining interventions. Throughout the history, the purpose of interventions has varied from ensuring the balance of power to serving the higher interests and ideals of global humanity or to exercising of influence over weaker states by the great powers or a mixed combination of such different purposes.

In contemporary international relations, the stronger emphasis on ethical and moral considerations, the growing concern for the promotion of individual and collective human rights and the belief that the rights of individual human-beings are superior than the rights of states, led to the questioning of the norms of absolute and unlimited sovereignty and non-intervention. There is a general acceptance that human rights matters do not fall exclusively within the domestic domain of states. The maintenance of international peace and security and the protection of fundamental human rights are regarded as interdependent on each

¹ Bull (1984), p. 2

other, whereby it is claimed that internal problems of a state could constitute a threat to international peace and security. International human rights regime establishes standards for the treatment of individuals, which implies certain constraints on the sovereign power and opens up the possibility of intervention when states violate these standards. For instance, the proponents of humanitarian interventions argue that if absolute and indivisible sovereignty is still regarded as the highest international norm, the injustice and violations of basic rights occurring within the borders of states will continue to happen without any restriction. So, the principle of sovereignty started to be evaluated as 'sovereignty as responsibility', a doctrine holding that state sovereignty cannot be restricted to inviolable legal authority.² The following assumption that the aim of the UN is to protect individual human-beings and not to protect those who abuse them leads to the conclusion that the internal sovereignty of states should be subject to international scrutiny and intervention. With the end of the Cold War, ideological barriers to collective action on security issues disappeared and the UN became more active in responding to threats to international peace and security by assuming a more interventionary role with respect to the newly emerging threats such as failed states, state collapses, civil wars or ethnic conflicts.³ Many of the intra-state problems and civil wars that had been frozen during the Cold War, surfaced increasingly in the post-Cold War era. As a response to such humanitarian crises, the perception of 'something had to be done' and a 'duty to protect' has evolved.

It is noteworthy to consider that in the recent years, the UN Security Council has interpreted the internal armed conflicts, failed states, humanitarian disasters, actions such as genocide, ethnic cleansing, prevention of the self-determination right of a people with oppression, massive sufferings of human-beings as threats to international peace and security within the meaning of the Chapter VII of the UN Charter by invoking Article 39; threat to the peace, breach of the peace or act

² Cunliffe (2007), p. 39

³ Macfarlane (2002), pp. 50- 61

of aggression. However, the military responses by the international community under the framework of ‘responsibility to protect’ are constrained by the momentous experience of the ‘responsibility to rebuild’ after the intervention takes place.⁴ The question whether intervention should take place or not was eventually replaced with the question what should be done in the post-intervention period. In order to eliminate the root causes of the crisis which has led to the military intervention, a comprehensive operation is required to restore lasting order and stability.⁵ Thus, the responsibility to protect understanding has started to invoke a constructive engagement perspective through a sustained intervention continuum.⁶

In this whole context, peacekeeping missions emerged as one of the most appropriate mechanisms in finding solutions to the crises of the new era and many peace operations have been conducted accordingly for promoting international peace and security. Although the Charter of the UN does not entail provisions for peacekeeping operations, peacekeeping has evolved into one of the UN’s primary tasks as a reaction to the necessity for UN involvement in regulating conflicts and crises. In response to the changing nature of the conflicts, the nature of the peacekeeping missions has also changed. In particular, peacekeeping can no longer be inferred as traditional peacekeeping where peacekeeping forces have operated with the consent of the host state, acted impartially and where forces were limited to the use of force only in self-defence.⁷ These missions were well-suited for the period during which the UN’s main purpose was to observe a peace accord between states after the fighting had ceded and peace had been established. However, with the end of the Cold War the emergence of new geopolitical realities such as intra-state conflicts, failed states, internal armed conflicts led to the transformation of peacekeeping operations. Such operations required a broader

⁴ ICISS (2001), *The Responsibility to Protect*, pp. 39- 45, paras. 5.1- 5.21

⁵ Yannis (2002), p. 826

⁶ Chandler (2002), p. 59- 63

⁷ Aksu (2003), pp. 15- 25

multidimensional approach to peacekeeping. Peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex model of many elements; military, police and civilian working together to help laying the foundations for sustainable peace.⁸ These operations are deployed in the aftermath of internal conflict and may employ multidimensional capabilities to support the implementation of a peace agreement. Furthermore, as the recent Capstone Doctrine assumes;

Some multidimensional UN peacekeeping operations have been deployed following a request from the national authorities to support the transition to legitimate government, in the absence of a formal peace agreement. In exceptional circumstances, the Security Council has also authorized multidimensional UN peacekeeping operations to temporarily assume the legislative and administrative functions of the State, in order to support the transfer of authority from one sovereign entity to another, or until sovereignty questions are fully resolved (as in the case of transitional administrations) or to help the State to establish administrative structures that may not have existed previously.⁹

In today's world, peace operations, in order to ensure the consolidation of peace, include some missions that go beyond basic military means including further social, economic and political elements. Concepts such as peacebuilding, nation-building and state-building gained prominence in international politics with the UN assuming more complex tasks to prevent the recurrence of violent conflicts and to create well-functioning, democratic states. Even in cases such as Kosovo and East Timor, the UN assumed some or all of the sovereign powers of a state whereby establishing transitional international administrations to govern these territories.¹⁰ The underlying discourse of these administrations is 'peace as governance' resting upon long-standing, deep interventions in conflict zones via a peacebuilding consensus aimed at the reconstitution of democratic liberal states.¹¹

⁸ Pugh (2004), p. 47

⁹ United Nations Peacekeeping Operations: Principles and Guidelines, Capstone Doctrine, 18 January 2008, para. 37

¹⁰ Chesterman (2004), pp. 79- 87

¹¹ Richmond (2004), pp. 91- 93

Since cessation of violent conflicts through intervention is not sufficient enough to establish a sustainable peace; economic stabilization, political reconstruction, democratization, rule of law, human rights, national reconciliation should all be ensured for a successful peacebuilding operation and a full-scale state-building.¹² Thus peacebuilding refers to a wide range of activities in the transition periods from war to peace with long-term consequences.

Under the light of above-mentioned developments, the main focus point in this study will be the idea and practice of handing over the administration of a territory to the UN on a temporary basis in response to manage and settle the consequences of a dispute concerning the future status of that territory. International transitional civil administrations which represent the most complex peace operations attempted by the UN deserve a special attention in this respect since they operate in transition periods within a broader political and normative framework with certain civilian responsibilities. The main argument of this dissertation is that the international administrations have emerged as a consequence of the above explained 'new interventionism' justified on humanitarian grounds and legitimated by a state-building perspective with the aim of creating well-functioning, sovereign states.

The ultimate aim of such administrations is building lasting peace in conflict-ridden societies and thus, they represent peacebuilding in practice. The practice of international administration, whereby the UN assumes quasi-governmental functions, can be regarded as the most assertive and complex mechanism of peacebuilding among many other mechanisms like exporting advice, shaping the content of peace settlements, controlling local authorities or entering into partnerships with them. The state-building perspective embedded in international administrations is carried out through the earned sovereignty approach whereby shared sovereignty, institution-building and determination of final status constitute the core elements of earned sovereignty. Although they reflect the shift

¹² Dobbins (2006), pp. 36- 39

in expansion of peacekeeping operations, what distinguishes international administrations from the previous missions is the unprecedented degree of authority exercised by these administrations. They illustrate how international exercise of transitional executive powers is required in order to ensure the consolidation of peace in certain circumstances. However such international administrations have been also criticized as constituting colonialism in a new guise and revive memories of the imperial past though in more benevolent forms. Thus, these experiences have generated sensitive labels such as ‘trusteeship’ and ‘protectorate’.¹³ However, the common view is that the UN administrations are situated within the broader category of multidimensional peace operations instead of the claims that they resemble foreign occupations or colonialism.¹⁴

Although there are other instances where the UN or other international institutions have taken the responsibility to conduct some administrative activities, such as in Bosnia Herzegovina by the OHR or in Eastern Slavonia under UNTAES, within the scope of this study, the main attention will be directed toward UNMIK and UNTAET as case studies since these missions are regarded as unprecedented in terms of their scope and complexity.

In both of these cases, the UN acted as the effective government; creating local political institutions, making and enforcing laws, appointing and removing public officials, exercising complete fiscal management of the territory, establishing and maintaining customs services, carrying out police duties, defending the borders, regulating local businesses, running the schools and operating all public utilities, among numerous other functions.¹⁵ Nevertheless, not only their complexity and broad mandates led us to study UNMIK and UNTAET as case studies in this dissertation. In addition to their complexity, what was decisive in selecting them as case studies was their influence on the internationalized state-building process.

¹³ Berdal and Caplan (2004), p. 2

¹⁴ Ratner (2005), pp. 698- 701

¹⁵ Malan (2003- 2004), p. 55

Unlike in other cases where the UN exercised a role of assisting or re-building the existing local institutions, in Kosovo and East Timor the UN was responsible both for creating and managing the local administrative structures which were not existent prior to the deployment of international administrations. If we take into account that neither Kosovo nor East Timor enjoyed sovereign independent statehood at the outset of the international administrations, but both these administrations resulted ultimately in the creation of new independent states, the distinctive nature of these missions will be revealed later in this study through the analysis of the earned sovereignty approach. Although they operated in different contextual grounds from each other with different historical backgrounds in remote parts of the world, UNMIK in Kosovo and UNTAET in East Timor are comparable to each other in terms of the exclusive governing powers transferred to the UN, their similar mandates and their final outcomes.

Some interesting political and legal questions that may arise regarding the cases are as the following ones: Was the independence inevitable in both instances? What is the viability of both Kosovo and Timor Leste as independent states and what challenges will they face? What kind of sovereignty will they exercise? Notwithstanding the importance and relevance of all these questions, to provide comprehensive answers to all of them is beyond the scope of this study. Instead, the main aim is to examine the conditions that led to the creation of UN administrations, the mandates and structures they adopted and the challenges faced during the administrations through a broader focus on peacebuilding and state-building. To analyze these aspects of the administrations will enable us to conclude what long-term implications such administrations may have for future UN interventions.

For the purpose of this study, after this introducing chapter, the second chapter will examine the key dimensions of peacebuilding in order to understand the conceptual framework behind the logic of international administrations. The conceptual definition, historical background and operational elements of peacebuilding will be analyzed. Since state-building is evaluated as one of the

central objectives of peacebuilding, it is also intended to provide essential information on state-building operations. The internationalized state-building operations in Kosovo and East Timor, in this respect provide us important clues on whether they will contribute to the preservation of self-sustaining peace in the long-run.

The third chapter is devoted to discuss the legal and political basis of international administrations with a particular emphasis on the self-determination principle under international law. This chapter examines whether the UN does have adequate legal, political and normative authority for such governance functions it has assumed in Kosovo and East Timor. The third chapter will also focus on different types of international administrations established within the historical context and the multiple functions exercised by these administrations so that a better understanding can be developed about these operations.

In the fourth chapter, it is intended to outline the scope of the UNMIK mandate under the Security Council Resolution 1244. The implementation and performance process exercised by UNMIK will also be explained in detail. To comprehend the implementation process, five particular dimensions of the operation will be analyzed; civil administration, security, humanitarian assistance and reconstruction, judiciary, political institution-building and accountability mechanisms.

The fifth chapter will outline the scope of the UNTAET mandate under the Security Council Resolution 1272. The implementation and performance process exercised by UNTAET will also be explained in detail. To comprehend the implementation process, five particular dimensions of the operation will be analyzed; civil administration, security, humanitarian assistance and reconstruction, judiciary, political institution-building and accountability mechanisms.

After presenting the basic structural features of UNMIK and UNTAET, the sixth chapter aims at explaining the similarities and differences between these operations. Such a comparative analysis will lead us to conclude whether general conclusions and policy guidelines can be attained in order to apply the lessons learned to other similar missions. The comparative study of the concerned missions reveals that although UNMIK and UNTAET adopted similar operational powers, since they operated in different political contexts with different departure points, unique characteristics of each case should be emphasized in analyzing their overall structures. Notwithstanding that the examples of UNMIK and UNTAET are evaluated as unique cases, this study argues that there is a possibility for the UN to undertake such further operations in the future. Therefore, the examination of these cases is essentially important to derive common lessons where appropriate and to avoid generalizations where inappropriate.

Taking into consideration the failures and weaknesses experienced by UNMIK and UNTAET as examples, the seventh chapter of the dissertation will focus on the challenges and dilemmas faced by international administrations in building lasting peace from a critical point of view. Although at the time of this writing, it is early to judge the success of these missions, it is intended to unveil basic shortcomings faced by UNMIK and UNTAET so that the criticisms may be better appraised.

Finally, the concluding chapter will review and discuss the main findings of this dissertation.

This study is an explanatory and descriptive one, aimed at discussing the international administrations established by the UN. After a general overview of the legal and political basis of such administrations and different types of international administrations, a deeper analysis will be conducted on the cases of UNMIK and UNTAET. To explain the whole structure of these missions in detail is beyond the reach of this study, however, the underlying framework of this

dissertation is based on a general comparative analysis in order to figure out the similarities and differences.

The data to compare and contrast the divergences and convergences focuses mainly on the initial contexts where UNMIK and UNTAET have been established, on the structure and organization of these missions, their objectives and their end results. In order to understand the events that led to the establishment of the international administrations, the historical facts about the concerned territories will also be examined.

Literature survey constitutes the backbone of the methodology. Due to the limitations of this study and the current material conditions, the conduct of a field research and interviews has been unattainable and basically bibliographical resources like books, academic journals have been used for research. The legal documents and resolutions adopted by the UN have also been used where necessary.

CHAPTER 2

KEY DIMENSIONS OF PEACEBUILDING

Since international administrations represent peacebuilding in practice, it is necessary to analyze the normative, historical and operational elements of peacebuilding so that the main drive behind the international administrations can be better understood.

2.1. Historical Background and Conceptual Clarity

The concept of peacebuilding was firstly introduced to the academic literature by Johan Galtung in the 1970s. According to Galtung;

The mechanisms that peace is based on should be built into the structure and be present as a reservoir for the system itself to draw upon. More specifically, structures must be found that remove causes of wars and offer alternatives to war in situations where wars might occur.¹⁶

However, the importance of the concept increased during 1990s with the emergence of multidimensional peace operations and became part of an activist international agenda, where external actors started to see it as their responsibility to intervene with political as well as military means in the internal affairs of conflict-ridden states. Most of the violent conflicts that emerged in the post-Cold War era were stemming from countries with poor governance, ethnic or religious tensions and structural inequalities and were resulting in massive human sufferings, mass killings and extreme human rights violations. It was certain that under the process of globalization what happened within the sovereign domain of states had an enormous impact on international peace and security. Humanitarian crises, violations of human rights within the borders of a state created cross-

¹⁶ Galtung, *Three Approaches to Peace: Peacekeeping, Peacemaking and Peacebuilding* in Galtung (1976), pp. 297- 298

border externalities that affected the security and peace of the neighbouring states or the region. So, the maintenance of international peace and security and the protection of fundamental human rights violations are regarded as interdependent and a strong linkage between international peace and human rights violations is emphasized.¹⁷ It is no longer controversial whether human rights issues are of international concern or not. There is a general acceptance that such matters do not fall exclusively within the domestic, sovereign domain of states. Therefore, to guarantee the rights of individuals who are the real holders of rights in the international arena, the principles of non-intervention and sovereignty should be replaced by a new perception that challenges the unrestricted interpretation of these concepts.

Accordingly, these principles can no longer be interpreted in their absolute meanings; instead they should be understood in more limited and conditional terms. The principle of sovereignty should be started to be evaluated as 'sovereignty as responsibility'. This means that in order for a state to claim sovereignty, it must meet internationally agreed responsibilities such as respecting human rights, providing the basic needs of its citizens and preventing crimes against humanity occurring within its borders. If a state fails to meet such obligations, then it becomes legitimate for the international society to undertake intervention against this state under the doctrine of responsibility to protect.¹⁸ The main logic supporting the interventionist and assertive agenda is related to the understanding that states are instruments at the service of their people and not vice versa. In situations where the sovereign authority fails to provide the conditions essential to the fulfilment of basic political, social and human rights, intervention may occur in order to restore the enjoyment of basic rights of the people in the target state. In this respect, international interventions aim at restoring or transforming the relationship between the government and the governed. Under

¹⁷ Schneckener and Wolff (2004), pp. 220- 248

¹⁸ 2005 World Summit Outcome Document, UN Doc A/RES/60/1, 24 October 2005, paras. 138-139

such a growing human security agenda, conflict prevention efforts, humanitarian interventions and peacebuilding operations emerged as legitimate international tools to intervene in the domestic affairs of states.¹⁹ Where conflict prevention efforts failed to settle the problem before escalating into a violent crisis, humanitarian interventions were conducted to stop the on-going crisis. The humanitarian interventions by military means, though successful in terminating the violent conflict, were inadequate in a total transformation of war-torn societies into peaceful, democratic entities. Thus, the necessity of adopting a multidimensional, comprehensive and long-term approach incorporating peacebuilding and state-building strategies was realized in such fragile transformation periods.

With respect to such an expanded normative framework for international action, the concept of ‘post-conflict peacebuilding’ entered the agenda of international affairs through the UN in Boutros Boutros Ghali’s *An Agenda for Peace* (1992) indicating action to identify and support structures which tend to strengthen and solidify peace in order to avoid a relapse into conflict.²⁰ *An Agenda for Peace* identified peacebuilding along with preventive diplomacy, peacemaking and peacekeeping as one of the instruments for managing violent conflicts.²¹ The Agenda also argued that peacemaking and peacekeeping operations must come to include comprehensive efforts to identify and support structures which will tend

¹⁹ Keating and Knight (eds.) (2004), pp. 25- 35

²⁰ Roberts and Kingsbury (2004), p. 475

²¹ *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*, UN Doc A/47/277- S/24111, 17 June 1992, para. 20;

Preventive Diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur. Peacemaking is action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in the Chapter VI of the Charter of the United Nations. Peacekeeping is the deployment of a United Nations presence in the field, hitherto with the consent of all parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peacekeeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.

to consolidate peace and advance a sense of confidence and well-being among people.²²

In 1994 *An Agenda for Development* identified peace as a fundamental dimension of development and emphasized the need for peacebuilding efforts to address the underlying economic, social, cultural and humanitarian causes of conflict.²³ Peacebuilding was regarded as a means of offering countries emerging from conflict a chance to establish new social, political and judicial institutions that could give impetus to development.²⁴ *Supplement to an Agenda for Peace* in 1995 stressed the importance of the creation of structures for the institutionalization of peace and noted the linkages between conflict prevention and peacebuilding. Accordingly, peacebuilding was as valuable in preventing conflict as in healing the wounds after conflict has occurred.²⁵

In 2000, *Report of the Panel on UN Peace Operations*; also known as the *Brahimi Report* stressed the importance of peacebuilding operations and recommended the restructuring of the Department of Peacekeeping Operations with the institutional need for a peacebuilding mechanism and other reforms that led to some improvements.²⁶ In *Brahimi Report*, peacebuilding was defined as activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war.²⁷

²² Ahmed, Keating, Solinas (2007), p. 4

²³ *An Agenda for Development*, UN Doc A/48/935, 6 May 1994, paras. 16- 22

²⁴ *Ibid.*, para. 23

²⁵ *Supplement to an Agenda for Peace*, UN Doc A/50/60- S/1995/1, 3 January 1995, para.47

²⁶ Gray (2004), pp. 239- 245

²⁷ *Report of the Panel on United Nations Peace Operations, The Brahimi Report*, UN Doc A/55/305-S/2000/809, 21 August 2000, paras. 35- 47

In 2001, the Secretary General's Report to the Security Council entitled '*No Exit without Strategy*' underlined three key objectives whose fulfilment has often brought about successful comprehensive peacebuilding; consolidating internal and external security, strengthening political institutions and good governance, promoting economic, social rehabilitation and transformation.²⁸

Contrary to such positive developments and high optimism, the deficiency and inability of the UN in dealing with the complexities in post-conflict transition periods resulted in serious weaknesses and failures of peacebuilding operations. The Secretary General Kofi Annan stated in 2005 in his report to the General Assembly called as, *In Larger Freedom: Towards Development, Security and Human Rights for All*; "roughly half of all countries that emerge from war lapse back into within five years".²⁹ The Secretary General further emphasized that the UN system is institutionally deficient since no part of the UN system effectively addresses the challenge of helping countries with the transition from war to lasting peace.³⁰ So, a more comprehensive approach should be adopted in order to overcome these challenges in peace operations. In this context, the establishment of the UN Peacebuilding Commission (PBC) in 2005 was a turning point in global efforts to sustained engagement in countries emerging from conflict with a special role of coordinating international strategy among various actors for post-conflict reconstruction. The complexity of peacebuilding operations, the variety of actors involved and the absence of coordinated approach by those parties such as states, international organizations, NGOs, donors, financial institutions, peacekeepers results in delayed response, duplication of functions and waste of resources in peacebuilding activities. Thus, the PBC is expected to play a role for coordinating international strategy for post-conflict reconstruction in war-torn societies and institutionalization of peacebuilding.

²⁸ No Exit Without Strategy: Security Council Decision-Making and the Closure or Transition of UN Peacekeeping Operations, UN Doc S/2001/394, 20 April 2001, para. 20

²⁹ Newman and Richmond (2006), p. 101

³⁰ In Larger Freedom: Towards Development, Security and Human Rights for All, UN Doc S A/59/2005, 21 March 2005, paras. 6- 20

As mentioned previously, it is obvious that the termination of hostilities by military means does not necessarily bring peace to conflict-affected territories. Underlying causes of the conflict should be addressed deeply so that a return to violence is prevented. Under the light of the involvement of multiple tasks, many various tools, a variety of actors, different definitions consistent with the existing mandates, worldviews and organizational interests, it is very important to define what constitutes 'peacebuilding'. It is also very important to prevent that the peacebuilding context will be lost among so many diverse institutions and activities on the ground, to become a non-place.³¹

Before focusing on what peacebuilding refers to, the essential focus should be what is understood by 'peace'. *Negative peace* which refers to the *absence of armed conflict* can be one of the desired outcomes of peacebuilding efforts. However, the most common view is that a *positive peace* must be built upon the negative peace through which a structural transformation towards a socio-political and economic system capable of fostering justice and ensuring a self-sustained peace will take place. Therefore, peacebuilding efforts should aim more than the elimination of armed conflict. Instead, the root causes of the conflict should be addressed and handled accordingly. Such an approach is identified by Charles Call and Elizabeth Cousens as the *Maximalist approach*, whereas only the prevention of renewed armed conflict is *Minimalist approach*, and usually the reality achieved is *middle ground* in between these two approaches with the result of no renewed armed conflict and attainment of decent governance.³² At its core peacebuilding aims at the prevention and resolution of violent conflicts, the consolidation of peace once violence has been reduced and post-conflict reconstruction with a view to avoiding a relapse into violent conflict.³³

³¹ Denskus (2007), pp. 656- 660

³² Cousens and Kumar (2001), pp. 5- 17

³³ Tschirgi (2003), p. 2

Essential elements of peacebuilding are the maintenance of the attained peace and the prevention of re-emergence; recurrence of violent conflict and upon these basic principles the long-term objective is bringing a fundamental transformation of the conflict-ridden societies. So, a transformative potential is hidden in the peacebuilding agenda which ensures transformation from culture of violence to culture of sustainable peace where politics should replace violent conflict as the means of resolving differences.³⁴ Since an agreement ending hostilities does not necessarily bring peace to a conflict affected country, efforts should be focused on peace consolidation by strengthening national capacities at all levels for conflict management. In this regard, peace may require a break with the past and reaffirmation of local history, in moving from war to peace, transition periods thus require change which may itself constitute a ground for further destabilization or new conflicts. Therefore one of the main debates evolving around the concept is between '*peacebuilding as stabilization*' or '*peacebuilding as transformation*'. In most of the cases, the loss of legitimacy, trust towards the state elites or resentment among different groups within a society leads to the eruption of violent conflict. After the termination of violent conflict, local elites and peacebuilders generally negotiate a peacebuilding programme that reflects the desire of peacebuilders for stability on the ground and the desire of local elites to ensure that reforms do not threaten their power base. The *Co-opted Peacebuilding* thus refers to the situation where local elites and peacebuilders jointly determine assistance activities in accordance with their own interests. Therefore, in most of the cases, on the ground not a real transformative power takes place; state-society relations remain intact.³⁵ However, emphasizing stability and status-quo over change creates a dangerous line which should be handled very carefully. Dimensions of peacebuilding should equally focus on the stability creation, restoration of democratic state institutions, addressing the socio-economic dimensions of conflict and ensuring a real transformation on the ground. In this respect, establishing an interim international administration is an integral part of

³⁴ Ibid., p. 3- 6

³⁵ Barnett and Zuercher (2007), pp. 25- 40

the process of conflict transformation through which the administrations aim at diminishing the means and motivations for violent conflict, while developing peaceful alternatives for the competitive pursuit of political and economic aspirations.

The question of what are the most effective methods to reach the objectives of peacebuilding is one of the key questions that should be focused on. Some adopt a linear view of conflict where the emphasis on peacebuilding emerges only after the peacemaking, peacekeeping processes have been established. This approach could be mainly valid when dealing with inter-state conflicts where diplomatic peacemaking phase should be concluded between the involved parties, only then would military peacekeepers be deployed to keep the peace.³⁶ On the other hand, the second approach offers no sequencing among peacemaking, peacekeeping and peacebuilding. Accordingly, a more holistic approach to conflict whereby diagnosing the problem before offering a solution should be the key element. Peacebuilding should refer not only in post-conflict situations but at different stages of conflict since all the peacemaking, keeping and building processes are inseparable from each other and mutually supportive. This requires the simultaneous capacity to make peace, impose peace and build peace.

Any peacebuilding strategy must be tailored into its unique context and need clearly established goals. Knowledge of the local context is necessary to understand the realities. Society-specific expertise rather than functional expertise is required for meaningful efforts. Effective peacebuilding should define its goals in such a way that they can be self-enforcing, or sustained over time without requiring new international intervention. Therefore, some scholars refer to peacebuilding as the reinstatement of political life; building stable political capacity for conflict resolution in order to manage conflicts without resorting to violent methods.³⁷

³⁶ Covey, Dziedzic, and Hawley (eds.) (2005), pp. 5- 10

³⁷ Cousens and Kumar (2001), pp. 5- 17

War-torn societies should build their own peace in the long run. In other words peacebuilding efforts must be home-grown and based on national ownership. The basic dilemma that emerges is the more proactive the external role the harder it is for local structures to gain legitimacy. Therefore, every aspect of assistance should be harnessed to strengthen, empower the local capacities, should help them find and strengthen the capacities for their own solutions. It is not the responsibility of external actors to cure all the problems of a country. International involvement is not an open ended commitment, instead targeted to achieve certain objectives; establishing conditions, dialogue, public security, participation under which viable political processes can flourish.³⁸

Following these assumptions, another central topic in the debate is the normative basis of the concept of peacebuilding; that is *peacebuilding as political and democratic liberalization*. The current international approach to peacebuilding is grounded in the particular concept of ‘liberal peace’ which derives from a long tradition of Western liberal theory and practice. The liberal peace thesis argues that political and economic liberalization serve as effective antidotes to violent conflicts. Thus promotion of human rights, human security, democracy, free and fair elections, constitutionalism, rule of law, property rights, good governance and market-oriented economic reforms have become part of the international peacebuilding strategy.³⁹ Roland Paris argues that since such peacebuilding missions attempt to transplant the values and institutions of the liberal democratic core to the peripheral states, they resemble an updated version of *mission civilisatrice*, whereby a new chapter in the history of relations between the developed and developing world is emerging.⁴⁰ The idea of what a state should look like and how it should act has been globalized through such missions transmitting a set of internationally-approved norms and standards of acceptable behaviour.

³⁸ Hazen (2007), pp. 324- 327

³⁹ Tschirgi (2004), p. 5

⁴⁰ Paris (2002), pp. 637- 638

Whether this immediate pursuit of liberal peace in fact contributes to real peace in post-conflict societies is a central debate in the field. According to some scholars, who criticize the liberal peace thesis, immediate economic and political liberalization are particularly ill-suited and counter-productive in peacebuilding efforts since they promote economic, societal and political competition at a difficult and fragile phase. A political process of democratic competition based on the idea of conflict of interests, will tend to further exacerbate tensions in a transition period from war to peace. Instead, a gradual and controlled peacebuilding strategy is suggested to avoid the destabilizing effects of political and democratic liberalization.⁴¹ Although liberalization and democratization should be the ultimate aims, they should be delayed until political and economic institutions which are capable of managing the societal tensions arising from the process of democratization and marketization are constructed by the international actors. Through this process, which is called as ‘institutionalization before liberalization’, the institutional foundations for more peaceful and democratic societies in the long run are laid down and the destabilizing effects of liberalization are prevented.⁴² According to this approach, the potential political problems will be eliminated by offering technical and administrative solutions for a temporary period of time even though they are based on undemocratic means.

However, this approach is challenged by some others who argue that such a process where the international actors take the lead in the creation of strong institutions may not create the mechanisms for generating sufficient power and authority.⁴³ Political institutions could cohere society only if they emerge out of the existing social forces, if they represent real interests and real clashes on the ground and not if they are stemming from foreign imposition. Therefore, international community, instead of assuming a regulatory role, should facilitate political participation and create space for dialogue among local actors. Since

⁴¹ Ibid., p. 645- 550

⁴² Paris (2003), pp. 445- 465

⁴³ Jahn (2007), pp. 222- 224

societal pressures and demands are constitutive of stable and legitimate institutional mechanisms, a political process must be initiated instead of delaying elections, limiting political freedoms, imposing political restrictions. The argument that the rule of law, respect for democracy and other institutions can be developed before the elected representatives assume political responsibility is challenged by Chandler on the ground that rule of law requires a public authority based on local support, popular legitimacy and consent. In the absence of such a popular consent, a politics of local exclusion will threaten the sustainability of externally created institutions.⁴⁴ Chandler further asserts that the current growing peacebuilding agenda is driven more by moral and ethical concerns than political ones, where viable long-term political solutions are obstructed in the name of cosmopolitan values.⁴⁵ Before we turn our attention to the operational elements of peacebuilding in the next section, it should be admitted that all the above-mentioned debates and dilemmas concerning the liberal peace thesis are also valid for international administrations since they offer mechanisms to promote reconstruction of functioning, liberal and democratic states.

2.2. Operational Elements and State-Building

Since the key sources of conflicts, which invoke interventionist actions, are often deeply rooted in the political, economic and social structures of the target states, interventions should address the underlying roots of the conflicts. The immediate withdrawal of the intervening forces without solving the root causes, will lead to the resumption and revitalization of the conflicts in the future. Therefore, use of military force in emergency cases should be employed as part of a long-term project of political, economic and social reconstruction. Otherwise, though interventions prove to be successful in settling the humanitarian crisis in the short-term, their long-term effects will not be so victorious and they won't be able to ensure no future outbreak of hostilities. As a consequence, in many cases, instead

⁴⁴ Chandler (2006), pp. 490- 494

⁴⁵ Ibid., pp. 485- 488

of withdrawing immediately after the military action, the intervening forces should engage in long-term massive peacebuilding efforts in order to restore the political stability, order and peace in the target state.

These long-term peacebuilding efforts may include multidimensional and multi-sectoral activities and practices such as security sector reform; disarmament, demobilization, reintegration (DDR); democracy and good governance; civil society; human rights; constitution-building; public administration; local governance; electoral process; political parties; institutional capacity building; justice and rule of law; judicial and legal reform; transitional justice; reconciliation of conflicting parties; social dialogue; gender and vulnerable groups; youth empowerment and employment; economic reconstruction; reconstruction of infrastructure; land issues; private sector; job creation; return of refugees and IDPs.⁴⁶

All these efforts, whereby the intervenors become a part of the political repairment agenda, should be regarded as a complementary process to state-building, which is one of the key concepts that has deep implications on the efficacy of peacebuilding. However, it should be noted that the contribution of state-building to peacebuilding may depend on the type of the tools adopted for constructing state institutions. Therefore, a broader focus on state-building should be adopted through which the type of the state and the state-building strategy of the international community will be analyzed. The emphasis on state-building is a proof that sovereign states are still the constituent units of the international system and bear certain rights and obligations whereby they provide the most effective mechanisms for the creation and enhancement of security and welfare.

Since post-conflict state-building is so important for consolidating peace through creating sustainable self-government and national autonomy, it emerged as a central objective of peacebuilding operations. In post-conflict societies, in the

⁴⁶ Barnett, Kim, O'Donnell and Sitea (2007), pp. 45- 50

process of recovering from conflict, people desire foremost the restoration or creation of a functioning, accountable and transparent state serving their legitimate aspirations and interests.⁴⁷ The establishment of state institutions and the transfer of governance elements to such legitimate authorities will also ensure that the international actors will withdraw from the concerned territories and not become a neo-colonial power. Therefore, building legitimate and independent state institutions capable of delivering human security, and prosperity to its citizens should be the focal point for ensuring sustainable peace. However, the establishment of a strong state apparatus is not enough to facilitate national reconciliation, for which the revivification of the civil society is necessary.⁴⁸ Therefore state-society relations, not only strong state institutions should be aimed by state-building. State-building if conducted successfully enhances mechanisms for security, order and conflict resolution at national level with a long-term positive impact on peacebuilding.

Although they seem to be regarded as complementary concepts, however some of the contradictions between state-building and peacebuilding should also be highlighted. State-building refers to actions undertaken by international or national actors to establish, reform, or strengthen the institutions of the state which may or may not contribute to peacebuilding.⁴⁹ The question of what kind of state should be created at the end is one of the key challenges that should be addressed in examining the relationship between state-building and peacebuilding. Also the way international actors handle this process deserves a high attention.

Contrary to its above-explained positive impact, state-building can undermine peace consolidation in the long-term, by contributing to further insecurity and group tensions when not sensitive about local conditions and not adopting the appropriate tools. In certain cases, external assistance can lead to the

⁴⁷ Ghani, Lockhart and Carnahan (2006), p.118

⁴⁸ Chopra, *Political Tasks of Peace Maintenance* in Schmidl (ed.) (2001), p. 25

⁴⁹ Call and Cousens (2007), p. 3

empowerment of some segments of the population at the expense of others in a way that may damage national reconciliation efforts. Bearing in mind that post-conflict state-building is distinguished from a normal process of state-building due to the impact of a dual crisis of security and legitimacy stemming from prior existence of violent conflict among domestic actors, state-building operations in such a fragile atmosphere must focus on mobilizing total public support and confidence towards the post-conflict institutions. Re-building or establishing at least minimally functioning independent state institutions will enhance popular legitimacy and confidence for the emergent regime.⁵⁰ However, internationalized state-building operations create a dual legitimacy problem whereby the distinction between to what extent states exercise the control as sovereigns, in service of nationally determined goals and to what extent as agents of externally defined international standards is blurred.⁵¹ The intrusive nature of international assistance creates a dilemma whereby outside intervention is used to foster self-government and to define legitimate local ownership, which may in turn undermine the efforts. For instance, a sustained international military and civilian presence can be at odds with sufficient national capacity-building. Furthermore, external state-building leaves little room for state institutions to develop their links with societal forces and civil society. Instead, it is regarded as a scientific, technical, administrative top-down process by external forces, which does not require a process of popular consensus-building to give the target population a stake in policy making.⁵² This politics of local exclusion combined with the unwillingness of international administrators to assume full responsibility for their policies leads to the creation of an 'Empire Lite' which in turn cannot provide long-term security guarantee.⁵³ Therefore, the technocratic view of politics, by replacing the politics of self-determination with bureaucratic rule that is dependent on external

⁵⁰ Ibid., pp. 7- 9

⁵¹ Rubin (2005), pp. 96- 97

⁵² Chandler (2006), p. 490

⁵³ Ignatieff (2003), p. 126

power for its survival, resulted in emergence of an understanding for ‘state-building as state failure’.⁵⁴

State-building efforts must originate from within the state itself. Where external actors play a leading role, they undermine the ability of the emerging state to learn to govern independently and they disrupt patterns of local ownership. Thus, external actors must have very modest expectations of their own role, not playing a guiding role, but playing only a facilitating one. The growing view that international actors can better govern than the local actors is a very critical assumption that should be avoided. Instead, effective state-building strategy should rest on existing potential and local assets and forms of capital, instead of adopting that everything must be created from scratch and societies can be radically remade after wars. It should be never forgotten that wars, violent conflicts radically transform the very foundations of the society as much as they destroy. The simultaneous processes of destruction and transformation during the violent conflict have an enormous impact on the post-conflict environment where the dysfunctional relationships among the conflicting parties are altered and social rehabilitation efforts are initiated. Even though in cases where universal values clash with local peculiarities; particular social, political, cultural traditions, the existing assets and capital should be mobilized instead of a total exclusion and underestimation of national local input and certain specific requirements. Especially, in the post-September 11 era, with the growing emphasis on ‘war on terror’, a posture in favour of outside unilateral military intervention and regime change was developed. State-building issue is a highly sensitive and complex one that should not be regarded as a simple extension of national interests, which otherwise would create serious burdens and accusations on the part of the intervening party. Instead of unilateral military ventures, multilateral mechanisms should prevail as the most reliable vehicles for rebuilding states and tackling the root causes of its failure and establish democratic institutions.

⁵⁴ Bickerton (2007), p. 109

The establishment of transitional administrations by the UN, in this respect provides the implementation of internationalized state formation process in a post-conflict environment. They are regarded as the most extreme example of externally led state-building practices. Although examples of numerous state reconstruction and state-building cases have been experienced so far, in most of the cases the concerned state was a collapsed, failed or abusive state but continued to enjoy an independent statehood in the international arena at the beginning of the international intervention through which only the internal sovereignty of the collapsed entity was restored and strengthened.⁵⁵ However, in our cases of international administrations in Kosovo and East Timor, considering the fact that neither of them were independent entities at the beginning of the international administrations, but resulted with the creation of independent states, it is essentially important to emphasize the *sui generis* nature of these cases. Therefore, international administrations, whereby the UN takes over quasi-sovereign tasks, are ground-breaking operations in terms of their contribution to the normative and practical transformation of state sovereignty.

Although sovereignty has been regarded as the basic and prevailing norm since the Treaty of Westphalia and is still enshrined in the current international system as the sovereign equality of states and non-intervention in the internal affairs, the norm itself has been subject to serious challenges, debates and constraints concerning its meaning and limitations whereby it was claimed that every piece of international law is a constraint on sovereignty.⁵⁶ Also, in an important Report by the UN Secretary General, it is stated that the time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality.⁵⁷

⁵⁵ External sovereignty refers to the capacity for a state to act independently and autonomously in the international realm while internal sovereignty concerns a supreme, centralized and sovereign power exercising its law-making and law-enforcing authority within the territorial boundaries of a state.

⁵⁶ Wallerstein, *The New World Disorder: If States Collapse Can the Nations be United?* in Paolini, Jarvis and Reus-Smit (eds.) (1998), p. 173

⁵⁷ An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, UN Doc A/47/277- S/24111, 17 June 1992, para. 17

Given the current nature of the international system, the absolute notion of sovereignty is being questioned by some scholars, emphasizing the need of re-thinking sovereignty by introducing the concept of sovereignty-modern.⁵⁸ Here it is important to refer to Krasner's argument that sovereignty is in fact an 'organized hypocrisy' whereby, he means that the right of a state to exercise full authority within its own territorial borders has never been consistently established in practice.⁵⁹ Krasner, by introducing 4 different ways, namely; conventions, contracts, coercion and imposition, argues that the Westphalian sovereignty has been violated and ignored constantly due to the lack of a higher authority to prevent states from intervening in others' domestic affairs. Conventions on human rights entered voluntarily by states, coercion or imposition emerging from power asymmetries such as economic or political sanctions to protect human rights, minority rights and in some cases to ensure domestic regime change, are all examples of compromises of sovereignty.⁶⁰

Under this general framework, the enduring centrality of territorial sovereignty in the normative structure of world politics has started further to be challenged seriously by the problems led by the sovereignty-based conflicts. The secessionist claims, sub-state groups or minorities seeking independence from a sovereign state, all relied on the doctrine of self-determination to support their claims to independence. A big gap and clash between the concepts of absolute sovereignty and self-determination has emerged responsively under international law. Some only insisted on the observation of the principle of absolute sovereignty and territorial integrity, but others focused on the attainment of self-determination, so political impasse with no viable solutions followed consequently. In such emerging crises, however, the internal nature of these conflicts challenged the international conflict resolution machinery designed for the essential purpose of preventing and settling conflicts between the sovereign independent states. Thus,

⁵⁸ Jackson (2003), p. 278

⁵⁹ Krasner (1999), pp. 1- 42

⁶⁰ Ibid., pp. 115- 151

alternative tools and approaches were tried to be invented under international law in order to resolve the impasse. Within this larger political debate, concerning the most appropriate means for resolving sovereignty-based conflicts and disputes about secession, the concept of ‘earned sovereignty’ has emerged as an important policy tool.

Earned sovereignty entails the conditional and progressive devolution of sovereign powers and authority from a state to a sub-state entity under international supervision.⁶¹ As the term implies, sovereign independence is not an immediate and automatic result, but instead, sovereignty for the aspirant states has to be earned through the realization of certain standards and benchmarks based on some objective conditions. With these conditions a particular model of governance based on democracy, rule of law, free market economic system and liberal values, is tried to be promoted. An entity will be treated as sovereign and independent as long as its internal governance complies with the right to democratic governance.⁶² What is observed consequently is not a total surrender of sovereignty but a division of sovereignty, through which states share their sovereignty both internally at sub-state level and internationally at supra-state level, which in turn enhances their security by eliminating threats stemming from the indivisibility of sovereignty.⁶³ Earned sovereignty under international supervision creates an opportunity to minimize many of the destabilizing factors associated with the immediate and unilateral secession of the sub-state entity in the case of continued insistence for absolute sovereignty by the parent state. The gradual nature of the earned sovereignty provides the concerned parties with sufficient time which they may use for resolving their competing claims peacefully with the assistance of the international community. And in highly disputed situations, where an agreement cannot be reached by the parties, even in the case of a unilateral action by one of the parties without the consent of the other

⁶¹ Williams and Pecci (2004), p. 347

⁶² Franck (1992), pp. 46- 91

⁶³ Hooper and Williams (2002- 2003), pp. 355- 365

side, the presence and involvement of the international actors on the ground and their intensive management of the crisis may prevent the situation from worsening and turning into a zero-sum gridlock.

The earned sovereignty process is based on three core elements; shared sovereignty, institution-building and determination of final status. It is also supported by three optional elements; phased sovereignty, conditional sovereignty, and constrained sovereignty.⁶⁴ During the shared sovereignty process, the state and sub-state entity may both exercise some sovereign authority and functions over a defined territory. Sometimes international institutions may also exercise sovereign authority in addition to or in lieu of the parent state. During the institution-building mechanism, the sub-state entity with the assistance of the international community undertakes to construct new institutions for self-government. The determination of the final status at the end may involve a negotiated settlement between the state and sub-state entity, often with high level international mediation. The phased, conditional and constrained sovereignty are designed to describe the characteristics of the devolution process whereby the sovereign functions and authority is transferred to the sub-state entity under international supervision.⁶⁵ The phased sovereignty implies the gradual and measured devolution of sovereign functions from the parent state or international administration to the sub-state entity during the period of shared sovereignty. In some cases, the gradual transfer of sovereign authority to the sub-state entity or the determination of final status may be conditioned upon the fulfilment of certain benchmarks; standards, a process which is described as conditional sovereignty. And once the sub-state entity gains its independence, the constrained sovereignty involves the imposition of continued limitations on the newly established sovereign independent state, such as prolonged international administrative or

⁶⁴ Williams and Pecci, *op.cit.*, p. 355

⁶⁵ *Ibid.*, pp. 355- 356

military presence and limits on the right of the state to undertake territorial association with other states.⁶⁶

Earned sovereignty with all these core and optional elements, as a new conflict resolution approach, has been incorporated in the practice of international transitional administrations, designated to create the conditions under which conventional sovereignty can be restored. Although we will later elaborate in detail the cases of Kosovo and East Timor, here just for a general overview of the process, if we examine the context of conflicts in Kosovo and East Timor, we encounter that both these crises originated from competing and conflicting claims on self-determination and absolute sovereignty. Therefore, the international community proposed the earned sovereignty approach in both cases through the creation of UN administrations. Accordingly, in both cases, the sub-state entity shared sovereign authority and functions with the UN through joint implementation for administrative structures during an interim period prior to the determination of final status. The UN exercised sovereign authority and functions because the state has been precluded from exercising those functions and the sub-state entity was not yet capable of doing so. In East Timor, with the adoption of the Security Council Resolution 1272, the period of shared sovereignty between the UN and East Timor to construct the democratic institutions necessary for independent self-government was initiated. After meeting some certain benchmarks, the UN slowly transferred governing functions and authority to East Timor and East Timor was recognized as an independent state in 2002. In Kosovo, the Security Council Resolution 1244 provided the basis for the interim UN administration in Kosovo. During this interim period the UN exercised near absolute executive and legislative authority, seeking to build local institutions that will allow for autonomous governance for Kosovo. And with the recent declaration of independence in February 2008, Kosovo emerged as an independent state on the international arena.

⁶⁶ Williams (2002- 2003), p. 389

The period of shared sovereignty is thus designed as a way station to independence, with the sub-state entity learning how to exercise nearly all the power and authority of an independent state through the institution-building efforts under international supervision.⁶⁷ The determination of final status of the sub-state entity and the type of the sovereignty attained are the most controversial aspects of the earned sovereignty. If the final status of the sub-state entity is not clear at the beginning or cannot be agreed upon later by the parties through consensus, the final decision may create some legal and political problems. When we continue to evaluate our cases, independence for East Timor was not disputed, since all parties agreed to this conclusion at the beginning of the process and the independence took place in conformity with the principle of self-determination. However, the deployment of subsequent UN missions after the Timorese independence in order to prevent the destabilizing dynamics of the independence and to assist the newly independent state in solving its problems is an illustration of the exercise of constrained sovereignty instead of an absolute sovereignty. In the Kosovo case, on the other hand, the international administration engaged in state-building activities even though Kosovo's international legal status was not determined yet and was not agreed that of an independent state due to the existence of some questions and counter-arguments on the applicability of external self-determination. However, the earned sovereignty approach created an irreversible expectation and desire of independence on the part of the sub-state entity which resulted with the unilateral declaration of independence without the consent of Serbia, the parent state. This situation illustrates the fact that earned sovereignty approach was not successful in influencing or mediating the ability of the concerned parties to determine the final status through consensus-building. In Kosovo, again, if we consider the continuation of specified limits and conditions on sovereignty even after Kosovo gained independence and international recognition, the constrained and conditional nature of the sovereignty is proved.

⁶⁷ Williams and Pecci, *op.cit.*, p. 361

As we can derive from our cases, though absolute sovereignty and independence cannot be asserted any more in their strict and exclusive terms, the attainment of sovereign independent statehood through international supervision in both our cases, is an illustration that state sovereignty is still evaluated as a crucial reference point in international system despite the fact that it is under siege from many sides.

The earned sovereignty approach, although widely accepted, there are also strong oppositions against this position. Some scholars who criticize the earned sovereignty approach, claim that since sovereignty flows only from the will of the people, the very idea of an international administration brought from outside runs against the logic of sovereignty. It is also claimed that intervening for eventual self-determination is a contradictory enterprise since if the local forces cannot achieve or sustain their self-determination and sovereignty without a foreign intervention, then they are unlikely to be able to hold on to power after the intervening forces leave.⁶⁸ It is further argued that through earned sovereignty the established principle of sovereign equality of states is challenged since states possessing various levels of sovereignty such as conditional sovereignty or constrained sovereignty have emerged. For countries who attained independence through the earned sovereignty approach, due to the existence of some conditions and limitations in the form of dependence upon international assistance, independence itself sets the conditions for the perpetuation of their subordination. Thus a sovereignty hierarchy where states have been started to be divided along pre-modern, modern, post-modern lines, has surfaced.⁶⁹ Others claim that focusing only on resuscitation of strong state authority may also be misleading since public authority can also be built at supra-state or sub-state levels as long as it is based on local support and popular legitimacy. All the recent operations serve to reaffirm the power and importance of the state as a given political unit under

⁶⁸ Doyle, *War Making and Peace Making* in Crocker, Hampson and Aall (eds.) (2001), pp. 538-539

⁶⁹ Kagan (2003), pp. 3- 76

international system. However, critical theorists claim that instead of taking the state-centric system as a central focus, non-state political structures should have been proposed to emancipate societies. Critical international theory which is mainly concerned with finding the sources of existing inequalities, injustices and domination that shape the global power relations, seeks to eliminate the global constraints which prevent the humanity from achieving freedom, equality and justice. In order to attain human emancipation, critical theorists question the existing sovereign state system and consider alternative forms of political community.⁷⁰ Whether such alternative structures could be attained is beyond the scope of this study, however, the contradictions resulting from the earned sovereignty approach should be emphasized in order to prevent further failures. It is asserted that the process of creating new states through long-term governance from outside, has overlooked the social and human consequences of this process of regulated statehood and independence.⁷¹ Attainment of statehood may no longer be regarded as an objective legal process but increasingly a top-down imposition of a subjective normative vision for a particular ideal form of state based on the prevailing international principles such as rule of law or democracy. Such an intrusive social engineering which devises a common general model was criticized on the ground that no one common model may be suitable for all societies. Therefore, the question of whether such state-building missions through earned sovereignty will result in long-term self-sustaining peace consolidation is a central question that should be focused on. In order to move from imposed stability under international supervision to self-sustaining peace under independence, constructivist approaches emphasize not only the importance of material but also discursive power such as ideas, norms or culture.⁷² Focusing only on the material power as the principal source of state authority will ignore the role of indigenous initiatives led by local people. Since interests in a society are not exogenously determined, not given prior to the social interaction, they are

⁷⁰ Linklater (1999), pp. 473- 482

⁷¹ Morgan (2005), pp. 69- 86

⁷² Ibid., p. 72

endogenous to social interaction and emerge as a result of identity acquisition.⁷³ For this reason to sustain the viability of peace, a bottom-up; communal peacebuilding approach, whereby people will mutually interact with each other, interpret their social relationships, reconcile their differences and construct their own collective meaning of peacebuilding through consensus should be adopted instead of a top-down external imposition of peacebuilding.⁷⁴

⁷³ Wendt (1994), pp. 166- 179

⁷⁴ Morgan, op.cit., pp. 82- 85

CHAPTER 3

OVERVIEW OF THE LEGAL AND POLITICAL BASIS OF INTERNATIONAL TRANSITIONAL ADMINISTRATIONS

The question of authority is important because it frames the terms and sets the conditions of the involvement. Sources of political and legal legitimacy for this kind of operations should be carefully analyzed in order to clarify the discussions evolving around when such administrations become or resemble neo-colonial practices. The main question that should be answered is whether the UN does have adequate legal authority for such governance functions it has assumed in Kosovo and East Timor.

Like peacekeeping operations have never been envisaged in the UN Charter, but invented as a response to actual demands, neither the formation of international transitional administrations was included in the UN Charter, instead developed as an innovation, on an ad hoc basis for providing sustainable solutions to disputes. Although there were some proposals in 1945 by Norway at the San Francisco Conference, international meeting which established the UN, to amend Chapter VII enforcement powers as to include that the Security Council temporarily to assume the administration of a territory if administration by the occupant state itself presented a threat to the peace, this provision was not accepted.⁷⁵

It should be emphasized that there are some recent arguments in favour of reviving the Trusteeship Council under the Chapter XII of the UN Charter for providing useful guidelines for the behaviour of administering authorities.⁷⁶ Some scholars argued that collapsed or failed states should automatically be placed under comprehensive international administration in the form of *de jure*

⁷⁵ Chesterman (2004), p. 56

⁷⁶ ICISS (2001), *The Responsibility to Protect*, paras. 5.22- 5.24

trusteeship.⁷⁷ So, UN conservatorship or protectorate was posited as a remedy for saving failed states.⁷⁸ Taking into account that the Trusteeship Council suspended its operations in 1994, with almost no actual power since then, and that the Article 78 of the Chapter XII of the UN Charter prevents the application of the trusteeship system to territories that are members of the UN and that such a revival would be incompatible with the prevailing international political discourse, removes the resurrection of the Trusteeship Council from the agenda of international administrations. Furthermore, Chapter XII limits the applicability of the trusteeship system to three different categories of territories, namely those formerly held as mandates under the mandates system of the League of Nations, territories detached from enemy states as a result of World War II and territories voluntarily placed under the trusteeship system by states responsible for their administration.⁷⁹ So, none of these categories could have been applied to UNMIK and UNTAET as a legal basis. Also from a political perspective, as Bain points out, trusteeship is an unpromising arrangement of security in a pluralist international society that continues to value political independence, self-determination and equality of its members.⁸⁰ The idea that the international society is on the verge of returning to an era of long-standing trusteeships should be met with caution taking the inherently ‘temporary’ nature of such administrations.⁸¹ According to Krasner, transitional administrations are based on a temporary, transitional and limited measure designed to create the conditions under which conventional sovereignty can be restored in a relatively short time frame.⁸² Unlike the colonial past, when the colonial powers deliberately and systemically exploited the territories they occupied, UN administrations are only

⁷⁷ Ratner and Helman (1992), pp. 3- 20; Fearon and Laitin (2004), pp. 5- 43

⁷⁸ Lyon (1993), pp. 96- 110

⁷⁹ Crawford (2006), pp. 566- 574

⁸⁰ Bain (ed.) (2006), p. 188

⁸¹ Jackson (2004), p. 34

⁸² Krasner (2004), p. 99

designed to serve and enhance the ideals of self-determination and self-government in the concerned territories rather than suppress these ideals. However, the intention to restore sovereignty is challenged by other scholars asserting that since they are imposed from outside, they are running against the logic of sovereignty which is built on the relation between the state and its own society based only on the popular will of the people.⁸³

In order to understand how the international administrations do fit within the broader structure of international law, we should focus on the mechanisms to promote international peace and security, which constitutes one of the major purposes of the UN. For this purpose, Article 1(1) of the UN Charter mandates the UN; “..... to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”⁸⁴ Article 2(3) of the UN Charter further obliges states to settle their disputes by peaceful means in such a manner that international peace and security is not endangered.⁸⁵ Article 33(1) incorporates negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and ‘other peaceful means’ for the peaceful settlement of international disputes. The practice of international administration can be considered therefore, as a part of this broader international system of dispute prevention and settlement.⁸⁶ As explained in the second chapter, international administrations may offer means for creating a more favourable climate for addressing the dispute and its resolution. And once the dispute is settled through a conflict resolution mechanism, international administrations play a crucial role in the implementation of these settlements.

⁸³ Caplan (2005), pp. 467- 475

⁸⁴ UN Charter Chapter 1, *Purposes and Principles*, Article 1(1)

⁸⁵ UN Charter Chapter 1, *Purposes and Principles*, Article 2(3)

⁸⁶ Wilde (2008), pp. 239- 241

Under this general framework, although the power of the UN Security Council to administer a territory is not mentioned explicitly in the UN Charter, in Kosovo and East Timor the Security Council established the respective civil administrations on the basis of its purposive interpretation on implied powers under Chapter VII of the Charter, with its primary responsibility for the maintenance and restoration of international peace and security.⁸⁷ According to the Article 39 under Chapter VII, the Security Council is required to determine whether a threat to the peace, breach of the peace or act of aggression exists before it can take appropriate measures.⁸⁸ Chapter VII does not, however, provide explicit definitions as to what constitutes a threat to the peace or breach of the peace. The decision is thus completely left to the exclusive judgement and discretion of the Security Council permitting a highly subjective interpretation.

Although in Article 2(7) of the UN Charter it is concluded that nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state, the same article states further that this principle shall not prejudice the application of enforcement measures under Chapter VII to maintain or restore international peace and security.⁸⁹ Considering the wording of the Article 39, threat to the peace is not qualified only as an ‘international’ threat but as ‘any’ threat to the peace. Therefore, threats to the peace may be extended to include internal problems, civil wars, massive violations of human rights or repressive regimes.⁹⁰ The domestic nature of the crisis does not not prevent the Security Council from taking its

⁸⁷ Triantafilou (2004), p. 359

⁸⁸ UN Charter Chapter 7, Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 39;

The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

⁸⁹ UN Charter Chapter 1, Purposes and Principles, Article 2(7)

⁹⁰ Kınacıoğlu (2005), p. 32

enforcement measures under Chapter VII if it evaluates the situation as a threat to international peace and security.

Consequently, the establishment of a civil administration would stem from the powers of the Security Council under Article 41 to take non-military measures for the maintenance of international peace and security.⁹¹ Article 41 of the UN Charter provides that the Council may decide what measures are to be employed to give effect to its decisions, without limiting the types of steps that may be chosen; the list under Article 41 is clearly exemplary and not exhaustive.⁹² Considering the fact that in the furtherance of international peace and security, the Security Council has the authority to create international criminal tribunals, truth telling institutions, electoral mechanisms and other special administrative organs whereby international appointees exercise authority on locally-based institutions, nothing prevents the Security Council from establishing a complete civilian administration in conflict-ridden societies.⁹³

For understanding the jurisdiction assigned to the Security Council, attention should be focused on some specific articles under the UN Charter. Accordingly, Article 24 of the UN Charter declares that the members of the UN confer on the Security Council primary responsibility for the maintenance of international peace and security. Furthermore, Article 25 of the UN Charter states that UN members agree to accept and carry out the decisions of the Security Council in accordance with the present Charter. And finally, Article 103 provides that obligations under the present Charter shall prevail over the obligations under any other international

⁹¹ De Wet (2004), p. 315

⁹² UN Charter Chapter 7, Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 41;

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

⁹³ Wilde (2008), p. 93

agreement in the event of a conflict between these obligations.⁹⁴ Thus, by becoming members of the UN, states have consented to the powers of the Security Council if it considers a situation a threat to international peace and security. The Security Council can then delegate these powers to either the Secretary General, subsidiary organisations or states to enforce the measures decided upon by the Security Council as it deems necessary for the performance of its functions.

In Kosovo, the UN Security Council Resolution 1244 and in East Timor, the UN Security Council Resolution 1272 having been adopted respectively on 10 June 1999 and 25 October 1999, declared the situations both in Kosovo and East Timor as a threat to international peace and security.⁹⁵ In Kosovo the Security Council through Resolution 1244;

Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner.⁹⁶

In East Timor, the Security Council through Resolution 1272;

Welcomes the intention of the Secretary-General to appoint a Special Representative who, as the Transitional Administrator, will be responsible for all aspects of the United Nations work in East Timor and will have the power to enact new laws and regulations and to amend, suspend or repeal existing ones.⁹⁷

Under international law, institutions deriving their authority from public international law remain accountable under international law and cannot

⁹⁴ Kirgis (2001), p. 580

⁹⁵ United Nations Security Council Resolution 1244 (1999), Preamble and United Nations Security Council Resolution 1272 (1999), Preamble

⁹⁶ United Nations Security Council Resolution 1244 (1999), Article 6

⁹⁷ United Nations Security Council Resolution 1272 (1999), Article 6

themselves be construed as being above the law which has created them.⁹⁸ Therefore, in exercising the above-mentioned powers, the UN Security Council is expected to exercise its rights in good faith observance of UN Charter principles and other requirements by international law. In choosing the type of enforcement measures, the Council is bound by the norms of *jus cogens*, which are the peremptory norms of international law and should be bound by the core principles of human rights and international humanitarian law and elements of state sovereignty.⁹⁹ In addition to such legal restraints, the Security Council is also restrained by consensus-building and veto powers according to the UN Charter's procedural rules. Considering that the UN is acting on the basis of sovereign equality of its members, to what extent the expansionist approach of the Security Council in interpreting its powers under Chapter VII may lead to the creation of new states or change in political status of a territory is worth to analyze. According to De Wet, the Council cannot violate the principle of self-determination of peoples or cannot authorize unilateral secession of territories in contrary to the territorial integrity of states.¹⁰⁰ However on the other hand, according to Matheson, there can be in fact situations in which the Council would be justified in directing a permanent change in some aspect of status, boundaries, political structure or legal system of a territory if the Council decides doing so is necessary to restore and maintain international peace and security.¹⁰¹

Thus, in analyzing the administrations established by the UN, we encounter the question of whether there are some limits to the Council's authority for the governance of a territory, a question which raises many other political considerations concerning the status after the cessation of the UN administration. According to Crawford the limitations are determined by the fact that transfer of

⁹⁸ Bothe and Marauhn, *UN Administration of Kosovo and East Timor* in Tomuschat (ed.) (2002), p. 239

⁹⁹ De Wet (2004), p. 370

¹⁰⁰ *Ibid.*, pp. 328- 329

¹⁰¹ Matheson (2001), p. 85

territory may take place either by consent of parties affected before a formal peace settlement or by the creation of a new State in compliance with the principles of external self-determination in the territory affected.¹⁰²

The right to self-determination is a norm of *jus cogens* under international law which is enshrined in many international legal documents.¹⁰³ The right to self-determination postulates the right of a people to determine freely, without external interference, its own political status in a democratic way and pursue its economic, social and cultural development. In respect to UN administrations, it means that the UN cannot impose a particular form of government upon the population of a territory or a state against the will of the people concerned.

Whereas external self-determination entitles a people freely to choose the external; international status of their territory, whether forming part of or enjoying

¹⁰² Crawford (2006), p. 552

¹⁰³ UN Charter Article 1(2) reads the purposes of the United Nations as following;

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

The Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted in 1960 under the General Assembly Resolution Resolution 1514 (XV) stresses that;

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States adopted in 1970 under the General Assembly Resolution 2625 (XXV) states that;

Every state has a duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence.

The Helsinki Final Act of 1975, 1(a) Declaration on Principles Guiding Relations between Participating States, Section VIII: Equal rights and self-determination of peoples states that;

By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

some kind of free association with another state or becoming an independent sovereign state, internal self-determination concerns a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. External self-determination in the form of secession has only been legally recognized with respect to peoples of non-self governing territories, trust territories and mandate territories breaking away from the colonial powers or alien domination or occupation, who have not yet attained a full measure of self-government. However, in non-colonial situations, for the exercise of the right of self-determination no general right of a minority people to secede has been recognized under international law and therefore, cannot be enforced through the UN.¹⁰⁴ In these situations, peoples such as minority groups only have a right to enjoy internal self-determination. Partial and total disruption of the national unity or territorial integrity of a country has been regarded as incompatible with the purposes of the UN Charter. The principle of self-determination has been used in conjunction with the principle of territorial integrity in order to prevent the rise of a rule permitting unilateral secessions from existing independent states.

According to the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States;

Nothing in the section on self-determination shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.¹⁰⁵

As understood, the Declaration reaffirms the principle of territorial integrity, but with an important caveat or notification. Accordingly, the importance and primacy of the principle of territorial integrity as well as the equal need to respect human

¹⁰⁴ Shaw (2005), pp. 225- 231

¹⁰⁵ General Assembly Resolution 2625 (XXV), 24 October 1970

rights and self-determination within the territory of any state was highly stressed. In other words, the international legal order attempts to preserve the sensitive balance between the observation of the principles of territorial integrity and the right of every people to self-determination. Here the critical question is whether any group within a sovereign state is entitled to the unlimited right of self-determination in situations where this sensitive balance is damaged. As explained above, in normal conditions of non-colonial cases, self-determination is expected to be achieved within the existing state which is bound to respect its population's human rights and right to participate in government and political decision-making process. In other words, the territorial integrity and sovereignty of a government is entitled to be respected only as long as it represents the equal rights and interests of the whole population without any discrimination on racial, ethnic or religious grounds. Hence, it is argued that sovereign states who degrade the basic rights of the population, including the denial of the right to democratic self-government, forfeit their claims to territorial integrity and sovereignty, which may open the way for disassociations from the parent state.¹⁰⁶ Although this understanding may lead to the conclusion that secessionist actions can be justified when the government does not grant equal access to political institutions and does not represent the whole population, at this point of time, an unlimited right to self-determination confined to minorities or peoples within an established sovereign state has not been openly recognized under international law or endorsed by the UN decisions. There are some different arguments on the question whether the right to self-determination has a further application beyond the colonial context, especially in exceptional situations where the government denies any group equal access to the political decision-making process on any ground of distinction or discrimination.

In spite of the existence of certain limitations regarding the exercise of the right of external self-determination, according to the advisory opinion of the Canadian

¹⁰⁶ Ober and Williams, *Is it true that there is no right of self-determination for Kosova?* in Lellio (ed.) (2006), p. 111

Supreme Court in the *Re Secession Quebec* case in 1998, the right to external self-determination might also exist, as a last resort, in extreme cases, when a people is blocked or denied from a meaningful exercise of its internal self-determination in some particularly extreme manner, for example through being disenfranchised or subject to gross violations of human rights and when there are no other alternative methods of achieving self-determination under domestic law and thus the internal self-determination is absolutely beyond reach.¹⁰⁷ For such a potential exception, determining criteria would include whether the concerned people is a victim of attacks on its physical integrity or massive violations of its fundamental rights; whether its members have access to government; whether they can freely make political choices and pursue their economic, social and cultural development. Such an exception is based upon the view that the extreme and unremitting persecution or oppression may make it quite unrealistic that the respective people, the majority and minority, live under peace in the future. The lack of any reasonable prospect for peaceful or normalized relations will hinder this from happening. However, it should be emphasized here that whether this category of external self-determination is legally recognized is unclear under current international law, even though widely accepted and supported by international lawyers.¹⁰⁸ Furthermore, it should be noted that any established practice demonstrating the successful application of this category of self-determination is lacking.

Enough has been said here that the notion of self-determination entails highly problematic and vague aspects with no unified responses, still waiting to be settled under international law. To analyze deeply all the legal debates concerning self-determination is exceeding the scope of this dissertation. However, in order to understand the details of our cases which will be elaborated throughout the rest of this study, the above-explained facts on self-determination will provide us a

¹⁰⁷ De Wet (2004), pp. 328- 329

¹⁰⁸ Dixon and McCorquodale (2003), pp. 212- 217, 250- 255

general framework and should be remembered when focusing on the details of our cases of Kosovo and East Timor.

Although the legal basis of international administrations can be attained through the broader terms of Chapter VII with certain attention towards the self-determination norm, the source of political legitimacy is a very demanding aspect for international administrations as understood by the above-mentioned limitations. The question of how international administration has become normatively acceptable according to international policy is one of the most important questions that should be analyzed. A proper international legal authority combined with the identity of the administering actor and consent given by the local authorities are all together the main factors contributing to the attainment of political legitimacy. The temporary nature of these operations with a strong commitment to independence is also a contributing factor to the attainment of political legitimacy. In UN administrations, the idea that the UN acts for the benefit of international community rather than representing the interests of particular states or groups of states, resulted in the general normative acceptance and greater legitimacy of such entities when authorized under Chapter VII. A legitimate international authority endowed with legitimate policies such as promoting universal human rights or democracy, is mostly evaluated as the basis for accountability of international administrations. Nevertheless, this disposition should also be supported through the consent or invitation expressed by the existing authorities where the administrations have been established.

Although the specific conditions leading up to the formation of UN administrations in Kosovo and East Timor will be analyzed later in this study in detail, it is necessary to mention briefly about certain elements of consent and self-determination in each case in order to understand the debate thoroughly. In both cases, however, it is inaccurate to some extent to assert that international administrations depended upon the full consent of local populations, since if genuine local control had been possible then the establishment of such administrations would not be necessary.

As far as East Timor is concerned, consent was already present to a certain extent at the time when UNTAET was deployed. Since the former Portuguese colony had been entitled to the right of external self-determination ever since it was listed as a non-self governing territory in 1960 and since the Indonesian annexation of East Timor had never been endorsed by the international community, the UNTAET was established to facilitate the realisation of East Timorese people's right to self-determination, leading to independence under UN supervision.¹⁰⁹ Once the East Timorese expressed their wish to become independent through the popular consultation on 30 August 1999, the authority of the territory was transferred to the UN for filling the governmental vacuum during the period leading up to independence. With respect to self-determination, East Timor's independence at the end of the UNTAET mandate was the logical consequence of the exercise by a people of its right to external self-determination and the UN did not violate the right of self-determination of the East Timorese people or did not promote its exercise contrary to the territorial integrity of any state because East Timor was not forming the territory of any state. Since East Timor was neither part of Portugal nor Indonesia, they could not have been regarded as states enjoying sovereignty with respect to the East Timorese territory. So, there was no need for UNTAET to enjoy legitimate consensual authority from any territorial sovereign.¹¹⁰

In Kosovo, it has been argued that it was not clear whether the FRY was coerced into consenting to the arrangements promulgated under the Security Council Resolution 1244, given the existence of a threat of force against the FRY for non-compliance with the collective decision of the Contact Group and Security Council.¹¹¹ After the NATO intervention, the vulnerable position of the FRY due to external pressures, the uncertainty about the future political status of Kosovo and the continued recognition of FRY's de jure sovereignty over Kosovo resulted

¹⁰⁹ Huxley (2002), p. 34

¹¹⁰ Wilde (2008), p. 405

¹¹¹ Milano (2003), pp. 1001- 1005

in a compromised nature of consent whereby the Security Council imposition was evaluated as an arrangement of power rather than one of law, creating a *de facto protectorate*.¹¹² Unlike the case of East Timor, Kosovo was recognized internationally as a part of Serbia having been designated an autonomous province of Serbia. Thus, the claims to self-determination and independence are not unproblematic and clear-cut. Under international law, the question of whether Kosovo is entitled to self-determination and statehood is open to question. When evaluating the self-determination situation in Kosovo, it can be asserted that at the time of adopting Resolution 1244, secession by the Kosovar Albanians would have been justified on the ground that they could not exercise their right to self-determination internally in a meaningful way due to the gross and systemic human rights violations by the Serbian government, the abolition of autonomous status of Kosovo and all other discriminatory policies.

On the other hand, however there are some arguments claiming that NATO intervention and the establishment of UNMIK ensured that human rights abuses against Kosovar Albanians ended and substantial autonomy and self-government was enabled under the Resolution 1244 which promoted the realization of internal self-determination rather than the authorization of secession. So, it is claimed by some scholars that the international administration removed the factual basis on which a particular claim to external self-determination based on the category of gross human rights violations could have been made.¹¹³ Therefore, it was argued that the future status negotiations must have considered the consent of the Serbian government in the case of application of external self-determination for Kosovo. However, the declaration of unilateral independence in Kosovo in February 2008 without the consent of the Serbian government, created a unique case under international law concerning the self-determination principle, which will be further evaluated in the fourth chapter later in this study.

¹¹² Bain (2003), p. 153

¹¹³ Ibid., p. 333

For the termination of the Security Council mandates, the important point is whether the mandate is open-ended or explicitly points out the time-table or extent of the mandate. In Kosovo, the mandate for civil administration was granted for an indefinite period of time whereas the UNTAET in East Timor initially received a mandate for 15 months which was eventually extended until independence. Concerning that East Timor become an independent country on 20 May 2002 and the Security Council Resolution 1410 established UNMISET in order to provide assistance to the core administrative structures critical to the viability and political stability of East Timor, UNTAET mandate was terminated by the independence and succeeded by UNMISET.¹¹⁴ In Kosovo, however, despite the declaration of independence, the Resolution 1244 is still in operation and an affirmative Chapter VII Resolution will be required to terminate UNMIK's authority.

According to De Wet, open-ended mandates for civil administrations under Chapter VII will terminate when the purpose of the authorising resolutions has been achieved and only remain legal as long as overall majority within the Security Council is in favour of its continuation.¹¹⁵ So, in case of Kosovo, the UNMIK mandate was expected to terminate when a political settlement would have been achieved by the parties and when the Security Council members would have approved this settlement. However, the declaration of unilateral independence without an agreement complicated the situation since the Security Council members become divided in their approach to the independence. For now, it is accepted that pending another Council guidance, UNMIK would continue to consider the Resolution 1244 as the legal framework for its mandate and continue to implement its mandate.¹¹⁶

¹¹⁴ United Nations Security Council Resolution 1410, UN Doc S/Res/1410, 17 May 2002

¹¹⁵ De Wet (2004), p. 317

¹¹⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/2008/211, 28 March 2008

3.1. Types of International Transitional Administrations

After having analyzed the political and legal basis of the international administrations, in this section, the attention will be diverted on various types or forms of international administrations. Such administrations can be distinguished from each other on the basis of the degree of authority they assume or in terms of their operational aims. Some other classification of international administrations has been also based on the availability of various actors involved in the missions; the multiplicity of actors.

The Brahimi Report, by devoting a particular section to the “*challenge of transitional civil administrations*”, illustrates the complexity and uniqueness of these missions. According to the Report;

These operations face challenges and responsibilities that are unique among United Nations field operations. No other operations must set and enforce the law, establish customs services and regulations, set and collect business and personal taxes, attract foreign investment, adjudicate property disputes and liabilities for war damage, reconstruct and operate all public utilities, create a banking system, run schools and pay teachers and collect the garbage — in a war-damaged society, using voluntary contributions, because the assessed mission budget, even for such "transitional administration" missions, does not fund local administration itself. In addition to such tasks, these missions must also try to rebuild civil society and promote respect for human rights, in places where grievance is widespread and grudges run deep.¹¹⁷

As understood from the preceding paragraph, there is a widespread acceptance that these operations are more comprehensive in scope, more political in character, unique in terms of the unprecedented nature of the tasks they have assumed. Although the unprecedented nature of UNMIK and UNTAET has been highly emphasized, they are claimed to be not entirely without any historical precedent. In other words, their unprecedented nature is not stemming from the fact that they are the first historical examples of international administrations, but

¹¹⁷ Brahimi Report, UN Doc A/55/305-S/2000/809, 21 August 2000, para. 77

that they are unique and unprecedented in terms of their broad governance responsibilities. The previous historical precedents where the League of Nations assumed some administrative; governmental functions like the German Saar Basin administered by the League of Nations between 1920 and 1935, or the district of Leticia from 1933 to 1934 or the Free City of Danzig between 1920 and 1939 are some examples of international administrations which can be compared to the contemporary ones built on earlier precedents.¹¹⁸ As mentioned previously, international administrations can be distinguished from one another by their operational aims and their contextual political environments on the ground. For instance, Chesterman differentiates international administrations by reference to the local political context within which they operate.¹¹⁹ Accordingly, five major classifications can be drawn as the following ones:

- a) Administrations under the decolonization process leading to the independence of a new state, as has been observed in the cases of UN Transitional Assistance Group in Namibia (UNTAG) (1989- 1990) and United Nations Transitional Administration in East Timor (UNTAET) (1999- 2002);
- b) Temporary administration for a peaceful transfer of authority of a territory from one state to another existing state, as has been observed in the cases of UN Temporary Executive Authority in West Papua (UNTEA) (1962- 1963) and United Nations Transitional Administration for Eastern Slavonia (UNTAES) (1996- 1998);
- c) Temporary administration of a state pending the holding of elections as experienced in Cambodia by the UN Transitional Authority in Cambodia (UNTAC) (1992- 1993);
- d) De facto administration as a response to state failure and absence of governing bodies as in Congo under the UN Operation in the Congo

¹¹⁸ Wilde (2004), pp. 76- 79

¹¹⁹ Chesterman (2004), p. 56

(ONUC) (1960- 1964) or in Somalia under the UN Operation in Somalia (UNOSOM) (1993- 1995);

- e) Interim administration as part of an ongoing peace process without an end state or a clear exit point as has been experienced in Bosnia Herzegovina by the Office of the High Representative for Bosnia Herzegovina (OHR) from 1995 until today and in Kosovo under the United Nations Interim Administration Mission in Kosovo (UNMIK) from 1999 until today.¹²⁰

Under the framework of such different political contexts, international administrations embrace a wide range of types on the basis of degree of authority that the international community assumes in each case such as direct governance, supervisory authority; executive authority; administrative authority or monitoring operations. For example, UNTAC is a good example of international administration as supervision where the UN accepts a more modest role in supervising and monitoring the election activities without exerting any direct control. On the other hand, international administration takes the form of direct governance as in the cases of UNMIK and UNTAET. When compared with the above mentioned examples of international administrations, although operated in different political contexts from each other, in terms of assuming full executive, legislative and judicial powers the UNMIK and UNTAET can be regarded as groundbreaking operations but not without any historical precedent. Nonetheless, what distinguishes these cases from other contemporary and historical examples is the exclusive governing powers transferred to the UN.

As a final point, it should be noted that the frequency of the use of international administrations since the founding of the League of Nations, though in different degrees of involvement and authority illustrates the utilization of international administration as an established institution under international politics for the management and settlement of conflicts.¹²¹

¹²⁰ Ibid., pp. 79- 83

¹²¹ Wilde (2008), p. 433

3.2. Functions of International Transitional Administrations

One of the most fundamental challenges for an international administration is the sheer number of functions it must perform and the difficulty of identifying the priority tasks. According to Caplan, the chief functions of an international administration can be grouped into six broad categories of activity;

- a) Establishing and maintaining public order and internal security including, the protection of human rights;
- b) Providing humanitarian assistance;
- c) Resetting refugees and internally displaced persons;
- d) Performing basic civil administrative functions;
- e) Developing local political institutions, including holding elections and building civil society;
- f) Economic reconstruction.¹²²

Although these functions are representing multidimensional peacebuilding efforts which may be found in many post-conflict reconstruction operations, for international administrations, what goes one step further from these operations is their involvement in the establishment and management of administrative structures with extensive responsibility for implementing public policy and delivering public services; the core functions of a government in situations where local capacity or governmental bodies for the performance of such administrative tasks do not exist.¹²³ In exercising such executive political authority, international administrations must strive to meet the material and social needs of the population under their control. They should prevent the unfortunate perception that UN missions are only there to serve themselves and not to the concerned population. In order to win the hearts and minds of the local people, it is very critical to have the ability to communicate to them the purposes of the UN administration.

¹²² Caplan (2002), pp. 29- 46

¹²³ Ibid., p. 38

Otherwise, the UN could suffer a crisis of a lack of confidence among the local population if it is unable to provide adequate security, economic welfare and functioning justice system, the very essences of the social contract, the violation of which had led to the collapse of the previous political system and hence resulted with the intervention of the UN.

According to Ralph Wilde, who labels international administrations as ‘international territorial administrations’ (ITA), ITA goes beyond merely assuming administrative functions, instead is being used as a device to replace local actors in the activity of administration because of two perceived problems, namely the ‘sovereignty problem’ concerning the identity of the actor performing this activity and the ‘governance problem’ concerning the way in which the activity is being performed.¹²⁴ When addressing the sovereignty problem, ITA actively interferes in the sovereignty process by displacing the level of administrative control by certain local actors through the temporary exercise of territorial control. The cases of UNTEA where the transfer of the territory from the Netherlands to Indonesia was accomplished and UNTAES where the control of Eastern Slavonia was handed over to Croatia, are good examples for responding to the sovereignty problem as determinative who is legally sovereign on the territory.¹²⁵ However, bearing in mind that in both of these cases, the options of external self-determination and independence of the concerned territories were excluded, the issue becomes more complicated when the status of the territory itself is open to further settlement.

ITA, when used as a response to governance problem, the problem is not the dispute around the identity of local actors but rather the conduct of governance by such actors. In other words, the absence of good governance or a governmental vacuum where local actors are unwilling or incapable of conducting any governance, leads to the establishment of international administrations, as has

¹²⁴ Wilde (2001), pp. 583- 587

¹²⁵ Ibid., pp. 587- 590

been observed in the ONUC and UNTAG cases.¹²⁶ Here the aim is to take on the responsibilities of government until local people are deemed capable of resuming those responsibilities. In most of the governance cases since the existing entity is an independent state, international authorities mainly assume the roles of monitoring, supervision or implementation of only some of the state obligations like promotion of free and fair elections or protection of minorities.

UNMIK and UNTAET are special cases which require further examination. Although at first glance, they seem to respond to the governance problem, they also hold some broader purposes combining both governance and sovereignty questions. Since neither Kosovo nor East Timor was an independent state at the time when international administrations assumed responsibility, they altered the factual situation on the ground by creating new independent states.

UNMIK, as a response to the departure of the FRY governmental presence in Kosovo and UNTAET, as a response to the Indonesian withdrawal, were created to fill the immediate administrative vacuum in the concerned territories. In these territories, which have become detached from a state, international administrations were associated with the objective of promoting the very existence of governmental institutions. Nevertheless, they not only remained within the boundaries of the administrative tasks, but also assumed the role facilitating the future status of the territories. Therefore, the difficulty in these cases lies in determining where to establish the balance between the competing demands of international responsibility on the one side and local self-determination, on the other. UNMIK, for instance, was charged with facilitating a political process to determine Kosovo's future status since the territory's international status had been in question.¹²⁷ So, UNMIK must have promoted the idea of a possible change in status rather than the definite adoption of a certain pre-determined status, thus becoming partially responsible for the very solution of

¹²⁶ Ibid., p. 592

¹²⁷ O'Neill (2002), pp. 37- 41

this 'status question'. Therefore, we can claim that international administration has created some of the practical capabilities for a certain outcome even before the outcome itself had been agreed upon by the concerned parties.

In UNTAET, unlike UNMIK, international administration was not used to replace an existing authority opposed to independence. Instead, it reflected international commitment to the realization of external self-determination for East Timorese people taking into consideration the results of the 1999 UN-run consultation in East Timor and was established to fill the void created by the Indonesian withdrawal and violent conflicts initiated by the pro-Indonesian militias opposing and resisting against to the results of the popular consultation which were in favour of independence.

As it can be understood, while in certain cases international administrations act as a neutral party, in others, international administrations become fundamentally a political enterprise, acting like an effective government which is one of the legal requirements for attaining statehood. So, enabling some practical realities such as a functioning government or infrastructure on the ground through state-building mechanisms, they pave the way for the realization of external self-determination and creation of independent states.¹²⁸ Thus, international transitional administrations cannot remain indifferent to political outcomes at the end since they are initiated with some political purposes to overcome; transform the *status quo* rather than to maintain it. In other words, an international administration cannot function without having a certain political vision for the society it is administering.

¹²⁸ Wilde (2004), p. 84

CHAPTER 4

KOSOVO UNDER THE ADMINISTRATION OF UNMIK

4.1. Historical Perspective on Kosovo

Kosovo has been regarded as a peculiar territory on which two separate nations namely the Albanians and Serbs ascribe their national identities and attribute their historical existence and national consciousness. Kosovo which means more than a land for both Serbs and Albanians, can be considered as the junction of conflicting national aspirations traced back to the medieval times.¹²⁹ Whereas Serbs constructed their allegations on Kosovo's distinctive Serbian character, Albanians' attachment to Kosovo has been an integral and central feature in their development of a sense of national identity. Indeed, Albanians and Serbs had created two entirely different and contrasting conceptions of history for Kosovo, a situation which cumulatively resulted in the emergence of deep animosities and hatred between Serbs and Albanians. Notwithstanding the seriousness of this complicated historical claims on Kosovo from the point of historical purposes, to analyze all the historical phases Kosovo has been subject to is out of the scope of this study; rather the emphasis will be put on its status within the Socialist Federal Republic of Yugoslavia (SFRY) until its dissolution process and afterwards. However, the indispensable role of Kosovo for the construction of national identities of both the Serbs and Albanians should be taken into consideration when analyzing the political implications of such conflicting claims for the resolution of Kosovo's disputed status and the adverse impact on its multi-ethnic composition.

Kosovo was given autonomous province status within the Republic of Serbia, which was one of the constituent republics of the SFRY. Although the vast

¹²⁹ Judah (2000), pp. 1- 33

majority of the population was Albanian, Kosovo was legally and politically part of Serbia. According to the adjustments made in the 1974 Constitution, Kosovo was provided with sovereign status nearly equivalent to that of other six republics of the SFRY. Kosovo had the right to maintain its own constitution, a parliamentary assembly and its own judiciary and was entitled to participate in federal institutions with an equal representation in Yugoslav government bodies.¹³⁰ The status of Kosovo was characteristically described as a *de facto* republic (but not *de jure*) enjoying almost all rights and privileges that the republics had, except the 'republic' label. The 1974 Constitution, however, was granting the right of secession only to the Federal Republics but not to autonomous provinces. This constitutional right was used by the Republics to break up from the Federation and declare their independence during the dissolution process in the early 1990s, but Kosovo remained clearly out of the scope of this right since it had not been given officially the republic status.¹³¹

The 1980s witnessed increasing disturbance on the Kosovar Albanians with their existing status and especially the economic conditions in the province. In this period, Yugoslavia also faced with the increasing nationalism on the Serbs side and Kosovo became the major arena for the eruption of nationalist actions. Parallel to the increasing nationalist sentiments a nationalist leader who would make use of these sentiments came to power in Serbia. Slobodan Milosevic by manipulating and agitating the situation in Kosovo, created the environment conducive to the dissolution of Yugoslavia. In 1990, the autonomous province status of Kosovo was abolished and its Assembly and Government dissolved through an unconstitutional way. Serbia took the authority and direct control of Kosovo. After taking the control into their hands, Serbs rapidly increased their security presence in Kosovo and in a parallel way increased their repressive policies towards the Kosovar Albanians, issuing legal decrees forbidding the sale

¹³⁰ Buckley and Cummings (eds.) (2001), p. 16

¹³¹ Stahn (2001), 'Constitution Without a State? Kosovo Under the United Nations Constitutional Framework for Self-Government', p. 533

of property to Albanians, outlawing Albanian as an official language in Kosovo, displacing Kosovar Albanians from public service.¹³²

Kosovar Albanians having been pursuing 'passive resistance' against the Serbian rule in the province under the leadership of Ibrahim Rugova, as a response to the denial of autonomy, repressive, discriminatory policies and massive human rights violations gathered their dissolved Assembly and later in September 1991 an underground referendum took place and independence was proclaimed.¹³³ These were followed by secret elections in May 1992 resulting in the establishment of a Government and Ibrahim Rugova's becoming the President of the Republic of Kosovo.¹³⁴ However, due to the strong opposition of the Serbian military and police forces in Kosovo and lack of international recognition, newly developed parallel structures of authority were incapable of governing Kosovo independently. Albanians frustrated with this incapability and passive resistance and thinking that this strategy was not taking them to independence, gathered around the Kosovo Liberation Army (KLA), which was in favour of an armed resistance and open struggle to deliver independence. Through the radicalization of the KLA and intensification of the violent conflicts, KLA intended to attract international attention to the Kosovo question.

During the dissolution process of Yugoslavia, Kosovo issue was generally regarded as a secondary issue and mostly considered to be only an internal matter of Serbia judged within the boundaries of human rights violations. Except some declarations warning the Serbs to obey the human rights principles in their policies towards the Kosovar Albanians, Kosovo issue was not taken to the agendas of the meetings and conferences about the future of Yugoslavia. On the side of the international community, their policy *vis-à-vis* Kosovo was reflected as the containment of the conflict instead of seeking solid solutions before it become

¹³² Allin (2002), pp. 46- 53

¹³³ The declaration of independence in 1991 was only recognized by Albania.

¹³⁴ Stahn and Zimmermann (2001), p. 426

more problematic. The most negative action by the international community disappointing the Kosovar Albanians was leaving the Kosovo issue out of the Dayton Peace Accords. Since the issue was not on the agenda, it was an indication for Kosovar Albanians that the passive resistance tactic was not paving the necessary way to independence and was not enabling them to explain their allegations to the international community. All these developments culminated in the radicalization of the Kosovo resistance movement. Attacks on the Serbian targets by the KLA and the harsher reprisals by the Serbs, escalated the conflict.¹³⁵ As a response to the increasing tension in Kosovo, the UN Security Council passed the Resolution 1160 on 31 March 1998, with a clear reference to the Chapter VII of the UN Charter, condemning both parties for the violence. It clearly condemned the use of excessive force by the Serbian police forces against the civilians and acts of terrorism by the KLA.¹³⁶ As the fighting increased, humanitarian concerns such as mass expulsion, refugees and ethnic cleansing came to the forefront. On 23 September 1998, UN Security Council passed the Resolution 1199 under Chapter VII, calling for an immediate ceasefire, withdrawal of the Serbian security units used for civilian repression, and deployment of international monitors to Kosovo.¹³⁷

Despite the deployment of the OSCE Kosovo Verification Mission and the withdrawal of some of the Yugoslav security forces, in fact, the situation on the ground could not have been changed in a short time. The on-going ethnic hostilities, brutal attacks and finally the Racak massacre led to the transformation of the response by the international community, with the increasing effort to bring parties to the table for peace negotiations.¹³⁸ Finally, parties agreed to negotiate for the resolution of the conflict in Rambouillet under the aegis of the Contact Group. The first attempt of the international community to implement autonomy

¹³⁵ Economides, *Kosovo* in Berdal and Economides (2007), pp. 222- 223

¹³⁶ Ibid., p. 225

¹³⁷ United Nations Security Council Resolution 1199 (1998), Article 1, 4(a), 8

¹³⁸ Bellamy (2002), pp. 95- 118

and self-government for Kosovo without prejudice to the sovereignty and territorial integrity of the FRY, safeguarded by the establishment of an international supervisory institution was the Rambouillet Accords, which was eventually signed by the Kosovar Albanians but rejected by the FRY because of the foreseen presence of a NATO-led military force in all parts of the territory of the FRY.¹³⁹ The failure of the Rambouillet Accords and the deteriorating situation on the ground resulted eventually with NATO's intervention in Kosovo, which was still under the sovereignty of the FRY. Since NATO intervention in Kosovo was regarded as a watershed in international relations and international law, and paved the way for the establishment of UNMIK, the basic motives behind this intervention should be analyzed. To examine the whole theoretical, moral and legal debate on humanitarian intervention is beyond the reach of this dissertation, whereas it is necessary to give some brief explanation on humanitarian intervention in order to understand the legal arguments being raised since the Kosovo crisis. The analysis of humanitarian intervention is also very important under the general framework of our study, due to the close link between the practices of humanitarian intervention and international administration. Since international administrations are usually established following interventions justified on humanitarian grounds, these two concepts cannot be divorced from each other.¹⁴⁰ It should also be indicated that most of the scholarly debates, theoretical explanations and criticisms evolving around humanitarian intervention share substantial similarities with those expressed for the international administrations.

4.1.1. The Legality of Humanitarian Intervention in the Kosovo

Case

Humanitarian intervention refers to actions that entail the threat or use of military force against the target state by a third party, being either a single sovereign state;

¹³⁹ Weller (1999), pp. 211- 251

¹⁴⁰ Ayoob (2004), p.100

a group of states or an international organization, to stop human suffering in the target state and cease gross human rights violations.¹⁴¹ Although, it is generally asserted that human rights violations may lead to humanitarian intervention, it is necessary to identify the extent of such violations. Since human rights constitute a very broad and diverse agenda, not all kinds of violations of human rights should invoke interventionist behaviours. Instead, extreme humanitarian emergency cases in which people's right to life is under imminent threat and huge losses of life erupted should provide a basis for intervention. Therefore, only massive violations of human rights, systemic killings, genocide, ethnic cleansing, state collapses may justify the use of armed force to stop the disaster. Wheeler argues that only such a 'just cause' may justify humanitarian intervention.¹⁴² Moreover, it is argued that the means chosen to prosecute humanitarian intervention should not serve to undermine or contradict the humanitarian purposes behind such interventions. The use of force should be necessary and proportionate to the aim of relieving of humanitarian need and it must be resorted as a last option whereby creating more good than harm.

Theoretical debate concerning humanitarian intervention which is a widely discussed topic, falls at the intersection of the two mainstream theories of international relations namely the realist and idealist traditions. For realists, intervention for humanitarian purposes has been always suspected of being a cover for deeper, power-political motives. Realists by believing that no humanitarian intervention can be justified solely on ethical grounds, argue that ethical and moral considerations are only a cover for real interests and only real interests can justify intervention. States will abuse the right of humanitarian intervention to promote their national interests in the absence of an impartial mechanism deciding when the humanitarian intervention is permissible and necessary. They further argue that most cases of humanitarian intervention do have political outcomes and the interveners become a part of the political

¹⁴¹ Vincent (1974), pp. 3- 16

¹⁴² Wheeler (2000), pp. 34- 36

processes of the target country through undermining the political balance on the ground. For realists, the selectivity of interventions, double standards employed by the intervening states, the dilemmas emerging from the disproportionate use of military force to achieve humanitarian ends are all signals that it is worth risking the use of military intervention only when it is required to promote national interests and that there is no such thing as purely impartial and neutral humanitarian intervention.¹⁴³

On the other hand, the proponents of the idealist school mainly supported by the solidarist thinkers of international society, assert that humanitarian intervention, based on multilateral and international cooperation, is an ethical response to a large-scale tragedy. They believe that international society is capable of agreeing on universal standards of justice and morality which would legitimize practices of humanitarian intervention. It is no longer understandable to forbid intervention in the name of protecting state sovereignty and stand aside neutrally, even if a state massacres its own people. They claim that the established principles of international law like state sovereignty and non-intervention cannot protect genocides, massacres and other activities that are themselves prohibited by the international law. Especially, the violations of the *jus cogens* principles, which are the highest international rules above any other established international norm, cannot be tolerated in order to adhere to the principle of state sovereignty. Actions such as genocide, ethnic cleansing, prevention of the self-determination right of a people with oppression, massive sufferings of human-beings which are not compatible with the human dignity are some of the actions that are prohibited under the *jus cogens* principles and violations of these responsibilities constitute crimes under international law.¹⁴⁴ So, since sovereignty of people is superior to the sovereignty of states, humanitarian interventions can be justified on moral grounds. The main logic supporting humanitarian intervention is related to the

¹⁴³ Smith and Baylis (2001), pp. 471- 475

¹⁴⁴ Wheeler, op.cit., pp. 34- 36

understanding that states are instruments at the service of their people and not vice versa.

In essence, this normative framework regarding the problem of intervention is inherently contradictory under the UN system. On the one hand, there is a strong concern for the promotion of individual and collective human rights. In the UN Charter it is stated that the UN shall promote and respect the human rights and freedoms of people.¹⁴⁵ The internationalization of the basic human rights has been also ensured under the broader UN system. The evolution of legal instruments concerning the human rights such as the ‘1948 Genocide Convention’ or the ‘1966 International Covenant on Civil and Political Rights’, expanded the above mentioned solidarist space in international relations and provided a normative basis for intervention for humanitarian reasons; but what is the weakness of international human rights law is its silence on preventive measures and lack of enforcement mechanisms.¹⁴⁶ However, on the other hand, the Charter of the UN with the aim of saving succeeding generations from the scourge of war, prohibited the threat or use of force by one state to another in Article 2(4) and concluded in Article 2(7) that nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state. The only exceptions to the use of force are self-defense against an armed attack as articulated in Article 51 and authorization of the use of force by the Security Council under Chapter VII if there is a threat to international peace and security.¹⁴⁷ As we can interpret from the Article 2(7), the only justification for

¹⁴⁵ UN Charter Chapter 1, Purposes and Principles, Article 1(3) reads the purposes of the United Nations as following;

To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

¹⁴⁶ Guicherd (1999), pp. 21-22

¹⁴⁷ UN Charter Chapter 7, Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 51;

intervention in the domestic affairs of a state was the existence of threats to the international peace and security decided collectively by the UN Security Council. So, scholars are mainly divided into two groups around the legality question of the humanitarian intervention. Those who are against the intervention are called as ‘restrictionists’ whereas the supporters of humanitarian intervention are called as ‘counter-restrictionists’.¹⁴⁸ Restrictionists argue that the prohibition on the use of force against territorial integrity and political independence of states in the Article 2(4) of the UN Charter renders forcible intervention on humanitarian grounds illegal. On the other hand, the counter-restrictionists assert that the primary purpose of the UN is not only to maintain international peace and security as the restrictionists claim, but also to promote human rights worldwide. They assume that the Articles 1(3) under the UN Charter Chapter 1, Articles 55 and 56 of the UN Charter Chapter 9 provide a legal basis for forcible humanitarian intervention even if the Security Council may not authorize use of force due to its internal problems regarding the veto threat.¹⁴⁹ All these articles emphasize the UN’s role

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

¹⁴⁸ Wheeler, op.cit., pp. 40- 46

¹⁴⁹ UN Charter Chapter 9, International Economic and Social Co-operation, Article 55;

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56;

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

in promoting the universal respect for and observance of, human rights and fundamental freedoms without any distinction as to ethnicity, language, or religion. Furthermore, there are some arguments raised by the supporters of humanitarian intervention that since such interventions are not against the territorial integrity and political independence of states and are not inconsistent with the purposes of the UN Charter, they can be compatible with the Article 2(4) of the Charter.¹⁵⁰ This question whether the practice of humanitarian intervention is exempt from the ban on the use of force in Article 2(4) is also tried to be answered within the boundaries of customary international law. However, Chesterman by evaluating state practices hitherto, asserts that there is little evidence that states justified their practices of interventions only on humanitarian grounds and that no *opinio juris* transformed the prohibition on use of force in international law in favour of humanitarian intervention.¹⁵¹

Since the ideological barriers to collective action on security issues disappeared with the end of Cold War, the UN assumed a more interventionary role with respect to the prevention of ethnic cleansing and genocide in failed states. In contrast with the state practices during the Cold War, the post-Cold War interventions in Iraq (1991); especially the creation of safe heavens for Kurdish population, Somalia (1991-1992), Bosnia (1992-1995), Rwanda (1994), Kosovo (1999) and East Timor (1999) were all legitimated in humanitarian terms by the intervening states.¹⁵² However, none of these interventions have been legitimated by the UN Security Council solely on humanitarian grounds because the UN Charter does not incorporate the right to humanitarian intervention explicitly. Therefore, the Security Council has accommodated humanitarian intervention within the Chapter VII of the UN Charter by invoking Article 39; threat to the peace, breach of the peace or act of aggression.¹⁵³ In other words, the legal basis

¹⁵⁰ Chesterman (2001), p. 44

¹⁵¹ Ibid., p. 87

¹⁵² Brown (2002), pp. 146- 159

¹⁵³ Franck (2002), p. 137

of these interventions has been derived from the Chapter VII, which established the rights and responsibilities of the Security Council in the face of threats to the international peace and security. In the post-Cold War humanitarian interventions, the interpretation of threats to international peace and security was expanded in scope, including the human security concept.¹⁵⁴ Internal armed conflicts, civil wars, violations of human rights within the borders of a state created externalities that affected the security and peace of the international community. Thus, the maintenance of international peace and security and the elimination of fundamental human rights violations are regarded as highly interdependent. However, neither of these developments resulted in an explicit legal approval to a principle of humanitarian intervention under the UN Charter. In spite of the frequency of interventions, reference to the ‘uniqueness’ and ‘exceptional’ features of the cases is an illustration of how states are reluctant to accept a new legal doctrine, fearing that such a legal rule would be abused. So, the general concern among scholars is that interventions would be far more likely to happen if any independent legal regime on humanitarian intervention were established other than the existing regime on the recourse to force. Therefore, the prevailing legal approach is to restrict humanitarian intervention to the category of collective action under Chapter VII of the UN Charter and not allowing any unilateral humanitarian intervention outside the UN framework.

In the Kosovo case, because it was the first time since the establishment of the UN that a group of states acting without express Security Council authorization intervened explicitly on humanitarian grounds, it was an important turning point in the history of humanitarian intervention, which generated highly mixed international reaction. While some welcomed it on the ground that morality should prevail against legality in exceptional cases where governments commit massive violations of human rights, others rejected it on the ground that humanitarian intervention without any authorization from Security Council would

¹⁵⁴ Freedman (2005), pp. 95- 96

jeopardize the foundations of international order. There are three main alternative interpretations of the legality and morality of the Kosovo intervention.

The first interpretation is that the intervention was illegal and posed fundamental threat to the international order since the intervention violated the principles of non-intervention and sovereign equality of states. Although NATO claims that the intervention was motivated solely by humanitarian reasons, the opponents regard it as a pretext for the pursuit of Western security interests. They assert that NATO's intervention in Kosovo which was justified on humanitarian grounds, was not only due to the moral imperatives, but it was also motivated by the compelling interests in the European stability and by the desire to keep NATO alive in the post-Cold War era. The opponents also criticize NATO's reliance on heavy air bombing from high altitude during the intervention. According to the opponents, NATO relied on air bombing since members were not willing to risk lives of their soldiers on the ground operation, with the aim of casualty-free operation on their sides. The reluctance to provide ground troops was described by Freedman as 'bodybags effects overtake the CNN-effect whereby risking a bullying effect to emerge'.¹⁵⁵ Since NATO lacked a ground strategy, most critical mass killings against the Albanians were conducted and even intensified, simultaneously with the air bombing. Accordingly, the 11 weeks long air bombardment resulted in huge damages to civilians and civilian targets as well as to the infra-structure, but not in the degradation of armed forces, which is contradictory to the declared aims of saving human-beings. So the way the war itself was fought did not set a useful precedent for future humanitarian cases.¹⁵⁶

The second interpretation about the unilateral action of NATO is that the intervention failed the test of legality because it violated the UN Charter, but should be morally approved since the law can not block humanitarian intervention in exceptional cases of humanitarian emergency. Proponents of this view argue

¹⁵⁵ Freedman (2000), p. 340

¹⁵⁶ Mandelbaum (1999), pp. 2- 8

that humanitarian intervention belongs in the realm not of law, but of moral choice.¹⁵⁷ They think that in extreme cases, humanitarian intervention may be necessary and justified on moral and political grounds even if an authorization from the Security Council can not be obtained. Therefore, according to this argument, it was morally right to take action in Kosovo where extreme human rights abuses were conducted. It is asserted that though the intervention was 'illegal' according to the existing regulations of international law, it was 'legitimate' on ethical and moral grounds.¹⁵⁸

The last interpretation argues that the unilateral intervention of NATO shows the development of a new rule of customary international law permitting unilateral action. During the Kosovo crisis, the states taking part in the intervention had claimed that the action had the backing of international law and regarded the unilateral action as a collective enforcement action. NATO argued that the intervention was legal and morally justified because it was aimed at preventing a humanitarian catastrophe and was in conformity with the former Security Council Resolutions that condemned the gross violations of human rights in Kosovo conducted by the Federal Republic of Yugoslavia; Resolutions 1160, 1199 and 1203 which were adopted in 1998. For example, the Resolution 1199 adopted under Chapter VII of the UN Charter demanded the Federal Republic of Yugoslavia to cease its actions against the Kosovar Albanians and regarded the situation in Kosovo as a threat to international peace and security.¹⁵⁹ However, neither of these resolutions did authorize the use of force. It was mainly due to the fact that Russia and China clearly signalled that they would veto any proposal for military action. However, NATO governments asserted that these previous resolutions legitimated their actions since they were enforcing the will of the Security Council which was just unable to take action frustrated by the veto threat. So, it was claimed that there was a legal basis for NATO to use force even

¹⁵⁷ Franck and Rodley (1973), p. 304

¹⁵⁸ Falk (2004), pp. 40- 44

¹⁵⁹ Solana (1999), p. 116

without explicit Security Council authorization in the case of overwhelming humanitarian necessity and immediacy, which were already present in the Kosovo case.¹⁶⁰ Also Security Council's refusal of the request to condemn NATO's military action and the establishment of UNMIK in the aftermath of the military campaign are regarded by the supporters of the intervention as demonstrations of the justification of the campaign *ex post facto*.

As it is clear, the most important question that should be answered is that whether a doctrine of humanitarian intervention in the absence of UN Security Council authorization, can be developed from this case or not. Roberts argues that the positive and negative lessons from this intervention should be drawn carefully in order to show the difficulties that are inherently found within a humanitarian intervention.¹⁶¹

If we look at the evolution of the use of force paradigm since Kosovo, we observe that this crisis precipitated the re-examination of the humanitarian intervention resulting in various arguments. However, most of the scholars agree for the need to address the deficiencies in the law and practice of the UN Charter which results in dilemmas between legal and moral concerns in extreme humanitarian circumstances. The question whether in such situations the veto threat by the permanent members of the Security Council may paralyze the world community from taking any action should be addressed. Thus, Henkin's argument in favour of creating a form of collective intervention beyond a veto-bound Security Council is worth to consider.¹⁶² Concerning Kosovo's legacy, Falk draws the attention to the fact that the UN should be endowed with independent enforcement capabilities, enabling an effective response to humanitarian catastrophes with a minimum of

¹⁶⁰ Greenwood (2000), pp. 926- 934

¹⁶¹ Roberts (1999), pp. 102- 123

¹⁶² Henkin in Editorial Comments: NATO's Kosovo Intervention (1999), p. 828

geopolitical supervision so that the reliance of the UN on member states for authorizing enforcement actions will be diminished.¹⁶³

Besides these idealistic arguments, we encounter a different reality. Since as long as the selective, ad hoc and abusive nature of the humanitarian intervention prevails, it would be difficult to envision a coherent theory and establish underlying principles concerning whole humanity and thus risking destabilizing international rule of law by arbitrary decisions.¹⁶⁴ It is obvious that the existence of ‘inhumanitarian non-interventions’ where strategic interests outweigh humanitarian motives also pose a serious threat to the international peace and security.¹⁶⁵ As Glennon asserts ‘case by case decisions’ to use of force may not generate widespread support for intervention, thus threatening its legitimacy and in turn destabilizing justice and at the end resting solely on power arguments.¹⁶⁶ Since there is not any established legal framework for humanitarian intervention which might otherwise oblige the states to intervene also in a situation where they are not keen to do so, the problem of selectivity remains as a challenging question which accelerates the controversy that states try escaping the burdens of participating in military interventions when their interests are not directly challenged by the humanitarian crisis elsewhere remote from their territories. Especially in an era when many unilateral military actions pose serious threats to the international stability, some attempts trying to legitimize the 2003 Iraqi war on humanitarian grounds by comparing it to Kosovo, are highly destructive to the efforts trying to create a universally agreed law of humanitarian intervention.¹⁶⁷ Some critics even argue that the language of humanitarianism is used to legitimate global hierarchies of power and inequality.¹⁶⁸ Chomsky further claims that the

¹⁶³ Falk in Editorial Comments: NATO’s Kosovo Intervention (1999), pp. 856- 857

¹⁶⁴ Perault (2005), p. 9

¹⁶⁵ Weiss (2004), p. 149

¹⁶⁶ Glennon (1999), p. 7

¹⁶⁷ Farer (2003), pp. 621- 628

¹⁶⁸ Booth (2001), pp. 314- 324

enthusiasm for a doctrine of humanitarian intervention reflects the legitimating ideology to justify the protection of US power necessary to maintain its economic and political hegemony.¹⁶⁹

However, it should be admitted that international law has not developed yet the necessary means and *opinio juris* to revise the existing rules concerning intervention. The declarations by the Third World countries affirming that the unilateral humanitarian intervention is illegal under international law, reflect deep suspicions that real motives will be concealed behind humanitarian claims by powerful states.¹⁷⁰ Therefore, the world community is far from the position to accept a right to humanitarian intervention in the absence of UN Security Council Resolution. Thus, to conclude it should be argued that the Kosovo intervention is mainly regarded as a ‘unique’ case which constitutes the exception from the rule not an attempt to create a new international law. This can also be inferred from the declarations by the NATO members themselves on the ‘*sui generis*’ character of the intervention and its exceptional nature. Moreover, as we can interpret from the following part of the Chicago speech by Blair in April 1999 outlining circumstances justifying intervention, “whether we had national interest involved”, the disinterestedness of the intervening states can not be achieved however the situation might be severe and shocking.¹⁷¹ So, there is an obvious difficulty in separating unilateral humanitarian intervention from the real-politik where mixed motives prevail.¹⁷²

Consequently, it seems that until new rules combining legality and legitimacy will emerge under international law without any reference to national interests, the lack of consent by the majority of states will not allow the creation of clear boundaries on the use of humanitarian force whereby requiring and allowing

¹⁶⁹ Chomsky (1999), pp. 72- 80

¹⁷⁰ Byers and Chesterman (2003), pp.177- 203

¹⁷¹ Roberts, op.cit., p. 119

¹⁷² Weiss and Chopra (1995), p. 106

states to break the existing law in extreme circumstances; which is called as ‘exceptional illegality’.¹⁷³ As Franck is arguing, in exceptional situations law should appeal to reason and allow mitigation whereby the gap between what is required by the law and what is generally perceived requisite of fairness would be narrowed.¹⁷⁴

Notwithstanding the existence of suspicions concerning humanitarian intervention, resisting the establishment of a legal rule concerning humanitarian intervention on the ground that it would be vulnerable to abuse will not alter the reality that states can always find a rationale to justify their actions which breach existing rules. The existing rules surrounding use of force have been violated several times even without any justifiable explanation. In cases of overwhelming humanitarian necessity, where a large international consensus has emerged on the necessity of action, expecting states to rely solely on the decisions of the Security Council where political interests of the members may preclude any collective action under Chapter VII constitutes a real dilemma towards universal moralism. It raises up the question whether legal and moral requirement to save lives ceases when the Security Council fails to act.

Therefore, in order to establish a global security system, current boundaries of international law should be transformed by drawing clear limits to prevent any abuse. Even if such boundaries do not inhibit states from acting unilaterally, the international community is perceptive enough to distinguish between genuine and bogus humanitarian interventions. Thus the need to legitimize any action or inaction before the international community is a serious factor which shapes and limits actions of states. When discussing the legality of humanitarian interventions, we should not forget that the discretionary nature of humanitarian intervention will be appraised by the international society.

¹⁷³ Ibid., pp. 198- 199

¹⁷⁴ Franck, op.cit., pp. 174- 191

4.2. Scope of the UNMIK Mandate

NATO intervention in Kosovo indeed opened the Pandora's Box not only for Kosovo but also for the international system with its far-reaching impacts on the discussions concerning the concepts like state sovereignty, territorial integrity, self-determination, use of force without UN authorization and new state formation by the international community as a consequence of an intervention. Notwithstanding the importance of all these debates, within the aim of this study, now the attention should be focused on the post-intervention period where UNMIK was established.

The signing of Kumanovo Technical Agreement in June 1999, which put an end to NATO's military campaign, concentrated on the withdrawal of all Serb forces from Kosovo and the establishment of an international security force KFOR to maintain peace and stability in Kosovo. At the end of the campaign, with the need to turn back to the UN to seek legitimacy for the military intervention *ex post facto*, on 10 June 1999, the UN Security Council passed the Resolution 1244 shaping the post-intervention destiny of the Kosovo. The resolution includes references to the previous Security Council Resolutions on Kosovo, the Rambouillet Accords and includes two annexes; May 6, 1999 dated G-8 declaration and June 2, 1999 dated principles accepted by the Yugoslav government prior to the passing of the Resolution. The Resolution, which tried to satisfy the US, NATO allies and Russia to get their compromise and stop fighting rather than settling the future of Kosovo and consolidating peace, basically lays the ground of the overall international civil and military presence and administration in Kosovo.¹⁷⁵ Although FRY's territorial integrity was guaranteed under the Resolution 1244, with the transfer of the actual rule to the UN administration, FRY's sovereignty over Kosovo was literally suspended. In other words, whereas the sovereignty as control was removed, sovereignty as title was reaffirmed.

¹⁷⁵ International Policy Institute (2003), *A Review of Peace Operations: A Case for Change*, p. 135

Resolution 1244 as the basic document determining the existing conditions for Kosovo possesses many inherent ambiguities and contradictions with a deep uncertainty about the key political question of the future status of Kosovo. The only clear thing after all is the Kosovo's turning into a *de facto* international protectorate, which will not return to the status quo ante. In Kosovo, the Security Council under Resolution 1244;

Authorises the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.¹⁷⁶

In spite of the clarity of the Resolution 1244 concerning the interim transfer of sovereignty to the UN administration, the mandate is surrounded by many inherent contradictions, vague phrases, imprecise remarks. The structure of the Resolution 1244 starts with a Preamble reflecting the international commitment both to the sovereignty and the territorial integrity of the FRY and the substantial autonomy and meaningful self-administration for Kosovo.¹⁷⁷ It has been unclear and vague what the Security Council means by stating meaningful self-administration since the phrase of meaningful self-administration may refer to a variety of meanings attributed to it at any time under different political conditions. What was reflected as substantial autonomy and meaningful self-administration for Kosovo in the Preamble is indicated later as "...to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which people of Kosovo can enjoy substantial autonomy within the FRY" in the Article 10 of the Resolution 1244. These phrases create some confusing questions such as where exactly will the substantial autonomy be established and

¹⁷⁶ United Nations Security Council Resolution 1244 (1999), Article 10

¹⁷⁷ Ibid., Preamble

whether if it be enjoyed within the FRY, will it than lack meaningful self-administration for the people of Kosovo. The emphasis on the '*interim administration for Kosovo under which people of Kosovo can enjoy substantial autonomy within the FRY*' can be perceived as the interim administration which will envision a final solution, may base its solution only on the will of the Kosovar people. It can also be argued that the commitment to the territorial integrity and sovereignty of the FRY will be observed within the context of the interim political framework, in other words, only as long as UNMIK administers Kosovo until a final settlement will be reached.

A different version of the self-administration emerges under the Article 11(a) of the Resolution determining the main responsibilities of the international civilian presence as, "promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo".¹⁷⁸ This article reflects that although the final settlement is uncertain and waiting for to be settled in the future, during this process, establishment of substantial self-government will be promoted in Kosovo. '*Pending a final settlement*' phrase, though clearly manifesting the objective to retain some different alternatives for the future status of Kosovo, however due to the conflicting wording of the Resolution it can also be assumed that the status of Kosovo is determined as substantial autonomy within the FRY as well. The use of the word 'settlement' but not 'agreement' in the context of the determination of Kosovo's eventual status is also worth to mention since this language does not rule out an outcome not based on agreement and there is no clear indication as to what this settlement should entail.¹⁷⁹ Article 11(e) declares one of the responsibilities of the civil administration as "facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet Accords".¹⁸⁰ Also the Article 8 of the Annex 2 of the

¹⁷⁸ Ibid., Article 11(a)

¹⁷⁹ Wilde and Lacourt (2008), 'Kosovo: International Law and Recognition: A Summary of the Chatham House International Law Discussion Group', Chatham House, pp. 2- 16

¹⁸⁰ United Nations Security Council Resolution 1244 (1999), Article 11(e)

Resolution mentions a “political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet Accords and the principles of sovereignty and the territorial integrity of the FRY”.¹⁸¹

Although the inviolability of the territorial integrity and sovereignty of the FRY was repeatedly stressed in the Resolution 1244, also the reference as to the final solution to the question of final status could be interpreted as the Resolution supposes that Kosovo cannot remain part of the FRY forever in perpetuity, thus supporting the argument that the continuation of the existing status was unsustainable and a change in the *status quo* was necessary. At the end, with its silence on the principle of self-determination, and instead with the emphasis on vague phrases such as self-administration, substantial autonomy or self-government, the Resolution 1244 neither promoted nor prevented Kosovo’s secession by avoiding taking a firm position on the very key political question of Kosovo’s relationship to Serbia. In other words, it reflected the international community’s own uncertainty and confusion about the future status of Kosovo. The unclear language of the Resolution led to the emergence of different interpretations of it, with various subjective connotations on a highly disputed case.

All these contradictions were reflected by Bernard Kouchner as head of UNMIK from July 1999 until January 2001; he claimed to read the text of Resolution 1244 twice every morning and still have no idea what substantial autonomy meant.¹⁸² Another comment on the Resolution 1244 was as ‘virginity and motherhood combined’ with an ‘open secret’ that Kosovo would eventually be granted independence.¹⁸³

¹⁸¹ Ibid., Annex 2, Article 8

¹⁸² Chesterman (2004), p. 79

¹⁸³ Ibid., p. 80

The organisation which was to administer was termed as ‘United Nations Interim Administration Mission in Kosovo’ with an emphasis on the phrase ‘interim’ since it was intended to be used until a permanent structure will be established. Although UNMIK has been an interim administration without a clear deadline, it is the existence of a deadline that constitutes the definition of interim. In terms of scope of UNMIK’s dual mandate, it was empowered both to assume full interim administrative responsibility over Kosovo and was given a central role in settling the future status problem.¹⁸⁴ UNMIK’s dual role; representing the territorial interests of Kosovo and facilitating a political process designed to determine Kosovo’s future status led UNMIK to bridge the gap between claims to self-determination and sovereign dominium on the other hand. By providing substantial autonomy, UNMIK, thus created a *de facto* independence situation for Kosovo in relation to Serbia since the assumption of all executive, legislative and judicial authority by UNMIK throughout Kosovo, has created a situation in which Serbia has not exercised any governing authority over Kosovo. This irreversible situation combined with the fact that a return to Serbian rule over Kosovo would not be acceptable to the overwhelming majority of the people of Kosovo created an anticipation that Serbia cannot regain its authority on Kosovo without provoking violent opposition. Although the Resolution 1244 is silent as to what form the final status of Kosovo takes and does not mention any word of independence, it laid the groundwork for an outcome that has not yet been agreed upon. The developments on the ground were evaluated as precluding any other possibility except for an independent Kosovo.

The contradictions and ambiguities in the mandate made its tasks almost unfeasible, creating operational constraints in the performance. Furthermore, due to the uncertainty concerning the final status of Kosovo, Kosovar Albanians and Serbs have interpreted every political decision and administrative act of UNMIK either in favour of or against their respective positions; independence for Albanians and maintaining Serbian supremacy over Kosovo for the Serbs.

¹⁸⁴ Yannis (2004), p. 67

Uncertainty over Kosovo's future status has hardened ethnic divisions and retarded democratic development, constituting a major drawback for UNMIK. Although there have been achievements especially on the security related matters, the economic and political problems were still on the agenda. As long as Kosovo's future status remained indeterminate, these problems could not have been settled down. Therefore, each side started to perceive UNMIK as blocking the path towards their declared aims.

UNMIK was also criticized for establishing ethnicity as the defining social characteristic and as legitimate political cleavages in Kosovo.¹⁸⁵ Despite the existence of integrative aims, UNMIK's ethnic categorization of people prohibited the promotion of inter-communal reconciliation and thus leading to insecurity which in turn mobilized ethnic identities and kept separatism on the agenda instead of cohabitation or harmonization under multi-ethnicity.¹⁸⁶ The challenges faced by UNMIK show the difficulties in administering a territory without clarity for the end status and the importance of time limit to the mandate. Different proposals about the future of Kosovo have been asserted like federal solutions, partition, protectorate or autonomy.¹⁸⁷ The preferred result was that two sides would have arrived at a mutually acceptable status that will range between enhanced autonomy and conditional independence. However, Serbia insisted on its rejection to a solution that would entail any form of independence.¹⁸⁸ Fear that granting independence to Kosovo could prompt further secessionist movements both in the region and in other parts of the world, also led to the emergence of oppositions from countries such as Russian Federation and China. On the other hand, others argued that unless Kosovo gained its independence, several problems like huge unemployment, poverty, marginalization of the youth, organized

¹⁸⁵ Hehir (2006), pp. 201- 203

¹⁸⁶ Ibid., p. 206

¹⁸⁷ Independent International Commission on Kosovo (2000), *Kosovo Report*, pp. 263- 272

¹⁸⁸ Report of the Security Council Mission on the Kosovo Issue, UN Doc S/2007/256, 4 May 2007, para. 59

criminal activity, human and drug trafficking, decreasing foreign investment would worsen, resulting in a political explosion in the region.¹⁸⁹

A solution to satisfy all of the parties seemed difficult to achieve. However, on the other hand, considering that Kosovo could not remain indefinitely under international administration, UN's desire to have succeeded in Kosovo led to the emergence of the Comprehensive Proposal for the Kosovo Status Settlement; Ahtisaari Proposal which envisaged a supervised independence, mandate for a new international civilian and military presence and creation of a multi-ethnic society based on good governance and rule of law with a system of checks and balances.¹⁹⁰ According to the Ahtisaari plan, if independence would be the end result, the long-term international commitment was expected to be institutionalized with the development of European Union (EU) membership prospective. Independence would be supervised for an initial period of time under the protection of the international community headed by the International Civilian Representative.¹⁹¹ So, Kosovo would remain to a great extent dependent upon the

¹⁸⁹ Perritt, *Would Kosovo survive economically as an independent state* in Lellio (ed.) (2006), pp. 165- 171

¹⁹⁰ Letter Dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, 'Report of the Special Envoy of the Secretary-General on Kosovo's future status', UN Doc S/2007/168, 26 March 2007

¹⁹¹ Ibid, Annex II. Main Provisions for the Comprehensive Proposal for the Kosovo Status Settlement, para. 11;

The International Civilian Representative, who shall be double-hatted as the European Union Special Representative and who shall be appointed by an International Steering Group, shall be the ultimate supervisory authority over implementation of the Settlement. The International Civilian Representative shall have no direct role in the administration of Kosovo, but shall have strong corrective powers to ensure successful implementation of the Settlement. Among his/her powers is the ability to annul decisions or laws adopted by Kosovo authorities and sanction and remove public officials whose actions he/she determines to be inconsistent with the Settlement. The mandate of the International Civilian Representative shall continue until the International Steering Group determines that Kosovo has implemented the terms of the Settlement.

para. 12;

The European Security and Defense Policy Mission shall monitor, mentor and advise on all areas related to the rule of law in Kosovo. It shall have the right to investigate and prosecute independently sensitive crimes, such as organized crime, inter-ethnic

international actors when granted independence. Albanian insistence on ‘nothing less than independence’ and Serbian approach as ‘more than autonomy but less than independence’, led to such a proposal of ‘independence with international supervision’ for Kosovo. Although the Albanians supported this proposal, the reluctance of the Serbs to relinquish sovereignty over Kosovo and the declared opposition by the Russian Federation to such a proposal did not change the nine-year long political limbo of Kosovo’s status.

The protracted indecision on the final status prevented the development of efficient democratic institutions in Kosovo, threatening further paralysis and failure. Therefore, it was clear that the paralysis situation, as a frozen rather than resolved conflict was not a viable option for none of the parties. The situation was too volatile for it to be frozen.¹⁹² Early resolution of Kosovo’s future status was also crucial for the stability and security of the Balkans. Leaving Kosovo with an undefined and stagnant status led to the prolongation and exacerbation of the conflict. The impossibility of the postponement of the final status and the need for UNMIK’s replacement rationale was also implicitly proposed and mentioned in several UN documents. According to the Secretary General’s Report;

UNMIK has largely achieved what is achievable under Resolution 1244. At this stage further progress depends on a timely resolution of the future status of Kosovo. A further prolongation of the future status process puts at risk the achievements of the UN in Kosovo since June 1999. Consideration should be given to how to deal with the situation if the sides

crime, financial crime, and war crimes. In addition, it shall have limited executive authority to ensure Kosovo’s rule of law institutions are effective and functional, such as in the areas of border control and crowd and riot control.

para. 13;

The International Military Presence shall be a NATO-led military mission. It shall continue the current task of the Kosovo Force (KFOR) to provide a safe and secure environment throughout Kosovo, in conjunction with the International Civilian Representative and in support of Kosovo’s institutions until such time as Kosovo’s institutions are capable of assuming the full range of security responsibilities.

¹⁹² International Crisis Group, Kosovo Countdown: A Blueprint for Transition, Europe Report, No: 188, 6 December 2007, p. 1- 12

are unable to reach agreement by the end of the current period of engagement. In light with the longstanding policy on the transfer of responsibilities, UNMIK is contracting into a monitoring and mentoring role with respect to the provisional institutions, while continuing to protect minority rights and exercising executive authority in some areas.¹⁹³

Despite enormous efforts and high level political negotiations and exchanges led by the Troika composed of the EU, the USA and Russian Federation, the process failed to yield satisfactory and conclusive results in terms of reconciling competing arguments. Neither side was willing to cede its position on the fundamental question of sovereignty, so an ‘agreement to disagree’ had emerged.¹⁹⁴ Under such an atmosphere, where no final agreement could have been reached, Kosovo’s Provisional Institutions of Self-Government declared independence on 17 February 2008. The declaration stated that Kosovo fully accepted the obligations contained in the Comprehensive Proposal for the Kosovo Status Settlement prepared by the then Special Envoy Martti Ahtisaari in March 2007. The newly created state was immediately recognized by many states including the USA, Great Britain, France, Italy and Turkey, but on the other hand, the declaration was not recognized and rejected by other states such as Serbia, Russian Federation, China, Slovakia, Greece and Brazil. However, it is claimed that the non-recognition by Serbia, Russian Federation and the others is not sufficient to hamper the international recognition effectiveness of Kosovo since recognition is a political decision and is not a formal requirement of statehood, thus only a declaratory action as opposed to constitutive one.¹⁹⁵ Many states perceive similarities with unsettled regions within their own territories and therefore are reluctant to recognize independent Kosovo fearing that it will set a precedent for their own problems.

¹⁹³ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/2007/582, 28 September 2007, paras. 28- 29

¹⁹⁴ Letter Dated 10 December 2007 from the Secretary-General to the President of the Security Council, UN Doc S/2007/723, 10 December 2007

¹⁹⁵ Gruda (2005), pp. 353- 378

Serbia declared the independence as illegal; null and void under international law by claiming that Serbia will never recognize the unilateral declaration of independence. According to Serbia's arguments, the independence violates the Security Council Resolution 1244, which reaffirms Serbia's sovereignty and territorial integrity. According to the Russian Federation, Kosovo's unilateral declaration of independence without the consent of Serbia will create a dangerous precedent for removing a territory from a sovereign state against its consent, and will encourage separatism in other parts of the world like the Nagorno-Karabakh, Transdniestria, South Ossetia, Abkhazia, thus leading to further erosion of the international legal order.¹⁹⁶

However, the counter-arguments against the precedent claims assert that Kosovo's independence should be evaluated as the culmination of a long and unique process. It was a *unique* situation demanding a *unique* solution.¹⁹⁷ The unique circumstances of the violent-break up and dissolution of the former Yugoslavia and the UN administration in Kosovo made this a *sui generis* case, which won't create wider precedent for other cases. The legacy of decades of state sponsored oppression and discrimination created an environment in which Serbs and Albanians could no longer live together and thus made it impossible and unthinkable for Kosovo to return to the control of Serbia. Since every possible option for a settlement had been explored, not any single realistic alternative to secession had remained. The independence of Kosovo is thus an outcome of the pragmatic reflection that has led the international community to support collectively the option of independence as the only viable option to ensure peace and stability in the region.

As mentioned previously, Kosovo's declaration of independence rests on a commitment to a secular, multi-ethnic society based on non-discrimination and

¹⁹⁶ Antonenko (2007), p. 92

¹⁹⁷ Letter Dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, 'Report of the Special Envoy of the Secretary-General on Kosovo's future status', UN Doc S/2007/168, 26 March 2007, para. 15

equal protection under the law, providing reassurance for the Serb minority which comprises 130.000 out of a total two million population.¹⁹⁸ In the declaration, Kosovo invited and welcomed an international civilian presence to supervise the implementation of the obligations under the Comprehensive Proposal for the Kosovo Status Settlement.¹⁹⁹ Therefore, the independence requests international supervision thus creating a major role for the EU and a continued presence of the NATO forces. Also the Constitution for the Republic of Kosovo, which entered into force on 15 June 2008, reflects the strong commitment of the Kosovo authorities to the protection of fundamental human rights and minority rights, promotion of social justice, rule of law, pluralism and non-discrimination.²⁰⁰ The inclusive, multi-ethnic nature of the new state has been emphasized throughout the Constitution which sets the official languages in Kosovo as Albanian and Serbian under the Article 5 of the Constitution. In terms of the transition of powers from the UN administration to the Republic of Kosovo, however, the Constitution does not envisage a real role for UNMIK while it offers a broad role for the international institutions set under the Comprehensive Proposal for the Kosovo Status Settlement.²⁰¹ As explained previously, under the Comprehensive

¹⁹⁸ Gowan (2008), p. 5

¹⁹⁹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/2008/458, 15 July 2008, para. 4

²⁰⁰ The Constitution for the Republic of Kosovo, Chapter 1: Basic Provisions and Chapter 2: Fundamental Rights and Freedoms, Article 3 on Equality before Law ;

The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.

²⁰¹ The Constitution for the Republic of Kosovo, Chapter 14: Transitional Provisions, Article 146 on International Civilian Representative;

Notwithstanding any provision of this Constitution:

1. The International Civilian Representative and other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 have the mandate and powers set forth under the said Comprehensive Proposal, including the legal capacity and privileges and immunities set forth therein.

2. All authorities in the Republic of Kosovo shall cooperate fully with the International Civilian Representative, other international organizations and actors mandated under

Proposal for the Kosovo Status Settlement, the UN Mission in Kosovo was supposed gradually to transfer its administrative powers to the EU Mission, which would assist the country until ready for self-governance. A further Security Council Resolution planned to authorize this transfer of power was blocked by the Russian Federation, which along with Serbia regards the transfer of Kosovo to the EU control as illegal under international law. On the other hand, in practice as a response to the emerging necessities of independence, the Comprehensive Proposal for the Kosovo Status Settlement has started to be implemented following the unilateral declaration of independence. Therefore, apart from the concurrent EU and UN missions, matters are further complicated by the continuing presence of NATO troops. All these contradictions and inconsistencies concerning the role of international actors creates a confusing and puzzling situation in Kosovo with many drawbacks. The international community was not capable of managing the aftermath of the deadlock due to the constant absence of a unified international attitude on how to deal with the crisis stemming from disagreement in Kosovo.

To discuss all the political and legal repercussions of Kosovo's independence is beyond the full reach of this study, however, certain aspects of independence have been emphasized in the preceding paragraphs so that the role and future of UNMIK can be better evaluated. There are no easy answers to the question as to UNMIK has come to an end with the declaration of independence. Since the Security Council members remained divided in their approach to the declaration of independence, pending another Council guidance which seems not easy under the Russian opposition, UNMIK would continue to consider Resolution 1244 as

the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 and shall, *inter alia*, give effect to their decisions or acts.

Article 147 on Final Authority of the International Civilian Representative;

Notwithstanding any provision of this Constitution, the International Civilian Representative shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in Article 146 and this Article.

the legal framework for its mandate and continue to implement its mandate. Although UNMIK had not taken any stance on Kosovo's independence and tried to follow neutrality, it has neither blocked the declaration of independence. It is argued that though the fate of UNMIK is unclear, as long as the Resolution 1244 is in place, UNMIK will bear responsibility for Kosovo and thus encounter a demanding position. In principle, UNMIK continued to retain executive authority for police, judiciary and customs functions throughout Kosovo. However, after the independence, a profoundly new operating reality in which UNMIK can no longer perform as effectively as in the past has emerged due to the experience of several instances where the Kosovo authorities and Kosovo Serbs have openly challenged the authority of UNMIK.²⁰² The SRSG and Head of UNMIK expressed his complaints as the following; "While I am still formally vested of executive authority under Resolution 1244, I have no tools to enforce it".²⁰³ Therefore, an immediate need to reconfigure UNMIK in accordance with its founding Resolution 1244 in order to afford the EU an enhanced role in the rule of law sector under 'UN umbrella' was declared in a recent UN report.²⁰⁴

The challenge in reconfiguring UNMIK and Resolution 1244 lies in the oppositions coming from the Russian Federation and China in the Security Council, insisting on the strict observation of the Resolution 1244 instead of any other document like the Comprehensive Proposal for the Kosovo Status Settlement having been not legally endorsed and explicitly confirmed by the Security Council. It is very clear that a new solution should be invented in compliance with the Resolution 1244, even though the way it will be handled is open to question. Whatever the new solution will entail, it should be never ignored that the inherent contradictions under the Resolution 1244, which we tried

²⁰² Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/2008/458, 15 July 2008, para. 3 and para. 29

²⁰³ United Nations Security Council 5944th Meeting, UN Doc S/PV.5944, 25 July 2008, Statement by the SRSG Mr. Lamberto Zannier

²⁰⁴ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/2008/458, 15 July 2008, para. 30

to explain at the beginning of this section, will continue to dominate all the debates concerning any new mandate under the concerned Resolution. The following sentences of the Serbian Foreign Minister is worth to consider in order to understand the degree of confusion and divergence on the Kosovo issue;

Serbia would spare no effort to engage honestly with the United Nations in forging an acceptable, forward-looking reconfiguration arrangement that would uphold the overall authority of the United Nations, while opening up space for the institutional inclusion of regional organizations. Reconfiguration must not go beyond the red lines marked out by the Resolution 1244 (1999). It must not in any way infringe upon the sovereignty and territorial integrity of the Republic of Serbia.²⁰⁵

Under such a sensitive atmosphere, European Commission's police and justice mission; EULEX, is expected to allow the international community to supervise the emergence of an independent Kosovo based on multi-ethnic, democratic values through which the minorities will be protected.²⁰⁶ Although EULEX has begun its deployment in Kosovo, the date when it will become operational is not clear yet at the time of this writing due to the above-explained discussions. In addition to providing post-independence support to Kosovo's competent institutions, the continued European monitoring presence will ensure that the Kosovo authorities will persuade the international community that they are on the right and legitimate course. Any type of aggression that will open the way for uniting with Albania, in the hope of creating a 'greater Albania', is strictly prohibited in accordance with the Comprehensive Proposal. Furthermore, observance of human and minority rights, protection and promotion of religious and cultural heritage, dedication to an efficient and impartial justice system must be ensured to sustain a democratic and multi-ethnic Kosovo. In other words, the idea of constrained sovereignty, conditioned upon certain measures and limited by the existence of a strong international presence can be found in the Kosovo case. So, the sovereign independence is only acceptable and tenable as long as Kosovo

²⁰⁵ United Nations Security Council 5944th Meeting, UN Doc S/PV.5944, 25 July 2008, Statement by the Minister of Foreign Affairs of the Republic of Serbia Mr. Vuk Jeremic

²⁰⁶ International Crisis Group, Kosovo's First Month, Europe Briefing, No: 47, 18 March 2008, pp. 13- 15

conforms to certain standards and proves its commitment to safeguarding certain rights and fulfilling or obeying certain obligations.

On the other hand, Serbia condemned the EU's deployment as illegal and argued that the presence of EULEX will contradict the Resolution 1244 as analyzed previously. A central part of Belgrade's strategy is to take full control over those parts of Kosovo where Serbs live in compact settlements. For this purpose, it has devoted significant resources to create parallel structures so that to manage many spheres of public life, including education, health, municipal governance, telecommunications, police and judiciary in the northern Mitrovica where Serbs live overwhelmingly.²⁰⁷ Even further, Serbia opened an office in northern Mitrovica to coordinate the parallel structures.²⁰⁸ After the independence, Serbian government instructed Serbs living in Kosovo to discontinue all contact with Kosovo's authorities and the new EU institutions.²⁰⁹ With this strategy, Serbia aims preventing the EU from deploying in those areas with Serbian majority, and so replacing the current UN administration with a Serbian one. However, it should be emphasized that if the parallel structures will expand, the situation may further deteriorate and a potential aspiration for certain ideas like 'greater Serbia' may re-emerge which will risk the security and stability in the region.

As we have analyzed in the preceding paragraphs, Kosovo's independence as the final stage of the break-up of the former Yugoslavia is a highly contested and ambiguous issue, which will continue to dominate international political and legal agenda. Several claims have been asserted for Kosovo such as, it was an arrangement of power rather than law since the beginning or the independence resulted from the hypocrisy under international law, where no uniform legal

²⁰⁷ International Crisis Group, Will the Real Serbia Please Stand Up?, Europe Briefing, No: 49, 23 April 2008, pp. 9- 16

²⁰⁸ International Crisis Group, Kosovo's First Month, Europe Briefing, No: 47, 18 March 2008, p. 8

²⁰⁹ International Crisis Group, Will the Real Serbia Please Stand Up?, Europe Briefing, No: 49, 23 April 2008, pp. 6- 9

standards are applicable for matters of self-determination and secession. It is obvious that once again Kosovo opened the Pandora's Box and demonstrated that law and politics are highly intertwined issues. However, when considering that it could not have remained in perpetual limbo under UN administration, with the independence, Kosovo escaped from an unsustainable political impasse.

In June 2006 when Montenegro gained independence from Serbia, anxiety about that this will create instability and violence in the region was also repeated when Kosovo declared independence.²¹⁰ However, the open perspective for the Balkan countries to begin integration into regional and European institutions prevents such an option from happening. With a European perspective highly promoted, and with the lessons from the past, it is certain that violence cannot be proposed anymore as a conflict resolution mechanism in the region. The centrality of European perspective is a major factor in creating the desire to seek a future under the common roof of the EU. Therefore, at the moment, there is no expectation and sign for translating the position of Serbian opposition into any kind of military action or violence. For Serbia, nothing more than the application of legal measures and resorting to international law mechanisms can be expected.

To put aside all the above-explained debates, as long as Kosovo remains dependent on foreign assistance to function as an independent entity, its disputed international status will remain problematic. Kosovo, though gained independence from Serbia, entered a new phase in its history with a high level international involvement and supervision resembling tutelage, triggering the critical question of whether Kosovo may exercise full authority and independence in determining its internal matters and external relations. Here, as a final point, it should be emphasized that membership in the international community of independent states, by its very nature involves a set of conditions and limitations on the domestic and international exercise of sovereignty as obligated by international treaties, conventions and other mechanisms under international law especially on

²¹⁰ Fawn (2008), p. 275

the standards for human and minority rights, political democracy or social equality.²¹¹ Therefore, as has been analyzed above, creating new additional mechanisms for international supervision without any clear vision for their role and future may complicate the situation and lead to further administrative chaos on the ground through creating functional duplication.

4.3. Implementation and Performance of the UNMIK Mandate

4.3.1. Civil Administration

After the NATO campaign and the withdrawal of the Serbian civil and security forces, the area experienced a power vacuum until the international presence has taken the control in Kosovo. The very purpose of the Serbian pull out was to make the way for the international civil presence; UNMIK, which was to be established by the Secretary General with the assistance of relevant international organizations.²¹² The UN was there not to fill a governmental vacuum which was as a result of state failure but to replace an administration committed to the disenfranchisement of the Kosovar Albanians, to engineer a fundamental change in government policy. The international community intended to establish and institutionalize a multi-ethnic Kosovo.

UNMIK presence in Kosovo was one of the broadest and deepest missions established by the UN. Article 6 of the Resolution 1244 regulated the appointment of the United Nations Secretary General's Special Representative (SRSG). UN mandate was covering literally being in charge of all responsibilities in Kosovo and the SRSG was the sole responsible person in charge of everything in the region empowered with all authority. The general lines of the UN civil presence and its Special Representative's roles were described with the first regulation of

²¹¹ Pula, *Is it true that Kosova cannot govern itself and needs further international tutelage or conditional independence?* in Lellio (ed.) (2006), p. 178

²¹² United Nations Security Council Resolution 1244 (1999), Article 10

the UNMIK as the following; “All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the SRSG.”²¹³ Kosovo has been ruled by the promulgation of regulations covering diverse issues ranging from the appointments of judges to the regulation of telecommunication services or education. Reflecting the transitory nature of UNMIK, these regulations were expected to cease to be binding once a final status for Kosovo has been agreed upon and divergent rules have been adopted by the relevant authorities.²¹⁴

UNMIK responsibilities were distributed among what are called as the ‘four pillars’. Although the SRSG had the final decision-making authority on everything, civil administration responsibilities were distributed among these four pillars headed by different international organisations. The first pillar used to be the ‘Humanitarian Assistance Pillar’ under the responsibility of United Nations High Commissioner for Refugees (UNHCR) that arranged the humanitarian assistance and the returning of the refugees to their homes. This pillar after the accomplishment of its task turned into, ‘Law Enforcement and Justice Pillar’ under the direct leadership of the SRSG responsible for the development of the necessary institutions for maintaining civil security and justice. Second Pillar was the ‘Civil Administration’, under the direct leadership of the UN responsible for the public administration and civil affairs. Third Pillar was the ‘Democratization and Institution Building’, led by the OSCE. This pillar included the efforts for democratization, human rights monitoring, election organization and supervision, capacity building and media affairs. The Fourth Pillar was ‘Reconstruction and Economic Development’, led by the EU. This pillar was responsible for coordinating the donor activities, reconstruction, economic development and modernizing economic structure.²¹⁵

²¹³ UNMIK Regulation No. 1999/1, 25 July 1999

²¹⁴ Stahn (2001), ‘International Territorial Administration in the Former Yugoslavia: Origins, Developments and Challenges Ahead’, pp. 150- 153

²¹⁵ O’Neill (2002), p. 40

These four pillars and the security mandate under the NATO led KFOR constituted the overall structure of the international presence under the administration of the SRSG. This division of labour aiming to make the relevant and experienced international organizations responsible for certain tasks did not prove to function in the way that it was originally intended to. There appeared a dualism between UNMIK and NATO, since the NATO states did not support the idea of putting their military forces under the UN Command, which inevitably created an accountability gap in the chain of control and command.²¹⁶ Moreover, there emerged a competition among the pillars and within the same pillar due to the diverse institutional interests, different organizational structures and different ways of doing the job.²¹⁷ Such structural problems and different policy priorities by various international actors retarded the normalization process in Kosovo.

In line with the Resolution 1244, for the establishment of the substantial autonomy and meaningful self-administration for Kosovo without having to rely on a central state authority, steps have started to be taken for limited sharing of powers by the international administration with local people. Along this shared sovereignty process, the basic principle of the international administration was to share responsibility among all people of the Kosovo taking into account the wishes of the majority without neglecting the minorities and make them to be represented. But due to the differing interests of the Kosovar Albanians and the Serbs, it proved to be the most difficult task to harmonize competing interests. Although the international administration tried to maintain impartiality to sustain its credibility in the eyes of the Kosovars, sometimes it had to act with pragmatism in favour of certain communities without destroying the general balance in the society. Nevertheless, integration of Serbs into the joint administrative structures proved difficult since they initially formed parallel structures in the political chaos that marked Kosovo during the first months of the international presence due to the rapid deployment problems. With the adoption of

²¹⁶ Yannis (2001), p. 32

²¹⁷ Ibid., p. 33

the Agenda for Co-existence and Joint Committee on Returns for Kosovo Serbs, the situation tried to be improved, but at the beginning UNMIK faced limited capacity to fully enforce its authority in the Serb-dominated parts of Kosovo.

The first step towards building substantial local autonomy was taken in October 2000 by conducting municipal elections whereby municipal council members were elected. On 15 May 2001, the regulation on the ‘Constitutional Framework for Provisional Self-Government’ was declared.²¹⁸ This designed the general lines of the provisional government and the responsibilities and authority that will be transferred gradually to the local institutions during the UN administration. Although UNMIK delegated important parts of its responsibilities to the local institutions, in fact most of the crucial powers such as external relations, law enforcement, security and police forces, protection of minority communities or budgetary control remained under the international administration. The institutions of the Provisional Self-Government are Provisional Assembly, Presidency, Government, Courts and other bodies and institutions determined in the Constitutional Framework. In this regard, the powers and responsibilities reserved to the SRSG should be emphasized. Even after the adoption of the Constitutional Framework, the SRSG remained de jure holder of almost unlimited public authority for the implementation of Resolution 1244 and the role of overseeing the Provisional Institutions of Self-Government was attributed to the SRSG.²¹⁹ Acting on behalf of UNMIK, the SRSG maintained the power to dissolve Kosovar Assembly and call for new elections, conduct external relations, withhold the approval of the budget.

In addition to the Constitutional Framework, the duties of the Provisional Government were determined by the Regulation 2001/19 called as ‘On the Executive Branch of the Provisional Institutions of Self-Government in

²¹⁸ UNMIK Regulation No. 2001/9, 15 May 2001

²¹⁹ Constitutional Framework for Provisional Self-Government in Kosovo, UNMIK Regulation No. 2001/9, 15 May 2001, Preamble and Chapter 8

Kosovo'.²²⁰ This regulation defined the roles and features of the executive agencies within the provisional government.

In accordance with the mentioned regulations the elections for the Provisional Assembly was made on 17 November 2001 under the international supervision. UNMIK tried to assure the participation of the Serbs and other minorities who had boycotted the 2000 Municipal Elections. Participation to the elections was a necessity to ensure legitimacy and focus on non-violent, moderate political activity in Kosovo. UNMIK officials and the FRY came to an agreement on 5 November 2001, encouraging full participation of the Kosovar Serbs. The agreement asserted the points of equality of the communities in Kosovo, made reference to the sovereignty and territorial integrity of FRY and to the Kosovo's status under Resolution 1244 and specifically mentioned that the status of Kosovo cannot be changed by any action taken by the Provisional Institutions of Self-Government. This was a clear message to the Kosovar Albanians who may intend to use the Provisional Assembly to vote for independence. According to the results, the seats of the Assembly distributed among several political parties including the parties of minority groups. In fact the Kosovo Provisional Assembly Elections marked the start of a new era for Kosovo which reflected the starting of the flexible political competition on a democratic ground.

When UNMIK was incrementally handing over power to provisional local authorities, it proposed the 'Standards before Status' policy in 2004. The Standards before Status policy can be regarded as one of the striking illustrations of the earned sovereignty approach which was previously described in the second chapter. Accordingly, the local institutions must have met some benchmarks before the final status of Kosovo was determined. The policy indicated certain mile markers but no clear directions. The standards were adopted in the area of democratic governance, the rule of law, freedom of movement, rights of ethnic

²²⁰ UNMIK Regulation No. 2001/19, 13 September 2001

communities, property rights, economy, cultural heritage, and dialogue.²²¹ However, the ‘Standards before Status’ policy has been highly criticized for contributing to a period of political stagnation, frustration and instability. Focusing on the standards of life without progression on final status sidestepped the fundamental political and legal issue of the status of Kosovo.²²² According to Knoll, since the fulfilment of standards was asserted as a condition for commencing discussion on the future status, Kosovo’s political institutions were asked to meet standards that are not under their sole control, but under that of UNMIK and Serbia.²²³ So, under the absence of a strong sense of local ownership, these standards could not have been achieved if the owners do not know what they own and what they are intended to govern.²²⁴ Since UNMIK’s ‘Standards before Status’ policy had not yielded the expected results, in 2005, although the standards implementation in Kosovo had been uneven, it was concluded that the time was ripe to enter the final status negotiation process and the untenable previous policy was replaced with a more dynamic approach. Accordingly, the Security Council decided to ignite a political process designed to determine Kosovo’s future status.²²⁵

4.3.2. Security

The responsibility for providing public order and security was one of the most important aspects of the international administration after the withdrawal of the Serbian forces. According to the Resolution 1244, the international security presence was to be established by Member States and relevant international

²²¹ D’Aspremont (2007), p.650

²²² Economides, *Kosovo* in Berdal and Economides (2007), p. 242

²²³ Knoll (2005), pp. 640- 641

²²⁴ *Ibid.*, p. 659

²²⁵ Letter Dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council UN Security Council Report, ‘A Comprehensive Review of the Situation in Kosovo’, UN Doc S/2005/635, 7 October 2005

organizations.²²⁶ In this respect, in Kosovo, security mandate has been assigned to NATO led security force KFOR which assumed the charge of the internal and external security of Kosovo. KFOR and UNMIK has been regarded as independent from each other and operating under their own authority but both presences were expected to operate towards the same goals in a mutually supportive manner.

When the fighting is over, as an appropriate tool of the security sector reform, the international authorities should be equipped and willing to disarm, demobilise and reintegrate local armed forces as necessary to guard against residual resistance. Combatants must be demobilized and reintegrated into civilian life whereas some former combatants will be included in the newly constructed military bodies.²²⁷ In Kosovo, the most demanding task for KFOR was to protect the Serbian minority from Albanians. For this purpose, KFOR accomplished the demilitarization of KLA and transfer of the demobilized KLA personnel into the Kosovo Protection Corps which was not allowed to take any role in defense, law enforcement or internal security; rather its main responsibilities were disaster response, humanitarian assistance and rebuilding infrastructure.²²⁸

UNMIK Civilian Police (CIVPOL) took direct responsibility for law enforcement. UNMIK international police effort consisted of three components, UN CIVPOL, UN Border Police Units and UN Special Police Units. UNMIK also created and trained a local police force; Kosovo Police Force (KPS).²²⁹

Although there were considerable improvements in the security situation, in 2004, when violence erupted and 19 people lost their lives and 900 were injured and

²²⁶ United Nations Security Council Resolution 1244 (1999), Article 7

²²⁷ Mellon (2006), p. 2

²²⁸ Dobbins (2003), p. 118

²²⁹ International Policy Institute (2003), *A Review of Peace Operations: A Case for Change*, pp. 145- 149

4500 Serbs were displaced, the true nature of the problem confronting the international community surfaced once again and the performance of UNMIK and KFOR in protecting the Serbian minorities has been questioned.²³⁰ These events led by ethnic Albanians were a signal that there was a significant breach and gap between the international authority and its subjects, in other words, a distance between UNMIK's and local population's priorities. Violent events in 2004 also led to the conclusion that while the Kosovo Albanian community was confident about the future, the Kosovo Serb community was apprehensive about its prospects for the future.

4.3.3. Humanitarian Assistance and Reconstruction

Safe return of forcibly displaced people and huge numbers of refugees after the end of hostilities is one of the priorities for international administrations. Accordingly, the UNHCR supervised the return of refugees and internally displaced persons in Kosovo. There has been a considerable movement of Serbs out of Kosovo and a return of Albanians into Kosovo.

The economic assets and infrastructure were devastated either because of the Serbian attacks or due to the heavy NATO bombing. Physical reconstruction, rebuilding homes, restoring electricity, water, telecommunication, transportation was a major concern for the international community.²³¹ For long-term economic reconstruction, the EU took the lead responsibility in Kosovo in a close alliance with the World Bank. Central Fiscal Authority and a new tax and trade system was created. First the 'deutschmark' and then the 'euro' became the currency of Kosovo in January 2002. Institutions like Department of Reconstruction or Department of Trade and Industry were set up by UNMIK to coordinate donor assistance or administer tax revenues or to encourage private sector

²³⁰ Economides (2007), p. 241

²³¹ Groom and Taylor, *The UN System and the Kosovo Crisis* in Schnabel and Thakur (2000), pp. 308- 312

development.²³² Nevertheless, it is generally complained that the international community in Kosovo has been spending too much money on the secondary things and do not satisfy the basic economic needs of the people like increasing the employment level by supporting the reactivation of the factories or companies. Although economic management was one of the major constraints of both operations, the availability of resources was more severe in East Timor than in Kosovo. The strength of the EU in economic terms and its high involvement in Kosovo was considerably influential in attracting foreign investment and assistance.

4.3.4. Judiciary

In post-conflict societies, absence of an effective judicial system can hinder the reconciliation and confidence-building efforts necessary for the long-term stability. Therefore, a functioning judiciary has been one of the most important priorities of UNMIK in the immediate post-conflict environment where public security and order was highly fragile. The removal of all Serbian officials combined with the lack of experienced Albanian experts due to the government sanctioned discrimination policies before the NATO intervention resulted in a collapse of the judicial system.

Kosovo Albanians rejected the decision taken by UNMIK to adopt as applicable law the Yugoslav law that had been applicable to Kosovo prior to the NATO intervention in 1999.²³³ A compromise was reached and UNMIK Regulation 1999/24 introduced as the applicable law the law in force in Kosovo on 22 March 1989, prior to the abrogation of Kosovo's autonomy, insofar as they do not conflict with the mandate given to UNMIK or any regulation issued by UNMIK.²³⁴

²³² International Policy Institute (2003), *A Review of Peace Operations: A Case for Change*, p. 158

²³³ Strohmeyer (2001), pp. 48- 50

²³⁴ Yannis (2004), p. 70

In any case, the SRSG has continued to make law through regulations for Kosovo where existing law did not suffice. The SRSG exercised the final authority regarding the appointment, removal from office and disciplining judges and prosecutors or creating new court structures.

The success of any legislative program depends on the advice and consent of those to be governed. So, an effective consultation with the local legal community was crucial. For this purpose, a Joint Advisory Committee on Legislative Matters (JACLM), through which interaction with the local judiciary was ensured, was established. The JACLM was created to review draft regulations that UNMIK wished to promulgate and to promote changes in applicable law to UNMIK.²³⁵

For the selection of judges, an independent judicial commission; Advisory Judicial Commission composed both of local and international experts was established. However, the effort to build a judiciary reflecting various ethnic communities complicated the process. In spite of the availability of large number of experienced local lawyers in Kosovo, the deep ethnic divisions in the society posed serious challenges to the efforts. The vacuum within law enforcement resulted mainly from the unwillingness of local judges, prosecutors to cooperate in the area of criminal law and to remain biased towards either Serbs or Albanians, a situation which necessitated the appointment of international judges and prosecutors to become part of the Kosovo's legal system.²³⁶

4.3.5. Political Institution Building and Accountability Mechanisms

The establishment of institutions for self-government is one of the mechanisms to legitimize the authority of international administrations. In accordance with this, political institution building in Kosovo followed three stages of development; consultation, co-government and self-government.

²³⁵ Betts, Scott, Gregory (2001), pp. 371- 374

²³⁶ Morphet (2002), p. 152

To provide the mission with local input and consultation, UNMIK had established a Kosovo Transitional Council (KTC) soon after the international administration was installed. KTC provided the forum for reconciliation and constructive cooperation between the international community and local people. Also UNMIK municipal administrators were introduced to reinforce legitimacy.

Establishment of the Joint Interim Administrative Structure (JIAS) as a cooperative body to get the opinions of the local political groups for the administrative matters was an important turning point. JIAS constituted 20 administrative units for delivering public services co-directed by a Kosovar and a senior UNMIK international staff. This 'dual-desk' approach with a single integrated joint administration was the best way to harmonize the need for international monitoring and local participation.²³⁷ To propose policy guidelines for these administrative units and also to make recommendations to the transitional administrator, the Interim Administrative Council (IAC) was established. With the establishment of the IAC, the co-government stage was finalized.

With the promulgation of the Constitutional Framework for Provisional Self-Government, the third phase for Kosovo commenced. In February 2002, the election of the President and establishment of the Government followed in Kosovo.

Lack of political and democratic accountability to the local people has been a very sensitive issue for international administrations. Since they assume functions which under normal conditions are exercised by the organs of a state, promotion of democracy and human rights, should be one of the priorities of international administrations. In particular, when the UN assumes governing role there is a temptation to demand the highest standards of democracy, human rights, rule of law and provision of services. Although the Security Council and UN Secretariat

²³⁷ Miller (2004), pp. 9- 10

exercise a certain degree of oversight through reporting requirements or bureaucratic oversight, the mechanisms are claimed to be not sufficient and efficient. As in the case of UNMIK, international staff enjoy broad immunity from any prosecution and courts in Kosovo have not sought to check or control the SRSG's governmental acts.²³⁸

In the case of UNMIK, Article 11 under the Resolution 1244 even explicitly establishes a link between the mandate and the need to protect human rights. The importance of human rights was also reflected in the Regulation 1999/1 which states that all persons performing public duties or hold public office shall observe internationally recognized human rights standards. The presence of OSCE mission was also a big contribution to the promotion of human rights. OSCE created the institution of Ombudsperson who will have the jurisdiction to receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions constituting an abuse of authority by the interim civil administration.²³⁹

However, the human rights situation in Kosovo has been criticized by the Ombudsperson Institution itself, which described Kosovo as a human rights black hole since the enjoyment of some rights can never be fully secured so long as UNMIK retains supreme legislation and executive authority independently of the will of the people it rules.²⁴⁰ Cerone draws the attention further to the fact that KFOR, an entity deployed under the UN auspices, does not act in a legal vacuum and is bound by provisions of international human rights and humanitarian law.²⁴¹ However, since the Ombudsperson was in principle not authorized to receive complaints of abuses committed by KFOR and the lack of any overall legal mechanisms to ensure the compliance of KFOR and UNMIK to international

²³⁸ UNMIK Regulation 2000/47: "UNMIK, its property, funds, assets shall be immune from any legal process".

²³⁹ UNMIK Regulation 2000/38, 30 June 2000

²⁴⁰ Caplan (2005), pp. 201- 205

²⁴¹ Cerone (2001), pp. 470- 481

human rights standards, it can not be claimed that UNMIK has been functioning fully according to democratic principles.

CHAPTER 5

EAST TIMOR UNDER THE ADMINISTRATION OF UNTAET

5.1. Historical Perspective on East Timor

East Timor became a Portuguese colony in the 18th century and remained under Portuguese administration until 1975. In 1960, the General Assembly (GA) decided that territories under Portuguese administration were non-self governing territories according to Chapter XI of the UN Charter and to which the GA Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples applied.²⁴² So, the formal status of East Timor as a non-self governing territory had played an important role in its independence struggle since it fixed East Timor's destiny as an independent state.

In 1974 Portugal acknowledged its Chapter XI obligations, accepting the right to self-determination and independence for colonies. Accordingly, Portugal envisaged the termination of Portuguese sovereignty over East Timor in 1978, meanwhile preparing for election of a popular assembly.²⁴³ As a result of this, East Timor began to organize for self-determination and political parties emerged in accordance. However, East Timor reached the level of civil war between the

²⁴² Resolution 1514 (XV);

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

²⁴³ Martin (2001), pp. 15- 17

pro-Indonesian parties and those who favour immediate independence like the Fretilin. After Portugal's withdrawal as a result of the escalation of hostilities, taking advantage of the internal disorder, Indonesia occupied East Timor and integrated it as its 27th province. However, Portugal never relinquished its authority and remained bound to promote the right of self-determination of East Timor. The annexation by Indonesia did not alter the realities and East Timor remained de jure a non-self governing territory, having the right to external self-determination, as affirmed also by the International Court of Justice in the Case Concerning East Timor (Portugal vs. Australia) in 1995.²⁴⁴

The GA passed several resolutions from 1975 until 1982 calling Indonesia to withdraw from East Timor so as to enable the people of East Timor to exercise freely their right to self-determination and enjoy independence. Also the Security Council passed the Resolutions 384 in 1975 and 389 in 1976 demanding that Indonesia withdraw its military troops from East Timor and respect the people's right to self-determination.²⁴⁵ However, it should be emphasized that neither of these resolutions condemned the invasion as an act of aggression nor as a breach of Article 2(4) of the UN Charter prohibiting the use of force. Extensive human rights violations committed by the Indonesian armed forces against pro-independence activists received also little attention from the international community. However, the Dili massacre in 1991, when the Indonesian armed forces conducted a massacre during a massive pro-independence protest, galvanized international attention and support through which the East Timorese started to internationalize their cause for independence before the international institutions and mainly the UN.²⁴⁶ Nevertheless, the independence movement in East Timor became more and more united only after the formation of National Council of Timorese Resistance (CNRT) in 1998 under the leadership of Xanana Gusmao, who had been the most important figure in East Timorese resistance.

²⁴⁴ Drew (2001), p. 656

²⁴⁵ Stephan (2006), p. 60

²⁴⁶ Ibid., pp. 62- 64

Meanwhile the changing political atmosphere in Indonesia with the rise of President Habibie to power prepared to give East Timor a wide-ranging autonomy. The UN was also determined to resolve the issue together with Indonesia and Portugal.

After talks between Indonesia and Portugal, on 5 May 1999, they agreed on entrusting the UN to organize a popular consultation, giving the citizens of East Timor a choice to decide either to become an autonomous province of Indonesia or an independent state. In July 1999, the Security Council through the Resolution 1236 established UNAMET in order to organize and conduct a popular consultation of the East Timorese people on the acceptance or rejection of a constitutional framework for an autonomy for East Timor.²⁴⁷ The referendum was held on 30 August 1999 and 78.5% of the voters voted in favour of independence. However, as a reaction to the results, pro-Indonesian militias with the support of the Indonesian military started violent clashes as a result of which many people were displaced and killed. The militias burned the country, looted homes, destroyed all worthwhile institutions, executed people and left the country with a devastating physical destruction.²⁴⁸ The UN was highly criticized for not foreseeing the eruption of violence and taking appropriate military measures to prevent bloodshed despite the existence of enormous evidence prior to the UNAMET deployment. In a response to the violent incidents on the ground, only in the aftermath of the explosion of fighting, on 15 September 1999, the Security Council determined that the situation in East Timor constituted a threat to international peace and security and authorized the establishment of a multinational force; INTERFET led by Australia, to take all necessary measures to restore peace and security in East Timor. On 25 October 1999, after the formal recognition by the Indonesian Assembly of the outcome of the consultation, the Security Council established UNTAET under Resolution 1272.²⁴⁹ The role of

²⁴⁷ United Nations Security Council Resolution 1236 (1999), Article 3(a)

²⁴⁸ Traub (2000), pp. 80- 82

²⁴⁹ Smith (2003), pp. 59- 61

UNTAET was to administer East Timor, pending elections and the installation of a sovereign independent government. In May 2002 when East Timor became independent under the new name of 'Timor Leste', UNMISSET was established to assist East Timorese authorities in areas of public administration and security. The termination of UNMISSET in 2005 followed by the establishment of UNMIT on 25 August 2006 to support the Government in consolidating stability, enhancing a culture of democratic governance and facilitating political dialogue among Timorese stakeholders.²⁵⁰ However, the deployment of subsequent UN missions after the Timorese independence in order to prevent the destabilizing dynamics of the independence and to assist the newly independent state in solving its various problems is an illustration of the exercise of a constrained sovereignty instead of an absolute and unitary sovereignty.

5.2. Scope of the UNTAET Mandate

If we turn our attention to the mandate for UNTAET, In East Timor the Security Council under Resolution 1272;

Decides to establish, in accordance with the report of the Secretary General, a United Nations Transitional Administration in East Timor, which will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice.²⁵¹

The mandate of UNTAET shall consist of the following elements;

To provide security and maintain law and order throughout the territory of East Timor; to establish an effective administration; to assist in the development of civil and social services; to ensure the coordination and delivery of humanitarian assistance, rehabilitation and development

²⁵⁰ Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 27 January to 20 August 2007), UN Doc S/2007/513, 28 August 2007

²⁵¹ United Nations Security Council Resolution 1272 (1999), Article 1

assistance; to support capacity-building for self-government; to assist in the establishment of conditions for sustainable development.²⁵²

UNTAET was compared to a pre-constitutional monarch in a sovereign kingdom because of its full legislative, executive and judicial powers.²⁵³ It is argued that since both Portugal and Indonesia renounced their sovereign claims to East Timor, the UN itself acted as a sovereign entity with the power to legislate and enter into international agreements on behalf of East Timor. So, UNTAET acted as an agent for the East Timorese *sui generis* legal personality, which was pre-determined to be fixed under the external self-determination principle pending a declaration of independence. Given that East Timor was not a state and did not form part of another state during UNTAET administration, the UN by performing governmental acts acted on behalf of this special entity.

UNTAET was structured into three components; Military Peacekeeping, Governance and Public Administration, Humanitarian Assistance and Emergency Rehabilitation, which were all integrated into a single operation under the UN. Unlike in Kosovo, the UN did not enjoy the assistance of such institutions like NATO, EU and OSCE.

The adoption of the phrase 'transitional' in UNTAET implies a process in which the situation will change from one state to another. In other words, the clarity of the end point; the independence was also reflected in the title of the mission. Compared to UNMIK, the mandate for UNTAET was much clearer. However, the mandate left several key questions unanswered, including the road map leading to self-government, political timetable for independence or mechanisms for consultation with the East Timorese people.

Indonesian military, police, judicial and administrative personnel left East Timor and only few East Timorese had been working in such institutions. So, in response

²⁵² *Ibid.*, Article 2

²⁵³ Chopra (2000), p. 29

to the exodus of the Indonesian officials and civil servants, the UN had to fill the immediate security void while building a civil administration, military and police force, justice system nearly from scratch or blankness where there was nearly no professional class, no economic activity, no infrastructure, nobody with senior administrative experience and no considerable accumulation of wealth.

Clash of local and international paradigms was one of the most serious challenges UNTAET confronted when exercising its mandate. UNTAET faced the threat of causing local systems to collapse without being able to adequately replace them and thus faced with the danger of losing popular confidence.²⁵⁴ Since local social and political structures in East Timor were traditionally built on descent, kinship, ancestral legitimacy, ritual life and hierarchical relationships, internationally applied paradigms of democracy and rule of law without integrating local paradigms or concerns was regarded as a threat to the continuation of societal and traditional values.²⁵⁵ Thus, UNTAET illustrated once again the fact that international actors can only support changes but not inflict them.

5.3. Implementation and Performance of the UNTAET Mandate

5.3.1. Civil Administration

UNTAET drew directly upon the institutional and personnel knowledge of UNMIK. Sergio Vieira de Mello, as the first transitional administrator in East Timor, had been served as the head of UNMIK and also other international officials serving in Kosovo had been transferred to East Timor.²⁵⁶

The authority of UNTAET was transferred to the UN Department of Peacekeeping (DPKO) rather than UN Department of Political Affairs (DPA),

²⁵⁴ Hohe (2002), p. 569

²⁵⁵ Ibid., pp. 584- 586

²⁵⁶ Chesterman (2004), p. 64

which had overseen and conducted the popular consultation held in 1999. This transfer was criticized for resulting in the loss of DPA input and continuity in planning due to lack of cross-departmental planning mechanisms at the UN.²⁵⁷

According to UNTAET's governance mandate, all legislative and executive powers were concentrated in the Transitional Administrator who had unprecedented authority like the power to enact new laws and regulations and to amend, suspend or repeal existing ones.²⁵⁸ Similar to the UNMIK Regulation 1999/1, UNTAET Regulation No. 1 contains that;

Acting pursuant to the authority given to him under UN Security Council Resolution 1272 (1999) of 25 October 1999, after consultation with representatives of the East Timorese people, and for the purpose of establishing and maintaining an effective transitional administration in East Timor; 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. In exercising these functions the Transitional Administrator shall consult and cooperate closely with representatives of the East Timorese people.²⁵⁹

UNTAET had the authority to do everything from signing treaties to putting UNTAET stamp in the passports at the airport. UNTAET conducted negotiations with Australia on the Timor Gap Treaty on behalf of the East Timorese. During the negotiations between UNTAET and World Bank's International Development Association regarding the Community Empowerment and Local Governance Project (CEP), the World Bank designated East Timor and UNTAET as 'recipient', so it had to be signed by the Transitional Administrator as the head of state.²⁶⁰

²⁵⁷ Goldstone (2004), pp. 85- 86

²⁵⁸ United Nations Security Council Resolution 1272 (1999), Article 6

²⁵⁹ UNTAET Regulation No. 1999/1, 27 November 1999

²⁶⁰ Chopra (2000), p. 30

Although UNTAET enjoyed a high level of popular support, it faced some shortcomings resulted from confusions over UNTAET's dual role both as a transitional administration and as a mission for preparing East Timor for democratic self-government. So, as a de facto government of East Timor, while UNTAET was occupied in the short-term with the daily administrative tasks, at the same time, it was also responsible to oversee the transition to independence and prepare local institutions for sustainable self-government in the long-run.²⁶¹ Whereas the first role required the maintenance of a centralized control, the second implied a broad sharing of power with local stakeholders, so two competing interests emerged from the same mandate.

In order to ensure the shared sovereignty process and to gain popular support, UNTAET established close relations with the National Council of Timorese Resistance (CNRT), which overwhelmingly represented the pro-independence political perspectives. CNRT became UNTAET's de facto interlocutor at central and district levels. However, UNTAET was criticized for resisting Timorese participation in order to safeguard UN's influence, thus invoking some calls within the CNRT for civil disobedience against the UN.²⁶²

In East Timor also District Administrations were created by UNTAET to achieve de-centralized form of administration which was more responsive to the local needs and dynamics. District Administrator was intended to be the representative of the international administration at the district level and was designed to enable the integration and representation of the local people such as women and youth groups, political parties or the Church.²⁶³ However, centralizing tendencies dominated in East Timor since despite the involvement of local actors, the ultimate decision making and executive authority remained under the UN's hierarchical structure. Lack of qualified international personnel with no sufficient

²⁶¹ Beauvais (2000-2001), pp. 1101- 1108

²⁶² Ibid., p. 1121

²⁶³ Chopra (2002), pp. 989- 991

academic or practical expertise on the district level administration with both linguistic and cultural problems, resulted in the failure to achieve rapid results. The resignation of Jarat Chopra, the head of district administration, was a sign of how disagreements and criticisms prevailed within UNTAET.²⁶⁴

While UNTAET secured independence in a short period of time, its contribution to sustainable self-government and democratic political environment was limited. According to the UN Development Program, Timor Leste became the poorest country in Asia, so UNTAET had given birth to a failed state.²⁶⁵

5.3.2. Security

Unlike in Kosovo, where NATO led KFOR was responsible for the security mandate, in East Timor, the military component formed an integral part of the UN mission. Therefore, UNTAET was regarded as a fully integrated executive mission, where the full scope of the operation is managed within a single chain of command and control.

UNTAET's security responsibilities were to provide external security through its peacekeeping force, to maintain law and order with the UN police, to disarm and mobilize armed groups, to develop a defence framework, and to set up an East Timorese police service. INTERFET's presence gave the UN an adequate period to prepare and deploy a peacekeeping force. On 28 February 2000, the hand over of command of military operations from INTERFET to UNTAET was completed. Such a two-stage process for establishing control whereby INTERFET established the initial security and UNTAET maintained it, created a much more secure environment.

²⁶⁴ Chesterman (2004), pp. 138- 140

²⁶⁵ Chopra (2002), pp. 994- 999

Indonesia backed militias and the East Timorese resistance movement Falintil presented potential security concerns. UNTAET sought to disarm, demobilize and reintegrate militias and Falintil fighters. Militias who had escaped to West Timor, crossing border remained behind the border, harassing refugees but otherwise posing very little security threat and the reconciliation of those who returned were facilitated through the Commission for Reception, Truth and Reconciliation in East Timor, established through the UNTAET Regulation 2001/10.²⁶⁶

UN constructed the East Timor Defence Force with the purpose of defending East Timor against the militia incursions, deterring foreign aggressors and providing assistance during disasters.²⁶⁷ In addition to this military unit, UN CIVPOL helped in the development of East Timor Police Service. Due to the absence of a deep ethnic conflict in the East Timorese society, the security concerns were relatively easier to handle than Kosovo.

Although East Timor was considered one of the success stories in the UN history, in June 2006 when political conflict erupted between competing Timorese factions within the government, the country's security institutions were torn apart. The collapse of the national security forces and divided political loyalties within it led to further intervention by the Australian-led troops and resignation of the Prime Minister Alkatiri. Accordingly, the UN authorized the deployment of a new peacekeeping mission UNMIT in Timor Leste by its Resolution 1704 of 25 August 2006.²⁶⁸

The immediate causes of the conflict was the dismissal of 594 soldiers in March 2006 from the armed forces, a group known as the 'petitioners'. This group constituted approximately 40 percent of the Timorese armed forces. Most of the petitioners were originating from the 'west' of the country and had gone on strike

²⁶⁶ UNTAET Regulation No. 2001/10, 13 July 2001

²⁶⁷ Dobbins (2005), pp. 162- 165

²⁶⁸ United Nations Security Council Resolution 1704 (2006)

claiming discrimination and mismanagement by the senior officers who were primarily from the 'east' and further complaining about the conditions within the army.²⁶⁹ Following this, from April to June 2006, deadly fighting, attributed to the differences between eastern and western regions of the country erupted and spilled over throughout the country where 38 people were killed and 150.000 persons; approximately 10 percent of the whole population was internally displaced.²⁷⁰ Although there was a common view that a strong sense of Timorese national identity has developed in the post-independence period, this extreme polarization of Timorese society along geographical identities, based on the divide as 'easterners' and 'westerners' surprised the international community.²⁷¹ The grievances of the dismissed armed forces; the petitioners led to the explosion of perceived divisions between the easterners and westerners continuing to mistrust each other and becoming increasingly divided and segregated.

During this petitioners' crisis, the rise of the rebel Alfredo Reinado; as the leader of the petitioners who was a former military police officer, played an important role in advocating the petitioners' claim and in steering the recent developments in Timor Leste. The inability of the government to arrest Alfredo Reinado until the recent events, is a testimony of its weakness and unresolved political problems. On 11 February 2008, Reinado organized the violent shooting attacks against the Prime Minister Mr. Xanana Gusma and the President Jose Ramos-Horta.²⁷² The attacks against the two highest ranking officials in Timor Leste underscored the enormous problems Timor Leste is facing today. Although the violent attacks have not led to the murder of the President and Prime Minister, the

²⁶⁹ International Crisis Group, Resolving Timor-Leste's Crisis, Asia Report, No: 120, 10 October 2006, pp. 8- 17

²⁷⁰ International Crisis Group, Timor-Leste's Displacement Crisis, Asia Report, No: 148, 31 March 2008, p. 2

²⁷¹ Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste, UN Doc S/2007/513, 28 August 2007

²⁷² International Crisis Group, Timor-Leste's Displacement Crisis, Asia Report, No: 148, 31 March 2008, pp. 10 – 15

fragility of the security situation is continuing. The rebel Reinado was killed during these recent attacks and eventually the issue of petitioners was managed to be manipulated by the Timorese governmental authorities.

In such a volatile period, the latest attacks reinforced the importance of the continued presence of UNMIT for providing peace and security and solving the root causes of the crisis. The strong desire for the UN to remain engaged in the long-term and assist in a number of areas was endorsed. As it has been observed, Timor Leste as an independent country, still faces enormous challenges associated with the political differences among its leaders in resolving critical issues. Therefore, the importance of UNMIT in terms of consolidating stability and security and enhancing a culture of democratic governance based on rule of law should be emphasized.²⁷³ The continued mentoring role of the international police under UNMIT in supporting the Timorese National Police (PNTL) is also worth to consider. At the same time, it should be argued that the dangerous perception for Timor Leste of becoming too much dependent on the international community to solve its internal problems must be thwarted.

The root causes of the 2006 and 2008 crises are multidimensional, including social, economic and political problems which necessitate long-term UN assistance. Consequences of the conflicts are widespread insecurity, dislocation of the population, the IDPs problem, unmet social and political expectations, a disaffected population, weakness of the civil society and little improvement in people's welfare. Unless the problems of massive unemployment, chronic poverty, weak institutions, lack of capacity, land problems, property and housing problems, weak and politicized governance, severe inadequacies in the justice system, high illiteracy, illegal immigration, human and drug trafficking, lack of

²⁷³ Report of the Security Council Mission to Timor-Leste, 24 to 30 November 2007, S/2007/711, 6 December 2007

qualified human resources are resolved, a sustainable peace in Timor Leste cannot be realized.²⁷⁴

5.3.3. Humanitarian Assistance and Reconstruction

In East Timor, substantial humanitarian, rehabilitation, reconstruction and service delivery were made possible through the work of UN agencies and their partners. Humanitarian needs, including food and shelter were largely met in the first months of the operation. There was also a rapid return of the displaced population when the UNTAET was deployed in 1999. It should be emphasized that humanitarian operation benefited from a generally favourable security environment. UNTAET established the Humanitarian Assistance and Emergency Rehabilitation component with the support of the UNHCR and the International Organization for Migration which have assisted in the return of large number of refugees.²⁷⁵

Unlike in Kosovo where the reconstruction efforts were led by the EU, in East Timor IMF, World Bank and Asian Development Bank played major role in the economic reconstruction. East Timor's economy, which had been one of the poorest in Asia, with the effect of the devastation as a result of the violent conflicts entered a crisis period. In response, reconstruction aid was channeled through several modalities such as UN-administered Consolidated Fund for East Timor, a Multi-Donor Trust Fund for East Timor supervised by the World Bank and several other projects financed by UN agencies.²⁷⁶ Through these mechanisms, the foundations were laid for Timorese-led development planning and service delivery in the health, education, agriculture and many other sectors.

²⁷⁴ International Crisis Group, Timor-Leste's Parliamentary Elections, Asia Briefing, No: 65, 13 June 2007, pp. 3- 15

²⁷⁵ International Policy Institute (2003), *A Review of Peace Operations: A Case for Change*, p. 243

²⁷⁶ Ibid., pp. 246- 247

5.3.4. Judiciary

In East Timor, as in Kosovo the UN faced the task of building a functioning, fair, transparent and sustainable judiciary. UNTAET's legal adviser Hansjorg Strohmeyer had recently been involved in UNMIK as the legal adviser to the SRSG.²⁷⁷ So, like in other fields, also in judiciary UNTAET mirrored UNMIK in many aspects.

After the exodus of the Indonesian judges and prosecutors, the entire judicial apparatus in East Timor has collapsed. Also the physical destruction of the courts, equipment and prisons and inadequate supply of legal texts created difficult conditions for the justice reform. Rebuilding an effective judicial system where virtually nothing was left, constituted a major task for UNTAET.

The choice of law was uncontroversial in contrast to Kosovo. With UNTAET Regulation 1999/1 it was decided that Indonesian law would remain in force unless it conflicted with UN human rights standards or with the UNTAET mandate.²⁷⁸ In accordance, death penalty was abolished by UNTAET.

For the selection of judges, as has been in Kosovo, an independent judicial commission; Transitional Judicial Service Commission composed of local and international experts was established. In the absence of experienced East Timorese legal experts and removal of all Indonesian legal experts, identification of lawyers and prosecutors was very difficult. UNTAET tried to find trained lawyers with dropping leaflets, but only 60 law graduates with minimal legal experience had applied.²⁷⁹ In East Timor, unlike in Kosovo, the main concern for the judiciary was not lack of trust between deeply divided ethnic groups but a huge void in the experienced legal personnel. The situation in East Timor was summarized in

²⁷⁷ Strohmeyer (2001), p. 46

²⁷⁸ Hohe (2003), pp. 337- 339

²⁷⁹ Ibid., p. 337

Strohmeyer's words as the following; "In Kosovo we had judges, lawyers, prosecutors, the trouble was finding one who did not have a Yugoslav past or a Serbian collaborator past. Here you don't have a single lawyer."²⁸⁰

With such a week new judiciary, mobilization of international judges was required. In accordance, UNTAET Regulation 2000/15 established a special unit consisting of international and Timorese judges to pursue serious crimes.

In East Timor, the striking aspect of the justice reform was defined as UNTAET was preoccupied with establishing a western legal system without much regard to local and indigenous notions of justice. UNTAET failed to understand the resilience of local structures, customs, traditions and values. Different perceptions of what constituted a crime, different notions of human rights and rule of law and ignorance of social realities resulted with the establishment of an entirely different system of justice from the justice at the grassroots level, thus undermining the efforts of UNTAET.²⁸¹

5.3.5. Political Institution Building and Accountability Mechanisms

The principle that local actors should be involved in the administration as early and as widely as possible was also recognized as an important factor in East Timor. Political institution building in East Timor passed three stages as has been in Kosovo.

For the consultation with local people, National Consultative Council was established which was a strictly advisory body with no legislative and executive authority. The second stage of co-government, Cabinet of the Transitional Government was established in July 2000. The East Timor Transitional Administration (ETTA) which was to become the nucleus of the new

²⁸⁰ Traub (2000), p. 83

²⁸¹ Strohmeyer (2001), pp. 55- 56

‘Transitional Government’ incorporated departments of UNTAET’s Governance and Public Administration, thus replaced this pillar of UNTAET. The major idea behind this process was that UNTAET should eventually be regarded as a UN assistance mission to ETTA. Third stage of self-government was accomplished through three steps for democratic institutions; election for a Constituent Assembly, approval of the East Timor Constitution, and finally holding of the Presidential Elections. The conduct of the free and fair elections for the Assembly was an important turning point in the history of democracy in East Timor since these elections constituted the first elections conducted ever. With the declaration of independence in May 2002, UNTAET was dissolved and the process of ‘Timorization’ was accomplished.

Protection of human rights was also a major concern for UNTAET. However, it is noteworthy to emphasize that in contrast to the Resolution 1244 for Kosovo, UNTAET’s mandate under the Resolution 1272 did not include any reference to promoting and protecting human rights.²⁸²

Adopting a similar language used by UNMIK in Kosovo, according to UNTAET Regulation 1999/1; all persons undertaking public duties or holding public office in East Timor should observe internationally recognized human rights standards.²⁸³

UNTAET also established a range of bodies bearing responsibility for human rights matters such as Gender Affairs Unit, Office of the Inspector General or the Office of the Ombudsperson.²⁸⁴ Whereas the Gender Unit was focusing on advocating gender equality, the Office of the Inspector General was designed to verify the use of funds from the World Bank administered Trust Fund for East Timor.

²⁸² Deverux, *Searching for clarity: a case study of UNTAET’s application of international human rights norms*, in Klaasen and White (2005), p. 297

²⁸³ UNTAET Regulation No. 1999/1, 27 November 1999

²⁸⁴ Deverux (2005), p. 314

The Ombudsperson Institution was also established to protect the rights, liberties and legitimate interests of the East Timorese people during the UNTAET administration. The absence of a distinct component to monitor human rights development like, the OSCE in Kosovo, however increased the burden on UNTAET. Nevertheless, UNTAET's Human Rights Unit provided an additional channel of complaints against the transitional administration.

CHAPTER 6

FROM A COMPARATIVE PERSPECTIVE: SIMILARITIES AND DIFFERENCES BETWEEN UNMIK AND UNTAET

Only within months after assuming the role of UNMIK, the UN faced a task of comparable scope and complexity in East Timor under UNTAET. Both of them were explicitly tasked to provide for interim or transitional administrations. Thus, limited capacities of the UN were fully stretched in the second half of 1999 in two distant missions, one in the Balkans and the other in the Southeastern Asia. UNTAET's design and implementation was influenced by the then recent experience in Kosovo in particular. Kosovo served as a precedent for East Timor, whereby many aspects of the international administration in East Timor was inspired by UNMIK's structure.

These two missions have been compared to each other in many aspects, including the initial contexts they emerged, the missions on the ground and their final objectives. Although the initial political contexts differed from each other, the structures of the missions were similar to each other, and their end results with the declaration of independent states in both cases were the same. Both UN administrations incorporated the earned sovereignty approach as the conflict resolution tool, which envisioned a three layered process based on shared sovereignty, institution-building and the determination of final status.

Ibrahim Rugova in Kosovo and Xanana Gusmao in East Timor, the resistance leaders, intensely tried to internationalize their claims and explain the situation and their cause worldwide through diplomatic means, attracting attention to the massacres, human rights violations occurring in the respective territories. However, the late responses by the international community due to the international political considerations and the little constructive attention by international actors resulted in the occurrence of tragedies both in Kosovo and

East Timor. When violence under the Indonesian military took place, there was a great reluctance to intervene in East Timor, despite the apparent double standard given the international response to the situation in Kosovo. Double standards concerning the international response were intensified with the controversial NATO intervention in Kosovo without any Security Council authorization, which we have tried to analyze in detail previously under the fourth chapter. However, despite such differences in international attitude, there is a common aspect of these cases; if the international attention was directed earlier and constructive involvement concerning the core, underlying causes of the conflicts were addressed, the tragedies would have been prevented or resolved without such exacerbation.

Whereas in Kosovo the international diplomacy regarding the impending Kosovo crisis was undertaken by an array of US, European and Russian negotiators acting around different international organizations like NATO, EU and OSCE, in East Timor the diplomacy was mainly led by the UN, with a high level of involvement due to the historical considerations explained previously. Whereas UNMIK was set up in the context of a number of international legal problems, like NATO's unilateral intervention or China's abstention from the voting for Resolution 1244, UNTAET was established without any major disagreement.

As mentioned before, the different emphasis on 'interim' and 'transitional' in the titles of the administrations bears importance in respect that the distinction implies that Kosovo was not in a state of transition, at least technically, whereas for East Timor the independence was clearly enshrined in the Resolution 1272.

Both in Kosovo and East Timor, the wholesale assumption of responsibility for civil administration by international authorities was conducted according to similar structures. UNMIK and UNTAET exercised their administrative powers through regulations, administrative directions or executive orders. They issued birth certificates, travel documents, identification cards for the inhabitants, enjoyed full judicial powers. Both missions adopted a phased approach for

capacity building evolving from direct administration to co-administration and finally transfer of responsibility. In Kosovo, the ambiguity of the final status prevented and delayed the transfer of full responsibility whereas in East Timor, the primary obligation was total transfer of power. UNMIK and UNTAET acquired the attributes of a surrogate state and a real government without a real accountability to the people in the absence of a system of checks and balances. Both have been criticized for not being structured according to the democratic principles and rule of law. Exceptional degree of immunity enjoyed by the international staff in these operations, where a separation of powers was entirely absent, has drawn reaction and criticism from several parties.

UN played a more muted role in Kosovo due to the presence of other institutional actors, but in East Timor the absence of such actors increased the burden on UNTAET.²⁸⁵ On the other hand, the UN in East Timor did not have to deal with the additional complications of coordinating different regional organizations under a single umbrella, as has been in Kosovo.²⁸⁶ In Kosovo, the multiplicity of actors including UNHCR, KFOR, OSCE, EU under the four pillar structure of UNMIK created problems of coordination. However, in UNATET due to the existence of far fewer regional organizations, a greater degree of integration had been achieved. The integrated character of UNTAET and the multi-organizational nature of UNMIK was an important difference noted between these missions.

UNTAET's mandate with the strategic objective of independence was very clear, while the Resolution 1244 created a near impossible mandate on the ground in the absence of clarity. UNTAET's mandate was broader than Kosovo with the aim to prepare East Timor for independence and to administer the territory while preparing the way for its establishment as an independent state. To this end, it was authorized to take all necessary measures to fulfil its mandate.²⁸⁷ On the other

²⁸⁵ Chesterman (2004), p. 64

²⁸⁶ Martin and Rieckh (2005), p. 133

²⁸⁷ United Nations Security Council Resolution 1272 (1999), Article 4

hand, the lack of a corresponding provision in the Resolution 1244, and different perceived meanings on it complicated the process in Kosovo. The UN shouldered the responsibility for the social, economic and political administration of a territory of unresolved status. The end-state uncertainty in Kosovo also influenced the degree of indigenous support and loyalty towards UNMIK, limiting Albanian cooperation in certain areas and triggering Serbian resentment. In East Timor, by contrast, the local population supported the objectives of the UN mission almost unreservedly.

Both in Kosovo and East Timor, UN administrations have been established in a context where there was a political claim to self-determination in the concerned territories. Although neither Resolution 1244 nor 1272 mentioned the term self-determination in their mandates, in East Timor, there was no doubt as to the existence of a East Timorese people entitled to external self-determination. East Timor benefited from the united international support towards the aim of independence. However, in Kosovo the status of territory left unresolved and frozen for many years and the international community remained divided about the status issue. Thus, East Timor is likely to be exceptional since the uncontroversial nature of its future status made it a relatively simple case. However, in Kosovo, as explained in the preceding chapters, the situation was much more complicated and sensitive due to the uncertainty of its status. Lack of agreed progress on the underlying ethnic divisions and status of Kosovo led the international administration to take only pragmatic, day to day solutions for functioning instead of long-term, lasting solutions.

In terms of accommodating ethnic and political differences among the local population, the efforts in East Timor were more successful. In East Timor, the UN did not have to deal with numerous competing factions, as it has in Kosovo, since the major political actors were largely united in their aims.²⁸⁸ The divisions were more political than ethnic, and the population was inclined towards reconciliation.

²⁸⁸ Cotton (2001), pp. 127- 142

However, in Kosovo, the factions were hostile to each other and incoherent. Due to highly polarised ethnic relations between Serbs and Albanians, to guarantee multi-ethnicity proved unsatisfactory. The opposed aspirations of Serbs and Albanians towards Kosovo, dispute over contest between the preservation of Serbian sovereignty and independence for Albanians led to the emergence of suspicions towards UNMIK. The conflicting ethnic identities, lack of trust and tolerance between the parties complicated the efforts taken by UNMIK to harmonize these competing political interests. However the absence of such an ethnic division and intolerance in East Timor, instead severe underdevelopment, illiteracy, lack of local qualified personnel presented immense challenges for UNTAET to build East Timorese technical and administrative capacity for self-government. East Timor was more difficult to rebuild than Kosovo in terms of local capacity-building, although it posed fewer security and political problems than Kosovo. In East Timor with neither history of democracy nor self-rule, one of the serious constraints facing UNTAET was major cultural gap between East Timorese and international actors. In Kosovo, on the other hand, the aspiration and capacity for self-government was already present considering the previous autonomous status of Kosovo and the strong desire and passion for self-rule.

Both UNMIK and UNTAET have been established in 1999 following military conflicts that produced acute administrative vacuums in the territories concerned. Although UNMIK and UNTAET are comparable in terms of the powers transferred to the SRSG by whom all the administrative authority was vested, the assumption of similarity of these cases was one of the mistakes made on the ground when the UN deployed in East Timor.²⁸⁹ The departure points and political contexts in which the international administrations were operated were different from each other. Whereas in East Timor UNTAET operated under East Timor's decolonization process leading to independence, in Kosovo, the explicit aim of UNMIK was to assume governmental functions without a clear exit point.

²⁸⁹ Chesterman, *Virtual Trusteeship* in Malone (ed.) (2004), p. 223

The process in Kosovo was paralyzed by the question whether it will eventually become independent or not.

The differences stemming from the different international status of the territories concerned and also the different attitudes of the international community towards them led to divergences in conduct of their otherwise similar functions. Korhonen draws the attention to the different languages adopted by the the regulations on self-authorisation of the administrations.²⁹⁰ Accordingly, the UNTAET Regulation No. 1 stressed that in exercising these functions the Transitional Administrator shall consult and cooperate closely with the representatives of the East Timorese people.²⁹¹ However, the UNMIK administration did not provide a basis for a democratic dialogue by addressing the local people or their will in its self-authorization, relying solely on the Security Council mandate and excluding the consultation mechanism for effective administration. The Resolution 1244 itself neither included an obligation to consult with local actors, whereas the Resolution 1272 emphasized the need for UNTAET to consult and cooperate closely with East Timorese people.²⁹²

Despite the mandate's insistence on consulting with East Timorese people, a major contradiction for UNTAET was that it followed the Kosovo model of concentrating all political power in UNTAET and Special Representative. On the other hand, since its final aim was to give the East Timorese eventual control over their territory, such a centralized approach was inherently contradictory. UNTAET was criticized by Timorese political elite for failing to give them a greater say in the administration.

In East Timor, reliance upon the experience of Kosovo where the development of civil society was constrained by continuing threats to the security, delayed the

²⁹⁰ Korhonen (2001), p. 499

²⁹¹ UNTAET Regulation No. 1999/1, 27 November 1999

²⁹² United Nations Security Council Resolution 1272 (1999), Article 8

necessary transition to political and economic development. Since UNTAET greatly relied on the experiences in Kosovo, this led to a centralized control and neutrality dominating the UNTAET performance on the ground. However, given that the internal security situation was normalized, threat of violence diminished, and most importantly the fact that East Timor could not be characterized as a divided or unstable society as has been in Kosovo, high emphasis on security and peacekeeping was challenged with the need to replace it with mechanisms for political and economic development. However, the mandate was slow to change on the ground and could not appear as flexible enough to accommodate to the changing local conditions and demands. At first glance, strong emphasis on a centralized UN governorship and prioritization of security in UNTAET was the contradictory result of adopting similar structures along with UNMIK, although operating on different contextual grounds.²⁹³

In East Timor, given the consent by Indonesia and Portugal to the UN existence, sovereignty passed to the UN for a temporary period independently of any competing authority. UNTAET constituted the legal sovereign in East Timor, thus its authority exceeding that of UNMIK, which basically assumed *de facto* sovereignty over Kosovo which remained formally part of Serbia under the Resolution 1244. Withdrawal of the Serbian officials which created the governmental vacuum was actually part of the same overall settlement endorsed by the UN. Although Kosovo has been *de facto* transferred into an internationalized territory, every legislative act of UNMIK was perceived as being contrary to Serbia's sovereignty since Serbia's territorial integrity and sovereignty over Kosovo was endorsed by the Resolution 1244 which avoided taking a position on the key political question of Kosovo's relationship to Serbia as explained previously in detail in the fourth chapter.

Kosovo and East Timor become test cases which have implications far beyond the territories concerned. Whereas UNTAET has given birth to a new state with a

²⁹³ Chesterman (2004), pp. 63- 65

unified and comparatively peaceful mission, the status of Kosovo after remaining long time in political limbo created a new state with many political and legal discussions. The question of what are the measures and criteria of success for such missions is a highly difficult one to answer. To judge and assess the success of these operations will require time with a retrospective analysis. The UN will be judged to have succeeded or failed in the task of guiding post-conflict societies towards long-term political stability, economic recovery, reconciliation, and peace consolidation. For East Timor, time will test the institutionalization and the survival capacity of the international community's imposed democracy, judged by how well Timor Leste fared as a new state. Although East Timor became independent, as one of the newest states of the 21st century, it also became the poorest country in Asia. UN firstly through UNMISSET and now through UNMIT pursues a considerable interest in remaining engaged to ensure that this was not an investment in a failed state. The deployment of such succeeding UN missions in East Timor is an obvious proof that peacebuilding and state-building are long-term projects. For Kosovo, although the strategic goal was to sustain a multi-ethnic Kosovo, little has been achieved to create the foundations for a multi-ethnic society in Kosovo. Now with the independence of Kosovo, the international community must do its utmost to ensure that Kosovo will not become a failed or weak state in the future. On the other hand, the perception that Kosovo would remain wholly dependent upon the international actors even after the independence is a problematic view that should be avoided.

Under the light of the relevant considerations, the necessity for the long-term international involvement even after the declaration of full independence, and the imposition of certain conditions, as has been observed both in East Timor and Kosovo, casts doubt on the degree of exercising sovereign status for these entities. Accordingly, limited and constrained sovereignty instead of a unitary and absolute sovereignty has started to be enjoyed in these cases.

CHAPTER 7

CRITICAL ASPECTS AND CHALLENGES FACED BY THE INTERNATIONAL TRANSITIONAL ADMINISTRATIONS

The readiness of the international community to engage in necessary, broad institutional reform, required to prevent the concerned territories from turning into conflict zones in the future, plays an important role for judging the success of administering territories. The size of the administered territory, regional environment, attitude of the neighbouring countries, political context, international response, are all relevant factors contributing to the success of international administrations. However, weaknesses in the following key areas account the most serious shortcomings and challenges associated with the international administrations, as have been experienced both by UNMIK and UNTAET.

First of all, weaknesses in planning and management of operations arising from resource constraints, organisational structural impediments and procedural inflexibility constitute a major restraint on the efficiency of these administrations. There is a strong claim that the UN is not well suited for such massive and complex missions due to the lack of adequate resources, experience and staff. The lack of an institutional capacity to respond to the demands of transitional administration has left the UN relying on a variety of structures built around a core peacekeeping personnel under the DPKO. The absence of cadres of bureaucrats, police, soldiers or judges permanently committed to the international administrations led to the adoption of ad hoc measures so far. However, if the means are inadequate for the ends, the result would become more frustrating.

Secondly, the weaknesses in rapid deployment of assets to provide security due to the inadequate supply of qualified military and police officers available for deployment and cumbersome procedures for the recruitment of these personnel

and necessary goods constitute a major challenge. Moreover, since the missions had to be established in a very short time on ad hoc basis, insufficient planning and lack of sufficient information about local conditions, language, customs and sensibilities, creates conditions undermining the political legitimacy of these administrations.²⁹⁴ The knowledge deficit in post-conflict environments leads the international actors to take the most important decisions at the very beginning when very little information is known about the people and place with which they started to deal. For instance, once UNMIK started its operation on the ground, it was discovered that *anmik*, in the dialect of Albanian spoken in Kosovo, means ‘enemy’.²⁹⁵ In East Timor the disparity between the resources allocated for the international staff and East Timorese society on the other hand, led UNTAET being criticized for being not transparent.²⁹⁶ Moreover, the working language of UNTAET which was English created some frustration among the Timorese people fearing that this language might be imposed on them as the language of their future administration and the lack of sufficient translators prevented the international administration from conducting considerable communication with the local people. Thus, understanding of language, culture, history at local level and respect for the political aspirations of the population is very important considering the temporary nature of the missions and their need for collaboration with the local people to ensure a successful transfer of authority at the end.

The lack of consultation with the representatives of the local community and absence of accountability to the local population is one of the major dilemmas international administrations encounter. The administrations have been criticized for being characterised by imposition rather than empowering the competencies of the local actors. Such an imposition might be perceived as negative in the eyes of the indigeneous population, thus undermining the efficiency of administrations.²⁹⁷

²⁹⁴ Zaum (2006), p. 467

²⁹⁵ Chesterman (2007), pp. 11- 17

²⁹⁶ Beauvais (2000-2001), p. 1125

²⁹⁷ Kiehl (2001), p. 143

Instead, a constructive engagement between the international community and various local actors should be developed in the reconstruction process whereby local consensus on what is right and what is wrong should be established. Empathy-building through understanding the motives and intentions of the local parties would play a key role in consolidating peacebuilding. Most local stakeholders simply want to be heard and understood. Often if they are not heard or understood, it leads to more frustration, suspicion and tension, possibly resulting in circles of new violence. Therefore, the need to co-opt local partners as soon as possible in the administrations is vitally important.

The participation of local actors in the work of international community is also vitally important to ensure democratic representation and compatibility with the local social and political realities. If the local population is not included in the decision-making process from the very beginning, taking over the tasks of the international administrations after the withdrawal will create some risk of administrative vacuum. In other words, they would be unlikely to be able to hold on to power after the international officers leave. Therefore, from the very beginning on, the participation of local communities in the administrative structures which creates a process of ‘participatory intervention’ should be achieved.²⁹⁸

The international administrations should develop a model of good governance to ensure the accountability of the international authority to the local population. Chesterman’s argument that today’s international rule provides even less local accountability than the last century’s mandate system or that under the presently defunct UN Trusteeship Council, is worth to consider in order to illustrate the seriousness of this problem.²⁹⁹ Although international authorities are accountable to the bodies that appoint them, and not directly to the population whose territory they administer, the enhancement of accountability to the local population will

²⁹⁸ Chopra and Hohe (2004), pp. 290- 293

²⁹⁹ Chesterman (2004), p. 45

help to ensure the legitimacy of international actions.³⁰⁰ Furthermore, from the very beginning on, international administrations should be bound by basic international standards, such as human rights, international humanitarian law, the principle of self-determination and the basic elements of democracy and rule of law. International administrations shall also avoid taking decisions on issues which are irreversible or having long-ranging effects or on key matters, which should be left to national representative governments.

What remains unclear is the kind of political engagement that is required since there is a risk of creating the administrative equivalent of dependency in which the local population becomes accustomed to international representatives making decisions for them, including some of the harder decisions that they can thus choose to ignore, where international authorities are highly intrusive. There is the risk that external support will create a cycle dependency and deplete politics at the national and local levels resulting in reduced political autonomy and capacity for self-governance. As analyzed in detail in the second chapter, the ‘institutionalization before liberalization’ understanding which proposes to focus on the creation of strong institutions, the rule of law and human rights protections before giving post-conflict societies the right to have a say in their own affairs; self-government, is one approach assumed by the regulatory role of international administrations.³⁰¹ However, this process, what Chandler concludes as ‘peace without politics’, a process wherein the establishment of democratic institutions is given priority over the development of domestic politics, creates a dilemma where good governance overseen by international bodies takes precedence over the domestic political process of government.³⁰²

³⁰⁰ Caplan (2005), pp. 474- 476

³⁰¹ Paris (2004), pp. 189- 190

³⁰² Chandler, *The State-building dilemma: Good governance or democratic government?* in Hehir and Robinson (eds.) (2007), pp. 71- 79

Well-defined, pre-determined aims and with broad support among the local population provides the administrative authority distinct advantages, as it has been observed in East Timor. If the mandate for the mission is vague and unclear, dysfunction will inhibit the performance of the mission irrespective how comprehensive and detailed the mission is designed. It may not always be possible to achieve a clarity of aims which all parties will agree, however. Where the local political leaders and groups have not reached agreement on the ultimate outcome, it may be necessary to establish interim arrangements, though in some cases parties to a conflict may refuse to accept any settlement or follow interim measures that fall short of their goals.³⁰³

For the exit strategy, all operations, even though the ones designed for indefinite duration, envisage an end state. However, if international authorities choose to withdraw their full support immediately, they risk triggering renewed hostilities. This means that a strict timetable can work against the achievement of an operation's objectives. An international civil and military presence of indefinite duration may thus be necessary until a new and more conciliatory political atmosphere, where a self-sustaining peace has been achieved, emerges. Therefore, instead of immediate exit strategies and disengagement, sustainability is one of the key instruments for the success of transitional administrations. Exit should be seen as a process, completed through successive missions in progressively less intrusive ways.³⁰⁴ However, the duration and degree of the international engagement is a very sensitive issue, whereby the time period for the exit and transfer of authority to the local population must be carefully determined. Local population may become disillusioned or even hostile towards the continued presence of outside actors, which in turn may undermine external efforts. Open-ended missions may also create passivity and lack of interest within the local population in taking on the responsibilities for self-government.³⁰⁵ For UNTAET,

³⁰³ Covey, Dziedzic and Hawley (eds.) (2005), pp. 99- 123

³⁰⁴ Paris and Sisk (2007), p. 9

³⁰⁵ Ibid., pp. 6- 9

elections provided the basis for the transfer of power to the local authorities and with the attainment of independence at the end the exit strategy for UNTAET was accomplished. In Kosovo, where the UN operation was determinedly called an interim administration, the absence of an agreed end-status has left the territory in political limbo for a considerable long period of time. Reflection on the absence of an exit strategy from Kosovo was called as ‘no strategy without an exit’.³⁰⁶

³⁰⁶ Chesterman, Ignatieff and Thakur, *The Future of State-building* in Chesterman (ed.) (2005), pp. 381- 382

CHAPTER 8

CONCLUSION

Throughout this study, we tried to analyze whether the evolving ‘interventionist agenda’ and subsequent attempts to ‘rebuild’ will succeed in producing lasting peace in conflict-ridden societies. For this purpose, the concept of peacebuilding and its relation to state-building was analyzed with a special focus on UN administrations, which represent the peacebuilding discourse in practice. UN administrations, whereby the UN assumes quasi-governmental functions and performs key state functions, can be regarded as the most assertive and intrusive mechanism of peacebuilding among many other mechanisms of varying degrees of authority. Such efforts make sense only in light of an expanded normative agenda, where the scope of the concept of ‘international’ has been widening. Under such an expanded agenda, it has been argued that the devices of state-building, responsibility to protect, humanitarian intervention, international human rights regime, liberal ideas of sovereignty legitimize the idea of introducing international administrations as an institution under international politics. The unique cases of Kosovo and East Timor were the focal point as case studies since the UN had exercised no experience so far on the scale of what was required of it in Kosovo and East Timor. Desire for independence was a prominent feature in both of these cases where, the realization of external self-determination and independence was made a practical possibility through the application of the earned sovereignty approach by the UN administrations. Furthermore, the idea of how a state should look like and how it should act was internationalized by introducing liberal elements of internal governance that would give rise to an entitlement to sovereignty.

International intrusiveness has extended beyond coercive intervention to the level of international administration of territories in the aftermath of intervention. The installation of international administrations, like the existing debates concerning

the 'new interventionism' itself, has attracted various criticisms and suspicion on the basis that such administrations would be vulnerable to abuse, selectivity and double standards under power politics.³⁰⁷ It is obvious that deploying international administrations cannot be separated totally from the national interests of the world's powerful states, at least the permanent members of the Security Council, who enjoy the veto right in the authorization of such administrations. Whatever the mistakes and shortcomings of these operations, positive contributions and accomplishments for peacebuilding should also be taken into consideration when evaluating the criteria for success. In both of our cases, an alternative situation; a political, security and administrative vacuum after the military interventions would have been a major source of instability in the respective regions, thus threatening international peace and security; further escalating conflict. Notwithstanding all the shortcomings and the lack of doctrinal clarity and coherence surrounding international administrations, it is obvious that as long as the desires of the international community cannot be met with the real capabilities of the international system, such criticisms will continue to dominate the debates. Considering the fact that the international administrations grew only in reaction to the necessity for UN involvement in maintaining international peace and security, there was no clear guiding vision for these efforts beyond that being fashioned on the ground as reactions to daily events and problems in the form of *ad hoc* measures.

In order to replace international administrations, some of the suggestions for de facto trusteeships, shared sovereignty and internationalized states whereby integrating them into the international system of regulation and oversight so as to pacify internal strife, have gained prominence among scholars. However, it should be never forgotten that international actors can play a role to a certain extent, but are likely to have only limited impact.³⁰⁸ Therefore, the focus should be directed to the creation of home grown, self-sustaining indigenous institutions instead of

³⁰⁷ Ayoob (2004), pp. 100- 104

³⁰⁸ Fukuyama (2004), pp. 37- 42

long-term international engagement for an indefinite period of time which would mirror a return of a more hierarchical world order with the institutionalization of new forms of political inequality between states.

Paddy Ashdown's following sentences when he became the High Representative for Bosnia in 2002 are demonstrating how a paradoxical situation may emerge out of these international engagements. Ashdown states;

I have concluded that there are two ways I can make my decisions. One is with a tape measure, measuring the precise equidistant position between three sides. The other is by doing what I think is right for the country as a whole. I prefer the second of these. So, when I act, I shall seek to do so in defence of the interests of all people of Bosnia-Herzegovina, putting their priorities first.³⁰⁹

Vesting a single person with such degree of power and capacity for acting in the name of others would have detrimental effects on the democratization process. While trying to establish liberal democracies, if the means chosen for this end will resemble autocracy, a high tension will emerge. The fact that the ultimate claimants for sovereign power on the territory will be the local population should never be ignored by the international administrators.

As we derive from cases of UNMIK and UNTAET, although some commonalities can be drawn among these operations, generalizations shall be avoided and local unique features of each case should be taken into consideration. Every crisis generates its own special opportunities and challenges. 'No one size fits all' understanding demonstrates its validity for the cases we examined in this study due to their different political and historical contexts. However, concerning the similarities faced when exercising their performances, lessons learned should be institutionalized and provided for future missions whereby creating a high quality of advice to develop policies that might facilitate the implementation of similar operations. According to one comment; Kosovo got the operation that should have

³⁰⁹ Chandler (2006), p. 480

been planned for Bosnia four years earlier and East Timor got the one that should have been sent to Kosovo.³¹⁰ This shows the importance of learning from previous experiments in order to be successful in future ones by keeping in mind that there is never a final lesson to be learned.

If all the examples of international administrations are evaluated within a historical perspective, though in varying administrative degrees and political contexts, UN has been involved in administrative functions whenever necessitated by local circumstances. As part of a series of operations in which UN exercised some or all governmental functions on a temporary basis, the most advanced missions emerged in East Timor and Kosovo. All these realities beg the question of whether the UN will undertake similar missions in the future. According to the Brahimi Report;

Although the Security Council may not again direct the United Nations to do transitional civil administration, no one expected it to do so with respect to Kosovo or East Timor either. Intra-State conflicts continue and future instability is hard to predict, so that despite evident ambivalence about civil administration among United Nations Member States and within the Secretariat, other such missions may indeed be established in the future and on an equally urgent basis.³¹¹

As it can be observed, there is a probability that future transitional administrations will become as the rule rather than the exception in the future as long as internal conflicts, state fragmentations and collapses persist on the international agenda. Notwithstanding the fact that the international administrations may be costly and challenging, more specialized, professional mechanisms other than DPKO or within DPKO, such as ‘transnational administration committees’ resembling sanctions committees shall be created to respond to the demands of such administrations in a much better and credible way.³¹² Since DPKO was originally

³¹⁰ Chesterman (2005), p. 355

³¹¹ Brahimi Report, UN Doc A/55/305-S/2000/809, 21 August 2000, (2000), para. 78

³¹² Caplan (2005), pp. 232- 236

established to conduct peacekeeping, its capacity to be involved in peacebuilding which requires an in-depth understanding of the political situation on the ground and local capacity building is limited for such tasks. A rather different set of strategies, methods and skills are needed for such operations with a long-term approach especially where it involves the construction of a new state. Putting aside the question whether international transitional administrations should be managed by other structures, what is certain is that well-prepared, dedicated and organized tools should be maintained in order to improve the effectiveness of such distinctive missions.

To conclude, it can be asserted that the international administration is representing a *sui generis* institutional mechanism for supporting international peace and security which is the basic mission of the UN. It is undeniable that such mechanisms will recur if the circumstances demand such interventions. However, unless the real transformation of the peacebuilding rhetoric into practice can be achieved, taking also into account the above-established weaknesses, international administrations will encounter serious problems in achieving real success on the ground. Therefore, the tensions between the principles upon which the current international system is founded and the emerging norms and standards that pose a challenge to the existing notions of international order should be underscored.³¹³ Notwithstanding the importance of post-conflict peacebuilding for the global security, efforts should also be diverted to develop adequate instruments to tackle the underlying, structural causes which led to the formation of international administrations. Without developing such preventive measures and early warning indicators, focusing only on the post-conflict recovery will not create a more secure and stable world where other instances will re-emerge, which would compel international actors to take responsibility and repeat their interventions.

³¹³ Lipson (2007), pp. 5- 34

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APPENDICES

APPENDIX A

UN SECURITY COUNCIL RESOLUTION 1244



Security Council

Distr.
GENERAL

S/RES/1244 (1999)
10 June 1999

RESOLUTION 1244 (1999)

Adopted by the Security Council at its 4011th meeting,
on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on

2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;

2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;

3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;

4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;

5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

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8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;

(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;

(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;

(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include:

(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) Organizing 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 (S/1999/648);

(f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;

(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;

(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

(j) Protecting and promoting human rights;

(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;

/...

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.

Annex 1

Statement by the Chairman on the conclusion of the meeting
of the G-8 Foreign Ministers held at the Petersberg Centre
on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;

/...

- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
 - Liaison with the international civil mission and the international security presence;
 - Marking/clearing minefields;
 - Maintaining a presence at Serb patrimonial sites;
 - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other

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countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.¹ A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

¹ Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);

/...

- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

APPENDIX B

UN SECURITY COUNCIL RESOLUTION 1272



Security Council

Distr.
GENERAL

S/RES/1272 (1999)
25 October 1999

RESOLUTION 1272 (1999)

Adopted by the Security Council at its 4057th meeting,
on 25 October 1999

The Security Council,

Recalling its previous resolutions and the statements of its President on the situation in East Timor, in particular resolutions 384 (1975) of 22 December 1975, 389 (1976) of 22 April 1976, 1236 (1999) of 7 May 1999, 1246 (1999) of 11 June 1999, 1262 (1999) of 27 August 1999 and 1264 (1999) of 15 September 1999,

Recalling also the Agreement between Indonesia and Portugal on the question of East Timor of 5 May 1999 and the Agreements between the United Nations and the Governments of Indonesia and Portugal of the same date regarding the modalities for the popular consultation of the East Timorese through a direct ballot and security arrangements (S/1999/513, annexes I to III),

Reiterating its welcome for the successful conduct of the popular consultation of the East Timorese people of 30 August 1999, and taking note of its outcome through which the East Timorese people expressed their clear wish to begin a process of transition under the authority of the United Nations towards independence, which it regards as an accurate reflection of the views of the East Timorese people,

Welcoming the decision of the Indonesian People's Consultative Assembly on 19 October 1999 concerning East Timor,

Stressing the importance of reconciliation among the East Timorese people,

Commending the United Nations Mission in East Timor (UNAMET) for the admirable courage and determination shown in the implementation of its mandate,

Welcoming the deployment of a multinational force to East Timor pursuant to resolution 1264 (1999), and recognizing the importance of continued cooperation between the Government of Indonesia and the multinational force in this regard,

Noting the report of the Secretary-General of 4 October 1999 (S/1999/1024),

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Noting with satisfaction the successful outcome of the trilateral meeting held on 28 September 1999, as outlined in the report of the Secretary-General,

Deeply concerned by the grave humanitarian situation resulting from violence in East Timor and the large-scale displacement and relocation of East Timorese civilians, including large numbers of women and children,

Reaffirming the need for all parties to ensure that the rights of refugees and displaced persons are protected, and that they are able to return voluntarily in safety and security to their homes,

Reaffirming respect for the sovereignty and territorial integrity of Indonesia,

Noting the importance of ensuring the security of the boundaries of East Timor, and noting in this regard the expressed intention of the Indonesian authorities to cooperate with the multinational force deployed pursuant to resolution 1264 (1999) and with the United Nations Transitional Administration in East Timor,

Expressing its concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor, stressing that persons committing such violations bear individual responsibility, and calling on all parties to cooperate with investigations into these reports,

Recalling the relevant principles contained in the Convention on the Safety of United Nations and Associated Personnel adopted on 9 December 1994,

Determining that the continuing situation in East Timor constitutes a threat to peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides to establish, in accordance with the report of the Secretary-General, a United Nations Transitional Administration in East Timor (UNTAET), which will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice;

2. Decides also that the mandate of UNTAET shall consist of the following elements:

(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;
3. Decides further that UNTAET will have objectives and a structure along the lines set out in part IV of the report of the Secretary-General, and in particular that its main components will be:
- (a) A governance and public administration component, including an international police element with a strength of up to 1,640 officers;
 - (b) A humanitarian assistance and emergency rehabilitation component;
 - (c) A military component, with a strength of up to 8,950 troops and up to 200 military observers;
4. Authorizes UNTAET to take all necessary measures to fulfil its mandate;
5. Recognizes that, in developing and performing its functions under its mandate, UNTAET will need to draw on the expertise and capacity of Member States, United Nations agencies and other international organizations, including the international financial institutions;
6. Welcomes the intention of the Secretary-General to appoint a Special Representative who, as the Transitional Administrator, will be responsible for all aspects of the United Nations work in East Timor and will have the power to enact new laws and regulations and to amend, suspend or repeal existing ones;
7. Stresses the importance of cooperation between Indonesia, Portugal and UNTAET in the implementation of this resolution;
8. Stresses the need for UNTAET to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public service functions;
9. Requests UNTAET and the multinational force deployed pursuant to resolution 1264 (1999) to cooperate closely with each other, with a view also to the replacement as soon as possible of the multinational force by the military component of UNTAET, as notified by the Secretary-General having consulted the leadership of the multinational force, taking into account conditions on the ground;
10. Reiterates the urgent need for coordinated humanitarian and reconstruction assistance, and calls upon all parties to cooperate with humanitarian and human rights organizations so as to ensure their safety, the protection of civilians, in particular children, the safe return of refugees and displaced persons and the effective delivery of humanitarian aid;

/...

11. Welcomes the commitment of the Indonesian authorities to allow the refugees and displaced persons in West Timor and elsewhere in Indonesia to choose whether to return to East Timor, remain where they are or be resettled in other parts of Indonesia, and stresses the importance of allowing full, safe and unimpeded access by humanitarian organizations in carrying out their work;

12. Stresses that it is the responsibility of the Indonesian authorities to take immediate and effective measures to ensure the safe return of refugees in West Timor and other parts of Indonesia to East Timor, the security of refugees, and the civilian and humanitarian character of refugee camps and settlements, in particular by curbing the violent and intimidatory activities of the militias there;

13. Welcomes the intention of the Secretary-General to establish a Trust Fund available for, inter alia, the rehabilitation of essential infrastructure, including the building of basic institutions, the functioning of public services and utilities, and the salaries of local civil servants;

14. Encourages Member States and international agencies and organizations to provide personnel, equipment and other resources to UNTAET as requested by the Secretary-General, including for the building of basic institutions and capacity, and stresses the need for the closest possible coordination of these efforts;

15. Underlines the importance of including in UNTAET personnel with appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communication skills, cultural awareness and civilian-military coordination;

16. Condemns all violence and acts in support of violence in East Timor, calls for their immediate end, and demands that those responsible for such violence be brought to justice;

17. Decides to establish UNTAET for an initial period until 31 January 2001;

18. Requests the Secretary-General to keep the Council closely and regularly informed of progress towards the implementation of this resolution, including, in particular, with regard to the deployment of UNTAET and possible future reductions of its military component if the situation in East Timor improves, and to submit a report within three months of the date of adoption of this resolution and every six months thereafter;

19. Decides to remain actively seized of the matter.

APPENDIX C

MAP ON UNMIK DISTRICT CENTERS



Map No. 4133 Rev. 5 UNITED NATIONS
October 2001

<http://www.unmikonline.org/maps/unmik.pdf>

Department of Public Information
Cartographic Section

APPENDIX D

MAP ON UNMIK DEPLOYMENT AS OF JUNE 2008



Map No. 4133 Rev. 32 UNITED NATIONS
June 2008 (Colour)

<http://www.un.org/Depts/Cartographic/map/dpko/unmik.pdf>

Department of Field Support
Cartographic Section

APPENDIX E

MAP ON REGIONS OF TIMOR LESTE



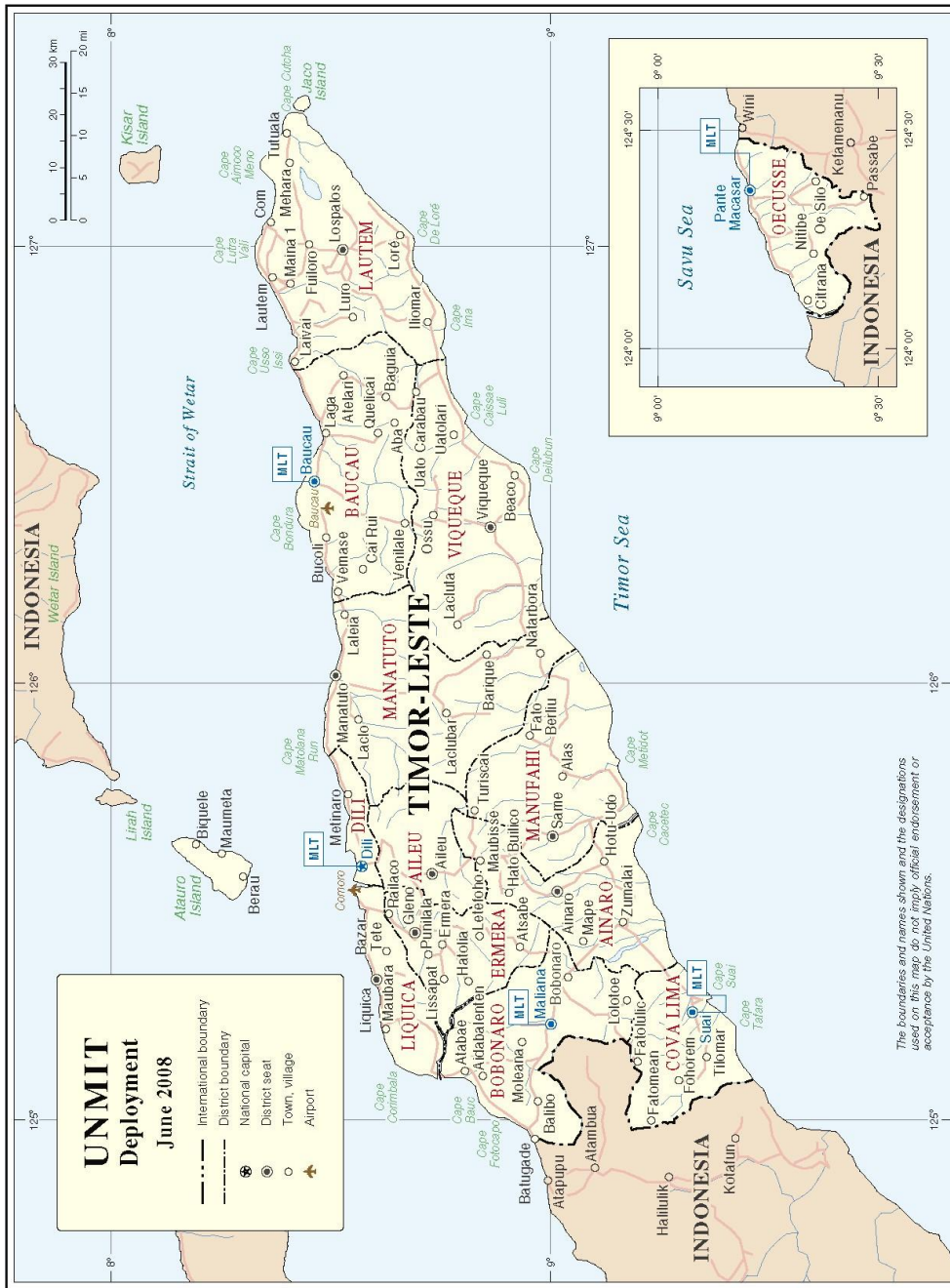
Map No. 4117 Rev. 6 UNITED NATIONS
March 2007

<http://www.un.org/Depts/Cartographic/map/profile/timoreg.pdf>

Department of Peacekeeping Operations
Cartographic Section

APPENDIX F

MAP ON UNMIT DEPLOYMENT AS OF JUNE 2008



Map No. 4885, Rev. 4 UNITED NATIONS
June 2008 (Colour)

<http://www.un.org/Depts/Cartographic/map/dpko/unmit.pdf>

Department of Field Support
Cartographic Section