Peacebuilding through International Territorial Administration: An Assessment of Cases of Eastern Slavonia (Croatia), Bosnia and Herzegovina and Kosovo

Rutvica RUSAN NOVOKMET
e-mail address: rutvica.rusan@pravo.hr

Abstract

International territorial administration (ITA), a phenomenon which evolved from classical peacekeeping and peacebuilding activities under the auspices of the United Nations, represents direct or less direct involvement of international actors (the United Nations, the European Union and other international organizations and institutions) in governing a post-conflict country. The aim of such an engagement is restoration of peace, establishment of rule of law, respect for human rights, creating social stability and setting the foundations for economic development. This paper gives insight into and an assessment of the results of more recent cases of international administration following the dissolution of the Socialist Federal Republic of Yugoslavia (Eastern Slavonia in Croatia, Bosnia and Herzegovina and Kosovo) by presenting circumstances in which the missions were established, the legal basis for their establishment, as well as the content of authority entrusted to the missions. However, the author focuses on the most recent mission in Kosovo, the United Nations Interim Administration Mission in Kosovo (UNMIK), the complexity and uniqueness of which is manifested, among other things, in the distribution of governmental and supervisory powers on not just one, but several international actors (the United Nations, the European Union, the Organization for Security and Cooperation in Europe, the NATO and other). Moreover, the author expresses concern about the continuing prolongation of the duration of UNMIK and the European Union Rule of Law Mission's (EULEX) mandates and explains that the international presence could have a negative effect manifesting itself as the reduction in responsibility of local institutions for their role in developing a society based on the rule of law.

Key words: *peacebuilding, international territorial administration, UNTAES, Erdut Agreement, Dayton Agreement, UNMIK, EULEX*

1. Introduction

In the last few decades, the international community has been faced with an increasing number of non-international armed conflicts, resulting from peoples' aspirations to realize their right to self-determination and establish independence in the form of a new state or some degree of autonomy. Unfortunately, the fact that countries return to armed conflicts within five years of a negotiated settlement almost 50% of the time[1] indicates that these conflicts cannot be self-resolved and that the international community has the responsibility to get involved through different modalities of peacebuilding missions, international administration of territories, humanitarian occupation etc. as these conflict situations often represent threat to and breach of peace and include grave violations of human rights.

In his report to the General Assembly in June 1992, the former UN Secretary-General Boutros Boutros-Ghali addressed some crucial issues concerning the maintenance of international peace and security and the role that the United Nations has in this process. The concept relevant to this paper is the concept of post-conflict peacebuilding, which the Secretary-General tried to define in his report, An Agenda for Peace. [2] According to the Agenda, the concept of peacebuilding refers to an ″action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict″.[3] The idea of peacebuilding is to lay a durable foundation for the achieved peace and to prevent the crisis from recurring by dealing with the economic, social, cultural and humanitarian issues that led to the conflict in the first place.[4]

This approach to rebuilding societies on the grounds of the rule of law and development of democratic institutions is a step further from the traditional role of the UN peacemaking and peacekeeping missions. Peacemaking is primarily focused on bringing hostile parties to an agreement and peacekeeping on the deployment of United Nations presence in the field, with the consent of all the parties concerned, normally involving the UN military and/or police personnel and frequently civilians as well.[5] Peacemaking and peacekeeping are, therefore, actions aimed at stopping conflicts and preserving peace once it is achieved. Nevertheless, the concepts of peacemaking, peacekeeping and peacebuilding are integrally related; if the first two missions, i.e. the peacemaking and the peacekeeping mission are successful, they lay

[1] See: Andrassy, J., Bakotić, B., Seršić, M., Vukas, B., *Međunarodno pravo*, Vol. 3, Zagreb, Školska knjiga, 2006, p. 107., Biersteker, T. J., ″Prospects for the UN Peacebuilding Commission″, *Disarmament Forum*, No. 2, 2007, p. 37.

[2] See *An Agenda for Peace: Report of the Secretary-General*, UN Doc. A/47/277 – S/24111, 17 June 1992, available at www. un.org/docs/SG/agpeace.html.

[3] *Ibid*., para. 21.

[4] See: Han, S. K., ″Building a Peace that lasts: the United Nations and Post-Civil War Peace-Building″, *New York University Journal of International Law & Politics*, Vol. 26, No. 4, 1994, p. 838.

[5] *An Agenda for Peace*, *supra* (note 2).

a good foundation for post-conflict peacebuilding, which can prevent reappearance of violence among peoples. Therefore, peacemaking is often a prelude to peacekeeping; just as the deployment of a United Nations presence in the field may expand possibilities for the prevention of conflict, facilitate the work of peacemaking and in many cases serve as a prerequisite for peacebuilding.

2. Peacebuilding through international territorial administration

The process of peacebuilding has evolved in various forms of complex, direct or less direct administrative involvement of international actors (states, international organizations, mainly the United Nations) in governing a territory or a country. Depending on the scope of the authority transferred to outside actors, there are different definitions scholars use to explain what exactly an internationally administered territory is. Stahn, for example, mentions several definitions: international administrations as the exercise of international civil authority over a territory; international administration as an operation with the purpose to facilitate the emergence of a new state, or at least to promote substantial autonomy; transitional administration as a sum of operations in which international entities pursue activities such as electoral assistance, human rights and rule of law technical assistance, security sector reform and certain forms of development assistance.[6] The Handbook on United Nations Multidimensional Peacekeeping Operations refers to an internationally administered territory as a UN transitional administration with the authority over the legislative, executive and judicial structures in the territory or country.[7] Fox, on the other hand, uses another term to describe this phenomenon. He calls it ″humanitarian occupation″ and explains that the main purpose of these missions is to establish social stability, end human rights abuses, reform governmental institutions and restore peaceful coexistence among groups that had recently been engaged in vicious armed conflict. That is why they are humanitarian.[8] The term ″occupation″ is used because the governing authority assumed by the international administrators is similar to the de facto authority of traditional belligerent occupiers.[9] It involves the control over a territory by a temporary regime that does not claim full sovereignty, but at the same time assumes virtually all functions of local government.[10]

[6] See: Stahn, C., *The Law and Practice of International Territorial Administration*, Cambridge, Cambridge University Press, 2008, pp. 43-45.

[7] See the *Handbook on United Nations Multidimensional Peacekeeping Operations*, available at www.un.org/en/peacekeeping/resources/policy.shtml.

[8] See: Fox, G. H., *Humanitarian Occupation*, Cambridge, Cambridge University Press, 2008, pp. 3-4, 73-74.

[9] *Ibid*., p. 4.

[10] There are other supporters of this view; Ratner argues that the difference between the occupation by states and the international territorial administration governed by international organizations is disappearing and that the two types of operation share a

A third term, i. e. ″internationalized territories″, is also used among scholars to describe some form of international governance over a territory, particularly when referring to autonomous entities under international administration in the past, which should be distinguished from protectorates, condominiums, mandate and trusteeship territories. Stahn distinguishes two main forms of internationalization: territorial and functional. Territorial internationalization is a device that removes a territory from the jurisdiction of a state and places it under an international institutional framework. Functional internationalization represents a broader technique, which limits the jurisdiction of states over a certain space and submits it to international supervision and control.[11] The concept of internationalized territories represents the historical framework from which international territorial administration emerged. The first attempts to implement international governance were conducted under the supervision of the League of Nations after World War I and by the United Nations after World War II, when these international organizations played a role as neutral actors, pursuing collective rather than individual interests.[12]

3. More recent cases of international territorial administration following the dissolution of the Socialist Federal Republic of Yugoslavia

After these theoretical and historical remarks concerning the definition and development of the concept of international territorial administration (ITA) as a form of direct or indirect government for a territory by international actors, this paper will analyze more recent cases of international administration in Eastern Slavonia (Croatia), Bosnia and Herzegovina and Kosovo and discuss the success or failure of the analyzed ITAs, as well as the most significant and, in some cases, most arguable international law related issues, e.g. legal basis for international presence and administration in the mentioned territories, legal status of territories subject to administration by international organizations, content of authority entrusted to them - drafting or amending constitutions, implementing disarmament, demobilization and reintegration programs, securing humanitarian assistance, facilitating transitional justice systems, strengthening state institutions, fostering an independent

number of common characteristics. Despite the differences that undoubtedly exist between the occupation of a state by another state and a territory administered by an international organization, the author concludes that the two types of operation have witnessed significant convergence. See: Ratner, S. R., ″Foreign Occupation and International Territorial Administration: The Challenges of Convergence″, *The European Journal of International Law*, Vol. 16, No. 4, 2005, pp. 695-719.

[11] Stahn, *op. cit.* (note 6), p. 50.

[12] For more information see *ibid*. See also: Knoll, B., *The Legal Status of Territories Subject to Aministration by International Organisations*, Cambridge, Cambridge University Press, 2008.

civil society, placing the security sector under the democratic, civilian control and organizing elections.

a. *Eastern Slavonia*

The purpose of the UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) was to enable peaceful reintegration of the three regions of the formerly Serb-controlled Republika Srpska Krajina into Croatia, details of which were agreed in the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirminum (the ″Erdut Agreement″), signed between the Government of the Republic of Croatia and the local Croatian Serb authorities in Eastern Slavonia on 12 November 1995.[13] According to the ″Erdut Agreement″, the UN Security Council was requested to establish a Transitional Administration with the task of governing the region during the transitional period in the interest of all persons resident in or returning to the region. A deployment of an international force was also envisaged in order to supervise the process of demilitarization and to maintain peace and security in the region. Further, the UNTAES was entrusted with the authority to ensure the possibilities for the return of refugees and displaced persons to their homes, to reestablish normal functioning of all public services, help establish temporary police forces and build standards of professionalism and confidence among all ethnic communities. The respect for internationally recognized human rights and fundamental freedoms was set as an imperative for the parties concerned.[14] The UNTAES was also given a very important assignment of organizing elections for all local government bodies, with the request to the Organization for Security and Cooperation in Europe (OSCE), the UN and interested states to supervise the elections. In its Resolution 1037 (1996)[15] the Security Council established the UNTAES under Chapter VII of the Charter in order to ″support the parties in their effort to provide for a peaceful settlement of their disputes, and thus to contribute to the achievement of peace in the region as a whole″, requested the Secretary-General to appoint a Transitional Administrator to have overall authority over the military and civilian components of the UNTAES, and to exercise the authority given to the Transitional Administration in the ″Erdut Agreement.″[16] This was the first time the Security Council invoked Chapter VII in

[13] See the *Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium*, 12 November 1995, UN Doc. S/1995/951.

[14] The Parties of the ″Erdut Agreement″ were also required to establish a commision, which will be authorized to monitor the implementation of the Agreement, particularly its human rights and civil rights provision, to investigate all allegations of violations of the Agreement and to make appropriate recommendations. *Ibid*., para. 11.

[15] *Security Council Resolution* UN Doc. S/RES/1037 (1996), 15 January 1996.

[16] *Ibid*., para. 2.

order to establish a direct and comprehensive UN civil and military presence.[17] During its mandate, the UNTAES pursued a policy of negotiating public agreements with the Government of Croatia on the post-UNTAES implementation of its commitments and guarantees and preparing the local population for the full transfer of authority.[18] Therefore, the UNTAES mission was a combination of dispute settlement and a state-building mission, refraining from sharing its powers with domestic institutions – the UN administrator (Jacques Klein) was empowered with both executive and legislative authority. Croatia, nevertheless, remained the territorial sovereign.[19]

The termination of the UNTAES mission was set by Security Council Resolution 1145 (1997),[20] after the Secretary-General gave his report on the results of the UNTAES.[21] The mission was successful in accomplishing its goal, namely to achieve peaceful reintegration of the region into the Croatian legal and constitutional system. Furthermore, it secured the peaceful disarmament of armed groups, stabilized the relations between Croatia and the Former Republic of Yugoslavia through bilateral agreements.[22] The role of the UN Administrator was significant in the abrogation of legislation enacted by the local Serb authorities and the restoration of Croatian law,[23] as well as through the establishment of a political and institutional framework for the reintegration of civil administration of public services. In other aspects, the successfulness of the mission was limited to a certain extent. According to the report of the Secretary-General, most municipalities could not provide basic communal services. No agreement between Croats and Serbs could be reached in the area of education and culture at the time. The issue of responsibility of prosecuting war crimes before domestic courts has never been fully resolved because a complete reform of the domestic judiciary was not carried out and the full repatriation of displaced persons was not achieved.

[17] ″…determining that the situation in Croatia continues to constitute a threat to international peace and security…, determined to ensure the security and freedom of movement of all personnel of the United Nations peace-keeping operation in the Republic of Croatia, and to these ends, acting under Chapter VII of the Charter of the United Nations…″ *Ibid*., the Preamble.

[18] See: Knoll, *op. cit*. (note 12), pp. 34-35.

[19] See: Stahn, *op. cit*. (note 6), pp. 281-282.

[20] *Security Council Resolution* UN Doc. S/RES/1145 (1997), 19 December 1997.

[21] See the *Report of the Secretary-General on the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium*, UN Doc. S/1997/953, 4 December 1997.

[22] E.g. Agreements on the border regime and the restoration of commercial and traffic links. *Ibid*., para. 5.

[23] By the directive issued on 29 May 1997, the Transitional Administrator ordered the region's judiciary to apply Croatian law for all new cases as from 1 June 1997. UNTAES and the Minister of Justice of Croatia signed a declaration fully establishing the Croatian judiciary in the region on 30 September 1997. *Ibid*., para. 23.

In conclusion, it should be noted that the UNTAES mission is an example of an overall successful interim authority for a post-conflict society that needed international assistance in the ending of the war, the rebuilding of the infrastructure and order maintenance. The authority of the UNTAES and the Transitional Administrator was concisely determined by the ″Erdut Agreement″, which enabled the Administrator to adjust his responsibilities to the needs of the situation. At the same time, and as opposed to the missions in Kosovo and Bosnia and Herzegovina, the short term of the operation and the strictly limited powers the UNTAES could exercise in Croatia prevented the UNTAES mission from dealing more successfully with more complex, long-term challenges of peacebuilding.

b. *Bosnia and Herzegovina (BiH)*

The complexity and uniqueness of the ITA established in Bosnia and Herzegovina in 1995 is best described in Security Council Resolution 1031 (1995), in which ″the unique, extraordinary and complex character of the present situation in Bosnia and Herzegovina, requiring an exceptional response″ is recognized.[24] Having learned a lesson about catastrophic consequences that its ignorance and indolence in reacting promptly to ethnic cleansing in Bosnia and Herzegovina had produced, the international community became involved in creating a complex, experimental and long-term constitutional framework in which three ethnic groups (Muslims, Croats and Bosnian Serbs) could coexist. After three weeks of difficult negotiations, the Bosnian peace process was finalized (or rather initiated) at Dayton by the General Framework Agreement for Peace in Bosnia and Herzegovina with twelve annexes, the fourth of which was the Bosnian constitution.[25] Prior to the discussion about the Agreement itself, it is important to mention the circumstances in which the Dayton Agreement was signed. Since the Bosnian Serbs' leaders Radovan Karadžić and Ratko Mladić had been indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY), no representative of the Republika Srpska could have been present to sign the Dayton Agreement. Instead, the Federal Republic of Yugoslavia (FRY) delegation was authorized to sign the Agreement on behalf of the Republika Srpska, ″with the obligation to implement the agreement that is reached strictly and consequently″[26], thereby creating a legal fiction that was, so it seemed, acceptable for all the parties concerned.[27] To ensure that the subsequent need for ratification did not obstruct the Agreement entering into force, the Agreement provided in Article XI that all the Dayton documents would enter into force immediately upon signature. In such a way this legal fiction could have been overcome.

[24] *Security Council Resolution* UN Doc. S/RES/1031 (1995), 15 December 1995.
[25] See the text of the *General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes*, of 14 December 1995, available at www.ohr.int.
[26] *Ibid*., the Preamble.
[27] Fox, *op. cit*. (note 8), pp. 77-78.

Similar to other cases of ITA, the goals of the implementation of the Dayton Agreement were double-natured: a long-term goal of creating a democratic state after the armed conflict and a short-term goal of establishing stable and peaceful coexistence of the three ethnic groups: Bosnians, Croats and Serbs.[28] These goals were to be achieved through the territorial division of Bosnia into a federal system with two sub-entities called the Federation of Bosnia and Herzegovina and the Republika Srpska,[29] which would help in the preservation of the territorial unity, the integration of the country and the restoration of democratic society after the conflict. The Constitution of BiH granted Bosnians, Croats and Serbs special privileges by defining them as ″constituent peoples″ of BiH;[30] the representation in the Parliamentary Assembly was organized in accordance with ethnic quotas and government offices were reserved for members of the particular ethnic groups.[31] Furthermore, each of the constituent peoples was given the power to veto the decisions affecting their vital interests in the most important national institutions.[32] The responsibilities of the institutions of BiH were limited on the areas of foreign policy, foreign trade policy, customs and monetary policy, immigration, communications and air traffic control.[33]

According to the Dayton Agreement, therefore, Bosnia and Herzegovina was envisaged as a radically decentralized state, with its institutions subject to series of checkups by international norms and institutions. First of all, the General Framework Agreement itself was approved by the Security Council, invoking Chapter VII of the UN Charter, in Resolution 1031 (1995).[34] Furthermore, the Constitution provides that the rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply directly in Bosnia and ″shall have priority over all other law″, thus incorporating highest human rights standards in the BiH constitutional system.[35] Also, Bosnia ″shall remain or become party″ to a list of fifteen major human rights treaties.[36] Compliance with the Dayton standards is ensured by a set of international actors: the United Nations, NATO, the Organization for Security and Cooperation in Europe, the UN High Commissioner for Refugees, the International Committee of the Red Cross and the

[28] Stahn, *op. cit.* (note 6), p. 289.
[29] The *General Framework Agreement*, *supra* (note 25), Annex IV – Constitution of Bosnia and Herzegovina, Art. I/3.
[30] The *General Framework Agreement*, *supra* (note 25), the Preamble.
[31] *Ibid*., Art. IV.
[32] *Ibid*., Art. IV/3/e and Art. V/2/d.
[33] *Ibid*., Art. III.
[34] *Security Council Resolution*, *supra* (note 24).
[35] The *General Framework Agreement*, *supra* (note 25), Annex IV, Art. II/2.
[36] *Ibid*., Art.II/7. On the disproportionality of the level of human rights obligations imposed by the Agreement on domestic institutions and the capacity of the Bosnian judicial system, as well as on the conflicts of jurisdiction and institutional overlaps see in: Stahn, *op. cit.* (note 6), pp. 294-296.

World Bank.[37] But the ultimate civilian authority, prescribed in the Annex X of the Dayton Agreement, is assigned to the Office of the High Representative (OHR), who has jurisdiction over almost every aspect of economic reconstruction, human rights and institutional rehabilitation and is a non-appealable authority to interpret civilian aspects of the Dayton Agreement.[38] Because of the right to use ethnic veto powers, the national institutions were almost paralyzed in decision-making processes, the role of the High Representative became increasingly significant in imposing laws and decisions, thus gradually turning into the central legislative and executive authority in situations of political crisis.[39]

When assessing the quality of the General Framework Agreement for Peace in Bosnia and Herzegovina and the effects it has produced, it is obvious that creating stable and durable post-war governance in Bosnia represented a major challenge for international actors involved in this venture. There are several reasons for the criticism of the legal framework set by the Agreement. First, the provision referring to entering into force upon signature without ratification casts a shadow on the Agreement. At the same time, it seems that no other legal construction could overcome the difficulties in obtaining a wider public acceptance of the Agreement by domestic leaders. Second, the constitutional system envisaged by the Agreement created a loose federal structure and the ethnically based mechanisms of representation actually contributed to the division within the society and not to a reduction in the division within the society. Third, assigning increasingly extensive powers to the High Representative was counterproductive for the development of democracy among the elected bodies of BiH. The reliance on the Office of the High Representative caused the avoidance of responsibility of local actors for their role in the democracy-making process and an increased dependence of the country on the international community, instead of furthering democratic pluralism and progressive self-government.[40] The present form of governance cannot last forever. It is not efficient and lacks democratic content. That is why the constitutional reform is necessary and unavoidable, but at this time it cannot be imposed. Unfortunately, consensus among the representatives of the three constituent peoples will be difficult to obtain. Nevertheless, if people of Bosnia and Herzegovina see their interests best protected within the European Union some time in the future, they, and in particularly their political leaders, will have to put more effort into creating and maintaining democratic standards and be more open to dialogue.

[37] Fox, *op. cit.* (note 8), p. 81. Similar division of authority was applied in Kosovo, see *infra.*
[38] The *General Framework Agreement*, *supra* (note 25), Annex X, Art. V.
[39] Stahn, *op. cit.* (note 6), pp. 292-293.
[40] *Ibid*., pp. 298-299.

c. *Kosovo*

The international administration in Kosovo, established under the authority of the Security Council, represents a unique case of international governance over a territory for several reasons: its role was not to supervise local governing bodies, but to govern the population directly; the duration of its mandate was not defined in advance; the consent obtained from local actors is burdened with elements of coercion.

It is important to briefly recall the most significant events that preceded the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) by Security Council Resolution 1244 (1999). The autonomous status that Kosovo was given in the Yugoslav constitution in 1974 was revoked by president Milošević in 1989 and petitions for secession from Serbia, under the leadership of the Kosovo Liberation Army (KLA), continued during the 1990s. Since violence in Kosovo increased, the international community responded by a wide range of diplomatic initiatives in order to end the growing aggressive behavior of Serbia towards Kosovo's Muslims.[41] At this point, the international community strongly opposed the idea of independence of Kosovo from the Federal Republic of Yugoslavia (FRY), emphasizing the need to preserve the territorial integrity of the FRY.[42] In its Resolution 1160 (1998)[43] the Security Council, specifically acting under Chapter VII of the UN Charter, but without being explicit that the Kosovo crisis resulted in threats to peace, in para. 5 agreed that ″the principles for a solution of the Kosovo problem should be based on the territorial integrity of the Federal Republic of Yugoslavia and should be in accordance with OSCE standards, including those set in the Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975, and the Charter of the United Nations, and that such a solution must also take into account the rights of Kosovar Albanians and all who live in Kosovo″, and expressed ″its support for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration.″

However, the situation deteriorated, the fighting intensified causing numerous casualties, the displacement of hundreds of thousands of people from their

[41] In September 1997, a Contact Group (composed of the representatives of the USA, Russia, Great Britain, France and Italy) called on Yugoslavia to withdraw its special police units from Kosovo and try to find a peaceful political solution with Kosovars. Fox, *op. cit*. (note 8), pp. 84-86.

[42] The Contact Group emphasized: ″…we do not support independence and we do not support maintenance of status quo. We support an enhanced status of Kosovo within the FRY. Such a status should fully protect the rights of the Albanian population in accordance with OSCE standards and the UN Charter…″ More information available at www.ohr.int/other-doc/contact-g/default.asp?content_id=3543.

[43] *Security Council Resolution* UN Doc. S/RES/1160 (1998), 31 March 1998.

homes, and extensive invasion of refugees into other countries.[44] The Security Council adopted a new Resolution 1199 (1998), this time expressly stating that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region, and acting under Chapter VII, it demanded the cessation of hostilities, as well as immediate steps by both parties to improve the humanitarian situation and implement a series of measures in order to achieve a peaceful solution to the crisis.[45] Since it was clear that the unanimity of all permanent Member States of the Security Council could not be achieved (because of the veto of Russia) in order to authorize the use of force against the FRY,[46] the NATO pressured Serbia by approving an activation order that gave the NATO Secretary-General authority to initiate air strikes against Serbian forces in Kosovo, should the FRY not comply with the Security Council's resolutions.[47]

This seemed to have the desired effect, so in October 1998 president Milošević signed an agreement with NATO providing for the monitoring from the air and agreement that the OSCE establish a Kosovo Verification Mission (KVM), to supervise the withdrawal of the Serbian security forces from Kosovo and the cease-fire.[48] Nevertheless, the violence continued,[49] so the Contact Group decided to put more pressure on the FRY to negotiate a final political settlement. The Group proposed an arrangement, the Interim Agreement for Peace and Self-Government, in Kosovo on 29 January 1999 (Rambouillet Accords),[50] in which they emphasized the commitment of the international community to sovereignty and territorial integrity of the FRY, but significantly altered Kosovo's position in the FRY's constitutional structure, providing that the province would govern itself democratically through the bodies set out in its new constitution.[51] According to the Rambouillet Accords, the military authority would be internationalized in a way that all FRY military personnel would be withdrawn from Kosovo, the KLA personnel were to be disarmed and replaced with the NATO forces KFOR, and the air, ground and maritime force was empowered to ″take such actions as required, including the use of necessary force″, in order to fulfill its mandate.[52]

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[44] See: Simma, B., ″NATO, the UN and the Use of Force: Legal Aspects″, *European Journal of International Law*, Vol. 10, No. 10, 1999, p. 6.

[45] *Security Council Resolution* UN Doc. S/RES/1199 (1998), 23 September 1998.

[46] Simma, *op. cit*. (note 44), p. 7.

[47] On the legal basis for such an action see *ibid*.

[48] Fox, *op. cit*. (note 8), p. 88.

[49] See the *Report of the Secretary-General prepared pursuant to resolutions 1160 (1998), 1199 (1998) and 1203 (1998) of the Security Council*, UN Doc. S/1999/99, 30 January 1999.

[50] The *Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo*, available at www.state.gov/www/regions/eur/ksvo_rambouillet_text.html.

[51] Fox, *op. cit*. (note 8), pp. 89-91.

[52] The *Rambouillet Accords*, *supra* (note 50).

Belgrade's refusal to sign the Agreement triggered the NATO Council's decision to initiate air strikes against the FRY on 24 March 1999, with the intention to secure the agreement with the Rambouillet draft.[53]

Determined to resolve the grave humanitarian situation in Kosovo, the Security Council, acting under Chapter VII of the UN Charter, adopted Resolution 1244 (1999)[54] and established ″…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″.[55] For the full legitimacy of the deployment of UNMIK as a UN peacekeeping mission into a post-conflict country, consent of the host government was needed and was obtained by the so called Kumanovo Agreement, which was concluded on 9 June 1999, between the international security force (KFOR) and the FRY[56].

However, there are doubts as to whether the consent on the transfer of effective control from the FRY to an ITA was voluntary.[57] The Agreement was concluded after the military intervention by NATO, which would have most definitively continued if the FRY had not signed the Agreement. Therefore, to a certain extent, coercion was applied on the FRY Government to give consent on the deployment of effective international civil and security presences under the United Nations auspices in Kosovo with the authority to take all necessary actions to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out the mission of the United Nations.[58] Nevertheless, possible nullification of the Kumanovo Agreement due to the mentioned element of coercion does not put into question the legality of the establishment of UNMIK. Namely, the interim administration in Kosovo was established under the terms of the Kumanovo Agreement, however, as a necessary measure to restore international peace and security in the region within the meaning of Art. 39, Chapter VII of the Charter.[59] Therefore, in situations defined to be threat to peace, breach of peace or an act of aggression, for the implementation of the enforcement measures (including the establishment of the international governance over the territory) in accordance with Art. 41 and 42, Chapter VII of the Charter, the consent of the host country is not

[53] Fox, *op. cit*. (note 8), pp. 91-92.
[54] *Security Council Resolution* UN Doc. S/RES/1244 (1999), 10 June 1999.
[55] *Security Council Resolution*, *supra* (note 54), para. 10.
[56] Military-technical agreement between the international security force (KFOR) and the Federal Republic of Yugoslavia of 9 June 1999. See the *Letter dated 15 June 1999 from the Secretary-General addressed to the President of the Security Council*, UN Doc. S/1999/682, 15 June 1999.
[57] Knoll, *op. cit*. (note 12), pp. 44-46.
[58] The *Kumanovo Agreement*, *supra* (note 56), Art. I/1 and 2.
[59] Knoll, *op. cit*. (note 12), p. 47.

needed as the Security Council's decisions based on Chapter VII are binding for all Member States.

Resolution 1244 (1999) reaffirms on the one hand the commitment of all Member States to the sovereignty and territorial integrity of the FRY and other states of the region,[60] and on the other, it reaffirms the call expressed in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo.[61] The Security Council, thus, refrained from expressly recognizing Kosovo's right to self-determination or independence, or from making any binding determinations with respect to the future status of Kosovo. Instead, it decided that the international civil presence include: ″promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo; performing basic civilian administrative functions where and as long as required; organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections; transferring its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peacebuilding activities; facilitating a political process designed to determine Kosovo's future status…″[62]

The Secretary-General prepared an overall structure of the mission in Kosovo.[63] The highest international civilian official in Kosovo was headed by a Special Representative of the Secretary-General, appointed by the Secretary-General in consultation with the Security Council. He was empowered with the authority to manage the Mission and coordinate the activities of all UN agencies and other international organizations operating as part of UNMIK.[64] Furthermore, four major components of the mission were defined, each to be supervised by one Deputy Special Representative: interim civil administration (to be supervised by the United Nations); humanitarian affairs (to be supervised by the Office of the United Nations High Commissioner for Refugees); institution-building (to be supervised by the Organization for Security and Cooperation in Europe, OSCE) and reconstruction (to be supervised by the European Union).[65] The tasks of the interim civil administration under the UN were focused on overseeing the civilian police operation and establishing and supervising the Kosovo Police Force, maintaining law and order, supporting the restoration of basic public services, organization and oversight of the judicial system. The primary functions of UNMIK in the humanitarian area under the UNHCR were to ensure safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo and to protect minority

[60] *Security Council Resolution*, *supra* (note 54), the Preamble.
[61] *Ibid*.
[62] *Security Council Resolution*, *supra* (note 54), para. 11.
[63] See the *Report of the Secretary-General pursuant to paragraph 10 of Security Council Resolution 1244 (1999)*, UN Doc. S/1999/672, 12 June 1999.
[64] *Ibid*., para. 3.
[65] *Ibid*., para. 5.

groups. The tasks of institution-building led by the OSCE were human-resources capacity-building in the areas of justice, police and public administration, democratization and governance, human rights monitoring, and the conduct and monitoring of elections. The reconstruction under the EU was aimed at rebuilding the physical, economic and social infrastructure and systems of Kosovo and supporting the reactivation of public services and utilities, transportation and communications.[66]

The international security presence, operating under the UN auspices, was to establish a secure environment, deter renewed hostilities, and ensure public safety and order, with the authority to ″take such actions as are required, including the use of necessary force″.[67]

The distinctive feature of the UNMIK mission in Kosovo as an ITA is that it was unconnected to any specific timetable of its mandate. The report of the Secretary-General on the United Nations Interim Administration in Kosovo envisaged five integrated phases leading to termination of the UN presence, the third of which was the finalization of preparations for and the conduct of elections to what may be termed the Kosovo Transitional Authority.[68] Furthermore, it was envisaged that the efforts to facilitate the political process designed to determine Kosovo's future status, taking into account the Rambouillet Accords, should intensify during this phase.[69] During the fifth phase, ″UNMIK would oversee the transfer of authority from Kosovo's provisional institutions established under a political settlement.″[70]

Resolution 1244 (1999), therefore, abstained from determining Kosovo's future status. It exercised an open status mandate, ″promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo…″[71] The open status question had direct implications for UMIK's regulatory activity and efforts for reconstruction; the prospects of political and economic progress were compromised.[72] Furthermore, the UNMIK's mandate did not include any entitlement for a unilateral determination of the final status of Kosovo. Nevertheless, the next step in the progress of transferring the authority from the international actors to the institutions of self-government in Kosovo had to be made.

Thus, the Security Council supported the intention of the Secretary-General to appoint Martti Ahtisaari, former President of Finland, as his Special Envoy for the

[66] *Ibid.*, paras 8-14. A comprehensive framework of the United Nations-led international civil operation in Kosovo based on the assessment conducted by the advance team of UNMIK is presented in the *Report of the Secretary-General on the United Nations Interim Administration in Kosovo*, UN Doc. S/1999/779, 12 July 1999.

[67] *Security Council Resolution*, *supra* (note 54), para. 11.

[68] The *Report of the Secretary-General*, *supra* (note 66). para. 114.

[69] *Ibid.*, para 114.

[70] *Ibid*., para. 116.

[71] *Security Council Resolution*, *supra* (note 54), para. 11.

[72] See: Stahn, *op. cit*. (note 6), p. 312.

future status process for Kosovo.[73] The members of the Contact Group (France, Germany, Italy, Russian Federation, United Kingdom and United States) issued ″Ten Guiding Principles″ for the settlement of the status of Kosovo to support the Special Envoy in his efforts.[74]

From 2005, the Secretary-General's Special Envoy Martti Ahtisaari tried to reconcile opposing aspirations between the Serbian demands for the continuation of Kosovo's autonomy within Serbia and the Kosovar demand for independence. Due to the impossibility of reaching any compromise through negotiations, the Special Envoy presented a Comprehensive Proposal for the Kosovo Status Settlement,[75] proposing a model of ″supervised independence″, which would provide the foundations for a future independent Kosovo that would be viable, sustainable and stable, and in which all communities and their members could live a peaceful and dignified existence.[76] He also emphasized that while UNMIK had made considerable achievements, the Kosovars expectations of managing their own affairs could not be realized in the framework of continued international administration.[77] Further, Kosovo's uncertain political status during UNMIK's governance prevented Kosovo from accessing international financial institutions, fully integrating into regional economy or attracting foreign capital to reduce unemployment and poverty.[78] The international administration, therefore, proved not to be an optimal long-term solution. Nevertheless, the Special Envoy's Comprehensive Proposal envisaged international civilian and military presence for the initial period, because Kosovo's capacity to overcome challenges of minority protection, democratic development, economic recovery and social reconciliation was limited, until Kosovo has implemented the measures contained in the Settlement.[79]

Therefore, the operation and functioning of Kosovo's domestic institutions under the Settlement was placed under the general supervision of an internationally

[73] The *Letter dated 10 November 2005 from the President of the Security Council to the Secretary-General*, UN Doc. S/2005/709, 10 November 2005.

[74] In particular, these principles state that every settlement should ensure Kosovo's multi-ethnicity and the protection of the cultural and religious heritage, strengthen regional security and stability, and ensure that Kosovo can cooperate effectively with international organizations and international financial institutions. The Guiding Principles stipulated that there should be ″no return of Kosovo to pre-1999 situation, no partition of Kosovo and no union of Kosovo with any other, or part of another, country.″ *Ibid.*, Annex.

[75] See the *Report of the Special Envoy of the Secretary-General on Kosovo's future status* UN Doc. S/2007/168, 26 March 2007.

[76] *Ibid*., para. 5.

[77] *Ibid*. para.8.

[78] *Ibid*., para. 9.

[79] The *Comprehensive Proposal for the Kosovo Status Settlement* in *Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council* UN Doc. S/2007/168/Add.1., 26 March 2007.

appointed civilian representative (ICR)[80], with powers similar to those of the High Representative in Bosnia. According to the Settlement, the ICR would, *inter alia*, have the authority to conclude international agreements and seek membership in international organizations,[81] annul decisions or laws adopted by Kosovar authorities[82], and monitor the implementation of all civilian aspects of the Settlement[83]. The peculiarity of the proposed Settlement is that it envisaged the appointment of the European Union Special Representative by the Council of the European Union (who would be the same person as the ICR)[84], as the head of the European Security and Defense Policy Mission (ESDP)[85], with the powers in the field of the rule of law (the judiciary, police, border control, customs and correctional services)[86].

The uniqueness of the proposed status solution for Kosovo is manifested in the attribution of governmental and supervisory powers on not just one, but several international organizations, all interrelated with the obligation of cooperation. Apart from the International Civilian Representative, whose appointment was endorsed by the Security Council of the United Nations and the European Union Special Representative appointed by the Council of the European Union, the Settlement prescribed that Kosovo should fully cooperate with the United Nations High Commissioner for Refugees[87] and the International Committee of the Red Cross[88]; establish a fiscal surveillance mechanism with the European Commission in close cooperation with the International Monetary Fund[89]; an International Military Presence would be established, under the authority and subject to the direction and political control of the North Atlantic Council through the NATO Chain of Command[90]; the Organization for Security and Cooperation in Europe should maintain in Kosovo to support its democratic development[91]. Therefore, through the association of several international organizations the international administrative tasks do not need to be carried out by the UN alone, as they commonly are, but can be distributed among various international actors, each with the authority over a different domain of a mission.

While the Settlement does not include a full constitution for an independent Kosovo (as was the case at Dayton for Bosnia), it contains a long list of items the

[80] *Ibid*., Annex IX, Art. 2.
[81] *Ibid.*, Art. 1.5.
[82] *Ibid*., Annex IX, Art. 2.1.c.
[83] *Ibid.*, Annex IX, Art. 2.1.e.
[84] The *Comprehensive Proposal for the Kosovo Status Settlement, supra* (note 79), Art. 12.1.
[85] *Ibid*., Annex X.
[86] *Ibid*., Annex IX, Art 2.3.
[87] *Ibid*., Art. 4.3.
[88] *Ibid*., Art. 5.1.
[89] *Ibid*., Art. 8.1.
[90] *Ibid*., Art. 14. and Annex XI, Art. 1.8.
[91] *Ibid*., Annex IX, Art. 3.2.

constitution ″shall include″[92]. Moreover, its complexity is enhanced by the need to represent the multitude of ethnic, cultural and religious groups within the institutions of Kosovo.[93]

Although the Comprehensive Proposal for Kosovo Status Settlement was not endorsed by the Security Council and encountered opposition by the Serbian side[94], the expectations remained high among Kosovar Albanians that Kosovo would become independent in the near future. The Kosovo unity team continued its activities to explain the settlement proposal to all of Kosovo's communities, participated in negotiating with the Belgrade negotiating team and garnering international support for Kosovo's independence.[95]

The significant point in Kosovo's path towards independence was the Declaration of Independence, approved by the Assembly of Kosovo on 17 February 2008.[96] The Assembly notes that ″Kosovo is a special case, not precedent for any other situation; it regrets that no mutually acceptable status outcome was possible; confirms that the recommendations of the UN Special Envoy Martti Ahtisaari provide Kosovo with a comprehensive framework for its future development and are in line with the highest European standards of human rights and good governance″[97]. The Assembly, further, emphasizing that the Declaration reflects the will of Kosovar people, declares Kosovo to be an independent and sovereign state[98]; invites and welcomes an international civilian presence to supervise the implementation of the Ahtisaari Plan and a European Union-led rule of law mission; invites NATO to retain the leadership role of the international military presence in Kosovo, until Kosovo institutions are capable of assuming these responsibilities[99]; commits itself to provide protection of the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes[100].

The authorities in Belgrade and Kosovar Serbs, as expected, condemned the Declaration, stating that it represents ″a forceful and unilateral secession of a part of

[92] *Ibid*., Annex I.

[93] See: Ruffert, M., ″The Administration of Kosovo and East-Timor by the International Community,″ *International and Comparative Law Quarterly*,Vol. 50, No. 3, 2001, p. 624.

[94] The Serbian side stated that the proposed ″supervised independence″ for Kosovo was not acceptable and that the Kosovo problem could be resolved through ″supervised autonomy.″ See the *Report of the Security Council mission on the Kosovo issue*, UN Doc. S/2007/256, 4 May 2007.

[95] See the *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, UN Doc. S/2007/395, 29 June 2007, para. 4.

[96] The text of *Kosovo Declaration of Independence* of 17 February 2008 available at www.assembly-kosova.org.

[97] *Ibid*., the Preamble.

[98] *Ibid*., Art. 1.

[99] *Ibid*., Art. 5.

[100] *Ibid*., Art. 2.

the territory of Serbia, and does not produce any legal effect either in Serbia or in the international legal order"[101].

Since the Declaration of Independence has been received with varied reactions by the Members of the United Nations as to its compatibility with the existing international legal order, the General Assembly of the United Nations requested the International Court of Justice to give its advisory opinion on whether the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo is in accordance with international law.[102] In its (not binding) opinion from 2010, the Court referred to the question of compatibility of the Declaration with general international law, Security Council Resolution 1244 (1999) and the Constitutional Framework adopted by the Special Representative of the Secretary-General in his regulation 2001/9.[103] The Court stated that general international law contains no applicable prohibition of declarations of independence and accordingly, the Declaration of Independence of 17 February 2008 did not violate general international law.[104] Further, the Court concluded that the Security Council Resolution 1244 (1999) did not bar the authors of the Declaration from issuing a declaration of independence from the Republic of Serbia and that therefore, the Declaration did not violate Resolution 1244 (1999).[105] Finally, according to the advisory opinion, the authors of the Declaration were not bound by the framework of powers and responsibilities established to govern the conduct of the Provisional Institutions of Self-Government so the Court found that the Declaration of Independence did not violate the Constitutional Framework.[106]

It is interesting and significant that the International Court of Justice, one of the main organs of the United Nations, did not, in this advisory opinion, seize the opportunity to discuss some of the most important questions concerning Kosovo (the right to self-determination, the question of territorial integrity of the Republic of Serbia, legal consequences of the Declaration of Independence) and explicitly answer the question on whether the Declaration of Independence of Kosovo is in accordance with international law, but it only stated that general international law contained no applicable prohibition of declarations of independence. *Argumentum a contrario*, one could conclude that only in cases where there is an explicit prohibition of an action in international law, the action in question represents a

[101] See the *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, UN Doc. S/2008/211, 28 March 2008.

[102] *General Assembly Resolution* UN Doc. A/RES/63/3, 8 October 2008, available at www.icj-cij.org.

[103] The *Advisory Opinion of the International Court of Justice*, 22 July 2010, available at www.icj-cij.org.

[104] *Ibid*., para. 84.

[105] *Ibid.*, para. 119.

[106] *Ibid*., para. 121.

violation of international law and that the action that is not prohibited is permitted.[107] The issue of accordance of the Declaration of Independence with international law, in our opinion, should have been considered only in connection with the question of the right to self-determination of the Kosovar people and the legality of Kosovo's secession from Serbia. The conclusion of the Court, had it considered the questions mentioned, surely would have had significant effects on the clarity of Kosovo's legal status today and the recognition of statehood of Kosovo. Instead, the Court considered that the question posed by the General Assembly was narrow and specific, that it did not ask about the legal consequences of the Declaration or whether or not Kosovo had achieved statehood.[108]

In the meantime, Kosovo adopted the Constitution of the Republic of Kosovo, which entered into force on 15 June 2008.[109] Most of its provisions are based on the Comprehensive Proposal of the Kosovo Status Settlement. The Constitution guarantees full respect for the rule of law through its legislative, executive and judicial institutions (the Assembly, the President, the Government, judiciary, the Constitutional Court), direct applicability of international agreements ratified by the Republic of Kosovo and their superiority over the Kosovo laws, specific rights to inhabitants belonging to the same national or ethnic, linguistic or religious group (Communities), equitable representation of Communities and their members in public bodies, etc.[110] In its final provisions the Constitution states that all authorities in the Republic of Kosovo shall abide by all of the Kosovo's obligations under the Comprehensive Proposal for the Kosovo Status Settlement of 26 March 2007 and that the provisions of the Proposal shall take precedence over all other legal provisions in Kosovo; that all authorities in Kosovo shall cooperate fully with the International Civil Representative, who will be the final authority in Kosovo regarding the interpretation of civilian aspects of the Proposal, and other international organizations mandated under the Comprehensive Proposal.[111]

The Secretary-General expressed his concern that the evolving reality in Kosovo is likely to have significant operational implications for UNMIK, noting that there might be a need for UNMIK to adjust its operational deployments to developments on the ground in a manner consistent with the framework established under Resolution 1244 (1999).[112] Furthermore, the Secretary-General accepted the offer of the European Union to play an enhanced role in the area of the rule of law in

[107] On the Advisory Opinion on the Declaration of Independence of Kosovo by the International Court of Justice see: Burri, T., ″The Kosovo Opinion and Secession: The Sounds of Silence and Missing Links,″ *German Law Journal*, Vol. 11, No. 8, 2010, pp. 881-889.

[108] The *Advisory Opinion of the ICJ*, *supra* (note 103), para. 51.

[109] The *Constitution of the Republic of Kosovo* available at www.rks-gov.net.

[110] *Ibid*.

[111] *Ibid*.

[112] See the *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, UN Doc. S/2007/354, of 12 June 2008, paras 8 and 16.

Kosovo within the framework of Resolution 1244 (1999) and under the overall authority of the United Nations.[113]

The European Union Rule of Law Mission (EULEX), working within the framework of the Security Council Resolution 1244 (1999), became fully operational in April 2009. The legal basis for EULEX Mission are Joint Action of the Council of the European Union of 4 February 2008[114], Joint Action of 9 June 2009 amending the previous Joint Action[115], Council Decision of 8 June 2010 amending and extending Joint Action 2008/124/CFSP[116] and Council Decision of 5 June 2012 amending and extending Joint Action 2008/124/CFSP[117]. The goals of EULEX are assisting Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further strengthening an independent multi-ethnic justice system and multi-ethnic police and custom service, ensuring that these institutions are free from political interference.[118] Further, in order to fulfill these goals, EULEX shall monitor and advise the competent Kosovo institutions in all areas related to the rule of law, ensure the maintenance of public order and security, ensure that all its activities respect international standards concerning human rights.[119] EULEX is led by the Head of the Mission, who will ensure that EULEX works closely and coordinates with the competent Kosovo authorities and relevant international actors, including NATO/KFOR, UNMIK, OSCE, third States involved in the rule of law in Kosovo and an International Civilian Office.[120] The latest prolongation of EULEX Mission in Kosovo is until 14 June 2014.[121]

There are two main bodies operating in Kosovo: the European Union Office and the European Special Representative. The EU Office plays a central role in realizing the European agenda in Kosovo with the aim to promote Kosovo's approximation to the European Union.[122] The EU Special Representative provides

[113] *Ibid.*, para. 32.

[114] *Coucil Joint Action* 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, Official Journal of the European Union L 42/92.

[115] *Council Joint Action* 2009/445/CFSP of 9 June 2009 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, Official Journal of the European Union L 148/33.

[116] *Council Decision* 2010/322/CFSP of 8 June 2010 amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, Official Journal of the European Union L 145/13.

[117] *Council Decision* 2012/291/CFSP of 5 June 2012 amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, Official Journal of the European Union L 146/46.

[118] *Council Joint Action* 2008/124/CFSP, *supra* (note 114), Art. 2.

[119] *Ibid*., Art. 3.

[120] *Ibid*., Art. 6. and 8/9.

[121] *Council Decision* 2012/291/CFSP, *supra* (note 117), Art. 7.

[122] More information available at www.eulex-kosovo.eu.

support to the Government of Kosovo in the political process and overall coordination for the EU presence in Kosovo. He reports to the Council of the European Union through the High Representative Catherine Ashton.[123]

An overall assessment of what EULEX Mission in Kosovo has achieved since its inception in 2008, what obstacles in the field it has faced and what is yet to be accomplished in the future is presented in EULEX Programme Report 2012.[124] The Report states that a great progress has been made by Kosovo Police toward the EULEX aims: greater sustainability and accountability, freedom from political interference and multi-ethnicity, and compliance with European best practice and internationally recognized standards[125]; further, EULEX has focused its activities on setting formal conditions for the independence of judiciary and the autonomy of the prosecution, so it developed strategies to convert the recommendations into actual changes on the ground, targeting four areas: judiciary, prosecution, Ministry of Justice and Kosovo Correctional Services[126]; EULEX has facilitated Kosovo Customs in its development and progress, and has managed to serve as a worthy mentor and advisor, guiding Kosovo Customs efforts to improve its performance in a number of areas[127]. Apart from strictly institutional reforms, EULEX has also tried to acknowledge local civil society's perspectives and cooperate with Kosovo non-governmental organizations. The report emphasizes that many NGOs moved from a subsidiary delivering of public services to a closer monitoring of governmental performances and that they represent an important interlocutor for local authorities and international structures operating in Kosovo.[128]

The following period of the EULEX Mission in Kosovo (the estimated duration of the Mission is until 14 June 2014) will be focused on four key operational objectives: monitoring, mentoring and advising host rule of law institutions, executive functions, re-establishment of the rule of law in the north and support to the Belgrade-Priština dialogue.[129] It is evident that the context in which the EULEX Mission in Kosovo operates is constantly evolving and changing, depending on the situation in the filed, past experiences and the priorities set up for the Mission. Through monitoring, mentoring and advising functions of EULEX, Kosovo is encouraged to further strengthen independence, impartiality and transparency of its institutions, fundamental values that represent *condition sine qua non* for every democratic, sovereign and independent state.

The EULEX Mission in Kosovo obviously cannot last forever. It has extended its mandate several times and it is to be expected, considering what has

[123] The *Rule of Law Handbook* serves as a useful resource of all the major local and international rule of law institutions in Kosovo with their mandates and roles, *ibid*.
[124] EULEX *Programme Report* 2012, *supra* (note 122).
[125] *Ibid.*,, pp. 10-18.
[126] *Ibid.*, pp. 20-28.
[127] *Ibid*., pp. 30-35.
[128] *Ibid*., pp. 38-41.
[129] *Ibid*., p. 44.

been achieved so far and the continuing problems waiting to be dealt with, that the mandate of the EULEX Mission will be prolonged once more. However, the experience of the situation in Bosnia after the Dayton Agreement shows that no state can achieve democracy, independent public institutions, peace and security, respect for human rights, protection of minorities and social stability if the presence of international actors lasts too long. The establishment of an ITA, led by a respectable international organization such as the United Nations or the European Union, is a necessity in situations where domestic institutions are not capable of ensuring peace, security and the rule of law for their citizens, but its mandate should, in our opinion, be time-limited with strictly defined objectives that should be achieved in a given period. Otherwise, the international presence could have a negative effect, i.e. the too long international presence could result in the reduction of responsibility of local institutions for their role in developing a society based on the rule of law.

4. The comparison of the analyzed countries

When comparing the three analyzed countries and the mandates of international administrations governing the territories of Croatia, Bosnia and Herzegovina and Kosovo, it can be concluded that only the UNTAES mission in Croatia was successful in most of its aspects. The strictly defined tasks of the mission and the relatively short-term engagement of international actors enabled the mission to fulfill its goals, i.e. to secure peaceful reintegration of the region into the Croatian legal and constitutional system, negotiate public agreements with the Government of Croatia on the post-UNTAES implementation of its commitments and prepare the local population for the transfer of authority. Unlike the situation in Bosnia and Herzegovina or Kosovo, the UNTAES mission in Croatia was successful in stabilizing the relations between Croatia and the FRY, which provided the good foundations for both countries to develop as democratic and independent societies.

On the other hand, although successful in ending the war in BiH, the constitutional framework envisaged by the Dayton Agreement did not provide sustainable conditions for the country to develop independently from the international actors. On the contrary, the role of the High Representative became increasingly dominant in imposing laws and decisions, thus disabling the local institutions to take full responsibility for their role in the democracy-building process.

Unlike the UNTAES mission in Croatia and similar to the High Representative in BiH, the international presence of several international organizations constantly prolonging their mandate in Kosovo (UNMIK, NATO, OESS, EULEX) has only proved to be ineffective and counterproductive. Instead of creating the foundations for Kosovo to develop as a peaceful and independent country, it has only deepened the dependence of Kosovo on the international community.

Therefore, it is primarily the responsibility of domestic leaders, both in Bosnia and Herzegovina and Kosovo, to achieve political consensus for the necessary

constitutional reform and be the main actors in democracy-building process. The international community should at the same time refrain itself from increasing its powers and prolonging its mandate, especially in Kosovo, and retain its influence only through the supervisory and advisory functions of the process of peacebuilding.

5. Concluding remarks

The analysis and the comparison of different types of international administration over a territory, especially the cases of Eastern Slavonia in Croatia, Bosnia and Herzegovina and Kosovo, lead to the conclusion that international actors, entrusted with the authority to restore a post-conflict society, have more or less the same goals: reestablishment of order, maintenance of peace and security, respect for human rights and minority rights, strengthening state institutions, establishment of rule of law and social stability, restoration of peaceful coexistence among groups that had recently been engaged in an armed conflict, and creation of foundations for durable peace, economic development and independent civil society.

However, a deeper insight into each of the analyzed situations shows that the circumstances in which the international community responded by establishing international governance were very different and demanded specific approaches in each case. Each of the conflicts leading to the international engagement was different; participants of these conflicts had diverse aspirations and different amount of will to cooperate with the established mission; the consent obtained from local actors was not always entirely voluntary; the duration of international presence was a relevant factor for the quality and success of the mission.

To conclude, no case of ITA can be automatically replicated in another situation because there is no guarantee that positive experiences and positive outcome of a previous international governance would produce the same positive effects. In our opinion, the United Nations, having the most important role in post-conflict peacebuilding processes, and the European Union should in the future apply all the aspects of international governance that proved to be efficient and successful (prompt action in order to avoid human casualties, defined duration of the mission, specified tasks and distribution of powers, coordinated cooperation with other international organizations, assistance provided in the filed), however, always bearing in mind that they have to act under the framework of international law, take into account the specificity of the situation and be focused on the final goal: the establishment of an independent, sustainable and peaceful society. One of the most difficult challenges that international actors governing a territory are faced with is avoiding the scenario in which their involvement excludes local actors from the administration process, thus not allowing them to be active creators of legal and social foundations for the durable peace.

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