LUISS Guido Carli
LIBERA UNIVERSITÀ INTERNAZIONALE DEGLI STUDI SOCIALI

Department of Political Science, Graduate School

Master's Degree in International Relations

Chair of International Organizations & Human Rights

International Territorial Administration in Kosovo under the United Nations: From NATO's Intervention to the EU Rule of Law Mission

Prof. Francesco Cherubini

SUPERVISOR

Prof. Cristina Fasone

CO-SUPERVISOR

Giordano Cani
ID No. 651872

CANDIDATE

Academic Year 2023/2024

Ai miei genitori
A Clizia

Table of Contents

Introduction **7**

PART I: CONFLICT **11**

Chapter One: Historical and Political Context of Kosovo **12**

1.1 A confrontation of crossing identities and opposing narratives **12**

1.2 The Kosovo Conflict [1998-1999] **14**
1.2.1 Insurgency and counterinsurgency [1996-1998] 15
1.2.2 NATO's intervention [March-June 1999] 16

1.3 The UN administration [1999-2008] **18**

1.4 The Republic of Kosovo [2008-current] **19**

Chapter Two: International Intervention and Assistance **21**

2.1 The humanitarian intervention of NATO **21**
2.1.1 Legal Framework of Operation Allied Force 23
2.1.2 The Interplay Between NATO and the United Nations 28

2.2 The humanitarian assistance of UNHCR **34**
2.2.1 The humanitarian crisis management in Kosovo 37
2.2.2 Legal implications of the humanitarian response 43

PART II: PEACE-BUILDING **46**

Chapter Three: An Introduction to International Territorial Administrations **47**

3.1 Historical precedents **49**
3.1.1 Territorial administrations under the League of Nations 50
a. The Free City of Danzig [1920-1939] 50
b. The Saar Basin [1922-1935] 50
3.1.2 The Mandates System 51
3.1.3 The UN Trusteeship System 52
a. The *corpus separatum* of Jerusalem 53
b. South West Africa under the direct responsibility of the UN 54

3.2 UN peace operations **55**
3.2.1 Early experiments of UN peacebuilding 56
a. Opération des Nations Unies au Congo (ONUC) 1960-1964 57
b. United Nations Transition Assistance Group (UNTAG) 1978-1990 57
3.2.2 The decade of internationalisation 58
a. United Nations Transitional Authority in Cambodia (UNTAC) 1992-1993 59
b. United Nations Mission in Somalia (UNOSOM II) 1993-1995 60

c. United Nations Mission in Bosnia- Herzegovina (UNMIBH) 1995-2002 61
d. United Nations Transition Administration Eastern Slavonia (UNTAES) 1996-1998 62
3.2.3 The extremes Kosovo and East Timor 63
3.2.4 International administration in the 21st century 66
a. United Nations Mission Assistance in Afghanistan (UNAMA) 67

3.3 Legal basis of UN territorial administrations 69
3.3.1 Resolution of the Security Council 69
3.3.2 Resolution of the General Assembly 72

Chapter Four: The International Administration of Kosovo 74

4.1 Legal Framework of UNMIK and KFOR 74
4.1.1 The Rambouillet Accords 75
4.1.2 Ahtisaari-Chernomyrdin peace plan 79
4.1.3 Kumanovo Military-Technical Agreement 81
4.1.4 Security Council Resolution 1244 (1999) 82

4.2 UNMIK – The international civil presence 86
4.2.1 Mandate and Structure 87
4.2.2 The SRSG *auctoritas maxima* 92
4.2.3 Humanitarian Affairs 96
4.2.4 Civil Administration 98
a. A new legal system 99
aa. The UNMIK laws and subsidiary instruments 100
bb. The question of the law applicable in Kosovo 101
cc. A Constitutional Framework for Provisional Self-Government 103
b. Provisional executive institutions 105
aa. Direct international administration (July 1999-December 1999) 106
bb. Joint Interim Administrative Structure (January 2000 – November 2001) 107
cc. Provisional Institutions of Self-Government (January 2002-June 2008) 109
4.2.5 Police and Justice 114
a. Judiciary System 115
aa. The socialist judicial legacy in Kosovo 115
bb. Judicial structures 116
cc. Quasi-judicial structures 120
dd. Transitional Justice 123
b. CIVPOL and Security Sector Reform 126
4.2.6 Democratisation and Institution Building 130
a. Capacity-building 130
b. Democratisation, governance and elections 132
c. Human rights 134

4.2.7 Reconstruction and Economic Development 139
4.3 KFOR – The international security presence 142
4.3.1 Mandate and Structure 143
4.3.2 Security and public order 144
4.3.3 Disarmament, Demobilisation, and Reintegration 148
PART III: INDEPENDENCE 151
Chapter Five: Transition Of Powers and The Role Of The European Union 152
5.1 Towards Kosovo's Independence 153
5.2 The ICR/EUSR double hat 157
5.3 The European Union Rule of Law Mission in Kosovo (EULEX) 158
5.3.1 Mandate and Structure 159
a. Police component 163
b. Justice component 164
c. Customs component 166
5.3.2 Continuity and legal implications for UNMIK 167
5.4 Prishtinë/Priština-Belgrade normalization prospects 170
Conclusions 174
Bibliography 179
Documents 194
Resolutions of the United Nations Security Council 199
Resolutions of the United Nations General Assembly 202
Reports of the United Nations Secretary-General 202
Kosovo/UNMIK Legislation 204
Reports of the Organisation for Security and Co-operation in Europe (OSCE) 207
Primary Sources of the European Union 208
Reports of the European Union 209
Jurisprudence 211
International Court of Justice 211
European Court of Human Rights 211
International Criminal Tribunal for Rwanda 212
International Criminal Tribunal for the Former Yugoslavia 212

International Territorial Administration in Kosovo under the United Nations: From NATO's Intervention to the EU Rule of Law Mission

«Contribuire a ridurre, sia pure di una frazione infinitesimale, la sofferenza così diffusa nel mondo può rendere meno opprimente il bilancio della nostra giornata»
Antonio Cassese, *I Diritti Umani Oggi*.

«Toute communauté humaine, pour peu qu'elle se sente humiliée ou menacée dans son existence, aura tendance à produire des tueurs, qui commettront les pires atrocités en étant convaincus d'être dans leur droit, de mériter le Ciel et l'admiration de leurs proches. En chacun de nous existe un Mr Hyde ; le tout est d'empêcher que les conditions d'émergence du monstre ne soient rassemblées»
Amin Maalouf, *Les Identités Meurtrières*.

«Sabina muvrátila víru ve velikost lidského osudu. Byla o to krásnější, že za její postavou prosvítalo bolestné drama její země. Jenomže Sabina to drama nemilovala»
Milan Kundera, *Nesnesitelná lehkost bytí*.

Introduction

Today's world is no longer just natural ambient but is inherently political. On a planisphere, no uncharted land is left under the formula *hic sunt leones*, and the planet is defined by both tangible and intangible frontiers of slightly less than two hundred political entities. States have become the fundamental bricks of the international system, with all the terrestrial surface now falling under the sovereignty of some form of central authority[1].

However, this governance is not static, nor does it go unchallenged. Territorial sovereignty may be 'lost' due to external invasions – the most common cause in history – or through internal conflicts, such as rebellions, secessions, or so-called failed states. Beyond these two scenarios, a third way has surfaced in history, where states do not necessarily 'lose' their sovereignty, but a portion of their territory undergoes a period of administration by an international authority or organisation. International territorial administration (ITA) is a specific formula of governance that the international community has progressively developed as a potential remedy to the deficiencies of states in guaranteeing their people's safety and respect. In principle, ITAs are designed to resolve conflicts, sustain peace, and promote human security. However, the practice may be quite different from the theoretical concept. Therefore, it is crucial to carefully assess both the limitations and successes of this type of governance, identifying the weak areas that require improvement and the valuable lessons that can be learned. In this study, we aim to explore the controversies and often overlooked contributions of ITAs by examining two key questions: what role do international organisations play in international territorial administrations? What factors explain both their failures and their achievements?

The literature on international territorial administrations (ITAs) is relatively limited and tends to focus on specific aspects of the concept. The largest body of work centres on the relationship between international and local actors, often critiquing ITAs on grounds of legitimacy and advocating for local ownership, sovereignty, and self-determination[2]. While these concerns will be addressed in Chapters Three and Four, this literature tends to focus narrowly, lacking a more comprehensive examination of the connection between ITA mandates and their direct operational responsibilities. Another segment of the literature, grounded in legal analysis, addresses the issue of human rights accountability[3]. Unquestionably, this is one of the most complex legal challenges associated with the immunities and privileges of international organizations, not exclusively for international administrations. This

[1] There is only one exception to this allegation, posed by the interesting story of Bir Tawil, a small area enclosed between Egypt and Sudan and claimed by neither for historical reasons.

[2] CAPLAN (2005); STAHN (2008); WILDE (2008); DE BRABANDERE (2009).

[3] STROHMEYER (2001A); KNOLL (2008); MURATI (2020).

issue will be revisited in Chapter Four. Finally, there is a more heterogeneous body of research that explores the forms and modalities of inter-organizational cooperation[4]. However, this research often takes either a macro approach, covering multiple case studies but sacrificing detailed accuracy, or a micro approach, focusing narrowly on a single sector within one case study – both departing from the central part on the international administration.

This study seeks to assess the performance of international organisations in international territorial administration, by employing an analytical framework composed of three explanatory factors: political (or primary), operational (or secondary), and contextual (or external). First of all, 'political factors' are the foundational elements of any international mission, forming its conceptual and guiding framework. Though typically straightforward and not exhaustive, these factors provide the essential basis from which an international mission derives its legitimacy and strategy. These decisions primarily fall within the realm of international organizations, as they are made by member states in plenary sessions or smaller councils to establish the core mandate of the mission. 'Operational factors' refer to the decisions, actions, and direct consequences of the authorities and officials managing the international administration. These are secondary to political factors because the legitimacy and authority of the international administration stem from the mandate granted by the international organization. Without this mandate, the operational aspects would not exist. Finally, 'contextual factors' arise from the specific socio-political, cultural, and historical conditions of the territory and its people, which lie outside the direct control or responsibility of the international organizations or the administering authorities.

This study hypothesizes that flaws in the political factors of international organizations can derail, or at least significantly impair, the potential operational successes of international administrations. A clear direction and defined end goals are essential for developing and executing a comprehensive, coherent strategy. Without a clear objective, the mission risks losing its focus. To test this hypothesis, the following chapters will examine Kosovo[5] as the central and most fitting case study for several reasons. Despite its small size and population of under two million people – comprising Albanians, Serbs, Bosniaks, Turks, Roma, and other minorities – Kosovo's significance far exceeds its scale. This small territory, nestled in the mountains of the Balkan Peninsula, stands as a powerful example of humanity's ongoing struggle for peaceful coexistence and inter-ethnic tolerance. We can grasp this atmosphere of contention from the quarrel over the terms used to identify the land: the province of Kosovo and Metohija (or merged in Kosmet), for

[4] CROSSLEY-FROLICK, DURSUN-OZKANCA (2012); HARSCH (2014); BIERMANN, KOOPS (2016).

[5] There is no consensus over the appellation of the territory. Throughout this work, only for reasons of simplicity and without taking any political stand, it will be used the term Kosovo, except for original titles of international documents or books. For placenames within Kosovo, it will be considered both Albanian and Serbian versions without any accents (e.g. Prishtinë/Priština).

the Serbs; Kosova (or Kosovë), for the Albanians. From here, two distinct and competing narratives emerge – two mutually exclusive "truths of Kosovo"[6]. The events here occurred have had a shockingly powerful impact on the current international system under a variety of aspects: from the controversial NATO humanitarian intervention to the unprecedented joint rule of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR), to the ongoing European Union Rule of Law Mission (EULEX). As regards specifically the period under international administration, one of UNMIK's novelties was the multitude of international organisations acting under the UN 'umbrella mission', such as the United Nations High Commissioner for Refugees (UNCHR), the Organisation for the Security and Cooperation in Europe (OSCE), and the European Union. The very small size of the territory required this international 'crowd' to figure out some coordinating expedients not to mutually interfere with each other. Hence, the case of Kosovo enables us to analyse and compare a variety of legal aspects and practical activities of the UN, NATO, UNCHR, OSCE and the EU, as well as to assess the dynamics established by their close coexistence (whether it was cooperative or dysfunctional) in a small piece of land such as Kosovo. The research methodology employed for this study is multi-faceted, comprising at time historical excursus (the contextual change through time), normative considerations (the change from legal dispositions and their effective implementations) and comparative analysis (the differences among the various international organisations).

The study is structured in three main parts, each characterized by the dominant context wherein the international organisations had to operate and cooperate: conflict, peacebuilding, and independence. In Part I, we start by putting in place an overview of the historical and political context of Kosovo (Chapter 1) and we introduce the international involvement by looking at the main legal implications of the military intervention and humanitarian assistance in 1999 (Chapter 2). Part II is the core of the thesis, wherein we consider the theoretical and historical framework of the international territorial administrations (Chapter 3) before moving to a thorough evaluation of the content and implementation of the UN Security Council 1244, highlighting mandates, objectives, structures and operations of both the international civil and security presences (Chapter 4). Hence, we shall assess the capacity of international organisations to cooperate on the ground, despite the flaws in the mandate and the contextual challenges. Lastly, Part III sets on the context of the unilaterally declared independence of Prishtinë/Priština, allowing us to reflect on the practical and legal consequences for UNMIK as well as the greater operational stage of the European Union Rule of Law Mission in Kosovo, EULEX (Chapter 5). Ultimately, this research contributes to offering a methodological framework grounded in cause-and-effect analysis to assess more precisely the performance of ITAs and international organizations. This framework aids in identifying the underlying sources of various dysfunc-

[6] DEJAN GUZINA (2003: 30).

tions, thereby facilitating more effective solutions aimed at ensuring conflict resolution, sustaining peace, and advancing the protection and promotion of human rights.

PART I: CONFLICT

Chapter One: Historical and Political Context of Kosovo

Each conflict has its logic and if we do not understand it, we cannot find a resolution for it. The conflict in Kosovo started in 1998 and ended in 1999, but the roots of the confrontation had started long before and have not been stamped out yet. Exemplary case of the post-Cold War crises that "are no longer simple affairs of a single cause or simple response"[1], we can individuate three levels of confrontation behind Kosovo: a) the ethnic tensions between Albanian and Serbian communities in Kosovo; b) the growing Serbian nationalism in post-Tito's Yugoslav Federation; and c) the faltering strategic relations between NATO and the Russian Federation on the international level. Despite the complexity, this is the historical and political logic from which our research must set forth if we want to comprehend the further developments of the story of Kosovo, especially considering the specific features and major setbacks of the later international administration.
In this first chapter, we introduce the background wherein the action of the international organisations has taken place. We will set off by opening up the opposing symbolic value that Kosovo holds for the Serbs and the Albanians, out of which the political fractures have emerged, eventually leading to open conflict. Without these premises, all the further reasoning would be groundless. We will then briefly display the main factors and events of the proper Kosovo war, from the initial internal phase to the abrupt internationalization following the start of NATO's air campaign. Finally, we move on to the post-conflict phase and the deployment of the "international civil and security presences"[2], as envisioned by the Security Council Resolution 1244. Here, we will limit ourselves to a summary of the major features and its evolution until the 2008 unilateral declaration of independence by the Kosovo Assembly, prompted by the unsuccessful UN-led process of determining the final status of Kosovo.

1.1 A confrontation of crossing identities and opposing narratives

The confrontation is the context wherein the conflict takes place. They are two activities with distinct purposes for the latter is only one of the viable alternative outcomes of the former. As put by Rupert Smith, "the point of origin [of the conflict] is always a confrontation: the core dispute, which is always political"[3]. In Kosovo, the confrontation is an issue of identity and

[1] Larry Minear quoted in WEIL (2001:79).
[2] Resolution of the United Nations Security Council, 10 June 1999, S/RES/1244, *The Situation in Kosovo*, para. 5.
[3] The difference in their purposes is well explained by SMITH (2019: 182-183): "In confrontations the aim is to influence the opponent, to change or form an intention, to establish a condi-

sovereignty whose roots go back until the Middle Ages but whose sprouts trace to the more recent Yugoslav past.

This territory casts an enormously powerful symbolic value for the Serbian cultural heritage, akin to a "holy land", due to the plethora of religious buildings there hosted: 14 historical Orthodox churches and monasteries preserved, along with the ruins of other 23 monasteries and 140 churches[4].

From a historical background, the battle of *Kosovo Polje* ('Field of the Blackbirds') occurred on June 28th, 1389, between Serbs and Ottomans, crystallised the birth of the myth of 'lost' Kosovo as the 'heart of Serbia'[5] and the nostalgia of a past of *grandeur* of the Serbian Empire of the 14th century – one of the largest states in Europe at that time[6]. Conversely, the Albanian narrative has always claimed the ethnic and cultural continuity between the early Illyrians and the medieval Albanians as the most profound legitimacy for the sovereignty over this land. Eventually, after almost five centuries of Ottoman rule, the territories corresponding to today's Kosovo were ceded to Serbia and Montenegro as compensation for the 1912-1923 Balkan Wars. This meant that the Albanian majority in Kosovo had now become a minority within the greater Serbia, and while the Serbian narrative saw it as 'liberation', the Albanian counterpart perceived it as 'colonization'[7].

In the second half of the 20th century, Josep Tito partially managed to soften these persistent tensions by leveraging the federal architecture of his Socialist Yugoslavia to grant Kosovo the status of Autonomous Province with large powers[8]. However, as for the history of the rest of Yugoslavia, the death of Tito removed the keystone from the foundations and the system started to crumble. The following year, in fact, with the repression by the Yugoslavian Army of the Albanian mass protests in Priština/Prishtinë, the confrontation in Kosovo awakened and both Albanian and Serbian nationalism in Kosovo started to simmer during the 1980s.

The rise of Serbian nationalism is the second essential element in the story, with the turning point of the election of Slobodan Milošević as President of the Serbian Republic in 1988. His well-known *Gazimestan* speech for the 600th anniversary of the battle of Kosovo baptized him as the champion of Serbian nationalism leaning towards a new Great Serbia in the middle of the

---

tion and, above all, to win the clash of wills. In conflicts the purpose is to destroy, take, hold; to forcibly attain a decisive outcome by the direct application of military force".

[4] AVRAMOVIĆ *et al* (2010: 9 ff.); PIRJEVEC (2014: 555 ff.); SVIRCA (2016: 192-195).

[5] DASKALOVSKI (2003: 12-13 ff); PIRJEVEC (2014: 514).

[6] The first Slavik settlements of the 4th Century in the Balkans eventually succeeded in creating the Medieval Serbian Kingdom (1217-1346) and later Empire (1346-1371) which, however, were subdued with the arrival of the Ottomans at the end of the 14th century. For further information look at BIEBER and DASKALOVSKI (2003); SVIRCA (2016).

[7] DASKALOVSKI (2003: 16).

[8] Under the 1974 Yugoslav Constitution the composition of the Federation was officially established by six Republics and two Autonomous Provinces (Kosovo and Vojvodina). The latter enjoyed *de facto* the same powers and rights as the Republics in the main federal branches of government.

Balkans[9]. The fulfilment of his expansionist aims would soon lead to the collapse of the Socialist Yugoslavia but, for what concerned Kosovo, Milošević opened his office by deleting any form of constitutional autonomy enjoyed by Priština/Prishtinë since 1974, establishing a repressive control of Belgrade over the newly called province of "Kosmet"[10]. Unquestionably, these measures further inflamed the old discord with the Kosovo Albanians who opted to peacefully boycott the official Serbian institutions and created their own "parallel infrastructures", from education to administration[11].
Finally, we must consider the residual confrontation on the international level between NATO and Russia. Moscow has historically taken the role of protector of the Slavic population and was thus close (as still is) to the regime of Belgrade. Consequently, albeit the desegregation of Yugoslavia occurred in the 1990s, that is, in the so-called "post-Cold War policy consensus"[12], the NATO intervention in 1999 certainly contributed to the opening of a fracture between Moscow and Washington. Without descending into deep geopolitical considerations, we must acknowledge that this external confrontation played a significant role in the Kosovo story, unfolding mostly within the UN Security Council, paralysing its leverage, and thus contributing to the halo of uncertainty related to the mission of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the process of determination of the final status of Kosovo.

1.2 The Kosovo Conflict [1998-1999]

The war in Kosovo was the last page of the decade-long collapse of the Socialist Federal Republic of Yugoslavia that provoked more than a quarter million dead, thousands of people forcibly displaced and the whole Balkan region scattered. The Federal architecture had started to falter since Tito died in 1980, under the pressure of the awakened nationalist sentiments and a serious economic downturn. The rise of Milošević and his Serbian chauvinism represented a threat to the other Republics which suffered the overwhelming attitude of Belgrade for a centralized control over the Balkans[13]. The Serbs composed the greatest national group within Yugoslavia but were split into significant minorities within all the other Republics and Milošević was eager to be reunited all of them within Serbia's borders. Eventually, Slovenia was the first to declare independence in 1991, a little later followed by Croatia

[9] The *Gazimestan* speech was given by Slobodan Milošević on June 28th, 1989, at the monument of Gazimestan on the Kosovo Field in memory of the Battle of Kosovo fought on the same day in 1389. Before a huge crowd, Milošević presaged the possibility of new armed battles in the future of Serbian nations.
[10] The policy of Milošević was openly approved by the Serbian public opinion "che guardava al Kosovo attraverso il prisma dei propri miti nazionalistici e considerava gli albanesi *usurpatori di una terra sacra* [emphasis added], la culla della Nazione" PIRJEVEC (2014: 514).
[11] PIRJEVEC (2014: 554-559).
[12] HARLAND (2016: 225).
[13] ZIMMERMANN (1995: 6-12).

and North Macedonia (fYROM)[14], and then Bosnia-Herzegovina (BiH) in 1992.
The international community immediately acknowledged the potentially dreadful consequences of a violent disaggregation of Yugoslavia but, despite all efforts, failed to avert the turn of inhuman brutality. The most devastating events involved Croatia and BiH, where the world assisted helpless to widespread violence against civilians, extensive ethnic cleansing and genocide[15]. The UN and NATO struggled to contain the scope of the wars, conducting respectively missions of peacekeeping (such as the United Nations Protection Force, UNPROFOR[16]) and military actions, such as no-fly zones and airstrikes against Bosnian Serb Forces (such as 1993-1995 Operation Deny Flight and 1995 Operation Deliberate Force)[17]. The outcomes, the mistakes, and the lessons learnt from the experience in BiH and Croatia would be crucial for the later approach of the international community during the Kosovo War, both relative to the impact of NATO's airstrikes on parties' inclination to negotiate and for the post-conflict management[18].
Only by the mid-1990s, this gory chapter of the violent Balkan scramble closed with the signing of the Dayton Agreement: Bosnia-Herzegovina was finally recognised as an independent Republic composed of two distinct "entities", one Serbian and the other Croatian-Bosnian[19]. Accordingly, of the various components of the former Socialist Federation (officially succeeded by the Federal Republic of Yugoslavia in 1992), only remained two Republics: Montenegro and Serbia – including Kosovo.

1.2.1 Insurgency and counterinsurgency [1996-1998]

The international community succeeded in 1995 in agreeing on the Dayton Agreement to put an end to the conflict in Bosnia-Herzegovina. The price for that, however, was for the question of Kosovo being left out, with two opposing yet essential interpretations: for Milošević, it meant the acknowledgement by the international community of Kosovo as an internal affair belonging exclusively to Serbia; for the Kosovo Albanians, the peaceful means of Ibrahim Rugova had failed, the international community had left them

[14] Due to a dispute with Greece over the name Macedonia, the new State in 1993 was officially called the former Yugoslav Republic of Macedonia (fYROM). The appellation Republic of North Macedonia came into effect only in 2019 after an agreement was reached between the two countries the previous year.
[15] Judgment of the International Criminal Court for the former Yugoslavia (ICTY), 26 March 2016, Case IT-95-5/18-T, *The Prosecutor v. Radovan Karadzic*.
[16] Resolution of the United Nations Security Council, 21 February 1992, S/RES/743, *Socialist Federal Rep. of Yugoslavia (21 Feb)*.
[17] LAMBETH (2010: 32 ff.).
[18] For the civilian side, the United Nations Mission in Bosnia and Herzegovina (UNMIBH) and for the security mission, the Implementation Force (IFOR) substituting the UNPROFOR.
[19] PIRJEVEC (2014: 520-530).

alone and it was now the moment to embrace the arms against the repressive regime of Belgrade[20].
The Kosovo Liberation Army (KLA/UÇK)[21] launched in 1996 the so-called Kosovo Insurgency, conducting several attacks against Serbian governmental buildings and police stations to destabilize the province. In a spiral of violence, Belgrade violently reacted against these guerrilla actions so that the region progressively slid into war. The latter is a term conventionally identified starting from the Drenica massacre of February/March 1998 committed by the Serbian police.
We can divide the conflict in Kosovo into two phases with failed diplomatic peace talks in between. The first phase was an internal fighting lasting almost all of 1998. This return of violence in the Balkans was echoed by an increasing concern by the international community, especially for "the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army"[22]. But the demands of the Security Council for "all parties, groups and individuals [to] immediately cease hostilities and maintain a ceasefire" remained unheeded[23].
Only in October, it was reached a first ceasefire, brokered by the US Special Envoy, Richard Holbrooke, and that allowed the withdrawal of the Yugoslav army under the Verification Mission of the Organization for Cooperation and Security in Europe (OSCE). The Holbrooke-Milošević Agreement effectively improved the humanitarian situation, enabling the return home to thousands of Albanians, but it failed to address the core of the dispute[24]. Albeit the international community endorsed it as a valid step toward peace, the negotiations did not involve either representatives of the Kosovo Albanians or the KLA/UÇK – thus failing the ultimate test for local legitimisation[25]. As a result, violence never effectively stopped and, soon after a few months, open conflict resumed.

1.2.2 NATO's intervention [March-June 1999]

The new escalation urged the so-called Contact Group[26] (US, UK, France, Germany, Russia, and Italy) to convene an international conference at Ram-

[20] Ibrahim Rugova was the founder and leader of the Democratic League of Kosovo (LDK), the main party in Kosovo, advocating for a strategy of minimalist methods and an active peaceful boycott of Serbian administration in the province.
[21] The original Albanian name is *Ushtria Çlirimtare Kombëtare* (UÇK).
[22] Resolution of the United Nations Security Council, 23 September 1998, S/RES/1199, *The situation relating to Kosovo*, Preamble.
[23] *Ivi*, para. 1.
[24] OGATA (1999: 209-210).
[25] HEAD (2008: 155).
[26] International Contact Groups are "informal, non-permanent international bodies that are created ad hoc, with the purpose of coordinating international actors in their aim of managing a peace and security crisis in a specific state or region" as defined in HENNEBERG (2020: 445–472). As regards the case of Kosovo, it refers to the informal grouping of those countries such

bouillet, in France, to try to reach a comprehensive diplomatic solution, along the lines of the Dayton experience. The peace talks lasted from February to March 1999 and the final document would have foreseen the retreat of the Serbian regular army from the province, democratic self-government for the Albanian majority, international patrolling by NATO for three years until the determination of the final status of Kosovo[27]. However, the Yugoslav-Serbian delegation refused to sign the document, claiming that it would be an unacceptable violation of their sovereignty:

> "Si tratta di un tentativo di distruggere la Serbia. L'Occidente non desidera un accordo ragionevole; considera infatti il Kosovo come il primo passo verso la frammentazione, occupazione e dominazione di tutto il paese e per soddisfare interessi stranieri"[28].

On March 24th, 1999, six days after the failure of diplomatic means, NATO forces began a large-scale air bombing campaign over Yugoslavia, despite the lack of explicit authorisation by the Security Council[29]. *Operation Allied Forc*e lasted for 78 days during which, notwithstanding the unparalleled superiority of NATO, the persistence of Belgrade proved hard to bend. Only in June, Milošević accepted the terms for an international peace plan, brokered by Ahtisaari and Chernomyrdin to cease the hostilities[30]. On the 12th, the first NATO-led peacekeeping forces (within the framework of the Kosovo Force mission, KFOR) entered Kosovo. In the immediate aftermath, the direction of decennial Kosovar movements reversed with almost 750,000 Albanian refugees returning home and about 180,000 Serbs – roughly half the province's Serb population – fleeing in fear of reprisals[31].
The following day the Kumanovo Military-Technical Agreement[32] ended the controversial NATO humanitarian intervention, and the Security Council adopted Resolution 1244 deciding for "the deployment in Kosovo, under United Nations auspices, of international civil and security presences"[33].

---

as the United States, United Kingdom, France, Germany, Russia, and Italy which first came together in response to the previous crisis in Bosnia.

[27] Letter dated 4 June 1999 from the Permanent Representative of France to the United nations Addressed to the Secretary-General, 7 June 1999, S/1999/648, Annex I, *Rambouillet Accords, Interim Agreement for Peace and Self-Government in Kosovo* (hereafter *Rambouillet Accords*).

[28] Milan Milutinovic, President of Serbia (1997-2002), quoted in PIRJEVEC (2014: 598).

[29] NATO countries attempted to gain authorisation from the UN Security Council for military action but were opposed by China and Russia which expressed that they would resort to their veto power in case of deliberation on the matter.

[30] Resolution S/RES/1244, *supra* note 2, Annex 2 (hereafter *Ahtisaari-Chernomyrdin Agreement*).

[31] DEL MUNDO, WILKINSON (1999: 11).

[32] *Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia* (hereafter Kumanovo MTA), 9 June 1999.

[33] Resolution S/RES/1244, *supra* note 2, para. 5.

1.3 The UN administration [1999-2008]

On June 10, 1999, the territory of Kosovo, formally a province of the Republic of Serbia, shifted under the joint international administration of the United Nations and NATO. It was not the first time that the UN established this peculiar kind of mission and broad experience was inferred from the precedent in Bosnia-Herzegovina[34].

For the international civilian presence, the UN Interim Administration Mission in Kosovo (UNMIK) was arranged according to the so-called 'four-pillars system', headed by different international organisations: the Civil Administration pillar by the UN; the Humanitarian Assistance pillar by the UN High Commissioner for Refugees (UNHCR); the Democratisation and Institution Building pillar by the OSCE; the Reconstruction and Economic Development by the European Union (EU)[35]. The Special Representative of the UN Secretary-General (SRSG) was responsible for the coordination among all the various international organisations and, since Regulation NO. 1999/1, became the *maxima auctoritas* within the internationally administered Kosovo[36].

For the international security presence, as envisaged by the UNSC Resolution 1244/1999, the NATO-led Kosovo Forces (KFOR) had the responsibility for deterring renewed hostilities, demilitarizing the KLA/UÇK, supporting the international humanitarian effort and coordinating with the international civil presence[37]. It is important to note that there was no hierarchical relations between UNMIK and KFOR as the Commander of KFOR responded to NATO's chain of command. This precarious dualism at the top of this joint international administration, however, was partially balanced through close coordination between UNMIK and KFOR in activities such as routine meetings, liaison officer systems, and joint operations or patrols[38]. Despite considerable limits, this multidimensional and dual international administration ensured a considerable degree of freedom and flexibility allowing the UN to adjust to the necessities on the ground of restoring the order in Kosovo after the conflict[39].

---

[34] OGUZ (2016: 105).

[35] YANNIS (2001: 32).

[36] Regulation No. 1999/1 of the United Nation Interim Administration Mission in Kosovo, 25 July 1999, UNMIK/REG/1999/1, *On the Authority of the Interim Administration in Kosovo*, Section 1.1: "All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General".

[37] Resolution S/RES/1244, *supra* note 2, para. 9. Differently from the military intervention, NATO's presence in Kosovo was legitimized and legalized by paragraph 7 of this same resolution: "[the UNSC] 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".

[38] OGUZ (2016: 107).

[39] YANNIS (2001: 33).

1.4 The Republic of Kosovo [2008-current]

The joint international administration UN-NATO issued by the UNSC Resolution 1244 was originally conceived to be "interim" and "transitional", while "facilitating a political process designed to determine Kosovo's future status"[40]. However, as we shall investigate in the next chapters, the omission from the text of the Resolution of any indications about the procedure or the ends for determining Kosovo's future status created a halo of uncertainty compelling UNMIK to stall and postpone the moment of complete transfer of authority to the local actors. This was cause of a growing turmoil in the majority of the Kosovar population that eventually erupted in widespread riots in March 2004.

The unexpected burst of violence worked as a wake-up call for the UN about the need to reconfigure the mission ongoing in Kosovo. Secretary-General Ban Ki-moon prompted in 2005 an initiative to resolve the standoff once and for all, but the conclusive proposal for a "conditional independence" of Kosovo recommended by the UN Special Envoy, Martti Ahtisaari, sunk because of Russia's opposition[41]. Deceived by the paralysis in the Security Council as well as the inconclusive talks among the Troika (EU, Russia, and USA), the Kosovo Assembly decided to force the hand proceeding to declare unilaterally the independence of the Republic of Kosovo on February 17th, 2008.

The main legal implications that followed there were two. Serbia, like many other states, strongly opposed the act and resorted to the International Court of Justice (ICJ) questioning its legality. However, the Court deliberated that the declaration "did not violate any applicable rule of international law", eluding the major issue of Kosovo's status[42]. As regards the territorial administration, instead, the EU acquired greater responsibility as most of the authority of UNMIK was handed over to its Rule of Law Mission in Kosovo (EULEX), the largest civilian mission ever launched under the Common Se-

[40] Resolution S/RES/1244, *supra* note 2, paras. 10, 11(e).

[41] Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, 26 March 2007, UN Doc. S/2007/168, *Report of the Special Envoy of the Secretary-General on Kosovo's Future Status (Ahtisaari Report)*, p. 2. Ahtisaari assessed that "the negotiations' potential to produce any mutually agreeable outcome on Kosovo's status [was] exhausted. No number of additional talks, whatever the format, [would] overcome this impasse". He concluded that "the only viable option for Kosovo is independence, to be supervised for an initial period by the international community".

[42] Advisory Opinion of the International Court of Justice, 2010, ICJ Reports 141, *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, p. 3. The ICJ answered strictly the question that was requested about the legality of the declaration of Priština/Prishtinë and thus concluded that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, the Security Council Resolution 1244 (1999) or the Constitutional Framework. Consequently, the adoption of that declaration "did not violate any applicable rule of international law." Such a general conclusion of the court has been – and still is – openly debated and criticised as a means to avoid solving the core of the question over Kosovo.

curity and Defence Policy (CSDP)[43]. This event confirmed the evolution of the mission: from institution-building to assistance and monitoring.
In 2012, the temporary international supervision envisioned by the Ahtisaari Report terminated and Kosovo became responsible for its governance[44]. To date, the world appears split over the issue of Kosovo as 102 out of 193 countries have accepted to officially recognize the independent Republic of Kosovo. Within the European Union itself, there is no unanimity[45]. The fact remains that, alongside the most recent EULEX, UNMIK and KFOR missions are still present in Kosovo as the legal basis of the UNSC Resolution 1244 is still virtually in force to this day[46].

[43] Joint Action of the Council of the European Union, 4 February 2008, 2008/124/CFSP, *on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*.
[44] *Ahtisaari Report*, *supra* note 41.
[45] 5 EU member states currently do not recognize the independent Republic of Kosovo: Spain, Slovakia, Cyprus, Romania, and Greece.
[46] Resolution S/RES/1244, *supra* note 2, para. 19: "The Security Council […] 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* [emphasis added]". To date, the Security Council did not or could not decide otherwise.

Chapter Two: International Intervention and Assistance

The first airstrikes on the Serbian sovereign territory marked the start of the direct involvement of the international community in the Kosovo story. A page of history that is not fully closed yet. In the first chapter, we have seen that the previous international efforts to solve the crisis through various diplomatic and multilateral channels eventually failed, be it due to negotiating shortcomings (rif. Dayton Agreement and Rambouillet peace talks) or the same warring parties' conduct (rif. Holbrooke-Milošević Agreement). Once all the possible ways were exhausted, NATO member states found themselves before an unanswerable quandary: either to witness passively or to intervene decisively. It was a severe *aut aut* based on the clash between two prominent principles of international law: the principle of non-intervention and the protection of human rights. The gravity of the quarrel was worsened by the awareness of the humanitarian carnage ongoing against the Albanian population and the horrific memory of genocide that occurred in Bosnia under the indifferent eye of the international community.
NATO eventually acted and the price for that was that, for the first time in history, incidentally in the fiftieth anniversary of its foundation, the Atlantic Organization declared war on a third country without the explicit sanction of the Security Council. The repercussions of such a conduct were self-evident then as they are still now. This chapter closes the first part related to the conflict by drawing up the major legal implications derived from the early direct involvement of the international community in the Kosovo story: the controversial doctrine of humanitarian intervention and the challenges to humanitarian assistance.

2.1 The humanitarian intervention of NATO

After the end of the Cold War, *l'intervention d'humanité* was one of the most captivating and debated challenges in the international system. The ruthless ethnic violence passed through the 1990s had had the same catalysing effects on global attention that the 9/11 attacks would later have about the threat of terrorism. A considerable contribution came from the progress in communication channels, fuelling the widespread opinion that the international community could not stand still before the slaughters were recorded on live TV, but it was imperative to do something. However, there was no clear consensus on how to intervene.
Operation Allied Force, both in its merits and for its criticisms, may be the most prominent precedent of humanitarian intervention. A concept that, for the purposes of this study, we hereby explain through J.L. Holzgrefe's definition as:

> The threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its citizens, without the permission of the state within whose territory force is applied[1].

Neither the concept nor the practice is new. Already in the 17th century, Grotius had argued the existence of a "Right of human Society [*sic*]" in Natural Law to relieve people from the oppression of foreign Tyrannies[2]. However, the long-standing debate on the significance of humanitarian intervention has chiefly opposed political Realists and Idealists. Historically, the movement of Liberalism has always stood up for the centrality of individuals, with their freedoms and rights as fundamental values of the domestic society. People must be protected from the abuse of public power, and States shall restrain their authority. Parallelly, on the global level, international set boundaries to the ruthless conduct of States, while the protection and promotion of human rights shall be deemed the uppermost principle. On the other hand, the *realpolitik* narrative argues that, in an anarchic global 'disorder' such as the one wherein we live the only consistency is states with their sovereignty, i.e., those polity effectively claiming "the monopoly of the legitimate use of physical force *within a given territory*"[3]. The concept of humanitarian intervention for the Realists contravenes the very essence of the State and is equivalent to questioning the *status quo* existing since the Westphalia Peace.
As regards the practice, some accounts have proposed some primordial precedents already in the 19th century, with the interventions by European powers in Greece (1827), Syria/Lebanon (1860-1861), and the Balkans (1875-1878)[4]. In fact, despite the patent geopolitical interests governing the European capitals, these military actions were often justified or disguised on moral grounds. After World War II and the establishment of the United Nations, the main relevant events have been in Somalia (1992-1993) and Libya (2011), both sanctioned by the Security Council. In addition, we cannot overlook the significance of two further influential events: Rwanda (1994), where no action was taken by the international community against the genocide of the Tutsi population, prompting a sense of guilt and the need for a greater international responsibility; and our case study of Kosovo (1999) where, partially because of the guilty conscience after the indifference five years earlier, humanitarian intervention was eventually accomplished but with the fundamental shortage of previous UN authorization:

> "If, in those dark days and hours leading up to the genocide [in Rwanda], a coalition of States had been prepared to act in defence of the Tutsi population, did not receive prompt Council authorisation, should such a coalition have stood aside and allowed the horror to unfold?"[5].

---

[1] HOLZGREFE (2003: 18).
[2] GROTIUS (2005: 1159-1162).
[3] WEBER (1946: 78, emphasis added).
[4] BROWNLIE (1981: 339 ff).; BEYERLIN (1982: 211-212); RONZITTI (1985: 90-91).
[5] Annual Report of the Secretary-General of the United Nations to the General Assembly, 20 September 1999, SG/SM7136, GA/9596.

2.1.1 Legal Framework of Operation Allied Force

Operation Allied Force was chiefly justified on the grounds of morality and exceptionality. We can find proof of that since the first day of NATO's air bombing over Serbia, in the speech that the United Kingdom Permanent Representative to the United Nations delivered to the Security Council on 24 March 1999:

> "The action being taken is legal. It is justified as an *exceptional measure* to prevent an overwhelming humanitarian catastrophe. Under present circumstances in Kosovo, there is convincing evidence that such a catastrophe is imminent. Renewed acts of repression by the authorities of the Federal Republic of Yugoslavia would cause further loss of civilian life and would lead to displacement of the civilian population on a large scale and in hostile conditions. Every means short of force has been tried to avert this situation. In these circumstances, and as an *exceptional measure* on grounds of overwhelming humanitarian necessity, military intervention is legally justifiable. The force now proposed is directly exclusively to averting a humanitarian catastrophe and is the minimum judged necessary for that purpose"[6].

From a legal perspective, the controversy of humanitarian intervention is the point of contradiction between the two cardinal principles of contemporary international law: the protection of human rights and the principle of non-intervention (or sovereignty).

Protecting human rights is an obligation binding all states, owing to a multitude of legal sources and mechanisms of enforcement in international law. The *Universal Declaration of Human Rights* (UDHR) undisputedly embodies the bedrock of the global protection of human rights "as a common standard of achievement for all peoples and all nations"[7]. Although a non-legally binding instrument, there is growing consensus that most of its provisions, if not all, have acquired the status of customary international law:

> With time, the Universal Declaration has itself acquired significant legal status. Some see it as having given content to the Charter pledges, partaking therefore of the binding character of the Charter, as an international treaty. Others see both the Charter and the Declaration as contributing to the development of a customary law of human rights binding on all states[8].

Moreover, the seminal principles there enshrined served as the inspiration for the development of further enforceable provisions, today comprised in the so-called "core human rights treaties"[9]. Among these stand out the two

---

[6] Minutes of the meeting of the United Nations Security Council, 24 March 1999, S/PV.9988, p. 12.

[7] Resolution of the United Nations General Assembly, 10 December 1948, A/RES/217(III), *Universal Declaration of Human Rights* (hereafter UDHR), Preamble.

[8] Louis Henkin quoted in HANNUM (1995: 320 ff.); SCHUTTER (2019: 50-51).

[9] *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), A/RES/20/2106, 21 December 1965; *International Covenant on Civil and Political Rights* (ICCPR), A/RES/21/2200A, 16 December 1996; *International Covenant on Economic, Social and Cultural Rights* (ICESCR), A/RES/21/2200A, 16 December 1966; *Convention on*

International Covenants of 1996 proclaiming the comprehensive framework for the universal protection of civil and political rights (ICCPR), and economic, social, and cultural rights (ICESR). Their implementation is an obligation for states and the two texts comprise also enforcement mechanisms as monitoring bodies composed of experts. Taken together, UDHR, ICCPR, and ICESR, these three texts form the so-called International Bill of Human Rights, a benchmark for state conduct.

As anticipated, some human rights are also part of customary law, thereby all states must abide by them, regardless of whether they ratified or not the treaties. Within this category, arising from the consistent and widespread practice by States over time, along with a manifest belief of righteousness of their conduct (*opinion juris*), fall some of the most serious human rights norms such as the prohibition of genocide, torture, slavery and racial discrimination, crimes against humanity; others, instead, are still questioned and disputed such as the right to self-determination, the right to development, or the right of indigenous peoples[10].

The significance of accepting human rights as customary international law consists in providing the basis for a universally recognized standard for their protection – a concept that we will often meet in the further pages about the international administration of Kosovo. It means that national courts can enforce these norms by directly applying customary international law principles within their domestic legal system. Contextually, at the upper level, also international courts, such as the International Court of Justice (ICJ) and the International Criminal Court (ICC), or regional human rights courts, such as the European Court of Human Rights, play a crucial role in adjudicating violations of customary international law and influence its evolution. However, the human rights regime contains no enforcement mechanisms implying the threat or use of force.

The paramount source in international law regulating the *jus ad bellum* is the *Charter of the United Nations*. There we can find only two circumstances allowing the legality of war: self-defence and the authorization of the Security Council. Article 51 enshrines the "inherent right of individual or collective self-defence"[11] in case one Member State shall be subjected to an "armed attack"[12]. The only limitations are the implicit general principles of proportionality and necessity, and the explicit reference to the superseding compe-

---

the Elimination of All Forms of Discrimination Against Women (CEDAW), A/RES/34/180, 18 December 1979; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), 10 December 1984; *Convention on the Rights of the Child* (CRC), A/RES/44/25, 20 November 1989; *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICMW), A/RES/45/158, 18 December 1990; *Convention on the Rights of Persons with Disabilities* (CRPD), A/RES/61/177, 20 December 2006; *International Convention for the Protection of All Persons from Enforced Disappearance* (CPED), A/RES/61/177, 20 December 2006.

[10] SCHUTTER (2019: 62-64).

[11] United Nations, *Charter of the United Nations* (hereafter UN Charter), 24 October 1945, 1 UNTS XVI, Art. 51.

[12] No space is left for interpretation, for the attack can only be of a military nature.

tence of the Security Council, which always remains the *maxima auctoritas* designated by the *Charter* to maintain and restore the security and peace in the international system (Article 24)[13]. Complementary to Article 51, we must highlight Article 2, spelling out the fundamental respect of states sovereignty through, other than the principle of equality (para. 3), the principle of non-intervention (para. 4) that calls "all Member States [to] refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state"[14].

When the category of self-defence cannot be applied, such as for *Operation Allied Force*, the only circumstance in which the use of armed force is to be considered lawful is upon a call of the Security Council. In fact, under Chapter VII, the latter may decide to take "action by air, sea, or land forces as may be necessary to maintain or restore international peace security" (Article 42), after having ascertained the existence of a "threat to the peace, breach of the peace, or act of aggression" (Article 39) and the inadequacy of non-military "measures" (Article 41). To accomplish the mission, the Security Council may decide, for the most various reasons, to exploit the resources of the UN Member States which are required to observe, other than for the general obligation contained in Article 25[15], because of the explicit mandate of Article 43 to provide "armed forces, assistance, and facilities, including the rights of passage".

As a result, it is evident that, in the legal framework considered thus far, there is no solid legal justification for a humanitarian intervention conducted independently by one state. Albeit performed for the sake of fundamental principles of international law such as the protection of human rights, intervention for humanitarian purposes represents an act of force violating the sovereignty of other states, thus breaching the as much fundamental principle of non-intervention. The one and only circumstance rehabilitating the legality of humanitarian intervention is by permission of the UN Security Council. According to Chapter VIII, the same conclusion applies to the case of an organisation of states, such as NATO, whose integrative role for international security and peace is pronounced in Article 52, but with the explicit constraint by Article 53, affirming that "[…] no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council".

However, the law is not static but develops through a process of competing interpretations, state practice and reforming norms. Today's legal framework of humanitarian intervention has at least partially evolved compared to the one existing in 1999 – and the very same experience of *Operation Allied*

---

[13] UN Charter, *supra* note 11, Art. 24, para. 1: "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf".

[14] *Ivi*, Art. 2, para. 4.

[15] *Ivi*, Art. 25: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Present Charter".

Force has significantly contributed to this change. The traumatic experiences from the 1990s proved the controversy of humanitarian intervention, both when missing (Rwanda 1994) as well as when implemented (Kosovo 1999). This paradox manifested a sense of disorientation that was effectively conveyed by Secretary-General Kofi Annan:

> "…if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?"[16].

It became finally clear the need for a balance as never before. A general rejection *a priori* of the concept of humanitarian intervention could not be accepted as the definitive conclusion:

> "The experience and aftermath of Somalia, Rwanda, Srebrenica and Kosovo, as well as interventions and non-interventions in several other places, have provided a clear indication that the tools, devices, and thinking of international relations need now to be comprehensively reassessed, in order to meet the foreseeable needs of the 21st century"[17].

A first step in this direction was taken in the report published by the International Commission on Intervention and State Sovereignty (ICISS)[18], named *The Responsibility to Protect* and addressing the remit of the international community to protect all peoples from gross atrocities, such as genocide, war crimes, ethnic cleansing, and crimes against humanity. The underlying premise in this document is the re-definition of the concept of sovereignty not as just mere territorial power but as a duty for the safety and lives of citizens, shifting "from *sovereignty as control* to *sovereignty as responsibility* in both internal and external duties"[19]. Based on this, it is possible to adjust the view of the debate about the need to act for human protection purposes, passing from a narrative on 'the right to intervene' towards 'the responsibility to protect' (R2P)[20]. The ICISS described the latter as made of three pillars: prevent, react, and rebuild; in the sense that the concern of the international community should not be restricted only to military actions, but rather undertake anticipatory measures as well as post-crisis engagements. Furthermore, the Commission outlined four key principles for a more detailed framework of conducting humanitarian interventions: 1) a "just cause threshold" to assess the severity of the humanitarian crisis by a large-scale loss of life and ethnic cleansing; 2) "precautionary principles" implemented

---

[16] Kofi-Annan, Secretary-General of the United Nations, quoted in *The Responsibility to Protect*, *infra* note 17, p. 2.
[17] Report of the International Commission on Intervention and State Sovereignty (ICISS), December 2001, *The Responsibility to Protect*, p. 11.
[18] Independent commission established by the Canadian government in September 2000, prompted by the question of SG Kofi-Annan, and mandate to investigate the responsibilities of the international community for humanitarian intervention and state sovereignty.
[19] *The Responsibility to Protect*, *supra* note 17, p. 13.
[20] *Ivi*, p. 17.

before the use of force[21]; 3) the principle of "right authority", recognizing the primary duty of Security Council but, in case it fails to act promptly, giving the possibility to react to the General Assembly or regional settlements; and 4) "operational principles" of intervention, which ought to unfold with a clear mandate, appropriate resources and maximum possible coordination with humanitarian actors involved[22]. Ultimately, the reasonings of the ICISS concluded that wherever a population comes to suffer gross violations of human rights and the state in question is incapable of unwilling to prevent or solve them, "the principle of non-intervention yields to the international responsibility to protect"[23].

The report was only an advisory document that did not create any legal obligation for states, but the "Responsibility to Protect" eventually emerged as an international principle when it was publicly adopted at the 2005 World Summit[24] by consensus of more than 170 states, affirming that:

> 138. *Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity*. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. *We accept that responsibility and will act in accordance with it*. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.
>
> 139. *The international community, through the United Nations, also has the responsibility* to use appropriate diplomatic, humanitarian, and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, *we are prepared to take collective action, in a timely and decisive manner, through the Security Council*, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, *should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.* We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing,

[21] They are A) the "Right Intention" of the intervention for halting or averting human suffering; B) the "Last Resort" of non-military option before the use of force; C) the "Proportional Means" in the conduct of the military operation; and D) the "Reasonable Prospects" that the intervention will effectively solve the situation. *The Responsibility to Protect*, *supra* note 17, XII, p. 29 ff.

[22] *Ivi*, pp. XI-XIII.

[23] *Ivi*, p. XI.

[24] The 2005 World Summit occurred on September 14-16 in New York, at the Headquarters of the United Nations and there took part more than 170 heads of state and government to discuss an agenda imprinted to Secretary-General Kofi Annan's report *In Larger Freedom*. United Nations General Assembly, 21 March 2005, A/59/2005, *In larger freedom: towards development, security and human rights for all: report of the Secretary-General.*

> and crimes against humanity and to assisting those which are under stress before crises and conflicts break out"[25].

The public endorsement by the world leaders, despite its moral and symbolic value, represented a political commitment with no enforceable duties and, as such, did not give R2P a legally binding nature. Nonetheless, from that moment we can find reference to it in a plethora of resolutions issued by the Security Council, the General Assembly and UN Human Rights Council[26]. These copious resolutions, on the one hand, are evidence of the growing legitimacy of the concept, and on the other hand, have favoured an operationalization of its framework in various contexts, from peacekeeping missions to military actions[27]. Among these, is included also the most recent case of humanitarian intervention, which occurred in Libya (2011) once again at the hands of NATO member states but effectively after the authorization of the UN Security Council, "*reiterating* [*sic*] the responsibility of the Libyan authorities to protect the Libyan population"[28].
In conclusion, the legal framework of humanitarian intervention is indeed a complex interplay of various norms, practices and interpretations evolving through time. Evidence of that is the basic shift in the narrative towards the "Responsibility to Protect"; a process to which a significant contribution came from the controversial experience in Kosovo that emphasized the considerable gap between legitimacy and legality in the concurrent legal framework of humanitarian intervention. Ultimately, we have demonstrated that NATO's actions against Belgrade breached the UN Charter, i.e., the highest source in the hierarchy of international law[29]. As a consequence, other than creating a gross precedent, this event inevitably affected the relations of the two international organisations.

2.1.2 The Interplay Between NATO and the United Nations

The Kosovo crisis corresponded to "a crucial turning point" in the inter-organisational relations between NATO and the United Nations[30]. The cause is *per se* manifest: the decision of the North Atlantic Council (NAC) to give the green light to a non-defensive military operation against the FYR criti-

---

[25] Resolution of the United Nations General Assembly, 24 October 2005, A/RES/60/1, *2005 World Summit Outcome*, para 138-139, emphasis added.
[26] To date, we can find R2P references in 93 resolutions of the UN Security Council (plus 17 Presidential Statements), in 37 by the UN General Assembly, and 80 by the UN Human Rights Council. For further information, or the complete lists, please consult the online resources of the Global Centre for the Responsibility to Protect.
[27] R2P has been invoked by the UN organs, other than for general thematic resolution, for the specific crises in the Central African Republic, Cote d'Ivoire, Democratic Republic of Congo, Liberia, Libya, Mali, Somalia, South Sudan, Syria, and Yemen.
[28] Resolution of the United Nations Security Council, 17 March 2011, S/RES/1973, Preamble.
[29] UN Charter, *supra* note 11, Art. 103: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".
[30] DROZDIAK (1998); HARSCH (2015: 63).

cally put into question the monopoly of the Security Council on the legality of the use of force. However, it is interesting to note that NATO governments have never justified their actions through a narrative of 'illegal but legitimate', as they were allegedly "filling the gaps of the Charter"[31]. They consistently argued the existence of legal and moral righteousness, based on the purposes of the intervention of "averting a humanitarian catastrophe" and ensuring "full respect […] and observance of all relevant Security Council Resolutions, in particular, the provisions of Resolutions 1160, 1199 and 1203"[32].

The situation in Kosovo was first overseen by the Security Council on March 31, 1998, with the imposition of an arms embargo in light of the escalation of the conflict after the Drenica Massacre. Resolution 1160 condemned the excessive violence of the Serbian police as well as the terroristic acts by the KLA/UÇK, urged the FRY to withdraw its special police units from the province and decided that "all States shall […] prevent the sale or supply [of armaments] to the Federal Republic of Yugoslavia, including Kosovo"[33]. The text concludes with the warning that a failure to make progress towards a peaceful resolution would "lead to the consideration of additional measures". We need also to highlight that, as will be recurrent in the later resolutions, the Security Council decided to act under Chapter VII of the Charter, i.e., those provisions that regulate 'actions' entailing the use of force. On that occasion, the only abstention came from China, while Russia decided to agree to prevent further escalation of the conflict. However, the call remained unheeded, and the conflict escalated in the spring with the entrance of the Yugoslav army into the province, provoking the displacement of thousands of civilians.

The Security Council returned to the matter on September 23, agreeing upon Resolution 1199 after more than a month of intense negotiations between NATO members, Russia, and China[34]. Once again under Chapter VII, it was demanded that "all parties, groups and individuals immediately cease[d] hostilities and maintain[ed] a ceasefire", to enhance a dialogued solution and avert "the impending humanitarian catastrophe"[35]. Once again Russia voted in favour, albeit refusing to mention any enforcement mechanism in the case of Belgrade's negligence. The text thus concluded, on the same line as the previous resolution, that, should the concrete measures demanded not be taken, "further action and additional measures to maintain or restore stability in the region" would be considered[36]. The following day, the NAC issued an 'activation warning' for air strikes in Kosovo and, although it was meant as a

[31] SIMMA (1999: 12).
[32] Statement by the North Atlantic Council on Kosovo, 30 January 1999, Press Release (99) 12, paras. 1, 4.
[33] Resolution of the United Nations Security Council, 31 March 1998, S/RES/1160, *The situation relating to Kosovo*, para. 8.
[34] HARSCH (2015: 61).
[35] Resolution of the United Nations Security Council, 23 September 1998, S/RES/1199, *The situation relating to Kosovo*, paras. 1 and 2.
[36] *Ivi*, para. 16.

political signal of the Alliance's readiness to use force, it marked the first violation of the Security Council monopoly of the use of force, owing to the fact that also threats of force are forbidden by the *Charter*[37].

This moment was the first crack in the relations with the UN, with Russia and China stating clearly that they would oppose any authorization of force by the Council. However, a contrary interpretation came from NATO Secretary-General, Javier Solana, who argued, based on the reference to Chapter VII in Resolutions 1160 and 1199 of the "continuation of a humanitarian catastrophe" (also addressed by the report of the UN Secretary-General), and considering the unforeseeable agreement to another UNSC Resolution providing a clear enforcement action, that "in the particular circumstances with respect to the present crisis in Kosovo […] there are legitimate grounds for the Alliance to threaten, and if necessary, to use force"[38].

In October, the situation seemed to ease down thanks to the Holbrooke- Milošević agreement and the deployment of the civilian verification mission by OSCE. The Security Council endorsed the arrangement in Resolution 1203 and demanded "full and prompt implementation" by the FYR[39]. Albeit acting once more under Chapter VII, Russia, China and Brazil emphasized, as members of the Security Council, that the resolution was not sufficient to provide a legal basis for NATO's threat or action, and any potential military initiative would need further approval: Moscow publicly announced its veto in case of any proposal to the Security Council comprising the use of force, while for Peking the situation in Kosovo was an "internal matter" to the Yugoslav people[40].

The crunch came with the resumption of the conflict, the resurge of the humanitarian crisis and the last diplomatic attempt at the Rambouillet negotiations. Similarly to what happened in October, as a tactic to put pressure on Belgrade to accept the terms of the draft agreement, the NAC agreed that Secretary-General Xavier Solana "may authorise air strikes against targets on FRY", thus undermining the role of the Security Council for a second time[41]. Only this time, the threats did not work, Milošević did not yield, and the Serb forces started a new offensive on the ground. As a result, on the evening of March 24, NATO decided to cross the red line:

> "[Javier Solana] I have been informed by SACEUR, General Clark, that at this moment NATO Air Operations against targets in the Federal Republic of Yugoslavia have commenced.
> In the last months, the international community has spared no efforts to achieve a negotiated solution in Kosovo. But it has not been possible.

[37] HARSCH (2015: 61).
[38] Javier Solana (1998) quoted in SIMMA (1999: 7).
[39] Resolution of the United Nations Security Council, 23 October 1998, S/RES/1203, *The Situation in Kosovo*.
[40] HARSCH (2015: 61-62); SIMMA (1999: 7-11).
[41] Statement by the North Atlantic Council on Kosovo, 30 January 1999, Press Release (99) 12, para. 5.

> Clear responsibility for the air strikes lies with President Milosevic [*sic*] who has refused to stop his violent action in Kosovo and has refused to negotiate in good faith.
> The time has now come for action.
> Let me reiterate: NATO is not waging war against Yugoslavia.
> We have no quarrel with the people of Yugoslavia who for too long have been isolated in Europe because of the policies of their government.
> Our actions are directed against the repressive policy of the Yugoslav leadership.
> *We must stop the violence and bring an end to the humanitarian catastrophe now taking place in Kosovo. We have a moral duty to do so*.
> NATO's men and women in uniform, who are carrying out this important mission, are among the best in the world. I am confident that they will be successful"[42].

NATO members decided to circumvent the authorization of the Security Council because they were confident that "legitimacy could be generated in other ways"[43]. Firstly, recalling the philosophical tradition of the "just war", the Atlantic Organisation argued the uppermost imperative of averting the humanitarian carnage ongoing in Kosovo, objectively ascertained by many accounts, including the very same Security Council. Analogue statements about Solana's "moral duty" came from all over the NATO governments: from the US President, Bill Clinton – "I do not believe that we ought to have thousands more people slaughtered and buried in open soccer fields before we do something"[44], to the German Foreign Minister, Joschka Fischer – "If people are being massacred, you cannot mutter about having no mandate. You must act"[45].
The military intervention was defended in conformity with the legal framework provided in Resolutions 1199 and 1203, demanding Serbian forces, under Chapter VII of the *Charter*, to cease their violations of human rights in Kosovo:

> "If due to one or two permanent members' rigid interpretation of the concept of domestic jurisdiction, such a resolution is not attainable, we cannot sit back and simply let the humanitarian catastrophe occur… We will act on the legal basis we have available, and what we have available in this case is more than adequate"[46].

Such an interpretation was rather extreme and unclear since the legal basis available for the intervention was never effectively indicated. In addition, NATO justified its actions also referring to the exceptionality of the case. In particular, the British government spearheaded the possibility in international law to use force, as a last resort, when compelled by "overwhelming humanitarian necessity":

---

[42] Statement of NATO Secretary-General, 24 March 1999, PR (1999)041, *Following Commencement of Air Operations*, emphasis added.
[43] HARSCH (2015: 66); WHEELER (2000: 153).
[44] Bill Clinton quoted in HARSCH (2015: 67).
[45] COHEN (1999).
[46] Minutes of the meeting of the United Nations Security Council, 24 March 1999, S/PV.9988, p. 8.

> The action being taken is legal. It is justified as *an exceptional measure* to prevent an overwhelming humanitarian catastrophe. Under present circumstances in Kosovo, there is convincing evidence that such a catastrophe is imminent. Renewed acts of repression by the authorities of the Federal Republic of Yugoslavia would cause further loss of civilian life and would lead to displacement of the civilian population on a large scale and in hostile conditions. Every means short of force has been tried to avert this situation. In these circumstances, and as *an exceptional measure* on grounds of overwhelming humanitarian necessity, military intervention is justifiable. The force now proposed is directed exclusively to averting a humanitarian catastrophe and is the minimum judged necessary for that purpose"[47].

The matter split the international community. Unsurprisingly, the Russian Federation advanced the fiercest opposition, requesting a special session of the Security Council on the very same 24 March 1999, wherein its Ambassador, Sergej Lavrov, severely denounced NATO's conduct, asserting that there was no accepted norms in international law possibly justifying such a unilateral use of force:

> "The members of NATO are not entitled to decide the fate of other sovereign and independent States. They must not forget that they are not only members of their alliance, but also Members of the United Nations, and that it is their obligation to be guided by the United Nations Charter, in particular its Article 103, which clearly establishes the absolute priority for Members of the Organization of Charter obligations over any other international obligations. Attempts to justify the NATO strikes with arguments about preventing a humanitarian catastrophe in Kosovo are completely untenable. Not only are these attempts in no way based on the Charter or other generally recognized rules of international law, but the unilateral use of force will lead precisely to a situation with truly devastating consequences… In light of this turn of events, we shall draw the appropriate conclusions in our relations and contacts with that organization"[48].

While China preserved its long-standing definition of the question of Kosovo as "an internal matter" to the FYR, the greatest support for the Russian position came from India:

> "The attacks against the Federal Republic of Yugoslavia that started a few hours ago are in clear violation of Article 53 of the Charter. No country, group of countries or regional arrangement, no matter how powerful, can arrogate to itself the right to take arbitrary and unilateral military action against others. That would be a return to anarchy, where might is right. Among the barrage of justifications that we have heard, we have been told that the attacks are meant to prevent violations of human rights. Even if that were to be so, it does not justify unprovoked military aggression. Two wrongs do not make a right"[49].

Two days later, Russia and India, together with Belarus, presented a draft resolution to demand, under Chapters VII and VIII, an immediate cessation of the use of force against Yugoslavia and the resumption of negotiations, affirming that NATO's "unilateral use of force constitutes a flagrant violation

[47] *Ivi*, p. 12; GREENWOOD (2000: 928).
[48] *Ivi*, p. 1.
[49] *Ivi*, pp. 12, 15-16.

of the United Nations Charters, in particular, Articles 2 (4), 24 and 53"[50]. Interestingly, the resolution would be rejected by 12 votes to three (Russia, China, and Namibia), with no abstentions; meaning that six non-Western states plus one (Slovenia) came to oppose the Russian draft resolution condemning NATO's bombing[51]. We have already seen that no proper legal doctrine has emerged with the Kosovo war, and some authors fairly argued that "lack of condemnation by the Security Council cannot be seen as an authorisation to use force"[52]. However, as put by Nicholas J. Wheeler, existing literature has neglected, or failed to understand, the true significance of the deliberation in the Security Council occurred on March 26: "For the first time, since the founding of the Charter, seven members either legitimated or acquiesced in the use of force justified on humanitarian grounds in a context where there was no express Council authorisation"[53].

Once begun, the 78-day long air campaign against Milošević's Serbia unfolded in a context of almost complete absence of cooperation between NATO and the UN, except only for the humanitarian response to the massive refugee crisis[54]. Neither the Security Council nor the UN Secretary-General succeeded in influencing the conduct of the war. The greatest concern was for the civilian casualties as, albeit the attacks were targeted against Serbian key infrastructures, such as electrical power plants, highways, bridges, and telecommunication facilities, aerial bombing *per se* flaws of a discrete margin of error, provoking at times 'unpleasant incidents'. According to Human Rights Watch, "some 500 Yugoslav civilians are known to have died in these incidents"[55]. Unsurprisingly, it became a cause of great embarrassment for NATO, owing to the stated objective of military intervention to protect human lives. On top of that, the deadly bombing of a hospital in Nis and the Chinese Embassy in Belgrade, on May 7, 1999, aggravated the reputation of the Atlantic Organization so much so that the UN Secretary-General publicly confessed to being "shocked and distressed"[56].

In conclusion, NATO's intervention seriously impaired the relations with the United Nations for a twofold reason: other than being a patent breach of the Charter law, it was an open challenge to the role of the Security Council as the highest authority of international security and peace. A significant contribution to this hiatus derived from the revenant discord between NATO and the Russian Federation, but we have seen that in reality also other countries

---

[50] Draft Resolution of the United Nations Security Council, 26 March 1999, S/1999/328, *Belarus, India, and Russian Federation: draft resolution*.

[51] The rest of the Council was composed of Argentina, Bahrain, Namibia, Gabon, Gambia, Jamaica, Malaysia, Netherlands, and Slovenia, other than the P3 (USA, UK, France).

[52] WHITE (1999: 33).

[53] WHEELER (2000: 157-158).

[54] HARSCH (2015: 68-69).

[55] Report of Human Rights Watch, February 2000, 12 (1) (D), *Civilian Deaths in the NATO Air Campaign*, p. 5.

[56] Press Release of the Secretary-General of the United Nations, 10 May 1999, SG/SM/6986, *Secretary-General Shocked and Distressed by Bombing of Civilian Buildings in Yugoslavia, including Chinese Embassy*.

countered in the Council, such as China, Brazil, and India. Ultimately, the coordination between NATO and the UN was almost insignificant during most of the Kosovo war, if not for only one exception: the humanitarian assistance to the massive refugee flow pouring into the region.

2.2 The humanitarian assistance of UNHCR

The refugee crisis triggered by the Kosovo conflict was the worst humanitarian crisis that Europe had seen since World War II. Back then, the newborn United Nations had first founded the International Refugee Organization (IRO) to cope with the mass displacement in the 1946 aftermath. Those early years were essential in demonstrating to the international community the need for a more structured strategy and a complete legal framework for the refugee question. Eventually, in 1951, the General Assembly established the United Nations High Commissioner for Refugees (UNHCR) with the mandate to "assume the function of providing international protection […] to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees"[57]. Practically, the mission of UNHCR was to support and coordinate governments and private organizations to facilitate, in accordance with the relevant norms of international law, either the voluntary repatriation of refugees or their integration within new national hosting communities.

The bedrock of international refugee law is enshrined in Article 14 of the *Universal Declaration of Human Rights* (1948), for which "everyone has the right to seek and to enjoy in other countries asylum from persecution"[58]. Here, it is important to note that the text refers to the right to seek asylum but without mentioning any obligations for states to grant it. Furthermore, the international community adopted in 1951 the *Convention Relating to the Status of Refugees* (Refugee Convention) establishing a comprehensive and binding legal framework for protection and assistance that only through the 1967 Protocol was cleared from any temporal and geographical limitations, thus finally becoming a universal regime[59].

In the first article of the *Refugee Convention*, it is formulated an official definition of refugee as:

> "any person who […] owing to well-founded fear of being persecuted of reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former

[57] Resolution of the United Nations General Assembly, 14 December 1950, A/RES/428 (v), *Statute of the Office of the United Nations High Commissioner for Refugees* (hereafter UNHCR Statute), Art. 1.

[58] Resolution of the United Nations General Assembly, 10 December 1948, A/RES/217(III), *Universal Declaration of Human Rights* (hereafter UDHR), Art. 14 para. 1.

[59] *Protocol Relating to the Status of Refugees*, 4 October 1967, Art. I paras. 2, 3.

> habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"[60].

Thanks to this provision, it is possible to standardize the parameters for the determination of refugee status, thus fostering major observance and compliance among all States. A cascade of fundamental principles and norms of international refugee law can be derived from this statutory definition. The first one *ab initio* is the principle of non-discrimination, later recalled in Article 3, for which, no State is allowed to apply unfairly the provisions contained in the Convention by reason of race, religion, or country. Secondly, the wording reserves paramount attention to the willingness to return of the refugee, in conformity with the so-called principle of *non-refoulment*:

> "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"[61].

Outlined in Article 33, the prohibition of expulsion or forced repatriation is unquestionably the core tenet of international refugee law, to be widely recognized with the status of customary norm[62].
Furthermore, the *Refugee Convention* outlines an array of rights aimed at ensuring refugees a life with dignity and security. They span from freedom of religious practice and education (Article 4), property (Article 13), association (Article 15), access to courts (Article 16), to the rights to work (Article 17), housing (Article 21), public education (Article 22), public relief (Article 23), and freedom of movement (Article 26). In general, States must accord to them "the same treatment as is accorded to aliens generally", except for when the Convention specifies more favourable provisions[63].
However, refugees are not the only victims during a humanitarian crisis. We must consider also Internally Displaced Persons (IDPs), namely those people who have been forced to flee their homes but, unlike refugees, remain within their country's borders. Although the cause of displacement is the same fear or constriction for personal safety, this conceptual distinction is crucial, for the protection under the 1951 Refugee Convention is indeed 'international' and applies only to people moved across state borders. IDPs, instead, remain citizens or residents of their own countries and for that, the primary responsibility for their protection is upon their State authorities, based also on the principles of sovereignty, non-intervention, and responsibility to protect, that we have analysed in the previous section[64]. Nonetheless, it does not mean that they are utterly overlooked by any international norms; for the legal framework in assisting and protecting IDPs, we shall turn to the two general

---

[60] *Convention Relating to the Status of Refugees* (hereafter Refugee Convention) UNTS 189/137, 28 July 1951, Art. 1.
[61] *Ivi*, Art. 33.
[62] COSTELLO (2015: 273).
[63] *Refugee Convention*, *supra* note 60, Art. 7 para. 1.
[64] Office for the Coordination of Humanitarian Affairs (OCHA), 17 April 1998, E/CN.4/1998/53/Add.2, *Guiding Principles on Internal Displacement* 1998, Principle 3.

branches of international law: international humanitarian law (IHL) and human rights law (HRL).
As regards the *jus in bello*, the core principle of distinction between military and civilian objectives, underpinned in all the Geneva Conventions and their Additional Protocols, sanctions the uppermost imperative for all the warring parties to protect the civilians, thus including IDPs, during conflicts. As general protection, common Article 3 establishes a minimum standard of protection applying to all "persons taking no active part in the hostilities" who "in all circumstances" must be treated in observance of the principles of humanity and non-discrimination, without being subjected to any violence to life and person, nor taken as hostages, suffering outrages upon personal dignity, or sentenced without a fair process[65]. Moreover, Article 49 of the Fourth Geneva Convention prohibits deportation and forced displacement of people in occupied territory unless "the security of the population or imperative military reasons so demand"[66].
In human rights law, the UDHR maintains the value of the right to life, liberty, and security of person to all individuals, including IDPs[67]. These principles of IHL and HRL were eventually incorporated in the *Guiding Principles on Internal Displacement* (1998) developed by the UN to cover the evident gap in international law concerning the protection and assistance of IDPs. Albeit an instrument of soft law, the Guiding Principles outline a set of non-binding standards and responsibilities of states and agencies, for which the humanitarian conduct must be in observance of the principles of impartiality, non-discrimination, protection from arbitrary displacement, and guarantee for safe return, resettlement, and reintegration[68]. Finally, since the 1970s, thanks to the emerging contribution of the UN General Assembly and the Social and Economic Council (ECOSOC), UNCHR has progressively included in its mandate and operations the relief of IDPs[69].
In the last decade, the number of forcibly displaced people worldwide has steadily surged reaching the scale of more than 117 million figures[70]. This horrific record may be the clearest evidence of the ever-green necessity of an entity such as UNHCR, today indispensable more than ever. However, the UN agency has not always succeeded in living up to its allegedly leading role in humanitarian assistance and protection – including the performance in the crisis of Kosovo.

[65] International Committee of the Red Cross (ICRC), 12 August 1949, 75 UNTS 287, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, Art. 4 para. 1.
[66] *Ivi*, Art. 44 para. 1.
[67] UDHR, Artt. 1-5.
[68] *Guiding Principles*, *supra* note 64, Artt. 6, 15, 24.
[69] GOODWIN-GILL (2021: 26).
[70] UNCHR Refugee Data Finders, Key Indicators, available online.

2.2.1 The humanitarian crisis management in Kosovo

The Kosovo refugee crisis was unique because of its brief but intense nature, with abrupt mass flows both outbound and inbound. Initially, during the internal conflict, more than 400 thousand people left their homes, with UNHCR referring in August 1998 to 260.000 IDPs and 200.000 persons fleeing outside Kosovo into refuge in Montenegro, Albania, and Macedonia (fYROM)[71]. As already anticipated, the Holbrooke-Milošević agreement permitted, since October 1998, the return of thousands of families to their homes but then, with the resuming violence in early 1999, a new wave of refugees from 150.000 to over 200.000 units emerged[72]. Ironically, the internationalization of the conflict through NATO's intervention, aiming to stop this humanitarian pouring, coincided with the pinnacle of people forcibly displaced, registering more than 863 thousand refugees poured into the neighbour countries (444,600 to Albania, 244,500 to Macedonia, 69,9000 to Montenegro), whereas approximately 590 thousand IDPs stayed inside Kosovo, "hiding in the mountains or trekking from village to village, sheltering for weeks and months in basements and other hideaways"[73]. Altogether, these figures tell us that over 90 per cent of the Albanian population was forced to leave their homes. It is still not clear whether these dizzying numbers were the direct result of the intensification of the conflict because of the air bombing, or rather of the increased violence of the FRY army and Serb paramilitaries against the civilian population. In fact, it is confirmed that Belgrade decided to exploit the chaos of war to better execute its plans of deportation and ethnic cleansing in the province (*Operation Horseshoe*)[74]. In addition, many reports denounced widespread rape, torture, looting, pillaging and extortion[75].

Once the hostilities ceased with the Military-Technical Agreement in June 1999, the decade-long direction of people movements inverted, and the humanitarian crisis in Albania and Macedonia ended as abruptly as it commenced. It was the beginning of the "secondary humanitarian emergency", as put by the UNHCR Deputy Coordinator for South-Eastern Europe Operations, Neill Wright, "of seeking to ensure that those returning survived the winter, in a province in which many homes had been destroyed and the infrastructure severely damaged"[76]. In the same period, around 180.000 Serbs and Roma fled in the opposite direction towards Serbia proper, fleeing from the spreading reprisals of the Albanian population, favoured by the initial ab-

---

[71]Report of the Independent International Commission on Kosovo (IICK), 2001, Oxford, 19 October 2000, *The Kosovo Report: Conflict, International Response, Lessons Learned*, p. 74.

[72] *Ivi*, p. 82.

[73] *Ivi*, p. 90; DEL MUNDO, WILKINSON (1999: 10-11).

[74] *The Kosovo Report, supra* note 71, 90; RIEFF (2000: 25): WRIGHT (2001: 126); HAMMERSTAD (2014: 232).

[75] Amnesty International, April 1999, '*Disappeared' and 'Missing' Persons: The Hidden Victims of the Conflict*, in *Kosovo: A Decade of Unheeded Warnings. Amnesty International's Concerns in Kosovo*, May 1989-March 1999, p. 11.

[76] WRIGHT (2001: 128).

sence of order between the time of retreat of the FYR/Serb forces and the arrival of NATO militaries[77]. The management of these post-conflict processes would be the primary responsibility assigned to UNCHR within the multifaceted framework of the later UNMIK administration, but we will better analyse it in the second part of this thesis[78].

Overall, the first humanitarian response in Kosovo was "appropriate"[79] and succeeded in providing "adequate assistance"[80] to the displaced population of over one million and a half. In the refugee camps, the morbidity and mortality rates remained well below the generally accepted emergency threshold and no serious epidemics were reported[81]. UNHCR contributed to procuring shelter, food, water, and medical care for the refugee camps set up in Albania, fYROM and Montenegro, arranging the aid arrival and distribution of relief supplies[82]. In addition, it offered legal assistance to refugee seekers and, through its strong presence on the ground in Kosovo, monitored the human rights situation for the UN Secretary-General and OSCE[83]. However, the success of the humanitarian crisis management in Kosovo was not all thanks to the UNHCR, whose reputation, on the contrary, came out of it rather damaged. Its performance revealed profoundly serious shortcomings in its emergency response capacities, that we can distinguish between of internal and external nature.

On the internal level, unpreparedness was the greatest problem. Albeit the refugee surge coinciding with NATO's intervention was truly unprecedented, UNHCR had underestimated by far the real magnitude of the crisis. Based on the testimony of Wright, "in mid-March 1999, […] the only preparedness figures being used were up to 100,000 more refugees, with additional internal displacement within Kosovo also considered possible"[84]. Moreover, the enquiry by Barutciski and Suhrke (2001) reveals a crucial bias for the confidence that the air campaign would shortly lead to the capitulation of Belgrade: "UNHCR and other UN humanitarians did not make plans to cope with a mass refugee flow in early 1999 because they believe that NATO air strikes would not lead to a mass outflow of refugees but, rather, rapidly pave the way for a political settlement of the conflict"[85]. Some accounts have also justified this miscalculation with the insufficient qualification of the personnel on the ground in the Balkans as well as the lack of leadership of the UN High Commissioner for Refugees, Sadako Ogata[86].

---

[77] DEL MUNDO, WILKINSON (1999: 11).
[78] *Infra* Chapter 4.2.3 "Humanitarian Affairs".
[79] WRIGHT (2001: 129).
[80] Report of the Executive Committee of the United Nations High Commissioner for Refugees, 9 February 2000, *The Kosovo Refugee Crisis: An Independent Evaluation of UNHCR's Emergency Preparedness and Response*, p. 207.
[81] *Ivi*, p. 206; DONEV (2002: 184).
[82] OGATA (1999: 205-208).
[83] HAMMERSTAD (2014: 235).
[84] WRIGHT (2001: 125).
[85] BARUTCISKI, SUHRKE (2001: 98).
[86] RIEFF (2000: 27); *The Kosovo Refugee Crisis*, *supra* note 80, p. 212.

As a result, UNHCR ended up running low on sufficient resources, both material and personnel, meanwhile, the stream of refugees was mounting. And so it was that on 3 April, when in just one day it touched the peak of 80 thousand Kosovars flooding towards Macedonian borders, and the government of Skopje took the controversial decision to close the borders, UNHCR's response capacity remained outpaced and overwhelmed: "The relief operation is on the verge of being overwhelmed… Our capacity to respond simply cannot keep pace with the scale of the expulsions and force population displacements"[87]. The gravity of the situation compelled Ogata to officially welcome "any support from the [Atlantic] Alliance Member States for the humanitarian operation that would enhance our efforts to save lives"[88].
The collaboration with NATO would be a "mixed blessing"[89]. Contrary to UNHCR, the reaction of the Alliance was timely, responsive, and immediately effective, thanks to the forces that had already been positioned in fYROM and Albania - a clear sign of readiness. Overall, NATO's support for humanitarian action proved to be crucial in three specific areas: security, logistics, and resources[90]. Firstly, Ogata admitted not just the difficulty in providing relief and effective protection to the refugees, but first of all to reach them: "the opposing parties have denied or limited access into certain areas to UNHCR and other humanitarian organizations, sometimes under the pretext of insecurity"[91]. Physical protection is unquestionably a challenging objective for civilian relief actors who, to fulfil their mission of assistance to the vulnerable groups affected by war, are often required to access those most dangerous territories where conflicts are still ongoing. Moreover, logistic support was the most needed by UNCHR amid a crisis that completely involved 1.5 million people. In this sense, NATO showed how military forces are more 'efficient machines' in quickly moving copious quantities of material and personnel:

> "The logistical capabilities of military organisations and their ability to deploy rapidly, mobilizing transport and communication as well as supplies for immediate survival, can provide an indispensable lifeline in refugee emergencies taking place amid armed conflict"[92].

As described by the Deputy Secretary General of NATO, Ambassador Sergio Balanzino, the Alliance's logistic collaboration with UNHCR in Kosovo consisted in:

---

[87] Press Release of the United Nations High Commissioner for Refugees, 2 Aprile 1999, *UNHCR's Ogata Demands an End to Expulsions as Humanitarian Crisis Mounts*; WRIGHT (2001: 127).
[88] Letter dated 3 April 1999 from the United Nations High Commissioner for Refugees addressed to the Secretary-General of the North Atlantic Treaty Organization, S/1999/391, pp. 3-4.
[89] *The Kosovo Refugee Crisis*, *supra* note 80, p. 8; BARUTCISKI, SUHRKE (2001: 210).
[90] WEIL (2001: 90-94).
[91] OGATA (1999: 205-206).
[92] United Nations High Commissioner for Refugees, 1993, *The State of the World's Refugees 1993. The Challenge of Protection*, London, pp. 77-78.

> "Managing the airlift of relief supplies; easing pressure on the former Yugoslav Republic of Macedonia by transferring some refugees to NATO countries temporarily; off-loading and providing immediate storage of aid cargoes; setting up refugee camp sites; and providing information regarding numbers and locations of internally displaced persons (IDPs)"[93].

Worth mentioning is *Operation Allied Harbour*, launched in mid-April in Albania, comprising 8,000 troops to ensure the supply and distribution of aid arriving by the coast, and which marked the first pro-active (and not just supporting) operation of the Alliance specifically for a humanitarian mission[94]. In addition, the recently founded NATO's Euro-Atlantic Disaster Response Coordination Centre (EADRCC), mandated to "ensure a prompt and effective disaster assistance to the United Nations", demonstrated the potential of a small but competent agency in coordinating humanitarian flights and providing air clearance, as affirmed by Ambassador Balanzino:

> "The massive expulsion of refugees from Kosovo (…) prompted many nations spontaneously to fly relief supplies into those countries. Initially, none of these operations was coordinated with UNHCR. To allow UNHCR to develop a more comprehensive picture of what humanitarian assistance was being provided, the EADRCC proposed an arrangement whereby humanitarian aid flights into the region would be given air clearance only after they had been verified and prioritised by UNHCR"[95].

However, the interplay between NATO and UNHCR was not without its challenges, and for the latter, the role of the former was so fundamental as to become "overwhelming"[96]. Evidence of that can be found in the statements of the UNHCR Ogata, in which she admitted that:

> "Relations are complicated, but I am trying to make them simpler. I have asked NATO to share information on displaced populations that it picks up through its air surveillance, but so far it has refused to do so. The UNHCR must conduct this humanitarian operation but can only do so with increased contribution from NATO Countries which have the means necessary for action on this scale"[97].

In other words, the more NATO's involvement proved its significance, the more UNCHR's limits and dependency became flagrant. A twofold subaltern relation eventually formed: on the one hand, to access refugees through the NATO-controlled airspace and the physical security with the troops on the ground in the neighbouring countries; on the other hand, to fund its humanitarian operations and relief supplies. This "asymmetrical distribution of resources" would be recurrent also in the more general dynamics of cooperation between NATO and the UN throughout the later territorial administration[98]. One peculiarity of the humanitarian response in Kosovo was that it was an unusually well-founded operation, participated actively by the donors

[93] BALANZINO (1999: 10).
[94] HUYSMANS (2002: 607).
[95] BALANZINO (1999: 11).
[96] WRIGHT (2001: 127).
[97] Quoted in HUYSMANS (2002: 608).
[98] IVANOV (2013: 79).

who, instead of 'being chased', were "desperate" to show to their public opinions to be spearheading and committed to the relief[99]. However, UNHCR saw little of this money.

The 'politicization' of the relief action is inherently related to the second type of constraint to the UNHCR's role in Kosovo, i.e., the extreme bilateralism in the international response at the detriment of a multilateral coordinated approach. The practice of assisting and protecting vulnerable groups afflicted by war and disaster ought ideally to be driven primarily by an attention to those people's well-being, thus based on acts disinterested from political or personal gains. As we will see in the next section, neutrality and impartiality are two relevant principles underlying the credibility and consistency of humanitarian action, especially for UNHCR. However, these preconceptions were severely undermined in Kosovo where instead, as evidenced by the UNHCR Special Envoy in the Balkans, Dennis McNamara, the inter-organisational cooperation between UNHCR and NATO inserted "competing priorities":

> "Governments see bilateral programs serving national interests more effectively. Hence there is support for NATO's post-conflict role, for European Union and OSCE bodies and at the same time there has been very inadequate funding for an organisation like UNHCR which is charged by these same players with coordinating the humanitarian response"[100].

Increasing bilateralism means that donor governments undertook more frequently direct *tête-à-tête* programs of support and aid with Tirana, Skopje, and Podgorica, rather than rely on the multilateral platform that UNHCR represents and was expressly founded for. This turn in NATO's government activism was not driven by a genuine affinity to the humanitarian cause, but rather by a pressing need to restore, or safeguard, the Alliance's credibility; we must not forget that the air campaign started in the first place for "averting a humanitarian catastrophe", and the aim was to foster the image of NATO's troops as "humanitarian saviours"[101].

Moreover, the Kosovo crisis held considerable political leverage that the European leaders could take advantage of domestically, due to the high indexes of attention and concern in the national public opinions for the backlashes of an uncontrolled wave of refugees on what British Prime Minister, Tony Blair, had called "the doorstep of Europe"[102].

As a result, the humanitarian response in support of Kosovar Albanian refugees was not only well-funded, but international attention favoured the creation of rapid solutions. In Albania, the recipient country of the highest number of refugees from Kosovo, the collaborative efforts between NATO, international organizations such as UNHCR and the World Food Programme

---

[99] HAMMERSTAD (2014: 233).

[100] Interview to the UNCHR Special Envoy, Dennis McNamara, *"It's Hard to Be Optimistic"*, in *Kosovo: one last chance*, UNHCR Refugees Magazine, 3 (116), p. 22; BARUTCISKI (2001: 211).

[101] HAMMERSTAD (2014: 235-236).

[102] RIEFF (2000: 25-26); HARSCH (2014: 70).

(WFP), and over 180 Non-Governmental Organizations (NGOs) successfully provided 40 per cent of the refugee population settled in more than 300 camps, while the residual majority were directly hosted by the Albanian people with additional support from UNHCR through cash grants and other assistance to host families[103]. In fYROM, albeit dealing with a smaller number, the situation appeared more complicated because of the national security concerns of the government of Skopje about the potentially destabilizing effects of letting passing through the borders a large stream of Kosovo Albanians. The country was already coping with internal tensions due to its historical ethnic minority of Albanians on the territory. When eventually the Macedonian government closed the border on 3 April, abandoning thousands of Kosovars stranded, the international community rapidly reacted with a twofold programme of border-sharing: the 'Humanitarian Evacuation Programme' (HEP) and the 'Humanitarian Transfer Programme' (HTP). The mechanism was the same: refugees were airlifted in these "unorthodox" ad-hoc evacuations to countries willing to accommodate them temporarily. In only one week, the emergency ended with almost 96,000 persons moved to 28 European countries through HEP, in addition to some 1,400 people who were transferred from fYROM to Albania and Türkiye within the framework of the HTP[104]. These programmes of border-sharing were a solution for the international community only in the sense that they were set up bilaterally between NATO and the government of Skopje; it would only later that UNHCR took it over. Given the controversy of this system, as we will address in the next section, UNHCR appeared very reluctant to participate initially, so much so that it even was reported attempts by the UNHCR personnel on the ground to physically block the departure of the convoys[105].

Ultimately, the (virtually) universal leading actor for the management of the refugee crisis, UNCHR, exited from the experience in Kosovo marginalized and its reputation seriously harmed. The international humanitarian response was effective, but not for the UN agency. On the contrary, UNHCR failed to show resource readiness and personnel capacities at the moment of most need, finishing to resort to NATO's capabilities. This decision, in turn, came with a price for UNCHR:

> "Perhaps one of the most fundamental mistakes we made was to underestimate the enormity of the stakes on the table… We knew of course that Kosovo was a huge humanitarian crisis, but the political and military stakes were even higher. In that environment, every success, and every mistake was magnified. And while everyone was quick enough to take credit, they were even quicker to pass on the blame. We were amateurs in this game"[106].

---

[103] Annual Global Report of the United Nations High Commissioner for Refugees, 1999, *Kosovo Emergency*, p. 345.
[104] *Ivi*, p. 345.
[105] BARUTCISKI, SUHRKE (2001: 105).
[106] Anonymous UNHCR official quoted in DEL MUNDO, WILKINSON (1999: 13).

UNHCR did not live up to the standards required and expected from its mandate, and such a vigorous debacle could not but trigger profound consequences.

2.2.2 Legal implications of the humanitarian response

The deceiving experience in Kosovo led the UN High Commissioner for Refugees, Sadako Ogata, to acknowledge that the "traditional views on asylum and assistance have been tested". Hence, we shall now proceed to consider the two most serious humanitarian controversies.
Firstly, the 'crowded' humanitarian response in Kosovo unfolded in the context of a serious overlooking of the core principles of international refugee law. Ensuring the observance and compliance to the fundamental right of asylum is the inherent mission entitled by the founding mandate of UNHCR; but the developments of the humanitarian crisis at the borders of fYROM demonstrated the failure of the UN agency to fulfil its statutory responsibility. We have already seen that within few weeks from the beginning of NATO's air campaign, an increasingly massive flow of Kosovar residents fled from their homes and approached the neighbouring countries. While for Albania and Montenegro, the accommodation occurred smoother, the government of Skopje, frightened by the mass domestic repercussion of a mass influx of Kosovar Albanians, closed its border at the Blace passage, preventing the access to 80 thousand people stuck in the open, with nowhere to go and repair. UNHCR advanced the firm position that Macedonia must admit refugees in accordance with international law, based on the *non-refoulement* principle, prohibiting the expulsion of refugees to areas where they would be in danger[107]. Skopje's refusal of entry would have forced the refugees back into a hostile environment with Serb forces, violating the principle. Moreover, since the early 1980s, UNHCR has adopted as a standard policy for refugees to seek asylum in the country of first arrival:

> "In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least temporarily... In all cases, the fundamental principle of non-refoulement-including non-rejection at the frontier-must be scrupulously observed"[108].

Asylum must be unconditional and chiefly, "the meeting by States of their protection obligations should not be dependent on burden-sharing arrangement first being in place"[109]. In the case of Kosovo, instead, all these cau-

[107] BARUTCISKI, SUHRKE (2001: 99).
[108] United Nations High Commissioner for Refugees, Conclusions Adopted by the Executive Committee on the International Protection of Refugees, December 2009, EXCOM Conclusion No. 22 (XXXII), *Protection of Asylum-Seekers in Situations of Large-Scale Influx* (1981), Sec. II para. A (1).
[109] United Nations High Commissioner for Refugees, Conclusions Adopted by the Executive Committee on the International Protection of Refugees, December 2009, EXCOM Conclusion No. 85 (XLIX), *Conclusions on International Protection* (1998), para. P.

tions were disregarded and circumvented by the creation of an ad-hoc remedy agreed between governments; the dozens of thousands of civilians blocked outside Macedonia did not get accepted but were transferred. In addition, also the 'humanitarian corridors' did not utterly abide by the principle of first asylum. Firstly, the refugees transferred to other 29 countries could not apply there for asylum as provided in the 1951 Convention but were given a one-year temporary leave[110]. The concepts of resettlement, humanitarian evacuation and temporary protections considerably blurred as European countries interpreted HEP as emergency solutions of temporary protection, while the rest of the world recognized it as a mere resettlement operation[111]. Furthermore, it was never clarified the criteria of willingness and procedure standards of the programme, as both selection and screening deemed to function according to a "first-come first-served" method, with stories of families forcibly separated in different unknown destinations[112].

The second significant legal implication that emerged from the experience in Kosovo is the controversial impairment of the principles of neutrality and impartiality. These two are traditionally recognized as cornerstones of international humanitarianism, recalled also in the Statute of the UNHCR, whose first chapter defines the agency as "entirely non-political […] humanitarian and social"[113]. In the past decades, literature and practice have increasingly endorsed the significance of Civic-Military Collaboration (CIMIC), i.e., the collaboration between civilian and military actors in contexts of institutional fragility or conflicts, emphasizing, simultaneously, the need to preserve the civilian nature of assistance under the military weight:

> "The co-ordination of humanitarian efforts with political and military actions in refugee-producing conflicts is not without its difficulties. It blurs traditionally distinct roles and, if mismanaged, could compromise the strictly neutral character of humanitarian aid, which is the best guarantee of access to people in need. Nevertheless, such co-ordination often provides an opportunity to advance the peace process, as relief efforts give rise to negotiations that can subsequently develop beyond humanitarian issues to conflict resolution. There is room for a variety of patterns and practices, as long as basic humanitarian principles are not compromised"[114].

In Kosovo, the start of NATO's engagement marked a crucial turning point as from that moment, UNHCR was substantially relying on one of the warring parties. The degree of dependency on its resources, logistics and security, which we have seen in the previous section, inevitably resulted in greater leverage for NATO in defining the "humanitarian agenda": the civilian character of assistance in Kosovo existed only virtually and as a disguise[115]. The humanitarian interplay between NATO and UNHCR was a cooperation only

---

[110] HAMMERSTAD (2014: 243).
[111] BARUTCISKI, SUHRKE (2001: 102).
[112] *Ibid*.
[113] UNHCR Statute, *supra* note 56, Ch. I Art. 2.
[114] UNHCR, *The State of the World's Refugees 1993*, *supra* note 92, pp. 77-79; PUGH (2000: 234).
[115] MINEAR, VAN BAARDA, SOMMERS (2000: 16).

by name, as the intervention of the former proved to be overwhelming and marginalizing the latter.

In conclusion, we can learn from the experience in Kosovo that CIMIC can overcome operational limits inherent to civilian humanitarian action, especially in most critical circumstances: from the access to refugees and IDPs in the middle of the fights to the vast availability of resources and efficient logistics. However, the unfortunate part of UNHCR in the events of 1999 emphasizes as much the sacrosanct imperative to maintain a balance between the various actors to not contravene the guiding principles of humanitarian assistance, other than the very same credibility and reputation of the civilian international organisation. Granted, a solution for that would simply be the anticipation, preparedness, and readiness of balanced contingency plans for an inter-organisational collaboration[116]. In this way, international originations may avoid the situation of improvising the terms and mechanisms of such collaborations amid a crisis and without clear boundaries, resulting in a skewed partnership – that is, precisely what occurred between NATO and UNHCR in the middle of the humanitarian crisis management in Kosovo, in April 1999.

[116] BARUTCISKI, SUHRKE (2001: 204); WEIL (2001: 102); WRIGHT (2001: 128); HAMMERSTAD (2014: 244, 245).

PART II: PEACE-BUILDING

Chapter Three: An Introduction to International Territorial Administrations

State sovereignty is one of the pillars of the modern international system, yet there are instances where control over a territory temporarily shifts from the local authority to an international entity, either a group of states or an international organisation. This form of governance, often referred to as international territorial (or transitional) administration (ITA), still lacks a consistent terminology and definition in legal literature. Verdirame describes it as "the direct or indirect exercise by an international organisation of such public functions (legislative, executive or judicial) as to place the organisation in effective control of the territory"[1], whereas Stahn as the "exercise of administering authority (executive, legislative, or judicial authority) by an international entity for the benefit of a territory that is temporarily placed under international supervision or assistance for communitarian purposes"[2]. Both specify the powers that ITAs might hold, but Stahn highlights their transitional nature. Alternatively, the noted French jurist Rousseau considers a '*territoire international*' when directly administered by an international organization or entity, removed from the exclusive rule of any single state[3]. Shaw similarly speaks of 'international territories' as "a particular territory [that] is placed under a form of international regime"[4]. De Brabandere and Brownlie slightly change the appellation into 'internationalised territory', respectively referring to "the regime of administration of a territory conferred upon one or more state, or to one or more international organisations"[5], and of "a special status […] created by multilateral treaty and protected by an international organisation"[6]. Benzing prefers the term 'direct administration' as the case where the "governmental functions in a specific territory are exercised not by the territorial State, but by an entity mandated to do so under international law, i.e., an international organisation or a single state, or a group of states under an international mandate"[7].

Whether termed international, transitional, special, or direct, ITAs represent a specific form of administration functional to the fulfilment of determined interests and purposes legitimized by the international community. This is the most important characteristic distinguishing them from other historical forms of administration, such as colonies, protectorates or military occupation. Firstly, an ITA is not a colony because it does not involve the exploita-

[1] VERDIRAME (2011: 233).
[2] STAHN (2008: 43-45).
[3] Charles Rousseau quoted in DE BRABANDERE (2009: 81).
[4] SHAW (2003: 162).
[5] DE BRABANDERE (2009: 81).
[6] BROWNLIE (2003: 60).
[7] BENZING (2010).

tion of the resources of one territory to the benefit of a single state. Albeit it may resemble the historical colonial governments with foreign (European) officials, the foundational 'social contract' is crucially different: in the XIX century, the subjected populations were mistreated under colonial rule, whereas ITAs are legitimised by the international community and are meant to uphold higher values, including human rights and the rule of law[8]. An international territorial administration is also not a protectorate, i.e., the situation whereby "a dependant state retains control over its internal affairs while leaving its external protection in the hands of another state"[9]. ITAs are not established on a territory ceding the competencies over its external relations to the international community; instead, their main purposes are domestic, towards the preservation of people's lives, conflict resolution and institution-building[10]. Lastly, an international territorial administration is not a military occupation, as it generally does not involve of the warring parties, but rather it is set up also as a means of peacekeeping and/or peacebuilding. Historical precedents of "transformative occupation"[11] after World War II established in Germany and Austria by the Allies exist, but they are distinct from mere military occupations aimed at conquest by a single state.

There are two primary justifications for the establishment of a territorial administration by the international community, both related to the sovereignty of the affected state: the capacity to govern and the quality of governance[12]. In the first case, ITAs overcome the deficiency of a public authority to exercise effective and direct control over a territory, especially in post-conflict scenarios where wars have damaged or destroyed public infrastructures and institutions, creating a legal and political vacuum. The introduction of an ITA serves to fill this gap, ensuring continuity in governance, which is crucial in war-torn societies. Alternatively, existing governmental structures might be inadequate, with policy outcomes failing to meet certain international standards. Here, the objective of territorial administrations is to guarantee a certain 'quality' of governance, focusing on freedom, democracy and the rule of law. This reflects the international community's perception of a 'lack' in the authority and qualification of a specific territory, usually newborn, historically linked to the phenomenon of decolonization, or authoritarian regimes[13]. In sum, while the first category usually requires more direct engagement of the international authority to rebuild or replace missing public institutions through peace-building operations, the second one may envision more nuanced degrees of 'internationalization' of the territory.

Benzing identifies five criteria for classifying various forms of ITAs: 1) the duration, whether transitory, open-ended, or permanent; 2) the administering entity, either composed by a group of states or by an international organisa-

[8] BENZING (2010); MURATI (2020: 5).
[9] BLEDSOE, BOCZEK (1987: 43).
[10] DE BRABANDERE (2009: 80).
[11] BENZING (2010).
[12] WILDE (2001: 583).
[13] CHESTERMAN (2005: 339).

tion; 3) the legal basis, be it a treaty, a UN resolution or military occupation; 4) the degree of internationalisation, meant as spectrum of competences from full powers to limited areas of administration; and 5) the purposes, which it is not possible to enlist exhaustively but briefly summarise in the determination of the final status of a territory, the filling a government vacuum due to a failing state, the protection of human rights and minorities, and the attempt to resolve internal conflicts[14]. These categories are to be considered overlapping rather than mutually exclusive.

Despite the ostensibly virtuous mission of ITAs, their legitimacy does not go unchallenged. Many scholars criticize this practice as an innovative disguise of neo-colonialism and imperialistic aims[15]. Ralph Wilde, one of the most authoritative critic voices, identifies elements of the European colonial dominion in today's ITAs, referring to them as "neo-trusteeship" and "post-modern imperialism"[16]. The only difference of this new guise, argues Wilde, is that objectives are "set by the member states of international organisations collectively, rather than by European states individually"[17]. Paris similarly labels peace-building operations as "an updated version of the *mission civilisatrice*"[18], while Verdirame acknowledges the UN administration as a form of foreign rule, though "outwardly benign rather than colonial"[19]. In addition, Chandler critiques 'UN protectorates' as an instrument for the international community to impose values, suggesting that "some cultures are not 'rational' or 'civil' enough to govern themselves"[20].

3.1 Historical precedents

The origin of ITAs is generally recognised starting following World War I. Some early experiments of internationalization had already been attempted and/or occurred in the XIX century in Cracow [1815-1846], Istanbul and Shanghai [1845-1943][21], but they were still managed by individual states[22]. The groundbreaking event was the creation of the League of Nations, the first international organisation designed "to promote international cooperation and to achieve international peace and security"[23]. To cope with the aftermath of the Great War, this new global actor was given by the European powers and the United States direct or indirect responsibilities over certain

[14] BENZING (2010).
[15] BROOKS (2003: 2275); CHESTERMAN (2005: 47).
[16] WILDE (2008: 293).
[17] WILDE (2001: 602).
[18] PARIS (2002: 637).
[19] VERDIRAME (2011: 241).
[20] CHANDLER (2000: 3).
[21] STAHN (2008: 6-7).
[22] Proposed but never realized internationalisation also regarded Istanbul (1821 and 1896), Mount Athos (1913), and Spitzbergen (1914), according to YDIT (1961).
[23] League of Nations, *Covenant of the League of Nations*, 28 April 1919.

territories, resulting in two distinct forms of administration, respectively ITAs in *strictu sensu* and the Mandates System.

3.1.1 Territorial administrations under the League of Nations

The League was given governmental prerogatives over unresolved territorial disputes among the states, such as the Free City of Danzig [1920-1939], the Saarland [1922-1935], the district of Leticia in Colombia [1933-1934]; in addition, it had the authority to appoint the chair of the Upper Silesia Commission [1922] and the Memel Harbor board [1924][24]. Hereafter we shall illustrate the establishment of the Free City of Danzig and the Saar Basin, the very first exercises of territorial administration by an international organisation.

a. The Free City of Danzig [1920-1939]

Danzig is a strategic harbour city with access to the Baltic Sea that had always been disputed between Prussia, later Germany, and Poland. The confrontation was about the preponderant German character of the population *vis-à-vis* the need for a passage to the sea for Warsaw. The city had already experienced a period of great autonomy as a "Free City" or "Free State" in the XV and XIX centuries, followed by systematic occupations and annexations by both Poland and Prussia[25].
After WWI, the Versailles Peace Treaty placed Danzig "under the protection of the League of Nations", but with a considerable role shared with Poland, responsible for the city's external affairs and the customs regime[26]. Internally, the League appointed a Commission, chaired by the 'High Commissioner', who had specific powers in drafting of the Constitution of the Free City of Danzig and arbitrating disputes between the city and the government of Warsaw. The project aimed for a permanent 'internationalised' territory and the administering role of the League of Nations was considerably limited to a temporary institution until the adoption of a Constitution. However, this was disrupted by the expulsion of the High Commissioner and the annexation of the territory by Germany before the spark of World War II.

b. The Saar Basin [1922-1935]

The administration of the Saarland was by far more extensive and significant. This German region was at the heart of a historical dispute with France, which obtained as compensation for WWI the right to exploit this rich mining land for 15 years. However, concerns from the Americans and the British

[24] BENZING (2010).
[25] DE BRABANDERE (2009: 17).
[26] WILDE (2001: 596).

about the potential for German excessive frustration and another war prevented direct annexation by Paris. The Treaty of Versailles tasked the League of Nations with administering the Saarland, through an independent and neutral "Governing Commission" which, despite its limited timeframe, held broad governmental powers:

> "all the powers of government hitherto belonging to the German Empire, Prussia, or Bavaria, including the appointment and dismissal of officials, and the creation of such administrative and representative bodies as it may deem necessary"[27].

It is interesting to note that Germany had not lost sovereignty over the Saar Basin. Instead, under Article 49 of the Versailles Peace Treaty, it "renounces [d] in favour of the League of Nations, in the capacity of a trustee, the government of the territory defined above"[28]. This means that similar to the future case of Kosovo, the international organisation was not granted *de jure* sovereignty but *de facto* administrative authority over the territory. The Saarland eventually returned to Germany when its population overwhelmingly voted, with a 90.8% majority in the referendum, as envisaged in the Versailles Peace Treaty, to decide whether to unite with France, and Germany or maintain the *status quo*:

> "At the termination of a period of fifteen years from the coming into force of the present Treaty, the population of the territory of the Saar Basin will be called upon to indicate their desires in the following manner: A vote will take place by communes or districts, on the three following alternatives: (a) maintenance of the regime established by the present Treaty and by this Annex; (b) union with France; (c) union with Germany"[29].

3.1.2 The Mandates System

Direct administration of the League was also considered to address the question of the former colonies of the defeated great powers of Germany and the Ottoman Empire. Such a course would have fostered the process of independence of a plethora of territories, in line with the principle of self-determination, as articulated by US President Woodrow Wilson in 1917, for a new international system of nation-states. However, due to pressure from the European powers eager to preserve (and even expand) their imperial dominions, Wilson's directives were implemented cautiously[30]. The Mandates System was established, wherein colonial territories were neither directly annexed by the victorious powers nor granted immediate independence, but were placed under the control of individual states to promote "well-being and development" on behalf of the League of Nations until they would be deemed sufficiently capable of self-government:

---

[27] Peace Treaty of Versailles, 28 June 1919, Annex to the articles 45-50, Chapter II, para. 19.
[28] *Ivi*, Art. 49.
[29] *Ivi*, Art. 50 para. 34.
[30] STAHN (2008: 76 ff.)

> "To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are *inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world*, there should be applied the principle that the well-being and development of such people form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.
> The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who because of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League"[31].

The system was thus divided into three classes – A, B and C – based on their perceived "stage of development of the people, the geographical situation of the territory, its economic condition and other similar circumstances" (Article 22). In practice, this international oversight often served merely as a pretext for maintaining rule and exploitation by a single state.

3.1.3 The UN Trusteeship System

After the Second World War, the question of governance emerged again for those territories previously under the control of the defeated Empires of Germany, Italy and Japan. The newly established UN framework created the Trusteeship Council, drawing from the League model of Mandates but trying to adjust its shortcomings, particularly to advance self-government and decolonisation. The "trust territories" included the former mandates, territories detached from the defeated states of WWII and territories voluntarily placed under the system through a trusteeship agreement[32]. The UN Trusteeship System addressed the limitations of the League Mandates System, firstly by explicitly aiming for the progressive development of the territories "towards self-government or independence as may be appropriate to the particular circumstances of each territory"[33]. The oversight role was performed by the Trusteeship Council, responsible for ensuring that it adhered to the principles outlined in the trusteeship agreement, and promoting political, economic, social and educational advancement[34].
Furthermore, the new system was cleared of the racial superiority contained in the Versailles Peace Treaty referring to the territories on trust as "uncivilised" and of inferior races and cultures, deleting notions such as "tutelage", "advanced nations", or the embarrassing stance for the inability "to stand by themselves under the strenuous conditions of the modern world", for instead employing a more neutral language[35].

---

[31] Peace Treaty of Versailles, *supra* note 27, Art. 22, paras. 1, 2.
[32] United Nations, *Charter of the United Nations* (hereafter UN Charter), 24 October 1945, 1 UNTS XVI, Art. 1.
[33] *Ivi*, Art. 76.
[34] *Ivi*, Art. 88.
[35] STAHN (2008: 94).

In conclusion, the UN Trusteeship System started to resemble more the features of the ITAs framework as the administering authority. These two paradigms remained formally distinct due to Article 78, which prohibits trustees over "territories which have become Members of the United Nations"[36]. The scope of the UN Trusteeship System was most thought to the post-war context of decolonization. However, at least in principle, Article 81 envisaged that the administering authorities could be held by "one or more states, or the Organisation itself [the UN]"[37]. Although this possibility was never realized in practice, hereafter we shall reflect on two relevant failed precedents: the city of Jerusalem and South West Africa (Namibia).

a. The *corpus separatum* of Jerusalem

The powerful symbolism of Jerusalem is well-known to everyone: the heart of the Holy Land of Palestine, the spiritual cradle of three world religions, Christianity, Islam and Judaism. After WWI, the United Kingdom became the administering authority of Palestine on behalf of the League of Nations, within the framework of the Mandates System aimed to prepare the territory for self-government. The interwar period saw increasing clashes between the Jews and the Arabs that the British appeared unable to manage, until the final decision in 1947 to terminate its mandate and refer back the issue of Palestine to the United Nations. It was thus established a UN Special Committee on Palestine, whose final report suggested for the first time the internationalisation of Jerusalem, arguing that an International Trusteeship System was:

> "the most suitable instrument for meeting the special problems presented by Jerusalem, for the reason that the Trusteeship Council, as a principal organ of the United Nations, affords a convenient and effective means to ensuring both the desired international supervision and the political, economic and social well-being of the population of Jerusalem"[38].

In November, the General Assembly finally adopted the *Partition Plan* (Resolution 181), envisaging the territorial division between Arabs and Jews, and the transformation of the Holy City into a distinct demilitarized territory, under a specific regime and statute:

> "The City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations.

[36] UN Charter, *supra* note 32, Art. 78.
[37] *Ivi*, Art. 81.
[38] Proposal of the United Nations Special Committee on Palestine, 31 August 1947, General Assembly Official Records 2nd Session, Supp. No. 11, Chapter VI, Part III, *City of Jerusalem*, Justification 6.

> The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations"[39].

However, as argued by De Brabandere, the formulation as such of the text did not imply that the city could have been considered a proper trust territory under the Charter, as there was no explicit reference to Chapters XII (The International Trusteeship System) nor XIIII (The Trusteeship Council)[40]. Following Resolution 181, the Council elaborated and approved a draft *Statute for the City*[41], recognizing the authority conferred by the General Assembly and justifying the framework of internationalisation of Jerusalem as a "special regime"[42]. However, the legality of the draft Statute remained controversial, and eventually, it was never implemented due to the non-adoption at the fifth session of the General Assembly in 1950[43].

b. South West Africa under the direct responsibility of the UN

Known formerly as South West Africa, Namibia was colonized by Germany in the late XIX century. Following the Great War, it passed under the control of South Africa as a Mandatory state of the League of Nations. The post-WWII era saw the country's international status being restructured under the new UN Trusteeship System; however, the government of Johannesburg refused to cede any prerogatives over the territory, such as rich of diamond and mineral mines and proceeded instead to exacerbate its control by institutionalizing also in Namibia a regime of *apartheid* to protect the interests of the ruling white minority. When in 1966, armed conflict finally broke out between the South West African People's Organisation (SWAPO) and Johannesburg's forces, the General Assembly intervened revoking the Mandate of South Africa with the Resolution 2145, deciding that the country had "no […] right to administer the Territory and that henceforth South West Africa [Namibia] comes under the direct responsibility of the United Nations"[44].
The Organisation assumed direct administrative control over the territory but, similarly for the case of Jerusalem, it was not clear on what legal basis, thus risking compromising the operation. The mandate of Johannesburg was effectively terminated, but there was no reference in Resolution 2145 (nor the following ones) about Namibia effectively becoming a trust territory directly administered by the United Nations by Article 81, nor was ever signed a trusteeship agreement as contemplated by Article 77[45]. As for the case of

[39] Resolution of the United Nations General Assembly, 29 November 1947, A/RES/181(II), *Future government of Palestine*, Part III *City of Jerusalem*, point A.
[40] DE BRABANDERE (2009: 19); STAHN (2008: 100).
[41] Report of the United Nations Trusteeship Council, T/592, 4 April 1950, *Statute for the City of Jerusalem*, Art. 1.
[42] DE BRABANDERE (2009: 20).
[43] STAHN (2008: 102).
[44] Resolution of the United Nations General Assembly, 27 October 1966, A/RES/2145(XXI), *Question of South West Africa*, para. 4.
[45] STAHN (2008: 103, 105).

Jerusalem, the justification proposed was on grounds of the exceptionality of the situation, conditioning a *sui generis* authority[46], and in 1967, the General Assembly proceeded to establish the so-called "United Nations Council for South West Africa" (later renamed for Namibia)[47]. Its task was to oversee the administration of the territory until the eventual independence and by trying to involve as much as possible the local population. However, South Africa's reticence to yield its governmental powers and withdraw its military presence in Namibia prevented the access to the territory to the UN authorities for several years. Consequently, the Council for Namibia exercised its powers limited and only *de jure*, becoming a "pressure group"[48], despite the support coming from the other UN organs, such as the International Court of Justice with its 1971 Advisory Opinion[49] sanctioning the illegality of Johannesburg actions, and the endorsement of the Security Council. Only a more direct engagement of the latter, as we will see in the next section, would be indispensable for the solution of the crisis.

In conclusion, we have seen that following WWI, the creation of the League of Nations represented the actual point of origin of international territorial administrations. This instance developed along two distinct tracks, that is, on the one hand, the international organisation held direct prerogatives over certain (smaller) territories or cities, and on the other hand, for the case of colonies, the international community opted for indirect supervision over the exercise of single states. We have also seen that some deficiencies in the Mandate System of the League of Nations were addressed in the following UN Trusteeship System, which also comprised the possibility for a direct administration of the Organisation. Despite some attempts, this convergence with the ITAs remained only formal, without being never realized, as for the case of Jerusalem, or controversially attempted in Namibia. However, the ultimate completion of the virtual administration in Namibia at the turn of the 1990s corresponded with the start of a new page for the United Nations. As we will see in the next section, it is in fact in this first decade post-Cold War that we assist to the greatest extent possible to the direct and expanding involvement of the Organisation in territorial administrations around the world.

3.2 UN peace operations

The United Nations was created "to save succeeding generations from the scourge of war"[50]. This fundamental commitment has been operationalized

[46] STAHN (2008: 104).
[47] Resolution of the United Nations General Assembly, 19 May 1967, A/RES/2248, *Question of South West Africa*.
[48] ROCHA (1984: 63).
[49] Advisory Opinion of the International Court of Justice, 21 June 1971, ICJ Reports 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.
[50] UN Charter, *supra* note 32, Preamble.

by the Organisation in four areas of action: conflict prevention (or preventive diplomacy), addressing the structural sources of conflict to reinforce the foundations for peace, usually through low-profile diplomatic initiative; peace-making, addressing ongoing conflicts to bring them to health through diplomatic and mediation channels, involving both official representatives from governments, coalition of states or international arrangements, as well as informal or non-governmental actors; peacekeeping, rapidly evolved from traditional ceasefire observing missions to more complex model of civilian-military cooperation (CIMIC) to build peace; and finally the more recent peacebuilding, comprehensive efforts to reconstruct structures of peace and provide the necessary resources and support to create a stable and enduring well-being among people, beyond the mere cessation of hostilities[51].
If we were to employ the UN vocabulary, ITAs represent an intersection of peacekeeping and peacebuilding, integrating immediate stabilization efforts and long-term development and governance support. At the same time, ITAs are an expansion of 'simple' peacebuilding because the Organisation may be entitled to carry out also executive, legislative and/or judiciary functions, i.e., not just supporting sovereignty institutions but creating and exercising explicitly state prerogatives for a transitional period. Differently from the case of the League of Nations, here it is not possible to identify *ab initio* proper UN administrations comparable to the internationalized Free City of Danzig or, more appropriately, the Saar Basin; rather, the UN practice has progressively emerged, evolved and expanded. This section gauges some of the principal steps that were taken along this path, aiming to emphasize the increasing responsibilities that the Organisation has gradually assumed in various sectors.

3.2.1 Early experiments of UN peacebuilding

The UN's commitment to peacebuilding did not spark immediately since its foundations but rather grew through a self-aware process of the Organization, composed of many attempts at times more successful but more frequently seriously flawed. Although the notion of peacebuilding is more appropriate for the practice of the 1990s, it is possible to identify some primordial traces in earlier operations. Hereafter we shall consider two important cases illustrating some initial administrative role of the Organisation: the controversial mission in Congo and the virtual administration of Namibia – the latter second part of the story that we have anticipated in the previous section.

[51] Report of the United Nations Secretary-General Boutros, 31 January 1992, DPI/1247, *An agenda for peace: preventive diplomacy, peace-making and peacekeeping*, paras. 20-21; Report of the High-Level Independent Panel on United Nations Peace Operations (*Brahimi Report*), 21 August 2000, A/55/305-S/2000/809, New York, pp. 2-3.

a. Opération des Nations Unies au Congo (ONUC) 1960-1964

The UN operation in the Congo (known by the French acronym ONUC: *Opération des Nations Unies au Congo*) represented the first operation blending peacekeeping elements with early state-building experiments. It was established in the summer of 1960, upon the request of the newly independent government of the Democratic Republic of the Congo (DRC), after the nonconsensual military intervention by Belgium, a former colonial power. The Security Council adopted Resolution 143, requesting Brussels to withdraw its troops from the territory and authorising the UN Secretary-General to take all the necessary measures to "provide the Government [of Leopoldville] with such military assistance as may be necessary until […] the national security forces may be able […] to meet fully their tasks"[52]. As the mission evolved, its scope expanded to preserving territorial integrity and political assistance, assisting the government in maintaining law and order, preventing civil war, and removing foreign military, paramilitary and mercenary forces[53]. ONUC also grew significantly in scale, employing nearly 20,000 military and civilian personnel, and received the authorisation to use force against the secessionist groups in the eastern part of the country, making it a groundbreaking and unprecedented mission in the history of the Organisation. It lasted four years, gradually withdrawing after the reintegration of the Katanga region in 1963. However, DRC would struggle to maintain autonomously the level of stability and control in place when ONUC departed in 1964, revealing the impelling need for the UN to undertake more comprehensive operations, going beyond mere restoration of law and order[54] – this is where the hybrid case of Namibia fits in.

b. United Nations Transition Assistance Group (UNTAG) 1978-1990

As we have seen in the previous section, the UN's direct responsibility over South West Africa began after few years after the termination of ONUC and, despite the ambiguity about its legal foundation, envisaged since the beginning a wider approach. In 1978, the Security Council intervened more decisively when its permanent members (P5), also called the Contact Group in this matter, agreed with South Africa on a *Settlement Proposal*[55], appointing a UN Special Representative (SR) for Namibia. In addition, the Council adopted Resolution 435 creating the United Nations Transition Assistance

[52] Resolution of the United Nations Security Council, 14 July 1960, S/RES/143, *Calling upon Belgium to withdraw its troops from the Congo (capital Leopoldville)*.
[53] Resolution of the United Nations Security Council, 21 February 1961, S/RES/161, *On the Death of Patrice Lumumba and reorganisation of Congolese armed forces*; Resolution of the United Nations Security Council, 24 November 1961, S/RES/169, *The Congo Question*.
[54] DE BRABANDERE (2009: 26).
[55] Letter dated 10 April 1978 From The Representatives of Canada, France, Germany, Federal Republic Of, The United Kingdom Of Great Britain and Norther Ireland And United States of America addressed to the President of the Security Council, S/12636, *Proposal for a Settlement of the Namibia Situation*.

Group (UNTAG) to assist the newly appointed SR for Namibia in ensuring "the early independence of Namibia through free elections under the supervision and control of the United Nations"[56].
UNTAG was the first multi-faceted UN operation since the termination of ONUC in 1964. It focused more on political purposes than military, covering in practice five central areas: civil administration, military disarmament, civilian policing, refugee return, and organisation and control of elections[57]. The Special Representative was placed at the centre of a clear and centralized chain of command and the UN staff was sufficiently spread all over the country to correctly assess the needs and concerns of the local population[58]. Despite its ten-year delayed implementation due to continuous South African obstruction, the significance of the 'virtual' UN administration of Namibia resides in the increasing civilian and administrative performance of the Organisation. The political transition in 1990 occurred smoothly and rapidly, resulting in consistent success in creating solid conditions of lasting political stability in post-independence Namibia[59].

3.2.2 The decade of internationalisation

The 1990s were a turning point in the history of international relations for a twofold reason. Firstly, with the end of the Cold War, the Security Council was free from the ideological chains that had frequently hampered its functioning. In his *An Agenda for Peace*, Secretary-General Boutros Boutros-Ghali foresaw the potential "in this new era of opportunity" for expanding the horizon of objectives, missions and engagement of the United Nations in its fundamental mission for peace:

> "The nations and peoples of the United Nations are fortunate in a way that those of the League of Nations were not. We have been given a second chance to create the world of our Charter that they were denied"[60].

However, concomitant to this new hope, the Secretary-General did not fail to acknowledge that a new fearful danger was taking its place:

> "fierce new assertions of nationalism and sovereignty spring up, and the cohesion of States is threatened by brutal ethnic, religious, social, cultural or linguistic strife. Social peace is challenged on the one hand by new assertions of discrimination and exclusion and, on the other, by acts of terrorism seeking to undermine evolution and change through democratic means"[61].

To cope with these new threats to peace, it was necessary for a new, structural and comprehensive engagement of the United Nations to the deepest caus-

---

[56] Resolution of the United Nations Security Council, 29 September 1978, S/RES/435, *Question of Namibia*, para. 3.
[57] HOWARD (2014: 297).
[58] *Ibid*.
[59] *Ivi*, p. 295.
[60] Report *An Agenda for Peace*, *supra* note 51, paras. 14-15, 75.
[61] *Ivi*, para. 11.

es of conflict: "economic despair, social injustice and political oppression"[62]. Hence, he endorsed the urgency of implementing, alongside traditional preventive diplomacy, peace-making and peacekeeping, a greater role in post-conflict peacebuilding missions, meant as all those "action[s] to identify and support structures which will tend to strengthen and solidify peace to avoid a relapse into conflict"[63]. To accomplish this "wider mission", he finally emphasized, it was necessary for the "concerted attention and effort" of all States, regional arrangements, and NGOs[64].

Boutros-Ghali's appeal was eventually fulfilled, or at least partially. The international community became somehow more self-aware of its responsibilities and its duties. Sometimes we may say at a remarkably high price, for instance after the genocides in Rwanda in 1994 or Srebrenica in 1995. However, there was an increasing and wide-spreading sentiment in the global public opinion, that the collectivity of States, and the Security Council firstly, could not remain indifferent before the brutality of the armed conflicts, now live transmitted on TV. Accordingly, the 1990s registered a surge in the number of UN peace operations, and hereafter we shall examine the most relevant cases, emphasizing the further degree of involvement by the Organization in direct post-conflict management, whose point of culmination would be in 1999, in Kosovo and East Timor.

a. United Nations Transitional Authority in Cambodia (UNTAC) 1992-1993

Cambodia was part of the French colonial Empire, fell in disgrace after WWII, and only in 1953 succeeded in obtaining independence. In the 1970s the country suffered internal havoc, due to the reckless US bombing related to the Vietnam war and the rise to power of the Khmer Rouge. Pol Pot's genocidal regime, perpetrator of the most heinous crimes in human history, was overthrown in 1978 by an invasion of the Vietnamese communist forces. From there a complex, decade-long civil war among four factions began, afflicting the country until the withdrawal of Hanoi's forces in 1988. After various diplomatic attempts, in 1991, all the factions agreed in Paris on a *Comprehensive Political Settlement*, envisaging the establishment of a UN Transitional Authority.

The Security Council welcomed the Paris Agreement and authorized the creation of the United Nations Transitional Authority in Cambodia (UNTAC), adopting Resolution 745[65]. UNTAC was appointed with civilian and military components under the direct responsibility of the Secretary-General, acting through his Special Representative. The mandate was overly broad, includ-

---

[62] *Ivi*, paras. 55-59.
[63] *Ivi*, para. 21.
[64] *Ivi*,, paras. 16, 60-65.
[65] Resolution of the United Nations Security Council, 28 February 1992, S/RES/745, *Cambodia (28 Feb)*.

ing human rights protection; organisation of free and fair elections; disarmament, demilitarisation and rehabilitation (DDR); maintenance of law and order; repatriation and resettlement of refugees and IDPs[66]. Furthermore, the UN administration had to oversight the existing administrative structures on the management of the elections, but it was also given direct control of five core government departments: Foreign Affairs, Defence, Finance, Public Security, and Information. In addition, the Paris Agreement granted UNTAC the right to issue binding directives, as necessary.
The UN effort in Cambodia was unprecedented, both economically ($2 billion budget) and in personnel (16,000 regular troops, over 3,000 police officers, and 3,000 civilian officials)[67]. It laid down the foundations for a democratic framework and succeeded in leading the country to relatively free and fair elections in 1993. In this sense, UNTAC was a major achievement for the UN because, recalling Boutros-Ghali's words, people in New York considered the mission as a try-out of the Organisation's capacities to adapt and cope with the new challenges of the post-Cold War era[68]. However, UNTAC's focus on democratisation caused a serious overlooking of other fundamental aspects such as DDR and transitional justice, and consequently, the immediate achievements would be eventually shaded by a resurgence of internal violence.

b. United Nations Mission in Somalia (UNOSOM II) 1993-1995

Somalia has never succeeded in overcoming the enduring institutional fragility and instability that have persisted since the end of Siad Barre's twenty-year authoritarian rule. In the early 1990s, the UN first reacted gingerly to the crisis because of the challenges and risks deriving from the political vacuum in the country[69]. In 1992, the Security Council intervened by establishing for purely humanitarian purposes the United Nations Mission in Somalia (UNOSOM I)[70] and the deployment of a US-led multinational force, the Unified Task Force (UNITAF)[71]. Shortly after, the two missions were incorporated and expanded in the second United Nations Operation in Somalia (UNOSOM II). The latter's mandate, established through Resolution 814/1993, comprised wide civilian and military tasks to "assist the people of Somalia to promote and advance political reconciliation, through broad participation by all sectors of Somali society, and the reestablishment national

[66] Report of the United Nations Secretary-General on Cambodia, 19 February 1992, S/23613, para. 5; Report of the United Nations Secretary-General on Cambodia, 26 February 1992, S/23613/Add.1, para. 5.
[67] DOYLE, SUNTHARALINGAM (1994: 121).
[68] JELDRES (1993: 107).
[69] WILLIAMS (2014a: 409).
[70] Resolution of the United Nations Security Council, 24 April 1992, S/RES/751, *on establishment of a UN Operation in Somalia*.
[71] Resolution of the United Nations Security Council, 3 December 1992, S/RES/794, *on measures to establish a secure environment for humanitarian relief operations in Somalia*.

and regional institutions and civil administration in the entire territory"[72]. Due to the lack of an effective central government, UNOSOM II was granted administrative and legislative powers, and in 1994, the mission's framework was again reinforced to include, on the one hand, the reorganization of the police force and the judiciary, and on the other, supporting Somalia's political process by drafting a new constitution and facilitating the establishment of a democratically elected government[73].
UNOSOM II terminated officially in 1995, widely considered an "unmitigated disaster"[74], leaving the country not too different from the political instability existing at the time of its arrival in 1992. Despite the broad range of powers it held, the mission failed to accomplish its mandated objectives; nonetheless, UNOSOM II remains a significant step in the evolution of the UN peace-building practice since it was established without any agreement with the parties (in this case for evident reasons of impossibility). Resolution 814 was adopted acting under Chapter VII, the fundamental basis to authorise the use of force if deemed necessary and overcoming the state consent – we will illustrate the relevance of this passage in section 3.3. For the moment, we may conclude the reflection about Somalia by emphasising the fact that a wide mandate is not alone sufficient to ensure the success of an international mission if it fails to assume full control over the territory[75].

c. United Nations Mission in Bosnia- Herzegovina (UNMIBH) 1995-2002

The war in Bosnia and Herzegovina (BiH) was one of the grimmest and most complex passages of the Yugoslavian breakup. When it ended in December 1995, with the signing of the General Agreement for Peace (Dayton Agreement), the newly independent state of BiH finally internationally recognized was composed of two entities: the Croat-Muslim Federation of Bosnia and the Republika Srpska[76]. The Dayton Agreement provided also for the creation of a High Representative (OHR) as the *maxima auctoritas* in the interpretation of its provisions, responsible for the implementation, monitoring, and coordination of the various international organisations and agencies operating in BiH. In addition, its authority was further strengthened in 1997 by the so-called "Bonn Powers", enabling him to remove from office public officials, and most importantly, a legal mandate to impose and change the legislation[77].

---

[72] Resolution of the United Nations Security Council, 26 March, 1993, S/RES/814, *on the expansion of the size and mandate of the UN Operation in Somalia II*.
[73] *Ivi*, para. 4
[74] WILLIAMS (2014b: 431).
[75] DE BRABANDERE (2009: 31).
[76] There is also a third entity, the Brcko district, an autonomous part in the West of the country.
[77] Conclusions of the Peace Implementation Council at the Bonn Conference, 10 December 1997, *Bosnia and Herzegovina 1998: Self-Sustaining Structures*, Part II Constitutional and Legal Matters.

However, the OHR was not a UN body. The UN's role in BiH peacebuilding was more marginal, also due to the negative legacy from the previous involvement with the UNPROFOR and the responsibility for the Srebrenica massacre. Accordingly, the Security Council established the UN Mission in Bosnia and Herzegovina (UNMIBH)[78] with a mandate mainly focused on the monitoring and assistance to Bosnia's law enforcement agencies, through its main body, the UN International Peace Task Force (IPTF). UNMIBH was primarily composed of a police force but acted also as an "umbrella mission" in its limited civilian areas, coordinating the efforts of the other UN Agencies, the European Union and the Organisation for the Security and Cooperation in Europe (OSCE) regarding the humanitarian relief, refugees assistance, human rights and election oversights[79].
The mission lasted until 2002 when it was replaced by the European Union. Its final assessment, however, cannot be deemed entirely satisfactory. UNMIBH was part of a complex, multi-dimensional operation, and despite its contributions, it was overly dependent on the parties involved and unable to play a significant role in the country's stabilization process. In conclusion, it represented a unique case of limited international administration, marked by the coexistence of an autonomous High Commissioner and a UN mission. Nevertheless, it significantly influenced the development of the subsequent mission in Kosovo[80].

d. United Nations Transition Administration Eastern Slavonia (UNTAES) 1996-1998

Croatia declared independence from the Socialist Federal Republic of Yugoslavia in 1991, but armed clashes immediately arose between its Croat and Serb components, further escalated by the intervention of the Yugoslav National Army (JNA). In the meanwhile, in 1992 the Serb regions within the Croatian borders of Eastern Slavonia, Krajina, and Western Sirmium united into the secessionist *Republika Srpska Krajina* (RSK). The conflict came to an end in November 1995, during the so-called Dayton Peace Process, when Croatian and RSK authorities reached a compromise and signed the *Basic Agreement* (Erdut Agreement) envisaging the peaceful reintegration of the region into Croatia after "a transitional period of [at least] 12 months" under an international administration[81].
The Security Council welcomed the settlement and adopted Resolution 1037 to set up the United Nations Transitional Administration for Eastern Slavo-

[78] Resolution of the United Nations Security Council, 21 December 1995, S/RES/1035, *Establishment of a UN civilian police force to be known as the International Police Task Force (IPTF) and a UN civilian office for the implementation of the Peace Agreement for Bosnia and Herzegovina.*
[79] TARDY (2014: 517).
[80] DE BRABANDERE (2009: 33).
[81] *Basic Agreement of the Region of Eastern Slavonia, Baranja and Western Sirmium* (Erdut Agreement), 12 November 1995, A/50/757 S/1999/951.

nia, Baranja and Western Sirmium (UNTAES)[82]. The Transitional Administrator (TA) was put in charge of both military and civilian components, and the latter was tasked with the police sector, monitoring the prison system, performing civil administration and public services, managing the return of refugees and organisation free and fair elections[83]. UNTAES was granted considerable executive powers and limited legislative powers, it was also responsible for economic reconstruction and demining[84]. In addition, the Transitional Administration was requested by the Erdut Agreement to oversee the region regarding its demilitarization, human rights monitoring, return of IDPs and the Serbs' political representation[85].
The mission closed after two years in 1998 and, even though it was followed by another mission of the Security Council but more centred on policing sector, the UN Police Support Group (UNPSG)[86], UNTAES was immediately recognized as a solid success. The reintegration of the Serb regions into Croatian territory, the primary mandate objective, was achieved in a peaceful manner and without any major crises[87]. Finally, the significance of UNTAES is also represented by the fact that Resolution 1037 was adopted under Chapter VII, that is, the same legal basis of UNOSOM II, but with the crucial difference that the UN operation in Croatia was also based on an agreement between the parties involved.

3.2.3 The extremes Kosovo and East Timor

The point of culmination of the 'internationalisation decade' arrived in 1999, when, as put in the *Brahimi Report*, "in two extreme situations, United Nations operations were given executive law enforcement and administrative authority where local authority did not exist or was not able to function"[88]. These two "extreme situations" of full internationalisation were in Kosovo and East Timor.
We have already anticipated some key features of the UN Interim Administration Mission in Kosovo (UNMIK) in the first chapter and will examine them further in the next chapter. For the moment we shall consider it comparatively to the UN Transitional Administration in East Timor (UNTAET). The story of this small half-island, whose today's official state name is Timor-Leste, is the legacy of the political division in the colonial territories of the Netherlands and Portugal in Southeast Asia. While in 1949 the rest of the Dutch-controlled archipelago passed to the newly independent state of Indo-

[82] Resolution of the United Nations Security Council, 15 January 1996, S/RES/1037, *The Situation in Croatia*.
[83] *Ivi*, Art. 11.
[84] *Ivi*, Art. 12.
[85] Erdut Agreement, *supra* note 81, points 3-4.
[86] Resolution of the United Nations Security Council, 19 December 1997, S/RES/1145, *on the establishment of a support group of civilian police monitors in the Danube region*.
[87] GOWAN (2014: 529).
[88] *Brahimi Report*, *supra* note 51, para. 19.

nesia, East Timor remained separated under the control of Lisbon. As for the rest of the Portuguese overseas dominions, the process of decolonisation was 'delayed' in the 1970s, after the fall of the Salazar's centralized regime. During this political vacuum, in the small half-island, armed conflict broke out between the newly formed liberation movement of the *Frente Revolucionária do Timor-Leste Independente* (FRETILIN) and the Indonesian military forces, which invaded the territory to finally annex it. Immediate condemnation arrived from the Security Council and the General Assembly, asserting the rights to self-determination and calling for Jakarta's withdrawal; however, no consistent initiative occurred because of the resurgence of the confrontational bipolarity in the so-called 'Second' Cold War in the late 1970s and 1980s.

The 1990s were instead pivotal, with General Suharto's regime progressively losing its grip on international support since the demise of the anti-communist cause. The fundamental change arrived in 1998 when the economic and democratic internal pressures in Indonesia led the new government of Jakarta to open for the possibility of greater autonomy in East Timor. In August 1999, based on an agreement between Indonesia and Portugal (still *de jure* responsible over the territory), the overwhelming majority of the East Timor people voted in favour of independence, through a referendum organised and overseen by the UN Mission in East Timor (UNAMET)[89], in collaboration with the security presence of the International Force for East Timor (INTERFET)[90]. After the vote, the Security Council adopted Resolution 1272, creating the United Nations Transitional Administration in East Timor (UNTAET) "endowed with overall responsibility for the administration of East Timor and […] empowered to exercise all legislative and executive authority, including the administration of justice"[91]. The multi-dimensional mandate covered governance, humanitarian assistance and security: maintaining law and order; establishing an effective administration; assisting the development of civil and social services; delivering humanitarian assistance; and laying the foundations for self-government[92]. Similar to Kosovo, the mission was given a pillars-structure: Pillar I, Governance and Public Administration (GPA); Pillar II, Humanitarian Assistance and Emergency Rehabilitation; Pillar III, Military Component[93]. The UN administration in East Timor lasted less than three years, gradually transferring authority to local institutions until, on 20 May 2002, it was declared the birth of the new independent state of Timor-Leste, as would be shortly later renamed. UNTAET withdrew and was replaced by other UN missions estab-

[89] Resolution of the United Nations Security Council, 11 June 1999, S/RES/1246, *The Situation in Timor*.
[90] Resolution of the United Nations Security Council, 15 September 1999, S/RES/1264, *The Situation in East Timor*.
[91] Resolution of the United Nations Security Council, 25 October 1999, S/RES/1272, *on establishment of the UN Transitional Administration in East Timor*.
[92] *Ivi*, Art. 2.
[93] *Ivi*, Art. 3 (a), (b), (c).

lished by the Security Council but holding a more supporting role for security purposes, such as the 2002 United Nations Mission of Support in East Timor (UNMISET)[94], the 2005 United Nations Office in Timor-Leste (UNOTIL)[95], and the 2006 United Nations Integrated Mission in Timor-Leste (UNMIT)[96].

The mandate of UNTAET, in principle, may resemble under many aspects the one of UNMIK, but the two missions substantially diverged for at least 4 factors. First and foremost, the structure. In East Timor, the civilian and military components operated under the unified authority of the "Transitional Administrator". In Kosovo instead, the Special Representative of Secretary-General (SRSG) was in control only of the international civilian presence, while the Kosovo Force (KFOR) was outside of the pillars structure, resulting in a 'dual' or 'two-headed' situation. In addition, whereas the administration of East Timor was run entirely by the UN, within UNMIK each pillar was headed by a different international organisation reporting to the SRSG.

Second, the context of operation. In Kosovo, the population was relatively educated and there had been various functioning institutions before the installation of UNMIK. The socialist legacy from the Yugoslav period would reveal to be a serious challenge for the UN officials, as we will see in the next Chapter. UNTAET instead had to cope with the unique question of inventing and building from scratch new public institutions and political culture in a territory with no preexisting precedents. Such a difficulty is well expressed by Hansjorg Strohmeyer, legal advisor both in East Timor and Kosovo missions: "In Kosovo, we had judges, lawyers, prosecutors; the trouble was finding one who didn't have a Yugoslav past or a Serbian collaborator past. Here [East Timor] you don't have a single lawyer"[97].

Third, the framework of the territory's future status. The UN transitional administration in East Timor was established with a clear mandate to work towards the independence of the territory, in accordance with the result of the popular referendum that occurred in August 1999. On the contrary, Resolution 1244 establishing the ITA of Kosovo, is extremely ambiguous about its ends, affirming the "commitment [,] to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia" (FYR) and, at the same time, charging UNMIK with the responsibility of promoting "substantial autonomy and self-government in Kosovo" and "facilitating a political process designed to determine Kosovo's future stats"[98].

---

[94] Resolution of the United Nations Security Council, 17 May 2002, S/RES/1410, *on establishment of the UN Mission of Support in East Timor (UNMISET)*.

[95] Resolution of the United Nations Security Council, 28 April 2005, S/RES/1599, *on establishment of the UN Office in Timor-Leste (UNOTIL) as a one-year follow-on special political mission in Timor-Leste.*

[96] Resolution of the United Nations Security Council, 25 August 2006, S/RES/1704, *on establishment of the UN Integrated Mission in Timor-Leste (UNMIT)*.

[97] Hansjorg Strohmeyer quoted in TRAUB (2000: 83).

Resolution of the United Nations Security Council, 10 June 1999, S/RES/1244, *The Situation in Kosovo*, Art. 11 (a)(b).

Finally, the territorial control. The population of East Timor was homogeneous, and it generally supported UNTAET and its purposes. Kosovo, instead, is a multi-ethnic society, seriously affected by the Serbs-Albanian hiatus, whereby, as explained by Alexandros Yannis, political advisor to the SRSG in Kosovo, "any policy or decision by the international administration has been interpreted by Kosovo Albanians and Serbs as promoting either independence or the return to Serb rule and contested or undermined by one side or the other"[99].
The two 1999 UN administrations in Kosovo and East Timor are groundbreaking and unique compared to cases we have so far seen. Both UNMIK and UNTAET presented the highest territorial internationalisation, with the UN assuming full authority over the traditional sovereign powers, legislative, executive and judiciary. In the end, we can say that they were as much unprecedented as well as unmatched to this day. No other operation by the UN has ever reached such a wide range of powers; rather, the 1999 experiences prompted a reflection on the legitimacy and effectiveness of ITAs, resulting in a change of tone in the following operations.

3.2.4 International administration in the 21st century

At the turn of the new Millennium, the United Nations felt the necessity for a moment of reflection on their performance of the past 'busy' decade with a view to the new international context of the 21st century. In March 2000, Secretary-General Kofi-Annan convened a High-level Independent Panel, chaired by Mr Lakhdar Brahimi, to review the peace and security activities hitherto, resulting in a series of conclusions and recommendations[100]. The so-called *Brahimi Report* re-affirmed the 10-years earlier message of Boutros-Ghali that "effective peacebuilding requires active engagement with local parties, and that engagement should be *multidimensional* in nature", highlighting five crucial dimensions in this sense: a) the ability to implement "quick impact projects" to make an immediate effective difference in daily lives of people in the mission area; b) "free and fair" elections in support of a broader process of democratization and civil society; c) UN civilian policing and monitoring, owing to the fact of the increasing importance of the security sector reform (SSR); d) the human rights component as critical for the success of the operation; e) the necessity for disarmament, demobilization and reintegration (DDR) of former combatants as key to immediate post-conflict stability and conflict recurrence[101]. However, the Panel advanced also serious criticism against the UN's past peace operations:

> "Over the last decade, the United Nations has repeatedly failed to meet the challenge; and it can do no better today. Without significant institutional change, increased financial support, and renewed commitment on the part of

[99] YANNIS (2001: 76)
[100] *Brahimi Report*, *supra* note 51.
[101] *Ivi*, paras. 37-42.

> the Member States, the United Nations will not be capable of executing the critical peacekeeping and peacebuilding tasks that the Member States assign it in the coming months and years. *There are many tasks which the United Nations peacekeeping forces should not be asked to undertake and many places they should not go*"[102].

The *Brahimi report* failed to answer all the peace operations problems and was criticized also for some of its recommendations, judged as banal or only repeating previous reports[103]. Although it was rather disregarded in the United Nations Millennium Declaration, we cannot deny that the document was a significant first step towards further development of UN peace initiatives. Its influence certainly contributed to the later establishment of a Peacebuilding Commission (PBC), an advisory body created in 2005 mainly to enhance coherence, shared strategy and resource marshalling among peacebuilding actors, and Peacebuilding Fund (PBF), a standing fund elaborated in 2006 to support several countries simultaneously, and a Peacebuilding Support Office (PBSO) within the UN Secretariat[104].
The impact of this rethinking of UN peace operations in the early 21st century, also fuelled by the concurrent early developments of the "extreme situations" in Kosovo and East Timor, became firstly most apparent with the so-called 'light footprint' approach in Afghanistan.

a. United Nations Mission Assistance in Afghanistan (UNAMA)

Following the 9/11 attack on the World Trade Centre, an international coalition led by the United States intervened in Afghanistan to punish and remove the Taliban regime, responsible for hosting the fundamentalist group Al-Qaeda. In December 2001, parallel to the military actions, the international community convened in Bonn, Germany, to discuss 'the day-after' for the State of Afghanistan. The final draft of the *Bonn Agreement*[105] provided the creation of an Interim Authority as an immediate "repository of the Afghan sovereignty", pending the nomination of a Transitional Authority to administrate the state until democratic elections. The UN was not given full administrative responsibility like for UNMIK or UNTAET, but its aim would be, as put by the Secretary-General, "to bolster Afghan capacity (both official and non-governmental), relying on as limited an international presence and on as many Afghan staff possible, […] thereby leaving a light expatriate 'footprint'"[106]. This position was justified primarily by the fact that Afghanistan was already an existing state, whose territorial status was not questioned, and

---

[102] *Ivi*, para. 1, emphasis added.
[103] YAMCHUK (2013).
[104] STAHN (2005: 404); SCOTT (2008: 8 ff.).
[105] *Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishing of Permanent Government Institutions* (Bonn Agreement), 5 December 2001, S/2001/1154.
[106] Report of the United Nations Secretary-General, 18 March 2002, A/56/875-S/2022/278, *The Situation in Afghanistan and its Implications for Internal Peace and Security,* para. 98 (d).

thus local power would logically shift from the Taliban regime to other Afghan leaders. During the Bon talks, the UN Special Envoy, Brahimi, the same one who was the chairman of the High-level Panel on UN Peace Operation, appeared as one of the strongest advocates for this minimalist or 'light footprint' approach. He argued that the UN's role "should be to provide the government with support and assistance, not to seek to govern in its place or impose upon it our own goals and aspiration"; adding that "the peace and reconstruction process stands a far better chance of success when it is nationally owned rather than led by external actor"[107]. As a result, the UN was not mandated neither to exercise full-scale administrative authority nor any direct responsibility for the administration; rather, an assistant contribution.

The role of the international community in Afghanistan was envisaged by the Bonn Agreement in two distinct areas of security and civilian, thereby closer, at least in principle, to the structure of UNMIK than UNTAET. Annex I of the Agreement requested the deployment of the International Security Assistance Force (ISAF), later endorsed by the Security Council[108], "in helping the new Afghan authorities in the establishment and training of new Afghan security and armed forces"[109]. The primary responsibility for providing security and law and order remained under the Afghans, while ISAF was to be of support for training, and the maintenance of security in the capital Kabul.

As regards the civilian component, the Security Council adopted Resolution 1401 establishing the United Nations Assistance Mission in Afghanistan (UNAMA)[110] for an initial period of 12 months. Its mandate was the fulfilment of the tasks contained in Annex II of the *Bonn Agreement*, chiefly "to advise the Interim Authority in establishing a politically neutral environment conducive to the holding of the Emergency Loya Jirga [Grand Assembly in Pashto] in free and fair conditions"[111]. To this purpose, the mission was structured in two main pillars, each headed by a Deputy Special Representative reporting directly to the SRSG, as occurred for UNTAET. Pillar I on "Political Affairs" was tasked to monitor, analyse and report the overall political transition envisioned in the Bonn Agreement as well as investigate human rights violations and combat illicit drug trafficking[112]. Pillar II on "Relief, Recovery, and Reconstruction" was responsible for the direction and oversight of the UN offices and agencies involved in humanitarian activities, including the return and reintegration of refugees and IDPs[113]. The Mission started in 2002, and it is still operating on the ground, despite the recent political and international developments – for the moment, the mandate has

[107] Lakhdar Brahimi quoted in DE BRABANDERE (2009: 42).
[108] Resolution of the United Nations Security Council, 20 December 2001, S/RES/1386, *on authorizing the establishment of an International Security Assistance Force in Afghanistan*.
[109] *Bonn Agreement*, *supra* note 105, Annex I, art. 2.
[110] Resolution of the United Nations Security Council, 28 March 2002, S/RES/1401, *on establishment of UN Assistance Mission in Afghanistan (UNAMA)*.
[111] *Bonn Agreement*, *supra* note 105, Annex II, art. 3.
[112] *Ivi*, Annex II, Artt. 2, 3, 6.
[113] Report *The Situation in Afghanistan*, *supra* note 106, paras. 106-107.

been extended until 17 March 2025[114]. UNAMA has been a radical change in the process of growth of the UN administrations. After the extreme cases of UNMIK and UNTAET, the international community opted to return to a lesser extent of responsibility, favouring an indirect and supporting action to the already existing institutions of Afghanistan. At the same time, we have noted that the mission in Afghanistan mixed some features from the mission in Kosovo, regarding the dual distinct structure between security and civilian components, and East Timor, with a fully UN-led management.

3.3 Legal basis of UN territorial administrations

International administration, within the UN framework, can be based on several legal bases from the Charter, differing substantially for two conditions: the UN organ establisher of the mission, whether it is the General Assembly or the Security Council; the position of the recipient State, whether it consents to the deployment of the ITA or not. Furthermore, we shall also consider two specific provisions: Article 29, by which "the Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions"[115], and Article 98, affirming the possibility for the Secretary-General to "perform such other functions" that are entrusted to him by the four fundamental organs of the Organization, the General Assembly, the Security Council, the Economic and Social Council (ECOSOC), or the Trusteeship Council[116].

3.3.1 Resolution of the Security Council

The power of the Security Council to set up an international territorial administration may derive from three distinct legal bases, according to the specific features of the context.
Firstly, based on Article 36, the Security Council may "recommend appropriate procedures or methods of adjustment" to international disputes[117]. Since this legal basis is provided in Chapter VI, i.e., the Pacific measures of settlement, this first procedure requires inevitably the consent of the State in question for its implementation. It must be recalled that Article 2(7) prevents the UN from intervening in matters which are essentially within the domestic jurisdiction of its members. This procedure was traditionally adopted for the 'first generation' of peacekeeping operations meant primarily to monitor ceasefires. Literature has frequently justified this competence of the Security Council also referring to the factionary powers of 'Chapter VI bis' or 'Chapter VI ½'. However, there were also UN administrations based on Chapter

[114] Resolution of the United Nations Security Council, 15 March 2024, S/RES/ 2724, para. 3.
[115] UN Charter, *supra* note 32, Art. 29.
[116] *Ivi*, Art. 98.
[117] *Ivi*, Art. 36.

VI, including cases abovementioned[118]. In Cambodia, UNTAC was based on Chapter VI and the consent of the host state was provided in the signing of all the conflicting factions to the Paris Agreement. Furthermore, we have already mentioned that an international transitional administration in Eastern Slavonia was officially first envisioned in the Erdut Agreement between the Croatian and Serbian authorities, with the Security Council simply endorsing the request and enacting UNTAES. Finally, the UN assistance mission in Afghanistan (UNAMA) has been argued to enjoy the consent of the host state based on Annex II of the Bonn Agreement, although the case may appear somehow controversial because the fact that the Afghan delegates who participated in the Conference were not official governmental representatives[119].
A second source of legality for the UN peace operations is Chapter VII. We have already considered it in the second chapter of this thesis dealing with humanitarian intervention. The difference from Chapter VI is threefold: the nature of measures takeable, for Chapter VII actions implying the use of force; the competence *ratione materiae*, for which the Charter legitimizes to resort these actions only in the context of threats to peace, breaches of the peace, and acts of aggression; and the lack of necessity for the consent of the recipient state. However, when the Security Council authorizes a mission under Chapter VII of the UN Charter, it does not specify the exact article upon which its action is based, and as argued by the European Court of Human Rights (ECtHR) in the *Behrami and Behrami* case, regarding the case of UNMIK, there is more than one provision that may be considered appropriate:

> "While the Resolution referred to Chapter VII of the Charter, it did not identify the precise Articles of that Chapter under which the UNSC was acting and the Court notes that there are several possible bases in Chapter VII for this delegation by the UNSC: the non-exhaustive *Article 42* (read in conjunction with the widely formulated Article 48), the non-exhaustive nature of *Article 41* under which territorial administrations could be authorised as a necessary instrument for sustainable peace; or *implied powers* under the Charter for the UNSC to so act in both respects based on an effective interpretation of the Charter. In any event, the Court considers that Chapter VII provided a framework for the above-described delegation of the UNSC's security powers to KFOR and of its civil administration powers to UNMIK"[120].

The Court made two explicit references to Chapter VII. As already examined in the second chapter of this thesis, Article 41 grants the Security Council the power to undertake measures not involving the use of armed forces, but related to the economic, communication and transport relations. However, the Court clarified that the power of the Security Council is not restrained to the list of the provision, but it may also include the administration of the territo-

[118] SLOAN (2014: 679).
[119] DE BRABANDERE (2009: 60-61).
[120] Decision of the European Court of Human Rights, Admissibility, 2 May 2007, Application n. 71412/01 and 78166/06, *Agim Behrami and Bekir Behrami against France and Ruzhdi Saramati against France, Germany and Norway* (hereafter *Behrami and Behrami* case), para. 130, emphasis added.

ry. This interpretation is consistent with the *travaux préparatoires* of the Charter during which, as noted by De Brabandere, the proposition for administration without the use of force was not inserted only due to the concern not to limit the Security Council's competence[121]. Furthermore, this understanding of the ECtHR had been earlier confirmed by the rules of the two *ad hoc* International Criminal Tribunals for the Former Yugoslavia[122] and Rwanda[123].

However, the lack of legitimation to resort to force in peace operations may constitute a serious hindrance to their efficacy and eventual success. That is the reason is generally recognized Article 42 as the most appropriate also for international administrations, authorising the Security Council to decide on military actions such as demonstrations, blockades and other operations by air, sea or land forces, aimed to maintain or restore international peace and security. In this case, too, the ECtHR clarified the non-exhaustive character of the actions listed in the provision. Other than the administration in Kosovo, under Chapter VII, it was established UNTAES in East Timor and UNAMA in Afghanistan.

Finally, a third legal basis for the creation of a UN administration by the Security Council has been identified in the so-called "implied powers". This doctrine has been increasingly defined by the International Court of Justice (ICJ), starting from its 1949 advisory opinion on *Reparation for Injuries*, wherein the majority of the judges noted that "the Organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties"[124]. In later opinions, the ICJ sustained this wide interpretation formulating, in 1962 *Certain Expenses*, that "when the Organisation takes action which warrants the assertion that it was appropriate for the fulfilment of one of the state purposes of the United Nations, the presumption is that such action is not *ultra viers* the Organisation"[125]. These 'gap-filler' principle of the Charter must not be intended as an open-ended device enabling the Security Council to override specific limitations; rather, implied powers must not intrude on express powers, nor fundamental rules of international law, and most importantly shall be consistent with the purposes of the Organisation and fulfil the Court's yardstick of being "essential to the performance of its duties"[126].

---

[121] DE BRABANDERE (2009: 62).

[122] Decision of the International Criminal Tribunal for the Former Yugoslavia, Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case no IT-94-1, *Prosecutor v. Dusko Tadic aka "Dule"*.

[123] Decision of the International Criminal Tribunal for Rwanda, 18 June 1997, Case. No. ICTR 96-15-T, *Prosecutor v. Kenyabashi*.

[124] Advisory Opinion of the International Court of Justice, 11 April 1949, ICJ Reports 1949, Majority Opinion, *Reparation for Injuries Suffered in the Service of the United Nations*, p. 182.

[125] Advisory Opinion of the International Court of Justice, 20 July 1962, ICJ Report 1962, *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, p. 168.

[126] DE WET (2005: 193); KLABBERS (2022: 58-59); CRAWFORD, PERT, SAUL (2023: 410-411).

In conclusion, the Security Council is legitimized to establish UN peace operations including territorial administrations both in Chapter VI, based on state consent and without the use of force, and in Chapter VII, indifferently from the will of the state and also involving the use of force. However, since there is no article in the Charter expressly authorising the creation of international administration, the doctrine of implied powers may fill this gap.

3.3.2 Resolution of the General Assembly

The General Assembly is the second organ capable, in principle, of establishing a UN administration. In the previous section 3.2, we have already anticipated two 'hybrid' cases with the proposed *corpus separatum* of Jerusalem and the ambiguous Council for Namibia. The legal basis for this power of the General Assembly resides in Article 11 of the Charter:

> "The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations by Article 35, paragraph 2, and, except as provided in Article 12, may make *recommendations* about any such questions to the state or states concerned or the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion"[127].

The General Assembly has the competence to discuss and make recommendations to all matters of international peace and security as far as the Security Council is not "exercising in respect of any dispute or situation the functions assigned to it in the […] Charter"[128]. The only derogation to this limit is a direct request from the Security Council. As argued by De Brabandere, this recommendatory power of the General Assembly is somehow comparable to the analogous powers of the Security Council under Chapter VI, as long as the former's resolution is a non-binding instrument[129]. Regarding the scope of *ratione materiae*, there has been a wide debate on what kind of actions are admissible to be taken, mainly for the final sentence of the second paragraph: "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion". The final interpretation of the word 'action' is strictly related to Chapter VII, i.e., in respect to threats to and breaches of the peace and acts of aggression; meaning that the General Assembly has no competence to undertake initiatives involving the use of force[130]. Such a meaning was explicitly asserted by the ICJ in the already mentioned *Certain expenses* case:

> "the word 'action' must mean such action as is solely within the province of the Security Council, […] which is indicated by the title of Chapter VII of the Charter, namely 'Action concerning threats to the peace, breaches of the

[127] UN Charter, *supra* note 32, Art. 11 (2), emphasis added.
[128] *Ivi*, Art. 12.
[129] CONFORTI (2005: 211); DE BRABANDERE (2009: 75).
[130] DE BRABANDERE (2009: 75).

> peace, and acts of aggression'. If the word 'action' in Article II, paragraph 2, were interpreted to mean that the General Assembly could make recommendations only of a general character affecting peace and security in the abstract, and not about specific cases, the paragraph would not have provided that the General Assembly may make recommendations on questions brought before it by States or by the Security Council. Accordingly, the last sentence of Article II, paragraph 2, has no application where the necessary action is not enforcement action"[131].

In conclusion, we can derive from all these considerations that, other than the Security Council, also the General Assembly has the competence to establish an international administration of territory but with two limitations: the exclusion of military operations and the necessity of the consent of the recipient state[132].

[131] Advisory Opinion *Certain Expenses*, *supra* note 125, p. 18.
[132] STAHN (2001: 140); DE BRABANDERE (2009: 76).

Chapter Four: The International Administration of Kosovo

The international administration of Kosovo was unprecedented. After the end of the conflict in June 1999, the United Nations embarked on the largest and most challenging mission of peacekeeping and peacebuilding hitherto. After a few months also in the small island of East Timor, an undertaking of such magnitude would take place, but the ceiling was first broken in a small territory amidst the Balkans. The scope of the international territorial administration (ITA) of Kosovo was so groundbreakingly wide and full, covering all the traditional powers of government, that the United Nations could not run it alone. This is the true significance of Kosovo: since 1999, the sovereignty of this small territory *de jure* belonging to the state of Serbia was suspended and exercised *de facto* by multiple international organisations. Having understood the logic of the local confrontation and the development of the international intervention, both in its military and humanitarian nature and having acquired the fundamental theoretical premises of ITAs, we shall now enter the core of this thesis.

This fourth chapter pores over at last the joint administration of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR). These were two parallel, distinct structures under their chain of command, culminating respectively with the Special Representative of the Secretary-General (SRSG) and the Commander (COMKFOR). Unquestionably, this lack of unified overall command in favour of a double-headed chimaera required an effort to cooperate to ensure a truly effective and successful result. In addition, the multi-organisation coexistence within UNMIK inevitably impelled the international actors in Kosovo to elaborate effective means and forms of cooperation both between military and civilian partners as well as intra-civilian pillars.

This chapter aims to thoroughly look into the structure, functioning and characteristics of these missions as well as the outcomes of the cooperation and coexistence of the ‘crowd’ of international organisations. Hereafter we shall consider first the legal framework from which the two international presences took place, and then focus on the specific features and actions respectively of the civilian and the security components.

4.1 Legal Framework of UNMIK and KFOR

The official legal basis of the joint international administration in Kosovo of UNMIK and KFOR resides in Resolution 1244 of the Security Council. The latter is the ultimate international organ with the authority to legitimize the conduct of states on the global stage. However, if we limited ourselves exclusively to the analysis of Resolution 1244, we would fatally miss a piece of the puzzle. The legal framework underlying the international administra-

tion of Kosovo is completed by '3+1' sources. In effect, the pronouncement of the Security Council incorporates the results of two previous fundamental documents, the international peace plan brokered by the Finnish diplomat Marti Ahtisaari and the Russian Viktor Chernomyrdin, and the subsequent agreement concluded between KFOR and Yugoslavia/Serbia. In addition, all the reasoning cannot preclude the contents of the Rambouillet peace conference. Despite not having been officially signed by all parties, nor containing any reference to an international administration, the *Rambouillet Accords* represented the point of reference frequently recalled in the other subsequent documents. Hereafter, we shall consider chronologically the key features of each document, remarking on the evolution in the process from the cessation of the conflict in Kosovo to the elaboration and operationalisation of the joint international territorial administration UNMIK-KFOR in Kosovo.

4.1.1 The Rambouillet Accords

The conference convened in Rambouillet, France, in February and March 1999, was an extreme attempt by the international community to find a diplomatic solution to the violence in Kosovo. After intense negotiations, the final draft of *the Interim Agreement for Peace and Self-Government In Kosovo*[1] reached on 23 February 1999, was rejected by the Yugoslav and Serbian delegations. The fact that the latter took advantage of stalling and reformulating the bargaining for a month to conduct a large-scale military operation in Kosovo eventually led to the point break for NATO's intervention.
The skeleton of the diplomatic talks in Rambouillet had been provided by a one-page document enlisting "non-negotiable principles/basic elements" for a settlement, that the Contact Group had sent to the Kosovar and Yugoslav/Serbian parties, hereafter reported in full:

> "*General elements*
>
> - necessity of immediate end of violence and respect of ceasefire;
> - peaceful solution through dialogue;
> - interim agreement: a mechanism for a final settlement after an interim period of three years;
> - no unilateral change of interim status;
> - territorial integrity of the FRY and neighbouring countries;
> - protection of rights of the members of all national communities (preservation of identity, language and education; special protection for their religious institutions);
> - free and fair elections in Kosovo (municipal and Kosovo-wide) under the supervision of the OSCE;
> - neither party shall prosecute anyone for crimes related to the Kosovo conflict (exceptions: crimes against humanity, war crimes, and other serious violations of international law);

[1] Letter dated 4 June 1999 from the Permanent Representative of France to the United nations Addressed to the Secretary-General, 7 June 1999, S/1999/648, Annex I, *Rambouillet Accords, Interim Agreement for Peace and Self-Government in Kosovo* (hereafter *Rambouillet Accords*).

- amnesty and release of political prisoners;
- international involvement and full cooperation by the parties on implementation.

Governance in Kosovo

- people of Kosovo to be self-governed by democratically accountable Kosovo institutions;
- high degree of self-governance realized through own legislative, executive and judiciary bodies (with authority over, inter alia, taxes, financing, police, economic development, judicial system, health care, education and culture (subject to the rights of the members of national communities), communications, roads and transport, protection of the environment);
- legislative: assembly; executive: President of Kosovo, government, administrative bodies; judiciary: Kosovo court system;
- clear definition of competencies at the communal level;
- members of all national communities to be fairly represented at all levels of administration and elected government;
- local police representative of ethnic make-up with coordination on the Kosovo level;
- harmonization of Serbian and federal legal frameworks with the Kosovo interim agreement;
- Kosovo consent is required inter alia for changes to borders and declaration of martial law.

Human Rights

- judicial protection of human rights enshrined in international conventions and rights of members of national communities;
- ombudsman selected under international auspices;
- role of OSCE and other relevant international organizations

Implementation

- dispute resolution mechanism;
- establishment of a joint commission to supervise implementation;
- participation of OSCE and other international bodies as necessary"[2].

Based on these principles, and constant points of reference during the negotiations, the parties progressively developed a draft resolution, eventually composed of a framework and eight chapters. The initial framework established the principle of equality for all citizens in Kosovo as well as special rights and legal equality of the national communities, but with the explicit limit not to endanger "the sovereignty and territorial integrity of the Federal Republic of Yugoslavia"[3]. Such a formula is frequently repeated in the 80-page-long document. In addition, the framework also stipulates "the right to democratic self-government"[4] for the citizens of Kosovo.

Chapter One, "Constitution", sets a compromise in the public competencies with a shared responsibility between Pristina and Belgrade. The former "shall govern itself democratically", except for specific areas recognized to federal competence, such as territorial integrity, maintaining a common market within the FRY, monetary policy, defence, foreign policy, customs ser-

[2] WELLER (1999: 255-256).
[3] *Rambouillet Accords*, *supra* note 1, Framework, Art. 1 (2).
[4] *Ivi*, Framework, Art. 1 (4).

vices, federal taxation, and federal elections[5]. Furthermore, the first chapter outlines the structures of Kosovo's self-government, specifying their duties: an Assembly composed of 120 members (80 elected directly, 40 by national communities according to a certain definition), whose laws shall not be changed or modified by Federal or Republican authorities; a President of Kosovo elected by the Assembly; a Prime Minister and a Government approved by the Assembly; Administrative Organs "fairly represent[ing] at all levels" national communities; a Chief Prosecutor; a judiciary system consisting of Communal and District Courts, topped by a Supreme and Constitutional Court, composed by judges from all national communities and partly selected from a list drawn up by the President of the European Court of Human Rights, a Supreme Court, District Courts, and Communal Courts[6].
Chapter Two, focused on Police and Civil Public Security, entitling a leading role to the Organisation for Security and Cooperation in Europe (OSCE) in monitoring and oversight of law enforcement, also issuing binding directives, to respect international standards of human rights and due process. In addition, Chapter Three set the conditions for elections and requested the OSCE to supervise their organisation and conduct. Chapter Four dealt with Economic Issues, regulating an economy in Kosovo in accordance with free market principles, and defining the need for coordination in humanitarian assistance, reconstruction and economic development.
Central for the purpose of this thesis is Chapter Five, called also "Implementation I", which focuses on the structure and process for the civilian implementation of the Agreement. Hence the *Rambouillet Accords* put great emphasis on the OSCE, in cooperation with the European Union, to establish an "Implementation Mission" (IM), responsible for monitoring and coordinating the implementation of the civilian components of the agreement, together with managing donor meetings, assisting the civilian organisation and also carrying out certain functions related to police and security forces[7]. Furthermore, Chapter Six stipulated the creation of an Ombudsperson, nominated by the President of Kosovo from a list prepared by the President of the European Court of Human Rights (ECtHR) to monitor the situation of human rights protections and members of national communities.
Another part significant is contained in Chapter 7, also known as "Implementation II", centred on the military component. The parties therein agreed on the creation of a "multinational military implementation force in Kosovo", for the first time officially named "KFOR", aimed to establish a durable cessation of hostilities:

> "a. The United Nations Security Council is invited to pass a resolution under Chapter VII of the Charter endorsing and adopting the arrangements outlined in this Chapter, including the establishment of a multinational military implementation force in Kosovo. The Parties invite NATO to constitute and lead a military force to help ensure compliance with the provisions of this Chapter.

[5] *Ivi*, Chapter 1, Art. 1 (1), (3).
[6] *Ivi*, Chapter 1, Artt. 2-5.
[7] *Ivi*, Chapter 5, Artt. 1, 4.

> They also reaffirm the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY)"[8].

The Chapter also defined the procedure for the cantonment and withdrawal of the Yugoslav Army, the demilitarization of borders and inner land with an ultimate deadline of 120 days. In addition, it was envisioned the creation of a Joint Military Commission (JMC), chaired by the KFOR commander (COMKFOR), whose members would be representatives of the Yugoslav Army, the Ministers of Interior of FRY and Serbia, senior members "of all Other Forces", i.e., the UÇK/KLA, the IM, and other persons determined by COMKFOR[9]. The main task assigned to JMC was to function as an advising body to the KFOR Commander and address any military complaints, questions or problems requiring its attention.

Attached to Chapter Seven, Appendix "B" regulated the legal status, rights and obligation of KFOR, according to which all NATO personnel were bound to respect "the laws applicable in the FRY, whether Federal [Yugoslavia], Republic [Serbia], Kosovo, or other" as long as compatible with the entrusted tasks[10]. However, it is later indicated a full immunity for NATO "from all legal process, whether civil, administrative or criminal" and "from the Parties' jurisdiction in respect of any civil, administrative, criminal, or disciplinary offences which may be committed in the FRY"[11]. Such a statement is perfectly in accordance with the traditional vast (and controversial) immunities that international organisations enjoy. However, the most controversial passage was later when it was stated that "NATO personnel shall enjoy, together with their vehicles, vessels, aircraft, and equipment, free and unrestricted passage and unimpeded access *throughout the FRY*, including associated airspace and territorial waters"[12]. This particular clause was one of the most contested by the Yugoslav/Serbian delegation, for it would be equivalent to an unacceptable violation of their sovereignty, going far beyond the territory of Kosovo.

The last Chapter dealt with the residual legal issues, and most importantly the final resolution of the question of Kosovo:

> "Three years after the entry into force of this Agreement, an international meeting shall be convened to determine the mechanism for a final settlement for Kosovo, based on the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act".

In conclusion, we can summarise two central elements in the final draft of the Interim Agreement for a settlement in Kosovo. Under the sovereignty aspects, we have seen that the drafter reiterated frequently the fundamental respect of the parties for the territorial integrity of the Yugoslavian Federal Republic. In addition, the Accords established the right to self-government for

[8] *Ivi*, Chapter 7, Art. 1 (1)(a), (2)(a).
[9] *Ivi*, Chapter 7, Art. 2.
[10] *Ivi*, Chapter 7, Annex B, Art. 2.
[11] *Ivi*, Chapter 7, Annex B, Art. 6 (a) (b).
[12] *Ivi*, Chapter 7, Annex B, Art. 8, emphasis added.

the Kosovo citizens, also delimiting its structure and extent. From a more international perspective, it is evident from this text that in early 1999, the central actor in the resolution, or at least, the implementation of the agreement, was the OSCE, and not yet the United Nations. As we have already addressed in the first part of this thesis, the European agency had already physically been present and actively participated in Kosovo with its Verification Mission since October 1999, while the UN appeared distant or ineffective, anyway unheeded.

4.1.2 Ahtisaari-Chernomyrdin peace plan

NATO's bombing campaign was expected to last for a few weeks before forcing the regime of Milosevic to yield and return to the negotiating table. However, as Belgrade proved to be more resilient than expected and when it became clear that the air military operation was failing its political objective, the diplomatic track resurfaced. This new initiative, first prompted by the German government, annual holder of the Presidency of the G8[13], envisioned the involvement of the United Nations in the process and a leading role in the transitional administration of post-conflict Kosovo, pending a final settlement of its status[14]. However, to make it happen, it was necessary to convince Russia, the fiercest opponent in the Security Council of NATO's intervention in Kosovo, as we have seen in Chapter Two. The intense diplomatic work, mostly between Germany and Russia, eventually succeeded in producing a seven-principles framework, declared in a statement of the G8 foreign minister meeting, on 6 May 1999:

> "1. Immediate and verifiable end of violence and repression in Kosovo;
> 2. Withdrawal from Kosovo of military, police and paramilitary forces;
> 3. 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;
> 4. 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;
> 5. The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
> 6. 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 countries of the region, and the demilitarization of the KLA;

[13] The "G8" is a political forum reuniting the governments of the most advanced economies in the world, and comprises the United Kingdom, Canada, France, Germany, Italy, Japan, the United States, and Russia. Similarly,, the "G7" is composed of the above, without Russia.
[14] Report of the Independent International Commission on Kosovo (IICK), 2001, Oxford, 19 October 2000, *The Kosovo Report: Conflict, International Response, Lessons Learned*, p. 95.

7. Comprehensive approach to the economic development and stabilization of the crisis region"[15].

This short conceptual list became the fundamental common ground from which the final diplomatic efforts and discussion departed Belgrade. It was conducted by the three Special Envoys of the U.S., Russia and EU, respectively, Strobe Talbott, Viktor Chernomyrdin and Martti Ahtisaari. The understanding between the latter two diplomats in particular favoured the creation of a successful strategy of confrontation with Milosevic, eventually leading to the final agreement between all parties, and its formal approval by the Serb Parliament on 3 June 1999[16].

The so-called *Ahtisaari-Chernomyrdin plan* substantially incorporated the G8 statement, calling for an immediate and verifiable end to the repression and violence in Kosovo; the withdrawal of fry military, police, and paramilitary forces; the deployment of effective international civil and security presences; and the return of all refugees under the supervision of the UNHCR[17]. Here it is appropriate to make some considerations. First, there is no trace of the OSCE and, contrarily to the *Rambouillet Accords*, in the text of June is prominent the importance attributed to the United Nations, under whose auspices has requested the deployment of "effective civil and security presences", explicitly acting under Chapter VII of the Charter[18]. In addition, it is entitled to the UN the establishment of an "interim administration for Kosovo"[19] to ensure peaceful conditions and normal life for all its inhabitants. Second, as regards the security presence, it is made explicit wording of a "substantial participation" of NATO to establish a safe environment for all people in Kosovo[20]. Moscow accepted, or ceded, to the idea that the security presence would be led by the Atlantic Organisation based on the consideration that also Russian troops would be present on the ground, although the nature and extent were not immediately clarified[21]. Finally, while the agreement reiterated the right 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 countries of the region"[22], it essentially lacked a timeline or mechanism for de-

[15] Resolution of the United Nations Security Council, 10 June 1999, S/RES/1244, *The Situation in Kosovo*, Annex 1, *Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersburg Centre on 6 May 1999*.

[16] LATAWSKI, SMITH (2003: 102-103). It must be clarified that there is no clue about the actual reasons behind Milosevic's eventual yielding to an agreement to pull FRY forces out Kosovo; neither the investigation of the Independent International Commission on Kosovo could answer for sure this doubt, whether it was for military, political or simply personal factors.

[17] Resolution S/RES/1244, *supra* note 15, Annex 2 (hereafter *Ahtisaari-Chernomyrdin Agreement*).

[18] *Ivi*, principle 3.

[19] *Ivi*, principle 5.

[20] *Ivi*, principle 4.

[21] LATAWSKI, SMITH (2003: 103 ff.).

[22] *Ahtisaari-Chernomyrdin Agreement*, *supra* note 17, principle 8.

termining the final status of Kosovo, as instead was included in Chapter 8 of the *Rambouillet Accords*.
In conclusion, the international peace plan brokered by Ahtisaari and Chernomyrdin was the result of a low-key but enduring diplomatic interaction between Russia and the G7 countries, overcoming the hindrances in the formal framework of the Security Council. Relatively to the previous *Rambouillet Accords*, the peace plan of June accepted by Belgrade entailed a major responsibility for the UN instead of NATO and OSCE, but the absence of a predetermined exit strategy, with considerable implications as we shall see. Ultimately, the clause granting the NATO troops access to the entire Yugoslavian territory outside of Kosovo was barred for instead foreseeing a further "military-technical agreement" between Yugoslav/Serb authorities and KFOR.

4.1.3 Kumanovo Military-Technical Agreement

On June 9, 1999, in the Macedonian village of Kumanovo, the Kosovo International Security Force (KFOR) and the Federal and Republican governments of Yugoslavia and Serbia signed the Military Technical Agreement (MTA) setting out the terms and objectives of the deployment of an international military presence.
The MTA entered into force immediately upon its signature and was made of six articles, with the annexes attached. The core document enshrines the official acceptance from the Yugoslav and Serbian authorities of the Agreement, authorising the deployment of the international security mission "with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission"[23]. This passage of the MTA was cardinal for its purposes to establish a "durable cessation of hostilities" and providing legitimacy to the international security forces, in particular authorising the latter "to take such actions […], including the use of force" as required to ensure compliance with the obligations of the Agreement[24]. The Agreement further provided for the creation of a joint Implementation Commission (JIC) chaired by the commander of the international security force (COMKFOR) upon whom also bestowed the "final authority" over the interpretation of the Agreement and the security aspects of the peace settlement (Article 5)[25].
The first annex to the Agreement modelled the phased withdrawal of FRY Forces from Kosovo, to be complete from South to North, in a maximum of 11 days, that is, 20 June 1999. As evidence of the changing paradigm of war characteristic of the 1990s, it is interesting to note that the same provision

[23] *Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia* (hereafter Kumanovo MTA), 9 June 1999, art. 1(2).
[24] *Ivi*, art. 4.
[25] *Ivi*, art. 5.

offered a very wide definition of the "FRY Forces", including the entirety of the FRY and Serbian personnel and organisations with a military capability, specifically:

> "regular army and naval forces, armed civilian groups, associated paramilitary groups, air forces, national guards, border police, army reserves, military police, intelligence services, federal and Serbian Ministry of Internal Affairs local, special, riot and anti-terrorist police, and any other groups or individuals so designated by the international security force ('KFOR') commander"[26].

Annex "B" defined the mandate for the International Security Force in Kosovo. Central is Article 2, conferring a very wide authority to the COMKFOR, to do:

> "*without interference or permission*, […] all that he judges necessary and proper, including the use of military force, to protect the international security force ('KFOR'), the international civil implementation presence, and to carry out the responsibilities inherent in this Military Technical Agreement and the Peace Settlement which it supports"[27].

The significance of this provision must be read together with Article 5 of the MTA, as it is based on these two provisions that the COMKFOR raised to the specular level of the *maxima auctoritas* of the SRSG in the civilian component, thus forming the two heads of the international administration of Kosovo. The Annex deals also with the immunities granted to the KFOR personnel, *trait d'union* in the operations of the international organisations[28]. Finally, it is reiterated the right for KFOR to monitor and ensure compliance with the obligations in the Agreement and for this purpose, on the one hand, "to respond promptly to any violations and restore compliance", including military force if required, and on the other, the discretion "to inspect any facilities in Kosovo"[29].

4.1.4 Security Council Resolution 1244 (1999)

On 12 June 1999, the United Nations became the central actor in the question of Kosovo. Resolution 1244 of the Security Council incorporated the principles and compromises reached in all the previous key documents and marked the official birth of the international territorial administration of Kosovo under United Nations auspices. The resolution established the UN blueprint for an overall three-phased peace process: an initial international administration, followed by provisional self-governing institutions, pending a political settlement establishing official institutions. This process had to unfold based on two criteria, on the one hand, the immediate involvement of local actors on a consultative basis, and the other, the gradual and progressive transfer of authority.

---

[26] *Ivi*, art. 1(3).
[27] *Ivi*, Annex B, art. 2, emphasis added.
[28] *Ivi*, Annex B, art. 3.
[29] *Ivi*, Annex B, Art. 4 (a) (c).

The Security Council demanded an immediate and verifiable end to violence and repression in Kosovo, and the verifiable phased withdrawal from the territory of all FYR forces. Most importantly, it decided, acting under Chapter VII, for the deployment under United Nations auspices of "international civil and security presences"[30]. We are going to look into detail the structure and operations of these two in the next sections, for the moment it is sufficient to note that the KFOR presence was based on the framework of the already seen *Ahtisaari-Chernomyrdin plan*, envisioning a "substantial" participation of NATO; while for the civilian component, the Secretary-General was requested to appoint a Special Representative to provide:

> "an *interim* administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and […] 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"[31].

UNMIK's main task was to promote the creation of "substantial autonomy and self-government in Kosovo", based on the principles and elements stated in both the Ahtisaari-Chernomyrdin plan and the draft *Rambouillet Accords*[32]. In addition, it was mandated to instil, develop and oversee aspects spanning from public administration and law enforcement, democratization and institution-building, humanitarian assistance and economic reconstruction. The purposes and responsibilities of this "interim" and "transitional" administration were so unprecedented and 'sophisticated', that it was explicitly provided "with the assistance of relevant international organisation"[33].
The extremely wide scope of activities and responsibilities that UNMIK would have to carry out required the United Nations to rely on the support of other international organisations, *in primis* the European Union and the OSCE. However, whether all the various civilian components were indeed subjected to the authority of the SRSG, in practice any lead organisations tended to seek a space of autonomy in their sector of responsibilities. Furthermore, the security presence was by no means bound to the SRSG but rather it was subjected to its chain of command, culminating in the authority of COMKFOR. This meant that UNMIK and KFOR would represent two distinct parallel structures without a unified chain of command. In light of the above, it is clear that cooperation and coordination among all these actors, be it between SRSG-COMKFOR or intra-pillars, would be indispensable for the success of the mission. Otherwise, the disruptive potential of free raiding was high stakes.
UNMIK was truly a discontinuity in the experience of UN commitment to peace, substantially resembling the meaning of Boutros-Ghali earlier that decade, towards comprehensive efforts to identify and support those struc-

[30] Resolution S/RES/1244, *supra* note 15, para. 5.
[31] *Ivi*, paras, 6, 10.
[32] *Ivi*, para. 11 (a).
[33] *Ivi*, para. 10.

tures, of different nature from social to economic, to consolidate peace and prosper "a sense of confidence and well-being among people"[34].
Resolution 1244 suspended, not revoked, the sovereignty of the Federal Republic of Yugoslavia over Kosovo, to be directly administered by the UN[35]. The Security Council had acted under Chapter VII of the Charter, thus not requiring, in principle, the consent of the parties; nonetheless, it relied also on the acceptance of the FYR authorities for practical reasons. UNMIK's mission faced unprecedented challenges in UN peace operations to seek the support of Belgrade to be perceived as legitimate the most by the local people[36]. Some authors have challenged this position, sustaining that the consent of the FYR attested in the Ahtisaari-Chernomyrdin peace plan and the subsequent MTA, was fictional and coerced by military force during the bombing campaign[37]. According to the Law of Treaties, Article 52, any treaty "procured by the threat or use of force" is void *ab initio*[38]; nevertheless, we may reject such an interpretation for the reason that armistices or peace accords inherently arise from conflict situations, and without such contexts, these agreements would not exist.
A second noteworthy aspect of Resolution 1244 is the absence of an explicit mention of the recent war. NATO's humanitarian intervention had circumvented the authority of the Security Council which, in turn, did not acknowledge the legality of *Operation Allied Force* in Resolution 1244[39]. Although the Security Council endorsed the creation of a security presence in Kosovo substantially composed by the Atlantic Organisation, it did so solely based on the annexed *Ahtisaari-Chernomyrdin plan* but not the MTA. In the Preamble, the Security Council welcomes the acceptance of FYR authorities "of the principles set forth in points 1 to 9 of the paper presented to Belgrade on 2 June 1999", that is, intentionally excluding the decisive point pertaining to a further military-technical agreement for the withdrawal of Yugoslav forces. In essence, Resolution 1244 did not remedy the illegal conduct of NATO in Kosovo but accentuated its ambiguity and legal disjunction. This becomes particularly relevant when it comes to the legal status of Kosovo under both the security and civilian presences because, as Geistlinger argues, the wording of Resolution 1244 implies an exclusion of the formal context of *occupatio bellica*[40].
However, Resolution 1244 established a novel and complex arrangement with two essential flaws: the unsolved question of Kosovo and the open-ended mandate of UNMIK. Building upon the Ahtisaari-Chernomyrdin blueprint, the Security Council sought to navigate a delicate route between

[34] Report of the United Nations Secretary-General Boutros, 31 January 1992, DPI/1247, *An agenda for peace: preventive diplomacy, peace-making and peacekeeping*, para. 55 ff.
[35] YANNIS (2001: 71).
[36] BENZING (2010).
[37] SIMMA (1999: 10); GIBBS (2009: 171 ff.).
[38] United Nations, *Vienna Convention on the Law of Treaties* (hereafter Vienna Convention), 23 May 1969, UNTS 1155/331, Article 52.
[39] HARSCH (2014: 75).
[40] GEISTLINGER (1999: 82).

"the Scylla of Kosovo's independence and the Charybdis of Yugoslavia's sovereignty", as Alexandro Yannis described it[41]. The Preamble of the resolution reflected this balance by reaffirming commitment to the "sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region," as well as to "substantial autonomy and meaningful self-administration for Kosovo"[42]. The Security Council left the determination of the final status open to a future political process, simply affirming that a political solution for the Kosovo crisis ought to be based on the general principles of the G8 Statement of 6 May and their further elaboration in the agreed Ahtisaari-Chernomyrdin plan[43]. Although this posture enabled the development of the peace process in the present based on precarious compromises, the price for such a 'short-sighted' choice was a long-term deadlock. What was the final objective of the interim administration? Where was it transiting the territory of Kosovo to? The vagueness of Resolution 1244 and the lack of a clear road map provoked increasing tensions and frustration in Albanians and Serbs, each contesting UNMIK of aiding and abetting the other side, and eventually erupted in the disastrous events of the 2004 March Riots[44].

The Security Council failed to determine an ultimate mechanism of resolution for the question of Kosovo. Whereas the draft *Rambouillet Accords* had called for an international conference after three years, Resolution 1244 was limited to a passive confirmation of the need for a political settlement, identifying its conceptual bedrock in the G8 Statement, the *Ahtisaari-Chernomyrdin peace plan* and some elements of the *Rambouillet Accords*. Moreover, the Security Council decided, naively we might add, for the mandate of the international presence to last "for an initial period of 12 months"[45]. As we know today, after 25 years, *mutate mutandis*, UNMIK and KFOR are still present on the ground.

To some extent, we might argue that Resolution 1244 established a successful peacekeeping operation more than a successful peacebuilding mission. The UN administration in Kosovo was perceived not as a means to an end but rather as an end in itself, serving as the only peaceful alternative to renewed violence. The vague wording of the Security Council provided enough flexibility to reach a temporary compromise that prevented conflict However, it has been amply recognized that the very same ambiguities, uncertainties and contradictions enshrined in Resolution 1244 have posed a virtually insurmountable obstacle in the political settlement of the status of Kosovo, hindering a definitive end to the territorial dispute[46]. Since its inception, UNMIK was hindered by the absence of a clear exit strategy, which fundamentally undermined the mission's success. For this thesis, we may de-

[41] YANNIS (2004: 68).
[42] Resolution S/RES/1244, *supra* note 15, Preamble.
[43] *Ivi*, para. 1.
[44] YANNIS (2004: 76).
[45] Resolution S/RES/1244, *supra* note 15, para. 19.
[46] STANNIS (2004: 75); CAPLAN (2014: 624).

fine these flaws at the Security Council level as ‘primary’ or political factors. These are the founding characteristics of any international mission that provide for its conceptual and orientational framework. For how much tendentially simple, not exhaustive and at times ambiguous, they represent the vital groundwork out of which any international administration must deduce all its powers and strategy. The case of Kosovo may be the most illuminating about the necessity not to underestimate the significance of these ‘primary’ or political factors. They fatally affected UNMIK’s duration and effectiveness, leading soon the territory into what Ahtisaari called in 2007 a limbo and from which only a unilateral Kosovar ‘grassroots’ initiative, whether legitimate or not, would eventually get it out.

4.2 UNMIK – The international civil presence

The international civil presence was officially named the United Nations Interim Administration Mission in Kosovo (UNMIK). It was endowed with an unprecedented mandate in the history of the UN peace operations, so wide to require the support of other international organisations to be carried out properly. Consequently, the small territory of Kosovo suddenly became the host of the principal and biggest international organisations in the world. Despite the explicit noble intentions of this international crowd, it is self-evident that the greater the plurality of actors, the greater the risks for dysfunctional cooperation. Hereafter we shall therefore study the responsibilities and operations of each international organisation and try to understand the nature of the coexistence of this ‘crowd’, be it difficult competition or effective cooperation. At the same time, we shall take into consideration the relations between the overall international administration and the local population. The controversially daunting authority of UNMIK was mainly based on a ‘correlation’ with the important level of destruction on the territory at the end of the war, but it also concealed a biased conception of the international community of Kosovo as an utter political and institutional vacuum. Based on this “empty shell” approach, UNMIK would proceed to establish from scratch some provisional structures of government but adamantly preserve its prerogatives. As a result, the extreme internationalization of Kosovo originally conceived to offset the perceived total emptiness of socio-political structures and capacities in the territory, ended up substantially thwarting and suffocating the underlying and ultimate objective of the international transitional administration: local ownership. Hereafter, we shall consider the mandate and structure that the ITA assumed to rationalize the division of labour of the various IOs, understanding to what extent the SRSG held so much power. Furthermore, we shall examine the successes and failures of the international civilian presence in the main sectors of action: humanitarian affairs, civilian administration, law enforcement and justice, democratisation and human rights, and economic reconstruction.

4.2.1 Mandate and Structure

The international civilian presence was mandated under Resolution 1244 for creating "substantial autonomy and self-government in Kosovo", to perform directly basic civilian functions of the public administration, while organising and overseeing the development of provisional institutions for "democratic and autonomous self-government", to which, once democratically elected, gradually transferring administering competences[47]. This process was remarked as "pending a political settlement" and it was the task of the very same UN administration to facilitate its development[48]. In addition, UNMIK had responsibility for the coordination of humanitarian and disaster relief aid, assuring the safe and unimpeded return of all refugees and IDPs; the maintenance of law and order as well as the protection and promotion of human rights; the reconstruction of the key economic infrastructures[49]. The last point of Resolution 1244 requested the Secretary-General to report regularly to the Security Council on the process of implementation of the resolution, with the first one to be submitted within 30 days of the adoption of the resolution.

The overall authority of the UNMIK was vested by the Special Representative of the Secretary-General (SRSG) who was demanded to rely on "the assistance of other relevant international organisations" to carry out the vast objectives of the mission. Although Resolution 1244 did not mention explicitly any other international institution except for the European Union (EU), Secretary-General Kofi-Annan, in his first two reports of June and July 1999, provided an outline of the overall framework of UNMIK, as an umbrella mission' also including the UN High Commissioner for Refugees (UNHCR) and the Organisation for Security and Cooperation in Europe (OSCE)[50]. What happened therefore in Kosovo was that the UN adopted a strategic approach of subcontracting and delegating specific tasks to regional organizations while striving to maintain overall supervision.

UNMIK was structured in four main components or "pillars", each covering a key aspect of the post-conflict recovery of Kosovo and led by one of the relevant institutions: Pillar I, "Humanitarian Affairs" by the UNHCR; Pillar II, "Civilian Affairs/Public Administration" by the UN; Pillar III, "Democratisation and Institution Building" by the OSCE; Pillar IV, "Reconstruction and Economic Development" by the EU[51]. Each component was headed by a Deputy Special Representative of the Secretary-General, a member of the leading organisation, and reporting directly to the SRSG; the latter retained

[47] Resolution S/RES/1244, *supra* note 15, para. 11.
[48] *Ivi*, para. 11(c)(f).
[49] *Ivi*, para. 11(g)-(k).
[50] Report of the United Nations Secretary-General pursuant to paragraph 10 of the Security Council Resolution 1244 (1999), 12 June 1999, S/1999/672; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 July 1999, S/1999/779.
[51] Report S/1999/779, *supra* note 50, para. 43.

however the capacity to direct those activities necessary to ensure a coherent implementation of the mission. As emphasised by the Secretary-General in his report, "the lead organisation will incorporate its respective command structures"[52] but the overall system had to operate "in an integrated manner with a clear chain of command"[53] to maintain coherence and effectiveness.
In light of the complexities and multifaceted aspects of directing UNMIK, the figure of the SRSG would be assisted by the Principal Deputy Special Representative who would chair the Joint Planning Group (JPG): an advisory body composed of senior planning staff from each lead organisation, charged with the oversight of the consistency of the plans between the components, with a particular focus to the inherent links between emergency relief and long-term reconstruction. The SRSG would be supported by two further bodies in his/her activities. First, the Executive Committee, whose membership included the Principal Deputy Special Representative and the heads of the four components. It aimed to control the implementation of UNMIK's objective and oversee the progress of UNMIK's objectives, setting priorities, phasing and designating tasks and ensuring effective coordination with outside agencies, primarily KFOR. Moreover, the SRSG had its Executive Office, headed by a Director and composed of various units: Legal Advisor, Chief of Staff, Political Office, Public Information and Spokesperson, and Military Liaison Office. The latter, headed by a Chief Military Officer, was the multi-level point of connection between UNMIK and KFOR, deploying officers at the headquarters as well as at the regional and multiregional brigade levels. The military liaison officer had to provide military advice to the UNMIK components, assessing the level of threats to the security and safety of the international civilian personnel[54].
Within the UNMIK framework, the UN was responsible for the components of civilian affairs and public administration, including law enforcement and justice. The general aim of the Office for Civil Affairs was to create and promote multi-ethnic government structures; however, meanwhile, it was responsible for overseeing and, where necessary, directing performing public functions, such as civil service, economic and budgetary affairs, along with supporting the restoration and provision in the short run of basic public services, such as public health, education, utilities, transport and telecommunications. The Judicial Affairs was meant to establish an independent, impartial and multi-ethnic judiciary system; originally having competence also on policy development, it was eventually focused on two operational factors: courts and tribunal administration, prosecution and prison management. Finally, the Office of Civilian Police (CIVPOL) was entrusted with a twofold mission: providing interim law enforcement services while rapidly establishing and supervising a local Kosovo Police Service (KPS). It was headed by a UNMIK Police Commissioner and comprised three elements: International

[52] *Ivi*, para. 44.
[53] Report S/1999/672, *supra* note 50, para. 2.
[54] *Ivi*, paras. 45-51.

Civilian Police Units, responsible for ensuring public safety and order; Special Police Units, carrying out public order functions; and the International Border Police Units, ensuring compliance with immigration laws and other border regulations[55].

The first pillar was led by the UNHCR because it had been operating on the ground since the start of the first refugee crisis in 1998, and even earlier. Its role was thus just a formal endorsement of an operation already in effect for humanitarian assistance for adequate shelter, food, water and medication to the refugees and internally displaced persons (IDPs). In the framework of UNMIK, UNHCR had to ensure the safe and unimpeded return of all people to Kosovo, including special attention to the protection of and assistance to minority groups, as well as coordinating the other UN and outside agencies for the provision of humanitarian and disaster relief aid. On top of that, under the humanitarian affairs component, it was undertaking the mine action programme for Kosovo, exercised by the newly established UN Mine Action Coordination Centre (UNMACC) to deal with the demining of landmines and unexploded ordnance threatening the safe return of refugees and displaced persons[56].

The OSCE was assigned to the third pillar of democratization and institution building, consisting of strengthening the capacity of local and central institutions and civil society organisations as well as the promotion of democracy, good governance and respect for human rights. Formally, its tasks focused on four main areas: human resources capacity-building, overlapping the UN areas of justice, police and public administration; democratisation and governance, underlying confidence-building activities; human rights monitoring and capacity building; and finally, the central element of elections, preparing, conducting and monitoring them[57].

Finally, the European Union led the fourth pillar of economic reconstruction and development, whose final aim was to create Kosovo a viable, market-based economy, through an integrated plan of immediate emergency relief, reconstruction and rehabilitation, and long-term sustainability.

The choice of multi-faceted pillars-structure was based on the lesson learned from the difficulties in inter-organisational coordination in other comparable situations, primarily the UN Mission in Bosnia and Herzegovina. There, the High Representative was seriously limited in its capacity to mobilize and coordinate the activities of the international agencies as the latter enjoyed an incredibly significant but divergent degree of autonomy[58]. The rationale behind UNMIK's pillars, in principle, was to eliminate duplication, overlaps, gaps, and resource wastage, while simultaneously preventing detrimental competition among international organizations[59]. The SRSG was the top and cornerstone of this framework, heading various formal coordinating mecha-

[55] Report S/1999/779, *supra* note 50, paras. 55-73.
[56] *Ivi*, paras 29, 91-100.
[57] Report S/1999/672, *supra* note 50, para. 13.
[58] CAPLAN (2014: 619).
[59] CHOEDON (2010: 46-47).

nisms, such as the Executive Committee and assisted by the JPT. According to Jones, these formal fora served as an "important strategic coordination function" providing the SRSG with a forum to communicate strategic vision[60]. However, it is interesting to note that formal coordination was mainly residing at the central level, while such kind of operational mechanisms were lacking. Also, thanks to the high density of international organisations in such a small territory as Kosovo, the civilian (but also military) personnel developed more informal means of interaction, sharing and exchanging information or consulting with their counterparts in other organisations[61]. Evidence of effective cooperation between international organisations in Kosovo may be found in the provision of humanitarian assistance by UNHCR and KFOR, and the other humanitarian agencies, to allow the phasing out of the former as pillar I just after one year. The UN and the OSCE collaborated in various manners to provide professional training to the local police forces, and the OSCE succeeded in planning, conducting and monitoring the elections at the municipal and central level, thanks to the complex interplay with the Civilian Police, KFOR and the UNHCR[62].

However, except for some specific instances, the international interplay of the UN administration in Kosovo fell short of many of its objectives. As we will see, UNMIK in general failed the create a multi-ethnic society, and for instance, notwithstanding the efforts of UNHCR nor KFOR, the precarious security situation for the non-Albanian minorities hindered the return of Serbian refugees. The UN-OSCE goal of a multi-ethnic justice system eventually vanished because of the prominent membership of Albanians and the Serbian fear of resentment. Otherwise, looking at the final unsatisfactory economic development, the EU and the UN critically diverged about the fate of the socially owned enterprises (SOEs) in Kosovo. These are only a few examples of critics of the interplay of the lead organisations in Kosovo and they will be thoroughly analysed, along with the aforementioned achievements, in the next sections. For the moment, hereafter we shall consider the main reasons behind the lack of effective coordination within the UNMIK framework.

First, the systematic division of labour was carefully articulated but little attention was given to the concrete forms of intra-pillar cooperation. Since the early reports of the Secretary-General, it was evident the mutual dependence among the lead organisations for achieving their common goals:

> "Four international organisations and agencies will be working together in one operation under one leadership. *None of them would be able to span a wide range of complex activities on its own.* Setting up an interim administration, providing humanitarian relief, building democratic institutions and restoring an entire economy would go beyond the competence and capabilities of just one organisation"[63].

[60] JONES *et al* (2002: 101).
[61] CHOEDON (2010: 48); IVANOV (2015: 79).
[62] JEONG (2006: 204).
[63] Report S/1999/779, *supra* note 50, para. 118.

The Secretary-General knew it as well as the rest of the four international organisations, but there was limited organizational guidance and knowledge on how to implement this effectively[64]. As noted by Eide, "the UN approach has been overly concerned with the structure of mission, and far less focused on the strategies required to ensure sustainable peace"[65]. Eventually, the main expression of the overall intra-pillar cooperation capacity was limited to the regular meetings of the Executive Office, but in the day-to-day performance, each component performed the task of its pillar with limited coordination, or through little informal mediums[66].

Another crucial factor was leadership and personality. The professional ability of the SRSG, being the cornerstone of the structure, is strategic to ensure effective coordination and coherence in the implementation of the mission. In Kosovo, the Special Representative in the pilot stages was held by qualified officials, such as Kouchner, Steiner and Jessen-Petersen, who had both operational experience and genuine organisational activism in the mission[67]. However, this was not the rule and there was also a widespread presence of officials in the international organisation that seemed less committed and more interested in their personal career advancements, especially at the middle and lower levels. In addition, the frequent change of personnel, particularly at the senior level with an average duration of eighteen months or so, hindered the consolidation of effective networking relationships and, in turn, inter-organisational cooperation[68].

Organisational culture has a long history in cooperation literature. It essentially encompasses the set of "shared basic assumptions", i.e., values, beliefs, norms and practices shaping how an organisation perceives, interprets and responds to them[69]. In the case of Kosovo, while the UN performed in a bureaucratic and hierarchical chain of command, with a culture inclined to maintain the status quo and exercise caution over the initiative, the other two relevant organisations, the EU and the OSCE, operated through smaller size of personnel but more cohesive[70]. Furthermore, UNMIK had to respond firstly to the UN headquarters in New York but since the mission included also the OSCE and the EU, it was inevitably the involvement of their respective central and as much robust structures, such as the former's Secretariat in Vienna or the European Parliament, the Commission, the Directorates-General, the office of the EU High Representative for Foreign and Security Policy. Both agencies had their own specific and well-established organisational culture and tradition that could not easily fit in the UN 'tight' framework, reducing the cohesion in the overall international response[71].

---

[64] HOLOHAN (2005: 43).
[65] EIDE *et al* (2005: 19).
[66] BRAND (2002: 110)
[67] KING, MASON (2006: 220); EIDE *et al* (2005: 36).
[68] CHOEDON (2010: 52).
[69] SCHEIN (2010: 18); WEAVER (2008: 37).
[70] KING, MASON (2006: 167); NARTEN (2006: 157).
[71] KING, MASON (2006: 249).

Finally, and most importantly, institutional competition is a constant underlying peril. Cooperation is not *per se* a granted condition of harmony among two actors but rather it is inherently accompanied by a potential or actual conflict; because, as put by Keohane, "without the spectre of conflict, there is no need to cooperate"[72]. Competition implies a double connotation. On the one hand, there is the 'healthy' competition among actors to outsmart each other but with a direct positive implication on the ground and for the people. On the other, organisations compete also through turf battles, to increase their visibility and influence, but risk spoiling considerably their relationship and undermining prospects of effective coordination[73]. In the case of Kosovo, this essentially occurred in the context of the growing frustration and delusion in the local people towards the UNMIK governance, wherein other international organisations blamed the UN umbrella system, easily scapegoating the UN as a source of all failures[74].
In conclusion, the international civilian presence in Kosovo was the highest per density compared to the rest of the world. So much international community for so little piece of land; to operate in such a limited environment, it was necessary a well-established framework of work of implementation of Resolution 1244. The systematic division of labour among the various international organisations was aimed at this: rationalising the intervention of the international community and making it more efficient. Notwithstanding the experience from Bosnia, the pillar structure adopted in Kosovo became a paradigm of unsatisfactory cooperation. However, the ineffective performance of UNMIK was not merely a consequence of poor coordination, but other formidable factors contributed to its downfall.

4.2.2 The SRSG *auctoritas maxima*

The role of the Special Representative of the Secretary-General (SRSG) is vital in complex crisis management. Personality, leadership and disposition are important factors in the performance of SRSGs[75]; however, it must be admitted that there are external or contextual conditions upon the deployment and management of SRSGs which may substantially affect their capacity, for instance, the role of the Organisation in the peace process, the support received, the timing of deployment and the specific mandate and job description[76]. To be effective in their mission, the SRSGs need to hold a clarified and robust authority, ensuring their financial, administrative and substantive control, because in integrated missions, such as the one in Kosovo,

[72] KEOHANE (2005: 54).
[73] SOBJERG (2006: 66).
[74] CHOEDON (2010: 53).
[75] Some performance of SRSGs with formidable reputation have been Aldo Ajello in Mozambique, Alvaro de Soto in El Salvador, Jean Arnault in Guatemala and Terje Roed-Larsen in Palestine.
[76] JONES (2001: 10-11).

"there is a high correlation between effective strategic coordination and the presence and good management of an SRSG"[77].

The Special Representative in Kosovo was the head and cornerstone of the authority of UNMIK[78]. Resolution 1244 briefly portrayed the SRSG as responsible for the implementation of the mandate of the international civilian presence, along with the close coordination with the security force KFOR[79]. The first detailed framing of the authority of the SRSG was introduced by Secretary-General Kofi Annan, in his two operationalizing reports to the Security Council in June and July 1999. His Special Representative was entitled to the overall authority to manage the UN Mission and coordinate the activities of all the UN agencies and the other international organisations operating in Kosovo, to maintain coherence and effectiveness "in an integrated manner with a clear chain of command"[80]. In addition, the SRSG was also mandated to facilitate a political process to determine Kosovo's future states, although with no precise indication of an end-state, but just "took into account the *Rambouillet Accords*"[81].

The most striking factor about the UN Special Representative in Kosovo was the exceptional authority that it came to hold. First of all, it is necessary to note that, in his second report to the Security Council, Secretary-General Kofi Annan interpreted and operationalized extensively the already daunting and unprecedented scope of powers belonging to UNMIK, beyond the explicit wording in Resolution 1244:

> "The Security Council, in its resolution 1244 (1999) has vested in the interim civil administration authority over the territory and people of Kosovo. All legislative and executive powers, including the administration of the judiciary, will, therefore, be vested in the UNMIK"[82].

The "basic civilian administrative functions" originally envisioned by the Security Council were thus transformed into full governmental competencies and the UN as a 'surrogate state' was empowered to enact legislation, undertake judicial and law enforcement reforms, support civil society, and establish transitional justice mechanisms to develop a democratic system and fortify the rule of law. However, the further decisive step was directly taken by the first official SRSG, Bernard Kouchner, adopting Regulation No. 1999/1 (so-called "Mother of all Regulations") *on the Authority of the Interim Administration in Kosovo* where it was stated that:

---

[77] The importance of a single mediator as a lead coordinating agent is one of the principal conclusions of CROCKER, HAMPSON, AALL (1999: 3 ff.).

[78] During the decade of the 'proper' international administration of Kosovo (1999-2008) there have been eight different SRSG: Bernard Kouchner (1999-2001); Hans Haekkerup (2001); Michael Steiner (2002-2003); Harri Holkeri (2003-2004); Soren Jessen-Petersen (2004-2006); Joachim Rucker (2006-2008); Lamberto Zannier (2008-2011).

[79] Resolution S/RES/1244, *supra* note 15, para. 6.

[80] Report S/1999/672, *supra* note 50, para. 2-3.

[81] Report S/1999/779, *supra* note 50, para. 44.

[82] *Ivi*, para. 35.

> "All legislative and executive authority concerning Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General"[83].

All three governmental branches traditionally belonging to the state were now in the hands of one single person, with no formal nor substantial division of powers. As regards legislation, the UN Special Representative was empowered to change, repeal or suspend existing laws in Kosovo and could exercise his/her legislative authority through the issue of regulations, remaining in force until repealed by UNMIK or suspended by institutions established under a political settlement[84]. Notwithstanding the gradual process of transferring authority to emerging local actors, from the early consultative forum of the Joint Interim Administrative Council (JIAC) to the later Provisional Institutions for Self-Government (PISG), the SRSG always kept the "ultimate authority over the implementation of UNSCR 1244 (1999)", along with the "authority to intervene as necessary in the exercise of self-government to protect the rights of Communities and their members"[85]. From an administrative point of view, the Special Representative represented "the highest civilian international civilian official in Kosovo", holding "the maximum civilian executive powers"[86]. As such, the head of UNMIK had also the authority to appoint or remove any person to perform public functions, by the existing laws and regulations[87]. In addition, the SRSGs assigned themselves, in quality of supreme legislators, also the power to issue administrative acts, called Administrative Directions, to implement the Regulations. In practice, there was no hierarchy between these two legal instruments as all the SRSGs regarded Directions as amending Regulations even retroactively[88]. Finally, regarding the administration of the judiciary, the SRSG set up counselling bodies for the creation of an independent and multi-ethnic system but retained supremacy for the assignment and removal of local judges and international judges "where this is considered necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice"[89]. In addition, owing to the general uncertainty and blurred distinction in Kosovo about the notions of 'judicial power' and 'administration in justice', the SRSGs took advantage of their powers to interfere in *res judicata* matters, both by assigning any case from the Kosovar ju-

---

[83] Regulation of the United Nation Interim Administration Mission in Kosovo, 25 July 1999, UNMIK/REG/1999/1, *On the Authority of the Interim Administration in Kosovo*, Section 1.1.
[84] Report S/1999/779, *supra* note 50, para. 39, 41.
[85] Regulation of the United Nations Interim Administration Mission in Kosovo, 15 May 2001, UNMIK/REG/2001/9, *on a Constitutional Framework for Provisional Self-Government in Kosovo* (hereafter Constitutional Framework), Preamble and Section 4.6.
[86] Report S/1999/779, *supra* note 50, para. 44.
[87] *Ivi*, para. 40.
[88] BENVENISTI (2012: 285).
[89] Regulation of the United Nation Interim Administration Mission in Kosovo, 15 December 2000, UNMIK/REG/2000/64, *on Assignment of the International Judges/Prosecutors and/or Change of Venue*, Section 1.2.

diciary to an international panel[90] as well as providing directly legal interpretation to courts through enacted laws[91]. It is thus evident that the intended independence and impartiality of the UNMIK's established judiciary system, one of the central priorities since the early deployment as well as the explicit objective posited by the Secretary-General to be "the guarantor of the rule of law"[92], was substantially compromised, if not contravened, by the exceptional and overwhelming degree of power of the Special Representative.

Similarly to the experience in East Timor, the SRSG became the *de facto* head of state of Kosovo, normatively constrained only by the mandate of Resolution 1244 and the observance of internationally recognized standards[93]. Chopra saw in it "a pre-constitutional monarch in a sovereign kingdom"[94], while Mertus spoke of "virtually unlimited powers"[95] as the population could not challenge the decision of the SRSG, neither the actions were always transparent, nor the figure could be removed from office if acting in contrast with the interest of the community governing. Hence, the other side of the coin of the far-reaching powers of the SRSG, and more generally the UNMIK's authority, that is, their feeble legitimacy or 'legitimacy gap'. As argued by Lemay-Herbert, legitimacy is not simply the logical outcome of a successful process, but rather a relevant factor that "inherently shapes the nature of the state-building process"[96]. It is true that with great powers come great responsibilities, and when UNMIK surrogated the *de facto* government of Kosovo, it also assumed indirectly the same requirements of any legitimate government in front of its population. Moreover, due to the nature of transitional and interim administration, the UN mission also implied lofty expectations from the Albanian community for the key role of the SRSG towards the determination of the final status of the territory. The lack of these achievements and the progressive delay of the process were sources of mounting criticism from both communities under, as they critically referred, the "UNMIKistan"[97], particularly the Albanian majority aiming for independence whose frustration eventually erupted in the violent events of March 2004.

In conclusion, the exceptional powers held in the hands of the SRSG without any traditional checks and balances mechanism heightened the legitimacy weakness of the unprecedented mandate of the UNMIK. Notwithstanding such wide powers, the UN mission proved considerably unsatisfactory, also because of this legitimacy gap. The success of an international administration does not depend exclusively on how much power it has, but also on how it is used. This latter aspect is what, for this thesis, we shall consider as sec-

---

[90] MURATI (2020: 64).
[91] Regulation of the United Nation Interim Administration Mission in Kosovo, 12 December 1999, UNMIK/REG/1999/24, *on the Law Applicable in Kosovo*, Section 2.
[92] Report S/1999/779, *supra* note 50, para. 40.
[93] Regulation UNMIK/REG/1999/1, *supra* note 83, Section 2.
[94] CHOPRA (2000: 28).
[95] MERTUS (2003: 28).
[96] LEMAY-HERPERT (2009: 67).
[97] KING, MASON (2006: 16).

ondary or 'operational' factors affecting post-conflict peacebuilding. Namely, along with the founding political moments defining the mandate, it is also relevant to the manners in which the latter is operationalized and implemented by international administrators and/or international organisations.

4.2.3 Humanitarian Affairs

Humanitarian assistance and protection were the first reasons why the international community was present in Kosovo, and, within the UNMIK framework, it was placed in Pillar I. It should not surprise the fact that the leading role in the humanitarian component was assigned to the UN High Commissioner for Refugees. Despite its initial irresolute performance, as we have already seen in Chapter Two, the UNHCR had been engaging in the management of the refugee crisis during the outbreak of the conflict, thus being already present and with situational awareness of the area of operations.
The mission entrusted to the humanitarian pillar was threefold: coordinating and supporting humanitarian and disaster relief operations ensuring the safe and unimpeded return of all refugees and displaced persons, and the elaboration of a protection strategy for ethnic minorities[98]. The immediate emergency assistance by the international community was completed without any serious problems, thanks to the central role of UNHCR in the interplay between multiple UN and outside agencies, such as the World Foord Programme (WFP), the United Nations Development Programmes (UNDP), the United Nations International Children's Emergency Fund (UNICEF), the Food and Agriculture Organisation (FAO), the International Federation of the Red Cross and Red Crescent (IFRC), the International Committee of the Red Cross (ICRC), the International Organisation for Migration (IOM), and further national and international NGOs[99]. Adequate shelter, food, clean water, medical assistance and employment were thus provided to the growing number of people returning to Kosovo.
The second aspect of guaranteeing safe and unimpeded return "to their homes in Kosovo" was instead more complicated. While in the medium term, the UN administration would reckon with increasing clashes over property rights in a context of severe absence of legal documents, the most immediate concern was the precarious housing situation in the province because of the widespread impacts and destruction of war. Many houses had been damaged during and after the conflicts, with an estimated 50 thousand facilities beyond repair[100]. The winterisation was "the secondary humanitarian emergency"[101] that UNHCR, along with other many humanitarian agen-

[98] Resolution S/RES/1244, *supra* note 15, para. 11 (h)(k); Report S/1999/779, *supra* note 50, para. 93.
[99] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 23 December 1999, S/1999/1250, para. 21.
[100] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 16 September 1999, S/1999/987, para. 11.
[101] WRIGHT (2001: 128).

cies, had to cope with by providing the returnees during the cold months with shelter kits, prefabricated shelters, direct repairs, cash subsidies and, for the majority, housing in host families. To be more effective, the UN agency established an Inter-Agency Coordination Unit, directly supported by the Office for the Coordination of Humanitarian Affairs (OCHA) of the UN Secretariat, to guarantee a coordinated and coherent approach in humanitarian operations[102].

The humanitarian component of UNMIK proved to be certainly one of the most successful in strict terms of emergency assistance, leading to the phasing out of Pillar I in mid-July 2000. The UNHCR continued to operate in Kosovo with a less central role, assisting and supporting the Kosovar authorities in implementing sustainable solutions for the return of displaced persons, especially concerning the safety of ethnic minorities. The latter was a significant failure besmirching the achievements of the humanitarian pillar as much as one of the most serious for the overall international administration. The end of the war represented a turning point in the direction of the people on the move, on the one hand, with the mounting hundreds of thousands of Albanians returning and, on the other, because of the wave of non-Albanian Kosovar fleeing towards inner Serbia or Montenegro.

This second displacement regarded initially at least 150 thousand persons but soon doubled because of the increasingly widespread reverse violence due to the absence of law-and-order enforcement agencies[103]. The extremist branches of the Albanian majority were the perpetrators of these revengeful acts, mainly "killings, abductions, beatings, threats and harassment", both intra-ethnic, targeting Serbs, Roma, and Slavic Muslims, and inter-ethnic, against Albanian individuals on suspicion of collaboration with Yugoslav authorities[104]. The plague of violence after the end of the conflict was mainly caused by the unpreparedness of KFOR troops for operations of minority protections and the severely delayed deployment of the civilian personnel and UNMIK police.

However, the security situation remained steadily fragile for the period of internationalisation of Kosovo, without that neither UNMIK nor KFOR succeeded in effectively tackling the problem. Evidence of this incapacity was the unpleasant events of March 2004, provoking 19 victims, almost one thousand injured and many damaged to houses and cultural sites[105]. It is not surprising that this underlying but constant state of insecurity for ethnic minorities worked as a disincentive significantly hampering the resettlement of displaced persons. However, the situation was so grim that the very same UNCHR arrived to discourage the return of minority populations in Kosovo, during the early stages of the post-conflict period[106]. UNMIK attempted to

[102] Report S/1999/779, *supra* note 50, paras. 93-98.
[103] Report S/1999/987, *supra* note 100, para. 10.
[104] ONDROVIČ (2013: 127).
[105] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 30 April 2004, S/2004/348, para. 3.
[106] Report S/1999/1250, *supra* note 99, para. 23.

tackle the problem by establishing in May 2000 a Joint Committee on Return for Kosovo Serbs and a Platform for Joint Actions, organising returns in identified "safe" sites and monitoring visits by the Committee[107]. However, despite all these efforts, considerable individuals kept leaving in contrast to the limited arrival of Serbians and other minorities, thus inevitably proving two elements: the persistent animosity between ethnic communities in Kosovo as well as a profound weakness of the international presence[108].

4.2.4 Civil Administration

The principal component of UNMIK was led directly by the United Nations, and comprised public administration, police and judicial affairs. After the phasing out of UNHCR in 2000, the latter two functions formed the new Pillar I, thus concentrating the second pillar all on the establishment of multi-ethnic governmental structures. Upon its arrival in Kosovo, the international civilian mission found the territory amid an almost utter absence of formal political institutions, either for the physical destruction of the war or the departure of the Yugoslav/Serbian authorities, who had composed the majority of the civil servants. When interviewed by Traub, former UNMIK official Strohmeyer reported that "UN officials in Kosovo used to refer to the bombed-out territory they administered as the *empty shell*"[109].
The extreme legal and political vacuum following the 1999 conflict was the principle of the so-called "empty shell approach", that is, a fundamental biased conception of the international mission in Kosovo considering the political context in which they were operating as completely arid under every aspect, a *tabula rasa*, a *terra nullius*[110]. If it is true that this approach provided a convenient legitimation basis for the far-reaching international administration, on the other hand, as asserted by Chopra, it substantially "missed the fact that the population continues to exist, that market forces of whatever kind are always at work, and that the social structures of Indigenous communities invariably generate sources of political legitimacy according to their paradigm"[111]. In other words, despite the real absence of formal political institutions, in June 1999 social structures were still present and active. These "parallel structures" both of the Albanian and Serbian communities would prove to be a considerable limit to the authority on the ground of UNMIK and KFOR, which, in turn, attempted to confront and co-opt them as a means to achieve greater legitimacy.
Dazzled by the "empty shell" bias, the international community proceeded to invent 'from scratch' a completely new provisional governmental structure.

---

[107] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 6 June 2000, S/2000/538, paras. 73-74.
[108] PAVLAKOVIĆ (2000: 111); MOCKAITIS (2004: 31).
[109] TRAUB (2000: 74).
[110] CHESTERMAN (2001: 26); SURKHE (2001: 3).
[111] CHOPRA (2002: 980).

There was no pre-fixed road map for the institution-building process, only a general strategy of five integrated phases, pending a final political settlement to the dispute. First, the establishment and consolidation of UNMIK's authority and the creation of interim UNMIK-managed administrative structures as conditions of basic stability. Afterwards, the administration of social services and utilities, the consolidation of the rule of law, and some first provisional transfer of executive authority at the local and possibly regional levels in specific sectors, such as health and education. Third, the finalization of the preparation for and the conduct of free and fair democratic elections for a central political body. As a fourth step, UNMIK would oversee and assist, "as necessary", this democratically elected body of Kosovo in the organization and establishment of the provisional institutions for democratic and autonomous self-government, to which UNMIK would transfer its remaining administrative responsibilities. The conclusion of this process was left once again open and "depending on a final settlement and the disposition made therein"[112].

Hereafter, we shall examine the performance of UNMIK towards its goal of creating completely new multi-ethnic governmental structures in Kosovo. First, we start from the significant issues for the establishment of a legal system to emphasise the imperative prerequisite of a comprehensive legal framework regulating the activities of peacebuilding missions. Then, we focus on the challenges and developments for the executive institutions, identifying the critical aspects of imbalanced internationalisation and unsubstantial local ownership.

a. A new legal system

The first necessity of the international civil presence in Kosovo was to establish a legal context wherein all its various components and actors could operate. Whereas Resolution 1244 and the other key documents previously addressed in this Chapter provided the legal framework of the international administration, UNMIK and its components needed to determine a clear set of rules for the governance of the territory. This was a very delicate task, susceptible to creating tensions in the reconstruction process because the legal system of a territory is a substantial part of its cultural heritage[113].

The principal problems usually encountered in the legislation of countries with past internal violence and oppression are the absence of reference to international human rights standards and the existence of discriminatory laws. Accordingly, the post-crisis management authorities, whether national or international, are generally requested to provide a remedy by the identification of the laws applicable, introducing human rights standards in the system and reviewing the existing legislation in the light of the latter.

---

[112] Report S/1999/779, *supra* note 50, paras. 110-117.

[113] DE BRABANDERE (2009: 192).

aa. The UNMIK laws and subsidiary instruments

The foundation of the law-making authority of UNMIK resides in the extensive interpretation of the mandate by Secretary-General Kofi Annan in July 1999, stating that "all legislative and executive powers, including the administration of the judiciary, [are] vested in the UNMIK"[114]. The UN administration in Kosovo thus proceeded to establish a legal system consisting of regulations, administrative directions, and executive decisions that could not be repealed or modified by any other authority within the territory.

The main legislative act entrusted to the SRSG was the Regulations[115]. This latter term, first envisioned by the second report of the Secretary-General to the Security Council, led to significant confusion, particularly regarding its legal nature. Typically, regulations are issued by internal bodies to address specific issues arising from the law. However, within the UNMIK framework, this legal instrument served a dual purpose: initially, it functioned as the law itself, but later it became the means through which the Kosovo Assembly's laws were enacted[116].

As both the supreme legislator and the highest executive authority, the SRSG assumed the power to issue Administrative Directions. These represented, in principle, subsidiary acts implementing regulations, with a faster-adopting procedure only requiring a review by the UNMIK Legal Adviser before the submission to the SRSG's signature[117]. However, it is important to note that no specific terminology clarified the normative nature of these subsidiary acts, and various terms were used interchangeably, such as administrative instructions, sub-acts, normative acts, and guidelines[118]. In this sense, very controversial was the adoption of Regulation No. 2000/59 amending the previous legislation on the law applicable in Kosovo and deciding that "in case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence [over domestic laws]"[119]. The question of subsidiary instruments essentially persisted for all the international administration and raised differing interpretations about the unclearness around the hierarchy and uniformity of the normative acts[120].

Beyond these legal instruments, the SRSG also issued numerous Executive Decisions aimed at achieving specific outcomes or addressing particular situations, often with a political dimension. These decisions included actions

[114] Report S/1999/779, *supra* note 50, para. 35.
[115] *Ivi*, para. 41.
[116] MURATI (2020: 35).
[117] VON CARLOWITZ (2003: 377).
[118] MURATI (2020: 36).
[119] Regulation of the United Nations Interim Administration Mission in Kosovo, 27 October 2000, UNMIK/REG/2000/59, *Amending UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo*, Section 1.
[120] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, January 2002, *Property Rights in Kosovo*, pp. 14-15.

such as detaining individuals extrajudicially, invalidating actions and agreements, and overturning court decisions[121].
The legal implications of the SRSG's intrusiveness in the judiciary affairs significantly limited the functioning of the courts as guarantors of last resort for the protection of human rights, evidently contravening the principle of independence of the judge, the bedrock of the concept of rule of law. This aspect is even more truly relevant as, in general, laws issued by UNMIK proved to be in contradiction with internationally recognized human rights standards, but no supervisory body was established to supervise these acts[122].
In addition, neither *ad hoc* accountability mechanisms nor its internal arrangements were sufficient to provide a suitable solution. In doing so, UNMIK called into question its commitment to foster democracy and the rule of law.
In conclusion, during its first two years of administration, UNMIK exercised its law-making prerogatives almost exclusively by itself, with little involvement of local actors. This international prominence not only would progressively cost the legitimacy of the UN mission but immediately reveal its potential deficiency concerning the question of applicable law.

bb. The question of the law applicable in Kosovo

Resolution 1244 failed to determine the question of applicable law in Kosovo, creating a confusion and legal vacuum for several months. Since the mandate asserted respect for FRY sovereignty, the UNMIK administration insisted on the application of FYR laws. Regulation No. 1999/1, the so-called "Mother of All Regulations", initially determined the validity of the law applicable on 24 March 1989, the day of the beginning of NATO's military intervention, as long as it respected international human rights:

> "The laws applicable in the territory of Kosovo before 24 March 1999 shall continue to apply in Kosovo insofar as they do not conflict with standards referred to in section 2, the fulfilment of the mandate given to UNMIK under United Nations Security Council Resolution 1244 (1999), or the present or any other regulation issued by UNMIK"[123].

The advantage was to address the existing legal vacuum while avoiding the introduction of an entirely new legal system, which would have been impractical and unsustainable during the immediate post-conflict recovery. This was due to the considerable time required to draft a new legal system and train the judicial personnel, who were almost non-existent at the time. However, Regulation No. 1999/1 had significant shortcomings too. It failed to specify which laws breached international human rights law or to provide immediate alternative legal sources. The greatest drawback, however, was the backlash in the Albanian community. The Serbian law in effect through-

[121] MURATI (2020: 36).
[122] *Ivi*, 51 ff.
[123] Regulation UNMIK/REG/1999/1, *supra* note 83, Section 3.

out the 1990s was considered a symbol of Serbian oppression and it contained indeed many discriminatory laws[124]. In protest of this UNMIK's unilateral decision, many Albanian judges resigned from their office, further hindering the fragile process of reconstruction of the judicial system. The international administration eventually sought to rectify the situation by adopting Regulation No. 1999/24, amending Regulation No.1. The amendment stipulated that applicable law should consist of the regulations promulgated by the SRSG (including subsidiary instruments) and the law, which was in force in Kosovo on 22 March 1989, to the extent that it did not contradict internationally recognizes human rights standards[125]. This change of date acquiesced to the wishes of the Albanian majority by reverting to the legal system in place before Milosevic stripped Kosovo of its constitutional prerogatives as the official Autonomous Province of the Yugoslav Federation. However, it is important to stress that the pre-1989 laws proposed by the Albanian lawyers were nearly as incompatible with international human rights standards as the laws of the post-1989 laws[126]. The matter was further settled some months later with Regulation No. 2000/59 identifying the sources of law applicable in Kosovo as UNMIK Regulations, the law in force in Kosovo on 22 March 1989, and, in addition, the law applied in Kosovo between 22 March 1989 and 12 December 1999 as long as it was not discriminatory and not in contradiction with international human rights standards.

However, there was no clear hierarchy in the legal source, out of the supremacy of SRSG Regulations[127]. It was not also clear how to reconcile FYR/Serbian law with international human rights standards, explicitly referring only to seven legal instruments: the *Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms* and the *Protocols* thereto; the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the *Convention on the Eliminations of All forms of Racial Discrimination*; the *Convention on the Elimination of All Forms of Discrimination against Women*; the *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*; and the *International Convention on the Rights of the Child*[128].

The most vulnerable sector of the previous Kosovo legal system compared to the international human rights standards was the penal. In 2000, UNMIK directly engaged in the drafting of completely new codes of criminal law and criminal procedure through the Joint Advisory Council on Legislative Matters. The process lasted almost two years until the SRSG promulgated the results into the new Regulations No. 2003/25, *Provisional Criminal Code of*

---

[124] YANNIS (2001: 112-113).

[125] Regulation UNMIK/REG/1999/24, *supra* note 91, Section 1.1.

[126] MURATI (2020: 31).

[127] STAHN (2001: 156).

[128] Regulation UNMIK/REG/1999/1, *supra* note 83, Section 3; Regulation UNMIK/REG/1999/24, *supra* note 91, Section 1.3; Regulation UNMIK/REG/2000/59, *supra* note 119, Section 1.3.

Kosovo[129], and No. 2003/26, *Provisional Criminal Procedure Corde of Kosovo*[130]. Entered into force in April 2004, the two new codes meet modern criminal law criteria, among which the relevant changes comprise the introduction of a new pre-trial investigative approach, the abolition of the death penalty, the extension of the period of *habeas corpus*, and the boosting of protection for victims and witnesses.

The question of law applicable in Kosovo put UNMIK at a crossroads between "continuity", implying the retention of discriminatory laws, or "reform", through the enactment of new laws. This subject is inherently connected to the issue of sovereignty: what is the legitimacy of UNMIK to modify substantially Yugoslav legislation? After all, Resolution 1244 had no explicit provision, but it was the extensive interpretation by the Secretary-General to open this function. Hence then, it becomes apparent the constant tension between the ambiguous terms of UNMIK's official mandate for governing the territory and its concrete priorities on the ground to fulfil the mission of rule of law. This contingency dilemma hampered the UN mission effectiveness on the one hand, while on the other pushed it on some occasions to force the hand. However, UNMIK's legislative activity has been accepted by legal experts as a matter of necessity to enable the international presence, both military and civilian, to become fully operational[131].

cc. A Constitutional Framework for Provisional Self-Government

The *Constitutional Framework* was the quasi-constitutional act promulgated on 15 May 2001 to regulate internal matters of the Kosovar legal system. The document replaced the existing Joint Interim Administrative Structures with the Provisional Institutions of Self-Government (PISG), which would officially take place after the general elections in November 2001. However, the drafting process towards the *Constitutional Framework* proved to be an overly complicated and challenging activity for the international administration.

The first two years of the international administration of Kosovo unfolded in a situation of 'a-constitutionality'. While the UN officials considered the Security Council Resolution 1244 the only necessary fundamental text, the Kosovars had consistently insisted since the immediate after-war, on the necessity to have a proper constitutional act before the issue of new regulations. Any new legal acts should have emerged out of this constitutional text. However, the request was dismissed by the international community because it was a dangerous highly political issue. On March 2000, the SRSG Kouchner first presented the question suggesting a "pact" between Kosovar Alba-

[129] Regulation of the United Nations Interim Administration Mission in Kosovo, 6 July 2003, UNMIK/REG/2003/25, *Provisional Criminal Code of Kosovo*.

[130] Regulation of the United Nations Interim Administration Mission in Kosovo, 6 July 2003, UNMIK/REG/2003/26, *Provisional Criminal Procedure Code of Kosovo*.

[131] MURATI (2020: 45).

nians and the UN, wherein the UNMIK would gradually introduce domestic self-governance institutions based on the status model envisioned in the last version of the *Rambouillet Accords*[132].

However, the proper negotiating process started in March 2001, when the new SRSG Haekkerup set up the Joint Working Group (JWG) in Prishtinë/Priština with the task of drafting "a legal framework for self-governance of Kosova"[133]. The JWG body was chaired by Johan Van Lamoen, a UN legal expert operating in East Timor, and composed of seven international legal experts and seven local representatives, including both Serbian and Albanian communities – although the Serbian members abandoned the project in the early sessions[134]. This was the first time in the history of the UN where it was realized a negotiating process for the constitutional drafting of an internationally administered territory. However, as asserted by Murati, "the concept of *pouvoir constituant* was completely absent" as domestic legal experts were excluded from the constitution-making process; the concrete work of definition of the structure, competencies and relations of the new institutions was instead carried out by a small reserve of internal international advisers[135]. UNMIK's representatives were concerned with two key priorities, or "red lines", with regard to the final outcome of the drafting process: to ensure the protection of the rights of all communities in Kosovo, especially the minorities, and to respect the sovereignty and territorial integrity of the FYR, avoiding to prejudging any potential final settlement for Kosovo[136]. Eventually, the parties reached an agreement on a wide range of issues and the final document was promulgated by the SRSG as Regulation No. 2001/9 *on a Constitutional Framework for Provisional Self-Government in Kosovo*[137], thus formally levelling up from the original title of "legal framework".

The *Constitutional Framework* identified four main institutions of the Interim Self-Government, i.e., the Assembly, the President of Kosovo, the Government and the Court, and laid down the main areas in which the new government would be competent[138]. While a detailed analysis of the new institutional structure and responsibilities will be the object of study in the next section, here it is necessary to stress the major legal implication followed Regulation No. 2001/9: the authority of UNMIK's governance exited from the negotiating process was neither limited nor altered. The *Constitutional*

---

[132] REKA (2003: 229-239); TANSEY (2009: 125).

[133] BRAND (2002: 142).

[134] The international members included, apart from the chair, one representative from each of Pillars II, III, and IV, the UN's Head of legal affairs, a representative from UNMIK's Office of Political Affairs, and two rotating members from the Venice Commission, body of legal experts of the Council of Europe.

[135] BRAND (2002: 143); MURATI (2020: 38).

[136] TANSEY (2009: 125).

[137] Constitutional Framework, *supra* note 85.

[138] The new government was entitled with responsibilities over matters related to economic and financial policy, fiscal and budgetary issues, trade and industry, education and culture, sciences and technology, health, environment, labour and social welfare, agriculture, and tourism.

Framework substantially confirmed the prominence of the Special Representative of the Secretary-General, affirming that:

> "The exercise of the responsibilities of the Provisional Institutions of Self-Government under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244(1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244 (1999) or this Constitutional Framework"[139].

Furthermore, Chapter 8 of the document provides a thorough list of "certain reserved powers and responsibilities, which will remain exclusively in the hands of the SRSG" and that the powers and responsibilities of the PISG could not include[140]. In conclusion, it is evident that the far-reaching authority of UNMIK in Kosovo was not undermined by the outcome of the 'constitutional process' and the SRSG maintained the role of ultimate guardian. Because the Security Council Resolution 1244 was not superseded, it must be stressed that the *Constitutional Framework* should not be regarded as a supreme law.

b. Provisional executive institutions

Resolution 1244 posited a twofold challenge for the international civilian presence: to build multi-ethnic provisional institutions for self-government (PISG) while administering the territory directly in the *interim*. The responsibilities assigned to and further expanded by UNMIK itself were daunting for the UN history of peace operations. Hereafter we shall divide the period of international governance of Kosovo into three broad phases: an initial direct international administration, followed by a period of apparent co-administration, and ultimately the progressive transfer of responsibility.
The critical aspect to take into consideration in this process is the (dis)balance in the relationship between local and international actors, or the confrontation between local ownership and international administration. Capacity-building and confidence-building were widely acknowledged as indispensable for the creation, development and consolidation of local capabilities in self-government, but in practice when Kosovar actors showed initiative, UNMIK did not refrain from overriding this bottom-up agency, thus putting into question the legitimacy and consistency of the UN presence. Although this approach was partially derived from uncertainty enshrined in the Security Council Resolution 1244 (what we have defined as the 'primary' or political constraints), it is appropriate to stress that the international prominence over the local voices was also undeniably the outcome of the proper direct decisions and deficiencies in the Mission on the ground – i.e., what we may hereby label as 'secondary' or operational factors.

[139] Constitutional Framework, *supra* note 85, Chapter 12.
[140] *Ivi*, Chapter 8.

aa. Direct international administration (July 1999-December 1999)

The deployment of the international civilian presence was very delayed. The reason was that UNMIK was the first mission of its kind, requiring specific and time-consuming recruitment. Despite this bumpy start, the basic rehabilitation of civil service was successful, rapidly succeeding in the first months after UNMIK's arrival in restoring power, water and energy systems, reopening all hospitals and resuming the academic year in schools[141].
However, the lack of an immediate decisive presence of the international civilian personnel favoured the resurgence and consolidation of the so-called "parallel structures", i.e., socio-political networks of informal administration run by the local communities and capable of tax revenue collection, health and educational services. Serbian and Albanians operated in different structures, with the former eradicated mostly in the Northern municipalities of the Province, but also the Albanian community had its internal division: the "Republic of Kosova", founded by Ibrahim Rugova, leader of the Democratic League of Kosovo (LDK) and the more recent "Provisional Government of Kosova", controlled by Hashim Thaci's Kosovo Liberation Army (UÇK/KLA)[142]. This proved that the reality on the ground was soon exposed to the "empty shell" bias of the international community. Albeit there was not in effect any substantial formal official political, there existed in Kosovo local socio-political organisations that, in turn, proved to be an alternative legitimate source of authority in the eyes of the local population.
The first six months unfolded essentially as a period of full direct administration by the international actors. The first official SRSG Kouchner exercised at most its "virtually unlimited powers"[143] to incept and consolidate the foundations of UNMIK's authority, designing and implementing emergency measures in virtually every sector. However, it was immediately clear that for the sake of the legitimacy and consequently success of the Mission, the international authorities would need the voluntary submission and acceptance of the local population over whom they would rule. In fact, it must be stressed that the agreement on the establishment of a UN *interim* administration in Kosovo had been concluded between the international community and Belgrade, but no single representative of the territory into question[144].
The UN advanced team guided by the *interim* SRSG Sergio Vieira de Mello and arrived in Kosovo just the day after the adoption of Resolution 1244, first elaborated the idea of a Kosovo Transitional Council (KTC):

> "for enhancing cooperation between UNMIK and the people of Kosovo, restore confidence between the communities and identify candidates for interim

[141] Report S/1999/987, *supra* note 100, paras. 21-2; Report S/1999/1250, *supra* note 99, para. 37.
[142] *The Kosovo Report*, *supra* note 14, p. 104.
[143] MERTUS (2003: 28).
[144] PULA (2003: 199).

> administration structures at all levels. This broadly representative body, which will be composed of representatives of all main ethnic and political groups in Kosovo, is intended to ensure participation of the people of Kosovo in the decisions and actions of UNMIK"[145].

UNMIK's strategy was to co-opt segments of the local elites in the decision-making process but limit this new forum exclusively to consultative and advisory functions. It had no role in executive or legislative matters competing with the SRSG, which chaired the Council and had no obligation to follow its recommendations[146]. Officially convened under the new SRSG Kouchner, the KTC was initially composed of 12 members perceived as being politically influential and/or relevant, comprising for the Albanian part, Hashim Thaçi and Ibrahim Rugova, and as Kosovo Serb representatives, Archbishop Artemije and Momčilo Trajković. However, this forum soon revealed its fallacious nature, marred by permanent crises and frictions among its members without enabling them to set a constructive agenda[147].
Other than the TKC, UNMIK concurrently attempted several other *ad hoc* solutions to include groups of Kosovars in the build-up phase of the international administration. At the functional level, it was established Joint Civilian Commissions (JCCs), also called executive directorates, chaired by UNMIK regional administrators and including representatives of both Kosovo Albanian and Serb communities to facilitate the process of a mediated and controlled transition to integrated public institutions and operating in certain sectors such as health, universities, education and culture, municipalities and governance, post and telecommunications, and power[148]. However, all these primitive attempts and mechanisms to introduce local actors at the margins of the new international administration essentially failed in captivating broad support because of their nonfactual political accountability for the local interests. The international officials had soon to reckon with the fact that neither the KTC nor the JCCs were suitable to oust the parallel structures challenging UNMIK's authority - it would need a stronger sharing of administrative responsibilities.

bb. Joint Interim Administrative Structure (January 2000 – November 2001)

The second phase of the international administration of Kosovo sets off with the official creation of the Joint Interim Administrative Structure (JIAS). The outcome of an agreement between the leaders of the Kosovar Albanian communities in December 1999, at the start of the new year the SRSG promulgated Regulation No. 2000/1 to finally dissolve the parallel structures challenging UNMIK's authority and, most importantly, bolster its legitimacy by integrating them:

---

[145] Report S/1999/779, *supra* note 50, para. 20.
[146] TANSEY (2009: 122).
[147] BRAND (2002: 133).
[148] Report S/1999/799, *supra* note 50, para. 19.

> "Current Kosovo structures, be they executive, legislative or judicial (such as the 'Provisional Government of Kosovo' and 'Presidency of the Republic of Kosovo'), shall be transformed and progressively integrated, to the extent possible and in conformity with the present regulation, into the Joint Interim Administrative Structure, which should be operational by 31 January 2000 by which time these and all other Kosovo structures of an executive, legislative or judicial nature shall cease to exist"[149].

If Kosovo Albanians did effectively integrate their shadow networks in the official administration, Kosovo Serbs never formally acceded to the JIAS agreement, dismissing it as a violation of Resolution 1244 and, accordingly, their parallel structures persisted in the Northern Serb municipalities[150].
The JIAS provided a framework for sharing responsibilities between international and local actors, within a structure of three main bodies at the political level, the Kosovo Transitional Council, the Joint Interim Administrative Council (IAC), and Administrative Departments; and Administrative Boards and Municipal Councils at the local administration level. The KTC was incorporated in the new framework but in an enlarged format up to thirty-five members "to better reflect the pluralistic composition of Kosovo"[151]. The IAC became the new most exclusive and arguably highest political body since, under the chairmanship of the SRSG, it comprised only eight members: the four Deputy SRSGs of each pillar, three Albanian representatives, including Thaçi and Rugova, and one Serb representative. The role of the Interim Administrative Council was essentially twofold: to make recommendations on existing laws or new regulations, and to propose amendments or guidelines regarding the applicable law[152]. The Administrative Departments were mandated to perform the provisional administrative tasks to implement the policy guidelines received by the IAC. Initially covering only five sectors, they would soon reach the scope of twenty departments, each jointly led by one Kosovar and one UNMIK Co-Head of Department, who were required, in principle, to make decisions altogether. However, in case of conflict, the respective superior Deputy SRSG was given the final authority[153]. Finally, the local administration was instead performed by Municipal Administrative Boards, headed by a UNMIK Municipal Administrator. The latter was mandated initially to appoint the board members, trying "to the extent possible" to include Kosovo members, as well as supervise the performance of the institution. Municipal Assemblies were directly elected since

[149] Regulation of the United Nations Interim Administration Mission in Kosovo, 14 January 2000, UNMIK/REG/2000/1, *on the Kosovo Joint Interim Administrative Structure*, Section 1 (c).
[150] DE BRABANDERE (2009: 134-135).
[151] Regulation UNMIK/REG/2000/1, *supra* note 83, Section 2.1.
[152] *Ivi*, Sections 3, 4, 5.
[153] *Ivi*, Section 7.

October 2000, becoming responsible for their local affairs, including urban planning and building, education, health, public services and environment[154]. It is noteworthy that the establishment of the JIAS did not affect or replace UNMIK, or its pillar structure. The two entities operated alongside each other: on the one hand, international officials continued to draft and enforce key policies without Kosovar involvement, while no decision made by Kosovars was deemed valid without the endorsement of an international counterpart or supervisor. For instance, the Kosovar members of the IAC consistently complained that "the real decisions were made behind their backs and without them being consulted"[155]. The JIAS truly created a formal framework of co-sharing but, at the same time, institutionalized the disbalance in the factual authority between the international and local actors. The new framework had been designed by the formers, thus reflecting more external than domestic priorities[156].

The JIAS was more an assist for UNMIK's legitimacy than a concrete step toward local democratic development. The IAC essentially represented, as asserted by Pula, a "transplantation of the [K]TC but expanded"[157] to include the Heads of the pillars and provide a symbolic rotational co-chairmanship for the Kosovar members. Furthermore, UNMIK made the most of its gradual monopolisation of political power to attract further segments of society by appointing them to positions of power, such as police officers, judges, prosecutors, teachers, or managers of public enterprises[158]. Most importantly, although the JIAS founding text provided a formal basis for central institutional dynamics, it should not be misinterpreted as a Constitution. Neither the initial agreement nor the regulation conferred the territory of Kosovo a legal subjectivity, nor did they affect the supreme rule of UNMIK, rather confirming the sole legislative and executive authority of the SRSG[159].

cc. Provisional Institutions of Self-Government (January 2002-June 2008)

Although both the IAC and the KTC were still advisory organs with no real powers, the JIAS demonstrated to be a suitable transitional solution until the adoption of the *Constitutional Framework for Provisional Self-Government* (PISG) in 2001. This quasi-constitutional document represented the fundamental step towards an effective gradual transfer of power from UNMIK to provisional autonomous institutions: the Assembly, the President, and the Government with a Prime Minister.

---

[154] Regulation of the United Nations Interim Administration Mission in Kosovo, 11 August 2000, UNMIK/REG/2000/45, *on Self-Government of Municipalities in Kosovo*, paras. 3.1-3.3; FRIEDRICH (2005: 257).
[155] BRAND (2002: 123).
[156] TANSEY (2009: 123).
[157] PULA (2003: 201).
[158] *Ibid*.
[159] BRAND (2002: 118).

The Kosovo Assembly would assume the legislative authority for Kosovo to the extent of the areas of responsibilities progressively transferred by UNMIK. It had thus competence in governmental affairs spanning from economic and financial policy to transport and judicial affairs to environment, media, culture and agriculture[160]. The SRSG continued to retain considerable authority over certain issues, such as the budget and appointment of judges, the Kosovo Protection Corps, monetary policy, customs, international relations, property administration and the coordination with KFOR[161]. Most importantly, the *Constitutional Framework* provided the role of the Special Representative to promulgate the laws adopted by the Assembly but without specifying any obligation for the former: in other words, the SRSG could (and in effect did) veto any law of the Assembly. In practice, it was understood that this power should be used solely to block legislation that conflicted with Resolution 1244 or international human rights obligations[162].
The election of the Assembly was fixed by secret ballot in a single, multimember electoral district and its 120 members were partitioned as follows: 100 seats distributed amongst all parties based on a proportional electoral system, and the residual 20 seats were reserved for the additional representation of non-Albanian communities in Kosovo (ten to the Kosovo Serbs and the rest distributed among the Roma, Ashkali, Egyptian, Bosniak, Turkish and Gorani communities)[163]. The drafting of the *Constitutional Framework*, it was indeed paid great attention to establishing protection mechanisms for the rights and members of minorities, such as the minimum requirement of two ministers coming from a non-majority community or the motion procedure by which at least six members of the Assembly may denounce a certain design of law in violation of vital interests of a community[164]. Overall, the PISG were subjected to the principles of respect and reconciliation of the communities, by UNMIK's objective to promote a multi-ethnic society:

> "The Provisional Institutions of Self-Government shall be guided in their policy and practice by the need to promote coexistence and support reconciliation between Communities and to create appropriate conditions enabling Communities to preserve, protect and develop their identities"[165].

The Assembly was also responsible for the election of a President of Kosovo and the Government, led by a Prime Minister. The Presidency required a two-thirds majority of the 120 members and represented a merely representative role, compared by the SRSG Haekkerup to the functions of the Danish queen[166]. The Government exercised the executive authority, tasked to "implement Assembly laws and other laws" within the scope of responsibilities of the PISG, but had also faculty to "propose draft laws to the As-

[160] Constitutional Framework, *supra* note 85, Chapter 5.
[161] *Ivi*, Chapter 8.
[162] DE BRABANDERE (2009: 244).
[163] Constitutional Framework, *supra* note 85, Section 9.1.3.
[164] *Ivi*, Sections 9.1.3 (b).
[165] *Ivi*, Section 4.3.
[166] BRAND (2002: 155).

sembly at its initiative"[167]. The new Kosovar institutions became effective with the general elections on 17 November 2001, and resulting, after the first formal coalition of government in early 2002, in the successful transfer of large parts of the executive and legislative authority[168].

The consolidation of the new PISG marked the beginning of a period of tension and confrontation between UNMIK and Kosovars[169]. The territory had undeniably achieved a milestone in the process of democratisation, what Tansey described as "a qualified political transitional"[170]. The international civilian presence had succeeded in the goal of establishing a political system sufficiently resembling that of modern democracies. Conventionally, such a result would mark in the history of transitional administrations the cut-off point between the period of international executive authority and the introduction of appropriate self-government, such as it was, for instance, in the sister mission in East Timor. In Kosovo, however, this was not the case.

The 2002 political change corresponded only to the slight reduction, but not the demise, of the interference of the international community within the core of the Kosovar political agenda. As we have already seen in the previous section, the *Constitutional Framework* essentially institutionalized a qualified government and an assembly forum with executive and legislative authorities limited and subordinated to the UNMIK's prerogatives. This cohabitation was the principle of confrontation and evident frustration from the Kosovars. In 2003, the Kosovo Assembly started a process to draft and propose a set of amendments to the *Constitutional Framework* to rebalance the powers of UNMIK in a threefold way: creating a legal basis for the transfer of the SRSG's competencies, endorsing domestic institutions with the necessary tools to meet the international standards, and developing the resolution of Kosovo's final status[171].

However, all the forty-two proposed amendments were directly rejected by UNMIK, without any negotiation, on the basis that the times were not mature yet. This case illustrates at best that even after the consolidation of the PISC, whenever the newly democratically elected institutions were considered by UNMIK to overflow their competencies set out in the *Constitutional Framework* (mainly for the case of reconciliation, human rights protection or multi-ethnicity), the international administration did not mind using its powers to veto or override domestic initiatives. The repercussions of such conduct in the short-medium term would be the erosion of UNMIK's legitimacy to critical levels.

---

[167] Constitutional Framework, *supra* note 85, Sections 9.3.1-2.

[168] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 2 October 2001, S/2001/926, para. 2; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 January 2002, S/2002/62, paras. 2-9; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 22 April 2002, S/2002/436, paras. 2-8.

[169] KING, MASON (2006: 137 ff.).

[170] TANSEY (2009: 134).

[171] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, 7 July 2004, *Report on the Monitoring of the Assembly of Kosovo*.

The international administration sought to bolster political development through the so-called "Standards before Status" process. UNMIK's strategy essentially consisted of a conditionality policy according to which the discussion on Kosovo's future status would first require the new PISG to meet certain international standards. Already in April 2002, SRSG Michael Steiner introduced eight benchmarks that the Kosovar institutions should meet before launching a discussion on the status: 1) the existence of effective, representative and functioning institutions; 2) the enforcement of the rule of law (police and judiciary); 3) freedom of movement for all; 4) the respect for the right of all Kosovars to remain and return; 5) the development of a sound basis for a market economy; 6) clarity on property rights; 7) the normalization of the dialogue with Belgrade; 8) the reduction of the Kosovo Protection Corps in line with its mandate[172].

These benchmarks would become the centre of the official process "Standards before Status" launched in December 2003, with the programmatic target of "a Kosovo where all regardless of ethnic background, race or religion – are free to live, work, and travel without fear, hostility, or danger and where there is tolerance, justice and peace for everyone"[173]. The initial benchmarks were further developed to include thirty-two sub-goals and operationalized in the Kosovo Standards Implementation Plan (KSIP), released in March 2004. It is noteworthy that the KSIP stated that progress towards the standards would be "the basis for any review in mid-2005 to begin consideration of Kosovo's final status"[174].

According to Steiner's words addressed to the Security Council, the benchmarks represented "an exit strategy which is, in reality, an 'entry strategy' into the European integration process"[175]. In practice, the "Standards before Status" consisted more of UNMIK's strategy to use its discretion and delay the start of the process for the final status of Kosovo by linking it to the fulfilment of these standards[176]. This top-down conditionality process imposed by the international community produced a double effect. On the one hand, there was an apparent institutional positive response by the PISG, starting to take the standards more seriously because of the explicit reference in UNMIK's project to a date for the start of the political process around mid-2005 to begin the determination of Kosovo's final status[177]. Nonetheless, the Albanian population, who had already grown resentment towards the international administration, perceived this manoeuvre as a hindrance to the way to independence. This frustration came to a head on 17 March 2004, when the

[172] Minutes of the Meeting of the United Nations Security Council, 24 April 2002, S/PV.4518, p. 2; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 29 January 2003, S/2003/113, Annex *Goals and benchmarks of the United Nations Interim Administration Mission in Kosovo*.

[173] United Nations Interim Administration Mission in Kosovo, 10 December 2003, *Standards for Kosovo*, Prishtinë/Priština, p. 1.

[174] Report S/2004/348, *supra* note 105, para. 60.

[175] Minutes S/PV.4518, *supra* note 172, p. 2.

[176] FRIEDRICH (2005: 261).

[177] TANSEY (2009: 139).

territory of Kosovo was shattered by "an organised, widespread and targeted campaign"[178] at the hands of Albanian extremists, resulting in a total of 19 casualties, of whom 11 Albanians and 8 Serbs, and approximately 954 injured. Furthermore, "approximately 730 houses belonging to minorities, mostly Kosovo Serbs, were damaged or destroyed. In attacks on the cultural and religious heritage of Kosovo, 36 Orthodox churches, monasteries and other religious and cultural sites were damaged or destroyed"[179]. These large-scale riots broke out after the reports accusing Serbs of being responsible for the drowning of three Albanian children and occurred principally in the ethnically divided Mitrovicë/Kosovska Mitrovica region of northern Kosovo. However, we should refrain from considering it an exclusive expression of inter-ethnic violence. As described by the direct testimony of King and Mason:

> "As the riots progressed, Albanian mobs turned their collective fury on their international overlords, throwing rocks at UN buildings, burning UN flags and destroying more than 100 of the administration's ubiquitous white Toyota 4Runner 4x4s"[180].

The March 2004 riots represented a wake-up call for the international community. The most immediate consideration was twofold, about the failure of international security and the deficiencies in the local security sector. Overall, the UN needed to reckon with the sorry state of affairs of the Mission and the stagnation of the political process for Kosovo's final status. Recalling the words of the SRSG Søren Jessen-Petersen:

> "We have now turned the crisis of March into an opportunity to move towards the resolution of the Kosovo issue. And we have done it without rewarding violence. […] Progress will depend on the implementation of those priorities among the Standards that are linked to a multi-ethnic Kosovo. In other words, only by showing progress in the areas where Kosovo failed last March, a positive review of Standard implementation can be made, possibly next summer. And only in case of a positive assessment will there be a chance of moving forward in the process leading to status discussions"[181].

King and Mason's conclusion is less deceptive: "Violence had once again advanced independence agenda as nothing else in the previous five years had"[182]. After one year, in mid-2005, Secretary-General Kofi Annan dispatched the Norwegian Ambassador Kai Eide to conduct a "comprehensive review of the policies and practices of all actors in Kosovo", by a second report on the "comprehensive review of the situation in Kosovo"[183]. Eide's

---

[178] Report S/2004/348, *supra* note 105, para. 2.
[179] *Ivi*, para. 3.
[180] KING, MASON (2006: 6).
[181] Speech of the Special Representative of the Secretary-General to Royal Institute of International Affairs, 8 December 2004, UNMIK/PR/1280.
[182] KING, MASON (2006: 191).
[183] Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council, 30 November 2004, S/2004/932, Enclosure, *Report on the Situation in Kosovo (Eide Report I)*; Letter dated 7 October 2005 from the Secretary-General addressed to

conclusions were critical but blunt: "While standards implementation in Kosovo has been uneven, the time had come to move on to the next phase of the political process"[184]. The report negatively identified the Standards before Status strategy as the source of "a period of political stagnation and widespread frustration", proposing an ambitious restructuring of UNMIK while transferring extended authority to the institutions of Kosovo. It did not however envision a complete withdrawal of the international oversight or authority. In October 2005, the Secretary-General accepted Eide's recommendations and decided the beginning of the political process for the determination of the final status, appointing the Finnish diplomat, Marti Ahtisaari, as UN Special Envoy in charge of the negotiation process. After a full year of negotiations and shuttle diplomacy between Belgrade and Prishtinë/Priština, Ahtisaari had to helplessly acknowledge that "the negotiations' potential to produce any mutually agreeable outcome on Kosovo's status is exhausted"[185]. Although his proposal for Kosovo's "independence supervised by the international community"[186] eventually sunk in the Security Council due to Russia's veto, the Kosovo Assembly unilaterally proceeded to declare the birth of the independent Republic of Kosovo on 17 February 2008. Accordingly, a new Constitution came into effect by June 2008, based on the February 2007 Ahtisaari settlement proposal.

4.2.5 Police and Justice

The destruction and institutional vacuum left in Kosovo after the end of the war fatally wrecked the security situation on the ground. Private violence and reverse killings infested the territory, worsening the living conditions for many people who survived or returned. The enforcement of public order is the first concrete step necessary in post-conflict peacebuilding as it allows people to gradually return to their daily civil lives.
The strategic priority of the UN administration to re-establish law and order in Kosovo was to rapidly set up an efficient judiciary system as well as an efficient police corps to enforce the former's decisions. UNMIK had to cope with a disturbing absence of infrastructures and also qualified personnel but eventually managed to employ innovative and mostly incisive solutions. Hereafter we shall therefore examine UNMIK's performance in dealing with the reconstruction of a local judiciary system and law enforcement agency by the internationally recognized human rights standards and the specific need for reconciling ethnic communities and protecting minorities.

---

the President of the Security Council, 7 October 2005, S/2005/635, Annex, *A Comprehensive Review of the Situation in Kosovo (Eide Report II)*.
[184] *Ivi*, p. 1.
[185] Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, 26 March 2007, UN Doc. S/2007/168, *Report of the Special Envoy of the Secretary-General on Kosovo's Future Status (Ahtisaari Report)*, para. 3.
[186] *Ivi*, para. 1.

It is noteworthy that especially in this field, more than anywhere else, the international administration came to face hurdles and controversies in its operations related to the specific background of Kosovo. These are what for this thesis we may define as 'external or contextual factors', that is, a specific and inevitable hindrance to the achievement of one goal that is by no means related to the decisions or actions of the international mission but derive from the unique socio-political, cultural and historical context and environment of the territory and the local people. In the case at issue of Kosovo, the socialist legacy considerably affected the implementation of UNMIK's responsibilities in the judicial, police (and economic) reconstruction.

a. Judiciary System

Protecting and promoting human rights was the underlying precept of the UN administration in Kosovo. Concurrently with its work in building institutions for democratic self-government, UNMIK had to succeed in creating a multi-ethnic, independent and impartial judiciary system. concept of the rule of law, for how wide and unclear, is one of the most fundamental pillars of the modern democratic political system, as it refers to:

> "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency"[187].

The latter is strictly interconnected with the restoration of security and solidification of peace, as a guarantee of prevention of further violation of rights and oppression. However, the reform of the judiciary is as crucial as the delicate passage in post-conflict reconstruction to ensure the respect of the rule of law. The judicial and legal systems of a country are closely related to local culture and tradition, they are part of the territory's cultural heritage. Accordingly, international officials must be incredibly careful not to operate a mere transplantation of foreign legal systems, risking endangering the sustainability of the peace process due to its principle.

aa. The socialist judicial legacy in Kosovo

Similar to the developments in other European countries under a Soviet regime, the judiciary branch of Kosovo had been transformed into an important instrument of propaganda, promoting the communist ideology and

[187] Report of the United Nations Secretary-General, 23 August 2004, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*, para. 6.

the role of a sole political party as a guiding principle[188]. Furthermore, after the abolition of the constitutional prerogatives and the centralization of power of Milosevic's regime, the judicial system in the province had been purged by non-Serbian officials. Over the 1990s-decade, Albanian prosecutors and judges were expelled and excluded from judicial institutions, allowing them only to serve as defence attorneys within a system heavily influenced by political forces and dependent on existing power structures[189].
The departure of FYR/Serbian officials left Kosovo with a substantial judicial vacuum. The courts were transferred by Belgrade in Serbia proper to handle their cases "in exile", and the vast majority of Serbian judges and lawyers left the province in June and July 1999, taking or destroying all the legal materials, court equipment, registers and records[190]. The situation that the first UN officials had to face upon their arrival in Kosovo was daunting:

> "In Kosovo, virtually all public buildings, including the courts, had to be cleared of mines and booby traps before they could be reclaimed for public purposes. In the course of the conflict, files had been dislocated, official forms and stationery had been destroyed, and valuable office equipment had been appropriated by the withdrawing security apparatus. The situation was so grave that the first UN-appointed judges and prosecutors had to bring their dated typewriters to the initial hearings to be able to draft decisions and court records"[191].

UNMIK did not recognise the Yugoslav/Serbian courts, thus proceeding to build the judiciary branch virtually from scratch. This was particularly challenging given the limited pool of human resources, many of whom lacked professional expertise and experience due to their decade-long 'banishment from the robe' as well as the absence of any prior appropriate application of human rights law and rule of law principles in the region[192].

bb. Judicial structures

In light of the physical, material and personnel vacuum in Kosovo, UNMIK established an Emergency Judicial System upon two weeks of its deployment. As we have already seen, the legal basis of the judicial authority vested in UNMIK, and particularly in the figure of the SRSG, was both in the extensive interpretation of the mandate in the Secretary-General Report 1999/779 and the later Regulation No. 1999/1 (with retroactive effect)[193]. It was essential for the UN to act rapidly, yet still transparent and professional, to identify and select qualified candidates for the judicial offices, while always keeping in mind the overall criteria for ethnic representation. Similarly

---

188 MURATI (2020: 57).
189 GASHI, MUSLIU (2013: 5).
190 DE BRABANDERE (2009: 193).
191 STROHMEYER (2001a: 57).
192 MURATI (2020: 20).
193 Report S/1999/779, *supra* note 50, para. 35; Regulation UNMIK/REG/1999/1, *supra* note 83, Section 1.1.

to the experience in East Timor, UNMIK resorted to judicial service commissions with a mixed composition of international and Kosovar senior experts as the primary mechanism for the selection of local judiciary personnel[194]. *Interim* SRSG Vieira de Mello exercised its far-reaching authority to issue on 28 June 1999 three Emergency Decrees to create the Joint Advisory Council on Provisional Judicial Appointments (JAC), composed of three internationals and four Kosovo members (two Albanians, one Serb, one Bosniak), and tasked to provide recommendations on the provisional appointment of judges and prosecutors for an initial temporary tenure of three months[195].
The SRSG appointed the first nine judges and prosecutors on 2 July 1999, serving as mobile units with jurisdiction throughout the territory of Kosovo. The rationale for such a rapid deployment of local personnel was the urgent necessity for a review mechanism and pre-trial hearings of people detained by KFOR and UNMIK on criminal offences[196]. The international administration was incapable of deploying immediately a sufficient number of foreign lawyers, adequately acquainted with the Kosovar legal traditions and system, but interestingly it also feared that excessive resort to international judicial personnel may be perceived as a form of neo-colonialism[197]. Between July and September 1999, the SRSG was able to appoint another 55 Kosovar judges and public prosecutors based on the recommendation from the JAC; however, the ethnic diversity goal was not possible to attain due to the premature resignation of all Kosovo Serb judges and prosecutors either for intimidations by threats and violence or as part of the general Serbian reluctancy to collaborate[198].
On 7 September 1999, the UN administration issued two fundamental Regulations setting up a regular court system in Kosovo. The first, Regulation No. 1999/6 *on Recommendation for the Structure and Registration of the Judiciary and Prosecution Service*[199] established the Technical Advisory Commission on Judiciary and Prosecution Service (hereafter Technical Commission), composed of ten local and five international members, chosen for their integrity, skills and experience to advise the SRSG on the structure and administration of the judiciary and the prosecution service in Kosovo. The second, Regulation No. 1999/7 *on Appointment and Removal from Office of Judges and Prosecution*[200], dissolved the JAC and replaced it with the new Advisory

[194] STROHMEYER (2001b: 115).
[195] Report S/1999/779, *supra* note 50, para. 18.
[196] STROHMEYER (2001a: 54).
[197] HARTMANN (2003: 4).
[198] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, 17 December 1999, *Report 2 – The Development Of The Kosovo Judicial System (10 June Through 15 December 1999)*, p. 3.
[199] Regulation of the United Nations Interim Administration Mission in Kosovo, 7 September 1999, UNMIK/REG/1999/6, *on Recommendation for the Structure and Registration of the Judiciary and Prosecution Service*, Sections 1-2.
[200] Regulation of the United Nations Interim Administration Mission in Kosovo, 7 September 1999, UNMIK/REG/1999/7, *on Appointment and Removal from Office of Judges and Prosecutors*.

Judicial Commission (AJC), composed of three international experts and eight Kosovar lawyers, and empowered not only to recommend candidates for judicial and prosecutorial offices permanently but also to recommend disciplinary measures, including also the removal of judges and prosecutors and the investigation alleged cases of misconduct[201]. Finally, after the adoption of the *Constitutional Framework*, the AJC was succeeded by the Kosovo Judicial and Prosecutorial Council (KJPC). The latter, under Regulation No. 2001/8, inherited most of the characteristics of the previous Commission, first among all, its advisory nature with no real power, while the ultimate authority remained in the hands of the SRSG[202].

The Kosovo judicial system was structured in four tiers with the creation of the Department of Justice. Under Regulation No. 2000/15[203] and under the new Pillar I in charge of Police and Justice, the Department was established as an administrative body responsible for the administration of justice and of the correctional system. At the lowest level, 19 Minor Offences Courts were responsible for adjudicating criminal cases punishable either by a fine or up to two months imprisonment. In addition, 17 Municipal Courts were competent to rule sentences up to five years imprisonment and served also as judges of first instance for civil matters. The appeals to the decisions of the Municipal Courts were heard by the respective District Court. These were five, covering all the territory of Kosovo, and competent also over cases envisioning more than five years imprisonment, major property disputes, and copyright and patent disputes. Finally, the apex tier consisted of the Supreme Court, an *ad hoc* Court of Final Appeal for criminal proceedings and detention terms[204]. In essence, the judiciary under international administration was essentially structured along the lines of the Kosovo system under the previous Yugoslav/Serbian regime.

At the start of 2000, the international administration could not but ascertain that the justice system in Kosovo had still significant problems. First of all, the lack of sufficiently qualified, experienced and trained jurists – an aspect that was central to the capacity-building mission of the OSCE. The most alarming question resided in the fact that the juridical community in the territory was almost mono-ethnically Albanian, discrediting the appearance of impartiality and, in most serious cases, giving place to effective cases of favouritism for their fellow Albanians and discrimination towards the Serbs:

> "Instances of bias against Serbs and other minorities among the Albanian judiciary surfaced early during the Emergency Judicial System and have contin-

[201] *Ivi*, Sections 1,2,3, 7.

[202] Regulation of the United Nations Interim Administration Mission in Kosovo, 6 April 2001, UNMIK/REG/2001/8, *on the Establishment of the Kosovo Judicial and Prosecutorial Council*.

[203] Regulation of the United Nations Interim Administration Mission in Kosovo, 21 March 2000, UNMIK/REG/2000/15, *on the Establishment of the Administrative Department of Justice*.

[204] Regulation of the United Nations Interim Administration Mission in Kosovo, 4 September 1999, UNMIK/REG/1999/5, *on the Establishment of an Ad Hoc Court of Final Appeal and An Ad Hoc Office of the Public Prosecutor*, Section 1.

> ued ever since. Albanians arrested on serious charges, often caught red-handed by KFOR or UNMIK police, frequently were released immediately or were not indicted and subsequently released. Meanwhile, Serbs, Roma, and other minorities arrested on even minor charges with flimsy evidence were almost always detained, and some stayed in detention even though they were not indicted"[205].

A partial remedy against this ethnic-biased dynamic of the Kosovo judicial system was found in the use of international lawyers. In a unilateral manoeuvre virtually not discussed with the local counterparts, UNMIK adopted Regulation No. 2000/6 o*n the Appointment And Removal From Office Of International Judges And International Prosecutors*[206], stipulating the right for the SRSG to appoint and remove international judges and international prosecutors with authorities and responsibilities to work within the existing domestic judiciary institutions together with the Kosovar personnel. Initially applying only within the jurisdiction of the Mitrovicë/Kosovska Mitrovica District Court, the measure was soon extended throughout Kosovo, including the Supreme Court, under Regulation No. 2000/34 *Amending UNMIK Regulation No. 2000/6 On The Appointment And Removal From Office Of International Judges And International Prosecutors*[207].

This event is significant because the UN administration in Kosovo set the precedent of institutionalising a hybrid (or mixed) court system, i.e., wherein courts had a mixed composition of international and Kosovar jurists. International judges or prosecutors had never been appointed to serve within a judicial system along with domestic officials; rather, practice hitherto had regarded fully international courts composed of international lawyers with restricted competence over serious violations of international law and humanitarian law, such as in Nuremberg, Tokyo, Yugoslavia and Rwanda[208].

UNMIK inserted international judges and prosecutors in the already existing domestic system as a double solution to the inherent shortcomings of a purely international approach, which is the lack of legitimacy, and a purely local approach, for pragmatic and immediate security needs – although it has been observed that the international participation should have been immediate and bold, rather than incremental[209]. The UN authorities were soon compelled to make further revisions because of the criticisms from the OSCE and NGOs that the current mixed system was not yet adequate to assure sufficient impartiality[210]. The cause was specifically identified in the limited number of the international judges and their restricted scope of powers, resulting in

---

[205] O'NEILL (2002: 84).

[206] Regulation of the United Nations Interim Administration Mission in Kosovo, 15 February 2000, UNMIK/REG/2000/6, *on the Appointment and Removal from Office of International Judges and International Prosecutors*, Section 1.

[207] Regulation of the United Nations Interim Administration Mission in Kosovo, 20 May 2000, UNMIK/REG/2000/34, *Amending UNMIK Regulation No. 2000/6 On The Appointment And Removal From Office Of International Judges And International Prosecutors*.

[208] MURATI (2020: 17-18).

[209] HARTMANN (2003: 13); FRIEDRICH (2005: 263).

[210] PERRIELLO, WIERDA (2006: 13).

their outvoting in such cases entailing a panel of three judges with only one international[211]. Responding to these concerns, UNMIK promulgated Regulation No. 2000/64 *on Assignment of International Judges/Prosecutors and/or Change of Venue*, empowering the SRSG to appoint a special panel composed of only three judges with a major international composition, so-called "Reg. 64 panel", as well as the authority to assign international prosecutors or a change of venue, if deemed necessary to ensure the independence and impartiality of the judiciary[212].

However, domestic actors still succeeded in circumventing Regulation No. 2000/64 as the "64 Panel" had to be assigned before the start of the trial, thus enabling a Kosovar prosecutor either to file an indictment with lack of notice or to abandon a case prematurely. One of the best examples of this practice was the 2001 *Afrim Zeqiri case*, illustrating the controversial necessity for the SRSG to repeatedly issue executive orders for the continuation of Mr. Zeqiri's detention, accused of the murder of three Serbs, to remedy his initial release[213]. As noted by Hartmann, not coincidentally, within a month of the decision by the all-Kosovar judge panel of the Supreme Court in favour Zeqiri's release, UNMIK adopted Regulation No. 2001/2 *Amending UNMIK Regulation No. 2000/6, as Amended, on the Appointment and Removal from Office of International Judges and International Prosecutors*, strengthening the powers of the international prosecutors by allowing them to resume cases abandoned by Kosovar prosecutors and requiring any Kosovar prosecutor to notify within 14 days the intention to abandon the case[214].

Despite all its extensive efforts, the UN administration failed to rebuild a multi-ethnic, impartial, and independent justice sector in Kosovo based on respect for human rights principles, due process and fair trial. These very same principles were the core of the establishment of UNMIK from Resolution 1244 to the first Regulation No. 1999/1. On top of that, the UNMIK administration raised quite a bit of controversy for its direct performance and its interference in the judiciary work, patently contravening the principle of independence of the judge, for one, in respect of appointment, management and budget[215].

cc. Quasi-judicial structures

An underestimated but demanding question emerged in the post-conflict administration in Kosovo regarded housing and property rights. The latter is

---

[211] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, September 2002, *Kosovo's War Crime Trials: A Review*, p. 11.

[212] Regulation UNMIK/REG/2000/64, *supra* note 89, Section 1.

[213] MURATI (2020: 77).

[214] Regulation of the United Nations Interim Administration Mission in Kosovo, 12 January 2001, UNMIK/REG/2001/2, *Amending UNMIK Regulation No. 2000/6, as Amended, on the Appointment and Removal from Office of International Judges and International Prosecutors*, Section 1.4; HARTMANN (2003: 11-12).

[215] MURATI (2020: 57-75).

protected according to Protocol I of the *European Convention on Human Rights*:

> "every natural or legal person is entitled to the peaceful enjoyment of his possessions, No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law"[216].

The property right is one of the substantial preconditions for the return of refugees and displaced families. In Kosovo, the war had provoked chaos and devastation throughout the province, destroying many habitations and businesses, and favouring their occupation by the remaining population, in a context of absence of law and order[217]. In addition, the situation was complicated by the lack of an adequate legal framework, deriving from the socialist past and inheriting an unclear distinction between two types of property, i.e., social state ownership, and citizens' and private possession[218]. By the testimony of King and Mason:

> "UNMIK was unable to unravel the situation by referring to old property records, many of which had been stolen or destroyed by the Serb militia in 1999; and it was unwilling to impose a solution, worried that any formula would be unfair and leave them open to legal claims from those who lost out"[219].

The restoration of property rights required the provision of remedies to those individuals whose properties had been unlawfully seized, as well as to those who had lost their properties because of the discriminatory policies that led to the conflict. This included the return of apartments, houses, and possibly other assets to their displaced pre-war owners, allowing them to exercise their right to "unimpeded return [...] to *their* homes"[220] envisioned by Resolution 1244. Initially, the Secretary-General specifically tasked the UN Centre for Human Settlement (HABITAT) to provide technical and legal support for the issue of property rights in Kosovo as an *interim* measure until the start-up of a local mechanism[221]. This was realized in November 1999, when UNMIK established two semi-autonomous institutions as the first emergency response to an "impending property crisis"[222].

The first was the Housing and Property Directorate (HPD), an administrative mechanism composed of two main elements, the Executive Director and the Department of Coordination, and it was entitled to receive and process property claims and provide general direction on the matter; the other, the Housing and Property Claims Commission (HPCC), was an independent quasi-judicial body responsible for the adjudication of the claims and property

---

[216] Council of Europe, *Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, ETS 9, Art. 1.
[217] LEWIS (2001: 47).
[218] BRAND (2002: 229).
[219] KING, MASON (2006: 185).
[220] Resolution S/RES/1244, *supra* note 15, para. 11(k).
[221] SMIT (2006: 66).
[222] Report of the Organisation for Security and Cooperation in Europe Mission in Kosovo, 25 September 2000, *The Impending Property Crisis in Kosovo*.

right disputed received by the HPD[223]. The interplay unfolded as follows: HABITAT worked as an implementing agency while UNMIK provided policy orientation and supervision to the operations of HPD and HPCC[224]. The Rules of Procedure passed by Regulation No. 2000/60[225] enabled the two semi-autonomous bodies to deal with matters regarding residential property rights and categorized into three groups: category A "Discrimination", made of claims by individuals whose property right had been revoked following 23 March 1989 based on discriminatory laws; category B "Informal Transactions" encompassed claims by individuals who entered into informal but willing transactions subsequent 23 March 1989; and category C "Displacement", comprising claims by displaced persons and refugees who had lost their properties owned before 24 March 1999 and not voluntarily[226].

The procedure for property restoration comprised several stages via HPD, from claim registration, notification, verification, rejection, mediation and eventual referral to the Commission. The latter was composed of a tripartite panel (two internationals and one Kosovo Albanian former judge). Since 2002, the HPD/HPCC employed a so-called "mass-claims" approach radically improving the efficiency of the process, through the collection of several cases at once according to similar facts, the determination based on a representative sampling of cases and subsequently applying the cover decision to the rest of the cases in the group[227]. It was necessary to extend twice the deadline for the submission of claims; on the final date of 1 July 2003, a total of 29,061 claims had been received by HPD and, among these, the vast majority of claims received corresponded to the third category (displacement). Although most residential property claims were adjudicated, only a limited part of the decision was effectively implemented, resulting in a vast number of agricultural and commercial properties being illegally occupied[228].

The property restoration process in Kosovo posed a series of legal issues. HPCC failed to ensure a fair trial and to address effectively the issues involving individuals' rights to property guaranteed under Article 1 of Protocol I to the ECHR[229]. The proceeding before the Commission was essentially administrative, carried out through written submissions as oral hearings were excluded, thereby contravening Article 6 of the *European Convention on Human Rights*, according to which "in the determination of his civil rights

[223] Regulation of the United Nations Interim Administration Mission in Kosovo, 15 November 1999, UNMIK/REG/1999/23, *on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission*.

[224] MURATI (2020: 24).

[225] Regulation of the United Nations Interim Administration Mission in Kosovo, 31 October 2000, UNMIK/REG/2000/60, *on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission*.

[226] Regulation UNMIK/REG/1999/23, *supra* note 223, Section 1.2(a)(b)(c).

[227] SMIT (2006: 68).

[228] KING, MASON (2006: 238).

[229] MURATI (2020: 94).

and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing"[230]. Furthermore, the procedure lacked considerable transparency due to the absence of a public pronouncement which the jurisprudence of the European Court on Human Rights has substantially demonstrated as an important principle to guarantee a fair trial:

> "[the public character of the proceedings] protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 (1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention"[231].

Finally, there was no opportunity for judicial review of the decisions made by the HPCC under Regulation No. 2000/60, effectively denying affected individuals the right to access a court. The remedy to the matter was provided by two innovations introduced in 2006. The first was for both HPD and HPCC to be replaced by the Kosovo Property Agency (KPA), which retained their same mandates and was composed of three bodies: the Executive Secretariat, the Kosovo Property Claims Commission (KPCC), and the Supervisory Board[232]. Subsequently, UNMIK adopted Regulation No. 2006/50 *on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property* by which, on the one hand, the Property Claims Commissions was entitled to make decisions amounting to title determination of either ownership or property use rights which could be registered by the successful claimant; and on the other, it was established the possibility of judicial review of the KTA's decisions by appealing exclusively to the Supreme Court[233].

dd. Transitional Justice

Transitional justice refers to "a variety of judicial and non-judicial means of accountability and responding to past crimes"[234]. Conflict and justice have a bidirectional relationship as injustice may breed conflict, and conflicts may give rise to injustices as well:

---

[230] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 3 November 1950, ETS 5, Art. 6; MURATI (2020: 94).
[231] Judgement of the European Court on Human Rights, 8 December 1983, App. No. 8273/78, A/72, *Axen v. Federal Republic of Germany*, para. 25.
[232] Regulation of the United Nations Interim Administration Mission in Kosovo, 4 March 2006, UNMIK/REG/2006/10, *on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property*, Chapter 1.
[233] Regulation of the United Nations Interim Administration Mission in Kosovo, 16 October 2006, UNMIK/REG/2006/50, *on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property*, Sections 1, 3; ARRAIZA, MORATTI (2009: 444 ff.).
[234] HAYNER (2009: 11).

> "Justice mechanisms may be used during a transition from war to peace to address issues related to the large numbers of offenders and victims that may threaten long-term peace and stability. This is particularly important in post-conflict countries where perpetrators who have participated in human rights violations may remain in a community with impunity due to insufficient capacity of judicial or security institutions"[235].

Justice is integral to the resolution of a conflict (and confrontation), but it is extremely difficult to obtain. The reason is that justice is subjective and emotional and, to be effective, has to be perceived and accepted by the people. This is why justice can never be absolute because of the "tension between prioritising an end to violent conflict […] versus prioritising justice and the rule of law"[236]. Transitional justice can take place usually in the form of criminal accountability, truth commissions, reparations, reform of the security and judicial sectors, demobilisation-integration of ex-combatants, and indigenous or community-based[237].

As regards the case of Kosovo, it is possible to identify two main forms of transitional justice. First, *ad hoc* judicial mechanisms offer an adequate solution to the deficiencies of post-conflict contexts or regime transitions, wherein national courts may usually be weak, lacking in resources, or heavily politicised. Within the UN universe, international criminal tribunals with limited authority are a practice that emerged during the 1990s as an initiative of the Security Council for the atrocities and crimes committed in former Yugoslavia and Rwanda[238], and later similarly applied also in Sierra Leone[239].

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993, that is, before the war in Kosovo. The Security Council adopted Resolution 827/1993 in light of the massacres and genocides already occurring at the initial stages of the collapse of the Yugoslav Federation. Consequently, the ICTY had jurisdiction over the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991[240].

The Tribunal had the authority to prosecute and try individuals on four categories of offences: grave breaches of the 1949 Geneva Conventions; violations of the laws or customs of war; genocide; and crimes against humanity. At the termination of its functions in 2017, the ICTY prosecuted 13 individuals regarding the conflict in Kosovo: seven Serbs and six Kosovar Albanians. Slobodan Milošević and six of his senior officials were charged with

---

[235] Organisation Economic Cooperation and Development, *Security system reform and governance: a DAC reference document*, May 2004, p. 21; DEUTSCH (2006: 53-54).

[236] *Ivi*, 5; HAYNER (2006: 295-310).

[237] HAYNER (2009: 296).

[238] Resolution of the United Nations Security Council, 8 November 1994, S/RES/995, *on establishment of an International Tribunal and adoption of the Statute of the Tribunal*.

[239] Resolution of the United Nations Security Council, 14 August 2000, S/RES/1315, *on establishment of a Special Court for Sierra Leone*.

[240] Resolution of the United Nations Security Council, 25 May 1993. S/RES/827, *on establishment of the International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*.

grave crimes: eventually, five were convicted and one acquitted – Milošević died during his trial before the court could issue a verdict. For the Kosovar Albanians, the result was two convicted and four acquitted[241]. One may argue that the limitation in the justice that the ICTY could provide was that international humanitarian law applied exclusively to the context of armed conflicts and not to crimes in peacetime.

A more recent and incumbent instrument of criminal accountability is the Kosovo Specialist Chambers and Specialist Prosecutor's Office (KSC & SPO)[242], formally established in 2016 in The Hague. Differently from the ICTY and despite being composed of international judges, this court is not an international tribunal as it was constituted through constitutional amendment of the Kosovar legislation[243]. However, it still is separate and independent from other Kosovar institutions. The KSC & SPO was created after the surprising testimonies of former ICTY prosecutors[244] on the serious violence committed by the UÇK/KLA (during and after the conflict) and later acknowledged by the 2011 report to the Parliamentary Assembly of the Council of Europe[245]. As a result, the court has jurisdiction over crimes commenced or committed in Kosovo between 1 January 1998 and 31 December 2000, in particular crimes against humanity, war crimes and other crimes under Kosovo Law[246]. To date, a total of ten senior UÇK/KLA officers have been indicted in the KSC of which two are already serving sentences. One of the currently pending trials also involves the former President of the Republic of Kosovo, Hashim Thaçi (2016-2020), charged with crimes against humanity and war crimes[247].

A second relevant form of transitional justice is the Truth and Reconciliation Commission (TRC). These are official, temporary, but non-judicial bodies established to investigate patterns of human rights abuses or violations of international humanitarian law over a period that concludes with a final report and recommendations[248]. Whereas trials and retributive justice have a focus on the perpetrators, truth commissions are instruments of restorative justice, that is, focused on the victims, their pains, and abuses[249]. It is possible to find

---

[241] Human Rights Watch, 31 March 2023, *Kosovo: War Crimes Trial to Begin in The Hague*, available online.

[242] Law of the Assembly of the Republic of Kosovo, 3 August 2015, No.05-D-139, *Amendment of the Constitution of the Republic of Kosovo*.

[243] Law of the Assembly of the Republic of Kosovo, 2 August 2005, No.05/L-053, *On Specialist Chambers and Specialist Prosecutor's Office*.

[244] DEL PONTE, SUDETIC (2008).

[245] Report of the Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights, 7 January 2011, Doc. 12462, *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*.

[246] Law of the Assembly of the Republic of Kosovo, 2 August 2005, No.05/L-053, *On Specialist Chambers and Specialist Prosecutor's Office*, Art. 7 for temporal jurisdiction, Art. 8 for territorial jurisdiction, Art. 6, 12-16 for the subject matter jurisdiction.

[247] Kosovo Specialist Chambers & Specialist Prosecutor's Office, current trial, Case No. KSC-BC-2020-06, *Specialist Prosecutor v. Hashim THAÇI et al*.

[248] HAYNER (2006: 295); ID (2009: 11).

[249] MARKO-STÖCKL (2010: 343).

various cases of successful implementation of truth commissions around the world, but to date, Kosovo is not one of them.
A first attempt was the Yugoslav Commission for Truth and Reconciliation, created in 2001 at the behest of Vojislav Koštunica, successor of Milošević at the Presidency of Serbia and Montenegro (or Federal Republic of Yugoslavia, heir of the former Socialist Yugoslavia). It was assigned a four-year mandate to research the social, inter-communal and political conflicts that occurred from 1980 to 2000 and investigate war crimes committed in Slovenia, Croatia, Bosnia, and Kosovo[250]. However, the commission disbanded after only 12 months of operativity because of a lack of agreement on essential aspects of the mandate, a lack of political will, funding, and civil society support. The most recent initiative for a new instrument of restorative justice arrived in 2017 from the former President of the Republic of Kosovo, Hashim Thaçi, for the creation of the Kosovo Truth and Reconciliation Commission[251]. However, since the resignation of Thaçi in 2020 to face war crimes charges, the initiative has faltered[252]. In essence, it is correct to say that the chapter on justice, 'truth' and reconciliation in Kosovo is still open.

b. CIVPOL and Security Sector Reform

The restoration of public order is an indispensable prerequisite for the outset and success of any post-conflict reconstruction. Complementary to the re-establishment of an independent and impartial judiciary branch, a Security Sector Reform (SSR) must ensure effective law enforcement. SSR is a broad concept involving the rebuilding of local security infrastructures based on the principles of good governance, human rights respect, democratic control, citizen participation, transparency and public expenditure accountability[253]. The significance of SSR is evidenced by the ample literature developed only in the last decades about the various security factors affecting peace and state building[254]. Particularly, it is noteworthy the study demonstrates a substantial correlation between SSR and transitional justice[255] and democratic transition[256].
Security Council Resolution 1244 explicitly mandated UNMIK the responsibility of "maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo"[257]. Similarly, for the civilian administration,

[250] United States Institute of Peace, 1 February 2002, *Truth Commission: Serbia and Montenegro*, available online.
[251] BALIU, MORINA (2017).
[252] HAXHIAJ (2022).
[253] BALIQI (2012: 25).
[254] BRZOSKA (2000); DAVIS (2009); LAW, MYSHLOVSKA (2008); HÄNGGI (2009); PATEL (2009); ASLANTAŞ, ÖZDAL (2023).
[255] CROSSLEY-FROLICK, DURSUN-OZKANCA (2012).
[256] BERNABÉU (2007).
[257] Resolution S/RES/1244, *supra* note 15, para. 11(i).

the international administration had to provide direct law enforcement pending the effective setting up of a local police institution. Demands for international policing (or CIVPOL) have progressively increased throughout the Cold War, gaining momentum, especially throughout the post-Cold War years of peacebuilding as determining instruments for the support of law and order in difficult contexts[258].

The experience from the 1990s led the *Brahimi Report* to the realization that the need "for civilian police operations dealing with intra-State conflict is likely to remain high on any list of requirements for helping a war-torn society restore conditions for social, economic and political stability"[259]. In addition, the Panel acknowledged the close connection existing between CIVPOL and SSR, calling for a doctrinal shift in the use of civilian police in UN peace operation to "focus primarily on the reform and restricting of local police forces", that is going beyond to the traditional "SMART" approach (Support, Monitoring, Administering, Reporting and Training)[260]. In sum, an effective SSR is often considered "a litmus test" for the progress of the entire post-conflict reconstruction[261].

In the aftermath of the Kosovo war, the situation on the ground was devastating. The power vacuum after the withdrawal of the Yugoslav/Serbian forces had caused a deterioration of public security and the widespread of arms possessions, looting, arson and revenge killings by Kosovo Albanians[262]. Such virulent ethnic violence resulted in the killing of at least 271 Serbs and the missing of an additional 650, plus more than two hundred thousand Kosovo Serbs and Roma fleeing outside Kosovo[263]. Neither KFOR nor UNMIK were capable of re-establishing law and order immediately, and the failure to protect the Serbs and other ethnic minorities had serious implications for future efforts for trust and cooperation.

The international military presence was the first to step foot on the territory and assumed temporary policy responsibility pending the arrival of the civilian component. However, the KFOR contingents were not prepared nor trained to sustain autonomously the burden of public order, but they could not rely on the UN CIVPOL for the first few months[264]. It has been generally recognized that the slow deployment of the international civilian police force critically impaired the situation of public security and order on the territo-

---

[258] GREENER (2009: 9 ff.).

[259] Report of the United Nations Secretary-General Boutros, 31 January 1992, DPI/1247, *An agenda for peace: preventive diplomacy, peace-making and peacekeeping*, paras. 20-21; Report of the High-Level Independent Panel on United Nations Peace Operations (*Brahimi Report*), 21 August 2000, A/55/305-S/2000/809, New York, para. 118.

[260] GREENER (2009: 24).

[261] BALIQI (2012: 25).

[262] Report S/1999/779, *supra* note 50, para. 5; Report S/1999/1250, *supra* note 99, para. 16; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 3 March 2000, S/2000/177, para. 22.

[263] Report S/1999/779, *supra* note 50, para. 9.

[264] NARDULLI *et al* (2002: 107); CAPLAN (2014: 619).

ry[265]. The lagged unfolding had to do with many factors. First of all, while NATO had already started amassing troops in the bordering countries before the air bombing, the UN did not and could not plan the framework for a police mission until the adoption of Resolution 1244, for the same reason we have seen when considering the civilian administration component[266].
In addition, the UN does not enjoy any standing contingents pre-arranged by its member states, thereby needing the completion of a time-consuming recruitment process: for instance, the envisaged target of 4,700 officers, which was considered insufficient since the start, was only approached after three years of the start of the international administration, with 4,468 personnel in September 2002[267]. Meanwhile, UNMIK's police force expanded, and its role evolved from advising KFOR to ensure public safety to directly police duties and responsibilities for the maintenance of law and order, such as crime investigation, criminal intelligence, border immigration control, but still holding joint patrolling with KFOR[268]. Two significant accomplishments by the CIVPOL were the security services during the 2000 Municipal elections and 2001 general elections, managed by the OSCE but increasing the international community's confidence and support for UNMIK[269].
The UN and the OSCE cooperation also ensured the creation of the Kosovo Police Service (KPS). The UN covered the appointment, deployment and field training of the officers while the OSCE was responsible for the cadet's training in the Police Academy[270]. The major challenge here was that UNMIK had to create a local police corps in a context wherein there had never been one. Law enforcement in Kosovo had always been carried out by Yugoslav/Serbian officers, also during the period in which it was an Autonomous Province[271]. In addition, the new police corps was required to be "representative of the different ethnic communities of the municipalities in which it serves"[272],
The recruitment of KPS candidates was conducted by UNMIK's special team. The selection process was based on four sets of criteria, such as minimum requirements, preferred skills, comprehensive (written and oral) examination, and psychological and physical fitness standards. It also conducted background checks about the period of the war as well as taking into consideration gender and ethnic representation[273]. In September 1999, UNMIK admitted the first group of 200 staff out of a court of nearly 20,000 candidates[274]. Along with selection and recruitment, a relevant factor was also the

[265] DE BRABANDERE (2009: 164).
[266] DE BRABANDERE (2009: 164).
[267] ASLANTAŞ, ÖZDAL (2023: 263).
[268] Report S/1999/779, *supra* note 50, paras. 61-62; COCKELL (2002: 488); GREENER (2009: 34).
[269] ASLANTAŞ, ÖZDAL (2023: 264).
[270] Report S/1999/779, *supra* note 50, paras. 62-64.
[271] ASLANTAŞ, ÖZDAL (2023: 259).
[272] Report S/1999/779, *supra* note 50, para. 64.
[273] Report S/2000/177, *supra* note 262, para. 44.
[274] GREEN, FRIEDMAN, BENNET (2012: 4).

training activities envisaged for the capacity-building of the new organisation. KPS received since the start, thanks to the OSCE program headed by Steve Bennet, a qualified training comparable to most European country's police forces[275]. However, the real novelty regarding SSR in Kosovo was the system of "on-the-job training" for local police, hitherto unprecedented in the history of UN peace operations[276]. KPS candidates participated in two months of field training during which the UN police evaluated their weekly performance. CIVPOL carried out a fundamental work of monitoring and documentation of KPS's activities: on the one hand, cadets who did not live up to the expected standards were sent back to the police academy for improvement, while those staff members who seriously misconducted or violated human rights, were immediately dismissed[277].

UNMIK's transfer of authority to the newly formed KPS was envisaged in four main stages. Since 2001, Kosovars progressively acquired experience and competencies, including beat patrols, traffic services, and joint scouting with CIVPOL, until receiving full control of all the 32 police stations in Kosovo[278]. The next steps regarded the strategic transition at the UNMIK and KPS headquarters in Prishtinë/Pristina, where Kosovars progressively assumed mid-level management up to senior positions[279]. Overall, UNMIK's transfer of authority to local police proved to be a consistent process, completed in January 2006[280]. Under the *Constitutional Framework*, the KPS remained under the authority of the SRSG and the supervision of UNMIK police[281]. Unquestionably, the March 2004 Riots were a significant setback and disappointment in the transfer process. Neither the international nor the Kosovar security forces were capable nor prepared to prevent what was called a "failure to protect"[282] both ethnic minorities' individuals, habitations and cultural heritage sites; in the clashes, 65 CIVPOL officers, 58 KPS officers and 61 KFOR personnel were injured[283].

Nonetheless, UNMIK's SSR in Kosovo is considered a solid success. From a project assessment perspective, the international administration succeeded in establishing a multi-ethnic local police force; in fact, the KPS was the second institution better representing ethnic diversity in Kosovo[284]. From a confidence point of view, OSCE surveys conducted during the international administration showed that for the Kosovar population, the KPS was the sec-

[275] ASLANTAŞ, ÖZDAL (2023: 260).
[276] Report S/1999/779, *supra* note 50, para. 62.
[277] ASLANTAŞ, ÖZDAL (2023: 263).
[278] CROSSLEY-FROLICK, DURSUN-OZKANCA (2012: 126).
[279] Report of the United Nations Secretary-General on United Nations Interim Administration Mission in Kosovo, 13 March 2001, S/2001/218, para. 35.
[280] Report of the United Nations Secretary-General on United Nations Interim Administration Mission in Kosovo, 25 January 2006, S/2006/45, para. 29.
[281] Constitutional Framework, *supra* note 379, Chapter 6.
[282] Human Rights Watch, 25 July 2004, *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, available online.
[283] Report S/2004/348, *supra* note 105, paras. 21-23.
[284] ASLANTAŞ, ÖZDAL (2023: 269).

ond most trusted institution in the country. The ultimate evidence of the success of this process may be found in the contrast between the voluntary participation of the Serb communities in the KPS, indicating that its jurisdiction was generally accepted by the ethnic groups, compared to the rejection of the other provisional executive, legislative and judiciary institutions[285]. According to Gajic, the cause of such a striking contrast may be due to the disproportional investment by the international community more in security capacity-building and institutions than in justice-building and oversight institutions[286]. Nonetheless, the case of Kosovo remains an important benchmark in SSR resulting in 2006, at the moment of the full transfer of authority to KPS, in the creation of a functioning and multi-ethnic professional police service, composed of 7,335 officers trained to the EU Standards[287].

4.2.6 Democratisation and Institution Building

UNMIK's third Pillar on democratisation and institutional building was charged to the Organisation for Security and Cooperation in Europe (OSCE). The mandate assigned to the OSCE Mission in Kosovo (OMiK) consisted of assisting the people of Kosovo in strengthening the capacity of local and central institutions and civil society organisations, as well as promoting democracy, good governance and respect for human rights; including the organisation, conduct and supervisions of elections to establish the foundations of a free, pluralist and multiethnic society[288]. Pillar III covered a series of activities and objectives interloping with the other UNMIK components and thus involving a frequent interplay of the OSCE with the rest of the international organisations. In practice, OMiK concentrated its work in three main interrelated areas: human resources capacity building; democratisation, governance and elections; and human rights[289].

a. Capacity-building

The *interim* transitional administration in Kosovo was tasked to build provisional governmental structures for a new democratic regime. However, these forms are not insurance of immediate proper democratic government in respect of human rights. In Kosovo, especially because the territory had never experienced and practised concretely the democratic principles, rule of law and respect of human rights. Consequently, the UN administration had also to develop and promote the human capital that would operate in the newly set-up public structures, to prevent in principle the resurgence of oppression

[285] *Ivi*, p. 265.
[286] GAJIĆ (2017: 3).
[287] ASLANTAŞ, ÖZDAL (2023: 267).
[288] Report S/1999/779, *supra* note 50, para. 79.
[289] Decision of the Organisation for and Cooperation in Europe, Permanent Council, 1 July 1999, PC.DEC/305.

and violence. The OMiK's work accomplished its human resources capacity-building mission essentially by carrying out training for the police, the judicial personnel and the civil administrators.

The OSCE collaborated with the UN to rebuild an independent and impartial multi-ethnic judiciary branch. While UNMIK's Pillar I immediately proceeded to set up an Emergency Judicial System and appoint the early judges and prosecutors, the OSCE's Judicial Training Section first initiated their training activities in August 1999, conducting two-day training courses with a primary focus on criminal law and human rights law[290]. However, it became soon clear that these 'quick start' courses were not sufficient to guarantee an appropriate functioning of the judiciary, also due to the overly sensitive ethnic bias in criminal cases, to impel UNMIK to resort to international lawyers in February 2000 as a remedy[291].

In the same period, the OSCE created the Kosovo Judicial Institute (KJI) to increase the professional and technical competence of local judges and prosecutors[292]. Hundreds of courses organised under the Continuous Legal Education Programme were provided on several legal issues, occasionally in collaboration with the Council of Europe, the US Department of Justice and the American Bar Association; however, the activities were not mandatory and thus registered a moderately low attendance rate of 25 judges for all training lessons[293].

In 2022, a new Practical Skills Training Programme was organised together with the US Agency for International Development (USAID) and the International Development Law Organisations (IDLO), chiefly working on the enhancement of management abilities, decision-making, judgment writing, and witness examination skills. This essential training programme was set up only after three years the first judicial appointments fundamental but, as noted by De Brabandere, they would have ideally been indispensable capacity-building instruments in the immediate beginning of the process, especially in the light of the significant lack of expertise of the local judges in Kosovo[294].

The joint efforts of the OSCE and the UN proved to be highly successful in the area of law enforcement. A crucial factor here was a clear division of labour in creating the Kosovo Police Service (KPS), with the UNMIK taking over the selection, appointment and "on-the-job training" through the CIVPOL, while OMiK assumed the responsibility of academic training[295]. The OSCE immediately committed to re-establish the police academy, the so-called Kosovo Police Service School, succeeding in opening the first

---

[290] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 December 2000, S/2000/1196, para. 49.

[291] Regulation UNMIK/REG/2000/6, *supra* note 206; HARTMANN (2003: 5).

[292] Report of the Organisation for Security and Cooperation Mission in Kosovo, March 2006, *Kosovo: Review of the criminal justice system 199-2005 – Reforms and residual concerns*, pp. 14-15.

[293] *Ivi*, p. 17.

[294] DE BRABANDERE (2009: 198).

[295] ASLANTAŞ, ÖZDAL (2023: 259).

training sessions as early as September 1999[296]. The training, oriented both at new KPS candidates as well as Kosovo Police Officers, was initially administered by interpreters but just after two years the end of the war, since 2001, they were conducted by KPS instructors, by the general UNMIK's framework of progressive transfer of responsibilities to the Kosovar[297]. Finally, the OSCE, the Institute for Civil Administration, was specifically established for the development and implementation of a comprehensive training policy and programme for the civil service of Kosovo[298].

b. Democratisation, governance and elections

Elections are the hallmark as well as the preconditions of democracy[299]. The OSCE was assigned with the delicate yet fundamental goal to organise elections in Kosovo while promoting transparency, equal opportunity and participation in the decision-making process of Kosovo. UNMIK organised the first administrative election in 2000, which is just one year after its inception. This event marked not only an initial concrete success of the international mandate but on 28 October, the people of Kosovo had exercised their right to vote in a democratic election for the first time in their history.
It was a success in various aspects. First, although the organisation and conduct were the primary responsibility of the OSCE, the elections required functional cooperation among various components and international organisations under the UN umbrella, including the security aspects of CIVPOL and KFOR[300]. Moreover, the polls registered a turnout with considerably high participation of almost 80 per cent, ran relatively smoothly with virtually no fraud and were officially declared by the Council of Europe's observers as free and fair[301]. Only three northern municipalities boycotted the election (Leposaviq/Leposavić, Zubin Potoku/Zubin Potok and Zveçani/Zvećan) and the SRSG had to appoint the Municipal Administrator there directly, but in general, the 2000 administrative elections represented the first real step towards the progressive transfer of authority from the international authority to the local[302].
Overall, under the international administration, there were 8 elections: the OSCE led the first five while the Kosovars gradually learnt while assisting. The last three were instead managed by the newly established Central Election Commission (CEC) under the supervision of the OSCE. The CEC was created by UNMIK Regulation No. 2000/21 (later amended by Regulation

[296] Report S/1999/987, *supra* note 100, para. 30.
[297] ASLANTAŞ, ÖZDAL (2023: 261).
[298] Report S/2002/62, *supra* note 168, para. 34.
[299] SCHUMPETER (2003: 269).
[300] JEONG (2006: 204).
[301] EVERTS (2001: 247).
[302] Report S/2000/1196, s*upra* note 290, paras. 2, 8.

No. 2000/65[303]) to be independent and impartial while preparing the basic rules for the elections and conducting them; it was composed of nine Kosovars, three international members and chaired by the Deputy SRSG for Pillar III, i.e., OMiK's head[304].

The holding of regular elections in Kosovo was certainly another positive chapter of the international administration in Kosovo and one of the most important achievements of the cooperation between international organisations[305]. However, there is one as much fundamental and concerning consideration to take into account when talking about the elections in Kosovo: that is, the steady decline in popular participation. After the highly positive turnout in October 2000 of almost 79 per cent, the following and first general elections for the Kosovo Assembly in November 2001 registered a disappointing 64 per cent, after which the trend was a constant downhill until the lowest point of the 2007 parliamentary elections slightly below the 40 per cent[306]. If we assume that the ethnic minorities could not produce altogether such an astonishing reality, the increasingly negative electoral participation must be inevitably reconducted to the Albanian majority population. In particular, it is to be interpreted in light of the wider context of the 'missed' or delayed independence process and the persisting presence and interference of UNMIK within the Kosovar political agenda.

The diminishing democratic character in Kosovo's society essentially confirms Hebert's claim "that direct governance by an international administration tends to create the preconditions for its illegitimacy, and that a strong-handed approach might exacerbate the [so-called] legitimacy paradox"[307]. This paradox refers to the vast authority enjoyed by UNMIK, similar to and somehow larger than states' government, yet without an effective legitimacy from the local population governing[308].

Ultimately, the international community succeeded in instilling an effective electoral process as a representative instrument of the democratic political interests in Kosovo, however, people's frustration and dissatisfaction with UNMIK's performance in other sectors eventually transformed this election's success in the most evident aspect of UNMIK's eroding legitimacy and thereby authority.

---

[303] Regulation of the United Nations Interim Administration Mission in Kosovo, 19 December 2000, UNMIK/REG/2000/65, *amending UNMIK Regulation No. 2000/21 on the Establishment of the Central Election Commission*.

[304] Regulation of the United Nations Interim Administration Mission in Kosovo, 18 April 2000, UNMIK/REG/2000/21, *on the Establishment of the Central Election Commission*, Sections 1, 2, 4.

[305] DE VRIEZE (2008: 133).

[306] BASHOTA, PODRIMQAKU, BYTYQI (2014: 447).

[307] LEMAY-HEBERT (2009: 72).

[308] REKA (2003: 152).

c. Human rights

The UN administration of Kosovo was explicitly mandated in Resolution 1244 to promote and protect human rights, developing mechanisms to ensure that all the provisional public institutions would operate by the international standards of criminal justice and human rights[309].
The starting point of the human rights regime in Kosovo under the international administration was Regulation No. 1999/1, introducing the duty for all public and international officials to observe internationally recognized standards:

> "In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards and shall not discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status"[310].

We have already seen that one contextual characteristic of Kosovo was the substantial lack of human rights standards in the traditional legal system. Accordingly, the international administration acted in a twofold manner: one 'positive', to introduce human rights standards and the other 'negative', to repeal existing discriminatory laws. UNMIK adopted Regulation No. 1999/24, immediately abolishing death penalty and declaring that the existing laws were applicable as long as not in conflict with international human rights standards – the latter notion was clarified by explicitly enlisting the main sources in international law: the *Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms* and the Protocols thereto; the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the *Convention on the Eliminations of All forms of Racial Discrimination*; the *Convention on the Elimination of All Forms of Discrimination against Women*; the *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*; and the *International Convention on the Rights of the Child*[311].
This state-of-the-art, also including the *European Charter for Regional or Minority Languages*[312] and the Council of Europe's *Framework Convention for the Protection of National Minorities*[313], was later incorporated in Chapter Three of the *Constitutional Framework*[314]. The PISG were required to observe those rights and freedoms and, most importantly, the provisions con-

---

[309] Resolution S/RES/1244, *supra* note 15, para.11(j); Report S/1999/779, *supra* note 50, para. 85.
[310] Regulation UNMIK/REG/1999/1, *supra* note 83, Section 2.
[311] Regulation UNMIK/REG/1999/24, *supra* note 91, Section 1.3.
[312] Council of Europe Parliamentary Assembly, 21 October 2010, Doc. 12422, *The European Charter for Regional or Minority Languages*.
[313] Council of Europe, 1 February 1995, ETS 157, *Framework Convention for the Protection of National Minorities*.
[314] Constitutional Framework, *supra* note 85, Article 3.2.

tained in the aforementioned international instruments had to be considered "directly applicable in Kosovo as part of [the] *Constitutional Framework*"[315]. The implementation of human rights in Kosovo was instead more difficult for UNMIK. The ultimate guarantor of human rights is usually the judge, but as aforementioned, UNMIK had to be rebuilt and correct Kosovo's legal system. The determining factors were that, in the first place, local judges lacked practical experience and competence in human rights standards, and in addition, the international judges later stepped in needed time to get acquainted with the Kosovar legislation[316]. The situation was also complicated by the lack of a clear legal hierarchy in the legal instruments legislation since, except for the supremacy of UNMIK regulation, judges had to unravel which norm was superseding the prior-1989 laws, 1989-1999 laws in case the matter was not covered in the former, identify eventual incompatibilities and appropriately interpret them by human rights[317].

A fundamental breakthrough in the protection of human rights in Kosovo was the establishment of the Ombudsperson Institution (OIK). This is an independent institution composed of the Ombudsperson and at least three deputies, established by Regulation No. 2000/38 "to enhance the protection of human rights in Kosovo"[318]. The importance of this institution was confirmed also in the *Constitutional Framework* with an eye to ethnic peaceful coexistence:

> "The Ombudsperson shall give particular priority to allegations of especially severe or systematic violations, allegations founded on discrimination, including against Communities and their members, and allegations of rights of Communities and their members"[319].

In practice, the OIK investigated and monitored complaints received about human rights violations as well as official actions allegedly constituting abuses of authorities by UNMIK and any central or municipal institutions[320]. It must be stressed that the OIK issued no binding decisions but rather published its findings and recommendations in the form of special reports. Thanks to various detailed, annual and thematic reports denouncing violations and official misconduct, the OIK shed light on the factually fragile situation of human rights in Kosovo under the international administration[321]. That is the reason why the Ombudsperson is widely considered the most effective mechanism ever employed in Kosovo for the protection of human rights[322]. However, the OIK was so highly effective and critical of the inter-

---

[315] *Ivi*, Articles 3.2, 3.3.
[316] CAPLAN (2005: 64).
[317] DE BRABANDERE (2009: 218).
[318] Regulation of the United Nations Interim Administration Mission in Kosovo, 30 June 2000, UNMIK/REG/2000/38, *on the Establishment of the Ombudsperson Institution in Kosovo*, Preamble and Section 5.
[319] Constitutional Framework, *supra* note 85, Art. 8.2.
[320] Regulation UNMIK/REG/2000/38, *supra* note 318, Section 3.
[321] DE BRABANDERE (2009: 219).
[322] FRIEDERICH (2005: 266); HOFFMANN, MÉGRET (2005: 54); EVERLY (2007: 32); MURATI (2020: 137).

national administration's deficiencies that UNMIK decided to severely constrict its authority by removing the automatic right to review and redress acts of direct omissions or decisions of UNMIK that may constitute an abuse of authority or a violation of human rights. Regulation No. 2006/6 essentially excluded UNMIK from the OIK's jurisdiction, which was weakened and limited to "violations of international human rights standards as incorporated in the applicable law and acts, including omissions, which constitué an abuse of authority of the Kosovo Institutions"[323]. However, the new regulation provided the possibility for the OIK to conclude bilateral agreements with the SRSG on procedures for dealing with cases involving UNMIK[324].

A second noteworthy development in human rights protection in Kosovo was the creation of the Human Rights Advisory Panel (HRAP). The idea was first born from a proposal in 2004 of the Venice Commission to establish some kind of mechanism to bring claims against UNMIK and KFOR authorities: "It is necessary that the UN system itself develop a mechanism which must ensure the respect for the limitations on UN action, as they derive from general international law (in particular human rights law), in individual case"[325]. Following a Resolution of the Parliamentary Assembly of the Council of Europe recommending the establishment of an advisory panel or human rights commission[326], UNMIK adopted Regulation No. 2006/12 establishing the Human Rights Advisory Panel with the mandate to examine complaints from any individual or group of individuals concerning alleged human rights violations committed by or attributable to the UN authorities[327].

The Regulation contained two considerable limitations to the HRAP's competence: it could receive only complaints relating to violations that occurred after 23 April 2005 and had no jurisdiction over KFOR. Furthermore, the HRAP would issue opinions concerning the complaints received and may include recommendations to the SRSG, but the latter is under no obligation to follow or implement it. HRAP held an advisory nature unaffecting the ultimate authority of the head of UNMIK. In addition, the Panel could not order any compensation or relief by only determining the responsibility of UNMIK for a violation.

The accountability deficit of international administration is the greatest operational shortcoming of UNMIK. The latter failed to establish an effective remedy to human rights violations and abuses, issuing binding decisions, and

---

[323] Regulation of the United Nations Interim Administration Mission in Kosovo, 16 February 2006, UNMIK/REG/2006/6, *on the Ombudsperson Institution in Kosovo*, Section 3.

[324] *Ivi*, Art. 3.4.

[325] European Commission for Democracy Through Law (Venice Commission), 11 October 2004, *Opinion on Human Rights Possible Establishment of Review Mechanisms Kosovo*, para. 78.

[326] Resolution of the Council of Europe Parliamentary Assembly, 25 January 2005, Resolution 1417 (2005), para. 5.

[327] Regulation of the United Nations Interim Administration Mission in Kosovo, 23 March 2006, UNMIK/REG/2006/12, *on the Establishment of the Human Rights Advisory Panel*, Sections 1-2.

with competence of judicial review also of UNMIK's conduct. The paradoxical and sorry state of affairs led the Ombudsperson to label Kosovo "a human rights black hole", in Europe and the world, openly criticizing how much:

> "It is ironic that the United Nations, the self-proclaimed champion of human rights in the world, has by its actions placed the people of Kosovo under UN control, thereby removing them from the protection of the international human rights regime that formed the justification for UN engagement in Kosovo in the first place"[328].

The international administration of Kosovo corresponded to the translation of the territory in a vacuum system of protection of human rights and freedoms:

> "By temporarily derogating from the FRY legal order, the [Security Council] removed from individuals the benefit of the ECHR's fundamental safeguards and their right to call authorities to account for violation of their rights in proceedings before the Court"[329].

The case of Kosovo however is just one manifestation of the well-known question of the insurmountable immunities of international organisations. Immunity is one of the most ancient institutions in the diplomatic relations between states and enshrined in the Vienna Convention according to which "a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state"[330]. First established between states, the *Charter of the United Nations* absorbed this practice in Article 105, for which "the Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes"[331], and Article 2: "The United Nations […] shall enjoy immunity from every form of legal process insofar as in any particular case it has expressly waived its immunity"[332]. These two provisions laid down the legal ground of the so-called "organisational immunity", which was later cemented in the groundbreaking 1949 advisory opinion of the ICJ on the *Reparation for Injuries case*:

> "So that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization and that he may count on it. To ensure the independence of the agent, and, consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be)"[333].

---

[328] Ombudsperson Institution in Kosovo, 10 July 2002, *Second Annual Report 2001-2002 addressed to Mr. Micheale Steiner, Special Representative of the United Secretary General of the United Nations*, p. 5.
[329] KNOLL (2008: 391).
[330] Vienna Convention, *supra* note 38, Art. 31.
[331] United Nations, *Charter of the United Nations* (hereafter UN Charter), 24 October 1945, 1 UNTS XVI, Art. 105 para. 1.
[332] *Ivi*, Art. 2 Section 2.
[333] Advisory opinion *Reparation for Injuries*, *supra* note 124, p. 183.

The Court further reinforced this position later in the 199 *Cumaraswamy case*, wherein it made clear that "any claims against the United Nations shall not be dealt with by national courts"[334]. In light of the above, for the international administration of Kosovo, UNMIK Regulation No. 2000/47, provided immunity from any legal process for the international civilian presence, including international and locally recruited personnel, property, funds, and assets; and specifically, for the SRSG, its Deputies and the other high-ranking officials complete immunity "from local jurisdiction in respect of any civil or criminal act performed or committed by them in the territory of Kosovo"[335]. The same Regulation conferred a far-reaching immunity regime also to KFOR and its personnel, but with the difference that the latter could still be "subject to the exclusive jurisdiction of their respective sending States"[336].

As a result, this meant that both KFOR and the UN were immune from any form of legal claim in Kosovo. Noteworthy evidence of this accountability deficit was the failed claims of some Kosovo Albanian citizens before the European Court of Human Rights (ECtHR) about the violations of human rights and fundamental freedoms committed by peacekeeper contingents of certain European states within the framework of the international administration of Kosovo In 2007, the Court rejected the admissibility of the so-called *Behrami and Saramati case* on the ground that:

> "Since operations established by UNSC Resolutions under Chapter VII of the UN Charter are fundamental to the mission of the UN to secure international peace and security and since they rely for their effectiveness on support from member states, the Convention cannot be interpreted in a manner which would subject the acts and omissions of Contracting Parties which are covered by UNSC Resolutions and occur before or in the course of such missions, to the scrutiny of the Court. *To do so would be to interfere with the fulfilment of the UN's key mission in this field including* […] *with the effective conduct of its operations*"[337].

Similarly, in 2013, the ECtHR decided on the inadmissibility of the application by *Stitching Mothers of Srebrenica and others* by referring to organisational immunity as "a long-standing practice established in the interest of the good working of the [international] organisation", but most importantly arguing on its supremacy over claims based on an act of genocide, based on the justification that:

---

[334] Advisory opinion of the International Court of Justice, 29 April 1999, ICJ Reports, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, p. 89.

[335] Regulation of the United Nations Interim Administration Mission in Kosovo, 18 August 2000, UNMIK/REG/2000/47, *on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo*, Section 3.

[336] *Ivi*, Section 2.4.

[337] Decision of the European Court of Human Rights (Admissibility), Applications No. 71412/01 and 78166/01, *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway*, para. 149.

> "international law does not support the position that a civil claim should override immunity from suit for the sole reason that it is based on an allegation of a particularly grave violation of a norm of international law, even a norm of *jus cogens*"[338].

This lack of a fair and due process against alleged human rights violations suffered because of the conduct of international organisations marks, other than a legal problem, also a paradox: despite being deeply involved in the promotion, respect, and oversight of human rights across all states, the United Nations is not directly bound by obligations under the existing international human rights regime. States remain the primary subjects of international duties, even as the range of actors recognized as having legal subjectivity in international law has significantly expanded. Also, the attempt made by the International Law Commission with the adoption of the *Draft Articles on Responsibility of International Organisations* (DARIO)[339], aiming at establishing a more effective framework of responsibilities for international organisations based on the sister regime for states, has turned out thus far quite sterile in practice.
Ultimately, the accountability deficit encountered within the context of the international territorial administration of Kosovo is part and result of the greater and pre-existing question of international law about the responsibilities of international organizations. Up to date, there is no judicial mechanism competent to condemn the actions neither of the UN nor NATO in violations of human rights norms; and the *status quo* will not change without an act of courage towards the only viable solution: the normalization of the access and answerability of these international organisation to human rights conventions[340].

4.2.7 Reconstruction and Economic Development

The European Union was the lead organisation of the fourth and last pillar of UNMIK's structure, mandated by Resolution 1244 to "support the reconstruction of key infrastructures and other economic and social systems"[341]. The economic component is a relatively recent development in peacebuilding operations, evidence of the emergence of a new comprehensive concept of security and positive peace[342], and not anymore limited to Bobbio's idea of *non-guerra*[343]. The economy of Kosovo exited the conflict in pieces, but the territory had already suffered a severe degree of underdevelopment since

[338] Decision of the European Court of Human Rights, 11 June 2013, Application No. 65542/12, *Stitching Mothers of Srebrenica and Others v. The Netherlands*, paras. 63, 139.
[339] Report of the International Law Commission, Sixty-third Session 2011, A/66/10, *Draft Articles on the Responsibility of International Organisations*.
[340] MURATI (2020: 186).
[341] Resolution S/RES/1244, *supra* note 15, para. 11(g).
[342] DE BRABANDERE (2009: 148).
[343] BOBBIO (1975: 199).

the stagnation in the 1980s, heightened by the neglected management by the Yugoslav and Serbian authorities in the 1990s[344].

The usual strategy for economic reconstruction is composed of two main courses of action. First, short-term emergency measures meant both at reconstruction of physical infrastructure and the basis for a swift re-launching of the economic reconstruction, by the establishment of tax and customs systems, financial institutions and trust funds, forms of micro-credits and attraction of foreign investments[345]. These are not to be confused with the operations of emergency relief, but they rather provide, in principle, the bridge of the gap between the latter and long-term growth[346]. The second component is indeed long-term sustainability, i.e., the capacity of the economy to work autonomously, often implying a transition to a market economy and the rationalisation of public spending[347].

The EU approach in Kosovo was founded upon the principles of the 1993 European Council in Copenhagen, the so-called *Copenhagen Criteria* setting out among the conditions required for the adhesion to the EU the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; and the Conclusion of the Council of Ministers of 29-30 Aprile 1997, defining the preconditions for the contractual relations with the EU[348]. Accordingly, the EU's priorities in Kosovo were restoring basic public services and privatising the public enterprises. As immediate emergency measures, UNMIK issued two regulations governing, on the one hand, the establishment of customs administration and revenue collection services[349], and on the other, the permission for unrestricted use of foreign currencies for transactions in Kosovo[350]. The latter was much contested as the Deutschmark was the official currency of the Kosovo institutions and agencies[351], thereby superseding the Yugoslav Dinar. Although the justification provided by the SRSG was that the German currency was stronger than the Dinar and thus more attractive for foreign inves-

---

344 CAPLAN (2014: 622).

345 GREIVCEVCI (2021: 76).

346 MOORE (1996: 15).

347 DE BRABANDERE (2009: 149).

348 Report of the European Commission, 9 November 2005, SEC (2005) 1423, *Kosovo (under UNSCR 1244) 2005 Progress Report*, p. 27. The conditions for contractual relations defined at the April 1997 Council of Minister are the following: macroeconomic institutions and policies necessary to ensure a stable economic environment; comprehensive liberalisation of prices, trade and current payments; setting up of a transparent and stable legal and regulatory framework de-monopolisation and privatisation of state-owned or socially owned enterprises; establishment of a competitive and prudently managed banking sector.

349 Regulation of the United Nations Interim Administration Mission in Kosovo, 31 August 1999, UNMIK/REG/1999/3, *on the establishment of the customs and other related services in Kosovo*.

350 Regulation of the United Nations Interim Administration Mission in Kosovo, 2 September 1999, UNMIK/REG/1999/4, *on the currency permitted to be used in Kosovo*.

351 Administrative Direction of the United Nations Interim Administration Mission in Kosovo, 4 October 1999, UNMIK/DIR/1999/2, *implementing UNMIK Regulation 1999/4 of 2 September 1999 on the currency permitted to be used in Kosovo*.

tors, the decision was denounced as contravening the monetary sovereignty of Yugoslavia. Nonetheless, the regulation remained in force and the EU quickly proceeded with its work on the institutional level by creating a Central Fiscal Authority for the oversight of the public budget, a Supervisory Board for Payment Operations[352], and a Banking and Payment Authority[353] to reorganize the banking and payment systems. Furthermore, UNMIK issued a series of regulations to provide Kosovo's legal system with a framework also governing the creation of private companies and corporations, trade and foreign investment[354]. After twenty months of the UNMIK's arrival, by March 2001, the emergency phase of the economic reconstruction component was considered accomplished[355].

The long-term engagement for sustainability is aimed at the creation of a free-market-based economy. The challenge here was by far more delicate since the transition from a socialist economy implied the transformation of the traditional state- and socially-owned-enterprises (SOEs):

> "We need to face reality and call a spade a spade. Most of Kosovo's socially owned enterprises are dinosaurs. Even if we had the capital needed to rebuild them – and we don't have it – we could not make viable enterprises out of them. It is time to acknowledge that the old economic approach has failed"[356].

Privatisation was considered by the international administration as the most effective measure to accomplish the transition towards a market economy, but this passage raised serious legal issues about UNMIK's mandate for undertaking such a radical change, in light of the underlying commitment to Yugoslavia's sovereignty affirmed in Resolution 1244. The heart of the controversy resided in the legitimacy of the UN international administration, in the principle of temporary nature, and the sovereign prerogatives of Yugoslavia in maintaining a unified model of economic development within its integral territory. When UNMIK proceeded to establish a Kosovo Trust Agency (KTA), the strong opposition from Yugoslavia, but also the UN Legal Advisor, obstructed the process of configuration until eventually the KTA's mandate was redesigned in 2004[357].

---

[352] Regulation of the United Nations Interim Administration Mission in Kosovo, 13 October 1999, UNMIK/REG/1999/11, *on exercising control over payments facilities and services.*

[353] Regulation of the United Nations Interim Administration Mission in Kosovo, 15 November 1999, UNMIK/REG/1999/20, *on the banking and payments authority of Kosovo*.

[354] Report of the United States Agency for International Development, September 2004, *Commercial Legal and Institutional Reform Assessment: Diagnostic Assessment Report for Kosovo*, pp. 12, 20, 31, 43, 52, 58.

[355] Report S/2001/218, *supra* note 279, para. 52.

[356] Press Release of the United Nations Interim Administration Mission in Kosovo, 18 April 2002, UNMIK/ PR718, *SRSG Michael Steiner Addresses University of Pristina on Privatization.*

[357] Regulation of the United Nations Interim Administration Mission in Kosovo, 13 June 2002, UNMIK/REG/2002/12, *on the Establishment of the Kosovo Trust Agency*; Regulation of the United Nations Interim Administration Mission in Kosovo, 22 April 2005, UNMIK/REG/2005/18, *Amending Regulation No. 2002/12 on the Establishment of the Kosovo Truste Agency*.

For an assessment of the EU's component in Kosovo is appropriate to make a distinction. The economic reconstruction during the first emergency phase is generally recognized as a positive success, re-establishing shortly the basic economic infrastructures[358]. However, UNMIK's development policy for long-term sustainability fell short on several matters. Kosovo remained impoverished, heavily dependent on external funding and with a concerning high rate of unemployment[359]; in addition, the territory kept suffering from widespread corruption and public fraud, high taxes and excessive bureaucracy[360]. In 2007, nearly at the end of the operational international administration of Kosovo, the scarce results in the territory were cleared by the personal testimony of the UN Assistant Secretary-General and Associate Administrator of the UN Development Programme, Ad Melkert:

> "the situation in Kosovo can be compared to the circumstances in the poorest African countries: an extremely high mortality rate of newborn children (35 deaths to 1,000 births), a very high unemployment rate (42 per cent), a poor educational system and a severely polluted environment"[361].

The following year, UNICEF labelled Kosovo as "an island of poverty in the heart of Europe"[362]. How could this be possible after the large economic engagement by the international community? Certainly, the uncertainty about Kosovo's final status played a role in its economic difficulties, and it would be unrealistic to expect that the foundations of economic sustainability and growth can take place and profit in just a few years. However, the major problem in Kosovo seemed dealing more with the quality than the quantity of the international action. For instance, Alexandro Yannis, who worked in Kosovo under the UN, attributed the responsibility to the hitherto EU's limited experience in post-conflict economic management and reconstruction and its difficulties in adequate personnel recruitment[363]. This perception has been sustained by other former officials, according to whom the lead organisation of the fourth pillar accomplished elaborate a comprehensive strategy only in 2003, thus hindering "UNMIK's ability to forge a viable peace [and economic stability] in a reasonable time frame"[364].

4.3 KFOR – The international security presence

The Kosovo Force (KFOR), although legitimized by Resolution 1244, did not fall under the authority of the SRSG. The security component of the international administration of Kosovo had its chain of command under the

---

[358] De Brabandere (2009: 152).
[359] Lemay-Hebert, Murshed (2016: 530).
[360] Caplan (2014: 625).
[361] Melkert (2007).
[362] United Nations Children's Fund, February 2008, *Getting to Lisbon: Assessing Vocational Training Needs and Job Creation Opportunities for Rural Women*, p. 11.
[363] Yannis (2003: 180).
[364] Blair *et al* (2005: 206).

KFOR Commander (COMKFOR). The UN administration in Kosovo was thus made of a parallel non-hierarchical structure, wherein the peacekeeping component was not subalternate to the peace-building mission, differently from the later UNTAET. This innovative two-head blueprint had some serious implications for the coordination and coherence of international action.
However, it would be reductive to affirm that KFOR's tasks were limited to keeping the peace; the international security presence was mandated too with some responsibilities to contribute to post-conflict resilience and reconstruction. Hereafter we shall thus examine the role of the NATO-led operations in the multi-faceted administration of Kosovo in the "day-after". It must not be underestimated the significance of the Organisation in demonstrating its commitment to the post-war management of the small territory, after the reiterated call for the protection of human rights and security that had eventually led to the controversial humanitarian intervention without the authorisation of the Security Council.

4.3.1 Mandate and Structure

The legal framework of the KFOR mission in Kosovo is clarified by the Kumanovo Military-Technical Agreement (MTA), Resolution 1244, and NATO's operational plan (OPLAN) No. 10413. Chronologically the first, the MTA signed between Belgrade and NATO provided the detailed phased process of withdrawal of the Yugoslav/Serbian forces from Kosovo concurrently with the KFOR's deployment. The document contained also the first core of responsibilities of the new security apparatus which was recognized as the authority not just to monitor but also to resort to the use of force if deemed necessary to establish and maintain a "durable cessation of hostilities"[365]. The ultimate authority for the security aspects in the territory of Kosovo was reserved to the commander of the international security force (COMKFOR), who became the alter ego of the SRSG for the military structure[366]. The day after the signing (and immediate entry into force of the MTA), the Security Council officialised the international security presence partially reflecting some of the points of the MTA but without any reference to it, thus avoiding engaging the basic controversy of the illegality of NATO's intervention. KFOR was first mandated with traditional peacekeeping objectives to deter potential conflict recurrence, ensuring the respect of the ceasefire and the withdrawal without the return of the FYR forces. In addition, it was assigned the responsibility for the demilitarization process of the Kosovo Liberation Army (UÇK/KLA), the establishment of a secure environment for all the citizens, refugees, IDPs and the international staff, border monitoring functions, and the protection and freedom of movement inside the territory[367]. Finally, the military troops were requested to ensure public safety and order

[365] Kumanovo MTA, *supra* note 23, art. 4.
[366] *Ivi*, art. 5.
[367] Resolution S/RES/1244, *supra* note 15, para. 9 (a)-(h).

as well as supervise demining, pending the arrival and takeover of the civilian component[368].
Resolution 1244, in principle, opened the call to establish the international security presence to all willing "Member States and relevant international organisations"[369]. In practice, the "substantial North Atlantic Treaty Organisation" set out in point 4 of the Ahtisaari-Chernomyrdin peace plan was implemented as full NATO control. However, in the very early hours since the adoption of Resolution 1244, some 2000 Russian troops stationed in the SFOR contingent in Bosnia undertook a pre-emptive incursion in the airport of the capital Prishtinë/Priština, taking control before NATO's arrival[370]. It is not noticeably clear the true justification behind Moscow's rush, most likely for ensuring an actual military presence in the territory; however, the situation was eventually resolved without dramatic events in Helsinki, on June 18, signing an accord setting out the principles for Russian participation in KFOR operation[371].
The structure and geographical division of international security presence was defined in the NATO Joint Military Forces Supreme Command's plan No. 10413, called *Joint Sentinel*[372]. The Kosovo Force was organized in five Multi-National Brigades (MNBs), each led by one national contingent responsible for ensuring security in as many task sectors in which the territory of Kosovo was divided: MNB North (France), MNB South (Germany), MNB West (Italy), MNB Central (UK), including Prishtinë/Priština, and MNB East (USA)[373]. Within the latter, there was also a Greek contingent in two municipal areas, a combined Polish-Ukrainian unit in another municipal area, and the aforementioned Russian parachute battalion in the northern municipal district. Although brigades were responsible for their specific area of operation, they all fell under the single unified FKOR chain of command, that is, the authority of the COMKFOR.

4.3.2 Security and public order

The major concern about the phased withdrawal of FYR forces and the concurrent deployment of KFOR was to avoid a security vacuum. The Yugoslav/Serbian forces completed their departure on the deadline on 20 June while NATO's troops had started entering Kosovo on June 12, assuming temporarily the functions of public safety and order pending the arrival of the civilian components and the taking over of the CIVPOL, as envisioned

[368] *Ivi*, para. 9 (e)(f).
[369] *Ivi*, para. 7.
[370] LATAWSKI, SMITH (2003: 105).
[371] *The Kosovo Report*, *supra* note 14, p. 102. The Russian contingent was set to a maximum of 2850 troops, with an additional 750 troops for airfield and logistic base operations. There units were located in sectors of Germany, U.S., and France.
[372] LYOSHIN (2006: 187).
[373] NARDULLI *et al* (2002: 101).

by Resolution 1244[374]. However, because of the very lagged deployment of the UN personnel, the KFOR troops were left alone to tackle the extremely unstable situation on the ground and the province fell into a dramatic state of instability and absence of law and order, due to the Albanian reverse violence the province fell in dramatic state of instability due to the Albanian reverse violence[375].

KFOR deployment was quicker than UNMIK but not as rapid as needed. It took time for the military to spread in all of Kosovo's districts and, most importantly, it did not have the numbers to re-establish an effective and general situation of security[376]. Furthermore, KFOR was not adequately trained for a counter-insurgency mission as the troops were prepared for only two scenarios: either a fighting advance to expel FYR forces or a peaceful handover of the province[377]. As a result, the initial re-establishment of law and order was severely compromised by the late arrival of CIVPOL and KFOR troops could not but partially mitigate the instability throughout the territory; however, the security situation in Kosovo remained a continuous issue all along the international administration.

The KFOR troops are however to be held entirely responsible for another critical aspect of the initial deployment that would keep affecting the international administration. The French brigade was assigned to the Northern Sector, mainly inhabited by the Serbian community, concentrated in four municipalities: Leposaviq/Leposavić, Zubin Potoku/Zubin Potok/Zubin Potok, Zveçani/Zvećan, and the northern part of Mitrovicë/Kosovska Mitrovica. However, in its initial advance, MNB North decided to stop and not cross the Ibar River, cutting the municipal of Mitrovicë/Kosovska Mitrovica in two halves[378]. The French commanders were chiefly concerned with the safety of their soldiers and with maintaining stability in their sectors, and they saw the physical division of the Albanian and Serbian as the best practical solution[379].

The Ibar River was the geographical inter-ethnic boundary within Mitrovicë/Kosovska Mitrovica, between the northern Serbian part and the southern Albanian. The case of Mitrovicë/Kosovska Mitrovica represented the first example of the "security first" approach adopted by KFOR, according to which security aspects were weighted more heavily than other components of peacebuilding[380]. The small inaction of the French-led MNB North had fatal delayed repercussions on the rule of the international administration. UNMIK's authority fell short in Northern Kosovo where the Serb community, who did not immediately recognise the newly established UN administration, took advantage of the vacuum to install with the support of

[374] Resolution S/RES/1244, *supra* note 15, para. 9(d).
[375] Report S/1999/779, *supra* note 50, para. 5.
[376] *The Kosovo Report*, *supra* note 14, pp. 104-105.
[377] MOCKAITIS (2004: 31).
[378] HAMITI (2015: 51).
[379] HARSCH (2015: 83).
[380] HAMITI (2015: 50).

Belgrade their parallel structures composed of individuals who used to work in the previous system of the province and operating in sectors such as security, judiciary, public administration, health, education[381].
The two main entities for parallel security were the police of the Serbian Ministry of Interior Affairs (*Ministarstvo Unutrasnih Poslova* – MUP)[382], and the so-called "Bridge-Watchers" in Mitrovicë/Kosovska Mitrovica, a paramilitary group which took control of the whole area preventing Albanians from the south from entering the Serbian northern part[383]. In the latter district, the OSCE also reported the existence of parallel courts and a *de facto* co-existence of two education systems because of the mutual distrust of the two communities, based on concerns about both the quality of the education and personal security of the children[384]. UNMIK did not recognise the Serbian parallel structures and, similarly to the approach with Albanian ones, worked to dismantle and/or partially integrate them; for instance, recruiting Kosovo Serb MUP officers into the KPS[385]. However, the problem of parallel security forces in Kosovo was never successfully solved and persisted throughout the international administration[386].
Overall, KFOR's "security first" approach essentially undermined the relations with the other civilian components. Resolution 1244 explicitly required KFOR and UNMIK to cooperate to guarantee coherence and effectiveness, both in light of the complex context wherein they had to operate and, most importantly, to rationalize the disruptive potential inherent to the two-headed parallel institutions. Therefore, various formal mechanisms of civil-military cooperation (CIMIC) were created between KFOR, UNMIK, UNHCR and the OSCE. Since the early days, the *interim* SRSG Sergio Vieira de Mello and the first COMKFOR, Mike Jackson had established a praxis of regular bilateral meetings twice a week, but they used to meet also in other different settings[387]. It was established a Liaison Office in every UNMIK regional department. A representative of KFOR participated in the Joint Planning Group and, at the battalion and brigade level, representatives of OSCE, UNHCR, UNMIK Police and UNMIK Civil Administration took part in the Joint Security Meeting and the Regional Security Meeting[388].

---

[381] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, October 2003, *Parallel Structures in Kosovo*, p. 5.
[382] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, May 2002, *Background Report: Parallel Court Activities in North Mitrovicë/Mitrovica*, P. 17-19.
[383] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, May 2002, *Background Report: Parallel Security Structures in North Mitrovicë/Mitrovica*, p. 5.
[384] *Ivi*, p. 6.
[385] *Ibid*.
[386] Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, 4 April 2007, *Parallel Structures in Kosovo 2006-2007*, p. 14.
[387] Report S/1999/779, *supra* note 50, para. 17; HARSCH (2015: 79).
[388] MÅNSSON (2001: 118).

However, besides these formal arrangements, CIMIC was in practice far less effective. Since their lagged different arrival, UNMIK and KFOR put into place what Harsch called a "selective cooperation"[389]. The contrast between NATO's large presence and the UN's recruitment difficulties, along with substantial disbalance in material resources, marked a considerable differential in organisational capacities leading KFOR and UNMIK, similar to what had already happened between NATO and UNHCR for the humanitarian assistance during the air campaign[390]. The sole exception proved the area of election support, with a successful coordination between UN police and KFOR military, together with OSCE and UNHCR. In effect, effective elections were a crucial test for all the actors engaged in Kosovo to demonstrate progress in the eyes of the international community, donors, and public opinion[391].

The March 2004 Riots were a breakthrough in the CIMIC evolution. The widespread violence fatally revealed the shortcomings of the superficial cooperation between KFOR-UNMIK, which both appeared incapable of foreseeing, preventing or halting the interethnic violence, giving "an impression of being in disarray, without direction and internal cohesion"[392]. The international reaction to the widespread violence was uncoordinated as a result of the scarce communication between the headquarters: CIVPOL was overwhelmed, KPS lacked sufficient competence, and KFOR contingents preferred avoiding troop casualties rather than acting appropriately to protect minorities[393]. Both UN and KFOR had erroneously assessed that the security situation in Kosovo was finally stable and as the later report of the UN Special Envoy Eide would sanction: the international community had been persistently incapable "to read the mood of the majority of the population, its frustrations and impatience"[394].

The dramatic events of 2004 triggered an overhaul of UNMIK-KFOR relations in Kosovo and a clarification of the division of labour and responsibilities[395]. In December 2005, SRSG Jessen-Petersen and COMKFRO Yves de Kermabon signed a "note of understanding" reaffirming the indispensability of effective coordination between the civil administration, CIVPOL and military presence to maintain security and ensure progress by the Standards for Kosovo process. Operationally, CIVPOL was given tactical authority to enforce criminal law and handle public disturbance and riots, whereas KFOR held tactical primacy in addressing armed groups causing public unrest and posing a threat to overall, security in Kosovo[396]. Furthermore, the two organisations installed a direct and secure communication line between KFOR

[389] HARSCH (2015: 88).
[390] IVANOV (2013: 79).
[391] HARSCH (2015: 86).
[392] International Crisis Group, 22 April 2004, Europe Report No. 15, *Collapse in Kosovo*, p.19.
[393] KING, MASON (2006: 14).
[394] *Eide Report I*, *supra* note 183, para. 10.
[395] HARSCH, VARWICK (2009: 34).
[396] HARSCH (2015: 95).

headquarters and the CIVPOL Commissioner and conducted special joint exercises[397]. Their news arrangements proved to facilitate communication and operational coordination between UNMIK and KFOR.

4.3.3 Disarmament, Demobilisation, and Reintegration

Disarmament, demobilization and reintegration (DDR) is a three-dimensional concept widely seen as a fundamental condition for progress in conflict resolution and peacebuilding. It lays the groundwork for safeguarding the return to order and the sustainability of long-term peace and development. In essence, DDR is the most telling event marking the transition from war to peace: armed units are disbanded (demobilisation) and required to hand over their weapons (disarmament) to acquire civilian status and access civilian forms of work and income (reintegration)[398].

Resolution 1244 mandated KFOR with the responsibility to deter potential conflict recurrence and, if necessary, enforce the ceasefire resorting also the use of force. If on the one hand, this corresponded to ensuring the withdrawal of the Yugoslav forces outside Kosovo, the complementary action was the demilitarization of all the armed bands within the territory, first of all the UÇK/KLA. On 20 June 1999, KFOR and the leaders of the UÇK/KLA concluded an *Undertaking of Demilitarisation and Transformation by the UCK* by which the Albanian paramilitaries accepted to cease all hostilities immediately and to undertake a phased process of "disengagement, […] demilitarisation and reintegration into civil society"[399]. UÇK/KLA personnel were required to respect the authority of the international security and civilian presences and to progressively hand over all their weapons in the registered weapons storage sites established by KFOR throughout Kosovo to collect and reduce the public circulation of arms[400]. The ultimatum for finishing the process of demilitarisation was set within ninety days, by which the Albanian paramilitary would have also "to cease wearing either military uniforms or insignia of the UCK [*sic*]"[401].

On 20 September 1999, COMKFOR Jackson announced the completion of the process of demilitarization of UÇK/KLA[402]. KFOR was handed over some 9,000 small arms, 800 machine guns, 300 anti-tank mines, 178 mortars, 27,000 hand grenades, 1,200 mines, 1,000 kg of explosives and over five million rounds of ammunition[403]. However, many accounts syndicated the effectiveness of the demilitarisation of the Albanian paramilitaries. On the one hand, it became more evident that the former UÇK/KLA members

---

397 VAHLAS (2011: 55).
398 MURPHY (2007: 203).
399 *Undertaking of Demilitarisation and Transformation by the UCK* (hereafter DDR Undertaking), 20 June 1999, point 1.
400 *Ivi*, point 23(f), point (i).
401 *Ivi*, point 23(h).
402 Report S/1999/1250, *supra* note 99, para. 10.
403 RIPLEY (2000: 23).

had delivered their armoury due to the not-uncommon arms finding by KFOR patrols in hidden stocks, and the personal weaponry retained by individual ex-combatants that circulated throughout Kosovo long after the end of the conflict[404]. KFOR officers would later admit that "the complete disbarment of KLA combatants was not seen as a priority during the first year of the protectorate, as 'the KLA was not considered to be a problem' at that time"[405].

The final reintegration step of the UÇK/KLA was achieved through the creation of the Kosovo Protection Corp (KPC). In fact, on 20 September, the day of the announcement of the completion of the demilitarisation process, COMKFRO Jackson and KLA commander Agim Çeku signed the *Commander KFOR's Statement of Principles for the Kosovo Protection Corps*, outlining the principles for the partial transformation of the UÇK/KLA into the new KPC[406]. On the very same day, UNMIK issued Regulation No. 1999/8 officialising the contents of the Statement of Principles and setting up the KPC as a "civilian emergency service agency" tasked to provide disaster response services, search and rescue, humanitarian assistance in isolated areas, demining assistance and to contribute to rebuilding infrastructure and communities[407]. The KPC consisted of a maximum of three thousand active members plus two thousand reservists, all unarmed and placed under the authority of the SRSG but the daily operational direction of KFOR[408].

The Kosovo Protection Corps had nothing to do with the Kosovo Police Service as it was utterly prevented from having any role in law enforcement or the maintenance of law and order, to be rather modelled "on the lines of the US National Guard" or the French *sécurité civile*[409]. SRSG Kouchner wanted to be truly clear on this point: "The Corps must not be an army, and it is not an army, believe us, it was an army yesterday and we break the army, we demilitarize"[410]. However, only in the eyes of Western countries the KPC could appear as a humanitarian organisation, whereas for both Serbs and Kosovo Albanians, based on opposing sentiments, it was clear its true function of "nucleus of a future Kosovo army"[411].

Belgrade feared that the new group may represent the first step towards an official Kosovo 'army in-waiting' and, in effect, KPC leaders never concealed their ultimate aims: "We see the KPC as a bridge towards the future, from the KLA as a wartime organisation towards a regular army of Kosovo"[412]. The influence of UÇK/KLA on the new corps was evident since the

---

[404] HEINEMANN-GRÜDER, PAES (2001: 20).
[405] *Ivi*,19.
[406] MUHARREMI, RAMADANI (2024: 51).
[407] Regulation of the United Nations Interim Administration Mission in Kosovo, 20 September 1999, UNMIK/REG/1999/8, *on the Establishment of the Kosovo Protection Corps*, Section 1,
[408] *Ivi*, Sections 2, 3.
[409] *Ivi*, Article 1.3; Heinemann-Grüder, Paes (2001: 2); De Brabandere (2009 : 165).
[410] Bernand Kouchner, quoted in TRIANTAFYLLOU (2018: 266).
[411] HEINEMANN-GRÜDER, PAES (2001: 22).
[412] Agim Çeku quoted in KUSOVAC (1999).

recruitment process: in principle responsibility of the International Organisation for Migration (IOM) and with ten per cent of all posts supposedly reserved for minority candidates, in practice, UÇK/KLA was accepted by UNMIK and KFOR virtually any candidate proposals[413]. The final numbers are unequivocal: out of the 4552 initial open positions, 4446 were filled by former KLA members, that is, more than 97 per cent of the new KPC members[414].

Despite the identity ambiguities and the overall scepticism, KPC was formally established on 21 January 2000. KFOR immediately set up the Kosovo Protection Corps Training (KPCT) "to raise […] awareness of the organisational structure, the importance of their transition from military to civilian organisation, the established organisational mandate and general awareness of topics related to the newly established mandate"[415]. However, KPC's operational activities in the field primarily focused on supporting municipalities and public institutions through humanitarian efforts and public works projects[416]. Notwithstanding the oversight of KFOR, there were several reports of abuse of authority and misconduct by the KPC members, engaging in corruption, intimidation, demands for "donations for protection" from local businesses and individuals, and even some more serious cases of politically motivated murders and human rights abuses against ethnic minorities in the first year after the conflict[417]. Following the 2008 declaration of independence, KFOR ceded most of its operational security functions to reserve a supervisory role, while the KPC was finally transformed into the new Kosovo Force Service (KFS) – a quasi-official army for the quasi-officially independent Republic of Kosovo.

[413] MUHARREMI, RAMADANI (2024: 53).
[414] Report of the International Organisation for Migration, 2002, *Thirty months in Kosovo*, p. 88.
[415] ÖZERDERM (2003: 86).
[416] MUHARREMI, RAMADANI (2024: 60).
[417] O'NEILL (2002: 120-121).

PART III: INDEPENDENCE

Chapter Five: Transition Of Powers and The Role Of The European Union

Following the internationalized civil conflict in 1998-1999, the territory of Kosovo underwent a joint international territorial administration (ITA) of the United Nations and NATO based on the Security Council Resolution 1244 (1999). Originally transitionary, the ITA of Kosovo has yet to be considered terminated. The UN, along with other relevant international organisations such as the United Nations High Commissioner for Refugees (UNHCR), the Organisation for Security and Cooperation in Europe (OSCE), and the European Union (EU), undertook the challenging and daunting two-fold mission of institution-building while directly carrying out executive responsibilities. If on the one hand, the United Nations Interim Administration Mission in Kosovo (UNMIK) has progressively transferred its authority to the Kosovar-led Provisional Institutions of Self-Government (PISG), the process for the determination of a political settlement of the proper question of Kosovo, i.e., the controversy about the identity and sovereignty of the territory between the Albanian and Serbian communities, never effectively progressed.

The more time passed, the more it became evident that Kosovo was sinking into limbo. It was not a state as well and it was no longer a province under the control of Belgrade. The Kosovar Albanian population felt increasingly stifled under the persistent political prominence of the international administration which, in turn, was bound to its ambiguous mandate enshrined in Resolution 1244: to respect Yugoslav sovereignty and territorial integrity while promoting self-democratic government in Prishtinë/Priština. The Kosovar frustration that erupted in 2004 took by surprise both UNMIK and the Kosovo Force (KFOR), and sent a clear signal that, even though the international community might have forgotten, the question of Kosovo had never gone away. As it had been five years earlier, and would be four years later, it took the local actors' initiative in 2004 to shake things up and overcome the international stiffness.

For the purpose of this study, we may include these events as an instance of the 'contextual factors', i.e., external events or elements specific to the local territory and population affecting the performance of the ITAs and the action of the international organisations. In 2004 as well as in 2008, the Kosovar agency was a clear direct reaction to the deficiencies of the international community, mostly in the Security Council ('political factors'), and of the international administration ('operational factors'). Its significance is incontestable in light of the following breakthrough for the rethinking and restructuring of UNMIK and the deployment of the European Union Rule of Law Mission (EULEX). The UN Headquarters became aware of the need for a turn in the post-crisis management of Kosovo and spearheaded a process of

regionalization of the question, providing for a greater role of the European Union and a definitive solution of the legal status of Kosovo. Even though the consistent divisions in the international community eventually foiled this UN-led plan, the PISG in Prishtinë/Priština proceeded to declare unilaterally the independence of the Republic of Kosovo. Far from being the end of the story, the 2007 'contextual factor' further overcomplicated the already intricate and uncertain question of Kosovo. Hereafter we shall consider the effects and consequences of the unilateral declaration of independence of Prishtinë/Priština for the international presences deployed under Resolution 1244. Particularly, we shall pay attention to the failed UN-led process of determination of the final status and the new centrality of the European Union.

5.1 Towards Kosovo's Independence

If 1999 was the founding moment of the international administration of Kosovo, 2004 was a fundamental breakthrough. After five years since its inception, the ITA and the international community experienced a wake-up call: the situation in Kosovo could no longer be delayed and it was necessary the resumption of a concrete approach towards a final status of the territory. Following the March 2004 Riots, Secretary-General Kofi Annan appointed the Norwegian Ambassador, Kai Eide, as his UN Special Envoy to conduct "a comprehensive review of the policies and practices of all actors in Kosovo and to prepare recommendations as a basis for further thinking on the way forward"[1]. This first Eide's mission resulted in a critical analysis of the situation on the ground, exposing the responsibilities of the international community. The latter had "failed to read the mood in the population and to understand the depth of the dissatisfaction of the majority and the vulnerability of the minorities"[2]. Eide debunked the biases about the inter-ethnic motives behind the outbreaks of violence that occurred in 2004, to instead identify their origin in a "serious lack of economic opportunities and an absence of a clear political perspective"[3]. Particularly, the Standards before Status process was judged as lacking credibility and "seen as unachievable"[4].
In his recommendations, Eide called for a new comprehensive and integrated strategy to strengthen the current positive trends in capacity-building through an immediate replacement of the Standards before Status policy "by a dynamic priority-based standards policy". It was also emphasised the necessity for a further undelayable transferring of competencies to give the Provisional Institutions of Self-Government (PISG) a greater sense of ownership as well as accountability. In light of this approaching to UNMIK's completion, the

[1] Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council, 30 November 2004, S/2004/932, Enclosure, *Report on the Situation in Kosovo* (*Eide Report I*), p. 1.
[2] *Ivi*, p. 3.
[3] *Ivi*, p. 1.
[4] *Ivi*, p. 2.

UN Special Envoy considered the possibility to restricting the international presence as a whole in 2005, resulting in a gradual reduction of UNMIK and a handover of responsibilities to other authorities and organisations[5].
In May 2005, the UN Secretary-General instructed once again Eide as his Special Envoy for a second but more comprehensive review of the situation in Kosovo, this time purposely to verify "whether the conditions [were] in place to enter into a political progress designed to determine the future status of Kosovo, by Security Council resolution 1244 (1999)"[6]. In this second mission in the territory, Eide highlighted several serious problems spanning from organized crime and corruption, Serbian political marginalization, the fragility of the rule of law and the foundations for a multi-ethnic society: "The situation is grim"[7]. Although recognizing the considerable achievements made by UNMIK, he reaffirmed the urgency for an evolution of international engagement in terms of a regionalisation turn:

> "The United Nations has done a credible and impressive job in fulfilling its mandate in difficult circumstances. But its leverage in Kosovo is diminishing. Kosovo is located in Europe, where strong regional organizations exist. In the future, they – and in particular, the European Union (EU) – will have to play the most prominent role in Kosovo. They will have the leverage required and will be able to offer prospects in the framework of the European integration process"[8].

In sum, Eide concluded that "while standards implementation has been uneven, the time has come to move to the next phase of the political process"[9]. Secretary-General Kofi Annan accepted his Special Envoy's conclusions and appointed the Finnish diplomat Marti Ahtisaari, as new Special Envoy expressly charged with the leading of the future status process. In early 2006, Ahtisaari conducted a full year of shuttle diplomacy between Belgrade and Prishtinë/Priština as well as face-to-face talks between the leaders of the Kosovo Albanian and Serb communities, trying to converge all sides in a fundamental compromise. However, the UN Special Envoy could not go beyond marginal technical points because the parties were adamant in their "categorical, diametrically opposed positions"[10]: Belgrade demanded Kosovo's autonomy within Serbia, while Prishtinë/Priština would accept nothing short of independence. His conclusions on the situational assessment were that:

> "The negotiations' potential to produce any mutually agreeable outcome on Kosovo's status is *exhausted*. No amount of additional talks whatever the format, will overcome this impasse. Nevertheless, the resolution of this fun-

---

[5] *Ivi*, p. 3-4.
[6] *)*; Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council, 7 October 2005, S/2005/635, Annex, *A Comprehensive Review of the Situation in Kosovo* (*Eide Report II*), p. 1.
[7] *Ivi*, p. 3.
[8] *Ivi*, p. 5.
[9] *Ivi*, p. 1.
[10] Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, 26 March 2007, UN Doc. S/2007/168, *Report of the Special Envoy of the Secretary-General on Kosovo's Future Status (Ahtisaari Report)*, p. 2.

> damental issue is urgently needed. […] Uncertainty over its future status had become a major obstacle to Kosovo's democratic development, accountability, economic recovery and inter-ethnic reconciliation. [….] The time has come to resolve Kosovo's status. Upon careful consideration of Kosovo's recent history, the realities of Kosovo today and taking into account the negotiations with the parties, I have come to the conclusion that *the only viable option for Kosovo is independence, to be supervised for an initial period by the international community*"[11].

Ahtisaari went beyond the recommendations of his previous colleague Eide and publicly endorsed the option of an effective independence of the territory of Kosovo, thus overcoming the boundaries of Resolution 1244. Furthermore, he attached to his report a *Comprehensive Proposal for the Kosovo Status Settlement* (hereafter *Ahtisaari Plan*), outlining the structures and modalities to implement this "supervised independence"[12].

The plan provided the creation of a multi-ethnic democratic state of Kosovo within the current borders, founded upon the decentralization of power and administrative redistricting to guarantee that the majority of Serbs live in predominantly Serb municipalities[13]. Great emphasis was given to minorities and community rights, the right of return for refugees and the protection of Serbian Orthodox religious and cultural heritage[14]. As concerns the international administration, Kosovo would undergo the supervision of two new international missions: the International Civilian Representative (ICR) and an *ad hoc* EU presence under its European Security and Defence Policy (ESDP). The former would be set up by an International Steering Group (ISG), composed of key international stakeholders, and would have overall responsibility to supervise the implementation of the Settlement and support the relevant efforts of Kosovo's authorities. For this reason, the ICR would hold the final authority in Kosovo regarding the implementation of the civilian aspects of the *Ahtisaari Plan* as well as the power to take "corrective measures" to remedy as necessary any action taken by the Kosovo authorities that were deemed to be in breach of the spirit of the Settlement plan or seriously undermining the rule of law, explicitly including annulment of laws or decisions adopted by Kosovo authorities[15].

Interestingly, the International Civilian Representative was envisioned to be double-hatted with the EU Special Representative (EUSR), appointed by the Council of the European Union – this fact would imply serious ambiguities for this office. Other than the ICR, the *Ahtisaari Plan* demanded also the European Union establish a European Security and Defence Policy (ESDP) Mission in the field of rule of law to assist Kosovo authorities in their progress towards sustainability and accountability by further developing and strengthening independent judiciary, police, and customs services. Its im-

[11] *Ivi*, paras. 1-5, emphasis added.
[12] Ivi, Addendum, Comprehensive Proposal for the Kosovo Status Settlement.
[13] Ivi, Annex III, Decentralization, and Attachment to Annex III, Delineation of New Municipalities.
[14] Ivi, Artt. 2-5, 7; ID, Annex II, The Right of Communities and Their Members.
[15] Ivi, Annex IX, International Civilian Representative, Art. 2.

plementing task was essentially two-fold: one supervisory, providing mentoring, monitoring and advice (MMA) in the area of the rule of law generally, and the other one more executive, retaining certain powers in respect of the judiciary, police, customs and correctional services[16]. The latter executive authority would regard mostly to ensure the appropriate investigation, prosecution and adjudication of the cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes[17]. Finally, the proposal for conditional independence of Kosovo inevitably implied the conclusion of the international administration of the territory under the United Nations. The *Ahtisaari Plan* recommended a 120-day transition period at the end of which the UNMIK's mandate would "expire and all legislative and executive authority vested in UNMIK […] transferred *en bloc* to the authorities of Kosovo"[18].

However, the plan failed to pass the Security Council test. Serbia vehemently rejected it and in July 2007, due to Russia's opposition and explicit threat of veto, the proposed resolution for the acceptance of the *Ahtisaari plan* and the establishment of the new EU-led mission was withdrawn from the Security Council[19]. In August, the Contact Group, composed of the US, the United Kingdom, France, Germany, Italy, and the Russian Federation, agreed to the appointment of a *troika* between the experienced diplomats of the EU, Wolfgang Ischinger, Russia, Alexander Botsan-Kharchenko, and the United States, Frank Wisner, as a last resort to reach a negotiated final political settlement. The three diplomats conducted a 120-day round of talks with the parties in Belgrade and Prishtinë/Priština until in December concluded, similarly to Ahtisaari's experience, that no consensual solution could be found, and further negotiations would be pointless[20].

In light of the international incapability to move forward, the Kosovo government, in coordination with the US, the EU and the majority of the EU member states, decided to proceed to unilaterally declare the independence of the Republic of Kosovo, on 17 February 2008. The day earlier, the Council of the European Union (hereafter the Council) had adopted the Joint Action 2008/124/CFSP setting up the European Union Rule of Law Mission in Kosovo (EULEX)[21]. Part of the international community decided to follow up on the *Ahtisaari Plan*, notwithstanding the lack of an official endorsement by the Security Council. Once again, in a controversial set of circumstances outside the proper UN framework, the story of Kosovo was about to evolve.

---

[16] *Ivi*, Addendum, *supra* note 12, Art. 13.
[17] *Ibid*.
[18] *Ivi*, p. 9.
[19] HOGE (2007).
[20] Letter dated 10 December 2007 from the Secretary-General to the President of the Security Council, 10 December 2007, S/2007/723, Enclosure, *Report of the European Union/United States/Russian Federation Troika on Kosovo*, p. 4; ZUPANČIČ, PEJIČ (2018: 59).
[21] Joint Action of the Council of the European Union, 16 February 2008, OJ L42 2008/124/CFSP, *on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*.

5.2 The ICR/EUSR double hat

The 2008 Kosovar Constitution explicitly reflected the provisions of Ahtisaari's Comprehensive Proposal. Despite the lack of an official endorsement by the Security Council, the Kosovo Assembly provided a domestic legal basis for the implementation of the plan in the newly declared independent state:

> "This declaration reflects the will of our people, and it is in full accordance with the recommendation of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement. […] We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan and a European Union-led rule of law mission. […] We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially, the obligations for it under the Ahtisaari Plan"[22].

In February 2008, the Council of the European Union appointed Dutch diplomat Pieter Feith as the European Union Special Representative (EUSR) who, as provided by the *Ahtisaari plan*, concurrently held the position of the International Civilian Representative (ICR). The latter role was formally appointed by the International Steering Group (ISG), i.e., the group of countries that recognized Kosovo's declaration of independence and supported its full implementation.

The ICR was supported by a 200-staff International Civilian Office in carrying out its task to ensure the full implementation of the *Ahtisaari Plan*. As anticipated, the authority of the ICR roughly reflected the one of the SRSG, with the power to nullify or reverse any decisions made by the Kosovar authorities that conflict with the Ahtisaari Plan. In the role of the EUSR, Feith was requested to offer the EU's advice and support to the Kosovo Government in the political process, promote the EU presence in the territory, provide political guidance to the EULEX's Head of Mission, and contribute to the development and consolidation of respect for human rights and fundamental freedoms[23]. This ICR/EUSR double hat function, for how much it created some advantages allowing closer contact and greater leverage with the ISG member states, EU member states and the Kosovar authorities, caused serious confusion, ambiguity and potential for misinterpretation. In fact, Feith represented a figure entirely committed to the fulfilment of Kosovo's independent status as ICR but, at the same time, in the role of the EUSR, he had to align with the official free-status (or neutral) position of the European Union.

It must be noted that the EU member states has never been unanimously aligned on the matter and five countries openly opposed the secessionist turn of Prishtinë/Priština (Cyprus, Greece, Romania, Slovakia, and Spain). This

[22] Assembly of Kosova, 17 February 2008, D-001, *Kosova Declaration of Independence*, paras. 1, 5, 12.

[23] Joint Action of the Council of the European Union, 16 February 2008, OJ L 42/88 2008/123/CFSP, *appointing a European Union Special Representative in Kosovo*, Artt. 2, 3.

meant that Feith, on every public occasion, had to clarify the capacity in which he was speaking, and in extreme cases during meetings, he would explicitly state that he was 'switching hats'[24]. The implications for his credibility are self-evident. As argued by several accounts, this ambiguous double-hat function of the ICR/EUSR demonstrated the limits of the European Union on the international stage and its incapability to agree on important political issues, inevitably hindering its poor international relevance[25]. On 10 September 2012, the ICR was disbanded, marking the conclusion of the period of international supervision of Kosovo's independence[26].

5.3 The European Union Rule of Law Mission in Kosovo (EULEX)

The EU Rule of Law Mission in Kosovo (EULEX) is the largest and most costly mission ever deployed by the European Union under the European Security and Defence Policy (ESPD), now renamed the Common Security and Defence Policy (CSDP). In the first two years of the mandate, the mission reached the maximum capacity of 1700 international staff (around 3000 total organics) and with a starting budget of €250 million (later amended to €265 million)[27]. Although since 2012, EULEX has experienced downsizing and repeated restructuring up to the current level of 396 personnel, the economic engagement of the European Union has remained substantially steady, covering in almost 15 years of deployment in Kosovo an expenditure of nearly €2,5 billion[28].

Before creating the proper EULEX mission and amid the UN Special Envoy Ahtisaari's process to determine the future status of Kosovo, the European Union had soared as the most adequate and willing actor to take lead in a post-status scenario. Accordingly, the Council had disposed in 2006 the establishment of an EU Planning Team (EUPT Kosovo) regarding an EU crisis management operation in the field of rule of law, especially the police and judiciary sectors, and evaluate other possible areas[29]. The EUPT was tasked to initiate the planning of an EU Operational Plan (OPLAN) in Kosovo,

---

[24] DERKS, PRICE (2010: 14).

[25] GREIÇÇEVCI (2011: 297); KEUKELEIRE, KALAJA, ÇOLLAKU (2011: 2-3); ZUPANČIČ, PEJIČ (2018: 67).

[26] ALIU (2012).

[27] Decision of the Council of the European Union, 11 June 2010, OJ L145/23 2010/322/CFSP, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, para. 6.

[28] Data estimated from all the European Council decisions amending the Joint Action 2008/124/CSFP to extend the mandate of the EULEX Kosovo Mission, from 2008 until the latest Decision of the Council of the European Union, 6 June 2023, OJ L146/22 (CFSP) 2023/1095, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*.

[29] Joint Action of the Council of the European Union, 24 February 2006, OJ L112/19 2006/304/CFSP, *on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo*, Artt. 1, 2.

which, once accepted by the Council, had also to be implemented by assuming personnel, necessary procurement of tools and services necessary for the mission, and managing the handover of functions from UNMIK to EULEX. In the end, the *Ahtisaari plan* sunk in the Security Council 'game of vetoes' and the original transfer of powers from UNMIK did not occur. However, the EU proceeded to establish the EU Mission on Rule of Law in Kosovo (EULEX) on 16 February 2008, purposely the day before the official unilateral declaration of independence of the Kosovo Assembly.

5.3.1 Mandate and Structure

The Council established the EULEX mission adopting on 16 February 2008 the Joint Action 2008/124/CFSP *on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*. The procedure of adoption followed a twofold legal basis provided in the Treaty of the European Union: Article 14, which states the joint legislative exercise of the Council and the European Parliament, and the third paragraph of Article 25, by which:

> "The Council may authorise the [Political and Security Committee (PSC)], for the purpose and for the duration a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation"[30].

Furthermore, the Preamble of the Joint Action explicitly referred to the Security Council Resolution 1244 and thereof authorisation to establish an international interim and transitional administration "with the assistance of relevant international organisation"[31]. The mandate was addressed in the Mission Statement:

> "EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices".

EULEX is a mission essentially focused on the rule of law, cardinal principles comprised in the fundamental values of Article 2 of the Treaty on European Union. In line with the principle of the rule of law, all public authorities must operate within the confines of the law and adhere to its boundaries. This principle also mandates a transparent, democratic, pluralistic, and accountable lawmaking process, ensuring effective legal protection, including access to justice through independent and unbiased courts, as part of the separation of powers. It also demands equal protection for everyone under the

[30] European Union, 10 March 2001, 2001/C 80/01, *Treaty of Nice Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts*, Artt. 14, 25.
[31] Resolution of the United Nations Security Council, 10 June 1999, S/RES/1244, *The Situation in Kosovo*, para. 10.

law, prevents the arbitrary use of power, and guarantees the safeguarding of civil and political rights and freedoms. The EU believes that a strong culture of the rule of law is essential for fostering democracy, combating corruption, protecting academic and media freedoms, and promoting human rights. Consequently, EULEX was committed to advancing these values in Kosovo.

EULEX's original tasks consisted in a monitoring role concurrent to the retaining of certain executive responsibilities[32]. As concerns the former, the strategy was based on a 'monitor, mentor, and advise (MMA) approach' towards the competent Kosovo institutions. 'Advising' was referred to offer expert guidance to the Kosovo authorities to aid in the development of key components for creating the required structures and legislation and improving the effectiveness of the authorities. 'Monitoring' implied the adoption of a system of measuring performance and activities of the mission, an accurate method of registration and drafting of the report for a six-month cycle. 'Mentoring' was meant to describe the manner in which EULEX exercised its activity of advising and monitoring the Kosovo law enforcement authorities on a basis of mutual trust and professional respect[33].

However, what made the EULEX mission truly special relatively to the rest of the ESDP/CSDP missions was its executive powers. The EU mission could directly interfere in the decisions, structure and domestic policy of local institutions. In line with the Ahtisaari Plan, the European Council entrusted the EULEX mission with the power to investigate, prosecute and adjudicate cases of war crimes, terrorism, organised crime, corruption, interethnic crimes, financial/economic crimes and other serious crimes[34]. Furthermore, EULEX could "assume other responsibilities, *independently or in support of the competent Kosovo authorities*, to ensure the maintenance and promotion of rule of law, public order and security", including also reversing or annulling operation decisions taken by the competent Kosovo authorities[35]. In this sense, EULEX was the first mission in the external relations of the European Union to hold such a capacity within a third 'state'.

In addition, EUELEX was assigned two other operational objectives. First, the so-called 'North Objective', by which the Mission is committed to restore the rule of law in the norther territories of Kosovo, beyond the Ibar river. Here, in light of the persistent divisions between the central authorities of Prishtinë/Priština and the Serbian municipalities, EULEX has maintained a central role in the fields of judiciary district system, law enforcement and correctional system, and the improvement of Customs institutions. Finally, EUELX is at the forefront in the normalization between Serbia and Kosovo, providing the necessary technical support for the implementation of the agreements reached in the framework of the EU-facilitated dialogue[36].

---

[32] Joint Action 2008/124/CFSP, *supra* note 21, Art. 3(a).
[33] SPERNBAUER (2010: 17-18).
[34] Joint Action 2008/124/CFSP, *supra* note 21, Art. 3(d).
[35] *Ivi*, Art. 3(b),(h), emphasis added.
[36] Report of the European Union Rule of Law Mission in Kosovo, 20 October 2015, *EULEX Factsheet*, p. 2.

The initial structure of EULEX was illustrated by the Joint Action in three main components: customs, police, and justice[37]. The latter component was further subdivided into five sections, namely judges in the civil field, judges and prosecutors in the criminal field, and judicial experts and judges in the Kosovo Ministry of Justice, the Kosovo Judicial Council and the Kosovo Correctional Service.

The police component mirrored the organisational structure of the Kosovo Police Service (KPS) with four departments: Operations (170 staff members), Crime (120 staff members), Borders (113 staff members), and Administration (25 staff members)[38]. The mission was assured a unified chain of command, under the leadership of the Head of Mission (HoM) and the overall Civilian Operation Commander (COC). The latter vests the role of Director of the Civilian Planning and Conduct Capability (CPCC), situated in Brussels, exercising command and control of EULEX at the strategic level.

The COC has to ensure proper and effective implementation of the decisions of the Council and the PSC, regularly consulting with the EUSR[39]. Below the Civilian Operation Commander, the Head of Mission assumed authority at the theatre level, exercising command and control over personnel, teams and units as assigned by the COC, as well as administrative and logistic responsibility, including over assets, resources and information at the disposal of the mission[40]. The HoM was required to coordinate as appropriate with the other EU actors present on the ground as well as receive political guidance (i.e., not direct orders) from the EUSR.

The EU leadership continuously engaged in strategic planning and close coordination with the Kosovar authorities, to ensure the effective and successful work of the mission. This approach was adopted on all distinct levels of hierarchy and stages of the planning process, but the central and highest coordination mechanism was certainly the Joint Rule of Law Coordination Board (JRCB)[41]. Co-chaired by the local authorities and the Head of Mission (HoM), this politically integrated forum convened representatives from national authorities alongside multilateral and bilateral donor institutions, most notably the European Commission Liaison Office (ECLO)[42]. Beneath the JRCB level, various thematic working groups facilitated prior coordination and follow-up at a more technical level.

EULEX was launched throughout Kosovo in December 2008, reaching full operational capability in April 2009, and during its first two years of mandate undertook a programmatic approach to conduct a detailed assessment of the state and performance of Kosovo's rule of law, evaluating the state of the

---

[37] Joint Action 2008/124/CFSP, *supra* note 21, Art. 6.

[38] SPERNBAUER (2010: 20).

[39] Joint Action 2008/124/CFSP, *supra* note 21, Art. 7.

[40] *Ivi*, Art. 8.

[41] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 17 March 2009, S/2009/149, Annex I, *Report of the SG/HR for CFSP to the UNSG on the activities of the European Union Rule of Law Mission in Kosovo*, p. 5.

[42] Report of the European Union Rule of Law Mission in Kosovo, July 2009, *EULEX Programme Report*, p. 9.

police, customs and justice[43]. In June 2010, the Mission in Kosovo was extended for an additional two years, maintaining its primary objective[44].
However, since the 2012 extension of the EULEX mandate, the Council decided to gradually limit the international responsibilities in order to favour a major local ownership and accountability. Accordingly, the Mission underwent significant downsizing and restructuring. The international personnel was reduced to 1250 (and 1000 for the local support staff), while from an operational point of view, it was reorganized into two key departments: Executive Division, focused on the Mission's executive competence, and Strengthening Division, related to the MMA activities with the local counterparts[45]. EULEX progressively handed over competencies to the Kosovar judicial system, except for the northern territory of Kosovo, where the CSDP mission reserves substantive responsibility in the judicial proceeding until the Kosovar communities will not solve within the framework of the EU Facilitated Dialogue between Belgrade and Prishtinë/Priština[46].
The 2018 extension of the mandate has led to another formal restructuring, with the transformation of the Divisions in the current pillars[47]. First, the Monitoring Pillar assesses the functioning of the Kosovo judiciary in terms of procedural, legal and human rights compliance through monitoring of selected cases and resulting in reports with findings and recommendations for the Kosovo authorities aimed at improving the justice system. Further, the Operations Support Pillar, by which EULEX contributes as second security responder to the maintenance and promotion of public order and security in cases of civil disturbance, alongside a three-tiered coordinated mechanisms with the Kosovo Police and KFOR[48]. EULEX is still today in place and whose mandate is at present extended until 14 June 2025[49].

[43] Press Release of the Council of the European Union, 6 April 2009, S095/09, *Javier SOLANA, EU High Representative for CSFP, welcomes EULEX full operational capability*; Report *EULEX Programme Report* (2009), supra note 42, p. 6.
[44] Decision 2010/322/CFSP, *supra* note 27.
[45] Decision of the Council of the European Union, 5 June 2012, OJ L146/46 2012/291/CFSP, *amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*; CAPUSSELA (2015: 114); ZUPANČIČ, PEJIČ (2018: 69).
[46] Decision of the Council of the European Union, 12 June 2014, OJ L174/42 2014/349/CFSP, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*; Decision of the Council of the European Union, 29 September 2014, OJ L284/51 2014/685/CFSP, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*.
[47] Joint Action of the Council of the European Union, 8 June 2018, OJ L146/5 (CFSP) 2018/856, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO)*.
[48] Report of the European Union Rule of Law Mission in Kosovo, 2024, *EULEX Factsheets 2024*, p. 2.
[49] Decision (CFSP) 2023/1095, *supra* note 28, Art. 1.

a. Police component

The significance of law enforcement and Security Sector Reform (SSR) has been already addressed in Chapter Five of this study regarding the work of UNMIK and KFOR during the international administration. Here instead we shall focus on the performance of the proper EULEX mission in this field.
The European Union had already had some experience in the planning and implementation in light of the 2002 European Union Police Mission (EUPM) in Bosnia-Herzegovina[50] and the 2003 EU Police Mission (EUPOL *Proxima*) in the former Yugoslav Republic of Macedonia (fYROM)[51]. In addition, the Council had elaborated a strategy for these kinds of ESDP/CSDP missions in the *EU Comprehensive Concept for Strengthening of Local Police Mission* (hereafter the *Concept*), based on the prior Feira and Nice European Council Conclusions[52]. The two generic yet fundamental concepts of police missions there defined by the EU were: "strengthening of local police forces", meant as the deployment of force essentially to educate, train, monitor, and advise, with of goal elevating the capabilities and conduct of the local police to meet international standards, particularly in the area of human rights, and enhancing their overall effectiveness; and "substituting for local police forces", notably in scenarios where local structures are failing, by which the main task of EU police forces, to be deployed as early as possible, is to contribute to restoring public security by maintaining order, protecting people and property, addressing violence, reducing tensions, and resolving disputes, while also facilitating the reactivation of judicial and penal facilities[53]. These two tenets were essentially incorporated into the overall EULEX mission as aforementioned, including the police component.
The latter was structured in fact in three main departments: the Police Strengthening Department (PSD), the Police Executive Department (PED), and the Special Police Units (SPU). The PSD carry out the MMA activity according to the principle of 'co-location': due to physical proximity, Kosovar police officers were continuously subjected to supervision by mission experts. Based on its evaluation, the PSD could propose recommendations to the KPS and measure their operationalization through the so-called Action Fiches[54]. As regards the EULEX executive police, its legal basis is contained in Article 17 of the Kosovo law No. 03/L-053, by which the EULEX police

[50] Joint Action of the Council of the European Union, 13 March 2002, OJ L 070/1 2002/210/CFSP, *on the European Union Police Mission*.
[51] Joint Action of the Council of the European Union, 23 September 2003, OJ L 249/66 2003/681/CFSP, *on the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL 'Proxima')*.
[52] Conclusions of the Presidency of the European Council at Santa Maria da Feira, 19-20 June 2000, point C *Common European Security and Defence Policy*; Conclusions of the Presidency of the European Council at Nice, 7-9 December 2000, Annex II, *Strengthening of European Union Capabilities for Civilian Aspects of Crisis Management*, Point 2 *Concepts of police forces.*
[53] Council of the European Union, Political and Security Committee, 31 May 2002, Doc. 9535/02, *EU Comprehensive Concept for Strengthening of Local Police Mission*, p. 1.
[54] SPERNBAUER (2010: 31).

has "the authority to exercise the powers as recognized by the applicable law to the Kosovo Police" and according to the modalities defined by the HoM[55]. The PED has jurisdiction in five clearly defined areas, financial crime, organized crime, war crimes, terrorism and corruption; it holds substantial independence of investigation from the KPS, with its command structure and may submit cases directly to the Special Prosecutorial Office[56]. Finally, the Special Police Units are meant to deal with riots and civil uprisings, thus overlapping with some of KFOR's public order functions. As a result, the two forces successfully developed a solid and significant coordination, concluding several 'technical arrangements' and establishing a clear labour division, through the so-called 'cascade of responsibilities': in case of a security incident the local Kosovo Police Service would be the first responder which, if deemed necessary, would call upon the EULEX SPU which, in turn, may rely on KFOR as the last responder. Overall, the cooperation between EULEX and KFOR is seen as a truly valid instance of good practice in civil-military relations (CIMIC)[57].

b. Justice component

Unsurprisingly, the justice sector is a cornerstone of the mission of the rule of law, with the monitoring unit playing a crucial role in overseeing and guiding the entire justice system. This includes everything from criminal justice to property and privatization cases. The MMA activity was considered a tripartite yet successive unitary process[58]. First, based on informal meetings, monitoring regarded case allocation, workload distribution, witness protection, corruption, discrimination, enforcement of judicial decisions, prison sentences and fines. Mentoring occurred chiefly on informal but individual basis between the European judge or prosecutor and the respective Kosovar counterpart and was focused on the management of executing cases upon appeal, the accessibility to the courts, registration, evaluation and service system of appeals in criminal law[59]. This strengthening activity of EULEX was in line with the characteristics normative character of the European Union and the over-arching focus on the empowerment of society, based on the principle of local ownership.
However, EULEX undertook considerable work too of direct judiciary exercise, mostly based on the assessment of Kosovo's systemic inefficiency and

[55] Law of the Assembly of the Republic of Kosovo, 13 March 2008, No. 03/L-053, *on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo*, Art. 17.
[56] SPERNBAUER (2010: 30).
[57] ZUPANČIČ, PEJIČ (2018: 74).
[58] European Union Rule of Law Mission in Kosovo, Assembly of EULEX Judges, 23 October 2008, *Guidelines on Monitoring, Mentoring and Advising (MMA) of EULEX judges, Final Document*.
[59] Report of the European Union Rule of Law Mission in Kosovo, 2010, *EULEX Programme Report 2010*, p. 9-10.

inclination to political interference, corruption and intimidation[60]. Pursuant to the Kosovo Assembly Law No. 03/L-053 *on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo*, EULEX judges and prosecutors became an integral part of Kosovo's judicial system both at the level of the supreme court and district courts, both in civil and criminal matters, with the power to initiate investigations and to conclude proceedings[61]. EULEX executive division had compulsory and thus exclusive jurisdiction over most serious crimes, such as terrorism, genocide, crimes against humanity, war crimes inter-ethnic crimes, organized crime, financial crimes and other serious crimes provided in the amended Yugoslav Criminal Code.

In addition, EULEX held a secondary and residual jurisdiction over crimes that were not investigated or prosecuted by the Special Prosecution Office of the Republic of Kosovo (SPRK). In the area of criminal law, priority was set for the processing of cases inherited from the period of UNMIK, mainly composed of two broad categories: war crimes against the civilian population committed during the 1998-1999 conflict, and crimes committed during the March 2004 Riots[62]. The jurisdiction of EULEX judges mirrored the practice under UNMIK with the creation of mixed or hybrid panels of three judges, composed of a consistent majority of European judges, including the chairperson, and only one Kosovar judge. However, in extreme cases when locals were not willing to exercise their office, the President of the Assembly of EULEX judges had the authority to decide on the assignment of a specific case to a panel composed entirely of European judges[63].

In the area of civil law, EULEX judges were assigned by Article 5 of the Kosovo Law on EULEX jurisdiction to proceedings related to public and private property, that is, falling within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency (KTA)[64]. This represented an interesting novelty compared to the previous jurisdiction of UNMIK's international judges and prosecution and was considered necessary because of the widespread use of falsified documents to legitimize fraudulent transactions, the complex legal challenges involving missing or displaced persons, the absence of formal records to verify past transactions, and the political implications of such property claims[65].

The 2014 extension of EULEX's mandate brought a new major redefinition of the mission's activities. Contextually the new *Law on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo*, it was set a new composition of the mixed/hybrid court panels, reversing the majority in

---

[60] POOPUU (2020: 237).

[61] Law of the Assembly of the Republic of Kosovo, 13 March 2008, No. 03/L-053, *on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo*.

[62] Report of the European Union Rule of Law Mission in Kosovo, 2009, *Annual Report on the Judicial Activities of EULEX Judges 2009*, pp. 5-6.

[63] *Ivi*, p. 8.

[64] Kosovo Assembly Law No. 03/L-053, *supra* note 61, Art. 5.1.

[65] SPERNBAUER (2010: 26).

favour of the Kosovar judges and leaving only one seat to the European judges. Further, it was decided to terminate the possibility of EULEX taking new cases while gradually handing over competencies to the Kosovar judicial system. The only exception to this process was in Northern Kosovo, as anticipated. In the subsequent extension of the mandate, no substantial changes were made but the transferring process continued. After the announcement in 2018 of the conclusion of EULEX's executive mandate for serious crimes, the ESDP mission in the judiciary field is currently engaged in a robust systemic and thematic monitoring of selected cases across the entire criminal justice system, as well as aspects of the civil justice system, with the goal of evaluating compliance with human rights obligations[66].

c. Customs component

Customs is considered one of the most crucial sectors in Kosovo, owing to the fact that it raises revenues for more than 70 per cent of the annual state budget[67]. At the time of EULEX deployment, it was in place an already considerably solid system, run by local officials and regulated by the 2004 *Custom Codes*[68]. The first *EULEX Programme Report* noted that local customs staff was quite well trained and regularly assessed to carry out their basic duties, the government had adopted a strategy on integrated border management, and operational plans had been developed[69].
However, the report also emphasized a continuous need to improve the existing insufficient legislation and for specialized training in law enforcement[70].
Due to the economic significance of this sector, customs hold a high potential for corruption and political interference, especially in a context such as Kosovo[71]. It is enough to consider that, for instance, shortly after independence, the Kosovo government's attempt to politicize the customs service by removing its director was thwarted by intense pressure from the EU and the USA, leading to his reinstatement. When a similar effort was attempted in 2010, the EU swiftly intervened once again, taking measures to counter the Kosovar action[72].
The ESDP mission's primary objective was to restore the public confidence towards the authority and impartiality of customs institution, by ensuring

[66] Report of the European Union Rule of Law Mission in Kosovo, November 2022, *EU Rule of Law Mission Justice Monitoring Report. Finding and Recommendations*, November 2021 – September 2022, pp. 7, 9.
[67] Report of the European Union Rule of Law Mission in Kosovo, September 2015, *Compact Progress Report 2015*, p. 14.
[68] Regulation of the United Nations Interim Administration Mission in Kosovo, 30 January 2004, UNMIK/REG/2004/1, *on the Customs Code of Kosovo*; Law of the Assembly of the Republic of Kosovo, 13 March 2008, No. 03/L-109, 10 November 2008, *Customs and Excise Code of Kosovo*.
[69] Report *EULEX Programme Report* (2009), *supra* note 42, p. 131.
[70] *Ibid*.
[71] SKENDAJ (2014b: 468).
[72] SKENDAJ (2014a: 129-130).

management capabilities and limiting political interference. In practice, this was achieved through advisory functions alongside the deployment of mobile teams. Further, EULEX gradually developed a data registration system, resulting in a substantial reduction in goods smuggling and decreasing revenue losses by over 80 per cent[73].

In 2011, Serbia and Kosovo reached an agreement on Integrated Border Management (IMB), followed in 2012 by a Technical Agreement and an Action Plan, by which the parties shared responsibilities over six 'border' crossing in Merdarë/Merdarë, Bërnjak/Brnjak, Mutivodë/Mutivode, Jarinjë/Jarinje, Dheu-i-Bardhë/Konqul, e Mucibabë/Depce[74]. Although the process of implementation encountered some obstacles, the IMB provided for freedom of movement of people and goods through a collaboration of Kosovo Police and Customs agencies and Serbia's counterpart in two phases: first, the establishment of temporary buildings, later followed by the construction of permanent facilities in accordance with EU standards[75].

The major challenge for EULEX and Kosovo Customs has thus far been the execution of regular patrols on the so-called 'green border', i.e., the land 'borders' between Kosovo and its neighbouring countries. KFOR has complained about the fact that the EU mission does not have sufficient capabilities and manpower to effectively carry out such tasks, thus eventually leading to an increased burden on KFOR itself[76]. As a result, certain zones of the green border have remained exposed and more vulnerable to illegal trafficking and organized crimes. To counter these deficiencies, EULEX supported the creation of a National Centre for Border Management assuring proper regional, cross-border, and institutional cooperation as well as collection, analysis and dissemination of information[77]. In conclusion, notwithstanding the continuous necessity to improve the management of green borders as well as the inconsistency against political interference, EULEX has demonstrated a positive influence on the effectiveness of customs institutions, ensuring continuous improvement throughout the years[78].

5.3.2 Continuity and legal implications for UNMIK

The original schedule of the *Ahtisaari plan* according to which, after the official independence of Kosovo, UNMIK would end its mandate and hand over its authority to an ESDP mission was never endorsed by the Security Council. This meant that the supreme legal basis of Resolution 1244 was un-

[73] CHIVVIS (2010: 38).
[74] ALIU, ANDRIC (2011).
[75] ZUPANČIČ, PEJIČ (2018: 100).
[76] *Ivi*, p. 101.
[77] Press Release of the European Union Rule of Law Mission in Kosovo, 8 December 2015, *EULEX supports the establishment of National Centre for Border Management*; Report of the European Union Rule of Law Mission in Kosovo, September 2016, *Compact Progress Report assessing Progress between August 2015-June 2016.*
[78] ZUPANČIČ, PEJIČ (2018: 102).

altered and that EULEX, whose establishment was masterminded by the Council of the European Union purposedly before the unilateral declaration of Prishtinë/Priština, had to find a way to conform with the still-existing UN legal framework.

Furthermore, following the declaration of independence, an apparent incompatibility arose between the Kosovar Constitution and the international civilian presence. The Kosovar Constitution adopted in June 2008 did not recognize neither the authority of UNMIK nor the SRSG, notwithstanding the fact that both were still legitimized by Resolution 1244. This contraposition made inoperative the role of the SRSG who, since 15 June 2008, decided to abstain from exercising his/her powers either to modify or nullify Kosovar legislation and from issuing new Regulations – it must be cleared that however the SRSG is formally reserving all his power to date. Such was the ambiguity that the SRSG himself admitted to the Security Council that he was stuck in a situation of impasse, being *de facto* prevented in the exercise of his powers while *de jure* authorised[79].

Secretary-General Ban Ki-Moon attempted to bypass the deadlock by presuming his competence to delegate powers to EULEX. This initiative was highly controversial due to the lack of an explicit endorsement of the Security Council, as had consistently occurred in prior reconfigurations of UN missions[80]. In his July 2008 report, Ban Ki-Moon claimed, in consideration of the demonstrated inability of the Security Council to provide guidance, his intention to instruct his SRSG to initiate operational adjustments of the international civil presence in Kosovo so as that the EU would:

> "perform an enhanced operational role in the area of the rule of law under the framework of resolution [*sic*] 1244 (1999) and the overall authority of the United Nations. The European Union will, over a period of time, gradually assume increasing operational responsibilities in the areas of international policing, justice and customs throughout Kosovo"[81].

Concurrently, the EU High Representative, Javier Solana, publicly confirmed the subjection of EULEX "under the global authority of the United Nations" alongside the commitment to provide all necessary reports to the UN Secretary-General[82]. The Security Council expressed in favour of the reconfiguration of the UN mission in Kosovo only in November 2008, based on the definition of a *Six Point Plan* presented by Secretary-General Ban Ki-Moon concerning the areas of police, courts, customs, transportation and in-

---

[79] Press Release of the United Nations Security Council, 25 July 2008, SC/9407, *Security Council discusses Secretary-General's Decision to Reconfigure Kosovo Mission in View of Changes Following Unilateral Declaration of Independence.*

[80] DE WET (2009: 89).

[81] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, paras. 14-16.

[82] Press Release of the Council of the European Union, 18 July 2008, Doc. S257/07, *Summary of intervention of Javier SOLANA, EU High Representative for the Common Foreign and Security Policy before the meeting of international organisations active on the ground of Kosovo (EU, NATO, UN, OSCE).*

frastructure, boundaries, and Serbian patrimony[83]. In addition, it was established that the EU mission would be neutral regarding Kosovo's status and refraining from any measures to implement the provisions of the *Ahtisaari plan*[84]. As argued by De Wet, it corresponded to a legalisation of EULEX under Resolution 1244 *ex post facto*[85]. In this newly agreed framework, the EU and UN mission managed to coordinate their coexistence in the small territory of Kosovo thanks to a clear division of labour. EULEX would assume executive powers and monitoring for police, judiciary and customs, while UNMIK's functions would be limited to monitoring and reporting; facilitating where necessary and possible arrangements for Kosovo's participation in international agreements; facilitating dialogue between Belgrade and Prishtinë/Priština for practical concerns as well as the implementation of the aforementioned 'six points'[86]. Accordingly, the reconfigured UNMIK downsized in personnel and budget, abandoning its pillars structure, except only for the one entitled to the OSCE Mission in Kosovo (OMiK), which has continued up to date to play a crucial role in building and monitoring Kosovo institutions and supporting minority communities[87].

After the 2008 restructuring, UNMIK was in practice emptied of its core competencies, preserving only a formal yet resilient guise to become a "presence of coordination and mediation" between EULEX, OSCE, KFOR and the Serbian northern communities[88]. In fact, the deployment of EULEX faced strong resistance in the Serbian northern territories, where instead UNMIK's authority became more accepted due to its official neutral stance – EU's ambiguity was due to the fact that the majority of its member states supported Prishtinë/Priština's stance[89]. As a result, contrarily to the 1999-2008 decade, when the Kosovo Serbs opposed the UN presence, the post-independence situation shifted, compelling the EU officials to work through UNMIK's mediation in the northern territories. In essence, while the Kosovo Albanian government welcomed to phase out UNMIK in favour of EULEX, the Serbian minority remained more supportive of UNMIK's continued presence[90].

However, even though UNMIK's mediating role has effectively enabled in the last decade an increasing rapprochement between Serbian communities

---

[83] Report S/2008/354, *supra* note 81, Annexes I, II; Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, paras. 30-47.

[84] GREIÇÇEVCI (2011: 293). The European Union employs the designation of Kosovo with an asterisk (Kosovo*) in official documents to express its neutral status position, without prejudice to positions on status, and in line with UNSCR 1244/1999 and the International Court of Justice advisory opinion on the Kosovo declaration of Independence.

[85] DE WET (2009: 89).

[86] Report S/2008/354, *supra* note 81, para. 16.

[87] Report S/2008/692, *supra* note 83, para. 51.

[88] KALLABA, FERATI (2012: 15).

[89] Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 17 June 2009, S/2009/300, paras. 7

[90] CUNHA (2008).

and the EU mission, the practical utility of the United Nations in Kosovo has inexorably waned. UNMIK's presence appears today like a forcing, the chimeric and expensive legacy from 'a distant past' that to justify its existence has progressively set objectives more and more abstract. Several authors have argued for the necessity of a definitive termination of UNMIK's mandate in favour of EULEX[91]. Such a turn of events will inevitably require the consensus of the Security Council to finally abrogate Resolution 1244 but, as things stand today, there is no clear indication that this could be possibly fulfilled in the next future.

5.4 Prishtinë/Priština-Belgrade normalization prospects

Throughout the international administration since 1999, the Serbian and Yugoslav authorities have always upheld their sovereign prerogatives over the province of Kosovo and Metohija (or Kosmet), based also on the explicit commitment of "all [UN] Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia", as nailed down in the fundamental Resolution 1244[92]. Without any surprise, the unilateral declaration of independence of the Republic of Kosovo in 2008 exacerbated the confrontation between Belgrade and Prishtinë/Priština. Less than half of the international community refused to recognize the new state and Serbia questioned the legality of the Kosovo Assembly's declaration before to the International Court of Justice (ICJ). The court provided an advisory opinion strictly based on how the question received had been formulated and concluded by ten votes to four that:

> "the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently, the adoption of that declaration did not violate any applicable rule of international law"[93].

After the independence, the European Union stood in for the UN not only in the operational activities but also as a principal mediator in the question of normalization with Serbia. 'Mediation' consists in a tool of conflict resolution more pronounced of basic good offices in the sense that a dispute between two sides is facilitated by a third party, the mediator, who is an active participant, authorized and expected to put forward new proposals and to interpret and convey each party's proposal to the other[94]. On 9 March 2011, the European External Action Service (EEAS) launched the *EU-facilitated Dialogue between Belgrade and Prishtinë/Priština*, with Kosovo's delegation led by Ms Edita Tahiri, Deputy Prime Minister and Minister for Dialogue in

[91] WELLER (2009); KER-LINDSAY (2012); VISOKA (2013); HAXHIAJ (2018).
[92] Resolution S/RES/1244, *supra* note 31, Preamble.
[93] Advisory opinion of the International Court of Justice, 22 July 2010, ICJ Rep 2010/403, *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, para. 122.
[94] MERRILS (2017: 2).

the Kosovo Government, and the Serbian delegation led by Mr Borko Stefanović, Serbia's Special Representative to the dialogue[95]. The first act of this EU-led process concluded in 2013, and was characterized by a first phase of technical dialogue (2011-2012), during which the parties reached a series of timid agreements that led towards a proper political dialogue, as formally recognized by the Resolution of the Kosovo Assembly in support of:

> "the process of solution of problems between two independent and sovereign states, Kosovo and Serbia, on behalf of normalization of relationships between themselves, improvement of citizens' life and advancing the European agenda for two states and the region"[96].

In this second phase, since the summer of 2008, the negotiations were also held by high-profile politicians, such as both parties' Prime Ministers, always parallelly to the technical talks[97]. Brussels tried to exploit its leverage over the two parties' aspiration to EU membership, concluding in 2013 the signing of the *First Agreement of Principles Governing the Normalisation of Relations* (hereafter the *Brussels Agreement*)[98]. Its key elements were the establishment of an Association/Community of Serb municipalities in Kosovo; the principle of a unified police force within Kosovo, including the integration of police from northern Kosovo into the Kosovo police service; the integration and functioning of all judicial authorities under Kosovo's legal framework; and the facilitation of municipal elections in northern municipalities by the OSCE. As a result, Serbia closed down its 'parallel structures' in Northern Kosovo, including police stations and criminal courts, allowing the integration of four municipalities in the Kosovo System of governance and the effective participation of the Kosovo Serbs for the first time in the vote of the local elections in November 2013[99].
Accordingly, the European Council granted the opening of accession negotiations with Serbia in January 2014[100] and the start of negotiations on a *Stabilisation and Association Agreement* with Kosovo[101]. Based on the *Brussels Agreement*, Belgrade and Prishtinë/Priština agreed not to "block, or encourage other to block" the other side's progress towards EU membership, but Serbia continued consistent diplomatic efforts preventing Kosovo's accession to international organisations (such as UNESCO in 2015) and working to gain more support from countries not accepting Kosovo's independ-

---

[95] DESKAJ (2021: 124).
[96] Resolution of the Assembly of the Republic of Kosovo, 18 October 2012, Nr. 04-R-08, *On Normalization of Relationship between Republic of Kosovo and Republic of Serbia*.
[97] RRAHAMANI, BELEGU (2022: 132).
[98] First Agreement of Principles Governing the Normalization of Relations (hereafter *Brussels Agreement*), 19 Aprile 2013, Brussels.
[99] Report of the European Commission, 16 October 2013, SWD(2013) 416 final, *Kosovo* 2013 Progress Report*, pp. 5-6.
[100] Conclusions of the European Council, 28 June 2013, EUCO 104/2/13 REV 2, para 19.
[101] Ivi, para. 20; European Union, 16 March 2016, OJ L 71/3, *Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part*.

ence[102]. It is noteworthy that Belgrade succeeded in certain cases also in persuading countries to revoke their official recognition of Kosovo – an unprecedented event in modern international law[103].
The ultimate goal of the EU-facilitated dialogue is the mutual recognition of Kosovo and Serbia, however, after 2013 no considerable progress has been achieved in the normalization process or its implementation. In 2014, the German Chancellor, Angela Merkel attempted to give a new impulse to the negotiations by introducing the so-called *Berlin Process*, that is, gathering a smaller group of international stakeholders and Western Balkan countries. Also in this case, Belgrade proved adamant about its firm rejection of any possibility for a formal recognition, recalling the prophetic words of former Serbian President, Boris Tadić:

> "no democratic leadership in Serbia would ever, under any circumstances, recognize the unilateral declaration of independence. This principled position is set in stone and will not change – come what may. There are those who expect us to yield eventually. That will not happen"[104].

The post-2013 diplomatic stagnation, other than reaffirming the Serbian political obstinance, evidenced the limited tools that the EU has to put pressure on external parties, constraining its policy effectiveness and international relevance[105]. In 2018, the negotiations were officially suspended after the controversial decision of the Kosovo government to introduce a tariff of 100 per cent on imported goods from Serbia and Montenegro. It marked the beginning of the 2018-2020 tense period between Belgrade and Prishtinë/Priština and registered a series of protests by the Kosovar Serbian minority clustered in the northern province of Mitrovica. Furthermore, looking at the developments in the domestic politics of Kosovo, in 2019 the change of government with the new ruling party *VETEVENDOSJE!* openly rejected any furthering of the dialogue without a precise and clear agenda[106].
The Dialogue was tentatively resumed in 2020 with a new interference of the United States, leading to the conclusion of the so-called *Washington 'Commitments'*, brokered by the Trump Administration to pursue the way of an economic normalization focused on business and trade[107]. However, a lack of coordination and communication, especially between the EU and the US, and their respective Special Envoys, Richard Grenell and Miroslav Lajčák, seriously hampered the process. As argued by Staníček, the reasons for the "very limited results are multiple, ranging from the internal political situation in both countries to ambiguous and asymmetrical expectations of the

[102] *Brussels Agreement*, *supra* note 98, point 14; RRAHAMANI, BELEGU (2022: 133).
[103] STOJANOVIĆ (2023).
[104] Minutes of the meeting of the United Nations Security Council, 6 July 2010, S/PV.6353.
[105] SZPALA (2016: 7).
[106] RRAHAMANI, BELEGU (2022: 140).
[107] *Economic normalization Serbia [Belgrade] and Kosovo [Pristina]*, 4 September 2020, Washington. The parties agreed to move forward with economic normalization concerning 16 commitments.

normalization agreement"[108]. North Kosovo has remained the hot spot of the question, triggering in the summer of 2021 another crisis due to the decision of the Kosovo government to ban the Serbian license plates[109]. Only on September 30th, the emergency was over with the effective end of the ban on Serbian license plates thanks to the mediation of Brussels[110].
Overall, despite the fact that the conflict ended more than twenty ago, the definitive resolution to the confrontation over Kosovo has not been found yet. Unquestionably, there still persists an underlying rage ready to erupt: the most recent evidence in September 2023 and the dramatic ambush of some Serbian paramilitary on Kosovo police officers[111]. Furthermore, despite the deeper engagement of the EULEX since 2008, the EU has shown its limited power, or willingness, to make concrete headway towards a political solution. Brussels should probably be more concerned on the matter or, as it is fairly comprehensible, the local stakeholders will look for support elsewhere, as warned by former Austria's Chancellor, Sebastian Kurz:

> "If the European Union does not offer this region a real perspective, we have to be aware that other superpowers – China, Russia or Turkey – will play a bigger role there. The region belongs to Europe geographically, and it needs a European perspective"[112].

After the (operational) demise of the UN mission, the European Union has had the opportunity to put into practice once and for all its alleged potential, but so far it has not seized it yet. Who will?

[108] STANÍČEK (2021: 1).
[109] BUTCHER, BOFFEY (2021).
[110] *Agreement on car license plates*, 30 September 2021, Brussels. The parties agreed on three points regarding the simultaneous removal of the special police units in certain checkpoints, the temporary application of a sticker regime pending the negotiated solution for the license plate issue within six months.
[111] BORGER, O' CARROLL (2023).
[112] Sebastian Kurz quoted in BOFFEY (2021).

Conclusions

"You can force your way in, but you have to build your way out"[1]. The story of little Kosovo serves as a telling example of the greatest challenge of our times: the complexity and contradictions in maintaining peaceful coexistence and tolerance between different ethnic groups while developing a secure environment for the protection and promotion of human rights. International territorial administration (ITA) is a specific formula of governance that has emerged in history as a potential remedy to the deficiencies of states in guaranteeing their people's safety and respect. In this sense, ITAs are designed as a tool for conflict resolution, peace endurance and human security.

This study has tried to explore the controversial limits and incremental achievements revealed from the not-so-recent practice of international administrations by asking: what is the role of international organisations in international territorial administrations? What explains their failures and their achievements? To answer these questions, we have dwelled on the experience of Kosovo as the central case study for a twofold justification. On the one hand, the multitude of international organisations acting in Kosovo was demanded by the very small size of the territory to figure out some coordinating expedients not to mutually interfere with each other. In addition, the story of Kosovo has embodied a shockingly powerful impact on the current international system under a variety of aspects: from NATO's humanitarian intervention to the proper period of the joint administration under the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR), to the ongoing European Union Rule of Law Mission (EULEX).

The hypothesis upon which this study was built is that flaws in the political factors of international organizations can derail, or at least significantly impair, the potential operational successes of international administrations. This study sought to assess the performance of international organisations in international territorial administration, by employing an analytical framework composed of three explanatory factors: 'political factors', the foundational elements of any international mission, forming its conceptual and guiding framework, including its mandate; 'operational factors', the decisions, actions, and direct consequences of the authorities and officials managing the international administration; and 'contextual factors', the specific socio-political, cultural, and historical conditions of the targeted territory and its people.

We have concentrated the most on the political factors underlying the debates and divisions within the Security Council, the maximum political organ of the international community, approaching the final version of Resolution 1244. Nonetheless, we have encountered political factors also when oth-

[1] STROHMEYER (2001: 108).

er international organisations launched operations strictly related to the UN transitional administration of Kosovo, such as the transformation of NATO into a 'humanitarian-interested actor' and the growing responsibility of the European Union beyond the mere economic sphere. Although these are not species of ITA and therefore they were given their specific part of the analysis (respectively Part I 'Conflict' and Part III 'Independence'), they unquestionably enable to highlight the nuances in the premises and the demise of UNMIK.

We have investigated the operational factors of the experience in Kosovo in the core Chapter Four of this study, and we have done it bearing in mind an essential conceptual framework. The international administration of Kosovo was an 'exceptional' one not just for the scope of its mandate but because it was double-headed by the international civil presence (UNMIK) and the international security presence (KFOR), and what is more, UNMIK itself functioned as an 'umbrella mission' consisting of a multiplicity of working agencies, including the leading United Nations High Commissioner for Refugees (UNCHR), the Organisation for the Security and Cooperation in Europe (OSCE), and the European Union.

In light of this complexity, we have tried to provide order by elaborating a two-tier analytical framework: the civil-military cooperation (CIMIC) level, and the 'intra-pillar' level. The former entails the joint work of two essentially different nature of agencies, such as KFOR with the civilian counterparts (that is, not only the UN in general). The 'intra-pillar' level evidently refers to UNMIK's potential not to be compartmentalized, but rather to function as a flexible and organic structure. Finally, we have seen the potential of 'contextual factors' in their most prominent manifestation of the socialist judicial legacy as well as in the events of 1998-1999, 2004 and 2008.

All of the above led us to three major findings. On the operational level, the key solution that some of the largest international organisations have found to overcome their mutual challenges in the small land of Kosovo and to effectively carry out their daunting mandate was a clear and well-defined division of labour. We have seen how the lack of communication and coordination has produced various deficiencies, especially in the first years and in the relations between the United Nations and KFOR. These two understood only after the 'wake-up call' of the March 2004 Riots that selective cooperation would be no more justifiable and eventually arranged proper technical platforms of co-management. It is no coincidence that the most appreciable achievements of the international administration of Kosovo occurred in the establishment and training of the Kosovo Police Service (KPS), the result of the rational coordination between the United Nations and the OSCE, or in the planning and conduct of the municipal and general elections, outcome of the functional interplay between the OSCE, UNHCR and KFOR. A different story, instead, regarded the economic development wherein the different perspectives between the UN Headquarters and the European Union delayed the implementation of the important transition towards a market-based economy.

However, not all the limits of the international administration can be entirely blamed on operational failures.

The second major finding of this study regards the political level and the incalculable significance of a clear and decisive mandate. The strength of the story of Kosovo is exactly to accentuates more than elsewhere the disruptive potential of inconclusive and ambiguous political factors. When the Security Council Resolution established the transitional interim administration under UN auspices, it also fatally impaired its possible success because of the contradictions and ambiguity in the mandate. The Special Representative of the Secretary-General (SRSG) and the rest of the international presence in Kosovo were given an unprecedented scope of responsibilities but paradoxically without a clear end-state where to channel all of this power. Because of the shortcomings in the Security Council's decision, UNMIK ended up stalling the political process for the determination of Kosovo's status, eventually coming pointed out as a new antagonist of the interests of the local people – that is, one of the main reasons international administrations are employed for.

Lastly, international administrations both in their political as well as operational level cannot foreclose the significance of local agency. It is no novelty that the relationship between the international authorities and their local counterparts is crucial in determining the kind of governance that will result. Several authoritative studies have already demonstrated that an excessive top-down approach risks impairing the legitimacy of the mission, contravening the principle of sovereignty and self-determination, and ending up blurring the lines with other forms of less virtuous governance, such as imperialism, 'neo-colonialism' or protectorates[2].

However, what stands out the most from the story of Kosovo is that, in case of general stagnation or stiffness of the international community or the related stalling of the international administration, the initiative of local people may provide the most decisive and needed stimulus to the advancement of a certain process. In Part I, we have seen how the Kosovar Albanians radically changed their approach to the 'question of Kosovo' after seeing their instances overlooked by the international community during the Dayton peace process. The new strategy involved transforming Rugova's passive resistance into active *guerrilla* warfare against Serbian oppressive control, with the goal of drawing international attention – which ultimately prompted NATO's intervention. In March 2004, the widespread violence by the Kosovar Albanian majority was not merely an expression of inter-ethnic tensions, but rather a manifestation of local frustration with the international community's reluctance to advance the process of determining Kosovo's final status. Once again, the escalation of protest succeeded in capturing international attention, leading to the initiation of the Eide-Ahtisaari process. Finally, in 2008, faced with a new impasse due to international divisions that neither the

[2] CHANDLER (2000); PARIS (2002); WILDE (2008); DE BRABANDERE (2009); VERDIRAME (2011).

UN nor the *troika* could resolve, only a bold unilateral act by the Assembly of Prishtinë/Priština managed to move Kosovo out of the limbo it had been trapped in.

What we can draw from the experience of the ITA in Kosovo is the following: overall, the operational mandate of the joint administration of UNMIK-KFOR was carried out with a positive balance, although with some serious flaws regarding human rights accountability. However, we have seen that the latter is a recurrent challenge related to international organisations' immunity. Unfortunately, the operational achievements of UNMIK and KFOR were substantially shadowed by the fundamentally twisted political inconsistencies imprinted in Resolution 1244. The resulting deadlock was ultimately overcome only through a unilateral initiative by the Kosovar people, although its legality and legitimacy remain subjects of controversy. In essence, this suggests that ITAs can effectively address governance failures and post-conflict reconstruction, as long as they are established with a clear mandate and a defined end-state. When these elements are lacking, the system becomes impaired, potentially undermining the operational success of the transitional administration and leading to destabilizing outcomes in the territory—sometimes resulting in radical unilateral actions.

The findings of this study highlight the often-overlooked possible positive impacts of international administration, challenging broad criticisms of ITA as a whole. While this institution is certainly not without flaws, as we have observed, our three-factor approach offers a more accurate cause-and-effect analysis. This helps in pinpointing the true sources of certain dysfunctions, enabling more effective solutions. Therefore, the key takeaway from this analysis is the undeniable importance of political factors, which are critical not primarily for ensuring the guaranteed success of international missions, but for averting their potential failure from the outset.

While this study has offered valuable insights, it is equally important to acknowledge the inherent limitations of the research. Our intensive focus on the case of Kosovo allowed for a more detailed and precise analysis, but it also necessitated only a brief consideration of the broader practices of ITAs. This approach may have limited our ability to identify more abstract, recurring patterns across different cases. The decision to concentrate on Kosovo was deliberately made to produce a comprehensive study that integrates both historical and normative perspectives, alongside an internal comparative analysis given the diversity of actors involved in Kosovo.

However, future research could address the limitations of this focused study by employing a larger sample, possibly concentrating on the experiences during the 1990s. Such an approach could better illuminate the historical and normative evolution of this institution, particularly by applying the three-factor framework developed in this study. Expanding the scope of analysis in this cautious way could provide a more ample understanding while still maintaining an adequate attention to the unique characteristics of each specific ITA. Additionally, further research might explore international administrations not solely through the lens of global entities like the United Na-

tions, but also by examining the role of regional organizations. This could shed light on potential advancements in addressing the delicate balance between legitimacy and sovereignty, as well as the interaction between political factors and local agency.

Ultimately, despite its limitations, this study lays a foundation for further research and offers insights that can be expanded upon in future studies. International territorial administrations may become increasingly significant in the forthcoming era of polarization and confrontation, providing a seemingly neutral mechanism for transitioning disputes towards a resolutive end-state. Some of the most prominent examples at present may refer to the Palestinian issue and the Donbas region, both of which have been embroiled in violent and tragic conflicts for many years now. However, as the case of Kosovo demonstrates, if the desired end-state is not be clearly defined from the outset, the outcome of the international administration may prove inconclusive and unfulfilling. In conclusion, the potential of international territorial administrations has not yet fully been proven as dismissible. Whether the extreme cases of Kosovo and East Timor should not be viewed as definitive solutions for post-conflict reconciliation and peacebuilding, they exemplify an alternative approach – bold, with both strengths and weaknesses. But as the common saying goes, *the first person through the wall always gets bloody*.

Bibliography

ALIU (2012), *Era of Supervised Independence Ends in Kosovo*, in *BalkanInsight*, available online.

ALIU, ANDRIC (2011), *Kosovo And Serbia Both Claim Victory In Border Deal*, In *BalkanInsight*, available online.

ARRAIZA, MORATTI (2009), *Getting the Property Questions Right: Legal Policy Dilemmas in Post-Conflict Property in Kosovo (1999-20099)*, in *International Journal of Refugee Law*, 21(3), p. 421 ff.

ASLANTAŞ, ÖZDAL (2023), *The Effectiveness of the United Nations Peacekeeping Operations in Building the Capacity of Local Police Forces: Case of Kosovo*, in *Güvenlik Stratejileri Dergisi*, 19(45), p. 255 ff.

AVRAMOVIĆ, RAKITIĆ, MENKOVIĆ, VASIĆ, FULGOSI, JOKIĆ (2010), *The Predicament of Serbian Orthodox Holy Places in Kosovo and Metohija*: *Elements for a Historical, legal and Conservational Understanding*, Belgrade.

BALANZINO (1999), *NATO's Humanitarian support to the victims of the Kosovo crisis*, in *NATO Review*, 47 (2), p. 9 ff..

BALIQI (2012), *Security Sector Reform in Kosovo: From institutional transitions to the democratic consolidation*, in *Iliria International Review*, 2, p. 24 ff.

BALIU, MORINA (2017), *Kosovo's Thaci Announces Post-War Reconciliation Commission*, in *BalkanInsight*, available online.

BARUTCISKI, SUHRKE (2001), *Lessons from the Kosovo Refugee Crisis: Innovations in Protection and Burden-Sharing*, in *Journal of Refugee Studies*, 14(2), p. 95 ff.

BASHOTA, PODRIMQAKU, BYTYQI (2014), *The Role of International Governance in the Democratization of Post-Conflict Societies through Promoting Political Culture. Case Study: Kosovo under UNMIK Administration*, in *European Scientific Journal*, 10(16), p. 441 ff.

BENVENISTI (2012), *The International Law of Occupation*, Oxford, II ed.

BENZING (2010), *International Administration of Territories*, in *Max Planck Encyclopedia of Public International Law*, available online.

BERNABÉU (2007), *Laying the Foundations of Democracy? Reconsidering Security Sector Reform Under UN Auspices in Kosovo*, in *Security Dialogue*, 38(1), p. 71 ff.

BEYERLIN (1982), *Humanitarian Intervention*, in *Encyclopedia of Public International Law*, Amsterdam.

BIERMANN, KOOPS (2016), *The Palgrave Handbook of Inter-organizational Relations in Word Politics*, London.

BLAIR, EYER, SALOME, WASSERSTROM (2005), *Forging a Viable Peace: Developing a Legitimate Political Economy*, in J. COVEY, M. DZIEDZIC, L. HAWLEY (eds.), *The Quest for Viable Peace: International Intervention and Strategies for Conflict Transformation*, Washington, p. 205 ff.

BLEDSOE, BOCZEK (1987), *The International Law Dictionary*, Santa Barbara.

BOBBIO (1975), *L'idea Della Pace e Il Pacifismo*, in *Il Politico*, 40(2), p. 197 ff.

BOFFEY (2021), *Serbia President Lauds Russia Ties At EU Balkans Summit*, In *The Guardian*, available online.

BORGER, O'CARROLL (2023), *Kosovo Accuses Serbia Of Involvement In Paramilitary Ambush*, In *The Guardian*, available online.

BRAND (2002), *Kosovo under International Administration: Statehood, Constitutionalism and Human Rights*, Vienna.

BROOKS (2003), *The New Imperialism: Violence, Norms and Rule of Law*, in *Michigan Law Review*, 101(7), p. 2275 ff.

BROWNLIE (1981), *International law and the use of force by states*, Oxford.

BROWNLIE (2003), *Principes of Public International Law*, Oxford.

BRZOSKA (2000), *The concept of security sector reform*, in *Brief 15: Security sector reform*, p. 6 ff.

BUTCHER, BOFFEY (2021), *Tensions Rise At Kosovo Border As Number Plate Row Escalates*, In *The Guardian*, available online.

CAPLAN (2005), *International Governance of War-Torn Territories: Rule and Reconstruction*, Oxford.

CAPLAN (2014), *United Nations Interim Administration Mission in Kosovo (UNMIK)*, in J.A. KOOPS *et al* (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, p. 617 ff.

CAPUSSELA (2015), *State-Building In Kosovo: Democracy, Corruption, And The EU In The Balkans*, London.

CHANDLER (2000), *Bosnia: Faking Democracy after Dayton*, London, II ed.

CHESTERMAN (2001), *A Nation Waits*, in *The World Today*, 57, p. 25 ff.

CHESTERMAN (2005), *Transitional administration, state-building and the United Nations*, in S. CHESTERMAN, M. IGNATIEFF, R. THAKUR (eds.), *Making States Work: State Failure and the Crisis of Governance*, New York.

CHESTERMAN (2005), *You, the People: the United Nations, Transitional Administration, and State-Building*, New York.

CHIVVIS (2010), *EU Civilian Crisis Management. The Record So Far*, Santa Monica.

CHOEDON (2010), *The United Nations Peacebuilding in Kosovo: The Issue of Coordination*, in *International Studies*, 47(1), p. 41 ff.

CHOPRA (2000), *The UN's Kingdom of East Timor*, in *Survival*, 42(3), p. 27 ff.

CHOPRA (2002), *Building State Failure in East Timor*, in *Development and Change*, 33, p. 979 ff.

COCKELL (2002), *Civil-military Responses to Security Challenges in Peace Operations: Ten Lessons from Kosovo*, in *Global Governance*, 8(4), p. 483 ff.

COHEN (1999), *Germany's Pragmatic Ex-Radical Thinks Globally*, in *The New York Times*, available online.

CONFORTI (2005), *The law and practice of the United Nations*, The Hague, III ed.

COSTELLO (2015), *Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test*, in M. DEN HEIJER, H. VAN DER WILT (eds.), *Netherlands Yearbook of International Law 2015, Jus Cogens: Quo Vadis?*, The Hauge, p. 273 ff..

CRAWFORD, PERT, SAUL (2023), *Public international law,* Cambridge, III ed.

CROCKER, HAMPSON, AALL (1999), *Herding Cats: Multiparty Mediation in a Complex World*, Washington.

CROSSLEY-FROLICK, DURSUN-OZKANCA (2012), *Security sector reform in Kosovo: the complex division of labour between the EU and other multilateral institutions in building Kosovo's police force*, in *European Security*, 21(2), p. 236 ff.

CUNHA (2008), *EULEX inside UNMIK, too late?*, in *Osservatorio Balcani e Caucaso Transeuropa*, available online.

DASKALOVSKI (2003), *Claims to Kosovo: Nationalism and Self-Determination*, in F. BIEBER, Z DASKALOVSKI (eds.), *Understanding the War in Kosovo*, London, p. 11 ff.

DAVIS (2009), *Justice-sensitive security sector reform in the Democratic Republic of the Congo*, Initiative for Peacebuilding, Brussels.

DE BRABANDERE (2009), *Post-conflict Administrations in International Law: International Territorial Administration, Transitional Authority and Foreign Occupation in Theory and Practice*, Leiden.

DE VRIEZE (2008), *Building parliamentary democracy in Kosovo*, in *Security and Human Rights*, 19(2), p. 121 ff.

DE WET (2005), *The Chapter VII Powers of the United Nations Security Council*, Portland.

DE WET (2009), *The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of EULEX*, in *The American Journal of International Law*, 103(1), p. 83 ff.

DEJAN GUZINA, *Kosovo or Kosova – Could It Be Both? The Case of Interlocking Serbian and Albanian Nationalism*, in F. BIEBER, Z. DASKALOVSKI (eds.), *Understanding the War in Kosovo*, London, p. 29 ff.

DEL MUNDO, WILKINSON (1999), *Kosovo's Race Against Winter*, in *Kosovo: one last chance*, UNHCR Refugees Magazine, 3 (116), p. 4 ff.

DEL PONTE, SUDETIC (2008), *La caccia: io e i criminali di guerra*, Milan, III ed.

DERKS, PRICE (2010), *The EU And Rule Of Law Reform In Kosovo*, The Hague.

DESKAJ (2021), *Kosova-Serbia Negotiations: Different Objectives Of Parties And Complex Mediation*, Sofia.

DEUTSCH (2006), *Justice and conflict*, in M. DEUTSCH, P.T. COLEMAN, E.C. MARCUS (eds.), *The Handbook of Conflict Resolution: Theory and Practice*, San Francisco, p. 43 ff.

DOYLE, SUNTHARALINGAM (1994), *The UN in Cambodia: Lessons for Complex Peacekeeping*, in *International Peacekeeping*, 1(2), p. 117 ff.

DROZDIAK (1998), *U.S., European Allies Divided over NATO's Authority to Act*, in *Washington Post*, available online.

DUCLOS (2020), *Joining the Kosovo Liberation Army: A Continuist, Process-Based Analysis*, in *Violence: An International Journal*, 1(1), p. 21 f.

EIDE, KASPERSEN, KENT, VON HIPPEL (2005), Independent study for the expanded UN ECHA core group, *Report on Integrated Missions: Practical Perspectives and Recommendations*.

EVERLY (2007), *Reviewing Governmental Acts of the United Nations in Kosovo*, in *German Law Journal*, 8(1), p. 21 ff.

EVERTS (2001), *The OSCE Mission in Kosovo – Two Years into Institution Building*, in *Helsinki Monitor*, 12(4), p. 254 ff.

FRANCK (1992), *The Emerging Right to Democratic Governance*, in *American Journal of International Law*, 86(1), p. 46 ff.

FRIEDRICH (2005), *UNMIK in Kosovo: Struggling with Uncertainty*, 9, p. 225 ff.

GAJIĆ (2017), *Capacity Building for Security Sector Reform in Kosovo*, EUCIVCAP Working Paper No. 2(17).

GASHI, MUSLIU (2013), *Justice System Reform in Kosovo*, Prishtinë/Priština.

GEISTLINGER (1999), *The Legal Status of Kosovo under the United Nations Security Council Resolution 1244 (1999)*, in *Medzinárodné otázky*, 8(4), p. 80 ff.

GIBBS (2009), *First Do No Harm: Humanitarian Intervention and the Destruction of Yugoslavia*, Vanderbilt.

GOWAN (2014), *United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and UN Civilian Police Support Group in Croatia (UNPSG)*, in J.A. KOOPS *et al* (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, p. 519 ff.

GREEN, FRIEDMAN, BENNET (2012), *Building the Police Service in a Security Vacuum: International Efforts in Kosovo, 199-2011*, in *Innovation for Successful Societies*, Princeton University.

GREENER (2009), *The New International Policing*, London.

GREENWOOD (2000), *International Law and The NATO Intervention in Kosovo*, in *International and Comparative Law Quarterly*, 49, p. 926 ff.

GREIÇÇEVCI (2011), *EU Actorness In International Affairs: The Case Of EULEX Mission In Kosovo*, In *Perspectives On European Politics And Society*, 12(3), p. 283 Ff.

GREIVCEVCI (2012), *The EU as a State-builder in International Affairs*, London.

GROTIUS (2005), *De Jure Belli ac Pacis: Book II*, in HAAKONSSEN (ed.), Oxford.

HAMITI (2015), *NATO in Kosovo-KFOR, Intentions, Successes, Failures*, in *European Journal of Research in Social Sciences*, 3(6), p. 48 ff.

HAMMERSTAD (2014), *How Success Became Failure: The Kosovo Crisis, 1998-99*, in *The Rise and Decline of a Global Security Actor: UNHCR, Refugee Protection and Security*, Oxford, p. 229 ff.

HÄNGGI (2009), *Security Sector Reform*, in V. CHETAIL (ed.), *Post-conflict peacebuilding: a lexicon*, Oxford, p. 337 ff.

HANNUM (1995), *The status of the universal declaration of human rights in national and international law*, in *Georgia Journal of International and Comparative Law*, 25(2), p. 287 ff.

HARLAND (2016), *War is Back: The International Response to Armed Conflict* in *Horizons: Journal of International Relations and Sustainable Development*, 6, p. 224 ff.

HARSCH (2015), *The Power of Dependence, NATO-UN Cooperation in Crisis Management*, Oxford.

HARSCH, VARWICK (2009), *NATO-UN Cooperation Revisited: A New Dawn?*, in *Studia Diplomatica*, 62(3), p. 29 ff.

HARTMANN (2003), *International Judges and Prosecutors in Kosovo: A New Model for Post-Conflict Peacekeeping*, Special Report of the United States Institute of Peace, Washington.

HAXHIAJ (2018), *Has the UN's Kosovo Mission Become Obsolete?*, in *BalkanInsight*, available online.

HAXHIAJ (2022), *Is There a Future for the Kosovo War Truth Commission?*, in *BalkanInsight*, available online.

HAYNER (2006), *Truth commissions: a schematic overview*, in *International Review of the Red Cross*, 88(862), pp. 295 ff.

HAYNER (2009), *Negotiating justice: Guidance for mediators*, Centre for Humanitarian Dialogue and International Centre for Transitional Justice, Geneva.

HEAD (2008), *Critical theory and its practices: Habermas, Kosovo, and International Relations*, in *Politics*, 28(3), p. 150 ff.

HEINEMANN-GRÜDER, PAES (2001), *Brief 20, Wag the Dog: The Mobilization and Demobilization of the Kosovo Liberation Army*, Bonn.

HENNEBERG (2020), *International contact groups: Ad hoc coordination in international conflict management*, in *The South African Journal of International Affairs*, 27 (4), p. 445 ff.

HOFFMANN, MÉGRET (2005), *Fostering Human Rights Accountability: An Ombudsperson for the United Nations?*, in *Global Governance*, 11(1), p. 43 ff.

HOGE (2007), *Kosovo Independence Measure Withdrawn From U.N. Council*, In *The New York Times*, available online.

HOLOHAN (2005), *Networks of Democracy: Lessons from Kosovo for Afghanistan, Iraq and Beyond*. Standford.

HOLZGREFE (2003), *The Humanitarian Intervention Debate*, in J.L. HOLZGREFE, R.O. KEOHANE (eds.), *Humanitarian intervention: ethical, legal and political dilemmas*, Cambridge, p. 15 ff.

HOWARD (2014), *United Nations Transition Assistance Group (UNTAG)*, in J.A. KOOPS *et al* (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, p. 294 ff.

Human Rights Watch, 25 July 2004, *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, available online.

Human Rights Watch, 31 March 2023, *Kosovo: War Crimes Trial to Begin in The Hague*, available online.

International Crisis Group, 22 April 2004, Europe Report No. 15, *Collapse in Kosovo*.

Interview to the UNCHR Special Envoy, Dennis McNamara, *"It's Hard to Be Optimistic"*, in *Kosovo: one last chance*, UNHCR Refugees Magazine, 3 (116), p. 22 ff.

IVANOV (2013), *Emergence, Dynamics and Institutionalisation of UN-NATO Cooperation in Kosovo and Afghanistan*, in *European Review of International Studies*, 2, p. 69 ff.

JELDRES (1993), *The UN and the Cambodian Transition*, in *Journal of Democracy*, 4(4), p. 104 ff.

JEONG (2006), *Peacebuilding in Post-conflict Societies: Strategy and Process*. Boulder.

JONES (2001), *The Challenges of Strategic Coordination, Containing Opposition and Sustaining Implementation of Peace Agreements in Civil Wars*, International Peace Academy Policy Paper Series on Peace Implementation, New York.

JONES (2002), *The Challenges of Strategic Coordination*, in S.J. STEDMAN, D. ROTHCHILD, E.M. COUSENS (eds.), *Ending Civil Wars: The Implementation of Peace Agreement*, Boulder, p. 89 ff.

KALLABA, FERATI (2012), *Mapping The UNSCR 1244 Legacy In Post-Independence Kosovo: Between Contestation And Recognition*, Prishtinë/Priština.

KEOHANE (2005), *After Hegemony: Cooperation and discord in the world political economy*, Princeton.

KER-LINDSAY (2012), *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States*, Oxford.

KEUKELEIRE, KALAJA, ÇOLLAKU (2011), *The EU and Kosovo: Structural Diplomacy in Action – but on the basis of one-sided paradigms?*, Loughborough.

KING, MASON (2006), *Peace at Any Price: How the World Failed Kosovo*, New York.

KLABBERS (2022), *An Introduction to International Organisations Law*, Cambridge, IV ed.

KNOLL (2008), *The Legal Status of Territories subject to administration by International Organisations*, Cambridge.

KUSOVAC (1999). *Interview with General Agim Çeku*, in *Jane's Defence Weekly*.

LAMBETH (2010), *Reflections on the Balkan Wars*, in *Air Power History*, 57, p. 30 ff.

LATAWSKI, SMITH (2003), *The Kosovo Crisis: the evolution of post-Cold War European security*, Manchester.

LAW, MYSHLOVSKA (2008), *The evolution of the concepts of security sector reform and security sector governance: the EU perspective*, in D. SPENCE, P. FLURI (eds.) *The European Union and security sector reform*, London, p. 2 ff.

LEMAY-HÉBERT (2009), *State-building from the outside-in: UNMIK and its paradox,* in *Journal of Public International Affairs*, p. 65 ff.

LEMAY-HÉBERT, MURSHED (2016), *Rentier State-building in a Post-Conflict Economy: The Case of Kosovo*, in *Development and Chance*, 47(3), p. 517 ff.

LEWIS (2001), *Restoring Property Rights in Kosovo: Post-Conflict disaster management*, in *UN Chronicle*, 38(1), p. 47.

LYOSHIN (2006), *Participation of the Russian Military Contingent in the Peacekeeping Operation in Kosovo: Experience Gained and Lessons Learned*, in R.S. RUSH, W.W. EPLEY (eds.), *Multinational Operations, Alliances, and International Military Cooperation: Past and Future*, Washington, p. 187.

MÅNSSON (2001), *Cooperation in Human Rights; Experience from the peace operation in Kosovo*, in *International Peacekeeping*, 8(4), p. 111 ff.

MARKO-STÖCKL (2010), *My Truth, Your Truth—Our Truth? The Role of History Teaching and Truth Commissions for Reconciliation in Former Yugoslavia*, in *European yearbook of minority issues*, 7 (1), p. 327 ff.

MELKERT (2007), *Peut-on encore sauver le Kosovo ?*, in *Le Figaro*, available online.

MERRILS (2017), *International Dispute Settlement*, Cambridge, VI ed.

MERTUS (2003), *The Impact of Intervention on Local Human Rights Culture: A Kosovo Case Study*, in *The Global Review of Ethnopolitics*, 1(2), p. 21 ff.

MINEAR, VAN BAARDA, SOMMERS (2000), *NATO and humanitarian action in the Kosovo crisis*, Providence.

MOCKAITIS (2004), *Civil-Military Cooperation in Peace Operations: The Case of Kosovo*, Strategic Studies Institute, Carlisle Barracks.

MOORE (1996), *The UN and Complex Emergencies – Rehabilitation in Third World Transitions*, Geneva.

MUHARREMI, RAMADANI (2024), *Transforming a Guerrilla into a Regular Army: From the Kosovo Liberation Army to the Army of the Republic of Kosovo*, Cham.

MURATI (2020), *UN Territorial Administration and Human Rights: The Mission in Kosovo*, New York.

MURPHY (2007), *UN Peacekeeping in Lebanon, Somalia, and Kosovo: Operational and Legal Issues in Practice*, Cambridge.

NARDULLI, PERRY, PIRNIE, GORDON (2002), *Disjointed War: Military Operations in Kosovo, 1999*, Santa Monica.

NARTEN (2006), *Building Local Institutions and Parliamentarianism in Post-War Kosovo: A Review of Joint Efforts by the UN and OSCE from 1999-2006*, in *Helsinki Monitor*, 17(2), p. 144 ff.

O'NEILL (2002), *Kosovo: An Unfinished Peace*, Boulder.

OGATA (1999), *The Limits of UNHCR's Intervention in Post-Cold War Conflicts: An Analysis of the Kosovo Crisis*, in *The Brown Journal of World Affairs*, 6(1), p. 201 ff.

OGUZ (2016), *The Evolution of Peace Operations and the Kosovo Mission*, in *Uluslararasi Iliskiler/International Relations.*13(51), p. 99 ff.

ONDROVIČ (2013), *A Fatal Defect of Interim Administration? Case Application: Kosovo*, in *Středoevropské politické studie / Central European Political Studies Review*, 15(2-3), p. 123 FF.

ÖZERDERM (2003), *From a 'Terrorist' Group to a 'Civil Defence' Corps: The 'Transformation' of the Kosovo Liberation Army*, in *International Peacekeeping*, 10(3), p. 79 ff.

PARIS (2002), *International Peacebuilding and 'Mission Civilisatrice'*, in *Review of International Studies*, 28(4), p. 637 ff.

PATEL (2009), *Transitional Justice, DDR, and Security Sector Reform*, in A.C. PATEL, P. DE GREIFF, L. WALDORF (eds.), *Disarming the past: transitional justice and ex-combatants*, New York, p. 262 ff.

PAVLAKOVIĆ (2000), *Refugee Returns in Kosovo: Learning from the Mistakes in Bosnia and Croatia*, in *Human Rights Review*, 1(2), p. 108 ff.

PERRIELLO, WIERDA (2006), *Lessons from the Deployment of International Judges and Prosecutors in Kosovo*, Report for the International Centre for Transitional Justice, New York.

PIRJEVEC (2014), *Le Guerre Jugoslave, 1991-1999*, Torino.

POOPUU (2020), *The European Union's Brand of Peacebuilding. Acting is Everything*, Cham.

PUGH (2000), *Civil-Military Relations in the Kosovo Crisis: An Emerging Hegemony?*, in *Security Dialogue*, 31(2), p. 229 ff..

PULA (2003), *The UN in Kosova: Administering Democratization?*, in F. BIEBER, Z. DASKALOVSKI (eds.), *Understanding the War in Kosovo*, London, p. 195 ff.

REKA (2003), *UNMIK as an International Governance in Post-War Kosova: NATO's Intervention, UN Administration and Kosovar Aspirations*, Skopje.

RIPLEY (2000), *The UCK's Arsenal*, in *Jane's Intelligence Review*, November, p. 22 ff.

ROCHA (1984), *In Search of Namibian Independence: The Limitations of the United Nations*, New York.

RONZITTI (1985), *Rescuing nationals abroad through military coercion and intervention on grounds of humanity*, Dordrecht.

RRAHAMANI, BELEGU (2022), *The EU Engagement in the Kosovo-Serbia Dialogue*, in *Online Journal Modelling the New Europe*, 39, p. 127 ff.

SCHEIN (2010), *Organisational culture and leadership*, San Francisco, IV ed.

SCHUMPETER (2003), *Capitalism, Socialism and Democracy*, New York, V ed.

SCHUTTER (2019), *International human rights law: cases, materials, commentary*, Cambridge.

SCOTT (2008), *The United Nations Peacebuilding Commission*, in *Journal of Peacebuilding & Development*, 4(2), p. 7 ff.

SHAW (2003), *International Law*, Cambridge.

SIMMA (1999), *NATO, the UN and the Use of Force: Legal Aspects*, in *European Journal of International Law*, 10(1), p. 1 ff.

SKENDAJ (2014a), *Creating Kosovo: International Oversight And The Making Of Ethical Institutions*, New York.

SKENDAJ (2014b), *International Insulation From Politics And The Challenge Of State Building: Learning From Kosovo*, In *Global Governance: A Review Of Multilateralism And International Organizations*, 20(3), p. 459 ff.

SLOAN (2014), *The Evolution of the Use of Force in UN Peacekeeping*, in *Journal of Strategic Studies*, 37(5), p. 674 ff.

SMIT (2006), *Housing and Property Restitution and IDP Return in Kosovo*, in *International Migration*, 44(3), p. 63 ff.

SMITH (2019), *The Utility of Force*, London, IV ed.

SOBJERG (2006), *The Kosovo Experiment: Peacebuilding through an International Trusteeship*, in T.B. KNUDSEN, C.B. LAUSTEN (eds.), *Kosov Between War and Peace: Nationalism, Peacebuilding and International Trusteeship*, Oxford, p. 57 ff.

SPERNBAUER (2010), *EULEX Kosovo – Mandate, structure and implementation: Essential clarifications for an unprecedented EU mission*, The Hague.

STAHN (2001), *The United Nations Transitional Administrations in Kosovo and East Timor: a First Analysis*, in *Max Planck Yearbook of United Nations Law*, 5, p. 105 ff.

STAHN (2008) *The Law and Practice of International Territorial Administration. Versailles to Iraq and Beyond*, Cambridge.

STANÍČEK (2021), *Belgrade-Pristina Dialogue. The Rocky Road Towards A Comprehensive Normalisation Agreement*, Brussels.

STEENKEN (2017), *Disarmament, demobilization, and reintegration (DDR): A practical overview*, Williamsburg.

STOJANOVIĆ (2023), *Serbian President Claims 'Nine More Recognition Withdrawals'*, In *BalkanInsight*, available online.

STROHMEYER (2001a), *Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor*, in *The American Journal of International Law*, 95(1), p. 46 ff.

STROHMEYER (2001b), *Making Multilateral Interventions Work: The UN and the Creation of Transitional Justice Systems in Kosovo and East Timor*, in *The Fletcher Forum of World Affairs*, 25(2), p. 107 ff.

SURKHE (2001), *Peacekeepers as Nation-Builders: Dilemmas of the UN in East Timor*, in *International Peacekeeping*, 8, p. 1 ff.

SVIRCA (2016), *Sacred Places and Religious Institutions in Kosova* in S. FERRARI, A. BENZO (eds.), *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Farnham, p. 243 ff.

SZPALA (2016), *Hostages To Dialogue. The Process Of Normalising Serbian-Kosovar Relations*, In *Centre For Eastern Studies Commentary*, 214, p. 1 ff.

TANSEY (2009), *Regime-Building: Democratization and International Administration*, Oxford.

TARDY (2014), *United Nations Mission in Bosnia and Herzegovina (UNMIBH)*, in J.A. KOOPS *et al* (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, p. 511 ff.

TRAUB (2000), *Inventing East Timor*, in *Foreign Affairs*, 79(4), p. 74 ff.

TRIANTAFYLLOU (2018), *Statehood without an army: the question of the Kosovo Armed Force*, in *Southeast European and Black Sea Studies*, 18(2), p. 261 ff.

United States Institute of Peace, 1 February 2002, *Truth Commission: Serbia and Montenegro*, available online.

VAHLAS (2011), *Dispelling Misperceptions for a Renewed Synergy between the United Nations and the Atlantic Alliance*, in B.A. WINDSOR (ed.), *The UN and NATO: Forward from the Joint Declaration*, Rome, p. 53 ff.

VERDIRAME (2011), *The UN and human rights: who guards the guardians?*, Cambridge.

VISOKA (2013), *UNMIK After Kosovo Independence: Exit Strategy or 'Exist' Strategy?*, Kosovo.

VON CARLOWITZ (2003), *UNMIK Law Making between Effective Peace Support and Internal Self-Determination*, in *Archiv des Völkerrechts*, 41(3), p. 336.

VRIEZE (2008), *Building Parliamentary Democracy in Kosovo*, in *Security and Human Rights*,19(2), p. 121 ff.

WEAVER (2008), *Hypocrisy Trap: The World Bank and the Poverty of Reform*, Princeton.

WEBER (1946), *Politics as a Vocation*, in GERTH, WRIGHT MILLS (eds), New York.

WEIL (2001), *The Protection Neutrality-Dilemma in Humanitarian Emergencies: Why the Need for Military Intervention?*, in *The International Migration Review*, 35(1), p. 79 ff.

WELLER (1999), *The Rambouillet Conference on Kosovo*, in *International Affairs (Royal Institute of International Affairs)*, 75(2), p. 211 ff.

WELLER (2009), *Contested Statehood: Kosovo's Struggle for Independence*, Oxford.

WHEELER (2000), *Reflection of the Legality and Legitimacy of NATO's Intervention in Kosovo*, in *International Journal of Human Rights*, 4 (3-4), p. 144 ff.

WHITE (1999), *The Legality of Bombing in the Name of Humanity*, in *Journal of Conflict and Security Law*, p. 27 ff..

WILDE (2001), *From Danzig to East Timor and Beyond: The Role of International Territorial Administration*, in *The American Journal of International Law*, p. 583 ff.

WILDE (2008), *International Territorial Administration, How Trusteeship and Civilizing Mission Never Went Away*, New York.

WILLIAMS (2014a), *United Nations Operation in Somalia I (UNOSOM I)*, in J.A. KOOPS *et al* (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, p. 408 ff.

WILLIAMS (2014b), *United Nations Operation in Somalia II (UNOSOM II)*, in J.A. KOOPS *et al* (eds.), *The Oxford Handbook of United Nations Peacekeeping Operations*, p. 429 ff.

WRIGHT (2001), *Kosovo 1999: From Multilateral Humanitarian Response to Bilateral, and Back Again – A UNHCR Perspective*, in *Refugee Survey Quarterly*, 20(2), p. 124 ff.

YAMCHUK (2013), *The "Brahimi Report" in the Context of Reforming the Peacekeeping Policy of UN*, IN *Studia Humanitatis*, available online.

YANNIS (2003), *Kosovo: The Political Economy of Conflict and Peacebuilding*, in K. BALLENTINE, J. SHERMAN (eds.), *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, Boulder, p. 167 ff.

YANNIS (2004), *The UN as Government in Kosovo*, in *Global Governance*, 10(1), p. 67 ff.

YDIT (1961), *Internationalised territories from the "free city of Cracow" to the "free city of Berlin": a study in the historical development of a modern notion in international law and international relations (1815-1960)*, Leiden.

ZIMMERMANN (1995), *The Last Ambassador: A Memoir of the Collapse of Yugoslavia*, in *Foreign Affairs*, p. 6 ff.

ZUPANČIČ, PEJIČ (2018), *Limits To The European Union's Normative Power In A Post-Conflict Society*. *EULEX And Peacebuilding In Kosovo*, Cham.

Documents

Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishing of Permanent Government Institutions (Bonn Agreement), 5 December 2001, S/2001/1154.

Amnesty International, '*Disappeared' and 'Missing' Persons: The Hidden Victims of the Conflict*," in *Kosovo: A Decade of Unheeded Warnings*. *Amnesty International's Concerns in Kosovo, May 1989-March 1999*, April 1999.

Annual Global Report of the United Nations High Commissioner for Refugees, 1999, *Kosovo Emergency*.

Annual Report of the Secretary-General of the United Nations to the General Assembly, 20 September 1999, SG/SM7136, GA/9596, available online.

Basic Agreement of the Region of Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement), 12 November 1995, A/50/757 S/1999/951.

Conclusions of the Peace Implementation Council at the Bonn Conference, 10 December 1997, *Bosnia and Herzegovina 1998: Self-Sustaining Structures*.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10 December 1984.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), A/RES/34/180, 18 December 1979.

Convention on the Rights of Persons with Disabilities (CRPD), A/RES/61/177, 20 December 2006.

Convention on the Rights of the Child, A/RES/44/25, 20 November 1989.

Convention Relating to the Status of Refugees, UNTS 189/137, 28 July 1951.

Council of Europe Parliamentary Assembly, 21 October 2010, Doc. 12422, *The European Charter for Regional or Minority Languages*.

Council of Europe, 3 November 1950, ETS 5, *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

Decision of the Organisation for and Cooperation in Europe Permanent Council, 1 July 1999, PC.DEC/305.

Draft Resolution of the United Nations Security Council, 26 March 1999, S/1999/328, *Belarus, India, and Russian Federation: draft resolution.*

Economic normalization Serbia [Belgrade] and Kosovo [Pristina], 4 September 2020, Washington.

European Commission for Democracy Through Law (Venice Commission), 11 October 2004, *Opinion on Human Rights Possible Establishment of Review Mechanisms Kosovo*.

European Union Rule of Law Mission in Kosovo, Assembly of EULEX Judges, 23 October 2008, *Guidelines on Monitoring, Mentoring and Advising (MMA) of EULEX judges, Final Document*.

European Union, 10 March 2001, 2001/C 80/01, *Treaty of Nice Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts*.

European Union, 16 March 2016, OJ L 71/3, *Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part*.

First Agreement of Principles Governing the Normalization of Relations (Brussels Agreement*)*, 19 April 2013, Brussels.

International Committee of the Red Cross (ICRC), 12 August 1949, 75 UNTS 287, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (*Fourth Geneva Convention*)*.

International Convention for the Protection of All Persons from Enforced Disappearance (CPED), A/RES/61/177, 20 December 2006.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), A/RES/20/2106, 21 December 1965.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), A/RES/45/158, 18 December 1990.

International Covenant on Civil and Political Rights (ICCPR), A/RES/21/2200A, 16 December 1996.

International Covenant on Economic, Social and Cultural Rights (ICESCR), A/RES/21/2200A, 16 December 1966.

Kumanovo Military Technical Agreement between KFOR and the Governments of the FRY and the Republic of Serbia, 9 June 1999.

League of Nations, *Covenant of the League of Nations*, 28 April 1919

Letter Dated 10 April 1978 from The Representatives of Canada, France, Germany, Federal Republic Of, The United Kingdom Of Great Britain and Norther Ireland And United States of America addressed to the President of the Security Council, S/12636, *Proposal for a Settlement of the Namibia Situation*.

Letter dated 10 December 2007 from the Secretary-General to the President of the Security Council, 10 December 2007, S/2007/723, Enclosure, *Report of the European Union/United States/Russian Federation Troika on Kosovo.*

Letter dated 17 August 2000 from the Chairman of the Panel on United Nations Peace Operations to the Secretary General, A/55/305, S/2000/809, *Report of the Panel on United Nations Peace Operations* (*Brahimi Report*).

Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council, 30 November 2004, S/2004/932, Enclosure, *Report on the Situation in Kosovo (Eide Report I)*.

Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, 26 March 2007, UN Doc. S/2007/168, *Report of the Special Envoy of the Secretary-General on Kosovo's Future Status (Ahtisaari Report)*.

Letter dated 3 April 1999 from the United Nations High Commissioner for Refugees addressed to the Secretary-General of the North Atlantic Treaty Organization, S/1999/391.

Letter dated 4 June 1999 from the Permanent Representative of France to the United nations Addressed to the Secretary-General, 7 June 1999, S/1999/648, Annex I, *Rambouillet Accords, Interim Agreement for Peace and Self-Government in Kosovo*.

Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council, 7 October 2005, S/2005/635, Annex, *A Comprehensive Review of the Situation in Kosovo (Eide Report II)*.

Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (hereafter Kumanovo MTA), 9 June 1999.

Minutes of the meeting of the United Nations Security Council, 24 March 1999, S/PV.9988.

Minutes of the Meeting of the United Nations Security Council, 24 April 2002, S/PV.4518.

Minutes of the meeting of the United Nations Security Council, 6 July 2010, S/PV.6353.

Office for the Coordination of Humanitarian Affairs (OCHA), 17 April 1998, E/CN.4/1998/53/Add.2, *Guiding Principles on Internal Displacement* 1998.

Ombudsperson Institution in Kosovo, 10 July 2002, *Second Annual Report 2001-2002 addressed to Mr. Micheale Steiner, Special Representative of the United Secretary General of the United Nations*.

Organisation Economic Cooperation and Development, May 2004, *Security system reform and governance: a DAC reference document*.

Peace Treaty of Versailles, 28 June 1919.

Press Release of the Council of the European Union, 18 July 2008, Doc. S257/07, *Summary of intervention of Javier SOLANA, EU High Representative for the Common Foreign and Security Policy before the meeting of international organisations active on the ground of Kosovo (EU, NATO, UN, OSCE).*

Press Release of the Council of the European Union, 6 April 2009, S095/09, *Javier SOLANA, EU High Representative for CSFP, welcomes EULEX's full operational capability; EULEX Programme Report.*

Press Release of the European Union Rule of Law Mission in Kosovo, 8 December 2015, *EULEX supports the establishment of the National Centre for Border Management*.

Press Release of the Secretary-General of the United Nations, 10 May 1999, SG/SM/6986, *Secretary-General Shocked and Distressed by Bombing of Civilian Buildings in Yugoslavia, including Chinese Embassy*.

Press Release of the United Nations High Commissioner for Refugees, 2 Aprile 1999, *UNHCR's Ogata Demands an End to Expulsions as Humanitarian Crisis Mounts*.

Press Release of the United Nations Interim Administration Mission in Kosovo, 18 April 2002, UNMIK/ PR718, *SRSG Michael Steiner Addresses University of Pristina on Privatization*.

Press Release of the United Nations Security Council, 25 July 2008, SC/9407, *Security Council discusses Secretary-General's Decision to Recon-*

figure Kosovo Mission in View of Changes Following Unilateral Declaration of Independence.

Proposal of the United Nations Special Committee on Palestine, 31 August 1947, General Assembly Official Records 2nd Session, Supp. No. 11, Chapter VI, Part III, *City of Jerusalem*.

Protocol Relating to the Status of Refugees, 31 January 1967, UNTS 606.

Report of Human Rights Watch, February 2000, 12 (1) (D), *Civilian Deaths in the NATO Air Campaign*.

Report of the Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights, 7 January 2011, Doc. 12462, *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*.

Report of the Executive Committee of the United Nations High Commissioner for Refugees, 9 February 2000, *The Kosovo Refugee Crisis: An Independent Evaluation of UNHCR's Emergency Preparedness and Response*.

Report of the High-Level Independent Panel on United Nations Peace Operations (*Brahimi Report*), 21 August 2000, UN General Assembly, Security Council. A/55/305-S/2000/809, New York.

Report of the Independent International Commission on Kosovo, 2001, *The Kosovo Report: Conflict, International Response, Lessons Learned*.

Report of the International Law Commission, Sixty-third Session 2011, A/66/10, *Draft Articles on the Responsibility of International Organisations*

Report of the International Organisation for Migration, 2002 *Thirty months in Kosovo*.

Report of the United Nations Trusteeship Council, 4 April 1950, *Statute for the City of Jerusalem*.

Report of the United States Agency for International Development, September 2004, *Commercial Legal and Institutional Reform Assessment: Diagnostic Assessment Report for Kosovo*.

Resolution of the Council of Europe Parliamentary Assembly, 25 January 2005, Resolution 1417 (2005).

Speech of the Special Representative of the Secretary-General to Royal Institute of International Affairs, 8 December 2004, UNMIK/PR/1280.

Statement by the North Atlantic Council on Kosovo, 30 January 1999, Press Release (99) 12.

Statement of NATO Secretary-General, 24 March 1999, PR (1999)041, *Following Commencement of Air Operations.*

Undertaking of Demilitarisation and Transformation by the UCK, 20 June 1999.

United Nations Children's Fund, February 2008, *Getting to Lisbon: Assessing Vocational Training Needs and Job Creation Opportunities for Rural Women*.

United Nations General Assembly, 21 March 2005, A/59/2005, *In larger freedom: towards development, security and human rights for all: report of the Secretary-General.*

United Nations High Commissioner for Refugees (1993), *The State of the World's Refugees 1993*. *The Challenge of Protection,* London.

United Nations High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009.

United Nations Interim Administration Mission in Kosovo, 10 December 2003, *Standards for Kosovo*, Prishtinë/Priština.

United Nations, *Charter of the United Nations*, 1 UNTS XVI, 24 October 1945.

United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS 1155/33.

Resolutions of the United Nations Security Council

Resolution of the United Nations Security Council, 14 July 1960, S/RES/143, *Calling upon Belgium to withdraw its troops from the Congo (capital Leopoldville)*.

Resolution of the United Nations Security Council, 21 February 1961, S/RES/161, *On the Death of Patrice Lumumba and reorganisation of Congolese armed forces*.

Resolution of the United Nations Security Council, 24 November 1961, S/RES/169, *The Congo Question*

Resolution of the United Nations Security Council, 29 September 1978, S/RES/435, *Question of Namibia*.

Resolution of the United Nations Security Council, 21 February 1992, S/RES/743, *Socialist Federal Rep. of Yugoslavia (21 Feb)*.

Resolution of the United Nations Security Council, 28 February 1992, S/RES/745, *Cambodia (28 Feb).*

Resolution of the United Nations Security Council, 24 April 1992, S/RES/751, *on establishment of a UN Operation in Somalia*.

Resolution of the United Nations Security Council, 3 December 1992, S/RES/794, *on measures to establish a secure environment for humanitarian relief operations in Somalia*.

Resolution of the United Nations Security Council, 25 May 1993. S/RES/827, *on establishment of the International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*.

Resolution of the United Nations Security Council, 26 March, 1993, S/RES/814, *on the expansion of the size and mandate of the UN Operation in Somalia II.*

Resolution of the United Nations Security Council, 8 November 1994, S/RES/1995, *on establishment of an International Tribunal and adoption of the Statute of the Tribunal*.

Resolution of the United Nations Security Council, 21 December 1995, S/RES/1035, *Establishment of a UN civilian police force to be known as the International Police Task Force (IPTF) and a UN civilian office for the implementation of the Peace Agreement for Bosnia and Herzegovina.*

Resolution of the United Nations Security Council, 15 January 1996, S/RES/1037, *The Situation in Croatia*.

Resolution of the United Nations Security Council, 19 December 1997, S/RES/1145, *on the establishment of a support group of civilian police monitors in the Danube region*

Resolution of the United Nations Security Council, 31 March 1998, S/RES/1160, *The situation relating to Kosovo*.

Resolution of the United Nations Security Council, 23 October 1998, S/RES/1203, *The Situation relating to Kosovo*.

Resolution of the United Nations Security Council, 23 September 1998, S/RES/1199, *The situation relating to Kosovo*.

Resolution of the United Nations Security Council, 10 June 1999, S/RES/1244, *The situation relating to Kosovo*.

Resolution of the United Nations Security Council, 11 June 1999, S/RES/1246, *The Situation in Timor.*

Resolution of the United Nations Security Council, 15 September 1999, S/RES/1264, *The Situation in East Timor*.

Resolution of the United Nations Security Council, 25 October 1999, S/RES/1272, *on establishment of the UN Transitional Administration in East Timor*.

Resolution of the United Nations Security Council, 14 August 2000, S/RES/1315, *on establishment of a Special Court for Sierra Leone*.

Resolution of the United Nations Security Council, 20 December 2001, S/RES/1386, *on authorizing the establishment of an International Security Assistance Force in Afghanistan*.

Resolution of the United Nations Security Council, 28 March 2002, S/RES/1401, *on establishment of UN Assistance Mission in Afghanistan (UNAMA).*

Resolution of the United Nations Security Council, 17 May 2002, S/RES/1410, *on establishment of the UN Mission of Support in East Timor (UNMISET).*

Resolution of the United Nations Security Council, 28 April 2005, S/RES/1599, *on establishment of the UN Office in Timor-Leste (UNOTIL) as a one-year follow-on special political mission in Timor-Leste*.

Resolution of the United Nations Security Council, 25 August 2006, S/RES/1704, *on establishment of the UN Integrated Mission in Timor-Leste (UNMIT).*

Resolution of the United Nations Security Council, 17 March 2011, S/RES/1973, *Libya*.

Resolution of the United Nations Security Council, 15 March 2024, S/RES/ 2724.

Resolutions of the United Nations General Assembly

Resolution of the United Nations General Assembly, 10 December 1948, A/RES/217(III), *Universal Declaration of Human Rights*.

Resolution of the United Nations General Assembly, 14 December 1950, A/RES/428(V), *Statute of the Office of the United Nations High Commissioner for Refugees*.

Resolution of the United Nations General Assembly, 24 October 2005, A/RES/60/1, *2005 World Summit Outcome*.

Resolution of the United Nations General Assembly, 27 October 1966, A/RES/2145(XXI), *Question of South West Africa*.

Resolution of the United Nations General Assembly, 29 November 1947, A/RES/181(II), *Future government of Palestine*.

Reports of the United Nations Secretary-General

Report of the United Nations Secretary-General, 31 January 1992, DPI/1247, *An agenda for peace: preventive diplomacy, peace-making and peacekeeping*.

Report of the United Nations Secretary-General, 23 August 2004, S/2004/616, *The rule of law and transitional justice in conflict and post-conflict societies*.

Report of the United Nations Secretary-General on Cambodia, 19 February 1992, S/23613.

Report of the United Nations Secretary-General on Cambodia, 26 February 1992, S/23613/Add.1.

Report of the United Nations Secretary-General pursuant to paragraph 10 of the Security Council Resolution 1244 (1999), 12 June 1999, S/1999/672.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 July 1999, S/1999/779.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 16 September 1999, S/1999/987.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 23 December 1999, S/1999/1250.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 3 March 2000, S/2000/177.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 6 June 2000, S/2000/538.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 December 2000, S/2000/1196.

Report of the United Nations Secretary-General on United Nations Interim Administration Mission in Kosovo, 13 March 2001, S/2001/218.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 2 October 2001, S/2001/926.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 January 2002, S/2002/62.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 22 April 2002, S/2002/436.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 29 January 2003, S/2003/113.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 30 April 2004, S/2004/348.

Report of the United Nations Secretary-General on United Nations Interim Administration Mission in Kosovo, 25 January 2006, S/2006/45.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 17 March 2009, S/2009/149.

Report of the United Nations Secretary-General on the United Nations Interim Administration Mission in Kosovo, 17 June 2009, S/2009/300.

Report of the United Nations Secretary-General, 18 March 2002, A/56/875-S/2022/278, *The Situation in Afghanistan and its Implications for Internal Peace and Security*.

Kosovo/UNMIK Legislation

Administrative Direction of the United Nations Interim Administration Mission in Kosovo, 4 October 1999, UNMIK/DIR/1999/2, *implementing UNMIK Regulation 1999/4 of 2 September 1999 on the currency permitted to be used in Kosovo*.

Assembly of Kosova, 17 February 2008, D-001, *Kosova Declaration of Independence*.

Law of the Assembly of the Republic of Kosovo, 13 March 2008, No. 03/L-053, *on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.*

Law of the Assembly of the Republic of Kosovo, 2 August 2005, No.05/L-053, *On Specialist Chambers and Specialist Prosecutor's Office.*

Law of the Assembly of the Republic of Kosovo, 10 November 2008, No. 03/L-109, *Customs and Excise Code of Kosovo*.

Law of the Assembly of the Republic of Kosovo, 3 August 2015, No.05-D-139, *Amendment of the Constitution of the Republic of Kosovo*.

Regulation of the United Nation Interim Administration Mission in Kosovo, 25 July 1999, UNMIK/REG/1999/1, *On the Authority of the Interim Administration in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 31 August 1999, UNMIK/REG/1999/3, *on the establishment of the customs and other related services in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 2 September 1999, UNMIK/REG/1999/4, *on the currency permitted to be used in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 4 September 1999, UNMIK/REG/1999/5, *on the Establishment of an Ad Hoc Court of Final Appeal and An Ad Hoc Office of the Public Prosecutor*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 7 September 1999, UNMIK/REG/1999/6, *on Recommendation for the Structure and Registration of the Judiciary and Prosecution Service*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 7 September 1999, UNMIK/REG/1999/7, *on Appointment and Removal from Office of Judges and Prosecutors*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 20 September 1999, UNMIK/REG/1999/8, *on the Establishment of the Kosovo Protection Corps*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 13 October 1999, UNMIK/REG/1999/11, *on exercising control over payments facilities and services*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 15 November 1999, UNMIK/REG/1999/20, *on the banking and payments authority of Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 15 November 1999, UNMIK/REG/1999/23, *on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 12 December 1999, UNMIK/REG/1999/24, *On the law applicable in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 27 October 2000, UNMIK/REG/2000/59, *Amending UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo.*

Regulation of the United Nation Interim Administration Mission in Kosovo, 15 December 2000, UNMIK/REG/2000/64, *on Assignment of the international Judges/Prosecutors and/or Change of Venue*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 14 January 2000, UNMIK/REG/2000/1, *on the Kosovo Joint Interim Administrative Structure*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 15 February 2000, UNMIK/REG/2000/6, *on the Appointment and Removal from Office of International Judges and International Prosecutors*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 21 March 2000, UNMIK/REG/2000/15, *on the Establishment of the Administrative Department of Justice.*

Regulation of the United Nations Interim Administration Mission in Kosovo, 18 April 2000, UNMIK/REG/2000/21, *on the Establishment of the Central Election Commission*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 20 May 2000, UNMIK/REG/2000/34, Amending UNMIK Regulation No. 2000/6 *On The Appointment And Removal From Office Of International Judges And International Prosecutors.*

Regulation of the United Nations Interim Administration Mission in Kosovo, 30 June 2000, UNMIK/REG/2000/38, *on the Establishment of the Ombudsperson Institution in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 11 August 2000, UNMIK/REG/2000/45, *on Self-Government of Municipalities in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 31 October 2000, UNMIK/REG/2000/60, *on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 19 December 2000, UNMIK/REG/2000/65, *amending UNMIK Regulation No. 2000/21 on the Establishment of the Central Election Commission*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 12 January 2001, UNMIK/REG/2001/2, *Amending UNMIK Regulation No. 2000/6, as Amended, on the Appointment and Removal from Office of International Judges and International Prosecutors, Section 1.4*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 6 April 2001, UNMIK/REG/2001/8, *on the Establishment of the Kosovo Judicial and Prosecutorial Council*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 15 May 2001, UNMIK/REG/2001/9, *on a Constitutional Framework for Provisional Self-Government in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 13 June 2002, UNMIK/REG/2002/12, *on the Establishment of the Kosovo Trust Agency*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 6 July 2003, UNMIK/REG/2003/25, *Provisional Criminal Code of Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 6 July 2003, UNMIK/REG/2003/26, *Provisional Criminal Procedure Code of Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 30 January 2004, UNMIK/REG/2004/1, *on the Customs Code of Kosovo*

Regulation of the United Nations Interim Administration Mission in Kosovo, 22 April 2005, UNMIK/REG/2005/18, *Amending Regulation No. 2002/12 on the Establishment of the Kosovo Truste Agency*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 16 February 2006, UNMIK/REG/2006/6, *on the Ombudsperson Institution in Kosovo*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 4 March 2006, UNMIK/REG/2006/10, *on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 23 March 2006, UNMIK/REG/2006/12, *on the Establishment of the Human Rights Advisory Panel*.

Regulation of the United Nations Interim Administration Mission in Kosovo, 16 October 2006, UNMIK/REG/2006/50, *on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property*.

Resolution of the Assembly of the Republic of Kosovo, 18 October 2012, Nr. 04-R-08, *On Normalization of Relationship between the Republic of Kosovo and the Republic of Serbia*.

Reports of the Organisation for Security and Co-operation in Europe (OSCE)

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, 17 December 1999, *Report 2 – The Development Of The Kosovo Judicial System (10 June Through 15 December 1999*.

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, January 2002, *Property Rights in Kosovo*.

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, May 2002, *Background Report: Parallel Court Activities in North Mitrovicë/Mitrovica*.

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, May 2002, *Background Report: Parallel Security Structures in North Mitrovicë/Mitrovica*.

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, September 2002, *Kosovo's War Crime Trials: A Review*.

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, October 2003, *Parallel Structures in Kosovo*.

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, 7 July 2004, *Report on the Monitoring of the Assembly of Kosovo.*

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, March 2006, *Kosovo: Review of the criminal justice system 199-2005 – Reforms and residual concerns*

Report of the Organisation for Security and Co-operation in Europe Mission in Kosovo, 4 April 2007, *Parallel Structures in Kosovo 2006-2007*.

Report of the Organisation for Security and Cooperation in Europe Mission in Kosovo, 25 September 2000, *The Impending Property Crisis in Kosovo*.

Primary Sources of the European Union

Conclusions of the Presidency of the European Council at Santa Maria da Feira, 19-20 June 2000.

Conclusions of the Presidency of the European Council at Nice, 7-9 December 2000.

Conclusions of the European Council, 28 June 2013, EUCO 104/2/13 REV 2.

Council of the European Union, Political and Security Committee, 31 May 2002, Doc. 9535/02, *EU Comprehensive Concept for Strengthening of Local Police Mission.*

Decision of the Council of the European Union, 11 June 2010, OJ L145/23 2010/322/CFSP, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.*

Decision of the Council of the European Union, 5 June 2012, OJ L146/46 2012/291/CFSP, *amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.*

Decision of the Council of the European Union, 12 June 2014, OJ L174/42 2014/349/CFSP, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.*

Decision of the Council of the European Union, 29 September 2014, OJ L284/51 2014/685/CFSP, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.*

Joint Action of the Council of the European Union, 8 June 2018, OJ L146/5 (CFSP) 2018/856, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO*).

Decision of the Council of the European Union, 6 June 2023, OJ L146/22 (CFSP) 2023/1095, *amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.*

Joint Action of the Council of the European Union, 24 February 2006, OJ L112/19 2006/304/CFSP, *on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo.*

Joint Action of the Council of the European Union, 13 March 2002, OJ L 070/1 2002/210/CFSP, *on the European Union Police Mission.*

Joint Action of the Council of the European Union, 23 September 2003, OJ L 249/66 2003/681/CFSP, *on the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL 'Proxima')*.

Joint Action of the Council of the European Union, 16 February 2008, OJ L 42/88 2008/123/CFSP, *appointing a European Union Special Representative in Kosovo*.

Joint Action of the Council of the European Union, 16 February 2008, OJ L42 2008/124/CFSP, *on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*.

Reports of the European Union

Report of the European Commission, 9 November 2005, *Kosovo (under UNSCR 1244) 2005 Progress Report*, SEC (2005) 1423.

Report of the European Commission, 16 October 2013, SWD(2013) 416 final, *Kosovo* 2013 Progress Report.*

Report of the European Union Rule of Law Mission in Kosovo, 2009, *Annual Report on the Judicial Activities of EULEX Judges 2009*

Report of the European Union Rule of Law Mission in Kosovo, July 2009, *EULEX Programme Report.*

Report of the European Union Rule of Law Mission in Kosovo, 2010, *EULEX Programme Report 2010*

Report of the European Union Rule of Law Mission in Kosovo, September 2015, *Compact Progress Report 2015.*

Report of the European Union Rule of Law Mission in Kosovo, 20 October 2015, *EULEX Factsheet.*

Report of the European Union Rule of Law Mission in Kosovo, September 2016, *Compact Progress Report assessing Progress between August 2015-June 2016.*

Report of the European Union Rule of Law Mission in Kosovo, November 2022, *EU Rule of Law Mission Justice Monitoring Report. Finding and Recommendations, November 2021 – September 2022.*

Report of the European Union Rule of Law Mission in Kosovo, 2024, *EULEX Factsheets 2024.*

Jurisprudence

International Court of Justice

Advisory Opinion of the International Court of Justice, 11 April 1949, ICJ Reports 1949, Majority Opinion, *Reparation for Injuries Suffered in the Service of the United Nations*.

Advisory Opinion of the International Court of Justice, 20 July 1962, ICJ Report 1962, *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*.

Advisory Opinion of the International Court of Justice, 2010, ICJ Reports 141, *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*.

Advisory Opinion of the International Court of Justice, 21 June 1971, ICJ Reports 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.

Advisory opinion of the International Court of Justice, 22 July 2010, ICJ Rep 2010/403, *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*.

Advisory opinion of the International Court of Justice, 29 April 1999, ICJ Reports, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*.

European Court of Human Rights

Decision of the European Court of Human Rights, 11 June 2013, Application No. 65542/12, *Stitching Mothers of Srebrenica and Others v. The Netherlands*.

Decision of the European Court of Human Rights, Admissibility, 2 May 2007, Application No. 71412/01 and No. 78166/06, *Agim Behrami and Bekir Behrami against France and Ruzhdi Saramati against France, Germany and Norway*.

Judgement of the European Court on Human Rights, 8 December 1983, App. No. 8273/78, A/72, *Axen v. Federal Republic of Germany*.

International Criminal Tribunal for Rwanda

Decision of the International Criminal Tribunal for Rwanda, 18 June 1997, Case. n° ICTR 96- 15-T, *Prosecutor v. Kenyabashi*.

Judgment of the International Criminal Court for the former Yugoslavia (IC-TY), 26 March 2016, Case IT-95-5/18-T, *The Prosecutor v. Radovan Karadzic*.

International Criminal Tribunal for the Former Yugoslavia

Decision of the International Criminal Tribunal for the Former Yugoslavia, Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case no IT-94-1, *Prosecutor v. Dusko Tadic aka "Dule".*

Kosovo Specialist Chambers & Specialist Prosecutor's Office

Kosovo Specialist Chambers & Specialist Prosecutor's Office, current trial, Case No. KSC-BC-2020-06, *Specialist Prosecutor v. Hashim THAÇI et al*.

Ringraziamenti

Il primo ringraziamento non può che essere per il professor Cherubini, relatore della tesi ma soprattutto punto di riferimento importante di questi ultimi mesi. Grazie per i suoi consigli e la sua guida. Un ulteriore ringraziamento relativo a questo lavoro è dovuto alla professoressa Fasone, correlatrice, nonché alle professoresse di Sciences Po Paris, Rana Kharouf e Ilana Bet-El, per avermi aiutato ad approfondire rispettivamente il diritto umanitario internazionale e i principi di risoluzione dei conflitti, applicandoli anche al caso studio del Kosovo. Non tanto per i suoi risultati quanto più nel mio sviluppo personale sino a questo momento e in prospettiva futura, questa tesi rappresenta un primo vero snodo di un processo iniziato tanto tempo fa e sostenuto, in un modo o nell'altro, da varie persone care. Primi e assoluti, grazie mamma, grazie papà e grazie Clizia. Senza di voi, tutto quello che ho potuto fare, letteralmente e metaforicamente, non sarebbe stato possibile. Grazie Anì, Vitto e Mati, compagne di sacrifici e avventure, letterali e figurate, per sostenerci, ritrovarci e ispirarci a vicenda. Grazie Ve per essere sempre presente come una boccata d'aria fresca in mezzo a questo labirinto, da cui prima o poi capiremo come fare ad uscirne. Grazie Pat che, per quanto tempo o spazio possa esserci di mezzo, riusciamo sempre a contare l'un l'altro. Grazie agli eterni di Sarzana e della "11E" (ho perso davvero il conto ormai). Menzione doverosa a Kaito e Nakamoto, alleati improbabili e implausibili in questa vita. Grazie a Bologna e ai compagni di San Sigi, a Roma e alle sue genti, merci à Paris et sa beauté, والشكر لمصر. Grazie a tutte le persone incontrate, in un modo o nell'altro, con Libera, L'égalité, Limes, Monde Arabe e altre associazioni, che mi hanno aiutato ad aprire gli occhi. Grazie Micheal, Hans, ed Ennio per avere composto le colonne sonore della mia ricerca e del mio lavoro. Grazie infine a te, che stai leggendo ora, sia solo quest'ultima pagina o tutte le duecento e passa prima. Grazie. A voi che siete qui sopra e a chi non c'è ancora, io dico "non scappate!", perché non possiamo fermarci adesso. È un processo. *It's a process*. E perché alla fine è davvero tutto una questione di punti e linee.