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The Possibilities of Increasing the Efficiency of International Territorial Administration

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The legitimacy of international territorial administration as a conflict resolution mechanism that evolved from classical peace-building and state-building continues to represent a controversial issue in international law. Despite its long-term implementation practice, the concept of international territorial administration, its legal bases, the scope of direct and indirect restrictions on the administration, as well as the priorities of governance with the effective outcome are not clearly set up. As the uncertainty of these questions directly influences the efficiency of conflict resolution processes, the article addresses them through the research of the concept's legal component, as well as the study of recent cases of international administration, particularly the case of Kosovo.

Keywords
International territorial administration, self-determination conflicts, UN Security Council, Kosovo.

In almost half of self-determination conflicts the countries tend to return to armed clashes within five years of peace talks[1]. This indicates that in some cases the peace reached by the parties involved in a conflict can only be temporary and a more active international engagement in post-conflict settings is needed to prevent new clashes. This engagement is in recen times achieved through the establishment of International Territorial Administration (ITA) in conflict territories.

Following the end of the Cold War, the United Nations hurried to place the idea of ITA among conflict resolution mechanisms. Although the bases of this idea are traced in the era of the League of Nations, the coming era had a decisive impact on the clarification of both its legal and political components. ITA is a multidimensional idea that has undergone various transformations in its formation phases, particularly a widening

[1] **Biersteker T. J.,** Prospects for the UN Peacebuilding Commission, Disarmament Forum, #2, 2007, p. 37.

of the scope of functions and powers vested in the international territorial administrator. As a result of several drastic changes, particularly in the second half of the 20th century, various and even contradictory hypotheses and definitions are used to describe this phenomenon, to draw parallels between ideas of similar nature and even to show that the difference is merely nominal. Therefore, to avoid misunderstandings it becomes necessary to determine the implementation scope for each of them. While in the past this was practically impossible considering the ad hoc nature of ITA and the absence of its legal bases in international law, nowadays several alternative bases are available that will be described below.

In 1990-1993 the UN Security Council (UNSC) adopted an unprecedented and broad interpretation of Chapter 7 of the UN Charter with respect to threats to the peace, breaches of the peace and acts of aggression[2]. The implementation of the territorial administration received a significant boost after the former UN Secretary-General Boutros-Ghali presented to the General Assembly a report entitled "An Agenda for Peace" (June 1992). The report stressed the necessity of expanding the functions and powers of the UN in addressing armed conflicts[3]. Peacebuilding activities and its various forms have been regarded as conflict resolution tools. The Agenda highlighted that the absence of war or armed conflicts is not a guarantee of international peace and security. Hence, there is a clear need to concentrate on those particular issues that can easily cause the breach of international peace and security. Following the report of the Secretary-General the UNSC started to perceive "threats to international peace and security" in a much broader framework. As a result, the issues essentially within the domestic jurisdiction of states gradually gained an international importance.

A large group of ITA researchers consider its first legal document the Treaty of Versailles, which provided the League of Nations with a unique opportunity of assuming the administration of several territories

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2 **Doyle M. W., Sambanis N.,** Making War and Building Peace: United Nations Peace Operations, UK, Princetown University Press, 2006.

3 Report of the Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, (17 June, 1992), available at http://www.unrol.org/files/a_47_277.pdf.

(Saar region, Leticia etc)[4]. However, taking into account the fundamental alterations the concept (particularly its legal component) has undergone after the end of the Cold War, the article is primarily focused on the cases outside colonial experiences and launched after the Cold War.

The Necessity to Clarify the Idea of International Territorial Administration

There are various and even contradictory observations and definitions of the idea of ITA. R. Caplan describes international administration as a transitional mission that aims to facilitate the establishment of a state or at least to promote the achievement of substantial autonomy[5]. He identifies five main functions of ITA:

- establishment and maintenance of public order and internal security,
- repatriation and reintegration of refugees and internally displaced persons,
- performance of basic civil administrative functions,
- development of local political institutions, including preparations for elections and building of civil society,
- economic reconstruction.[6]

S. Chesterman qualifies ITA as a "transitional authority" listing among its functions the assistance in holding elections, the guarantee of human rights and the rule of law, as well as the maintenance of sustainable peace and stability[7]. A much broader definition offered by Wilde defines ITA as a strategic mechanism through which international

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4 **Stahn C.,** The law and Practice of International Territorial Administration: Versailles to Iraq and Beyond, US, Cambridge University Press, 2008.

5 **Caplan R.,** A New Trusteeship? The International Administration of War-Torn Territories, Oxford University Press for the International Institute for Strategic Studies, 2002.

6 **Willigen V. N.,** Peacebuilding and International Administration: The Cases of Bosnia and Herzegovina and Kosovo, US, Routledge, 2013, p. 20.

7 **Chesterman S.,** You, the People: The United Nations, Transitional Administration and State-Building, NY, Oxford University Press, 2005.

actors exercise their authority or control over a particular territorial unit on the basis of a local government system[8].

Among definitions of ITA there are those that draw parallels between ITA and the initiatives of similar kind (Trusteeship, Occupation, Protectorate, Neocolonialism etc) aiming to show that the overall idea is the same and that the difference is purely nominal. Drawing such conclusions is rather dangerous and can result in the distortion of the research topic. As the comparative analysis of similar concepts is a separate topic of a much broader research, the article aims to disclose only the relationship between ITA and occupation/neocolonialism, which is viewed by the international community as one of the most problematic.

Fox defines international administration as "humanitarian occupation" stating that these missions aim to establish social stability, end ongoing human rights violations, reform governmental institutions as well as to restore the peaceful coexistence of the groups involved in conflict[9]. Based on the aforenamed, the characteristic "humanitarian" becomes truly justified. To clarify the use of the notion "occupation" Fox puts forward the view that the scope of the authority exercised by international actors is identical with the de facto authority exercised by separate states during territorial occupation. Obviously, only a wide scope of power cannot serve as a rationale behind identification of these concepts. It is noteworthy that Fox's interpretation itself makes clear distinctions between ITA and territorial occupation. The main difference between territorial administration and occupation lies in the administrators of the territory: while ITA is carried out by international organisations (particularly the UN) occupation is exercised by separate states. As a direct consequence, occupation is derived from the national interests of separate states. This phenomenon inevitably finds its appearance in the case of ITA considering the integral part of international relations double standards. Meanwhile, as Zaum correctly notes that "international nature of territorial administration mitigates the

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[8] **Wilde R.,** International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away, NY, Oxford University Press, 2010.

[9] **Fox G.,** Humanitarian Occupation, Cambridge Studies in International and Comparative Law, 2008.

problem of "interests"[10]. Therefore, territorial administration is illustrated as a relatively "unbiased" mechanism.

The possible outcomes of ITA and occupation vary as well. The scenarios for the termination of the first are the following: (1) integration or reintegration of a territory under international administration (Saar region's reintegration into Germany following 1935 referendum, Eastern Slavonia's reintegration into Croatia in 1998, Mostar's reintegration into Bosnia); (2) declaration of an independent and sovereign state (Eastern Timor, 2002; Kosovo, 2008); (3) in case of an independent state the end of administration is mainly preceded by the elections (Cambodia).

As for occupation, it can follow the models of (1) withdrawal of occupiers from the occupied territory; (2) creation of a new state (the Turkish Republic of Northern Cyprus following Turkish occupation, Eastern Pakistan (Bangladesh) following India's occupation); (3) allowance of control restoration by domestic government which is not always accompanied by elections or by full withdrawal of the military (the occupation of Germany and Japan after the Second World War); (4) integration into the territory of the occupying state (following the Second World War, the Soviet Union annexed several occupied territories in Eastern Europe and Japan)[11].

At the end of the 20th century it finally became possible to identify the differences between ITA and occupation in a legal domain as well. This period marked the rise of new and totally different bases that came to replace the old and indirect references to ITA's justification. Nowadays the UN initiates the administration of a territory based on the UNSC resolution which is mainly adopted with reference to Chapter 7 of the UN Charter addressing the prevention of breach or threat to international peace and security and acts of aggression (Bosnia and Herzegovina, Kosovo, East Timor etc.).[12] Moreover, the adoption of the resolution is in some conflict settings preceded by the agreement of the host state which

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[10] **Willigen V.**,…, p. 19.

[11] **Ratner S. R.,** Foreign Occupation and International Territorial Administration: The Challenges of Convergence, *The European Journal of International Law*, **16**, 4, 2005, 695-719.

[12] **De Brabandere E.,** The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept*, Vanderbilt Journal of Transnational Law*, 2010, **43**, 119, 2010, 119-149.

is usually achieved through a ceasefire (Kosovo, Northern Iraq) or peace agreement (the Dayton agreement in Bosnia, the Paris agreement in Cambodia)[13]. It is noteworthy to highlight that unlike consent-based ITA, non-consensual territorial occupation is directly bound by the documents of International Humanitarian Law, particularly the Geneva and Hague Conventions. The latter two cannot restrict the UN missions as it is not a signatory party of these treaties. Hence, the documents of International Humanitarian Law can be applicable to UN missions only if the UN voluntarily assumes the obligation to respect the norms of International Humanitarian Law in assuming administrative powers[14].

There are rather extreme definitions of ITA, the authors of which associate this concept with "neocolonialism" or even "imperialism"[15]. The tendency was brought forward in regard to administration cases in Kosovo and East Timor, where a Special Representative of the UN Secretary-General, who is generally responsible for the administration assumed full executive, legislative and judicial powers. R. Paris addresses the recent cases of UN territorial administration as an updated version of a "civilizing mission" (fr., "mission civilisatrice"[16]) typical to neocolonialism. According to Paris, international organisations adopted a clear scenario of how the states should organise themselves based on the principles of liberal democracy and market economy. While reconstructing failed states, international organisations retain this vision by applying a uniform model of domestic governance putting aside the internal specificities of each state under administration. Paris notes that in this respect international administration resembles the revised version of the civilising mission or the colonial-era belief that the European powers should civilise dependent people or territories. It is noteworthy that the analysis of ITA cases really shows the risk of applying the "one model for all" principle. This becomes evident in observing the relation of the

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13 **Ratner S.R.,...**

14 *The Canadian Yearbook of International Law*, University of British Columbia Press, Vol. XLVI, 2008, p. 132.

15 **Chandler D.,** Bosnia's New Colonial Governor, *Guardian*, 9 July, 2002, **Paris R.**, International Peace-building and the "Mission Civilisatrice", *Review of International Studies*, 2002, **28**, 6, 37-656.

16 A rationale behind justification of occupation or colonialism, which is based on the idea of spreading civilisation (particularly Western) in colonised territories.

cases of Kosovo and East Timor: the same government model was applied in the first case for the country located in Europe and having prior self-government experience, and in the second, characterised by a complete absence of self-government and being outside of Western civilisation. This resulted in East Timor's crisis of 2006, a case when, as opposed to Kosovo, the problem of the country's political status had been previously resolved (in 2002).

The comparisons of recent ITA cases with colonial-era initiatives are also based on the assumption that the UN administrations are usually imposed on local government and, hence, carry a potentially exploitative nature. Two elements of this imposition are generally illustrated: (1) territorial administration is exercised without the consent of local population; (2) the policy behind international administration is not universally legitimate, therefore reflecting the interests of international administrators rather than those of local population[17].

If such claims were partly justified until the end of the Cold War, following the drastic alterations in ITA's legal component[18], particularly the imperative of acquiring the consent of the host state, the determination of legal bases for assuming administrative powers outside the colonial context, as well as the clarification of restriction mechanisms applicable to ITA, such claims are out of date. To avoid the above-mentioned misunderstandings and the risks they can bring forth it becomes crucial to define carefully the concept of ITA. This should be done bearing in mind a series of specificities the idea comprises that existing definitions fail to incorporate. It includes a clear separation of military and civil components of ITA, emphasis on the decisive role in peace talks, changes in the concept's legal component as well as the possibility of an ITA mechanism application outside of self-determination conflicts.

Hence, the article proposes to define ITA as *civil and military legitimate presence of international organisations that aims at*

[17] **Wilde R.,** Colonialism Redux: Territorial Administration by International Organizations, Colonial Echoes and the Legitimacy of the "International", State-Building: Theory and Practice, Routledge Advances in International relations and Global Politics, 2007.

[18] For more details, see the next section.

establishing peaceful and stable environment in a conflict settings, forming and/or developing economic, social and political local institutions, promoting peaceful talks leading to conflict resolution as well as preventing the rebirth of new military clashes by partly or fully assuming the administrative authority of recognised or unrecognised state.

Challenges of ITA's Legal Component

Though the UN Charter does not directly address the issue of territorial administration, its legal basis can be traced in the customary powers of the UN. The bases of such powers lie in the regular repetition of similar operations characterised by universal recognition and legally binding force[19]. The importance of granting such powers to the international organisation was first mentioned in the Advisory Opinion of the International Court of Justice (1949) which stresses that international organisations will not be able to productively perform their functions in a rapidly changing world if the powers they assume are limited by those set in the moment of establishment of the Organisation[20]. Thus, the absence of a direct reference to ITA in a Charter does not necessarily imply the complete rejection of its legal bases.

Nowadays the establishment of ITA can be legitimised by the following three bases:

- UNSC resolution adopted under Chapter 7 of the UN Charter (Kosovo, East Timor),
- Peace agreement reached between conflicting parties (Cambodia),
- ‘‘Dual legitimization’’ peace agreement is strengthened by the UNSC resolution (Bosnia and Herzegovina, Eastern Slavonia).[21]

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[19] **Shaw M.,** International Law, Fifth Edition, Cambridge University Press, pp. 68-88.

[20] Reparation for Injuries Suffered in the Service of the United Nations, Advisory opinion, ICJ Reports 1949, available at 20 http://www.icj-cij.org/docket/files/4/1837.pdf.

[21] **Wolfrum R.,** International Administration in Post-Conflict Situations by the United Nations and Other International Actorrs, Max Planck Yearbook of United Nations Law, vol. 9, 2005, pp. 649-696.

Since 1996 the UN mainly establishes territorial administration under Chapter 7 of the UN Charter which refers to the measures taken with respect to threats to the peace, breaches of the peace and acts of aggression. Moreover, before taking measures prior to Chapter 7 the UNSC should guarantee two preconditions. First, according to the Article 39 of the UN Charter, the UNSC must precisely determine "any threat to international peace or breach of it and acts of aggression". Second, the measures undertaken should serve for the maintenance or restoration of international peace and security[22]. The determination of the first is regularly open to contradictions as the UNSC is not bound by any legal criteria in determining whether the internal situation constitutes a threat to international peace or security[23]. Historically such threats were associated with hostile actions in particular with the cases of aggression by one or more country against the other. Latterly, particularly in 1990s, the interpretation of "threats to international peace and security" was broadened, which enabled the UN to justify from a legal perspective the need to establish administration over several territories. During this period a significant number of situations accompanied by gross human rights violations that were previously referred to as purely domestic found their place in the agenda of international organisations.

E. Brabandere suggests that internal situations can be considered a threat to international peace and security from the viewpoint of the possible consequences of such situations on international peace and security[24]. E.g., in the case of Kosovo the establishment of the UN Interim Administration became urgent not only because the situation was accompanied by massive human rights violations but because the consequences of the conflict could have easily resulted in regional instability[25].

In many conflict settings the impediment to people's right to self-determination is not regarded as a sufficient ground to intervene in post-

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[22] **Baskin M.,** Between Exit and Engagement: On the Division of Authority in Transitional Administrations, *Global Governance*, 2004, 10, **1**, 119-137.

[23] Reparation ...

[24] **De Brabandere E.,** UN Supervision of Post-Conflict Reconstruction and the Domestic Jurisdiction of States, *Ars Aequi*, 2009, **59,** 2, 103-108.

[25] **Knudsen T.,** From UNMIK to Self-Determination?: The Puzzle of Kosovo's Future Status, Department of Political Science, University of Aaarhus, 2003.

conflict zones. However, it should be noted that due to late responses of international organisations, people seeking self-determination are being subjected to mass violence, ethnic cleansing and even to the risk massacre[26]. A typical case was registered in East Timor where the establishment of UN Interim Administration (UNTAET) followed not the systematic massive violations of human rights in the course of 24-year occupation aimed at limiting the people's right to self-determination but rather its more or less predictable outcome: the attempt of genocide carried out by the Indonesian government.

Another challenge in the legal domain stems from the conviction that a broad interpretation the Charter contains regarding measures undertaken with respect to the restoration of international peace and security narrows the scope of restrictions on the UNSC's activities. Such interpretation is mainly derived from Article 25 and Article 103 of the UN Charter. According to Article 25 of the UN Charter "The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter"[27]. According to Article 103 of the UN Charter "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"[28].

Though these two articles undoubtedly widen the scope of the authority exercised by the UNSC, still International Law contains certain norms that draw inviolable boundaries for even the UNSC (and for any organ of any organisation):

- Firstly the purposes and principles behind the UN Charter or "mechanism of self-restriction". According to Article 24 of the UN Charter "In discharging the duties under the responsibility for the maintenance of international peace and security the Security Council shall act in accordance with the Purposes and Principles of

[26] **Torosyan T.,** Conflict Resolution in the Framework of International Law. Case of Nagorno-Karabakh, Yerevan, Tigran Mets Publishing House, 2010, p. 124.

[27] Charter of the United Nations, Article 25, available at http://www.un.org/en/documents/charter/chapter7.shtml.

[28] Charter…, Article 103.

the United Nations"[29]. The purposes and principles enshrined in the UN Charter or ''mechanism of self-restriction'' put significant restrictions on the UN missions ensuring their effective and peaceful outcome.

- Secondly, Jus cogens norms (Article 53 and 64 of the Vienna Convention). Such norms have mandatory nature and no state or international organisation including the UN can deviate from the norm having the status of *jus cogens*[30].

Some researchers add to the list the International Humanitarian Law (IHL)[31]. However as it was mentioned in the previous section underlying the difference between occupation and ITA, the UN is not a party of either Geneva (1949) or Hague conventions (1907). Therefore, the documents of International Humanitarian Law can be distributed to the UNSC actions only when it voluntarily assumes the principles and norms of a particular treaty of International Humanitarian Law in establishing territorial administration.

Besides the restrictions set out in a Charter, international organisations have certain procedural obligations. The UNSC demands the Secretary General to regularly submit reports on the progress of administration. Those international or regional organisations that are directly or indirectly involved in the process of government should similarly submit reports[32].

It should be indicated that the administration environment is much more favourable in cases where the basis of dual legitimisation is obtained; consent of parties is strengthened by the UNSC resolution in regard to Chapter 7 of the UN Charter. For most of ITA cases international organisations acquired the consent of the existing sovereign authority: Cambodia agreed to the United Nations Transitional Authority

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[29] Charter.., Article 24.

[30] **Boon K.,** Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers, *McGill Law Journal*, 2005, 285-326.

[31] **Zwanenburg M.,** Accountability of Peace Support Operations, Leiden and Boston: Martinus Nijhoff Publishers, 2005.

[32] **Lowe R., Roberts A., Welsh J., Zaum D.,** The United Nations Security Council and War: Evolution of Thought and Practice since 1945, US, Oxford University Press.

in Cambodia (UNTAC), Bosnia and Herzegovina to the administration in Mostar, Croatia to the UN Transitional Administration in Eastern Slavonia, and the Federal Republic of Yugoslavia (FRY) to the UN Interim Administration in Kosovo[33].

Certainly, the consent of sovereign authority is rather difficult to obtain especially in divided post-conflict societies. It is no coincidence that the former UN Secretary-General Kofi Annan commented that "the old dictum of 'consent of the parties' will be neither right nor wrong; it will be, quite simply, irrelevant"[34]. Though currently the UNSC resolution adopted under Chapter 7 of the Charter is enough to launch an ITA mission, the UN Secretary-General should have known that the consent of parties is an imperative for the productive outcome of administration over a territorial unit. The case of Kosovo demonstrates that even in cases when the consent is obtained in inappropriate conditions, additional problems may arise in the course of international governance.

Possibilities and Challenges of Establishing Territorial Administration: The Case of Kosovo

The UN Mission in Kosovo was established on the basis of dual legitimisation: the consent of parties was followed by the UNSC resolution. However, most researchers characterise the case of Kosovo as "dubious" or "relatively legitimate" noting that the Kumanovo agreement which was signed between the International Security Force (KFOR) and the Federal Republic of Yugoslavia (June 9, 1999) and which was immediately followed by the UNSC resolution 1244 (1999) was reached through external coercion[35]. The point is that the Agreement was signed immediately after NATO's military intervention which would quite

[33] **Wilde R.,** Colonialism Redux? Territorial Administration by International Organizations, Colonial Echoes and the Legitimacy of the International, State-Building Theory and Practice, 2007, p. 36.

[34] **Evans G., Sahnoun M**., The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty, International Development Research Centre, 2001, p. 181.

[35] **Zaum D.,** The Sovereignty Paradox: The Norms and Politics of International Statebuilding, US., Oxford University Press, 2007.

surely have continued if the FRY refused to sign it. There is surely a clear rationale for this view however it cannot cast doubt on the legitimacy of ITA establishment in Kosovo. The mission was launched on the basis of Chapter 7 of the UN Charter as a necessary means for restoring peace and security in the region. In such cases as previously referred to, the consent of parties is not a must from a legal perspective.

Following the intervention of the world's most powerful security alliance, the UN hurried to establish a territorial administration in Kosovo equally unprecedented in terms of its scope, authority centralisation and financial opportunities. To end the grave humanitarian situation in Kosovo the UNSC adopted resolution 1244 (1999) establishing an Interim Administration in Kosovo (UNMIK) under which "the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo"[36]. Interestingly enough, in resolution 1244 (1999) the Security Council refrained from recognising the right of Kosovo to self-determination and full independence, referring only to a high level of autonomy. The resolution reaffirmed two fundamental principles stated in previous resolutions: the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and a substantial autonomy and meaningful self-administration for Kosovo[37]. In this respect it becomes necessary to highlight that theoretically the concept of "substantial autonomy" is rather vague and contains an extremely broad interpretation of political status. As a result until now there is no universally applicable definition to "substantial autonomy". Hence, such a definition in regard to the future status of Kosovo made the question of status unclear from the very beginning. It is noteworthy that many supporters of Kosovo's administration as a "failed mission" suggest the above- mentioned to be one of the rationales behind the UN failure. In those cases of ITA where the resolution authorising the administration contained a clear definition

[36] UN Security Council Resolution 1244, 10 June, 1999, available at http://www.nato.int/kosovo/docu/u990610a.htm.

[37] Ibid.

of future political status, the duration of international administration was incomparably shorter and the overall outcome transpired to be much more productive: the independence of East Timor was proclaimed after three years of administration, while in case of Eastern Slavonia a single year was needed for reintegration into Croatia.

While previously the administrator of territory was endowed with only partial administrative powers (Bosnia and Herzegovina, Somali, Cambodia) the case of Kosovo registered an unprecedented expansion of powers, leaving aside even the imperative of separation of powers. A Special Representative of the UN Security-General (the latter is appointed by the UN Secretary-General with the UNSC's consent) assumed the full legislative, executive and judicial powers. He could change, repeal or suspend existing laws, as well as appoint or remove any member of the civil service including the judiciary[38]. The question of separation of powers was put forward only in 2001 as a necessary precondition for achieving the goals set out in the UN mandate.

In his report on UNMIK's activities the UN Secretary-General identified five interrelated phases that will lead to the end of international administration and finally to the transfer of authority to the local government. For the purposes of research it is noteworthy to highlight the final three phases. The third phase aimed toward preparation and holding of elections, in other words the formation of Kosovo's transitional government. In this phase maximum efforts were envisaged to be invested in facilitating the process of determining Kosovo's future status, taking into account the Rambouillet Accords. To accomplish the fourth phase UNMIK should have assisted the newly elected government of Kosovo in establishing and developing democratic institutions. Finally in the fifth phase the UNMIK was supposed to control the transfer of the legislative, executive and judicial powers to Kosovo's transitional authority[39].

The most essential initiatives that were undertaken for the realisation of these phases were the formation of the Kosovo Transitional

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[38] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999, available at http://www.unmikonline.org/SGReports/S-1999-779.pdf.

[39] Ibid.

Council (1999), the Joint Interim Administrative Structure (2000) and the introduction of Kosovo's Provisional Constitutional Framework (2001). The first two laid the bases for local participation though they were endowed with minimal advisory capacity and were more artificial in their nature. The formation of these structures was a direct result of the Kosovo peoples' regular complaints and demonstrations demanding an increased participatory role in making political decisions.

Progress in enhancing local participation was registered in June 2001 after UNMIK's adoption of "Kosovo's Provisional Constitutional Framework" which is undoubtedly considered to be the most significant achievement throughout UNMIK's two-year governance[40]. Constitutional Framework for Kosovo established transitional institutions of self-government therefore forming a sui generis (special) political system in which the administrative power was equally vested in UNMIK and in Kosovo's transitional institutions[41]. Meanwhile, it should be noted that even after the adoption of Constitutional framework a Special Representative of the Secretary-General remained the only de facto governing body with practically unlimited legislative, executive and judicial powers. In addition, the worrying aspect of the document for Kosovo's people was the absence of any clear position in regard to Kosovo's future status[42].

The negotiation process on Kosovo's political status began only four years after the establishment of UNMIK. In April 2002, the UN Secretary-General reported to the Security-Council that his Special Representative in Kosovo was authorised to develop a set of standards based on which they will be able to register a substantial progress on Kosovo's issue. In his report Steiner, a Special Representative, noted that the UN Interim Mission in Kosovo gradually started to realise the transfer of authority to the local institutions, which meant that they are closer to the beginning of the determination of Kosovo's future status. However, Steiner also highlighted that the time had not yet ripened, and that

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[40] Constitutional Framework for Provisional Self-Government in Kosovo, UNMIK Regulation No. 2001/9, 15 May 2001, available at http://www.unmikonline.org/regulations/2001/reg19-01.pdf.

[41] **Knoll B.,** Legitimacy and UN-Administration of Territory, *German Law Journal*, **8**, 1, 2007, 39-56.

[42] Ibid.

"Kosovo's people and local institutions must show they are ready for the process. We need to clarify what is expected for them. So I have initiated the standards' process which should be implemented before starting negotiations based on 1244 (1999) resolution". The UNSC approved Steiner's initiative which became known as "Standards before Status"[43].

In March 2004 a massive movement began against UNMIK stemmed from the renewed clashes in Mitrovica, Northern Kosovo. This immediately destroyed the illusion of stable and multi-ethnic Kosovo. The clashes broke out as a result of military incident in a dividing line between Northern Kosovo (Mitrovica) and the rest of the territory. The point is that UNMIK failed to assume the legislative, executive and judicial powers of the whole territory as was stated by 1244 (1999) resolution: about 20 percent of Kosovo's territory, including the Northern part remained under the supervision of Serbs. The wave of the attacks lasted several days during which ethnic Albanians carried out large-scale violence towards Serbs and other minorities causing numerous wounded, killed and displaced persons[44].

Although the international community was taken by surprise by the sudden upsurge in violence it did not break out of nowhere. A deep discontent among Kosovo's population on the lack of progress towards the determination of the territory's final status, continued economic stagnation, and the aspirations of Belgrade to strengthen the political control over some parts of Kosovo made the territory open to new riots[45]. July 2004 survey results showed that the majority of Kosovo's people regardless of their community belonging placed the responsibility for March events on UNMIK[46].

The March 2004 violence demonstrated both the strategic and structural shortcomings inherent during UNMIK's four-year

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[43] Provisional Report of the 4518th Meeting of the UN Security Council, UN Doc. S/PV 4518, 24 April 2002.

[44] **Serwer D., Bajraktari Y.,** Kosovo: Ethnic Nationalism at its Territorial Worst, United States Institute of Peace, Special Report 172, August 2006, pp. 4-5.

[45] Failure to Protect: Anti-Minority Violence in Kosovo, Human Rights Watch, March 2004, Vol. 10, No. 6, July 2004, p. 15.

[46] 73.5 percent of Kosovar Albanians, 58.4 percent of Kosovar Serbs and 58.3 percent of other minority groups holds this opinion (USAID/UNDP/RINVEST 2004, 3).

administration. First, it showed that international administration should be exercised in respect to the whole territory: leaving a part of it under parallel administration increases the risk of new military clashes. Second, the administration is more likely sentenced to failure when keeping the vagueness of a territory's future status. After the bloody clashes the international community reviewed the "Standards before Status" strategy and the determination of the final status gained primary importance. Third, new military clashes made it clear that it is practically impossible to register substantive progress while keeping all the legislative, executive and judicial power in the hand of a territorial administrator. This viewpoint was represented in the reports prepared on the path of regaining independence. A Special Envoy of the Secretary-General Martti Ahtisaari in his Comprehensive plan on the future status of Kosovo proposed a model of "supervised independence" which will provide a stable and sustainable basis for independent Kosovo[47]. The Special Envoy noted that despite the recorded achievements of UNMIK the expectations of Kosovo's people cannot be realised under the maintenance of international administration. Kosovo's uncertain political status under UNMIK's administration has left it unable to access international financial institutions, fully integrate into the regional economy or attract the foreign capital[48]. Meanwhile, the Special Envoy's Comprehensive plan envisioned initial civil and military international presence as the capacities of Kosovo are rather limited in the framework of the protection of minority groups, development of democratic institutions, economic recovery and social reconciliation[49].

Four years after revising the policy of conflict resolution, Kosovo declared its independence (February 17, 2008). However, even after the regained independence, international organisations, particularly the EU mission that came to replace UNMIK, continue to play certain roles in the government of the country. In 2008 the UN Secretary-General agreed that the EU assumed the responsibility for the rule of law in Kosovo

[47] Report of the Special Envoy of the Secretary-General on Kosovo's Future Status, UN Doc. S/2007/168, 26 March, 2007, available at http://www.unosek.org/docref/report-english.pdf.

[48] Report of the Special Envoy…, Article 8.

[49] Ibid.

within the framework of 1244 (1999) resolution and the general supervision of UN. In his report of 2009 on UN Interim Administration in Kosovo the UN Secretary-General noted that the government of the Republic of Kosovo considers that the resolution 1244 has lost its legal force and will try to minimise the role of UNMIK[50].

It is more than obvious that after, the second declaration of independence the local authorities of Kosovo attempted to eliminate the role of international organisations in the country. Taking into account several shortcomings of the mission - the artificial extension of the transfer of power to local authorities, the maintenance of the territory's uncertain political status, as well as dealing with direct results of these shotcaming (the elimination of the consequences of 2004 military clashes) that process will undoubtedly be both complex and durable.

Conclusion

The study of ITA's legal component, the analysis of its implementation course in conflict settings, particularly in the case of Kosovo demonstrates that:

1. Establishment of favourable environment for territorial administration is much easier in cases where the dual legitimisation is obtained: the consent of parties is strengthened by the UNSC resolution adopted under Chapter 7 of the UN Charter,
2. ITA should be exercised in respect to the whole territory: leaving a part of it under parallel administration increases the risk of conflict upsurge,
3. The efficient outcome of self-determination conflicts largely depend on whether the authorising mandate contains a clear definition of a territory's final status,

[50] **Кудряшова И.,** Внешнее управление как фактор легитимации новых государств: Республика Косово, Вестник МГИМО, **6,** 14 июля, 2011, 206-213.

4. After assuming administrative powers, territorial administrators should enhance the local participation through an institutionalised system,
5. The timetable for gradual transfer of authority to local government should initially be set up to exclude ITA's lasting effect and to prevent any decrease of confidence among the local population, as was the case with Kosovo.