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REVIEWING THE INTERNATIONAL ADMINISTRATION OF KOSOVO

Introduction

The changing nature of the conflicts and crises in the aftermath of the Cold War, in addition to the transformation of the international security parameters resulting from the demise of the super power rivalry, sharpened the need for reviewing the traditional concepts upon which is based the UN collective security system. Civil wars and other forms of internal disturbances became the predominant form of contemporary conflict, and, at the same time, the major source of international instability. The Kosovo crisis represents a typical case in this context, as it reveals the challenges and constraints facing the UN in handling the new type of conflicts emerging in the post-Cold War era. This paper does not pertain to analyze all aspects of the UN engagement in the Kosovo crisis, as it can be evaluated from different angles and time periods. Instead, this paper focuses on elaboration of the main characteristics of the current UN administration in Kosovo. It starts by analyzing the current legal status of Kosovo, as a typical example of the international administration of territories. Further, the main characteristics of the UN Mission in Kosovo shall be elaborated. This includes analysis of the legal basis of objectives, mandates, structures and challenges of the UN civil and military presence in Kosovo.

WAR AND NATO INTERVENTION

The origins of the crisis

The war in Kosovo was one of the tragic acts characterizing the disintegration of the Former Yugoslavia. The origins of the recent conflict dates back to 1989 when Yugoslavia under Milosevic illegally removed the autonomous status of Kosovo, granted by the Yugoslav constitution of 1974. Although this constitution did not go far enough to meet the demands of the Kosovar Albanians (90% of the population), who advocated a status of Republic for Kosovo, it granted to Kosovo a high level of autonomy, in many respects similar with the position of the other (six) Yugoslav Republics. The revocation of autonomous status was followed by the application of apartheid-like policy in Kosovo by what was now the Serbian state, whereby Albanians were totally excluded from the public life (administration, courts, education, police, culture etc), and great abuses of human rights took place. The Kosovar Albanians in the beginning reacted by organizing a peaceful, non-violent, resistance. They proclaimed the Republic and later (following a referendum unrecognized by Serbs) the independence of Kosovo. By the mid 1990s the clandestine Albanian organization called Kosovo Liberation Army (KLA) began to challenge the Serbian rule in Kosovo by committing armed attacks against the Serbian targets in Kosovo (mostly police and army). The situation escalated up to the end of 1997 and culminated at the beginning of 1998, when the KLA managed to control almost 40% of the territory of Kosovo. Serbs attempted to quell Albanian insurgency by using their known methods of ethnic cleansing and genocide, practiced before in Bosnia and Croatia. The international community (UN, OSCE, Contact Group, EU etc), was alarmed by the humanitarian catastrophe caused by the Serbian attacks against the Albanian civilians as well as the possibility of spill over.

The UN Security Council (UNSC) adopted several resolutions proclaiming the situation as a threat to international peace and security and, at the same time, calling the Serbian regime to stop their practice of ethnic cleansing

and to seek a political solution to the crisis. After these calls were disregarded, NATO launched a military campaign against Serbia and Montenegro, which lasted for 78 days. NATO intervention put an end to Serbia's policy of ethnic cleansing and genocide committed by the Serbian State against the Kosovar Albanians.

NATO intervention: Legal Dimensions

The NATO intervention raised a lot of controversy in terms of its legality. The failure of the UNSC to give an explicit mandate to this action led many to comment the NATO intervention as an act of aggression. There are many arguments, however, which run contrary to such assertions. First, the situation in Kosovo was qualified by several UNSC resolutions, adopted under Chapter VII, as a threat to international peace and security. The UNSC, as the only supranational body to maintain international peace and security, is empowered under Chapter VII of the UN Charter to take all necessary measures, including force, to response to the situations which threaten international peace and security. The UNSC however, failed to fulfil its mandate as it was blocked by the use (abuse) of the veto power by 2 of its permanent members (Russia and China). The UNSC gave an *ex post facto* approval to the NATO action by refusing by a large majority the resolution proposed by Russia which would have condemned the intervention, and, on the other hand by adopting resolution 1244 which ended the war. On the other hand, the NATO intervention met all the criteria to be qualified as a humanitarian intervention. Finally, the NATO intervention was committed against one regime who not only violated international law in continuity for more than a decade but furthermore disregarded the basic moral values of the civilized world. This intervention sent a message to all repressive regimes that the they can not hide behind the concept of sovereignty (as it is not an abstract concept) while abusing massively human rights.

INTERNATIONAL PRESENCE IN KOSOVO

Current Legal Status of Kosovo

UNSC Resolution 1244, adopted on June 10 1999, creates an unusual situation in terms of legal status of Kosovo. While formally recognizing the sovereign rights of the Former Republic of Yugoslavia (FRY) over Kosovo, the latter is deprived almost totally from the basic sovereignty powers. Paragraph 2 of Annex 2 of the Resolution orders the withdrawal of all former Yugoslav military, police and paramilitary forces from Kosovo, while permitting their return only in limited and exceptional cases, upon the approval of the Commander of the international security forces, created under the resolution 1244. On the other hand, this resolution provides for the establishment of interim international civil and military presence in Kosovo, empowered with a very broad mandate. Basically all classical state functions, including executive and legislative powers and administration of judiciary are vested in the hands of Special Representative of the Secretary General – the SRSG. The SRSG is appointed by the Secretary General of UN, and represents the highest UN civilian authority in Kosovo, with very broad powers. Thus, pending the final settlement of the politico-legal status, Kosovo is *de facto* transformed into a so-called “internationalized territory”, a practice originating from the League of Nations (LoN) and later developed by the United Nations on several occasions (with the Trusteeship Council in particular). The concept of the “internationalized territories”, basically means that certain territories are placed under international administration, whereby the international organizations (LoN or UN) or a particular state or group of states authorized by them exercise full governmental powers and assume full sovereignty rights over a certain territory for an interim period. The exercise of governmental authorities by international organizations is not new. The League of Nations and United Nations acted as administrators of territories in several occasions. Some of the examples include administration of the Saar Territory by the League of Nations from 1920-1935. Although the German sovereignty over the Saar province was formally recognized by the Treaty of Versailles, the Commission created by the LoN was

entitled to enact legislation and all other governmental authorities were vested on the League. German sovereignty over it was basically suspended until 1935 when following a plebiscite the Saar returned to full German control. Other examples include the “Free City of Danzing” (Poland), administered by the League of Nations (1920-1929), the Colombian town and district of Leticia (1933-1934), etc. This practice was continued and multiplied in the UN era. Some of the examples include the “Free territory of Trieste” in 1947 (never realized), Jerusalem also in 1947 (never realized), Libya (1937-1951), and West New Guinea or Iran (1962-1963). More recently UN administration was imposed on Slavonia, Baranja and Western Sremium in Croatia (1996-1998), and in East Timor (1999-2000).

United Nations Administration in Kosovo: Legal Basis, Mandate, Power and Structure.

The UN mission in Kosovo, from the legal standpoint, meets all the criteria to be qualified as an enforcement measure under Chapter VII of the UN Charter. Resolution 1244, which is the legal source of UN administration in Kosovo, in its preamble makes a reference to the responsibilities of the Security Council to maintain international peace and security. It further determines the situation in Kosovo as a “threat to international peace and security”, making therefore clear that the UN involvement in Kosovo should be viewed as falling within Chapter VII of the UN Charter.

The UN administration in Kosovo is one of the largest and yet most ambitious missions of this kind. According to resolution 1244, the international presence in Kosovo is twofold:

A military presence composed of NATO and those states which cooperate with NATO in the framework of the “International Security Force – KFOR”;

A civilian component, known as United Nations Interim Mission in Kosvo, or UNMIK.

Coordination and Cooperation

Although operating under the auspices of UNMIK, the military and civil components of the UN administration in Kosovo remain mutually independent. UNMIK is headed by a Special Representative of the Secretary General – SRSG, who is appointed (for a one year term) by the Secretary General after consultation with the UNSC. He (or she) is the ultimate authority in all civilian matters in Kosovo. The international security presence benefits from substantial North Atlantic Treaty Organization participation, following the terms of the Resolution 1244, must be deployed under the unified command and control of KFOR. Yet, both KFOR and UNMIK must “operate toward the same goals and in a mutually supportive manner”. The legal arrangements in terms cooperation and coordination between the civil and military components of the mission are vague

Thus article 6 of the resolution 1244 “requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner”.³¹⁶ Yet, there is no reference to the relations between the UNSG over the KFOR.

On the other hand, article 7 “authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below”.³¹⁷ Although there is no explicit reference, this article sets out the legal basis for the leading role of NATO in the KFOR, however it contains no provisions as to the coordination and cooperation between the civilian and military missions, nor between NATO

³¹⁶ UNSC Res. 1244, § 6. www.un.org

³¹⁷ UNSC Res. 1244, §7. www.un.org

and UN. Only article 20 makes a vague reference to the coordination between the UNSG and KFOR, when it states that the UNSC “requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presence”.³¹⁸

UNMIK

Mandate: the Security Council in resolution 1244 authorized the Secretary-General to establish in the war-ravaged province of Kosovo an interim civilian administration led by the United Nations under which its people could progressively enjoy substantial autonomy. In particular, resolution 1244 has called upon UNMIK to: perform basic civilian administrative functions; promote the establishment of substantial autonomy and self-government in Kosovo; facilitate a political process to determine Kosovo's future status; coordinate humanitarian and disaster relief of all international agencies; support the reconstruction of key infrastructure; maintain civil law and order; promote human rights; and assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo etc.

Operational Framework: To implement its mandate, UNMIK initially brought together four "pillars" under its leadership. At the end of the emergency stage,

Pillar I: Police and Justice, under the direct leadership of the United Nations (Until June 2000 this pillar was called “humanitarian assistance”, led by the Office of the United Nations High Commissioner for Refugees (UNHCR))

Pillar II: Civil Administration, under the direct leadership of the United Nations

³¹⁸ UNSC Res. 1244, §20. www.un.org

Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE)

Pillar IV: Reconstruction and Economic Development, led by the European Union (EU) The head of UNMIK - Special Representative of the Secretary-General (SRSG) as the most senior international civilian official in Kosovo, presides over the work of the pillars and facilitates the political process designed to determine Kosovo's future status. The heads of four pillars are at the same time the deputies of the SRSG.

Resolution 1244 outlines five phases of the development of UN civilian mission in Kosovo:

1. In the first phase UNMIK is empowered to perform basic civilian administrative functions and to maintain law and order;
2. To create the provisional institutions for democracy and autonomous self-government, through organizing elections, gradually establishing substantial autonomy;
3. To transfer administrative powers to the local institutions;
4. To facilitate the political process which will determine the final status of Kosovo;
5. To oversee the transfer of powers from the provisional institutions to the institutions resulting from the final settlement.

KFOR

In addition to UNMIK, resolution 1244 also establishes an international security presence in Kosovo (KFOR), which, as explained above, coordinates extensively but remains outside of UNMIK itself, and therefore does not operate under the authority of SRSG. KFOR is organized in five Multinational Brigades (MNB), respectively responsible for five sectors, headed by Multinational Brigade Commander. The general commanding KFOR, rotates among the NATO countries on a six-month basis, fulfils the coordinating role with the SRSG, and exercise supreme central authority related to

security matters in Kosovo. Each of the sectors falls within the military authority of five NATO states, namely US, Great Britain, Germany, France and Italy. Accordingly, the commanders of the five Multinational Brigades come from these countries, as well as the substantial part of soldiers and other military infrastructure.

Mandate: According to Article 9 of resolution 1244, responsibilities of the international security presence (KFOR) in Kosovo include:

1. Deterring renewed hostilities, **maintaining and where necessary enforcing** a cease-fire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
2. Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;
3. **Establishing a secure environment** in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;
4. **Ensuring public safety and order** until the international civil presence can take responsibility for this task;
5. Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;
6. Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
7. Conducting border monitoring duties as required;
8. Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations.³¹⁹

³¹⁹ UNSC Res. 1244 § 9. www.un.org

CHALLENGES

Despite the very real progress achieved, several challenges remain. For Kosovo, uncertainty remains about its final politico-legal status (UNSC resolution 1244 is very vague in this regard). UNMIK has trouble extending its reach and exercising power in all territory of Kosovo, and eliminating parallel illegal institutions (especially in the Northern Part of Kosovo). Economic progress remains lacking, as are the application of international human rights standards and democratic principles. Finally, confidence building measures to improve inter-ethnic relations will prove the key to the success of the UNMIK and KFOR missions, and this confidence building extends to maintaining a good image in the eyes of local populations.

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