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EUROPEAN MASTER'S DEGREE IN HUMAN RIGHTS AND DEMOCRATISATION



***The United Nations Transitional Administration Missions and
the Principles of Democratic Governance***

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Human Rights
E.M.A LIBRARY
INV. N. 12-2
COLL. THESES 2004/2005 49

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July 2005

Abstract

The new comprehension of the nature of conflict postulated new methods for dealing with its violent forces. Peacebuilding strategies have become the embodiment of a newly delineated human security. Thousands and thousands of military and civil personnel have been sent in different corners of the globe to pave the way towards 'sustainable peace'. But, *quis custodes custodiet?* (Who will guard the guards?) State is the one that is bound by the provision of the existing international human rights instruments and none of them impose the legal obligations on international organization however noteworthy its impact could be at the human rights of the individuals.

The link between human rights obligations and good governance principles, on the one hand and the UN peacebuilding operations on the other, has become apparent when those complex peacebuilding undertakings began to encompass the exercise of quasi-governmental functions.

This research is about that link – about the lack of the international legal instruments and the UN institutional capabilities to uphold it. The UN Mission in Kosovo did not implement some of the basic principles of human rights protection and good governance - such as separation of powers, respect for human rights, the rule of law, and accountability – in its daily running of the province. Thus the core idea of peacebuilding – the empowerment of the citizens and the transformation of the political culture - has been flawed in that war-shattered society.

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Introduction

*Pessimismo della Ragione, Ottimismo della Volontà.*¹

For the decades the United Nations has been the main forum for the emergence of human rights discourse and its materialization through the standards-setting procedures. Numerous instruments and resolutions have been adopted by the United Nations hence creating an awesome and in some manner quite futuristic legal basis for the international protection of human rights. The end of Cold War suddenly opened a prospect for what once had appeared as the far future to become embodied in a real enforcement motion. The United Nations has become the place where now more and more frequent peace operations have been designed to address gross human rights violations in a tangible manner.

The new comprehension of nature of conflict postulated new methods for dealing with its violent forces. Peacebuilding strategies have become the embodiment of a newly delineated human security. Thousands and thousands of military and civil personnel have been sent in different corners of the globe to pave the way towards sustainable peace. But, *quis custodes custodiet?*² State is the one that is bound by the provision of the existing human rights instruments and none of them impose the legal obligations on international organization however noteworthy its impact could be at the human rights of the individuals.

Despite the erosive effects of the post-Cold War human rights policies on the state sovereignty principle, the outbreak of the highly destructive civil wars in the last decade of XX century yielded again the necessity of the stable and consolidated state institutions. Soon, democratization and institution-building have become the inevitable part of

¹ "Pessimism of reason and optimism of will!", Antonio Gramsci.

² Who will guard the guards?

peacebuilding strategies. Many of those new, complex peacebuilding undertakings started to include the exercise of certain types of quasi-governmental functions as one of the phases of the institution-building activities. Eventually, by late 1999, the UN has begun to exercise complete governmental powers in Serbia's province of Kosovo that was a victim of ethnic cleansing by its parent state, and one post-colonial territory (East Timor) whose move to independence had been interrupted by a quarter-century of Indonesian occupation. The link between human rights obligations and good governance principles, one hand and the UN peacebuilding operations on the other, has become apparent.

This research is about that link and the striking lack of the legal instruments to uphold it. The main argument of it is that, in the cases where an international organization performs governmental tasks thus becoming itself a surrogate state, the same organization has to be bearer of the basic set of the internationally recognized human rights obligations that state would otherwise bear. "All unlimited forms of power are open to abuse, and there is no reason why power which legitimizes itself in the name of human rights does not end up as tyrannous as any other."³

The reasoning employed here is the following one:

- a) Although commitment to human rights of the United Nations and the personnel deployed in peace operations is unquestionable, the mistakes in such giant and complex undertakings are possible – and as the existing experience shows, inevitable.
- b) If transitional administration is exercising governmental powers in a manner that contradicts principles intended to bind future local regimes – such as separation of powers, respect for human rights, the rule of law, etc – that can have grave ramifications on the prospect of good governance in the long run.

This paper is divided in two parts. The first part gives an overview of the theoretical roots of peacebuilding and the practical approaches that it consists of. In the focus of the second part of the research is the actual implementation of the given approaches on the

³ Ignatieff, M., *Whose Universal Values? The Crisis in Human Rights*, in Alston, F., Steiner, J. H., *International Human Rights in Context*, Oxford, Oxford University Press, 2000, p. 657.

example of the United Nations Interim Administration Mission in Kosovo (UNMIK). While the first section is supposed to provide a deeper understanding of the ideas and objectives which construct the logical framework of peacebuilding, the aim of the second section is to expose that logical framework to the reality check through the investigation of the UNMIK performance. The role and application of good governance and human rights principles are the essential theme of both sections but observed at two different analytical levels.

The first chapter of the first part (I) introduces the contemporary theoretical achievements in understanding conflict. Particular attention has been given to the theories which see conflict as a consequence of the denial of basic human needs such as identity, security and distributive justice (Burton) and to the notion of 'protracted social conflict' (Azar), which merges several levels of analysis into one theoretical framework of conflict. The second chapter (II) moves further towards the theories of conflict resolution where the analysis of conflict are built into the methods for the resolution of conflict, while in the last chapter of the first section (III), different UN approaches to conflict are presented. Here, the special focus falls on the theoretical construct of the transitional civil administration. In this way, conflict and the approaches to conflict are studied at both macro and meso level in order to acquire the foundation for the micro level analysis of peacebuilding that is carried out in the second section of research.

The structure and certain aspects of the day-to-day performance of the UN Mission in Kosovo in administering the province are investigated in the part two of this paper (IV). Does the Mission in Kosovo fulfill the basic principles of democratic governance and if not, why should those principles be incorporated into the Mission's institutional set-up and its daily activities?

The lenses through which the investigation is carried out are those constructed through the macro and meso-level analysis accomplished in the first part. The analysis starts with the principles of separation of powers and civilian control over military and subsequently moves towards the state of human rights protection in Kosovo (V). In the last, sixth chapter (VI), several in-built institutional features of the United Nations System will be

pointed out as the principal constraints to the effective realization of the previously observed principles and the principle of accountability in addition to them.

The analysis accomplished in the second part shows that the UN Transitional Administration in Kosovo does not encompass some of the basic principles of the democratic governance and functional human rights protection. However, the intention behind is not to state that the Mission in Kosovo is complete failure or that this type of Missions cannot be a valuable tool for dealing with the root causes of conflict. *Pessimismo della ragione, ottimismo della volontà!* The objective of this work is rather to contribute to the discussion of a necessity of a new international regime of human rights where international organizations such as UN would continue to be its main antagonists but the duty holders as well. The extraordinary documented reports of the Ombudsperson Institution in Kosovo and several documents released by the Council of Europe and Venice Commission, have already paved the way in this direction. Their groundbreaking observations have made the UN Mission in Kosovo to be the useful illustration of the inevitability of change if *sustainable* peace is our true inspiration.

Terms and Definitions

Language reflects how far we have gone in understanding the abstract concepts, which have been developed through the time. It depicts how successfully those abstract concepts have been mirrored in their 'real life application'. If theory is to lead praxis, than clear, prescriptive, but at the same time flexible definitions have to be our starting point and any critical discussion ought to be commenced by revisiting our vocabulary. All of this is validated even more in the field of peace operations in which the terminology is "notoriously slippery"⁴. Thus, it is useful to begin with a short glossary of terms relevant for this work, followed by comments on several of the most often present misunderstandings in the theory and practice of peace operations.

In his Report from 1992, Secretary-General Boutros Boutros-Ghali offered a new classification of peace operations urged by the changes introduced by the post-Cold War era. He made differentiation between:

- *Peacekeeping*⁵ as deployment of lightly armed UN military personnel for non-enforcement tasks such as observation of cease-fire and control of the buffer zones between hostile parties. Their mandates comply with the established principles of traditional peacekeeping.⁶

⁴ Paris, R., *At War's End: Building Peace after Civil Conflict*, Cambridge, Cambridge University Press, 2004, p. 38.

⁵ Widely known as 'blue helmets' because of their distinctive headgear.

⁶ Traditional peace operations are commonly determined through the application of the principles of prohibition of use of force by the peacekeepers, except in self-defense, and prohibition of any kind of political activity in the host state. For more see the *Short History of Peace Operations* (Chapter III. 1).

- *Peace enforcement* as newly designed missions, with the personnel more heavily armed and authorized to use force for purposes other than self-defense, but which resembled traditional peacekeeping operations in many important aspect.
- *Postconflict peacebuilding* as the actions undertaken at the end of civil war in order to “identify and support structures which will tend to strengthen and solidify peace” through deployment of military and civilian personnel from several international agencies.⁷

There are as well several other terms the precise usage of which will have relevance in the further analyses:

- *Preventive diplomacy* as the diversity of the attempts, usually in the form of a diplomatic initiative, to prevent occurrence of the conflict or its spreading to the neighboring countries.
- *Peacemaking* as an initiative to stop an ongoing conflict through the series of actions - from the peaceful ones such as negotiation and mediation to the authorization of an international military force, which should impose a settlement to the conflict.⁸
- *Transitional Civil Administration* as the missions with the mandate primarily linked to the ‘state-building’ activities; carried out through the governing and administration of a given territory for a transitional period, by assuming all or some of the functions that are normally the responsibility of a government. Throughout this work this term will be used interchangeable with the term ‘transitional administration’ and ‘civil administration’.
- *Peace operations and peace missions* are for the purpose of this work used as generic terms for the wide variety of multidimensional missions that UN started to deploy since the end of Cold War.

As can be seen from the presented definitions, the given terms are not mutually exclusive. Basically, most of the UN missions deployed after the 1990s are multidimensional in

⁷ Boutros-Ghali, B., *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping. Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992*, A/47/277-S/24111, 17 June 1992.

⁸ Paris (2004), p. 38.

nature and therefore, they have usually incorporated the elements of different types of peace missions. Peacebuilding, for instance, most often involve peacekeeping or peace enforcement as its military component but peacebuilders could as well become involved in the peacemaking process if the violence reoccurs after the mission has been established. Nonetheless, two basic distinctions have to be made.

First, peacebuilding and peacekeeping are not and cannot be used under any circumstances as synonymous. "Since peacebuilding looks at ensuring a lasting peace, it is expected to involve much more than a cessation of hostilities."⁹ Peacebuilding is before all focused at the non-security objectives such as: the administration of elections, support of the civil society creation/strengthening, training of judiciary and police, financial assistance and economic reforms...etc.

Second, although certain researchers in the field of conflict resolution define peacebuilding in a broader way – as the sum of efforts to avert conflict either before or after the war - this paper will use the more common designation of peacebuilding as primarily postconflict activity.

Lastly, for the purposes of this work, the term 'international' used in combination with the terms 'peacebuilding', 'mission', 'operation' or 'transitional administration' means exclusively that deployment of the personnel has passed the formal authorization of the UN Security Council. The challenges that the peacebuilding activities and transitional administrations run by the conqueror face after the conquest¹⁰, are quite different from those faced by the operations, which are the object of this research.

In the sections solely dedicated to the conflict theory, the following distinctions will be useful:

- *Civil war* as an intrastate conflict where the violence has mainly occurred within the borders of a single state and between the parties who normally reside in that

⁹ Keating, T., Knight, W. A. (eds.), *Building Sustainable Peace*, Edmonton, Tokyo, The University of Alberta Press, United Nations University Press, 2004, p. xliv.

¹⁰ Regardless of the name of those undertakings!

state (as opposite to the term 'interstate war'). In the following chapters, the terms 'civil war' and 'civil conflict' will be used interchangeably.

- *Conflict Resolution Theory* as the set of theories and methods for dealing with conflict developed mainly as a reaction to the Cold War practices.
- *Conflict Management* as the theoretical and practical approach to conflict, dominant during the Cold War period, which main characteristic was the amelioration of conflict at the state level by negotiation and tactical bargaining, coercive third-party intervention and through the balance-of-power mechanism.
- *Good governance* as "a general standard for democratic governance", which relates "to the way in which power holders in States and in other entities deal with people and with resources in their command."¹¹ For the purpose of this article, two elements of the good governance principle will be particularly important – the accountability and the rule of law.

As it is indicated in the above definition, the term 'conflict management' denotes the approach to conflict the main goal of which was to 'manage' rather than to 'resolve' conflict. This approach is historically older than most of the conflict resolution theories presented in the following chapters, and it is firmly linked to the state-centric framework of the Cold War international relations.¹²

The author is aware that some theoreticians use the term 'conflict management' in quite different way. Certain scholars and most of the practitioners use the term 'conflict management' to embrace all the theoretical and practical approaches that are here situated within the term 'conflict resolution theory'. Their main argument is that the term 'conflict management' is more in accordance with the nature of conflict as "a natural, normal and

¹¹ Sano, H-O., *Good Governance, Accountability and Human Rights*, in Alfredsson, G., Sano, H-O. (eds.), *Human Rights and Good Governance: Building Bridges*, The Hague, London, New York, Martinus Nijhoff Publishers, 2002, p. 124. For the different analytic levels of the concept of good governance see Kjær, M., Kinnerup, K., *Good Governance: How Does It Relate to Human Rights?*, in Alfredsson, G., Sano, H-O. (eds.), *Human Rights and Good Governance: Building Bridges*, The Hague, London, New York, Martinus Nijhoff Publishers, 2002.

¹² See more in: Ramsbotham, O., *Reflections on UN Post-Settlement Peacebuilding*, in Ramsbotham, O., Woodhouse, T. (eds.), *Peacekeeping and Conflict Resolution*, London, Portland, Frank Cass, 2000; Richmond, O., *Maintaining Order*, New York, Palgrave, 2002; Woodhouse, T., *Conflict Resolution and Peacekeeping: Critiques and Responses*, in Ramsbotham, O., Woodhouse, T. (eds.), *Peacekeeping and Conflict Resolution*, London, Portland, Frank Cass, 2000.

inevitable part of life”, which will always exist in the human society, and hence cannot be *resolved* but only *managed*.¹³ Despite the obvious value of this argumentation, the author has decided to use the term ‘conflict resolution’. This term reflects the essence of every humanistic orientated undertaking – streaming towards unimaginable to widen the scope of imaginable.

Chapter I - Conflict

Conflict is universal social phenomenon. It affects all cultures, at all stages of political, social and economic development. As an inseparable part of social interactions, it appears at all societal levels, from the interpersonal to the international.¹⁴ Mutually incompatible goals among parties combined with the lack of coordinating or mediating mechanisms give birth to conflict.¹⁵

Conflict can be constructive as well as destructive. Certain types of conflict are endemic to all social relationships and an integral part of the contemporary competitive systems. Their existence can be a drive forward that brings new and enhanced modes of societal interactions.¹⁶ The other types of conflicts are those destructive in nature, which cause material and moral devastation of one society. They stem from the denial of basic human needs, which is deeply rooted in the structural set up of the affected societies and also in the contemporary human society in general. The resolution of destructive conflict, which is the central concern of this work, requires reconstruction of the entire environment in which they occur.

¹³ Parlevliet, M., *Bridging the Divide - Exploring the Relationship Between Human Rights and Conflict Management*, in «Track Two», vol. 11, no. 1, 2002, at http://ccrweb.ccr.uct.ac.za/archive/two/11_1/bridging.html

¹⁴ Deutsch, M., *Subjective Features of Conflict Resolution: Psychological, Social and Cultural Influence*, in Väyrynen, R. (ed.), *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation*, London, Newbury Park, New Delhi, Sage Publications, 1991, p. 26.

¹⁵ Edward E. Azar, *The Management of Protracted Social Conflict*, Hampshire, Dartmouth, 1990, p. 5.

¹⁶ In this sense, John Burton draws useful distinction between *disputes* over material resources and *conflicts* over human needs. Burton, J., *Conflict Resolution and Prevention*, Bangstoke, Macmillan, 1990. p. 2, 241; Burton, J., *Conflict Resolution as a Political Philosophy*, in van der Merwe, H., Sandole, J. D. D. (eds.), *Conflict Resolution Theory and Practice: Integration and Application*, Manchester, New York, Manchester University Press, 1993, p. 55.

Conflicts can be latent or manifest, explicit conflicts. Latent conflicts are those with a potential to produce manifest conflict behavior in the foreseeable future. *Manifest conflict process* (MCP) is “a situation in which at least two actors, or their representatives, try to pursue their perceptions of mutually incompatible goals by undermining, directly or indirectly, the goal-seeking capability of one another.”¹⁷ If parties to conflict employ aggressive means for dealing with it, manifest conflict processes transforms into *aggressive manifest conflict processes* (AMCP), which is:

“situation in which at least two actors, or their representatives, try to pursue their perceptions of mutually incompatible goals by physically damaging or destroying the property and high-value symbols of one another; and/or psychologically or physically injuring, destroying, or otherwise forcibly eliminating one another,”¹⁸

Conflict is a dynamic phenomenon – it goes through the cycle of genesis, maturity, reduction and termination.¹⁹ The issues, actors and interests change over time as a result of the social, political and economic dynamics of the societies. Accordingly, a dynamic analysis of conflicts is the essential for their comprehension. The study of conflict and its resolution, which is placed in a static framework, necessarily belies social reality.

There are several frameworks within which the analysis of conflict can be situated: 1) the individual level; 2) the societal/national level; 3) the trans-societal/international level; 4) the global level.²⁰

¹⁷ Sandole, J. D. D., *Paradigms, Theories, and Metaphors in Conflict and Conflict Resolution: Coherence or Confusion?*, in van der Merwe, H., Sandole, J. D. D. (eds.), *Conflict Resolution Theory and Practice: Integration and Application*, Manchester, New York, Manchester University Press, 1993, p. 6.

¹⁸ Sandole (1993), p. 7.

¹⁹ Azar (1990), p. 6. Some earlier theories of conflict equate the terminal phase of conflict with peace. On the contrary, new theories of conflict have developed more itemized classification of the stages of conflict, particularly regarding its final stage. See for instance Ryan, S., *United Nations Peacekeeping: A Matter of Principles?*, in Ramsbotham, O., Woodhouse, T. (eds.), *Peacekeeping and Conflict Resolution*, London, Portland, Frank Cass, 2000, p. 34, or Bar-Siman-Tov, Y., *From Conflict Resolution to Reconciliation*, Oxford, Oxford University Press, 2004, p. 61.

²⁰ As being the most abstract one, this level seeks additional explanation. In the word of the author of this classification, Denis J. D. Sandole, the global level is introduced “to capture those events, processes and systems (natural or social) that are fully ‘global’ either as effects of the first three images and/or as source of influence on them – e.g., destruction of the world’s rain forest [...], the aids pandemic, and other global problems in need of the solution”. Sandole (1993), p. 7.

I. 1. Individual Level – Conflictual Behavior

Much of what applies at the individual level is valid across the spectrum of different levels of the analysis. An individual is the 'unit of explanation', the basis of any attempt to understand a social change and the consequences of a resistance to a social change.²¹ Thus, the individual level is the starting and the ending point of any study of conflict resolution, which tends to go beyond pure description.

There are varieties of explanation of conflict that are drawn from the framework of the individual existence. Two types of those explanations are particularly illustrating as being conflicting regarding the way in which they perceive human nature and exclude/include the other levels of the analysis.

I. 2. 1. Destructive Tendencies of Human Nature

Biological and physiological theories of conflict share the assumption that violent human behavior is a function of a biologically determined human nature. "The recurrence of war and conflict becomes a necessary periodic release by which groups preserve themselves through diverting their self-destructive tendencies to outsiders"²². Thus, in the opinion of those authors, the role of conflict theory is to measure or systematically observe violence as a 'symptom' of human nature.

However, for many other scholars, the explanations that try to demonstrate that human nature is solely a source of conflictual behavior were not enough convincing. Hence, they endeavored to examine whether there is something in the setting of the individual existence, which can cause violent behavior.

²¹ Sandole (1993), p. 14.

²² Dougherty and Pfaltzgraff (1990), p. 277, in: Sandole (1993), p. 8.

I. 2. 2. Dissonance, Structurally Induced Violence and Frustration

The most often used categories in the theories of violence or aggressive manifest conflict behavior have been the categories of 'dissonance' and 'frustration'. *Dissonance*, which is experienced as anxiety, is defined as a reaction to felt discrepancies between preferred and actual state of affairs. As 'dissonance' is a consequence of disequilibrium between preferred and actual, it can be reduced only if the conditions for new equilibrium are created. This process of adjustment or/and transformation towards new equilibrium could produce the immense changes in beliefs, values and behavior.²³ Dissonance reduction behavior can be manifested violently, either externally or internally (within oneself).²⁴

If given dissonance or discrepancy is part of the structural set up of one society, than we arrive at John Galtung's notion of structural violence. *Structural violence* is based at the system of differential, unequal access to the economic, legal, educational, political, ...etc. resources for those who are, by reason of involuntary membership in certain ethnic, religious and/or other groups, at the bottom of some hierarchically structured relational system.²⁵ Structural violence is source of frustration and *frustration* is "both a necessary and a sufficient condition of aggression."²⁶

Going even further at the individual level, Galtung introduced the term '*rank disequilibrium*' which refers to the dissonant locations of actors along various indicators of socioeconomic measurement scale. One individual can, for instance, be placed high on the certain indicators (e.g., education) and very low in regard to some other indicators (e.g., employment). Galtung states that the individual who is most likely to respond violently on the perceived imbalance is not the one placed low across all indicators "but the one who is mixed between 'topdog' and 'underdog' status."²⁷

²³ Useful illustration of this can be found in the psychological observations on conflict where it is observed that "[w]hen a party commits atrocities, social psychological processes are activated to justify them, and further violence becomes routine". In: Bartos, J. O., Wehr, P., *Using Conflict Theory*, Cambridge, Cambridge University Press, 2002, p. 139.

²⁴ Sandole (1993), p. 11.

²⁵ Galtung, J., *Violence, Peace and Peace Research*, in «Journal of Peace Research», no. 3, London, Sage, 1969.

²⁶ Sandole (1993), p. 13.

²⁷ Galtung (1964), in: Sandole (1993), p. 11.

Link between the structural violence, frustration and aggression has been further substantiated through the concept of *basic human needs*, introduced by John Burton. Basic needs such as identity, security and recognition are “an integral part of human being” and they “will be pursued by all means available”.²⁸ Denial of basic human needs leads to the occurrence of conflict deeply rooted in the given structural injustice, named by Edward A. Azar as the ‘protracted social conflict’.

The notion of ‘protracted social conflict’ has made a major shift in the way the analytic frameworks for the conflict-analysis were constructed. The outbreak of the identity-related conflicts - civil wars in core of which was the issue of religious, cultural or ethnic identity demanded a new theoretical framework. It has become apparent that the individual level cannot be the only analytic framework for the understanding of conflict. The frequent occurrence and seemingly intractable nature of those new types of civil conflicts, urged for a new approach to conflict that would integrate all levels of the analysis – individual, societal, international and global.

I. 2. Protracted Social Conflict

Term ‘protracted social conflict’ mirrors this newly acquired recognition of the necessity of merging all four theoretical frameworks into one, if the contemporary conflict is to be seen in its complexity.

Protracted social conflict is conflict, which occurs “when communities are deprived of satisfaction of their basic needs on the basis of their communal identity”.²⁹ Starting with the concept of basic human needs and human response on their denial, this concept includes into the theoretical examination of conflict variables such as: the structure of society, ‘the pattern of international linkages’ and the global features of the contemporary society. The deprivation is understood as a result of a complex causal chain induced by the interplay of four clusters of variables.

²⁸ Burton (1990), p. 36.

²⁹ Azar (1990), p.12.

1. 2. 1. Theoretical Frameworks

1) Human Needs

“It could be that the normal human being is not typically aggressive or conflictual even when human needs or desires may have been frustrated, and that those who engage in conflict are, indeed, aggressive and require containment.”³⁰ However, argues Burton, “human beings [...] appear to have certain inherent drives that are not within their ability to control, and which certainly cannot be suppressed by external socialization, threats and coercion.”³¹ Deep-rooted conflicts are situations where the demand is made on individuals to make certain adjustments in their behavior that are intolerable and probably beyond human capabilities.³²

2) Societal Level

The individuals tend to fulfill their human needs through the formation of identity groups such as community. One of the most plausible factors related to the potentials for the occurrence of a protracted social conflict is the level of diversity of a given society – its ‘communal content’. Protracted social conflicts are most likely to occur in the societies with the multi-communal composition.³³ The grievances, which are based on the deprivation of basic needs, are usually expressed collectively.

3) Governance and the State's Role

A failure of the authority to recognize and remedy these grievances creates a space for the protracted social conflict. In this regard, the model of governance and the effectiveness of the state - largely determined by the nature of a decision-making process - are decisive. Policy capacity in the most conflict-laden societies is either rigid or fragile, and often under the pressure of the dominant identity groups.

³⁰ Burton (1990), p. 29.

³¹ Burton (1990), p. 32.

³² Burton (1990), p.15.

³³ The term ‘community’ is used here as a generic term for those groups whose members share ethnic, religious, linguistic or other unifying ‘identity’ characteristics.

4) International and global patterns of interdependence

The effectiveness of the domestic social and political institutions of a given state is not factor solely determined by its power configuration and the type of regime. The domestic institutions are greatly influenced by the way they are linked to the international system. The basic feature of the contemporary intersection of domestic and international societal levels is *economic dependency*. The existing model of the North-South economic dependency distorts the pattern of economic development and encumbers the satisfaction of basic needs.

Furthermore, the remaining elements of client relationship with the strong states still have a serious effect on the way in which war-prone state responds to the needs of its various constituents. As conflict protracts, the affected communities start to make stronger and stronger alliances with the external actors. Decision-making processes at all levels began to be more and more performed by the outside actors and the control of the communities over their lives is additionally deteriorated. All of this just further entrenches the cycle of dependency and hopelessness.

I. 2. 2. Dynamics of Protracted Social Conflict

Protracted social conflicts are highly dynamic in nature - they commonly pass through the wide variety of phases in their 'life cycle'. New conflict resolution theories have developed more itemized classification of the stages of this type of conflict, usually determined as: 1) pre-violence, 2) escalation, 3) endurance, 4) de-escalation, 5) post-violence.³⁴

Similar to the other forms of conflict, protracted social conflict remains latent until some effective occurrence triggers it. In an environment of deep and mutual distrust between communities, caused by the collapse of the organizational and communicational systems,

³⁴ Ryan, S., *United Nations Peacekeeping: A Matter of Principles?*, in Ramsbotham, O., Woodhouse, T. (eds.), *Peacekeeping and Conflict Resolution*, London, Portland, Frank Cass, 2000, p. 34.

trigger may be even a trivial event. Trivial or not those initial events “tend to become a turning point at which the individual victimization is collectively recognized”.³⁵

A dynamics of protracted social conflict does not necessarily have to be linear – some conflicts can retrograde into the ‘earlier’ stages or pass through several stages several times.³⁶ What is characteristic for the protracted social conflicts is that they can stagnate at the stage three over long period of time, or some can even move back from stage four or five. In addition, those conflicts do not demonstrate clear starting and terminating points.

The dynamic features of the protracted social conflict are not visible only in the given time frame. Protracted social conflicts tend as well to grow in size or to escalate. Attempts to apply coercive measures at the destructive conflicts are likely to increase the size of conflict and hence to increase its destructiveness.³⁷

I. 2. 3. Destructiveness of Protracted Social Conflict

There are no winners in protracted social conflict. The most visible feature of protracted social conflict is its negative-sum outcome (as different from the zero-sum outcome classically assigned to the conflict in general). As the consequence of its intrinsic properties such as ‘*protractedness, fluctuation and actor/issue spill-over*’, all the parties to this type of conflict tend to be victimized.

Victimization, divisive political rhetoric, myths of differences and boundaries among the groups, whether remembered or newly developed, deepen the divisions among the parties to the protracted social conflict. Parties quickly came to see each other as different and distinct peoples while trust and tolerance is replaced by the fear and intolerance of the ‘other’. The element, which polarizes parties the most, is fear - fear of marginalization.³⁸

³⁵ Azar (1990), p.12.

³⁶ Mitchell, R. C., Problem-solving Exercises and Theories of Conflict Resolution, in van der Merwe, H., Sandole, J. D. D. (eds.), Conflict Resolution Theory and Practice: Integration and Application, Manchester, New York, Manchester University Press, 1993, p. 87.

³⁷ Deutsch(1991), p. 37.

³⁸ Azar (1990), p. 16.

The process of protracted social conflict retards the effective functioning of the political institutions. "Civil wars are, almost by definition, accompanied by the fragmentation of social structures and political actors", which produces situation where "violence can be easily privatized".³⁹ It spreads pessimism throughout the society, demoralize leaders at all levels and immobilizes the initiatives for peace:

"As the protracted conflict becomes part of the culture of the ravaged nation, it builds the sense of paralysis which afflicts the collective consciousness of the population. An environment of hopelessness permeates all strata of society, and a siege mentality develops which inhibits constructive negotiation for any resolution of the conflict"⁴⁰ "...These entrenched conflicts provide the most severe challenge to those concerned with peace-building."⁴¹



³⁹ Väyrynen, R., *To Settle or to Reform? Perspectives on the Resolution of National and International Conflicts*, in Väyrynen, R. (ed.), *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation*, London, Newbury Park, New Delhi, Sage Publications, 1991, p. 9.

⁴⁰ The development of 'siege' mentality in the communities affected by the civil wars could be one of the crucial arguments why the coercive measures, such as the economic sanctions are not the appropriate mean to deal with the conflict. The economic sanctions treat the whole population of the targeted country in the same way regardless of their attitude and the involvement in the conflict, thus forming some kind of 'unity', which would not exist otherwise. In the same way, the side effects of the economic sanctions such as the exclusion of the given population from the international sport, cultural and educational exchange/events further reinforce feeling of exclusion, which is fertile ground for the further strengthening of the siege mentality. This argument, supplemented with the humanitarian reasons, has led to the proposal for the new type of sanctions - 'smart'sanction - designed to target the elites responsible for the policies which have generated the conflict. More on this in Steiner&Alston (2000), p. 662-672.

⁴¹ Azar (1990), p. 16 - 17.

I. 3. Notion of 'Sustainable Peace'

"The path toward transformation and peacebuilding has been a journey toward an understanding that the work of conflict transformation and reconciliation involves both the termination of something undesired - violent conflict - and the building of something desired. It is about change and construction."⁴²

The raise of peacebuilding activities, as the new UN set of tools to respond on violent intrastate conflict, is fundamentally attached to the notion of 'sustainable peace'. As we have approached the twenty-first century, new ideological and strategic environment opened new space for the theories of conflict and new opportunity to re-examine how to achieve peace.

The new era of the UN peace operations came as direct consequence of the deepened understanding of the processes, which cause violent conflict. Formulated within the conflict resolution theory⁴³, theoretical explanations of the root causes of conflict have got its practical counterpart in the notion of sustainable peace.⁴⁴ Since the "Agenda for Peace"⁴⁵, the notion of 'peacebuilding' has become intrinsically linked with the notion of 'sustainable peace' as a final objective of every peacebuilding activity. The phrase 'sustainable peace' has become subsequently a self-reinforcing truth about the value of peacebuilding activities.

The extensive use of the term didn't lead to its clarification. Notion of 'sustainable peace' serves even today, more than ten years after it has been introduced for the first time, as a label rather than a definition that could further assist in clarifying the essential features of those peace operations. Nonetheless, its indispensable value endures in the fact that it has had successfully reinforced the nexus development – democracy - human rights - peace.

⁴² Lederach, J. P., *Journey from Resolution to Transformative Peacebuilding*, in Lederach, J. P., Sampson, C. (eds), *From the Ground Up: Mennonite Contributions to International Peacebuilding*, New York, Oxford US, 2000, p. 55.

⁴³ See chapter on Conflict Resolution Theories (II. 1).

⁴⁴ Although much more associated with the practice, the notion of sustainable peace was originally formulated by the conflict resolution theory, in the research of John Galtung.

⁴⁵ Boutros-Ghali, (1992).

The most common way to determine the notion of 'sustainable peace' has been to set up some kind of instrumental relationship between the 'sustainability', 'conflict' and 'mid-term goals to peace'. Connie Peck, for instance, determines sustainable peace in the following way: "if peace is to be sustained, it will need to be backed up by a long-term approach that will address the structural causes of conflict and foster institutions that will promote the kinds of distributive and procedural justice that have been shown to make violent conflict less likely".⁴⁶ In the same way, Oliver Richmond interprets the Secretary-General's call for the sustainable peace⁴⁷ as the method "to identify and reinforce structures which would prevent conflict from re-emerging – to promote positive instead of negative peace".⁴⁸

What consequently emerges from the given 'definitions' is that they are basically founded in the distinction between the two types of violence and to that related two types of peace. Structural violence is one of the central themes for those theories, which see human rights violations as a *cause* of conflict. For them, structural violence is to be found in the injustice and repression built into the structures of a system. Structural violence has its antipode in the notion of 'positive peace' as a lasting peace where every human being has equal access to the conditions necessary for his/her full development. On the contrary, physical violence is direct, manifest violence and it is main concern of those theories, which regard human rights violations only as *symptoms* (consequence) of conflict. For them, main objective of peace operations should be primarily the restoration of a 'negative peace' as an absence of direct, physical violence. This division has served later as a cornerstone of the human rights based approach to the conflict.⁴⁹

The differentiation between 'negative' and 'positive' peace is a good opportunity to accentuate several distinctive features of the notion of 'sustainable peace' and their practical implications on the concept of peacebuilding.

⁴⁶ Peck, C., *Sustainable Peace: The Role of the UN and Regional Organizations in Preventing Conflict*, Carnegie Commission on Preventing Deadly Conflict, New York, 1998, p. 15.

<http://wwics.si.edu/subsites/ccpdc/pubs/role/toc.htm>

⁴⁷ Boutros-Ghali, (1992).

⁴⁸ Richmond (2002), p. 144.

⁴⁹ More on this in the chapter V. 1. 1. (*Peace v. Justice Debate*).

I. 3. 1. Long-term perspective

One of the important characteristics of sustainable peace is, without doubt, its long-term dimension. Sustainable peace is desired future, long-term venture that can be achieved only through the long-term peacebuilding undertakings. In the same time, by the very nature of conflict and its life cycles, peacebuilding missions have to include necessarily both short-term and long-term goals.

The peacebuilding attempts to alter structural sources of violence are necessarily long-term undertakings. On the other hand, securing the 'negative peace' is supposedly a short-term goal that is again the necessary precondition for the long-term peacebuilding activities. The efforts to achieve peace are fundamentally tied to the ability of parties to end hostilities and to prevent further violence (violations of human rights as a consequence of conflict). This feature of 'sustainable peace' renders peacebuilding activities to be situated in two different but in the same time intermingled time-frames. What is usually overlooked here is that those two phases in building peace have to be conducted simultaneously.

In order to address the multidimensional nature of the protracted social conflict, the problem-solving approach to conflict resolution has to be combined with the public, process-orientated approach.⁵⁰ In substantial sense, peacebuilding is "a twofold process that should simultaneously maintain: a) *deconstruction* of the structures of violence, and b) *construction* or *reconstruction* of the structures of peace"⁵¹. 'Construction of the structures of peace', which include such essentials as economic development, human rights, the rule of law... etc, demands, 'deconstruction of the structures of violence' such as the cessation of hostilities, or demilitarization of the armed groups.

Commonly, those responsible for the institutional design of peacebuilding operations try to overcome this gap between the long and short-term perspectives of peacebuilding by

⁵⁰ More on this in the subsequent chapter (Lederach, II. 1. 4).

⁵¹ Knight, W. Andy., *Peacebuilding Theory and Praxis*, in Keating, T., Knight, W. A. (eds.), *Building Sustainable Peace*, Edmonton, Tokyo, The University of Alberta Press, United Nations University Press, 2004, p. 358.

assigning somewhat more operational meaning to the notion of sustainable peace.⁵² Link is usually embodied through one or several specific peacebuilding sub-objectives such as the strengthening of the institutions of governance or free exercise of civil and political rights. Hence, the long-term dimension of sustainable peace is made directly conditional upon a completion of the specific programmatic steps in constructing edifice of sustainable peace.⁵³

I. 3. 2. Institutions of governance

It is now widely agreed both among the practitioners and the scholars that the systematic frustration of basic human needs is a major cause of conflict. It is recognized that domestic peace can be sustainable only when it has gone beyond a stable truce. Thus, the term 'sustainability' began to refer to the reformed system of governance, which is responsive to people's basic needs at the local, regional, and national levels.

"Grievances and feelings of injustice are likely to grow when individual and group needs for physical safety and well-being, access to political and economic participation, and cultural or religious expression are threatened or frustrated over long periods of time, especially when a group feels that it is being unfairly disadvantaged compared to other groups."⁵⁴

I. 3. 3. Vagueness of the notion

While the contemporary theory of conflict has come across several well founded ways to demonstrate this link between the human needs and 'sustainable peace', praxis in this regard still remains seriously affected by the vague and superfluous determinations of sustainable peace. The notion of 'sustainable peace' is either articulated in a very broad way or its meaning is linked to the even more vague content of some liberal democratic

⁵² See Peacekeeping Best Practise Unit, *Handbook on United Nations Multidimensional Peacekeeping Operations*, United Nations Department of Peace Operations, December, 2003, at <http://pbpu.unlb.org/pbpu/handbook/Handbook%20on%20UN%20PKOs.pdf>

⁵³ Those programmatic steps are usually: creating and rebuilding administrative, court and judicial systems, police forces and custom agencies; reforming the security sector; monitoring elections; providing technical assistance and economic development, etc.

⁵⁴ Peck (1998), p. 16.

standard. Excellent example of the first offers the determination of sustainable peace formulated at the International Conference on the Transitional Administration Missions, organized by the International Peace Academy in October 2002: “[sustainable peace] comprises not just the legitimate selection of local leaders, but also the creation of institutions and conditions that make the renewal of armed conflict unlikely”⁵⁵. In the case of the second ‘method’, illustrative is the Report on the Closure or Transition of United Nations Peacekeeping Operations, where the Secretary-General, Kofi Annan, determines domestic peace as sustainable “not when all conflicts are removed from society, but when the natural conflicts of society can be resolved peacefully through the exercise of State sovereignty and, generally, *participatory governance* [italic added]”⁵⁶.

I. 3. 4. ‘Success Measurement’

Very often, however, there are indicators that this state of affairs does not affect only the official narrative of those who are engaged in the maintenance of peace missions. The vagueness and narrowness of the definitions given by the practitioners seriously undermine the effectiveness of the means employ to achieve the sustainable peace. One of the most transparent consequences is a non-existence of the properly designed evaluation mechanisms. Although measurement and evaluation activities are inevitable if one wants to ensure that the given peace operation is on the right track, in a considerable number of cases evaluation is either not possible or has very limited application.

‘Success measurement’ is a fundamental problem in peacebuilding. Since the terms such as peace, security and stability are the long-term objectives, the effects of the interim steps remain ambiguous. In his theoretical attempt to approach this issue, David Beer borrows the definition of sustainability from the organizational sciences. There, sustainability is defined “as a program’s ability to produce outputs and benefits that are valued enough to command continued resources and attention to ensure continued

⁵⁵ International Peace Academy, *You, the People: Transitional Administration, State-Building and the United Nations (Conference Report)*, International Conference, New York, 18 – 19 October, 2002, at http://www.ipacademy.org/PDF_Reports/YOU_THE_PEOPLE.pdf, p. 8.

⁵⁶ Kofi Annan, *No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations, Report of the Secretary-General*, S/2001/394, 20 April 2001, Para. 10.

outputs.”⁵⁷ But again, by recalling the examples of some peacebuilding activities (such as the institutional development or the capacity building), he soberly recognizes that this line of reasoning can be applied in a very limited way in just one out of two levels of those activities: The narrow and technically defined term of ‘sustainability’, can be used to measure only the development of the administrative, operational and organizational aspects of the institutions in question. On the contrary, each peacebuilding activity has to have major impact at the level where the variables are behavior, attitude and norms, which definitely do not fit in the given framework. Those variables, he concludes, remain fully out of reach of this method.

I. 3. 5. Legitimacy

In the case when UN exercises the quasi-sovereign powers over certain territory (transitional administration mission), this methodological problem has serious impact on the issue of the legitimacy of the mission. One of the basic principles of the UN presence of this kind is that no administration should stay longer than is absolutely necessary to fulfill its goals. Thus, the legitimacy to take over governmental functions should not be seen as stemming from a Security Council mandate alone, but should be anchored in the mission’s performance on the ground. However, the determination of when the foundations of sustainable peace are created or, in another words, when the domestic conditions are indicating that the governmental functions should be handed-over to the local population, remains a contentious issue.

As a consequence, certain authors claim that in some cases of the UN transitional administration missions, the notion of ‘sustainable peace’ is basically used as just another term for the ‘spread of the liberal peace doctrine’.⁵⁸ They commonly point at the fact that the elections are usually the benchmark chosen to substitute the abstract nature of sustainable peace. Instead of just being an element along a diverse continuum of post-

⁵⁷ Brinkerhoff, W. D., *Improving Development Program Performance*, Boulder, Lynne Rienner, 1991, p. 194, in: Beer, D., *Peacebuilding on the ground: Reforming the Judicial Sector in Haiti*, in Keating, T., Knight, W. A. (eds.), *Building Sustainable Peace*, Edmonton, Tokyo, The University of Alberta Press, United Nations University Press, 2004, p. 122.

⁵⁸ See for instance Paris (2004), Ramsbotham (2000) and Bush, K., *Commodification, Compartmentalization, and Militarization of Peacebuilding*, in Keating, T., Knight, W. A. (eds.), *Building Sustainable Peace*, Edmonton, Tokyo, United Nations University Press, 2004.

conflict, peacebuilding activities, for many practitioners and decision-makers, the elections turn to be the “end game” and basic element of the “exit strategy”.⁵⁹

The elections are, without doubt, an appropriate way to identify legitimate local leaders and encourage the channeling of political activity into the non-violent means. But, to hold elections too early in a post-conflict environment risks destabilizing a peace process and rendering them to be just a formal sign of democracy. One of the main arguments of this essay is that focusing on the democracy at the cost of the rule of law principle results in the expensive democratic forms without any democratic substance.⁶⁰

I. 3. 6. Need for the Theoretical Conceptualization

“Peacebuilding is about the construction of a vision and developing the design that guides the construction.”⁶¹ Vision itself belongs to the people. If peace process is to be rooted in the reality, vision of peace has to be articulated in that reality. The task of peacebuilders is to create space for the articulation of that vision.

But, our short lifetime perspectives seriously underscore the prospect for the sustainability. Dream of sustainable peace easily melts in the depth of animosity, frustrations and devastated hope of the war-shattered environments. To move from the reality of destruction to the shared future requires both transformation and building of an infrastructure to make such transformation possible. The tools for the contextualization and empowerment, indispensable for that task, can be found only in the theory of conflict and its resolution.

⁵⁹ International Peace Academy (2002), p. 8.

⁶⁰ “One senior UN official involved in UNMIBH recalled that every general and municipal election that was held in Bosnia and Herzegovina since 1996 turned out to be a ‘census of ethnicity’ instead of a contest of substantive policy issues.” International Peace Academy (2002), p. 9.

⁶¹ Lederach (2000), p. 55.

Chapter II - Conflict Theory

Despite a striking necessity, peacebuilding is still not a highly theorized topic. In the decade that just past we have been witnessed a growing body of literature on peacebuilding but the majority of written by diplomats and military professionals. The most common approach to peacebuilding remained to be the one of a single case study. Having description as their primary goal, the main ambition of those writings hasn't usually reached further than to analyze the efficiency of different peacebuilding instrument in different conflict settings.

As Kenneth Bush points out, the main problem accompanied with these problem-orientated approaches to peacebuilding is that "they unavoidably exclude more than they include" and that they bring with themselves "inflationary and deflationary tendencies [exercised] by practitioners and policymakers in the application of the label 'peacebuilding' to their initiatives".⁶² This situation has seriously limited the accumulation of knowledge. The practical implications of it have been mirrored in the general lack of the theoretical frameworks within which the analyses of the effectiveness and success of peacebuilding activities could be situated.⁶³

The following section will depict several major attempts of the conflict theory scholars to develop a theoretical framework for peacebuilding. The major concepts necessary for the understanding of the theoretical origins of contemporary peacebuilding will be presented through the opus of the revolutionary researchers such as Johan Galtung, John Burton, Edward A. Azar and John Paul Lederach.

⁶² Bush (2004), p. 38.

⁶³ And further on this: "An unsettling characteristics of the proliferating self-described peacebuilding projects has been the failure to evaluate them systematically – a situation not unique to this particular set of international activities, by any means.", Bush (2004), p. 40.

II. 1. Conflict Resolution Theories

Kenneth Boulding coined the term 'conflict resolution' to signify a normative study of resolving conflict.⁶⁴ Following the originally broad concept of the term, 'conflict resolution' will be used here as a conceptual roof for the wide set of theoretical approaches to conflict, which main features have been established as an answer to the 'conflict management' theories and practice developed in the period of Cold War. The common denominator for all these theories is their aim to transform conflict into peaceful non-violent process of social change rather than to eliminate it. Their assumption that conflicts should be *resolved* rather than merely *managed* came as a logical consequence of the way in which they perceive and treat conflict. As opposed to the conflict management approach this, so called 'second generation' approaches, attempt to examine the root causes of conflict, which are to be found in the social, psychological and structural set up of the given society. In this regard, the research of Johan Galtung and his notion of 'structural violence' were seminal.

II. 1. 1. Johan Galtung: Structural Violence

Johan Galtung developed for that time revolutionary model of conflict, drawn from the line of thinking associated with the peace research theory.⁶⁵ By introducing the term 'structural violence', he was first to argue that violence does not have to be only a direct one, but can be also part of the fundamental structures of one society. If injustice and repression are built into those structures, the structural violence occurs where individuals or groups are deprived by being exposed to the differential access to the resources. Structural violence exists "when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations."⁶⁶

⁶⁴ Richmond (2002), p. 77.

⁶⁵ Peace research has been seen traditionally as a distinct field to the conflict resolution theories but it had, nonetheless, very important role in the development of many of the 'conflict resolution' agendas. See Richmond (2002), p. 79.

⁶⁶ Galtung (1969), p. 168.

Galtung's model of conflict presents conflict as a triangle, on base of which are *structural causes of violence*, and structure of which is built upon the existence of incompatible goals, attitudes and behavior. In the societal settings that comprise structural inequalities, *incompatible goals* produce conflict of interest. *Attitudes* include emotive and cognitive elements, but also the objective aspects such as structural relationships and competing material interests. Although *behavior* ordinarily varies between the cooperation and coercion, violent conflict behavior is characterized by the threats and destructive attacks.

Galtung sees conflict as a dynamic process in which structure, attitudes and behavior are shifting constantly in the context of each other. In an asymmetric conflict⁶⁷, he argues, conflict of interests is deeply entrenched in the parties' relationship. This is further complicated with the difficulties brought about by the attitudes of the parties and parties' perceptions and misperceptions of the self and the other.

When parties' interests come into collision and their relationship becomes oppressive they develop conflictual behavior, which lead to the escalation of conflict. Therefore, resolving conflict, in Galtung's view, involves both transforming the parties' relationships and the clash of interests that lie at the core of the conflict structure. Accordingly, he prescribes peacebuilding, as opposed to the traditional peacekeeping and peacemaking, as the only possible way to deal with these structural causes of violence and thus with the violence itself.⁶⁸

Another of Galtung's fundamental contributions to the conflict resolution theory is his concept of negative and positive peace. *Negative peace* refers to the situation characterized by the absence of direct violence but where structural violence exists, whereas *positive peace* encompasses the concept of human security and refers to the situation in which human beings are not impeded from developing fully their

⁶⁷ Asymmetric conflict is a conflict where the conflicting parties are themselves asymmetrical with regards to the power and the access to the other resources decisive in the course of conflict. Structural violence is strongly related to this type of conflict.

⁶⁸ Galtung, J., *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*, London, Thousand Oaks, Delhi, Sage Publications, 1996, p. 103-113. This has inspired Andy W. Knight to regard Galtung's theory as the origins of peacebuilding. Knight (2004), p. 357.

predispositions.⁶⁹ This concept has been crucial for the further development of the conflict theory since it has opened the door for a multilevel, interdisciplinary analysis of conflict.

Johan Galtung's notion of 'structural violence', although originally developed in the peace research field, had formed a broad epistemological base for the subsequent developments in the conflict resolution theory. This is particularly noticeable in the work of John Burton and his sociologically rooted conflict resolution approach.

II. 1. 2. John Burton: 'Human Needs' Approach

Conflict outcomes are not and cannot be determined by power in the long run, states John Burton. Power is the category difficult to define while conflict is significantly determined by the subjective categories, which often leave little or no space for the rational insights.⁷⁰

Burton's alternative view of conflict is based on his 'human needs' approach. In his 'human needs theory', later called the 'generic theory of conflict', Burton argues that deep-rooted conflict is caused by the denial of the basic human needs. Originally, he has posited nine universal human needs, three of which are particularly important: *identity*, *security* and *distributive justice*. While interests are subject to the negotiation, the universal needs are not because their pursuit is ontological necessity of all human beings.⁷¹ They may be suppressed in certain periods but they will always reappear, producing the 'protracted social conflicts'.⁷² Thus, the human needs must be satisfied if our attempt is to create long-lasting 'sustainable peace'.

⁶⁹ Peace research theory also referred to positive peace as the 'peace with justice'. Fetherston, A. B., *Peacekeeping, Conflict Resolution and Peacebuilding: A Consideration of Theoretical Frameworks*, in Ramsbotham, O., Woodhouse, T. (eds.), *Peacekeeping and Conflict Resolution*, London, Portland, Frank Cass, 2000, p. 202.

⁷⁰ This Burton's statement points at the fact that the rational insights do not play crucial role in the phases of incitement and escalation of conflict. For instance, the knowledge of one party of the conflict that the other party possesses greater power does not necessarily lead to the termination of conflict.

⁷¹ Burton, J., *Resolving Deep Rooted Conflict (Handbook)*, Lanham, University Press of America, 1987, p. 29.

⁷² Notion already introduced in the chapter I. 2.

Crucial for the practical implication of his human needs theory was the fact that the human needs are not subject to the economic/resource scarcity, or in another words, more for one side does not necessarily mean less for another. This feature of the human needs has served as a sound basis for his problem-solving methodology and win-win scenario.⁷³ Conflict, according to Burton, should be approached as a socio-biological problem and the third party role is to establish the conditions in which the parties to the conflict would get chance to define and identify their conflict. In his opinion, conflict resolution should offer methodologies that would facilitate the problem-solving process and thus support design of the innovative solutions for the existing conflict of interests. Burton calls as well for a mediated social action, role of which would be to support the process of problem-reframing. Only the reframing of the problems, he argues, can open a social space for the creative solutions. Thus, creation of the supportive framework where the individuals at all levels will get the opportunities to communicate with each other is essential. The role of mediator (third party) is therefore to make available the necessary knowledge, including references to the similar situations, in order to help to parties to understand how the escalation took place. A mediator should also make obvious to the parties that both sides probably have the same negative image of each other, based on stereotypes, which are built in the course of the conflict. This type of contact is supposed to increase confidence and trust, leading to a better common understanding. In effect, this means that a discussion of the official matters can take place at a more informal level - via facilitated 'workshop' approach - through the application of which the civil-society discourses can find their way into the official debates. This theoretical approach has been described as revolutionary,⁷⁴ and has introduced many practical innovations in peace operations. John Burtons' problem-solving approach brought the individual back into the

⁷³ Researchers Ury, Brett, and Goldberg (1988) have identified three distinct methods which are used by parties in disputes: a) power-based approach (parties attempt to prove who's power is dominant); b) rights-based approach (parties attempt to prove who is 'right'); and c) interest-based approach, also called 'problem solving' (parties attempt to reconcile their major interests through the innovative solutions). The first two approaches tend to create zero sum (win-lose) outcomes while the goal of the 'problem-solving' approach is the achievement of a positive sum (win-win) outcome. In Peck (1998), p. 22.

⁷⁴ Richmond (2002), p. 81.

realm of conflict management and “made the case that conflict can be resolved at the diplomatic level only with the consent of the individual citizen.”⁷⁵

Besides being one of the most influential scholars in the field of conflict research, Burton has been as well widely criticized for 1) his universal approach to human needs and 2) the methods he has developed for resolving conflict. Regarding the first one, central point of the critics was the absence of the method by which the existence of the human needs can be tested. With regard to his problem-solving-workshop approach, it was stated that this approach could have only a limited application. Distortions caused by the faulty communications, asymmetry, and the lack of a common cultural ground,⁷⁶ critics say, in serious way affect our capability to apply this conflict resolution method. Moreover, its allegedly ‘universal’ character could be seen as a problematic since it tends to impose dominant Western discourses.⁷⁷

II. 1. 3. Edward E. Azar: Protracted Social Conflict

Parallel to Burton’s efforts to bring individual back into the focus of the conflict resolution theory, Edward A. Azar called for an end to the traditional distinction on the internal and external models of conflicts. Azar averts a general focus of the conflict theory again on the evident rather than hidden dimensions of conflict. His concept of ‘protracted social conflict’ depicts intractable, seemingly irresolvable conflicts, which involve sporadic outbreaks of violence resulting from communal and ethnic cleavages. This notion threw a new light on the communal groups within one society and their prolonged struggle for the basic human needs. As such, it has been a significant step forward of the post-Cold War conflict theory in its efforts to get out of the state-centric nature of the international system.

⁷⁵ Richmond (2002), p. 9.

⁷⁶ In this regard, an interesting observation on the issue of language constraints to the third party mediation could be found in: Cohen, R., *Language and Conflict Resolution: The Limits of English*, «International Studies Review», vol. 3, no. 1, Malden, Blackwell Publishing, 2001.

⁷⁷ See for instance van der Merwe, H., *Relating Theory to the Practice of Conflict Resolution in South Africa*, in van der Merwe, H., Sandole, J. D. D. (eds.), *Conflict Resolution Theory and Practice: Integration and Application*, Manchester, New York, Manchester University Press, 1993, p. p. 266-267.

In Azar's texts, development is equated with peace. Azar identifies the repression and deprivation of human needs as the root of protracted conflicts and underscores the role of structural factors, such as the underdevelopment, in the instances where social groups try to satisfy their needs through the conflict. Azar states that the main way to reduce the impact of the external systemic sources of protracted social conflict is to build responsive social institutions, which could diminish their influence: "Domestic institution-building within conflict-laden countries is step in the right direction."⁷⁸ He warns that the traditional pattern of peace initiatives largely based on patron-client relationship, further fragments domestic political institutions and aggravates conflict situations.⁷⁹

Hence, the attempts to alter existing patron-client relationship may best be supported through the multilateral efforts. However, the complexity of protracted social conflict postulates two important assignments for those involved in peacebuilding undertaking:

a) careful tracking of the dynamics of conflict and b) focusing at the social, economic and political roots of the conflict. Protracted social conflict is the most severe challenge for those concerned with peacebuilding, warns Azar. If the approach is too narrowly conceptualized, failing to address the roots and the underlying dynamics, which drive protracted social conflict, a cycle of violence and despair could be further deepened.⁸⁰

Edward E. Azar's new methodological stance, which merged realist, structuralist, and pluralists' approaches into the multidimensional understanding of conflict, has been great announcement for Lederach's comprehensive approach to conflict resolution.

⁷⁸ Azar (1990), p. 133.

⁷⁹ See in the chapter I. 3. 1 (*International and global patterns of interdependence*).

⁸⁰ Azar (1990).



*II. 1. 4. John Paul Lederach: Conflict Transformation*⁸¹

While working as a scholar-practitioner in different parts of the world, John Paul Lederach has formulated the approach to conflict, which encompasses “the full array of stages and approaches needed to transform conflict towards sustainable, peaceful relations and outcomes”.⁸² What Lederach has called the ‘comprehensive approach’ to conflict resolution is his attempt to integrate short-term intervention, which goal is to halt violence, with the long-term resolution process. The core idea of his long-term strategy is the importance of identifying and supporting “the cultural modalities and resources” within the setting of the conflict:

“The principle of indigenous empowerment suggests that conflict transformation must actively envision, include, respect, and promote the human and cultural resources within a given setting. This involves a new set of lenses through which we do not primarily ‘see’ the setting and the people in it as the ‘problem’ and the outsider as the ‘answer’. Rather, we understand the long-term goal of transformation as validating and building on people and resources within the setting.”⁸³

Lederach’s comprehensive approach entails building of an infrastructure for lasting peace, which should involve all levels of the affected population. Sustainable and long-term strategy to conflict resolution is only the one, which is capable to address all levels of an affected population.

In Lederach’s work, affected population is portrayed as a pyramid. Key military and political leaders are situated at the apex of a pyramid. In the middle are leaders significant in the sectors such as health, education and within the military hierarchies, who “hold[s] the potential for helping to establish a relationship-and skill-based infrastructure for sustaining the peacebuilding process”.⁸⁴ Finally, at the grass-roots level is a vast majority

⁸¹ Certain scholars place Lederach into the new and separate phase of the development of conflict theory called conflict transformation or alternatively, peacebuilding. See Fetherstone (2000) and Richmond (2002). On the contrary Ramsbotham (2000), Woodhouse (2000), Duffey (2000), etc, situate Lederach’s opus within the broader framework of the conflict resolution theories.

⁸² Ramsbotham (2000), p. 171.

⁸³ Lederach, J. P., *Conflict Transformation in Protracted Conflict: The Case for a Comprehensive Framework*, in Rupesinghe, K. (eds.), *Conflict Transformation*, Basingstoke, Macmillan, 1995, p. 212.

⁸⁴ Lederach (1997), p. 51.

of the affected population: the common people, refugees and IDPs, church groups, local leaders...etc. For conflict resolution to be successful and sustainable, co-ordination of peacebuilding strategies at all three levels has to be undertaken. Different types of actors (levels) have to be matched with the particular methodologies of peacebuilding.⁸⁵

The peacebuilding methodologies, in Lederach opinion, have to be matched with this three-level system. Thus, he has created different methods for each level of the affected population. At the top level, a 'top-down' approach should be applied. This approach should involve intermediaries or mediators backed by a supporting government or international organizations and the goal of should be a negotiated settlement. The second level is where the problem-solving workshops, conflict resolution training, and the development of peace commissions should take place. The third level demands grassroots bottom-up approaches.

According to Lederach, peacebuilding from below (bottom-up approach) is of decisive importance since only in that way peace can be build within the very settings of the conflict and not imposed.⁸⁶ At the same time, Lederach emphasizes the role of the middle-range actors since they have the greatest potential for constructing proper foundations for peace, through their significant impact at both top and grassroots levels in the long-term reconciliation processes. Taking into account that in the conventional practice of conflict resolution, the resources from outside of the conflict (diplomats, peacebuilders, etc) were valued more highly than the peacemaking resources within the community, Lederach's approach brought immense shift in peacebuilding practice.

Both conflict and reconciliation are embedded in *relationship* between parties that is commonly the first victim of the violent conflict. For Lederach, *reconciliation* is central in conflict transformation. What he suggests is the need to shift away from "a concern with the resolution of issues [...] toward a frame of reference that focuses on the restoration and rebuilding of relationship [by using] the relational aspect of reconciliation

⁸⁵ Lederach (1997), p. 44-54.

⁸⁶ Different interpretation of this segment of Lederach's theory in: Fetherston (2000), p. 205-206.

as the central component of peacebuilding”.⁸⁷ The reconciliation is a process which can create social space for facing the past, envisioning the future and through that make possible the process of re-framing of the present. While emphasizing the importance of the reconciliation, Lederach refers to the Azar’s notion of ‘protracted social conflict’ and reminds that such conflict requires action beyond the international relations methodology of conflict management. Developing recognition of relational interdependence - across the lines of conflict and all levels of society - is perhaps the single most important goal we can undertake in settings of deep-rooted conflict, argues Lederach. Only this can provide “a set of lenses and a long-term, lifetime perspective, which sharpens and informs short-term decisions.”⁸⁸

Lederach’s analysis further served as a basis for his integrated framework of peacebuilding. In the ‘integrated framework of peacebuilding’ the actors and specific methodologies are subsystems, which enable peacebuilding strategies to be developed from a local situation while taking into account the systemic (structural) problems. In Lederach’s model, a problem-solving approach to conflict resolution and a public, process-oriented approach are combined in order to address the multidimensional nature of protracted social conflicts. But, “this systemic analysis is only one half or one axis of [his] integrated framework.”⁸⁹ Another half comprises the time dimension of peacebuilding. Its first segment refers to the crisis intervention (2-6 months); second to the preparation and training for the change (1-2 years); third to the design of social change (5-10 years) and fourth eventually to the fulfillment of the desired future (20 years on). Lederach’s approach to peacebuilding as a system with subsystems that have to be properly integrated is significant since it substantiates in new and qualitative different way the importance of long-term thinking, planning and envisioning.

⁸⁷ Lederach (1997), p. 24.

⁸⁸ Lederach (2000), p. 55.

⁸⁹ Fetherston (2000), p. 205.

II. 2. From Theory to Practice

Conflict resolution theories, developed in the last decade of the XX century, have signified radical shift in the comprehension of the ways in which the sustainable peace can be achieved. The new insights into the *root-causes* of conflict have brought new, much more profound understanding of the conflict and its complexity. New line of thinking, introduced by the conflict resolution theories, demanded new techniques for dealing with the structural violence in the war-torn countries that would be able to tackle all levels of the affected population. Conflict resolution approaches attempted to bring the individual back into the realm of the international mechanisms for the restoration of peace. By emphasizing an enduring reconciliation process sustained by networks and mechanisms which would promote justice in fulfilling universal human needs, conflict resolution theory has served as a sound basis for the development of *multi-actor and multidimensional approaches to conflict*. It has become theoretical stronghold of the critics of a state-centric, static and mono-dimensional nature of the traditional diplomacy and peacekeeping operations.

Amplly formulated call for a more comprehensive conflict resolution framework was eventually mirrored in the development of the multifaceted peace operations - the operations where third parties, acting in coordination, would employ not one but several diverse instruments adjusted to the different levels of the conflict situation and its actors. Those operations have become increasingly involved in managing civil affairs, administration, democratization and human rights. Newly developed typology of the roles and functions of the third party (now peacebuilders) further determined the boost of the levels and actors involved, introducing new coalitions of international and regional organizations.

The significantly broadened 'debate on security' was the factor that had crucial role in the defeat of the *Realpolitik* policies and the raise of those new perspectives. The accent has been shifted from the significance of the state security (supposedly delegated from citizen to state) to a more normative version of human security. The new policies on human security, placed in the context of a globalizing and fragmenting world, started to refer to

the fundamentals such as human rights, economic development, and freedom from identity and representational constraints.

The real life application of those new policies, however, has once again raised the controversial question of whether the proposed conflict resolution methods are plausible within the current international system. Whether the UN's "standard operating procedure", as Oliver Ramsbotham has described the institutional rigidity of the United Nations system, can put theory into practice.⁹⁰ Conflict resolution theory has developed set of the assumptions about the conflict resolution in intrastate wars. Those assumptions have then become part of the new global agenda established on the principles of liberalization and democratization. But as it seems now, argues Ramsbotham, the mechanism for the application of that agenda rather reminds on the "Wittgenstein's locomotive cabin in which a uniform-looking set of handles in fact fulfill a number of diverse functions".⁹¹

⁹⁰ Ramsbotham (2000), p. 170.

⁹¹ Wittgenstein's locomotive used as a metaphor means that most of us are increasingly remote from all but the most superficial understanding of the underlying functions of the tools on which we rely. Ramsbotham (2000), p. 170.

Chapter III - United Nations Approach to Conflict

III. 1. Short History of Peace Operations

From the World War II and the establishment of the United Nations until the end of Cold War the UN's main security undertaking was 'peacekeeping'. First major peacekeeping operations occurred in Egypt in 1956, following the invasion of the country by Israel, Britain and France. Established with the consent of the invading states and Egypt itself, the United Nations Emergency Force (UNEF) had the task to control the departure of foreign forces from the Egyptian territory and to position itself along the Egypt-Israel border. The mission's mandate was based upon two main principles – prohibition of use of force except in self-defense and prohibition on any activity of political kind in the host state. Those two principles, which guided the conduct of UNEF in Egypt, further served as a mandatory template for all the future peacekeeping operations conducted during the Cold War. With the two exceptions⁹², those operations were compound of lightly armed contingents deployed to monitor cease-fires with the clearly stated prohibition of intruding into the realm of the domestic affairs of the host state. In its report on the implementation of the Security Council Resolution 425 through which the United Nations Interim Force in Lebanon (UNIFIL) was established, Secretary General at that time⁹³ stated that "UNIFIL, like any other United Nations peacekeeping operation, cannot and must not take on responsibilities which fall under the government of the country in which it is operating."⁹⁴

The end of Cold War introduced not only new opportunities for mediation of the 'proxy wars' but has witnessed as well emergence of the intrastate conflicts, which turned the

⁹² 1) The United Nations Mission in Congo (ONUC), established in 1960 until 1964, which comprised certain number of state-building activities; 2) the United Nations Temporary Authority in West Papua (UNTEA), where UN assumed some of the executive and limited legislative powers.

⁹³ Kurt Waldheim, persona whose presence at the leading position of the Organization of United Nations, world's biggest forum for the peace actions is, in the author's opinion, precedent worth of mentioning *nunc et semper* as the lessons for the future generations.

⁹⁴ *Report of the Secretary-General on the Implementation of Security Council Resolution 425*, March 19, 1978 (UN doc. S/126II), in Paris (2004), p. 14.

Post-Cold War era into world's most violent period after the World War II.⁹⁵ New wars have begun to emerge throughout the globe, and their number largely exceeded the number of 'proxy wars' waged by the client States of the superpowers during the previous period. 'Iron fist' regimes deeply dependent on foreign aid in monopolizing political power, once external aid diminished, ended into brutal civil conflicts "that blurred the boundaries between warfare and criminal violence"⁹⁶. Dormant ethnic tensions announced again their existence and triggered ferocities across a wide stretch of European former communistic states. Civil wars, which take place within the borders of the given state and among belligerents who normally reside in that state, accounted for 94 percent of all armed conflicts, which have occurred in the 1990s.⁹⁷ The ratio of the civilian-to-military deaths has been immensely changed. At the beginning of the last century approximately 90 percent of the war victims were soldiers. During the '90s on the contrary, an estimated 90 percent of those who lost their life in the armed conflicts were civilians.⁹⁸

New times urged new responses. Not only that the figures on the UN peacekeeping activities show more than doubled number of operations in the first decade after the fall of Berlin Wall, but the scope and size of peace operations have been rapidly changed as well. Originally developed as a means for dealing with the inter-state conflict, peacekeeping didn't fit anymore to the intra-state conflicts and civil wars, characterized by a multiple armed factions with differing political objectives and fractured lines of command. New mandates emerging from the notion of postconflict peacebuilding were established, going well beyond the constraints traditionally imposed on peacekeepers, including the prohibition of the involvement in domestic affairs. In 1992, Secretary-General Boutros Boutros-Ghali formally named this doctrinal evolution by introducing

⁹⁵ "Conservative estimates indicate that there were 93 armed conflict around the world, and that of the 5.5 million people killed (fully 25 percent of all deaths in armed conflict since 1945), 75 percent were civilians." Beer, D., *Peacebuilding on the ground: Reforming the Judicial Sector in Haiti*, in Keating, T., Knight, W. A. (eds.), *Building Sustainable Peace*, Edmonton, Tokyo, The University of Alberta Press, United Nations University Press, 2004.

⁹⁶ Paris (2004), p. 16.

⁹⁷ Paris (2004), p. 1.

⁹⁸ Knight (2004), p. 367.

“peacebuilding” as a new label for the so-called “second generation” peace operations.⁹⁹

In his own words:

“Peacemaking and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace...Through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.”¹⁰⁰

International policy-makers, supported by a large number of scholars, have come to the clear understanding that “military forces alone or massive humanitarian assistance could only stem some of the worst symptoms of violence, but could not resolve the source of conflict”¹⁰¹ This newly emerging concept of peacebuilding represented significant advance in the conflict resolution activities since it manifested more than just reactive solution to stop violent conflict (traditional ‘peacekeeping’).

III. 2. Peacebuilding Strategies

Peacebuilding in the broadest sense started to refer to all those initiatives which, after a peace has been negotiated or imposed, foster and support sustainable structures and processes which supposedly strengthen the prospects for peaceful governance and decrease the likelihood of the reoccurrence of violent conflict.¹⁰² As an attempt to address the sources of present hostility and build local capacities for conflict resolution,

⁹⁹ Boutros-Ghali (1992), Para. 55.

¹⁰⁰ Boutros-Ghali (1992), Para. 21, 55.

¹⁰¹ Chopra, J., Hohe, T., *Participatory Peacebuilding*, in Keating, T., Knight, W. A. (eds.), *Building Sustainable Peace*, Edmonton, Tokyo, The University of Alberta Press, United Nations University Press, 2004, p. 242.

¹⁰² The author has adopted the definition of peacebuilding as a postconflict activity.

peacebuilding necessarily included strategies at two crucial levels: 1) the level of regional and international regimes, and 2) in-country peacebuilding measures¹⁰³.

The end of Cold War competition was an important precondition for the blossoming of major peacebuilding components within the peacekeeping since this historical momentum was both source of new conflicts and herald of the radical ideological changes. Cold War ideological differences rendered impossible for the United Nations to promote any particular modus of governance within the borders of the individual state. But, the post-Cold War period witnessed radical devolution of power from governments to different groups and individuals. To address in a unified way security, human rights, development, policing, economic and other concerns, demanded nothing less than to get directly involved in the local political process in the war-torn states. This entailed both short-term objectives, such as humanitarian operations, and long-term goals such developmental, political, economic and social policies.

From 1990 on, perhaps the most remarkable feature of peace operations *en general* "was that they all persuaded the same general strategy for promoting lasting peace in war-shattered states: democratization and marketization".¹⁰⁴ Another unifying feature of these operations has become the rapidness of the processes through which liberal market democracy has been introduced in war-torn countries. Preparations of the elections have been commenced immediately, and in almost all cases the elections took place within the first three years of the establishment of mission. Comprehensive economic reforms were most commonly initiated right away.

Those two features of peacebuilding induced new and quite critical voices in the theory on peacebuilding.¹⁰⁵ New writings pointed out that processes of democratization and marketization has potential to exacerbate social tensions and thus undermine prospect for stable peace in the fragile conditions, which typically exist in countries just emerging from civil war. Peacebuilding is "nothing less than an enormous experiment in social

¹⁰³ Das, B. S., *Sustainable Peace: Who Pays the Price?*, in Keating, T., Knight, W. A. (eds.), *Building Sustainable Peace*, Edmonton, Tokyo, The University of Alberta Press, United Nations University Press, 2004.

¹⁰⁴ Paris (2004), p. 19.

¹⁰⁵ See for instance Ramsbotham (2000); Bush (2004); Knight (2004); Chopra&Hohe (2004); Paris (2004).

engineering, aimed at creating the domestic conditions for durable peace within countries just emerging from civil wars” and it is based on the process of political and economic liberalization which is inherently tumultuous, full of confusion, change or uncertainty, observes Roland Paris.¹⁰⁶ “Promoting democratization and marketization has the potential to stimulate higher levels of societal competition at the very moment (immediately following the conflict) when states are least equipped to contain such tension within peaceful bounds.”¹⁰⁷ Furthermore, in the countries in which conflict was developed between different ethnic groups, rapid democratization and marketization could just reinforce already existing division along the ethnic lines.¹⁰⁸ The doors were open for all subsequent critical writings, which started to search for the answers on the more and more evident shortcomings of the existing peace operations.

III. 3. Transitional Administration Missions

As it was shown in the previous chapter, in the years following the end of Cold War a growing number of complex peacekeeping operations begun to include diversity of peacebuilding components such as military, civilian police, political and civil affairs, rule of law, human rights, humanitarian, reconstruction...etc. This eventually led to the mainstreaming of peacebuilding missions as the so-called ‘second generation’ peace operations.

Throughout the 1990s, the increasing complexity of peacekeeping mandates required better specialization within the missions’ structure. Further advancement in peacebuilding praxis was conveyed through the strengthening of the role of certain components. In accordance with the parallel developments in the conflict resolution theory, the choice has fallen at the political and administrative component. State sovereignty has become seriously eroded, liberal democratic paradigm won unified acceptance and

¹⁰⁶ Paris (2004), p. 4.

¹⁰⁷ Paris (2004), p. 6.

¹⁰⁸ *Human Rights & Conflict Management: Valuing Synergy*, Public Meeting with Michelle Parlevliet, Danish Institute for Human Rights, 7 June 2005.

'democratization' has become widely apprised path to sustainable peace.¹⁰⁹ All of that have created ideal atmosphere for setting up the new type of peacebuilding missions in which the political and civil affairs segment gained central role. The idea was that the international community should assist local communities in their efforts to consolidate peace by reviving political, legal, economic and social infrastructures, which will become backbones of democratic governance and economic development.

There have appeared to be four distinct forms in which the exercise of the political authority by the international community has taken place:

- 1) assistance to an interim government (such as in the case of Afghanistan – United Nations Assistance Mission in Afghanistan (UNAMA)),
- 2) through the partnership with the existing occupier (United Nations Transition Assistance Group (UNTAG) - Namibia),
- 3) by controlling the divided factions (United Nations Transitional Authority in Cambodia (UNTAC)),
- 4) in the form of the governorship of a territory (United Nations Interim Administration in Kosovo (UNMIK)).¹¹⁰

Even though this kind of missions have exhibited apparently distinct form of peace engagement, for a long time UN officials have been quite reluctant to label them as an undertaking different from peacebuilding operations.¹¹¹ Instead, in most of the UN related texts, transitional administration missions have been continuously termed simply as the complex peace missions.¹¹² Although the international administration of war-torn territories has come across as a direct consequence of the expansion of peacebuilding activities, Richard Caplan argues that "it would be a mistake, however, to suggest that international administration constitutes just mere extension of the complex

¹⁰⁹ See for example Boutros-Ghali, B., *An Agenda for Democratization* (Supplement to Reports A/50/332 and A/51/512 on Democratization), 17 December 1996.

¹¹⁰ Chopra (2004), p. 242.

¹¹¹ "It should be strongly emphasized, however, that governance mandates are the exception rather than the norm in peacekeeping." In: Peacekeeping Best Practise Unit (2003), p. 35; The reason for this, in the author's opinion, is quite often present fear on the side of many UN peace representatives that these operations could recall rather unwelcome comparisons with the period of the UN trusteeship system.

¹¹² The author of this text holds the opinion that the specific nature of the transitional administration missions demands specific term.

peacekeeping".¹¹³ The responsibilities that UN as a main carrier of the missions of this kind has faced far exceeded established the peacebuilding practices. Transitional administration missions started to exercise executive, legislative and judicial powers as interim governments in the war-torn states.

There are several features of the transitional administration missions, relevance of which demands further elaboration.

III. 3. 1. IGOs' Cooperation

Whereas all the contemporary peacebuilding missions have in common **multiplicity of the actors engaged**, this is particularly bold feature of the transitional administration missions. Vast majority of them have been performed by UN engaged in the different types of cooperation arrangements with the range of the international organizations and ad hoc state coalitions. Excellent examples for this are United Nations Interim Administration Mission in Kosovo (UNMIK) and United Nations Transitional Administration in East Timor (UNTAET), which brought many different actors under single UN umbrella.

Wider array of peacebuilding agencies envisage better division of labor and higher prospects for the proper funding of the mission.¹¹⁴ What is even more significant in the case of transitional civil administration is that the multiplicity of actors gives broad representative character to the mission and thus significantly adds to its legitimacy.¹¹⁵ Today, in a post-colonial age, "it would be politically unacceptable to entrust responsibility for the administration of a territory to a single state, even if elaborate accountability mechanisms were established".¹¹⁶

III. 3. 2. Degree of the Authority

¹¹³ Caplan, R., *A New Trusteeship? The International Administration of War – torn Territories*, New York, Oxford University Press, 2002, p. 9.

¹¹⁴ Although, looking into practice, this can be openly disputable opinion. Different on this: Caplan (2002).

¹¹⁵ As opposite, within the UN trusteeship system a common practice was to appoint single state to administer a territory.

¹¹⁶ Caplan (2002), p. 21.

Transitional administration missions exercise greater **degree of the authority**¹¹⁷ than the other types of peace operations. Although degree of the authority that the international community delegates to those missions significantly varies from case to case, these peace operations display significant magnitude of the effective control over the principal state functions. The main scale lies between the supervision on one side to the direct governance at the opposite side of the continuum of delegated authority. While United Nations Transitional Authority in Cambodia (UNTAC) is often cited example of the first type of transitional administration missions (supervision),¹¹⁸ UNTAET and UNMIK are the most often used examples to illustrate the international administration in the form of direct governance.¹¹⁹

However, important to note is that degree of the authority is not once and for all given feature of the particular mission. Supposedly, central idea of any peace undertaking is that they should be temporal (transitory) in nature. This element is even more accentuated through the process of sequencing of transitional administration missions.¹²⁰ There are generally speaking three broad phases in the work of a mission: a) getting started in a post-conflict environment, b) implementing the mandate in partnership with the local and international counterparts, and c) transferring responsibility to the local government authorities.¹²¹ In the initial phase, degree of the missions' authority should be at the highest level, while gradually decreasing in second and third phase. Accordingly, degree of the authority depends not only on the given mandate but as well on the phase in which peacebuilding activities are.

¹¹⁷ Authority exercised towards the local population.

¹¹⁸ After Paris Accord between the four Cambodian political factions was reached, UNTAC was deployed to support establishment of a "neutral political environment conducive to free and fair general elections". Although originally conceived to exercise direct control over five administrative areas, the role of this peace operation was eventually limited to supervision and monitoring the four factions' activities. In: Caplan (2002), p. 17.

¹¹⁹ "In interim administration missions beginning in the late 1990s ...the United Nations (UN) performed ever more specialized governmental functions at all administrative levels in the mission area. In these cases, civil affairs became a civil administration responsible for directly managing all aspects of civilian life...." In: Peacekeeping Best Practise Unit (2003), p. 35.

¹²⁰ Sequencing refers to the planning and realization of the mission's mandate through the clearly determined phases.

¹²¹ Peacekeeping Best Practise Unit (2003), p. 37.

III. 4. Civil Affairs Component

In an interim or transitional administration mission, civil affairs component is the one that **performs governmental functions**. Its central assignment is to establish and subsequently oversee the participatory structures in the local government and to carry out basic administrative functions in all municipalities.

“Civil affairs officer may function as a minister, mayor, [...] general manager of an enterprise, civil registrar or court administrator.”¹²² These tasks embrace diverse areas such as health, education, civil protection, judicial administration, transportation, communications, environment, mine clearance, public enterprises, social welfare, customs, business registration, taxation and insurance. Thus, civil affairs officers have extremely miscellaneous and multi-dimensional role in the mission.

III. 4. 1. Structure

The civil affairs segment is typically based on a field structure with a core presence at the mission headquarters and civil affairs offices set up throughout the mission's area. At the local level, civil affairs officers are usually the most visible UN civilian representatives. Their responsibility is to develop and maintain a wide network of contacts at all administrative levels and interact with the local key players such as traditional leaders or civil society representatives. At the central level, civil affairs officers run ministerial-level bodies and perform executive functions within those bodies. They may also manage public enterprises and regulatory bodies and exercise control over diversity of other communal structures. In missions with the executive functions, the head of civil administration commonly holds a high-ranked position within the mission, typically as a Deputy Special Representative of the Secretary-General (DSRSG). From the decision-making perspective, his position is comparable to the position of a minister of the central-level governing body.

¹²² Peacekeeping Best Practise Unit (2003), p. 42.

III. 4. 2. Civil and political affairs

Civil affairs officers in an interim administration represent not only UN as organization, but also the administrative body to which they have been appointed, whether a ministry, public enterprise, municipality or local community. Thus, the distinction between the political affairs and civil affairs components in missions is quite often vague. "Civil administration is entrusted with implementing the mission's mandate in the administrative area and faces the challenge of not allowing political pressures to influence the running of an impartial administration, despite the high-profile political role of the SRSG."¹²³

Civil affairs officers are **the civilian face of the mission** to the local population. Hence, their readiness to understand local customs, institutions and codes are of the utmost importance. In order to fulfill successfully mission's mandate, civil affairs officers need to understand fully local political complexities and sensitivities and in the same time to preserve objectivity and professional ethics.

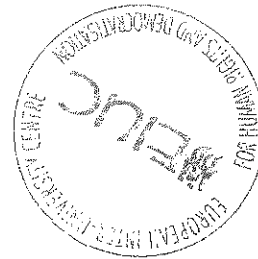
III. 4. 3. Transferring Responsibilities

The core idea of civil affairs and civilian administration is to assist in creating conditions for sustainable peace by helping local population to build effective local administrative structures. Civil affairs officers' goal is to work themselves out of that assignment by creating the environment in which their responsibilities are gradually assumed by the local civil servants and leaders. Once their original functions have been handed over to the local structures, the role of civil affairs is, depending on the mission's mandate, further redefined and usually comprises areas such as: reserved executive responsibilities, political oversight and reporting, financial auditing, minority integration or protection, coordination of refugees and displaced persons return initiatives...etc.

Administering this transition successfully is an enormous challenge for civil affairs officers, and paramount to the success of the transitional administration mission as a whole. Respectively, the process within which civil affairs officers set priorities and

¹²³ Peacekeeping Best Practise Unit (2003), p. 41.

implement programs must be carefully measured against in advance established and quantifiable benchmarks.



Introduction to the II part

The final goal of peacebuilding operations is the establishment of the conditions, which will secure stable, lasting and self-enforcing peace. The complexity and vagueness of the notion 'sustainable peace', joined by the complexity of peace operations, necessarily limits our ability to reach the conclusion about the effectiveness of peacebuilding 'projects' in the post-Cold War era. The notion 'sustainable peace' – its abstract nature comprehensible only through the 'long-term perspective' glasses, renders any attempts to measure the effectiveness of peacebuilding operations either rare or modest in their achievements. The existing efforts to do so by replacing the notion of 'sustainable peace' with the short-term objectives are even less promising. Tailored by the 'liberal market democracy' paradigm and commonly embodied in the 'free and fair elections' success story, they often loose from the sight the local conditions, which should be fundamental in addressing structural violence.¹²⁴

On the other hand, every peace operation is an immense undertaking in both organizational and administrative sense. The United Nations, with its enormously bureaucratic structure, inadmissible small budget¹²⁵ and chronically understaffed, is the world's most active peacebuilding agency, in the last decade engaged in more than fourteen peacebuilding operations.¹²⁶ The new coalitions with the regional organizations as the new bearers of the peacebuilding initiatives and consequently created problems of coordination just reinforce fear that the effectiveness of peacebuilding is impossible to grasp.

Yet, these difficulties should not lead us down the path of adopting reduced standards of successful peacebuilding such as the absence of violence or the successfully completed

¹²⁴ In the same way Paris: "As we have seen in the case of many of the missions that preceded UNMIK, speedy democratization is one way of creating the appearance of peacebuilding "success" without resolving difficult issues and underlying sources of conflict." Paris (2004), p. 218.

¹²⁵ The annual budget for all UN operations, all agencies and all programs does not exceed budget of a medium-sized Canadian province. Das (2004), p. 271.

¹²⁶ United Nations Department of Peacekeeping Operations (DPKO) at <http://www.un.org/Depts/dpko/dpko/index.asp>

elections. Instead, the author argues, more tangible tools for the evaluation of peacebuilding activities can be found in:

- a) internationally recognized human rights instruments,
- b) good governance principles,
- c) standards and procedures of the organizational sciences.

The evaluation of the effectiveness of postconflict peacebuilding operations have to be situated at the more prominent place in all phases, starting from planning to personnel deployment and finalization of peace operation.

Properly structured and developed evaluation mechanisms could bring series of incrementally important upshots. They could reinforce the connection between duties, responsibilities and individual/institutional accountability; increase the efficiency of the individual projects; uphold the quality and thus the legitimacy of each peacebuilding action. At the institutional level, they could bring additional legitimacy to the missions' mandates, preserve budgets and enhance relationship between the donor state and UN, which could in response have the reversible effect on the quality and legitimacy of peacebuilding projects.¹²⁷

Significance of properly conducted evaluation and monitoring is even more obvious if one speaks about the transitional administration missions. Transitional administration missions are by definition in charge of all or the most significant governmental functions in the given territory. Inadequate or erroneous performance of the activities that fall within a mandate of this type of missions has grave and far reaching repercussions on the life of the inhabitants and peace building process.

Evaluation through the application of human rights norms and good governance principles will be the main theme of the subsequent chapters. Theoretical findings from the first part of this work will be exposed to the reality check through the analyses of the certain aspects of the functioning of the United Nations Interim Administration Mission in Kosovo (UNMIK). In the first chapter the mandate and the structure of the Mission in Kosovo will be introduced. The link between the certain good governance and human

¹²⁷ The separate issue here is whether are those evaluation mechanisms, after being developed, properly applied or applied at all.

rights principles and the quasi-governmental character of the Mission's mandate will be examined in chapters two and three, while in the last chapter focus will shift at those UNMIK institutional shortcomings that draw their origins in the United Nations institutional weaknesses.

Chapter IV - United Nations Interim Administration in Kosovo

IV. 1. Short History

The UN Interim Administration Mission in Kosovo (UNMIK) is the largest UN transitional administration mission ever mounted.¹²⁸ No previous operation of this kind had ever exercised such an extensive and direct administrative control over a certain territory.¹²⁹ Interim administrator - Special representative of the Secretary-General (SRSG) - assumed "all legislative and executive authority with respect to Kosovo, including the administration of the judiciary", with the right to appoint (or remove) any person to perform functions in the civil administration and the judiciary in Kosovo.¹³⁰ International officials took over practically all key administrative functions, from taxation to designing educational curricula and maintaining health service. The core idea build in the UNMIK transitional strategy has been to lead Kosovo to the development of self-governing and democratic institutions.

The international protectorate in Kosovo was a direct result of NATO's 78-days bombing campaign in the Federal Republic of Yugoslavia (FRY). The campaign began on 24th March 1999 and ended at 10th June 1999 with the endorsement of the UN SC Resolution 1244, which provided for the withdrawal of the Yugoslav administration and security forces and their replacement by UNMIK along with the NATO-led Kosovo Force (KFOR). Resolution 1244 mandated the deployment of a civilian presence under the authority of the United Nations, and a military presence, which would operate under the separate NATO command. The KFOR was tasked to deal with peacekeeping, demilitarization, and the establishment of a safe and secure environment for the return of refugees and displaced persons.¹³¹ Its task included as well the other military objectives

¹²⁸ Conflict Security & Development Group, *Kosovo Report*, King's College London, February 2003, Para. 1, at <http://ipi.sspp.kcl.ac.uk/rep005/index.html>

¹²⁹ Paris (2004), p. 213.

¹³⁰ UNMIK Regulation 1999/I, *On the Authority of the Interim Administration in Kosovo*, July 25, 1999, Para 11.11, 12.12.

¹³¹ UN Security Council Resolution 1244, 10 June 1999, Para. 9.

such as: maintaining public safety, de-mining, border duties, and protecting and supporting the international community. The civilian presence was responsible for the establishment of an interim administration under which Kosovo could progressively enjoy substantial autonomy¹³²

IV. 2. Preparation of the Mission

Pre-mission planning started several months prior to Resolution 1244 and was initially constrained by the several significant factors. As noted in the Conflict Security & Development Group Report on Kosovo from 2003, the nature and concept of the future administration and the respective roles of the UN, the OSCE and the EU, stayed unclear until just before the Resolution 1244 has been endorsed. The OSCE started with the extensive planning already in early 1999 while anticipating that, after the Rambouillet negotiations, Kosovo Verification Mission (KVM) would be replaced by the fully-fledged OSCE operation. In accordance with that, "key Member States had given the UN Secretariat the impression that ... the OSCE would be the preferred organization to run any future mission."¹³³ Even more decisive disadvantage for the proper planning of the Mission was that the UN Department of Peacekeeping Operations (DPKO) in the given period began to experience serious decline in the available funds. Influenced by perceptions of poor UN performance in Bosnia, UN Member States started with the serious reduction of the contributions to DPKO. As a consequence, in late 1998 DPKO head office professional staff was reduced by almost one-third.¹³⁴

It was not before the Group of Eight industrialized countries (G8) meeting in Germany, in May 1999, that decision to have the UN lead the mission was taken.¹³⁵ A small UN head office team embarked on planning and design of the mission. Knowing that it lacks resources and personnel, DPKO found itself reluctant in preparing for the mission - its

¹³² UNMIK web page, at <http://www.unmikonline.org/>, accessed in May, 2005.

¹³³ Conflict Security & Development Group (2003), Para. 21.

¹³⁴ Immediately in the year following this exigency, DPKO was mandated to undertake extensive missions in Kosovo, East Timor and Sierra Leone.

¹³⁵ "The EU and OSCE were ruled out by the US and Russia, respectively, and the responsibility for leading the mission was given to the UN." Conflict Security & Development Group (2003), Para. 22. More on this in: Pula B., *The UN in Kosova: Administering Democratization*, in Bieber, F., Daskalovski, Ž. (eds.), *Understanding the War in Kosova*, London, Frank Cass, 2003, p. 200-201.

internal capacity was overstretched and almost no additional staff was diverted to help the head office team prepare and manage the mission deployment. Under such conditions the real strategic planning was not visible and the initial design of the future UN Mission in Kosovo was heavily influenced by the pattern employed in the UN Transitional Administration Mission for Eastern Slavonia, Baranja and Western Sirmium (UNTAES)¹³⁶. As depicted by one former senior UNMIK official, the head office planning was basically no more than “a statement of interests and very far from anything approaching an operational plan [...]; the initial planning had completely underestimated the scope and depth that [the mission] had to go into”.¹³⁷

In the report of 12 July 1999, UN Secretary-General Kofi Annan presented somewhat more developed plan for the future mission, based on the rapid assessments of local capacity and negotiations with the departing authorities.¹³⁸

IV. 3. Structure of the Mission

The UNMIK was the cutting edge not only in its scope but as well in its structural complexity. In no UN mission ever designed the other multilateral organizations were in such extensive way partners under the United Nations leadership. To implement its mandate, UNMIK was designed as the four-pillar structure. All four pillars were initially entrusted to the four different organizations:

- Pillar I was lead by the UNHCR and responsible for overseeing humanitarian assistance;
- Pillar II comprised civil administration, police and judiciary, and was assigned to the UN Secretariat;

¹³⁶ What was problematic here was that the local settings (environment) and the mandates under which those two Missions have been established did not have so many common elements.

¹³⁷ Quoted in: Conflict Security & Development Group (2003), Para. 24.

¹³⁸ *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/1999/779, 12 July 1999.

- Pillar III was entrusted to the OSCE and its scope of activity was institution-building (including democratization), elections and human rights.
- Pillar IV tasks - economic reconstruction and recovery - were assigned to the European Union.¹³⁹

At the end of the emergency stage in June 2000, the humanitarian component based on Pillar I (UNHCR) phased out, after a gradual transfer of the social welfare, health and rehabilitation responsibilities to UNMIK were conducted. Subsequently, in May 2001 new pillar has been formed to deal with the Police and Justice departments. Now, both first and second pillar were under the direct leadership of the UN.¹⁴⁰

Each of the four pillars of the interim administration in Kosovo, was headed by a Deputy of the Special Representative of the Secretary-General (SRSG). The deputies SRSG (DSRSG), together with the International Administrator - SRSG, constituted an Executive Committee as the main administering body, task of which was to assist the SRSG from the perspective of priorities detected in the area under their responsibility. UNMIK operational priorities also encompassed close coordination with the international security presence (KFOR) and establishment of the functional relationships with the local representatives.

IV. 4. Civil Administration (II Pillar)

In UNMIK, the Civil Administration (II pillar) was divided into three levels: central, regional and municipal (including local communities). The central or ministerial level originally consisted of a number of sectoral departments headed by civil affairs officers. There structure resembled a structure of a government with the ministries. In the field, five regional administrations, 30 municipal administrations and 24 local community offices were formed. This structure has remained constant while degrees of responsibility

¹³⁹ UNMIK web page, accessed in May 2005.

¹⁴⁰ However, it is important to note that the III Pillar (OSCE), structured in the same way as the one in Bosnia, also had a police-training department separate from the UN's executive policing department.

and resources have been changed subsequently with the Mission entering in the new phases of its engagement.¹⁴¹

IV. 5. Phases

Security Council Resolution 1244 designated UNMIK to develop provisional institutions for democratic and autonomous self-government and to transfer subsequently those administrative responsibilities to the newly developed structures. In the initial phase of the Mission, civil affairs officers carried out functions in all sectoral departments. Consequently, the process of transferring administrative responsibilities was initiated and it took place in three stages.

First stage has been commenced by the agreement on the joint administrative structure (December 1999). As a consequence in early 2000 the Joint Interim Administrative Structure (JIAS) - the central point of this phase, has been established. Formally, the Joint Structure has administered Kosovo since February 2000 when it officially replaced all previous parallel structures for revenue collection and provision of public services. JIAS was comprised of the Kosovo Transitional Council (KTC), the Interim Administrative Council (IAC), 20 separate administrative departments - prototypes of the future ministries, and ten independent agencies.¹⁴²

Second phase was undertaken by setting up local self-government following the municipal elections held in October 2000. Regulation 2000/45 on Self-Government of Municipalities accorded municipalities with the right to exercise all powers, which have not been expressly reserved to the Central Authority.¹⁴³ Nevertheless, UNMIK civil affairs officers at the municipal level retained broad reserve powers of intervention ensuring that municipal decisions are in compliance with UNMIK mandate as set out in

¹⁴¹ Peacekeeping Best Practise Unit (2003), p. 42.

¹⁴² UNMIK web page, accessed in June 2005.

¹⁴³ UNMIK Regulation 2000/45 On Self-Government of Municipality in Kosovo bases the powers, size, structure and procedures of municipal representation and administration on the European Charter on Local Self-Government. UNMIK Regulation 2000/45, *On Self-Government of Municipality in Kosovo*, 11 August 2000.

SCR 1244. Additional influence of the Municipal administrators on the decision-making process was secured through the co-signing of municipal budget once it has passed through the Municipal Policy and Finance Committee and has been adopted by the Assembly.¹⁴⁴

In the **third phase** of the UNMIK presence in Kosovo, the SRSG promulgated the Constitutional Framework.¹⁴⁵ This document determined the size, shape, powers and responsibilities of Kosovo's institutions for self-government and prepared the way for the general elections on 17 November 2001. It prescribed a government with a Prime Minister and Ministers and laid down foundation for the future functioning of the provisional self-government.

Two years and several months after the establishment of the UNMIK, self-governance was established following the general elections, which took place in November 2001. Later on, with the transfer of a number of responsibilities directly to the democratically elected representatives, the organization changed and the administration was divided into the "transferred" ministries and the "reserved" bodies, which remained part of the Mission.

¹⁴⁴ UNMIK web page, accessed in June 2005.

¹⁴⁵ UNMIK Regulation 2001/9, *On Constitutional Framework for Provisional Self Government*, 15 May 2001.

Chapter V - Human Rights and Democratization in Kosovo

V. 1. United Nations, Human Rights and Democratization

During the fifty years of its existence, the United Nations has been the main arena where the international politics on human rights have been evolving. It was through the United Nations that the international human rights norms were established and the institutions and mechanisms for their protection created. The efforts of the United Nations to protect the acknowledged rights of individuals and groups have been taking place in the form of indirect and direct action. The indirect action involved the actions designed to influence states to promote and protect human rights. When this was not the case, when the human rights of the individuals were violated in such a grave manner that the mechanism under the Chapter VII of the UN Charter could be put into motion, the United Nations has been the main international organization to take direct actions against the violator.

By the 1990s, UN intervention for the direct protection of human rights was becoming more and more important aspect of UN human rights activity. For the first time, the Security Council stated that there is a direct link between human rights violations and threat to peace and security.¹⁴⁶ The new understanding of the nature of conflict has triggered the new approach to human security in which democratization, development and human rights were recognized as the only path to sustainable peace. In the 1993 Vienna Declaration and Plan of Action, a clear link between human rights and democracy was established when it declared in paragraph 8:

“Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context

¹⁴⁶ Security Council Resolution 688 (5 April 1992) on the repression of the Iraqi civilian population in many parts of Iraq, including Kurdish populated areas. In Ofuatey-Kodjoe, W., *The United Nations and Human Rights*, in Horowitz, S., Schnabel, A. (eds.), *Human Rights and Societies in Transition: Causes, Consequences, Responses*, New York, Paris, Tokyo, United Nations University Press, 2004, p. 111.

of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached.”¹⁴⁷

In the following years, the synthesis of the institution-building, good governance and development programs has become the axis of the newly designed UN peacebuilding operations. As it was shown in the previous chapters, the newly acquired awareness that lasting peace is about transformation rather than enforcement has become eventually embodied in the more and more frequent Security Council authorization of the peacebuilding operations in the war-torn countries. The launch of two transitional civil administration missions in 2000, the one in Kosovo and another in East Timor, have been just the last in the series of attempts of the international community to build a structure for an enduring ‘human security’.

However, these newly designed missions have been reflecting a link between human rights and democratization quite often in just one-way direction. Once the negative peace has been established, human rights protection mechanisms have been replaced by the ‘rapid democratization’ techniques, which did not necessarily and always include the respect for the essential elements of the human rights discourse such as the principle of rule of law, accountability, separation of powers...etc. In other words, democratization as a major concept of the transitional civil administrations did not always mean day-to-day good governance by the transitional civil administration itself.

IV. 1. 1. ‘Peace versus Justice’ Debate

In the institutional sense, this negative phenomenon was just the logical outcome of the much older debate between those who were insisting on the primacy of the standard peacebuilding procedures (peace enforcement combined with the rapid democratization) and the others who were advocating for a more consistent, human rights-based approach to conflict within the UN. This so called ‘peace versus justice’ was a reflection of the fact that throughout the years practitioners have devoted little attention to the question of how the disciplines of human rights and applied conflict resolution relate to one another -

¹⁴⁷ Vienna Declaration and Plan of Action, A/CONF.157/23, 12 July 1993, Para. 8.

except that conflict resolution should bring to an end human rights violations that were a consequence of conflict.¹⁴⁸

The key argument of the human rights approach to conflict is that it is not enough to use human rights just as a justification for and guiding principle of the peacebuilding practices. If peace is to be sustainable, human rights practitioners claim, then human rights have to be used not as the rhetoric but as a set of legally binding instruments. Advocates of the rights based approach stress that if a sustained denial of human rights is a structural cause of high-intensity conflict, then a sustained protection of human rights is essential for dealing with conflict constructively. Human rights standards are primary instruments in this regard.¹⁴⁹

Parallel to this, similar insights have provoked the radical changes in the concept of good governance. Although this concept has been used initially as a set of the standards for the institutional efficiency, after the interpolation of the human rights perspective in development thinking, good governance began to signify “a general standard for democratic governance and power exertion” where the human rights accountability should have a prominent place.¹⁵⁰

For the effective and sustainable resolution of intra-state conflict, the prescriptive, human rights approach to conflict must be combined with the facilitative approach of conflict resolution practitioners.¹⁵¹ Without the adequate inclusion of the human rights standards and mechanisms for their protection in the day-to-day activities of the UN missions, such as the one in Kosovo, the process of democratization and institution-building is bound to be unsustainable. Democratization and institution-building cannot be seen anymore as a magic spell for achieving long lasting peace, but rather as a process of a social

¹⁴⁸ As noted by Asbjörn Eide, the same confrontation has been characteristic for the development programs where human rights-based approach was largely neglected until the second part of the 1990. Since then it has got an increasing attention although more on the rhetorical level than through the practical implementation of the development policies. Meeting of the Nordic Human Rights Institutes on Human Rights Reform in the United Nations, *Report*, Alfredsson, G., et al., Lund, 17-18 May 2005.

¹⁴⁹ Parlevliet (2002).

¹⁵⁰ Sano (2002), p. 124.

¹⁵¹ Parlevliet (2002).

construction of the peoples' certitudes in the democratic values. For this, human rights instruments are indispensable.

In the following lines several aspects of the UN administration of Kosovo will be scrutinized with regard to the application of good governance and human rights principles. In carrying out the analysis the author has relied, *inter alia*, on the annual and special reports of the Ombudsperson institution in Kosovo, the reports and recommendations of the Council of Europe, the opinions of the European Commission for Democracy through Law (Venice Commission), the reports of the OSCE Mission in Kosovo (OMIK), the reports of the Amnesty International and last but not least, on the information gathered through the interviews with the local and international staff of the UNMIK and OMIK.

V. 2. Basic Principles of the Democratic Governance

V. 2. 1. Separation of Powers

From the human rights perspective democracy is the most acceptable form of governance since it provides the individual with the strongest possible guaranties against the unlimited power of a sovereign. Every power can be abused and for that reason the 'checks' to its exercise are the necessity. Unfortunately, the very structure of the Interim Administration in Kosovo, the main objective of which is "organizing and overseeing the development of provisional institutions for *democratic* and autonomous self-government [italic added]"¹⁵² has been designed without the due respect for this core democratic principle.

¹⁵² UN SC RES. 1244, Para. 11.c.

The Authority of the Interim Administration

The first regulation that the UN Mission in Kosovo has issued in taking on its assignment was UNMIK Regulation No. 1999/1. In its brief text signed by Dr. Bernard Kouchner, at that time Special Representative of the Secretary-General, UNMIK asserted that: "*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. The Special Representative of the Secretary-General may appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such person [italic added].*"¹⁵³ At the very beginning of its mandate, "sweeping powers were delegated to the SRSG, who literary become 'the law'", as one scholar has commented later the content of the Regulation 1999/1.¹⁵⁴

The same grim observations have been expressed in the Second Annual Report of the Ombudsperson Office in Kosovo:

"On its establishment as the surrogate state in Kosovo, in 1999, UNMIK gave no cognizance to one of the founding principles of democracy, the separation of governmental powers. Amongst the earliest actions of the Special Representative of the Secretary-General of the United Nations (SRSG) was the promulgation of an UNMIK Regulation vesting total executive and legislative powers in himself. In the same Regulation, he also accorded himself administrative authority over the judiciary. The SRSG can and does act outside the bounds of judicial control to restrict or deny fundamental human rights to individuals in Kosovo."¹⁵⁵

Subsequently, in the Report on the Protection of Human Rights in Kosovo adopted by the Council of Europe Assembly in January 2005, Rapporteur Mr. Toni Lloyd observes:

¹⁵³ UNMIK Regulation 1999/1, Section 1.

¹⁵⁴ Chesterman, S., *Building Democracy Through Benevolent Autocracy: Consultation and Accountability in UN Transitional Administration*, in Newman, E., Rich, R. (eds.), *The UN Role in Promoting Democracy: Between Ideals and Reality*, Tokyo, United Nations University Press, 2004, p. 102.

¹⁵⁵ Ombudsperson Institution in Kosovo, *Second Annual Report 2001-2002*, 10 July 2002, p. 1. One of the first cases that had substantiated this harsh observation was the case in which the SRSG has exercised this power to override the decision of international judges and international prosecutors to release certain individuals from detention (more on this in the subsequent chapter).

“The fact that UNMIK is subject only to the Ombudsperson’s jurisdiction, therefore represents a serious lacuna in the human rights protection system in Kosovo.”¹⁵⁶

Ombudsperson Institution in Kosovo

Established by the OSCE on 21 November 2000 the Ombudsperson office is the only mechanism with some kind of jurisdiction over UNMIK, whereby local population can challenge decisions or actions undertaken by the international civil administration in Kosovo. Set up by the UNMIK Regulation 2000/38¹⁵⁷, Ombudsperson Office has been granted a wide jurisdiction to receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions, which could constitute an abuse of authority by the interim civil administration, and later emerging local institutions.¹⁵⁸

However, the Ombudsperson ‘powers’ over UNMIK or Provisional Institutions of Self-Governance (PISG) are in the stark opposition with such a wide jurisdiction. The Ombudsperson has not binding powers over the transitional and later developed provisional institutions, as his prerogatives are essentially limited to making recommendations to the administrative authority or officials in question. If the officials concerned do not take appropriate measures within a reasonable time, the most what the Ombudsperson can do is to “draw the Special Representative of the Secretary-General’s attention to the matter and make a public statement thereon”.¹⁵⁹

The real-life roots of the theoretically postulated principle of separation of power soon have been demonstrated by the reaction of the local population. A huge number of the application lodged already in the first year of the establishment of the Ombudsperson Office was a strong argument about the necessity of the institution, which would be the counterpart to the unlimited power of UNMIK. Despite the fact that the very notion of the ‘ombudsperson’ has been complete novelty to the majority of the population of

¹⁵⁶ Council of Europe Parliamentary Assembly, *Report on Protection of Human Rights in Kosovo*, 6 January 2005, Para. 14.

¹⁵⁷ UNMIK Regulation 2000/38, *On the Establishment of the Ombudsperson Institution in Kosovo*, 30 June 2000, Amended by UNMIK Regulation 2003/8, 15 April 2003.

¹⁵⁸ UNMIK Regulation 2000/38, Para 3.1.

¹⁵⁹ UNMIK Regulation 2000/38, Para. 4.11.



Kosovo¹⁶⁰, by May 2001 more than 2,500 people had contacted the Ombudsperson Office.¹⁶¹

However, not only that the Ombudsperson Office was insufficient equipped to secure proper conduct of power but, in addition to this jurisdictional deficiency, in a vast number of cases the UNMIK administration has not reacted at all at the Ombudsperson's recommendation. This was actually just the reflection of the situation where the principal administrator, SRSB himself often does not respond adequately or does not respond at all to the Ombudsperson's recommendations.

The malpractice of the interim civil administration to this regard rendered the exercise of already narrowly defined Ombudsperson's prerogatives, even less effective. Under the given constraints the only tool being left to the Ombudsperson was to raise the critical issues publicly. In this sense it could be argued that only the exceptionally high quality engagement of the Ombudsperson and an unusually elevated media profile of this institution make the Ombudsperson Office functional in the given settings.¹⁶²The four annual and several special reports issued by this institution serve as an important instrument in addressing structural deficiencies of the UN Mission in Kosovo. Those reports are as well highly relevant as a well-documented testimony on the necessity for the serious reconsiderations of the design of the future UN missions of this kind.

V. 2. 2. *Civilian Control over Military*

One of the essential achievements of the contemporary democracies is the principle of civilian control over military forces. As being one of the stronghold of the nowadays

¹⁶⁰ Neither Albanian nor Serbo-Croatian language comprise this or any other similar term. The Ombudsperson was unimaginable in the communistic context of the former Yugoslavia and the autocracy of the Milosevic's regime later in Serbia. This is as well one of the reasons why most of the states formed after the dissolution of Yugoslavia do not have native term for this institution but simply adopt the original term in establishing the Ombudsperson institution.

¹⁶¹ In the five years of its existence, by May 2004, in total 12,000 people of Kosovo has approached the Ombudsperson Office, 1753 formal applications have been lodged and 65 *ex officio* investigations opened. Ombudsperson Institution Reports.

¹⁶² However, in this context one should not forget that Kosovo is in Europe and that the extremely high attention given to this Mission by the international media is not at all common to the majority of peacebuilding missions, the mandates of which are passing by far from the eyes of the international community.

democracies, this principle is one of the central commitments a state is obliged to undertake in joining the Council of Europe.¹⁶³ However, even though the main task of the international presence in Kosovo is to support development of a democratic society and good governance practice, by its very structure this peace mission cannot give to the local population a true example in this regard.

The text of UNSC Resolution 1244 - some kind of the constitution for the international presence in Kosovo - is rather ambiguous on the power relationship between the international civilian presence (UNMIK) and the international security presence (KFOR).¹⁶⁴ While Paragraph 5 places both the international civil and security presences "under United Nations auspices", in Paragraph 6 the Secretary-General is further requested "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 [italic added]".¹⁶⁵

The dilemma has been resolved soon in the implementation of the UNSC Resolution 1244. In a correspondence of 20 January 2000 with the Amnesty International, former KFOR commander (COMKFOR), General Dr Klaus Reinhardt, stated categorically "that UNMIK has neither legal jurisdiction nor mandate to conduct investigations into KFOR activities".¹⁶⁶

In addition to this, Ombudsperson as the only existing mechanisms for redressing potential abuse of power by the staff of the Mission has no jurisdiction over KFOR. Although UNMIK Resolution 2000/39, by which this institution was established, stipulates that "[i]n order to deal with cases involving the international security presence, the Ombudsperson may enter into an agreement with the Commander of the Kosovo

¹⁶³ Council of Europe, <http://www.coe.int/DefaultEN.asp>

¹⁶⁴ The International security presence in Kosovo is led by the North Atlantic Organization (NATO).

¹⁶⁵ SC Resolution 1244, Para. 5,6. Similarly, Paragraph 9, which lists the responsibilities of the international security presence, states in section (f) that these responsibilities will include "[s]upporting as appropriate, and coordinating closely with the work of the international civil presence".

¹⁶⁶ Amnesty International Report, *The Apparent Lack of Accountability of International Peace-keeping Forces in Kosovo and Bosnia and Herzegovina*, EUR 05/002/2004.

Forces (COMKFOR)", to the authors knowledge, such an agreement has never been achieved.¹⁶⁷

One could of course argue that the national governments (senders) are the one who exercise the democratic control over their own troops. But having in mind that these troops are operating outside of their national territories and are quite distanced from their democratic overseers, the principle of civilian control over military could hardly be satisfied by this interpretation. The situation where UNMIK 'coordinates' but does not control KFOR was characterized by the Commissioner for Human Rights of the Council of Europe, Alvaro Gil-Robles, as one which "does not amount to the required democratic control over the armed forces". In the Report on the human rights situation in Kosovo, the Commissioner for Human Rights of the Council of Europe, Gil-Robles writes: "[...] I find the view that UNMIK is not to be held responsible for the respect of human rights standards by KFOR problematic [since] than one of the basic principles governing the functioning of any democratic State (or "entity") respectful of human rights and the rule of law, would not be respected in Kosovo [...]."¹⁶⁸

V. 3. Human Rights Protection

The protection and promotion of human rights are essential in addressing structural causes of conflict. If we assume that violent, high-intensity conflicts are largely the manifestations of deeply rooted, structural problems, than human rights standards should be seen as the primary instruments in the institution-building. The very processes that aim to resolve conflict must take place within a framework in which fundamental rights and freedoms are considered non-negotiable.

United Nations Interim Administration Mission in Kosovo has been established to protect human rights of the inhabitants of Kosovo in the situation of the serious human rights violations, which occurred prior to 1999 and during the grave humanitarian emergency in 1999. According to Section 11 of the UNSC Resolution 1244, one of main

¹⁶⁷ UNMIK Regulation 2000/38, Para. 3.4.

¹⁶⁸ Council of Europe, Office of the Commissioner for Human Rights, Kosovo: *The Human Rights Situation and the Fate of Persons Displaced from their Homes*, 16 October 2002, p. 21, Para. 36.

responsibilities of the international civil presence in Kosovo is protection and promotion of human rights.¹⁶⁹ In the very first regulation issued by UNMIK in June 1999, reference has been made to the duty of all persons undertaking public duties to “observe internationally recognized human rights standards”.¹⁷⁰

However, during the five years of its presence, the Interim Civil Administration in Kosovo has been sharply criticized for its failure to embrace many of the mechanisms that are indispensable for the human rights protection. In the Third Annual Report on May 2003, the Ombudsperson in Kosovo states: “The conclusion we drew in our Second Annual Report, that the people of Kosovo have been deprived of protection of their basic rights and freedoms – now four years after the end of the conflict – by the very entity set up to guarantee them, remains valid.”¹⁷¹ In faintly less alarming manner the Council of Europe Parliamentary Assembly at the beginning of 2005 notes: “Whilst UNMIK and KFOR have achieved some positive results in relation to the extremely difficult tasks with which they were charged in 1999 [...] serious concerns remain as regards the protection of human rights in Kosovo, especially after the tragic events of 17 to 19 March 2004.”¹⁷²

V. 3. 1. Human Rights Protection Mechanisms

“While it is arguable that every action of the UN has human rights implications, human rights obligations would clearly attach to the exercise of governmental functions.”¹⁷³ However, citizens of Kosovo have been left almost two years without any human rights protection mechanism.

Until the promulgation of the Constitutional Framework for Provisional Self-Governance in Kosovo, which took place two years after the establishment of the international

¹⁶⁹ SC Resolution 1244, Para (j).

¹⁷⁰ UNMIK Resolution 1999/1, Section 2.

¹⁷¹ Ombudsperson Institution in Kosovo, *Third Annual Report 2002-2003*, 10 July 2003, p. 3.

¹⁷² Council of Europe Parliamentary Assembly Resolution 1417 (2005), *Protection of Human Rights in Kosovo*, Para. 2.

¹⁷³ Cerone (2004), p. 3.

presence in this province,¹⁷⁴ the inhabitants of Kosovo have been living in some kind of legal limbo concerning the application of the international human rights instruments and mechanisms for their protection. This situation was a direct consequence of the omission done in the initial design of the Mission and subsequent failure of the UNMIK authorities to react promptly on this issue.

Namely, UNSC Resolution 1244 excluded Federal Republic of Yugoslavia (now Serbia and Montenegro) jurisdiction on the territory of Kosovo, which as well precluded the effective application of the international human rights instruments ratified by that state in the province.¹⁷⁵ On the other hand, neither the United Nations Mission in Kosovo nor the latter established local authorities in Kosovo could become a party to the international human rights treaties and/or subject to the external control of the international human rights treaty bodies and judicial mechanisms. It was somewhat "ironic" that while being placed under UN control the citizens of Kosovo have been simultaneously removed "from the protection of the international human rights regime that formed the justification for UN engagement in Kosovo in the first place".¹⁷⁶

After two years presence, in May 2001, the UN administration in Kosovo attempted to solve this serious human rights problem through the provisions of the Constitutional Framework for Provisional Self-Governance in Kosovo. This legal document made provisions of the eight important international instruments directly applicable in the territory of Kosovo.¹⁷⁷

However, even with the promulgation of the Constitutional Framework it remained quite uncertain whether the human rights provisions that it contains at least nominally bind UNMIK and KFOR. The section III of this document mentions only the Provisional

¹⁷⁴ UNMIK Regulation 2001/9, 15 *On a Constitutional Framework for Provisional Self-Government in Kosovo*, 15 May 2001.

¹⁷⁵ Legal opinion expressed in the Council of Europe Parliamentary Assembly Resolution 1417 (2005), *Protection of Human Rights in Kosovo*, Para. 1.

¹⁷⁶ Ombudsperson Institution in Kosovo, *Second Annual Report 2001-2002*, 10 July 2002, p. 5.

¹⁷⁷ These are: 1) the Universal Declaration on Human Rights, 2) the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR), 3) the International Covenant on Civil and Political Rights and the Protocols thereto, 4) the Convention on the Elimination of All Forms of Racial Discrimination, 5) the Convention on the Elimination of All Forms of Discrimination Against Women, 6) the Convention on the Rights of the Child, 7) the European Charter for Regional or Minority Languages, 8) the Council of Europe's Framework Convention for the Protection of National Minorities.

Institutions of Self-Government as the one that “shall observe and ensure internationally recognized human rights and fundamental freedoms [...]”.¹⁷⁸ In addition, the document contains the provisions which prescribe that “*nothing* in this Constitutional Framework shall affect the authority of [italic added]” the SRSG and KFOR while carrying out their tasks under the SC Resolution 1244.¹⁷⁹

Not less significant is that the texts of these, now directly applicable international instruments, haven't been published and distributed in all three official languages (English, Albanian and Serbian), neither their translations can be found at the UNMIK official web page. Three years after the promulgation of the Constitutional Framework, “their practical implementation into the Kosovo legal system remains a myth”.¹⁸⁰

V. 3. 2. Extra-judicial Detention

If one remembers that a true peacebuilding process is about building the democratic attitude much more than about the legal and democratic forms that process is supposed to impose, then it is clear that to establish human rights protection mechanisms in Kosovo does not mean to promulgate law only. It is about the transformation of the political and legal culture that was ruin in the absence of the properly functioning institutions. For that transformation to occur, the most important is to give an initial example how to uphold democratic and legal standards in the day-to-day governance despite all the restraints, which mark a post-conflict period.

One of the most apparent cases where UNMIK has been in collision with its own mandate was its practice of holding arrested individuals in detention for an extended period of time, prior to being brought before judicial authority and solely on the basis of the SRSG's executive orders.¹⁸¹ A number of individuals have been detained in Kosovo

¹⁷⁸ UNMIK Regulation 2001/9, Para, 3.2.

¹⁷⁹ UNMIK Regulation 2001/9, Section 12, 13.

¹⁸⁰ Ombudsperson Institution in Kosovo, *Forth Annual Report 2003-2004*, 12 July 2002, p. 14. The same observations on this in European Commission on Democracy through Law (Venice Commission), *Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms*, 8-9 October 2004, Para. 57.

¹⁸¹ The term ‘executive order’ refers to the decision, instruction, decree or any similar action taken by the SRSG.

under the executive orders issued by the Special Representative of the Secretary General, without the legal basis for detention, and thus without the procedural mechanisms through which they can effectively challenge their detention.

This state of affairs has been additionally worsened by the cases of the persons who have been held in continued detention by order of the commander of KFOR (so called COMKFOR 'hold'), despite a lawful order by the judicial authority to release them.¹⁸² Those situations included not only orders issued by domestic judges but also orders by a panel of international judges.¹⁸³ The OSCE reports on the case where a judge ordered release of the detainees in November 1999 but that they were nevertheless held in detention by order of the commander of KFOR until July 2000.¹⁸⁴ In the following year, Ombudsperson Office has reported quite few similar cases and released a special report on this issue.¹⁸⁵

Under the harsh criticism of the mentioned institutions as well several international human rights organizations such as Amnesty International and Human Rights Watch¹⁸⁶, in August 2001 UNMIK has eventually issued Regulation 2001/18 on the Establishment of a Detention Review Commission for Extra-judicial Detentions Based on Executive Orders. However, after the initial three-month period the mandate of the commission, comprised of the international judges, has never been renewed.

¹⁸² According to the OMIK Report on The Criminal Justice System in Kosovo (March 2002 – April 2003), KFOR detained up to a maximum of 200 people in summer 2001, and a cumulative total of 3563 people have been detained so far at the US KFOR Bondsteel Base. OMIK, Department for Human Rights and Rule of Law, *Kosovo: Criminal Justice System (March 2002-April 2003)*, 12 March 2003, p. 34.

¹⁸³ In late 1999 UNMIK decided to bring international judges and prosecutors into the judicial system to curb bias, as well as to help clear the significant backlog of cases. As of June 2002, Kosovo had 14 international judges and 12 international prosecutors. International Crisis Group, *Finding the Balance: The Scale of Justice in Kosovo*, 12 September 2002, p. 8.

¹⁸⁴ OMIK, *Review of the Criminal Justice System (February-July 2000)*, 10 August 2000, p. 25.

¹⁸⁵ Ombudsperson Institution in Kosovo, Special Report No. 3: On the Conformity of Deprivations of Liberty under 'Executive Orders' with Recognized International Standards, 26 April 2001.

¹⁸⁶ Amnesty International press release, 21 February 2001, at

<http://web.amnesty.org/library/Index/ENGEUR700042001?open&of=ENG-YUG>;

Human Rights Watch, *World Report 2002*, at <http://www.hrw.org/wr2k2/>

Not only* that the deprivation of liberty imposed under the 'executive orders' do not conform with the recognized international standards¹⁸⁷ but this unlawful practice, exercised in the first two years of the UNMIK presence, has seriously diminished the prospects for the legal certainty and the protection from the arbitrariness..

V. 4. Rule of Law

A reliable judicial system is fundamental for democratization, good governance and respect for human rights. The satisfactory functioning of the judiciary is vital in building a sustainable peace and "perceptions of a failure of the justice system in a post-conflict environment can impede peacebuilding efforts".¹⁸⁸

V. 4. 1. Lawfulness of UNMIK Legal Acts

Functioning and transparent legal system is where judiciary builds its tools and finds safeguard from the illicit interference. Transparent legal system means that the legal acts issued by the legislative body possess quality of lawfulness. According to the European standards expressed through the case law of the European Court of Human Rights, in order to be lawful law must be of an adequate quality, which foremost means that it must be *accessible* and *foreseeable*. The core idea of the concept of lawfulness relates to the principle of legal certainty. Only through the accessible and foreseeable laws citizens can obtain in advance the necessary information on the legal substance and thus regulate their conduct accordingly. Not less important, this standard serves as well to protect citizens from the arbitrary actions of the governing authority.

¹⁸⁷ Ombudsperson Institution in Kosovo, *Special Report No. 4: Certain Aspects of UNMIK Regulation No. 2001/18 on the Establishment of a Detention Review Commission for Extra-judicial Detentions Based on Executive Orders (25 August 2001)*, 30 May 2001.

¹⁸⁸ Peacekeeping Best Practise Unit (2003), p. 94.

1) Accessibility of the Law in Kosovo

As it was presented in the previous chapter, the inclusion of the international human rights instruments in the quasi-constitutional document was of little practical value for the inhabitants of Kosovo since those conventions and declarations have never been properly disseminated. Unfortunately, this problem is not characteristic only for this segment of the legal system in Kosovo. The Council of Europe Report on the Human Rights Situation in Kosovo from 2005 records that the lack of legal certainty concerning *inter alia* inaccessibility of legal texts, is amongst the most urgent human rights concerns in Kosovo.¹⁸⁹

In the article on the problems related to the translation of the legal documents in the official languages, two OSCE Mission's officers observe that the translation-related problems ruin the legislative process. Not only that the period between the promulgation and translation of regulations and laws is often very lengthy but even when the translations are done, quite often they are so poor that they easily produce confusion instead successfully transmitting the information.¹⁹⁰

The Ombudsperson Office and Venice Commission¹⁹¹ as well detected the problems related to the translation, publishing and dissemination of legal document in Kosovo. While reminding that, if rule of law principle is to be respected, law must be officially published before it may be considered as a law in force, the Ombudsperson Office notes that almost five years after the first UNMIK provision has been promulgated, there is still no official legal procedure regarding the publication of laws in Kosovo.

The fact that the regulations issued by UNMIK and the laws passed by the Kosovo Assembly since 2004 can now be accessed on the official website of those two

¹⁸⁹ Council of Europe Parliamentary Assembly, *Report on Protection of Human Rights in Kosovo*, 6 January 2005, Para. 2.x.

¹⁹⁰ To illustrate how the acuteness of this problem can bring to the 'comic' and in the same time warning, real life situations they presented the example of the draft law on labor inspectorate where in the Albanian version the 'labor inspectors' have been translated as the 'labor insects'. Sabovic, S., Steinle, U., 'Lost in Translation' or how to make three languages speak one legislative voice, OSCE Assembly Support Initiative Newsletter, Special edition, No. 15, Pristina, February, 2005.

¹⁹¹ Ombudsperson Institution in Kosovo, *Second, Third and Fourth Annual Report*; European Commission on Democracy through Law (Venice Commission), *Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms*, 8-9 October 2004, Para. 57.

institutions does not change too much the above given statement.¹⁹² For the vast majority of the inhabitants of the province Internet access is still in zone of luxury.

2) *Foreseeability of the Law in Kosovo*

Another important quality that one legal act has to possess in order to become applicable is sublimed in the notion of 'vacatio legis'. *Vacatio legis* is the period that has to pass between the promulgation of a law and its entry into force. Ratio of it is to make possible for citizens to learn about the new provisions and if demanded so, make the necessary adjustments in behavior. In the already mentioned January 2005 Resolution on Kosovo the Council of Europe Parliamentary Assembly calls UNMIK to improve legal certainty in the province by, between else, "allowing for an appropriate *vacatio legis* following the promulgation of all legal instruments".¹⁹³

If the new law or amendment has direct effect on the rights and duties of the individuals and the *vacatio legis* principle is not respected, this can have extremely negative effects on the state of legal certainty and thus attitude of the citizens towards the legal system. However, UNMIK regulations, almost without exceptions, enter into force at the time of signature by the SRSG.¹⁹⁴ One of the most critical examples in this regard is the Regulation on the Immunities of the UNMIK personnel. Although it was promulgated on 18 August 2000, at the bottom of this Regulation is stated that it "shall be deemed to have entered into force on 10 June 1999".¹⁹⁵

It could be possible that the demonstrated inability of the UN Mission in Kosovo to integrate more effectively the 'rule of law' requirements into the implementation of its

¹⁹² Although neither this is fully realized. Until the end of June 2003, only four UNMIK Regulations issued that year have been posted at the UNMIK web site. Ombudsperson Institution in Kosovo, *Third Annual Report*, p. 4.

¹⁹³ Council of Europe Parliamentary Assembly, *Resolution 1417 (2005)*, Para. 5.c.ii.

¹⁹⁴ Just several examples: UNMIK Regulation 2004/11 On the Registration and Operation of Political Parties in Kosovo, promulgated on 5 May 2004 and entered into force the same day; UNMIK Regulation 2002/3 On Profit Taxes in Kosovo, promulgated on 20 February 2002, entered into force the same day; UNMIK Regulation 2005/3 On Mines and Minerals in Kosovo, promulgated on 21 January 2005, entered into force on the same day ...etc. UNMIK Official web site, at <http://www.unmikonline.org/>

¹⁹⁵ Here is actually in question the breach of the principle of non-retroactivity as a cornerstone of the modern legal systems. UNMIK Regulation 2000/47, On the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo, 18 August 2000.

mandate was one of the last evidences of this kind that triggered the Panel on United Nations Peace Operations to call for a “doctrinal shift” in the way in which the rule of law was pursued in such operations.¹⁹⁶

In March 2000, the Secretary-General Kofi Annan appointed the Panel of experts on Peacekeeping to identify and assess the weaknesses of the United Nations peacebuilding practices and offer practical recommendations to remedy those weaknesses. Several months later, the Panel issued Report of the Panel on United Nations Peace Operations (known as Brahimi Report), which has become a landmark document in an ongoing effort for institutional change within the United Nations.¹⁹⁷ The Panel recommends a doctrinal shift in the use of rule of law elements and human rights experts in complex peace operations “to reflect an increased focus on strengthening rule of law institutions and improving respect for human rights in post-conflict environments”.¹⁹⁸ This has brought to another important perspective – institutional capability of the United Nations to properly plan and adequately support the peace missions as the United Nations Interim Administration in Kosovo. The proportions this issue demand and its significance for the solution of the failures of the peace operation in Kosovo, demands a separate chapter.

¹⁹⁶ UN General Assembly and Security Council, *Report of the Panel on United Nations Peace Operations*, A/55/305-S/2000/809, 21 August 2000, Annex III, Para. 1.b.

¹⁹⁷ Durch, J. W., Earle, R. C., Holt, K. V., Shanahan, K. M., *The Brahimi Report and the Future of UN Peace Operations*, The Henry L. Stimson Center, 2003, p. 1. at <http://www.stimson.org/fopo/pdf/BR-CompleteVersion-Dec03.pdf>

¹⁹⁸ UN General Assembly and Security Council, *Report of the Panel on United Nations Peace Operations*, Para. 47.b.

Chapter VI - In-built Institutional Obstacles

“Peacekeepers were asked the impossible, and sometimes, therefore, even failed to achieve the possible...”¹⁹⁹

Running of the entire administration of a war-torn territory is a giant task. Its success depends not only on the quality of the personnel deployed and development on the field but in a great part as well on the institutional capabilities to design and support such a serious undertaking. From the first mission deployed there is almost no peace of writing on the UN peace operations, which does not stress the constraints to the effective peacekeeping, which are result of the overly bureaucratized and rigid structure of this organization.

There are quite many detected deficiencies of the UN Mission in Kosovo which are much more a consequence of the inadequacies in the phase of preparation of the Mission than they can be subscribed to the conduct of the Mission’s personnel. The slow deployment of personnel and inadequate preparation of the mission (1); lack of the accountability mechanisms at the UN and mission’s level (2); vague and confusing mandates combined with the hazardous nature of peacebuilding (3); are just some of them. Nonetheless, they can serve as a good illustration of an urgent need for change of the UN system, expressed so effectively in Brahimi Report:

“There are many tasks which United Nations peacekeeping forces should not be asked to undertake and many places they should not go. But when the United Nations does send its forces to uphold the peace, they must be prepared to confront the lingering forces of war and violence, with the ability and determination to defeat them.”²⁰⁰

¹⁹⁹ UN SC Kofi Annan in his address at University of California, Berkley on 20 April 1988. In: Newman, E., *UN Democracy Promotion: Comparative Advantages and Constraints*, in Newman, E., Rich, R. (eds.), *The UN Role in Promoting Democracy: Between Ideals and Reality*, Tokyo, United Nations University Press, 2004, p. 189.

²⁰⁰ UN General Assembly and Security Council, *Report of the Panel on United Nations Peace Operations*, Para. 1.

VI.1. Preparation of the Mission and Deployment

While every peace operation is to some extent and necessarily an improvisation in order to meet dynamics of the conflict-prone environments, it is clear that lack of proper planning prior to the deployment of the mission can have serious repercussions on the functioning of the mission. This is even more the case in the path-breaking operations such as the transitional civil administration missions where the UN assumes the responsibility of such a magnitude as the day-to-day administration of a war-shattered territory.

In 1999, the very year of the deployment of the UNMIK, in a rapid succession the UN was called on to: administer Kosovo under the protection of NATO ground forces; to replace Australian-led forces in East Timor and provide a temporary government for that emerging nation; to replace Nigerian-led regional forces in Sierra Leone implementing a peace accord; and to oversee a cease-fire in the regional war that had overrun the vast Democratic Republic of Congo. In total, the number of troops, police, and civilian personnel deployed in those new UN operations was more than tripled.²⁰¹

Not only that the freshly launched peace operations overstretched Department of Peace Operations (DPKO) capacities but the existing capacities have been already completely inadequate even for the less intensive tasks. In the eve of the deployment of UN Mission in Kosovo, by late February 1999, "the departure of all the gratis officers left much of DPKO operational support capacity and institutional memory for military and logistical planning severely depleted".²⁰² All of that led to the serious operational difficulties in the very initial phase of the deployment of UN Mission in Kosovo. The deployment of civil staff was going too slowly. Instead of the international presence a de facto institutional vacuum existed for several weeks permitting the spread of vindictive violence and illegal

²⁰¹ Durch, J. W., Earle, R. C., et al, *The Brahimi Report and the Future of UN Peace Operations*, The Henry L. Stimson Center, 2003, p. 4, at <http://www.stimson.org/fopo/pdf/BR-CompleteVersion-Dec03.pdf>

²⁰² Durch (2003), p. 3.

governance structures.²⁰³ All of that had severe repercussions on the Mission activities, especially on the effectiveness in the establishment of the formal institutions and the rule of law. As noted by a prominent UNMIK official, the task of establishing the rule of law, in particular, becomes more complicated when the arrival of peacebuilders is postponed during the vital first weeks of the mission.²⁰⁴ All of this has been identified in the Brahimi Report and later released Report of the Secretary-General where he recognizes that “[a] good exit strategy results from a good entrance strategy”.²⁰⁵

However, the Mission has already been set up and the subsequent conclusions of the Brahimi Report and the Secretary-General could do little about the initial faults in the Mission’s planning and their consequences. However, the poorly realized ‘entrance strategy’ could serve at least as one of the answers why the ongoing ‘exit strategy’ of the United Nations from Kosovo looks more like an ‘escape’ strategy.

VI. 2. Institutional accountability and Immunity of the Personnel

The main motive for the deployment of a transitional civil administration mission is not to establish administrative and democratic look-alike institutions but to assist given society in achieving a deep political transformation. This political transformation, most obviously, does not assume only the transition from conflict to peace (negative peace), but the transformation of the entire political culture of the given society (in Burton’s words the transformation of the attitudes and behavior of the citizens at all social levels). “It cannot be overemphasized that at its essence peacebuilding is an impact or outcome [rather] than a type of activity.”²⁰⁶

²⁰³ Interview with Gianfranco Deramo, Senior Minority Rights Officer, Office of the Special Representative of the Secretary-General, Office of Returns and Communities, UNMIK, Pristina, 24 May, 2005. The same information obtained in the interview with Almaz Zerihun, UNMIK Municipality Representative, Municipality of Gnjilane, Gnjilane, 23 May, 2005.

²⁰⁴ Interview with Gianfranco Deramo, Senior Minority Rights Officer, UNMIK, Pristina, 24 May, 2005. The same theoretically postulated in Paris (2004), p. 229.

²⁰⁵ Report of the Secretary General, *No exit without strategy: Security Council Decision-making and the Closure or Transition of United Nations Peacekeeping Operations*, UN Doc.S/2001/394, 20 April 2001, Para. 44.

²⁰⁶ Bush (2004), p. 26.

The core of the desired transformation is the process of the empowerment of the individual citizens. But, the empowerment does not simply mean to grant somebody with certain set of rights - to be granted with the rights is not in any case the same as to be entitled to the rights. The most important for the process of the political transformation is that the citizens of the administering territory understand that they are entitled to the right to be governed in democratic, transparent and accountable way. The accountability is in this sense key requirement since only accountable governance can be seen as "part of the process of constituting individuals as citizens with rights and duties rather than as subjects"²⁰⁷

One of the common features of peace operations is the immunity of the peacekeeping/peacebuilding personnel. Another one is the absence of any judicial body that would be competent to adjudicate in the legal action against the United Nations. "Even if the UN is found to be bound by the international human rights law and violative conduct is attributable to it, there is no forum capable of hearing a claim against it. The Convention on the Privileges and Immunities of the UN affords it blanket immunity from domestic courts, and no international court has jurisdiction over it."²⁰⁸

These institutional features of the UN and the position of its personnel *en general* are just augmented instead of being adequately reduced in Kosovo, where the UN and its personnel are bearers of almost all state prerogatives and thus have a particularly strong impact on rights of the citizens of that territory. This not only affects the prospect for the realization of the peacebuilding strategy (understood as transformation), but also has a serious affect as well on the legitimacy of the given UN mission.²⁰⁹

In the previous chapter it was demonstrated that the UN administration in this province is not set up in the accordance with one of the basic democratic principles - the principle of the separation of powers - and that for quite some time Kosovo was out of reach of any regional or international human rights protection mechanism. In the addition to this, already at the beginning of its mandate, the UN administration in Kosovo has granted

²⁰⁷ Kjaer&Kinnerup (2002), p. 12

²⁰⁸ Cerone (2004), p. 27.

²⁰⁹ "A second condition identified as necessary for the legitimacy of transitional administrations is their public accountability." In: International Peace Academy (2003), p. 9.

itself with the practically unlimited immunity. UNMIK Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000) grants such a broad immunity to the international civilian and security presences that it renders procedurally impossible to lodge, at any time and in any territory, any legal process against:

1. KFOR and UNMIK as institutions, as well as to their property, funds and assets (Sections 2.1 and 3.1 of the Regulation, respectively),
2. international and locally recruited UNMIK personnel in respect of all acts performed by them in their official capacity (Section 3.3 of the Regulation),
3. locally recruited KFOR personnel in respect of words spoken and acts performed by them in carrying out tasks exclusively related to their services to KFOR (Section 2.3 of the Regulation).²¹⁰

In addition to the absence of formal accountability provisions available to local populations, depicted in the previous chapter, any attempt to establish alternative routes for criticism must deal with the UN culture of generally trusting the perspective of those in the field. UNMIK has the obligation to report "at regular intervals", which tend to mean once every three months.²¹¹ However, even those rare reports to the Council "are generally taken at face value, however, unless grand political issues or budgetary questions animate discussion."²¹²

As a consequence of this legal situation, already in 2000 a large number of citizens of Kosovo have approached non-governmental organizations and the Ombudsperson Office to complain about the occupation and damage of their property by KFOR and about the impossibility of obtaining compensation in that respect. They have alleged that no administrative or judicial remedies exist either to challenge the occupation or damage to the property or to claim compensation for the losses suffered. In the other cases the

²¹⁰ UNMIK Regulation 2000/47, *On the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo*, 18 August 2000.

²¹¹ SC Res. 1244, Para. 20.

²¹² Chesterman (2004), p. 107.

citizens "have complained about personal injuries they have suffered at the hands of individuals working for, or operating under the auspices of, KFOR or UNMIK".²¹³

After having faced serious number of cases of the individuals whose rights were seriously affected by the provisions of the given Regulation and being exposed to the disapproval of several international organizations, the UNMIK and KFOR have at least nominally recognized that individuals to whom they have caused injuries, damage to or loss of property should receive compensation. Both actors have established the internal 'claims offices' responsible for dealing with the civil-related complainants.

However, this attempt didn't bring the expected improvements. Both of the newly established claim offices, especially the one set up by UNMIK, have been criticized for "procedural inadequacies and lack of independence, and furthermore for lacking any appeals process".²¹⁴ In the Opinion on Human Rights in Kosovo, Venice Commission thoroughly determines several shortcomings: a) procedure before the UNMIK Claim Office lacks elements of proper judicial proceedings since "UNMIK provides no opportunity for individuals to be heard or represented by legal counsel in their proceedings and all decisions are taken by a panel of UNMIK staff members", b) The only appeal against this internal first instance decision is exhausted in the possibility of sending a "memorandum" to the UNMIK Director of Administration, c) It is practically impossible to obtain information from UNMIK about the status of pending claims, and last but not least d) It is expectable that even claims regarding which UNMIK has been found liable would stay pending indefinitely, "as the UN has apparently allocated no portion of its budget for the payment of such".²¹⁵

Although one could argue that there is no need to supervise acts by UNMIK since the *rationale* for the establishment of UNMIK in Kosovo was human rights protection in the

²¹³ Ombudsperson Institution in Kosovo, Special Report No. 1: On the Compatibility with Recognized International Standards of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000), 26 April 2001, Para. 2. The release of this Special Report has been partly initiated by a formal request lodged with the Ombudsperson by the Norwegian Refugee Council on 21 February 2001.

²¹⁴ Council of Europe Parliamentary Assembly, *Report on Protection of Human Rights in Kosovo*, 6 January 2005, Para. 23.vii.

²¹⁵ European Commission on Democracy through Law (Venice Commission), *Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms*, 8-9 October 2004, Para. 61.

situation of massive human rights violations, the possibility of making mistakes can never be ruled out. The immunity of the international organizations from legal process before the courts of individual states is a general rule. The purpose of it is to ensure that the international organization can perform its tasks without undue interference by the courts of the individual state, especially the courts of the state on territory of which the international organization is operating. But, what in the case when the international organization or its subsidiary body is the 'state' itself by in totality performing quasigovernmental activities at the given territory? The answer on this is bound by the basic standards lay down in the internationally recognized human rights instruments.

“Since UNMIK and KFOR are administering a territory to an extent which is comparable to that of a state and since a state must, in principle, grant access to courts [...] and provide effective remedies [...], it is hard to see why the establishment of a mechanism which provides for an effective legal remedy should hinder the respective international organizations to perform their tasks.”²¹⁶[...] “On the contrary, it would seem to raise a human rights problem if an international organization which administers a territory would not be able to set up an independent human rights mechanism [...]”²¹⁷

Although it could be argued that the accountability of the international actors, such as the international civil and security presence in Kosovo, should be limited during the opening phases of an operation, it is crucial to recognize that the accountability in the subsequent periods is essential if those profound aims of the transitional civil administration mission, such as transformation of a political culture, are to be achieved. In this sense the very process of creation of the mechanisms by which international presence may be held accountable could insert new strength in indigenous human rights and rule of law discourse. The significance of those mechanisms for the proper course of the UNMIK itself in the day-to-day governance of the territory is the logic obvious *per se*.

²¹⁶ Venice Commission, Para. 68.

²¹⁷ Venice Commission, Para. 69.

VI. 3. Culture of Neutrality, High Demands and Vague Mandates

VI. 3. 1. Culture of Neutrality

The tensions between the standard peacebuilding approach and demands arising from the human rights field have been practically embodied in many different ways. One of the most illustrative, without doubt, is the tension between the culture of neutrality focusing at the process of reconciliation and still prevailing in the UN, and the understanding, since recently gaining more and more of the institutional support, that the root causes of civil war by rule lay in denial of the basic human needs such as identity and distributive justice (Burton).²¹⁸ Dispute usually arises over the alleged incompatibility of reconciliation and justice, or over stability and justice.²¹⁹ Although vigorous judicial practices are the prerequisites for the process of reconciliation and as well for the robust and sustainable economic and political practices, in many instances 'justice' has not been among the priorities in the designing of peacebuilding missions.

Although recent development and strengthening of the international judicial bodies have brought some changes, the old habits have been so deeply entrenched within the UN system that many examples in the UN contemporary practice still demonstrate the vigorous nature of this problem. 'Culture of neutrality' has grey ramifications on the overall outcome of the peacebuilding strategy. In addition to that, it produces a serious UN institutional clash and thus the outflow of the resources since judicial body entrusted with the 'civil-war' justice could be itself an organ of the United Nations.

The UN peace operations have not been exempted from this general UN institutional trend. Recent developments in the United Nations Mission in Kosovo could serve as a useful illustration of the depicted tension. After the International Criminal Tribunal for the former Yugoslavia (ICTY) released the indictment against Ramush Haradinaj, who was until that time serving as the Prime Minister of Kosovo, at the Mission's official web site the following statement of the current SRSG, Mr. Søren Jessen-Petersen, has been posted:

²¹⁸ Process known within the UN as the 'human rights mainstreaming'.

²¹⁹ Parlevliet (2002).

"I understand the sense of shock and anger over this development," Secretary-General Kofi Annan's Special Representative Søren Jessen-Petersen said of Ramush Haradinaj's resignation after his indictment by the International Criminal Tribunal for the former Yugoslavia (ICTY). "I appeal, however, to the people of Kosovo to express your feelings through peaceful means."*[...] Thanks to Ramush Haradinaj's dynamic leadership, strong commitment and vision, Kosovo is today closer than ever before to achieving its aspirations in settling its future status. Personally, I am saddened to no longer be working with a close partner and friend,"* he said [italic added].²²⁰

Kosovo's former Prime Minister Ramush Haradinaj has been charged with 17 counts of crimes against humanity and 20 counts of war crimes, which include murder, rape, the deportation of civilians, unlawful detention, harassment and the destruction of property.²²¹ The statement of the SRSG, the Principal Deputy of the UN Secretary-General, in serious way undercut the functioning of the ICTY, another organ of the United Nations, established under Chapter VII of the United Nations Charter – the same one the UN Mission in Kosovo has been founded on.²²²

Although one of the key tasks of the ICTY is to contribute to the process of reconciliation by creating an authoritative record of those responsible for humanitarian law violations so that guilt may be removed and the affected societies may heal and rebuild²²³ - which is practically just another side of the coin of the task of the UN Mission in Kosovo - the roles of the two organs in the peace-building process defer radically.

However, the given clash should not be seen only as an outcome of the different approaches to conflict but as well as the inevitable consequence of the difficult and

²²⁰ UNMIK News Coverage Archive (March 2005), *UN administrator urges calm in Kosovo after premier is indicted for war crimes (8 March 2005)*, at http://www.unmikonline.org/archives/news03_05full.htm#0803, accessed in April 2005.

²²¹ UNMIK News Coverage Archive (March 2005), *Kosovo's ex-premier faces charges of murder, rape and other war crimes at UN tribunal (10 March 2005)*, at http://www.unmikonline.org/archives/news03_05full.htm#0803, accessed in April 2005.

²²² For the first time of the history of United Nations, the tribunal was established empowered to adjudicate crimes committed in the course of either inter - or intra-state conflict. ICTY Statute, UN Doc. S/RES/827, 25 May 1993.

²²³ Magnarella, J. P., *The Consequences of the War Crimes Tribunals and an International Criminal Court for Human Rights in Transition Societies*, in Horowitz, S., Schnabel, A. (eds.), *Human Rights and Societies in Transition: Causes, Consequences, Responses*, New York, Paris, Tokyo, United Nations University Press, 2004, p. 132.

contradictory demands that the role of the civil administration implies. After all what has been said above about the performance the UN Mission in Kosovo through the previous chapters we could analyze as well how much clearly are postulated the activities assigned to civil affairs officers engaged in the transitional administration. We could as well question whether their assignments are always in tune with the harsh and demanding environment in which they have to be realized.

VI. 3. 2. High Demands

As it was depicted in the Chapter on the Transitional Administration Missions, the role of the international civil administration (civil affairs officers) is to assist local communities in their efforts to consolidate peace by restoring the political, legal, economic and social infrastructures that could support democratic governance and economic development. In order to do so, they should “provide a neutral and impartial administrative presence” and in the same time develop and maintain a wide network of contacts at all levels to be capable to understand fully local political complexities.²²⁴ In another words, civil affairs officers are asked to interact successfully with the key players of the local communities, such as traditional leaders, civil society representatives, etc, while in the same time the very nature of their post and the reason of their presence (civil war) demands high level objectivity and neutrality.

VI. 3. 3. Vague Mandates

All the complexity and difficulty rising out of this demanding set of tasks become even more apparent when analyzed from the often obscure language of the SC Resolution where the Mission’s mandate is authoritatively determined. Security Council Resolution 1244 for instance, “laced with compromise language necessary to achieve consensus in New York”²²⁵ eventually states that UNMIK is to provide:

“an interim administration for Kosovo under which the people of Kosovo can enjoy *substantial autonomy within the Federal Republic of Yugoslavia*, and which will

²²⁴ Peacekeeping Best Practise Unit (2003), p. 38.

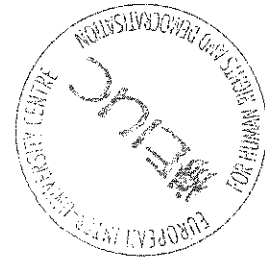
²²⁵ Rich, R., *Crafting Security Council Mandates*, in Newman, E., Rich, R. (eds.), *The UN Role in Promoting Democracy: Between Ideals and Reality*, Tokyo, United Nations University Press, 2004, p. 73..

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.”²²⁶

This vague determination of the Mission’s mandate, one more syndrome of the ‘culture of neutrality’ makes the task of the international civil administration and its administrator, Special Representative of the Secretary-General, even more exposed to the in-built clash between the described roles – to be political and impartial in the same time. The anecdote from the beginning of the Mission’s mandate where, at that time SCSR, Bernard Kouchner reads the text of Resolution 1244 twice every morning to get the idea what does ‘substantial autonomy’ mean,²²⁷ is good illustration of the doubts which can arise when the only guide you have is actually just the expression of the power games played within the Security Council. The principal organ of the UN petrified features of which clearly state how much the structure and culture of UN in general haven’t changed rather than changed after the end of Cold War.

²²⁶ UN SC Resolution 1244, Para. 10.

²²⁷ In Chesterman (2004), p. 90.



Final remarks

In 1969, in the middle of the Cold War, John Galtung had discerned that violence does not have to be only direct, 'personal' one, but that it can exist as a 'structural violence' when the actual somatic and mental realizations of human beings are below their potentials as a result of the structurally embedded deprivation. Almost two decades later, John Burton claimed that roots of conflict are to be found in the denial of basic human needs such as identity, security and distributive justice. Neither Galtung nor Burton had to wait too long to see the grave, real-life demonstrations of the validity of their theories. The collapse of Cold War structures of 'global order' suddenly unfolded the image of world where the widespread patterns of structural violence burst into a number of civil wars often constructed on the issues of identity and distributive justice. The protracted and seemingly intractable nature of those conflicts caused by the structurally determined denial of basic human needs, as elaborated by Azar, called for the new approach to peace. The issues of identity gained a prominent place in new writings on conflict resolution and led eventually to Lederach's transformative approach to conflict focused on the reconciliation and bottom-up approach to conflict resolution.

Their protracted nature, the irrationality of the issues invoked and lack of clearly definable determinants regarding the parties, roles and issues involved in civil wars, rendered the existing UN tools inadequate for the new challenges. The magnitude of human tragedies and the spill-over character of those conflicts threatened the regional stability in many corners of globe and called for the urgent but subtler types of intervention.

In response to it, the concept of post-conflict peacebuilding was developed where democratization and institution-building have been postulated as the long-term UN

strategies for 'sustainable peace'. The new peace operations began to exercise governmental functions in those post-conflict zones where the institutions had to be built from the scratch. The civil personnel of the new missions have been charged with the highly demanding task of transforming the culture of war and seeding democratic values in complex post conflict environments.

The long-term vision intermingled with the multitude of short-term and mid-term objectives brought many dilemmas in day-to-day realizations of peacebuilding mandates. The basic democratic and human rights principles - such as separation of powers, civil control over military, rule of law and the accountability - are supposed to be the foundations for the future local regimes. However, they have often lost their way through the harshness of the post-conflict local settings and impaired by the inadequate preparedness of peacebuilders to implement them successfully.

UN Mission in Kosovo is in that regard case to the point. As being a subject matter of already considerable number of official observations and investigations pursued by the relevant international bodies, analysis of UNMIK offers a comprehensive view on the discrepancy between the envisioned and actual pursuance of peacebuilding.

The idea behind institution-building is to support the transformation of the political and legal culture of one society through the empowerment of the individual citizen and by giving the right example to the local political leaders. Although the institution-building is in the basis of the UNMIK mandate, the international administration of Kosovo was not always the best illustration of it. UNMIK failed to implement the basic principles of democratic governance in its structure (separation of powers and civil control over military) and to entitle citizens of Kosovo with the rights that can be protected through the local and international judicial structures. The lack of the accountability mechanisms just deepened the gap between the initial visions and their real life realization.

In order to build genuine prospects for 'sustainable peace', transitional civil administration should place the basic principles of democratic governance higher on its list of daily priorities. Without those principles, the long-term vision of 'sustainable peace' soon dissolves in the arduous and puzzling reality of the war-shattered places.

The UN officials repeatedly stated that the UN missions of this kind are the exceptions rather than rule. Even if that will be a case the UNMIK institution-building orientation renders the applicability of the given observations wide enough to relate as well to the other types of peacebuilding missions with the institution-building component.

The mixed record of the UN Mission in Kosovo is not only a consequence of the multiplicity and often conflicting nature of its daily assignments situated in the complexity of the post-conflict setting. The highly complex and rigid structure of the UN itself has been quite often a major impediment for the successful realization of the Mission's tasks. This remark covers all 'life' phases of UNMIK – from the SC authorization of its mandate to the phase of personnel deployment and the subsequent responsibility of the institutional support and monitoring.

If the UN is to adjust adequately to the post-Cold War demands serious changes have to be undertaken. The abolition of veto powers and broader representation of the Member States in the Security Council, their more prompt and generous support of the UN peace engagements are just some of them.

On the other hand, the international mechanisms for human rights protection have to be adjusted to the new character of the UN peace interventions. There will be no genuine human rights until the all forms of power are limited with the proper accountability mechanisms. In pursuing peacebuilding tasks the UN is by necessity not only human rights agent but the power holder as well. The international legal obligations of UN and the other international organizations having similar responsibilities have to become proportionate to the new duties the UN has begun to undertake in the war-shattered places.

Once those changes take place the prospect for the genuine use of peacebuilding strategies will be open and the 'sustainable peace' will become more of a plan and less of a dream.

Abbreviations

BR	Brahimi Report, Report of the Panel on UN Peace Operations
DPA	Department of Political Affairs
DPKO	Department of Peace keeping Operations UN
EU	European Union
GA	General Assembly
ICG	International Crisis Group
ICTY	International Criminal Tribunal for the former Yugoslavia
IGO	Intergovernmental organisation
JIAS	Joint Interim Administrative Structure
KFOR	Kosovo Force
KLA	UCK Kosovo Liberation Army
KVM	Kosovo Verification Mission
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIOS	Office of Internal Oversight Services
OSCE	Organization for Security and Co-operation in Europe
PBPU	Peacekeeping Best Practices Unit
PISG	Provisional Institutions of Self-Government
SC	Security Council UN
SCR	Security Council Resolution
SG	Secretary-General UN
S-G	Secretary-General
SRS	Special Representative of the Secretary-General
TCC	Troop contributing country
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIK	United Nations Mission in Kosovo
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium

- UNTAES United Nations Transitional Authority in Eastern Slavonia, Baranja and
Western Sirmium
- UNTAET United Nations Transitional Administration in East Timor
- UNTSO United Nations Truce Supervision Organization

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