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STATE-BUILDING FROM THE OUTSIDE-IN: UNMIK AND ITS PARADOX

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If most of the literature on state-building has extensively covered the question of the increasing interference by United Nations peacekeeping missions, including the broadening scopes and mandates of these missions, not much has been said about the political dilemmas that the exercise of these competencies tend to create locally. This article will explore the particular legitimacy paradox affecting direct governance by an international administration. The article's main argument is that direct governance by an international administration tends to create the conditions for its own illegitimacy, portraying the state-building process as exogenous to the local society. This article will specifically analyze the UN Mission in Kosovo, one of the most comprehensive and yet most challenged state-building attempts the UN has faced.

INTRODUCTION

With the independence process of Kosovo well underway, the United Nations Interim Administration Mission in Kosovo (UNMIK) has reduced its involvement in direct governance. As UNMIK formulates an exit strategy and the European Union braces itself to take over as the international presence in the region, it is an opportune moment to consider the impact that UNMIK has had during the last nine years. This article seeks to shed light on UNMIK's management of Kosovo and particularly the following question: why has UNMIK's legitimacy in the eyes of the

local population generally and consistently declined during its tenure as administrator of the region?

Despite being acclaimed as "liberators" upon their arrival, the relationship between UNMIK officials and the local population has become increasingly strained over the years. This tension has been reflected in the Kosovar population's increasing level of dissatisfaction with UNMIK's performance, with the exception of the rule of the Special Representative of the Secretary General M. Søren Jessen-Petersen, who occupied the position between June 2004 and June 2006. While no publication has analyzed in depth this decline in public opinion, some observers have tried to explain the more general "failure" of the mission. One of the best publications in this regard is Iain King and Whit Mason's *Peace at Any Price: How the World Failed Kosovo*. The authors, who both previously worked for UNMIK, argue that UNMIK's failure lies in its incapacity or lack of willingness to alter the Kosovar political culture. Focusing on the realm of hard security, notably the security of its personnel, King and Mason argue that UNMIK has neglected the realm of soft power that is vital in state-building efforts (2006).

This article examines the problem from the reverse perspective. Building on interviews conducted on the ground in the summer of 2007, I argue that the direct governance by an international administration creates, in itself, the conditions for a popular backlash against foreign rule. The direct governance of a territory by an international administration poses a specific paradox to the state-building process. One central dynamic confronting international administrations is what I dub the "legitimacy dilemma." Mirroring the "state-strength dilemma" identified by the political scientist Kalevi Holsti (Holsti 1996, 117), I argue that everything that international administrators do to reinforce their rule in actuality perpetuates their political weakness. Their legitimacy waning, the state-building agenda comes to be seen as progressively more exogenous, reinforcing the delegitimization process. Furthermore, like Holsti's "state-strength dilemma," the legitimacy dilemma defies even well-intentioned and honest leaders (Holsti 1996, 117).

Thus, state-builders must walk a fine line between the legitimacy of external action and the necessity of intervention in the local context to fill the power gap in a state-building context. These requirements are exceptionally difficult to reconcile in a context of direct governance by an international administration. Rather than considering legitimacy as the logical outcome of a successful state-building process, this article proposes a new way of understanding how legitimacy actually impacted

state-building attempts throughout UNMIK's duration.[1] It shows the relevance of legitimacy as a factor that inherently shapes the nature of the state-building process.

UNMIK's Architecture: All Powers in the Same Hands

Following the NATO Operation *Allied Force* that expelled the Federal Republic of Yugoslavia's forces out of Kosovo, the United Nations Security Council passed Resolution 1244 of 10 June 1999. The resolution established an international civil and security presence to administer Kosovo, UNMIK and the NATO-led Kosovo Force, respectively. UNMIK's mandate, as stipulated in Resolution 1244, was threefold: to establish a functioning interim civil administration; to promote the establishment of substantial autonomy and self-government; and, finally, to facilitate a political process to determine Kosovo's future international status. One innovative feature of the plan's design was the concentration of powers to the Special Representative of the Secretary General (SRSG), who, as the legal head of state of Kosovo, was tasked with assuring the coherence of the entire mission and enjoyed "virtually unlimited powers" (Mertus 2003, 28). In addition to being empowered to assume full interim administrative responsibility over the territory of Kosovo, the SRSG was also given a central political role in settling the conflict. The first regulation adopted by UNMIK (better known as the "Mother of all Regulations") reinforced the SRSG's preeminence in Kosovar politics, stating 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 SRSG" (UN 1999a, Sec. 1, Art. 1).[2]

There was no separation of power in the framework of the international administration of Kosovo: the executive, legislative, and judicial authority were vested in a single individual (the transitional administrator), whose decisions couldn't be challenged by the local population, whose actions were not always transparent, and who couldn't be removed from power by the community in whose interests he or she exercised ostensible authority (Caplan 2005, 196). In practice, not only was the SRSG not accountable to the local population, but he even enjoyed a certain degree of autonomy from the UN structure. Bernard Kouchner, for instance, who acted as SRSG from July 1999 to January 2001, helped establish the autonomy of his office by reinforcing his own guard of political advisers, thereby sidelining the UN's Department of Political Affairs (O'Neill 2002, 41).

In addition to the SRSG's large potential role in the Kosovar political process, he also faced the high expectations of the Kosovar population.

Placed in the situation of a *de facto* government of Kosovo, the international administration had to face the same requirements as any legitimate government. If political legitimacy is "in the first place a belief, stated or implied, in the right of government to form policies" (Barker 1990, 28), then the international administration had the task to convince the local population of the legitimate character of its rule.

UNMIK's Management of Kosovo: Eight Years of International Administration

After eight years of international administration, one cannot help but notice the failure of UNMIK to secure popular legitimacy among the Kosovars. During the period of September-October 2002, UNMIK's performance approval rate reached a high of 63.8 percent, but has since steadily declined and hit an historic low of 20.7 percent between January and April 2004 (see Figure 1). The reasons cited for the decline include the slow pace of recovery that was unable to meet people's demands and expectations and, subsequently, led to growing discontent among the Kosovars under the UNMIK administration.

Figure 1: Level of satisfaction with the work of main institutions in Kosovo
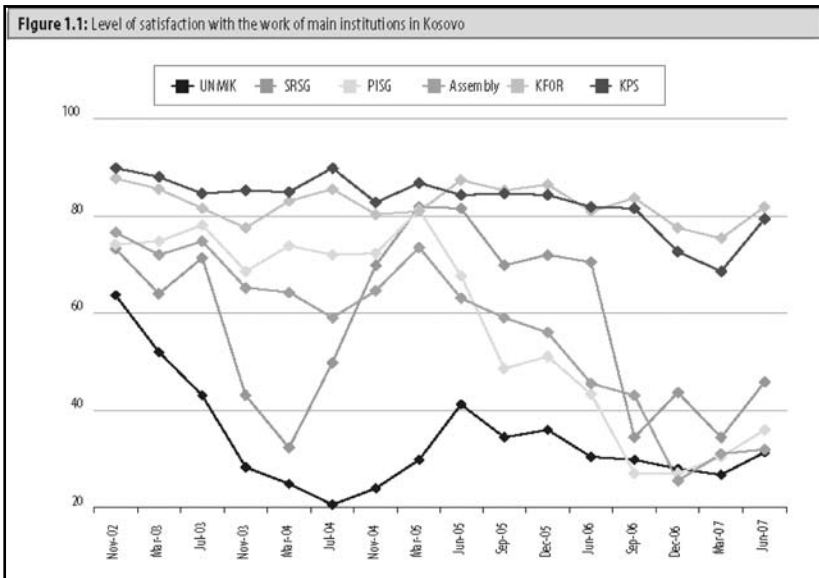
Source : UNDP/USAID, *Kosovo Early Warning Report #17, April-June 2007.*

Indeed, the economic fundamentals under the UNMIK administration have been consistently poor. As Ad Melkert, assistant UN secretary general and associate administrator of the UN Development Program, recently acknowledged: "the situation in Kosovo can be compared to the circumstances in the poorest African countries: an extremely high mortality rate of newborn children (35 deaths to 1,000 births), a very high unemployment rate (42 percent), a poor educational system and a severely polluted environment" (Melkert 2007).

At the same time, UNMIK's management of Kosovo, while not free from major misconduct,[3] has not been the root cause of all of Kosovo's problems. As King and Mason note,

> for all its flaws, the UN's neo-imperial administration in Kosovo has not been worse and in many ways has been better than most governments around the world. The failure of international efforts to transform Kosovo is tragic precisely because it occurred despite massive investment and serious efforts by thousands of imperfect but well-meaning, committed and generally competent people" (King & Mason 2006, 22).

Yet, in absence of clear improvements in living conditions and given the fact that UNMIK was *de jure* in charge of Kosovo, Kosovars logically attributed the setbacks to the UNMIK administration. As UNMIK was not an elected government, Kosovars became especially critical. UNMIK was simply not able to convince the population of its legitimate rule over the territory. While UNMIK's rule during the "emergency" phase of the intervention from 1999 to 2001 was relatively well-perceived, it slowly came to be seen as intrusive and overbearing.

Neo-Colonialism Charges and Resistance

Mired in its own "legitimacy paradox" and losing the "struggle for hearts and minds" in Kosovo, UNMIK's state-building agenda slowly came to be seen as exogenous by the local population. Consequently, Kosovo came to be christened by locals as "UNMIKistan," as resentment towards internationals steadily grew. So why exactly did this happen?

First and foremost, it is difficult for any international administration to avoid the social backlash inherent in direct administration. As Jane Stromseth, David Wippman, and Rosa Brooks assert, "there is no honor for domestic populations in being the object of an intervention. Local gratitude can be quickly vitiated by a sense of humiliation or disappointed expectations if foreign occupiers fail to deliver an improved quality of life"

(Stromseth, Wippman & Brooks 2006, 52). The broader social dimension of state-building, which includes legitimacy aspects for instance, is often overlooked by most analysts who prefer to focus on the institutional aspects of the process.

However, the social dimension of state-building is a crucial aspect to take into account in any state-building attempt (Lemay-Hébert 2009). As Eric Chevallier, who was the main advisor to SRSG Kouchner says, "we have to keep in mind that it is primarily the lost dignity that people having suffered from a conflict want to regain" (Chevallier 2002, 4). Lacking the social bond necessary to instil a relationship of trust between a given government and its citizens, international rule is almost certain to be resented by the local population and to be seen as a blow to their dignity. The political response, namely direct governance, seems unfit to correctly address the social challenges of postwar state-building. Hence, the idea of "neo-trusteeship" of war-torn territories, at least in their contemporary form in Kosovo, seems hardly compatible with the objective of fostering and nurturing legitimacy in an externally-led state-building project.

Albin Kurti's route of resistance tells much about the legitimacy dilemma facing international administration. Currently one of the largest non-violent resistance movements against UNMIK in Kosovo, Vetevendosje!, started as a movement against the occupation of Serbia in Kosovo in 1997. The Kosovo Action Network (KAN), as it was known at this time, supported non-violent student protests and organized petitions in support of clarifying the fate of missing persons in Kosovo. Albin Kurti, who was at the head of the movement, acquired national fame for being a political prisoner in the jails of Serbian President Slobodan Milosevic.

However, with NATO's intervention in 1999, the movement became increasingly marginalized and sought a new vocation. Soon thereafter, the movement began to oppose the "anti-democratic regime of UNMIK" and started to spray graffiti on government and public buildings, including-notably, the famous "Jo Negociata: Vetevendosje!" ("No Negotiations: Self-Determination!"), which can now be seen extensively in Albanian districts of Kosovo. In 2004, after the Eide report (UN 2004b) recognized the limits of UNMIK action in Kosovo, the KAN movement officially emerged. In what the movement considers its conceptual genesis, KAN representatives read a "Citizen's Declaration" in front of UNMIK buildings on the fifth anniversary of the Resolution 1244 and promised to struggle against the illegitimate UNMIK regime. For Kurti, UNMIK and Serbia are two sides of the same coin and one aspect of domination cannot be distinguished from the other.[4] One is external (Serbia) and the other is

internal (UNMIK), but they closely resemble each other. Kurti goes on to argue that the problem was not a couple of rotten apples in the barrel but rather systemic and proportionate to the authority wielded by internationals. "Absolute power isolates from power," Kurti added, quoting loosely from Hannah Arendt. This evolution, which embodies the dilemma of direct governance by an international administration, posed concerns for the UN administration.

March 2004 Events: The Extent of the Discontent

The year 2004 saw both the birth of a genuine movement of contestation to UNMIK's rule and the largest violent incident since the 1999 Kosovo War. UN officials began to realize the extent of the political discontent in Kosovo with the March 2004 riots,[5] in which Serbian communities and cultural sites were attacked. Around this time, UNMIK recorded its lowest public approval rating with regard to its management of Kosovo. Furthermore, all indicators showed alarming trends for the UN (e.g. economic and political pessimism, faltering support for UNMIK and especially for the SRSG). The common explanation was that the same old ethnic divisions were at work and UNMIK was just a spectator in this disaster. However, this simplistic explanation brushes aside other major aspects of this event related to the UN administration of Kosovo. Indeed, this interpretation passes over in silence the fact that the reactions among both the Serb and Albanian communities reflected deep frustrations towards UNMIK. In fact, if generally described as a purely inter-ethnic confrontation between Albanians and Serbs, the events were certainly more complex than that, involving UNMIK's governance in the process. As Nexhmedin Spahiu, political analyst and Director of Radio and TV Mitrovica, asserts:

> [T]he fact that violence in Kosova is being considered as inter-ethnic violence by the international media and the United Nations Security Council is just a result of successful disguise of the real problems of Kosova by UNMIK.… the attacks of Kosova Albanians against Serbs are a result of the conflict between the majority population in Kosova and UNMIK (2004, 124).

Though there was clearly an inter-ethnic aspect to the violence that erupted in 2004, it cannot be disputed that UNMIK was targeted by the Albanian mobs.[6] As King and Mason recalled, during the events Albanian mobs "turned their collective fury on their international overlords, throwing rocks at UN buildings, burning UN flags and destroying more than 100 of the administration's ubiquitous white Toyota 4Runner 4x4s" (2006, 6). As

the International Crisis Group reported, "anger against the internationals was palpable. The pro- Kosovo Liberation Army (KLA) newspaper *Epoka e Re* reproduced on its front page the next morning [March 17] a slogan that attracted cheers from the crowd in Peja: "UNMIK watch your step, the KLA has gunpowder for you too" (2004, 14).

In a July 2004 poll, in a rare show of unity, the majority of the citizens of Kosovo, regardless of their respective community (Serb, Albanian or other), placed responsibility for the March 2004 situation and crisis with UNMIK.[7] This was one of the most troubling aspects of the March events for the international administration. Despite NATO's *Kosovo Force* mandate to provide hard security, NATO managed to avoid blame in the public eye for the international failure to provide local security so evident in March 2004. In fact, NATO approval ratings have steadily hovered around 80 percent throughout the administration, even during the March crisis, making it one of the most respected political entities in Kosovo.

Though the only "real" government in Kosovo, the Provisional Institutions of Self-Government (PISG), had no formal sovereignty over the territory, UNMIK was seen as "confusing the role of the administrating authority with that of the manager," which made it the target for all criticisms.[8] For Krenar Gashi, Kosovo editor of the Balkan Investigative Reporting Network (BIRN), UNMIK faced a legitimacy crisis not because "people hate internationals, but because they hate absolute control."[9] In the context of direct governance, UNMIK has been unable to generate sufficient legitimacy to justify its rule on the territory, setting the table for being targeted as a colonial and exogenous presence.

UNMIK: A Low-Key Mission? Using Ethnicity to Read Politics in Kosovo

A common explanation put forward to explain UNMIK's failure, and one that leads to a totally different understanding of the situation in Kosovo, is its irresolute and indecisive character. For King and Mason and others, the lesson to be learned from Kosovo is that the mission should have been more strong-willed. The argument is that the mission barely dented the political culture underlying Kosovo's instability, which further led to its own failure (cf. Doyle & Sambanis 2006; Dobbins et al. 2005; Zürcher 2006). Leaving aside the central argument presented in this article that direct governance by an international administration tends to create the conditions for its own illegitimacy, and that a strong-handed approach might exacerbate the aforementioned legitimacy paradox, the King and Mason argument seems to present a very partial account of UNMIK's involvement

in Kosovo. Actually, UNMIK has had a significant effect on the political culture in Kosovo yet not in a way foreseen by King and Mason.

In fact, UNMIK has helped entrench the ethnic divisions in Kosovo by means of a two-faceted policy. While UNMIK inaction allowed the *de facto* partition of the Kosovar territory in Albanian-controlled territories and Serb enclaves, its multi-ethnicity policy in Albanian-led territories has not yielded the intended results, creating instead a negative backlash from the local communities. Indeed, throughout the years, UNMIK has cemented ethnic identity in Kosovo by establishing it as the defining social characteristic, most notably by making it a crucial factor in the apportioning of power (Hehir 2007, 201-202). Thus, "the international administration has inherited the categorization of the previous administrations: it does not try to build a new Kosovar nation, but a 'multi-ethnic' Kosovo" (Pula 2005, 32). Not seeing them as potential "Kosovar citizens," UNMIK officials have from the start identified all Kosovars in terms of ethnicity defined as communities, reinforcing a particular identity. The best example of this is the all-pervasive "K-Albanian" and "K-Serb" discourse among internationals. As Isa Blumi observes:

> The international community, represented by all the major non-governmental organizations (NGOs), the United Nations (UNMIK), NATO (KFOR) and the OSCE have used this filter of ethnicity to "read" the conflict in Kosova in terms reductible for purposes of explanation. Ethnicity, therefore, has, as "immutable," "primordial" identifying tool, animated all policy in Kosova today in ways that reflect conditions of analysis that have been soundly condemned by a number of theorists uncomfortable with the use of naturalizing essentialism (2003, 218-219).

One author has gone as far as to argue that UN efforts to create a multi-ethnic state have been "a complete failure" and "the ethnic groups are as far apart as before the war" (2007). The two communities certainly did not need the help of UNMIK to feel different from each other. What is certain, however, is that UNMIK, as an "identity entrepreneur," has been more engaged in a "community-building" process than a "nation-building" one. It has successfully built institutions for an independent Kosovo but has failed to link them with a common meaning around an inclusive notion of Kosovar citizenship. This is an issue so sensitive that a Political Officer at the Organization for Security and Co-operation in Europe (OSCE) said that there was internal censorship concerning any discussion

about the impact of the UN administration with regards to the identity of the people it governs (Andersen 2005, 50). This relative failure has to be understood at the light of the complexity of the task. The international administration mainly failed to anchor a multi-ethnic model of society in Kosovo because such a model never truly took roots in Kosovo before the 1999 intervention (Kostovicova, 2004).

Furthermore, even with the best intentions, "the multiple layers of positive discrimination imposed by the international community have damaged the process of inter-ethnic reconciliation," as one UNMIK official interviewed in Pristina lamented.[10] The humanitarian organisation CARE stated bluntly in a recent report that the focus on multi-ethnicity as the core of peace-building increased divisions rather than improved relations. The report noted that "the emphasis on multi-ethnicity was perceived in communities not as a 'carrot' or reward for cooperation, but as a 'conditionality' that was (and is) widely resented" (2006, xi; see also Jarstad 2007, 228). Once again, consistent with the legitimacy dilemma, the international community was targeted for blame and the direct involvement of the international administration resented by the local population.

However, paradoxically, even the relative *lack* of involvement by the international administration on other issues has at times been resented by the local population. In fact, there is hardly a middle ground for an international administration. Even a decision not to disturb the status quo will be seen as reinforcing the current trend. There is hardly a "no footprint approach" for an international administration.[11] The footprint of the international administration will be there, regardless of whether this is the intent of the international administrator. This has been most clearly manifested in the enforced segregation of the two communities following the 1999 war. Due to political ambiguity resulting from an unclear mandate and limited capacity and experience in the administration of war-torn territories, UNMIK took months to establish itself throughout Kosovo's territory. This resulted in the emergence of parallel administrations, established by Kosovo Albanians and Serbs in their respective areas of control. Though UNMIK managed to consolidate its authority over Albanian-controlled territories, the Northern Serb enclave remained firmly under the control of Belgrade with no attempt from UNMIK to impede this *de facto* partition. In fact, UNMIK has simply avoided the issue, informally recognizing the control Belgrade-appointed officials have over the Northern enclave of Kosovo,[12] while mildly supporting independent Serb movements. This was a particularly difficult issue to deal with, involving larger issues such as final status negotiations and the place of minorities

in a hypothetical sovereign Kosovo. However, this policy, or lack thereof, has had numerous repercussions for the state-building process in Kosovo, especially concerning the possible partition of the Northern Serb enclave from the rest of Kosovo.[13]

Missed Opportunity: Lack of Accountability in Kosovo and Its Effects

In the context of direct governance of a population that has no final say in its fate, accountability mechanisms can be a crucial element to assure success of an international administration. In the absence of a clear social contract between the administrator and those subject to his administration, accountability mechanisms can be instrumental in assuring a certain degree of trust between the international presence and the local population, thus helping the mission to mitigate the effects of its presence.

The contrary is also true. The exogenous character of UNMIK and its intrusiveness have been reinforced and magnified by the lack of accountability of the international administration vis-à-vis the local population. With particularly feeble accountability mechanisms in place to assure that the administering authorities would have to account for their decisions to the local population, not only were Kosovars not consulted in the establishment of the international mission supervising their territory, but they were also largely excluded from the process of governance itself.

Under the impetus of SRSG Kouchner, UNMIK did establish certain consultative mechanisms in order to include local elites and assure a certain degree of legitimacy to the mission. The setting up of the Interim Administration Council (IAC) and the expansion of the Transitional Council (TC), both designed to bring major Kosovar figures who were perceived to be politically influential into the system, as well as the creation of administrative departments (co-headed by internationals and Kosovars) and local administration boards, had the effect of begetting among Kosovars the impression that local politicians had been given more say in UNMIK's administration of Kosovo. By 2001, however, with the establishment of the Provisional Institutions of Self-Governance (PISG), Kosovar elites started to ask for more competencies, which led to recurrent clashes with UNMIK and an ensuing diminished level of public satisfaction with the work of UNMIK. The option of consultation, if it helped to bring a certain dose of legitimacy to the international administration especially in the first years, was not, in itself, sufficient.

Hence, Caplan is right to note that "the most important autonomous institution from the standpoint of accountability is the office of the

ombudsman" (2005, 200). The ombudsmanship is the only institution which can provide accountability through intermediation between the international administration and the local population. According to the official definition, the ombudsman is an independent public official who receives complaints from aggrieved individuals against public bodies and government departments or their employees and who has the power to investigate, recommend corrective action, and issue reports (Gregory & Giddins 2000, 3). Established by UNMIK Regulation 2000/38 on 30 June 2000, the ombudsman can receive and investigate complaints from any person in Kosovo concerning human rights violations and actions constituting an abuse of authority by UNMIK as well as by any central or local institution.[14] Apart from excluding KFOR personnel from any investigations, the major restriction in the ombudsman's mandate is that the institution is limited to making recommendations, which is not in itself a negligible function. It can focus local and international attention on the extraordinary powers of UNMIK and help generate debate within Kosovo and abroad about the appropriate exercise of executive authority (Caplan 2005, 204). However, this restriction also implies that the ombudsman office needs the collaboration of the political institutions, foremost UNMIK, to carry out its duty.

Far from being cooperative, UNMIK's stance has ranged from disregard of the ombudsman's recommendations to overt blockage of his work. This is particularly important, especially taking into account that nearly two months after creating the ombudsman office UNMIK enacted a regulation on "the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo" (UN 2000b), according legal immunity to the mission. Moreover, as a consequence of living under UNMIK's rule, Kosovars lacked the protections that derive from Belgrade's acceptance of international human rights instruments. Thus, as Marek Nowicki, the ombudsman until 2006 stated, "from a legal point of view, Kosovo is the black hole of Europe or like a novel by Kafka. The UN arrives to defend human rights – and at the same time deprives people of all legal means to claim these rights" (Zaremba 2007a).

The uncooperative behavior of UNMIK had something to do with the personality of the then-ombudsman. Nowicki, a former international lawyer with roots in the Polish human rights movement, had been quite vocal about UNMIK's abuses of its executive privileges. As Nowicki recalled, "the responsibility of the ombudsman is to criticize the work of UNMIK and they didn't like that… They criticized us for not taking into account some political rationales and in that sense considered us disloyal, that is,

we didn't act as if we were playing on the same team" (Kranjc 2006). The disregard became overt blockage when in February 2006, UNMIK promulgated a new regulation on the Ombudsperson Institution in Kosovo (UN 2006), superseding the former regulation. Under the new regulation, the ombudsman had a mandate to investigate complaints against local authorities but could no longer investigate complaints against international administrative bodies in Kosovo. UNMIK also decided not to extend the mandate of Marek Nowicki in order to "nationalize" the ombudsperson institution.

In defiance of international recommendations (Council of Europe 2005), the UNMIK decision was a bold one and reflected what William O'Neill termed UNMIK's greatest flaw: its propensity to "spin information to make it appear that the situation in Kosovo is 'under control' when this is not the case" (2002, 108). It was a final reckoning by the international administration that they were losing the struggle for hearts and minds and a last attempt to silence the voice of opposition. "The essence [of this decision] was to prevent dissonant information from [being disseminated in] Kosovo with respect to human rights and standards," commented Nowicki (Kranjc 2006). They want a "happy ending," added the new ombudsman.[15] Complaining repeatedly in his reports against the "lack of social bond" between the internationals and the locals, UNMIK decided to suppress the ombudsman critique instead of trying to improve its image.

UNMIK has recently taken steps to improve its accountability. The UN established a Human Rights Advisory Panel to deal with all cases against UNMIK. However, the Panel – a three-person international board whose members are appointed by the SRSG and based outside Kosovo, was only appointed in January 2007 and held its inaugural session in November 2007, despite being formerly created in March 2006. Furthermore, after an almost two-year delay, in January 2008, the UNMIK Office of the Legal Advisor surprisingly reversed its position, retroactively clarifying that the Ombudsperson Institution indeed had, and would continue to have, jurisdiction over complaints against UNMIK until the official appointment of a new Ombudsperson by the National Assembly. Thus, according to Bjorn Engesland, executive director of the Norwegian Helsinki Committee, "UNMIK has finally begun to take some positive steps to improve its accountability, albeit too late" (Amnesty International, Human Rights Watch and Norwegian Helsinki Committee, 2008).

Insights From the Jessen-Petersen Episode

After the events of March 2004, the level of satisfaction with UNMIK

action was so low that "if UNMIK had been up for election, it would have needed to campaign hard to win votes from anybody in Kosovo other than its own staff," as King and Mason put it (2006, 220). However, in June of the same year, Harri Holckeri, whose tenure as SRSG was characterized by "colonial practice, paternalism and no partnership with the local society,"[16] as one pundit asserted, was replaced by Søren Jessen-Petersen, an affable Dane with extensive knowledge of the region. This marked a dramatic change in the nature of the mission and in the exercise of its mandate.

The Eide reports (August 2004 and October 2005) put an end to the unpopular era of "standards implementation" in Kosovo and led to the nomination of Martti Ahtisaari as UN Special Envoy for the Kosovo Status Process. As the Norwegian ambassador Kai Eide assessed, "while standards implementation in Kosovo has been uneven, the time has come to move to the next phase of the political process" (UN 2005). It was clear that "after administering Kosovo for six years and four months, the UN accepted that its usefulness had come to an end" (King & Mason 2006, vii). Thus, SRSG Jessen-Petersen had the mandate to reduce the size of the mission and prepare Kosovo for the next stage of its political evolution. Showing more empathy toward Kosovars, especially the Albanian community, he became suddenly a very popular figure in Kosovo and came to be seen as "the man behind the end of the colonial era."[17]

More than anything, this radical change in the nature of the mission reveals much about the legitimacy dilemma of international administration. Removing the contentious aspects of direct governance of the mission by jumpstarting the transfer of competencies to the Provisional Institutions of Self-Government (PISG) and clarifying the endgame for Kosovo, the SRSG's level of satisfaction increased dramatically. From a low point of 32.4 percent favourable opinion of the SRSG performance in January-April 2004 (under Holckeri), the ratings swelled to reach more than 80 percent in 2005, under the office of Jessen-Petersen. UNMIK's ratings also increased, even if more modestly.

CONCLUSION AND RECOMMENDATIONS

This article has tried to illustrate the legitimacy paradox inherent to the direct governance by an international administration. In the exercise of its mandate, an international administration will face the daunting task of presenting its policies and the institutions it establishes as endogenous to the local society. In this context, the risk is high for the administrator to be seen as a colonizer and the whole process as illegitimate. This is not to say, however, that every international administration is doomed

to illegitimacy in the eyes of locals. Far from inevitable, some features of the international administration can vitiate the adverse consequences of the legitimacy paradox. For example, one of the lessons learned from the experience of the UN administration of Kosovo, according to an internal UNMIK document, is that "the Mission demonstrated a lack of cultural sensitivity and an insufficient understanding of the dynamics of the society, in terms both of power structures and of negotiations." Hence, "cultural sensitivity and understanding of local society must be the guiding principles for policy planning and implementation" for future civil administration missions (UNMIK 2007). Certainly, cultural sensitivity, along with robust accountability mechanisms and a greater local ownership of the process can help the mission garner a certain degree of legitimacy. This is probably the most important recommendation stemming from this study: to take seriously the social dimension pertaining to international administration. Implementing accountability mechanisms, such as the ombudsperson institution, and taking into account cultural sensitivity in the recruitment of UN personnel and the actual exercise of the mandate can help mitigate the most dreadful effects of the legitimacy dilemma pertaining to the direct governance of a war-torn territory by an international organization.

At the same time, as Simon Chesterman argues, "political structures created for foreign control (benevolent or not) tend to be unsuited to local rule. The reason for this, in part, is that the 'limited goals' of foreign control (benevolent or not) are generally determined with limited regard to local circumstances" (2004, 237). This is part of the legitimacy dilemma: there is no easy solution to the adverse effects of direct governance. Some measures can mitigate the ill effects of external governance, but the legitimacy paradox will still remain. The dilemma is encompassed in a number of policy prescriptions, exemplified by O'Neill when he states that "the UN should avoid acting like the 'ugly imperialist' but also should not be reluctant to be assertive, even overriding local decisions" (2002, 139). The restraint is particularly difficult to achieve, where there is a "difficulty in determining where, in practice, to establish the balance between the competing demands of international responsibility, on the one hand, and local ownership of the process, on the other" (Caplan 2005, 254).

This is why some officials at the Department of Peace-Keeping Operations (DPKO), believe that they will have to "fight like hell" to prevent the creation of a new mission with such extensive executive powers.[18] Actually, the other missions with similar functions, United Nations Mission in Bosnia and Herzegovina (UNMIBH) (Chandler 2000; Knaus & Martin 2003) and later United Nations Transitional Administration of

East Timor (UNTAET), present striking parallels to the challenges faced by UNMIK, and similar critiques. In both instances the international administration also came to be seen as an external process that affected its legitimacy. The direct governance by the SRSG in East Timor made him appear to be a "pre-constitutional monarch in a sovereign kingdom," as a prominent former UNTAET official put it, or as a "benevolent despot," as Sergio Vieira de Mello likened himself, with the ensuing effect on the legitimacy of the mission (Chopra 2000, 29; Caplan 2005, 196).

In this context, the rise of Lakhdar Brahimi in the UN establishment and his light footprint approach as implemented in Afghanistan is representative of a clear break from the euphoria of the "more is better" approach dominant at the end of the 1990s. The light footprint approach – a term that was coined during the planning of the United Nations Assistance Mission in Afghanistan – advocates that UN activities should be limited to those that are appropriate to the local needs and context, and that international staff should be limited to the minimum required, with an effort to ensure local capacity-building, so that nationals can take over from the UN as soon as possible (United Nations 2003, 5). The approach is coherent with the lessons drawn by Sergio Vieira de Mello: "if those [local] representatives are not consulted every step of the way—*indeed, if they do not lead the process of reconstruction*—then those who have come to help will come to be seen as invading interlopers (emphasis added)" (Vieira de Mello 2001). Even if the light footprint approach is not in itself a panacea (Chesterman 2002), it can constitute a coherent alternative to the direct governance by an international administration when approached in conjunction with the participatory intervention framework, as elaborated by Jarat Chopra and Tanja Hohe (Chopra and Hohe 2004). As Chesterman rightly states, "one element of the 'light footprint' approach that is certainly of general application is the need to justify every post occupied by international staff rather than a local" (Chesterman 2004, 248). This could constitute a further recommendation for all peace missions with sizeable civilian components.

So were Kosovo and Timor-Leste "historic anomalies" (Willner-Reid 2006, 6) representing a "high-water mark of UN peace operations" (Chesterman 2004, 97) or features of the international life "likely to remain with us for some time" (Mortimer 2004, 12)? It appears that the neo-trusteeship approach has actually been all but buried by the Brahimi report. Indeed, the report concludes that direct governance by an international administration will remain in the foreseeable future a possible *ad hoc* venture. Thus, it will likely continue to be a UN answer to a very

specific administrative situation – unfortunately an imperfect answer that tends to create problems of its own.

NOTES

[1] In this article, legitimacy will be understood as a "normative belief by an actor that a rule or institution ought to be obeyed… A subjective quality, relational between actor and institution, and defined by the actor's perception of the institution." (Hurd 1999, 381).

[2] This regulation drew on the Report of the Secretary-General on the UNMIK, 12 July 1999 (UN 1999b). His competencies will later be defined by the Constitutional Framework for Provisional Self-Government, which clarifies the relation between UNMIK and the local institutions instituted by the international mission (UN 2001, chapter 8).

[3] The most serious case of misconduct was the embezzlement of €3.9m of KEK funds by Joe Truchler, a senior German KEK official; €300 000 by KTA Division Manager, Roger Reynolds; and allegations of corruption by Gerard Fischer, who was the Deputy SRSG and who signed a contract involving PTK without undergoing procurement procedures. M. Fischer was arrested but did not face a trial and instead accepted another assignment. See: (Buzhala 2006; Zaremba 2007b).

[4] Interview with Albin Kurti, Head of the movement Vetevendosje!, July 15, 2007, Pristina.

[5] The events are generally believed to have been triggered by two separate incidents. The first incident was the shooting of a Kosovo Serb youth in the village of Caglavica (Pristina region) on 15 March, which led to a blockade by Kosovo Serbs of the main Pristina-Skopje road just outside Pristina. This road is deemed essential to the Kosovar economy (especially for the Albanian community). The second incident, on 16 March, was the death of three Albanian children by drowning in the Ibar River near the Serb community of Zubin Potok. The story spread by word of mouth that the children were chased by Serbs before their death, which sparked Albanian attacks on Serb enclaves. Though the circumstances of that incident have not been established clearly, the cumulative effects of the two incidents precipitated spontaneous Albanian demonstrations. The demonstrations were quickly taken over by "organized elements," and intense fighting erupted between the two communities while the violence quickly spread to other cities. In the midst of the events, 19 persons died and more than 1000 were wounded.

[6] There were prior signs of tensions between the international community and the Albanian extremists. On 16 March, widespread demonstrations by Kosovo

Albanians involving a total of approximately 18,000 demonstrators were held to protest against arrests by UNMIK police of former members of the former Kosovo Liberation Army (KLA) and the arrest of four members of the Kosovo Protection Corps (KPC) in connection with the murder of Kosovo Albanians. Some violent incidents were recorded in Prizren town, where a group of demonstrators stoned UNMIK regional headquarters facilities and injured one UNMIK police officer. Also, a homemade explosive device containing five kilos of TNT was planted near UNMIK headquarters just ahead of a visit by Jean-Marie Guehenno, Under-Secretary-General for Peacekeeping Operations (UN 2004a).

[7] 73.5 percent of Kosovar Albanians, 58.4 percent of Kosovar Serbs, and 58.3 percent of other minority groups holds this opinion. (USAID/UNDP/RIINVEST 2004, 6).

[8] Besnik Pula has expressed this idea in an article published in the daily newspaper *Koha ditore*, 6 October 2004, quoted in (USAID/UNDP/RIINVEST 2004, 3).

[9] Interview with Krenar Gashi, Kosovo editor of BIRN, July 10, 2007, Pristina.

[10] Interview conducted July 12, 2007, Pristina.

[11] As one UNMIK regional administrator tentatively described his policy. Interview with an UNMIK Regional Representative, July 6, 2007.

[12] The Serb National Council (SNC), a political entity first founded to oppose Milosevic policies and represent the interest of Serb Kosovars, is now considered as an organ of Kostunica's DCC political party and firmly controls the Northern enclave. Their officials administer the whole enclave, controlling appointments and the distribution of Belgrade's money.

[13] This led Wolfgang Ischinger, the EU representative in the "troika" of mediators, break the "partition taboo" and recognize that it could be an option for Kosovo.

[14] This excludes KFOR personnel. Other restrictions also apply: cases can only be handled that pertain to complaints arising from actions occurring after July 2001, cases must be situated in Kosovo, and the ombudsperson cannot take cases to court (UN 2000a).

[15] Interview with Hilmi Jashari, Ombudsman of Kosovo, July 13, 2007.

[16] Interview with Lulzim Peci, Executive director of KIPRED, July 11, 2007, Pristina. Opinion confirmed by a number of other interviews (and the polls).

[17] Interview with UNMIK official, July 16, Pristina.

[18] Personal interview with an official of the DPKO, New York, October 4, 2007.

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