

INTERNATIONAL CIVIL ADMINISTRATION AND STATE BUILDING PROCESS IN KOSOVO

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Abstract

Based on UN Security Council Resolution 1244 adopted on June 10, 1999 Kosovo was put under the international civil administration named UNMIK (UN mission in Kosovo). During the several years UNMIK exercised its powers in Kosovo based on four established pillars. A lots of debates were developed within the academic world about the role of UNMIK in Kosovo, its functions and especially the role it played for the process of the state building in Kosovo. A series of question were raise permanently about whether this mission was only a civil administration or it was a modern type of protectorate. Of course there were also other discussions developed regarding the UNMIK issue in Kosovo. The paper intends to explain the UNMIK mission and its legal basis with the special emphasizes the role it played in the process of Kosovo independence and the state building process. Some claim that UNMIK had a symbolic role in the process of state building whereas it had no role at all in the process of Kosovo independence. Paper analyses the entire process of UNMIK and comes up with findings as well as with the recommendations these types of international administrations should take into the consideration in the future if the need appears.

Keywords: International, civil, administration, diplomacy, mission

Introduction

This paper deals with the Interim Administration Mission to the United Nations - UNMIK and the contribution or failure of this Mission in the process of state-building and the functioning of the institutions of Kosovo, based on resolution S/RE /1244 adopted by the Security Council in its meeting no. 4011, dated June 10, 1999.⁹⁰

UNMIK began establishing Provisional Institutions of Self-Government (PISG) immediately after its settlement in Kosovo in June 1999.

⁹⁰ <http://www.unmikonline.org/regulations/unmikgazette/03albanian/Res1244ALB.pdf>

Institutions established by UNMIK, since their establishment have been more symbolic institutions governing how decision-making institutions as the all power was in the hands of the Special Representative of the Secretary General (SRSG), who had all legislative and executive powers, including the administration of justice.

Regarding the administrative organization of the Interim Administration, UNMIK headed by the Special Representative of the Secretary-General, as the highest civilian authority in Kosovo, which is within the powers and responsibilities himself had his four deputies. Each of the Deputy SRSG was also the Chairman of the so-called "pillar", which was in charge in carrying out certain administrative functions. There were four such columns, where each "pillar" included and ran a certain international organizations, such as:

- Pillar I: Police and Justice led by the Organization of the United Nations
- Pillar II: Civil Administration, led by the UN
- Pillar III: Democratization and Institution Establishing, led by the OSCE
- Pillar IV: Reconstruction and Economic Development, led by the European Union⁹¹

Applicable Law: Theory and Practice

On July 15, 1999 Secretary General of the UN **Kofi Atta Annan** appointed French Special Envoy Bernard Kouchner, who replaced Vieira de Mellon who was at the top of UNMIK in Kosovo for several weeks. Bernard Kouchner, July 16, established the Kosovo Transitional Council, allowing leaders with informal participation in the policy review⁹² in Kosovo Transition Council entered three of the signatories of the Rambouillet Agreement:

- Ibrahim Rugova. President and historic leader of Kosovo,
- Hashim Thaçi: political -director Kosovo Liberation Army.
- Rexhep Çosja - Chairman of LBD and a minor party
- Rada Trajkovic - A nationalist Serbian community representative

Although Kosovo Transitional Council was conceived as a consultative body between the Decree of the SRSG and community representatives, however it was an important coordinating body because it as anticipated termination of existed Albanian structures, such as those parallel ones that had governed Kosovo during years 1990-1998, the Kosovo

⁹¹ Kosovar Institute for Policy Research and Development. Political research Series Special Edition. Administration and Governance in Kosovo. Lessons learned and those that remaining to be studied p.2

⁹² Buxhovi. Y. (2009). "Historic Turn-West struggle for Kosovo": Faik Konica, Prishtina, Weller, M. (2009): "Citizenship contest". Pristina.

Liberation Army and all the others, whereas they failed or were not so interested in abolishing the parallel structures in particular Serbian communities in northern Kosovo and in this way determined permanent obstacles of Kosovo state building and functioning.

During the first stage of the International Ruling, in early 2000 the Special Representative of the Secretary General (SRSG) of the UN in Kosovo, Mr. Bernard Kouchner, also created "Joint Interim Administrative Structure" (JIAC). This structure consisted of twenty departments with responsibility for civil administration. These departments were headed jointly by a foreign official (international) and one local.⁹³ Municipal elections and the establishment of local self-government structures were planned in the second phase in 2000, whereas, in the third phase was envisaged self-conditional government, which had to comply with the requirements of the Constitutional Framework adopted in 2001.⁹⁴

Since the post-war period in 1999 Kosovo was ruled by the Mission of International Community on the basis of the Resolution 1244 of the United Nations, on such basis it was treated and considered as a "sue generis" country and issue.

As the United Nations Mission consisted of many states and many more nations in itself implied different stands, mentalities of different interests related to the same issues ... **For this reason the issue of Kosovo did not reflect as a successful story lead by International Community.**

Kosovo Elections organized by the OSCE

In Kosovo, during the period 2000- 010 were held four (4) first local elections and four (4) first general elections, which mean that over a period of 10 years, were held 8 with different systems and election rules.

Almost each elections were held, this has cost the poor and after the war Kosovo a great deal in every respect, and have influenced the continuity that the constituted institutions by these elections to be disrespected and distrustful from the population! As in local elections as well as in the general elections there had been numerous and unnecessary experiments.

Unclean lists, one after another electoral processes from deceased persons, persons who emigrated from Kosovo and got another nationality etc. were made on purpose and planned ahead on the basis of preliminary agreements of the International Mission and Kosovo Leadership, because together they sustained each other and continued to lead Kosovo according to their individual and group interests. For this reason, Kosovo since the

⁹³Yusuf Buxhovi. Historic Turn-West struggle for Kosovo. Faik Konica, Prishtina, 2009. Weller, Marc. Citizenship contest. Pristina 2009, p.515

⁹⁴ Weller, M. (2009): “ *Citizenship contest*”: Prishtina, p.301

installation of the UN Mission in Kosovo until its completion was led by the same "Political Elite" which entered politics as a family were considered economically poor and after several years they had become very powerful and rich. The more rich they became Kosovo was more impoverished, because they became rich not based on their work but on the basis of misuse of their political position ie installation or institutional corruption allowing International Mission which had stimulated corruption for two reasons: one to easily lead Kosovo and the other side to make disciplinable Kosovar leadership and to blackmail when they tend to change their rules of the game 'as defined by them ...

The Mission of UNMIK was initially planned to be accomplished within a specified time frame, which also would be accomplished if from the beginning more space would be offered to local population in participation decision-making processes and responsibilities.

The participation of the local population with UNMIK and its structures was primarily selected based on two of their basic criteria: subordination and obedience. This has made the local responsibility to be irrelevant. Kosovars, in principle and at least in the early stages of deployment and implementation of the power of UNMIK, supported this power. The reasons for this support can be explained naturally easy. Kosovo had a power, in a powerless situation. In a situation where everything was destroyed. However, this situation should at least be assumed that it could not without any measure and time restrictions.

Duties of the transfer of power from UNMIK to Interim Institutions Kosovo were associated with difficulties. After the first parliamentary elections, the power of the Provisional Institutions of Self-Government in Kosovo had divided into two political entities: the PDK⁹⁵ and the LDK⁹⁶. This government formation was previously conceived and even after the legitimization of the formation of the Kosovo Government and the Kosovo Assembly, UNMIK departments transferred only some minor Administrative and Executive Functions to the PISG Authorities and Ministries. Instead of transfer, UNMIK continued to hold large number of powers reserved for the SRSG in key policy areas, such as the police and the judiciary, in accordance with the Constitutional Framework. SRSG regularly continued to use veto to block legislation in the Assembly, if it confronted the Resolution 1244 and held extended control over the legislative and executive powers, while issuing a number of directives and regulations.⁹⁷

⁹⁵ Political party lead by Hashim Thaçi, known as war political party

⁹⁶ Political party lead by Ibrahim Rugova existing from pre-war "PERIOD"

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http://aix1.uottawa.ca/~czurcher/czurcher/Transitions_files/Final%20Report%20Kosovo.pdf, f
q.32

Knowing that UNMIK authority had exercised its functions for the benefit of the local population, it cannot be contested, because, in fact, if UNMIK Mission was not installed, anarchy and war for overpower and certain power of groups would bring to the people of extremely sad an imposed cost to Kosovo.

On the other hand, one of the tasks of UNMIK, arguably the most important in the long term, was to bring the territory to a level in which issues related to foreign status, can be considered.⁹⁸ Moreover, even at the beginning of its establishment, and at all times of its existence, the political vision of UNMIK wasn't totally clear. Furthermore, no International Administration cannot function without a political vision, implied or stated for the society it administers.⁹⁹

The power of the SRSG in many forms also depended on the personality of the holders of this function. Kouchner, for example, will be remembered as a very dynamic and willing for close cooperation with local authorities. Holker¹⁰⁰ was recognized as pretty cool and rigid, whereas, the arrival of Petersen, after Holker's withdrawal accelerated transfer of powers from UNMIK to the PISG, through the creation of Ministries, which until then belonged to the reserved power sectors, such as police and justice, border control and Trust of Kosovo (who supervised the privatization, imposed by UNMIK to Socially Owned Enterprises)¹⁰¹. The said Head Administrator was also recognized for excels and acceleration of the process for determining of final status of Kosovo.

Talks for final status

It was clear that the International Civil Administration could remain forever in Kosovo. In the early post-war years, this power was considered to have been very useful and effective to certain extent. But, as the time went on, this mechanism lost its popular support in Kosovo, which had already required something more. This "something" was more aspiration for Kosovo's state-building and for the determination of its final status. But, to be introduced in the process of negotiations for the final status of Kosovo,

⁹⁸ KIPRED, Administration and Governance in Kosovo -A project coordinated by CASIN: 2005, the Pristina-Geneva,p. 3.

⁹⁹ KIPRED, Administration and Governance in Kosovo -A project coordinated by CASIN: 2005, the Pristina-Geneva,3

¹⁰⁰In its mandate occurring "The events of March 2004" when large number of people explode after an incident in the north of Kosovo. He has bacome withdrawn and resigning.

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http://aix1.uottawa.ca/~czurcher/czurcher/Transitions_files/Final%20Report%20Kosovo.pdf,fq.3

the International Community suggested some preconditions, which had to be met. It was Head Administrator Steiner who suggested the so-called "standards before status"¹⁰², which had served as a base document and a measure, that after assessing whether the terms had been met or not, they would lit the green light to move forward with negotiations for the final status.

Based on this, we can draw a conclusion that the Standards for Kosovo document signed on December 10 2003 by the Special Representative of the Secretary-General Harri Holkeri and Kosovo Prime Minister Bajram Rexhepi, was a kind of exit strategy, which enabled the exit from the status quo being reigned in Kosovo. In fact, in Kosovo on March 17, 2004, there was an explosion, the causes of which, among other things, were just delays in development, non- status quo and no definition the courses. So within a long period of time for Kosovo, there were reports, which opened the direction for future, generating concrete recommendations. In July 2004, the Special Representative Kai Eide, the United Nations recommended the transfer of power to the Provisional Institutions of Self-government and recommended to start with a "discussion on status."¹⁰³ Later on, we had the second report of Kai Eide, entitled "Comprehensive Review of the Situation in Kosovo", which will be the key and guide for the launch of negotiations on the final status of Kosovo. This report was dated October 7, 2005. It should be noted that on this occasion and should be inserted in the text, was the statement of the Contact Group regarding the report of Kai Eide, which is explained as follows:

Contact Group reviewed the letter of the Secretary-General and Ambassador Kai Eide's report on the comprehensive review of the situation in Kosovo, submitted to the Security Council on October 7 2005. The Contact Group supported the recommendations of the Secretary-General submitted to the Security Council, based in this report to start the process of determining the future status of Kosovo in accordance with the Resolution 1244 of the Security Council. The Group welcomed the intention of the Secretary-General on the appointment of a Special Envoy, who will lead this process. Contact Group gladly supported the efforts of the Special Envoy and his team. A negotiated solution should be an international priority and that process which has begun cannot be blocked, but should finish.

¹⁰²Steiner. promotes access to something that marks the exit from the status quo initiative that had become unbearable, especially Kosovo Albanians risked already expressed their dissatisfaction in other ways

¹⁰³ Look Raport for Kosovo. (2007). No good alternatives to the Ahtisaari Plan, ICG – International Crisis Group, Europe Report nr. 182: Prishtina, (Beograd, New York), Brussels, p.7.

State building and state-building stagnation, as barrier for advancing international position Kosovo

There were various discussions and debates on relation to this matter, if Kosovo state building had started even before the Declaration of Independence. In addition, it depends on perspective and approach that anyone can be against the state, elements, components, structures, etc. state. But let us give an accepted definition about the state before the process will be briefly discussed. The state is an institution created by the group aiming to accomplish several goals, of which the most important is the maintenance of law and order within its borders and the preservation of the independence of people in relationships with other people.¹⁰⁴ The state-building process, according to a perspective is said to be as follows: State building Mission in Kosovo was a type of International Intervention, which was introduced in 1990. Similar Missions have been or are being developed in countries such as Afghanistan or East Timor. Dedication characteristic of this type of intervention is military and civilian aspects (Bieber, 2003: 2).

The Mission of state-building deployed in Kosovo, and under the authority of UNMIK is called multidimensional peace operation or operation of the second generation of United Nations peacekeepers (Pula, 2003: 199). Kosovo, based on the specific path of state building in the context of meeting the criteria for integration, was not equal to other Balkan countries and the countries that have emerged as a result of the disintegration of former Yugoslavia.

Within the framework of the Stability Pact, it should be added that Kosovo was set up a special mechanism called Tracking Mechanism of Stabilization and Association Agreement. This mechanism came into effect in 2003.

Guidelines for state-building are early aspirations of the people of Kosovo. But the risk for undergoing a process of state failure is not that they are small and far from the mind in Kosovo. Corruption, organized crime, ungrounded enrichment of political representative elites, the recycling of people with bad background, etc., were present in Kosovo in the process of state-building.

What even more complicates situation is the fact that Kosovo since 1999 hasn't independently been governed by locals. Kosovo has been ruled by Internationals, co-governance and International Supervision. In all three versions of this government none can be excluded from liability. Even not rarely corruption practices was in close cooperation with locals and

¹⁰⁴ Svarlien, cited from Gruda, Z. (2007). "International Public Law": Furkan ISM-Shkup, p. 69.

internationals. And that in way the failed state-building risk was planned and mentioned also in the report of Ambassador Kai Eide, where he says: "International Community must do everything to ensure whatever status will be and do not allow the status to fail. "Entering this future status does not mean that we are entering the last stage, but we are entering into the next stage of the international presence."¹⁰⁵

Since the stability of the Region is of great importance for the International Community and since Kosovo Serbia reports may have more potential outbreak, International Community somehow has closed the eyes before some phenomena, which would not have been allowed anywhere and in any democracy or state. This is because for the sake of negotiations with Serbia a certain extent misrule was tolerated, aiming not to endanger the process of negotiations. "One Commission Official the admitted that for the sake of EU stability in government was necessary, which is committed to dialogue, tolerated in silence a parliamentary control of the government the Commission Official warned by the Government of Kosovo, saying that you are among the few countries where the government controls parliament, whereas the parliament was mainly boycotted from the party in power."¹⁰⁶

Conclusion

Related to effectiveness of UNMIK governance in Kosovo there are different opinions. Some think that it was quite useless and prevented the development of Kosovo. Others share the opinion that without THE presence UNMIK in that period especially in the first years of post-war reality or life of its citizens would be more than the risk not only from the Serbian state, but also by certain Albanian circles.

Without the existence of an International Civilian Administration in Kosovo the return of nearly 1 million refugees to their homes would be much more difficult. Formation of government institutions without UNMIK would be much more problematic because the installed political system would certainly not be democratic.

UNMIK created the Kosovo Governing Institutions

There are many areas in which UNMIK has invested a lot, but the achievements have been limited, in particular related to investments and commitment to inter-ethnic dialogue. Economic Development is the area where UNMIK also failed to succeed. No successes reached and almost nothing was done to fight corruption but, in contrary, it has further

¹⁰⁵ Report on a Comprehensive Review, UN documents S/2005/635.

¹⁰⁶ Forum 2015, Kosovo-EU Relations: The history of unfulfilled Aspirations? Kosovo Foundation for Open Society, Prishtina 2013, p. 31.

stimulated and helped it. Not rarely due to its bureaucracy and more uncertainty to many official mission and its responsible UNMIK has prevented or slowed the development process and the functioning of Kosovo four pillars of UNMIK Mission had managed post-conflict situation, the construction of peace (peacebuilding) and the creation of institutions (institution building) for a long time. Later, after the Declaration of Independence, its role was mainly focused on the facilitation of communication and dialogue with the Serbian minorities in Kosovo and Serbia regarded at the interstate level.

In the end if we analyse the whole process of UNMIK in the context Kosovo reality, during and after the war, we may come with a conclusion that the International Mission of UNMIK in Kosovo was more than necessary as such, but it would for sure be more successful if the members of that Mission were experts and professionals who have at least basic knowledge about the people of Kosovo and the Region, their culture and particularly the causes of war, and not its staff to be determined based the comprehensive involvement of the states member of the UN.

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