

University for Business and Technology in Kosovo

UBT Knowledge Center

Theses and Dissertations

Student Work

Winter 2-2009

BUILDING THE STATE THROUGH 'DEMOCRATIC INSTITUTIONS' IN 'CO-GOVERNANCE' WITH THE UN INTERIM ADMINISTRATION

Makfire Azemi

University for Business and Technology - UBT

Follow this and additional works at: <https://knowledgecenter.ubt-uni.net/etd>



Part of the [Law Commons](#)

Recommended Citation

Azemi, Makfire, "BUILDING THE STATE THROUGH 'DEMOCRATIC INSTITUTIONS' IN 'CO-GOVERNANCE' WITH THE UN INTERIM ADMINISTRATION" (2009). *Theses and Dissertations*. 399.

<https://knowledgecenter.ubt-uni.net/etd/399>

This Thesis is brought to you for free and open access by the Student Work at UBT Knowledge Center. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of UBT Knowledge Center. For more information, please contact knowledge.center@ubt-uni.net.

UNIVERSITY FOR BUSINESS AND TECHNOLOGY



BUILDING THE STATE THROUGH ‘DEMOCRATIC INSTITUTIONS’ IN ‘CO-GOVERNANCE’ WITH THE UN INTERIM ADMINISTRATION

A Bachelor Thesis submitted for the degree of
“Bachelor of Science in International Faculty of Law, Political Science and
Diplomacy”
at the University for Business and Technology
UBT

Student

Makfire Azemi

Nr.2005070008



**BUILDING THE STATE THROUGH ‘DEMOCRATIC
INSTITUTIONS’ IN ‘CO-GOVERNANCE’ WITH THE UN
INTERIM ADMINISTRATION**

A Bachelor Thesis submitted for the degree of
“Bachelor of Science in International Faculty of Law, Political Science and
Diplomacy”
at the University for Business and Technology
UBT

supervised by
Prof. Dr. Ernst Florian. Winter

Makfire Azemi
Nr.2005070008

Prishtinë, 18/Feb./2009

Signature

Table of contents

Acknowledgements.....	3
Introduction.....	4
The methodological aspect and sources of the dissertation.....	6
PART ONE	
1. A historical background of Kosovo’s situation before the establishment of UNMIK..	7
1.1. The constitutional position of Kosovo after 1945.....	8
1.2. The war in Kosovo 1997-1999.....	12
1.3. The resolutions for Kosovo and the NATO’s Intervention.....	13
PART TWO	
2. The UN post-conflict Resolution for Kosovo.....	15
2.1. The legal nature, structure and functions of UNMIK.....	17
2.2. The establishment of UNMIK.....	19
2.3. The prolongation of the status-quo of Kosovo.....	23
PART THREE	
3. The Negotiation process and the Comprehensive Proposal for Kosovo.....	25
3.1. Comprehensive Proposal for the Kosovo Status Settlement.....	27
Conclusion.....	29
Bibliography.....	32
Abbreviations.....	34

Acknowledgements

This thesis could not have been finished without the great support of my BA mentor, Ernst Florian Winter, Professor of the Diplomatic Academy of Vienna, who guided me during my studies and who advised me on writing this.

Of course my basic acknowledgment goes to my family, especially to my husband, for their unfailing support, great understanding and patience during the writing of this thesis.

Introduction

Since 1999 Kosovo has been administered by UNMIK. For Kosovo's Albanians this has been a practice and a learning process of how a UN-peacekeeping mission saved the peace in a country like Kosovo, and how it functions in helping that country building its democratic institutions. It is important to come to a conclusion whether the Kosovo Society was lucky or unlucky to go through such an experience.

The main aim here is to introduce a mirror of the institutional and political stability in Kosovo after a dim period of time. I thought that it was more important to find what was accomplished here; success is found in institutional and political stability, there are some achievements regardless of difficulties. I am very sure that if I dealt with other challenges of UNMIK I would have difficulty to find something which points out the progress of this mission.

It is true that after the war, UNMIK authorities faced many challenges. Apart from the fact that the war left the country in a state of collapse, the situation was the same in 1989, a year which notes the existence of an administrative parallelism. The creation of such a parallelism lies with circumstances that are already known to us.

So, there were more challenges that faced us prior to UNMIK, like peacekeeping, inclusion of minority in the Kosovo Society, improving the education system, improving of health policy and the most important one which the Resolution 1244/99 obliges the mission to hold local elections, followed by a process of drafting a "constitutional framework for self-government of Kosovo", subsequently to hold parliamentary elections, including the election of a president and provisional government (PISG) and the process of negotiation of the status settlement which was considered as the final phase of UNMIK.

I will try to treat here the challenges of UNMIK that helped Kosovo to build its democratic institutions and the process of solving the status. The idea here is to describe the creation of PSIG, the elections and the negotiation process until the solution of final settlement. For Kosovo that was not the first time for organizing that. However it was the first time that the country had its democratic institutions internationally recognized.

During my thesis I will try to answer these questions: How efficient was UNMIK in such challenges? Did UNMIK allow another post-conflict administrative parallelism in Kosovo? Did UNMIK fail or was it successful in accomplishing its goals and their objectives in accordance to the basic mandate given by the UNSCR_1244/99?

Prior to explaining the nature of UNMIK, I will try to discover and explain a short historical and political background of Kosovo. This first part will include the most important political and historical events for Kosovo. I thought that without that we could not understand the situation which we are interested in.

Kosovo remained under the administration of the UN from 10th of June /1999, based on the resolution 1244/99 of the Security Council. The resolution gave the power to UNMIK to administer the territory for an undefined time, except the UNSCR 1244/99; the second part will contain the legal nature of UNMIK, as a mission of the UN interim administration of Kosovo including its structure and functions.

This part will also include the establishment of UNMIK. The main focus here will be the creation of PISG through the first democratic elections supervised and helped by OSCE and the issue of a constitutional framework for interim self-government in Kosovo. How this process was developed and what competences were transferred from UNMIK towards the Kosovo institutions which already represented its citizens?

The negotiation process will be included in the third part. The third part will also be a conclusion and 'evaluation' of UNMIK's work including its achievements and its

failures. This part will express the scale of satisfactions of citizens in Kosovo for the UNMIK mission. Herein we will analyze also some of the criticisms, recommendations and comments done by different reports, articles and speeches.

The methodological aspect and sources of the dissertation

My thesis was based mostly in findings. I used academic books as references and different reports, articles, legal documents and the internet on the official websites. Due to the scarcity of academic books that dealt with the UNMIK mission, I relied on the information given in the book of prof. Reka and prof. Bajrami.

I used the historical method, descriptive method, and to a lesser extent the comparative method. I used the sociological method not by interviews but by referring to reports that dealt with it. By using the historical method for the first part that deals with the problem of status evolution of Kosovo since 1974-1999, it enabled me to analyze the historical development and to follow the status settlement.

As the drafting process of the ‘constitutional framework’ was co-drafted by international and Kosovo legal experts, in the legal aspect I also referred to two professors who were members of the Transitional Council of Kosovo.

I used the word ”conflict” when I referred to those who used that word (especially the internationals), and “war” when I referred to others that used another term. I have not mentioned the names of the SRSG even if there were different evaluations for the personalities of each of them, as that was not my aim. Also in order to be indifferent toward the political parties and their leaders of Kosovo, I did not refer to any of them.

My research here is to prove a conclusion and recommendations in that of to what extent did the UNMIK fulfil its duties and obligation in compliance with 1244/99 UNSCR.

1. A historical background of Kosovo's situation before the establishment of UNMIK

“...not everything the Serbs have been told about the history is false; what is needed, however, is an ability to accept that there are other truths which they have not been told.....there is an element of truth in this, but is very much less than the whole truth.”

Quoted by: Noel Malcolm (2002)

Since when it was under the Ottoman Empire Kosovo had a status of statehood with elements of a federal state. This has been instituted by Turk regulation in 1864.

The disintegration of Albanian territory was made at the Congress of Berlin in 1878, and also at the Conference of Ambassadors in London in 1913 , where the Great Powers once more reconfirmed the decision of the Congress by leaving the Albanian people under the slave occupation.¹ With the aims of uniting the areas of mainly Albanian speaking populations in 1878, the League of Prizren was founded.²

This is the first occupation of Kosovo and the division of the Albanians people by state borders, which was accepted as a fact by many foreign scholars. So, the first annexation of Kosovo was legalized internationally by the decisions of the London Conference. Such an occupation will be reconfirmed by the Pact of Versailles after WORLD WAR I.³ During the Second World War, the coordination between the LNC of the Albanian people and the LNC of Yugoslavia took place. Under the promises that after the end of the war the Albanian population aspiration will be fulfilled, the LNC of the Albanian people answered positively the Yugoslavian calling for the subjoining in the wind of the

¹ Arsim Bajrami: *'E Drejta e Kosoves ne Tranzicion'*, *'The Kosova Law in Transition'*, Prishtine, 2001, pgs 33,34

² OSCE: *"Kosovo? Kosovo As seen, as told"*, ODIHR, Warsaw, 1999, p1

³ Blerim Reka, *"UNMIK as an international governance in post-war Kosova: NATO's Intervention, UN Administration and Kosovar Aspirations"*, LOGOS-A 2003, Shkup, Prishtine, Tirane.

antifascism forces⁴. As we know the Albanian population's aspiration has always been the right of the people for self-determination till the secession.

The Bujana Conference which has started in 31/dec/1944 and continued its proceedings until 1,2/ Jan/1945, got out the most important document that was the Conference's Resolution, which has been approved unanimously by all the members of that Conference.⁵

The resolution clearly respects the desire of the Albanian people to join with Albania and from that we can conclude that the Bujana Conference was a constitutional document with international guarantee.⁶ However, the positive determinations which were determined by that Conference faced with harsh reaction of the political leadership of Yugoslavia. As a result Kosovo was reoccupied by Serbia under military administration circumstances in 10/JUL/1945 in the assembly of Prizren organized by Serbian political forces and got out the so-called "Resolution for Joining of Kosova and Dukagjini with the federal Serbia".⁷

So, based on circumstances as prof. Reka rightly touch, the case of Kosovo has to be considered as a case of annexation and in conformity with the 'Restitutiv ab Integrum', requests international returning to the political-territorial situation before the first forceful annexation of Kosovo.⁸

⁴Dr.Fehmi Pushkollli: "Mbrojtja Kombetare Shqiptare 1878-1990, pg 127.

⁵Arsim Bajrami, 'E Drejta e Kosoves ne Tranzicion', 'The Kosova Law in Transition ', Prishtine, 2001,pg 36.

⁶N.Malcolm; "Kosova a Short History", Macmillan 1998, pgs.307-308.

⁷ibid.Arsim Bajrami, pg 38.

⁸Blerim Reka, Blerim Reka, "UNMIK as an international governance in post-war Kosova: NATO's Intervention, UN Administration and Kosovar Aspirations", LOGOS-A 2003, Shkup, Prishtine, Tirane,pg 48

1.1. The constitutional position of Kosovo after 1945

Before the SFRY Constitution of 1974, the other SFRY Constitutions such as of 1946 and 1963 haven't given the Kosovo an advanced constitutional position.

The SFRY Constitution of 1974 as well as the Kosovo Constitution in the same year gave Kosovo an equal federal unit in former Yugoslavia. According to prof. Reka who said that regardless by whichever of two international legal models whether the case of Kosovo was treated as 'Annexation' or 'Pact' model the last federal status of Kosovo (1974-1989) in the last Yugoslavia has been a *sui generis* one.

Nevertheless with that constitution the Kosovo aside from its federal equal units, have the right to adopt its constitution as well as their amendments, the right to decide for their boundaries, the right to organize their authority such as: The Parliament, The Presidency, The Executive Council, the Constitutional Court and the National Bank; the right to exercise the constitutional judicial function, the judicial autonomy including the right to establish its Supreme Court and finally as a federal units of SFRY, the constitution gave Kosovo the right to enter into independent international arrangements.⁹

Furthermore, with that Constitution Kosovo has gained the competencies for practicing every function the same with the republics except their which were duties of the Republic of Serbia.¹⁰

The Kosovo Albanians started the demands for full republican status including the right to secede in 1981 (as we know in the KSAK lived the population with 90% Albanian, totaling some 1.7 million and rising). Their demonstrations were countered by a hard line response. As a result the federal army was deployed and over 7000 Kosovo

⁹Blerim Reka: "UNMIK as an international governance in post-war Kosova: NATO's Intervention, UN Administration and Kosovar Aspirations", LOGOS-A 2003, Shkup, Prishtine, Tirane.pg50; see also *The Constitution of Kosova of 1974*;

¹⁰ www.independentkosova.com/blog/?/pg 19

Albanians were sentenced to short prison terms and over 1750 were given longer sentences, up to 16-years, as an answer for their nationalist activity.¹¹

The day of the 24/april/1987 has shined for the Serb nationalism and the future of Kosovo. Slobodan Milosevic, had gone to Kosovo and has told the Kosovo Serbs that no one should dare to beat them, making himself the instant hero of Kosovo Serbs. Moreover, in the 1987 he was in firm control of both the party and the government in Serbia.¹² Since then, every day for Kosovo Albanian was going to be worst.

...“To produce an adequate survey of the human rights abuses suffered by the Albanians of Kosovo since 1990 would require several long chapters in itself”¹³

Qtd. by Noel Malcolm

By amending the Constitution both Serbia and the SFRY gave Belgrade more control over security in Kosovo and Vojvodina. The most important thing of that time was the withdrawal or closure of publicly funded Albanian Language media in 1989 and the publication of a new curriculum for schools in Kosovo, in 1990, which will end the teaching in Albanian secondary schools in 1992 and the cutting of Albanian language teaching at Prishtina University at the same time .That period of time noted the loss of autonomy status. .

So, those were the 'presents' that Prishtina was taking from Belgrade.....every day.....!

¹¹ OSCE, *Kosovo? Kosovo As seen, as told* , ODIHR, Warsaw, 1999 pg 2

¹² OSCE, *Kosovo? Kosovo As seen, as told* , ODIHR, Warsaw, 1999 p3

¹³ Noel Malcolm, ' *Kosovo a Short History*' quoted , pg349, published 2002 by Pan Books

However, the Albanians in Kosovo didn't stop at the same point. They successfully organized a referendum to declare Kosovo a sovereign and independent republic with 87 per cent of voters which took part and the 99 per cent from them voted in favor. On 24/may/1992 Kosovo elections were held to create a new republican assembly and government. The Democratic League of Kosovo leading by dr. Ibrahim Rugova was officially founded in December 1989.¹⁴ The President of the 'Republic' of Kosova proclaimed and implemented a 'peaceful policy' for almost a decade.¹⁵

Prof. Bajrami has ranked the political and constitutional acts that brought the birth of the Republic of Kosovo:

- 1) The Constitutional Declaration of the 2/July/1990;
- 2) The Constitution of the Republic of Kosovo of the 7/September/1990
- 3) The Referendum for Kosovo, Sovereign and independent state held on 26-30/September/1991;
- 4) The Resolution of the Kosovo Assembly for Kosovo, Sovereign and independent state, approved by the Kosovo Assembly on 19/October/1991;
- 5) The Constitutional amendments in the Constitution of the Republic of Kosovo, approved by the Kosovo Assembly on 19/October/1991, and
- 6) Free and multiparty elections for the Kosovo Assembly and for the election of the President of the Republic held on 24/May/1992 and for the second time on 22/March/1998.¹⁶

The situation in Kosovo was definitely linked with the process of the dissolution of Yugoslavia. After the wars in Croatia and Slovenia which finished by seceding from Yugoslavia, and after the Dayton Peace Agreement, the Albanians in Kosovo rightly felt that they were forgotten by the international community. As a result of that and with understanding that the peaceful policy is seemed to not effective in Balkan, decided to

¹⁴ Noel Malcolm, 'Kosovo a Short History', pgs 347,348 published 2002 by Pan Books .

¹⁵ Blerim Reka, "UNMIK as an international governance in post-war Kosova: NATO's Intervention, UN Administration and Kosovar Aspirations", LOGOS-A 2003, Shkup, Prishtine, Tirane,pg53

¹⁶ Arsim Bajrami: 'E Drejta e Kosoves ne Tranzicion', 'The Kosova Law in Transition', Prishtine, 2001, quoted, pgs 59,60.

create a policy of armed resistance within Kosovo and in Diaspora by which they could liberate their country from Serbian occupation.¹⁷ These are some of the developments that happened before the war in Kosovo which notes a new chapter.

1.2. The war in Kosovo 1997-1999

The foundation of Kosovo Liberation Army (KLA-UÇK) has created new relationship in Kosovo and region. The KLA came out as a result of the violation of human rights to the Albanian population and it was marked as a historical event for its population. This was the willingness of the population to testify that the liberty and independence for their country are their priority. It is crucial that the KLA achieved in a short period of time the full support of population. And another important fact was that the KLA gave the Kosovo issue its due position in the international community.¹⁸

Since its appearance for the first time in public in June 1996, the KLA started the diplomatic contacts with international diplomats (especially with the Americans) about the solution of the crises. This de facto recognition will pass by de jure recognition in the Rambouillet Conference, where the leading negotiator was representative of KLA.¹⁹

Consequently, the Serbian authorities brought in special security forces in January 1998, and responded to clashes with the UCK by reprisal attacks on villages, using military helicopters and armored personnel carriers, accompanied by brutal house-to-house raids and indiscriminate arrests. Furthermore, two such attacks on villages in late February were followed by an attack on the village of Prekazi i Poshtem (Srbica/Skenderaj municipality) in early March, where at least 54 people were killed including a local

¹⁷ Blerim Reka, "UNMIK as an international governance in post-war Kosova: NATO's Intervention, UN administration and Kosovar Aspirations", LOGOS-A 2003, Shkup, Prishtine, Tirane,pgs71-73

¹⁸ Greg Cambell, 'The Road to Kosovo', 2000,pg.159-178).

¹⁹ Arsim Bajrami, 'E Drejta e Kosoves ne Tranzicion', 'The Kosova Law in Transition ', Prishtine, 2001,pg.70

UCK leader, most of his family and other women, children and elderly men. The reprisals continued with further attacks on villages in the central Drenica region, causing many villagers to flee their homes. In this downward spiral of violence, many Kosovo Albanians, including erstwhile supporters of the LDK's non-violent stance, became UCK members or active sympathizers.²⁰

1.3. The resolutions for Kosovo and the NATO's Intervention

Three Resolutions were approved by the UN Security Council: UNSCR 1169, UNSCR 1199 and UNSCR 11203, before the NATO's intervention. With the first one the UNSC imposed the arms embargo against the FRY. Whereas by the second resolution, UNSC Acting under Chapter VII of the UN Charter, called for an immediate cease-fire in Kosovo, an international presence to monitor it the withdrawal of security units used for civilian repression, and dialogue on the future of Kosovo. In compliance with the provisions of UNSCR 1199 the "Milosevic-Holbrook Agreement" was signed on October 1998 followed by another agreement, for the establishment of the OSCE Kosovo Verification Mission: OSCE-KVM.²¹

As a result, for the Albanians of Kosovo that was a hope that even no new massacres could be happen. The first part of the 2000 members of KVM began to deploy in Kosovo in November 1998. In mid-January, 45 people – some of them children - were found murdered in Racak/Recak (Stimlje/Shtime), mostly shot in the head at close range. It was this last development, and its immediate repercussions, which precipitated the next initiative by the six-country Contact Group. Ambassador William Walker, the head of the OSCE-KVM, was ordered out of the country by the Serbian authorities when he publicly accused them of responsibility – rejecting their claim that UCK guerrillas

²⁰ OSCE: "Kosovo? Kosovo As seen, as told" , ODIHR, Warsaw, 1999, p5

²¹ UNSCR 1160, of March 1998 and UNSCR 1199, of 23 September 1998 , adopted by the SC at its 3868th meeting respectively 3930th meeting.

had been killed in a battle at Racak and their bodies then rearranged by their comrades to look like civilian victims of a massacre.

Ambassador Walker refused to leave, while NATO threatened military action against the FRY unless the cease-fire was restored. In a bid to break the impasse by diplomatic means, the Contact Group then announced a conference on the future of Kosovo, to be held in Rambouillet near Paris on 6 February.²²

This international peaceful Conference was held in the Rambouillet and Paris on February and March 1999. The objective of the Rambouillet Conference was the achievement of a judicial and political agreement for the political solution in Kosovo.

The document among others include once autonomy for Kosovo (similar with the 1974th year) for an interim period and for SFRY was an opportunity to have the Kosovo under its Sovereignty. But, this leaved Kosovo under the NATO protection and opened an opportunity for the development of the political process for the determinacy of the final status for Kosovo.²³

The Kosovo Albanian side did sign the document after the second round of negotiations, however the Serbian side did not sign and without two signatures of both contractual parties this could not be an agreement, only a non-obligatory document. What was of crucial importance from that document, the military annex which nonnegotiable for two delegations.²⁴

²²OSCE, "Kosovo? Kosovo As seen, as told", ODIHR, Warsaw, 1999, pgs.6,7

²³ Arsim Bajrami 'E Drejta e Kosoves ne Tranzicion', 'The Kosova Law in Transition', Prishtine, 2001, p.71

²⁴Blerim Rekaj, "UNMIK as an international governance in post-war Kosova: NATO's Intervention, UN Administration and Kosovar Aspirations", LOGOS-A 2003, Shkup, Prishtine, Tirane, see also: "The Rambouillet Agreement", S/1999/648, Anex 1, Articles: I-X

As fighting continued the NATO forces began their campaign based on the plan that was been prepared and approved from NATO. It was right approach that NATO chose this option; acting without UNSCR, in order to save the Albanian population and give to the international law a human dimension. Moreover, an “ethnic cleansing” happened for a short period of time. Anyway, the common attempts of the NATO and KLA resulted by the release of the territory of Kosovo and by full withdrawal of the military and paramilitary forces including police and the forced administration of Serbia.

This was a result of the ‘Military Technical Agreement’, between the International Security Force (“KFOR”) and the Government of the FRY and the Republic of Serbia. In other words the Milosevic accepted the conditions determined by the international community.²⁵ It was an important part of the history for the people of Kosovo as well as a part that marked the end of the tragic chapter. For the Albanians of Kosovo it was a great humanitarian act that the NATO alliance has ever undertaken. However, there were different thoughts concerning the legitimacy of that action.

2. The UN post-conflict Resolution for Kosovo

Kosovo remained under the administration of UN from 10th of June /1999 based on resolution 1244/99 of the Security Council. The resolution gave the power to UNMIK to administer the territory in an undefined time. In the post-conflict circumstances this resolution obliges the international civil and security presences to end the violence and repression in Kosovo, to supervise the withdrawal from Kosovo of all Serbian forces including military, police and paramilitary, demilitarization of KLA, the return of all refugees and displaced persons and providing an interim political framework for a substantial self-government by full respecting the sovereignty of the Federal Republic of Yugoslavia.

²⁵www.NATO.int/KFOR/docu/docs/; see more about bombarding attacks in: Wesley K. Clark: “Waging Modern War”, New York, 2001, P 163.

The legal base of the resolution is the Chapter VII of the UN charter, which says:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security” qtd..²⁶

As much as the resolution was very welcomed for the people of Kosovo by fact that its main duties is to end the war and to ensure security, some of the legal experts of Kosovo mention its uncertainties and disadvantages.

According to prof. Bajrami the resolution has some general formulations; the resolution leaved Kosovo within FRY; its reference by the Ramboulliet Agreement even if it not signed by two parties and the undefinition of the concept of “substantial self-government.”²⁷ Likewise for prof. Reka the UNSCR 1244/99 gave to UNMIK to prepare Kosova’s population only for self-government and not for self-determination. He does it by comparing the UN mission in Kosovo with the UN mission in East Timor (UNTAET) where the mandate of it was to prepare the territory for independence. In his comments he also adds his questions on that of why in the UNSCR 1244/99 the Chapters XII and XIII of UN Charter were not applied?!²⁸

²⁶ *Charter of the United Nations, CHAPTER VII: ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION, Article 39*

²⁷ Arsim Bajrami, ‘E Drejta e Kosoves ne Tranzicion’, ‘The Kosova Law in Transition’, Prishtine, 2001, pgs84-87

²⁸ Blerim Reka, “UNMIK as an international governance in post-war Kosova: NATO’s Intervention, UN Administration and Kosovar Aspirations”, LOGOS-A 2003, Shkup, Prishtine, Tirane, pg.119,164

It is important to mention that it was the first time in the history of UN, that it applied a special model of international territorial administration. In its first report of the UN Secretary General was said: “UNMIK is a novel one”.²⁹

2.1. The legal nature, structure and functions of UNMIK

The UNMIK mission took its mandate from the UNSCR of 10/July/1999. The mission had all the authorizations to practice a so called ‘co-governance’ in Kosovo post conflict situation, leading by Special Representative of the General Secretary of UN. Being aware that every UN peacekeeping mission differs from the other depending on circumstances, it was the “sui-generis” one and has had its characteristics different from before peacekeeping missions.

Here are some characteristics: Firstly, its coordination with other international organization such as: NATO, OSCE, EU, and UNHCR. Secondly, the SRSG and his three exclusive powers in his hands: the executive, the legislative and the judiciary. And thirdly, the drafting process of the Constitutional Framework for the Interim Self-government in Kosova, which was the first one ever drafted in any UN mission in the world.³⁰

It is of crucial importance to mention the feature of the peace process in Kosovo was certainly the joint but, in fact, separate international civil and security presence under UN leadership in the area. For obvious reasons, co-ordination and liaison between UNMIK and KFOR were imperative for the overall success of the peace process.³¹

²⁹“UNMIK: A Unique Mission”, in ‘What is UNMIK?’, DPI-UNMIK, Prishtina 2002

³⁰ *Ibid*,

³¹Theo Neetling, *Centre for Military Studies (Gauteng) University of Stellenbosch*
Published in African Security Review Vol 9 No 1, 2000

Indeed the whole mission was based on four pillars. Its structures has been as follows: Pillar I-police and justice, (covered by UN); Pillar II- Civil Administration,(UN); Pillar III-Democratization and Institution-Building, (OSCE); and Pillar IV-Economic Development,(EU).³² In other words, it was decided that the allocation of tasks would be divided into four main components: a civil administration component; an institution-building component; a humanitarian component (that component was substituted by one another); and a reconstruction component.³³ The tasks of UNMIK's in the Institution-building component were identified as strengthening the capacity of local and central institutions and civil society organizations, as well promoting democracy, good governance and respect for human rights. It also included the organizing of elections. As an immediate priority, it was decided that UNMIK would work in the field of democratization and institution-building. Moreover, to fulfill those duties UNMIK should work with other international organizations.

UNMIK was also tasked to undertake programs to facilitate conditions that would support pluralistic political party structures, political diversity and a healthy democratic political climate. Over the longer term, it would develop an integrated approach to the strengthening of governance structures through the training of government officials in procedures of democratic governance.

³²Theo Neetling, *Centre for Military Studies (Gauteng) University of Stellenbosch* Published in *African Security Review Vol 9 No 1, 2000*

³³United Nations Interim Administration Mission in Kosovo (UNMIK), *Mandate & Tasks*, <www.un.org/peace/kosovo/pages/kosovo12htm>, 27 September 1999.)

UNMIK was also tasked to undertake programs to facilitate conditions that would support pluralistic political party structures, political diversity and a healthy democratic political climate. Over the longer term, it would develop an integrated approach to the strengthening of governance structures through the training of government officials in procedures of democratic governance.

Concerning elections, UNMIK would organize and oversee the development of provisional institutions for democratic and autonomous self-government pending a political settlement. This included the holding of elections and the creation of an environment where free, fair and multi-ethnic elections would be possible. In order to explain the performance of those components we have to go past through the phases of UNMIK.

2.2. The establishment of UNMIK

The first phase of UNMIK deployment in Kosovo linked with its foundation and creation. Moreover, during that phase of the international administration the mission had all the authorizations in governing Kosovo, leading by SRSG. As we aforementioned above, the SRSG was the head of the mission and had the main authority.

Under the Regulation nr.2000/1 of 14/Jan/2000 a Joint Interim Administrative Structure was founded. Consequently, the existed Kosovo structures of that time such as “Provisional Government of Kosovo” and “Presidency of Kosovo” had to be transferred and integrated into the Joint Interim Administrative Structure. The main organs of the JIAS in Kosovo founded by UNMIK were: Kosovo Transitional Council, Interim Administrative Council, Interim Administrative Departments (their leadership and

staff).³⁴ So, the role of those organs has been mostly recommendations, otherwise their recommendations were not considered in a convinced level. We will come to it later on. After the first parliamentary elections and the creation of Provisional Self-Government of Kosovo (PISG) those departments will quit their activity and their responsibility will pass to the future Kosovo Government and adequate ministries.

In the second phase of international administration were included the first local/municipal elections, the creation of the “Constitution Framework for Self-Government” for Kosovo and the first parliamentary /central elections.

The first local elections were held on 28th of October, 2000. Despite the fact that even after the local elections the main decision-taking competence remained in the hands of UNMIK administrator, their success delivered the first step in the transformation of responsibility from international Kosovo authorities.³⁵

The preparation of the society to hold those elections such as the civil registration was managed by OSCE mission in Kosovo. Except that the mission organized and supervised the municipal elections, it also helped to create the local elections institutions (CEC) and built their capacity to further organize the elections.³⁶

I will not discuss about the results of the elections, as my aim here is to describe the role of UNMIK in performing its challenges. The most important thing for both international and the Kosovo authority/society was their success on the holding process which was accepted by OSCE which had to deal with the evaluation.

Before the parliamentary and central elections the so called “Constitution Framework for Self-Government” for Kosovo was created. Although with many irregularities and dissatisfactions by the Kosovo legal experts side, the document was approved by the qualify majority of the Interim Administrative Council. The requests that brought before the SRSG were: the Kosovo should have its Interim Constitution even under the UN

³⁴ *unmik-online;REGULATION NO. 2000/1,UNMIK/REG/2000/1,14 January 2000*

³⁵ *UNMIK REGULATION 2000/45*

³⁶ *OSCE Mission in Kosovo > Elections,see also:The Constitutional for Self-Government for Kosovo*

administration; the referendum for the final status of Kosovo in order to respect the willingness of the people of Kosovo; the full Institutional Structure; Consequently, we had negative answers by UNMIK as “they have to respect the resolution 1244/99 of the SC”.³⁷

What brought the “Constitution for Self-Government” for the whole Kosovo society?! The aims of that constitutional framework were the preparations of the legal bases for the central elections, the creation of the PISG of Kosovo after the holding of the elections and the preparations of Kosovo for its final status. Here I would have to compare it with the KSAK of 1974 year under which the Kosovo had its supreme court, whereas here the role of the interpretation belongs to SRSG.

Moreover, it is very interesting and paradoxical to observe the events that took place in that period of time. Even after holding of municipal elections, followed by approval of Constitutional Framework, and after parliamentary/central elections of the 17th of November 2001 and the creation of the PISG on 28th/Feb/2002 the Kosovo Albanians had not seen that the democracy was functioning in their country.

The remained competences in the SRSG’s hands made the achievement of the process of democratization very difficult. Although on the one hand they required from citizens of Kosovo to comply with that Constitutional Framework, on the other hand it was known that for Kosovo Serbs it was something unacceptable as they boycotted it most of the time. Since the document and the PISG did not function in the whole territory of Kosovo, why did the Albanians of Kosovo have to comply with it? So, as we have already seen the functional parallelism continued to exist even during the international administration.

³⁷ *OSCE Mission in Kosovo > Elections, see also: The Constitutional for Self-Government for Kosovo*

Moreover the population in Kosovo was in a difficult situation. On the one hand they thought that the PISG was not functioning to their interest, though they had to comply by it. On the other hand it was the SRSG that had its reserved executive powers and if the law that it had to sign, did not comply with the UNSCR 1244/99 with due regard to his interpretation it could not do it. Thinking on that of whether the democratic world was co-governing a territory in an undemocratic manner, the image of an international administration was going to be dingy. The people were asking themselves for what reason UNMIK is here? Was it in Kosovo to help the post-conflict society to build their country in all fields or only to “dictate” them? Here I begin to remember the repetition of the phrase that the democratic nations do practice the democracy only within their territory.

The structure and the function of the PISG was the same as nowadays in the Republic of Kosovo where the Assembly of Kosovo as the highest representative and legislative institution approves laws and resolutions, elects the President of Kosovo and approves or disapproves of the proposed candidate for Prime Minister, together with the list of ministers of his cabinet.³⁸ In addition the PISG tried to fulfill its responsibility set out by international community by including the other minorities in their structures.

The important thing here is that even after their creation the very limited competences that they had did not constitute such good governance. However they are to blame for the mismanagement and misleading of the country. Nevertheless we can conclude that the free democratic and multiparty elections were the result of both nationals and internationals. They both took care to hold the situation stable and including their attempts to create the environment and to prepare the population and the political elite

³⁸ www.assemblyofkosovo.org

for this process. And it is clear that the Kosovo was ranked in the first position in the region for holding free and democratic elections.

2.3. The prolongation of the status-quo of Kosovo

In the period of the so-called international ‘quietness’ for the status solution in March of 2004 a protest or clashes between the Kosovo Albanian and Kosovo Serbs happened. According to the International Crises Group (ISG), the violent explosion revealed Kosovo Albanian society to be deeply troubled, lacking institutions, leadership and the culture to absorb shocks and contain its violent, criminal minority. In its current state, this society will continue to push out minorities and ultimately consume its own wafer-thin layer of liberal intelligentsia.³⁹ The recommendations from the report toward UNMIK were to immediately institutionalize the negotiating process of the final status.

So, for the majority it was obvious that the prolongation of the status solution by international community at the time of bad economic, health, education conditions, as well as high unemployment rate made the circumstances worse. And it would be good if the international community especially the SRSG would share the same opinion on that that things have to move on in the right directions.

But, consequently as a result of the violent riots, the UNMIK felt that it was necessary to stay here forever, and despite the beginning of the process of negotiations the SRSG proposed in its advices and recommendations before the Secretary General the implementation of the 2003 document ‘Standards for Kosovo’. This document in turn was implemented through the ‘Kosovo Standards Implementation Plan’, (KSIP) finalized in March 2004. The SRSG reports regularly to the UN Security Council. These reports include Technical standards for Kosovo before the final settlement.

³⁹ *Collapse in Kosovo-ISG Europe Report No 155 pg3-22-Aprill-2004*

“This was an important moment for Kosovo. Why? For the first time, the document “Standards for Kosovo” sets out a clear, understandable definition of the kind of society Kosovo can have. This is the roadmap to open discussion of final status. Point-by-point, the document explains what standards mean. These are the goals that are for all of us in Kosovo, the government, political leaders, but above all for you, the people of Kosovo”

.... by SRSG’s Speech on Standards

However, that was an agreement between SRSG and the PISG of Kosovo for those standards and the Kosovo Authorities were willing to do that.⁴⁰ For this kind of mixture of responsibilities the citizens of Kosovo every day were asking themselves for what kind of democracy and democratic institution they voted for?! If the democracy manifests the direct citizen representation, for whom did they vote, for the SRSG or for their political leader?!

From then on the PISG were working on the fulfillment of the standards. While the UNMIK criticized the Kosovo’s political actors for delaying the dynamics of standards implementations,⁴¹ in an interview for the satisfactions with the works of various institutions, the respondents still considered UNMIK to be the main actor responsible for the political situation.⁴² Until the beginning of the negotiation for the final status for Kosovo, the political and institutional stability has not changed so much.

⁴⁰ www.unmikonline.org/standards/index.html

⁴¹ “UNMIK’s criticism has been articulated on December 15, 2005: Zëri, 16 December, 2005..),

⁴² *Early Warning System*Kosovo*Report#12*October-December 2005*

3. The Negotiation process and the Comprehensive Proposal for Kosovo

The foregoing step for the beginning of the negotiations was the report done by the Norwegian Ambassador Kai Aide. Calling from the General Secretary of UN and after an intensive work the report recommended that the negotiations for the status should begin. The document approved by the UN Security Council gave the green light for the beginning of the process. The negotiations will develop between Pristina and Belgrade and have to be mediated by international actors and as chief international negotiator was appointed the former president of Finland, Marty Ahtisaary.⁴³

Here we could say that the delegation of Pristina was represented by their representative in a very important issue for Kosovo. It is important to say that this was the first time for Kosovo to speak by its voice since the UNMIK administration and even before.

Mr. Ahtisaary, and his deputies started their work to push this process with their first visits to Pristina and Belgrade consisting primarily in getting acquainted with the attitudes and positions of the two negotiated parties. Moreover they had informed the negotiating parties about the mandate, ways, places, conditions and procedures of the negotiations.

It was obvious since the beginning that the process would not be easy. As the attitudes of the Kosovo Albanians and Serbs were diametrically opposed, it was not easy for the international actors to articulate any resolution soon. The position of the two parties which even did not change by the pass of the time was as below:

Kosovo government was fully committed to the independence of Kosovo and with the constitutional guarantees would secure political, educational and cultural rights for

⁴³*Raporti i Kai Aides për Kosovën, for more see also: the report by Kofi Annan on October 7,2005)*

minorities, especially for the Serbian minority, they were ready to talk about the modalities of the decentralization of the government.

Serbian officials continue to offer a maximum autonomy for Kosovo within Serbia equivalent with status of being an internal republic under the Sovereignty of Belgrade. However they had also the second option which was the partition of Kosovo in two administrative ethnically based entities. But, the second one was opposed by EU representatives.⁴⁴ All of the first fourteen of these rounds of talks focused on decentralization, the protection of cultural and religious heritage in Kosovo, economic issues, and the protection of community rights.

After that, On 2 February, the Special Envoy travelled to Belgrade and Pristina to present his draft Comprehensive proposal for a Kosovo Status Settlement to both parties. In Belgrade, the proposal was handed over to President Boris Tadić of Serbia. In Pristina, the Special Envoy presented his proposal to President Fatmir Sejdiu and the Team of Unity. The Special Envoy then invited both parties in Vienna to a series of meetings on the draft proposal. In that round of talks the Special Envoy invited the highest representatives of both parties to attend a High-level meeting in Vienna on 10 March. Belgrade delegation was led by President Boris Tadic and Prime Minister Vojislav Kostunica and Pristina's Team of Unity was led by President Fatmir Sejdiu. Representatives of the Contact Group, EU and NATO also participated in the meeting.

3.1. Comprehensive Proposal for the Kosovo Status Settlement

On 3 April, the Special Envoy briefed the UN Security Council on the Status process and explained his proposal. The members of the UN Security Council then started to examine the proposal. In the statement, the Co-sponsors express their belief “that the Special Envoy’s recommendations, which UN Secretary-General Ban Ki-Moon fully

⁴⁴*Early Warning System*Kosovo*Report#12*October-December 2005.pgs 5, 6, 7,10*

endorsed, are fair and balanced and provide the best solution that will advance stability not only in Kosovo but in the region as a whole.” They recalled their intensive work and efforts “to accommodate the concerns and incorporate the proposals of other Council members” in successive unofficial drafts. They “regret, however, that it has been impossible to secure such a resolution in the UNSC.⁴⁵

After that failure by the Security Council and after it’s unwillingness to issue another resolution, the population in Kosovo was very disappointed. Every day the citizens were showing their willingness to protest against the UN and against PISG of Kosovo. Moreover, the Movement for Self-Determination, a more radical group that opposes talks in principle, said that more rounds of talks will bring the Kosovo and Serbia teams closer but the Serbian one will not back down from its primary goals and will not accept people's will.⁴⁶ Recommendation:

“Ahtisaari’s effort is now drawing to a close. He has delivered to both Pristina and Belgrade a plan that explicitly allows a great deal of protection for Serbs and their religious monuments in Kosovo but implicitly ends Belgrade’s sovereignty. His plan opens the prospect of a sovereign and independent Kosovo under continuing international supervision.....qtd.”⁴⁷

For the internationals it was never too late to solve this problem. Even after more advices and recommendations, the Contact Group met 25 July in Vienna to discuss plans for new round of Belgrade-Pristina talks to last at least 4 months. They decided that U.S., EU and Russia should mediate, but they did not agree on a beginning date, deadline or agenda. The UNSG Ban Ki-moon was especially warned against further

⁴⁵ www.unosek.org/docref/The%20Status%20Process-0108.doc

⁴⁶ . *Balkan Investigative Reporting Network* October 11, 2006.

⁴⁷ *Balkan Investigative Reporting Network* October 11, 2006.

delays.⁴⁸ Nevertheless, even the final attempts to find a compromise between parties failed.

The Ahtisaary's Plan for Kosovo had a content where all of the attributes of the democratic state were included in. The main part of the proposal calls for a multi-ethnic society with democratic government and with a Constitution which have to respect the freedom of citizens equally....Among others the Articles 12 and 13 of the Settlement calls for an International Civil Representative (ICO), which have to be the final authority in Kosovo regarding interpretation of this settlement, and an ESDP Mission to support and assist the Kosovo authorities in the area of rule of law.⁴⁹

Despite the fact that there was no resolution which has to substitute the UNSCR 1244/99, the Kosovo Authorities decided in coordination with international community, to declare the Independence of Kosovo. That happened in 17/Feb/ 2008 and the Kosovo Authorities with their full willingness, promised that the Ahtisaary's Document will be the core of the creation of the state of Kosovo. So, started with the non-resolution form the SC regarding the NATO interventions, continued with another approved resolution UNSCR 1244/99 and finalized by another rejection of a new SC resolution Kosovo became independent.

On the one hand, the UNMIK Mission is continuing its referring on the UNSCR 1244/99 as the legal bases. On the other hand the Kosovo Institutions in a way took their final competences and responsibilities and demonstrated their willingness for the adoption of the Constitution of Kosovo. Also they decided as soon as possible to create their ministries that weren't allowed to create before: the Ministry of Foreign Affairs and the Ministry for the Kosovo Security Force. In other words the Kosovo Authorities are thanking the UNMIK mission, and welcoming another international advice mission in compliance with the Ahtisaary's Document?

⁴⁸ *Crisis Group Europe Report N°182, Kosovo: No Good Alternatives to the Ahtisaari Plan, 14 May 2007*

⁴⁹ *COMPREHENSIVE PROPOSAL FOR THE KOSOVO STATUS SETTLEMENT, article 1,2,12,13.)*

Conclusion

It has been argued that in the aftermath of NATO's military campaign in 1999, the UN administration was presented with significant opportunities to establish a presence of strong actorship in the region and shape Kosovo's post-conflict transition and early statehood. These opportunities derived from the UNSCR 1244/99 where the UNMIK had to offer a peacekeeping and a peace building of Kosovo.

The failures of UNMIK mission in the area have undermined its inability to utilize effectively institution-building conditionalities as a means of democratization. Even if with some achievements in the light of holding the elections, foundation of the Constitutional Framework and the creation of the PISG of Kosovo, the uncertainty over the Kosovo's final status and the prolongation in transferring of the competencies from SRSG to domestic authorities as representatives of the citizens of Kosovo has further hampered this process.

According to the evidence that we have presented here, calls for a balanced assessment of UN attempts to link democratic institution building initiatives to peace support operations. However, the performance of the mission here tells us that the UN is not in a good shape to do that. Except in the two or three challenges that the mission achieved some success mostly with the OSCE mission, the failures of UNMIK in other challenges such as supporting the improvement of economy, education, health, rule of law have been innumerable. This practice of the Kosovo to have such administration did not show us a good experience that should be repeated in other areas.

Comparing the political and institutional stability that has existed before UNMIK the results say to us that even some movement toward the democratization process were made. By putting the country among the democratic nations where free, democratic and transparent elections for further the institution-building ensure us that something was done here except lacking of the other successes. So, there were some dangers that, almost by default the UN has been drawn to ensure peace and to support democracy.

Moreover it is uncertain whether it provided a good democracy because it combined the most destabilizing features of both the authoritarianism and democracy.

The coordination between international organizations has been another feature that UNMIK had. The experience in Kosovo informs us that the initiatives that were launched to strengthen the coordination between different institutions, for example the many elements of democracy-building that were formally led by OSCE did not work without complications.

As we aforementioned above there were criticism toward UNMIK and the PISG, nevertheless the main criticism went to UNMIK as responsible for the created situation. Even if I did not mention the talk that the officials of UNMIK were involved in corruption, people could find out about this in many international reports that pointed out that UNMIK people were much involved in corruption.

So ever, among all others, the best thing that the Kosovo took from the UN was the Ahtisaary's document which gave the Kosovo the attributes of a state. Supporting by some international relevant actors and willing to take all the responsibilities derived from the document the Kosovo Authorities declared their independence from Serbia. And we can conclude here that even without the SC resolution Kosovo has gained something from the mission and is achieving its objectives that one day will be the part of the UN.

So we can say here that UNMIK mission was a 'sui-generis' one as it was the Kosovo issue. And we would recommend to UN missions in the future areas not to use such strategies. Something that I found here is that it might be so much easy for a regional organization to deal with the post-conflict situation for the sake of the same mentality like EU and OSCE.

Bibliography

Books:

Bajrami, Arsim. *“E Drejta e Kosoves ne Tranzicion”, “The Kosova Law in Transition”*
Prishtine, 2001).

Clark. K, Weseley. *“ Waging Modern War”, (New York, 2001).*

Cambell, Greg. *“ The Road to Kosovo ” (2000).*

Malcolm, Noel. *“ Kosovo: A short History”, (London, 1998 and 2002 by Pan Books).*

Pushkolli, Fehmi. *”Mbrojtja Kombetare Shqiptare 1878-1990”,(1991, “ Zeri I Rinise”*
Prishtine).

Reka, Blerim. *“UNMIK as an international governance in post-war Kosova: NATO’s*
Intervention, UN Administration and Kosovar Aspirations”,
(LOGOS-A 2003, Shkup, Prishtine, Tirane).

Legal and Political Documents:

The Constitution of Kosova, (FL.Z.KSAK 7/74, 1974).

The Constitutional Framework for Self-Government for Kosovo

Charter of the United Nations

Comprehensive Proposal for Status Settlement

UNMIK REGULATION NO2000/1

UNMIK REGULATION 2000/45, UNSCR March 1998

UNSCR September 1998

15. UNSCR 1244/99

The Rambulliet Agreement, (S/1999/648)

Reports, articles and other publications

African Security Review (vol 9 no 1,2002)

Balkan Investigative Network, (October 2006)

Crises Group Europe Report (no 155, April/2004 and no 182, May/2007)

*Early Warning System*Kosovo*Report#12*October-December 2005*

OSCE: “Kosovo? Kosovo As seen, as told” , ODIHR, Warsaw, 1999

OSCE Mission in Kosovo > Elections

Raporti I Kai Aides per Kosoven,(2005)

The report by Kofi Annan (October 2005)

”Zeri”, 16/December/2005, Prishtine,(daily newspaper)

UNMIK: A Unique Mission”, in ‘What is UNMIK?’,DPI-UNMIK, Prishtina 2002

<http://www.assemblyofkosova.org>.

www.unmikonline.org/standards/index.html

www.unosek.org/docref/The%20Status%20Process-0108.doc

unmik-online;REGULATION NO. 2000/1,UNMIK/REG/2000/1,14 January 2000

www.un.org/peace/kosovo/pages/kosovo12htm

www.NATO.int/KFOR/docu/docs

Abbreviations

CEC- The Central Elections Commission

EU- The European Union

FRY- The Federal Republic of Yugoslavia

ICG- International Crises Group

ICO- International Civilian Office

KFOR- Kosovo Force, (NATO- troops in Kosova)

KLA- Kosovo Liberation Army, (UÇK- in Albanian)

KVM- Kosovo Verification Mission, (within the OSCE)

LNÇ- National Liberation Movement

NATO- North Atlantic Treaty Organization

OSCE- Organization for Security and Cooperation in Europe

SAP-KSAK- The Socialist Autonomous Province

PISG- Provisional Institutions for Self-Government (in Kosovo)

SFRY- The Socialist Federal Republic of Yugoslavia

SRSG- Special Representative of the Secretary General, (UN)

UN- United Nations

UNSC- United Nations Security Council

UNSCR- United Nations Security Council Resolution

UNSG- United Nations Secretary General

