FROM BOSNIA TO KOSOVO AND EAST TIMOR: 
THE CHANGING ROLE OF THE UNITED NATIONS 
IN THE ADMINISTRATION OF TERRITORY

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In recent years there has been a resurgence in projects where territorial units are administered by international organizations. In Bosnia and Hercegovina (‘Bosnia’), Kosovo and East Timor, international organizations have been given wide powers of administration, covering a broad range of activities. I am currently undertaking a study of this phenomenon, what I term ‘International Territorial Administration’ (ITA). Today, I would like to make some observations on the role of the United Nations in creating and carrying out the administration projects in these three territories.

With respect to Bosnia, the starting point is the General Framework Agreement of 1995, collectively known as the Dayton Agreement.¹ Annex 10 of the Dayton Agreement established the Office of the High Representative (OHR), with responsibility for the implementation of civil administration in Bosnia.² The civilian role of OHR is complemented by the military role of the NATO-led body, called at first the Implementation Force (IFOR), and later the Stabilization Force (SFOR). Annex 1-A of Dayton invites the Security Council to establish IFOR, effectively granting the force total military control in Bosnia.³

The Dayton Agreement also allocates further aspects of Bosnia’s administration to other international actors, from the Organization for Security and Co-operation in Europe (OSCE) being requested to set up and run the electoral system,⁴ to three members of the Constitutional Court being appointed by the President of the European Court of Human Rights.⁵

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2. Dayton Agreement, supra note 1, at 147.
3. Id. at 92.
4. Id. at 115.
5. Id. at 118.
The formal participants in the Dayton Agreement and the Annexes vary between the different instruments, being drawn from Bosnia, Croatia, the Federal Republic of Yugoslavia (FRY), and the two Entities that make up Bosnia. A common theme, however, is that the relationship between these participants, on the one hand, and the subject matter of the Dayton Agreement, on the other, is incongruous. Only a small part of the Dayton Agreement is concerned with the obligations inter se of the formal participants, for example refraining from the use of force. Most of the Dayton Agreement sets out how Bosnia and its two Entities will function internally and the powers of international organizations over this. None of the organizations involved are formal participants, apart from two limited areas. First, Annex 1-B is a series of agreements “between” NATO and Bosnia and Hercegovina, Croatia, and the FRY. It is notable that, unlike the other Annexes, the status of the formal participants, such as being “parties,” is not specified. Annex 1-B is comparatively minor, covering matters ancillary to the main powers outlined in Annex 1-A, to which NATO is not a party. Second, SFOR and OHR, despite not being parties to the Annexes that set out their main powers, are each given final authority in theatre to interpret the provisions of their respective Annex. Sweeping powers, and the final authority in theatre to interpret these powers, are therefore given to international organizations that are not parties to the agreements that give them these powers. A further peculiarity is that one of these organizations, OHR, is not only empowered, but also created by the relevant agreement.

The legal authority for the arrangements in Bosnia and Hercegovina does not stop at the Dayton Agreement. In Resolution 1031 of December 15, 1995, the Security Council, acting under Chapter 7, supports the Dayton Agreement and in particular OHR and SFOR’s prerogatives. It also authorizes the establishment of SFOR. This Resolution thereby realizes the Dayton Agreement’s invitation to authorize a military force and makes certain provisions of the Dayton Agreement binding as a matter of Security Council law, in addition to their status in treaty law.

6. Id. at 92.
8. Id. at 92.
9. Id. at 100, 148.
10. Id. at 147.
12. Id. at 253.
13. Dayton Agreement, supra note 1, at 92.
Turning to the international administration in Kosovo, the starting point is the Peace Plan of June 3, 1999 (Peace Plan). The FRY and the Republic of Serbia agree to the deployment of an international civil and security presence, authorized under Chapter 7. Like most of the Dayton Agreement Annexes, the Peace Plan is a one-sided acceptance of international administration by host country actors, without the participation of those organizations that will carry out this administration. However, a separate agreement was made between KFOR, the FRY and the Republic of Serbia on June 9, 1999, authorizing in some detail the plenary occupation and control of Kosovo by KFOR (KFOR Agreement). Unlike in Bosnia, therefore, the military force is a party to the main agreement delineating its powers.

The terms of both the Peace Plan and the KFOR Agreement make the arrangements they contain dependent on authorization by the Security Council. This came in Resolution 1244, passed on June 10, 1999. The Security Council, acting under Chapter 7, endorses the Peace Plan and welcomes the KFOR Agreement. It also authorizes the establishment of an international security force and elaborates on the powers of this force. Here, as with Bosnia, the Security Council reinforces existing obligations, and creates new obligations regarding a military force. The difference is that in addition to this, it authorizes the Secretary General to establish an international civil presence, now called UNMIK, and sets out in full the powers of this presence.

The role of the United Nations is even more pronounced in the East Timor administration project. In Resolution 1272, passed on October 25, the Security Council, acting under Chapter 7, established the United Nations Transitional Administration in East Timor, (UNTAET). In the words of the resolution,
UNTAET is given "overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority." Strikingly, the mission includes its own military component, with a "strength of up to 8,950 troops."25

Taking the three projects together, we can see a shift in the role played by the United Nations. As for creating the projects with Bosnia, the Security Council played a secondary role, essentially giving the Dayton Agreement its seal of approval. With Kosovo, it determined more of the project itself, especially the civil component. With East Timor, Resolution 1272 is the main legal authority for all aspects of the project. Of course, with Bosnia and Kosovo the states who used diplomatic means to trigger the formal legal processes were largely the same. The Contact Group countries who brokered the Dayton Agreement were also instrumental in the adoption of the Kosovo Peace Plan, the KFOR Agreement, and Resolution 1244.26 The change as between Bosnia and Kosovo was that these states channeled their diplomatic efforts much more through the United Nations legal system than through ad hoc legal processes.

Differences in the legal processes setting up the projects mirror changes in the actors carrying them out. As for the civil component, in Bosnia and Hercegovina the main role is performed by a sui generis entity. By contrast, in Kosovo and East Timor it is controlled by the United Nations. As for the military component, in Bosnia and Hercegovina and Kosovo this is conducted by an international force authorized by the Security Council. It is only in East Timor that the United Nations takes on the military component of administration itself.

I would make three observations on this renewed role for the United Nations.

Having such international administration projects authorized through the Security Council may be a positive development. An important objective of international administration is, of course, to assist a particularly weak territorial entity. When this is effected through a treaty signed by the entity concerned, the weakness of this entity renders consent meaningful particularly in a narrow, formal sense. In a more general sense, international administration projects are imposed. Given this, such projects should be legally authorized through a

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24. Id. at art. 1.
25. Id. at art. 9.
26. The Contact Group is made up of the European Union, France, Germany, Russia, the United Kingdom and the United States. These countries appear as 'witnesses' to the Dayton Agreement, supra note 1. The Peace Plan, was negotiated by the President of Finland, Martti Ahtisaari, representing the European Union, and Viktor Chernomyrdin, Special Representative of the President of the Russian Federation, supra note 14. NATO, whose members include France, Germany, the United Kingdom and the United States, signed the KFOR Agreement, supra note 16.
process with the power of unilateral imposition, namely the Security Council acting under Chapter 7. Furthermore, the changing nature of an administration project requires a regulatory regime that operates flexibly. In this respect, the comparatively quick process of adopting Security Council resolutions compares favorably with the cumbersome process of treaty-making and revision.

However, the fact that the United Nations both authorizes and carries out international administration projects is a mixed blessing. The Security Council scrutinizes keenly those operations that are set up and run by the United Nations. At the same time, concentrating the creation, conduct and regulation of international administration through one actor raises concerns about the efficacy of checks and balances, even given the constitutional and political differences between the Security Council and United Nations missions.

Finally, it is too early to tell whether the United Nations will succeed in carrying out its responsibilities in Kosovo and East Timor. For some, a multilateral institution is the appropriate actor for the conduct of this activity, and the United Nations brings a wealth of experience and expertise. Those with a less favorable view of the United Nations would prefer *sui generis* and/or, regional organizations to carry out international administration projects. It remains to be seen whether the United Nations can fulfill what are two of the most ambitious mandates it has ever been given. The role the United Nations plays in future administration projects, and indeed whether future administrative projects are created, depends largely on what happens in Kosovo and East Timor.