BUILDING STABLE AND EFFECTIVE STATES THROUGH INTERNATIONAL GOVERNANCE: THE POLITICS OF TECHNOCRATIC INTERVENTIONS

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by

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BUILDING STABLE AND EFFECTIVE STATES THROUGH INTERNATIONAL GOVERNANCE: THE POLITICS OF TECHNOCRATIC INTERVENTIONS

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ABSTRACT OF DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in International Affairs and Public Policy in the Graduate School of Arts and Sciences of Northeastern University, October 2008
ABSTRACT

Since the end of the Cold War, the United Nations and Western states have responded to severe internal crises of conflict-ridden territories by intervening and directly managing their internal affairs with the purported aim of strengthening state capacity. In some instances, external actors have even developed the institutions of government, while exercising the executive, legislative, and judicial powers of the modern state. This study explores the dominant assumptions that underlie the developmental strategies of the international administrations in Bosnia, Kosovo, and East Timor. I argue that these interventions tend to view state-building as a technical process that can ignore local politics and bypass the important role of consensus building in the formation of state institutions. The study shows that this technocratic view of state-building is a corollary of how Western powers have reinterpreted the institution of sovereignty from a formal-legal right to one in which non-Western states have an ethical responsibility to provide certain normative standards of good governance to their citizens in order to be recognized as legitimate sovereign authorities. Sovereignty as responsibility thus provides a certain blueprint for international policymakers involved in administering and rebuilding war-torn societies. The study finds that while international led state-building aims to rebuild stable and effective independent states, such regulatory and invasive policies are more likely to produce weak state institutions that lack local legitimacy, or at the very least, are highly dependent upon international support for their continued existence.
ACKNOWLEDGEMENTS

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Numerous UN officials in New York generously shared their insights into the inner workings of international administrations and state-building missions. My colleagues at Northeastern, particularly Jason Devine and Peter Richardson, who provided me a life line over the past six years and kept my sanity in check during long hours of studying and conversation.

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LIST OF ABBREVIATIONS

BiH    Bosnia and Herzegovina
CEP    Community Empowerment Project
CIMIC  Civil-Military Cooperation
CIVPOL Civilian Police
CNRT   National Council of Timorese Resistance
DPA    Department of Political Affairs
DPKO   Department of Peacekeeping Operations
ETDF   East Timor Defense Force
ETTA   East Timor Transitional Administration
Falintil Armed Forces for the National Liberation of East Timor
FRY    Federal Republic of Yugoslavia (Serbia and Montenegro)
HR     High Representative
IAC    Interim Administrative Council
ICTY   International Criminal Tribunal for the former Yugoslavia
IDPs   Internally displace persons
IFOR   Implementation Force
IMF    International Monetary Fund
INTERFET International Force in East Timor
IPTF   International Police Task Force
JAM    Joint Assessment Mission
JIC    Joint Implementation Committee
<table>
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<tr>
<th>Acronym</th>
<th>Full Name</th>
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<tr>
<td>JIAS</td>
<td>Joint Interim Administrative Structure</td>
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<tr>
<td>KFOR</td>
<td>Kosovo Force</td>
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<tr>
<td>KLA</td>
<td>Kosovo Liberation Army</td>
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<tr>
<td>KPC</td>
<td>Kosovo Protection Corps</td>
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<tr>
<td>KPS</td>
<td>Kosovo Police Service</td>
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<tr>
<td>KTA</td>
<td>Kosovo Trust Agency</td>
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<tr>
<td>KTC</td>
<td>Kosovo Transitional Council</td>
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<tr>
<td>MSU</td>
<td>Multinational Specialized Unit</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>NC</td>
<td>National Council</td>
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<tr>
<td>NCC</td>
<td>National Consultative Council</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<tr>
<td>OCHA</td>
<td>Office for the Coordination of Humanitarian Affairs</td>
</tr>
<tr>
<td>OHR</td>
<td>Office of the High Representative</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
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<tr>
<td>PIC</td>
<td>Peace Implementation Council</td>
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<tr>
<td>PISG</td>
<td>Provisional Institutions of Self-Government</td>
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<tr>
<td>PRT</td>
<td>Provincial Reconstruction Team</td>
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<tr>
<td>RRTF</td>
<td>Reconstruction and Return Task Force</td>
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<tr>
<td>RS</td>
<td>Republika Srpska</td>
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<tr>
<td>SAA</td>
<td>Stabilization and Association Agreement</td>
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<tr>
<td>SAp</td>
<td>Stabilization and Association process</td>
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<tr>
<td>SFOR</td>
<td>Stabilization Force</td>
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<td>Acronym</td>
<td>Full Name</td>
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<tr>
<td>SOE</td>
<td>Socially owned enterprise</td>
</tr>
<tr>
<td>SRSR</td>
<td>Special Representative of the Secretary-General</td>
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<tr>
<td>TA</td>
<td>Transitional administrator</td>
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<tr>
<td>TFET</td>
<td>Trust Fund for East Timor</td>
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<tr>
<td>TPF</td>
<td>Transitional Police Force</td>
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<tr>
<td>UNAMET</td>
<td>United Nations Assistance Mission in East Timor</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNMIBH</td>
<td>United Nations Mission in Bosnia and Herzegovina</td>
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<tr>
<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
</tr>
<tr>
<td>UNMISET</td>
<td>United Nations Mission in Support of East Timor</td>
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<tr>
<td>UNTAC</td>
<td>United Nations Transitional Authority in Cambodia</td>
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<tr>
<td>UNTAES</td>
<td>United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium</td>
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<tr>
<td>UNTAET</td>
<td>United Nations Transitional Administration in East Timor</td>
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<td>UNTEA</td>
<td>United Nations Temporary Executive Authority</td>
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INTRODUCTION

Domestic transitions from war to peace have increasingly taken on an invasive international dimension. International organizations such as the United Nations (UN) have demonstrated an increased willingness during the latter part of the 1990s and onwards to intervene and manage the domestic affairs of conflict-ridden states with the aim of rebuilding their institutions.¹ Perhaps more intriguing is the fact that international organizations have developed the institutions of government by assuming quasi-sovereign authority and exercising political administration over post-conflict societies on a temporary basis. What is often referred to in the literature as an international administration, international organizations via their special representatives have in some instances wielded considerable political authority over domestic arrangements, including the executive, legislative, and judicial powers of the modern state. Nowhere has this been more evident than in the recent international administrations in Bosnia and Herzegovina², Kosovo, and East Timor, where international organizations exercised unprecedented domestic political authority. Indeed, these missions represent the pinnacle of international intervention and the extent to which international organizations have become more regulatory and invasive in their developmental approaches in war-torn societies.

The state-building activities of international administrations in the 1990s and the more recent U.S.-led state-building projects in Afghanistan and Iraq have sparked a debate among scholars and practitioners about whether the international community

² For the sake of simplicity, I will hereinafter refer to Bosnia and Herzegovina as ‘Bosnia’.
should assume a more intrusive role in addressing civil conflicts, humanitarian catastrophes, and incidents of state failure. On one side of the debate are those scholars that have expressed skepticism with regard to the possibilities of external state-building. The majority of this work has focused on individual case studies that emphasize the importance of early local ownership as key to building self-sustainable states. On the other side of the debate are those that suggest that more intrusive forms of international intervention lead to better state-building outcomes. Among this latter group are the studies published by the RAND Corporation that explore both U.S. and UN-led state-building efforts since World War II. In both studies, the authors suggest that substantial ‘inputs’, in the form of high levels of economic assistance and high numbers of troops deployed for longer periods of time, increase the likelihood for state-building success. Roland Paris’s comparative study on peace-building similarly supports the thesis that more intrusive international interventions fared better in terms of establishing peace than less intrusive operations. He shows that early political and economic liberalization – the so-called Wilsonian approach – can have dangerous side effects on post-conflict societies, often exacerbating societal


4 For example, the RAND Corporation quickly published two volumes the examined the record of both US and UN-led nation-building efforts since the end of World War II. James Dobbins et al., *American’s Role in Nation Building: From Germany to Iraq* (Santa Monica, CA: RAND, 2003) and James Dobbins et al., *The UN’s Role in Nation Building: From the Congo to Iraq* (Santa Monica, CA: RAND, 2005).

tensions and creating new problems for countries that do not have the institutions to channel new social demands. He favors the ‘institutionalization before liberalization’ approach to post-conflict state-building, which supports the notion of delaying local ownership over the transitional period while temporarily handing over political responsibility for the territory to an international administration. Paris argues:

The direct international administration of war-torn territories is warranted where no functioning governmental institutions exist and have to be created from scratch, and where institutions do exist but have been co-opted and corrupted by one of the political factions that fought the war, such as in Cambodia. International administration is the key to creating a competent, professional, law-abiding bureaucracy. This entails staffing governmental institutions with international personnel, and then gradually replacing these officials with adequately trained and politically non-partisan locals... Ideally, no time limits should be placed on peace-building missions; they should remain in place until governmental institutions have developed well under way.7

Perhaps the most ambitious study to date that supports the contention that more intervention is better than less is Michael Doyle and Nicholas Sambanis’s quantitative analysis of civil conflicts since 1945.8 Both authors find that peace operations with extensive civilian functions that engage in economic reconstruction and institutional reforms are more likely to result in peaceful and democratic outcomes than traditional peacekeeping operations that espouse a more reserved approach to external intervention. In addition to these works, there have been a number of policy studies that suggest revisiting or reinventing earlier institutions of external administration, such as ‘neo-trusteeships’ or ‘UN conservatorships’, to address the perceived problems of state failure and civil conflicts.9

7 Ibid. pp. 206-07.
In spite of this larger debate there has been little comparative focus on the policymaking aspect of state-building missions, particularly with respect to examining the underlying sources that inform and influence the law making of international actors involved in territorial administration. Moreover, there has been limited comparative work on the circumstances or factors that make for the success or failure of international-led post-conflict transitions, especially with respect to the goal of strengthening effective sovereignty. This is because a great deal of the transitional literature has focused primarily on domestic factors and their impact on the transition from authoritarian rule to the consolidation of democracy. Other post-conflict studies that do examine the impact of international factors have largely focused on international assistance missions, which are not as influential as international administrations in terms of shaping the pace and trajectory of the transitional phase. This study therefore attempts to fill these theoretical gaps.

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11 Authors in this tradition have focused, for example, on issues of political culture and democracy; levels of economic development and their impact on democratic sustainability; class and ethnic composition and democracy; the role of elites in the transition from authoritarian rule to democracy. Most of these theories of democratization constitute the so-called ‘transitology’ school, exemplified by the works of Larry Diamond, Marc Plattner, Juan Linz, Yossi Shain, Alfred Stephan, Philippe Schmitter, Guillermo O’Donnell and many others.

12 See, for example, Krishna Kumar (ed), *Postconflict Elections, Democratization and International Assistance* (Boulder, CO: Lynne Rienner Publishers, 1998).
Why Study State-Building and International Administration?

The significance of this study rests on the premise that international administration is a *sui generis* form of governance. This *sui generis* argument implies that the regulatory acts and structural attributes of international administrations make them a unique form of governance in that they resemble qualities of both global and national governance institutions. As one legal scholar noted, ‘[international administration] is situated in a grey zone between purely domestic and purely international authority.’\(^\text{13}\) For instance, international administrations resemble state authority in that they are often vested with powers and responsibilities that are tantamount to domestic governance, *inter alia*, the authority to promulgate and repeal laws, the authority to appoint and dismiss public officials, and direct responsibilities for providing public security, maintaining public utilities, generating revenue from customs and taxes, and forming a budget and fiscal policy. Clearly these powers and functions distinguish international administrations from other regulatory bodies of global governance, such as the World Bank (WB) and the World Trade Organization (WTO), which normally do not exercise direct responsibility over territories and often lack the institutional powers of national governance. At the same time, however, the process of lawmaking by international administration is far removed from a democratic domestic setting, where lawmaking is shaped by the interests of various actors within the branches of government and by forces outside of it. Indeed, international administrations lack many of the institutional features of state governance, such as separation of powers and judicial review. More importantly, their

authority is derived not by a *demos*, but from their legal status as subsidiary bodies of the Security Council under which their very existence depends on. For this reason, international administrations share many of same legitimacy and democratic deficits that global governance institutions currently experience.

The study of international administration and state-building is thus an important exercise because it challenges the traditional division between domestic and international politics. They are indicative of the international community’s increasing role as an agent of domestic political change as it becomes commonly involved in the day-to-day process of reconstituting governments. In addition, the study of international administration and state-building provides a bridge between the fields of international relations (IR) and comparative politics, which often talk past one another in the transitional literature. Individually, each field offers limited analytical approaches for dealing with the problems and issues of post-conflict transitions that are internationally imposed. Traditional approaches in IR often pay too much attention to systemic influences on state behavior and cross-border dynamics that can constrain the nature of domestic governance. As a result, they offer little insight about the practical problems of international lawmaking and state-building during post-conflict transitions. Meanwhile, comparative approaches in the transitional literature tend to shed light largely on domestic institutions and processes and pay nominal tribute to the role of external influences.\textsuperscript{14} By investigating, on the one hand, the identities and interests of those international actors involved in territorial administration and, on the other hand, the nature of the conflict itself and the political,

\textsuperscript{14} See, for example, Yossi Shain and Juan Linz (eds.), *Between States: Interim Governments and Democratic Transitions* (New York: Cambridge University Press, 1995).
economic, and social qualities of the target territory, a study builds bridges between the two fields.

The aim of this study is twofold. The first aim is to better understand the nature of international policymaking within the context of international territorial governance since the end of the Cold War. To achieve this, the study examines our main case studies through the dual mandate of international administration. In situations where international organizations assume executive and legislative authority in territories recovering from conflict, international actors are often mandated with a dual responsibility: this includes providing governance or political administration to a host territory, while at the same time strengthening its governance capacity by establishing the core institutions of the state and instilling the technical wherewithal to manage those institutions through mentoring and training programs. This suggests that the policymaking of international administrations entails both their administrative acts as temporary governing regimes and their state-building policies aimed at enhancing the empirical sovereignty of the host territory – in other words, the state authority can effectively control its entire territory and provide basic physical and economic security to its citizens. Using the dual mandate as a theoretical framework, this study seeks to understand the nature of policymaking by international administrations through two perspectives: 1) by looking at the impact of norms on the policymaking decisions of international administrators; and 2) by examining the technocratic approach of post-conflict management employed by international administrators.

The first way of understanding the nature of international policymaking is to study the impact of norms associated with sovereignty on international administrators. A norm is a collective expectation about proper behavior for a given identity.\(^{16}\) The contention that norms play an influential role in shaping the policies of international actors forms the heart of the constructivist project, which emphasizes the power of ideas and change. Rather than seeing states as having pre-given interests, for example, constructivists argue that state identities – which in turn shape state interests – are socially constructed through the process of interaction, debate, and socialization.\(^{17}\) As a result, a concept such as sovereignty can be modified because it is ‘a product of shared or intersubjective understandings about the legitimate scope of state authority.’\(^{18}\) Constructivism thus appears to be the most useful lens for analyzing the administrative and state-building policies of international administration because it provides us the ability to redefine interest and identity, which is essential to the process of constructing new political orders domestically.\(^{19}\) In particular, this study examines the normative framework that underpins a liberal conception of sovereignty that was articulated by the International Commission on Intervention State Sovereignty (ICISS), which redefined sovereignty as an institution that is today more than a formal-legal ‘right’ to self-government – what Robert


Jackson has called *negative sovereignty*.\(^{20}\) Sovereignty now entails a ‘responsibility’ in which state governments have a duty to act as ‘moral agents’\(^{21}\) and provide certain standards of governance towards their citizens in order to be recognized as legitimate sovereign states – that is, *positive sovereignty*. This re-conception of ‘sovereignty as responsibility’ is indicative of a change of understanding of sovereignty by the international community. It attempts to redefine the relationship between state and society in which the former is expected to engage in ‘good governance’\(^{22}\) practices that promote values and institutions that are considered universal and beneficial to the latter (i.e., democracy, human rights, the rule of law, and the market economy). This study examines whether international territorial administrators have devised and implemented their policies conform with *logics of appropriateness*, the normative standards that underlie sovereignty as responsibility, or by *logics of consequences*, the instrumental behavior of the main actors involved in territorial administration.

The second way of exploring the nature of international policymaking is by examining the technocratic approach employed by international administrators and the consequences of that approach on the legitimacy of the resultant target government. A technocratic approach refers to a centralized style of governmental management in which international experts and bureaucrats regulate the internal affairs of post-conflict states that are viewed as incapable of genuine self-government.

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\(^{22}\) Good Governance has been defined by the UNDP as governance that ‘depends on public participation to ensure that … populations can directly influence political decision-making … [It] is also effective and equitable, and promotes the rule law and the transparency of institutions, officials, and transactions.’ See Governance for Sustainable Development, UNDP Policy Document, January 1997. Available at: [http://magnet.undp.org/policy/chapter1.htm](http://magnet.undp.org/policy/chapter1.htm).
It treats today’s wars in the non-western world as conflicts that are not necessarily the result of a clash of interests or the pursuit of politics by other means, but viewed as a non-political form of ‘psycho-social breakdown’ that necessitates therapeutic regulation.\(^{23}\)

The second aim of this study is to explore the effectiveness of international administrations in carrying out their dual responsibility as interim governments and agents of state-building. In determining the effectiveness of these missions, the study also considers the importance of contextual factors in shaping the outcome of the transitional process. Contextual factors range from internal conditions on the ground, such as war duration, level of violence, and the level of pre-war economic development of the target territory, to external factors, such as the geo-politics of intervening states and regional security. By analyzing the role of contextual factors in these missions, the study will achieve a better understanding of which objective conditions are appropriate for future situations that involve international-led post-conflict transitions.

To address these two aims, this study poses the following core questions:

- What are the driving forces that shape the administrative acts and state-building policies of international governing authorities? Are they shaped largely by logics of consequences? Or by logics of appropriateness?

- Do international authorities hold themselves to the same governing standards they promote in the territories placed under their administration? And do international administrations perform effectively as surrogate governments?

- Regarding the technocratic management style of territorial administration and state-building, what are the implications of this approach on the legitimacy of the target state’s new institutions?

• How effective have international administrations been at establishing state entities that have enough domestic capacity to provide at least the internationally accepted minimum of political goods? And what are the conditions on the ground, or contextual factors, under which these changes are likely to occur?

The Arguments of this Study

There are several core arguments that run through the course of this analysis. First, this study argues that the regulatory powers and invasive policies of international administrations have resulted in the establishment of weak state entities that lack the necessary legitimacy for their continued sustainability. In part, this is a corollary of the difficult contextual conditions on the ground that is both endogenous (i.e., low level of development) and exogenous (i.e., regional neighborhood) to the target territory. No matter what the degree of commitment by the international community in terms of political authority, time, resources, and troops, inauspicious contextual factors can play a significant role in limiting the successful outcome of external-led state-building. International administrations are also limited in their ability to both serve as interim governments and agents of state-building due to a host of shortcomings that are characteristic of such interventions, including insufficient planning, lack of information about the local conditions and customs of the host territory, coordination and organizational problems, limited international expertise, and the inherent tensions between the short-term mandate of international governance and the long-term mandate of building effective sovereignty.
The study also argues that the institution of sovereignty itself has been a limiting factor on international administrations. The re-conceptualization of sovereignty from a formal legal entitlement to one in which states have a moral responsibility to provide certain standards of good governance (democracy, human rights, democracy, and the rule of law) to their citizens suggests that today sovereignty is treated more as a conditional license that legitimizes international interventions in states that fail to live up to the normative standards that underlie sovereignty as responsibility. Although the lawmaking acts and state-building policies of international administrations are highly informed and shaped by these new standards, which are clearly reflected within the regulations of international administrators and highly visible in the institutions that were set up by them, local pressures for self-determination and self-governance have constrained the policymaking of international administrations. These traditional norms often collide with the norms that constitute sovereignty as responsibility, thereby forcing international administrators to pursue early exit strategies and prematurely hand authority over to local actors and institutions without fulfilling the standards they set forth. Thus while the international community rhetorically promotes a regime of positive sovereignty, in practice it continues to perpetuate a regime of negative sovereignty that was internalized during the Cold War.

At the same time, this study contends that international administrators do not always rule in conformity to the cosmopolitan values they promote. In part this is due to the emergency circumstances on the ground that help to justify policies that at times violate the rule of law or human rights, for example. However, it is also the
consequence of the way in which international administrations perceive their governing authority as exceptional and beyond the democratic standards of domestic governance. This not only mitigates the legitimacy of international administrative authority, but may also produce the wrong lessons to local stakeholders and the target society at large.

Finally this study maintains that the technocratic style of international lawmaking and state-building is counterproductive because it leaves the underlying conflicts unresolved and does little to address the security concerns that motivated the support for the conflict in the first place. Moreover, the international focus on a top-down process of building the macro-institutions of the state creates a disconnection between local elites and the masses. Given that international actors largely control the post-conflict transition process, local elites often become more accountable to the regulatory demands of international bureaucrats than to the desires of their own citizens. Having little possibility to establish and strengthen their relationships with their own societies during the transitional period, the newly established governing institutions lack the social and political legitimacy to serve their citizens effectively. Feeling little ownership or emotional attachment to the imported institutions, the target society will often bypass the formal political arrangements set up by external actors and instead opt for traditional institutions for economic and physical security. This disconnection between local leadership and society may also produce a culture of dependency as target societies become more dependent on international organizations for security, economic assistance, and even for guidance and political leadership.
Methodology

There are several methodological challenges raised by this investigation. The first challenge is unique to the first aim of this study – to determine the impact of norms on international actors. Since norms are not directly observable in the traditional positivist approach, they require their own methodology if one is to assess the impact of them on the policymaking of international actors involved in territorial governance and state-building. The remaining methodological challenges are related to the second aim of this study – determining the effectiveness of international administrations in carrying out their dual mandate. Hence, the second methodological challenge is the need to determine which proxies are suitable for measuring mission success and what type of data to use to help measure these proxies, given that states recovering from civil wars are not known for their ability to consistently produce statistical information about their own societies. Finally, there is the dual challenge of determining the guidelines for (1) selecting case studies that best represent the most comprehensive and invasive international interventions to date and (2) for establishing causality through a relatively small sample size.

How to Study Norms

To study the impact of norms on the lawmaking and state-building policies of international administrations, one must first recognize that norms are social facts that cannot be studied strictly in the positivist tradition due to their inter-subjective and indeterminate features. To get around this obstacle, one can study two types of

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norms in IR that are associated with sovereignty: regulatory and constitutive. Regulatory norms operate as standards that specify patterns of proper behavior that constrain the actions of state actors. For instance, the sovereign norm of non-intervention, codified in Article 2.7 of the UN Charter, clearly prescribes or discourages external interference in the domestic politics of another state. Whether state actors comply with the prescribed behavior depends on the resilience of the international norm, the extent to which it has become institutionalized, and whether state actors internalize the norm domestically.

Constitutive norms focus on the identities of actors, which in the case of sovereignty are states, and how those identities endow them with certain interests that affect their behavior. Constitutive norms can also define the identities of state actors in terms of behavior, at least partially, and at the same time provide indications about future behavior. A classic metaphor of constitutive norms involves the game of chess, in which each chess piece is defined in terms of the moves it makes. One who has knowledge of the game knows then how the pieces will behave in certain circumstances. Identities can thus influence state behavior by defining a range of interests that are considered possible and appropriate for state actors. For instance, the democratic peace thesis is based on the premise that democracies share perceived principles, interests, and expectations of behavior with one another. In the same way that democracies solve their domestic disputes through political means without

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28 Ibid. Not all norms, which constitute an identity, involve behavior, but many core identity norms do have behavioral premises.
resorting to organized violence, democratic states are also expected to behave similarly when resolving their problems with other democracies at the international level.\textsuperscript{29}

In addition, constitutive norms can affect state behavior by demarcating boundaries between a social ‘we’ against a so-called ‘other.’\textsuperscript{30} The conception of sovereignty as responsibility is therefore instructive because it delineates a particular identity that states need to embrace to be considered legitimate sovereign states. States that fall short of this prescribed identity are categorized as ‘rogue nations’ or ‘evil states’. Some may even be subjected to an outside intervention with the intended purpose of transforming their identity in accordance to the normative standards that underpin sovereignty as responsibility. Constitutive norms thus resonate with our discussion of constructivism given that proponents of the constructivist project do not take the interests of actors for granted but relate them to the identities of actors: ‘What I want depends to a large degree on who I am.’\textsuperscript{31}

This study will thus concentrate on whether constitutive norms affect the behavior of international actors engaged in territorial administration. It achieves this by analyzing the type of reforms that international administrators formulate and promote in the target territory; the kind of political institutions they prescribe and attempt to establish in the target territory; and whether international governing practices comply with or diverge from the very same normative standards they espouse. Given that


\textsuperscript{31} Ibid.
constitutive norms cannot be attributed as a causal mechanism as understood in the positivist tradition, this study employs a thick narrative description that examines the interactions of international authorities and local stakeholders on key areas of policymaking within the political theatres of the host territories. In each of the case studies considered here, several policy areas are examined: military reform, police reform, judicial reform, and economic reform. The implementation of these reforms, and the manner in which they are carried out and justified by international authorities, will provide to a large degree the evidence needed to make the assessment of whether norms associated with sovereignty have an impact on shaping the behavior of international actors.

**The Outcome of International Led State-Building**

This study is also interested in determining whether international administrations have effectively carried out their dual mandates as both interim governments and state-builders. Hence the ‘independent variable’ studied here is a type of post-conflict intervention in which international organizations exercise governmental control over a host territory and directly control the trajectory of the transitional process. The ‘dependent variable’ is effective state-building. To measure the effectiveness or success of state-building for international administrations, benchmarks need to be established against which success is measured. This raises a couple of challenges. To begin, the presence of different external actors operating at the same time, each with their own interests, roles, and benchmarks of success, makes the issue of defining success more difficult. Furthermore, because the state is often a principal warring
faction in the conflict, its institutional capacity after the war is likely to be severely compromised. As a result, a definition of success should avoid using excessively high benchmarks that are impractical and ignoring the realities on the ground. For instance, it is unreasonable to expect a post-conflict state to achieve the status of a highly developed, liberal democracy such as Denmark, in the course of five years. In addition, a definition of success should be measured in those areas of development where progress is assumed to make a difference in avoiding a relapse into war. Thus, the criteria for state-building success should be informed by the various theories that have emerged out of the post-conflict literature. Having established the above, this study measures international-led state-building success along four dimensions.

The first dimension involves the governorship aspect of the dual mandate. Thus one benchmark for success is whether the international administration was able to administer the territory effectively by providing the rule of law function during the transition through the use of international judges and prosecutors in administering the judicial sector. It measures administrative effectiveness by the extent to which international jurists (1) were trained in the local legal traditions of the target society; (2) sufficiently addressed the territory’s mounting case load; (3) adequately arbitrated sensitive cases that involved war crimes; and 4) operated independently of both international and domestic influences and arbitrated cases impartially. The study uses data from the United Nations Development Program’s (UNDP) ‘Early Warning Survey’ and secondary sources to further gauge local perceptions and attitudes toward the performance of international territorial administration of the judicial sector.
The next three dimensions are concerned with the state-building aspect of the dual mandate. Hence, the second dimension is the *reestablishment of a monopoly of the legitimate means of violence* that extends across the territory. This is the minimalist standard of state-building success. Although a post-conflict intervention implies the absence of a full-scale internal war, which is defined as 1000 battle related deaths a year or during the war\textsuperscript{32}, a territory may continue to endure low-scale organized violence. For example, a post-conflict territory can experience low-scale violence between the new governing regime and insurgent elements (i.e., internal rivals such as warlords and other non-state sanctioned power holders), ongoing conflicts between armed warring factions, or armed criminal gangs that regularly use violence against citizens. The presence of low-scale organized violence is thus a direct challenge to the new government’s ability to hold its own territory. This study measures the second dimension by observing whether there was an absence of low-scale violence in three areas: between target governments and insurgents, between armed warring factions, and by armed criminal gangs against civilians. The study employs data from the Failed State Index, published annually by the Fund for Peace, and secondary sources.

The third dimension is the *rule of law*. This third dimension is related to the second one in that it points to the overarching importance of reestablishing the target government’s institutional capacity to provide order and stability throughout the territory. It also attaches importance to a type of rule that goes beyond what Marina Ottaway has described as *raw power* – governmental rule that is based exclusively on the infrastructure and military strength of the central authority – to one in which the

state exercises its authority according to the rule of law.\textsuperscript{33} This requires the international administration to not only establish the institutions that can carry out and interpret the rule of law, such as the police and judiciary respectively, but to rebuild the institutional capacity of the target territory to hold government officials accountable for corrupt practices. The World Bank’s Rule of Law Indicators and Transparency International’s ‘Corruption Perception Index’ are used to measure the rule of law dimension.

The fourth and final dimension is \textit{economic growth and development}. This goes beyond the minimalist definition of state-building success and is treated here as a relatively high benchmark. As part of an international-led state-building project, it is widely accepted that territories with low levels of income are at a greater risk of conflict renewal than territories with more developed economies.\textsuperscript{34} Moreover, today’s international community expects central authorities to provide citizens with basic social services to improve their standard or quality of living through basic provisions such as health care and education. Building capable state institutions that will foster peace, therefore, requires international administrations to establish the conditions for sustainable growth and development. At the same time, however, intrusive state-building policies may also produce an economic dependency on the international community. Hence, this study measures economic development by looking at growth levels determined by GDP per capita, and aid dependency by observing ODA inflows.

as a percentage of GDP. The data is taken from the World Bank’s Development Indicators. In addition, standards of human development are measured using the UNDP’s *Human Development Report* and secondary sources.

**Guidelines for Case Selection and Investigation**

To examine the causal relationship between the independent and dependent variables, it is imperative that the case studies reflect the most comprehensive and invasive attempts of international interventions to date. Hence, the selected case studies need to fulfill at least three criteria. The first of these criteria is that the international administration was established during the post-Cold War era.\(^{35}\) Although international administration is not a contemporary phenomenon, this qualification is important because the end of the Cold War ushered in a security framework that heralded a new set of cosmopolitan norms, such as humanitarian interventionism and democracy promotion, which in turn allowed international organizations to assume a more assertive role in the domestic affairs of developing societies. The next criterion involves an international administration with a ‘heavy footprint’ in the host territory. The weight of a footprint depends on the presence of a credible governing authority, which can be determined by the number of international personnel deployed on the ground, by the ambitious nature of the mission, and by the scope of political authority.\(^ {36}\) A heavy footprint therefore constitutes a large multinational military operation that has at it peak force levels of ten troops for every 1000 local

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35 For conceptual and analytical reasons, I define the post-Cold War era from 1989 onwards.
A commanding military presence gives the civilian side of the operation greater credibility and political leverage. A heavy footprint also entails a mission with ambitious goals, such as the wholesale transformation of a territory’s political landscape, as opposed to a light footprint, which would involve more modest goals as monitoring troop movements and distributing humanitarian assistance. Ambitious goals also include missions with open-ended commitments to state-building beyond the conduct of elections. Finally, a heavy footprint requires the international mission to assume greater political authority over the host territory, including the executive and legislative powers of the state, for example.

A final qualification has more to do with the territories themselves. External involvement in the domestic governance of territories has largely been a response to full-scale internal conflicts\textsuperscript{38} that challenge the territorial integrity of the state and pose security challenges to the regional and international order. Internal conflicts are defined here as ‘armed conflicts fought for at least one year (which helps to differentiate wars from more transitory disturbances) and where these conflicts were mainly within the borders of a single state and among parties who normally reside in that state (thereby distinguishing civil from international wars).’\textsuperscript{39}

The aforementioned criteria helps to establish clear guidelines for selecting cases that were subjected to the most comprehensive and invasive international

\textsuperscript{37} Anything smaller would constitute a very small military presence by the historical standards of peacekeeping and peace-building missions. I derive this arbitrary cut-off point in James Dobbins et al., \textit{The UN’s Role in Nation Building}.

\textsuperscript{38} In this study, ‘large-scale violence’ is at least 1,000 battle-related deaths in a single year. See Peter Wallensteen and Margareta Sollenberg, ‘Armed Conflict, 1989-2000,’ \textit{Journal of Peace Research}, Vol. 38, No. 5 (2001), pp. 629-644.

interventions mounted thus far. For this reason, the post-Cold War transitional administrations in Namibia, Cambodia, and Eastern Slavonia do not qualify here.\footnote{In Namibia, the United Nations Transitional Assistance Group (UNTAG) was deployed only to supervise the independence election under a twelve-month mandate. In Cambodia, the United Nations Transitional Administration in Cambodia (UNTAC) was only supplied with a small ratio of military troops in proportion to the population with merely 2 soldiers for every one thousand Cambodians. Moreover, UNTAC worked alongside the pre-existing governing structures and therefore did not create or develop a new set of political institutions for the country, with the exception of developing its law enforcement capacity. The mission also departed immediately after hosting the May 1993 election, and no successor mission was deployed to build on UNTAC’s successes. Finally, UNTAC assumed only a supervisory role during the transition, exercising direct control over the elections and police duties.}

Furthermore, the international intervention in Afghanistan\footnote{The United Nations Assistance Mission in Afghanistan (UNAMA) is considered a light footprint operation that emerged after U.S.-led coalition military action aimed at eliminating Al Qaeda terrorist network and toppling the Taliban regime that harbored them.} and the U.S.-led military occupation of Iraq\footnote{The U.S.-led military invasion of Iraq is not considered a conventional international intervention, but instead a military occupation that is reminiscent of the Allied occupation of Germany and Japan after the Second World War.} are also disqualified. The international interventions in Bosnia, Kosovo and East Timor, however, fulfill the above criteria. All three are post-Cold War interventions that responded to full-scale internal wars that were or continue to be subjected by international administrations with heavy footprints. Each civilian mission was deployed alongside large military operations that had significant force-to-population ratios.\footnote{The troop-to-population ratios in the three territories are the following: Bosnia (19 troops/1000 inhabitants), Kosovo (20/1000), and East Timor (10/1000). See James Dobbins et al., The UN’s Role in Nation-Building, p. 228.} In addition, all three international administrations were directly involved in developing and reshaping the target territory’s political institutions (i.e., a national constitution, elections, a bureaucracy, electoral systems, courts, police, and...
so on). Both the United Nations Interim Administration Mission in Kosovo (UNMIK) and the United Nations Transitional Administration in East Timor (UNTEAT) effectively became governments in their host territories, exercising executive, legislative, and judicial powers. Although the Office of the High Representative (OHR) was not the government in Bosnia, the office represented the highest political authority in the country and exercised *de facto* executive, legislative, and at times judicial powers of the state through the interpretation of its 1997 Bonn power. The commonalities between these cases therefore makes it possible to generate preliminary conclusions about the lawmaking and state-building policies of international administrations and their impact on the main case studies.

Any empirical study of post-conflict intervention must also take into account the relatively small number of international administrations that engage in state-building, which raises issues of analysis and evidence.\textsuperscript{44} To rectify the problem, this study employs a methodological approach called *control comparison*.\textsuperscript{45} According to Roland Paris, ‘This methodology is designed for circumstances in which the total number of cases of a given phenomenon is too small to permit effective statistical or quantitative analysis, or when researchers wish to examine special causal relationships in greater detail than is possible simply through the study of statistical

\textsuperscript{44} As Samuel Barnes observes, ‘it is a challenge to generalize amid many variables and few historical cases… but often, the name of the country appears to have more explanatory power than other systematic variables.’ Samuel H. Barnes, ‘The Contribution of Democracy to Rebuilding Post-Conflict Societies,’ *The American Journal of International Law*, Vol. 95:86 (2001), p. 88.

correlations." With the aim of examining the effects of international administrations on the state-building of war-torn societies, this study will treat each case in a focused manner by setting out a series of specific questions at the outset of the empirical chapters (specifically Chapters 4 & 5). ‘This is the essence of controlled comparison: ensuring that the information derived from each case study is directly relevant to the question under investigation.’

**Organization of the Study**

This study is divided into two parts. Part I consists of theoretical chapters that introduce many of the issues and concepts to be examined. Chapter 1 begins by distinguishing international administrations from other international interventions to date. It then explores the dual mandate of the international administration by looking at the scope of political authority that these interventions are generally bestowed with and the type of state-building approach that international administrators employ. In doing so it also discusses the technocratic management style of international administration and various ways in which an international governing authority can be legitimized. Chapter 2 examines the theory of context in IR and argues that contextual factors play a significant role in shaping the policies and outcomes of international administrations. It divides contextual factors into those conditions that are endogenous to the target territory (internal factors) and those that are exogenous (external factors). In particular, it discusses the importance of norms associated with

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sovereignty as contextual factors that shape and constrain the policies of international actors involved in territorial administration and state-building.

Part II evaluates the impact of norms and the effects of international administrations in our three empirical case studies. Chapter 3 begins with a brief history of international administration since the League of Nations. It explores why these earlier instances of territorial administration were deployed, their scope of authority and political aims, and whether they successfully completed their missions. It then introduces the three main case studies in Bosnia, Kosovo, and East Timor. The operational framework of each mission is briefly sketched by examining their mandates, their governing structures, the main external actors involved, and their overall political goals. The chapter then proceeds by constructing the ecologies in which these missions operated in through the contextual factors of each case. The chapter determines the level of difficulty that confronted each mission and whether or not international administrators recognized and took advantage of auspicious conditions in order to increase the likelihood of mission success. Chapter 4 analyzes the governorship aspect of the dual mandate by exploring whether international authorities were able to effectively carry out their administrative functions in accordance with the governance standards they promote. This is determined by examining the international takeover of the judicial sector. The chapter demonstrates that the administrative acts of international authorities often violate the rule of law and infringe upon the human rights of the target population. Chapter 5 analyzes the state-building aspect of the dual mandate and determines whether international administrations can effectively rebuild state entities that wield empirical sovereignty.
The outcome of international-led state-building projects is shown to have largely resulted in weak state institutions that lack overall legitimacy. In addition, it postulates that organizational shortcomings and local pressures for self-governance limited international efforts.

The conclusion chapter briefly summarizes the findings and lessons learned from the three case studies. A set of guidelines for when international administrations are the best option for addressing the governance and sovereignty problems of conflict-ridden territories is established. A set of ideal contextual conditions that are the most conducive to mission success are also identified. The chapter then briefly discusses the political implications of international administrations and recommends various strategies for improving the accountability and legitimacy deficits that characterize these missions. Lastly, areas within the study of international administration where further theoretical development is needed are highlighted and recommendations are made for future research.
Understanding International Administration and State-Building

The practice of territorial administration by international organizations is a multifaceted undertaking that involves addressing the domestic crises of conflict-ridden territories. When deployed on the ground, international administrations often engage in activities that violate the traditional understanding of sovereignty, which emphasizes the exclusive authority of states over their territory, and the concomitant right to non-intervention in their internal affairs. These activities usually range from governance functions, such as implementing public policy and delivering essential political goods to developing security and rule of law institutions and economic restructuring.

If we are to understand the policymaking of international governing officials and the effects of their policies on target territories, it is imperative to develop a theoretical foundation of the major concepts that are under investigation – that is international administration and state-building. The problems of studying international administration and state-building lie in the difficulty of trying to capture these concepts and the activities associated with them in a theoretically meaningful way. For instance, what distinguishes international administrations from multidimensional peacekeeping missions that engage in similar activities on the ground?

48 The meaning of the term sovereignty has been vigorously debated in the literature. One of the more generally accepted versions is F.H. Hinsley’s conceptualization, in which he defined it as ‘the idea that there is a final and absolute political authority in the political community… and no final and absolute authority exists elsewhere.’ See F.H. Hinsley, Sovereignty (Cambridge: Cambridge University Press 1986), p. 1
And why do some scholars categorize the activities of international administration as state-building, while others designate them as nation-building or peace-building?

This chapter aims to develop a theoretical framework for which to understand the nature of international administration and state-building within the broader context of international intervention. The chapter begins by clarifying the conceptual distinctions between international administrations and other contemporary forms of international interventions in which territories are subject in some degree to the administrative control of international organizations. The analysis subsequently examines the conditions under which international administrations are deployed and the reasons for the international community’s gradual shift towards more invasive and comprehensive interventions. It then turns to a discussion of the different sources of transitional authority that legitimize the exercise of their power and the reasons why international administrations are equated with technocratic interventions. The chapter then shifts its focus to the political activity of state-building. The analysis distinguishes state-building from other concepts, such as nation-building and peace-building. Finally, the chapter examines the goals and various strategies of state-building and clarifies some of the key underlying assumptions of contemporary state-building practices by comparing them to the modernization programs that were implemented in the developing world during the height of the Cold War period.

**The Practice of Territorial Administration**

The international interventions in Bosnia, Kosovo, and East Timor are recent examples of territorial administration by international organizations. Contrary to the
belief that such interventions represent a novel phenomenon, the practice of territorial administration by an international organization goes back to the Interwar period when the Governing Commission of the League of Nations directly administered the Free City of Danzig and the Saar Territory in 1920. Yet, international administrations are not a formal practice or institution. There is no official department within the UN Secretariat that is dedicated to deploying interventions of this kind. Nor are they explicitly expressed in any general resolution of either the General Assembly or the Security Council. Why then has the international community felt compelled to deploy such operations in certain conflict situations? What circumstances demand the establishment of an international administration? And what aspects of international administrations, if any, make them appealing as a policy instrument? Before addressing these questions, it is necessary to first distinguish international administrations from other contemporary international interventions and then introduce a workable definition.

**Clarifying the Concept of International Administration**

The term international administration has often been used interchangeably with other concepts, such as ‘trusteeship’ and ‘protectorate’. While these institutions have been used to describe the contemporary practice of territorial administration, each varies in terms of their precise legal meaning and stated purpose. For example,

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the institution of trusteeship was established after the Second World War to supervise only non-self governing territories, which were placed under the exclusive authority of the UN-established trusteeship system on the basis of individual agreements between the administering authority and trust territory (Article 75 of the UN Charter). Yet the scope of contemporary territorial administration is not limited to non-self governing territories as demonstrated in Cambodia and Bosnia. Nor is the UN the exclusive administrating authority, as the role of the OHR in Bosnia exemplifies. Moreover, unlike the benevolent character of the UN trusteeship system, which aimed solely to facilitate the process of statehood for non-autonomous territories, contemporary international administrations are a more politicized form of territorial administration that prefers a liberal democratic outcome — what one political observer has called ‘strategic liberalization.’

The term protectorate has been used similarly to describe the contemporary practices of territorial administration by international organizations. For example, Bosnia has been referred to as a new form of protectorate because its internal sovereignty is severely limited under the international presence. However, in international law, protectorate applies only to weak states that have surrendered themselves by treaty to the protection of a strong state by transferring the management of their competencies related to foreign affairs to the protecting state. This legal meaning obviously excludes territories, such as Kosovo and East Timor, which did not possess full statehood previous to their interventions. It also ignores the

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52 Ralph Wilde, ‘From Danzig to East Timor and Beyond,’ p. 602.
multilateral character of today’s international administrations. Furthermore, contemporary international administrations typically manage a broader scope of state competencies than merely the conduct of foreign affairs.

In terms of more contemporary forms of international intervention, international administrations resemble second-generation or multi-dimensional peacekeeping missions in that they engage in similar activities on the ground, including state-building and/or taking over some competencies of the state.\(^53\) Also, both forms of intervention are not explicitly articulated in the UN Charter. Both are normally deployed after warring disputants reach a compromise or negotiated settlement. Both enjoy backing of the Security Council and have been supported by various UN departments and agencies, regional bodies, and state ministries, and other non-state actors. And both are *ad hoc* interventions.\(^54\) Having said that, it is evident that international administrations are on the margins of conceptual differentiation.

Nonetheless, international administrations go beyond multi-dimensional peacekeeping mandates in that they usually develop the institutions of governance by

\(^{53}\) UN peacekeeping has been generally divided into two discrete categories. Traditional peacekeeping, which is generally referred to as the ‘first-generation peacekeeping’ and lasted from 1948 to 1989, are mediation efforts by lightly (un)armed UN troops that typically operate as ‘buffer zones’ between two warring countries. In addition, these operations do not interfere in the domestic politics of the host government(s), and require the ‘consent’ of the warring territory in question. The next generation of peace operations, multi-dimensional peacekeeping, are more ambitious missions that include large military forces and civilian police units, judicial reform, the promotion of humanitarian assistance, organization of elections, economic reconstruction, and civil society. For more information on the so-called evolutionary process of UN peacekeeping, see *The Blue Helmets: A Review of United Nations Peacekeeping* (New York: UN Department of Public Information, 1996); Alan James, ‘Is There A Second Generation of Peacekeeping?’ *International Peacekeeping*, Vol. 1, No. 4 (September-November 1994), pp. 110-113; Frederick H. Fleitz, *Peacekeeping Fiascoes of the 1990s: Causes, Solutions and U.S. Interests* (Westport, Connecticut: Praeger Publisher, 2002).

\(^{54}\) Simon Chesterman observes that the *ad hoc* nature of international administration has resulted in different types of operations adopting ‘idiosyncratic mission structures that reflect the varying capacities of the regional organizations and UN agencies involved in each situation.’ See Simon Chesterman, *You, the People*, p. 55.
assuming sovereign powers of the modern state on a temporary basis.\textsuperscript{55} Although the scope of these sovereign powers varies from operation to operation, there are several discernable powers that are commonly manifested by international administrations that distinguish them from conventional peacekeeping operations. These include \textit{agenda-setting powers}, which allow international administrators to influence the trajectory of the transitional process by determining which issues and areas of reform will be given a salient role; \textit{veto powers}, which allow international administrators the ability to negate or strike down local legislation that is inimical to the peace or reconciliation process and to remove local officials, even if democratically elected, from their positions of authority; and \textit{decision-making powers}, which enable international administrators the authority to both initiate policy and promulgate new laws.\textsuperscript{56}

The corollary of international organizations assuming quasi-sovereignty over territories is the loss of local political authority or sovereign control over the local population. International administrations effectively replace existing, or in some cases, non-existing governmental institutions and authorities for a temporary period thereby withholding or ‘suspending sovereignty’.\textsuperscript{57} This latter point is important because the majority of peacekeeping operations have generally eschewed overt political entanglement in the internal affairs of post-conflict territories. Conversely, in the context of international administration, external interference in the internal affairs

\textsuperscript{55} Richard Caplan, \textit{A New Trusteeship?} p. 38.


of the target territory is unavoidable.\textsuperscript{58} International administrations can thus be defined in opposition to the conventional notion of state sovereignty. This is reflected in Ralph Wilde’s definition of international administration as a:

formally constituted, locally based management structure operating with respect to a particular territorial unit; it can be limited… or plenary… in scope. The international organization asserts the right either to supervise and control the operation of this structure by local actors, or to operate the structure directly. The right is exercised from within the territory, and can pertain to the structure as a whole, or certain parts of it (e.g. the legislature).\textsuperscript{59}

This definition suggests four structural attributes about international administrations that are noteworthy. First, international administrations are not administered by a single state, but rather by international organizations, such as the UN, the EU, or by \textit{ad hoc} international bodies like the Peace Implementation Council (PIC), as in the case of Bosnia. Second, the jurisdiction of international administrations is limited only to the territorial unit under their control. Third, international administrations can vary in terms of the number of governmental functions they wield. In Cambodia, the United Nations Transitional Administration in Cambodia (UNTAC) was delegated with a limited range of governmental functions, such as foreign affairs, finance, public security and information. By contrast, the UN administrations in both Kosovo and East Timor were mandated with a wide range of responsibilities: from ensuring law and order to the establishment of administrative procedures and laws related to such things as budgets, elections, taxes, customs, criminal laws, human rights, to providing health care, education, banking and


\textsuperscript{59} Ralph Wilde, ‘From Danzig to East Timor and Beyond,’ p. 585.
telecommunications, sanitation services, and activities related to economic reconstruction, employment, and so on.\textsuperscript{60}

A fourth structural attribute is that international administrations can be differentiated by the amount of political authority exercised by international administrators. This can range from direct external administration to some form of power sharing or co-governance between international and local actors. For example, Jarat Chopra contends that international transitional authority can be conceptualized as a power continuum.\textsuperscript{61} At one end of the continuum, international administrators may simply provide \textit{assistance}, for example, by sending technical advisers to help organize, conduct, or supervise elections. Moving along the continuum, international administrators may assume a \textit{partnership} role with the local authority that has a veto power and a final word in the transitional period. Next, they may exercise \textit{direct control} with the overriding authority to take action by dismissing local officials or redirecting the policy agenda. Finally, on the other extreme end of the continuum,

\textsuperscript{60} The undertakings in Kosovo and East Timor are not only considered comprehensive, but also unprecedented. The Brahimi Report noted that such interventions have been given the responsibility for ‘micro-managing these societies’ (para. 13) and thus designated both of them in a class of their own. (para. 19). Hansjorg Strohmeyer also observed that ‘the scope of the challenges and responsibilities deriving from these mandates was unprecedented in United Nations peacekeeping operations.’ See Hansjorg Strohmeyer, ‘United Nations Governance of Post-conflict Societies,’ \textit{American Journal of International Law}, Vol. 95:76 (2001), p. 83.

international administrators may take a governorship role by assuming complete political authority over a war-torn territory.\textsuperscript{62}

Two additional structural attributes that are not pertinent to the above definition relate to the bureaucratic structure of international administrations and the different configurations of international transitional rule. Representing the civilian side of the operation, international administrations are highly bureaucratic structures based on a hierarchical arrangement in which the Transitional Administrator, or the SRSG, exercises supreme authority over a range of Deputy administrators and mid-level managers who advise him and implement his policies respectively. The multifunctional nature of international administrations requires that the pool of personnel come from, among others, legal, business, educational, engineering, telecommunications, governmental, and scientific backgrounds. Beth Cole DeGrasse and Christina Caan also argue that there are several mission arrangements involving the civilian and military dimensions of international transitional governance.\textsuperscript{63} For example, there is the standard UN ‘blue helmet’ model in which the UN Secretary-General appoints a special representative who has authority over both the military and civilian components of the mission. Other arrangements include a mission structure in which a multinational force, like NATO or a coalition of the willing led by one state, controls the military operations while the UN oversees the civilian tasks, as in the case of Kosovo and East Timor, or by an ad hoc civilian structure, like the OHR in


\textsuperscript{63} Beth Cole DeGrasses and Christina Caan, \textit{Transitional Governance}, p. 8.
Bosnia. Finally, another arrangement that is currently in use in Afghanistan involves a unique hybrid structure where international organizations, external state actors, and local governments divide responsibilities for different sectors, such as the judiciary, the army, and the police.

Considerations for Establishing International Administrations

When has establishing international administrations been an appropriate response by the international community? Ralph Wilde observes that the historical record of international administration suggests that such interventions are used to respond to perceived ‘sovereignty problems’ or perceived ‘governance problems’.\textsuperscript{64} Sovereignty problems refer to questions of statehood and territorial integrity. Examples include disputes over the international status of a territory; disagreements among warring factions over who should wield the most power over governance structures, either at the central or regional level; ethnic tensions within those structures that may lead groups or communities to opt for secession or independence\textsuperscript{65}; or disagreements among the local population regarding the ends their society should pursue. Governance problems, on the other hand, refer to the lack of governmental capacity or conduct of governance. In other words, the establishment of an international political authority becomes necessary when governance structures simply do not

\textsuperscript{64} Ralph Wilde, ‘From Danzig to East Timor and Beyond,’ p. 587.

\textsuperscript{65} Identity groups or communities may strive for secession or independence due to political or economic disenfranchisement, or pervasive feelings of distrust and insecurity. For surveys of such theories, see Donald L. Horowitz, \textit{Ethnic Groups in Conflict} (Berkeley: University of California Press, 2000), pp. 281-288; Nicholas Sambanis, ‘Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature,’ \textit{World Politics}, Vol. 53 (July 2000), pp. 437-83.
exist, or when the local authority or leadership is either nonexistent or considered illegitimate.

In his analysis, Wilde shows that earlier experiences of territorial administration by international organizations have mostly addressed sovereignty problems, in particular, disputes over the international status of a territory. In this context, international administrations usually served as a facilitator that helped integrate a territory to the sovereign control of an internationally recognized state. More recent international administrations, however, have addressed the governance problems of territories with internal conflicts that resulted in societal chaos, massive human rights abuses, large outflows of refugees and displaced persons, destroyed infrastructure, and institutional collapse – what is roughly a ‘failed state’. In such circumstances, the target population may need an international governing presence to temporarily make executive and legislative decisions during the post-conflict transitional period to bring about a semblance of order until a new, legitimate, local government can be restored. The precarious nature of transitional rule under such circumstances often makes governance problems more difficult to address than sovereignty problems, given that such conditions are often inimical to the workings of any type of administration that necessitates some semblance of order and stability. Nonetheless, recent conflicts in Bosnia and Kosovo also show that international administrations are at times situated in territories where they have to address both sovereignty and

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66 William Zartman defines a failed or collapsed state as when the authority, law and order system, and political institutions fall apart. See I. William Zartman (ed.) *Collapsed States: The Disintegration and Restoration of Legitimate Authority* (Boulder, CO: Lynne Rienner Publisher, 1995), p. 1.
governance problems simultaneously. This, of course, raises the level of difficulty considerably.

There are several factors that help to explain the international community’s gradual shift towards more invasive practices, including the temporary takeover of sovereign powers. The first is the challenging environment posed by internal conflicts and dysfunctional territories that typify the post-Cold War era. Indeed, it became evident that strategies aimed toward managing internal conflicts required a more multi-functional response that goes beyond the traditional peacekeeping activities of simply monitoring troop movements and separating warring parties by establishing buffer zones. Instead strategies needed to focus on the political and societal conditions that had made war seem attractive in the first place. Logically, a second factor is the multiplicity of responsibilities that international organizations assume in these conflicts. In such operations, international actors engage in a number of military and civilian tasks to bring an end to violent and nascent conflicts, including the following: demobilization and cantonment of warring factions and warlords; providing security and/or confiscating weapons; assisting civil authorities; helping resuscitate elements within civil society; supporting the monitoring and/or conduction

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67 Roy Licklider paints a grim picture that underscores the complexities that often arise in a post-war society: ‘Economically, the infrastructure has been destroyed; the currency has been undermined; commerce is at a stand still; agriculture has been devastated; unemployment is high, which means there are no jobs for former soldiers; foreign investment has been frightened off; and there is no basis for exports. The country’s society has been undercut by the mutual dislike between warring groups, which is not any weaker than before the war; the wide distribution of weapons within the population; the people’s habit of non-obedience to government authority generally; the undermining of traditional sources of authority; the need to demobilize and disarm at least two armies quickly; and the prevalence of young soldiers with no skills other than killing. The old political process has been discredited, there is a low tolerance for legitimate opposition, there is often little democratic traditions, and the police and judicial system are seen as part of the problem rather as part of the solution because they have no legitimacy for much of the population.’ See Roy Licklider, ‘Obstacles to Peace Settlements’ in Chester A. Crocker, Fen Olser Hampson, and Pamela Aall, Turbulent Peace: The Challenges of Managing International Conflict (Washington: United States Institute of Peace Press, 2001), p. 698.
of elections; facilitating the repatriation of refugees and relocation of displaced persons; clearing mines; protecting humanitarian relief operations; and arresting war criminals.\textsuperscript{68} According to Jarat Chopra and Tanja Hohe, the complexity and multi-functional nature of these operations is what gradually drew the international community into the temporary exercise of political authority. In particular, they emphasize two factors that account for this shift:

First, in the midst of complex emergencies, a wide range of intergovernmental agencies and [NGOs] independently addressed security, humanitarian, developmental, human rights, judicial, policing, and economic concerns. To achieve unity of efforts for greater effectiveness, a civilian unit of command was formalized in multi-functional operations with multiple components or pillars. The aim was to improve harmonization across the various sectors, both horizontally and vertically with mission. Second, it became clear that military forces alone, or massive humanitarian assistance, could stem some of the worst symptoms of violence but could not resolve the sources of conflict. Doing so required direct involvement in the local political processes, and because the national government was fragile, fragmented, or altogether collapsed, international interventions began to assume increasing degrees of political authority over the territory and population. Transitional administrations finally exercised total executive, legislative, and judicial powers as interim governments.\textsuperscript{69}

Implicit in this observation is a third factor for the international community’s increasing assumption of extraordinary political authority: a growing distrust of local authority structures and politics. By relying on local authority structures (whether coherent and oppressive or fragmented and negligible), international actors are essentially beholden to the will of local stakeholders to guide the trajectory of the transitional process. However, there was a mounting consensus among policymakers and analysts that too much credibility was being given to local elites on taking the lead, many of which had their own personal and political agendas that were opposed to the general welfare of the local population and peace process in general. Leaving


this responsibility to local actors or regional representatives was felt to be giving international legitimacy to ethnic cleansers and warlords. Furthermore, by relying on local authority structures, the post-conflict transition was at risk of operating within the constraints of old power dynamics, particularly within the control of security forces, which in many cases, were responsible for the violence that led to the intervention in the first place. Also, by placing the burden on warring parties, institutional paralysis was likely to occur, as domestic factions were unable to find common ground in implementing the peace accord. In Cambodia, for example, dominant factions maintained their grip over both the military and administrative apparatus, thereby impeding the UNTAC from fulfilling many of its mandated responsibilities. Similarly, in the case of Angola, warring disputants maintained their military capabilities throughout the attempted peace process, only to return to violence after elections in 1992.

Proponents of invasive international interventions argue that the assumption of sovereign powers by international actors is a practical necessity in certain cases. Given the urgent needs and the high expectations that are typically manifested in post-conflict societies, particularly in territories that lack any functional government or local capacity, international administrations can immediately shape the transitional period with rapid decision-making over vital and sensitive areas of legislation, such

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as criminal justice, human rights, public administration, and market institutions. As one political observer notes, a ‘more intensive short-term intervention by internationals may shorten their presence in what can be described as a political version of shock therapy.’ International administrations are also predicated on their potential to: minimize the illiberal tendencies associated with postwar administrations led by local actors; reduce friction between major domestic factions by maintaining a level political playing field and isolating extremists and domestic spoilers; minimize politicized and time-consuming debates that frustrate the process of rapid reform, which is essential to demonstrate short-term results; prevent the possibility of further human rights abuses by not allowing local factions to control governmental power during the interim period; and reduce the risks of corruption, nepotism, and clientalism. Finally, the rapid transfer of authority from international to local control can overwhelm a society emerging from the trauma of violent conflict as well as reinforce or institutionalize divisions that lie at the heart of the conflict as warring parties compete for political power.

Conversely, the presence of international administrations can also engender negative problems. They not only deprive local ownership of the rebuilding process, by may actually incite political challenges by some political groups who consider the international presence as illegitimate. Moreover, those politicians closely associated with the international governing presence may face additional problems once the international administration departs. The different ways in which international administrations can achieve legitimacy as a political authority are explored below.

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72 Joel C. Beauvais, ‘Benevolent Despotism,’ pp. 1116-17.
Legitimating Sources of Transitional Authority

International administrations consist of international bodies that exercise governmental authority over a territory. As discussed above, this authority may range from a mere assistance role to a full-fledged governor-in-trust. However, there is a good possibility that such interventions will be viewed, particularly in the developing world, as a form of neocolonialism or neoimperialism. It is therefore necessary that international administrations be seen as a legitimate authority if they are to exercise governmental powers over a target population that is making the transition from colonial or colonial-like rule to self-determination and democracy. Indeed, the authority of a political body may not be recognized if that authority does not have a source of legitimacy. Authority has to be legitimate to ensure its acceptability to the population; strictly speaking, authority is essentially a function of legitimacy. The link between authority and legitimacy becomes even more pronounced if international transitional rule extends beyond a year or two.

To analyze the authority of international administrations, one must examine the processes that established their authority, the social purposes that their authority represents and promotes, and their governmental performance as a political authority. In terms of the processes that establish their authority, one must consider two procedural sources that lay the legal basis for their exercise of power: consent of the key players in the conflict and the delegation of authority by international organs, such as the Security Council. First, acquiring the consent of the key actors in the conflict in the form a peace agreement or treaty is a central source of authority for all international administrations. Such agreements usually exhibit the recognition and
approval of the authority of the international administration by the main warring parties. Moreover, international administrators often invoke the consensual nature of their presence as a legitimizing factor when conducting policy or passing legislation. Although international administrators arrive at their destinations with the permission of the parties to the conflict, they are also expected to foster the consent of domestic leaders throughout their rule. Yet consent is not always forthcoming or is sometimes withdrawn if warring factions increasingly view the international governing presence as an obstacle to their preferences or goals. This makes consent an unreliable source of authority. Moreover, consent is often given under duress, as in the cases of Bosnia and Kosovo, whereby parties signed peace agreements under the threat of continued use of force or pressure by western powers. This raises doubts about whether consent is a useful source of authority if given under such forceful circumstances. Finally, when consent has been invoked as a source of authority for an international administration, it is often given by the leaders of the warring parties, or by their regional patrons, and not necessarily backed by the political communities themselves.

A second procedural source that establishes the legitimate authority of an international administration is the delegation of that authority by form of a resolution of the UN Security Council. This is by far the most important mechanism or process for conferring authority to international administrations, as most of them have either been established or endorsed by the Security Council. Under Chapter VII of the UN Charter, the Security Council has the competency to determine whether a situation constitutes a threat or breach of peace and security and can thereby empower the UN to administer a territory with all the necessary authority, including legislative,
executive, and judicial powers to fulfill its mandate. Although the Charter does not expressly provide the right of the UN to assume governance functions, such competency has been inferred under Articles 39, 41 and 42 of the Charter, which give the Security Council wide discretionary powers.\footnote{Michael J. Matheson, ‘United Nations Governance of Post-conflict Societies,’ \textit{American Journal of International Law}, Vol. 95, No. 1 (2001), pp. 76-85.} However, it is not clear that the Security Council’s endorsement of an international administration necessarily results in domestic legitimacy on the ground. While the local population may less likely see the international presence as an imperial project, the Security Council’s approval of the mission may have no bearing on them if the international administration cannot improve the situation on the ground or is perceived as an impediment to a broader political objective.\footnote{This was certainly the case in Kosovo, where Kosovo Serbs accused UNMIK of failing to provide basic security to them against Kosovar Albanian attacks. Similarly, UNMIK’s legitimacy among the Kosovar Albanians was equally damaged as they increasingly saw UNMIK as an impediment to Kosovo independence.}

Moreover, because of the Security Council’s undemocratic nature, which gives a few powerful states exclusive veto rights, and resistance to structural reforms, its ability to confer legitimacy to a subsidiary body, like an international administration, may be limited if the Council’s own authority is being challenged or scrutinized.

A third source of authority that legitimizes the exercise of power by international administrations is the social purposes they represent and promote, notably human rights and democracy. Human rights are at the center of the human security framework that emerged in the post-Cold War era, ‘where the focus is no longer on the autonomy of states but upon the international protected rights of individuals.
wherever they might be in the world.’ As part of this shift towards human security, international administrations have elevated human rights in their mandates and regulations. For example, Section 1.3 of Regulation 2000/59 provided that ‘in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards.’ Similarly in East Timor, Section 2 of Regulation 1999/1 stated that all domestic laws must comply with international human rights standards. In Bosnia, the international community went further by creating a Human Rights Ombudsperson, a Human Rights Chamber, and a constitution that stipulates all the human rights agreements applicable in the country.

In the same way human rights became an important norm in the 1990s, democracy was increasingly identified as the preferred form of national governance. The notion that all citizens have a ‘democratic entitlement’ as a human right protected under international law has been embraced not only within the United Nations but in other major international organizations—including the OSCE, the EU, NATO, the OAS, the IMF and World Bank, and many international NGOs. For this reason it is no surprise that international administrations, as an extension of global governance by other means, have been explicitly mandated to promote democracy in post-conflict societies. For instance, Annex 4 to the DPA establishes Bosnia as a democratic state, which is to operate under the rule of law and with free and democratic elections. Likewise in Kosovo, Resolution 1244 established a connection between substantial

75 David Chandler, *Empire in Denial*, p. 63.
autonomy and self-governance in Kosovo and UNMIK’s task to organize democratic self-governing institutions (para. 10). This ostensible normative consensus on the importance of democracy in post-conflict societies underpins the broad belief that democracy is a vital condition for peace. As Carsten Stahn notes, the success of the international administrations in Kosovo and East Timor was ‘an important test case for [the UN’s] capacity to restore peace by shaping the internal governmental system of a territory.’

The promotion of human rights and democracy constitute the identity and interests of Western powers that are involved in territorial administration and who view such norms as universalistic aspirations that every country should embrace. However, many countries in the non-Western world have reservations about these norms, especially if they are being promoted by coercive means. In particular, countries such as China and Russia view the West’s interpretation of human rights (i.e., the protection of civil and political rights) and democracy (i.e., characterized by political processes that are participatory, open, and competitive; elections that are free and fair; and chief executives who are openly selected and subject to checks on their power) as incompatible to their own normative beliefs or as a threat to the stability of their regimes. This lack of global consensus about what constitutes human rights and democracy limits the extent to which international administrations can exercise their authority based on the social purposes they represent and espouse. This is especially

true in light of the fact that virtually all of these operations take place in non-Western territories.

A fourth and final source of authority for international administrations is their exercise of governmental powers. As mentioned above, territories under the administration of international organizations usually face significant problems of governance, whether in terms of capacity problems, illiberal governance, or paralysis due to political divisions. In Kosovo and East Timor, for example, administrative vacuums emerged after both conflicts ended, requiring international administrators to fill the void while building political institutions to which authority could then be transferred. In Bosnia, deep political divisions along ethnic lines, weak state-level institutions, and lack of local capacity at the cantonal levels prevented the central government from implementing the necessary reforms outlined in the DPA. Importantly, for the local population affected by territorial administration, the provision for government is a key source of authority for international administrations. Local populations are more likely to be concerned about security, unemployment, and other basic necessities of daily life, like running water, electricity, and garbage pickup than about debates within the Security Council over the authorization of a particular resolution. The ability to deliver these goods and services is an important legitimizing source of authority for international administrations. As interim governments, they have an opportunity to achieve what the previous political system could not do: meet the basic material and social needs of those populations. By fulfilling what is the very essence of the ‘social contract’,
international administrations are in a better position of being viewed as legitimate authorities on the ground.

At the same time the need for international governance as a source of authority for international administrations is limited in a number of ways that will be explored in more depth later in this study. However, one in particular should be noted here: that local pressures for self-determination or self-governance limit the exercise of international governmental authority. The need to transfer ownership of institutions and sovereignty back to local actors, whether gradually or rapidly, is a necessary condition if international administrations are to maintain legitimacy as a temporary political authority. As this study will show, having to turn over responsibilities prematurely back to local actors constrains the policies of international administrators, who will likely abandon many the benchmarks and standards they originally set at the outset their mission.

The four sources of authority described above represent the various ways in which international administrations can achieve legitimacy as a political authority of an administered territory. Taking into account that the consent of the warring parties and the Security Council’s authorization precedes the deployment of international administrations, it is no surprise that these operations usually rely heavily on the processes that establish their procedural authority to legitimate their policymaking. The other two sources of authority, the social purposes that international administrations promote and the provision for government, are contingent upon the actual behavior of international authorities. However, due to their controversial nature, both are treated as secondary sources that can compliment the other two
procedural sources. While each confers legitimacy in different ways, all are subject to a range of challenges that qualify their legitimizing potential. For this reason, a prudent approach would be a more serious effort by international actors to utilize all four sources of authority to maximize their optimal potential as legitimate political authorities.

**International Administration: A Technocratic Approach?**

Some observers have described the highly invasive role of international administrations in regulating and overseeing the internal affairs of post-conflict territories as ‘technocratic’ interventions. What does this mean exactly? And what aspects of international administrations make them technocratic interventions? The term technocratic is historically tied to development aid and the technical assistance projects for underdeveloped countries that were launched under the administration of Harry Truman in the 1950s. It was used to describe a type of development intervention led by a knowledgeable elite of professional experts who combine ‘theoretical knowledge and experiential (tacit) knowledge that is derived from professional practice.’ Today, these professional experts, or technocrats, come from diverse backgrounds whether as policymakers or project managers with theoretical expertise in areas ranging from agriculture to economics to civil engineering, for example, to individuals working for national agencies, NGOs, or international organizations who presumably have vast experience and knowledge of certain regions.

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78 See, for example, David Chandler, *Empire in Denial*.
and locations. The knowledge these experts wield provides an additional legitimating kind of authority that underscores the fundamental differences between ‘an authority’, an agent who should be followed based on the special knowledge and expertise he or she possess (i.e., the technocrat), as opposed to an agent who is ‘in authority’, someone who has the right to do something on the basis of the political position he or she occupies (i.e., the governor).\textsuperscript{81}

The term technocratic also connotes a type of intervention that is both ‘de-politicized’ and ‘anti-democratic’. For the most part, technocratic interventions present themselves as impartial intermediaries that transcend ideological and political boundaries. Such interventions tend to reduce the problems of developing societies (i.e., poverty) as purely technical problems that can be addressed by solely technical solutions, supported by neutral expertise. As Gordon Wilson points out, the expanding lexicon used by technocrats to describe their operations as politically neutral include terms such as ‘co-operation’, ‘local ownership’, ‘shared responsibility’ and ‘partnerships’.\textsuperscript{82} At the same time, the term technocratic evokes a type of anti-democratic quality.\textsuperscript{83} This can be attributed to the imparity of power that is often manifested in these interventions between technocrats and the local population that is receiving technical assistance. The increasing perception is that public participation in the planning and decision-making process is usually marginalized, as local stakeholders and civil society are subordinated within a

\textsuperscript{81} Bob Clive Smith, \textit{Bureaucracy and Political Power} (Brighton: Harvester Press, 1988).
\textsuperscript{82} Gordon Wilson, ‘Beyond the Technocrat,’ p. 504.
technocratic structure that displays indifference to local professional knowledge.\textsuperscript{84} In turn, this leads to the suppression of alternative interpretations of development. Rather than utilize a broader knowledge base to inform their development decisions, technocrats are seen as relying too heavily on their own experiences and knowledge, which are shaped by Western conceptions of development.

Finally, the notion of a technocratic intervention as de-politicized and anti-democratic has a counterpart in Max Weber’s conception of bureaucracy as an administrative structure that is staffed by non-elected officials and marked by hierarchical authority and fixed procedures. Weber’s analysis of bureaucracy highlights the critical importance of political neutrality and expertise as vital elements to the efficient operation of day-to-day governance. By permitting separation between the bureaucratic personnel of impartial experts and the policies of politicians temporarily in office, the institution of bureaucracy strives for efficiency by reducing the paralyzing effects of party politics. As Huntington observes, the bureaucratic model aims for efficiency and the elimination of irrational conflict that is brought about by ‘political parties’: ‘Parties simply introduce irrational and corrupt considerations into the efficient pursuit of goals upon which everyone should be agreed.’\textsuperscript{85} Resembling the technocratic interventions described above, bureaucratic structures emphasize the need for objective, or de-politicized, criteria as the basis for settling disputes. Moreover, in the same way that technocratic interventions are criticized as anti-democratic, Weber himself feared that the growth of a super

\textsuperscript{84} Ibid. p. 54.
\textsuperscript{85} Samuel Huntington, \textit{Political Order in Changing Societies}, p. 404.
bureaucratic state would eventually lead to the downfall of due process and the rule of law, resulting in a ‘dictatorship of bureaucrats’. 86

Given the above, it is quite clear that international administrations employ a technocratic approach in the territories under their control. International administrations tend to cast conflicts of non-Western societies as non-political events. This follows Mary Kaldor’s conception of ‘new wars’ in which the conflicts or crises in non-Western states are not seen as a clash of interests, or a pursuit of politics by other means, but as a product of a lack of domestic governance capacity exacerbated by atavistic desires of ethnic identity or greed-driven criminal elites who lack political legitimacy. 87 At the same time, international administrators similarly cast themselves as above politics, or as de-politicized interventions that provide technical or administrative solutions through capacity-building or by introducing the appropriate legal frameworks, for example. International administrations are also technocratic because they often micro-manage the territories at the expense of local participation in the decision-making process. Under such interventions, postwar domestic politics and public consensus building are perceived as obstacles to reform and progress. Chandler argues that the technocratic approach employed by international administrations is a corollary of a ‘growing consensus that international experts and bureaucrats can better govern a country than politicians accountable to the people who have to live with the consequences of their policymaking.’ 88 As a result, the public is expected simply to accept and live with the decisions made by international

86 Bob Clive Smith, Bureaucracy and Political Power, p. 12.
88 David Chandler, Empire in Denial, pp. 66-67.
experts and regulators, thereby highlighting the anti-democratic implications of international administrations.

The technocratic model of intervention therefore suggests that international administrations base their governmental effectiveness on three premises:

- **Expertise.** The expertise premise has traditionally served as an alternative to democratic decision-making. The core assumption of this premise is that international officials with special knowledge and experience are in a better position of administering a war-torn territory based on their ability to make well-informed and sound judgments. This demands the recruitment of individuals with specialized backgrounds in areas, such as international criminal law and human rights law, election monitoring, and specific aspects of development and reconstruction. More importantly, such missions require individuals with a detailed understanding of the region and history of the territory in question. The attainment of local knowledge is not only important for the purpose of planning and managing the mission, but also to build trust with the local population that is subjected to international rule.

- **Neutrality.** The notion that international authorities are neutral or depoliticized agents that are detached from the quagmire of local conflict and politics are a type of special legitimacy that both UN peacekeeping missions and transitional administrations try to invoke. It is based on the assumption that international actors are in a special position to gain an objective view of the conflict at hand and thus have a better ability to neutralize its sources. Moreover, it holds that domestic actors are more willing to cooperate or comply with peace efforts if they perceive the international presence as being able to balance conflicting interests in an equitable way.

- **Efficiency.** Due to their expertise and neutrality, international administrations are purportedly efficient in completing their mandates as quickly and cost effectively as possible. The assumption here is that, as technical interventions, international administrations circumvent the local political struggles that often typify postwar transitions. The efficiency premise is also based on the supposition that the internationalization of governance contributes to a more equitable distribution of costs, by dividing the financial burdens of reconstruction and development among a plurality of actors.

These hypotheses will be tested against the three main case studies in the area of judicial administration in Chapter 4 of this study.

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State-Building: A New Agenda?

There is a consensus today among academics and policymakers that the political activity of state-building is key to solving the problems of weak and failing states that experience civil conflict. James Fearon and David Laitin, for example, noted that ‘the reality of state weakness means that peacekeepers need to foster state-building if there is to be any hope for exit without a return to considerable violence.’\(^9^0\) Francis Fukuyama also observes that ‘the ability to shore up or create from whole cloth missing state capabilities and institutions has risen to the top of the global agenda and likely to be a major condition for security in important parts of the world.’\(^9^1\) In the area of policymaking, state-building is interpreted as an integral part of many Western foreign policy agendas, particularly the United States. For instance, US Secretary of State, Condoleezza Rice, recently expressed the important role of state-building in the Bush administration’s diplomatic approach towards the developing world: the objective is ‘to build and sustain democratic, well-governed states that will respond to the needs of their people and conduct themselves responsibly in the international system.’\(^9^2\) The ascendancy of state-building as a response to failing states in today’s post-9/11 era is particularly revealing. In the early post-Cold War period, state failure and civil conflicts were mainly perceived as regional problems that produced humanitarian consequences for the local population and destabilizing effects on neighboring states. These problems, however, have attained a more global significance as they evoke fears of transnational terrorism and other types of security

\(^9^0\) James Fearon and David Laitin, ‘Neo-trusteeship and the Problem of Weak States,’ p. 21.
\(^9^1\) Francis Fukuyama, *State-building*, pp. xi-xii.
threats that transcend national borders – in other words, state failure is seen as an invitation for terrorists, drug traffickers, and organized criminals to operate freely and with impunity and constitute threats that are hostile to the values and interests of the international community, such as peace, the rule of law, freedom, and democracy.\textsuperscript{93} The 2002 US National Security Strategy reflected these fears in its assertion that ‘America is now threatened less by conquering states than we are by failing ones.’\textsuperscript{94}

In addition to issues related to post-conflict reconstruction, the task of international state-building has also been undertaken in developing societies in peacetime. External support for economic and administrative progress, political development, and human rights are fused together under the rubric of ‘good governance’ policies and form the organizational mandates of many international institutions tasked with strengthening the governance capacity of developing societies. Such policies are typically wrapped up in the form of conditionality packages that require non-Western states to reform their internal governance institutions in exchange for development aid and debt relief assistance. This ranges from non-Western states in the programs of debt reduction under the UN’s Millennium Development Goals and the World Bank’s Poverty Reduction Strategies to the requirements placed on candidate members of the EU to adopt extensive political, economic, and legal reforms. What began as an \textit{ad hoc} process of post-conflict reconstruction, state-building has become a widespread practice that covers countries both in war and peace and throughout the developing world. It is promoted


by a whole constellation of international actors – including the WB, the UN and the EU – that have in part helped to create an inextricable web of international regulation of developing societies that pulls together administrative, economic, and political capacity-building into a single international policy agenda.95

Having said that, it is evident that state-building is a prominent feature of international relations. Many international administrations, particularly the main case studies examined here, are heavily involved in the political activity of state-building. Yet, in spite of its growing international acceptance as a policy tool among Western powers and international organizations, there continues to be confusion over the meaning of state-building and a misunderstanding of its intentions and underlying assumptions. The following addresses these loose ends.

**Clarifying the Concept of ‘State-Building’**

As part of the dual mandate, international administrations are usually tasked with the responsibility of rebuilding the governance institutions of territories under their administrative control. Policy makers and scholars have invoked a proliferation of conceptual categories to capture the activities of international administrations and other international interventions that similarly develop war-torn societies. For example, state-building has been used interchangeably with other concepts such as peace-building and nation-building to describe the activities of various kinds of

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multilateral operations throughout the 1990s.\textsuperscript{96} As Oisin Tansey observes, ‘what counts as state-building for one author may count as peace-building for another.’\textsuperscript{97} But at closer inspection, these concepts can be separated if one takes into account their different objectives. The aim of state-building, for instance, is to reconstruct, replace, or develop for the first time, autonomous structures of governance in a territory where no such capacity exists or where it has been seriously eroded.\textsuperscript{98} As Simon Chesterman writes, this includes building or rebuilding institutions of governance capable of providing citizens with physical security and supporting development in a range of political, security, and economic areas.\textsuperscript{99}

Nation-building, on the other hand, is different from state-building though it is used by some to describe the same activities.\textsuperscript{100} This activity involves the development of a cohesive spirit and a sense of national identity. Jens Meierhenrich asserts that nation-building is a project that seeks to develop the ‘psychological’ aspects and ‘cultural foundations’ of an emergent polity, which may ‘incorporate secular or religious, civic or ethnic, or a combination of these and other interventions

\begin{itemize}
\item \textsuperscript{97} Compare, for example, Roland Paris, \textit{At War’s End} and Simon Chesterman, \textit{You, the People}. Both scholars designate a similar range of activities of international action that they separately refer to as peace-building and state-building respectively. Cited in Oisin Tansey, ‘International Administration and Democratic Regime-Building,’ p. 2.
\item \textsuperscript{98} As indicated in the definition, state-building does not always consist of developing from scratch new governmental institutions. The international administration in Eastern Slavonia (UNTAES), for example, simply strengthened the existing institutions that had been established during the disintegration of Yugoslavia. Indeed, the main purpose of the UNTAES was to peacefully reintegrate the Serb-held region back into Croatia proper.
\item \textsuperscript{99} See Simon Chesterman, \textit{You, the People}.
\item \textsuperscript{100} For example, Robert Rotberg uses nation-building to refer to activities that includes the establishment of the rule of law and the development of a functioning economy. See Robert Rotberg, ‘Failed States in a World of Terror,’ \textit{Foreign Affairs}, Vol. 81, No. 4 (2002), pp. 127-41.
\end{itemize}
deemed essential to the creation and maintenance of social order.'¹⁰¹ This is a separate undertaking from that of state-building. The two concepts notwithstanding are obviously related, and to a large extent, symbiotic. State-building cannot ultimately succeed without nation-building occurring: the structure and institutions of the state cannot effectively function without a degree of national cohesiveness. Conversely, state-building contributes in various ways to nation-building. The development of modern state institutions is undoubtedly a vital part nation-building, as these institutions can be utilized to cultivate national consciousness.

Likewise, peace-building operations involve many of the same activities as state-building. The concept was initially defined in the 1992 An Agenda for Peace, whereby the former Secretary-General Boutros-Ghali viewed it as post-conflict activities that ‘identify and support structures which tend to strengthen and solidify peace in order to avoid a relapse into conflict.’¹⁰² Since then, the concept has taken on a more expansive meaning. For instance, Elizabeth M. Cousens defines the term as an effort that includes issues of peace-making, peacekeeping, and conflict prevention before and after war.¹⁰³ The UN Department of Political Affairs (DPA), the Peace-building Commission’s predecessor in the UN system, defines it as a ‘concurrent and integrated action on many different fronts: military, diplomatic, political, economic, social, humanitarian, and the many imponderables that go to make up a coherent and

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¹⁰¹ Cited in Oisin Tansey, ‘International Administration and Democratic Regime-Building,’ p. 3.
¹⁰² Boutros-Ghali, An Agenda for Peace, p. 11.
In others words, beyond the task of building national institutions, peace-building might include humanitarian assistance, refugee repatriation, and military demobilization. As Figure 1.1 shows, peace-building is a broader concept than state-building because the main objective is to resolve the sources of conflict that started the violence in the first place, and to secure the basis for lasting peace. At the same time, state-building is a broader concept than regime-building, which involves building or developing a particular regime type, such as democracy, rather than the overall structures of the state. State-building is thus the more appropriate concept for analyzing international administrations in this study, where in most cases, their activities relate specifically to the development and strengthening of political institutions and functions of the modern state.

Figure 1.1. The Conceptual Distinction of State-Building

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International State-Building: Goals & Strategies

Conventional wisdom tells us that state-building is primarily an internal or domestic process that is ‘brought about by the combined wills, efforts and responsibilities of governments and populations.’\textsuperscript{105} This implies that the creation of sovereign and coherent state institutions depends on a ‘popular consensus-building process’\textsuperscript{106} between state and society that takes into account the latter’s subjective hopes, interests, and desires. History of the modern state shows that even before this popular consensus-building process can take place, the modern state has developed historically through military force and that the consolidation of its institutions is a long and violent process that hinges initially on raw power.\textsuperscript{107}

Yet, the continuous display of state failure in the developing world has changed the international perspective of state-building as a purely domestic process. According to one observer, state failure has turned international relations theory ‘inside-out’, where the single most important threat is no longer from other states, but from the disorder within weak states.\textsuperscript{108} Christopher Bickerton asserts that ‘this focus on the problem of domestic disorder, against the backdrop of a harmonious


\textsuperscript{106} David Chandler defines this popular consensus-building process as essentially a political process that involves ‘social engagement in the making of policy and in the legitimization of government’ and ‘the existence of a public sphere thorough which the state’s relationship with society is cohered.’ According to Chandler, this takes place at ‘a variety of levels and through a number of different mechanisms from media discussion, pubic debate and civil society engagement to more formal political campaigns and the party competition for representation. It is [only] through these mechanisms that individual interests and concerns coalesce and a broader social and policy consensus is developed and expressed.’ See Chandler, Empire in Denial, p. 51.

\textsuperscript{107} For a thorough discussion of state formation, see Mohammed Ayoob, The Third World Security Predicament: State Making, Regional Conflict, and International System (Boulder, CO: Lynne Rienner Publisher, 1995).

international order, raised the prospect that the international order could offer a solution to the problems of war-torn domestic societies.¹⁰⁹ This solution has come to mean the ‘internationalization of war-torn states’ through invasive state-building policies that seek to not only create sovereign states where they appear to have failed, but to entangle them in a broader web of global governance.¹¹⁰

In his seminal work, *Quasi-States*, Robert Jackson argues that state failure in the developing world has been continuously nourished under the post-1945 international order as a regime of negative sovereignty, embodied in the idea of ‘freedom from outside interference.’¹¹¹ He distinguishes between two different types of states that emerged from this post-1945 international order: juridicial and empirical statehood.¹¹² Juridicial (or *de jure*) states are states that exist because the international community recognizes them as equal sovereign entities that possess the same rights (e.g., the right to non-intervention) and responsibilities as other sovereign states in spite of any proven ability to effectively control or administer their territories. According to Jackson, the majority of juridicial states in the developing world has the superficial trappings of a sovereign state, such as flags, national anthems, membership to the UN, the right to make international treaties and so on, but lack the ‘content’ of statehood.¹¹³ Empirical (or *de facto*) states, on the other hand, are states that exhibit the ability and political will to effectively exercise authority over their territory and

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¹⁰⁹ Christopher Bickerton, ‘State-building,’ p. 94.
¹¹⁰ Ibid.
¹¹² Robert H. Jackson, *Quasi-States*, p. 21
¹¹³ Somalia is the most commonly cited example of a juridicial state; the country achieved independence from Great Britain in 1960 but has largely existed in a *de jure* capacity, particularly since 1991 when the country has been without even a nominal central government for over a decade yet it still possesses all the same sovereign rights as other internationally recognized states.
population and to develop and implement public policy.\textsuperscript{114} In Stephen Krasner’s words, this type of state demonstrates in large measure effective qualities of domestic (or empirical) sovereignty.\textsuperscript{115} Taking Jackson’s typology of the state, Marina Ottaway further refines empirical statehood into two types of \textit{de facto} states:

[At] one end is the state that enjoys international recognition and exercises control over people through formal and strong, preferably democratic, institutions – that is a state \textit{de jure} as well as \textit{de facto}. It has an effective administrative apparatus and is characterized by the rule of law. In other words, this is the modern state in all its legal-rational Weberian splendor… I will refer to it as the Weberian state. At the other end… is the state that receives no international recognition and has weak institutions, but where power is exercised and enforced. This state is constructed on the basis of power, not institutions. It is a state \textit{de facto} but not \textit{de jure}… I will refer to this as the ‘raw power state’… In between the two extremes are a great number of states built on a mixture of raw power and institutions, as well as states enjoying different degrees of external recognition as states.\textsuperscript{116}

In the post-Cold War context, Ottaway contends that the state-building goal of the international community is to build the ideal Weberian state that governs according to the rule of law and wields empirical sovereignty. However, the path towards achieving this goal varies depending on who is leading or orchestrating the state-building process. Ottaway asserts that internal-led state-building has often been a modest transition for post-conflict societies: one that changes from the failed \textit{de jure} state to a raw power \textit{de facto} entity.\textsuperscript{117} She contends that while internal-led transitions in post-conflict societies are hampered by lack of resources, unresolved issues of power and sovereignty, violence and regional instability, legacies of colonialism, and external meddling, it is also the fault of kleptocratic local leaders, who engage in rent-seeking and govern with no boundaries, that condemn these societies to ongoing

\textsuperscript{114} Robert Jackson, \textit{Quasi-States}, pp. 40-7.
\textsuperscript{117} Ibid. p. 1004.
instability and underdevelopment. In such circumstances, local actors usually view the law-based system that is emblematic of the Weberian state as an obstacle to their parochial interests. For this reason, internal led state-building usually relies on superior force, which often produces weak institutions that fail to curb the raw power tendencies of factional leaders.

The external led model of state-building presents a different route. It demands a quick transition from the failed juridicial state to a Weberian empirical state. According to Ottaway, this type of transition ‘is a short-cut to the Weberian state, an attempt to develop such an entity quickly and without the long, conflictual and often brutal evolution that historically underlines the formation of states.’ This implies that external led state-building bypasses the consensus-building process of state formation. Instead the target society presumably delegates this responsibility to international actors who will address the underlying and nuance causes of state failure, while offering a variety of institutional solutions that are expected to curb raw power and channel it through legitimate political means for development.

Since the end of the Cold War, however, the international community’s approach of rebuilding and developing state entities has shifted from the early dominant strategy of ‘Liberalization First’ to the current and more accepted strategy of ‘Institutionalization First’. The Liberalization First strategy, which constituted the dominant paradigm of developmental policy in the immediate aftermath of the Cold War, sees the promotion of democratization and the establishment of market economies (the so-called Washington Consensus) as the key guarantors of peace and

\[118\] Ibid.

\[119\] See, for example, David Chandler, Empire in Denial.
stability in societies recovering from conflict. Proponents of this strategy believe that weak states, particularly war-torn states, are perennially underdeveloped and violent societies because they lack transparent democratic governance structures and economic freedom. The focus of this state-building strategy is on crafting a progressive constitution that promotes civil and political liberties, promoting effective public administration, good governance practices, and comprehensive economic reforms, and holding free and fair elections at the national level, which will also serve as the exist strategy for the international community. The strategy is predicated on the familiar ‘democratic peace thesis’ in international relations, which assumes that democratic states rarely go to war with one another, thereby creating a ‘separate peace’. Policymakers and development agencies have transposed this theory of international relations into a democratic domestic peace thesis, which assumes that political liberalization would inevitably shift societal conflict away from the battlefield into a peaceful arena of democratic politics. It is also informed by


121 Several studies have cited evidence that exporting the institutions and practices of democracy to non-democratic societies can enhance domestic peace. Examining the relationship between liberal polities and intra-state, or civil, violence, R. J. Rummel, for example, found that democracies are considerably less likely than non-democracies to experience a broad range of domestic disturbances, including ‘revolutions, bloody coups, political assassinations, anti-government terrorist bombings, guerrilla warfare, insurgencies, civil wars, mutinies, and rebellions.’ Joshua Muravchik also maintains that spreading democracy is not ‘only conducive to peace among states but it can be the key to resolving bloody battles within them.’ R. J. Rummel, Power Kills: Democracy as a Method of Nonviolence (New Brunswick, N. J.: Transactions, 1997); Joshua Muravchik, ‘Promoting Peace Through Democracy,’ in Chester A. Crocker and Fen Osler Hampsen, with Pamela Aall, (eds.), Managing Global Chaos: Sources of and Responses to International Conflicts, (Washington D.C.: United States Institute of Peace Press), pp. 573-85.
assumptions about the pacifying effects of market economics and economic interdependence – that is, peace by trade.\textsuperscript{122}

However, a growing number of analysts have raised legitimate questions and concerns over the pacifying effects of the Liberalization First strategy in post-conflict societies. In particular, Edward D. Mansfield and Jack Snyder argue that states undergoing a transition from authoritarianism to democracy are more prone to war than established democracies and non-democracies because incumbent authorities and political opportunists in such states often employ belligerent nationalism in order facilitate their political objectives.\textsuperscript{123} Building on this thesis, both authors recently argue that most democratizing regimes are developing their democratic institutions in the wrong order — what they refer to as ‘incomplete democratizing’ — and that politicians (both traditional elites and emerging political parties) have incentives to pursue bellicose aims to garner support while exploiting the newly established weak institutions of government, which typically lack mechanisms of accountability.\textsuperscript{124} Others have reached similar conclusions on the harmful effects of rapid liberalization.\textsuperscript{125} For instance, Roland Paris argues that premature liberalization typically creates weak central governments, unstable power-sharing coalitions, bad civil society, ethnic entrepreneurs, and high-energy mass politics in postwar societies.

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that generally do not have the political institutions to contain and channel the destabilizing effects of liberalizing reforms.\textsuperscript{126}

As a reaction to the various shortcomings of the Liberalization First strategy, the international community steadily gravitated towards the strategy of Institutionalization First, or what Paris refers to as ‘Institutionalization Before Liberalization.’\textsuperscript{127} The primary focus of this strategy is on the establishment and strengthening of legitimate and effective institutions on the national level. It essentially involves an externally driven top-down approach that focuses on the creation of the formal apparatus of the state, including executives, legislatures, bureaucracies, courts, police, and so on. The strategy usually involves developing and strengthening the core functions of the modern state:

- **Security function.** This concerns reforming the security sector. It begins with international actors establishing programs for demilitarizing, demobilizing, and reintegrating warring combatants into civilian life. It also involves building and/or reforming the police and military institutions. The task of securing external borders and fighting organized crime and violence by small-armed groups is also a top security priority. Increasingly, the security function expands to include the formation of border guards, intelligence services, customs enforcement, corrections system, ministries of dense and justice, and so on.

- **Rule of Law function.** This involves, among others, crafting a new constitution (or amending the existing one) and new elections laws; building and reforming the judicial system and the civil administration; promoting human rights and the protection of minorities; and establishing mechanisms to combat government corruption.

\textsuperscript{126} Roland Paris formulates his thesis based on the findings of Samuel Huntington’s *Political Order in Changing Societies* (New Haven, Conn.: Yale University Press, 1968). According to Huntington, modernization and development strategies in developing states in the 1960s had dislocating effects on these societies. He argued that when societies face a gap between rising demands for broad participation in politics and inadequate institutions to manage and channel these popular demands, political decay is likely to occur. Roland Paris, *At War’s End*. See also, Karl W. Deutsch, ‘Social Mobilization and Political Development.’ *American Political Science Review*, Vol. 40, No. 3 (September 1961), pp. 493-514.

\textsuperscript{127} Roland Paris, *At War’s End*, p. 211.
- **Welfare function.** This entails immediate relief measures to address internally displaced peoples, returning refugees, and other persons affected by the war. It also demands considerable resources to rebuild the infrastructure of the territory in question. Moreover, it includes immediate macro-economic measures that address the country’s currency, expenditures, inflation, and other conditions that make it conducive for foreign investment. The welfare function also includes a myriad of reforms that address areas such as banking systems, commercial codes and the creation of a tax administration.

The Institutionalization First strategy is predicated on several core assumptions. First, like the Liberalization First strategy, the strategy assumes that any society, regardless of the local context, can achieve this transition if they strictly follow the international agenda. Second, if the right institutions are introduced at the state level and are applied in the right sequence, external actors can orchestrate a successful transitional process by building the institutional foundations of the modern state. While building towards a market democracy is the ultimate end goal of this approach, external actors should first focus on establishing and strengthening the state’s monopoly of the use of force.\(^{128}\) The assumption here is that if the state is unable to perform the essential task of security, sustainable development in other sectors of governance is unlikely. Moreover, the introduction of political and civil rights will likely mean nothing in post-conflict environments that are not secure. A final assumption of this strategy is that the knowledge about organizational structures, about public administration, and about the strengthening of institutions is transferable.\(^{129}\) This is based on the belief that once political institutions are established, a process of collective learning will occur, altering the behavior of local actors as they habitually interact with the newly established public institutions.


\(^{129}\) See Francis Fukuyama, *State Building.*
will in turn validate these institutions, thereby enhancing their capacity to govern effectively. As Ottaway observes:

Early institution-building with major foreign involvement is an extremely intrusive social engineering approach: the international community devises a model for the reconstructed state, builds its component parts and hopes that, after being forced to adhere to the model for long enough, the country will accept it and respect it without supervision. It is a procrustean approach: the model is given, and the country will be pushed and pulled to conform to it. People will be taught to transfer their allegiance from the existing regional, ethnic or religious leaders or armed group to new national institutions; if they resist, they will be forced to conform. Competing factions will be forced by the international presence to accept the verdict of elections. Citizen will be taught to accept new national symbols, devised by outsiders if they cannot agree among themselves.¹³⁰

Perhaps the most effective way of understanding the assumptions that underlie contemporary international state-building is to compare it to the modernization programs during the Cold War. Indeed, state-building was a crucial aspect of the modernization or developmental policies of the post-1945 era, in which the U.S. government and a variety of international, non-governmental, and private business organizations were collectively involved in the task of building viable and effective governments of developing nations in the Third World.¹³¹ Modernization policies were seen as a strategy to address the uncertainties of a new international system and with it, the proliferation of non-Western states that were recognized by a regime of negative sovereignty. This prompted the West to find new ways of controlling, stabilizing, and governing this new system. The goal of modernization programs were thus twofold: the achievement of the first goal, to develop stable and dependable market democracies in the Third World would realize the second, to ensure security

for the First World. In a very similar way, contemporary state-building projects are seen as a strategic response to the proliferation of weak and failing states that characterizes the new world order that emerged in the post-Cold War period. Likewise, Western forms of political and economic organization are treated as a panacea for the instability of the developing world while ensuring the security interests of Western countries.

Modernization theories assumed that development towards modernity is a natural and universal process. Theorists postulated that all societies were able to move through a set of linear stages: from traditional societies to modernizing ones to modernity. Traditional society was characterized as a backward existence: economically, it is underdeveloped and inefficient; politically, it is hierarchical and repressive; and socially, it is illiterate, impoverished, dogmatic and driven by a culture of fatalism. Modernity, on the other hand, was defined in opposition to traditional society. It identified the Western – especially the American – model of political, economic, and cultural development as the summit of human development. Such societies were characterized in terms of their generation of wealth, respect for freedom, education, equality and opportunity, and cosmopolitan values.

While modernization theorists viewed modernity and traditional societies as relatively stable systems, the period of modernization itself, by contrast, was

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considered inherently unstable. Samuel Huntington in the 1960s argued that the political and economic transformation of a traditional society to a modern one is accompanied by sweeping social changes (e.g., increased levels of urbanization, industrialization, and literacy) that disrupt traditional mechanisms of social control and create new tensions and demands that produce ‘political instability and disorder’ in developing states. In order to control and mitigate the disorderly nature of such a transformation, early modernization policies posited the strategy that non-Western societies required strong charismatic leaders, single-party systems, and effective bureaucracies. This meant that mass political participation and political pluralism were interpreted as dangerous to a country’s development. Modernization had to come before democratization. The state needed to be unchallenged politically and led by a benevolent elite who would resist demagogy and prevent revolution. In addition, it was assumed that modernization would be facilitated by the creation of a single class of educated bureaucrats who would later implement a bureaucratic model of development that promoted governmental efficiency and rational policies. The promotion of rapid national development was also grounded in heavy state involvement in the markets: ‘this ranged from dual exchange rates, tariff barriers and the subsidization of petrol and staple foods to the attempt to provide education and healthcare and a range of the social services, not to mention land reform and the

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136 Ibid. p. 5. Edward Shils also described the modernization process as a tumultuous period that exposed dangerous gaps in society between the rich and poor, the educated and uneducated, the modern and traditional, the cosmopolitan and local, and the rulers and the ruled. See Edward Shils, *Development in the New States.* (Gravenhage, Netherlands: Mouton & Co., 1962), p. 30.
expansion of military establishments.'\textsuperscript{138} Finally, the model assumed that the masses of such societies would be transformed through the introduction of modernized technologies that would connect them to the First World; it was postulated that introducing the social norms of a modern society would in turn cultivate a modernized culture in the Third World.

However, modernization programs began to wither away during the apex of the Cold War, as political observers and scholars increasingly scrutinized the Vietnam debacle and the development strategy of the US. The conventional wisdom that developing states needed strong leaders, one-party systems, and a large measure of state intervention to put their economies on track to development, overestimated the administrative and financial capacity of a majority of nation-states in Asia, Middle East, Africa, Oceania, and Latin America. The results of modernization policies were raising levels of foreign debt, bloated and ineffective bureaucracies, corrupt elites, and a string of charismatic leaders that turned into predators and dictators. Moreover, according to Beate Jahn, modernization projects managed to achieve exactly the opposite of their intended objectives: ‘Instead of turning Third World countries into liberal market democracies and thus adding to American [and Western] security, it led to widespread radicalization and questionable security.’\textsuperscript{139} The failures of modernization, however, were often blamed on the traditional political cultures of the Third World rather than on the underlying assumptions of the theories themselves. For instance, as Lucian W. Pye once suggested, ‘It is because of deeper problems of


\textsuperscript{139} Beate Jahn ‘The Tragedy of Liberal Democracy (Part I)’, p. 89.
motivation that many transitional people [of the Third World] seem so often to be superficial in their commitments and opportunistic in their calculations.\textsuperscript{140}

It is clear that modernization policies share many of the same core assumptions that underlie contemporary international state-building projects.\textsuperscript{141} These parallels include the following:

- Both development models see Third World countries as inherently backwards in all respects. Modernization theorists viewed developing societies as economically inefficient, politically hierarchical and repressive, and culturally fatalistic. Likewise, state-building projects regard non-Western states as economically underdeveloped; politically fraught with bad leadership, nepotism, and corruption; and culturally characterized by militarism, hyper-nationalism, and fundamentalist ideologies that are inimical to Western norms.

- Modernization and external state-building approaches view Western styles of political (democracy) and economic (market capitalism) organization as the highest point of development and as morally and politically superior to alternative systems. Both see Western notions of governance and economics as models of emulation for all other states.

- Both development projects regard the Western democratic state as the universal end goal of a natural process of evolution that once initiated, is ‘self-perpetuating’.\textsuperscript{142} Thus both assume that any society is able to achieve this goal regardless of local contextual conditions. In turn, non-Western states are treated as ‘black boxes’ that are devoid of any personality and important local attributes, suggesting that historical, cultural or political factors have no impact or decisive role in the process and prospect of institutional development.

- In the same way that modernization policies envision development as a linear and sequential process that moves from traditional to modernization to modernity, contemporary models of international state-building view development as a process that moves from autocracy to institutionalization to democracy. Both regard the transitional stages of modernization and institutionalization as volatile periods that necessitate authoritative


\textsuperscript{142} Ibid. p. 15.
structures (e.g., strong charismatic leaders or one party state rule and international administrators and military forces respectively) to mitigate the turbulent effects of large-scale social change. In effect, both projects constitute apolitical approaches to development that discourage mass political participation, popular consensus building, or a positive process of democratization and instead focus on the administrative aspects of rebuilding states.

The most significant difference between the two models is the role of the sovereign state in the developmental process. In the post-1945 era of decolonization, there was an overall consensus among modernization theorists that state-building could only be accomplished if the process depended on state sovereignty and political solutions decided largely by local actors. Development towards modernity was thus not seen as an external-driven process, but one that was predicated on the state as the pivot for all programs of social and economic development. In contrast, today’s international state-building deliberately marginalizes the domestic political sphere and demands more external regulation. It assumes that locally derived political solutions are likely to be problematic due to either the incapacity of local institutions to formulate such solutions or the narrow and self-servicing interests of domestic elites. Nonetheless, does the fact that international state-building shares many of the same core assumptions as modernization policies of the past, suggest that the international community is currently promoting a failed policy in post-conflict societies? Or does the intrusive role of international state-builders make the difference between success and failure? Both questions will be explored further in Chapter 5.
Assessments

This chapter examined the concepts of international administration and state-building. The objective was to clarify each concept and establish a theoretical framework for which to examine the activities of territorial administration and state-building. International administrations can be conceptually distinguished from other contemporary international interventions based on the degree of political authority bestowed to Transitional Administrators and the scope of responsibilities for the functioning of a war-torn territory. By virtue of their extensive and invasive powers, international administrations effectively become a quasi-sovereign authority, giving them the unique ability to control and shape the trajectory of the transitional process. Such powers reflect the international community’s growing acceptance of deploying invasive interventions on the basis that civil conflicts demand a more multi-functional response and that complex and multi-dimensional interventions necessitate an overall political framework that can coordinate and harmonize the plurality of diverse activities on the ground. It is also a reflection of the international community’s basic distrust of the domestic politics of non-Western societies.

The chapter also discussed the various ways in which international administrations derive their legitimacy from a variety of sources of authority: first, from the consent of the main warring parties to the international presence; second, through the delegation of such authority from an important legitimating body, such as the UN Security Council; third, by the acceptance of liberal norms (e.g., human rights, rule of law, democratic governance, and free markets) that constitute the interests and identity of the West; and fourth, by the governance ability of
international administration to provide political goods and services to target societies (e.g., security, the rule of law, and welfare). The first two sources of legitimacy are procedural, and in most cases are an automatic given once an international administration is authorized and deployed on the ground. The last two, however, are contingent upon the actual behavior of the international administration. The analysis suggested that neither source of authority provides sufficient legitimacy on its own right, but taken together they may help to establish a more durable and legitimate form of international authority.

The chapter also showed that international administrations employ a technocratic approach to governance. In some measure this is a corollary of the highly bureaucratic nature of international administrations and their tendency to view non-Western conflicts as essentially non-political acts of violence. In turn, international administrations deal with these allegedly apolitical conflicts by overseeing and regulating their transitions, while simultaneously presenting themselves as purely depoliticized interventions. As governmental authorities, international administrations base their effectiveness on claims of expertise, neutrality, and efficiency. The technocratic approach also underlies the state-building policies of international administrators, who tend to see state-building as a top-down technical or administrative process rather than as a process that involves popular consensus-building. The shift in state-building strategy from the ‘Liberalization First’ to the ‘Institutionalization First’ during the 1990s revealed the international community’s inclination to solve the problems of conflict-ridden territories with institutional solutions that mainly focus on developing and strengthening the administrative
capacity, or empirical sovereignty, of the territory in question. The technocratic nature of contemporary state-building projects share many of the same assumptions that inspired earlier modernization programs, which viewed local politics as obstacles rather than as part of the solution, and treated development as a sequential process through the introduction or manipulation of institutions. These issues inform the analysis in the case studies in Part II.
The Role of Contextual Factors

This chapter contributes to the theoretical understanding of international administrations and state-building by examining the role of contextual factors. Contextual factors are defined here as objective conditions that can affect the process or outcome of international interventions. They can be divided into two broad subcategories: internal and external contextual factors. Internal contextual factors refer to conditions that are endogenous to the target territory, such as the territory’s cultural, political, economic, and historical characteristics; the local root causes of the conflict; the local capacities for change; the levels of hostility and factional capacities; the size of the territory and its population; and the disposition of the local population towards the international presence. Conversely, external contextual factors refer to conditions that are exogenous to the target territory, including, for example, the regional activities of a territory’s neighborhood, the geo-politics of interested states to the conflict, and international norms.

Analyzing international administrations through a contextual lens is a beneficial approach because every territorial crisis generates its own unique circumstances and challenges. This is particularly important given that the technocratic approach employed by international administrations tends to treat target territories as if they have no contextual attributes. As discussed in the previous chapter, technocratic interventions ignore or are based on a very limited understanding of the contextual factors of each case and the role these factors play in shaping the outcomes and legitimacy of externally driven transitions. Contextual factors can also reveal the level
of difficulty of particular missions. In doing so, a contextual analysis can provide
greater insight into the explanatory power of international-led transitions, and, in turn,
develop not only prospective policy forecasts of the main case studies under
investigation, but also the likelihood of success or failure for future situations of
international transitional governance.

The following chapter is divided into three sections. The first section is concerned
with clarifying the theory of context in international relations. It discusses the
possible relationships between entities and their environments and the mechanisms
that connect them. To do that, this study utilizes Gary Goertz’s conceptualization of
context as three broad meanings: context as cause, context as barrier, and context as
changing meaning. The chapter then examines the theory of context within the
broader discussion of international intervention. It develops a comprehensive list of
different internal and external contextual factors and formulates a set of ecologies that
distinguishes between relatively easy transitions from relatively difficult transitions.
The last section examines the context of international norms and the various
normative or rule-based environments in which international administrations are
nested. It looks at the interplay of norms and the various security frameworks that
define the interwar period, the Cold War period, and the post-Cold War period. Each
framework constitutes a set of divergent set of rules, values, and assumptions that
influences the behavior of international actors operating within it. The section
specifically focuses on the role of sovereignty as an institution of competing norms
and discusses the notion of sovereignty as responsibility that was articulated in the

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This chapter makes two basic postulations. First, it is argued that the success of an international administration owes as much, if not more in some cases, to a careful evaluation of the contextual factors on the ground than to the operational authority and capacities of a mission. At the same time, however, it is hypothesized that the extent to which international administrations can shape the objective conditions on the ground should not be overlooked. While the outcome of such missions is largely shaped by these factors, it is asserted that not all contextual factors serve as insurmountable barriers. A second postulation is that the norms associated with sovereignty as responsibility – that is, democracy, human rights, the rule of law, and market economics – influence the policymaking of international administrations that engage in state-building. These norms serve as a type of ‘blueprint’ for international administrations as they attempt to rebuild war-torn societies. The analysis suggests that realist approaches to understanding international intervention are unable to adequately explain the policymaking of international administrators, who strive to build empirical statehood in war-torn territories that have never experienced self-rule.

The Theory of Context

In the early days of the IR field, the level-of-analysis problem was a dominant part of the conceptual tool kit through which scholars used to explain and understand international political behavior. Realists, for example, saw a world of individual states

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as actors; others preferred to focus on the individual personalities of great leaders, whose beliefs and preferences determine how nations behave; and still others like neo-realis ists emphasized the importance of basic power structures of the international system. However, the dominance of state-centric realism and neo-realist modes in the field paid nominal attention to the notion that the choices of decision makers reflect the various environments in which they are situated. For many realist and neo-realist thinkers, the notion of environmental influences is confined to system structure (either in its overall ‘anarchic’ condition or in terms of the distribution of military capabilities).  

It was not until the 1980s that postmodernism and constructivist thought began making inroads in the field and experimenting with the new models that focused on the agent/structure problem, a kind of ‘mutation of the old levels-of-analysis problem.’ The agent/structure problem focuses on the ‘individual agent’ s perceptions of their environment including structures [that] influence their actions, which in turn affect the environment/structures in which they are engaged, and then environment/structures in a giant feedback loop influence the perceptions and behaviors of individual agents.

Two theoretical frameworks that offer different visions of the entity/environment or agent/structure problem are rational actor models and diffusion models. Rational actor models explain certain political phenomenon by focusing on individual

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147 Ibid.
decision-makers, whose beliefs and preferences based on a calculus of maximizing pleasure and minimizing pain determines how actors behave.\footnote{\textsuperscript{148} It should be noted that the rational actor model does not imply that actors have an unlimited set of choices to pick from. Quite the contrary, rational actors are constrained by their environments and do not have boundless choices or courses of action. For proponents of the rational actor model, see Bruce Bueno de Mesquita, ‘The Contribution of Expected-Utility Theory to the Study of International Conflict,’ in Manus Midlarsky (ed.) {	extit{Handbook of War Studies}} (Boston: Unwin Hyman, 1989); and Bueno de Mesquita, ‘Toward A Scientific Understanding Of International Conflict: A Personal View.’ \textit{International Studies Quarterly}, Vol. 29 (1985), pp. 121-36.} Conversely, diffusion models emphasize the important role of environmental or structural-level variables in determining how states interact with one another. Diffusion theorists look at the local environments and histories of states as important factors in explaining conflict or others types of international phenomena.\footnote{\textsuperscript{149} Works on diffusion theory include, for example, Harvey Starr and Benjamin Most, ‘The Substance and Study of Borders in International Relations Research,’ \textit{International Studies Quarterly}, Vol. 20 (1976), pp. 581-620; and Harvey Starr, ‘Democratic Dominoes: Diffusion Approaches to the Spread of Democracy in the International System,’ \textit{Journal of Conflict Resolution}, Vol. 35 (1991), pp. 356-81; Paul Diehl, ‘Contiguity and Military Escalation in Major Power Rivalries 1816-1980,’ \textit{Journal of Politics}, Vol. 47 (1985), pp. 1203-11; Paul Diehl, ‘What Are They Fighting For? The Importance of Issues in International Conflict,’ \textit{Journal of Peace Research}, Vol. 29 (1992), pp. 333-44.} The theory of context presented in this chapter, however, is about the interaction or relationship of the two frameworks rather than arguing for structural determinism or methodological individualism. For example, contextual theories focus not only on the degree to which the system structure \textit{determines} individual state behavior, but also how much room the system structure \textit{permits} individual differences, and how individual-level actors \textit{learn} about their environment from constant contact with it, resulting in new opportunities and dramatic change.

In studying contexts, it is useful to look at the agent-structure model proposed by Benjamin Most and Harvey Starr. Both put forward a system-level variable
‘opportunity’, which interacts with the individual-level variable ‘willingness’. The variable of opportunity refers to the environment of decision-making entities that provide possibilities and constraints, and the potential costs and benefits that influence decision-makers. It requires three related conditions: first, an environment that permits interaction between states; second, states that possess sufficient resources or capabilities and political will to carrying out certain types of behavior; and third, decision-makers who are aware of both the range of interactions and the extent of capabilities available to and between them. Opportunity, then, is the ‘possibility of interaction’ because the objective conditions on the ground may be perceived in varying ways by different decision-making entities. Willingness, on the other hand, is concerned with the goals and motivations of decision-makers, and concentrates on why decision-makers choose one course of action over another. ‘Willingness is therefore based on perceptions of the global scene and of domestic political conditions… [and on the choices of decision-makers that are derived] from calculations of the costs and benefits of alternative courses of action.’ Together, the interaction between opportunity and willingness contributes to understanding how a given behavior occurs.

Gary Goertz’s work on context in international relations is similar to the theoretical framework proposed by Most and Starr. However, Goertz contends that the notion of context can create multiple relationships between opportunity and

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150 See Benjamin Most and Harvey Starr, *Inquiry, Logic, and International Politics*. Most and Starr assert: ‘We have used opportunity and willingness (which can also be interpreted as structure and decision or macro- and micro factors) as a ‘pre-theoretical’ structure that allows us to link context/contextual, environmental or structural variables to decision-making/process variables.’ p. 20.
152 Ibid.
153 Ibid.
willingness. He identifies a number of ways – or what he refers to as ‘modes of context’ – in which individuals and environments interact: context as cause, context as barrier, and context as changing meaning. Context as cause is the most common mode of analysis. Cause usually refers to some state-of-affairs, or an act at any level of analysis, that contributes to a sufficient condition for the outcome. According to Goertz, context as cause is seen as a ‘default category’, where context is neither necessary nor sufficient, but in combination with other factors makes certain outcomes more or less likely. A second contextual mode that Goertz raises is context as barrier. Context as barrier is entirely different from context as cause: whereas the former prevents things from occurring, the latter makes things happen. This distinction has important theoretical and methodological implications because contextual barriers are negative forces that prevent or counteract change, while context as cause is normally seen in a positive sense of producing change. Barriers can be tangible factors, such as the geographical features of a state, as well as intangible factors like international norms and regimes. A third contextual mode is context as changing meaning. Here context is concerned with how relationships hold under different specific conditions. Goertz argues that this is perhaps the most ‘subtle contextual mechanism’ because the relationships between cause and effect can vary depending on the surroundings in which behavior occurs. Thus, the correlation between two variables may be strongly positive during a particular time period, but negative in another spatial-temporal domain. Put differently, ‘the variables in the

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154 Gary Goertz, *Contexts of International Politics*, p. 15.
155 Ibid. pp. 3-4.
156 Ibid. 3
157 Ibid. p. 23.
bivariate relationship are right, but the relationship is not constant (i.e., the $\beta$’s vary).\textsuperscript{158} Goertz asserts that context as meaning can be best understood if one makes the analogy that ‘just as words mean different things when uttered in different sentences or social situations, so can the relationship between cause and effect vary according to the surroundings in which behavior occurs.’\textsuperscript{159}

For the purpose of this study, context as barrier presents an interesting model for examining international administration and state-building because it allows us to understand the decision-making of international authorities and to conceptualize the challenges and obstacles they confront when administering and rebuilding societies under different environmental conditions. The following section further examines Goertz’s formulation of context as barrier.

\textit{Context as Barrier}

As stated above, barriers are negative forces that prevent decision-makers from achieving desired goals. Barriers may be tangible or intangible constraints. Barriers can also exist at different levels of analysis, whether a systems-level variable or domestic-level variable. In many instances, barriers are structures of some type (i.e., a domestic political system, a regional organization, or an oil market) and can be ‘a conjunction of forces’ that acts in a relatively cohesive fashion to frustrate the desires of decision-making entities. Figure 2.1 shows how barriers prevent the achievement of goals, leading to some other less desirable outcome. In other words, ‘a factor X is barrier to another factor Y if and only if X’s existence contributes to the non-

\textsuperscript{158} Ibid. p. 15.
\textsuperscript{159} Ibid. p. 4.
existence of Y.\textsuperscript{160} Most and Starr would interpret this as a situation in which decision-makers have the willingness but not the opportunity to achieve a certain outcome.

\textbf{Figure 2.1 Context as barrier}

\begin{figure}[h]
\centering
\begin{tikzpicture}
\node[draw, rounded corners] (individual) at (0,0) {Individual};
\node[draw, rounded corners] (goal) at (3,1) {Goal};
\node[draw, rounded corners] (outcome) at (0,-1) {Outcome};
\node[draw, rounded corners] (barrier) at (1.5,-0.5) {Barrier};
\draw[-latex] (individual) -- (barrier);
\draw[-latex] (barrier) -- (outcome);
\draw[-latex] (barrier) -- (goal);
\end{tikzpicture}
\caption{Context as barrier}
\end{figure}

Source: Gary Goertz, \textit{Contexts of International Politics}, p. 21.

Context as barrier draws upon the ecological theory of Harold and Margaret Sprout and their general concept of ‘environmental possibilism’ discussed below.\textsuperscript{161} The Sprouts rejected the notion that nation-states are utterly constrained in their behavior by environmental factors. They argued that in order to truly comprehend international political behavior, one must examine the uneven distribution of non-human as well as human resources.\textsuperscript{162} Like theories of context, the Sprouts argued for a more holistic view of the international environment that takes into account both its

\textsuperscript{160} Ibid. p. 21.
\textsuperscript{161} Harold and Margaret Sprout, \textit{An Ecological Paradigm for the Study of International Politics} (Princeton, NJ: Center for International Studies, 1968).
\textsuperscript{162} Ibid. p. 21.
physical and non-physical features. They viewed the international environment, or the operational milieu, as a multi-dimensional system and posited that the perceptions held by political decision-makers of their environments, what they refer to as the psychomilieu, as well as the environmental conditions themselves, were the objects of study and analysis. The research of the Sprouts is therefore integral in helping us to understand the decision making of actors and the perceptions they hold of their environments. They accomplished this by providing a framework, or an ecological triad, that is composed of three major elements: (1) an actor, or entity, of some sort; (2) an environment that surrounds the entity at any level of analysis; (3) and the entity-environment relationship, which translates into the outcome of actions that entities pursued in the environment.

Their research also provides great utility in linking actors or entities to their environments, thus ameliorating our understanding of ‘how and why various environments constrain, limit, or enable what entities or actors are able to do and what they are likely to do.’ They presented three alternative models to explain the entity-environment relationship: environmental possibilism, where the environment is conceived as a set of constraints on what is actually permissible for the entity or actor to do in the environment; environmental probablism, where the environmental constraints and possibilities make certain behaviors more or less likely; and cognitive behaviorism, where the entity is linked to the environment through the perceptions that actors hold of the environment. This last model is noteworthy because it suggests

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164 Harold and Margaret Sprout, An Ecological Paradigm for the Study of International Politics, p. 4.
that the failure of political actors to correctly discern the operational milieu can lead to potentially disastrous consequences. This is line with Alexander Wendt’s work, who similarly focused on the way decision makers of states perceive their environments, which attributes for their actions and the nature of the international system.\textsuperscript{165} While the environment is considered ‘objective,’ readings of it may differ and have important consequences, including drastic ones. For instance, one could argue that the United States overestimated its military capabilities to export democracy in Iraq after the defeat of the Baathist regime in March 2003, resulting in tremendous costs in terms of blood and treasure and a resultant security crisis that has dragged the American military into a quagmire and violent counter insurgency. In fact, some observers were bewildered by the Bush administration’s memory loss of how to engage in state-building and democracy promotion in light of America’s extensive involvement in state-building projects during the 1990s. Nonetheless, the mission was launched in a country located in a volatile region of the world, whereby neighboring autocratic countries are vying to exert some type of influence over the weak and ineffectual new Iraqi regime. Compounding matters is the fact that Iraq itself did not begin with a set of endowments that are anticipated by democratic theory (i.e., sufficient levels of economic development, stable political institutions, a civic political culture, among other factors). For this reason, the perennial task for decision-makers, to link the Sprouts analysis, is to narrow the gap between the perceived and the real environment.

\textsuperscript{165} Alexander Wendt, \textit{Social Theory of International Politics} (Cambridge: Cambridge University Press, 1999).
Barrier models thus emphasize that decision-makers can narrow the gap between the perceived and the real environment. According to Goertz, such models assume that actors have goals that are relatively constant, and by learning about the barriers ‘through tests which are sometimes punished and hence not repeated, while others are successful and hence rewarded and imitated,’ actors learn ways to achieve their goals by way of trial and error and observation. Such a process may lead to the buildup of a positive learning curve that can shrink the gap between the perceived and the real environment. Goertz also contends that once an actor has challenged her environment, such contact in turn may influence the preferences of other actors operating in the same environment. (This last point is one of the major tenets that diffusion theorists emphasize.) Accordingly, as pressure accelerates, and other actors contribute to this pressure, barriers eventually breakdown and opportunity for change emerges.

In terms of international relations, this dynamic learning process takes place as state actors learn by watching other states or governments test barriers, as well as by their own past experiences. ‘States react,’ Goertz asserts, ‘both to the barrier and to other states in the same situation vis-à-vis the barrier.’ The rate in which each nation learns how to respond to a barrier depends on its own domestic political characteristics, which can vary drastically in terms of pressure on the barrier. As a rational actor, State A has goals of cooperation or power maximization. However, a barrier blocks State A and limits its options. Yet State A has the capabilities and

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166 Gary Goertz, _Contexts of International Politics_, p. 106.
167 Ibid. p. 92.
168 Ibid., p. 94.
political will to challenge the barrier. State B, on the other hand, remains passive (perhaps because it does not have the capabilities and will to challenge the barrier on its own) and actively observes and learns from State A’s contact with the barrier. As a result, both State A and State B learn facts about the likelihood and costs of success. At this juncture, the barrier and the ‘lessons learned’ reinforce each other to maintain the status quo, but overtime as the barrier weakens as a result of pressure from states like A, State B’s behavior also changes as new knowledge about barrier changes becomes available – in other words, the barrier model emphasizes how changing opportunity structures can cause behavioral changes of the units operating within it. State B thus begins to imitate State A because it has learned that a desirable goal was achievable at a now modest cost. As pressure for change accelerates, the barrier will erode and eventually breakdown, presenting new opportunities that are quickly seized upon by the interested governments.\(^{169}\) As a result, State B is led to choose a new behavior within the confines of serving its own national interests.

Structural theories of neo-realism tend to downplay domestic factors. However, barrier model suggests that state behavior also arises from domestic political characteristics, public opinion, and changes in foreign policy positions as well as from developments outside the effective control of governments, such as those in markets and technology. Considerations of only system structure or just the internal workings of a state miss the mark, however. Rather, contextual models emphasize the interaction between domestic-level variables and system-level variables: the joint condition of domestic policy and environmental changes characterizes the system.

\(^{169}\) Ibid. p. 95.
Contextual Factors and International Administration

Applying contextual models to the study of international administration and state-building provide an interesting way of analyzing the interactive relationship between intervening actors and their environments. Such an analysis will establish a set of important and differing ecologies that international authorities confront when governing and rebuilding post-conflict societies. In turn, this will help to establish a set of expectations about political stability in territories that are subject to territorial administration, as well as additional sources of political instability during international led transitions.

Like all decision-making entities, international administrations have certain goals they desire to achieve. At the same time, they usually exhibit the willingness and capabilities to pursue their goals in various war-torn environments. As indicated in the previous chapter, these interventions are typically vested with broader responsibilities and stronger political mandates than conventional peacekeeping missions. Moreover, they are by and large equipped with substantial human (military and civilian personnel) and financial resources than the average peacekeeping mission. Indeed, these missions represent some of the boldest examples of post-conflict intervention ever attempted by the international community.

However, barrier models inform us that objective conditions on the ground can counteract attempted changes by intervening agents, thereby shaping the outcomes of interventions notwithstanding the amount of resources and political will a mission might have. Conditions that affect the process or outcome of international interventions have been conceptualized here as contextual factors. Contextual factors
are numerous and diverse and can relate, for example, to the aspects of the conflict, the parties involved, or the manner of external management itself. As indicated earlier, contextual factors can be divided into two broad sub-categories: internal and external factors. Whereas internal contextual factors refer to conditions that are endogenous to the target territory, external contextual factors refer to conditions or circumstances that are exogenous to the target territory. (Table 2.1 below shows a comprehensive list of both types of contextual factors.) Certain contextual factors stand out more than others when thinking about the type of factors that are conducive to territorial administration and likely to shape the new state’s ability to establish effective authority. Indeed, consideration of which contextual factors are more favorable to international administrations and state-building is a lot like thinking about democratic consolidation and the theories that inform democratic transitions.

In examining contextual factors that are endogenous to the target territory, for example, it is useful to conceptualize them around several dimensions: (1) pre-war factors, (2) conflict factors, and (3) post-conflict factors. Pre-war factors that particularly affect the transitional environment include a historical sense of national identity, pre-war levels of economic development, pre-war levels of effective state institutions, and prior experience in self-rule. First, a historical sense of national identity, that is, some degree of social solidarity, is important endowment that may prevent the inherently destabilizing nature of the transitional process from tearing a
Second, a territory’s pre-war level of economic development is crucial for the outcome of an international led transition. Industrialized territories

### Table 2.1 Contextual Factors: Key Internal and External Factors

<table>
<thead>
<tr>
<th><strong>Key Internal Factors</strong></th>
<th><strong>Key External Factors</strong></th>
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<tbody>
<tr>
<td>- Size and terrain of the territory and demographics</td>
<td>- International norms</td>
</tr>
<tr>
<td>- Type, amount, and location of natural resources</td>
<td>- Power structure of international system</td>
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<tr>
<td>- Strength of ethnic nationalism in the territory</td>
<td>- Economic competitiveness of the territory in the region</td>
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<td>- Political culture and traditions of target society</td>
<td>- Relationship of territory to its regional neighbors</td>
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<td>- Degree of societal and governmental corruption</td>
<td>- Stabilizing and de-stabilizing activities of the target territory’s neighbors</td>
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<td>- Militarization of the society</td>
<td>- Illicit and outside sources of revenue that sustain spoilers</td>
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<tr>
<td>- Pre-existing laws in the territory</td>
<td>- Domestic politics of intervening states involved in the international intervention</td>
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<tr>
<td>- Nature of the conflict that led to the intervention</td>
<td>- Ability of international community to sustain the intervention</td>
</tr>
<tr>
<td>- Devastating impact of the conflict on the population and infrastructure of the territory</td>
<td>- Speed and coordination of delivery of aid assistance</td>
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<tr>
<td>- Outcome of war (a decisive military defeat or a draw)</td>
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<tr>
<td>- Amount of human capital in the territory</td>
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<tr>
<td>- Strength of the middle class</td>
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<tr>
<td>- Presence of militias, warlords, or other spoilers</td>
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<tr>
<td>- Post-war levels of state capacity (i.e., capacity of governance, services, and security)</td>
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<tr>
<td>- Disposition of the local population towards foreign troops</td>
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<tr>
<td>- Presence of an indigenous crime syndicate or international criminal activity in the territory</td>
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<tr>
<td>- Type and scale of legal and illegal financial resources</td>
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with developed economies that boasted impressive GNP per capita prior to the outbreak of war are more capable of recovering from the devastating effects of the conflict. Such territories may retain their human, organizational, and social capital, which allows them to absorb foreign aid more effectively and take advantage of economic opportunities. Third, the differential endowment with effective state institutions is another critical variable that affects the transitional outcome. Territories that possessed an effective police force, judiciary, and civil service with which to govern offer international interveners valuable resources to work with during the transitional period. Finally, a meaningful history of self-rule in which territories can draw prior experience is also considered an important factor that affects the transitions of post-conflict societies.\footnote{See Barbara Walters, ‘Does Conflict Beget Conflict? Explaining Recurring Civil Wars,’ \textit{Journal of Peace Research}, Vol. 41, No. 3 (2004), pp. 371-88.}

Conflict factors consist of factors that relate to the type of conflict, the effects of the conflict on the territory and population, and the outcome of the conflict. There have been a handful of studies that have gauged the level of difficulty posed by certain conflict variables on peace operations.\footnote{See, for example, Barry Blechman, William Dunch, and William Stanley, \textit{Effective Transitions to Sustainable Peace} (Washington, D.C.: DFI International, 1997).} For instance, many scholars have argued that identity conflicts are more intractable than non-identity conflicts.\footnote{See, for example, Michael W. Doyle and Nicholas Sambanis, ‘International Peacebuilding: A Theoretical and Quantitative Analysis.’ \textit{American Political Science Review}, Vol. 94, No. 4 (2000), pp. 779-801; John Mearsheimer and Robert Pape, ‘The Answer,’ \textit{The New Republic}, Vol. 14 (1993), pp. 22-29; Chaim Kaufmann, ‘Possible and Impossible Solutions to Ethnic Civil Wars,’ \textit{International Security}, Vol.20, No. 4 (1996), pp. 136-75.} In terms of ethno-linguistic fractionalization, many empirical studies suggest that ethnically homogenous and very heterogeneous societies are more able to cooperate
in a peace setting than ethnically polarized societies.\textsuperscript{174} Scholars have also pointed to the duration of war and the level of destruction and human costs (deaths and displacements). The longer a particular conflict continues, the more resistant to outside intervention it will be: ‘Once violence becomes the norm, it is a norm that is exceedingly difficult to break.’\textsuperscript{175} Michael Doyle and Nicholas Sambanis argue that ‘the higher the human costs, the deeper the socio-psychological barriers to building peace.’\textsuperscript{176} Still, others have argued that the outcome of the conflict, meaning whether the war ended in a stalemate/comprise settlement or a decisive military victory, is one of the more significant explanatory variables in determining the degree of difficulty of a war. When conflicts do not end in a decisive military victory, all sides are capable of resuming the fight. Indecisive conflicts may also reflect the unhappiness of warring parties about the terms of a peace settlement, especially if imposed on them, and they create an uncertainty about who would win if another round of fighting resumed.\textsuperscript{177} Against this backdrop, assessments and important distinctions concerning the level of difficulty of the conflicts under investigation can be made.

Effective transitional governance is also contingent on the political dynamics of the post-conflict period. Post-conflict factors include the level of inter-factional

\textsuperscript{176} Michael Doyle and Nicholas Sambanis, ‘International Peacebuilding,’ p. 785. Others argue that the duration of a war, particularly if its long and drawn out, mitigates the difficulty for establishing peace in war-torn societies because of war weariness and exhaustion. See, for example, Caroline Hartzell, Matthew Hoddie, and Donald Rothchild, ‘Stabilizing the Peace After Civil War,’ \textit{International Organization}, Vol. 55, No. 1 (2001), pp. 183-208.
\textsuperscript{177} For this argument, see James Fearon and David Laitin, ‘Ethnicity, Insurgency, and Civil War,’ \textit{American Political Science Review}, Vol. 97, No. 1 (2003), pp.75-90.
hostility, each faction’s organizational coherency, and the disposition of the target society towards the international presence. Michael Doyle suggests that international interventions equipped with transitional authority must take into account ‘factional capacities’, meaning the number of postwar factions (few or many), the level of factional reconciliation or hostility among them, and the degree of factional coherency (that is, they do or do not follow the orders of their leaders). He postulates that the most ideal conditions for peace and political change is when factions on the ground are few, reconciled (or at least semi-reconciled), and coherent. Conversely, a worst-case scenario would entail many factions that are hostile and incoherent. One can also add to this the disposition of the local population and its leaders toward the international governing presence (whether they are cooperative or non-cooperative with internationals).

In addition to contextual factors that are endogenous to the target territory, conditions occurring outside of the borders of the territories under territorial administration play a significant role to successful implementation. External contextual factors can consist of systemic features, including the polarity of the international system, patterns of alignment, the distribution of power capabilities, and other geo-political considerations that may affect the ability and decision-making processes of intervening actors. Other factors can be conceptualized as global factors, which include the motivating reasons that prompted the international community to intervene in the first place and the levels of political will that interested states are

willing to expend. This, of course, reflects the domestic politics and public opinion of the states involved in these missions, who almost always seek to constrain troop levels, hasten the termination of the mission, and limit appropriations of development assistance to target territories. Regional factors can also play a considerable role as the target territory’s relationship to its adjacent neighbors and the region’s destabilizing activities influence the ability of intervening actors to avoid political challenges. Finally, international norms can act as barriers to action. The role of norms will be explored in more detail below.

The above attests to the importance of contextual factors and how they can play a significant role in shaping the outcome and even the legitimacy of an international led transition. Most contextual barriers are interconnected and mutually reinforcing, and any one of them, or in conjunction with others, can seriously set back economic and political development. They can also prevent or deter international actors from intervening in certain territories or from pursuing their full political objective in war-torn societies. It was no coincidence, for example, that the United Nations did not replicate its heavy footprint in the smaller territories of Kosovo and East Timor in Afghanistan after the US-led military defeat of the Taliban regime in the autumn of 2001. On the eve of the war, the country was the one the poorest places in the world, with little surviving infrastructure, hardly any government, and not much of an economy. Moreover, from the perspective of UN authorities, the country was seen as too large, its terrain too forbidding, and its population too divided by conflict and upheaval. Unlike the earlier example of the US’s perception of the operational milieu
in Iraq, the UN probably demonstrated a better ability of closing the gap between the real and perceived environment.

Contextual factors may also enable opportunities that permit outside parties to successfully implement their mandates. For instance, a local population that is not generally disposed to use violence against foreign occupiers gives the international community more leverage to govern and transform a target territory. At the same time, international actors learn from past experiences how to overcome some of the difficult obstacles and impediments that they repeatedly confront from mission to mission. For example, in post-conflict societies that are highly polarized between ethnic lines, the international community has learned overtime that different power-sharing mechanisms and various configurations of federalism are a more effective approach at reducing political tensions than majoritarian and unitary systems. International actors have also learned overtime that hostile regional neighbors can inflict further destabilizing effects on war-torn states by arming and funding spoilers or obstructionists. Drawing on the support of regional states during the peace process, however unruly they may be, has thus become a prudent and crucial measure for the successful implementation of a mission’s mandate. Yet, another example involves the problems associated with the multiplicity of actors engaged in large-scale international interventions, which often hamstring missions from achieving coordinated and uniform goals. International administrations are especially vulnerable to this problem, as the differences among so many external actors can result in highly atomized and unwieldy administrative frameworks. As Marcus Cox indicates, the international administration in Bosnia is perhaps the most extreme example of this:
Differences in interest among the different international actors during the Bosnian war have been reflected in a cumbersome international structure in the post-war phase. Early proposals for an international presence powerful enough to take control over reconstruction and institution-building came to nothing. Mistrust between American and European policy-makers made it impossible to bring the intervention within a single institutional structure that would allow for cohesive planning.\textsuperscript{179}

Learning from previous large-scale missions in Cambodia and Bosnia, the international administrations in Kosovo and East Timor, for example, brought many different actors together under a single umbrella authority to minimize coordination problems and mismanagement of resources. In fact, actors at all levels of international society have learned a lot about post-conflict intervention during the past decade. The United Nations, in particular, and its many departments and agencies, have learned overtime to respond more effectively to the challenges of conflict management. The 2000 Brahimi Report is a good example of this. The report recommends far-reaching institutional reforms and initiatives to redress deficiencies in the organization’s history with post-conflict operations – though it nominally deals with the challenges specific to international administration. Measures are also being pursued by individual national governments and regional organizations to rectify institutional weaknesses in the areas of reconstruction and development of failed states and war-torn societies.

The point here is that notwithstanding the numerous failures that generally typify international intervention in post-conflict territories, the international community has overtime improved – albeit, in an ad hoc manner – in its ability to intervene and rebuild war-torn territories. Much of this ‘learning process’ is a result of trial and error and repeated contact with certain barriers. At the same time, a vast literature on

the ways through which third-party actors can strengthen international and regional capabilities to meet future challenges has proliferated since the end of the Cold War. Scholars, research institutions, think-tanks, and others have published a wealth of studies examining issues related to post-conflict intervention, offering ‘lessons learned’ and ‘prescriptions for success’ to better improve, including, but not limited to, the territorial administration of war-torn territories.

The implications of ignoring contextual factors are the creation of further obstacles that hamper progress on the ground. The environment that international administrators inherit – including other types of stabilization and reconstruction missions – will always vary in terms of capacity and scale from territory to territory. Some territories will lack any semblance of functioning government institutions and have no tradition of civil participation; while others will offer practical situations where some governmental institutions still function and have active civil societies. Yet, the tendency of policymakers to view such conflicts as consanguineous and to respond with a common template or one-size-fits-all formula without taking into account the unique circumstances each territory is a counterproductive strategy. For example, the international administration in East Timor was in many respects modeled after the earlier Kosovo mission of that year. The SRSG of UNTAET was mandated with comparable political powers to the SRSG of UNMIK, and much of UNTAET’s administrative personnel and expertise came directly from the Kosovo mission, many of which lacked any familiarity with the Timorese language, culture,
and history. Although both UNMIK and UNTAET were established following conflicts that produced acute political vacuums in their wake, the local political context and the transitional nature on the ground were significantly different between the two. In Kosovo, the international community has been confronted with a polarized multi-ethnic population (Kosovar Albanians and Serbs) that is severely hostile to one another, and has been increasingly hostile to international forces. Both communities are sharply divided on the future status of the province: whereas Kosovar Albanians desire nothing less than independence, the minority Serb population want to remain within Serbia’s jurisdiction. As a response to the antagonistic situation on the ground, the Security Council created UNMIK and gave it full governorship powers to steer the province towards a stable path and develop ‘substantial autonomy and self-government’ that would later determine Kosovar’s future status without, at the same time, undermining the sovereignty and territorial integrity of Yugoslavia of which, Kosovo, is technically a part. (As I will argue later, the ambiguity of UNMIK’s mandate over the future status of Kosovo has highlighted the problematic nature of international interventions without clear political objectives.)

In East Timor, UNTAET was confronted with an entirely different situation that exhibited relatively favorable conditions at the outset of the operation: the local

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180 UNTAET drew directly upon the institutional and personal knowledge of UNMIK. This included the late UN expert, Sergio Vieira de Mello (who died in Iraq from an insurgent attack on UN headquarters in 2003), who headed UNMIK, and subsequently brought many of his personnel to the UN mission in East Timor.


population for the most part embraced the UN’s presence and objectives; the Indonesian armed forces and locally-supported militias had withdrawn across the border; and the UNTAET had to negotiate with only one locally supported interlocutor—the National Council of Timorese Resistance (CNRT)—rather than deal with many, competing domestic factions. Furthermore, the international community’s principle objective in East Timor was relatively clear: to facilitate the Timorese desire for sovereign independence. Despite this, the international administration arrived in East Timor with an authoritative agenda in mind—one, in which, international authorities would take direct lead of the transitional process without consulting or sharing power with a relatively unified and accommodating Timorese population. Consequently, this authoritative mindset and reluctance to share power with the Timorese population eventually led to local resentment of the international presence, and hampered international efforts in rebuilding the young republic. For these reasons and more, the East Timor mission was erroneously modeled after the Kosovo mission, which was meant for a highly divided and hostile population. By ignoring the contextual conditions on the ground, UNTAET indirectly created a host of problems that essentially made it more difficult for it to achieve immediate political results.

**International Norms: Shaping International Behavior**

It is argued in this study that one cannot fully understand the phenomenon of international administration and state-building without considering the important role

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of international norms. Fundamentally, norms are shared principles and expectations that describe the proper behavior of individuals in certain situations. They are ‘concrete expressions of the more intangible values and principles that may prevail at any give time.’\textsuperscript{184} Hedly Bull of the English school defines norms as behaviors and beliefs that together constitute a mechanism for establishing the rule and structures that make a ‘community’ even in conditions of anarchy.\textsuperscript{185} In international relations, norms are usually seen as quite stable and hence explain behavioral consistency by providing continuity in international politics as they embody accepted rules of international law and standards of international morality. Andrea Talentino observes that ‘norms shape the ethos or character of the international system by identifying what values are important and respected, thus creating a means of evaluating legitimacy and distinguishing between constructive and disruptive actors.’\textsuperscript{186} As indicated at the outset of this study, norms comprise both regulative and constitutive elements: not only do they constrain the behavior of state actors by providing moral standards to abide by, norms can also help create the identity of a state as it chooses to either accept or reject those standards.\textsuperscript{187}

For theories of context, norms can play an important role in all the modes of context discussed earlier. Normative contexts help determine behavior (context as cause) and serve as a guide to interpret behavior (context as changing meaning).\textsuperscript{188}

\textsuperscript{186} Andrea Kathryn Talentino, ‘US Intervention in Iraq and the Future of the Normative Order,’ p. 315.
\textsuperscript{188} Gary Geortz, \textit{The Contexts of International Politics}, p. 223.
Furthermore, international norms may act as barriers to action, or as constraints on behavior. They are barriers in the sense that the rules of the game can regulate individual pursuits of goals, or practices that limit and exclude certain options. However, the impact of a norm on international actors is a function of its strength in the international community, which, in turn, is largely determined by how widely and deeply it has been internalized into the personalities of the main actors and reflected in international institutions.\textsuperscript{189} According to Thomas Risse and Kathryn Sikkink, the process by which international norms are internalized and implemented domestically can be understood as a process of socialization.\textsuperscript{190} They posit three different causal mechanisms that are necessary for the enduring socialization of norms: 1) the processes of instrumental adaptation and strategic bargaining; 2) processes of moral consciousness-raising, argumentation, dialogue, and persuasion; and 3) processes of institutionalization and habitualization.\textsuperscript{191}

From the perspective of realism and the rational actor framework, norms play a nominal role in explaining state behavior. Starting with the assumption that states operate within an anarchical structure, realists contend that the international system is a society without effective rules of proper behavior. Each state uses whatever means are at hand, particularly military force, to gain its ends, that is self-interest maximization. States maximize their own power and all action is considered instrumental and chosen for its efficiency. For realists, norms are merely creations of great powers, which use them to serve their own self-interests. In general, state actors

\textsuperscript{189} Ibid. p. 239.
\textsuperscript{190} Thomas Risse and Kathryn Sikkink, ‘The socialization of international human rights norms into domestic practices: introduction,’ p. 5.
\textsuperscript{191} Ibid.
will adopt norms for instrumental reasons, whether to gain access to material benefits or to increase their power. Although norms may compel actors to consider a particular collective order, they more often than not pursue their own interests within that community regardless of whether or not that behavior is inimical to the broader collective good. In fact, realists often argue that great powers dress their realist motives in ‘normative garb’ to appear to be working within the system.\(^{192}\) Rational actor theories also show that rational behavior can be quite consistent with normative or rule-like behavior. In many instances, ‘norm-like behavior may be driven by pure self-interest’ if that particular normative behavior is part of a dominant strategy.\(^ {193}\) Thus, while states construct, promote, and adopt norms, they will ultimately rely on power to achieve their ends as they perpetually seek to attain hegemony.\(^ {194}\)

Constructivists, on the other hand, postulate that the instrumentally or strategically motivated adaptation of norms by state actors is rarely the end of the story. As Risse and Sikkink observe, if the instrumental adoption of a particular norm leads to some domestic structural change, ‘this can set into motion a process of identity transformation, so that norms initially adopted for instrumental reasons, are later maintained for reasons of belief and identity.’\(^ {195}\) The authors use the Reagan administration’s policy of democracy promotion in the 1980s as a way of illustrating this process:

\(^{193}\) Gary Goertz, Contexts of International Politics, p. 226.
When the principles position in favor of democracy was first adopted by the Reagan administration, most interpreted it as a vehicle for an aggressive foreign policy against leftist regimes, such as the USSR, Nicaragua, and Cuba. (This would be consistent with the instrumental use of a principled idea.) But because democracy as a principles idea had achieved consensus among political elites and the general public in the United States, the Reagan administration found itself obliged to a minimal consistency in its foreign policy, and thus eventually actively encouraged democracy in authoritarian regimes which the Republicans viewed as loyal allies, such as Chile and Uruguay. \(^{196}\)

Norms are thus robust and self-perpetuating forces. As Talentino argues, ‘they can… take on a life of their own that serves to constrain even the states that originally articulated them.’ \(^{197}\) While their creators may wither away, norms may continue to exist have inertia. Ward Thomas contends that ‘the presumptive legitimacy of norms… creates its own incentives for compliance, and states violating norms incur costs for doing so.’ \(^{198}\) Once norms are socialized and become recognizable expectations of international society, they can constrain even the greatest power from the bottom up as they represent the collective values and beliefs of individuals, non-governmental organizations, scientists, pressure groups, civil society and etc.

The conflict between ‘norms versus self-interest maximization’ or ‘norms versus power’ is a theme discussed in James March and Johan Olsen’s study of international political order, in which both authors suggest that in all political and social environments, actions and outcomes are determined by logics of expected consequences and logics of appropriateness. \(^{199}\) In international relations, logics of consequences see political action and institutions as the product of security concerns and power politics. Logics of appropriateness, on the other hand, understand political...

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\(^{196}\) Ibid.


action as a product of rules and norms that guide or inspire behavior in the international arena. One of the core questions of this study is which of these ‘logics’ has a stronger impact in shaping or influencing the state-building activities of international administrations. Without a doubt, national interests and security concerns play a considerable role in the decisions of states to intervene and administer war-torn societies. The international interventions in the Balkans, for example, were motivated in part by security concerns, as fears of regional destabilization and the threat to the credibility of international organizations, including NATO and the EU, warranted large-scale international interventions to establish peace in the region. However, once an international administration has been authorized and deployed on the ground, it is hypothesized here that it becomes very apparent that the activities of international administrators are influenced by the logics of appropriateness, whereby norms, particularly those associated with a liberal conception of sovereignty, shape the policymaking of international actors. To understand the impact of international norms on the policymaking of international administration, a discussion of international intervention and the changing meaning of sovereignty in different security environments are in order.

**Security, Sovereignty, and International Intervention**

The shift of international norms and the various configurations of power and alliances throughout the twentieth century have over time altered the notion of
international security. This was acknowledged by UN Secretary-General Kofi Annan in his September 2000 UN Millennium Report, *We the Peoples*, in which he reminded the global community that a ‘new understanding of the concept of security is evolving.’ Traditionally, security is an interstate concept. The perceived threats to international security during the Cold War, for instance, were synonymous with external attacks or interstate conflicts. The corollary of this was a security approach predicated on the contention that ‘state leaders and citizens do not have moral responsibilities or obligations to aid those beyond their borders.’ Issues such as human rights protection and the promotion of good governance were secondary or irrelevant at best, as the geo-political divide between the West and East led to the ideologically driven protection of brutal client regimes. International security was therefore tied up with protecting the rights of the state and upholding the notion of state sovereignty and its concomitant normative principles of self-governance and non-intervention. Annan argues that the post-Cold War conception of security deviates from its antecedent: ‘The requirements of security today have come to embrace the protection of communities and individuals from internal violence.’

With the end of the Cold War, the vast majority of armed conflicts have been of an

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200 The concept of security is a widely debated term that has expanded over the past decades in its meaning to include other values and interests. The more traditional definition of the term is concerned with the military security dilemmas and activities such as nuclear proliferation. Other scholars argue that the term should now include non-traditional problems such as environmental degradation, global warming, famine, mass migration and refugees, organized crime, poverty, genocide, torture, and etc. For a discussion on the various meanings of security, see Kalevi J. Holsti, *The State, War, and the State of War* (Cambridge: Cambridge University Press, 1996); Jessica T. Matthews, ‘Redefining Security,’ *Foreign Affairs*, Vol. 62, No. 2 (1989), pp. 162-177; Lawrence Freedman, ‘International Security: Changing Targets,’ *Foreign Policy* No. 110 (1998), pp. 48-63.


internal nature, giving rise to brutal atrocities that often make no distinction between soldiers and civilians and rendering some states incapable of performing even the most basic governmental functions. The changing nature of conflict, Annan observes, necessitates a different approach to security, one that shifts from the rights of the state as the centerpiece of international policy to that of protecting the human rights of the global citizen. The former Secretary-General describes this new strategy as a ‘more human-centered approach to security.’

The human-centered framework of security justifies external military intervention to protect the human rights of citizens who are abused by their governments. This has stuck a chord with many commentators and academics because it challenges the international framework developed since 1945. Such a discourse is reflected in the theoretical debate between the pluralist and solidarist schools of thought on the issues of sovereignty, the use of force, external intervention, and international cooperation. Both schools of thought rest on various combinations of rationalist and realist assumptions. That is, they both acknowledge that international society exists and is made up of sovereign states. Both maintain that this society of sovereign states defend their national interests while at the same time upholding the institutions of international society, whether its international law, diplomacy, balance of power, and more contentiously, the special responsibility of great powers and the international community. This consensus breaks down at this latter point. On the one side, pluralists believe that international order can be maintained when states coexist with a minimum set of rules, in particular, the principles of sovereignty and non-intervention in the domestic affairs of other states. In their view, the use of military means to
support a humanitarian agenda is a violation of these rules for safeguarding the independence of political communities and may be used by stronger powers to exploit or coerce weaker ones. On the other side, solidarists view intervention as a duty in cases of extreme human suffering. From their perspective, sovereignty is conditional and that international society should respond when governments systematically abuse peoples’ fundamental rights. Moreover, humanitarian intervention strengthens the legitimacy of states and deepens their commitment to justice. In other words, states that enforce human rights standards are at the same time serving their own national interests because an unjust world will be a disorderly one.204

Both perspectives are represented in the UN Charter, though not symmetrically. For example, Article 2(4) states that ‘all members shall refrain… from the threat or use of force against the integrity or political independence of any state’. Also, Article 2(7) prohibits intervention in matters essentially within the domestic jurisdiction of any state. These stipulations are consistent with pluralist beliefs. At the same time, the Charter also attaches its member States to respect certain fundamental human rights, which are commitments that embody the solidarist position. Yet, the notion of humanitarian intervention finds only scant support in the UN Charter. Since the end of the Cold War, the international community has struggled to define where the balance between protecting human rights and sovereignty lies.205 But as the

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204 For an exposition of these views, see Robert Jackson, The Global Covenant: Human Conduct in a World of States (Oxford: Oxford University Press, 2000).
205 This ethical debate has been widely contested. See, for example, Alex J. Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq,’ Ethics and International Affairs, Vol. 19, No. 2 (2005), pp. 31-53; Michael Ignatieff, Empire Lite: Nation-Building in Bosnia, Kosovo, and Afghanistan. (London Vintage, 2003); Alan Kuperman, ‘Humanitarian Hazard: Revisiting Doctrines of Intervention,’ Harvard International Review, Vol. 26,
humanitarian agenda became the more prevalent norm throughout the 1990s, the manner in which great powers of the international community together intervene in the internal affairs of other states under a multilateral banner has also become more acceptable and frequent. The following considers the contrasts between the different assumptions of the human-centered framework and the previous empire and state-centered ones, and seeks to establish the general impact of them on international intervention.

*The Interwar Period and the Empire-Centered Framework*

The Interwar period is generally seen as the final remnants of a world deeply shaped by imperial relationships and the ideology of race and empire. Before the onset of the Great War, the international system was comprised of a host of territorial and maritime empires and their subject colonies. The struggle for control of land, resources, and people among these competing colonial powers was an attempt to extend their commercial empires over vast parts of the world in an unprecedented power grab.\(^{206}\) The left-wing British economist and staunch opponent of British imperialism, J. A. Hobson, defined this type of imperialism as a ‘willingness to use military forces to secure natural resources of distant lands, to control overseas markets, and to guarantee secure investment conditions for the export of capital.’\(^{207}\)

\(^{206}\) For instance, by 1914, Europe’s maritime empires – namely, Britain, France, Spain, Belgium, Portugal, and Germany – controlled most of Africa, the Middle East, and South and South-East Asia. For a good historical summary of liberal empires during this period, see Niall Ferguson, *Empire: The Rise and Demise of the British World Order and Lessons for Global Power* (New York: Basic Books, 2003); and Niall Ferguson, *Colossus: The Price of America’s Empire* (New York: Penguin Press, 2004).

Imperialism had become the ‘faith of a nation’ and ‘the more of this Earth you could take away, the greater you became.’ At the same time, control over these non-independent territories was justified by great powers as a way for the ‘civilized nations’ to bring economic development and political enlightenment to the so-called ‘backward’ societies of the world. In this sense, the international norms of the time created a discourse in which great powers or civilized states viewed colonization as a magnanimous gesture. Article 6 of the General Act of the Berlin Conference (1885), for instance, exemplified this normative order, as all colonial powers involved in the partition of Africa were ‘to watch over the preservation of the native tribes and to care for the improvement of the conditions of their moral and material well-being.’ Whether this humanitarian impulse was genuine or not is open to debate. However, it was clear that all liberal empires justified imperialism to their domestic populations through a purported humanitarian belief, and, in turn, this justification influenced how their policies toward their colonial dependencies had to be designed.

Sovereignty was therefore not a universally applicable right under the empire-centered framework. As Robert H. Jackson explains: ‘sovereignty was assumed to belong only to states that accepted the norms of Western civilization,’ or more
specifically, ‘states that have some constitutional order and are perceived as responsible holders of sovereignty.’ Jackson makes clear that ‘responsible holders of sovereignty’ are those states that exhibited the ability and willingness to safeguard minimal civil conditions, such as peace, order, security, political goods and services. According to Gerrit Gong, European powers established a set of standards or benchmarks that non-European societies had to conform to be recognized as a so-called ‘civilized state.’ These standards constituted a social purpose that reflected European institutions and values that were regarded as appropriate measurements that could gauge the level of political maturity an underdeveloped society needed in order to achieve internationally recognized and legitimate statehood. As a regime of positive sovereignty, these standards included a stable government and administration, the capability to sustain territorial integrity, and political independence, to keep public order and security all over the territory, sufficient financial means for the state, a legal system and a court organization that ensures some semblance of the rule of law, and the ability to maintain a diplomatic system. Sovereignty in this light emphasizes a particular type of relationship between state and society and between state and international society, in which the authority aspect of sovereignty is more important than its legal side.

Although the number of great powers decreased after the First World War, the normative order of the pre-war era continued to be a prevalent guiding force during

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the interwar period. This was indicative of the League of Nation’s mandate system, which also operated under a regime of positive sovereignty that was predicated in the belief that the full exercise of self-government was held in trust until underdeveloped societies were sufficiently mature politically to assume legal sovereign status. Proponents of the League, in particular, U.S. President Woodrow Wilson, wanted to put an end to the balance of power system through ‘developing international institutions analogous to domestic legislatures and courts so that democratic procedures could be applied at the international level.’ Although the League of Nations was not an attempt to establish a world government or eliminate the sovereign state, it was an effort to make states collectively discipline unruly members who did not abide by the normative standards of the time. The unwillingness of major European States to confer the League with enforcement powers and the non-participation of the United States meant, among other things, that the organization lacked the authority to impose a solution upon its members and severely weakened the notion of collective security. Although the League did engage in territorial administration in several small territories throughout its tenure, as will be discussed briefly in the next chapter, the notion of international intervention under this security framework was a rare or scarce event.

The Cold War and the State-Centered Framework

Unlike the empires of the late nineteenth century, the remaining ones of the interwar period ‘were no longer capable of providing the globe with system and

order. They might have tried to cooperate with one another to preserve the new imperialism, but they had neither the will nor the resources to do so. For this reason, collusion among the empires that characterized the previous era gradually broke down as all empires, new and old, sought to destroy each other in World War II. In the end, the Second World War led to the breakdown of imperialism as a legal doctrine and was quickly replaced by nationalism—the notion that a distinctive people deserve to rule themselves in a state that protects and advances their distinctive cultural and political interests. In addition to mounting nationalism throughout much of Third World, domestic pressures in Europe, where public opinion was markedly against colonial expansion, contributed to the demise of imperialism. Compounding this was pressure from the United States, which vigorously pushed European powers to divest themselves of their imperial possessions. Many European powers exhausted by the devastating effects of the war also lost the will to continue this expensive enterprise.

Political pressure on the Allied Powers from around the world led to the creation of a law-bound international system that reflected long-established norms governing relationships between states under conditions of anarchy. These norms led to the establishment of principles such as self-governance and non-intervention, which were centered on maintaining a world order based on co-existence rather than morality, and

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217 Ibid.
218 For instance, in the Joint Declaration known as the Atlantic Charter issued in August 1941, Prime Minister Churchill and President Roosevelt stated publicly that they would respect the right of all peoples to choose the form of government under which they would live. Churchill would later limit the scope of this declaration to Axis-dominated Europe. At the subsequent Big Three Conferences held in Cairo and Tehran in 1943, Roosevelt proposed that all French dependencies be placed under International Trusteeship. Again, Churchill protested this suggestion and saw it as an implicit threat to the British Empire. Tom Parker, *The Ultimate Intervention*, p. 9.
one in which the freedoms of each state does not infringe on the freedoms of any other.\textsuperscript{219} Sovereignty, for example, perhaps the most fundamental institution of the international system, provided states during the Cold War with formal equality. No longer was the international system ostensibly a ‘vertical division of the world into the ruling powers and all the rest, but instead established through a horizontal system of cooperation among nations of presumably equal sovereign status.’\textsuperscript{220} Indeed, the creation of the UN Charter, according to Robert Jackson, marks the ascendancy of a regime of negative sovereignty, which recognizes statehood as a matter of procedural norms and legal rights.\textsuperscript{221} Negative sovereignty presupposes that each state has the capabilities as well as the volitions to engage in responsible governance; it also implies that each nation-state had the right to determine its own political and economic destiny, while at the same time, ensuring its own domestic stability. These norms were codified in the UN Charter: Article 1 (2) of the Charter guarantees “respect for the principle of equal rights and self-determination of peoples”; Article 2 (1) emphasizes “the principle of sovereign equality” of member states; and Article 55 emphasizes respect for the principle of equal rights and self-determination of peoples.\textsuperscript{222} Sovereign equality was also formally recognized through equal representation in the General Assembly.\textsuperscript{223}

\textsuperscript{220} Akira Iriye, ‘Beyond Imperialism,’ p. 112.
\textsuperscript{223} Clearly, the UN system did not realize full sovereign equality in its internal workings. The five permanent members of the powerful Security Council (the United States, Great Britain, France, Russian and China) possessed the exclusive right to veto UN action.
Although the meaning of sovereignty had shifted from a substantive to formal criteria during the Cold War period, in all eras it is cited as a regulative norm prohibiting external interference in a state’s internal affairs. The principle of non-interference was confirmed on many occasions through various UN resolutions, most notably in the ‘Declaration of the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty of 21 December 1965 (Resolution 2131) and the ‘Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations’ of 24 October 1970 (Resolution 2625). The latter resolution stating:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.224

Both the legal ascendancy of juridical sovereignty and the universal ethical recognition of the pluralist perspective of intervention, in turn, compromised other issues that are today considered essential to human security—that is, human rights and the democratic performance of states. The language of human rights and democratization were simply permissive whereas the rights of the state were peremptory. ‘Whatever governments and populations did with their sovereignty at home, whether they used it for good or ill, is largely up to them to determine.’225 For example, throughout the Cold War, the Soviet bloc contested the American version of human rights and democracy, and thus created their own accounts of human rights

and democracy based on the communist emphasis of social and economic development, instead of political freedom. In practice, however, issues of democracy and human rights mattered much less to both superpowers than allegiance to their camps and the ability of client states to maintain domestic stability. The norms and formal laws that underpinned the state-centered approach of security, therefore, limited the ability of the international community to intervene in the domestic affairs of other states. The combination of paralysis in the Security Council, caused by the almost nearly use of the veto by one or other side, and the superficial interpretation given to the principle of state sovereignty marginalized the United Nations in what had intended as its central role – to ensure a credible system of international peace and security. Moreover, the post-colonial states in Africa, Asia and elsewhere guarded aggressively their newfound independence and proved adept at using the language of self-determination as a roadblock against forms of interference or attempted threats against their governments or against their political, economic, and cultural elements, which they perceived as violations of international law.

*The Post-Cold War and the Human-Centered Framework*

In the post-Cold War period, some of the long-held norms relating to the protection of states began to weaken in face of the increasing importance attached to humanitarianism. Two factors help explain this normative shift in security from a state-centered framework to a more human-centered one. The first of these factors has

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been the end of the bi-polar world structure and with it, the collapse of the global balance of power. The Cold War ensured a system in which either superpower was willing to maintain high levels of military and economic assistance to their respective allies, no matter how bankrupt or ineffectual the state was or how abusive the regime was to its own citizens. With the collapse of the Soviet Union, however, this assistance came to an end as many client states were now considered strategically inconsequential and were left to fend for themselves. The corollary of this also produced a host of illegitimate regimes and failing states unable to ensure the most minimal domestic civil conditions. At the same time, the end of the bi-polar world structure also meant a greater major-power collegiality within the UN Security Council and other multilateral arrangements.\textsuperscript{227} Cooperation between the Soviet Union (later Russia) and the United States on the first Gulf War in 1991, for example, contributed to a great sense of optimism in the early 1990s and at least, in the short-term, there was a hope that the Security Council could function as the principle guardian of international peace and security as envisaged by the organization’s founders. The end of this ideological rivalry also meant that the Euro-American powers could persuade Russia to allow them to lead international interventions in territories that would have been unthinkable in the previous security environment. Russia could even be persuaded to participate militarily in some operations, as it did in both international interventions in Bosnia and Kosovo.

\textsuperscript{227} The G7, for example, is a good example of a more ad hoc arrangement that allowed Russia to meet regularly with other great powers—the United States, France, Great Britain, Germany, Italy, Japan, Canada—to discuss and coordinate issues of economic policy and political and security matters. Russia joined the informal association in 1997, thus making it the G8.
The second factor that caused this shift in behavior has been the changing nature of international conflict. Since postwar 1945, the vast majority of armed conflicts have increasingly occurred within the borders of sovereign states. In fact, societal or civil conflicts accounted for 94 percent of all armed-conflicts fought in the 1990s. Many of these internal conflicts were either based on ethnic nationalism and/or economic greed. According to Roland Paris, ‘the nature of the threat posed by these conflicts was both humanitarian and strategic.’ From a humanitarian perspective, this type of violence led to an appalling number of civilian deaths: whereas at the beginning of the twentieth century most war victims were soldiers, in the 1990s civilians accounted for as many as 90 percent or more of all killed in armed conflicts. Strategically, societal conflicts created regional, and even, global instability. Such violence has spilled over state borders and undermined the security of adjacent countries. Moreover, civil wars that are left to fester can create breeding grounds for transnational terrorist networks, organized crime, drug and sex trafficking, and other types of illicit activities that are inimical to international peace and security.

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232 One only has to remember the Rwandan conflict and how it spread to neighboring Zaire, or the current conflict in Sudan, which has spilled over into neighboring Chad.
The demise of the Cold War and the prevalence of human suffering in civil strife meant that the United Nations and other multilateral organizations could exercise a more assertive role in the international arena to address problems relating to human security – what is often called the ‘new interventionism.’ The use of military force for humanitarian purposes was facilitated by a growing list of widely accepted norms and practices that justified invasive forms of international intervention. To begin, the concept of sovereignty, the bedrock institution of international law and international relations, was being redefined in a new world order where concepts such as globalization and interdependence became increasingly more part of the discourse of international relations. In the post-Cold War era, sovereignty is no longer considered ‘sacrosanct,’ signifying a notion of international accountability to the so-called universal citizen.

Expressing this view, Lori Fisler Damrosch observes that state-centered conceptions of sovereignty are inadequate because all individuals possess rights outside the state to which they belong and deserve some protection if those rights are abrogated.

Kofi Annan also addressed this issue in his 1999 address to the General Assembly:

State sovereignty, in its most basic sense, is being redefined... The State is now widely understood to be the servant of its people, and not vice versa. At the same time, individual sovereignty—by which I mean the human rights and fundamental freedoms of

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each and every individual as enshrined in our Charter—has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny.\textsuperscript{236}

He later reasserted this view in 2000 \textit{Millennium Report} in which he stated that international intervention may be politically difficult, ‘but surely no legal principle—not even sovereignty—can ever shield crimes against humanity.’ And where such crimes transpire, the Security Council has a ‘moral duty to act on behalf of the international community.’\textsuperscript{237} The post-Cold War period, therefore, has simply brought back to mind the limited power of sovereignty in that the dominant values and the general normative context of the international system render intervention legitimate when it can be shown that certain states abuse the human rights of their own citizens.\textsuperscript{238}

A second trend that contributed to bringing about a more human-centered framework is principle of multilateralism. The responsibility to protect individual human rights from their own governments is legitimized through the practice of multilateralism. Multilateral organizations such as the UN, the EU, and NATO confer legitimacy on international interventions and provide a medium for the effective pursuit of the norms on which it rests. According to Martha Finnermore, multilateralism during the post-Cold War period is ‘a political and normative standard that was shaped by shared notions about when the use of force is legitimate and appropriate.’\textsuperscript{239} Multilateral military intervention was no longer seen as an extension

\begin{itemize}
\item \textsuperscript{236} ‘Secretary-General Presents his Annual Report to General Assembly,’ Press Release, UN Doc. SG/SM/7136 and GA/9596, 20 September 1999.
\item \textsuperscript{237} See Kofi Annan, ‘Two Concepts of Sovereignty,’ \textit{The Economist}, 18 September 1999.
\item \textsuperscript{238} Mark Webber, ‘States and Statehood,’ in Brian White, Richard Little and Michael Smith (eds.), \textit{Issues in World Politics} (New York: St. Martin’s Press, 1997), pp. 24-44.
\item \textsuperscript{239} See Martha Finnermore, “Constructing Norms of Humanitarian Intervention,” in Katzenstein (ed.), \textit{The Culture of National Security}, p. 182.
\end{itemize}
of politics but limited by the expectation that it will be a last resort and have broad international sanction. Part of this re-conceptualization of security involved an emphasis on multilateral solutions to humanitarian problems. It also meant that international intervention took on a more comprehensive role: such multilateral interventions are expected to only engage in conflict resolution, but also rebuilding the capacities of weak or collapsed states.

International intervention gained widespread acceptance because it also promoted the ethical importance of human rights and democratic norms as matters of regional and international concern. Although the two concepts have been conflated overtime, each played a discrete role in the 1990s: whereas human rights serves as the impetus for international intervention in the post-Cold War era, democracy is seen as the panacea for today’s global conflicts, underdevelopment, terrorism, and radical extremism. Writing in 1993, Richard Rorty observed that ‘human rights culture’ is now ‘a fact of the world.’²⁴⁰ The ascendancy of human rights as the center of international policy is a revolutionary departure from the preceding international framework, when governments were largely unaccountable for their human rights.²⁴¹

According to one analyst, the international promotion of human rights issues during previous periods was exclusively a cause of aid and campaigning by NGOs such as

²⁴¹ This is in spite of the fact that virtually all states had signed the 1948 Universal Declaration of Human Rights, while the majority of states also ratified the two supporting conventions: the International Covenant on Civil and Political Rights and the International Convention on Economic and Social Rights.
the Red Cross, Amnesty, Save the Children, Christian Aid and Oxfam. With the end of the Cold War, non-governmental organizations continue to play an important role in establishing new expectations based on human rights and law and thereby influencing state agendas in what Richard Falk describes as ‘globalization from below.’ The promotion of human rights has also been declared as an integral part of many leading Western governments’ foreign policies – what David Chandler calls ‘ethical foreign policies.’ In addition to non-state actors and national governments, international institutions such as the International Criminal Court (ICC) helped entrench human rights within formal law. Philip Nel, for example, credits the ICC as a ‘norm innovator’ that changes proscriptive norms into institutionalized norms ‘that not only reflect social expectations… but also encourages compliance through repeated and consistent application.’

Likewise, the primacy of democratization was another cause for this conceptual shift towards a more human-centered framework. During the Cold War, the UN Charter was construed as protecting how states select their leaders and design their constitutional systems. Moreover, the ideological divide made it impossible for international bodies to promote any particular model of domestic governance within

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244 For example, former American President Clinton stated that under his administration the United States ‘has made human rights a cornerstone of our foreign policy.’ Former Prime Minister Tony Blair also argued that the prioritization of human rights has led to ‘a new internationalism based on values.’ Cited David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto Press, 2002), p. 4.
the borders of individual states. The United Nations, in particular, was cautious about overstepping its boundaries and distanced itself from questions of domestic politics. With the end of the Cold War, however, democracy has become a ‘settled norm’ of the post-Cold War period. Indicative of this was the fact that from 1990 to 1996, more than three-dozen countries adopted liberal democratic institutions for the first time, raising the total number of democracies in the world from 76 to 118. Such developments led some commentators, like Francis Fukuyama, for example, to declare ‘the end point in mankind’s ideological evolution’ and ‘the universalization of Western liberal democracy as the final form of human governance.’ Although Fukuyama’s assessment may be exaggerated, it is without question that democracy is now perceived as the only model of government with any broad legitimacy and ideological appeal in the world.

The values and practices that took sway in the post-Cold War period created a normative order that is based on humanitarian concerns. The important difference between this and previous orders is the ethical beliefs that individuals should be accounted for beyond state borders, and that the proper role of force in the international system is to safeguard the human rights of individuals and communities.

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247 The United States and most of its allies promoted liberal democracy and market-orientated economics, whereas the Soviet bloc embraced a communist “people’s democracy”—which emphasized public rather than private ownership of the means of production and control of the state by a vanguard communist party.

248 For instance, the former UN Secretary-General Dag Hammarskjold wrote in 1960: ‘As a universal organization neutral in big Power struggles over ideology and influence… the UN’s impartiality on matters of ideology and domestic governance allows the organization to render service which can be received without suspicion.’ Quoted in Brian Urquhart, *Hammarskjold* (New York: Harper Colophon, 1972), pp. 458-59.

249 Larry Diamond and Marc Plattner (eds.), *Global Resurgence of Democracy* (Baltimore: Johns Hopkins University Press, 1996), p. ix. Both authors estimated during this period that 61 percent of the world’s countries were holding competitive, multi-party elections for public office, as compared with only 41 percent a decade earlier. (p. ix).

that are threatened by their own governments. The focus on people contradicts the long-standing practice of privileging the rights of states over individuals. The fact that norms now compel state to justify the use of force in reference to human security makes this the most distinguishing feature of this order.\textsuperscript{251} It also suggests that the solidarist position of international society has seemingly triumphed in the post-Cold War period.

*Responsibility to Protect: The Revival of a Positive Sovereignty Regime?*

As indicated above, the end of the Cold War ushered in a security framework that focused on the rights of individuals as opposed to the right of states. This resulted in a decade-long debate in the 1990s between those proponents of liberal interventionism in the West that supported the ‘right of intervention’ in the name of human rights against the ‘right of state sovereignty’, supported mainly by the developing world.\textsuperscript{252} By December 2001, there is a shift in language back from the human-centered framework of a right to intervention towards a state-centered framework of the ‘responsibility to protect’ doctrine articulated by the ICISS, and later enshrined in the outcome of the statement of the 2005 UN World Summit.\textsuperscript{253} Unlike the state-centered framework that constituted the Cold War period, the new state-centered framework under the responsibility to protect seeks to emphasize the responsibilities of the non-Western state at the same time as these states increasingly lose those very same traditional attributes of sovereignty: self-government and non-intervention. As Chandler points outs, the report effectively ‘shifts the terms of the debate and has

\textsuperscript{251} Mohammed Ayoob, ‘The War Against Iraq,’ p. 155.
facilitated the evasion of any clarification of the competing rights of state sovereignty and of those of intervening power, by arguing that states right of sovereignty can coexist with external intervention and state-building.\textsuperscript{254}

The responsibility to protect doctrine essentially redefines sovereignty as a two-fold responsibility. On the one hand, sovereignty as responsibility entails the wider society of states. Thus, states are expected to fulfill their international obligations, such as maintaining stable borders and an open diplomatic system, while upholding their commitment to non-interference. On the other hand, the second responsibility is to protect the welfare of the citizens that fall within that state’s jurisdiction.\textsuperscript{255} This suggests that states are obligated to protect their citizens and provide them with basic goods and services. If a state is ‘unwilling to uphold these obligations to either its external or internal constituency, or even if a state is merely unable to do so, then its sovereignty is forfeit.’\textsuperscript{256} \textit{This means that the onus is no longer placed on the international community to justify its interventionism, but rather on the non-Western state and its ability to demonstrate a capacity to govern effectively.} Indeed, the transformation of sovereignty from a purely legal and formal attribute to one that also embraces authority is a reflection of its social nature. As constructivists argue, sovereignty is constantly being constructed, reproduced, reconstructed, and deconstructed through the interactions of international actors who hold certain normative beliefs about sovereignty, and can therefore change. Thomas J. Biersteker and Cynthia Weber, for example, argue that state sovereignty is a ‘social construct’

\textsuperscript{254} David Chandler, ‘How State-building Weakens States.’
\textsuperscript{256} Ibid. p. 40.
whose ‘meaning is negotiated out of interactions within intersubjectively identifiable communities.’ In other words, sovereignty cannot be taken as a given.

Hence, sovereignty as responsibility gives the impression that the international community is interested in reviving a regime of positive sovereignty – that is, a state has to earn the legal right to non-intervention based on its ability or capacity to provide political goods to its population. This resembles the historic standards of civilization that were discussed above, in which European empires during the nineteenth- and early twentieth-century colonialism, including the League of Nations mandate system, established a set of benchmarks that non-European territories needed to fulfill to be considered legitimate sovereign states. Moreover, these standards or benchmarks represented European values and institutions. Sovereignty as responsibility similarly imposes a set of standards that requires non-Western states to be a particular kind of state. These standards underpin the shared principles and values that became the dominant normative order of the post-Cold War era, what Mohammed Ayoob describes as a ‘liberal hegemony.’ In general, this includes the guarantee of basic human rights (e.g., the prohibition of slavery, torture and genocide and protection of a broad range of civil and political rights), the rule of law, democratic governance, and a free market economy. To a great extent, these new standards are founded on the notion of popular sovereignty, which expands the scope of responsibilities of the state towards society beyond the provision of security. It also

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258 Robert Jackson, Quasi-States, p. 29.
implies that sovereignty rests ultimately in the society, not the state. As Michael Mandelbaum observes, ‘the hegemony of liberal values conferred broader international acceptance of the proposition that every government ought to respect those values.’

However, many non-western states such as China or Russia have deep reservations about these seemingly cosmopolitan principles, which in turn raise doubts to how universally deep these norms are internalized throughout the world, particularly outside of the West. Moreover, the Rwandan genocide in 1994 and the contemporary atrocities being committed in the Darfur region of Sudan remind us, however, that violations of the above norms does not always give rise to international military intervention. The double standard of intervening in the Balkans but not in African crises suggests that there is no general consensus among the international community on a threshold of violation of sovereignty as responsibility that needs to be passed before an intervention occurs. As realists claim, failure to intervene in states that blatantly violate the prevailing normative framework demonstrates the weak influence of norms in the international arena. Stephen Krasner writes:

Rules or norms… have only a limited impact on actual behavior. Actors can say one thing and do another. They may pick and choose among different, and mutually incompatible, norms. They may adopt institutional arrangements that are inappropriate for their own material circumstances. Their identity, and the identity that they present to others, may be influenced by abiding principles and norms, but their actual behavior is driven by a logic of consequences that is detached from principle.

Yet, as this study will show, the phenomenon of international administration shows quite the opposite that the norms associated with sovereignty as responsibility

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Stephen Krasner, *Sovereignty, Organized Hypocrisy*, p. 57
can play a considerable influence in the kinds of policies and institutions that international actors intend to implement and build in post-conflict societies. Unlike the decision to intervene militarily, where rulers generally weigh considerations of political interests and security concerns, the territorial administration of post-conflict societies by international organizations encompasses political activities beyond military intervention. This means that international administrators are more concerned and motivated by issues relating to the development of political institutions, governmental effectiveness, and the protection of human rights rather than human costs and geo-politics. This understanding of sovereignty as responsibility is most notably reflected in the mandates and regulations of all three international administrations analyzed here. For example, the provision for human rights is nearly ubiquitous in the DPA. In fact, Annex 6 of the document is devoted entirely to all of the human rights protections applicable in Bosnia. The DPA also establishes a number of human rights structures (e.g., a Human Rights Ombudsperson appointed by the OSCE and a Human Rights Chambers that deals exclusively with human rights violations) to monitor the activities of both national and international officials in Bosnia. Similarly in Kosovo, UNMIK’s ‘Standards before Status’ policy, which comprised of eight policy areas in which Kosovo had to change in order to become a functional society in harmony with contemporary European values. These standards represented the norms associated with sovereignty as responsibility and charted the way in which UNMIK pursued its policies in the territory.262 Indeed, for both Bosnia and Kosovo, the norms associated with sovereignty as responsibility also matters for

attaining membership of international organizations like the EU. In this sense, the EU’s membership criteria serve as a carrot to enhance a territory’s empirical sovereignty. Likewise in East Timor, Regulation 1999/1 demands the observance of international human rights norms by local actors holding public office, and it explicitly catalogues the various human rights agreements UNTAET is expected to promote.

Given the above, traditional realpolitik and rational actor models have a difficult time explaining the state-building activities of international administrations. From their perspective, actors involved in such missions would simply want to establish conditions conducive only to stability at the lowest possible price with a quick exit strategy. It is clear, however, that the interventionist policies of international administrations are far more costly and ambitious than necessary for stability. This is especially true given that target territories by and large have no history of self-rule or experience with democracy and the rule of law. For realists, international administrations are nothing but irrational.

The remainder of this study explores the extent to which these norms associated with sovereignty as responsibility, particularly human rights and the rule of law, have influenced the policies and practices of international authorities in the area of judicial administration (in Chapter Four) and of rebuilding the security, rule of law, and welfare institutions of target territories (in Chapter Five).
Assessments

This chapter explored the theory of context and how contextual factors can play a significant role in shaping the outcome of international interventions, including international administrations. In particular, it focused on how contextual factors can serve as barriers and counteract efforts by international actors. Where contextual factors limit the opportunities for confrontation or opposition, external interveners are in a greater position to create political change in war-torn societies. If the objective conditions on the ground are inauspicious, such factors may condemn a mission from the outset or limit what can be achieved. The chapter discussed how barrier models incorporate a simple dynamic of relatively constant goals, the actor’s perceptions of the environment, testing of the barrier, and belief revision. Actors who possess the greatest will and capabilities to test barriers over time can learn from their direct experiences – while other actors learn by observation. As a result, barriers gradually weaken and breakdown, leading to new opportunities and change. The chapter subsequently identified which key contextual factors are the most conducive for effective transitional governance, thereby distinguishing between a relatively favorable ecology from a relatively unfavorable ecology.

The chapter then focused on the importance of normative contexts. As a system-level variable, international norms are standards of behavior that reflect the identities of strong Western powers, which in turn can shape the behaviors of state actors and multilateral bodies. During the post-Cold War period, a normative order based on humanitarianism provided opportunities for the international community, particularly Western powers, to intervene in sovereign states that abuse their populations and/or
cannot provide responsible governance to their citizens. Moreover, it shaped the grounds for international intervention, placing a limitation on the use of force except with institutional sanction; encouraging multilateralism rather than unilateralism; and requiring the consensus of the UN or other international institutions as a means of legitimacy. At the same time, the notion of sovereignty was redefined under the human-centered framework and the subsequent acceptance of the responsibility to protect doctrine. Norms associated with sovereignty as responsibility – that is, democracy, rule of law, human rights, and a market economy – now serve as a type of blueprint for international interventions and state-building. Furthermore the discourse on sovereignty is seen as more than a formal legal entitlement: sovereignty has increasingly focused on the ‘authority’ element of sovereign statehood, which reflects the core definition of sovereignty as the ‘claim by a state to exercise supreme authority over a clearly defined territory.’

This suggests that the international community, at least rhetorically, supports the notion of reviving a regime of positive sovereignty, whereby the relationship between state and society is important, whereby that the nature and form of government is relevant, and whereby the domestic affairs of troubles territories are not off limits to external actors.

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3

Introduction to the Case Studies: Bosnia, Kosovo, and East Timor

The objective of this chapter is to provide an introduction to the main case studies: the international administrations in Bosnia, Kosovo, and East Timor. Its first section provides a brief history of past international administrations since the interwar period, developing a historical context in which the main case studies are embedded. While each historical example presents unique circumstances and challenges, there are certain features and experiences common to all of them that make it fruitful to conduct a broad comparative analysis. Indeed, failure to appreciate the historical resonance of these antecedents has clearly contributed to the ad hoc nature of these missions.

The second section outlines the international missions of the main case studies. This involves a detailed account of their mandates (the degree of political authority, scope of responsibilities, and the goals of the mission) and the political structures of each international mission and their functioning. It also entails an analysis of the different contextual environments in which these missions are situated. This, of course, demands an examination of the contextual factors, or the objective conditions on the ground, of each case. An analysis of these factors will help illuminate the level of difficulty of each mission and, in turn, identify which of these post-conflict environments are the most susceptible to political change and the most suitable for external led transitions.
A Historical Overview of International Administrations

The political phenomenon of international administration, whereby international organizations exercise temporary quasi-sovereign powers over dysfunctional territories, has a surprisingly long-standing background of maintaining peace and security. As Simon Chesterman points out, ‘One of the many ironies in the recent history of transitional administration of territory by international actors is that the practice is regarded as novel.’\(^\text{264}\) However, the roots of this type of intervention lie with the Treaty of Versailles, which entrusted the League of Nations and its mandate system with the direct administration of disputed German territories in the Free City of Danzig (1920-39), Saar basin (1920-35), and the Colombia district of Leticia (1933-34).\(^\text{265}\) These pioneering projects established a precedent in which an international organization was able to denationalize a public authority and strip governance functions away from a sovereign state. After the Second World War, the UN’s trusteeship system was created to advance and oversee the progressive development of non-autonomous territories towards self-government or independence. During the Cold War, the UN also experimented with the activity of territorial administration when it temporarily took over state functions as part of its peacekeeping mission in the Congo (1960-64). The UN also assumed executive authority in the former Dutch colony West Irian Jaya (for a six month between 1962-63). These antecedents were followed by a series of post-Cold War transitional

\(^{264}\) Simon Chesterman, *You, the People*, p. 11.

\(^{265}\) One pre-League example of an ‘internationalized territory’ was the international operation in Albania, which was established following the Balkans Wars of 1912-1913 under the administration of major European powers (Austria-Hungary, France, Great Britain, Italy, Russian, and Turkey). The six powers deployed a multinational military force to Shkodra in the north of Albania that soon assumed broad administrative responsibility for the wider region. See Erwin A. Schmidt, ‘The International Operation in Albania, 1913-14,’ *International Peacekeeping*, Vol. 6, No. 3 (1999), pp. 1-10.
administrations in Namibia (1989-90), Cambodia (1992-93), Eastern Slavonia (1996-98), Bosnia (1995-), Kosovo (1999-), and East Timor (1999-2002), all of which were either authorized or endorsed by the UN Security Council and operated to a large extent from the institutional framework of UN peacekeeping throughout the 1990s. (Table 3.1 provides a comparative summary of the powers and functions of each international administration listed above.)

**The Mandate System and League Administration**

After the conclusion of the First World War, The Treaty of Versailles effectively provided for a radical redrawing of the map of Europe and reallocated the colonial possessions of defeated Powers. In 1920, some 20 million inhabitants of the former colonies of the German and Ottoman empires in the Middle East, Africa, and the Asia-Pacific were recast as ‘Mandates’ to be administered by regional allies and victors of the Great War.\(^{266}\) After a compromise was reached between the victorious powers on the issue of the former colonies, a three tier system was established: class ‘A’ mandates for nations which were nearly ready to run their own affairs; class ‘B’ mandates which would be run by the mandatory power; class ‘C’ mandates for territories contiguous or close to the mandatory power which would be run as an

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\(^{266}\) There was a contentious debate between the victorious powers over what to do with the territories that had belonged to both Germany and Turkey. Woodrow Wilson’s proposal anticipated that the League would assume responsibility for all of Germany’s former colonies. Britain, France, South Africa, Australia, and New Zealand, all of which favored annexation over the territories, outright rejected Wilson’s proposal. See Neta C. Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Interventions* (Cambridge: Cambridge University Press, 2002).
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<td>1960-1964</td>
<td>SRSG</td>
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<td>1992-1993</td>
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<td></td>
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<td>1992-1993</td>
<td>SRSG</td>
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<td>SRSG</td>
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Adapted from Simon Chesterman, *You, the People*, pp. 258-59.
extension of its own territory subject to certain restrictions. With the exception of the class A mandates, the inhabitants of the mandated territories were classified as ‘peoples not able to stand by themselves under the strenuous conditions of the modern world’, and required the paternal tutelage of ‘advanced nations who by reason of their resources, their experiences, or their geographic position can best undertake this responsibility.’

While the League itself played no role in the actual administration of the territories placed under the mandate system, the League Council (the equivalent of today’s UN Security Council) did assume a more active role as a territorial administrator in parts of Europe (the Free City of Danzig and the Saar basin, both with respect to the former German territory) and in Latin America (the district of Leticia in Colombia). Although the Covenant made no explicit mention of the activity of territorial administration as part of the League’s repertoire, the organization nonetheless took on varying administrative responsibilities in these territories.

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267 Class A mandates included the former Ottoman possessions of Iraq, Syria-Lebanon, and Palestine in the Middle East. Class B mandates comprised of six former German colonies in Africa—the colonies of Togoland-Cameroons and German East Africa—and were deemed to be at a stage of a development that required the direct administration of advanced nations. Finally, the Class C mandates consisted of five former German colonies in South West Africa and in the Pacific; they, too, were placed under the direct tutelage of foreign victors. In terms of gaining independence under the Mandate System, only the Class A mandates achieved independence—with the exception of Palestine. All Class B and C mandates were eventually passed into the UN Trusteeship system with the exception of South-West Africa (Namibia), which was illegally annexed by South Africa.

268 See the Covenant of the League of Nations, Article 22 (1). Article 22(1) expounds that the Mandate System should apply ‘the principle that the well-being and development of such peoples form a sacred trust of civilization’ and that ‘securities for the performance of this trust’ should be embodied within it.

269 The League of Nations also exercised some measure of administrative power in the once wealthy territory of Upper Silesia (1922-1937) between Germany and Poland and in Memel (1924-1937), a German territory that was seized by Lithuania in 1923 and later recaptured by the Nazi German regime. See Steven R. Ratner, The New UN Peacekeeping: Building Peace in Lands of Conflict After the Cold War (New York: St. Martin’s Press, 1994), pp. 90-97.
The first of these territories was the Free City of Danzig, a small German enclave on Poland’s Baltic coast that had been part of West Prussia before the First World War. The City controlled the mouth of an important body of water (the water banks of Vistula) that would later serve as the main economic artery of the new Polish state, which was reestablished on the demand of Woodrow Wilson in his Fourteen Points’ Speech. Questions concerning how Poland would gain access to the waterways led to a wider debate on the future status of Danzig. Whereas the Polish delegates to the Paris Peace Conference made it known that the city should be absorbed under Polish sovereignty, the Allied Victors were reluctant to grant this due to the city’s overwhelmingly German population. Nevertheless, the Versailles Treaty would strip Danzig away from both Germany and Poland, making it a ‘Free City’ under the protection of the League of Nations, while Poland received special access to the waterways and some control over Danzig’s foreign policy.

Under the provisions of the Versailles Treaty, the League administration was mandated to fulfill three core objectives: first, to confirm a constitution that was essentially drafted in conjunction with League officials and by ‘duly appointed representatives of the Free City’ and to guarantee the constitution; second, to settle ‘in the first instance’ any disputes between Danzig and Poland; and third, to protect the minority rights of Polish citizens living in the territory.

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270 Woodrow Wilson’s call for an independent Poland entailed a state that would include all ‘indisputably Polish populations’ and be assured ‘free access to the sea.’ See Woodrow Wilson, Fourteen Points, point XIII.
271 According to 1934 census, of a population of 383,955 Danzig inhabitants, 96 percent were German while only 3 percent were Polish and Kashubian. For population statistics of Poland, visit ‘Population Statistics’ at University of Utrecht, available at www.library.uu.nl/wesp/populstat/Europe/polandt.htm
272 Steven Ratner, The New UN Peacekeeping, p. 94.
273 Versailles Treaty, Arts. 102-104.
the League administration was thus restricted to the role of conciliation and mediation. The Commissioner’s legislative and executive powers were limited to approving amendments to Danzig’s constitution and vetoing treaties he found to be incompatible with the City’s free status.\footnote{Steven Ratner, \textit{The New UN Peacekeeping}, p. 94.} Although most Danzigers resented the city’s free status and preferred union with Germany, the population grudgingly accepted for the time being the protected status of the city while reaping economic benefits from its commercial relationship with Poland. The city also enjoyed political autonomy in its own domestic affairs, holding its own assembly elections to the \textit{Deutscher Volkstag} and acquired many attributes of statehood, including the city’s own currency (the \textit{Gulden}), bank notes, and postage stamps.\footnote{F. P. Walters, \textit{A History of the League of Nations}, ch. 9.}

The Saar basin was also the center of a sovereignty dispute between two European powers: France and Germany.\footnote{For literature on the League’s experience in the Saar basin, see Frank M. Russell, \textit{The International Government of the Saar} (Berkeley: University of California Press, 1926); Sarah Wambaugh, \textit{The Saar Plebiscite} (Westport, CT: Greenwood Press, 1971).} A small region in southwestern Germany that borders with France, the territory was comprised of a small and unified German-speaking population that was relatively wealthy and full of skilled labor. The Saar was always considered as a strategic and important territory for both states because of its rich coalmines. Rejecting France’s aspiration to annex the territory completely after the war, the United States and Great Britain agreed at the Versailles Conference that Germany would surrender all the coal deposits within the Saar as a form of reparations to France for fifteen-years. During that fifteen-year interregnum, the League was entrusted with the government of the Saar territory and to serve as a
neutral arbiter and enable the preservation of German sovereignty. A five-member commission chosen by the League Council was bestowed ‘all powers of government hitherto belonging to [Germany] including the appointment and dismissal of officials, and the creation of such administrative and representative bodies as it may deem necessary’.277 Thus the League Commission administered the full range of political, economic, and other governmental functions for the territory. For example, it exercised budgetary authority, organized elections to local assemblies, issued regulations pertaining to a wide range of issues – from the police and revenue collection to public property and transportation – and dealt with strikes by public officials and coal workers.278 After the end of its fifteen-year tenure, the League was to organize a plebiscite, offering the inhabitants of the Saar region a choice between three options: union with France, union with Germany, or a continuation of League administration. Nearly 1000 election officials and an international military force of 3,300 soldiers from Britain, Italy, Sweden, and Netherlands – the first multinational military operation under the auspices of an international organization – supported the plebiscite. Like the Danzigers, the Saarlanders did not rebel against League rule even if they hardly favored it.

Finally, the League was summoned to help resolve a border dispute in Latin America between Colombia and Peru. In September 1932, Peruvian irregular forces invaded and occupied the Colombian town and district of Leticia. This sparsely populated territory provided Colombia a vital conduit to the Amazon, which had been

277 Versailles Treaty, Part III, Section IV, Art. 19.
278 Steven Ratner, The New UN Peacekeeping, p. 92
ceded by Peru in a treaty, signed in 1922, but ratified only in 1928. Following the take over the territory by Peruvian irregulars and a brief attempt at mediation by Brazil, the dispute was subsequently referred to the League Council in early 1933. The Council unanimously demanded the withdrawal of Peruvian forces of the territory by a League commission pending a final settlement. This decision was heavily supported by the United States, whose external influence in the region was unparalleled. A League Commission arrived thirty days later and Peruvian forces subsequently withdrew from the territory.

Under the peace agreement in Leticia, the League Commission was mandated with plenary authority to govern the territory for a maximum one-year period and was supported by a 75-man military contingent. The Commission established three administrative branches in the areas of the security, public works and public health, as well as the examination of claims with respect of property lost or damaged during the violence. The League Commission governed Leticia ‘in the name of the Government of Colombia,’ which was responsible for the commission’s expenses and the costs of administration. The operational aim of the League’s mission was clear: to formally ensure a smooth transfer of the territory back to Colombia proper.

Although the level of authority exercised by the League of Nations varied in each case, the operational aims were similar in that the League played a facilitator role in resolving sensitive sovereignty (or border) disputes. In the Saar Basin, for example,

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281 Ralph Wilde, ‘From Danzig to East Timor and Beyond,’ p. 588.
the League directly resolved the long-standing dispute over the territory by organizing and executing a peaceful referendum on 1 March 1935. The territory was effectively returned to German sovereignty as more than 90 percent of the inhabitants voted for reunification with Germany.  

This led one political observer to view the operation as ‘a glimmer hope for international governance as a means of resolving territorial disputes.’ Similarly, in Leticia, the League facilitated the peaceful resolution of the sovereignty dispute between Colombia and Peru. Conversely, in the Free City of Danzig, the Treaty of Versailles resolved the sovereignty dispute between Poland and Germany by making the city an internationally protected territory under the auspices of the League. According to Steve Ratner, the ‘Danzig experience began with great promise and ended as catastrophically as the League itself.’ The steady rise of Nazification in Danzig and constant tensions between Poland and Danzig overwhelmed the League’s capacity as guarantor of the territory. The international administration was shortly terminated after Hitler eventually demanded that the territory be placed back under German sovereignty in the summer of 1939. The League’s failure to protect Danzig from Nazi occupation not only reflected the institutional weakness of the organization as a territorial administrator, but also as a wider collapse of the League system itself, which failed in preventing large-scale warfare in Europe.

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282 During their presence, League authorities were also able to directly restore public services, renew civilian institutions, and revive economic life. Although the League was not bound to respect the wishes of the inhabitants of the Saar, it would have been ethically difficult to ignore the preferences of the more than 90 percent of inhabitants who voted for reunification with Germany.


284 Ibid. p. 95.

285 From its inception, the League was destined for failure. Its framers intended on creating a weak organization that would not interfere or curtail their national interests abroad. Beyond its inability to
The UN’s Cold War Projects in Territorial Administration

As discussed in the previous chapter, the normative environment of the Cold War period emphasized the principles of non-intervention and state autonomy. This was coupled with the East-West ideological confrontation that characterized the Cold War security environment. As a result, most UN interventions during this period were limited to traditional peacekeeping interventions, in which the objective was not to enforce resolutions on warring parties, but rather to discourage their escalation by placing UN blue helmet forces as a buffer zone between two warring groups. Yet, the UN did consider a number of opportunities to engage in the activity of territorial administration. Some were contemplated but never evolved beyond the proposal stage. These included the unrealized missions in the City of Trieste, the City of

enforce international law on obstinate state, the League’s credibility was severely weakened without the participation of the United States. Compounding all of this was the breakdown of the world economy during the Great Depression of the 1930s and the subsequent turn of many countries (Germany, Italy, Japan and most of Central and Eastern Europe) to dictatorial fascist rule, all of which overwhelmed and ultimately exposed the League’s inherent weaknesses.

What is now part of Slovenia, the ancient port city of Trieste was occupied by Yugoslavia after the conclusion of the Second World War. An ensuing debate between the Allied Powers and Yugoslavia over the exact boundary lines of the territory eventually led to the 1947 peace treaty, which made Trieste a “Free Territory.” Like the Free City of Danzig, the Security Council approved a Permanent Statute (which was effectively an interim constitution) that would have made Trieste an independent entity protected under the guardianship of the UN. The Statute provided that the Council appoints an international Governor who would act on behalf of report directly to the Security Council on all matters. The powers granted to Trieste’s Governor bestowed him great authority. Not only could the Governor review all legislation and veto laws, regulations, and treaties that he found incompatible with Trieste’s interim constitution, but he could also appoint and dismiss officials and take emergency action. The local Assembly could not override his authority directly; however, elected officials could petition the Security Council to overturn any action by the international Governor.

In the end, the proposed project never materialized as it fell victim to the geo-political climate of the Cold War. The ideological rivalry between the United States and the Soviet Union prevented the Council from agreeing on the appointment on a Governor. The situation was later resolved by the 1954 London Agreement, which divided the territory between Italy and Yugoslavia, more or less along the lines of occupation between the Allied Powers and Yugoslavia. For a detailed account of the Trieste situation, see Meir Ydint, Internationalized Territories: From the Free City of Cracow to the Free City of Berlin (Leyden: A. W. Sythoff, 1961), pp. 256-69.
Jerusalem, and the former mandate territory of South West Africa/Namibia. While not covered in this study, it may be argued that these proposed projects of international administration set additional precedents that legitimized the Security Council’s right to administer dysfunctional territories of various types. These Cold War anomalies also showed how the international community did foresee a more active role for the UN in international relations.

In addition to those unrealized missions, the UN did conduct two operations during this period that can be qualified as international administrations. The first was the UN mission in the Congo (ONUC), whereby UN authorities were mandated to support the decolonization process of the territory by ensuring the withdrawal of

287 Stephen Ratner further asserts that in 1947, two-thirds of the UN General Assembly approved a report by the UN Special Committee on Palestine (UNSCOP) to terminate the British Mandate over Palestine in favor of a two-state solution—an Arab State and a Jewish State—and to make Jerusalem ‘a corpus separatum under a special international regime… administered by the United Nations.’ (GA Res. 118) The Assembly later called on the Trusteeship Council to prepare a Statute for the City of Jerusalem, which it duly completed on 21 April 1948. The Council’s Statute provided for an international Governor, who would, on behalf of the UN, “exercise executive authority in the City and… act as chief administrator thereof” for a ten-year period, after which it would be re-examined by the Trusteeship Council.

Given the acute sectarianism of the conflict, the Statute empowered the Governor with powers even greater than those proposed in Trieste: this included the preservation of the territory’s integrity and security as well as the operation of the day-to-day governance of the City; the powers to conduct foreign affairs, supervise religious bodies, protect ‘Holy Places’, and promote human rights; and the final authority to veto bills or legislation inconsistent with the Statute. Like Trieste, local representatives could petition the Council in situations of disagreement with international authorities. Due to violence breaking out between Jordan and Israel in 1948, the proposed plan was never implemented and both sides eventually rejected the idea of placing the City under an international regime. Although the UN has reiterated its plan to internationalize the City as a solution to the conflict, Israel has ruled out that possibility since the Six-Day War. Stephen Ratner, _The New UN Peacekeeping_, p. 99.

288 The UN also asserted the right to govern the territory of Namibia after the General Assembly terminated the trusteeship that South Africa had first acquired under the League of Nations, and for this purpose, created a Council for Namibia that was theoretically to have carried out the functions of governance. (GA Res. 2248) However, South Africa’s refusal to give up the territory to UN administration prevented it from exercising these functions in any way. In 1988, over a decade later, South Africa finally agreed to Namibian independence, and the United Nations Transition Assistance Group (UNTAG) was created to monitor the agreed cease-fire and withdrawal of foreign forces and supervise the November 1989 election (Sec Res. 435) though it did not engage in governance. On West South Africa/Namibia generally, see, for example, David Lush, _Last Steps in Uhuru: An Eye-Witness Account of Namibia’s Transition to Independence_ (Windhoek: New Namibia Books, 1993); Lionel Cliffe, _The Transition to Independence in Namibia_ (Boulder, CO: Macmillan, 1996).
Belgian colonial authorities and provide assistance and support to the new government. The operation was initially deployed as a traditional peacekeeping mission, intended only to provide the Congolese Government with limited security assistance until national security forces were able to maintain order on their own.\footnote{ONUC’s military component was the largest military mission in UN history at the time (at a peak strength of 20,000 blue helmet troops from approximately 30 countries) It began as a traditional peacekeeping mission modeled after UNEF I: it was to act only with the consent of all parties involved; the military units would be impartial and not intervene in any internal conflict, including any joint operations with the government; and use force only in self-defense. In addition, the United Nations deployed a civilian police unit in order to assist remnants of the Congolese police force in maintaining civil order.} However, as the Congo’s problems mounted, so did ONUC’s responsibilities. The UN had to deal with a rapidly deteriorating security situation, a major economic and humanitarian crisis, numerous inter-tribal conflicts, several secessionist movements, and a complete breakdown in public services. The sheer size of the country (the third largest state in Africa) and its large and ethnically diverse population (there are over 200 ethnic groups), which was estimated at 60 million inhabitants, certainly contributed to the magnitude of problems that the UN confronted in the Congo.

ONUC was formally established to assist the Congolese government in recreating state structures capable of exercising sovereignty authority throughout the country and was not conferred powers of direct governance. However, with the rapid withdrawal of Belgian administrators, the country severely lacked ‘trained civil servants, executives and professional people among the Congolese, and the striking absence of administrative and political experience.’\footnote{Rajeshwar Dayal, \textit{Mission for Hammarskjold: The Congo Crisis} (New York: Princeton University Press, 1976), p. 217.} As a result, ONUC assumed direct responsibility in some areas of the administration, such as public health, communications, and certain transport facilities, and engaged in \textit{de facto} governance.
in order to avoid a sustained breakdown.  Given the unprecedented nature of the mission and the insurmountable nature of the conflict, it is not hard understand why ONUC is seen as an unsuccessful *de facto* international administration. With little or no governmental control over vast parts of the territory, ONUC was able to temporarily put down a secessionist movement and aided the central government in asserting nominal control over the territory. At the very same time, the UN suffered heavy repercussions: not only did it sustain the death of nearly 200 peacekeepers in hostile action and of former Secretary-General Hammarskjold in a plane crash, but the Congo operation also polarized the Security Council, nearly bankrupted the United Nations, and ensured that a mission of that nature would not be mounted on a comparable scale for decades.  

The other example was the United Nations Temporary Executive Authority (UNTAE) in Irian Jaya. The dispute between the Netherlands and Indonesia over Irian Jaya can be traced back to Indonesia’s independence from the Dutch in 1949. While Irian Jaya had not been included in the transfer of sovereignty, the Indonesian government asserted its right – based largely on the principle of *uti possidetis* – to the territory while the Dutch insisted that the inhabitants of Irian Jaya were an ethnically and culturally distinct people who had a right to exercise self-determination. (The 800,000 Papuan people, who are indigenous Melanesians with Christian backgrounds, inhabit the territory.) Although the issue of sovereignty was at the forefront of the  

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international debate, both countries were also interested in controlling the territory’s natural resources, which includes an abundance of precious minerals, timber, and oil. While various proposals were offered to settle the dispute, neither side was able to reconcile their differences.\footnote{For example, the so-called Malaysian Proposal in 1960 suggested that a trusteeship be created for the territory under the joint supervision of the Netherlands, Australia, and Malaysia. While the proposal received full support from the Dutch, the Indonesian government rejected it on the grounds that the logical end state of a UN Trusteeship was independence. Tom Parker, \textit{The Ultimate Intervention}, p. 19.}

Meanwhile, the Indonesian government was preparing its military forces for an armed struggle against what they perceived as European colonialism. Indeed, the consideration of the Irian Jaya question coincided with the rise of nationalism in the Third World and international support of self-determination around the globe. As with most UN interventions during this juncture, external pressures from the Cold War superpowers heavily shaped the outcome of the dispute. The USSR supported Indonesia’s claim over the territory and its ‘anti-imperialist’ struggle against the West by providing the Jakarta with enough military firepower to defeat the Dutch in a potential conflict. Fearing another war erupting in Southeast Asia, the U.S. aggressively negotiated between both parties to peacefully and quickly resolve the situation. Washington was especially keen on winning over Indonesia as a potential Southeast Asian ally to counterbalance Soviet influence in the region.\footnote{According to William J. Durch, it was ‘not until the US decided to intervene actively to help settle the dispute were direct negotiations begun. Moreover, without periodic [US intervention], the talks still might have been overtaken by war, one into which the US might have been dragged to protect its NATO ally even though it disagreed with Dutch policy. Thus, the US urged Indonesia to wait, while it urged the Dutch to move. This pressure [ultimately] allowed the parties, especially the Netherlands, to change their positions with less loss of face than would have been the case for similar concessions made in unmediated talks.’ See William J. Durch, ‘UN Temporary Executive Authority,’ in William J. Durch (ed.) \textit{The Evolution of UN Peacekeeping: Case Studies and Comparative Analysis} (New York: St. Martin’s Press, 1993), p. 296.} Under extreme pressure from the United States, the Netherlands eventually acceded and...
signed a bilateral agreement to hand over the territory to the United Nations. On 21 September 1962, the General Assembly passed resolution 1752 (XVII), taking note of the bilateral agreement and authorizing the Secretary-General ‘to carry out the tasks entrusted to him.’

UNTEA was authorized by the General Assembly in order to avoid the Cold War rivalry that had plagued the Security Council in the earlier UN mission in the Congo. The mission represented the first case in which the UN assumed direct and exclusive responsibility over a territory. It was supported by a small military and police arm, the United Nations Security Force (UNSF), which was comprised of 1,500 Pakistani infantrymen and 75 U.S. and Canadian air support staff. After the signing of the bilateral agreement, the majority of former [Dutch] civil servants left Irian Jaya creating both a governmental and security vacuum that UNTEA had to fill. For this reason, the first phase of UNTAE’s mission was to take over powers of direct governance in the fields of finance, health, education and support of the economy during a seven-month transition period. The UN Administrator was also empowered to ‘promote new laws and regulations or amend them within the spirit and framework of the agreement’ and to appoint government officials, including judges. The second phase of the operation entailed UN assistance and participation in the Papuans exercise of ‘freedom of choice’ regarding affiliation with Indonesia by the end of 1969. During this phase, the UN was given a weak mandate to assist in a plebiscite

297 Agreement Concerning West New Guinea, art. VIII.
that was supposed to allow the Papuans to make a free decision to either ‘remain with Indonesia’ or ‘sever their ties with Indonesia.’ (A function that was similar to the League’s task in the Saar basin.)

UNTEA was a relatively simpler operation than the Congo mission. In fact, UNTEA resembled the international administrations under the League, as each mission was concerned with ensuring the successful transition of a sovereignty dispute between two countries with little or no state-building. UNTAE was able to peacefully transfer full authority to Jakarta as scheduled on 1 May 1963, leading many to declare the operation as a success: ‘The UN functioned well as an administrator of both the agreement and the territory itself, and as a guarantor of a smooth transition and the rights of the local inhabitants during those six months.’

Yet, the second phase of the operation reminded the UN of its inherent weakness in the face of realpolitik. In this phase, the UN was supposed to assist and participate with the government of Indonesia in helping the Papuan people decide the future of the territory through a plebiscite no later than 1969. After a six-year transitional period under Indonesian rule, the UN requested a one-man one-vote plebiscite supplemented by consultations in remote areas of the territory. This method was outright rejected by the Indonesian government, which announced that it would exclusively consult with handpicked representative assemblies (comprising a total of 1,026 members) to decide, on behalf of the Papuan people, whether they wished to be a province of Indonesia or become an independent state. Clearly, the Indonesian government was determined to annex the territory and made every attempt to


\textit{International Territorial Administration in the post-Cold War Period}

When observed within the broader developments of the post-Cold War period, the international administration of war-torn territories can be viewed as part of a broader trend in which the international community, particularly its Western members, has increasingly promoted the institutions and values of market-orientated policies, democratic reforms, the rule of law, and human rights norms. Indeed, as asserted earlier, today’s international administration may be conceived as a device of ‘strategic liberalization’ that pursues the overall goal of promoting peace in war-torn societies through Western-style liberalization.\footnote{See Roland Paris, ‘Peacebuilding and the Limits of Liberal Internationalism.’ See also Mohammed Ayoob, ‘Third World Perspectives on Humanitarian Intervention and International Administration,’ \textit{Global Governance}, Vol. 10, No. 1 (2004), pp. 99-118.} Although there is nothing in the UN Charter that overtly mentions the idea of the Security Council’s authority to administer a territory in response to threats against peace and security, the Charter has proven to be flexible.\footnote{According to Simon Chesterman, the issue of the UN’s authority to engage in territorial administration was discussed during the San Francisco Conference—where the drafting of the UN Charter took place—but it never made the final draft. At the conference, Norway proposed to amend the Chapter VII enforcement power of the Council to provide, in special cases, temporary powers of territorial administration if the administration by the occupant state itself represented a threat to international peace. In the end, the “proposal was withdrawn out of a concern that including such
power to temporarily administer a dysfunctional territory by delegating that power to the Secretary-General, or his special representative, or as in the case of Bosnia, to other ad hoc bodies like the Peace Implementation Council (PIC). The liberal normative context and human-centered security framework that characterizes this period opened up opportunities for the organization to pursue more extensive and invasive forms of intervention. Since the beginning of this period in 1989, the Security Council has authorized or endorsed six international administration-type interventions, three of which (Namibia, Cambodia and Eastern Slavoina) will be examined briefly below, while the main case studies (Bosnia, Kosovo and East Timor) are observed in greater detail in the next section.

The first post-Cold War case was the United Transition Assistance Group (UNTAG) in Namibia. After the UN had terminated the mandate of South Africa over Namibia in 1966, the territory was placed under the responsibility of the UN Council for South West Africa/Namibia. The UN was supposed to support the South West African people in their right to self-determination, freedom and independence in accordance with the UN Charter. However, South Africa retained de facto control and established an apartheid regime in Namibia. UNTAG was later established by Security Council Resolution 632 ‘to ensure conditions which will allow the Namibian people to participate freely and without the intimidation in the electoral process under the supervision and control of the UN’s leading to early independence of the

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specific powers might be interpreted as suggesting that other powers not listed were implicitly excluded.’ See Chesterman, You, the People, p. 49.

However, because of South African resistance and other regional factors, UNTAG did not deploy until a decade later after an agreement was reached between South Africa, Angola, and Cuba. UNTAG’s mandate was successfully completed after the elections in November 1989, which resulted in Namibia’s attainment of statehood on 21 March 1990.

A second example of territorial administration in the post-Cold War period was the UN Transitional Authority in Cambodia (UNTAC) in 1992. Since its independence from France in 1954, Cambodia’s political life can be characterized as one that has been dominated by conflict, foreign interventions, and geo-political quarrels between regional and international powers. After more than 20 years of devastating wars and economic sanctions, Cambodia’s physical infrastructure was either non-existent or operated at dismal levels. Unemployment was rampant. And years of devastating conflict traumatized the entire population to the extent that every family had experienced some loss over the years. Adding to this was a shortage of educated members of the population who had fled the country, or had been killed during the Khmer Rouge years. As a result, Cambodia was condemned with a very low level of local capacity.

UNTAC was a striking departure from previous conventional peacekeeping in that it retained certain functions of the state and intended to restore popular sovereignty through free elections. For a period of eighteen months, the Paris accords entrusted UNTAC with organizing and conducting elections; adopting an electoral law; developing an information campaign directed at the public; designing and

305 Steven Ratner, The New Peacekeeping, p. 161
implementing a registration system for voters, political parties, and candidates; ensuring free access to the media; and investigating complaints of electoral irregularities.\textsuperscript{306} UNTAC was also to exercise direct control over five critical areas of each faction’s administrative structures (defense, foreign affairs, finance, information, and public security) in order to ensure the implementation of the Paris Accords:

In order to ensure a neutral political environment conducive to free and fair general elections, administrative agencies, bodies and offices, which could directly influence the outcome of elections, will be placed under direct United Nations supervision or control. In that context, special attention will be given to foreign affairs, national defense, finance, public security and information. To reflect the importance of these subjects, UNTAC needs to exercise such control as is necessary to ensure the strict neutrality of the bodies responsible for them. The United Nations, in consultation with the SNC, will identify which agencies, bodies and offices could continue to operate in order to ensure normal day-to-day life in the country.\textsuperscript{307}

Writing in 1995, Michael Doyle asserts that not since ‘the colonial era and the post-World II Allied occupations of Germany and Japan had a foreign presence held so much formal administrative jurisdiction over the civilian functions of an independent country.’\textsuperscript{308} Beyond its civilian responsibilities, the Security Council also mandated the military component of the operation under UNTAC command. UNTAC was supported by 15,991 UN troops, who were to supervise the demobilization of the 20,000 ex-combatants, monitor the cease-fire, assist in clearing an estimated million mines that cover the countryside, verify the withdrawal of all foreign forces and their equipment from Cambodia, and provide security for the 1993 national election. UNTAC was also supplied a 3,600-strong police force (CIVPOL), whose mandate

\textsuperscript{306} Agreement on a Comprehensive Political Settlement of the Cambodian Conflict, Annex 1, Section D.
\textsuperscript{307} Paris Accords, art. 6. UN Doc. A/46/608-S/23177.
included the continuous monitoring of the internal security forces and local police forces at all levels.

Although UNTAC at the time was the most ambitious and expensive (total cost of $1.6 billion) operation that the United Nations had ever launched, it’s political authority was relatively weak in comparison to its successors in Eastern Slavonia, Bosnia, Kosovo, and East Timor. Indeed, UNTAC did not possess governorship powers over Cambodia. Moreover, it did not impose its political mandate over the territory’s four main factions. Its relatively weak authority and short-time table were predicated on the assumption that all major factions would be committed to the peace process, and thus, the mission was based firmly on the traditional principles of conventional peacekeeping without any provision being made for enforcing compliance on any aspect of the accords.

Despite the variety of unresolved issues that UNTAC failed to address, the international community declared the intervention a success shortly after its departure. Indeed, UNTAC accomplished a number of impressive feats: it was able to host a national election notwithstanding mounting political violence, which allowed for the formation of a new government and new constitution, and it created conditions that put an end to over two decades of violence that had killed millions. Another notable achievement of UNTAC was its ability to facilitate the return of more than 96 percent of the 360,000-targeted refugees from numerous camps under the Khmer Rouge’s control.\footnote{Aided by UNHCR, one of the UN’s special agencies in the area of repatriation, UNTAC accomplished this feat by April 1993. It is important to note here that the Khmer Rouge consented to
Prime Minister Hun Sen. Although pre-1991 levels of violence have never returned, UNTAC failed in its major objective of transforming Cambodia into a western-style democracy. This raises the question of whether or not UNTAC presided over an actual transition.

A third transitional administration during this period is the United Nations Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium (UNTAES). Following Croatia’s declaration of independence from the Socialist Federal Republic of Yugoslavia (SFRY) in 1991, ethnic Serbs, supported by the Yugoslav National Army (YNA), captured Eastern and Western Slavonia and the Krajina within Croatia (approximately one-quarter of Croatia’s territory with a population 125,000) and declared themselves the Republika Sprska Krajina. The UN intervened and established safe havens under the supervision of UNPROFOR from early 1992 and mid-1995. To the extent that an ethnic cleansing campaign was being committed in Europe’s so-called ‘backyard,’ such atrocities served as an impetus for Western members of the international community to begin taking firm action. Croatia, in particular, was perceived as an important ally of Western Europe. The country is located on the strategic coastline of the Adriatic, directly across from NATO member Italy, and it had an enduring special relationship with Germany. In May 1995, the Croatian army launched a series of military attacks (Operations ‘Flash’ and ‘Storm’) on Serb positions in Croatia, re-capturing Western Slavonia and the Krajina. In response to international pressure, however, Croatia refrained from attacking the last Serb stronghold in Eastern Slavonia.

this and even allowed UN observers’ limited inspections into its bases. See James Mayall, The New Interventionism 1991-1994, p. 42.
Given the international community’s involvement in the conflict now, the nationalist leader of Serbian Yugoslavia, Slobodan Milosevic, realized that he had not much to gain by supporting Serbian paramilitary forces in the region. In November 1995, as the Dayton agreement was being debated, the international community was able to persuade Milosevic to abandon his support for the ethnic Serb population in Eastern Slavonia. Deprived of military and political support from Belgrade, local Serb leaders in Eastern Slavonia were forced to capitulate and eventually agreed to give up the territory to the Croatian government under UN auspices. Negotiations culminated in the signing of the Basic Agreement, which called upon the Security Council to authorize an international force to maintain peace and security in the region and to ‘establish a transitional administration, which shall govern during the transition period in the interest of all persons resident in or returning to the region.’

On 15 January 1996, the Security Council unanimously adopted resolution 1037, establishing UNTAES for an initial twelve-month period (later extended for two six-month periods). The authority given to UNTAES was extensive and comprised of a military and civilian component. Militarily, the Security Council authorized UNTAES with up to 4,984 troops. They were to supervise the demilitarization of the region, monitor the voluntary and safe return of refugees and displaced persons to their homes of origin, and help to maintain peace and security.310 In the event of an emergency, the NATO-led Implementation Force (IFOR), based in neighboring

310 The Security Council rejected the Secretary-General’s initial request of a military force of 9,300 troops plus logistic support and entrusted to a coalition of willing states not under UN command. SC Res 1025 (1995), 30 November 1995.
Bosnia, provided a credible military threat to the warring parties and thus signified the importance of a strong and unified international presence.

The civilian component of UNTAES was to establish a temporary police force; develop a training program and oversee its implementation; undertake tasks relating to civil administration and the functioning of public services; facilitate the return of refugees; and organize elections, assist in their conduct, and certify the results. The Basic Agreement called upon the Security Council to establish an administration to ‘govern’ the region pending its restoration to Croatia. The SRSG, Jacques Paul Klein, in turn, inherited a regime in which the transitional authority alone would possess sole executive power: he would not have to obtain the consent of either the [local] council or the parties for his decisions; he could override the local population on any administrative issue; and he had the power to pick and choose which NGOs could operate in the region.311 Although UNTAES constituted a governorship-type international administration, it relied largely on existing local governmental bodies and personnel for the provision of basic services – from water, sanitation, energy, and public transport to communications, waste disposal, and health and educational services. Unlike the past examples in Irian Jaya and Cambodia, much of the Croatian state – including Eastern Slavonia and its ethnic Serb population – was already endowed with relatively well-functioning administrative structures and an educated population with the skills necessary to continue administering their own territory. Building on these endowments, UNTAES deployed an estimated thirty Joint Implementation Committees (JIC) and subcommittees, composed of Serbs and Croat

representatives and led by UNTAES officials, in order to harness the local capacity of the region and understand local personalities, concerns, and priorities.

In contrast to the outcome in Cambodia, success in Eastern Slavonia has been far more promising with relatively fewer major setbacks. Demilitarization of Serb paramilitary forces was completed on 20 June 1996, only five months after the start of the mission, which also led to the withdrawal of the Croatian Army from its forward position. In addition, UNTAES conducted local and regional elections on 13-14 April 1997, leading to the victory of the nationalist Independent Democratic Serb Party (SDSS) with an absolute majority in eleven of the twenty-eight municipalities. UNTAES was also able to establish and train a Transitional Police Force (TPF), comprised of 815 Croats, 811 Serb officers, and 52 officers from other ethnic groups on 15 December 1997, one month before the conclusion of the UN mission. United Nations reports attest to growing professionalism among the police, although TPF officers would often show reluctance to take police action or force against members of their own ethnic community. UNTAES concluded its mandate on 15 January 1998 and was replaced by a smaller UN civilian mission of 180 police monitors, whose job was to observe the conduct and performance of the newly established police force; this small operation subsequently handed over its responsibilities to OSCE, which later monitored Croatia-wide elections in January and February 2000. In short, UNTAES succeeded in establishing peace and stability

313 Ibid.
in Eastern Slavonia and returning the territory to Croatian state sovereignty, fulfilling its major objective.

**International Administrations in Bosnia, Kosovo, and East Timor**

This section introduces the main case studies in Bosnia, Kosovo, and East Timor. It provides a detailed analysis of the operational framework of each case study by examining their mandates and mission structures. The section then turns to an analysis of the contextual factors of each case, thereby constructing the ecologies of each target territory.

**The Office of High Representative (OHR) in Bosnia**

The 1995 Dayton Peace Agreement (DPA) was an unprecedented peace treaty of modern times. Unlike other conventional peace treaties, which rely on the political will of warring parties to persevere, the DPA was externally imposed on Bosnia’s warring parties who were forced to cooperate and comply with the stipulations set out by the so-called Contact Group. The DPA is also exceptional in that it not only contains Bosnia’s national constitution – which was shaped largely by western technocrats – but also partitioned the country into two entity-level governments, one Bosniak-Croatian entity (the Federation of Bosnia-Herzegovina) and a Serbian entity (the Republika of Srpska (RS)), both of which are answerable to its terms and conditions. Next, the DPA is unique among peace treaties because much of its content deals with non-military provisions, such as institution-building and democracy.

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316 The Contact Group was comprised of the US, UK, France, Germany, and Russia.
promotion.\(^\text{317}\) Indeed, former HR Carlos Westendorp once called the DPA and its eleven Annexes as a ‘blueprint’ for state-building.\(^\text{318}\) Finally, the DPA bestowed international military and civilian authorities with far-reaching powers that are tantamount to the most basic functions of government and state.

The military component of the international intervention, which operated independently from its civilian counterpart, was initially handled by NATO (in the form of IFOR and later SFOR), and was authorized by the UN Security Council under Chapter VII of the UN Charter to enforce aspects of the DPA. The UN’s poor performance in providing security in the so-called safe zones in Bosnia during the conflict compelled Western powers to assign NATO the primary security role.\(^\text{319}\) NATO responded by deploying a peak level of 60,000 multinational military troops to the fledging Bosnian state – though it was not mandated at the outset to perform law enforcement or police responsibilities.\(^\text{320}\) As the security situation stabilized on the ground, the EU took over peacekeeping duties from NATO in 2004. By 2007, EUFOR reduced its troop presence from 6,000 to 2,500.

On the civilian side, Annex 10 of the DPA established the OHR as a diplomatic office and granted it ultimate civilian authority over all other civilian organizations and agencies (OSCE, IPTF, UNHCR) operating in Bosnia. Throughout its presence

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\(^{319}\) On 6 May 1994, the UN under Security Council Resolution 824, declared Sarajevo, Tuzla, Zepa, Gorenje, Bihać, Srebrenica, and their surroundings as safe areas to deter armed attacks by Bosnian Serb forces.

the OHR has had a relatively small staff consisting of both international and local personnel.\textsuperscript{321} The OHR receives guidance, funding, and orders from the Peace Implementation Council (PIC), an \textit{ad hoc} body comprised of fifty-five governments and international organizations, and it serves as a conduit between the Security Council and the civilian operation on the ground.\textsuperscript{322} Its primary mandate is to ‘monitor’ the implementation of the DPA and to ‘promote’ compliance with it.\textsuperscript{323} The High Representative is responsible for not only coordinating reconstruction and development activities, but for promoting humanitarian programs and arranging for the return and resettlement of refugees and displaced persons.

The political goals set out in the DPA are ambitious yet contradictory. Beyond creating conditions that would lead to lasting peace, the international community is to guide the warring parties in establishing democratic and sustainable political institutions that would preserve the territorial integrity of the country and promote a unified multi-ethnic Bosnian state. To accomplish this, the DPA demanded the return of all refugees and displaced persons to their homes of origin and to create conditions that would lead to the ‘highest level of internationally recognized human rights and fundamental freedoms’ in the territory.\textsuperscript{324} At the same time, however, the DPA essentially partitioned the country into three national statelets and devolved most of the competencies of the state to the lower entity-level governments thereby creating

\textsuperscript{321} The staff of the OHR has increasingly assumed a Bosnian face. In 2004, for example, the OHR had a staff of 575 persons, including 108 internationals and 476 locals. Data available on the OHR website, www.ohr.int., section ‘General Information.’

\textsuperscript{322} The PIC was established by the Peace Implementation Conference on 8 and 9 December 1999 and was later endorsed by the UN Security Council in SC Res. 1031 (1995) of December. The PIC works through a Steering Board comprising representatives of Canada, France, Germany, Italy, Japan, Russia, the UK, the US, and officials of other regional organizations.


not only a weak central government, but also institutionalizing the deeply divided politics of identity and ethnic allegiance.

In the first two years of the mission, the OHR and NATO played a relatively passive role in monitoring implementation of the DPA and ensuring that the warring parties complied with its conditions.\textsuperscript{325} As a result, the international community relied heavily on the cooperation and willingness of Bosnia’s nationalist parties to take the lead. However, this passive approach was shortsighted as neither party was genuinely interested in reconciliation. Instead, they preferred to strengthen their ethnic fiefdoms and satisfy their parochial interests. In particular, the IFOR’s reluctance to arrest persons indicted for war crimes sent a chilling message to would-be returnees and emboldened the nationalist parties to obstruct the DPA. The 1996 general elections, which resulted in huge victories for the wartime nationalists parties, prompted the international community to reconsider the notion of strengthening the influence of the OHR in Bosnia’s domestic affairs, which it did at two 1997 PIC meetings – Sintra (30 May) and Bonn (10 December) – without consulting Bosnia’s central and Entity governments. The so-called ‘Bonn powers’ enhanced the HR’s ability to influence and shape the political trajectory of the country.\textsuperscript{326} At the meeting, the PIC declared:

The Council welcomes [the HR’s] intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary, on the following issues:

a. timing, location and chairmanship of the meeting of the common institutions;
b. interim measures to take effect when Parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned;

\textsuperscript{325} The U.S. in particular was against a strong and activist HR because it feared that such involvement in Bosnia’s domestic affairs would drag NATO forces into a ‘mission creep’ scenario as had happened in Somalia.

c. other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violations of legal commitments made under the Peace Agreement or the terms for its implementation.\textsuperscript{327}

Given these newfound powers, the HR was allowed to interpret his authority and exercise \textit{de facto} legislative, executive, and judicial powers. In terms of legislative powers, the HR can amend or adopt laws through orders or decisions when domestic legislative bodies fail to vote for crucial laws in line with international standards. In the area of executive competencies, the HR can sanction or dismiss recalcitrant local officials in administrative and legislative bodies. With regard to judicial powers, the HR can declare laws of the various assemblies unconstitutional, or inimical to the principles laid out in the DPA.

According to the International Crisis Group, the ‘High Representatives have used the Bonn powers to institute significant reforms, including passing laws, amending constitutions, issuing executive decrees, appointing judges, freezing bank accounts, overturning judicial decisions and removing and banning elected politicians and others from holding public office or position.’\textsuperscript{328} Indeed, the OHR’s dependency on the Bonn powers to push progress is clearly reflected by the steady increase of its use by several HRs: from 1997 to 1999, Carlos Westerndorp imposed 76 decisions; from 1999 to 2001, Wolfgang Petritsch’s imposed 250; and from 2002-2006, Paddy

\textsuperscript{327} UN Doc. S/1997/979 Annex. The Declaration was approved in SC Res 1144 of 19 December 1997, in which the SC expressed its ‘support the conclusions of the Bonn Peace Implementation Conference and encourages the SG to pursue implementation of its relevant recommendations, in particular on the restructuring of the IPTF.’

\textsuperscript{328} International Crisis Group, \textit{Ensuring Bosnia’s Future}, p. 4.
Ashdown, who was perhaps the boldest and most active HR in wielding the Bonn powers, imposed 447 decisions during his term alone.\textsuperscript{329}

Unlike the international administrations in Kosovo and East Timor, the OHR in Bosnia is restricted in terms of its ability to directly administer the territory. The local institutions of Bosnia that were established in the DPA enjoy largely independent decision-making powers and international officials are not employed on a large scale in state organs. The exception to this was a series of hybrid institutions that comprise of both international and domestic officials. These included institutions such as the Independent Media Commission, the Central Bank, the Provisional Elections Commission, the Human Rights Commission (Human Rights Ombudsperson and Human Rights Chamber) and the Constitutional Court. In all of these hybrid institutions, international officials have jointly worked with local authorities and adopted quasi-legislative measures or took judicial or quasi-judicial decisions that directly affected the local population.

\textit{UN Interim Administration in Kosovo (UNMIK)}

Similar to the Bosnian operation, the international community imposed peace on Kosovo’s warring parties, though this time without authorization from the UN Security Council. NATO’s eleven-week bombing campaign against FRY military and paramilitary forces led to their withdraw from the province and subsequently to the passage of UNSC Resolution 1244 (1999), which established a UN protectorate on

\textsuperscript{329} Ibid.
Resolution 1244 was therefore not the result of a negotiated agreement between Kosovo Serbs and Albanians. Unlike other international administrations addressed in this study then, UNMIK was exceptional in that the UN assumed control of a territory not through consent but rather by way of force and unilateral decree.

Resolution 1244 brought NATO and the UN together to provide postwar security and governance respectively to Kosovo under the enforcement powers of Chapter VII. Militarily, NATO’s Kosovo Force (KFOR) – which by the end of 1999 had an estimated 45,000 multinational troops deployed in the territory – was tasked with ‘establishing a secure environment… and ensuring public safety and order until the international civil presence can take responsibility.’ KFOR was therefore mandated with police and law-and-order functions – in contrast to the IFOR operation in Bosnia – and performed joint security operations with UN police. KFOR was not however subordinate to the UN’s civilian authority and often acted independently notwithstanding the resolution’s request that both organizations ‘coordinate their activities’ closely with each other. This lack of cohesion has also been problematic within KFOR’s own structure, as each national contingent generally answers to their respective capitals and each with its own rules of engagement.

On the civilian side of the coin, Resolution 1244 authorizes the Secretary General ‘to establish an international civil presence in Kosovo in order to provide an interim administration, … while establishing and overseeing the development of provisional

331 UNSC Res 1244 (1999). This security mandate included deterring renewed violence; enforcing cease-fire and the withdrawal and preventing the return of Yugoslav security forces; demilitarizing the KLA and other militant Albanian groups; establishing a secure environment for returning refugees, displaced persons, and the distribution of humanitarian aid; ensuring public safety and order; supporting the international civilian presence; monitoring the borders; and protecting its own freedom of movement and that of international civilian officials and other international actors.
democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.\textsuperscript{332} Compared to the speedy deployment of KFOR forces, however, UNMIK arrived three months after the conflict ended with a small group of personnel and limited resources.\textsuperscript{333} Nonetheless, the civil administration was tasked with establishing a functional interim civil administration and providing law and order to the territory, which was bereft of any administrative structures following the departure of FRY personnel and security forces. UNMIK therefore had the daunting responsibility of ‘running Kosovo’s day-to-day affairs, from policing to operating schools to providing basic utilities.’\textsuperscript{334} Although most of the international civilian presence was located in Kosovo’s capital Pristina, municipal civilian administrations were also deployed throughout the province to displace local parallel structures that were formed following the conflict.\textsuperscript{335} In addition, UNMIK had to create new political institutions and governmental structures while helping to promote the establishment of ‘substantial autonomy’ and ‘self-government’. This latter duty meant that UNMIK was responsible for building Kosovo’s local capacity through training local Kosovars in areas of civil administration. Lastly, UNMIK was mandated to facilitate a political process that would determine Kosovo’s future status.

\textsuperscript{332} SC Res 1244, Para 10.
\textsuperscript{333} According to the International Crisis Group, the first SRSG, Sergio Vieira de Mello, arrived with a team of eight persons. Though the numbers of international staff increased, reaching 3,000 plus under the authority of SRSG Michael Steiner, UNMIK had to continuously work under enormous pressures with understaffed teams and small budgets. See International Crisis Group, \textit{Waiting For UNMIK: Local Administration in Kosovo}, Europe Report Number 79 (18 October 1999).
\textsuperscript{335} According to a World Bank paper, ‘UNMIK municipal administrators arriving in the summer of 1999 to displace the self-proclaimed mayors had no resources (offices, staff, or money) and few clear instructions from UNMIK headquarters in Pristina; and in fact needed to rely on those mayors and other Kosovars in the area to get established.’ See Gloria La Cava et al., ‘Conflict and Changes in Kosovo: Impact on Institutions and Society.’ (Washington, DC: World Bank, 2000), p. 19.
in spite of the fact that Resolution 1244 left this issue unsettled and forbade UNMIK from taking a direct position on it.

In addition to providing civil administration for the people of Kosovo, resolution 1244 gave the SRSG implied authority to legislate and make executive decisions. In his very first legislative act as the SRSG, Bernard Kouchner promulgated that all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and exercised by the SRSG.\(^\text{336}\) The SRSG ‘may appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such persons’\(^\text{337}\) – though no SRSG to date has used this power. UNMIK’s mandate was thus ‘unprecedented by the standards of UN field operations,’ particularly in terms of scope and authority, and literally moved the UN organization ‘into uncharted territory.’\(^\text{338}\) At the very same time, Resolution 1244 produced a vague mandate that did not give UNMIK a clear political end goal nor a foreseeable exist strategy. Given that Resolution 1244 avoided the issue of resolving Kosovo’s political status, UNMIK was tasked with promoting ‘substantial autonomy’ and ‘self-government’ in the territory while at the same time respecting Serbia’s sovereignty and territorial integrity. Due to Moscow’s sympathy for and historical friendship with Belgrade, western members of the Security Council had to accommodate Russia’s interest in the conflict, who threatened to veto Resolution 1244 unless a stipulation was added to UNMIK’s mandate that prevented international authorities from addressing or prejudicing

\(^\text{337}\) UNMIK Reg No. 1999/1, Section 1.2 (25 July 1999).
Kosovo’s political status. The ambiguity of UNMIK’s mandate was therefore a reflection of the international community’s own uncertainty about Kosovo’s future status.

To counter the organizational incoherence exhibited by the civilian administration in Bosnia, the international community organized a single umbrella structure that contained four pillar components: Humanitarian Assistance (UNHCR), which was phased out at the end of June 2000, and renamed Police and Justice (Pillar I, UN), Civil Administration (Pillar II, UN), Institution-Building and Democratization (Pillar III, OSCE) and Reconstruction and Development (Pillar IV, EU). Although each component relied on the capabilities and expertise of the lead organization, they all answered to the SRSG as the ‘highest international civilian official in Kosovo.’ However, despite looking good on paper, the pillar structure largely failed at mitigating the coordination and control problems that plagued past operations. In fact, like the military end of the Kosovo mission, subordinate civilian actors served other masters and often acted autonomously from the SRSG. Furthermore, turf wars and confusion broke out frequently between civilian organizations and agencies when crosscutting issues pulled more than one organization at a time in addressing them.

While the SRSG was the final political authority in Kosovo, UNMIK did establish local institutions or mechanisms for consulting local political leaders – despite the fact that Resolution 1244 does not explicitly require international officials to consult

340 For a good analysis on the structural problems related to the pillar structure of the Kosovo intervention, see William G. O’Neil, Kosovo: An Unfinished Agenda (Boulder CO: Lynne Rienner, 2002).
with local institutions or to progressively transfer its responsibilities upon them. One of these local institutions was the Kosovo Transitional Council (KTC). The KTC was a 36-member all-Kosovar body, which brought together representatives of the main Kosovar political parties, religious communities, and independent representatives of civil society, and was intended to ‘provide [the SRSG] with advice, be a sounding board for proposed decision and help to elicit support for those decisions among all major political groups.’

Members of the KTC were appointed by the SRSG and its influence was restricted to advisory powers. A second local institution was the Interim Administrative Council (IAC). The IAC was a hybrid institution consisting of three Kosovar Albanian political leaders, a Kosovar Serb, and four representatives of UNMIK. Officially, the IAC was merely a consultative body for the SRSG, who could either accept its advice or advise in writing within seven days of the ‘reason for his differing decisions.’ The IAC is generally seen as a political response by UNMIK to manage the growing frustration among Kosovo’s main political forces concerning the limited powers they exercised and with what they saw as a lack of seriousness by international officials about consultation. The IAC thus constitutes UNMIK’s attempt to ‘Kosovarize’ the transitional process by allowing Kosovo participation in the provisional administrative management of the territory with the SRSG, however, retaining legislative and executive authority.

By May 2001, after mounting pressure from Albanians for general elections and a Kosovo constitution, UNMIK signed Regulation 2001/9, which contained the

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342 UNMIK Regulation 2000/1 (14 January 2000), On the Kosovo Joint Administrative Structure.
Constitutional Framework for Provisional Self-Governance. The framework outlines a third local institution, the Provisional Institution of Self-Governance (PISG). The PISG represents the first institutional structure in Kosovo that allows for popular participation in certain areas of government by providing an elected Kosovo Assembly and other institutions of self-government. However, not all functions of the state had been transferred to the PISG. While most domestic functions, such as education, health, agriculture, and domestic trade were transferred to the PISG, the constitutional framework identifies a range of so-called ‘reserved powers’ that remain under the purview of UNMIK and the SRSG. These exclusive responsibilities encompass areas of external relations and military issues, judicial and police affairs, economy and finance, including control over the privatization process. The creation of the PISG thus created two different law-making processes during much of UNMIK’s tenure as an interim government.

The UN Transitional Administration in East Timor (UNTAET)

Several months after UNMIK’s deployment in Kosovo, the UN found itself again having to assume a similar role in the tiny half-island nation of East Timor. However, unlike the Balkan administrations, the international community had a clear political end goal in East Timor: independent statehood. Following the UN-led popular consultation held on 30 August 1999, in which the East Timorese voted overwhelmingly – 78.5 percent of the voting population – against autonomy within

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343 In fact, of all the international administrations addressed in this study, UNTAET represents the closest similarity to the UN Trusteeship System in that the UN engaged in a paternalistic role in order to facilitate a non-sovereign territory’s transformation into juridical statehood.
Indonesia, anti-independence militias in East Timor and Indonesian military forces (TNI) unleashed a wave of violence that resulted in thousands of deaths and wanton destruction. On 15 September 1999, the UN Security Council authorized the creation of an Australian-led military force (INTERFET) – which comprised of nearly 12,000 military troops – to restore peace and security in East Timor\textsuperscript{344} and then, on 25 October, established UNTAET to administer the territory’s transition to sovereign independence and self-rule.\textsuperscript{345}

Similarly to KFOR, INTERFET was to ‘maintain a secure environment throughout the territory of East Timor.’\textsuperscript{346} Armed with Chapter VII powers, INTERFET was given robust rules of engagement and permitted to pursue and fire on anti-independence militiamen who infiltrated the territory from neighboring West Timor. In addition, INTERFET was tasked with protecting and supporting UN activities on the ground and facilitating humanitarian assistance operations. Australian-led forces also carried out an array of law and order functions – like KFOR – that included the arrest of individuals accused of having committed serious crimes during the early days of the transition. Still INTERFET interpreted its mandate more broadly than KFOR: Australian forces frequently conducted weapons searches and performed other basic police duties such as crowd control and criminal

\textsuperscript{344} SC Res 1264 (1999).
\textsuperscript{345} SC Res 1272 (1999).
\textsuperscript{346} Report of the Secretary-General on the Situation in East Timor, UN Doc S/1999/1024, 4 October 1999, para. 75.
investigations – activities that many national contingents in KFOR and SFOR avoided.\textsuperscript{347}

Military command soon shifted from INTERFET to a UN peacekeeping mission in February 2000. The UN deployed a military force of roughly 8,000 peacekeeping troops, 200 military observers, and 1,250 unarmed UN police officers.\textsuperscript{348} Authorized with similar enforcement powers, the mission provided security; maintained law and order; disarmed, demobilized, and reintegrated ex-combatants into civilian life; assisted in the construction of an East Timor Defense Force (military); and helped in the creation of an official East Timor Police Service. Unlike both NATO operations in Bosnia and Kosovo, where separate chains of command existed between military and civilian components, military activities in East Timor were under the unified command of the head international civilian administrator.

In contrast to the Bosnia and Kosovo missions, Resolution 1272 did not provide a formula for adjudicating differences between the main warring factions – that process had already been achieved under the supervision of the previous UN operation, which oversaw the popular consultation in August 1999.\textsuperscript{349} Instead, the political objective of Resolution 1272 was relatively straightforward – that is, the uncontested goal of independence – and provided UNTAET with a robust civilian mandate to achieve this political end point. The civilian mandate of UNTAET is considered unprecedented in


\textsuperscript{348} According to James Dobbins, ‘over 30 countries contributed forces, of which nearly two-thirds came from six countries in the region: Australia, New Zealand, Pakistan, Philippines, Thailand, and Bangladesh.’ See Dobbins et al., \textit{The UN’s Role in Nation-Building}, p. 160.

terms of UN peace operations, even surpassing UNMIK. One political scientist equated UNTAET with a ‘pre-constitutional monarch in a sovereign kingdom’ while others have called it a ‘UN Leviathan.’ In passing Resolution 1272, the Security Council was explicit in empowering UNTAET to assume ‘overall responsibility for the administration of East Timor’ and ‘to exercise all legislative and executive authority, including the administration of justice.’ This meant that SRSG was given an extraordinary range of powers and enormous discretion over the transitional process. From the beginning of his tenure as the SRSG, the late Sergio Vieira de Mello took a proactive approach in exercising his powers and promulgated over 70 regulations (4 in 1999; 36 in 2000; 28 in 2001; and 4 in 2002) in a two and a half year span, of which he used to create, for example, a central fiscal authority, a police and court system, a defense force, and even traffic rules. UNTAET was also mandated to establish and manage all administrative and service functions of the territory. To accomplish this, UNTAET created an ad hoc emergency body, the Joint Sectoral Committees, to provide services in the areas of health, education and culture, agriculture, communications, civil service, and finance, and others.

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350 Jarat Chopra writes: ‘If doctrinal evolution reached an apex with transitional administration, and the international assumption of executive and legislative powers, global governorships achieved a kind of apotheosis in East Timor. Here not only would administrative functions be assumed more totally than ever before, the body corporate of the interventions would inherit the status of sovereignty – something that had not happened at the international level since the fall of the Holy Roman Empire and the 1648 Treaty of Westphalia.’ See Jarat Chopra, ‘Building State Failure in East Timor,’ Development and Change, Vol. 35, No. 5 (2002), p. 981.

351 See Jarat Chopra, ‘The UN’s Kingdom of East Timor,’ Survival, Vo. 42, No. 3 (2000); Time magazine also argued: ‘The UN is legally the holder of East Timor’s sovereignty, the first time in its history the world body has played such a role.’ See Terry McCarthy, ‘Rising From the Ashes,’ Time (20 March 2000), p. 14.


It is noteworthy that UNTAET borrowed heavily from the civilian administration in Kosovo. Sergio Vieira de Mello had been the first SRSG in Kosovo, and he brought many of his core personnel from Kosovo to East Timor. Simon Chesterman noted that ‘UNTAET drew directly upon the institutional and personal knowledge of UNMIK. The planning staff were, it seems, told to ‘re-jig’ the Kosovo plan for East Timor.’ This was also clearly evident by UNTAET’s decision to adopt UNMIK’s centralized and hierarchical practice of civil administration, which was conceived as a necessary strategy in Kosovo because the international community needed to impose peace on a recalcitrant and divided population – something that East Timor was not. Like Kosovo, UNTAET established district administrations across the island’s thirteen districts, each of which was led by a District Field Officer (DFO) who was to consult with the population and coordinate governmental matters with village chiefs and thus playing a ‘crucial role in forming the local perception of UNTAET at the local level.’ Initially UNTAET had stated that it was committed to a decentralized approach in administrating the territory, giving DFOs executive authority and discretion in managing international projects at the district level – a striking departure from previous international administrations in Kosovo and in Cambodia, for example. This was not the case, however. According to Jarat Chopra, who served as a DFO in East Timor, decentralization was soon abandoned for a more centralized approach to further increase the personal influence of UNTAET leadership located in the capital.

Dili, which for the most part sought to maintain an authoritative grip over the direction of the mission and the allocation of finite resources.\textsuperscript{356}

Unlike in Kosovo, however, Resolution 1272 tasked UNTAET to support capacity building for eventual self-government and assist in the establishment of conditions for sustainable development. This meant that UNTAET was ‘to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions… and the transfer of those institutions and its administrative and public service functions.’\textsuperscript{357} UNTAET responded by establishing the National Consultative Council (NCC) ‘to provide advice to the Transitional Administrator on all matters related to the exercise of… [his] executive and legislative functions’\textsuperscript{358} The NCC resembled the IAC in Kosovo in that the body was a hybrid institution of 15 members, of whom four were internationals. Likewise, the Transitional Administrator appointed all members to the NCC. However, Timorese participation in the political decision-making process remained very limited. The NCC was only conferred the powers to make policy recommendation on significant executive and legislative matters, not to issue binding decisions or initiate legislation.

\textsuperscript{356} After resigning his post in East Timor as a form of protest against the centralizing tendencies of UNTAET leaders in Dili, Chopra wrote extensively on the failures of the UN’s state-building mission in territory. More importantly, he criticized the lack of resources and qualified personnel that were sent to the districts. He writes: ‘Much of the new staff arriving in Dili were retained in Dili to increase the influence of the Transitional Administrator’s inner circle. As late as January 2000, the capital boasted 174 professional-level staff, while across the thirteen districts, only seventeen officials had been deployed. …[A]t the end of November 1999, some twenty-five of the thirty-seven remaining UNAMET staff had resigned… [feeling] denigrated by the leadership of the mission.’ For a fuller discussion on this issue, see Jarat Chopra, ‘Building State Failure in East Timor,’ pp. 985-89.

\textsuperscript{357} SC Res 1272, para. 4.

\textsuperscript{358} Section 1.1 of Regulation 1999/2.
As the situation in East Timor became more stable, local calls for wider and more direction participation in political life mounted. As had happened in Kosovo, UNTAET was under pressure to make concessions and transfer more policymaking responsibilities to Timorese stakeholders. UNTAET replaced the NCC with the National Council (NC), which was to serve as a transitional parliament. The NC had more substantive powers than the NC and could shape legislative agenda by the power to initiate, modify, and recommend draft regulations. However, in the end, the final legislative decision-making remained with the Transitional Administrator. Unlike the NCC, the NC was an all-Timorese body and more representative of Timorese society, consisting of 36 representatives of civil society. Yet, similar as the members of the NCC, those of the NC were appointed by the Transitional Administrator and could be dismissed by him at any time. At the same time, UNTAET established the East Timor Transitional Administration (ETTA) as the new cabinet, which consisted of eight departments. Four departments – Infrastructure, Economy, Social Affairs, and Internal Administration – were headed by Timorese politicians; the other four – Police and Emergency Services, Political Affairs, Justice, and Finance – continued to be led by internationals. While ETTA was responsible for the formulation of policies and programs of the government of East Timor, it enjoyed only partial decision-making powers in those areas. In fact, all decisions by the ETTA were subject to the review and approval of the Transitional Administrator, who exercised final authority.

Unlike the indefinite operations that exist today in Bosnia and Kosovo, UNTAET accomplished its political objective on 20 May 2002, when East Timor was
inaugurated statehood. Learning from previous UN peace operations, particularly from the follow-up arrangement in Eastern Slavonia, the UN and other international agencies maintained an international presence in the country through a number of successor missions, each smaller and less intrusive than the one before, thus reflecting the donor community’s waning interest in the country’s development. First, immediately after the completion of UNTAET’s mandate, the Security Council authorized on 17 May 2002 the UN Mission of Support in Timor-Leste (UNMISET) to provide security and strengthen the country’s police capacity, and provide governmental and administrative assistance to East Timor over a three-year period.\textsuperscript{359}

After completing its mandate on May 2005, UNMISET was immediately followed by a political mission – the UN Office in Timor-Leste (UNOTIL) – to continue to support the development of East Timor’s fragile political institutions.\textsuperscript{360} The departure of UNOTIL in May 2006 left East Timor on its own for a brief period. Though the country experienced intermittent episodes of violence under UN auspices, the young nation descended into conflict and the worst political crisis in its short history in April and May 2006, resulting in at least 37 dead and 155,000 displaced.

\textsuperscript{359} UNSC Res 1410 (17 May 2002). UNMISET’s security mandate continued to be armed with Chapter VII powers and included both a UN military and police component, comprised mostly of heavily armed Australians and New Zealanders. The UN mission initially retained executive control of local police forces, though it transferred command of all thirteen districts to the Timor police headquarters in Dili by the end of 2003. The Council maintained a deployment of 5000 UN troops to maintain security, 1250 police personnel to preserve law enforcement, and more than 100 civil police to serve directly in the newly independent national government. Resolution 1410 also provided for a civilian ‘support’ mission to improve the country’s embryonic governmental and administrative institutions. The mission’s mandate was extended four times over a three-year life span.

\textsuperscript{360} UNSC Res 1599 (28 April 2005). According to the DPKO web page, ‘The new Office was to continue to support the development of critical State institutions by providing up to 45 civilian advisers; support further development of the police through the provision of up to 40 police advisors, and bolster the development of the Border Patrol Unit (BPU) by providing up to 35 additional advisers. It was also to provide training in observance of democratic governance and human rights by providing up to 10 rights officers; and review progress on those fronts.’ Available at www.un.org/Depts/dpko/missions (East Timor: Background)
persons from the capital Dili. The UN responded again by deploying a new mission – the Integrated Mission in Timor-Leste (UNMIT) – and tasked it with ‘consolidating stability, enhancing a culture of democratic governance, and facilitating dialogue among Timorese stakeholders.’

Contextual Challenges

This section will now turn to an examination of the contextual factors of each main case study. Below is a broad analysis of key internal and external contextual factors that appear to have a significant impact on the outcome of these missions.

Key Internal Contextual Factors

As suggested in the last chapter, in examining contextual factors that are endogenous to the target territory, it is useful to conceptualize them around several dimensions: (1) background factors, its demographics and population dynamics, pre-war levels of local capacity and experience in self-rule; (2) conflict factors, which include the type of conflict, its effects on the territory and population, and the outcome of the conflict; and (3) post-conflict factors, which entail the level of factional hostility, each faction’s organizational coherency, and the disposition of the target society towards the international presence. As noted earlier, this is not an exhaustive list of internal contextual factors. However, they will help to establish a set of important and differing ecologies that international authorities confront when administering and rebuilding post-conflict societies.

Background factors

In terms of ethno-linguistic divisions, both Balkan cases entail ethnically polarized populations. In Bosnia, there is no large ethnic majority community. In 1991, its population consisted of Muslim Slavs (who are generally known as Bosniaks and represented 44 percent of the total Bosnian population), Orthodox Christian Serbs (31 percent), and Roman Catholic Croats (17 percent).\footnote{Figures derived from James B. Steinberg, ‘International Involvement in the Yugoslavia Conflict,’ in Lori Fisler Damrosch (ed.), Enforcing Restraint: Collective Intervention in Internal Conflicts (New York: Council on Foreign Relations, 1993), p. 41.} Under the communist dictatorship of Josip Broz Tito, Bosnia’s ethnically polarized population lived in relative tranquility compared to most of the other Yugoslav republics that had significant minority populations. Most of the municipalities in the country before the civil war had been multiethnic and there were virtually no ethnically homogenous districts. By contrast, the ethnic animosity in Kosovo between Muslim Albanians (who since 1991 represented 90 percent of the province’s population) and Orthodox Christian Serbs (who make up less than 10 percent) has been historically deeper than that between any other nationalities in the former Yugoslavia.\footnote{For a detailed treatment of Kosovo’s troubled past, see Noel Malcolm, Kosovo: A Short History (New York: HarperCollins, 1999); and Tim Judah, Kosovo: War and Revenge (New Haven: Yale University Press, 2000).} The notion of a multiethnic Kosovo has never really existed. (As evident, for example, by the low inter-ethnic marriage rates in the territory which were among the lowest in Yugoslavia.) King and Mason write that ‘Bosnians, Serbs and Croats all spoke the same Slavic language. Albanians spoke a unique language that was incomprehensible to virtually all non-Albanians.’\footnote{See King and Mason, Peace at Any Price, p. 3.} Throughout their long and adversarial relationship, Kosovar Albanians were always regarded by the general Slav population with
suspicion; and despite the special autonomy granted to Kosovo under Tito’s 1974 federal constitution, Kosovar Albanians were never treated as an equal ‘nation’ within Yugoslavia.\footnote{Whereas the six different Slav groups were given their own republics and the nominal and hypothetical possibility of seceding from the Federation, Kosovar Albanians were only given special status a minority nationality.}

In stark contrast to the Balkan cases, the composition of East Timor society provided for a more favorable situation on the ground. East Timor is ‘a complex multilingual society’ that comes from twelve Melanesian ethno-linguistic groups, four Austronesian and four Non-Austronesian groups, ‘which can be further divided into 25 dialects and sub-dialects.’\footnote{See Wayne Hayde, ‘Ideals and Realities of the Rule of Law and Administration of Justice in Post-Conflict East Timor,’ \textit{International Peacekeeping: The Yearbook of International Peace Operations,} Vol.8 (2002), p. 77.} Even more revealing, Helen Hill argues that generations of ‘marriage patterns’ show a much more complex and ‘nuance reality.’\footnote{See Helen Hill, ‘Regional Tensions,’ \textit{East Timor Mailing List}, 28 May 2006.} Despite the ethnically diverse nature of East Timor, its ethnic heterogeneity has not been a salient source of tension within the territory. Anthony L. Smith observes:

\begin{quote}
Ethno-linguistic distinctions, happily, are neither very stark nor very salient politically… Ethno-linguistic heterogeneity seems to matter less than the sense of East Timorese nationalism created in the successive crucibles of centuries-long Portuguese colonial rule and a much briefer but intensely brutal period of Indonesian occupation. Profound remembrances of a common struggle and shared suffering… [acted] as powerful reinforcements of national belonging. In East Timor’s case, these ‘mystic chords of memory’ appear to have bound together an identity that stretches beyond the tribe, making East Timor an exception to the norm among Melanesian societies.\footnote{Anthony L. Smith, ‘East Timor: Elections in the World’s Newest Nation,’ \textit{Journal of Democracy,} Vol. 15, No 2 (April 2004), pp. 157-58.}
\end{quote}

In terms of pre-war levels of local capacity (i.e., education, per capita GDP, level of development and natural resources), neither target territory was endowed with high levels of capacity. Bosnia was perhaps the most propitious of the three. As part of
Yugoslavia, Bosnia was poorer than most other Yugoslav republics and was among the least developed. However, the country’s economy was diversified and more market-oriented than that of other Yugoslav republics. Bosnia was also endowed with abundant raw materials and natural resources – though it was never highly dependent on any one of them – and possessed a relatively educated work force that was mostly employed in the industrial sector. The pre-war levels of local capacity were profoundly worse in both Kosovo and East Timor. Historically, Kosovo has always been an impoverished territory. Its economy was largely agricultural and much of its population was rural-based. Julie A. Mertus contends that despite receiving a greater proportion of economic development assistance than other poor parts of Yugoslavia, the province remained the poorest in the region with the highest unemployment rates – at one point, 27.5 percent – in the Federation. Though Kosovo’s population was increasingly educated under Tito’s Yugoslavia, most Kosovar Albanians were not educated in vocational technical subjects but rather in Albanian literature and culture. This meant that Serbs were disproportionately represented in the professions (i.e., lawyers, doctors, accountants, engineers, etc.) and thus created a ‘Brain Gap’ between the two communities.

370 Bosnia used to be described as a republic endowed with an abundance of natural resources, including wood, coal, salt, manganese, sliver, lead, iron and copper. See Azra hadziahmetovic, ‘The Economy of Bosnia-Herzegovina: Ten Years On,’ Bosnia Report No. 49-50 (2006). Available at www.bosnia.org.uk
372 King and Mason, Peace At Any Price, p. 34.
East Timor was also poorly endowed. Much of this can be traced to centuries of Portuguese colonial rule and Indonesia’s subsequent repressive military occupation of the territory from 1975 to 1999.\footnote{For a treatment of East Timor’s history, see John G. Taylor, *East Timor: The Price of Freedom* (New York: Zed Books, 1999).} East Timor was among the most neglected of Portugal’s colonial holdings.\footnote{Portugal used the island mainly as a place of exile for political prisoners.} Lisbon made little attempt to improve the education system and the infrastructure of the island.\footnote{In 1972, Portugal ‘spent only 1.9 million dollars in East Timor, raised to 7.6 million in 1973, but most of it for road building.’ This resulted in the only paved road in the entire island, which stopped at the Colonial Governor’s residence. Quoted in Wayne Hade, ‘Ideals and Realities of the Rule of Law and Administration of Justice in Post-Conflict East Timor,’ p. 73.} It maintained centralized control over the territory and did virtually nothing to develop a Timorese professional and political class. Inexorably, Portuguese failures in these areas produced a severe brain gap in the territory, which was further exacerbated by Indonesian military rule. Although Jakarta did a lot more in developing the island’s infrastructure and education system, the Timorese population remained disenfranchised from all major jobs in public service and government. As part of a transmigration policy, non-Timorese Indonesians assumed all civil servant and managerial positions throughout the territory and institutionalized Bahasa as the main language for all administrative activities.\footnote{Ibid. p. 77. This was meant to maintain control of the society and filter out Timorese from prominent positions of power.} Even before large-scale violence broke out in 1999, economic and social conditions under Indonesian occupation were abysmal. East Timor’s economy was ‘largely agricultural’ and was one of ‘the poorest provinces in Indonesia, with annual per capita income that ranged from $304 to $424 between 1995 and 1999.’\footnote{James Dobbins et al., *The UN’s Role in Nation-Building*, p. 158.} In 1999

Finally, none of the main case studies had meaningful histories of self-rule. Under centuries of direct colonial rule and twenty-four years of oppressive, corrupt, and predatory Indonesian administration, East Timor continued to operate through its traditional and hierarchical structures, which emphasized the importance of patronage and personal loyalty to village or clan leaders who possessed political authority and legitimacy in their respective ancestral homelands. In Kosovo, a resilient clan-based system survived centuries of different repressive empires and great wars. Bosnia was perhaps the only one of the three that had any limited experience in participatory governance.

\textit{Conflict factors}

In assessing the conflicts in Bosnia and Kosovo, one must first briefly explain the sequence of events that culminated in the break up of Yugoslavia. As the Cold War drew to a close, many of the bonds that held the Yugoslav state together began to weaken. First, Yugoslavia’s economy began to decline in the late 1970s, leading to high unemployment and worsening socio-economic conditions. This was followed shortly by Tito’s death in 1980, which delivered a devastating blow to Yugoslavia’s national unity as he was undeniably the ‘glue’ that held the country for over three decades. With Tito gone and the federal government struggling to restructure the economy, Yugoslav’s state capacity to deliver basic good and services diminished and political stability was increasingly elusive. At the same time, Yugoslavia’s
strategic and economic status was called into question during the latter part of the Cold War, depriving it of high levels of Western aid. Next, Slobodan Milosevic’s rise to power in 1986 further propelled the exclusionary language of ethnic nationalism to the forefront. Milosevic urged Serbs to take action against the injustices that Serb populations had been subjected to throughout the Federation, particularly in Kosovo and Croatia. His goal was to create a ‘Greater Serbia’ by extending Serbian national sovereignty into other Yugoslav republics that had large Serb minorities and to augment Serbian influence in Yugoslavia as much as possible. This behavior alarmed the other republics and galvanized ethnic nationalism throughout Yugoslavia, which was clearly reflected in the electoral victories of nationalist parties in most of the region during the spring of 1990. Finally, in June 1991, both Slovenia and Croatia declared independence shortly after Milosevic rejected their proposal for a confederation that would shift the gravity of political power from the federal government in Belgrade to the republics. Macedonia later followed suit in declaring its independence in September 1991.

This left Bosnia to decide whether it wanted to ‘remain in a much smaller Yugoslavia that would be overwhelmingly dominated by Serbia… or leave the Yugoslav Federation, leaving Bosnian Serbs and Croats to a much lesser extent, analogously worried about domination by the country’s Muslim plurality.’379 Fearing the former, the newly elected Bosniak President, Alija Izetbegovic, called for a national referendum in which 63 percent of Bosnia’s population voted for

independence in February 1992.\textsuperscript{380} Bosnia’s Serbs responded to this by securing as much of the territory as possible for themselves and then declaring their own independence from the newly recognized Bosnian state. With the help of Serbia, Serb paramilitary forces besieged the capital Sarajevo, shelling it indiscriminately, and employing a viscous campaign of ethnic cleansing. For the next three and a half years, the Bosnian government (led by Bosniak Muslims) found itself trying to preserve its borders and fighting a war with two fronts: One the one hand, it fought Bosnian Serbs, who were closely tied and actively supported by Serbia; on the other hand, it faced Bosnian Croats, actively supplied by neighboring Croatia, who also wanted to carve out the central and southern portion of Bosnia for itself.

Given the above, one can argue that the Bosnian war was a conflict between different ethnic communities. However, relying on the ‘ancient hatreds’ argument as the sole cause for war is shortsighted because Bosnia was a largely cosmopolitan society where ethnic Croats, Serbs, and Bosniaks lived in relative peace. Rather economic decline and political uncertainty in Bosnia produced a pervasive ‘insecurity’ and ‘fear’ that permitted nationalist leaders to mobilize their people into conflict. As Susan Woodward explains, ‘The choice of violence and nationalist propaganda was to force people by fear and circumstance to separate psychologically and then physically into national groupings and then to persuade them that they were

\textsuperscript{380} Though 63 percent was clearly a majority, it was not nearly as high as in Slovenia or Croatia. The Serbs boycotted the referendum wanting to stay part of Serb-led Yugoslav. Many Croats had also boycotted the referendum, especially as a response to Izetvegovic’s failure to guarantee political and cultural rights for Serb and Croat minorities within a new independent Bosnia.
safe only in political independence from each other.\footnote{See Susan Woodward, ‘Bosnia and Herzegovina: How Not to End Civil War,’ in Barbara F. Walter and Jack Snyder (eds.), \textit{Civil Wars, Insecurity, and Intervention} (NY: Colombia University Press, 1999), p.78.}

This line of reasoning fits with Barry Posen’s claim that the collapse of the Yugoslav state created a security dilemma that led each ethno-cultural community to mobilize its people into self-help groups. In other words, anarchy resulting from Yugoslavia’s collapse caused a domestic security dilemma that in turn led to an ethnic civil war.\footnote{See Barry Posen, ‘The Security Dilemma and Ethnic Conflicts,’ \textit{Survival}, Vol. 35, No. 1 (1993), pp. 27-47.} The result of the conflict was devastating and unseen since the end of World War II:

When the war ended, more than half of Bosnia’s 4.3 million citizens had been displaced, either as refugees in host countries (1.2 million) or as internally displaced persons within Bosnia’s external border (1 million); roughly 250,000 were estimated dead or missing; and more than 200,000 were wounded, including 50,000 children. Communicable diseases had increased between two- and fivefold, and infant mortality had doubled. Physical and economic losses were severe, with total replacement costs of the country’s destroyed assets estimated by the World Bank to be between $15 billion and $20 billion. Industrial production, which made up the bulk of Bosnia’s prewar economy, was reduced to between 5 and 10 percent of prewar levels… Bosnia’s capacity for energy generation had been reduced by more than half and coal production by more than 90 percent; transportation, telecommunication, educational and health infrastructures were heavily damaged… At the end of the war, unemployment reached 90 percent, and per capita gross domestic product (GDP) dropped nearly three-quarters to $500 in 1995.\footnote{See Elizabeth Cousens and Charles Cater, \textit{Toward Peace in Bosnia}, p. 25.}

It also important to note that Bosnia’s civil war did not naturally expire on its own terms. Outside coercion played a critical role in ending the war. As a result, ‘the Bosnian war did not end with a ‘mutually hurting stalemate’ but with what is better called a ‘coerced compromise.’\footnote{Ibid. p. 26.} The Bosnian Serbs had made significant territorial gains for much of the war, having seized nearly 70 percent of Bosnian territory and even controlling almost one-third of Croatia. On the other hand, the Bosniaks and their tenuous Croat allies were able to maintain control of central Bosnia and selected pockets. Serbian gains rapidly disappeared as Western powers not only provided

\begin{footnotesize}
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\item[383] See Elizabeth Cousens and Charles Cater, \textit{Toward Peace in Bosnia}, p. 25.
\item[384] Ibid. p. 26.
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assistance in the form of military training and equipment to the Croatian army, but also launched their own military attacks – via NATO air strikes – against Serb forces. This resulted in the loss of their Croatian holdings – except for Eastern Slavonia – and even threatened their control over Banja Luka and western Republika Srpska. High-stakes diplomatic pressure from outside governments, particularly the US, prevented the Croat-Bosniak alliance from launching further ground offences on a weakened Serbian front. It also forced the warring parties to the negotiating table in Dayton, Ohio in November 1995, where under extraordinary pressure the warring parties were coerced into agreeing with the terms stipulated in the DPA about which they were dissatisfied with at best. The end result of the war had been the division of Bosnia and its population into an ethnically divided country. Having recognized and institutionalized these ethnic divisions through the DPA, the international community set itself up for a daunting political task during the post-conflict phase.

On a basic level, the conflict in Kosovo similarly appears to be an ethnic one. Animosity over who should control the province runs long and deep between two distinct ethno-cultural communities who are of different ancestral groups, different religions, and speak different languages. The Serbs see Kosovo as part of their national territory and their cultural center – ‘a cradle of their identity that holds many Serbian historical, religious, and cultural monuments. It is the Serb’s Jerusalem.’ For Albanians ‘Kosovo is the birthplace of the Albanian movement and a territory where they are the ethnic majority. It has always been the focus of Albanian irredentism.’

Responding to poor economic conditions in the late 1960s and early 1970s, Albanians

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engaged in violent demonstrations that compelled Tito to grant the province special autonomy in the new constitution adopted in 1974. This gave the majority Kosovar Albanians more local autonomy over their domestic affairs and the right to express more openly their culture in local institutions. The ascendancy of Sloban Milosevic to political power, however, allowed him to revoke Kosovo of its special status in 1989 and begin implementing harsh anti-Albanian policies that formally placed the province under direct Serbian control in 1990 and effectively segregated the province.

As Yugoslavia disintegrated in the 1990s, the Kosovar Albanian resistance to Serbian rule grew stronger. The Albanian resistance comprised of a largely peaceful movement under the leadership of Ibrahim Rugova and his Democratic League for Kosovo (KDL) and a smaller and more militant organization, the Kosovo Liberation Army (KLA), which advocated violence as a means to independence and gained more popular support overtime as hostilities between Serbs and Albanians intensified. Milosevic responded fiercely by deploying Serbian-led FRY and paramilitary groups made up of Serb nationalists to the province; both employed brutal tactics (i.e., excessive force, extra-judicial executions, and abductions) to quell the Albanian insurgency. Although the international community made numerous attempts to bring an end to the hostilities, both sides were unwilling to comply with ceasefires. Moreover, Milosevic continued deploying military and paramilitary forces into the province. After months of failed negotiations and Belgrade’s rejection of the Rambouillet Accords, NATO declared war on a country for the first time in its existence. On 24 March 1999, NATO launched an eleven-week bombing campaign over Kosovo and Serbia that ended with Milosevic’s capitulation on 3 June 1999,
which allowed the territory to be placed under international protection until its final status could be determined. After a decade of mounting civil conflict between Kosovar Albanians and Serbs and NATO’s eleven-week attack, an estimated 10,000 Kosovar Albanians were killed between 1997 – when the outbreak of serious hostilities began – and June 1999. Close to 1 million Kosovar Albanians (about 45 percent of the prewar population) were expelled from their homes and neighborhoods and fled to neighboring Albania, Macedonia, Bosnia, or remained displaced within Kosovo.\footnote{For information about the killings and atrocities committed during this conflict, see the Independent International Commission on Kosovo, \textit{The Kosovo Report} (New York: Oxford University Press, 2000), pp. 306-311.}

In East Timor, the roots of the conflict were more of a struggle against a foreign occupation than an indigenous civil war with ethnic or sectarian dimensions. In 1974, the Portuguese attempted to set up a provisional government that would help determine the future status of the island after its departure. A civil war soon erupted between those Timorese who were supporters of the socialist and pro-independence movement, the Front for the Liberation of East Timor (FRETILIN), and the more conservative and land owning Uniao Democratic Timorense (UDT), who advocated more autonomy within Portugal and later became a proxy for Jakarta.\footnote{According to ‘The Report of the Commission on Truth, Reception and Reconciliation’ (CARV), a national/international report that documents the human rights abuses that were committed by various parties between 1974 and 1999, an estimated 1,500 to 3,000 people died during the brief civil conflict between FRETILIN and UDT. In the end, FRETILIN was able to defeat UDT and drove tens of thousands of its supporters across the border into West Timor.} While this prompted Portugal to leave the territory in a state of instability, Indonesia prepared its military forces to intervene and annex the island, which it did on 7 December 1975. FRETILIN responded by declaring independence some two days after the invasion,
thus initiating a long armed struggle against Indonesia’s military occupation for the next twenty-four years.

Under Indonesian occupation, divisions intensified within FRETILIN over the direction of the resistance. Most of the central committee leaders of the organization went abroad during this period to Mozambique and Angola seeking diplomatic support and buying armaments for the military arm of the resistance, Forcas Armados de Libertacao Nacional de Timor-Leste (FALINTIL). The leadership in exile also became more Marxist over time, which augmented fears of communist expansion in Indonesia. Meanwhile, FALINTIL sustained heavy losses against the larger and better-equipped TNI. This eventually prompted FALINTIL’s leader, Xanana Gusmao, to choose a different course of action that would entail negotiations with the Indonesians, reaching out to the Catholic Church, renouncing Marxism, and creating a new organization based on national unity. This angered hardliners within FRETILIN, which resulted in political purges, heated debates, and attempted coups on both sides of the resistance. By December 1987, Gusmao officially pulled FALINTIL out of FRETILIN and created his own organization, the National Council of Maubere Resistance (CNRM). As we shall see later, the divorce between FRETILIN and FALINTIL created significant implications for East Timor’s independence.

Large-scale violence did not break out until after national referendum in 1999, in which the East Timorese overwhelmingly voted against the proposal that East Timor

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388 According to the International Crisis Group, the armed resistance began with 15,000 fighters and by 1980, only 700 FALINTIL resistance fighters were left. See International Crisis Group, Resolving Timor-Leste’s Crisis, Asian Report Number 120 (10 October 2006), p. 3.
remain an autonomous province within Indonesia. Dissatisfied with the outcome of the referendum, mobs of pro-Indonesian militia backed by the TNI unleashed a wave of wanton violence – what was referred to as ‘Operation Clean Sweep’ – that had resulted in the deaths of an estimated two thousand people, the displacement of hundreds of thousands of civilians, and the destruction of some 70 percent of the territory’s physical infrastructure. Analogous to Kosovo, the violence in East Timor had created a gaping political and economic vacuum that left the territory bereft of any kind of civil administration and governmental authority. It took pressure from the international community to persuade Indonesia to permit the deployment of INTERFET in East Timor to suppress the violence. INTERFET quickly restored stability on the island and drove much of the pro-Indonesian militias out of the territory into West Timor.

Post-Conflict Factors

East Timor is perhaps the most propitious of the main case studies in terms of post-conflict factors. The departure of most pro-Indonesian militias into West Timor after INTERFET’s enforcement operation meant that there were effectively no formerly warring parties in East Timor, making the task of reconciliation much easier. Unlike the vindictive behavior displayed by Kosovar Albanians against Serbs following the end of their conflict, the East Timor population generally showed clemency to fellow Timorese who participated in the militia violence and were sympathizers of pro-Indonesian elements. James Traub writes: ‘The Timorese actually seem to be less angry than they have a right to be – making them very

389 Figures from Report of the Secretary-General on the Situation in East Timor, UN Doc S/1999/1024, 4 October 1999, para. 75.
unusual victims.\textsuperscript{390} Consensus was therefore easier to achieve in East Timor, where divisions within the local population did not generally run as deep as the Serb-Albanian split in Kosovo. This sentiment was also embraced for the most part by East Timor’s political leaders, who in spite of their ideological differences in the past, were broadly united under a national umbrella organization, the National Council of Timorese Resistance (CNRT), which had been created in 1998 with the intended purpose of bringing together all of the territory’s independence factions (and non-independence factions) in a demonstration of national unity. Thus the CNRT represented one massive faction in which ‘no single group was marginalized or tempted to start a civil war’ during the early post-conflict period.\textsuperscript{391} At the same time, the CNRT was not a coherent faction by any case and many of the political parties within it were either unwilling or incapable of fulfilling their commitments toward national unity. This lack of organizational coherency, however, did not introduce a serious obstacle to the early phase of the intervention since virtually all of them were unanimous on one goal: sovereign statehood.

In Bosnia the initial conditions of the post-conflict environment were more reminiscent of the situation in Cambodia in that neither of the main warring factions were defeated and each remained in tact after the end of hostilities. After three years of war and ethnic cleansing, the three wartime nationalist parties – the Bosniak Party for Democratic Action (SDA), the Croat Democratic Union (HDZ) and the Serbian Democratic Party (SDS) – had complete control over their respective parts of Bosnia.

Each faction filled the power vacuum left by the collapse of the Bosnian Republic, creating power structures that allowed them to maintain control over their local economies, their security and their public institutions. All political and executive authority remained localized within their controlled boundaries. Marcus Cox observes:

A key element of their power was control over public-sector appointments, allowing them to create elaborate patronage networks which gave them tight control over public institutions. These patronage systems functioned as a feudal hierarchy, in which the highest political leaders retained the loyalty of the *nomenklatura* by granting them status and opportunities for personal enrichment at lower levels. … Intelligence services, security forces and the police are under the direct control of the party… Public utilities and most industrial enterprises [are led] by management boards appointed by the political parties… revenue from public utilities is used to subsidize the nationalist parties and [their] intelligence services. \(^{392}\)

Thus in the early stages of the Dayton peace process, the main contending factions were few and very coherent. However, the level of hostility between them remained high after the signing of the DPA. None of the warring nationalist parties were satisfied with the outcome of the DPA, much of which had been shaped by the Contact Group and neighboring leaders. \(^{393}\) Given that a pervasive sense of insecurity and fear remained high during this period, and that the outcome of the war had resulted in the *de facto* partition of the country into ethnically divided entities that were dominated by the main nationalist parties, these warring factions had no incentive to cooperate with each other. Each employed nationalist propaganda to demonize the other in order to achieve their end goals, which collided in fundamental ways. Nationalists on the Bosnian Serb side wanted to maintain maximal autonomy from what they perceive as a Muslim-dominated Bosnian state with the goal of

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preventing an ethnically homogenous RS entity within a weak confederate Bosnian state. For their part, Bosnian Croat nationalists demanded a more partitioned country. Feeling threatened as a minority community, they advocated for the creation of a third Entity (Herceg-Bosna) that would be separate from the Federation entity and would give them the same status and protections as the RS. The Bosniaks, on the other hand, have increasingly pushed for more integration and development of a functional Bosnian state where they would be the numerical plurality and perhaps some day, the dominant majority.

Of the three case studies, Kosovo’s post-conflict environment presented the most unfavorable circumstances on the ground. Defeated by NATO and to a lesser extent, the KLA, Serbian forces moved out of the province taking with them about half of Kosovo’s Serb population. NATO’s decisive decision to ally itself with the Kosovar Albanians against Serb forces prompted the KLA and bands of Albanians to commit vengeful acts against the Serb minority population that chose to remain in the province in several enclaves, mostly toward the northern border with Serbia. These acts of revenge clearly diminished what dash of hope was left for reconciliation. Throughout the post-conflict period Kosovar Albanians and Serbs continue to pursue diametrically competing objectives, respectively for secession and independence and the preservation of Serbia’s national sovereignty over the province.

The departure of Serbian forces also allowed KLA elements to move in quickly and assume positions of power before UNMIK was in a position to exercise its new responsibilities fully.\(^{394}\) The rise of the KLA and its leaders – such as Hasim Thaci,

\(^{394}\) James Dobbins et al., *America’s Role in Nation-Building*, p. 113.
who founded the Democratic Party of Kosovo (PDK), and Ramush Haradinaj, who would lead the Alliance for the Future of Kosovo (AAK) – to political power immediately after the war, ignited a political firestorm within the Albanian opposition movement. According to King and Mason, ‘Many of the internationals were shocked by the fierce animosity between the LDK and PDK, and other intra-Albanian feuds.’ Ibrahim Rugova and his LDK party refused to recognize the legitimacy of the KLA commanders and the provisional government established by Thaci; the LDK had always claimed the mantle of Kosovo leadership since it was they who were elected in 1991 to lead Kosovo’s parallel government that had been created under Belgrade’s repressive rule during the 1990s. Former KLA leaders, on the other hand, asserted their right to power since they were the ones battling Serbs on the frontlines. KLA commanders dismissed Rugova as anachronism in the postwar setting. Given this, Kosovo’s post-conflict period can be characterized as highly unstable with too many competing and hostile factions vying for power and lacking coherency – conditions that according to Michel Doyle are the least conducive for effective transitional governance and external state-building.

Another important dimension in the post-conflict phase is the relationship between internationals and the local population, and whether the former has ‘won the hearts and minds’ of the latter. Compared to the recent American occupation in Iraq, where a deep and historical hypersensitivity against foreign occupiers exists, the local populations in all three territories considered here are not generally inclined to use force or violence against their foreign ‘masters’. In other words, there are no

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Fallujahs or ‘Triangles of Death’ in Bosnia, Kosovo, and East Timor. For the most part, the target populations welcomed the presence of international forces to their territories, and were more inclined to cooperate with them than to challenge their authority. In East Timor, ‘the vast majority of East Timorese regarded the UN [governorship] as essentially benign, at worst an uncomfortable interregnum that was the necessary precursor to independence.’  

Major General Michael G. Smith, who served as a deputy force commander of the UN peacekeeping operation from January 2000 to March 2001, remarked on how ‘exemplary’ and cooperative resistance fighters and political leaders had been towards international authorities.  

Given that the CNRT was the only organization on the ground with de facto legitimacy, the SRSG gave the CNRT and its leader, Xanana Gusmao, the formal role of interlocutor through which the UNTAET could interact with at a policy level. This amicable relationship between international and local actors began to wane, however, as East Timor’s political leaders resented how little political influence they wielded compared to UNTAET officials and the modicum of resources that local actors had at their disposal.  

Local political leaders often protested over this power and resource gap by threatening to boycott the provisional institutions established by UNTAET and by creating parallel structures that would counter international authority. Such

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396 Anthony Goldstone, “UNTAET with Hindsight,” p. 84.
398 In recognizing this resource gap between internationals and local officials, Vieira de Mello observed: ‘The UN mission in East Timor had over 500 vehicles for its staff, but it was only by breaking the rules that a meager dozen vehicles would be released for Timorese political leaders. The UN spent millions of dollars on offices and accommodation for staff, but the rules had to be bent again to allow us to do up a limited number of public buildings which where not for use by staff… In a country where transport is lacking, such rules (luckily often broke) make the UN appear arrogant and egotistical in the eyes of those whom we are meant to help.’ See Sergio Vieira de Mello, ‘How Not to Run a Country: Lessons for the UN from Kosovo and East Timor,’ (2000), p. 8.

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pressures worked effectively as UNTAET decided to precipitate the process of handing over political authority to local actors, though Gusmao himself reiterated the importance of continuing international engagement in East Timor’s post-independence period.\textsuperscript{399}

In Kosovo the local reception of international forces was divided. The minority Serb population never recognized or consented to the deployment of KFOR and UNMIK. With a shrinking community and their utter lost of power and security at the hands of the international community, Kosovo’s remaining Serbs in the northern municipalities (e.g., Mitrovica and Zvecan) established their own informal political and administrative structures backed by Belgrade and refused to participate in the interim political institutions created by UNMIK. The uncooperative response of Serbs during the post-conflict period has contributed to an unstable situation and raised fears that Kosovo’s northern municipalities may attempt to break away from the province if Kosovar Albanian independence is achieved. On the contrary the majority Albanian population welcomed international forces and treated NATO and, in particular, the UK and US, as liberators. The Albanians widely interpreted the international presence not only as a humanitarian intervention, but also an opportunity to endorse their long-held aspirations for independence. From the beginning of its mission, UNMIK engaged the Kosovar Albanian community and was particularly eager on establishing a close relationship with potential spoilers, mainly the former KLA leaders.\textsuperscript{400} In the same way that East Timor leaders grew frustrated with the lack

\textsuperscript{400} Iain King and Whit Mason, \textit{Peace at Any Price}, p. 80.
of meaningful authority relative to UNTAET, Kosovar Albanian leaders also chaffed at what they describe as ‘soft powers’ given to them by the Constitutional Framework, which include responsibilities on matters of education, trade, social welfare, health and environmental social welfare, agriculture and rural development. As one UNMIK official put it: ‘Kosovo’s Albanian politicians consider education and healthcare as womanly issues; they wanted access to real power such as control over defense, security, police, and economic policy, which are explicitly reserved for the SRSG.’ Moreover, the uncertainty of Kosovo’s future status had further deteriorated the early cooperative spirit between Kosovar Albanians and international authorities. As time went on without resolving the status question, mounting frustration and anxiety among the Albanian population encouraged groups within extremist circles to maintain weapon caches for a potential confrontation with international authorities. These groups occasionally vandalized UN vehicles, buildings, and other property owned by UN, while UNMIK personnel were attacked and even killed in some cases.

In contrast to Kosovo and East Timor where the disposition of local leaders towards international actors worsened overtime, Bosnia’s nationalist parties have up until this juncture never accepted or recognized the legitimacy of the OHR. The relationship between internationals and the nationalist ruling parties have been nothing less than hostile, though not violent. In order to end the war, international authorities had to rely on the ruling nationalist parties – many of who committed

401 Interview with former UNMIK official (Sarajevo, June 2005).
402 Interview with Bernard Zeneili, (Boston, May 2005).
wartime atrocities but were largely supported by their ethnic constituents – as their chief interlocutors for performance and progress during the early phases of Bosnia’s post-conflict transition. However the DPA has not altered the ambitions or goals of the three political leaderships and their militant nationalist followers, and each violated many of the DPA’s conditions with impunity. As a consequence, international agencies have launched their own aggressive campaigns in an attempt to marginalize nationalist hardliners among all three ethnic groups. Armed with the Bonn powers, various HRs have purged local administrative and political structures of their extreme nationalist elements. For example, during his tenure as HR, Carlos Westendorp removed both elected Bosnian Serb and Bosnian Croat presidents in 1999 and 2001 respectively for interfering in the country’s democratic process and for supporting ethnic partition. Also, in one broad stroke of the pen, HR Paddy Ashdown was able to dismiss 60 Serb officials who were alleged to have been supporting the recently captured war crimes fugitive, Radovan Karadzic.

As for the relationship between ordinary Bosnians and internationals, a more placid but complex picture emerges. The profound insecurity among Bosnia’s ethnic communities and the pervasive sense of uncertainty towards the future Bosnian state has for the most part worked against the international community and its efforts to build a stable, multiethnic and democratic state. The ability of the nationalist parties to exploit this fear and uncertainty and to play on nationalist and discriminatory sentiments has worked handsomely for them. Nationalist campaigns have often focused on the idea that maintaining the ‘survival’ of their ethnic community is their duty since they are the only parties that are capable of preventing their citizens from
becoming ‘second-class citizens.’ The Bosnian population has rewarded this rhetoric time after time by voting overwhelmingly for the three nationalists parties in virtually every election that has taken place since the first post-conflict election in 1996. This is in spite of the fact that in public opinion polls ordinary Bosnians have continuously expressed a deep distrust of the very parties they vote for. What is even more intriguing is the amount of confidence and trust that Bosnians have for the OHR, especially when Paddy Ashdown was the HR. In 2003, Bosnia’s media released a number of polls indicating that Bosnians had ‘trusted’ Paddy Ashdown more than any local leader in Bosnia. Other polls showed that ordinary Bosnians would rather see the OHR ‘running the country’ than Bosnian authorities. Although it would be imprudent to deduce such a conclusion solely through polling results, one can assess that Bosnians have generally accepted the international presence, but only as an uncomfortable and temporary option to an otherwise corrupt local leadership that has been more concerned with the pursuit of partisan and personal gains than with the general welfare of their populations. Addressing Bosnia’s contradictory situation, one political observer states the following:

The Bosnian electorate is hungry, jobless, naïve and desperate. The Bosnian people… might believe they are covering all the bases by accepting the international community’s rule, while at the same time voting along nationalist lines. If the international community

405 For polling data to support the view that Bosnian citizens do not trust their local elected leaders, see OSCE Press Release, ‘OSCE Poll Shows Public has No Confidence in BiH Leaders to Fight Corruption,’ 1 April 2003, available at www.oscebih.org/pressreleases/2003/01-04-03-eng.htm.
406 For example, Bosnia’s biggest daily paper, Dnevni avaz, released a poll that in which over 16 percent of the nearly 1200 people surveyed named Asdown as the leader they most trusted. See Anes Alic, ‘Living in a Paradox,’ Transition Online, 17 September 2003.
407 Ibid. On 12 September 2003, a Sarajevo based Hayat TV aired a live interview with Paddy Asdown and also opened phone lines for viewers to answer the following question: Who should be more involved in running the country, the OHR or Bosnian authorities? Over 75 percent of the 2,300 callers said they would rather see the OHR more involved.’
fails them, then, hopefully their representative nationalist party will come to their rescue, or vice versa.\textsuperscript{408}

\textbf{Key External Contextual Factors}

In addition to contextual factors that are endogenous to the target territory, circumstances occurring outside the borders of the territories under international administration play a crucial role in successful implementation. Among the more important external conditions include global factors, such as the motivating reasons that prompted the international community to intervene in the first place and the levels of political will that interested states are willing to expend; and regional factors, which include the target territory’s relationship to its adjacent neighbors and the region’s stabilizing or destabilizing activities.

\textit{Global Factors}

As argued earlier, powerful states act out of strong humanitarian impulses and self-interests when they decide to intervene in war-torn territories. The international community was clearly motivated to intervene in the Balkans and East Timor by the humanitarian catastrophes that engulfed all three territories. Despite no consensus among the international community to deal with the violence in both Balkan situations, sensationalistic reporting of extreme human suffering and gross violations of fundamental rights were broadcasted around the world and incited lobbying groups and humanitarian NGOs to put pressure on Western governments to intervene and

\footnote{\textit{Ibid.}}
end the hostilities.\textsuperscript{409} In East Timor the international community displayed a great reluctance to intervene in spite of the gross human rights violations mounting in the territory months before the referendum in 1999. Part of this had to do with the United States and Australia’s desire to preserve good relations with Indonesia for mainly geo-political and economic reasons.\textsuperscript{410} But similar to the Balkan cases, both international and domestic pressures grew to the point where both countries could no longer avoid the humanitarian catastrophe in East Timor. In the face of such pressure, President Clinton threatened to suspend all U.S. programs of military cooperation with Indonesia and later told Jakarta that it needed to accept an international presence in East Timor to restore order. In Australia, a sizeable Timorese émigré population was particularly vocal about this issue and pressed Canberra, which also felt a level of

\textsuperscript{409} This fits along Daniel Philpott’s notion of ‘civic liberalism’, which postulates that the humanitarian concerns of citizens and civil society groups inside liberal democracies can be a major contributing factor explaining the decision to intervene militarily. See Daniel Philpott, ‘Liberalism, Authority, and Power in International Relations: One the Origins of Colonial Independence and Internationally Sanctioned Interventions,’ \textit{Security Studies}, Vol. 1, No. 2 (2001-02), pp. 117-63.

\textsuperscript{410} The Clinton administration was for the most part unwilling to jeopardize its strategic relationship with Indonesia over the East Timorese struggle for independence notwithstanding numerous UN Security Council resolutions condemning Indonesia’s military occupation of the island since 1975. In the past, Indonesia was perceived as an anti-communist bulwark in South East Asia and was thus part of Washington’s containment policy during the Cold War. As the world’s largest Muslim country, it continues to be seen within Washington as an important geo-strategic area. The \textit{New York Times} reported that the Clinton administration had ‘made the calculation that the U.S. must put its relationship with Indonesia, a mineral-rich nation of more than 200 million people, ahead of its concerns over the political fate of East Timor, a tiny, impoverished territory of 800,000 people that is seeking independence.’ Quoted in Joseph Nevin, \textit{A Not-So-Distant Horror: Mass Violence in East Timor} (London: Cornell University Press, 2005), p. 124.

Australia was also unwilling to challenge Indonesia’s repressive rule over the question of protecting the East Timorese. Like the U.S., Canberra’s interest in good relations with Indonesia was for the most part based on national security reasons rather than emotion. This was particularly evident in 1991 when both Canberra and Jakarta entered into a joint production agreement for exploration of gas and oil reserves off of East Timor’s southern coast – what is commonly referred to as the ‘Timor Gap’ – that is worth billions for Australia. Consequently, Australia’s treaty with Indonesia for development of the Timor Gap meant that Canberra formally recognized East Timor as a province of Indonesia, and thus becoming the first country to officially recognize Jakarta’s claim of the territory. See James Cotton, ‘East Timor and Australia – Twenty-Five Years of the Policy Debate,’ in James Cotton (ed.), \textit{East Timor and Australia: AIIA Contribution to the Policy Debate} (Canberra: Australian Defense Studies Center, 1999), pp. 1-20.
guilt for its 20-year recognition of Indonesia’s occupation, to intervene militarily and bring order to the island.

But humanitarian considerations alone did not motivate the international community to intervene. Interested states wanted to protect their national interests by preventing potential regional instability. NATO’s member states were greatly concerned about the mounting refugee crises being generated by the conflicts in Bosnia and Kosovo. Bosnian refugees fled in large numbers to Western Europe and were perceived as a threat to the economic stability of some countries, particularly in Germany and Italy. Similarly the Serbian campaign to expel Kosovar Albanians from Kosovo resulted in large numbers of Muslims entering into neighboring Macedonia, exacerbating tensions between the majority Slav population and the growing Albanian minority. As Kimberly Marten notes, ‘the refugee crisis in Macedonia spawned real fear that European stability was threatened once again, in an era when Europe was supposed to be drawing together as never before in the EU.’

Similarly, Australia was also concerned about the potential domestic instability resulting from a refugee crisis off its northern shores.

Furthermore, many observers have contended that the motivations for intervening in the Balkans were to increase the sense of purpose and strength of NATO and other transnational organizations, such as the EU, which was eager to show a leadership position in the post-war administration of these territories. Writing about the intervention in Bosnia, Susan Woodward claims that the ‘international intervention in Bosnia since Dayton ‘has become a highly visible testing ground for post-Cold War

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interventions in general, for the redirection of European and transatlantic security organizations, and for the new agenda of development agencies in regard to post-conflict reconstruction.\textsuperscript{412} In the same vein, the crisis in East Timor gave Australia the opportunity to not only demonstrate its military power, but to assert its status as a regional hegemon in the Asian Pacific. In fact, since its military intervention in East Timor, Australia has taken a more engaged approach in the region, intervening in the Solomon Islands in 2003, for example.\textsuperscript{413}

The combination of these factors has resulted in some of the most robust international interventions since the end of the Cold War. In terms of receiving economic assistance, international staff and troops, Bosnia and Kosovo have received more overall support on a per capita basis than virtually all other international interventions in the post-Cold War period.\textsuperscript{414} Moreover, both Balkan interventions are the longest running post-Cold War missions, extending beyond 11 years in Bosnia and 7 years in Kosovo (This, of course, does not necessarily reflect a positive outcome.) The above push factors help to explain why the international community, and more specifically, the EU, has displayed a rare level of political will and commitment to stabilizing these territories and overseeing their transformation from


\textsuperscript{413} For a discussion of Australia’s increasing role in the South Pacific, see Benjamin Reilly and Elsina Wainwright, ‘The South Pacific,’ in Simon Chesterman, Michael Ignatieff, and Ramesh Thakur (eds.), \textit{Making States Work: State Failure and the Crisis of Governance} (New York: UN University Press, 2005), pp. 122-44.

\textsuperscript{414} In Bosnia, for example, cumulative international assistance to Bosnia from 1995 to 2006 is estimated over US$100 billion. In the first two years of the operation, economic assistance resulted in $679 (in 2000 US$) per local Bosnian, the highest of any peace operation in the post-Cold War era. In Kosovo the cost of reconstruction and recovery from 1999-2003 is estimated $2.34 billion. In fact, ‘Kosovo is the most endowed peace operation in UN history: on per capita basis, the world has invested 25 times as much money and 50 times as many troops as in Afghanistan.’ Iain King and Whit Mason, \textit{Peace at Any Price}, p. x.
non-democratic regimes to functioning and self-sustaining democratic entities. However, as the US is preoccupied with the global war on terror since 2001, the country has shifted its focus and resources away from the Balkans to areas more vital to its national interests.\(^4\) This has left the EU to largely foot the bill for both operations as the organization continues to struggle with its own budget, European enlargement and constitutional issues. In comparison to Bosnian and Kosovo, the international community devoted less resources and overall commitment to East Timor due to the island’s location and its low strategic importance to powerful actors such as the US and the EU.\(^5\) As the donor community’s patience began to wane UNTAET was obliged to end its mission and accelerate the political transition towards independence. The US in particular has consistently called for the UN peacekeeping presence in the territory ‘to be wound-up on the grounds that [East Timor] was no longer a threat to international peace and security.’\(^6\)

Regional Factors

The activities and attitudes of regional powers make up a further component of external contextual conditions. Whether they are the principal neighbors of the territory in question or the presence of transnational regional organizations, regional

\(^4\) According to Morton I Abramowitz and Heather Hurlburt, ‘US engagement in the Balkans has fallen off dramatically. American assistance to the region declined 10 percent this year [2005] and is slated to fall another 20 percent next year, from $621 million to $495 million… Responsibility for Balkan decision-making at the State Department has drifted down from “7 floor” special envoys and political figures to the “6th and 5th floor” mid-level career officials and out to the embassies themselves – a reduction not necessarily in competence, but certainly in high-level attention.’ See Morton Abramowitz and Hurlburt, ‘Can the EU Hack the Balkans?’ Available at www.crisisgroup.org/home/index.cfm?id=2237&l=1.

\(^5\) By one estimate, the UNTAET’s 2000-2001 budget was $592 million. See James Traub, ‘Inventing East Timor,’ p. 84.

factors can serve as either a constructive force that will enable international authorities to implement their mandates or they can greatly undermine international efforts. In regard to the former, principle neighbors, the surrounding countries often seek to exploit the internal disorder of a war-torn territory for their own advantage. At the same time, factions competing for power will inevitably seek external sponsors for support. As James Dobbins argues, ‘Faced with the prospect of a neighboring state’s failure, the governments of adjoining states inevitably develop local clientele in the failing state and back rival aspirants to power.’ In order to rebuild these failed states, Dobbins suggests that external interveners ‘must secure the cooperation, however grudging, of the principal neighbors’ to avoid the destabilizing effects that are likely to occur if they are ignored.418

In Bosnia the international community engaged regional leaders in Serbia and Croatia in order to secure their cooperation during post-war efforts. On the surface it seemed as if both neighboring countries acquiesced to international demands to stay out of Bosnia’s internal political affairs. However, the former nationalist presidents of Serbia and Croatia, Slobodan Milosevic and Franjo Tudjman respectively, persistently meddled in Bosnia’s domestic politics and supported hard-line nationalist elements in the country. Both regimes exported criminal networks to the Croat-dominated Herzegovina and the RS, which enabled leading Bosnian nationalist parties to maintain their power structures through black market control and ensured that they could actively pursue policies designed to disrupt the development of a functioning democracy and the emergence of a competitive market economy in

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Bosnia.\textsuperscript{419} Although Bosnian Croats received active support and encouragement from Zagreb, the death of Tudjman in December 1999 and the subsequent defeat of his HDZ at the polls – not to mention the democratic and economic improvements in Croatia – have significantly weakened extremists and separatist trends in the Croat Herzegovina. The arrest of Milosevic in October 2000 also improved the situation for international authorities in the RS, as the new regime in Belgrade and the OHR appear to have adopted a more constructive attitude towards each other.

In Kosovo international post-war efforts have been seriously undermined by Serbia, which is determined to prevent the international community and Kosovar Albanians from partitioning the province. Despite the downfall of Slobodan Milosevic and some level of progress in the region in terms of democratization and economic development, Belgrade’s \textit{de facto} control of the northern municipalities in Kosovo, which are contiguous with Serbia proper, has continuously thwarted international efforts to create a truly multiethnic society in the province. In areas it controls, ‘Belgrade dictates the school curricula, runs the health care system, applies laws passed in Serbia’ and provides pensions to Kosovo Serbs.\textsuperscript{420} Consequently, Belgrade has effectively persuaded the Kosovo Serb population not to participate in the province’s provisional governmental institutions, reinforcing the already sharp division between the Serbian and Albanian communities.

\textsuperscript{419} The nationalist parties are the nucleus of Bosnia’s criminalized power structures that were left over from the Tito-era ‘nomenklutra’ system. Based on a clandestine political economy that derives financial revenues from public resources, international funds and aid, customs and tax fraud, money laundering, and other illegal schemes, Bosnia’s nationalist parties have been able exploit inter-ethnic tensions through their monopoly on violence and their control of the black and gray markets. According to one estimate, ‘Bosnia’s formal economy may account for 20 percent of activity while 80 percent goes to the gray and black economies.’ See USIP Special Report No. 7, \textit{Lawless Rule Versus Rule of Law in the Balkans}, (December 2002), p.6.

In contrast, the regional environment in East Timor presented a far more conducive situation for international administrators. Given that Indonesia gave its consent to the deployment of international forces to the island and that Australia would assume responsibility for the territory’s security, regional powers were forthcoming in stabilizing the situation in East Timor. More importantly, the Indonesian-backed militias that were responsible for the violence in 1999 posed no serious security threat to international administrators during the entire mission. Since the departure of UNTAET in 2002, relations between Jakarta and Dili have improved considerably. The shared border line between West Timor and East Timor has been mostly peaceful; and despite ‘the continuing legacy of East Timor’s independence in Indonesian domestic politics, the two governments appear determined to pursue good relations.’

East Timor’s southern neighbor, Australia, has continued to provide security for the island, particularly in emergency situations, and is one of its largest donors. Both countries are also co-owners of the oil resources of the Timor Sea and signed a bilateral treaty in 2006 that equally divides the oil and gas revenues between the two countries.

The presence of wealthy regional organizations can also act as a powerful force for change in post-conflict territories, thus giving the international community much more leverage to transform territories under international administration. For instance

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One sticking issue that has caused some friction between the two countries is when President Gusmao submitted the 2,500-page CARV report to the UN Secretary-General, outlining the human rights abuses that had been committed from the beginning of the Indonesian occupation to the 1999 hostilities. This report provoked uproar in Indonesia but was short lived as Gusmao and many other East Timorese officials reiterated their determination to look to the future and not the past. This, of course, has angered many Timorese, many of which were directly affected by the human rights abuses that were committed during this period. They reject Dili’s amnesty response to the CARV report and demand justice for those atrocities committed. International Crisis Group Asia Briefing No. 50, *Managing Tension on the Timor-Leste/Indonesia Border*, (4 May 2006), p. 1.
the OHR currently benefits from Bosnia’s future membership in NATO and the EU – Bosnia has already joined NATO’s Partnership For Peace in November 2006 and signed onto the Stabilization and Association Agreement in November 2005. Membership in both organizations not only provides Bosnia with extra physical and economic security but the country can also look forward to ‘a cornucopia of subsidies as well as opportunities for more or less unrestricted study and work abroad’\(^422\) In turn such ‘carrots’ offer incentives for Bosnian leaders to accelerate the pace of political and economic reforms. Moreover, the magnetic attraction of EU membership, in particular, has helped hold the Balkans together, as the region is locked into the Euro-integration process. The main idea in Brussels is that in the long run integration into a pan-European infrastructure will help mitigate or ease conflict in the Balkans. As part of the region, Kosovo also aspires to join NATO and the EU though its process for integration remains a distant prospect, especially given that Belgrade and Moscow are adamantly opposed to the province’s desire for statehood. However, UNMIK’s eventual departure and replacement by an EU protectorate paves the way for Kosovo’s eventual accession into the EU as Brussels intends on directly shaping and developing the province’s political and economic institutions so that it may one day stand ready for EU membership. In short, joining the EU and NATO is still regarded in the region as an essential stage into the modern, prosperous, and democratic world. Unfortunately, for East Timor, there is no wealthy organization equivalent to the EU or NATO in its region. Rather it appears that East Timor will be

the UN’s responsibility as the organization has recently built a huge base on the island, ‘suggesting that the world body is digging in for the long term.’

Assessments

This chapter began with a brief historical overview of direct territorial administration by international organizations. The historical record revealed two important patterns in particular. First, international administrations have been deployed mostly in non-independent territories (Danzig, Saar basin, Leticia, West Irian Jaya, South West Africa/Namibia, Eastern Slavonia, Kosovo, and East Timor), though they have been used in juridical states as well (Congo, Cambodia, and Bosnia). Second, the record showed that the international community has by and large utilized such interventions to address sovereignty (or border) disputes between state actors. Increasingly, however, international administrations are deployed as a response to the governance problems of war-torn territories, whether it is the lack of governmental capacity or the illiberal behavior of governmental officials. It is notable that international administrations have performed more effectively at addressing sovereignty problems than governance problems. This was evident in the League cases in the Saar basin and Leticia, and the UN’s experiences in Irian Jaya and Eastern Slavonia, where international administrators were able to facilitate a peaceful transition of a disputed territory to the control of a sovereign authority.

The chapter then introduced the main case studies by examining their mandates, mission structures, and the contextual environments in which decisions were made. In

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Bosnia, Kosovo, and East Timor, international organizations were bestowed with the executive, legislative, and judicial functions of the modern state. This allowed international administrators to exercise executive decisions, promulgate legal acts, and conduct court judgments, which had immediate effects on the population of the target territory. Indeed, in all three main case studies, the head international administrator is the final political authority in the territory in question.

The regulatory authority of international administrations has usually resulted in a centralized structure of decision-making whereby senior international administrators control the preponderance of political authority. In Bosnia, the unwillingness of local leaders to govern harmoniously, coupled with the lack of institutional capacity at the state level, led to a reactionary response by the PIC, which bestowed the OHR with the so-called Bonn powers that allowed the HR to interpret his political authority as broadly as possible. Conversely, in Kosovo and East Timor, the international community was far more proactive in delegating direct authority to international authorities in light of the capacity problems of both territories. In fact, the UN implemented a ‘three-phased strategy’ for both territories during the transitional period. In the first phase, international administrators exercised full powers of direct governance while building up and managing the administrative structures in Kosovo and East Timor. During this phase, internationals established local institutions or mechanisms that served as mere advisory bodies that lacked meaningful decision-making authority, as the KTC and NCC exemplified in Kosovo and East Timor respectively. In the second phase of the transition, a greater degree of governance functions were transferred to local political structures within an asymmetrical model
of co-governance or power sharing between international governing officials and the
territory’s domestic authorities. This was evident in the establishment of the NC and
ETTA in East Timor, whereby the international administration conferred legislative
and executive functions to these local institutions or mechanisms – albeit, the sole
executive and legislative authority resided with the Transitional Administrator. In
Kosovo, this entailed an election to a transitional assembly and new cabinet structure,
both created by UNMIK, that was conferred certain decision-making powers and
competencies, with reserved powers and final authority residing with the Transitional
Administrator. The third phase envisaged a full transfer of governmental
responsibilities to local institutions and the disbandment of the international
administrative structure.

The division of power between international and local authorities during the
transitional phase suggests that international administrators were informed by a
particular understanding of sovereignty. That is, a conception of sovereignty that
emphasizes the capacity of a government to effectively provide security and other
public services as a major legitimating source of sovereign authority. The restriction
of the right to self-determination and the limitations of local governance during
international led transitions is a reflection of the international community’s lack of
confidence (and distrust) of local actors and institutions to effectively deliver certain
political goods to their constituents. At the same time, however, local leaderships in
both Kosovo and East Timor, frustrated over their lack of meaningful power, were
able to force international authorities, which were concerned about the legitimacy of
their missions, to prematurely transfer more governmental authority and
responsibilities to local institutions. This raises the question of whether the international community is really committed to the notion of reviving a regime of positive sovereignty, in which target territories are held to certain high standards of effective governance. (A question that will be addressed in Chapter 5.)

The chapter concluded with a detailed contextual analysis of the main case studies. Based on an assessment of the key internal and external contextual factors, East Timor provided the most ‘optimal’ scenario for transitional governance and state-building. First, Timor’s main contending political factions were largely unified on the goal of independence and accepted the notion of dramatic change. Second, there was no significant threat from within the territory or outside of it that posed as a barrier to the state-building process. And third, the Timorese population welcomed international authorities, and unlike the Timorese elite, wanted the UN to stay as long as possible. Highlighting these propitious conditions on the ground, John Sanderson observes that ‘the security situation in East Timor lends itself to political experimentation in a way that would be very difficult and costly in most other places.’

However, the internal contextual factors also revealed that the international community had little to work with: the territory suffered from severe economic underdevelopment, it had no experience in self-rule, and the population had been subjects of neglectful colonial rule for centuries. Moreover, East Timor’s geo-strategic value did not warrant the type of high degree commitment that has been demonstrated by the international community in the Balkan cases. The resources

devoted to East Timor’s institutional development were not necessarily negligible – especially in proportion to the territory’s own resources – but they appear to be nevertheless insufficient for the type of political change envisaged by the international community.

Conversely, the internal conditions on the ground in Bosnia and Kosovo are far more inauspicious. Both Balkan cases are ethnically polarized societies where tensions and uncertainty remain high. In Bosnia, the leaders of Muslims, Croats, and Serbs still refuse to cooperate with each other; in Kosovo, enmities are even more entrenched between Kosovar Albanians and Serbs. In the post-conflict phase, the Serbs continue to be victims of revenge attacks and in turn refuse to participate in Kosovo’s provisional institutions set up by UNMIK. Furthermore, Belgrade’s influence in the Serb-dominated north has effectively cutoff the region from the rest of the territory. Such unfavorable conditions limit the extent to which external interveners can govern and rebuild a society. At the same time, however, the Balkan case studies are more favorable in terms of their external surroundings, especially in light of the fact that both territories receive high levels of commitment in terms of aid and resources by the EU. Moreover, the prospect, or carrot, of EU membership is a powerful exogenous influence that allows international actors to wield an effective stick in shaping the developmental trajectories of both Balkan cases.
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The Dual Mandate (I): Serving the Role of Government

The most intriguing but controversial aspect of international administration is the degree or scope of sovereign powers and responsibilities entrusted to international organizations in war-torn territories. As noted earlier in this study, international administrations go beyond traditional peacekeeping and peace-building missions in that they assume sovereign tasks of the modern state, such as law enforcement, judiciary, and fiscal management of the territory. The logic of such governance or administrative authority is to give international authorities direct control over the trajectory of the transitional process in order to bring about immediate political change, improved security, and better access to economic opportunities for the territory concerned. Without extensive and invasive political authority, international efforts may be hampered when confronted with recalcitrant local actors whose strategic aims collide with the international agenda, or when competing interests among local parties paralyze international attempts to reform the system. At the same time the centralization of executive authority in the hands of international administrators may have serious consequences for the long-term development of local capacity. Such authority necessarily restricts the political space available for the society whom these institutions are designed to serve and therefore limits the exercise of local ownership and initiative.

This creates a dilemma of what Joel Beauvais has described as a dual mandate.\textsuperscript{425}

On the one hand, the international administration with governorship authority is

mandated to establish itself as the de facto government of the target territory. On the other hand, it is also charged with building local institutions and preparing the target society for self-government. ‘While conceptually compatible,’ argues Beauvais, ‘in practice these two mandates are in deep tension with one another,’ and often produces irreconcilable problems. For instance, there is the risk that a considerable portion of finite resources will be devoted to setting up the international administrative apparatus at the expense of local needs and institutions during those early and pivotal months of the post-conflict intervention. There is also the potential danger that the far-reaching powers of such missions will cause discontents among local political leaders and disenfranchise the local population from the state-building process itself, thereby creating a culture of dependency on international authority, which in turn may strengthen radical forces.

This chapter analyzes the governorship aspect of the dual mandate in the area of judicial administration in Bosnia, Kosovo, and East Timor. More specifically, it examines whether an international administration can achieve legitimacy beyond its procedural sources of authority (that is, consent and delegation) through its ability to exercise governance powers according to the social purposes of the mission that legitimizes its power and on its capacity as a surrogate interim government to deliver political goods to the target population. The chapter accomplishes this task by exploring how today’s conceptualization of sovereignty as responsibility has had an impact on the administrative practices of international administrations. This raises questions about the relative importance of norms, as opposed to interests and security

426 Ibid. p. 1108.
concerns, in shaping the behavior of international actors involved in territorial governance; and whether international governing authorities bind themselves to the norms and principles they promote in target territories.

The chapter also examines the governmental effectiveness of international administration through the technocratic model of intervention. As discussed previously in Chapter One, international administrations are seen as a technical solution to conflicts that are perceived not as political problems, but as ‘pathological conditions from which non-Western states suffer, or as criminal acts which leaders perpetuate.’ As a result, such interventions base their effectiveness on the following claims: first, international administrations are efficient in terms of time and resources; second, international bureaucrats involved in such missions possess the necessary technical expertise to manage territories; and third, international administrations are comprised of politically neutral and disinterested actors who are detached from the quagmire of local conflict and politics.

The Primacy of the Rule of Law in International State-Building

The rule of law is a fundamental aspect of the modern democratic state. It implies that a legal order exists within a state: one that delineates the locus and scope of authority of the state vis-à-vis its citizenry. Without the rule of law, governmental authority is typified by arbitrariness and lack of accountability. For societies that have never experienced respect for the rule of law and/or where such institutions have

428 For a more detailed account of the technocratic approach to international intervention, see Chapter Two.
completely collapsed as a result of war, international administrators argue that the rule of law must be prioritized before a discussion of democracy can even begin. For instance, former HR in Bosnia, Lord Paddy Ashdown, asserts that the key to peace-building is that of ‘the overriding priority… of establishing the rule of law.’ Reflecting on his own experience of governing Bosnia, he adds: ‘It is much more important to establish the rule of law quickly than to establish democracy quickly. Because without the former, the latter is soon undermined… [In Bosnia], we got these priorities the wrong way.’

Michael Steiner, former SRSG of UNMIK, agrees with Ashdown, stating that security and the rule of law was the priority, while democratization should be secondary: ‘In Bosnia, we made a mistake by holding elections just six months before the Dayton Accords were signed, before establishing the rule of law, with the result that nationalist political leaders consolidated their grip on power.’

In his influential study of peace-building and civil conflict, Roland Paris concurs with international policymakers that the focus of international interventions should be on building strong state institutions and on enhancing the rule of law at the expense of democracy and self-governance. Political and economic liberalization, he argues, often exacerbates conflict and tension in weak or failing states that do not have the social, economic, and legal mechanisms to channel social demands. According to these views, state-building should be ‘sequenced’ with the rule of law, policing, and

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431 Roland Paris, At War’s End.
administration taking precedence over consensus-building and local participation in the process.\footnote{David Chandler, \textit{Empire in Denial}, p. 174} The contention here is that it is ‘possible to create the institutional framework of a strong and stable state before liberalization’ and that ‘states and citizens can be capacity-built and empowered by correct practices of external regulation.’\footnote{Ibid. p. 56.} The sequencing of state development represents the core strategy of technocratic interventions, which treats state-building as a technical process rather than as a political one.

Establishing the rule of law has thus been central to the policies of our main case studies, with particular emphasis on rebuilding and reforming the judiciary.\footnote{In fact, establishing rule of law institutions has been central to most post-conflict state-building missions since the end of the Cold War. The importance of the rule of law in the work of international administration is underlined by its prominence in the Brahimi Report, where issues pertaining to legal order constitute the bulk of the recommendations regarding international administration.} In post-conflict environments, criminal activity of all stripes often flourishes in the affected society. To address internal threats to public authority, a police force must be established that is capable of enforcing the law (e.g., arresting criminals and conducting investigations) while at the same time operating in accordance to democratic standards of policing (e.g., improving police accountability, respecting human rights, and police protection of minorities). In addition, effective police forces cannot undertake their law enforcement activities in a meaningful way without a functioning judicial system. The establishment of a functional judiciary is important for the protection of the human rights of detainees and is essential for the credibility of, and trust in, state institutions as it guards the civil and political rights of citizens against the arbitrary use of power by the government. Thus the effects of good
policing can easily be undermined without an effective judiciary. Moreover, under international law, it is a requirement for governments to respect a judiciary that is independent and impartial.\textsuperscript{435} If a judiciary is not protected from the influences of governmental officials, elites, or other groups, the system risks of becoming an instrument of control rather than as an institution that protects equality before the law. The failure to address ongoing criminal violations – and past violations of international humanitarian and human rights laws – can adversely affect progress of the broader political objectives of the operation, including the development of democratic institutions, the establishment of confidence necessary for the return of refugees, the latitude to provide humanitarian assistance, and so on.\textsuperscript{436}

In the context of territorial administration, failure to establish some semblance of the rule of law can significantly undermine the authority and legitimacy of an international administration, as well as discourage foreign aid and investment. Towards this end, the international community must foster an appreciation of the critical role that the rule of law plays in the modern state by demonstrating and instilling to the target society that such institutions are not just instruments for wielding authority and control over society, but that they define and effectively limit the scope of authority of the state. This can be achieved in some measure if the international governing officials and international jurist operate according to the same standards to which they espouse. Although the rule of law includes institutions other


than the judiciary, such as police, prisons, interior ministries, border patrols, counter-drug forces, correctional facilities, law schools, and so on, this study will focus mostly on the capacity of the international community in carrying out judicial functions.

The Internationalization of the Judiciary

The introduction of international jurists in the domestic judicial systems of conflict-ridden territories is a recent development. Foreign jurists have served before in special war crimes tribunals such as those in Nuremberg and Tokyo, as well as the tribunals hosted in The Hague and Arusha. But never before have foreign judges and prosecutors served alongside local jurists in a post-conflict environment. In the post-Cold War era, international jurists have increasingly been deployed with the task to monitor, supervise, or directly handle the administration of justice. This trend constituted the growing acceptance of the international technocratic agenda, which assumes that international jurists are expected to ensure better quality justice during the transitional period. Where grievous risks of factional or ethnic bias exist, or where there is a lack of local judicial capacity, international actors have compromised the self-governance of target territories to establish a judicial system that promotes and safeguards fundamental human rights as well as strengthens the rule of law.

More specifically, the human rights and rule of law standards that the international community espouses are reflected in the requirements for an independent and impartial judiciary. The quality of a judiciary is usually evaluated on the basis to which courts are able to conduct trials speedily in a procedurally
appropriate manner (e.g., protecting the human rights of detainees by prosecuting their cases within a reasonable time frame). However, in modern democratic states, it is not only the number of cases successfully addressed that constitute quality justice, but also the extent to which the judiciary is independent from political influence and impartial in terms of its composition and rulings that really matters. The independence of the judiciary must be ensured through the obligation that the executive organ performing judicial appointments is bound to the decisions of judges acting in an independent capacity. Judges must be in a position to make decisions without the threat of intimidation or backlash. If the judiciary is not independent of the politically powerful, there is unlikely to be equality before the law. Furthermore, the impartiality of the judiciary suggests that appointed justices are neutral arbiters who play a pivotal role to maintaining and securing the confidence in the rule of law and justice itself.

In our main case studies, the administration of justice was not initially treated as a top priority in the early post-conflict phase. Due to a number of factors explained below, international actors focused their attention and resources on issues of security and economics, and immediate humanitarian concerns at the expense of justice. This failure to prioritize justice issues eventually undermined the credibility of the international presence. It was soon realized that introducing international jurists into these domestic legal systems were imperative to upholding and instilling judicial principles that strengthened the rule of law and promoted human rights. For instance, in Bosnia and Kosovo, the internationalization of the judiciary was seen as an effective response to concerns about shielding the judiciary from collaborators of the
old regime or from pressures of political groups. In Kosovo, in particular, internationalization was considered key to combating the pervasiveness of ethnic bias in the local judiciary. In East Timor, the complete lack of local judicial capacity meant that international jurists would fill this ‘brain gap’ and play a pivotal role in transforming a traditional legal society into a modern system of law that promotes human rights.

**Bosnia**

In Bosnia, international authorities relied chiefly on locals for the performance of judicial functions. Unlike the other two case studies, most of the country’s domestic sovereignty was retained by local stakeholders. International administrators were thus forced to operate within the ethnic fault lines created by the war and subsequently institutionalized by the DPA. For this reason, the judiciary in the post-war transition continued to be an instrument of the ruling nationalist parties who were more concerned with their own parochial gains than with supporting the core principles of judicial independence and impartiality. SC Resolution 1035 (1995) tasked UNMIBH, the largest and most expensive civilian agency operating at the time in Bosnia, to merely monitor and oversee the existing local judicial systems in the country. This relatively weak mandate was mostly the corollary of external

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437 Article III (a) of the Bosnia’s Constitution. Depending on how the one state, two entities, one autonomous district, eight unitary cantons, and two mixed cantons are counted, Bosnia is divided juridically into three, four, fourteen, or sixteen territorial hierarchical jurisdictions; it also has three separate sets of laws, two of which are replete with contradictory provisions. See International Crisis Group, Courting Disaster: The Misrule of Law in Bosnia & Herzegovina, Europe Report No. 127, 25 March 2002.

438 Although internationally supported efforts to promote and inculcate the rule of law was the main responsibility of the UNMBIH, a number of actors participated in varying levels in pushing for judicial
contextual factors relating to the inter-departmental conflict that occurred between the US State Department and the Pentagon at the time of the Dayton negotiations in November 1995, whereby Pentagon officials and a Republican-dominated Congress were adamantly opposed to US involvement in any type of nation-building functions.\footnote{439}

Despite not having the mandate to implement far-reaching judicial reforms, the Judicial System Assessment Programme (JSAP) and, more specifically, the UN Mission’s Criminal Justice Advisory Unit (CJAU), regularly monitored and assessed the criminal court proceedings at the entity levels.\footnote{440} However, due to a lack of significant international backing and most of its energies spent on reforming the police component of its mandate, the UNMIBH paid scant attention the JSAP. As a result, it took over two-and-a-half years before the JSAP was operational.\footnote{441} And even then, the program was terminated shortly after in December 2000 to UN budget cuts.\footnote{442} The judicial component of the mission was later transferred from UN control

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reforms and training local Bosnian jurists. This included the OHR, OSCE, the Council of Europe (CoE), the American Bar Association and Deutsche Gesellschaft Fur Technische Zusammenarbeit (GTZ), and so on. The multiplicity of so many international actors involved in one area of reform led to a number of problems, including the absence of an overall vision, a lack of leadership and cooperation, duplication and inefficiency, and personality and turf wars between different agencies and actors on the ground. See International Crisis Group, \textit{Bosnia: Reshaping the International Machinery}, Balkans Report No. 121, 29 November 2001.
\footnote{441} As part of Annex 11 for the IPTF, the JSAP received little financial backing as most of the limited resources were directed to the police component. See International Crisis Group, \textit{Ensuring Bosnia's Future}, European Report No. 180, 15 February 2007, p. 11.
\footnote{442} The JSAP was discontinued mainly due to US Congressional budget cuts. Former Senate Foreign Relations Committee member, Jesse Helms, deemed the program to be a nation-building operation, not
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to the OHR. On the basis of the Bonn peace declaration of 10 December 1997, which significantly enhanced the powers of the OHR, the HR was able to exercise not only legislative and executive competencies, but also judiciary ones. In the field of judicial competencies, the HR has exercised the constitutional control of laws by declaring, for example, a law of the Parliamentary Assembly unconstitutional.\textsuperscript{443} The HR’s newfound powers also enabled him to dismiss judicial officials who he deemed were unfit or perceived as obstructionists to the DPA. Three major departments within the OHR assisted the HR in pushing his agenda of reforming the judicial system: the Legal Department, which deals with state court issues, EU Road Map issues, and questions concerning to the drafting of criminal and civil legislation; the Rule of Law Department, which covers human rights issues that pertain to ICTY and the enforcement of decisions by other international decision-making bodies operating within Bosnia; and the Anti-Fraud Department, which helps, among other things, with judicial training in fighting corruption and fraud, and initiates criminal law reforms.\textsuperscript{444} According to the International Crisis Group, these departments have helped the OHR achieve some success in drafting laws for Bosnia’s other state level institutions and exposing political corruption in the Federation entity.\textsuperscript{445} However, in terms of establishing a judicial system that conducts trials in a procedurally

\textsuperscript{443} For example, see Decision amending the Law on Filling a Vacant Position of a Member of the Presidency of Bosnian and Herzegovina, 7 August 2000, at \url{http://www.ohr.int}.


\textsuperscript{445} Ibid. p. 9.
appropriate manner of observing international rule of law standards, such departments have had little or no effect.\footnote{Ibid.}

In addition to its own internal resources, former HR Wolfgang Petritsch also created the Independent Judicial Commission (IJC) on 14 March 2001 to replace the defunct JSAP. Under the aegis of the OHR, the IJC was tasked with the responsibility of assisting the HR in key areas that involved the vetting of local jurists and their appointment process, and other equally important functions that focus on building the local capacity of the judicial system. To uphold human rights and rule of law standards, the IJC initiated a review process with rigorous procedures to weed out local judges and prosecutors found to be corrupt and biased. It was expected that the review process would result in a meaningful reshaping of Bosnia’s judiciary – one in which the independence of the judiciary is protected and its rulings impartial. Unfortunately, the IJC’s performance has been at best ineffective for several reasons. First, the review process was conducted by local commissions and councils composed of judges and prosecutors who ‘lacked the staff, technical skills and financial incentives to do a thorough job.’\footnote{Ibid. p. 7.} Second, the IJC itself lacked the capacity to fully carry out its supervisory role.\footnote{Ibid.} Similarly to its predecessor, the JSAP, the IJC was underfunded and took many months to establish itself – about six months to employ new staff – which resulted in much time and momentum being lost in the process.\footnote{Ibid. p. 9. Initially comprised of 70 legal experts, 33 of whom were international and national lawyers and judges, the IJC was, like its predecessor, the JSAP, under-funded. According to sources from the International Crisis Group, the IJC faced a significant funding gap of over one million euros for its projected budget for 2001-02. Given the vastly expanded scope of its mandate, the IJC was in desperate need of increased funding.}
Finally, the local commissions relied on citizens’ complaints of local jurists and demanded a certain amount of proof, which rarely could be established. As a result, only a handful of local jurists were either removed or disciplined during the IJC’s first year of operation in 2001, despite the fact that some 700 complaints were filed against Bosnian judges and prosecutors.\textsuperscript{450}

Given the above, it was seen that Bosnia’s institutions for judicial recruitment and disciplinary procedures were inadequate. The OHR therefore responded by decreeing that all judges and prosecutors had to resign and reapply for their positions.\textsuperscript{451} This time, however, the burden of proof was placed on the individual applicants as former HR Paddy Ashdown directly laid the groundwork of legal reforms by appointing most of Bosnia’s judges.\textsuperscript{452} Indeed, during his reign as HR, Ashdown took the legislative initiative to directly reform the judicial system himself. For example, he imposed a new set of criminal codes in January 2003\textsuperscript{453} that were intended to battle corruption within Bosnia’s government and judiciary. In addition, he created two new departments (the Special Department of Organized Crime, Economic Crime and Corruption in 2002 and the War Crimes Chamber that has been taking cases from the Hague Tribunal since 2005) staffed both by international and local jurists to prosecute high-profile cases of corrupted officials and criminals operating over the inter-entity


\textsuperscript{451}The decree imposed by HR Paddy Ashdown did not distinguish between those judges who had been promised life tenure after passing an earlier comprehensive review and those that had not. As expected, there was a great level of resentment among Bosnian judges, of which many later resigned as a form of protest against the HR’s decree. See Gerald Knaus and Martin Felix, ‘Lessons from Bosnia and Herzegovina: Travails of the European Raj,’ \textit{Journal of Democracy}, Vol. 14, No. 3 (2003), p. 64.

\textsuperscript{452}See ‘Decisions on appointment of judges and on the establishment of the court of Bosnia and Herzegovina,’ OHR 9 May 2002.

\textsuperscript{453}See ‘Decisions on enacting the Criminal Code of Bosnia and Herzegovina,’ OHR, 24 January 2003.
boundary line. Against the complaints of Bosnia’s politicians, Ashdown interpreted these measures as necessary strategies of transformation that would help to implement a particular set of goals deemed desirable – one of these being a system of rule of law that ensures both the impartiality and freedom of Bosnia’s judiciary from corruption and political influence. However, the HR’s use of his authority for these social purposes has been nothing but controversial. Rather than inculcating Western norms of justice in Bosnia and therefore strengthening the country’s political framework, international policies that promote the rule of law have been criticized for inadvertently weakening Bosnia’s political institutions. For example, David Chandler strongly disagrees with the invasive approach taken by the OHR, warning ‘that [Bosnian] institutions are dependent on international administrators to appoint them and oversee their operation means they perpetuate divisions and external dependencies. As long as the political settlement is dependent on external regulation, the questions of ethnic insecurity and uncertainty over the future remain.’

The Constitutional Court: A Tool For Manipulation or a Harbinger of Justice?

Direct international involvement in Bosnia’s judiciary is mostly limited to the state’s Constitutional Court, a hybrid legal structure composed of nine judges, two of whom are appointed by the RS National Assembly, four (two Croats and two Bosniaks) appointed by the Federation House of Representatives, while the remaining three are international judges selected by the President of the European Court of

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Human Rights after consultations with the Bosnian Presidency. The Constitutional Court’s main responsibility is to uphold the Dayton Constitution. The Court has been increasingly active in determining whether legislation passed in the entities are consistent with the principles outlined in the Dayton Constitution. More interestingly is the fact that the Court has competency to review the decisions of the HR if the latter intervenes in the legal order of Bosnia, substituting himself for national authorities. According to Sumantra Bose, ‘These significant powers, together with the fact that the court operates by majority rather than consensus – thus rendering it much less prone to deadlock and paralysis – makes the Constitutional Court of [Bosnia] a potential tool in the hands of international state-builders and democratizers.’ As Bosnia’s political institutions are held hostage to nationalist agendas, the Constitutional Court is seen as an institution that can hopefully transcend that politics while operating as a standard bearer for rebuilding confidence in the rule of law. Due to its hybrid nature, the external appointment mechanism of the three foreign judges was intended to neutralize politically motivated appointments and to tip the balance in favor of national equality.

One of the more important rulings of the Constitutional Court that exemplifies the reasoning for introducing international justices in the Court is the ‘Constituent Peoples’ Decision’ passed in July 2000. With the votes of the two Bosniak and the

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455 Article VI.1(a) of Annex 6 of the DPA. All of the members of the Court are to be appointed for an initial five years and are not eligible for reappointment. Moreover, the Annex also stipulated that the appointed foreign justices must come from Bosnia’s immediate neighbors.

456 Bosnia represents the only territory administered by international organizations in which the acts of the international administrator are subject to judicial review. See the decisions by the Constitutional Court ruled in Para 5 of Decision U 9/00 of 3 November 2000 and Para 22 of Decision U 25/00 of 23 March 2001.

three international judges against the two Croat and two Serb judges, the Court ruled that all citizens of Bosnia were also citizens of both entities, and that the principles of political equality apply to the three-constituents peoples throughout the country.\footnote{\textit{‘Agreement on the Implementation of the Constituent Peoples’ Decision on the Constitutional Court of Bosnia and Herzegovina,’ OHR, 27 March 2002. Available at: www.ohr.int/ohr-dept/legal/const/default.asp?content_id=7274.}}

The international community and Bosnia’s progressive liberals lauded the decision as a major advance for the cause of constitutional reform and equal, non-discriminatory citizenship rights. Moreover, the decision permitted international administrators to reshape radically Bosnia’s political system by guaranteeing the representation of all ethnic groups in key political posts of the entities. An agreement drafted mostly by the OHR specified the following:

Out of the following positions not more than 2 may be filled by representatives of any one constituent people or of the group of Others: 1) Prime Minister 2) Speaker of the House of Representatives/Republika Srpska National Assembly 3) Speaker of the House of Peoples 4) President of Supreme Court 5) President of Constitutional Court 6) Public Prosecutors. Presidents of Entities – the President shall have two Vice-Presidents coming from different constituents peoples.\footnote{Ibid.}

The Entity governments, especially the RS, were very resistant to implementing these far-reaching reforms. As a result, the HR imposed several decrees requiring the necessary constitutional changes in the two entities in 2002 and 2003. Again, the international community hailed the move as a major step forward for democratizing Bosnia’s political institutions because minority populations in the entity governments are guaranteed extraordinary representation. This is in spite of the fact, for example, that the majority of the current population in the RS is by far Serbian.\footnote{Section III of the Agreement, for example, described in detail the new composition of the RS Government. Accordingly, ‘The RS Government (Prime Minister and 16 ministers) shall be composed of 8 Serb, 5 Bosniak and 3 Croat ministers. One ‘Other’ may be nominated by the PM from the quota of the largest constituent people. There shall be additionally a Prime Ministers who shall have two}
in Bosnia, which have resulted in nationalist victories time after time, demonstrated the ostensible necessity of using law to reshape Bosnian politics towards Western standards.\textsuperscript{461} Notwithstanding impressive electoral performances in the October 2002 elections by the three main nationalist parties – the SDA, SDS, and HDZ – in their respective communities, the ‘Constituent Peoples’ Decision’ relegated their victories to minority positions at both the state and entity levels. As David Chandler observes, ‘governments at both the entity and state level are based on multi-ethnicity rather than votes.’\textsuperscript{462} The OHR’s decision on implementing the Constitutional Court’s ruling has raised skepticism because it entrenches ethnicity even further in Bosnia’s political system rather than reducing its importance.

As such, the international membership in the Constitutional Court has increasingly been under scrutiny. While local judges object to the relatively high salaries of their international counterparts, Bosnia’s political officials, particularly from the RS, argue that the international influence in the Court’s rulings has marginalized Bosnia’s sovereignty, and that the time has come to fully domesticate the Court. Though the Constitutional Court has been less vulnerable to political interference than other institutions in Bosnia, it has nonetheless been subjected to the political meddling of nationalist officials, thus raising serious concerns about the Court’s independence. According to a report by the International Crisis Group, since the ‘Constituent Peoples’ Decision’, nationalist leaders in power have made attempts

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\textsuperscript{461} David Chandler, \textit{Empire in Denial}, p. 177.

\textsuperscript{462} Ibid.
to increase the domestic composition of the Court in order to outweigh the leverage of international justices; they have also made sure to appoint new justices in the Constitutional Court that would serve to block as much as possible the international agenda of strengthening state institutions at the expense of entity level autonomy.\footnote{International Crisis Group, “Courting Disaster,” 25 March 2002, p. 19.}

Notwithstanding local reservations about the international membership in the Constitutional Court, the Court has also challenged the authority of the OHR, giving the impression that there exists a system of checks and balances within the international governing structure. In a more recent judgment passed in the July 2006, the Constitutional Court ruled that the absence of a right of appeal (including the denial of the right to stand in elections, to receive unemployment benefits, and to work for public companies) for the hundreds of local officials sacked by the HR is a violation of the European Convention on Human Rights, which under the Bosnian Constitution is the highest law of the land.\footnote{For an analysis of this important decision, see the report by European Stability Initiative, \textit{Legal Dynamite: How a Bosnian court may bring closer the end of the Bosnian protectorate}, 12 March 2007.} The judgment arises from the case of Dragan Kalinic as president of the Serb Democratic Party (SDS) and speaker of the Republika Srpska parliament in June 2004, along side the dismissal of 34 other SDS officials. All were accused by the OHR for ‘abuse, corruption, and tax evasion.’\footnote{Ibid.}

However, no evidence was presented by the OHR to substantiate his claims. There was no right to appeal for the sacked officials. According to the Venice Commission, which was set up by the Council of Europe to investigate the HR’s aggressive activities, the OHR’s use of such powers from a human rights perspective disregarded
the most basic principles of justice and democracy. The Constitutional Court therefore ordered the Bosnian state to ensure the protection of its citizen’s constitutional rights, suggesting that the principles of the constitution, which was drafted by westerns in the first place, have precedence over the decisions of the HR. According to the European Stability Initiative, a think tank based in Berlin, the international administration in Bosnia (and the ‘soft power’ of the EU itself) weakened itself considerably through its hypocritical policies:

Following the conclusion of the Dayton Peace Agreement, an international mission was sent to Bosnia to make sure that new constitutional and human rights standards took root in a difficult post-conflict environment. Now the mission is found to be in violation of the very standards it has been mandated to promote… As a result, the Bosnian mission is no longer perceived as upholding the rule of law to the Bosnian public: it is above all concerned to protect its rapidly diminishing ‘soft power.’

Although the majority of Bosnia’s nationalist parties do not particularly appreciate the international dimension of the Constitutional Court’s membership, Bosnian society for the most part approve of its role in Bosnia’s politics. According to an OHR official, ‘The Constitutional Court is probably one of the most respected institutions in Bosnia now… It’s respected because it has acted as a type of check on both local and international officials.’

Kosovo & East Timor

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467 European Stability Initiative, Legal Dynamite, p. 5.
468 Interview with OHR official via e-mail (25 June 2006).
In Kosovo and East Timor, international administrations were given extensive authority over the control and administration of justice.\(^\text{469}\) Such political authority was deemed necessary, as both judicial systems had all but collapsed after the departure of Serb and Indonesian authorities. As a result, there were virtually no experienced local jurists left in Kosovo and East Timor.\(^\text{470}\) The challenges of both situations were compounded by the fact that Serb forces and pro-Indonesian militias had destroyed the physical infrastructure of their respective justice systems, such as courtrooms, valuable office equipment, court records, and penal facilities.\(^\text{471}\) In Kosovo, the murder rate of 50 per week during the first months of the post-conflict phase was illustrative of the type of insecurity and lawlessness that prevailed in the province. As a result, the Serb minority effectively broke off into ethnic enclaves that are still completely politically and financially integrated with Serbia, including administratively with regard to schools, health care and retirement funds. The looting and violence prompted KFOR to make large-scale arrests to restore public order, creating a backlog of hundreds of detainees in international custody. Without proper

\(^{469}\) In case of Kosovo, Security Council 1244 ‘the administration of the judiciary… is vested in UNMIK’ and exercised by the SRSG (Section 1.1 of Regulation 1999/1 as amended). In case of East Timor, Security Council Resolution 1272 provides that UNTAET ‘will be endowed with overall responsibility for the administration of East Timor and … empowered to exercise all legislative and executive authority, including the administration of Justice’ (Para 1).

\(^{470}\) In Kosovo, ethnic Albanians were vigorously excluded from the justice sector since 1989, when the province’s special autonomy was taken away by the Milosevic regime. Under such circumstances, appointments to the justice system were politically and ethnically motivated, as only 30 out of 756 judges and prosecutors operating in Kosovo were Kosovar Albanians. Those Kosovar Albanian jurists who decided to remain after 1999 were considered collaborators with the previous regime and soon faced death threats. As a result, the problem in Kosovo had more to do with finding jurists who did not have a Yugoslav past. In contrast, the departure of Indonesian jurists from East Timor meant that fewer than ten lawyers were estimated to have remained, and ‘these were believed to be so inexperienced as to be unequal to the task of serving in a new East Timorese justice system.’ See Hansjorg Strohmeyer, ‘Collapse and Reconstruction of a Judicial System,’ pp. 48–50.

\(^{471}\) Ibid. p. 50. In East Timor, the situation was even more severe. The post-referendum violence of September 1999 had resulted in the destruction of ‘an estimated 70 percent of all administrative buildings.’
legal channels and adequate numbers of international and local jurists, many of those detainees were denied international standards of due process (e.g., a judicial hearing within seventy-two hours of arrest and the right to sufficiently qualified defense counsel). Similarly, in East Timor, INTERFET and UN CIVPOL were faced with growing numbers of crime that resulted in a large prison population with no local judicial system in place. There was a pressing need for a legal framework to review the arrests and detentions that had been carried out by the Australian-led INTERFET, which was forced to improvise quickly and establish its own mechanisms for protecting the rights of its detainees until they could be transferred to a civilian judiciary. Notwithstanding these inauspicious circumstances, both international interventions were for the most part welcomed in Kosovo and East Timor. Unlike in Bosnia, where local nationalists leaders tried every way to hold on to their autonomous power and control their own affairs, local leaders in Kosovo and East Timor were more inclined to cooperate with international authorities than challenge their authority, at least initially.

Faced with judicial vacuums in the both territories, international administrators addressed the problem in two ways: first, by installing a legal framework (or applicable law) and, second, by developing a process of judicial appointment. Whereas in Bosnia the law in force came from various sources depending on the level of government, international administrators in Kosovo and East Timor had to decide

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472 See European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Art. 5.: ‘Everyone… shall be brought promptly before a judge or officer authorized by law to exercise judicial power…’. Cited in Hansjorg Strohmeyer, ‘Collapse and Reconstruction of a Judicial System,” p. 49.

473 Simon Chesterman, You, the People, pp. 117-18.
what applicable law to use within which their judicial activities could be carried out. In Kosovo, UNMIK decided that the applicable law in Kosovo was the law applicable prior to 24 March 1999 (the day on which NATO initiated its air campaign against Yugoslavia). Regulation 1999/1 stated that in addition to regulations issued by the SRSG, the ‘laws applicable in Kosovo prior to 24 March 1999 shall continue to apply in Kosovo insofar as they do not conflict with...[international human rights standards]’.

This meant applying FRY law, which was inevitably perceived seen as a means of prolonging Serbian hegemony over the province. Consequently, Kosovar Albanian judges and prosecutors refused to apply FRY laws from the 1990s, arguing that the Serbian Criminal Code was discriminatory and had been an instrument of oppression by the old regime. Local judges thus ignored or purposely misinterpreted Regulation 1999/1. After five months of dispute between local jurists and international administrators about the application of FRY law under Regulation 1999/1, the SRSG issued Regulation 1999/24, which applied the law as it had been place in 1989 – before the revocation of Kosovo’s autonomy. While the rejection of the laws from the 1990s was seen as a symbolic move on the part of Kosovar Albanians, emphasizing that Kosovo was no longer under Serb rule, the dispute exposed the international community’s unwillingness for confrontation with Kosovar Albanians – a direct contrast to the HR’s heavy-handed approach in Bosnia – and

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474 UNMIK Regulation 1999/1, sec. 3.
476 Observers have noted that both laws did not differ significantly in content, and that the FRY law was in fact superior to the laws that were revoked in March 1989. For instance, the FRY Code dealt with crimes such drug-trafficking and war crimes, issues not covered in the 1989 Code. Nonetheless, local judges borrowed from the FRY law. See William G O’Neil, Kosovo, p. 80; Simon Chesterman, ‘Justice Under International Administration: Kosovo, East Timor, and Afghanistan,’ (International Peace Academy, September 2002). Available at: www.ipacademy.org.
therefore greatly undermined the UN’s credibility as a governing authority. Moreover, the retraction of Regulation 1999/1 further ostracized the Serb minority and ‘[lowered] hopes of Serb judges returning to office.’

In East Timor, the issue of applicable law was considerably less controversial. International administrators decided on the continued use of Indonesian law, which was previously applied in East Timor by Indonesian jurists. However, the complexities of Indonesian law, particularly its Criminal Procedure Code, made it difficult for UNTAET officials to translate the law for use in East Timor – in particular, for CIVPOL officers trying to perform their duties within appropriate legal boundaries. It was not until 21 September 2000, when UNTAET promulgated Regulation 2000/30, that a civil law system was finally introduced that not only simplified procedure, but made ‘special provisions for those persons who had initially been in custody of INTERFET without having had the opportunity to be heard in court.’

With regard to the selection process of local jurists, both international missions in Kosovo and East Timor established independent judicial commissions as the primary mechanism. The commissions were intended to function as independent bodies,

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478 However, Section 3 of Regulation 1999/1 made Indonesian law applicable in East Timor subject to three conditions: 1) They would remain in force until repealed by UNTEAT Regulations or subsequent legislation of democratically established East Timorese institutions; 2) They do not conflict with internationally recognized standards; and 3) They do not conflict with the fulfillment of the mandate, or with present or subsequent regulation or directive issued by the Transitional Administrator.’ Given this, several Indonesian laws were immediately abrogated, such as the Law on Anti-Subversion and the Law on Mobilization and demobilization, as was capital punishment. See Wayne Hayde, “Ideals and Realities of the Rule of Law and Administration of Justice in East Timor,” in Harvey Langholtz, Boris Kondoch, and Alan Wells (eds.), *International Peacekeeping: The Yearbook of International Peace Operations*, Vol. 8 (2002), p. 80.
479 Ibid. p. 81.
comprised of both international and local legal experts who were responsible for making non-partisan recommendations on appointments to the SRSG; they were also entrusted with the responsibility to act as a disciplinary body to investigate complaints of misconduct of judges and prosecutors, and to recommend punitive measures to the SRSG, such as removals. International observers saw the commissions as the most effective way of safeguarding the establishment of an independent and impartial judiciary.\textsuperscript{480} Furthermore, in both territories the ‘United Nations deemed it essential to recruit the majority of the commission members among local experts and to empower them to overrule the international members so as to build a strong sense of ownership.’\textsuperscript{481}

In Kosovo, the SRSG Sergio Vieira de Mello established the Joint Advisory Council on Judicial Appointments (JAC) two weeks after UNMIK’s late arrival to the territory.\textsuperscript{482} The SRSG appointed seven members to the JAC (two Kosovar Albanians, one Serb, one Muslim Slav, and three internationals). The local commission members, all of which had extensive previous experience in the administration of justice, nominated nine judges and prosecutors – five Albanians, three Serbs, and one ethnic Turk – who served as mobile units with jurisdiction throughout the territory of Kosovo.\textsuperscript{483} The minority membership of international experts in the commission was intended to show Kosovars that they held ownership of the judiciary. However, the composition of the JAC stirred controversy as many

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\item \textsuperscript{480} See Amnesty International, ‘Amnesty’s International’s 16 Recommendations to the Parties at Rambouillet.’ No. EUR 70/08/99, 1999, para III.
\item \textsuperscript{481} Hansjorg Strohmeyer, ‘Collapse and Reconstruction of a Judicial System,’ p. 52.
\item \textsuperscript{482} UNMIK Emergency Decree 1999/1, 28 June 1999.
\item \textsuperscript{483} Hansjorg Strohmeyer, ‘Collapse and Reconstruction of a Judicial System,’ pp. 52-53.
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Kosovar Albanian officials, in particular representatives of the KLA, accused members of the JAC as being collaborators with the former Serbian regime. For this reason, JAC members were threatened with violence and in some cases, forced out of the province.

To appease the concerns of their main local interlocutors, the KLA, international administrators replaced the JAC with the Advisory Judicial Commission (AJC), which had broader responsibilities for both judicial appointments and disciplinary issues.\textsuperscript{484} Furthermore, not only was the composition of the commission expanded to eight local and five international members, but also the criteria used for nominating appointees became more stringent.\textsuperscript{485} Despite these stronger provisions, the AJC was unable to prevent Albanian members of the commission from appointing individuals who had political propensities that leaned with the cause of Kosovo independence. In terms of its responsibility as a disciplinary body, the AJC did not initiate one investigation during its tenure between 1999-2000, despite mounting evidence of misconduct by local jurists. One UNMIK official described the AJC as a ‘complete disaster.’\textsuperscript{486} As a result, the SRSG dissolved the AJC in October 2000 and replaced it six months later with the Kosovo Judicial and Prosecutorial Council (KJPC).\textsuperscript{487}

Similarly to its predecessors, the KJPC was given the mandate to propose appointments to the SRSG for approval – albeit, this time, with the endorsement of

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\item UNMIK Regulation 1999/7, 7 September 1999.
\item Section 6 of UNMIK Regulation 1999/7 stipulates that the criteria for judicial nomination should include, in addition to professional experience, a strong provision for excluding those judges and prosecutors who are affiliated with a certain political party, or engaged in political activities. This provision was later limited to the involvement in political activities, which was described by some observers as a vague standard.
\item Cited in William O’Neil, \textit{Kosovo}, p. 75.
\item UNMIK Regulation 2001/8, 6 April 2001.
\end{enumerate}
\end{footnotesize}
Kosovo’s new Assembly; to investigate misconduct and offer disciplinary measures; and to provide the SRSG with judicial advice. The arrangement of the commission, however, was now comprised of nine members, of which five were internationals and only four local.\footnote{Section 2.2 of UNMIK Regulation 2001/8, 6 April 2001.} By bestowing a numerical majority of international experts in the commission, UNMIK clearly revealed its desire to take control of the judiciary and focus more with securing the rule of law than with local capacity-building, thus breaking its initial commitment to the notion of promoting local ownership. As such, the SRSG increasingly sidelined the KJPC, treating the commission as a mere consultative body rather than as an independent legal institution.\footnote{David Marshall and Shelley Inglis, ‘The Disempowerment of Human Rights-Based Justice in the United Nations Mission in Kosovo,’ p. 121.} By December 2002, the SRSG was under heavy criticism from both local and international observers for appointing judges and prosecutors without the approval of Kosovo’s Assembly.\footnote{Ibid. p. 107. Though it should be noted that the SRSG ‘may appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such person’ (Section 1.2 of Regulation 1999/1 as amended).} One can essentially argue then that the SRSG had violated the very same standards he was mandated to promote: not only did the SRSG undermine the democratic legitimacy of Kosovo’s governing institutions, but by using his executive powers to reshape the judiciary, the SRSG ultimately infringed upon the independence of Kosovo’s nascent judiciary.

Initially, UNTAET also deemed it essential to build a strong sense of local ownership over the new judiciary and to inject as much domestic expertise as possible into the process. The Transitional Judicial Services Commission (TJSC) was
therefore set up on 3 December 1999.\(^{491}\) Similarly to the various commissions in Kosovo, the TJSC was responsible for nominating judicial personnel for appointment, for investigating complaints about the judiciary and recommending disciplinary measures.\(^{492}\) Based on consultations with relevant local interlocutors and civil society groups (e.g., the Catholic Church and human rights NGOs), the SRSG appointed a commission composed of five members, three of whom were Timorese and two were international experts.\(^{493}\) Yet, similar to its counterpart in Kosovo, the SRSG in East Timor was not only given the authority to reject a recommended candidate by the TJSC, but also possessed the authority to remove any judge or prosecutor who had failed to meet the principles of judicial independence and impartiality.\(^{494}\) Likewise, UNTAET attempted to augment international control over the appointment and disciplinary process by proposing a provision that would allow for the SRSG to bypass the TJSC. Although this was seen by international authorities as a way to improve the quality and effectiveness of the judiciary, local Timorese official saw it as a violation of judicial independence.\(^{495}\)

**Going Hybrid**

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\(^{491}\) UNTAET Regulation 1999/3.

\(^{492}\) Ibid.

\(^{493}\) Section 2.1 of UNTAET Regulation 1999/3, 3 December 1999. The numerical majority of Timorese members, which could outvote their international counterparts, ostensibly demonstrated the international community’s commitment to local ownership over the judicial process.

\(^{494}\) Section 5.1 of UNMIK Regulation 1999/3, 3 December 1999.

\(^{495}\) This provision, however, as rejected by Timorese officials who considered such powers as inimical to the independence of the judiciary. See Jonathan Morrow and Rachel White, ‘The United Nations in Transitional East Timor: International Standards and the Reality of Governance,’ *Australian Yearbook of International Law*, Vol. 22 (2002), pp. 18-19.
The above analysis shows that international authorities were initially more aggressive with the idea of domesticating the judiciary from the outset of both missions. The reasoning behind this approach was based on ‘numerous similar considerations.’\textsuperscript{496} The most critical reasoning was pragmatic: the cost of internationalizing the judiciary is an expensive enterprise. As Hans Strohmeyer observed, ‘the costly requirements of translating laws, files, transcripts, and even the daily conversation between local and international lawyers, as well as the enormous time and expense of familiarizing international lawyers with the local and regional legal systems’ would financially overburden the setup phase of the operation.\textsuperscript{497} In addition, given the urgent circumstances of large numbers of detainees that had been arrested by KFOR and INTERFET previously, and with no review mechanism at hand, it was unrealistic in both situations to expect a speedy deployment of international judges and prosecutors on such short notice. It thus made practical sense to use local jurists than wait for the arrival of international ones. Finally, pushing for local ownership of the judiciary was a means of conferring legitimacy to the mission and avoiding charges of neo-colonialism. This point was particularly important to the East Timorese population since there had never been a purely Timorese judiciary before under both Portuguese colonial rule and Indonesian military rule.

As realities on the ground began to play out, however, both international administrations reconsidered their initial strategy of relying on purely local judiciaries. For different reasons, international administrators introduced international judges and prosecutors to complement local ones, creating hybrid tribunals. In

\textsuperscript{496} Hans Strohmeyer, ‘Collapse and Reconstruction of a Judicial System,’ p. 54.
\textsuperscript{497} Ibid. p. 55.
Kosovo, the initial commitment to local ownership was eventually supplanted by concerns of ethnic bias in the judiciary. The appointment of international jurists was thus seen as a way of upholding the principles of judicial independence and impartiality and enhancing the procedural legitimacy of the legal system. In contrast, in East Timor, the core motivation for introducing international judges and prosecutors was the severe lack of local capacity. In both cases, the reactionary response to internationalizing the administration of justice was premised on the ability of international jurists to expedite the judicial process; to offer immediate legal expertise and training of local judges and prosecutors; and to provide an independent and neutral service in arbitrating cases of war crimes, ethnically motivated crimes, and other sensitive charges.

In Kosovo, trials took place in five district courts with a right of appeal to the Supreme Court in Pristina. Although the ICTY has primary jurisdiction over crimes related to the conflict in Kosovo, officials of the ICTY have repeatedly stated that the international tribunal will only take cases of principal perpetrators – meaning, those elites or persons who have ordered and committed egregious human rights crimes. This meant that the huge majority of trials of international crimes took place within Kosovo’s justice system, or not at all. However, it became evident within the first few months of the operation of the justice system that a properly functioning system of judicial procedure had not been established. This stemmed from a number of problems. First and foremost, the majority of local jurists had virtually no previous and practical judicial or prosecutorial experience. Also, because Serbian jurists had either departed or honored the Serbian policy of not working with the UN, nearly all
of the local judges and prosecutors were Albanian. This led to a third problem: many of those Kosovar Albanian judges and prosecutors typically displayed a strong bias in favor of Albanians, on the one hand, and against Kosovo Serbs and other minorities on the other.\footnote{498} For this reason, former KLA fighters and Albanian leaders acted with utter impunity, often receiving short sentences or no prison time at all, even if they had been caught committing serious crimes. Given the hundreds of cases of inter-ethnic violence against Serbs and other minorities that followed NATO’s military intervention and during the early stages of UNMIK administration, the lack judicial impartiality severely undermined the credibility and legitimacy of the justice system in the eyes of Kosovan society, particularly among minorities.

According to Michael Hartmann, who served as an international prosecutor for UNMIK, the internationalization of the judiciary in Kosovo underwent a series of stages or ‘phases’.\footnote{499} In the first phase, as indicated above, the strategy was to rely solely upon local jurists to staff and perform judicial functions.\footnote{500} The second phase began on 15 February 2000 with the passage of Regulation 2000/6, which allowed for the appointment of one international judge to a five-member panel\footnote{501} and one international prosecutor in the District Court of the ethnically divided city of

\footnote{498} See Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/1999/1250, 23 December 1999. In the report, the UN Secretary General mentions the biased attitude of local judicial bodies towards minority populations.


\footnote{500} It should be noted that UNMIK administrators had rejected an earlier OSCE proposal that envisaged international jurists complementing local judges and prosecutors; UNMIK rejected it based on fears of charges of neo-colonialism, short-time constraints on mission planning, and the unavailability of foreign judges versed in indigenous law.

\footnote{501} Under Kosovo Criminal Code, required five judges to sit on the trial panel, of which only two are professional (attorney-trained) and three are lay judges (people from the community without legal training).
The international jurists were given the same powers and competencies as their local counterparts in Mitrovica; however, they were limited to criminal trials and could only choose and take responsibility for new and pending criminal investigations and cases.\textsuperscript{503} Three months later, UNMIK issued Regulation 2000/34, which expanded the scope of international jurists to all five judicial districts in Kosovo, including the Supreme Court, which ‘hears the second-instance appeals and provides the highest review of detention decisions.’\textsuperscript{504} But Hartmann argues that the UNMIK administration encountered a number of problems in its ‘minimalist Phase Two approach.’\textsuperscript{505} First, the presence of international judges did not fully rectify the lack of partiality of the courts, as Kosovar Albanian judges regularly outvoted internationals. This meant that Kosovar Albanian prosecutors continued to overcharge Serbs and proposed longer detention periods without sufficient evidence, ‘while abandoning cases and refusing to investigate against ethnic Albanians.’\textsuperscript{506} Moreover, in spite of never making up the voting majority in the court, the presence of international judges on the bench created the perception of increased legitimacy of biased judgments. Finally, the high volume of cases dealing with war crimes, inter-ethnic violence, and other sensitive cases overburdened the limited number of international judges and prosecutors.\textsuperscript{507}

The third phase was initiated with Regulation 2000/64 in December 2000, which created the so-called 64-panels that increased international control over the

\textsuperscript{502} This was seen as a response to the violent ethnic riots that occurred in February 2000 in Mitrovica.
\textsuperscript{503} Michael Hartmann, \textit{International Judges and Prosecutors in Kosovo}, p. 8.
\textsuperscript{504} Ibid. p. 9.
\textsuperscript{505} Ibid. p. 10.
\textsuperscript{506} Ibid.
\textsuperscript{507} By the end of 2000, there were only ten international judges and three international prosecutors assigned throughout Kosovo to deal with mostly war crimes cases.
Regulation 64 gave UNMIK the authority to assign a particular case to a panel composed of three professional judges, with a minimum of two international judges, instead of a five judge panel with two professional and three lay judges. Shortly after, UNMIK promulgated Regulation 2001/2, which allowed international prosecutors to re-open cases that have been closed or abandoned by local prosecutors. Both of these regulations significantly bolstered international control over the justice system. With the creation of the new Police and Justice Pillar (Pillar I) in May 2001, the justice system was effectively placed under purview of international control as it was designated as a reserved power of the international administration. As a result, the international side of the justice system received more funding that translated into the hiring of more international jurists and better administrative support structures.

Since the enactment of Regulation 64 and the establishment of Pillar I, international majority panels have adjudicated virtually all war crimes cases. The OSCE reported in March 2006 that international prosecutors have prosecuted 502 cases. International jurists therefore took a higher caseload and reduced some of the existing backlog. Progress in prosecuting ethnically motivated crimes, particularly, Albanians accused of attacking minorities, was also finally making

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508 UNMIK Regulation 2000/64 ‘On Assignment of International Judges/Prosecutors and/or Change of Venue,’ 15 December 2000
509 Ibid. ‘64 panels’ are typically given cases based on four main criteria: (1) in situations when the local judiciary is threatened or intimidated during trial; (2) when there existed an overwhelming public demand for a judicial decision by internationals; (3) the ethnic identity or political affiliation among defendants, victims, and witnesses; and (4) the severity of the offence. See Conflict Security and Development Group, A Review of Peace Operations: A Case for Change – The Kosovo Study (London: Kings’s College, 2003), para 2007.
strides in the spring of 2002. Moreover, after acquiring an international majority, the Supreme Court subsequently reversed many of the convictions of Serbs on genocide and war crimes charges during the first and second phases mentioned above. The International Crisis Group reports in September 2002:

In these retrials, some defendants were acquitted due to incomplete establishment of fact: the inability of witnesses to attend the trial; inconsistent witness testimony; and insufficient evidence. In several cases the verdicts were upheld and the length of sentences increased, while most genocide and war crimes charges were diminished to murder (with only one charge of war crimes standing).

It has also been observed that the treatment of minorities in the judicial system improved considerably since the presence of the 64 panels. For example, between 2001 and 2005, the OSCE and the Judicial Investigative Unit reported that there were ‘no reports by the court monitors which would indicate… any suspicion regarding bias by judicial panels.’ The OSCE attributes this success partly to the control of the justice system by internationals. It recommends that the presence of international jurists in the Kosovo justice system is still very much needed because of the ‘[…] continued presence of security threats which may undermine the independence and impartiality of the judiciary and impede the ability of the judiciary to properly prosecute crimes, which gravely undermine the peace process and the full establishment of the rule of law in Kosovo.’

Proponents of the technocratic approach would point to the aforementioned successes as a testament to how international participation in post-conflict systems

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511 Ibid. pp. 28-29.
512 Iain King and Whit Mason, *Peace At Any Price*, p. 66.
515 Ibid. p. 30.
should be immediate and bold from the outset. This is a sentiment shared by many former UNMIK officials. For example, King and Mason contend that ‘[a] mission must be prepared to assert its authority from day one.’ Highlighting the judicial arena as one example, they argue that UNMIK’s minimalist approach during the initial stages of its judicial intervention was ‘misplaced: tolerance of the intolerant is a dead-end strategy, particularly in a post-conflict environment with no tradition of pluralism. Where bullying is the norm, an unobtrusive approach to local culture favors the strong at the expense of the weak.’ Hartmann himself similarly advocates immediate internationalization of the judicial sphere in post-conflict territories:

The Kosovo example provides proof that future international missions should condition their initial deployment in the judiciary upon a worst-case scenario. Local or national jurists should not be expected to be impartial and impervious to coercion and threat, in light of the expected power vacuum struggle, and the influence that the former regime had upon those jurists. These future missions should establish the most robust international intervention possible ... While the views of the local or national jurists should be taken into account, their understandable desire to have exclusive authority should not in itself decide the issue of whether there should be extensive international participation in the domestic judicial system.

Notwithstanding the above, the Kosovo case illustrated that there are a number of serious drawbacks from relying heavily on internationals. The most obvious is the deprivation of Kosovo’s self-governance. With the establishment of KJPC and Pillar I, local ownership over the judicial system had been effectively taken away. Similarly as other spheres of authority in which UNMIK controls, this situation created tensions between internationals and local elites over the speed of transferring power and the competencies of the state back to the latter. The Kosovar Albanian political elite,

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516 Iain King and Whit Mason, *Peace At Any Price*, p. 258.
517 Ibid. p. 246.
especially those politicians who are closely linked to the former KLA, increasingly expressed frustration and anger as they considered the judiciary as an instrument to pursue their broader political agenda of attaining independence for Kosovo. Coupled with the extremely negative reaction to the mounting prosecution of Albanians for the atrocities that occurred in 1999, many sectors of Kosovar Albanian civil society have not cooperated with international authorities, making it very difficult for international police officers and investigating judges, for example, to arrest and prosecute suspected criminals. Indeed, the issue of local ownership over the judicial system provides a good example of the paradox of such interventions: how traditional Westphalian sovereignty has to be compromised in order to establish empirical sovereignty.

The precarious security situation on the ground during the early phases of the post-conflict transition also undermined the ability of international jurists to act independently and impartially. One year after the establishment of UNMIK, the US newspaper, *The Christian Science Monitor*, wrote that even international judges receive death threats from Albanian extremists unless they sentence Serbs as the Albanians demand: ‘It is very, very difficult to get any justice here as long as some extremists are still operating.’\(^{519}\) Indeed, both international and domestic jurists were not allowed to work independently and prosecute certain individuals for fear that they would put their lives at risk by acting against former members of the KLA or other rebel groups.

Next, while the introduction of international judges and prosecutors may have assisted in alleviating the problem of ethnic bias, it has not necessarily improved the quality of justice being administered. This is in part a consequence of the quick turnover of international jurists employed by the Department of Justice in UNMIK. After being hired, international jurists are given six-month contracts that can only be renewed by executive authorities within UNMIK. According to King and Mason, the average international judge stayed in Kosovo for just nine months.\textsuperscript{520} Due to the short-term of office for international judges and prosecutors and the rotation of new jurists replacing older ones, ‘there was no institutional memory built up, no record of lessons learned, and new recruits were thrown into action with virtually no preparation.’\textsuperscript{521} Moreover, the rotation process has allowed international judges to leave the mission before completing the trials they had started. According to the OSCE:

\begin{quote}
At best, this led to the awkward situation of a panel composition change during trial; at worst, the trials had to be re-started. This compromised the administration of justice, caused unnecessary suffering to witnesses who had to re-testify, and ultimately impacted on the right of the defendant to a speedy trial.\textsuperscript{522}
\end{quote}

The legal ability or expertise of international judges in Kosovo has also been questioned. In a number of reports, the OSCE criticized international panels in Kosovo for making very little use of international jurisprudence in coming to their

\textsuperscript{520} Iain King and Whit Mason, \textit{Peace At Any Price}, p. 108.
\textsuperscript{521} Ibid.
verdicts.\textsuperscript{523} Moreover, the OSCE chastised the limited analysis and legal reasoning offered by international judges in their judgments. The OSCE states:

\begin{quote}
[Judgments by international judges] are characterized by brevity (the average length of decisions is three to four pages), poor legal reasoning, absence of citations to legal authority, and lack of interpretation concerning the applicable law on war crimes and human rights issues.\textsuperscript{524}
\end{quote}

Given that international judges are required to provide on-the-job-training with regard to international human rights provisions to local judges and prosecutors, one must be skeptical then about the capacity-building programs undertaken by UNMIK. As part of the dual mandate, international judges and prosecutors are encouraged to mentor their local counterparts in applying international human rights provisions. This mentoring role, however, has suffered considerably because international judges and prosecutors are all overworked. Under the 64 panels, for example, ‘a local judge would be lucky to get one or two war crimes trials per year – not enough to learn how to conduct themselves professionally.’\textsuperscript{525}

The internationalization of the judiciary has also led to contradictory policies that have exacerbated an already existing culture of impunity in Kosovo. This problem takes root from the criticism that international administrators often preach the gospel of the rule of law and human rights, but in practice, they exclude themselves from those very same standards. In the Kosovo mission, due to the nature of its authority and the contracts under which international jurists are hired, international authorities have been accused of violating the principles of judicial independence and

\textsuperscript{523} The OSCE reported in September 2002 that ‘international judges have not, in their written verdicts, based their decisions on war crimes and international humanitarian law jurisprudence; the same situation applies to international human rights jurisprudence.’


\textsuperscript{525} Iain King and Whit Mason, \textit{Peace At Any Price}, p. 109.
impartiality. For instance, the authority of international judges to appropriate any new and pending criminal cases, given approval by the SRSG, is a direct violation of judicial independence because such ‘selection flexibility’ is arguably vulnerable to political abuse and interferes with the principle of random distribution of cases.\textsuperscript{526} Also, the mere fact that international judges are institutionally reliant on Pillar I for resources and contract renewals, suggests that international judges and prosecutors do not enjoy functional independence from UNMIK’s political influence because they are essentially civil employees of UNMIK. For similar reasons, the absence of a disciplinary procedure for international judges and prosecutors means that international jurists are not subject to the same mechanism of disciplinary accountability as other members of the local judiciary. ‘This exceptional authority continues to undermine the reputation of the IJP [International Judge and Prosecutor] program.’\textsuperscript{527}

Senior UNMIK officials have also been criticized for intervening in the work of both international and local judges to conduct their cases in particular ways.\textsuperscript{528} From mid 1999 to 2001, senior UNMIK officials used their executive powers to order extra-judicial detentions of persons who were released by the courts. In May 2000, for example, SRSG Bernard Kouchner overruled a decision by an Albanian panel and, later upheld by an international judge on insufficient evidence, which released Afram Zeqiri, a former KLA fighter, who was arrested on suspicion of murdering several ethnic Serbs. Raising fears of ethnic bias and potential instability, Kouchner

\textsuperscript{526} Roger Lorenz, ‘The Rule of Law in Kosovo: Problems and Prospects,’ p. 131.
\textsuperscript{527} OSCE, \textit{Review of the Criminal Justice System in Kosovo (1999-2005)}, p. 64.
issued an executive order that extended his detention on the grounds that Zeqiri was a security threat. The case ultimately showed Kosovo society that UNMIK officials had no faith in the local judiciary.\textsuperscript{529} The Zeqiri case and other instances of executive detention also blurred the distinction between the executive and the important role of the judiciary as an independent body. Moreover, with no legal mechanism to review their prolonged detentions, such persons were denied their basic international human rights.\textsuperscript{530} The OSCE has considered these extra-judicial detentions to be illegal, commenting on July 2001: ‘It is a fundamental aspect of international human rights law that a person deprived of their liberty be able to challenge the lawfulness of his detention. Judicial review of executive detentions would ensure that they are not arbitrary.’\textsuperscript{531}

The Kosovo example clearly illustrated how the problems associated with the enforceability of human rights and the rule of law with regard to the powers exercised by the international administration can be the corollary of two factors. First, similarly to other types of international military interventions, international personnel involved in territorial administration are immune from civil or criminal jurisdiction in the host territory. To protect themselves against liability claims, international organizations have generally invoked immunity for their personnel against potentially arbitrary policies from the host state.\textsuperscript{532} In Kosovo, for example, Regulation 2000/47 provides for the immunity of UNMIK personnel (including UNHCR, OSCE, and EU

\begin{footnotesize}
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\item Simon Chesterman, \textit{Justice Under International Administration}, p. 5.
\item See, for example, Article 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 and 6 of the European Convention on Human Rights.
\item The principles of immunity are well established in the UN Charter, the Vienna Convention on Diplomatic Relations, and the Convention on Privileges and Immunities of the United Nations.
\end{enumerate}
\end{footnotesize}
components) and KFOR. Marshall and Inglis have observed that in its capacity of legislature, by giving ‘itself and its executive actions immunity from judicial process,’ the SRSG has violated ‘international human rights standards and has rendered nonexistent the right of Kosovars to seek a remedy for violations of their fundamental rights.’ The SRSG has thus the right and duty to decide whether to waive the immunity of any UNMIK personnel at his own discretion. The courts in Kosovo (and in East Timor) are also not authorized to declare UNMIK regulations null and void and inapplicable for non-conformity with the human rights obligations. This sense of impunity is further compounded by the fact that institutions such as the Ombudsperson offices in Kosovo (and in Bosnia) – international bodies specifically set up to defend the rights of citizens against international action – do not have any remit over actions by NATO members. In fact, violations of human rights or abuses committed by KFOR soldiers are referred to the respective commanders of the national brigades of such personnel for consideration. Most importantly, the claim to immunity puts international governing officials on a pedestal, removing them from any democratic and legal control and perhaps creating an incentive to rule with impunity.

The second factor can be found in the argument that in a state of emergency – which generally follows the conclusion of major combat – the situation on the ground

533 For instance, Section 3.2 of Regulation 2000/47 stipulates that the SRSG and the four Deputy SRSGs, the police commissioner and other high-ranking officials as decided by the SRSG are immune from local jurisdiction in respect of any civil or criminal act performed or committed by the in the territory of Kosovo. See UNMIK/REG/2000/47 of 18 August 2000, On the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo.


535 Section 6.2 of Regulation 2000/47.
is not yet conducive for the exercise of the standards that constitute sovereignty as responsibility (e.g., democratic governance and a full guarantee of human rights).  

This line of reasoning suggests that the need for public order and effectiveness of the mission sometimes outweigh strict compliance with international human rights standards. In all three case studies, for example, ‘human rights have to be balanced against the demands of public order and security.’ Senior UNMIK officials continuously maintained that Kosovo was still an internationally-recognized emergency, in which ‘International human rights standards accept the need for special measures that, in the wider interests of security, and under prescribed conditions, allow [international] authorities to respond to the findings of intelligence that are not able to be presented to the court system.’

Together these violations demonstrated how the policies and activities of international administrations are from time to time inconsistent and contradictory to the norms and values they promote in war-torn societies. The lack of administrative or judicial remedies to address the immunity entitlements given to international personnel is particularly troublesome, given that international authorities are conducting tasks of public administration for the supposed benefit of the local population. Since one of the core principles of the modern democratic state is that the law binds executive and legislative bodies, the impunity exhibited by international personnel is hardly compatible with the principles of the rule of law and protection of

536 Many international human rights instruments, such as Article 4 of the ICCPR and Article 15 of the ECHR provide for the possibility of derogation in public emergency situations, according to which security concerns may take precedence over the strict compliance of human rights, particular political rights.


538 Cited in Simon Chesterman, Justice under International Administration.
human rights. Such derogation from the norms associated with sovereignty as responsibility led the Ombudsperson in Kosovo to publish a damning report on UNMIK’s record three years into the mission:

UNMIK is not structured according to democratic principles, does not function in accordance with the rule of law, and does not respect important international human rights norms. The people of Kosovo are therefore deprived of protection of their basic rights and freedoms three years after the end of the conflict by the very entity set up to guarantee them.539

Finally, the interference of international administrators in the judiciary has not always resulted in neutral behavior, thereby calling into question one of the core premises that justifies the centralization of international authority in war-torn territories. On several occasions UNMIK officials have bent over backwards to prevent intrusive investigations and prosecutions of former KLA commanders. In 2000, for example, UNMIK police officers were attempting to compile evidence for the arrest of Hasim Thaci, a former KLA commander and Kosovo’s current Prime Minister, who has been accused of crimes against humanity during the conflict, and murder and organized crime. Thaci complained bitterly to senior UNMIK officials that he was being harassed by international police officers. Fearing that Thaci’s arrest would provoke instability, the SRSG instructed UNMIK police not to engage in intrusive investigations of public figures.540 This created an impression that high profile figures could continue to act with utter impunity, undermining the credibility of both the police and the judiciary. A more recent example involves Ramush Haradinaj, a former KLA commander and, briefly, Prime Minister, who was indicted by the ICTY for war crimes during the late 1990s. Like other former high-level KLA

commanders, UNMIK and Western governments considered Haradinaj as a crucial key in international efforts to bring peace to the territory. On 8 April 2007, *The New York Times* reported that international officials tried to prevent the case from going to the ICTY, adding:

> Once he was indicted, the mission [UNMIK] supported his provisional release, which has lasted almost two years: he is the only indicted person that the court, the International Criminal Tribunal for the Former Yugoslavia, has released in order to return to active politics... International officials have tried to shield him in the name of stability. For instance, the United Nations administration in Kosovo repeatedly blocked the prosecution of Mr. Haradinaj on charges that he had attacked a group of former fighters of the Kosovo Liberation Army. The effect of the relationship between the United Nations and Mr. Haradinaj, according to the prosecution, was to create a sense of impunity around him, and to scare away witnesses.\(^{541}\)

Unfortunately the exceptional treatment given to former KLA leaders is seen by sections of Kosovan society as a sign that the judicial system is not genuinely impartial. As the body charged with instilling the norms of human rights and the rule of law, particularly the principles of international independence and impartiality, the introduction of international jurists and UNMIK’s contradictory policies may have a damaging legacy on Kosovo’s nascent justice system. According to Lorenz, the internationalization of the justice system has ‘created the potential for harm to the local community’s perception of justice because of a seemingly parallel international court system with ties to the executive’.\(^{542}\) Moreover, the authority of the SRSG to assign and reopen cases has been criticized for creating the ‘perception that the executive may interfere at any time with any given case’.\(^{543}\) This perception is reflected in the degree of dissatisfaction in Kosovar public opinion of the judicial

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\(^{542}\) Roger Lorenz, ‘The Rule of Law in Kosovo,’ p. 141.

system, which is consistently seen as one of the most corrupt institutions in Kosovo.\textsuperscript{544}

In East Timor, it became very clear to international administrators that the lack of experience among the East Timorese legal professionals would pose a serious challenge to the establishment of a system of justice, and that a purely Timorese judiciary was hardly sustainable. In fact, there were a number of UNTAET and Timorese officials who from the very outset of the mission argued for the deployment of international jurists in order to handle complex issues of war crimes and allow time for proper training of Timorese judges and prosecutors. Their opinion, however, was outright disregarded by top administrators who were committed to promoting local ownership. It was imperative for the UN that the detainees in the custody of INTERFET for serious crimes, as well as locals being arrested by CIVPOL for lesser crimes, be dealt with expeditiously in accordance to international standards of due process. The TJSC eventually appointed only 24 local judges and prosecutors to serve the entire country from Dili.\textsuperscript{545} However, none of the appointees had any experience in practicing law under the Indonesian dominion.\textsuperscript{546} International administrators also searched abroad for Timorese lawyers willing to serve, but as James Traub observes, ‘there are, thanks to a 25-year diaspora, Timorese lawyers in Portugal and Australia, as

\textsuperscript{545} See Report of the Secretary-General on the United Nations Transitional Administration in East Timor, UN Doc. S/2000/53, 26 January 2000, para 44. The Report indicates that these judges were sworn in by UNTAET on 7 January 2000.
there are Timorese doctors and academics. But it will be a long time before many of them will be tempted to leave their paneled offices for life in Dili or the provinces.  

The appointed judges and prosecutors were thus unprepared and overwhelmed by the backlog of cases. Local jurists were without proper court equipment and skilled court workers to help facilitate the judicial process. Furthermore, the quality of local judges and prosecutors were increasingly criticized by both international and local officials for their ‘lack of knowledge of laws and legal procedure, laziness, political bias, and lack of courage necessary to make fair and impartial decisions.’ One of the biggest concerns was the perceived inability of local judges to adjudicate complex cases involving human rights violations or war crimes that occurred before and after the 1999 referendum on independence. To address this problem, the UN Commission on Human Rights recommended the creation of an \textit{ad hoc} international tribunal reminiscent of the international war crimes courts established in the Former Yugoslavia and Rwanda. In a report given to the UN Security Council, the UN High Commissioner for Human Rights stated that:

\begin{quote}
The United Nations should establish an international human rights tribunal consisting of judges appointed by the United Nations, preferably with the participation of members from East Timor and Indonesia. The tribunal would sit in Indonesia, East Timor, and any other relevant territory to receive complaints and to try and sentence those accused [...] of serious violations of fundamental human rights and international humanitarian law which took place in East Timor since January 1999.
\end{quote}

However, the international community lacked the political will and desire to force an international tribunal with the jurisdiction to prosecute Indonesian military

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\item[547] See James Traub, ‘Inventing East Timor,’ p. 83.
\item[548] For example, former Prime Minister of East Timor, Mari Alkatari, was quoted in 2002 for criticizing the competence of local judges and later blamed UNTAET for ‘a completely disastrous justice system.’ Quoted in Wayne Hayde, ‘Ideals and Realities of the Rule of Law and Administration of Justice in East Timor,’ p. 83
\end{footnotes}
officials for war crimes. Western governments feared that such prosecutions could ‘hurt efforts to repatriate the tens of thousands of East Timorese that were still at that time in militia-controlled camps in Indonesian West Timor could destabilize the government in Jakarta or could do both.’\textsuperscript{550} It was therefore the strategic and regional interests of states, particularly the United States, which has had strong military ties with Indonesia, that prevented the establishment of an international tribunal.\textsuperscript{551}

Given these external contextual factors, the UNTAET was tasked by the Security Council to hold accountable perpetrators of serious international humanitarian violations committed in East Timor. UNTAET responded quickly by creating a Serious Crimes process that included a court system of Special Panels, and prosecutorial and defense teams. The Special Panels were established to hear cases of serious crimes; each comprised of two international judges and one East Timorese, thus ensuring that decisive judicial decision-making is vested in the hands of international judges.\textsuperscript{552} The panels operated only in the Dili District Court – one of the four district courts in East Timor – and were given exclusive jurisdiction over genocide, war crimes and crimes against humanity; and over murder, sexual offences, and torture which occurred in East Timor between 1 January and 25 October 1999.\textsuperscript{553} The panels were also complemented by a Court of Appeals with the same regulatory


\textsuperscript{551} According to Christopher Rudolph, balance of power and realpolitik best explains why international tribunals are established in some cases but not in others. See Christopher Rudolph, ‘Constructing an Atrocities Regime: The Politics of War Crimes Tribunals,’ \textit{International Organization}, Vol. 53, No. 3 (2001), p. 628.

\textsuperscript{552} UNTAET Regulation 2000/15, 6 June 2000.

\textsuperscript{553} Section 2 and Section 22 of UNTAET Regulation 2000/15. It should be noted that UNTAET borrowed heavily from the Rome Statute of the International Criminal Court (ICC) as its substantive law.
composition and jurisdiction. The Special Panels included judges from around the world who were selected based on their experiences in criminal law, international law, including international humanitarian law and human rights law.\footnote{Section 23.2 of UNTAET Regulation 2000/15.} In order to investigate and prosecute these cases before the Special Panels, the Serious Crimes Unit (SCU) was established in 2000. The SCU was under the authority of the Office of the General Prosecutor and was staffed principally by UN international civilian staff and police officers. Finally, the UNTAET created the Defense Lawyers Unit to provide legal representation for defendants who came before the panels.

The Special Panels in the Dili District Court heard its first case in May 2000, and as of June 2000, all four District Courts were functioning.\footnote{It should be noted, however, that the court buildings in the district courts of Oecussi and Suai were not finished by the end of UNTAET’s mandate.} Throughout its tenure, the various units of the Serious Crimes process were able to convict many of those responsible for serious crimes. Sukehiro Hasegawa, a resident member of the UNDP in East Timor, suggests that though ‘[m]any observers consider those convicted as the small fish [emphasis added]… at the national level and particularly in the victim communities these convictions are significant and represent formal justice being carried out.’\footnote{\textit{Sukehiro Hasegawa, Lessons Learned from Peacekeeping and Peacebuilding Support Mission in Timor-Leste}, (Presented at the Berlin Center for International Peace Operations, 27 January 2006), p. 38.} However, it is widely accepted that approximately 1,500 to 2,000 Timorese were killed in the 1999 referendum violence. The SCU reports that the agency filed 95 indictments charging 391 persons with serious crimes.\footnote{Report of the United Nations High Commissioner for Human Rights, para. 41, UN Doc. E/CN.4/2005/115, 22 March 2005.} Following these indictments, the Special Panels brought to justice 87 defendants, mostly
Timorese members of the local militia, with 84 being convicted of crimes against humanity and murder and 3 acquitted.\textsuperscript{558} Hasegawa himself reported that the 95 indictments filed only account for 579 of those murders; this means that over 800 killings remain to be accounted for by way of indictment.\textsuperscript{559}

This low conviction rate does not necessarily attest to the efficiency premise promoted by the technocratic model of intervention. According to the UNCHR, the inability to ‘fully meet Timorese aspirations for justice was the result of the ‘jurisdictional limitations’ of the Serious Crimes process and the ‘time frame’ of its mandate.\textsuperscript{560} Indeed, to date, international and Timorese authorities have been unable to secure the presence of indicted offenders from Indonesia, which has rejected such requests on grounds that the Special Panels do not have international jurisdiction and, for that matter, legally, they do not have the capacity to reach non-Timorese.\textsuperscript{561} Time also served as an external contextual barrier as Security Council resolution 1543 (2004) ordered the SCU to stop all investigations in November 2004 and directed the Special Panels to complete all trials by 20 May 2005. Such time constraints placed overwhelming pressure on international jursists who, in turn, were trying to conduct trials in a procedurally appropriate manner consistent with international rule of law standards.

\textsuperscript{558} This means that 339 defendants have not come before the court due to their absence. Under Timorese law, trials \textit{in absentia} are not covered.

\textsuperscript{559} Sukehiro Hasegawa, \textit{Lessons Learned from Peacekeeping and Peacebuilding Support Mission in Timor-Leste}, p. 38.


\textsuperscript{561} In response to the publication of the Report by the Human Rights Commission in January 2000, Jakarta established its own ad hoc court to try cases of serious violations of human rights that occurred in April 1999 and September 1999. By January 2002, 18 military and police officers, civilian officials and militia leaders were charged. Of the court’s eighteen verdicts, only six resulted in convictions. Yet, by August 2004, Indonesia’s Supreme Court had acquitted all of those convicted.
Yet, a closer examination reveals that the problems of ensuring justice in East Timor can also be attributed to problems linked directly to the internationalization of the judiciary, and the overall strategy of the international community, which is not only highly ambitious, but incompatible with Timorese perceptions of justice. Focusing most of its attention on providing security, law enforcement, and governance matters, UNTAET had shown little commitment to ensuring that the Serious Crimes process was adequately resourced. In a November 2000 report by the Security Council Mission to East Timor, the mission noted that ‘the judicial sector remains seriously underresourced’ and as a result, the Serious Crimes units were unable to process many of ‘those suspects already in detention, some of whom [had] been held for almost a year’ without a trial, thus creating a ‘backlog of unprocessed cases [that have] grown to over seven or eight hundred in the category of serious crimes alone’ in 2001. Consequently, ‘a multitude of suspected perpetrators of serious crimes was released, and East Timorese confidence in the justice system began to erode considerably.’

Problems of judicial administration also arose from the UN’s struggles to find countries willing to send judges and prosecutors to run war crimes cases in the territory. Examining the progress of various international judicial panels in post-conflict territories, Sylvia de Bertodano indicates that ‘the most significant handicap for the Special Panels has been the lack of judges.’ She adds:

There have never been sufficient judges for two Special Panels to operate at once. During 2002 [the last year of UNTAET’s mission] the situation significantly deteriorated. In October 2001 there were three international judges for the Special Panels, and two for the Court of Appeals. By

563 Ibid.
564 See Sylvia de Bertodano, ‘Current Developments in Internationalized Courts,’ p. 231.
September 2002, one international judge and both Appeal Court judges had left the mission. By January 2003, they had not been replaced. The consequence… has been little progress in trials and none in the appeals during 2002. As a result of this, many defendants have been in custody on charges of serious crimes for up to three years without their trials having started.565

This resulted in the denial of due process for many of the accused and suspects that were detained by international military and law enforcement personnel, a problem that seriously undermined the credibility of the Serious Crimes system.

Against this background of limited resources and poor recruitment of international legal professionals, the quality of those jurists who were appointed to the Special Panels have been criticized for their limited background in international law. For instance, Bertodano, who served as a public defender in the Serious Crimes process from 2001-2002, has questioned the very expertise of some international judges by examining the indictments and final judgements of the Special Panels. Highlighting one particular case that was adjudicated by the Special Panels, she poignantly observes:

The final judgement issued by the Panel includes very limited analysis of the law of crimes against humanity: just three pages out of 249 deal with the applicable law. The judgement is largely concerned with quoting and summarising the witness evidence, and the submissions made by the prosecution and defence. Typically, the findings of the court on the basis of the evidence and submissions are contained in single sentences, with no justification provided for the the conclusion reached. In the course of the judgement, the Court makes no independent reference to any international criminal law. This is despite the fact that the prosecution and counsel for the first defendant cited international case law extensively, including cases from the ICTY and ICTR. The judgement quotes the final statements of the parties at great length, but makes no findings of its own on international jurisprudence.566

Bertodano makes it clear that this particular case was not an isolated incident and that international judges have shown limited expertise in applying international case law in many of the cases under their jurisdiction. Yet, given the extreme conditions on the ground, stretched resources, and limited time to adjudicate literally hundreds of

565 Ibid.
566 Ibid. p. 232. The case under scrutiny is referred to as the ‘The Los Palos Trial.’ The case was the first crimes against humanity trial undertaken by the Special Panels. All the final judgments of the Special Panels can be found at http://www.jsmp.minihub.org.
cases involving war crimes and other violations of human rights, it is perhaps understandable that the quality of international adjudication via the Special Panels were compromised in order to show quick and tangible results – a problem that is emblematic of territorial administration by international organizations and state actors alike.

As in Kosovo, international jurists in East Timor were also encumbered by their other administrative responsibility of training and mentoring the new East Timorese judiciary. Due to the dearth of experienced local jurists in East Timor, international judges and prosecutors were particularly overwhelmed with the burden of ensuring that adequate legal and judicial training programs were immediately operational. In a society that has never before experienced respect for the rule of law, such training had to focus on transferring not only legal and practical skill, but fostering an appreciation for the critical role that an independent and impartial judiciary plays in a democratic society.\textsuperscript{567} UNTAET responded by developing a three-tiered training program of ‘quick impact’ courses, on-the-job training, and judicial mentoring of judges by internationals.\textsuperscript{568} However, similarly as in Kosovo, international judges were too busy with the preparation of their own cases to be able to provide training to local jurists. Language barriers also hampered international efforts in providing assistance and training. As with other aspects of international administration, language problems between internationals and locals have made it difficult for the former’s ability to transfer its skills or knowledge to the latter; this was particularly true in East Timor, where the judiciary was required under UNTAET Regulation

\textsuperscript{567} Hans Strohmeyer, ‘Collapse and Reconstruction of a Judicial System,’ p. 55.
\textsuperscript{568} Ibid. pp. 55-56.
2000/11 to operate under four different languages, thus creating significant transaction costs. Moreover, as the mission progressed, local jurists were less likely to accept mentoring by their international counterparts.

Finally, the international strategy itself created considerable problems to the administration of East Timor’s judiciary. The focus on establishing the rule of law coupled with promoting and safeguarding fundamental human rights – without overlooking the criteria of good governance, free market reforms, and a long list of civil and political rights – are a demanding set of standards, especially for one of the poorest countries in the world. It is thus not inconceivable to suggest that East Timor’s post-conflict economy was ill-equipped to handle the amount of reforms demanded by UNTAET. Indeed, the international strategy of UNTAET is far more reflective of Western values and ideals of international legal standards than of East Timor’s political realities on the ground.

In turn, UNTAET’s overall strategy of promoting the rule of law in East Timor was incompatible to local perceptions of justice.569 For the most part, international authorities in East Timor viewed local or customary law as inimical to the international human rights standards embodied by the UN. During the initial stages of the operation, the prevalent view among internationals was that a liberal, western formal legal system could not coexist with a traditional legal order. Whereas western legal systems emphasize accountability, and thus punishment against the perpetrator,
in traditional type societies like East Timor, customary law is more concerned with compensating the victim and his/her family in addition to punishment.\textsuperscript{570} Moreover, East Timor’s customary law raised a number of fundamental issues that conflicted with the principles of judicial independence and impartiality. For instance, under customary law, ‘the victim is involved in the decision-making process as to the quantity and quality of compensation. In most western societies this question is a matter for the courts, with imprisonment being used as the major punishment.’\textsuperscript{571} The heavy involvement of hereditary elders or village chiefs also raised concerns of judicial independence and impartiality, as such figures hear disputes and make decisions based on personal or spiritual judgements rather than on evidence or police testimony, for example. Also, international authorities voiced concerns about the ineffectiveness of customary law to adequately protect the rights of women, particularly from domestic or sexual violence. For these reasons and more, UNTAET sidelined customary law and attempted to supplant it with western forms of justice.

The imposition of a foreign legal order is nothing new for the Timorese. For centuries, the Timorese have been exposed to foreign legal systems under Portuguese colonial rule, and then under Indonesian control; most East Timorese, however, continued to live under their customary law system as a means to settle local disputes despite foreign efforts to disrupt it. Wayne Hayde contends that illiteracy, poverty, and perceived corruptness of foreign justice prevented the Timorese from better

\textsuperscript{570} It should be noted that there is no single customary law in East Timor, and that there are variations of it from district to district.
\textsuperscript{571} Wayne Hayde, ‘Ideas and Realities of the Rule of Law and Administration of Justice in East Timor,’ p. 84.
understanding and participating in either foreign legal system.\textsuperscript{572} UN administered East Timor proved to be no exception. Under the judicial administrative control of UNTAET, the Timorese have not always agreed with the manner in which legal matters are resolved in liberal, western formal legal systems.\textsuperscript{573} During UNTAET’s tenure, it has been documented that those Timorese victims who were not satisfied with the district court’s rulings took extra judicial means into their own hands, leading to so-called ‘Blood Feuds’ between whole villages and communities.\textsuperscript{574} Many Timorese were also uncomfortable with the notion of disregarding traditional authority figures for foreign and local judges who had no connection with their ancestral communities.

As a consequence of limited resources available to the SCU and the growing backlog of cases, UNTAET increasingly constrained the number of serious crimes brought to justice through the newly established legal institutions.\textsuperscript{575} In other words, the priority of supplanting traditional notions of law with modern structures of the rule of law was not consistent throughout UNTAET’s tenure. Senior UNTAET officials responded by establishing the Commission for Reception, Truth, and Reconciliation (CRTR), a group of community-based panels that brought perpetrators of human rights violations before and during the post-ballot violence through traditional forms of justice.\textsuperscript{576} It has been noted that international prosecutors and investigating judges referred many cases to these panels on the basis that traditional

\begin{itemize}
\item \textsuperscript{572} Ibid.
\item \textsuperscript{573} Ibid.
\item \textsuperscript{574} Ibid. p. 85.
\item \textsuperscript{575} See Piers Pigou, \textit{The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation} (Dili: UNDP, 2004), n. 3.
\item \textsuperscript{576} UNTAET Regulation 2001/10.
\end{itemize}
authorities were better suited in addressing more trivial or politically sensitive matters.\textsuperscript{577} What eventually transpired was a judicial system that nominally recognized the cultural importance of traditional law in minor offences, while serious offences were predominately tried through formal law via the district courts and the special panels.

Taken together, the Special Panels in Dili did not provide real answers for the problem of bringing the perpetrators of crimes committed in 1999 to justice. Consequently, there are continue calls from East Timorese and national and international human rights NGOs for an international tribunal to be established along the lines of the ICTY and ICTR. However, due to a number of external contextual factors that are unlikely to change in the foreseeable future, it is highly improbable that a tribunal of that scale will materialize. This lack of justice will continue to haunt East Timor’s prospects for a lasting peace, which requires some form of reconciliation and certain measures of justice.

\textbf{Assessement}

This chapter analyzed the governance aspect of the dual mandate of international administration in Bosnia, Kosovo, and East Timor. In particular, it examined the performance of international actors in administering the judicial sector. The analysis draws four major inferences pertinent to the practice of territorial administration by international organizations. First, the focus on the administration of justice reflected

the tensions that are inherent in the dual mandate: on the one hand, the introduction of international judicial jurists has come to play a critical role in the short-term to create the foundations or conditions necessary for the re-establishment of the justice sector as a part of the rule of law in general. On the other hand, as with other aspects of international administration, the use of international jurists hampers the development of local capacity in the long-term. This dual mandate raises the question of when international administrators should devolve responsibility or ownership back to domestic officials. There is, of course, a shared consensus among many policymakers and scholars that local ownership should be the top priority from the outset of the mission. During his tenure as the SRSG of UNTAET, Sergio Vieira de Mello suggested that ‘We should seek… to be victims of a constitutional coup as soon as possible,’\textsuperscript{578} Richard Caplan similarly observes that early devolution allows the local population to learn from their own experiences and helps to prevent a culture of dependency.\textsuperscript{579} Former Secretary-General Kofi Annan concluded in a report he released in August 2004:

\textit{[N]o rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable… [I]t is essential that these efforts be based upon meaningful public participation involving national legal professionals, Government, women, minorities, affected groups and civil society… [P]eace operations must better assist national stakeholders to develop their own reform vision, their own agenda, their own approaches to transitional justice and their own national plans and projects. The most important role we can play is to facilitate the processes through which various stakeholders debate and outline the elements of their country’s plan to address the injustices of the past and to secure sustainable justice fore the future, in accordance with international standards, domestic legal traditions and national aspirations. In doing so, we must learn better how to respect and support local}


\textsuperscript{579} Richard Caplan, \textit{A New Trusteeship}, p. 51.

Recognition of the importance of building local capacity was emphasized in all three judicial missions. But the analysis above illustrated that handing over judicial competencies prematurely led to highly destabilizing situations, especially when it needs to be taken back. During the early phases of the post-conflict transition when emergency conditions prevail and local actors are either inexperienced or known for their illiberal tendencies, international administrators will often rely on their own devices and personnel for the execution of their mandates. Simon Chesterman has indicated that such invasive operations are ‘undertaken precisely because of the malevolence or incapacity of existing governance structures.’\footnote{Simon Chesterman, ‘Ownership in Theory and in Practice: Transfer of Authority in UN Statebuilding Operations,’ \textit{Journal of Intervention and Statebuilding}, Vol. 1 No. 1 (March 2007), p. 7} He adds:

\begin{quote}
In such an environment it is, at best, disingenuous to suggest that local ‘ownership’ should be asserted the moment that conflict ceases. If it was appropriate to undermine local ownership with decision to send thousands of troops into a territory, the cessation of active hostilities does not indicate that the reasons for military intervention have dissipated. At worst, premature restoration of local control might lead to a return to the governing policies (or a lack thereof) that led to intervention in the first place. Ownership is certainly the intended end of such operations, but almost be definition it is not the means.\footnote{Ibid.}
\end{quote}

The internationalization of the judiciary, particularly in Kosovo and East Timor, meant that once international administrators assumed full judicial responsibilities they were often not receptive to local input and tended to favor their own programs to the detriment of local capacity-building. While it is rhetorically easy to speak of local ownership or discuss the theoretical possibilities for devolving more governmental responsibilities to domestic officials during the transitional period, in practice, the
exercise of quasi-sovereign powers places international actors in a delicate balancing act of wielding international responsibilities with competing demands of self-government. Indeed this highlights the often irreconcilable or contradictory nature of the dual mandate.

Second, the empirical case studies demonstrated how norms associated with sovereignty as responsibility shape and influence the behavior and practices of actors involved in territorial governance. Given that the norms associated with sovereignty as responsibility correspond with the identity of great Western powers in terms of their interests and the principles they stand for, it is not inconceivable to posit that many of the administrative practices of international authorities involved in territorial administration conform according to those very same standards. Indeed, references to the above norms appear prominently in the mandates and regulations of the international administrations in our main case studies. The analysis above highlights the role of such norms in the administration of justice: it revealed that the decisions and policies of each international administration elevated two of those norms associated with sovereignty as responsibility: the protection of human rights and the rule of law. In Bosnia, international administrators have promulgated new criminal codes, and created various departments and agencies in the judicial sector with the intended aim of strengthening the rule of law by limiting the influence of nationalist politics and corruption in the judicial system. The OHR, in particular, has taken a more aggressive stance in the area of judicial administration, vetting and removing local officials who obstructed the development of an independent and impartial judiciary within Bosnia’s multi-layer legal system. In addition, the role of
international judges serving in Bosnia’s Constitutional Court has had a considerable influence in protecting the basic human rights of Bosnians through judicial decisions that protected their rights from the arbitrary policies or laws of both national and international officials.

Similarly, in the cases of Kosovo and East Timor, both international administrations elevated these norms through policies and structures and, more significantly, through the introduction of international jurists whose core aims were to establish and maintain a procedural rights system that guaranteed judicial independence and impartiality. As in Bosnia, the international community has attempted to create a type of political environment in which the scope of authority of state institutions vis-à-vis its citizenry is limited: first, by emphasizing the independence of the judiciary from the governmental apparatus, thus placing the latter under the scrutiny of the former; and second, by trying to limit the influence of the state in the recruitment and disciplinary process of judicial officials through creation of independence judicial commissions. Moreover, the introduction of international jurists in the 64 panels in Kosovo and the Special Panels in East Timor were seen as a means to protect and promote the human rights of individuals in both territories. In Kosovo, particularly, the direct influence of international jurists was considered key in counteracting the bias treatment of ethnic minorities by a system dominated with corrupt Albanian judges.

Taken together, the above analysis showed the considerable influence that norms and practices found in Western states have on the international territorial governance of war-torn territories. This is particularly true for the missions in Bosnia and
Kosovo, where normative standards such as the rule of law and human rights are considered key criteria for eventual membership into the EU. The West’s highly interventionist role in overseeing and regulating the transitional phases of conflict-ridden territories is thus seen as acting in the name of internationally-agreed norms of governance, where direct international rule is cast as a matter, not of security concerns or *realpolitik*, but of ethics and norms which are embodied through the policies and decisions of international administrators.

At the same time, this chapter has also drawn attention to the inconsistencies on the part of international administration to act according to the same principles it espouses. As the body charged with instilling the values of human rights and the rule of law, international authorities have at times deviated and blatantly derogated from those very same standards. In Bosnia, the OHR has ignored the elected representatives of the Bosnian people, for example, by removing elected officials from office in both entities and denying them a right of appeal – a practice that even the Constitutional Court has condemned as a violation of human rights and the most basic principles of justice. In fact, the above analysis showed how the OHR has utilized the Court (due to its plurality of international membership) as a tool for manipulating elections and implementing far-reaching constitutional changes that has radically transformed the governments of Bosnia, particularly in the RS, with the intention of having Bosnia’s government controlled by moderate politicians that were deemed acceptable to international officials. This violates not only the rule of law but produced a situation where the expressed will of Bosnia’s citizenry has been ignored. Likewise, in Kosovo, the powers and policies of international administrators have not
always been consistent with the standards that they seek to encourage (or impose) on the local population. For instance, the selection flexibility of senior UNMIK officials to take on any crime and select any case has led to charges of political abuse given that UNMIK officials have violated judicial independence by appropriating cases from the local judiciary without explanation. Furthermore, the independence of international jurists operating in Kosovo (and in East Timor) was compromised due to their institutional reliance on the SRSG for resources and essentially for their jobs. International jurists are also not subject to the same disciplinary procedures as local judges, raising concerns about a parallel structure of justice that does not operate according to the same rule of law standards as the local judiciary. These digressions have been compounded by the fact that senior international administrators in Kosovo have been accused of violating the human rights of local citizens through extra judicial detentions.

The above analysis therefore demonstrated that the activities and policies of international administrations do not always follow the logics of appropriateness. In part, this is a corollary of the immunity invoked by international administrations from the civil and criminal jurisdiction of the host territory. Such immunity is seen as incompatible with the social purposes of international administrations to inculcate respect for the rule of law and to establish institutions that are accountable to citizens, as it removes international personnel from those legal and political controls. The analysis also discussed the importance of emergency conditions on the ground that at times compel international administrators to respond pragmatically rather than adhere strictly to ethical principles. The inability of international administrations to wholly
commit themselves to the norms and principles they export in war-torn societies remind us of the undemocratic nature of international administration. As indicated at the outset of this study, international administrations are not created as democratic administrations that represent the demands of the target society. Instead, the goal of accomplishing their mandates suggests that they are more accountable to the donors and the bodies (the UN Security Council in the cases of Kosovo and East Timor, or additionally the PIC in the case of Bosnia) that authorized their missions in the first place.

A final major inference drawn from this chapter concerns the utility of the technocratic style of management. The promotion of highly interventionist missions in which international bureaucrats and experts directly oversee and regulate the state-building process of troubled territories is seen as an effective way to overcome the perceived problems of local politics. Similarly to other international decision-making bodies (WTO, ICC, WHO), international administrations derive legitimacy from their ability to be efficient interventions that bring along the necessary expertise and neutrality needed in such conflicts. The evidence above, however, showed that territorial governance, particularly in the realm of judicial administration, does not necessarily support these postulations, raising doubts about the effectiveness of these missions as institutional bridges between violent instability and sustainable peace.

First, with regard to the efficiency premise, it is hypothesized that international administrations are efficient in terms of time and costs presumably because the assumption of sovereign powers allows international officials to bypass the local politics of the post-conflict transition, which are often characterized as cumbersome
and time-consuming. They are also cost effective due to the fact that multilateral missions divide the financial burdens of reconstruction among a plurality of actors. Yet the evidence above reveals that international administrations are not in all cases an asset in terms of efficiency. To begin, insufficient planning hamstrung each of the missions. Similarly to most cases of territorial administration since the end of the Cold War, missions had to be planned and organized quickly in the wake of a peace agreement, and as a result, planning was often rushed and poorly managed. Given that the civilian side of the mission receives only a few days notice about its role in the territory, it is not surprising then that in all three case studies international jurists arrived late and understaffed. As a result, the internationalization of the judiciary took months to become fully operational, thus squandering precious time during those critical ‘golden hours’ and allowing either local elites or rebels to (re)assert their authority and create parallel structures. To make matters worst, once international administrators and jurists were deployed, they typically lacked sufficient resources to perform their duties as effectively as possible. In fact, financial and material support for international civilian personnel tended to be insufficient long after their initial deployment. These difficulties arise in part from the organizational structures and the cumbersome procedures of international organizations such as the UN. Writing about the obstacles of establishing a UN mission with extensive political authority over a war-torn society, W. Andy Knight notes:

The UN still lacks the command and control capabilities to manage peace operation effectively. It is hindered by an arcane organizational structure and a set of cumbersome operating procedures. The UN must depend on its member states to supply military troops and civilian personnel for its mission. The multinational nature of these operations makes them difficult to manage, because of the different working languages, equipment, procedures, and level of training… [Also] the Byzantine procurement system of the UN
prevents the organization from quickly obtaining the equipment and supplies that it needs for its field operations.\textsuperscript{583}

The efficiency of international administration was also hindered by the fact that neither the UN nor the international community at large was able, on such short notice, to find adequate numbers of judges and lawyers with enough knowledge of the legal traditions of the administered territories.\textsuperscript{584} In addition to organizational problems, a number of operational factors on the ground demonstrated the apparent inefficiencies of territorial governance. The introduction of international jurists has led to a myriad of practical concerns that have undermined the administration of justice. The most important of these was the organizational rivalries and difficulties in coordinating the large numbers of organizations operating under the authority of civilian administrators. More specifically, the quick turnover of international judges militated against an efficient administration of justice, as the average stay for international jurists ranged from six to nine months in both in Kosovo and East Timor. Consequently, there was no institutional memory built up, no record of lessons learned, and new arrivals assumed unfinished cases that needed to be restarted, thereby preventing progress in tackling the backlog of cases in both territories. The internationalization of the judiciary is also a costly enterprise because international civilian personnel typically expect more pay in such hostile conditions and require additional protection for their safety. Moreover, the extensive involvement of international jurists created a number of transaction costs, as they required ‘the need for translation of very court session and every court-produced and

\textsuperscript{584} Hans Strohmeyer, “Collapse and Reconstruction of a Judicial System,” p. 54.
legal document, the interpretation of every communication with other lawyers, and, more important, the creation of a extensive translation apparatus for plaintiffs and defendants. To compound these problems, the high costs of international jurists and personnel consumed enormous resources at the expense of developing local capacity. Given this, it is difficult to justify that international administrations are per se more efficient than relying, for example, on domestic models of administration or caretaker governments.

The expertise premise also appears to be one the more convincing arguments in supporting the deployment of international administrative structures in war-torn societies. In the eyes of international administrators, the abysmal level of local capacity in both Kosovo and East Timor, for example, called for the expertise of international technocrats and specialists to deliver the material and social needs of the populations under their control at the detriment of public participation in the state-building process. For this reason, the expertise premise is potentially the most reliable source of legitimacy for international administrations. In the area of judicial administration, the use of international jurists in all three examples provided an indispensable source of expertise in adjudicating sensitive cases and applying international criminal law and human rights law. In Bosnia and Kosovo, where ethnic tensions are high, international judges invoked human rights instruments such as the Universal Declaration on Human Rights and the European Convention on Human Rights and its protocols in politically charged cases that were impossible to adjudicate otherwise.

585 Ibid. p. 55
Yet the above analysis showed that even the expertise argument does not always hold true. The evidence demonstrated that international jurists in Kosovo and East Timor exhibited limited legal skills and ability to incorporate international human rights and/or criminal law into their cases. This in turn raises serious questions about the quality of the mentoring role that internationals are supposed to provide to their local counterparts. Major problems also arose from insufficient knowledge about the local cultures and legal customs of the target societies. For instance, the lack of understanding about East Timor’s traditional legal system, and about how the local population accessed the judicial system, created serious obstacles to UNTAET’s efforts to integrate traditional legal customs into the internationally established legal framework. As a result, the judicial system in East Timor became dysfunctional, which made it necessary for the UN to start entirely from scratch when the system collapsed shortly after the departure of UNTAET in 2002. Although expert knowledge can serve as a powerful source of legitimacy for international administrations, it is difficult to justify that international administrators are more qualified to make important political (value) judgments than local actors about managing the latter’s internal affairs without a sufficient anthropological understanding of the society itself. Moreover, the justificatory effects of expertise as a reason for intervention wanes inevitably overtime: as local expertise becomes available through progress on local capacity-building, the expertise of international administrators becomes less compelling and legitimate.

Finally, it is also widely believed that the most persuasive argument in favor of the deployment of international organizations in war-torn environments lies in the
neutrality of international personnel. It is assumed that international administrations derive legitimacy from their perceived status as neutral decision-makers who are independent or detached from local conflict and politics. The evidence above, however, showed the limits of this theory. As quasi-governments that run the internal affairs of target territories, international administrators are inescapably embedded in local politics and to the core issues of the day. In highly divided societies where a pervasive security dilemma exists, international authorities often take sides according with their own self-interests, coupled with the foreign interests of Western powers that are highly involved in the missions. In Bosnia, Western interests of seeing the Bosnian state strengthened at the expense of the entity level governments is seen by Bosnian Serbs in the RS, in particular, as a threat to their autonomy within the Dayton framework. The Constituent Peoples’ Decision was indicative of this perceived biasness of the OHR among Bosnian Serbs who expressed the most dissatisfaction with the ruling. The HR’s disproportionate removal of Serb officials relative to the other two ethnic communities reinforced this highly shared sentiment. Indeed, the decisions and state-building activities of the international community have resulted at best in a fractious relationship between the OHR and Bosnian Serb officials. Similarly in Kosovo, the minority Serb population has felt let down by UNMIK and KFOR, accusing the international community of the failure to offer them the protection they had anticipated after NATO’s military intervention. Furthermore, despite some of the positive contributions made by international jurists in addressing ethnic bias problems in the local judiciary, senior UNMIK officials and international jurists have also been accused of being bias in their attempts to shield certain former
KLA officials from prosecution of war crimes and other criminality. Even in East Timor, international officials have not always been impartial. Australia and Western government have tended to support the pro-Western faction of Xanana Gusmao over FRETILIN due to the latter’s historical ties with Third World communist movements during the Cold War.

The record of international governance in the area of judicial administration suggests that more often than not, international administrations have not been very effective as interim governments. Given that international administrations base their legitimacy and value on the social purposes they represent, and on their effectiveness as efficient and neutral interventions that possess the necessary expertise of administering war-torn societies, the evidence revealed that such international missions have a very difficult time in garnering legitimacy beyond their procedural sources of authority.
The Dual Mandate (II): Building Empirical Statehood?

The preceding chapter examined the governorship side of the dual mandate by observing the capacity of international administrations to serve as interim governments during transitions from war to peace. This chapter will deal with the other aspect of the dual mandate: state-building. Because of their provisional nature, international administrations have as their ultimate objective the task of building state institutions and practices that conform to the normative standards that constitute sovereignty as responsibility. This involves establishing not only the proper institutional trappings of the state, but also transferring to the target territory the technical skills necessary for the proper functioning of the newly created state institutions. This suggests that international authorities must develop local capacity through the training and mentoring of local actors that would enable them to provide political goods to generate their own solutions to societal problems.

The dilemma here, however, is that despite recognition of the significance of building national institutions and promoting self-governance, international administrators often rely on their own personnel agency to carry out their mandate, especially during the early days of the post-conflict transitional period. As the previous chapter indicated through the international takeover of the judicial sector, the short-term priority of (re)establishing judicial authority through international governance can compromise the long-term goal of building self-governance. The evidence suggested that the very presence of international administrators might weaken precisely those institutions they are seeking to strengthen. Such missions
often divert finite resources intended for local development in order to sustain the international governing apparatus. Moreover, international administrators often get into the habit of ruling and making decisions without meaningful consultations with local stakeholders. International administrations therefore tend to be unreceptive to local demands and indigenous institutions that may help in creating a legitimate state authority. Furthermore, internationalization of the state-building process may be a detriment to the development of local capacity because it deprives local actors of learning from their own mistakes during the early stages of development, thereby increasing the likelihood of creating a culture of dependency on foreign assistance.

The problem of the dual mandate that international administrations confront is thus a very real one. For this reason, a deeper analytical understanding of state-building under the context of international administrations is needed. There is currently little thought given to the problems caused by intrusive international state-building policies that marginalize the domestic political sphere. Given this basic contradiction between the exercise of international administrative authority and the building of strong domestic foundations, do contemporary state-building projects create self-sustaining states that not only supply as ‘service stations’ for target populations, but also act as vehicles that provide the necessary political legitimacy for societies that have just experienced traumatic violence that often erodes the foundations of a political community?

Another question that deserves analytical attention is to what extent do the norms that underpin sovereignty as responsibility (human rights, democracy, the rule of law, and free markets) influence the state-building policies of international
administrations? This question will help us understand to what degree the international community is serious about revitalizing a new regime of positive sovereignty. As discussed earlier, these norms represent a new (western) standard for recognizing the sovereignty authority of those leaders who claim to act and speak for a political entity externally. In the new discourse of responsibility to protect, political authorities that live up to these standards are considered legitimate states that exhibit empirical sovereignty. Those that fall short of these standards are deemed illegitimate and consequently can forfeit their Westphalian right to non-intervention. The chapter begins by establishing a set of standards with which to assess the impact of international state-building in war-torn territories. In particular, it discusses two types of ‘authorities’ that are considered essential to achieving empirical statehood: coercive authority and administrative authority. The chapter then draws on the state-building projects in Bosnia, Kosovo, and East Timor to illustrate the observed impact of norms on international state-building policies, and whether those policies can effectively create stable and effective states.

Setting the Standard for Evaluating International State-building

To assess the effectiveness of international state-building in our three empirical case studies, it is necessary to establish conditions that will help us gauge their impact. Given that the goal of international state-building is a state that wields empirical sovereignty, assessments of state-building projects should consider the relative strength of the target state’s ability and willingness to provide fundamental political goods associated with empirical statehood. ‘Ability’ refers to the capacity of
governments to deliver certain political goods to their inhabitants. According to Robert Rotberg, ‘stronger states may be distinguished from weaker states according to the effectiveness of their delivery. The higher the quality and the greater the quantity of the political goods delivered, the better the level of governance.’ On the other hand, ‘willingness’ connotes the manner in which government leaders administer their societies. For example, some countries possess adequate levels of capacity, yet their governments are unresponsive to societal demands and may govern in corrupt and oppressive ways.

‘Political goods’ often represent indigenous expectations about what the state’s obligations are to its citizenry. Robert Rotberg suggests that political goods do a good job of informing us of the local political culture, and collectively it gives substance to the social contract between the rulers and the ruled. The most important of these political goods is physical security. The provision of physical security involves the state’s ability and willingness to monopolize the use of force, control territorial borders, and ensure public order and safety from crime. Without basic security guarantees, governance of any form is difficult if not impossible to exercise. In addition, the rule of law is also of primary importance. As Rotberg note, the rule of law is when ‘effective states provide predictable, recognizable, systematized methods of adjudicating disputes and regulating both the norms and the prevailing mores of a host society.’ Institutionally, this political good encompasses an enforceable body of law, an independent, impartial, and efficacious judicial system, and ‘a set of norms

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587 Ibid.
588 Ibid.
that comprise the values contained in the local version of a legal system.⁵⁸⁹ In this study, these political goods constitute the ‘coercive authority’ of a state. Another set of basic political goods is economic and social in nature. Attention here is paid to the ability and willingness of the state to formulate and implement basic macroeconomic and fiscal policies and to maintain a stable economic environment that is conducive to development, entrepreneurship, private enterprise, trade, foreign investment, and growth. In the social domain, this requires states to meet the needs of their populations by delivering at least basic social services, such as healthcare and education. The importance of these political goods is reflected in the number of publications by the UN’s *Human Development Reports* and by the World Bank’s *World Development Indicators*. In this study, these political goods represent the state’s *administrative authority*.

The political goods discussed above are not an exhaustive list. Nonetheless, given limitations on time and space, they do provide a standard for evaluating whether external led state-building efforts have established the foundations for empirical statehood. Against this standard, an unsuccessful outcome can therefore be characterized as one in which the newly created state institutions severely fail to deliver the basic political goods described above, thus manifesting signs of state failure or weakness.⁵⁹⁰ For example, states that are unable to provide minimum

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⁵⁸⁹ Ibid.
⁵⁹⁰ What exactly constitutes weak or failing states has been a problem that scholars and observers need to address. Estimates as to the number of failed states around the world vary considerably throughout the literature. This is because political analysts have used varying criteria to assess state failure and dispute each other over the validity of their methodologies. For example Robert Rotberg suggested in the 2003 that there are only seven failed states; while Stuart Eizenstat, John Edward Porter and Jeremy Weinstein argued in 2005 that there are ‘about fifty’. See Robert Rotberg, ‘Nation State Failure: A Recurring Phenomenon?’ Discussion Paper for the CIA’s NIC 2020 Project, 6 November 2003.
conditions of security may have to deal with the presence of insurgencies or secessionist movements that persistently or occasionally challenge the government’s authority by violent means.\textsuperscript{591} The \textit{Failed State Index}, which ranks states according to ‘levels of instability’ and ‘risk’, identifies state failure as:

\begin{quote}
... [A] government that has lost control of its territory or of the monopoly on the legitimate use of force has earned the label [failed state]. But there can be more subtle attributes of failure. Some regimes, for example, lack the authority to make collective decisions or the capacity to deliver public services. In other countries, the populace may rely entirely on the black market, fail to pay taxes, or engage in large-scale civil disobedience.\textsuperscript{592}
\end{quote}

Having established the above standards, the remainder of this chapter will examine the impact of international led state-building efforts in our main case studies. To that end, the chapter will assess whether such outside efforts established state entities that have demonstrated an ability and willingness to deliver political goods associated with the two types of state authority described above: coercive authority and administrative authority.

Under coercive authority, the following core questions are addressed:

- Does the State have control of the territory?
- Has the State ensured security?
- Have the basic structures of the rule of law been reestablished?
- Does the public have confidence in these institutions?
- Do these institutions reflect the ethnic diversity of the target society?

Under administrative authority, the following core questions are examined:

\textsuperscript{592} \textit{Foreign Policy}, ‘The Failed State Index’ July/August 2005.
• Has the State established conditions conducive to economic growth and development?
• Has the social well-being of the citizens improved?
• Has the central authority performed an effective job in circumventing political corruption?

Building Coercive Authority

Many of the most basic definitions of the modern state start from the classical premise that states are the ultimate guardians of public order and that control over one’s territorially defined area is the lowest common denominator of the modern state. Alexandro Yannis states that ‘Even a minimalist state is expected to possess the institutional and organizational capacity to safeguard the physical security of its citizens which, together with the natural environment, form the material foundations of human societies.’ ⁵⁹³ This minimalist definition follows Max Weber’s treatment of the state, of which he held that a state exists ‘insofar as its administrative staff successfully upholds the claim to the monopoly of the legitimate use of physical force in the enforcement of its order.’

In civil wars where the government is unable or unwilling to provide security to its citizens, what often follows is a ‘domestic security dilemma’ ⁵⁹⁴ in which warring factions are in a constant state of arming themselves to the teeth in lawless conditions, which can be further exploited by spoilers or war entrepreneurs. In such

⁵⁹⁴ Barbara F Walter and Jack Snyder (eds.) Civil Wars, Insecurity, and Intervention (New York: Colombia University Press, 1999).
circumstances, international state-building policies need to address the security dilemma by establishing a coercive authority that is capable of asserting itself within its territorial jurisdiction and deliver security to citizens by protecting them from external attacks, from illegal boarder crossings, and from internal violence that can threaten a country’s territorial integrity. Building this authority often requires outside forces to first demilitarize the society by having combatants and militias turn in their weapons (disarmament) and then disband as organized units (demobilization). This is generally followed by a reintegration program, whereby a large portion of former combatants are reintegrated into hopefully an existing civilian economy, while remaining fighters will be screened and trained as professional soldiers (or police officers) who will in turn form a new national army or defense force that operates under civilian command. In some circumstances, the new military force will also have to reflect the ethnic diversity of the target society. If managed well by external actors, it is postulated that an integrated army can show a divided society that they are collectively able to serve and defend the borders of their country, thus improving the outlook for a multinational identity for the post-conflict state.

Establishing coercive authority also demands that external actors (re)build or rehabilitate local law enforcement. Even if large-scale violence has been put to a stop, individuals may still live in fear if no credible authority exists to enforce the law or where local police forces are beholden to factional leaders. This is especially problematic in ethnically polarized societies where local police officers are generally composed of members of the dominant ethnicity of the region. As a political good,

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595 Of course, convincing such groups into giving up their weapons to a new central authority is a difficult task in itself, particularly if there is continuing mistrust between former warring factions.
effective law enforcement personnel should operate as servants of the law rather than as agents of political leaders or nationalist parties. They should also be able and willing to solve crimes and arrest perpetrators who break the law. Moreover, local police should be seen as accessible to the ordinary citizen and representative of the communities they police. Minority representation, in particular, is an important condition if resident minorities or prospective returnees are to feel safe. Building local law enforcement capacity is thus a multifaceted task that requires an exhaustive screening process that can remove officers who have committed past war crimes and hire police officers from various ethnic backgrounds. State-building in this respect also entails creating training and mentoring systems that teaches police officers how to execute their jobs consistent with international standards of democratic policing. Finally, internal reorganization of police management structures to improve departmental coordination and overall effectiveness is a desired outcome. Like the creation of a new military, building an effective domestic police force can play a considerable ‘confidence-building’ role in post-conflict societies.596 The International Crisis Group recently noted that police forces ‘are society’s most pervasive teachers about civic values. If [the police] is arbitrary, brutal, distant from the public and close to the government of the day, [the territory in question] will be unstable.’597

The establishment of an effective judicial system is also considered an indispensable component of coercive authority. The aim here is to foster a capable

judiciary that lives up to the rule of law. This involves an independent and impartial judiciary that can swiftly adjudicate basic crimes while at the same time holding those responsible for committing and planning human rights violations (e.g., war crimes) without fear of intimidation or reprisal. Addressing serious crimes, in particular, is a necessary precondition for broader reconciliation. Without some form justice there can be no lasting peace. Ultimately rebuilding the judiciary aims to not only make law enforcement meaningful to citizens, but to also establish the legitimacy of the rule of law itself. There are often a low supply of trained and experienced judges and other legal professionals to harness in post-conflict environments. Many judicial officials are either forced to leave the territory or are killed as a result of the societal conflict; those judges and prosecutors that do remain are typically under the political influence of local elites. For this reason, international officials will most likely have to appoint and train judicial officials under demanding conditions. Judicial training will not only have to focus on instilling legal and practical skills, but equally important, on fostering an appreciation of the crucial role a judiciary plays in society, and the type of benefits that derive from of a culture of law.598

In all three instances of territorial administration examined here, international military forces have for the most part provided successful security in Bosnia, Kosovo, and East Timor. Yet, the international community’s record in building
reliable military forces that are capable of providing defense on their own without international assistance has been largely ineffective. In Bosnia, the institutional transformation of the country’s security apparatus has perhaps been the most impressive. At the end of the conflict there were three mono-ethnic armies, with an estimated 419,000 soldiers.\textsuperscript{602} After the singing of the DPA in 1995, intense

negotiations between international and local actors allowed separate ethnic armies to continue to exist, though 300,000 fighters were discharged under the auspices of NATO forces. While the demilitarization of Bosnia was for the most part successful, distrust between ethnic communities persisted. The lack of progress in implementing the DPA agenda and the uncertainties of renewed conflict as each ethnic faction was allowed to maintain their own defenses (and their own intelligence services) prompted the international community to push harder for defense reforms that would merge the two entity defense ministries, the three military commands, and the three ethnic armies into a joint force. The provision for an integrated and unified military was seen as an integral part towards meeting the requirements for entering NATO’s Partnership for Peace (PfP), in which Bosnia successfully joined in December 2006, and for fulfilling the Stabilization and Association Agreement (SAA), which is considered an important requisite on the road to EU membership.

Despite the enticing prospects of NATO and EU membership, the entity governments resisted and obstructed defense reforms. As a result, the process was almost completely driven by the political will of the OHR. After years of local

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603 See Annex 1A of the DPA.
604 The Bosnian Serbs, for instance, were suspected of consistently underreporting the reduction of their armed forces and their weapons holdings. Bosnian Serb leaders were very reluctant to diminish their own defense capabilities. On their part, Bosnian Serbs were suspicious of various U.S.-led programs designed to train and equip the military capability of the Bosnian-Croat Federation. See Pascale Combelles Siegal, ‘Target Bosnia: Integrating Information Activities in Peace Operations.’ U.S. Army Center for Army Lessons Learned. Available at: http://call.army.mil/products/spc_prod/ccrp/htm.
605 Bosnia has also made significant strides towards NATO accession by being the first of the remaining Balkan countries to submit a Presentation Document to NATO, which ‘outlines individual activities that a partner country selects to implement within the PfP framework, based on its ambitions and capabilities.’ The Southeast European Times reported that in return for NATO accession, Bosnia allows NATO free usage of its roads, railways, sea and airspace if needed. In terms of military capabilities, Bosnia has offered NATO its infantry personnel and expertise in the unexploded ordnance disposal and training in mine removal. Southeast European Times, ‘Bosnia Makes Significant Strides Towards NATO’, 13 April 2007.
resistance to the reform (not to mention a number of threats by the international community), two crucial bills were signed on 18 July 2005 and later adopted by Bosnia’s national parliament as well as the parliaments of the two entity governments. As a result, today’s Bosnia has a single army comprised of approximately 10,000 troops and 5,000 reservists under a single command. The newly created military has been lauded for its participation in several UN missions in the DRC, Sierra Leone, Ethiopia and Eritrea, Liberia, and East Timor.\textsuperscript{606} But the military’s capacity to protect the country against a potential insurgency or secessionist movement is limited at best. Many observers question the vitality of the institution, suggesting that the military would ‘collapse in any tense situation.’\textsuperscript{607} Moreover, its record in arresting war criminals at large has been depressing. The task of arresting war criminal has been the onus of international military forces, which have captured most of the country’s indicted war criminals. Some observers warn that if multinational military forces were to leave today, fighting is likely to resume very shortly after.\textsuperscript{608} More disconcerting is the fact that ethnic tensions continue to exist within the new army. For instance, soldiers continue to carry the symbols of their respective ethnic army on one sleeve and the Bosnian coat of arms on the other.\textsuperscript{609} In spite of all this, the country remains peaceful and it appears unlikely that large-scale violence will return given the prospects of EU accession and the presence of

\textsuperscript{606} European Stability Initiative ‘The Worst in Class’, p. 2.
\textsuperscript{609} Transitions Online, ‘A Unified Army for a Divided Country?’ 15 July 2005.
international forces, which have gradually decreased in size.\textsuperscript{610} Public perception of the security situation reflects this favorable outlook. Surveys have invariably shown since 2000 that constituents from each ethnic community are mostly unconcerned about the likelihood that large-scale violence will resume.\textsuperscript{611}

Attempts to build effective and reliable local defense forces in Kosovo and East Timor have been less impressive. After eight years of UN administration in Kosovo, KFOR forces continue to provide overall security for the territory and will continue to do so in the foreseeable future.\textsuperscript{612} At the same time, NATO has been slowly cultivating a civilian emergency force, the Kosovo Protection Corps (KPC), which some outside observers see as the future of Kosovo’s army.\textsuperscript{613} Originally, the KPC was going to be an organization that would assist NATO in its security mission. However, international authorities operating in Kosovo expressed doubts about the KPC’s future role in an independent Kosovo. For them, the KPC was a way of providing temporary employment for many former KLA fighters: it was important to keep as many KLA fighters from using their military skills in a manner that would undermine the stability of the international mission.\textsuperscript{614} Despite agreements between KLA leaders and NATO that the former would disengage from zones of conflict,

\textsuperscript{610} At the beginning of the post-conflict mission, there were some 60,000 international troops. Today there are a mere 2,500 EUFOR troops on the ground.

\textsuperscript{611} \textit{Early Warning System,} Bosnia and Herzegovina: Third Quarterly Report (Sarajevo: UNDP, 2006). The report indicated that 27.3\% of the sampled Bosnian population expressed public concern that the withdrawal of EUFOR from Bosnia might allow a renewal of conflict. Much of this concern came from Bosniak majority areas that still view their Serb and Croat counterparts as wanting to breakaway from the country.

\textsuperscript{612} Reuters ‘No Quick Exit for Peacekeepers in Kosovo,’ 8 March 2007.

\textsuperscript{613} For example, according to a recent recommendation by the International Crisis Group, many from the KPC should form the bulk of a 3,000 strong military force after the status settlement is complete. See International Crisis Group, \textit{An Army For Kosovo?} (28 July 2006).

\textsuperscript{614} Indeed, former KLA fighter that were not absorbed in the KPC were still able exacerbate armed conflict in South Serbia in 2000 and Macedonia in 2001.
renounce the use of violence, and demilitarize according to a timetable set out by NATO, disarmament and demobilization proceeded slowly and were never total.\textsuperscript{615}

The KPC was initially made up of a force level of 5,000 members, of which only less than half were former KLA fighters, but international authorities decided based on budgetary reasons to decommission about two thousand of those into a reserve component.\textsuperscript{616} Although the KPC did not become a leading institution in Kosovo’s post-conflict transition as originally expected, Kosovo’s Albanian population continues to revere the institution. In a 2005 review of Kosovo’s development process, Kai Eide credited the KPC as an institution that has achieved ‘steady improvements’ and in which its ‘leaders are promoting professionalism and adhering to their mandate.’\textsuperscript{617} However, others have painted an entirely different portrait of the KPC. For example, whereas Kosovar Albanians see the KPC as a legitimate pillar of security and the future national military of an independent Kosovo state, Serbs view the KPC as an organization of Albanain extremists who are intent upon completing their campaign of ethnic cleansing. NATO has also documented a multitude of incidents in which KPC officials, including high-ranking officials, have not only engaged in violent attacks against Serbs and other Albanians who oppose the KLA,

\textsuperscript{615} This also showed that the KLA was not a unitary or cohesive group and that the leaders of the KLA did not have total control nor command over their fighters. For an analysis on the KLA’s fractious nature, see Tim Judah, \textit{Kosovo: War and Revenge} (New Haven, CT: Yale University Press, 2005).

\textsuperscript{616} The organization was only able to employ a fraction of the former KLA, some 18,500 of who applied to join the Corps. The remaining fighters were offered only information counseling and referral service for alternative employment. See International Crisis Group, “An Army For Kosovo?” (28 July 2006).

but were also heavily involved in organized crime, prostitution, extortion, and the illicit trade of weapons, fuel, cigarettes, and appliances.\textsuperscript{618}

Similarly, in East Timor, efforts by international actors to build a capable defense force have been largely unsuccessful. As part of the military component of UNTAET, international military forces were tasked with disarming and demobilizing militia elements and FALINTIL fighters during the immediate post-conflict phase. However, similar to the demilitarization efforts in the Balkan cases, many former FALINTIL fighters resisted giving up their weapons to international peacekeepers. Many of these former fighters considered themselves war heroes that deserved a pivotal role in the new independent East Timor. They especially resented the prominent role given to the police mission by UNTAET, which often recruited many former pro-Indonesian police officers into the newly established police force, the \textit{Policia Nacional de Timor-Leste} (PNTL). Consequently, there was great concern among international observers that FALINTIL could potentially pose a great source of instability if it became an enforcement arm for political factions. At first, UNTAET avoided these concerns but as these fears became more real, international officials were eventually tasked to play a coordinating role in the development of a new national defense force, the \textit{Timorese Lorosae Defense Force} (FDTL). On paper, the FDTL was to defend the country against external attacks and militia incursions from West Timor and to provide assistance during natural disasters and other national emergencies. Trained and funded by Australian and Portuguese peacekeeping forces, the FDTL was hastily organized into a 1,500-strong army of which ‘only 650 of the 1,500 members were

\textsuperscript{618} Iian King and Walt Mason, \textit{Peace At Any Price}, p. 60.
drawn from ex-fighters; the rest were new recruits.\(^{619}\) Another 1,500 served in a reservist capacity. The remaining fighters – more than 1,300 – were dealt with through a demobilization process called the FALINTIL Resistance Assistance Program, which was sponsored by USAID and the WB to assist with the reintegration of former fighters to civilian life, though the program was deemed a failure in terms of satisfying the expectations or economic needs of fighters.\(^{620}\)

From its inception, the FDTL was considered one of East Timor’s weakest institutions. Many blamed international authorities for building of an army that had less to do with national defense than with creating a home for former freedom fighters where they would be paid, watched over, and kept in uniform – very similar to UNMIK’s strategy for dealing with the KLA. In addition to not properly integrate more FALINTIL fighters into the FDTL, the International Crisis Group observes that the UNTAET failed ‘to build a national consensus about security needs and the kind of forces required to meet them.’\(^{621}\) By the end of 2002, former Secretary-General Kofi Annan concluded that East Timor’s national military was still not capable of handling external threats on its own: ‘The military component lacks the necessary

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\(^{619}\) Although all FALINTIL fighters were eligible to become members of the new defense force, many of the veteran fighters were disqualified for medical reasons or disabilities from prior service. International Crisis Group, *Resolving Timor-Leste’s Crisis*, Crisis Group Asian Report No. 120, 10 October 2006, p. 5.

\(^{620}\) With high levels of unemployment throughout the country, efforts by the international community to re integrate ex-combatants to civilian life were daunting. As a result, a number of former FALINTIL fighters turned to an assortment of crimes. See Elsina Wainwright, *New Neighbor, New Challenge: Australia and the Security of East Timor* (Barton, Australia: Australian Strategic Policy Institute, 2002), pp. 12-13.

capacity and mobility to respond effectively or take a sufficiently proactive role to address threats, and has inadequate ability to obtain and process information.\textsuperscript{622}

Since East Timor’s independence in May 2002, the security situation has deteriorated considerably. Factions within the FDTL began to emerge as soldiers cantoned in the Western region of the country complained about conditions within the management of the army and cited discrimination in favor of soldiers from the East. As a result, soldiers began to protest in the streets of Dili, leading to violent confrontations between the military and national police forces. For the next several years, these violent confrontations continued, as disgruntled soldiers, known as ‘the Petitioners’, attacked local police stations and sought numerous times to bring down the government. The FRETILIN-controlled government responded by dismissing half of the national military, fueling the resentment of former fighters who continued their violent efforts. To compound matters, the high-level rivalry between Xanana Gusmao (and his CNRT supporters) and FRETILIN party leaders soon became intertwined with the internal politics of the security forces, leading the police and army to be divided into pro-Gusmao and pro-FRETILIN forces. Wracked by sporadic violence and a growing political crisis that brought down the FRETILIN-controlled government in 2006, the country was forced in May of that year to request the assistance of Australia’s military to help restore order after East Timor’s military split along regional lines and its police force disintegrated. At this writing, Australian, Portuguese, and other international military forces continue to provide security for

East Timor under hostile conditions while the UN tries yet again to build the country’s national defenses.

**Law Enforcement**

In all three case studies examined here, international administrations carried out either partial or plenary responsibilities associated with policing. In Bosnia, the UNMIBH ran a large international police mission (IPTF) with only supervisory authority. IPTF was tasked with merely screening, monitoring, and training local police forces.\(^{623}\) The UN’s limited mandate meant that the international police mission was dependent on the cooperation of local police forces: IPTF officers could only implore local police officials to operate in accordance with their own laws.\(^{624}\) Forced to work alongside local police forces that engaged in corruption, discriminatory behavior, and refused to arrest war criminals, the IPTF was severely

\(^{623}\) The UNMIBH was the largest international civilian organization in Bosnia, costing some US$150 million per year at its height. At full strength, 2,027 unarmed officers from around 40 countries were deployed though none had the authority to enforce local laws. IPTF performed very few actual law-enforcement functions, such as the dismantling illegal checkpoints and conducting limited investigations of human rights abuses. (It should also be noted that IFOR’s successor, SFOR, had increasingly assumed a more active role in support of the rule of law, beginning with its arrests of several indicted war criminals in July 1997.) The IPTF’s supervisory role was mostly the corollary of external contextual factors relating to, in particular, the inter-department rivalry between the US State Department and the Pentagon at the time of the Dayton negotiations in November 1995. Pentagon officials and Republican-dominated Congress were adamantly opposed to US involvement in any type of external policing functions. This aversion to policing post-conflict societies stemmed from the 1993 tragedy in Somalia, where the US suffered casualties in Mogadishu. For analyses on the diplomatic front that occurred between 1992-1995, see, for example, Richard Holbrooke, *To End a War* (New York: Random House, 1998); Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington: The Brookings Institutions, 1995); Wesley Clark, *Waging Modern War* (New York: Public Affairs, 2001); and Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World* (Cambridge: Cambridge University Press, 2000).

\(^{624}\) After the signing of the DPA, the Secretary-General outlined that that “… the Task Force will not exercise any executive law functions. Its effectiveness will depend, to an important extent, on the willingness of the parties to co-operate with it in accordance with article IV of annex 11 to the Peace Agreement.” Cited in Fionnuala Ni Aolain, “The Fractured Soul of the Dayton Peace Agreement,” p. 82.
handicapped in its mission by having to operate within the ethnic fault lines created by the war and subsequently institutionalized by the DPA. In contrast, whereas the DPA placed the burden of providing a safe environment on the former warring parties, international police forces in Kosovo and East Timor were tasked with full executive authority and administrative responsibility for providing overall public order. With an authorized strength of almost 4,800 officers, UNMIK police continues to be the largest UN police force ever mounted; in East Timor, the civilian police component consisted of 1,250 individual officers and two smaller reaction units with 120 officers each. Both UN police missions in Kosovo and East Timor were mandated to arrest lawbreakers, conduct investigations, train local police forces, and carry firearms.

In Bosnia, rehabilitation of the existing local police forces meant trying to instill democratic policing practices and implementing an ambitious formula of ethnic representation that reflected the population – albeit, based on the 1991 consensus. It was evident that the police institutions that emerged after the war were not prepared to provide the type of public order that is espoused in the West. Upon arrival in early 1996, IPTF monitors reported that domestic police forces were ‘entirely unsuited to civilian law enforcement’. Similarly to the military situation in the immediate post war period, Bosnia’s police forces were mono-ethnic. Many of the officers lacked

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625 As stipulated in Art III (2)(c) of Bosnia’s Constitution, civilian law enforcement is a competency of the entity-level governments. Moreover, within the Federation entity, police authority was further devolved to ten ethnically divided cantons.

626 It should be noted, however, that CIVPOL officers in East Timor were not initially armed – with the exception of two rapid-response units – though the Police Commissioner could authorize the use of firearms if he deemed it was necessary. By April 2000, however, following disturbances involving gangs of youth, all international police officers were required to carry side arms.

basic training and orientation of a civilian police force. More troublesome was the fact that local police officers served the interests of the various warring nationalist parties and were essentially instruments of political control. A great deal of the ethnic cleansing that occurred after the war was also carried out by local police officers, many of which were demobilized paramilitaries and corrupt individuals with direct involvement in war crimes. In fact, the UN reported in early 1996 that as many as 70 percent of all human rights violations were committed by local police officers.628 Finally, the lack of cooperation between police officers at the entity and cantonal levels of government hindered effective law enforcement. The ICG, for example, reported in 2002 that there was little sharing of information between police departments, few joint operations, and arrest warrants were rarely implemented beyond jurisdictions.629

To counter these deficiencies, the IPTF deployed 1,721 international police officers to monitor over a hundred police stations throughout the country and engaged in a large-scale demobilization process that reduced the size of the local police from 45,000 officers in uniform to 18,000. It also developed a vetting process, which was handled entirely by internationals, to remove police officers who had violated human rights, breached the law or failed to meet other standards of democratic policing. Altogether, the UN screened ‘some 18,000 Bosnian police officers and declared 793

unfit to exercise police powers.  However, observers have criticized the handling of the vetting process, accusing internationals of rushing the process and implementing a procedurally flawed methodology for screening. Many dismissed police officers were also not even given a reason for their disqualification or an opportunity to respond to mistaken allegations. This poorly executed process prompted many of these officers to protest their dismissals and demand some measure of justice since their livelihood and reputations were tarnished. A European think tank pointed out that disqualified police officers effectively became ‘a cause celebre in Bosnian politics… and have attracted widespread sympathy from the Bosnian public’ at the expense of, and vilification of, the international mission. Bosnian courts also cited the dismissals as an unlawful policy that contradicts due process and violates the rule of law. Senior international authorities involved in Bosnia have for the most part ignored these protests and accuse the Bosnian judiciary and lawmakers of undermining the authority of the international mission.

To meet internationally accepted standards of democratic policing, international authorities also emphasized the importance of minority recruitment. With the exception of ethnically mixed police forces in mostly Central Bosnia, Neretva-Herzegovina cantons and Brcko district, police departments continue to be organized along ethnic lines and do not meet target standards of ethnic representation as mandated by each Entity constitution. By the end of 2003, for example, only 6 percent of the police in the RS and 11 percent of the police in the Federation were


631 Ibid. p. 2.
minorities, as against IPTF targets of 20 percent and 28 percent respectively.\footnote{US Department of State, Country Reports on Human Rights Practices 2003: Bosnia and Herzegovina. Available at: www.state.gov/g/drl/rls/hrrpt/2003/27829.htm.} Similarly, while the IPTF had some success in training Bosnian police officers to operate in accordance with international recognized standards of human rights, local police forces continue to be implicated in crimes of an ethnic nature and, at times, have actively discouraged minority resettlement in majority areas. Crime within local law enforcement also remains a persistent problem, including reports of ‘accepting bribes, inflicting serious injury, violating public law and order under the influence, assisting the escape of a prisoner during transport, forgery, and extortion.’\footnote{US Department of State, Country Reports on Human Rights Practices 2007: Bosnia and Herzegovina. Available at: www.state.gov/g/drl/rls/hrrpt/2007.} Public perception of police corruption continues to show that Bosnian citizens see corruption as a fairly common practice.\footnote{UNDP, Early Warning System: Bosnia and Herzegovina, Third Quarterly Report (Sarajevo, 2006).} In one report, the ICG concluded that local law enforcement ‘cannot yet be counted upon to enforce the law. Too often… local police officers uphold the law selectively within a dysfunctional system still controlled by politicized and nationalized interior ministries.’\footnote{International Crisis Group, Policing the Police in Bosnia, p. i; on the ‘Directorate for Police Restructuring Implementation in BiH,’ Available at: www.eu pm.org/Clanci.asp?ID=653&lang=eng.}

The biggest obstacle to police rehabilitation (and perhaps the most controversial) is the OHR’s policy to centralize the management of Bosnia’s police system and to make this reform a core condition of EU membership.\footnote{On the ‘Directorate for Police Restructuring Implementation in BiH,’ Available at: www.eu pm.org/Clanci.asp?ID=653&lang=eng.} From the OHR’s perspective, the proposal to restructure the police system from a highly decentralized structure to one with a single structure of policing under the overall political oversight
of central authorities in Sarajevo is seen as a reform of intrinsic value.\textsuperscript{637} Senior international authorities argued that centralization of Bosnia’s police structure would help, for example, remove power from the hands of corrupt party bosses and help fight organized crime given that police officers were unable to operate across the Inter-Entity Boundary line. From the perspective of local stakeholders, particularly from Bosnian Serb leaders, police restructuring is seen as a threat to the sovereignty of the Entity governments. Bosnian Serbs have consistently challenged the policy as a violation of the spirit of the Dayton framework. For this reason, restructuring Bosnia’s police system has proved to be elusive because of both an unwillingness and a lack of consensus on the part of Bosnian stakeholders to accept the international proposal, thus delaying Bosnia’s entry to SAA negotiations. Similar to the IPTF’s vetting process, police restructuring has driven a wedge between international policymakers and local authorities, particularly Bosnian Serbs. Police restructuring has also been criticized as an internationally driven policy that treats politically sensitive questions as merely technical bureaucratic issues that are not open to political debate.\textsuperscript{638} Many EU member states have also expressed doubts over the

\textsuperscript{637} The OHR website lists ten reasons for police restructuring: 1) Police restructuring will make police accountable to the citizen first not to politics; 2) Police structuring will make BiH safer for citizens, tougher for criminals; 3) Police restructuring will get rid of the barriers that help criminals and hinder the police; 4) Police restructuring will cut bureaucracy and beef up crime fighting; 5) Police restructuring will rationalize the use of scarce resources; 6) Police restructuring will give the police modern equipment to fight crime; 7) Police restructuring in a European Union requirement; 8) Without police restructuring, there will be no change in European visa requirements for BiH citizens; 9) Police restructuring will mean new career opportunities for police officers across BiH; and 10) Police restructuring will mean that a police officer will receive the same pay for the same job anywhere in BiH.

\textsuperscript{638} The policy of police restructuring was led by the Police Restructuring Commission (PRC), which was created on 2 July 2004 by the former HR Paddy Ashdown through the use of his Bonn powers. According to the European Stability Initiative, the PRC was a foreign-led commission that decided exclusively the model of police management for Bosnia and how the model would be implemented.
OHR’s management of police reform; in particular, they criticize the OHR’s attempts to force through reforms using the conditionality of EU membership, which not only mitigates the country’s sovereignty, but also adds unnecessary conditions that delay the SAA process.\textsuperscript{639}

It would be disingenuous, however, to conclude that international efforts at rehabilitating Bosnia’s police forces have completely failed and that the country is currently experiencing an internal security crisis. In fact, just the opposite is true. International state-building efforts have cultivated an array of new security institutions at the central level, including a State Border Service of 2,000 officers that has been noted for its success in reducing human and drug trafficking and illegal crossings; a State Information and Protection Agency that employs more 1,200 officers; an Interpol office; and a state-level Ministry for Security.\textsuperscript{640} Various sets of statistics also show a consistent and gradual improvement in terms of local police capacity. For example, a review of Bosnian policing financed by the European Commission concluded in 2004 that Bosnian police forces have a success rate of 60 percent in solving crimes, which is considered a success in terms of Western European standards. The ESI also observes that the ‘rate of many crimes (e.g., theft, burglary, robbery) is lower in Bosnia than in the EU – though organized crime continues to be a pervasive problem. In 2004, there were fewer murders in Bosnia than in many EU member states: 77, or 2.02 per 100,000 inhabitants, compared to


\textsuperscript{639} Many critics argue that conflating EU membership with the requirement for centralized police control is unnecessary given that other EU countries such as Germany and Belgium have long-established federal police administrations.

\textsuperscript{640} European Stability Initiative, \textit{The Worst in Class}, p. 2.
2.22 in the Czech Republic, 2.75 in Sweden and 9.38 in Lithuania. More importantly, since 2001, Bosnian citizens have invariably expressed higher degrees of confidence in their safety that is comparable to public perceptions of public safety in countries such as Belgium and Switzerland.

In both Kosovo and East Timor, international administrators had to build entirely new local police structures from scratch. Building a functional domestic police force was particularly urgent in Kosovo for three reasons. First, the late arrival of international police officers months after the deployment of UNMIK, forced KFOR troops to police much of the province. Second, although KFOR was given explicit responsibility for law enforcement, many national contingents refused to carry out policing activities, particularly in Serbian enclaves. And third, crime and violence had become endemic in Kosovo, including revenge attacks against ethnic minorities and criminal activity running from arson, seizure of property and smuggling to politically motivated kidnapping and torture. A murder rate of 50 per week during the first months of the post-conflict phase was revealing. Under these conditions, the UN quickly set out to build the Kosovo Police Service (KPS) as a local police force. As part of the police training, candidates were subjected to a screening process, a twelve-week education program at the newly created international police academy

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641 European Stability Initiative, *On Mount Olympus*, p. 5
642 Ibid.
643 According to Iain King and Whit Mason, five months into the mission, CIVPOL had only established a credible police presence in two regions, Prizeren and Pristina. And even then, CIVPOL officers were dependent on KFOR for law enforcement in many areas of the province. See Iain King and Whit Mason, *Peace At Any Price*, p. 56.
644 SC Resolution 1244 explicitly tasked KFOR with ‘establishing a secure environment… and ensuring public safety and order until the international civil presence can take responsibility for this task.’
organized by the OSCE, and a fifteen-week training session under the auspices of UNMIK police. Seven years after UNMIK’s deployment, the internationally run academy has produced a local police force of 7,215 officers that is considered one of the more professional and better integrated police institutions in the region, with 13 percent of the staff made up of women and 16 percent from minority communities, including 10 percent from the Kosovo Serb community, who currently constitute a little more than 5 percent of the population.\footnote{Report the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/2007/134, 9 March 2007, para. 35.} The ICG also noted that the KPS ‘may be the least corrupt police force in the region.’\footnote{International Crisis Group, \\textit{Kosovo: The Challenges of Transition}, p. 6.} Due to the increasing size and effectiveness of KPS, significant decreases in the numbers of crimes and murders occurred from 2002 to 2005. In fact, across the territory, Kosovo’s internal security situation was stabilizing at a level just below the average for South-East Europe.\footnote{Iain King and Whit Mason, \\textit{Peace At Any Price}, p. 198.} Together these positive developments have made the KPS one of the most favorable institutions among Kosovo’s majority Albanian population.\footnote{From November 2002 to September 2006, Kosovar Albanian perception of KPS has consistently showed that the police institution provided the best level of satisfaction compared to other institutions, such as KFOR and Kosovo’s interim government, the PISG. Quite the contrary, the KPS is seen as the most ineffective institution among Kosovo’s Serbs. See UNDP Early Warning Report in Kosovo, July-September 2006, p. 19.} And while executive authority over security remains a reserved power of the international administration, UNMIK has gradually delegated more responsibilities to the KPS, which now controls all municipal police stations throughout the province – with the exception of Mitrovica – and performs all basic day-to-day policing functions. For these reasons, the KPS is one of Kosovo’s best institutional successes.
Notwithstanding the above, there are still areas of concern that need to be addressed before the international community is willing to give Kosovo’s government complete sovereign control over its own public security. The most evident problem is the inability of KPS to patrol the Northern part of Mitrovica on its own. Without international assistance, KPS officers are unable to provide public security to Serb inhabitants, who greatly distrust them. The inter-ethnic violence that broke out in March 2004 exposed this reality and further exacerbated the distrust that Serbs feel towards the KPS. In addition, because many of the recruits were hastily chosen and trained, observers argue that KPS still lacks proficiency skills in specialized areas, suffer from low levels of education, and lack experience. Human Right Watch reported recently that a ‘great majority of ‘sensitive’ investigations (relating to organized crime, war crimes, serious political violence, etc.) continue to be carried out solely by international investigators and officers.’\(^650\) Clearly this assessment suggests that Kosovo’s inexperienced police officers need more training, monitoring, and time to consolidate. However, a large degree of this weakness can be attributed to the quality of UNMIK police officers that are mandated to train KPS police. According to UNMIK’s own figures, more than half of the total number of international police officers are from autocratic or highly corrupt countries.\(^651\) With little or no experience in democratic policing, it is difficult to understand to what degree such a profile of international police officers could significantly contribute to the development of local democratic policing.


\(^{651}\) For specific figures and numbers on national contributions to UNMIK’s police force, see http://www.civpol.org/ummik/balance.html.
In East Timor, UNTAET was actively engaged in the formation of a Timorese national police force, the PNTL, and provided technical and material support to its development. As noted above, the police received an unusual amount of attention by senior international officials, who invested considerable resources to develop a major police training center in Dili, equipped with classrooms and training facilities. UN police officers screened, tested, and trained selected candidates while at the same time performing law enforcement duties. By the end of UNTAET’s tenure in May 2002, the PNTL had some 1,700 police officers on the ground. Successor UN missions (UNMISET and UNOITL) continued to support further development of the PNTL through training and mentoring, while Australia and the UK assisted in 2003 with the development of its managerial capabilities and specialization in areas of crime prevention and community safety. In January 2004, the international police mission handed PNTL full responsibility for the country’s security in all thirteen districts. Yet the capacity of the newly established police force to ensure public order on its own was limited. Kofi Annan struggled to convince the Security Council against a complete UN withdrawal from the territory, noting that PNTL continued to have a number of institutional weaknesses, including limited professional skills and experience, and a general lack of logistical capacity and resources for equipment and infrastructure development. Many foreign observers echoed his wariness over PNTL’s untested ability to effectively guarantee public order in the face of a security crisis without international assistance. As it turned out, a security crisis did occur in early 2006, weeks before the UN was scheduled to leave, thus exposing the

institutional fragility of East Timor’s police force, which eventually collapsed under the weight of severe violence.

Perhaps more unsettling was the manner in which local police officers have executed their duties inconsistently with international human rights standards. Human Rights Watch has documented a general pattern of abusive policing practices, including ‘excessive use of force by police when arresting suspects’, ‘abuse of detainees once they are in custody’, and ‘holding detainees without charges’ beyond the procedural time limit.\textsuperscript{653} The organization noted that police abuse continues to be ‘East Timor’s most pressing and current human rights problem’ and that ‘this behavior seems to have become so common that officers rarely try to hide their actions from the general public.’\textsuperscript{654} Moreover, police and other state institutions often fail to respond to police abuse. Disciplinary mechanisms within the police and at the state level remain weak at addressing such problems, and with the politicization of the security sector, coupled with massive governmental corruption, a culture of impunity has taken over the country. More importantly, the pattern of police abuse and impunity has had a negative impact on the public’s perception of the PNTL as an institution, which has increasingly lost the support and respect of the Timorese people.

Similarly to Kosovo, the weakness of East Timor’s police is in part a reflection of the UN’s vetting and mentoring process, which is fraught with competency problems and mismanagement. For example, international efforts to build the police were

\textsuperscript{654} Ibid.
hampered by the lack of qualified trainers and institutional development experts. Human Rights Watch observed that ‘previous training by the UN and other bilateral programs has been weak, often inconsistent, and sometimes contradictory.’ Also, in terms of the vetting process, international actors consulted exclusively with the CNRT about the viability of potential candidates, thereby excluding valuable input from other important political parties and civil society groups. Since the 2006 security crisis, the ICG reports that the current rebuilding process of the local police ‘risks following the same path.’ The quality of training and preparation of international personnel in the UN police-mentoring system remains poor. The system continues to lack a standardized training system that is both ‘rigorous and well-conceived’ and UN police officers are often given only ‘three to five days of training’ for such difficult missions. These operational weaknesses are further complicated by the persistent security crisis, which is evident in the country’s east/west-based violence in Dili, the displacement camps that house more 100,000 people, the localized violence between neighborhood youth gangs, and the growing presence of regional organized crime syndicates from China and Indonesia that are exploiting the country’s weak state apparatus. According to the ICG, insecurity and acts of violence keep international police officers busy while distracting them for their own mentoring tasks – a recurring manifestation of the dual mandate.

The Judiciary

Empirically, the evidence below suggests that efforts by international administrators to build effective and capable judicial systems have yet to materialize. Such institutions remain fragile and will most likely receive continued international
assistance in the form of resources, training, mentoring, and oversight. In Bosnia, problems with the local judiciary are legion, many of which are symptomatic of the corrupt nature of the judiciary under the former Yugoslavia. During this period, Bosnia’s judiciary was under the complete influence of Communist Party officials. Its authority and independence was also compromised by the country’s police force, which wielded considerable influence in determining the guilt of citizens.655 Immediately after the war, Bosnia’s judiciary continued to serve as a political tool of various party bosses. Ruling nationalist parties possessed the power to appoint and dismiss judicial officials, which severely diminished the independence of the judiciary. As the ICG noted, ‘The close relationship between political power structures and organized crimes results in pressure being placed on judges and prosecutors to overlook the crimes of known criminal and of those in power.’656 Also, the disappearance of many competent pre-war judicial officials resulted in a judiciary that is laden with inexperienced, young judges who are often appointed based on ethnic criteria. To compound matters, judges themselves have been known to abuse their positions for personal gain, or from political and ethnic prejudices.657 As a result, public opinion polls have over time shown a marked decline of public confidence in the judiciary, which is considered one of country’s most corrupt institutions.658

657 Ibid.
The highly decentralized nature of Bosnia’s political framework has also contributed to the judiciary’s woes. The country’s judicial system is divided into fourteen different territorial jurisdictions (if you include one state, two entities, one autonomous special district, and ten cantonal units) and has four separate sets of laws.\(^{659}\) Such fragmentation resulted in an unwieldy legal framework that is replete with contradictory provisions, overlapping competencies, and numerous loopholes that are a godsend to criminals. It has also served as an impediment to inter-entity legal cooperation between various judicial authorities and law enforcement bodies. Consequently, access to justice for Bosnian citizens stops at the entity borders. Moreover, lack of material resources, poor salaries, and the scarcity of legal materials have harmed the morale of Bosnian judges, many of whom have left the profession, thereby contributing to an ever-increasing caseload. To illustrate the dearth of this problem, the ICG noted:

> Lower-level courts are hard-pressed to handle their current workloads, much less take on more work, and complex work at that. Courtrooms are decrepit. Prosecutors and judges in some towns spend personal money to buy court supplies or cover telephone bills. They can only dream about witness protection measures. At the start of 2005, cantonal and district courts were coping with 82,866 pending cases, 5,748 of them criminal cases. Basic and municipal courts were saddled with another 1,272,682 cases.\(^{660}\)

As described in the last chapter, initial efforts by the international community to reform Bosnia’s judicial system were characterized as limited, inefficient, and lacking a comprehensive vision. In part, this was explained by the emphasis placed on making sufficient financial backing to the police mission and to help fund the ICTY, while the domestic legal system lagged behind in priority. Subsequent efforts by the


\(^{660}\) Ibid. p. 13.
OHR to raise professional standards and instill discipline in the judicial system were also inadequate. Lacking the capacity and resources to carry out their supervisory role, international driven reforms had to be imposed on local political forces who saw effective legality as a threat to their hegemony and therefore made the reform process as difficult as possible.

Perhaps the most successful international policy in the area of judicial reform was the creation of a state level court that addresses the issue of war crimes in Bosnia. Inaugurated in March 2005, Bosnia’s War Crimes Chamber has been touted as the first national court in the former Yugoslavia capable of addressing domestic war crimes fairly and impartially. Similarly to the 64 Panels in Kosovo and the Special Panels for Serious Crimes in East Timor, the chamber constitutes the latest incarnation of hybrid tribunals in which international and local judicial actors collaborate to bring justice against those responsible for the worst crimes committed during wars. Despite its hybrid quality, the chamber is essentially a domestic institution that operates under national law, while the international dimension of the chamber is gradually being phased out.661

Since its inception, the chamber has made considerable progress in addressing the war crimes issue and ‘narrowing the impunity gap in Bosnia through fair and effective trials.’662 The chamber, for example, recently indicted eleven defendants

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661 Although the bulk of the cases tried under the chamber’s jurisdiction are war crimes initiated locally, the newly established court has also tried a number of cases of alleged mid- and lower-level perpetrators referred to it by the ICTY.
charged with genocide for their role in the Srebrenica massacre.\textsuperscript{663} This is particularly important given that legal authorities in the RS have been reluctant to arrest and prosecute Bosnian Serbs of war crimes, including high profile war criminals such Radavon Karadzic and Ratko Mladic. Other signs of improvement noted by Human Rights Watch include ‘introducing support for witnesses in the pre-indictment phase and establishing an effective defense office committed to assisting defendants in trials before the trials.’\textsuperscript{664} More importantly, the chamber has contributed to the goal of enhancing local capacity by allowing national prosecutors to learn how to manage complex war crimes cases from international prosecutors. Given that the domestic legal system in Bosnia has been unable to handle even routine criminal matters, let alone war crimes, the international community sees the chamber as way of fostering public confidence in the rule of law by showing Bosnian citizens that a national solution to hold accountable those remaining perpetrators of war crimes does exist. Despite this progress, the chamber is still a relatively new institution and its overall impact on Bosnia’s judicial sector and the rule of law more broadly is nominal at best. The majority of war crimes trials will continue to be tried before cantonal and district courts in the country’s constituent entities, which as stated above, lack the capacity and willingness to address them.\textsuperscript{665} The most disconcerting sign about the chamber is the mere fact that positive development in the country’s war crimes problem was primarily driven by an international rather than a domestic agenda. Without

\textsuperscript{663} Ibid. p. 6
\textsuperscript{665} While cantonal and district courts have so far only dealt with a handful of cases related to war crimes, the huge number of impending cases will pose monumental obstacles for an already beleaguered judicial system.
international initiative, it is unlikely that Bosnia’s war crimes problem would receive continued attention after the ICTY’s mandate expires in 2010. This demonstrates some of the limitations of state-building in a society where the vision of an end state as well as the historical truth about its recent past is not shared but continues to be divided.

International efforts to establish reliable, independent and impartial judiciaries in Kosovo and East Timor have run up against severe difficulties. Unlike in Bosnia, the challenge of rebuilding the judiciary in both territories was compounded by the fact that international authorities had very little or nothing to work with. In both territories, the collapse of judicial administrative structures and the concomitant departure of Serbian and Indonesian civilian authorities, combined with a history of politically or ethnically motivated appointments by the Serb and Indonesian authorities, meant that both societies severely lacked the rudimentary building blocks to initiate the process on their own. Yet, despite this lack of local capacity, both international administrations for political and pragmatic reasons initially bestowed judicial responsibilities to local hands. In Kosovo, this decision had far-reaching implications for several reasons. First, Kosovo lacked a tradition of independent justice. Like Bosnia, the institution of the rule of law was non-existent under the Yugoslav regime. Next, not too many Kosovar jurists had judicial or prosecutorial experience. And for those jurists that worked in the court system during the 1990s,

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666 In Kosovo, UNMIK authorities were highly sensitive to anti-colonial accusations and were more than eager to localize the judiciary. In East Timor, the move to ‘Timorize’ the judiciary was considered both a symbolic gesture, given that the Timorese had never held such positions under both Indonesian and Portuguese colonial rule, and that internationals were concerned about the practical costs of introducing international jurists to takeover the judicial system.
virtually all Kosovar Albanians viewed them as collaborators with the previous regime. For this reason, many of them were either threatened to leave their posts or killed by extremist groups. In addition, many of the local judges and prosecutors that were subsequently appointed, nearly all of which were Kosovar Albanian, displayed a strong bias against Kosovo’s minorities, who found it very difficult to get a fair trial. In particular, Kosovo’s Serb population received long detentions for minor charges, sometimes without indictments, while many Albanians were often treated more leniently for similar crimes.667

The politicized nature of Kosovo’s judiciary made it virtually impossible to prosecute Kosovar Albanian leaders, especially KLA leaders accused of war crimes and other serious offences. While the ICTY handles a small amount of high-profile cases of war crimes, hundreds of inter-ethnic attacks and serious offences committed against Serbs and Roma were ignored for the most part by the local judicial system. Indeed, Kosovo institutions have done virtually nothing to collect facts, evidence, and witness testimonies in order to prove war crimes, crimes against humanity or genocide. As a result, this lack of willingness has undermined the legitimacy of the judiciary in the eyes of minorities.668

These signs of weakness prompted international authorities to reconsider their initial strategy of relying heavily on local jurists to manage the judicial system. Since then, Kosovo’s judiciary has been under the executive control of UNMIK. Senior

668 According to Michael Hartmann, the behavior of Albanian jurists was predictable and should have been anticipated by international administrators. After decades of Serb repression, community pressure and fear of ostracism, and threats or fear of harm against judges and their families, Albanian judges were, in part, cajoled to act arbitrarily against Serbs for fear of negative social and professional consequences. See Michael Hartmann, International Judges and Prosecutors in Kosovo, pp. 6-7.
international administrators decided that improving the capacity of the justice system was more important than upholding the principle of local ownership. This was evident by a number of organizational and operational changes on the ground that were intended to increase judicial effectiveness, including the following: the creation of a new justice and police Pillar in May 2001, which increased focus on the establishment of the rule of law, the introduction of international jurists and the 64 panels to take on a higher caseload and reduce the existing backlog, and the prioritization of capacity-building and training.

With regard to training and capacity-building, there have been a number of efforts by various international actors to enhance the effectiveness of Kosovo’s judiciary. First and foremost was the establishment of the Kosovo Judicial Institute (KJI) in February 2000. Under the auspices of the OSCE, the KJI trained national jurists on applicable law and legal procedures. But because of Kosovo’s complicated legal framework, coupled with numerous UNMIK regulations and the absence of a Constitutional Court, the KJI played a considerable role in strengthening the capacity of judges in understanding the law and formal procedures through its training programs. To complement these efforts, the Kosovo Judicial Council (KJC) was recently created to oversee the performance of national jurists and is expected to be a key institution for disciplinary action and controlling the overall quality of judicial training. Other outside efforts directed at strengthening judicial capacity come from national agencies such as USAID and the European Agency for Reconstruction, both having sponsored a variety of ad hoc training programs and distributed legal materials to help improve local understanding of the applicable law. Finally, in the NGO sector,
groups such as the Kosovo Law Center have provided national jurists with supplemental training, literature, and other materials.

Together these ongoing efforts to strengthen the judiciary have had some positive impact in terms of both improving the capacity of the system to adjudicate cases and the manner in which the courts procedurally operate in accordance to human rights and rule of law standards. By and large, however, the local judiciary is generally regarded as the weakest of Kosovo’s institutions. Many observers indicate that the judicial system will be dependent on continued international support and involvement, particularly for complex cases involving war crimes, organized crime or political and ethnic violence. This is evident by the creation of a new EU mission that is scheduled to take over judicial administrative responsibility from UNMIK. In addition, courts in Kosovo continue to be understaffed and unable to handle an increasing backlog, especially in the municipal courts, which up until this point have not been assigned international judges and prosecutors. The backlog of cases has also affected the extent to which international jurists can mentor and collaborate with their local counterparts. Because international jurists are overworked, it was rare that they had any time for mentoring and transferring their skills to national judges and prosecutors. Moreover, lack of resources and basic office materials, coupled with meager pay and poor security for judges, who continue to be threatened and intimidated by defendants, contributed to the low morale of the profession, which in turn reflects poor recruitment rates. Finally, a mid-July 2006 report of the Ombudsperson Institution in Kosovo observes that ‘the judiciary remains weakened

669 Ibid. para 15.
by allegations of widespread corruption…[and that Kosovan society] does not have a strong and independent judiciary to fall back on. This may help to explain why surveys have consistently expressed a high level of public dissatisfaction with the judiciary that is mutually shared by all ethnic communities in Kosovo.

In East Timor, the initial decision to ‘Timorize’ the judiciary had also underestimated the local judicial capacity of the new country. Because of the ‘scorched earth’ tactics of pro-Indonesian militias, the island’s judicial infrastructure was completely destroyed and judicial personnel and support staff was virtually non-existent. More troublesome was the mere fact that none of the Timorese judges and prosecutors that were subsequently appointed by international authorities had any practical legal experience. This severe lack of local capacity presented immense challenges to UNTAET, which was confronted with overpopulated detention facilities and a backlog of cases that resulted in further delays in the administration of justice. Moreover, international efforts to train and develop a whole new cadre of judicial officials were hampered by stretched resources and difficulties in recruiting experienced trainers and mentors that had some background in Indonesian civil law. It quickly became apparent that a purely Timorese judiciary was not a viable option, at least in the short-term. By March and June 2000, international jurists were  

671 See Early Warning System No. 3 (Pristina, January-April 2003), p. 27.
672 James Traub, Inventing East Timor, pp. 82-3.
673 Joel Beauvais, ‘Benevolent Despotism,’ p. 1155.
674 During the immediate post-conflict period, UNTAET developed a three-tiered training program for appointed jurists that consisted of a series of one-week, compulsory impact training courses, mandatory ongoing training sessions, and a mentoring system that allowed international legal experts to serve as ‘shadow’ judges, prosecutors, and public defenders without actually exercising judicial power. See Hansjorg Strohmeyer, ‘Collapse and Reconstruction of a Judicial System,’ pp. 55-6.
deployed to help local jurists handle cases involving war crimes and crimes against humanity that arose from the 1999 post-referendum violence.

But more than five years after UNTAET’s departure from the territory and continued international support through UN successor missions, the state of East Timor’s judiciary remains extremely dysfunctional. Perhaps the most serious challenge to judicial progress has been the continuous shortage of local judges and prosecutors to conduct trials. For example, years after UNTAET’s closure, East Timor’s four district courts still barely function on a daily basis and the Court of Appeals system just recently began proceedings after two years of inactivity because of a lack of judges. As a result, the capacity of the judicial system to promptly deal with its backlog and with the growing number of cases is severely limited, requiring it to prioritize the most serious crimes while those arrested for lesser offences are generally released back into the general population. Language problems have also constituted a serious impediment to the development of the judicial system. Although Tetum is in practice the working languages of most court actors, East Timor’s government has rigorously pushed for Portuguese as the official language in which judges and prosecutors are now trained under, thereby creating language barriers at the expense of judicial efficiency. In addition, many remote Timorese communities in the country, which make up most of the population, lack basic access and understanding of the justice system. Reports of witness intimidation and a general lack of court security have further exacerbated a sense of impunity among the

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Timorese population. In effect, these profound deficiencies have undermined public confidence in the rule of law itself. The UN Secretary-General expressed such concerns in a recent report to the Security Council, highlighting some of the main observations of an assessment mission of East Timor’s judicial sector:

The assessment mission… noted a serious lack of public confidence in the judicial system, in part, generated by low expectations from the period of Indonesian occupation, but also due to the inadequate performance of the justice system to date. Women and minors, in particular, have experienced difficulties accessing the justice system. The processing of criminal cases by the prosecution and the courts is perceived as inefficient and ineffective. At its worst, the process is perceived as being subject to the influence of third parties. The defense function is weak, both in the office of the public defender and the private bar. Further, there is a widespread perception that the justice system generally fails to hold criminal wrongdoers to account or to provide adequate recourse in civil disputes.677

In the absence of an effective judicial system, the majority of the Timorese population has instead relied on traditional institutions of justice and customary law to settle disputes. According to Wayne Hayde, East Timor’s ‘traditional customary law system had always been used by Timorese to settle conflict despite being exposed to developed legal systems for hundreds years’ under different colonial regimes.678

Many observers criticized UNTAET for ignoring the importance of indigenous institutions that carry grassroots legitimacy in favor of modernizing East Timor’s legal system according to a purely western-style system of formal law. But dissatisfaction with the progress of the newly established judiciary encouraged many Timorese to conclude that customary law is the only legitimate legal avenue available

678 Unlike in western legal systems, which are based on the rights of the individual and emphasize accountability for wrongdoing, in traditional type societies like East Timor, compensation and reconciliation to the victim and his or her family is of greater importance than sentencing the perpetrator to prison. In such societies, individual rights are subordinated to the restoring of social order within a community. Notions of judicial independence and impartiality are not seen as important standards in such systems. See Wayne Hayde, ‘Ideals and Realities of the Rule of Law and Administration of Justice in Post Conflict East Timor,’ International Peacekeeping: The Yearbook of International Peace Operations, Vol. 8, 2002, p. 80.
for them. This created tensions between segments of Timorese society and international authorities over which legal paradigm should serve as the country’s main system for settling disputes and addressing crimes. From their perspective, international administrators saw East Timor’s traditional legal system as highly incompatible with the international human rights standards. Various international observers have also noted that the country’s traditional legal system lacks basic due process protections and often fails to provide justice for victims, particularly for women who are victims of domestic and sexual violence.

Notwithstanding these concerns, UNTAET attempted to reconcile the division between traditional and formal legal paradigms through the introduction of community reconciliation panels in 2001. These panels were created to adjudicate perpetrators of human rights violations during the Indonesian occupation and the post-ballot violence. In contrast to the Special Panels, which had jurisdiction over serious war crimes offences and were administered mostly by international jurists, community reconciliation panels consisted of traditional and religious leaders who had authority to adjudicate lesser offences, such as arson and looting. Many individuals prosecuted under the community reconciliation panels were given lenient punishments, including a mere apology to victims. Due to the limited resources available to the Serious Crimes Unit and the growing backlog of cases that overburdened international judges, many cases involving serious war crimes offences were allow to be processed through these community-based panels, thus denying justice to many victims of humanitarian crimes. In effect, the priority of promoting
formal law over traditional customary law was compromised, but as the result of insufficient resources rather than deliberate policy.

**Building Administrative Authority**

In addition to providing security, public order, and enforcing the rule of law, contemporary understandings of state sovereignty go beyond the coercive elements of state authority. As part of upholding a new regime of positive sovereignty, a state’s administrative capacity to effectively foster an environment conducive to the pursuit of economic development and material well-being is considered a key part of attaining sovereign recognition. In post-conflict environments, such a standard typically demands the state-builder to develop a well-functioning civil administration and effective institutions, distribute donor aid for reconstruction projects, and assist the society in making the transition towards a market economy. These efforts correspond with the growing recognition that the long-term sustainability of a state may hinge on the success or failure of the economy.\(^{679}\) This is particularly relevant in post-conflict settings, where continuing economic scarcity and deprivation can be major sources of conflict renewal.\(^ {680}\)

In the context of territorial administration, senior international authorities have thus concerned themselves early in an operation with laying the foundations for

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economic recovery and development. The assumption here is that such policies can weaken the economic foundations of political violence and create conditions that will facilitate a process of confidence building between warring factions. As Susan Woodward notes, this is based on the belief that economic activity can ‘wean leaders from war, replace war profits with commercial profit, shift the balance of power to businesses interested in peace, and bring individuals from all sides of the war back into contact through markets and trade.’ Additionally, such policies are seen as potentially strong sources of legitimization for both international and domestic governing authorities. One the one hand, successful economic policies may help create broad local support for international state-building projects. On the other hand, international aid and economic reforms will help bring in private investment dollars that can generate the revenue necessary to finance local governing institutions, which in turn, can enhance the administrative capacity of target governments to provide other types of basic goods and services such as education and healthcare.

The remainder of this chapter is divided into three sections. The first section discusses the types of challenges and obstacles that get in the way of economic recovery. The next section provides a broad examination of the various types of policies employed by international authorities to spur development and growth. The final section evaluates how well international led state-building efforts laid the foundations for a capable and effective administrative authority in our main case studies.

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Challenges and Obstacles to Economic Recovery

International administrators are confronted with a number of challenges and obstacles that hamper their efforts at building the conditions that are necessary for economic revival and development. Many of the challenges are essentially contextual barriers that are endogenous to the target territory, including – but not limited to – the devastating impact of the war on a territory’s physical infrastructure and economy, the relatively poor state of the pre-war society and its general lack of human resources, ineffective and inefficient prewar economic systems, the pervasiveness of criminality and political corruption, and the propensity towards resource dependency. Furthermore, other challenges to economic revival and development can be identified as obstacles that are self-induced, or of the international community’s own making. More often than not these obstacles include problems concerning international aid, such as its distribution for reconstruction purposes, the susceptibility of war-torn territories becoming dangerously dependent on aid, coordination problems among external actors involved in economic development, and the negative effects of liberal economic policies.

Internal ‘Contextual’ Challenges of the Target Territory

Perhaps the most urgent challenge that international administrators face has to do with the extensive damage caused by the war on a territory’s infrastructure and economy. Without a viable public infrastructure and key utilities such as electricity and water, external efforts at revitalizing the economy are severely constrained. This challenge is compounded by the fact that local inhabitants usually experience a sharp deterioration of living standards as a result of the war. The devastating impact of the
wars in Bosnia, Kosovo and East Timor are illustrative. International civilian actors were confronted with societies in utter chaos. Beyond not having any formal governments and security institutions in Kosovo and East Timor, the physical infrastructures of both territories were in a state of collapse, while hundreds of thousands of displaced persons and refugees were in need of humanitarian aid. Specifically in East Timor, the magnitude of the destruction was staggering: pro-Indonesian-backed militias destroyed over 70 percent of the island’s public infrastructure and private housing.\textsuperscript{682} Economically, in Bosnia, international civilian authorities inherited a war-torn country in which its gross national product (GNP) had declined to more than 10 percent of its prewar size, its per capita income down 20 percent, and its unemployment figures stood as high as 80 percent and rising.\textsuperscript{683}

But even before the outset of war, territories that succumb to internal conflicts are often poor areas to begin with and lack the human resources needed for economic sustainability. In the Balkans, both Bosnia and Kosovo were in deep economic crisis before the onset of violence. Both territories experienced sharp declines of economic growth, unsustainable debts, and increased levels of unemployment in the 1980s. Kosovo’s economy and standards of living suffered particularly under the repressive regime of Slobodan Milosevic, who after revoking Kosovo’s special autonomy placed the province directly under his authority in July 1990, forcing many Kosovo Albanians out of their jobs and creating a massive dislocation of skilled labor. In East Timor, the situation before the war was even more forbidding. It was poorly endowed and did not have the human resources to run a modern state. As one of the poorest

\textsuperscript{682} James Dobbins et al., \textit{The UN’s Role in Nation-Building}, p. 157.
provinces in Indonesia, ‘its economy was largely agricultural, with approximately 90 percent of the population based in rural areas and 75 percent engaged in agriculture – primarily on a subsistence level.’ Furthermore, East Timor had some of the lowest rankings in Asia in terms of its life expectancy, levels of education, and standards of living.

A third common challenge to economic revival and development that is endogenous to the target territory is the structural weakness of its economic system. International administrations are often put in a position of having to restructure the economic system of the territory in question, which in many cases are inefficient and unsustainable. This challenge was especially pertinent to the socialist economies in Bosnia and Kosovo. Under Yugoslavia’s unique system of socially owned enterprises (SOEs), large firms in Bosnia and Kosovo belonged to the public, not the state. The management of SOEs was entrusted to those who were employed in these firms. Even so, the poor economic performance of Bosnia and Kosovo under Yugoslav socialism can be attributed to many of the same shortcomings that plagued other socialist countries with command economies. For example, the economic scarcity and deprivation in Central and Eastern Europe were in large part a result of economic mismanagement and ineptitude that often characterized socialist economies. In addition, such systems were often criticized for maintaining unprofitable enterprises for the sake of employment while at the same time espousing a number of misguided investment policies that ignored the importance of technological development and

684 James Dobbins et al., *The UN’s Role in Nation-Building*, p. 158.
685 Ibid.
modernization. In Bosnia, for example, the economy maintained high levels of unemployment in SOEs despite their poor economic performance before the war.

Many of these firms were not self-sufficient, their equipment technologically outdated, and their workers inadequately trained to compete in a global market. As a result, the country was insufficiently prepared for the type of liberal economic reforms that were being promoted by international administrators. To compound matters, both Balkan territories lacked the financial institutions or private entrepreneurs to stimulate and support market-style economics, thus discouraging much needed foreign investment. Another related challenge to economic reform in general – and privatization more specifically – is the question of ownership over property. This was particularly evident in Kosovo. Given that Belgrade did not legally own the SOEs, many of these firms could not be restarted legitimately since nobody knew who owned them. UNMIK officials were also prohibited from addressing the issue out of fear that privatization of the SOEs could have an impact on Kosovo’s final status, a concern that UNMIK was legally obligated to avoid under UN Resolution 1244.

A fourth challenge that posed a serious threat to economic recovery was criminality and political corruption. Just as war produces opportunities for criminal activity, post-conflict settings can also be fertile grounds for organized crime and political corruption. Post-conflict societies often lack the domestic institutions to curb illicit activities and provide ideal terrain for the predatory elite networks that routinely exploit what should be public resources for personal enrichment.\textsuperscript{687} Organized crime

syndicates find lucrative opportunities in post-conflict conditions, engaging in illicit economic activities such as trade in contraband and counterfeit goods, sex and drug trafficking, and arms smuggling. Political leaders and public officials, on the other hand, often engage in more subtle forms of illegal activity such as embezzlement, misappropriation of public funds, money laundering, and bribery. Where organized crime and political corruption are the norm, the international community has practical reasons for concern. First, by working against efforts to create a viable administrative authority, political corruption impedes prospects for trade and foreign investment. Next, it hampers economic growth and keeps the territory dependent on foreign aid. Finally, in some cases, organized crime strengthens ethnic nationalism, rendering peace and state-building activities fruitless.688

Organized crime and political corruption has been especially endemic in Bosnia. What emerged in the postwar period was a complex web of alliances between mafia and criminal formations, nationalist parties and elements of the old socialist *nomeklatura* that profited together under the country’s clandestine political economy, which emerged at the margins of Yugoslav’s socialist institutions that were subsequently strengthened by the onset of the war.689 Bosnia’s black market has enabled these groups to maintain a hold over much of the economic and political power in the country throughout most of the post-Dayton period. Amra Festic and Adrian Rausche observe:

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During the 1992-95 war in Bosnia and Herzegovina, various criminal networks organized nationalist clandestine political economies in order to provide a capacity for supporting their wartime political objectives. These underground political and economic links were critical components of the post-war conflict that emerged among the parties implementing and obstructing the [DPA]. The clandestine political economies adapted to the new conditions of peace and continued to pursue their nationalist agendas. These discrete structures... have been utilized in peacetime to pursue political objectives. Instead of providing paramilitary forces or smuggling weapons, the clandestine political economies have used financial revenues from diverted public funds, customs, and tax fraud, money laundering, and other illegal schemes to become a cornerstone of the political system.690

A final internal challenge that puts a damper on international efforts to lay down the foundations for economic recovery and development has been the problem of resource dependency. Countries blessed with natural resources that are globally desired have often relied too heavily on their natural resources for domestic economic growth. But as Michael Bhatia notes, ‘two decades of economic theory have shown the weakness of resource-dependent development, which subjects a small economy to fluctuating global prices, buttresses one-party states, hinders the development of a manufacturing base, and generally fails to trickle down to a rural majority.’691 This becomes even more of a problematic issue in those post-conflict territories where the wealth generated by natural resources can be used to fund a renewed campaign of violence, or channeled directly to the coffers of corrupt leaders. For this reason, Paul Collier has consistently argued that such societies should move away from natural resources dependence, asserting that a combination of dependency on primary commodity exports, low average incomes, slow growth, and large diasporas,

substantially increases the likelihood of renewed conflict.⁶⁹² Others observers have pointed to the record of countries who have fallen victim to the so-called ‘resource curse’, which has left many oil-rich nations mired in corruption, ethnic conflict and widespread poverty. Of particular concern here is the billions of dollars in royalties that East Timor is expected to receive in the near future from its offshore oil and gas reserves under the Timor Sea. The oil and gas revenues make up as much as 80 percent of the country’s income.⁶⁹³ Many have portrayed these resources as a savoir to the country’s ailing economy and recent political instability. They argue that overtime the money from oil and gas will solve the country’s immediate problems of poverty, literacy, malnutrition, and unemployment. In the long-term, it is envisaged that the money generated from oil and gas can be invested in healthcare, education, the public and private sectors as well as infrastructure development. Yet one can only speculate whether East Timor will follow a different path from those other resource-dependent countries that are allegedly ‘cursed’.

Self-Induced Obstacles

In addition to the challenges that are endogenous war-torn territories, some obstacles to economic revival and growth have been at least partially the responsibility of the international community. In Bosnia, for example, the Dayton constitution created a number of obstacles that have undermined the central state and its ability to manage the economic sector. For instance, the Dayton constitution

allowed for much of the country’s most profitable industries to be divided and controlled by the entity and cantonal-levels of government. Moreover, because of the highly decentralized nature of Bosnia’s political system, there was a complete lack of harmonization with regard to Bosnia’s economy as three different currencies existed, coupled with dueling legal systems and unreasonable and irrational tax codes that stood as impediments to the country’s economic development. Many economic observers essentially blame this unwieldy system of overlapping institutions and multiple levels of government and bureaucracy for Bosnia’s lackluster economic performance and for deterring private foreign investment. Similarly in Kosovo, the international community’s inability to take a decisive stance on resolving the province’s status issue has had a negative impact on the territory’s economic future. Consequently, without political certainty on Kosovo’s status, many foreign investors have shied away from the province while Kosovo’s government has been unable to borrow from international markets or use credits from the World Bank and other international lenders because of its non-sovereign status.

These specific examples of self-induced obstacles are supported by other recurring patterns. For instance, the ability of international administrators to utilize aid allocated for economic reconstruction is often a challenging ordeal in spite of the significant amounts of pledged resources by outside donors. In post-conflict situations, the need for aid during the first years of recovery is particularly vital in terms of establishing the foundations for economic recovery. Generous pledges are usually made within the first six months to a year of a crisis when global attention on

a particular post-conflict territory is high. But as Stewart Patrick notes, although billions of dollars have been pledged over the years, ‘a significant proportion of promised reconstruction aid either never materializes or does so only very slowly.’

In Bosnia, for example, only two-thirds of the approximately $5.1 billion in international aid was provided between 1995-2000. Likewise in East Timor, of the $1.2 billion pledged to help the newly established Timorese government, only $550 million was actually provided with the majority of this amount allocated to UNTAET’s costs and to the maintenance of the military force. Commenting on the reasons why pledged resources are delayed or go unfulfilled, Simon Chesterman places the blame squarely on donor states, suggesting that they have ‘[l]engthy bureaucratic formalities, legislative reviews and inefficient procurement procedures…[Donor states] tend to focus on their own political interests – including the interests of their national service providers, who may be tasked with implementing reconstruction contracts.’

Whether or not international aid arrives on time or goes partially unfulfilled, the flow of donor money may also create a dangerous economic dependency on foreign aid. For territories under international governance, economic growth during the early transitional period is more often than not contingent on international economic assistance (and from the remittances of diaspora communities). In Bosnia, donor aid accounted for virtually all of the country’s economic growth during the first four

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695 Simon Chesterman, *You, the People*, p. 191.
698 Chesterman also attributes the problem to the target territory’s lack of administrative capacity to take in large sums of money from diverse sources that are earmarked for multiple purposes. See Simon Chesterman, *You, the People*, p. 190.
years of the post-conflict period. Obviously foreign aid cannot serve as the basis for economic growth. The problem of aid dependency is further complicated by the fact that the very presence of international employees creates an artificial economic bubble in the target territory that is hardly sustainable. The rapid influx of thousands of international civilian and military personnel helps to boost certain sectors of the local economy – particularly restaurants, cafes, and bars – through large infusions of cash. This falsely engenders unrealistic expectations of continued economic growth by segments of the local population who are profiting immensely from the surge of internationals arriving to work. However, most these societies are poorly prepared to deal with the reality that international attention will eventually wane and that the surge of external activity will travel elsewhere to another hotspot area that is attracting global attention. As a result, the economic bubble will inevitably burst, creating an abrupt and potentially unmanageable shock to the economy that may have broader political and economic consequences for the territory in question. In Kosovo, the presence of many different international actors created a property boom in which rental prices were inflated to house international personnel. Furthermore, a large-scale service industry was built around Pristina to cater to incoming internationals with disposable income. According to the IMF, growth rates during the first several years of territorial administration exceeded 10 percent per year. Yet none of this growth was real. In fact, unemployment remained exceedingly high during this period and the

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average per capita income per person was barely $3 a day.\textsuperscript{701} With international personnel gradually departing overtime, Kosovo’s local economy suffered drastically, as ordinary Kosovans did not have the income to support the service industry and to buy/rent the properties that were erected during the height of the international presence.

Two other recurring obstacles are problems of coordination between multiple international actors and the harmful effects of liberal economic policies. International administrations are usually comprised of multiple civilian and military actors from different countries and international organizations and financial institutions, all of which share the same goal of trying to revitalize the economy of the same post-conflict territory. However, each international actor often holds a diverse set of interests, resources, values, and levels of engagement that frustrates the pursuit of a coherent strategy towards building the foundations necessary for economic development. International administrations are therefore more likely to be susceptible to problems of interagency conflict and confusion over respective responsibilities, roles, and mandates that can create a muddled set of expectations for the local population.

The adverse effects of liberal economic policies by the international community can further create problems to immediate economic recovery. As part of the normative framework of sovereignty as responsibility, the global shift towards market-oriented economics became something of a standard goal for developing

\textsuperscript{701} Iain King and Whit Mason, \textit{Peace At Any Price}, p. 132.
societies to emulate in the immediate aftermath of the Cold War. Still there remains a heated debate about whether market structural changes can create the conditions for sustainable economic growth in the long-term. On the other hand, the empirical evidence almost certainly shows that such policies usually impose adverse social costs in the short-term. These social costs tend to affect those groups within the recipient state that are most vulnerable and dependent on governmental subsidies and social spending. Moreover, privatization is very likely, at least initially, to contribute to increased unemployment and poverty, skyrocketing living costs, wage decreases, and distributional inequalities that widen the gap between the rich and poor. This type of shock therapy is particularly challenging in countries recovering from war. Indeed, the adverse social effects of economic liberalization in post-conflict societies can exacerbate social tensions and spawn further political unrest that can endanger the entire transitional process.

**Efforts By International Actors**

With the aim of building an administrative authority, international administrations have typically employed three types of policies. In the broadest sense, the trajectory taken by international administrators begins first with the reconstruction of the target territory’s physical infrastructure: the rebuilding of roads, bridges, railways, and airports (what Robert Rotberg has referred to as the ‘physical arteries of

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705 Michael Pugh, ‘Postwar Political Economy in Bosnia and Herzegovina,’ pp. 467-82.
commerce’\textsuperscript{706}, and the restoration of electricity, water, heat, and other public services. Second, such policies also include the establishing or strengthening of key economic institutions, such as the creation of a central banking system for monetary regulation and local cooperative banks, the formation of a finance ministry, the establishment of a taxation system, the introduction of macroeconomic policies, including a common currency, and the building and training of a civil service and federal customs administration to collect revenues the border, which in very poor economies may be only source of domestic revenue initially. Finally, international administrators attach great importance to developing free market systems as the most effective way of promoting economic prosperity, improving standards of living, and ultimately assuring political stability.\textsuperscript{707} Such policies generally consist of structural transformation of the target territory’s economy by privatizing state enterprises in industry, agriculture and service areas, terminating centralized control of both planning and pricing, building strong but efficient public sector institutions, and encouraging foreign investment through easing restrictions on foreign ownership of property thereby eliminating barriers to trade and establishing a friendly tax regime that provides incentives to potential foreign investors.

\textit{Reconstruction}

Of all the rehabilitation activities that international administrations take part in, international administrators have been most successful in their reconstruction efforts. Francis Fukuyama notes that the ‘restoration of war-torn damaged societies to their

\textsuperscript{706} Robert Rotberg, ‘The Challenges of Weak, Failing, and Collapsed States,’ p. 87.
\textsuperscript{707} According to Roland Paris, ‘there is a near-universal agreement today that non-market economic policies (that is, those that do not give the market the primary role in allocating scarce resources) are too inefficient to generate sustained economic growth.’ See Roland Paris, \textit{At War’s End}, p. 199.
pre-conflict situation... is something that outside powers have shown themselves historically able to bring about. Much of this success can be attributed to the considerable amount of experience and knowledge that donors and multilateral organizations have gained through disaster relief and other humanitarian emergencies.

In Bosnia, the international community managed to use a bulk of the $5.1 billion aid allocated for emergency reconstruction to improve the physical infrastructure of the country. As a result, military and civilian engineers repaired and opened more than 50 percent of the roads, rebuilt over sixty bridges, and restored much of the public infrastructure including utilities and schools and hospitals. Yet, despite these successes, the full impact of these efforts was mitigated by coordination problems between donors and by the persistent challenge of political corruption. In terms of the former, leading donors such as the World Bank, the IMF, the EU, and individual donor countries — all with their own agendas — tended to work independently from one another while the OHR had limited authority to oversee and direct the overall effort. This limited coordination slowed down the reconstruction process and hampered the ability of the OHR to apply pressure on Bosnia’s uncooperative ruling parties. In turn, political corruption contributed as a major threat to economic progress in Bosnia, as up to $1 billion of international aid had been misappropriated by nationalist party leaders.

709 For a more detailed analysis on the reconstruction of Bosnia’s infrastructure, see Larry Wentz ‘Bosnia: Setting the Stage’ in Larry Wentz (ed.) Lessons from Bosnia: The IFOR Experience (U.S. Army: Center for Army Lessons Learned, 1998).
In Kosovo, international assistance for the territory’s reconstruction was more generous than any earlier previous post-conflict operation. Commenting on the enormous amounts of aid pouring into the province, King and Mason noted that ‘representatives of donor agencies roamed around Pristina looking for worthy causes to invest in.’ Moreover, donor coordination in Kosovo was better executed than in Bosnia. The EU, which comprised Pillar IV of UNMIK and led the responsibility for economic reconstruction and development of the province, set up a Department of Reconstruction to coordinate all international assistance and donor funding. Although the bulk of this assistance was effectively utilized to purchase materials for rebuilding roads and schools, much of the territory’s infrastructure remains decrepit even after years of international territorial administration. In particular, Kosovo’s energy sector has performed significantly worse than it had done before the war. Fraught with problems of corruption and a severe lack of local and international management expertise, Kosovo’s Electric Company (KEK) has been unable to keep up with consumer demand while economic development is severely constrained by frequent power cuts in the electricity supply, requiring much power to be imported from abroad. Other basic services such as running water, sewage, and telephones do not perform regularly.

In East Timor, rebuilding of the physical infrastructure of the territory was less impressive in light of the magnitude of the physical destruction caused by the conflict.

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711 According to the RAND Corporation, the US and international organizations spent $1.5 billion on reconstruction and recovery to Kosovo between 1999 and 2000. See James Dobbins et al., *American’s Role in Nation-Building: From Germany to Iraq* (Santa Monica, CA: RAND Corporation, 2003), p. 125.
and the pre-war state of the island’s infrastructure, which was virtually non-existent outside of city centers. Although the Asian Development Bank (ADB) and the WB supervised the distribution of donor aid for reconstruction and development, each donor had their own provisions on how the funds could be spent for specific purposes. This arrangement made it challenging to synchronize reconstruction efforts. But more importantly, the various modes of aid provision created barriers to national ownership of the reconstruction planning as local stakeholders were denied any discretion over its distribution. A large amount of reconstruction aid in East Timor had also been diverted in order to pay for international expertise. For example, as one observer noted, ‘30 percent of funds distributed under the ADB’s Emergency Infrastructure Rehabilitation Project… have gone to pay foreign consultants’.

Moreover, the UN’s tightly regulated procurement procedures prevented the UNTAET to channel millions of dollars that could have been used to refurbish schools, hospitals, ports and airports. East Timor’s economic reconstruction and development was further hindered by conflict between international actors. Perhaps the most dramatic incident involved the UNTAET and the WB over the latter’s promotion of its Community Empowerment Project (CEP). The CEP was intended to facilitate the development of local governance structures by giving village leaders the voice and autonomy to decide the distribution of block grants for reconstruction and development. This was a deliberate attempt by the WB to reverse the UNTAET’s highly centralized form of governance, which took a top-down approach to development rather than a bottom-up, grass roots approach espoused by the CEP.

Senior international administrators resisted the CEP for several months, considering it to be a challenge to UNTAET’s authority. As a result, $35 million procured for reconstruction was rejected by UNTAET ‘at a time when no other funds had arrived from the international community.’

*Institution-building*

In addition to reconstruction, international administrations have focused their efforts on introducing or creating key economic institutions with the intended hope that the target territory will then be able to manage its own economic affairs and develop its own sources of revenue. In Bosnia, the Dayton constitution assigned most of the country’s economic power to the entity-level governments, thereby allowing the nationalist parties to control key wealth-producing industries. Under the constitution, the central government also did not have the authority to levy taxes. It also lacked the ability to develop a national stabilization program, cohesive regulatory structures, and a national banking system. Furthermore, the decentralized nature of the DPA permitted three different currencies to exist and a myriad of dueling legal codes and irrational tax code systems that made the country vulnerable to corruption and deterred foreign investment.

However, after the OHR’s 1997 endowment with the executive Bonn powers, the OHR, working with international financial institutions and the EU, began a more aggressive campaign of strengthening the administrative authority of the Bosnian state by setting up, and often imposing, economic institutions. Several policies stand out. First, to address the currency

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problem, international authorities pushed for the creation of a new currency, the *konvertibilnaja marka* (KM), which now trades at a fix rate relative to the euro. In addition, the OHR transferred the responsibility of indirect taxation from the entities to the state to make central institutions more financially secure. This measure was coupled with the decision to replace the sales tax with a state-wide value-added tax (VAT) at the start of 2006, which was seen to not only stimulate and stabilize fiscal revenues, but also to foster an improved competitive environment in the domestic economy. International financial institutions also assisted with the set up a modern and unified tax administration, an audit system to control government expenditures, and introduced simpler and more transparent tax codes. Finally the EU helped to establish and sustain a multiethnic customs administration at the border to raise much needed domestic revenue and to reduce the problems of smuggling and tax avoidance.

In Kosovo and East Timor, international authorities had to build basic economic institutions from scratch. Learning from the problems that the OHR encountered early on in Bosnia, in its first half-year, UNMIK (and the EU) quickly began building Kosovo’s economic foundations. It swiftly adopted the *Deutsche Mark* in 1999 and later the euro as the de facto local currency, placing the territory in the ‘Eurozone’ even before many EU member states. This economic measure was intended to take monetary control away from the Milosevic regime, which argued that UNMIK’s replacement of the Yugoslav dinar violated Resolution 1244 because it implied that the international community was paving the way for Kosovo’s independence. UNMIK also established the Banking and Payments Authority of Kosovo (BPK) to handle domestic payments, licensing, and supervision of the banking sector, a
Ministry of Economy and Finance, a tax system and administrative structure, a customs service and central bank, and a Central Fiscal Authority (CFA). UNMIK also trained Kosovans in the finance ministry and civil service. In East Timor, it should be noted that economic policy took a back seat to security and justice. For this reason, the first economic policies of UNTAET did not emerge until the late spring 2000, almost a year after UNTAET’s deployment. With the advice and help of the IMF in helping UNTAET stabilize the Timorese economy, international officials convinced Timorese officials to adopt the U.S. dollar as the official currency. They also helped to establish a Central Payments Office, which performed many of the functions of a central bank, and a Central Fiscal Authority, which later became East Timor’s Ministry of Finance. Both institutions allowed the transitional administration to form a fiscal framework and a budget for the territory while raising domestic revenues through taxes and customs duties.\footnote{IMF, Public Information Notice, No. 03/90, 28 July 2003.} Predominance was also given to the creation of an indigenous civil service, with the WB and other bilateral development partners providing much of the training in anticorruption and financial management.

\textit{Market Restructuring}

The promotion of free market economies has been a core element of international state-building policies. The goal of establishing a market economy is especially pronounced in Bosnia and Kosovo, where both territories are part of a broader attempt at regional economic transformation that involves their the eventual integration with the EU.\footnote{The goal of deepening the integration of the Balkans, or South East Europe, into the greater Euro-Atlantic community has been a core policy of the EU and other international financial institutions. In}
prominent in East Timor, though international financial institutions such as the IMF and the WB have promoted a range of policies to develop East Timor’s nascent regulatory system and its private sector. The following analysis will therefore focus on two market-based reforms that were employed in our Balkan case studies: 1) the policy of reforming Bosnia’s payment system and (2) the privatization of Kosovo’s SOEs.

In Bosnia, the largest and most complex economic project was the OHR’s policy to transform the country’s payment system. Under Yugoslav’s socially owned economy, the state’s Social Bookkeeping Service controlled the country’s payment system. During and immediately after the war, however, the Social Bookkeeping Service was divided into three separate payment bureaus, each controlled by the three wartime nationalist parties. Given that the payment bureaus allowed each of the wartime nationalist parties to control the economies of their respective territories, the international community in Bosnia eventually considered the payment bureau as a major source of corruption that allowed the nationalist parties to siphon money and support their illegal and underground activities. It was estimated by USAID that the

late July 1999, the European Commission and the WB formally established a regional assistance framework called the Stability Pact for South Eastern Europe. The general idea behind the program was to link regional integration efforts through the establishment of bilateral free-trade agreements and through a comprehensive reform process that attempts to instill European values and institutions in the former Yugoslav republics. In return the EU has provided considerable financial assistance through its Community Assistance for Reconstruction, Development and Stabilization – the so-called CARDS program.

For a more thorough analysis on Bosnia’s payment bureaus, see USAID, Payment Bureaus in Bosnia and Herzegovina: Obstacles in Development and Strategy for Orderly Transformation (Sarajevo: USAID, 1999); also see International Crisis Group, Why Will No one Invest in Bosnia and Herzegovina? p. 10.

Under the immediate post-war Bosnian system, the payment bureau fulfilled the following functions: 1) the operation of the payment system; 2) tax collection and distribution; 3) accounting services for business and government; 4) cash management; 5) statistics collection; and 6) lending functions. See USAID, Payment Bureaus in Bosnia and Herzegovina, pp. 8-14.
payment bureaus cost the Bosnian government between KM 255 million and KM 311 million in 1997, which accounted for 5 to 6 percent of the country’s GDP.\(^{720}\) By 1999, USAID and other international actors denounced the payment bureaus as major impediments to establishing a functioning market economy and demanded that the institution be dismantled and replaced by a new and more efficient payment system. Shortly after, the International Advisory Group for Payment Bureaus and Payment System Transformation (IAG)\(^{721}\) was established to ‘assist and advise’ local authorities in both entities on the elimination of the payment bureaus and to provide ‘technical assistance’ to the new institutions set up by the IAG.\(^{722}\)

To rid Bosnia of the payment bureaus, the IAG drafted a series of laws that outlined the contours of a new payment system and the steps it would take to dismantle the payment bureaus. Although local authorities were involved in the drafting process during the early stages, the process was entirely driven by international actors who often did not consult with local stakeholders over the substantive matters of the draft. Nonetheless, the features of the new payment system aimed at reducing the political control of the nationalist parties over financial flows and credits and limiting the role of the state in the economy while at the same time assigning new competencies to the central government, such as the administration and collection of taxes. Throughout the process, however, most of Bosnia’s local authorities, particularly from the RS, resisted implementation of the reform; they saw

\(^{720}\) Ibid. pp. 57-8.

\(^{721}\) The IAG consisted of representatives from a number of national agencies and international organizations and financial institutions, including, for example, USAID, the OHR, the WB, the IMF, and advisors from the US Treasury.

it as a direct threat to their power. Due to delays and a general unwillingness of the Bosnian Serb authorities to pass the reform in their respective assembly, the HR, backed by the international community, imposed the reform on 20 December 2000.  

While the reform of the payment bureaus did not dramatically change Bosnia’s economic fortunes overnight, it did weaken the grip that wartime nationalist leaders wielded over the country’s economy. Moreover, the reform attracted other financial institutions and western banks to reconsider the option of providing new financial services to the country. But all of this came at a great cost: the lack of local ownership over the entire reform process – an issue that will be discussed further in the concluding chapter.

In Kosovo, efforts to privatize the territory’s SOEs were central to the international community’s policy of promoting a market-based economy. At the outset of UNMIK’s mission, there were an estimated 350 SOEs with over 60,000 employees. Yet, as discussed earlier, Yugoslavia’s unique brand of socialism posed a great challenge to Kosovo’s economic transition from a command economy to a market-based one. Given Yugoslavia’s complex property rights and the unresolved status issue of the territory itself, the question of who exactly owned Kosovo’s SOEs raised important legal questions about who had the authority to privatize them. Moreover, UNMIK’s own Office of the Legal Advisor (OLA) and the UN’s Office of Legal Affairs expressed concern initially that any form of privatization enacted by the

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723 It should be noted that against great international pressure, the FbiH legislature surprisingly adopted the law unanimously in its 14th session on 26 July 2000.
international mission would be overstepping resolution 1244.\textsuperscript{725} The UN, in particular, was cautious about privatizing the enterprises out of fear that it would be held liable for claims by potential creditors and owners. Furthermore, the regime in Belgrade threatened potential investors with lawsuits if UNMIK went ahead with the sale of the SOEs. For these reasons, international efforts to privatize the SOE’s were halted on several occasions amid debate and disagreement over legal matters between various international actors and other interested parties. With no viable framework for privatization in place, or property rights and commercial law more generally, foreign investors were reluctant to risk their money in a territory plagued by uncertainty.

Despite these challenges, international lawyers from western nations promoted a number of different approaches to privatize Kosovo’s SOEs. For example, Pillar IV of UNMIK established a Kosovo Trust Agency (KTA) on 13 June 2002. The KTA was to be established with a full juridical personality separate from UNMIK as a way to mitigate the risk of UN liability for claims by owners and creditors. The agency would have the right to administer the SOEs and privatize them through two methods: spin-off and liquidation.\textsuperscript{726} The spin-off system involves taking the assets of an SOE and transferring them to a new company (NewCo) and the shares of this NewCo are then sold to an investor. The other method employed by the KTA is liquidation, which was generally used when an SOE had long since stopped trading and its debts far exceeded the value of its assets. Other innovative approaches, for example, involved the commercialization of the SOEs, which meant that they were leased to


\textsuperscript{726} UNMIK Reg. 2002/12, 13 June 2002.
private investors for a specific number of years with no implications for ownership. While the end result of all of this was simply confusion, the abovementioned efforts did result in some tangible progress. As of January 2006, Pillar IV reports that KTA privatization sales have generated over 200 NewCos, almost 200 million euro in sales, and with more than 100 SOEs sold. At the same time, however, this particular case study highlights the limitations of international state-building in situations where the absence of juridical sovereignty and statehood imposes certain constraints on external interventions, including international administration.

*Evaluation of International Efforts*

In this study a capable and effective administrative authority is one in which the central government is able to provide a basic level of economic prosperity and social services through creating the conditions that will lead to economic development and growth. To what extent then have international state-builders been able to establish or lay the foundation for this type of authority that is considered essential to achieving legitimacy and effective statehood? To answer this question, the analysis below will examine the economic performance of each target entity and their ability to improve the economic well-being and quality of life of their citizens. (Table 2 provides a cross territorial summary and comparison of basic economic and human welfare indicators.)

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Bosnia

Twelve years after the war, Bosnia still suffers economically from the legacy of its war, which destroyed a significant portion of its physical productive capacity, depleted its human resources and shattered its institutions. Bosnia remains one the poorest countries of the former Yugoslavia – the WB’s has estimated that one-fifth of Bosnian households live in poverty while another 30 percent of the population is estimated to be in risk of falling below the poverty line— while economic growth continues to stagnate with small fluctuations of growth. Between 1999-2004, the average annual GDP growth hovered around 4.8 percent, while in 2006, growth raised to 6 percent. The country still relies heavily on international aid for reconstruction and economic sustainability – at one point, it accounted for 30 percent of official GDP. Bosnia’s once lucrative pre-war industrial sector, which accounted for over 50 percent of the country’s GDP, was damaged heavily by the conflict and since then has not recovered. Other sectors such as agriculture consists mostly of small and ineffective private farms (Bosnia has traditionally been a net importer of food). Most of Bosnia’s economic growth consists of its service sector, which in 2006 makes up more than 60 percent of the country’s GDP. Yet much of this sector initially depended on the spending of representatives of international agencies and organizations. As one local academic remarked, Bosnia’s economy is based on ‘the thousands of translators and drivers who work for the international community as

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729. Ibid.  
well as the places and restaurants which cater to foreign officials. There are very few Bosnian products and services that are competitive on the global market.\textsuperscript{732}

Growth has also been hampered by the country’s growing trade deficit. While it is unrealistic to expect an economy like Bosnia not to run any trade deficit, the ever-widening gap between imports and exports in the country is far too large. Between 2000 and 2007, the volume of foreign trade reached nearly KM100 billion; however, during this same period, exports amounted to just KM26 billion, compared to KM73 million in imports.\textsuperscript{733} The most troublesome aspect of this is that a large proportion of the deficit is due to the import of goods for consumption rather than components for use in further production. The Bosnian government has also been unable to create and retain jobs for its citizens. This has led to increasing and prolonged unemployment, which is currently Bosnia’s biggest economic problem. The WB’s official rate was 41\% in 2006, though this figure does not take into account the large proportion of Bosnian citizens working in the informal economy, which at one point constituted 42\% of the total employment in 2004.\textsuperscript{734} The country’s economic woes and the related high unemployment are contributing to a serious ‘brain drain’ problem as its young population is leaving the country in droves looking for employment opportunities abroad. This is also affecting Bosnia’s skilled professionals, who are leaving the country at an alarming rate, thereby depriving the country of more precious human resources.

\textsuperscript{732} Interview with Dejan Brkljac, Graduate Student at Banja Luka University, BiH (Sarajevo, June 2005).
\textsuperscript{733} UNDP, Early Warning System in Bosnia and Herzegovina (Annual Report 2007), p. 29.
\textsuperscript{734} Ibid. p. 134.
TABLE 5.2 Economic and Human welfare data, 2006

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According to figures published in the *Southeast European Times*, in Bosnia ‘79 percent of research engineers, 81 percent of master’s degree holders in science, and 75 percent of PhD graduates in science have left the country since 1995.’

The weakness of the country’s economy is also a result of poor fiscal policies. Public spending in the country has remained high, reaching about 64% of GDP in 2000 and 56% in 2002, which is well above the regional average of 40% of GDP. This is mostly attributed to efforts by local lawmakers to gain political points by increasing public sector wages and pension payments to war veterans. Public expenditures have also been high as a consequence of the international community’s desire to strengthen the central government by creating new state-level institutions such as the State Border Service, State Courts, and a new national army. Given its limited public revenues, Bosnia lacks the resources for such an expensive and bloated public sector that has put a great deal of fiscal pressure on the central government. These fiscal problems are compounded by the country’s complex governance structures, which allow both entity governments to form different economic policies and foreign relations that are uncoordinated and incoherent, threatening the country’s macroeconomic stability while leading to uneven development between the entities that may pose a danger to the country’s economic security.

The capacity of Bosnia’s government to generate revenue remains weak, though signs of progress are beginning to materialize. The IMF and the WB have pressured the entity governments to introduce new tax policies that increased inter-entity tax

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735 *Southeast European Times*, ‘Southeast Europe Turns Brain Drain into Gain,’ 25 June 2007.
737 Ibid.
harmonization, broadened the country’s tax base, and improved tax collection. The introduction of the VAT and the creation of a new indirect tax administration (ITA) have also ameliorated the central government’s capacity to extract revenue from its citizens. According to the Economist Intelligence Unit, for example, the ITA in 2006 received KM4.29bn (US$2.75bn) in tax receipts, which was 26.1% higher than in 2005. Nonetheless, the country’s tax administration continues to be criticized for its inefficiency and corruption.

In addition to a declining industrial sector, dependence on international aid, and fiscal mismanagement, Bosnia’s ability to promote economic development and create growth has been hindered by widespread political corruption. Transparency International’s (TI) Corruption Perceptions Index ranks Bosnia 84th of 180 countries, with 3.3 index points, in 2007 – up from 93rd in 2006. Though the country has made some progress over the past year, Bosnia’s local leaders have shown little willingness to confront more forcefully with the problem of corruption. The problem is compounded by Bosnia’s privatization process, which has provided an opportunity for ‘the criminalized nationalist cliques to purchase state enterprises – through their connections with the ruling structures – on the cheap, and then escape from reinvestment, tax paying and generating employment.’ All of these factors have contributed to a negative public perception of the government’s administrative capacity to manage the economy and pursue further economic development. The

738 Ibid. p. 31.
739 The Corruption Perception Index Score relates to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). Available at http://www.transparency.org/.
740 Srdan Vucetic, ‘Peacebuilding and Political Corruption,’ p. 73.
UNDP’s *Early Warning Survey* shows in December 2007 that 77.6 percent of all Bosnians sampled agree that the country’s economic circumstances are bad, while 62 percent say that both state and entity-level governments will not improve the economic situation in the foreseeable future.\(^{741}\) This sentiment is similarly shared by Bosnia’s business community, which views the macroeconomic management of the country as failing to meet business sector expectations.

Notwithstanding Bosnia’s struggle with economic development and growth, the country has made advances in terms of its human development and well-being. According to the UNDP’s 2005 *Human Development Index*, Bosnia is ranked 66th out of 175 countries, which means that the country advanced from the group of states with medium human development to the group of states with high human development. Since 2000, life expectancy has been on average 70 years for males and 77 years for females. However, according to the World Health Organizations (WHO), the country’s healthcare system lacks the capacity to provide quality service: the country has less than one hospital for every 100,000 citizens, compared with about three in the EU.\(^{742}\) Many Bosnians living in the country also lack basic access to healthcare. Furthermore, Bosnia’s education system remains ethnically segregated with parallel education structures for each of the main ethnic communities. This has resulted in different standards of education, coupled with staffing and financial problems. Despite efforts by the OHR to unify the country’s education system, local politicians have vigorously resisted reforms, arguing that local control of schools and universities is an important means of preserving national identity.


\(^{742}\) *The Economist Intelligence Unit*, ‘Bosnia and Herzegovina: Country Profile 2007,’ p. 22.
As noted previously, following the end of the conflict in the summer of 1999, Kosovo’s economy was in turmoil. Years of under-investment, chronic mismanagement and the legacy of central planning had greatly reduced the economy’s capacity to produce. Initially under UNMIK authority, the province experienced double-digit growth (21 percent in 2001) as a result of the first several years of a postwar reconstruction boom, in which the international donor community spent an estimated 1.96 billion euros between 1999-2003. UNMIK also managed to bring inflation down to 0 percent in 2003, instituted one of the most liberal trading regimes in Europe, and proceeded with further privatization of the SOEs. By 2004, however, the economic bubble that was generated by the international community had disappeared as international donor resources declined. Consequently, Kosovo’s annual GDP growth has spiraled down from double-digits in 2001 to 4.2 percent in 2006. The territory has the poorest economy in the Balkans with a GDP per capita of US$790 in 2003. Approximately 45 percent of Kosovo’s population lives in poverty (below 1.42 euros per day) and another 15 percent are in ‘extreme poverty’, surviving on 0.93 euros a day.\footnote{Alexandre Kolev et al., \textit{Kosovo Poverty Assessment} (Washington, D.C.: World Bank, 2005).} A large proportion of the population still depends on remittances sent home by family members abroad and on donor aid for survival. Chronic unemployment runs at above 60 percent (nearly 70 percent in 2005), moving the province back towards levels not seen since the 1990s. Such depressing numbers
have particularly affected Kosovo’s young people, who make up more than half of the
territory’s population.\textsuperscript{744}

Although economic powers were generally reserved to UNMIK, international
authorities under the coordination of the EU gradually transferred more and more
competencies in the economic sector to Kosovo’s local institutions, the PISG.\textsuperscript{745} For
this reason, both authorities were responsible for administering Kosovo’s economy –
albeit, with UNMIK having the last word. Up until 2007, both authorities performed
poorly in terms of managing the economy and creating the conditions necessary for
growth. Perhaps the biggest failure has been the inability of UNMIK and the PISG to
maintain a reliable power supply in the province. Infrastructure failings in the
electricity sector have led to constant power outages that impose great costs to both
the public and private sector, not to mention, deterring foreign investment. Moreover,
despite an abundance of mineral resources, both authorities have failed to refurbish
the infrastructure that is needed to revitalize the province’s traditional industries, such
as the extraction and processing of minerals. Most of the province’s agriculture,
which at one point employed 30 to 40 percent of Kosovo’s work force, is also under
used and lacks rural development despite vast amounts of fertile land. Both
international and domestic authorities have also been unable to establish a new
industrial base. As a result, Kosovo suffers from a massive trade deficit and relies

\textsuperscript{744} An estimated 70 percent of the Kosovo Albanian population is under thirty years of age, and 50
percent are under the age of twenty.

\textsuperscript{745} By late June 2007, local officials controlled all regulatory bodies – with the exception of the Civil
Aviation Regulatory Office. See Report of the Secretary-General on the United Nations Interim
mostly on imported goods, even for basic staples like milk and meat.\footnote{Currently, imports rune about $1.9 billion a year, but exports are a trifling $130 million. See Kosovo’s summary indicators in the World Bank’s web page, available at http://www.worldbank.org/kosovo.} The poor economic performance of both UNMIK and the PISG has led to high levels of public dissatisfactions with the current economic direction: in August 2006, about 70 percent of Kosovans – both Albanians and Serbs – are either ‘dissatisfied’ or ‘very dissatisfied’ with Kosovo’s economic direction. In the same survey, most Kosovans blamed UNMIK for the territory’s economic troubles, about 46.4 percent, while only 36 percent blamed the PISG.\footnote{UNDP, Early Warning Report: Kosovo (Pristina, July-September 2006), p. 22.}

The above problems are compounded by economic mismanagement and corruption. For instance, governing authorities in Kosovo continue to maintain a bloated public sector. As the ICG noted: ‘[P]rice-gouging monopolies like the KEK, the post and telecommunications corporation (PTK), and the airport, burden the economy with over-sized workforces and bloated wages. UNMIK created a too-large civil service of 68,000, to which the PISG has added 7,000 since it gained responsibility for the budget in 2004. With a similar population, Slovenia has 200,000 civil servants.’\footnote{International Crisis Group, Kosovo: The Challenge of Transition, p. 5.} Endemic corruption and organized crime, which is intensified by the clientistic-clan character of politics and business, further weakened the economic situation. Transparency International ranks Kosovo as the world’s fourth most corrupt economy, after Cameroon, Cambodia, and Albania.\footnote{International Herald Tribune, ‘Ethnic Albanians Chart Kosovo Path,’ 4 March 2008.} According to one senior UNMIK official, ‘When we talk of organized crime in Kosovo, we are very much\footnote{International Crisis Group, Kosovo: The Challenge of Transition, p. 5.}'}
dealing with politicians and ministers. In June 2005, Andre Venegoni, Kosovo’s International Prosecutor for business crime, suggested that the dominant economic mentality in Kosovo supports fraud, misconduct, bribery, and other forms of organized crime that is like ‘a cancer, a wound which is crippling economic and all other development in Kosovo.’

It is also important to note here that the ability of Kosovo’s government to generate revenue is limited, but steadily improving. Government revenue as a percentage of GDP has risen from 17.2 percent in 2001 to 38.9 percent in 2003. Much of the government’s revenue comes from taxes on imported goods and tax revenue collected at the border, which is still enforced by UNMIK. Still only about 11 percent of receipts are from direct taxes. The large size of the informal economy and the volume of transactions that are cash-based have contributed to the government’s inability to collect more domestic tax revenue. The situation at the municipal level is even worst, where the administrative capacity is weaker. For instance, only 13 percent of the bills issued for property taxes were paid at the end of 2003. Notwithstanding this, the Secretary-General’s report to the Security Council in September 2007 states that ‘efficiency in the Tax Administration of Kosovo (TAK) is gradually improving… though Kosovo needs to further develop its system to improve domestic revenue collection.’

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Since 1999, both international and local authorities have been unable to make significant strides with regard to improving education and healthcare standards. According to the WB, ‘six percent of the adult population is illiterate, and half of the adult population has only completed primary education…[However] improvements in primary school enrollment rates are over 95 percent, and the illiteracy rate has been reduced to less than 0.5 percent among children and youth.’\textsuperscript{753} However, the quality of education remains a concern. Kosovo’s education system is fraught with political appointments, as many Kosovar Albanian teachers are better known for their nationalist credentials rather than their backgrounds on education. Institutions of higher education are also of equal low standards. Graduates from Pristina University are considered ‘poorly matched to employment opportunities’ and are of ‘insufficient caliber to sustain state institutions’.\textsuperscript{754} Health outcomes are among the worst in Southeast Europe. Infant mortality rates, for example, are the highest in the region while life expectancy is the lowest.

\textit{East Timor}

It has been well established in this study that UNTAET did very little to enhance East Timor’s capacity to deliver basic public services that would improve the livelihoods of the Timorese people. Instead a great deal of attention was directed towards building the security and justice sectors to the detriment of economic and human development. Since UNTAET’s departure in May 2002, the country’s economic performance in terms of poverty reduction, growth, and employment


\textsuperscript{754} International Crisis Group, \textit{The Challenge of Transition}, p. 5.
generation has been dismal. East Timor remains one of the poorest nations in the world. The majority of the population is affected by poverty and chronic deprivation, with more than 40 percent of Timorese living below a poverty line set below one U.S. dollar per day. With its growing population rate, the highest in the region, the number of people in absolute poverty continues to grow. According to the WB, the annual GDP in 2005 (excluding the oil and gas sector) was only $350 million, and annual income per head was less than US$350. The country still depends on international aid for economic sustainability, as it made up 35% of GDP in 2005. Growth in the country has been erratic and declined (again, excluding oil and gas) by more than 8 percent a year in 2002 and 2003, demonstrating the degree to which growth was linked to the international presence. Although the country experienced relatively small economic growth in 2004 and 2005, violence in mid-2006 brought economic activity to a standstill. As no surprise, unemployment is also extremely high. Various estimates put it between 50 to 60 percent. This shockingly high unemployment rate is particularly troublesome given that half of the country’s population is under 18. According to WB estimates in 2004, unemployment in Dili was estimated at 23 percent, and youth unemployment at 44 percent. As a result, frustration among the large and increasing youth population has contributed to demographic pressures and instability as many young people turn to violent and criminal gangs for a modicum of economic security.

While East Timor’s oil and gas sector has transformed the country’s economic prospects, making up 80 percent of the East Timor’s GDP, the sector has not

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generated many jobs. Gas from its Baya-Udan fields is currently piped to Australia, where it is transformed into liquefied natural gas; East Timor’s derives its revenue from the cut it receives from the raw materials. While the Timorese government is trying to convince multinational energy companies to build a plant on Timorese soil in order to start production of the country’s Greater Sunshine gas fields, it has been noted that industry executives see the East Timor option as a risky investment due to its political instability, low education levels, poor physical infrastructure, and lack of skilled human resources. Beyond this, agriculture dominates East Timor’s economy and comprises 30 percent of GDP and employs three quarters of the labor force. But the country’s agricultural production is low and the quality of its goods does not compete well in the global market. The country therefore relies heavily on imports from Thailand, Vietnam and China.

In addition to poverty and lack of job growth, the Timorese government has lacked the administrative capability to implement programs that are approved in its budget. Despite a steady stream of revenue from its oil and gas sector, which currently averages more than a $100 million per month, the government still lacks the ability to channel this revenue into programs that could address its poverty and unemployment problems. Most of the country’s civil servants are illiterate and have only a junior high school education. In addition, most of their administrative experiences came under Indonesian occupation, when corruption was prevalent and the normal standard. As a result, there has been long delays in government spending on improved infrastructure and services, while rural infrastructure, market buildings,

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country roads, clinic, schools and homes destroyed in the 1999 post-referendum violence remain untouched. Many observers have also blamed the incompetence and irresponsibility of government officials for the country’s increased vulnerability to the volatility of international markets. Corruption within government has also become common for many Timorese. Transparency International ranks East Timor 123rd out of 179 countries that are perceived as the most corrupt countries in the world. It was reported recently that East Timor is losing an estimated US$45 million annually from smuggling and poaching activities that have been traced back to government officials and public servants, equivalent to 11% of the government’s current annual budget or more than the entire police and defense budget combined.\textsuperscript{757} For these reasons, East Timor remains largely dependent on international advisors for the functioning of its economy. Since its independence in 2002, the Security Council has deployed hundreds of so-called ‘stability’ or ‘development’ advisers to help carry out basic functions of the state while mentoring their Timorese counterparts in acquiring the technical skills needed for the proper administration of state institutions.\textsuperscript{758}

This lack of administrative capacity has also affected the country’s human development. Although the government spends a considerable amount of its budget on services that are aimed at human development, the quality of such services remains well below acceptable standards. The UNDP assigned East Timor a low human development ranking in 2006. Standards of health in the country are among the lowest in the world as infant mortality rates are relatively high with many

\textsuperscript{757} Asia Times Online, ‘The Cost of Crime in East Timor,’ 30 April 2008.
Timorese children dying of preventable diseases. Life expectancy was around 57 years in 2005. Education standards are also dismal due to a lack of highly skilled and experienced teachers, limited schools, and high teacher to student ratios. Only 48 percent of the adult population (15 years and older) is literate. Summarizing all of this in his report to the Security Council, the Secretary-General updated East Timor’s current administrative capacity:

With support from the international community, the country has established much of the institutional infrastructure that constitutes the core of a democratic State. Until the emergence of the recent crisis, State institutions had been able to carry out their functions regularly, albeit with varying degrees of performance. Nevertheless, State institutions have not been able to overcome fundamental problems in the areas of governance and capacity development. While the time to build human and institutional capacity has been limited, other constraints have also emerged. These include… the uneven success in translating progress in State building into human development, including reduced poverty, inequality and unemployment rates, especially among youth, inadequate access to formal education and other basic health and social services.759

Assessments

The aim of this chapter was to understand the second aspect of the dual mandate: enhancing local capacity through state-building measures. In most instances where multinational organizations are tasked with the responsibility of governance, they are also expected to (re)build the core institutions of the state with the intended hope that the target society will use them as a way of continuing with the peace-building process. The chapter explored the various types of activities that constitute international led state-building projects, and whether these projects can establish a sovereign authority that effectively delivers political goods that are considered essential to empirical statehood. In this chapter, this authority was divided into two

components: coercive and administrative authority. Coercive authority was described as the ability and willingness of a central government to provide their citizens with basic political goods such as physical security from outside attacks and from crime; it was also defined as a citizen’s desire to exist under a robust rule of law. Administrative authority was described here as going beyond the traditional understanding of the sovereign state, but one in which the government can provide a stable economic environment and basic education and health services.

The evidence showed that international administrations performed ineffectively in developing the post-conflict territories in terms of their coercive and administrative capacities. All three territories still rely heavily on international security forces and donor aid for their continued survival. As a result, their institutional capacity is severely limited. In Bosnia, impressive strides have been made since 1995 in terms of improving the institutional capacity of the state level, which has gained considerably through the transfer of responsibilities from the entities and international assistance that has helped the country’s coercive and administrative capacity become more responsive to citizens. With the help of the OHR and other international actors, Bosnia’s central government now raises and distributes taxes through the ITA, controls the country’s borders through its State Border Service; provides public security through the State Court, and defense through an integrated Defense Ministry and unified army. Yet Bosnia is still not a functioning state with the proven ability (and willingness) to provide basic services for all its citizens. Its institutional fragility is a direct result of the country’s regulatory structures, which remain relatively weak, thereby allowing nationalist politicians to plunder the country’s public resources for
reasons of patronage to strengthen their power bases without any effective oversight and accountability. It is also a corollary of the fragmentation of its political system, which has led to continuous conflict and competition for political authority and resources. Moreover, Bosnia’s political establishment – with the exception of the Bosniaks – has been unwilling to surrender entity powers over to the state level authority.

The outcome of the state-building projects in Kosovo and East Timor is even more disconcerting. This, of course, has a lot to due with fact that neither territory has had any previous experience with statehood. Even so there are a number of other factors that have limited the authority of both territories. In Kosovo, the mere continued presence of UNMIK as a governing authority and its reserved powers outlined in Resolution 1244 has severely limited the territory’s autonomy. In addition, the existence of parallel institutions within both Serbian and Albanian communities limits the PISG’s control over the territory. For example, Serbian enclaves, particularly the northern half of the divided city of Mitrovica, continue to receive administrative support and services from Belgrade. Former KLA fighters have also created underground criminal structures that have limited the ability of the government to exercise sovereign control. In East Timor, the country remains heavily dependent on the UN years after UNTAET’s departure over five years ago. While Dili performs its governmental duties it also shares its sovereign authority with UN successor mission in areas of security, justice, and other state competencies. The government currently lacks human resources to manage its administrative institutions, thus compromising its political authority. For this reason, many Timorese have
reverted back to traditional authority structures, which continue to compete against and challenge Dili’s authority.

The evidence presented in this chapter suggests that the ability of the international community to reconstruct and develop viable state institutions with proven empirical capacity is limited. As ‘service stations’, the state structures that were established by international authorities simply function at a low capacity, thereby depriving target societies of basic political goods. Consequently, they face serious challenges in generating legitimacy. But this lack of legitimacy goes beyond poor institutional performance; it is also a corollary of the type of technocratic state-building approach employed by international authorities. As discussed throughout this study, this technocratic approach to development treats problems that are inherently political with technical, administrative, and bureaucratic solutions. The approach is premised on introducing a particular set of institutions and quickly inculcating the skills and expertise needed to manage them through the training and mentoring of local stakeholders. External actors generally drive the process while local stakeholders and institutions are given a marginal role. Furthermore technocratic state-building treats target societies as black boxes that are devoid of contextual attributes. In effect, the approach assumes a degree of universalism with the added intent of homogenization. The examples of this approach were evident in the case studies examined here. In Bosnia, for example, the reform process was for the most part an externally driven agenda in which institutional designs were imposed on recalcitrant local authorities. The case studies also demonstrated that international administrators had very little understanding of the local contextual factors on the ground. This was apparent in
Kosovo where international authorities underestimated the difficulties in trying to privatize Kosovo’s SOEs. In addition, western institutions and values often collided with local institutions and customs, creating conflict and social tension between international and local actors. This was clearly the case in East Timor when western systems of formal justice were perceived as alien and illegitimate institutions by a growing number of Timorese. The evidence in this study suggests the following: that when states are externally constructed as mere administrative centers, they will be unable to strengthen their relationships with their societies as they derive their legitimacy from their relationship with the international community rather than from their own people. The implications of this approach are examined further in the conclusion chapter of this study.

The aim of this chapter was to also examine the impact of norms associated with sovereignty as responsibility on international state-building policies. Indeed, our discussion of different types of state authority – coercive and administrative – is central to our understanding of today’s liberal conception of sovereignty as a responsibility. To be a legitimate sovereign authority, governments need to demonstrate to both the international community and in particular to their own citizens that they can deliver the basic political goods described above. This suggests that international recognition of legitimate state authority is contingent on the domestic political performance of the central political authority. It has been argued throughout this study that these goods constitute a set of standards that emerged prominently in the post-Cold War era that represent the identities and interests of western powers. They encompass norms such as human rights, democracy, the rule of
law, and a free market economy. As demonstrated in this chapter, these standards have played a pivotal role in shaping the state-building policies of international administrations. Indeed, the normative standards represent a type of blueprint for state-building. The emphasis on human rights, for example, has been evident in the policies toward establishing effective law enforcement and judiciaries in all three case studies. In Kosovo and East Timor, international administrators have spent enormous resources on rebuilding and training local law enforcement in democratic policing practices to protect the rights of minority communities from violence and harm. Similarly in Bosnia, UNMIBH installed a comprehensive vetting process to remove police officers suspected or accused of committing war crimes and other human rights violations. In the legal sphere, the role of human rights was apparent in the judicial reforms introduced in Kosovo and East Timor, where international jurists were deployed to mentor their local counterparts as a way of strengthening the procedural human rights of detainees. This was equally evident in Bosnia where the OHR established a State Court/ War Crimes Chamber. The emphasis on the rule of law was also reflected strongly in the state-building policies of the three international administrations.

In Kosovo and East Timor, international authorities devoted considerable resources and time to build independent and impartial judiciaries through establishing independent institutions responsible for judicial appointments and disciplinary procedures. The rule of law norm was also reflected in the OHR’s policy to dismantle Bosnia’s payment bureaus. The desire behind this policy was to mitigate corruption while removing the financial benefits nationalist parties and their supporters benefited
from their control over the country’s payment system. Finally, the appeal of a market economy inspired a whole set of international policies, particularly in Bosnia and Kosovo, where limiting the role of the state in the economy and creating a regulatory framework conducive for the development of a private sector and market economy was a way of preparing both territories for eventual EU membership. This was evident in the OHR’s policy of dismantling Bosnia’s payment bureaus to diminish state influence in the economy and in the EU’s policy of privatizing Kosovo’s SOEs.

The state-building activities of international administration should thus be seen as part of a liberal western project in which the norms associated with sovereignty as responsibility have had a considerable impact on the state-building policies of international actors. Yet sovereignty is an institution of competing norms and, for that very reason, the goal of holding local officials and institutions to the strict normative standards of sovereignty as responsibility were often superseded by local pressures for more self-determination – a well established norm itself. This was clearly the case in both Kosovo and East Timor where local pressures for self-governance within the international interim government had a great impact on the decision-making processes of UNMIK and UNTAET (i.e., transferring competencies of the state to local institutions sooner than originally planned) regardless of the fact that both territories severely lacked empirical sovereignty. At the same time, one can argue that material and security-related interests also shape the policy choices of international administrations. For instance, in Kosovo and East Timor, the initial desire to quickly localize the judiciaries in both territories reflected the lack of political will on behalf of major donors to contribute financially towards the deployment of international
judges and prosecutors – an expensive and time-consuming undertaking. Such interests also contributed to UNTAET’s earlier-than-expected departure from the territory given that the Security Council’s limited patience with expensive nation-building projects expired. Finally, one can argue that UNMIK abandoned its standards before status policy out of security fears that if left to fester, the unresolved status issue could potentially destabilize the region. These counter examples show that the activities and policies of international administrations do not always follow the logics of appropriateness. Indeed, the juridical personality of East Timor’s statehood and the West’s premature recognition of Kosovo as an independent countries shows that the international community, despite its rhetoric, is not very serious about resurrecting a new regime of positive sovereignty.
Conclusion

The aim of this study was twofold: (1) to understand the administrative acts and state-building policies of international organizations involved in territorial administration; and (2) to determine the effectiveness of those measures in strengthening the sovereign authority of war-torn territories under their political control. To this end, the first part examined the issues and concepts that form the heart of this study and set up the theoretical framework for such an analysis. The second part analyzed the impact of norms associated with sovereignty as responsibility on international administrations and the effectiveness of such missions on the outcome of post-conflict transitions through a comparative analysis of territorial administration and state-building in Bosnia, Kosovo, and East Timor. To conclude the analysis, this final chapter briefly summarizes the findings of this study. It then discusses the policy implications of international governance missions and their development efforts and subsequently recommends various ways of improving the legitimacy and effectiveness of these missions. The chapter ends by suggesting different avenues for further research.

Summary of the Study’s Findings

Chapter 1 clarified the concepts of international administration and state-building. It distinguished international administrations from other contemporary international interventions that engage in similar activities on the ground. In particular, international administrations can be theoretically differentiated from other
interventions by the scope of their responsibility for the functioning of the territories and by the degree of political authority they are vested with. This translates into a firm influence on the ground that allows international administrations a greater ability to shape the trajectory of a post-conflict transition than other less extensive interventions, such as conventional peacekeeping. The chapter also discussed the sources of authority that international administrations wield and the various ways in which their exercise of power can be legitimized by consent, delegation, social purposes, and governance. The chapter subsequently examined the goals and different strategies of international state-building and highlighted how the core assumptions that underlie contemporary state-building projects are similar to those that motivated the modernization programs of the post-1945 era. More specifically, both are ideological projects that view development as a sequential process that sidelines democratic participation, treat western models of political and economic organization as superior to indigenous ones, and view non-western states as backward societies that are devoid of any contextual attributes. The main difference between the two developmental approaches is that whereas modernization programs emphasized the important role of the state as a leading agent of socio-economic transformation, contemporary state-building projects rely on the international community to navigate the process.

Finally, the chapter asserted that due to their bureaucratic nature, the lawmaking and state-building policies of international administrations are in part shaped by a technocratic style of management. This has been described as a highly centralized and apolitical type of policymaking that is carried out by international bureaucrats and
administrators who promote a top-down process of introducing political and institutional change at the state level while ignoring societal pressures and problems located at the local level of the host territory. It was shown that technocratic interventions claim their effectiveness based on three premises: first, that these interventions are ‘efficient’ in terms of time and costs; second, that these interventions bring with them the needed ‘expertise’ in post-conflict environments that often lack the human resources for development; and third, that these interventions serve as ‘neutral’ intermediaries in conflicts where trust among warring parties is tenuous at best.

Chapter 2 further developed the theoretical framework for this study by postulating the important role of contextual factors in affecting the outcome and legitimacy of externally driven post-conflict transitions. The chapter identified two sub-categories of contextual factors: internal and external contextual factors. Informed by various theories in the post-conflict literature, the chapter distinguished between ‘favorable’ and ‘unfavorable’ ecologies for these missions. The chapter then discussed the important role of norms associated with sovereignty as an important external contextual factor. It showed how sovereignty was redefined from a formal legal entitlement (negative sovereignty) to one in which states become legitimate sovereign authorities by performing certain standards of good governance to their own populations and the international community (positive sovereignty). This standard of good governance reflects the normative order that embraces a set of western values and practices that are seen as universally beneficial for all societies: democracy, human rights, the rule of law, and a market economy. The reinterpretation
of sovereignty as a ‘responsibility’ had two major implications: first, it legitimizes international interventions that violate juridicial sovereignty in order to rebuild empirical sovereignty; and second, it links the legitimacy of domestic governments to the international recognition of their authority.

Chapter 3 offered a brief historical overview of past international administrations since the League of Nations and introduced the main case studies. A number of important findings were revealed. First, international administrations have been established in territories that do not constitute states (Free City of Danzig, Saar Territory, the district of Leticia, Western Irian Jaya, South West Africa/Namibia, Eastern Slavonia, East Timor, and Kosovo) and in territories that constitute sovereign independent states (Cambodia and Bosnia). Second, international administrations in the past were often established in territories that had recently emerged from conflicts over sovereignty disputes. More importantly, the record showed that international administrations perform more effectively at addressed perceived sovereignty problems than governance problems, particularly in terms of transferring a non-independent territory to the sovereign control of an existing government. Third, the record supports the hypothesis that robust international administrations are not enough to create the conditions for mission success insofar as international actors require favorable objective conditions on the ground to succeed. The more important included a small size territory, a fairly unified local population, a conflict where one side either faced or suffered a decisive military defeat, the disposition of the local population to accept (or at least not oppose) the international presence, and the support of the international intervention by regional powers and the international
patrons of local actors. Finally, the chapter asserted that of the three main case studies under investigation, East Timor presented the most favorable ecology for territorial administration and state-building. Kosovo presented the most unfavorable ecology and Bosnia’s ecology was found to be between East Timor and Kosovo in terms of the level of difficulty.

Chapter 4 examined the governorship aspect of the dual mandate by analyzing the administrative performance of international governing authorities in the judicial sector. The main case studies showed that the policymaking of international administrations was shaped by the normative standards that constitute sovereignty as responsibility. The analysis demonstrated how the international community compromised self-governance and local ownership over the judiciary to enhance the effectiveness of the courts as a response to the perceived failures of local actors in upholding standards, such as the rule of law and human rights. This was evident in a range of international measures intended to elevate human rights and rule of law standards over the principle of self-governance. These included the promulgation of new criminal codes and disciplinary rules to punish officials who breached the law; the establishment of new departments and agencies within the judicial sector to combat the influence of local politics and corruption in the system; the installment of rigorous vetting procedures to filter out jurists who had committed previous war crimes or human rights violations; the integration of international human rights standards into the domestic legal system; the establishment of independent judicial commissions to appoint competent jurists with records of abiding by the rule of law;
and the introduction of international judges and prosecutors to handle complex cases involving war crimes and human rights violations.

However, the case studies have also shown that international lawmaking has not always been consistent with the good governance standards that are promoted in the target territories. International administrators have at times violated the rule of law and human rights by interfering in the local courts for political purposes and holding local citizens through extra judicial detentions. International administrators also ignored and bypassed local court rulings, promulgated legislation that was exempted from the jurisdiction of national courts, and rejected local efforts to set up institutions to independently review their actions. Criticism has also been directed at international jurists for failing to meet rule of law standards such as judicial independence and impartiality. Despite its role as a surrogate government, the evidence suggested that international administrative rule is more in line with the behavior of other international governance institutions through the invocation of international immunities and privileges than with the modern standards of democratic governance.

The chapter also demonstrated that the tradeoff of internationalizing the management of the judicial sector, as opposed to the strategy of local ownership, is not necessarily clear-cut. The case studies showed that the involvement of international actors in territorial administration is not in all instances an asset in terms of the efficiency, expertise, and neutrality claims that often characterize these interventions as ‘effective’. In particular, the case studies discredited the efficiency premise, highlighting the failures of such missions to plan and prepare adequately, staff appropriately, gain access to sufficient resources, and arrive at their destinations
as quickly as possible. These inefficiencies were compounded by coordination problems, inter-organizational rivalries, numerous transactions costs, and lack of funding. In terms of the expertise premise, the evidence showed that it was difficult for international administrations to recruit individuals with knowledge of the local traditions and customs of the target society and practical experience adjudicating cases involving international human rights law. Finally, the case studies revealed the limits of the neutrality premise. Contrary to the premise, international administrators are inescapably embedded in the social and political problems of the target society, and are often in the position of choosing sides and making critical decisions that will have profound implications on the host territory’s political future. The chapter concluded by asserting that international administrations have not performed effectively in terms of delivering the rule of law and upholding its principles of judicial independence and impartiality. In effect, international administrations have a difficult time achieving legitimacy beyond their procedural sources of authority.

Chapter 5 examined the state-building aspect of the dual mandate by investigating whether international efforts were successful in establishing and strengthening both the ‘coercive’ and ‘welfare’ functions of target governments. The case studies showed that the state-building efforts of international administrations resulted in the creation of very weak state institutions that are dependent on international support and lack overall legitimacy. The analysis attributed this failure mainly to the technocratic approach of state-building, which draws in a constellation of external actors who establish political institutions and marginalize the role of local stakeholders during the process. As a result, local citizens become passive recipients of externally-created
institutions that have shallow roots in the societies for which they are being built. In effect, the top-down process of international state-building not only generates gaps between international and domestic actors during the transition period, but also creates gaps between domestic elites and their societies, as the former become more accountable to the regulatory demands of international actors than to the wishes of the latter.

The chapter also demonstrated that the norms associated with sovereignty as responsibility guided the state-building policies of international administrations. The case studies showed how international actors devoted a considerable amount of resources to developing the local capacity of the target territories by establishing police and judicial institutions while training local personnel in upholding the principles of human rights and the rule of law. International actors also created regulatory frameworks and economic institutions, in the Balkan cases in particular, that supported the development of the private sector and a market economy. Together these externally created institutions reflected the identities of the Western powers that constitute the primary actors involved in state-building projects. Yet, while these norms serve as a blueprint for state-building, they do not necessarily provide the impetus necessary for building the capacity of these institutions to fulfill the standards that international actors set forth. It was found that international policymaking is also influenced in part by local pressures for more self-governance and by the lack of political will on behalf of the international community to expend more material resources on state-building missions. The chapter ended with the assertion that the
international community has demonstrated in practice – via international administration – that it is not willing to revive a regime of positive sovereignty.

**Policy Implications**

The policy implications of international administration and state-building are four-fold. First, the applicability of such missions as a policy instrument to deal with precarious states in the foreseeable future is limited. The analysis showed that great powers in the past did not entrust international organizations with administering postwar arrangements of vital strategic interest. For instance, the notion of an international administration taking on the sovereign responsibilities of post-war Germany and Japan, or even post-Baathist Iraq after the March 2003 U.S invasion, was inconceivable. All three states were of significant strategic interest to the United States when it decided to occupy and administer these societies. Instead, great powers have utilized such interventions for territories of less geo-political import. The utility of international administration as a policy tool for future conflicts or incidents of state collapse is further limited by contextual factors. The prospect for

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60 Although the Allied occupation and administration of Germany and Japan were both multilateral efforts, they were essentially US-led missions where Washington invested much more resources (in terms of money and manpower) and manifested more political will than its partners in carrying out these operations. Similarly, in post-Baathist Iraq, the US military and civilian administration (led by the Coalition Provisional Authority (CPA)) were supported by a ‘Coalition of the Willing,’ which at one point, included countries such as Britain, Spain, Poland, Italy, Australia, and a host of other smaller countries that contributed in varying degrees with providing security, post-conflict reconstruction, and humanitarian assistance.

61 This is not to suggest that self-interest did not serve as a motivating factor for deploying international administrations. For example, in the European territories provided by the Treaty of Versailles, both Danzig and the Saar were of regional importance to the key victors of the war—in particular, the great regional powers of Great Britain and France and the burgeoning international power of the United States—who were determined to play a key role together in the outcome of those projects. In the Balkans wars of the 1990s, Western Europe feared a further spillover of violence from the de-stabilization of the region and made it a point to extensively involve itself in those countries by directing their transitions toward a higher end goal: membership to the EU.
successful application of this intervention is limited, as Stephen Krasner suggests, to the easiest cases. That is, those post-conflict cases where the size of the territory and population is relatively small and manageable; a prewar infrastructure and accessible terrain exist; key warring factions share to some extent a mutual vision for their society; the target society is not deeply polarized in terms of ethnic and sectarian differences; there is a widespread acceptance of the international governing presence and little likelihood that spoilers will be able to undermine the transitional process; there is a history of some empirical sovereignty; and great powers have some strategic interest in the territory in question.

Second, the legitimacy of international governance in the context of territorial administration is limited in scope and can be lost easily. The analysis showed how the procedural sources of international legitimacy – delegation of authority by the Security Council and the consent of the key warring parties – does not necessarily foster domestic legitimacy on the ground and that domestic legitimacy can be easily lost if international administrators rely solely on their procedural sources of authority. This is because the legitimacy derived from the Security Council is increasingly limited as the international body is increasingly criticized for its lack of global representation and ineptitude as an instrument for dealing with peace and security issues. In the same way, legitimacy by consent of the main warring parties is tenuous at best and can be lost easily if international authorities are perceived as ‘taking sides’, a particular warring party decides to renege on the political objectives of the peace process, or key warring parties are themselves internally fractionalized.

The durability of international administrations as legitimate surrogate governments is therefore largely contingent on the manner in which they exercise their moral authority according to the social purposes they represent and on their ability to deliver basic goods and services to the target population. Yet the case studies have shown that even these sources of authority are compromised in several ways. To begin, the unaccountable nature of international administrations has weakened the legitimacy and quality of their authority. International administrations share few of the principles of democratic governance. Although they serve as surrogate governments that possess many of the same responsibilities and powers of national governance, international administrations are essentially *ad hoc* structures that are neither elected nor appointed by local representatives, and are thus not formally accountable to the domestic authorities and citizens of the administered territories. Likewise, the case studies showed that the political authority of international administrators is usually not subjected to democratic principles such as the separation of powers and judicial independence, and their executive decisions and legislative acts are usually not checked by mechanisms such as judicial review.\(^{763}\)

In addition to the absence of accountability mechanisms, the authority of international administrations has been undermined by their very own conduct, which has shown to be at times inimical to the social purposes that are reflected in their mandates and to the principles embodied in the UN Charter and international human rights law. This contradiction between how international actors behaved and how local actors were told the way they should act has prompted accusations of neo-

\(^{763}\) This excludes the international administration in Bosnia, where the Constitutional Court can review the acts of the OHR and declare them unconstitutional. See Chapter 3.
colonialism against international administrators. Moreover, there is the potential danger that the local population may ‘draw the wrong lessons from the more peremptory methods employed by international administrations.’ As Marcus Cox and Gerald Knaus observe, ‘If the High Representative can set aside the constitution and the democratic process in order to advance a particular policy agenda, then why shouldn’t Bosnian politicians when they get the chance?’

Next, the legitimate authority of international administration is undercut by the lack of local ownership that is characteristic of these missions. With the concentration of executive and legislative power on international authorities, in particular in Kosovo and East Timor, international administrations often produce an imbalance of power in which international actors largely drive the decision-making process at the expense of local initiative. While different forms of power sharing institutions were introduced by both administrations, as discussed Chapter 3, such consultative mechanisms did not offer meaningful local ownership over the process of lawmaking and state-building. This lack of meaningful ownership produces frustration and resentment among local elites who quickly challenge the authority of international administrators by demanding more self-governance. This was evident in Kosovo and East Timor where local elites protested the imbalance of power and called into question the right of international administrations to exercise a preponderance of governmental authority. In both situations, international authorities were forced to devolve certain state competencies back to local stakeholders in spite of any proven empirical ability.

Finally, the authority of international administrations has also been challenged by their lack of effectiveness as interim governments. This goes to the heart of the matter of whether the international community – via intergovernmental organizations such as the UN – is capable of replacing the sovereign state for either a specified or indeterminate period of time. Based on the evidence provided here, the answer is obviously no. International governance in the context of territorial administration is run by a wide range of intergovernmental agencies, national agencies, and NGOs, each of which has their own set of interests, criteria for success, procurement procedures, organizational rules and (sub) cultures, and so on. It is this diversity of authority and interests that makes the notion of international governance a remote and unaccountable exercise of power. It also means that international administrations are susceptible to the political calendars of external actors. The ineffectiveness of international governance is further challenged by the inability of international administrations to devise and implement public policy and provide basic political goods to their host societies. As the case studies have shown, through the administration of the judicial sector, this can be attributed to the inefficiencies of such missions, including inadequate planning, delayed arrivals, and lack of resources; the lack of expertise exhibited by international administrations, particularly with regard to understanding the local conditions and customs of the target territory; and the failure of such missions to present themselves as neutral intermediaries. It is therefore difficult to rationalize international policies that delay local ownership, or suspend sovereignty for extended periods of time, especially given that international actors themselves have performed poorly as interim surrogate governments.
Third, the internationalization of state functions and the assumption of executive and legislative authority can potentially create a culture of dependency in the host territory. Just as extensive deployment aid can lead to donor dependency on external economic assistance, international administrations can indirectly cultivate a political dependency relationship whereby local stakeholders become accustomed to international officials developing and implementing public policies and making difficult and politically costly decisions for them. This can stifle local capacity rather than enhance it. As one observer notes, after more than a decade of international intervention in Bosnia, ‘not one piece of substantial legislation has been devised, written and enacted by Bosnian politicians and civil servants without external guidance.’

Local elites may welcome international administrators that will take the tough and controversial decisions out of their hands, thus avoiding the public backlash from unpopular but needed reforms. This allows domestic politicians to pursue only those policies that favor their constituents while at the same time blaming and hiding behind internationals when things go wrong. This type of unaccountable behavior is a consequence of international-led transitions that give local politicians little or no stake in the formal political process. More disconcerting is that the culture of dependency may become even more difficult to overcome the longer these conditions persist.

Finally, the state-building policies of international administrations can be counterproductive in two ways. First, the state-building agenda of international administrations generally consist of ambitious goals that ignore the realities or local

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contextual conditions on the ground. As evident in the mandates and regulations of international administrations, the end goal for such missions is to rebuild modern state institutions that represent the highest standards of human rights, democracy, and the rule of law. This aim is obviously impractical and imprudent given that such missions are often constrained by time and limited political will. As Marina Ottaway notes ‘the international community has developed a set of prescriptions for state reconstruction that is so exhaustive that it cannot possibly be followed in practice.'

Such ambitious standards can inflate the target population’s expectations to unrealistic levels that usually manifest into large-scale disappointment that can weaken international authority and create tensions between international and local actors. Moreover, the state-building policies of international administrations usually overlook existing domestic institutions and processes that functioned adequately before the conflict, suggesting that such policies ignore the variety of political and legal forms that democracy and the rule of law come in. This was evident in UNTAET’s vision of creating an ambitious modern judicial system in East Timor, a country with no history of the rule of law or the resources to support such an expensive and ambitious project. The western-style justice system imposed on East Timor ignored the country’s legal and indigenous customs that have functioned for generations under various empires and occupations. The failure of East Timor’s national judiciary to deliver justice prompted many Timorese citizens to boycott the newly imported institutions for traditional mechanisms to resolve local disputes.

Second, the state-building policies of international administration can give rise to the establishment of what David Chandler has described as ‘phantom states’. According to Chandler, phantom states are not sovereign states because their governments are not accountable to their citizens but are instead answerable to meeting the externally imposed standards espoused by global governance institutions. The international community essentially replaces the institution of sovereignty by an ‘alternative network of internationalized relations in which the liberties and interests of citizens are no longer the essential foundation of the political order.’ This suggests that phantom states do not rely on the will or passions of their own citizens and rarely engage their own societies during the state-building process. Under international regulatory control, state-building thus translates into the establishment of institutions with few social or political foundations of the society in question. As a result, the newly established institutions will most likely carry no legitimacy by the population of the target society, who will see them as foreign structures and likely disengage from the formal political process. Christopher Bickerton observes:

The creation of sovereign, coherent political institutions depends upon engaging the subjectivity of the individuals within the society in question. If people’s hopes, interests and desires are mediated through so many external forces, the resulting institutions will be that many more steps removed from the individuals for whom they are established. These institutions, as a consequence, will be less the creations of the people in question, and more products of external interests.

Phantom states are, as with the other challenges and problems that arise from international administrations and state-building described above, a product of the technocratic and administrative style of intervention promoted by the international

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768 David Chandler, Empire in Denial, pp. 192-93.
769 Christopher Bickerton, ‘State-building,’ p. 100.
770 Ibid. p. 96.
community. As the case studies have shown, the technocratic style of intervention subordinates local demands and problems to an international agenda that pays nominal attention to the underlying sources that started the conflicts in the first place and instead focuses on an internationally-supported top-down process of institution-building. The emphasis on macro-level institutions has led to the creation of governments that lack genuine self-governance, exhibit weak governmental capacity, and are disconnected with the realities of their own citizens and the security issues they face. Phantom states are not ‘collective expressions of their societies’ but rather expressions ‘of an externally driven agenda.’ For this reason, they are unable to ‘cohere post-conflict societies and overcome social and political divisions.’

**Policy Recommendations**

In light of the above implications, the possibility of international administration being employed as a top policy instrument to address failed or precarious states is unlikely, especially in the strategic and political environment of the post-9/11 era. While the US has used state-building as a tool in its ‘war on terrorism’, the manner in which it is has prosecuted the war in a unilateral and coercive way is inimical to the multilateral support and norm-based style of intervention that epitomizes international administrations. Hence, international administrations are not well-suited for the war on terror, and it is unlikely that other state actors have the desire to utilize intergovernmental organizations, like the UN and its state-building capacities, for such purposes.

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771 David Chandler, *Empire in Denial*, p. 44
772 Ibid. p. 43.
Having said that, state-building and various forms of international administration are likely to remain prominent features of international relations in the years to come. It would be disingenuous to suggest that circumstances that demand or are conducive to such interventions will never recur. For example, back-to-back international administrations in Kosovo and East Timor in 1999 were not easily foreseeable. There will inevitably be future instances when international actors are called upon to engage in complex operations that – while not assuming all the sovereign powers of the state – may require them to exercise state-like functions, including policing and judicial duties, establishing a national economy, hosting elections, managing certain industries, and so on. Moreover, the importance of state-building has transformed the foreign policy bureaucracies and the agencies of government around the world. For instance, since the beginning of the millennium, The US and UK have established the Office of the Coordinator for Reconstruction and Stabilization and the Post-Conflict Reconstruction Unit respectively to respond to crises involving failing, failed, and post-conflict states. In addition, the UN has also responded to the demand for state-building by creating a ‘Peacebuilding Commission’ that was approved at the sixtieth meeting of the UN general Assembly in late 2005. The body is responsible for advising the UN in its various peace-building missions and to better coordinate information and funding. These efforts show that the international community views international intervention and state-building as important tools for addressing the conflicts of tomorrow.

It is imperative then that those who undertake interim governance responsibilities and engage in state-building learn from past experiences to improve their
understanding of these difficult undertakings. The following section begins by
drawing lessons learned from the main case studies. While drawing lessons from a
limited number of case studies cannot provide fully satisfactory lessons, they can be
used to identify broad patterns that have led to successful outcomes. The section then
recommends specific proposals to enhance the legitimate authority of international
administrations and the effectiveness of their state-building practices.

Lessons Learned

The three main case studies indicate that the following ten lessons should be
considered when planning for similar operations in the future.

Lesson 1. A successful international administration begins with a mandate that
clearly defines an end state, stipulates the powers of international actors
unambiguously, promotes modest political goals, and ensures the proper political
authority to quickly achieve results and to enforce compliance when necessary.

Lesson 2. Support of the mission mandate by the local population and key warring
parties is critical. However, this alone is not sufficient. In addition to the support of
the UN Security Council’s permanent members, international administrations should
also have the support of regional powers. A supportive neighborhood can do a great
deal in creating favorable conditions for a successful transition.

Lesson 3. International administrators should plan ahead of missions as early as
possible and be given sufficient resources and personnel if an operation is to address
the problems of the target society rather than deal with their own organizational
shortcomings. Planning also involves better collection and management of
information about the societies they are governing.

Lesson 4. The necessities of quickly deploying international civilian personnel on the
ground and asserting control of the territory from the outset are of critical importance.
To facilitate this, the UN should develop a standby network of pre-trained
multinational police officers, judges, and lawyers that could be deployed on short
notice. In addition, the organization should also develop a standard body of applicable
law, or a standard UN Criminal Code, that can serve as an interim legal model to
address the political vacuums and problems of lawmaking in post-conflict societies.
Lesson 5. Effective international governance requires a holistic approach and unified strategy. Internal actors are likely to deflect pressures to change their behavior and rebel if external actors lack cohesion and appear to be divided. This means that both military and civilian structures should be coordinated under a unified command of a single head or Transitional Administrator. It also requires close cooperation with other international organizations and agencies and NGOs operating simultaneously on the ground. Finally, the relationship between those civilian administrators deployed in the provinces and those in the capital need to be better integrated.

Lesson 6. The quality of command is just as important as the unity of command. Therefore international administrations should require a head Transitional Administrator whose qualifications in leadership and managerial skills are exceptional. In addition, missions should include a robust number of trained international personnel who have a sufficient understanding of the region, history of international engagement in the region, and the language and customs of the target territory.

Lesson 7. International administrations must recognize that while providing security is an indispensable objective, progress in other sectors is just as important. This means that international administrations must be functionally relevant to the territories under their control by striving to meet the material and social needs of local populations. Target populations will be more likely to accept international authority for a longer duration if they see that international administrators offer them improved security and better access to economic opportunities and social services. Conversely, if international administrations fail to perform in these areas, target populations will more likely challenge the authority of international administrators and view them as illegitimate authorities.

Lesson 8. International administrations cannot hold on to power indefinitely. The end game of an international administration is to hand over all its responsibilities to local institutions and to return sovereignty to the local population. International administrators should therefore develop local ownership of the transitional process by gradually transferring responsibilities to local stakeholders as early as possible. Early devolution allows local actors to learn from their own experiences and helps to prevent the administrative equivalent of aid dependency. Creating institutions of consultation and co-administration can facilitate the process of local ownership. Creating genuine consultative mechanisms ensures local participation in the state-building process in a meaningful way. Similarly, co-administrative institutions that are supported by a strong international commitment to train local personnel and empower them through co-management of public services and other areas of governance can enhance local capacity. Overall, if peace is to be sustained and institutionalized, the process must be owned by the target society.

Lesson 9. While building security institutions is a top priority, the strengthening of economic governance is just as essential to the establishment of a self-sustaining
state. International administrations should focus then on developing institutions that can promote investment and employment, as well as collect taxes and tariffs. In turn this can help diffuse nationalist power structures or weaken links between formal and informal economies. In addition, international authorities should curb corruption as early as possible at all levels of governance through a number of measures, including the promulgation of anti-corruption legislation, the creation of local watchdog groups to monitor government corruption, and the establishment of a civil service that is based on meritocratic criteria.

\textit{Lesson 10.} Exist strategies should not be driven by the domestic political calendars of participating states. Nor should they be driven by local demands for self-determination or self-governance. For international administrations, exist strategies should be predicated on the ability of local actors to manage their own institutions and demonstrate a capacity and willingness in different areas of governance to formulate policy and implement it. Smaller advisory or assistance missions should supplement the international administration after its withdrawal to help ensure the peaceful consolidation of the target territory.

\textit{Policy Proposals}

In addition to the lessons learned from the main case studies, the following section recommends two major proposals aimed to enhance the legitimacy and effectiveness of international administrations in term of their governance and developmental activities. The first proposal addresses the legitimacy problem of international administrations due to their undemocratic nature and performance. If international administration is to serve as an appealing policy alternative for addressing future internal conflicts and cases of state failure or collapse, greater efforts need to be made to ensure accountability to the local population. In their scathing analysis of the OHR’s performance in Bosnia, Gerald Knaus and Martin Felix assert that ‘any post-conflict mission that aims to establish democratic governance and the rule of law must institutionalize checks and balances on the use of
extraordinary powers.’ Such mechanisms of accountability can be introduced at both the international level and the domestic level of government. At the international level, proposals aimed at checking the powers of international administration usually center on the supervisory powers of formal international institutions, such as the UN’s Security Council and General Assembly. One proposal that has been suggested is that international officials should borrow mechanisms from both the League’s Mandate system and the UN’s Trusteeship system. For instance, James Fearon and David Laitin recommend that the General Assembly should create *ad hoc* committees reminiscent of the League’s Permanent Mandates Commission, or the Trusteeship Council, that would closely monitor the work of international administrations through investigative services.

Another proposal involves a mechanism that would allow target populations to petition their grievances directly to the Security Council – an innovation unique to the Trusteeship Council. Others have suggested reactivating the Trusteeship Council to administer war-torn territories that lack central governments or have no local capacity. However, such reactivation would require revising the UN Charter, a daunting task in itself, and would have limited scope as the Charter prohibits the

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774 James D. Fearon and David D. Laitin, ‘Neo-trusteeships and the Problem of Weak States,’ p. 36.
775 *UN Charter*, Ch. XIII, Art. 87.
777 This would require a two-thirds majority in the General Assembly and ratification in two-thirds of the UN member states, including the permanent member states of the Security Council. See *UN Charter*, Art. 108.
application of the trusteeship system to member states. Finally, another proposal at the international level is to allow other international judicial or quasi-judicial institutions, such as the European Court of Human Rights (ECHR), to adjudicate claims against international administrators and to protect populations under territorial administration against human rights violations. Michaela Salamun observes:

If the international administration is conducted by members of the Council of Europe in a country which aspires membership in the Council of Europe, the ECHR and its Protocols should be made directly applicable in the territory by the international administration, which has been the case in [Bosnia] and Kosovo. Consequently… the ECHR could in theory assert its jurisdiction to human rights violations in territories subject to the administration of international organizations in those areas of international administration which are under the jurisdiction of the member states of the Council of Europe.

In terms of introducing mechanisms at the domestic level of government, a number of proposals should be considered to make international administrations more accountable to the local population. First, the lawmaking acts of international administrations should be under the jurisdiction of local supreme courts as well as hybrid courts operating on the ground. This mechanism of judicial review is particularly important if the executive or legislative acts of the international administration violate the rule of law or human rights, or are incompatible with locally enacted legislation. This has happened in Bosnia, where the country’s Constitutional Court – a hybrid legal mechanism – has reviewed the legislative decisions of the HR. Next, the international community should lift the immunities of international military and civilian personnel who fail to comply with the norms and standards they for the territory under administration. Third, the institution of the Ombudsperson should be

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778 UN Charter, Ch. XII, Art. 78.
779 Michaela Salamun, Democratic Governance in International Territorial Administration (Bozen, Germany: European Academy of Research, 2005).
780 Ibid. p. 184.
strengthened in terms of its ability to initiate investigations based on a wide purview of complaints, including improprieties, abuse of international authority, and assault on liberties. Moreover, the recommendations of ombudspersons to transitional authorities to take interim measures should be given greater consideration. Finally, the role of both international and local media and international and local NGOs can provide invaluable services by highlighting the alleged corruption of international officials and by shaping the policy perceptions of donor states that fund these operations. Although the introduction and modification of these institutions at both the international and domestic level of government are necessarily limited, they can help to increase the transparency and responsiveness of international administrations.

A second policy recommendation is that the international community should abandon the top-down technocratic approach of state-building where the priorities of international actors focus on a particular set of state-level institutions, or a template, and on what happens primarily in the capital of the territory. These emerging central institutions typically remain completely separated from the realities of life as experienced by people outside the capital, where significant portions of these populations live, as is the cases in Bosnia and East Timor. ‘State-building in this manner results in a superficial layer on the top of reality of social life.’ Any international intervention that engages in state-building must therefore not ignore local governance and community structures that exist in the peripheral areas of the target territory. This means that from the outset of the mission, international administrators should be cultivating participation at the grassroots level by

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strengthening civil society development and establishing capable local administrations that can bridge the local-national divide and create a greater sense of identification and ownership of the state-building process. This bottom-up approach to state-building is what Jarat Chopra has referred to as ‘participatory intervention’\textsuperscript{782}, a model of international intervention that guarantees a much greater role and genuine integration of the local population. Chopra notes:

\begin{quote}
[If there is to be any future for peace operations that are both legitimate and effective, then a much more participatory form of intervention has to considered. The idea of participatory intervention stands in contrast to the practice in state-building processes of relying on only international appointees or elites self-appointed as representatives of the people. Instead, the aim would be to include direct involvement of the local population from the beginning of an international intervention, in order to ensure justice for the parts and that new governing structure resonate with local social reality. Participation has become a minimum standard and a moral imperative… Having some meaningful effect will require, in the operational planning phase, valuable anthropological information to understand local social structures, as well as the deepest possible political analysis of all the actors in the deployment environment.]\textsuperscript{783}
\end{quote}

Although bottom-up approaches have been promoted for many years by NGOs and developmental agencies, such the WB, the UNDP, and USAID, there is little evidence in the case studies examined here that suggests that the international community understands the importance of promoting local governance and grassroots development in territories that are administered by international organizations. A better balance must be achieved between the demands of creating state-level institutions and the needs of incorporating social organizations and local structures to

\textsuperscript{782} Chopra and Hohe categorize participatory intervention into four different levels of international intervention: reinvention (introduction of new and standardized administration at the local level), transformation (gradual transformation of existing structures into a formal, local administration), integration (integration of local structures as a whole), and reinforcement (restoration of local political and social structures to their full capacity). Ibid. p. 299.

the state-building process if long-term stability and cooperation among the various segments of the target territory’s population is to be achieved.

**Avenues for Future Research**

Against the backdrop of the findings of this study, two avenues for future research emerge. First more research is needed to understand what drives the policymaking decisions of the various actors operating under these conditions. This means going beyond the binary theorizing of this study, which focused on how constructivist assumptions of new cosmopolitan ethics, rather than the traditional realist emphasis on realpolitik, offers a better explanation of the lawmaking and state-building policies of international administrators. For example, a promising research avenue is to examine the social interactions or bargaining games that occur between international interveners and the main local elites in the context of territorial administration. Such an analysis could not only reveal new insights into the decision-making processes of both international and local actors, but also offer new explanations about the shortcomings of international-led state-building policies.

The second research avenue is to focus on a different level of analysis. In this study, the focus was on intergovernmental organizations and the impact of their policies on war-torn territories. However, the focus could also encompass the role of non-state actors who are increasingly replacing traditional donor states and organizations in addressing the problems of conflict-ridden territories. Similar to the international administrations examined in this study, non-state actors (i.e., private organizations, international charities, and humanitarian NGOs) are ‘increasingly
taking over key state functions, providing for health, welfare, and safety of citizens.\textsuperscript{784} This fits in line with Stephen Krasner’s notion of ‘shared sovereignty’, ‘which involve[s] the engagement of external actors in some of the domestic authority structures of the target state for an indefinite period of time.’\textsuperscript{785} Shared sovereignty shares many of the same principles as international administrations but is partial rather than comprehensive in terms of assuming sovereign authority. Nonetheless, the increasingly invasive role of non-state actors in weak and precarious states raises similarly important empirical questions. For instance, to what extent do the normative standards of sovereignty as responsibility similarly shape the developmental practices of non-state actors who take over state functions? Do contextual factors have the same affect on the efforts of non-state actors as they do on international administrations? What are the effects of their developmental policies on the legitimacy and governmental capacity of the host countries? Are non-state actors better at developing state capacity than international organizations and state actors? And do the policies of non-state actors lead to some of the same negative outcomes as international administrations?

\textbf{Concluding Remarks}

This study addressed a number of important concepts, such as sovereignty, development, governance, legitimacy, and authority. Although the case studies presented here do not prove or disprove the ability of international organizations to


govern and rebuild war-torn societies, they do serve to show how building empirical statehood through international governance is limited both in time and scope. International administrations are interventions that are constantly being reminded of their transitional nature. They are always working against time and the thin patience of their external donors. International administrations are also constrained by the very norms they espouse, such as self-governance and self-determination, which limits their ability of strictly holding newly established local institutions to the governance standards they promote. As a result, many of these newly established institutions are quickly set up, with little concern as to whether they have any legitimacy or roots in the target societies. Success of these missions also depend on the inclusion of local actors in the transitional process notwithstanding the fact that some of these actors have vested interests that are inimical to the international agenda and will seek to thwart and delay reforms in the hope that international actors will go away. Moreover, as policy instruments, international administrations and state-building are limited in their ability to exact broader societal change in target territories. Due to their ephemeral nature and organizational shortcomings, it is unlikely that these interventions can significantly change bad habits, identities, or loyalties through the introduction or manipulation of institutions. Given this, the best path for international administrators is to develop institutional foundations and a political climate that would enable the target society the ability to solve problems for themselves. This highlights the importance of promoting local ownership of the state-building process as early as possible and formulating policies that pay close attention to the unique local contextual attributes of each society. In the words of John Stuart Mill:
Politics cannot be leaned once and for all, from a textbook, or the instructions of a master. What we require to be taught... is to be our own teachers. It is a subject on which we have not masters; each must explore for himself, and exercise an independent judgment.\textsuperscript{786}

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