

The London School of Economics and Political Science

**‘Institution Building in Kosovo: The Role of International Actors
and the Question of Legitimacy’**

Camille Andrée Marie Monteux

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Abstract

This thesis argues that establishing legitimacy, both in relation to the international community and in relation to local populations, is a critical precondition for the success of international missions in post-conflict situations. The argument is developed through a study of post-conflict institution-building in Kosovo. In 1999, when the Security Council established the United Nations Administrative Mission in Kosovo, the international community had a unique opportunity to develop conflict management mechanisms capable of responding to the contemporary challenges posed by ethnic conflicts. By acting under the United Nations umbrella, the international community could have sent a strong message to the deeply divided population of Kosovo: this mission had the ability to protect them and provide them with institutional structures capable of sustaining long-term economic, political and social peace and stability. Yet the international actors failed to do so. They failed to grant the Kosovo population the security they so dearly needed, and they failed to construct institutions appropriate to the challenges faced by the territory. This thesis argues that this occurred because of the international community's inability to provide legitimacy for their actions and policies. As the different actors focused their attention on attempting to secure legitimacy *vis à vis* the international community, they failed to nurture the roots of the new political system they wished to establish by obtaining the support of Kosovo's population as a whole. After developing a working concept of legitimacy, I analyse the degree and nature of legitimacy of the different international actors, and their policies at each stage that led to the establishment of a new political system in Kosovo. Through this analysis, I provide an explanation for the failure of the international community to offer a satisfactory and sustainable solution to the Kosovo issue.

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List of Abbreviations

Intergovernmental Organisations

CoE – Council of Europe
CSCE – Conference on Security and Co-operation in Europe
ESDP – European Security Defence Policy
EULEX - European Rule of Law Mission
IAC – Interim Administrative Council
ICR – International Civil Representative
JIAS - Joint Interim Administrative Structure
KTC – Kosovo Transitional Council
OSCE – Organisation for the Security and Cooperation in Europe
NATO – North Atlantic Treaty Organisation
SRSG – Security General Special Representative
UNDP – United Nations Development Program
UNMIK – United Nations Administrative Mission to Kosovo

Non-governmental Organisations and Research Institution

ECMI – European Centre for Minority Issues
KIPRED – Kosovo Institute for Policy Research and Development
NDI – National Democratic Institute
PER – Project on Ethnic Relations
IWPR – Institute for War and Peace Reporting

Local Political Parties and Affiliated

AAK - Alliance for the Future of Kosovo (*Aleanca për Ardhmërinë e Kosovës*)
DS – Democratic Party (*Demokratska Stranka*)
DSS – Democratic Party of Serbia (*Demokratska Stranka Srbije*)
LDK – Democratic League of Kosovo (*Lidhja Demokratike e Kosovës*)
ORA – Reformist Party (*Partia Reformiste*)
PDK – Democratic Party of Kosovo (*Partia Demokratike e Kosovës*)
PK – Coalition Pavratk (*Koalicija Povratak*)
PLD – Popular Movement of Kosovo (Levizja Popullore e Kosovës)
SDP – Social Democratic Party (*Socijaldemokratska partija*)
SNC – Serb National Council
SPS – Socialist Party of Serbia (*Socijalistička partija Srbije*)
UÇK – Kosovo Liberation Army (*Ushtria Çlirimtare e Kosovës*)
UÇPMB –Liberation Army of Presheva, Medvegja, and Bujanoc (*Ushtria Çlirimtare Presheve, Medveja e Bujanovec*)

Introduction

With the end of the Cold War and the fall of Soviet bloc, the international order saw the multiplication of new kinds of conflicts. Since the Treaty of Westphalia, the international community has secured stability through mechanisms meant to prevent states from entering into conflict with one another. As the tensions of the Cold War diminished at the turn of the 1980s/1990s, the international order was increasingly threatened by another kind of instability. Robert Hayden develops an interesting argument as regards the Former Yugoslavia.¹ He argues that the void left by the weakening ideology that had ruled the former federal state until then left a space for ethnic nationalism to offer itself as the basis for the new states that issued from its dissolution. As Hayden argues, the development of states on the idea of nationhood is intrinsically exclusive of segments of its society that cannot identify with the nation, thus triggering intra-state tensions. Ethnic tension within states is not an issue that appeared with the fall of the Iron Curtain; yet the weakening of the authority of nation states that followed this period unquestionably provided a suitable environment for ethnic conflicts to grow. With the intensification of such violence the international community increasingly recognised the need for coherent responses to the problems of power vacuums in post-ethnic conflict societies.

After the challenges they faced in Bosnia-Herzegovina, the international community was presented in 1999 with a new opportunity to develop effective conflict management mechanisms to deal with the growing contemporary challenges caused by ethnic conflicts. Strengthened by decades of trial-and-error,² the international community designed a modern form of international administration to address the crisis presented by the case of Kosovo. In an innovative fashion, the United Nations Security Council established, through resolution 1244, a subsidiary organ in charge of ‘organiz[ing] and oversee[ing] the development of provisional institutions for democratic and autonomous self-government’.³ Thus, this international organ aimed to re-establish a political system capable of managing – and eventually reducing – tensions between the different factions of the society, and to then provide remedies for the economic and social crises faced by the province and secure long-term stability. Yet, to what extent did the international administrative mission, its strategies,

¹ Hayden, R., ‘American Proposals for the Constitutional and Political Status of Kosovo: The State as Legal Fiction’ in *East European Constitutional Review*, vol. 7 (4), 1998. pp. 83-92.

² Caplan, R., *International Governance of War-torn Territories: Rule and Reconstruction*. Oxford University Press, Oxford, 2005.

³ Security Council Resolution 1244, S/RES/1244 (1999), 10 June 1999, preamble. §11c.

actions and policies contribute to the resolution of the issues faced by Kosovo and manage to lead the province towards long-term stability?

This is the question this thesis aspires to address. With the internationalisation of the ‘Kosovo Question’ in early 1999, this small Yugoslav province became the focus of attention of academic debates in the regional studies literature, but also increasingly within wider international scholarship. Before this period, the Kosovo predicament was mainly dealt with within Balkan specialist circles. After the North Atlantic Treaty Organisation (NATO) bombing of Serbia, Kosovo became associated in the academic literature with several international legal and political controversies revolving around three core themes: (1) the legality and legitimacy of NATO’s intervention in the affairs of a sovereign state; (2) the development of an international administration to regulate ethnic conflict; and (3) the issues relative to the Kosovo Albanians’ right to national-self determination versus Serbia’s sovereignty and the implication of this dispute for the future status of the province.

First, NATO’s unilateral airstrike against a sovereign state, outside of any Security Council resolution, on the grounds of mass human rights violations became the centre of a controversy regarding the validity of a duty to humanitarian intervention.⁴ Between 1999 and 2001, the international legal and political literature articulated different views regarding the legality and/or legitimacy of the use of military force against a sovereign state on the grounds of mass human rights violations. This debate contributed to the development of the concept of an international ‘responsibility to protect’. This concept, which is supposed to impose legal obligations on states to protect their own populations, also makes a claim to promote the protection of human rights in foreign states. Although the actual obligation on states remains modest, the development of the notion, and the role that NATO’s action played in influencing the debate, shook the international order to its core by breaching the sacrosanct principle of sovereignty. Yet, the literature that explored this controversy failed to a certain extent to provide a stance on the implications that this intervention could have for Kosovo and its people, let alone the implications it might have for the long-term political future of Kosovo. Indeed, beyond the significant consequences this event had for the development of international law and politics, it also had had drastic effects on the future of the province.

⁴ i.e., Cassese, A., ‘Ex Inuria Ius Oritus: Are We Moving Towards International Legitimation of Forceable Humanitarian Countermeasures in the World Community?’ in *European Journal of International Law*, vol. 10 (1), 1999. pp. 23-30; Simma, B., ‘NATO, the UN and the Use of Force: Legal Aspects’ in *European Journal of International Law*, vol. 10 (1), 1999. pp. 1-22.

Second, the development of an international mission to manage the power vacuum and regulate ethnic tensions in the province after decades of hostilities was addressed both by the scholarship on ethnic conflict as well as the scholarship on international territorial administration.⁵ At the beginning, discussions revolved around the structure of the mission and the development of appropriate conflict regulation mechanisms to enable it to pursue its challenging mandate. This literature highlights the deficiencies of the mission in developing a coherent and efficient strategy for pursuing conflict regulation; yet it does not provide convincing explanations for the deep causes of that failure or the consequences it would have for the future prospects of the province. The scholarship limits itself to a descriptive rather than explicative or critical function. In fact, there is a tendency to blame the difficulties encountered on the unresolved status of the territory and to make the dangerous assumption that the determination of Kosovo's status would provide a miracle cure for all the wrongs of the province. It does not, however, articulate a convincing explanation for how the settlement of the constitutional status of the province would solve the deep economic, social and political crises Kosovo faces.⁶

Third, owing to the nationalist nature of the conflict and its critical implications for the established international order, a large part of the literature dealing with Kosovo concentrates on the national self-determination versus sovereignty debate and the different implications the alternative constitutional settlements of the province have for this debate. Aside from a handful of Serb hardline nationalists, most academics and analysts resigned themselves early on to the inevitability of Kosovo's independence, even if this meant possible border changes and movements of population. Indeed, they have tended to assume that the resolution of Kosovo's status is an end in itself.

Despite the abundance of material, this scholarship has failed to draw attention to certain common and fundamental threads across those three debates; it has failed to illustrate the deep-rooted causes of the difficulties encountered by post-conflict Kosovo and their implications for the long-term development of the province, and, more generally, the role of international conflict regulation in post-conflict societies. Far from ignoring the complexity of the situation, this thesis aims to contribute towards filling this gap through an analysis of one

⁵ Chesterman, S., *You, the People: The United Nations, Transitional Administration, and State-building*, Oxford University Press, Oxford, 2004; Bieber, F., *Institutionalizing Ethnicity in the Western Balkans Managing Change in Deeply Divided Societies*, European Center for Minority Issues, Flensburg, 2004.

⁶ e.g. di Lellio, A. (ed.), *The Case for Kosova: Passage to Independence*, Anthem Press, London, 2006.

of the intrinsic issues of the Kosovo question: the subject of legitimacy revolving around international involvement in ethnic-conflict regulation through the establishment of governmental mechanisms within third party states. Indeed, with the spread of collapsed states unable to deal with their internally precarious conditions, the international community has grown fond of intervening to prevent the potential threat of instability beyond the borders of the ‘failing state’ to its overall order. Following a Western liberal rationale, it increasingly resorts to the imposition of ‘democratic’ institutions, purportedly enforcing good governance and the rule of law as solutions to the void of authority in order to promote long-term stability.

Drawing on Seymour Lipset’s argument as developed in his work *Political Man*,⁷ I assume a direct and essential correlation between the stability of a political system – the goal pursued – and its legitimacy. The key goal of international action in post-conflict societies is to provide sustainable stability through the establishment of a political system. In order to assess the actual and potential effects of this policy, I propose to investigate the ability of the international community to provide legitimacy to the new system. The relevance of the issue of ‘the legitimacy of contemporary international democratisation as a conflict regulation mechanism’ is evidenced by the growth of the scholarship on this theme since I began this research.

Indeed, in the last four to five years, a literature has developed around what Denisa Kostovičová calls the ‘legitimacy gap’, which consists of two key themes.⁸ The first is the intrinsic oxymoron of the imposition of democracy through undemocratic means.⁹ This debate was foreshadowed by the earlier conflict regulation attempts in Bosnia-Herzegovina, which emphasised the disproportionate ‘Bonn Powers’ granted to the High Representative in 1997. Nevertheless, it took on another dimension altogether in 1999 with the establishment of the United Nations administrative missions in Kosovo and East Timor. This criticism centres on the legitimacy crisis arising from the lack of accountability mechanisms between these international administrations and the people they governed. The second debate, concerns the questionable international legitimacy of imposing an ‘outside’ political model within a part of

⁷ Lipset, S., *Political Man: The Social Bases of Politics*, Heinemann Educational Books, London, 1983.

⁸ Kostovičová, D., ‘Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective’ in *International Peacekeeping*, vol. 15 (5), 2008. pp. 633-635.

⁹ i.e., Beauvais, J., ‘Benevolent Despotism: a Critique of the UN State Building in East Timor’ in *New York University Journal of International Law and Politics*, vol. 33, 2001. pp. 1102- 1171; Bain, W., *Between Anarchy and Society: Trusteeship and the Obligation of Power*, Oxford University Press, Oxford, 2003; Chandler, D., *Empire in Denial: The Politics of State-building*, Pluto, London, 2006.

a sovereign territory.¹⁰ It emphasises the dubious usurpation of sovereign prerogatives – the foundation of a political system – by the international community, on some part of an independent state’s territory without its involvement, thereby encouraging this territory’s secession.

Using the case of Kosovo to illustrate this argument, this thesis seeks to contribute to those debates by first establishing and drawing on the relationship between the different aspects of legitimacy relevant to the situation of international involvement in ethnic-conflict management through institution-building. Second, it assesses the impacts those aspects have on the success of the mission’s goal – the long-term stabilisation of conflicts – and thus on this model as a credible conflict regulation mechanism. As noted earlier, the focus of this research on one aspect of conflict management does not imply any underestimation of the complexity of the other issues at stake. Yet, by focussing on ‘legitimacy’, this study aims to single out one of the complex but crucial variables of international involvement in ethnic conflict management, thus modestly contributing to the overall debate. To do so, it is essential for me to first define a number of parameters of for the thesis.

This research observes, in the context of Kosovo, the strategy and policies set in place to structure a political system to fill the governance power vacuum after the collapse of sovereign authority. By nature, institutions can be economic, social and political. Yet, this study is limited to those institutions that contribute to the development of the political system. This comprises legislative, judicial as well as strictly executive institutions. By limiting the scope of this research to governance-oriented political institutions, I do not mean to imply that institutional developments in other fields, notably in the economic sector, were not undertaken; nor do I wish to minimise their relevance for the stabilisation of Kosovo. Yet, for this research, I wish to limit myself to the policies that were carried out to design a coherent political framework, commenting on other developments when they are relevant to the central focus of the investigation.

The focus of the thesis is geographically limited to the historical Yugoslav administrative province of Kosovo.¹¹ Although this study has potentially wider explicative

¹⁰ Zaum, D., *The Sovereignty Paradox: The Norms and Politics of International Statebuilding*, Oxford University Press, Oxford, 2007.

¹¹ The Serbian spelling of ‘Kosovo’ will be used as opposed to the Albanian spelling ‘Kosova’. The appellation of the province is highly controversial due to the political nature of the ‘ethnicisation’ of the territory, all the way to names. By using the term Kosovo I wish to maintain some ‘neutrality’ by using an internationally recognised term that was commonly use in the academic literature until recently, when it started to reflect a political

and prescriptive implications for conflict management at large, it limits its scope to the case study of post-conflict management *in* the Yugoslav province. The choice of the case of Kosovo is explained by the specific nature and implications of the institution-building process on this territory. First, the United Nations Administrative Mission in Kosovo (UNMIK) was one of the two first and only international administrations of this kind, unprecedented in the extent of the powers vested in the mission as well as in the ambitiousness of its mandate – essentially quasi-unlimited power to develop from scratch a political system in a sovereign state. Second, the international action has implications for the sovereignty of the state in which it is performing. As opposed to East Timor, which benefited, in the context of decolonisation, from the right to have a say in the determination of its status,¹² Kosovo was not under international law a candidate for ‘external’ self-determination. Yet, the institutions established and run by the international authorities in the Serbian province eventually provided the conditions for and empowerment for it to secede, thus breaching the rights of a sovereign state. Finally, international involvement in Kosovo over the past ten years has had a number of unprecedented and – not experienced since – implications for the international legal and political order, as is demonstrated through this analysis.

The theme of the research is primarily on the specificity of multilateral involvement in post-conflict regulation. It concentrates on the structure of the international players involved in the process, as well as the strategy and policies they instigated, and finally, the outcome of their activities. The title of this thesis focuses on the term ‘actor’ rather than ‘community’ in order to highlight the diversity of players involved in the legitimacy process. Indeed the multilateral mission pursuing institution-building in Kosovo is headed and run by the United Nations, as the ‘executive’ branch of the community of ‘united nations’. Yet, various other international ‘actors’ – multilateral governmental organisations and individual states – are also involved at the different levels of the analytical framework in this study of legitimacy. Several local actors are identified and their roles are highlighted, but for this analysis they are considered as explanatory variables in the definition of international actors and the legitimacy of their policies. Indeed local players’ involvement in the institutions, and their degree – or lack – of participation in the overall process is crucial to my argument. In addition, it is important to specify that this research is concerned with the civilian aspects of the

position. Throughout the thesis, when considering names of places I attempt to employ the most commonly used spelling in international circles, and where appropriate, give the bilingual equivalent.

¹² The East Timor Special Autonomy Referendum, 30 August 1999.

international mission. Indeed, with resolution 1244, the Security Council also mandated a military force to secure the province. Nonetheless, this study, owing to its research focus concerned specifically with the institution-building activities of the mission, concentrates on the civilian mission instituted by the Council.¹³

By focusing on international involvement in conflict regulation through institution-building, this thesis limits itself exclusively to the timeframe between June 1999 – when UNMIK was established – and 18 February 2008 – when the Kosovo assembly declared the independence of its institutions from Serbia, but also from UNMIK rule. This controversial point is extensively covered in the last chapter. The contexts prior to and briefly after those dates are examined when they have explanatory value for this research but are not, in themselves, fully explored.

Finally, it is important to emphasise that the principle of legitimacy is the key variable in this study. Through my assessment of the nature and degree of legitimacy of the established political system,¹⁴ I aim to assess the successes and failures of the international action and determine the long-term stability implications for Kosovo's deeply divided society. To do so, this research takes up a number of issues such as: What is the concept of legitimacy? How is legitimacy determined? How does it apply to the context of the international community? What implications does the notion have for international conflict management? And conversely, how does the international community's action influence the understanding and concept of legitimacy? On which basis does legitimacy rest in ethnically deeply divided societies? Is intervention based on humanitarian arguments legitimate? On what grounds does the legitimacy of international territorial administrations rest? Are democracy and democratisation key components of legitimacy? How does the legitimacy of its political system influence the stability prospects of Kosovo? Through an exploration of those questions and the attempt to provide answers to them, this thesis aims to pinpoint one of the factors responsible for the failures of the international community in its conflict management actions – that is to say, the lack of local legitimacy. Given the complexity of the issue, this study does not embark on a search for an absolute answer. It rather aims to demonstrate the relevance of this issue, and to assess the extent to which tackling this issue might, hypothetically,

¹³ Resolution 1244, § 5.

¹⁴ Cf. Stillman, P., 'The Concept of Legitimacy' in *Polity*, vol. 7 (1), 1974. pp. 32-56; Barker, R., *Political Legitimacy and the State*, Oxford University Press, Oxford, 1990.

contribute to the improvement of the situation on the ground to enable the international community to attain its ultimate goal.

By considering these different questions, this thesis demonstrates that the international community missed a unique opportunity to develop well-articulated management mechanisms to respond to the contemporary challenges of ethnic conflicts, in part due to its failure to gain legitimacy for its actions and their outcomes. By acting through an integrated ‘neutral’ and internationally sponsored organ, the international actors could have sent a strong message to the deeply divided society: this administration has the ability to protect and provide for the people of the province as a whole with an institutional structure capable of sustaining long-term economic, political, and social peace and stability. Despite its bold moves to impose peace on the warring parties, such as the ‘occupation’ of Kosovo and the assumption of all – that is, executive, legislative and judicial – powers, the mission failed to enforce fully its policies, showing indecisiveness and insecurity in enforcing its own decisions and policies.¹⁵ The mission failed to provide Kosovo’s inhabitants the security and the basic commodities they dearly needed, failed to strengthen and integrate into the system a form of ‘civil society’, and failed to structure an institutional framework within which the population of the province as a whole would recognise themselves. Yet, success in those fields would have been essential to gaining some legitimacy and thus providing some stability to the new political system that the international administration attempted to establish. As Seymour Lipset argues, cohesion of the political system is essential to provide some sort of realistic future for a political system. Nonetheless, nationalist ideologies prevented any shared basis for the political legitimacy of local institutions, and these proved to be even more entrenched after nine years of UNMIK rule.

The conclusions of this research are based on the collection of information gathered through, first, the analysis of relevant documents, such as reports, policy papers and official documents published in English by the different organisations involved in the institution-building process as well as translation of local newspapers and official documents such as political parties’ manifestos. Second, fieldwork analysis was conducted in the aftermath of the March 2004 violence. In particular, I was able to conduct valuable formal and informal interviews with international and local policy-makers, local political leaders and eminent members of Kosovo’s civil society. Finally, I draw on my extensive first-hand experience

¹⁵ ie., Mitrovica.

working as visiting researcher at the European Centre for Minority Issues in 2001-2002 as well as an election monitor for the Organisation of Cooperation and Security in Europe in the Gjilan (Serb: *Gnjilane*) area during the first elections held in October 2000. In particular, in the former position, I worked on a ‘researched-oriented’ project involved in the development of Kosovo civil society, which enabled me to gain valuable contacts and insights into the political and daily lives of the people of Kosovo.

Based on this experience and research, I developed a ‘double layer’ analytical framework of legitimacy to study international institution-building in a sovereign state. This framework comprises an international and a local dimension. The distinction is made on the basis of what Bernard Knoll has called ‘audiences’ – those who grant support, and thus legitimacy – and the criteria on which legitimacy is based.¹⁶ Through this analytical framework, I argue that as international actors focused on securing the legitimacy of their administration and its new institutional structures *vis à vis* the international community, they failed to ensure the support of the local population that is so crucial to the sustainability, and thus ultimately the success, of that system.

To argue my case, I first develop a workable definition of legitimacy, which I apply to the different aspects/stages of international involvement in Kosovo, determining at each stage the repercussions the failure to secure legitimacy at the grass-root levels had on the overall process. As David Beetham argues, to evaluate the legitimacy of a system, it is not enough to assess its structure and policies; the context in which it evolves also needs to be considered.¹⁷ In the case of Kosovo, to determine the sustainability of its *Institutions of Provisional Self-government*, it is not enough to simply assess their (or their policies’) legitimacy. The circumstances in which the institutions were established influences the legitimacy of the political system and of the institutions that evolve within it. Thus this legitimacy matrix will be applied to each stage of the process. I use three tests to determine the absence or presence of legitimacy that I have adapted from Seymour Lipset. These tests cover rules, justifications and actions. I argue that UNMIK failed these tests because the rules were ambiguous. Neither the legality of the NATO intervention nor United Nations Security Council resolution 1244, which was contradictory, offered a basis for establishing legitimacy. In terms of justification,

¹⁶ Bernard Knoll developed a similar argument where he distinguished ‘international’ and ‘domestic’ legitimacy. Cf. Knoll, B., ‘Legitimacy and UN Administration of Territory’ in *Journal of International Law and Policy*, vol. 4 (1), 2007. pp. 1-15.

¹⁷ Beetham, *Op. Cit.*, p. 23.

the international community was divided at an international level between those who insisted on the importance of sovereignty and those who argued in terms of human rights; and, at the local level, UNMIK, unsure of its own legitimacy basis, pandered to nationalist sentiment rather than promoting an inclusive alternative through greater local individual participation. Furthermore, in terms of action, UNMIK failed to meet basic needs or to provide a framework for cooperative behaviour since it was obsessed with power sharing. ‘Standards before Status’ could have offered a possible way forward, but it was abandoned in the face of violence.

Pursuing this line of thought, this study is divided into six chapters. Chapter One is the theoretical backbone of this research, providing a workable definition of the concept of legitimacy, and establishing the assessment tools and articulating the theoretical framework for the case study. Chapter Two assesses the foundations of local legitimacy in Kosovo, shaped by the difficult and tortuous history of the province. Chapter Three considers the basis of international legitimacy. It outlines the international circumstances that led to the creation of the international administration and highlights the causal relationship it has with the future political system. Next, Chapter Four analyses the policies pursued to legitimise the mission, first examining the conflict within the international framework and then increasingly among the grass-roots base, and highlighting the resulting conflict between the two. Chapter Five studies the institutions at the central and local levels, assessing the relevance of the democratisation process pursued by UNMIK for securing the Kosovo population’s support for the newly designed political system. Chapter Six rounds it all off with a discussion of the impact of the ultimate resolution of Kosovo’s final status on the long-term stabilisation of ethnic tensions therein. I summarise my findings and discuss some implications for future work in this area in the Conclusion that follows.

In more concrete terms, Chapter One develops the theoretical framework of this research. I explore different definitions and dimensions of the concept of legitimacy at the national and international levels, observe their implications for the new trends in international administration, and establish a workable definition for the purposes of this thesis. Through the development of criteria to determine legitimacy, I sketch out and articulate the theoretical analytical framework as applied to the case study, providing the logical map of the reasoning underlying the subsequent analysis. Through this process, I define ‘legitimacy’ as a combination of beliefs and actions shaped both by rationality and powerful ideologies. I identify two distinct analytical frameworks: an international one and a national one. This

chapter demonstrates that due to its nature, the international community to its detriment has a tendency to focus on the former rather than on the latter.

The purpose of Chapter Two is to explore the nature and consequences of the ‘Question of Kosovo’ from its beginnings to the negotiations of Rambouillet. Through a historical perspective, it analyses how the patterns of legitimacy evolved in leading to the situation faced by the province in 1999. This chapter makes the case that due to the violent and intense past that Kosovo has experienced over the past 150 years, legitimacy is anchored in nationalist ideologies. Yet, this chapter further establishes that those nationalist ideologies are not primordial and unchanging, as evidenced by the relative success of the communist ideology to centre the debate on an alternative common theme during and immediately after the Second World War. Given that the rise of ‘new’ nationalist movements followed the fall of Communism,¹⁸ nationalist ideologies cannot not be taken for granted or considered as irreversible. Given time, appropriate support, suitable policies and the provision of alternative responses to the population’s numerous needs, those ideologies, I argue, could be moderated and, combined with other beliefs, could be supplanted by another ideology.

Chapter Three maps out the roots of international legitimacy and considers the implications of NATO’s military intervention for the legitimisation process of the international administration. This chapter analyses the fundamental opposition between the different core principles on which the future international order rests: sovereignty versus national self-determination, and sovereignty versus human rights; it explores how this opposition affects the legitimacy of the order, the actors and ultimately, their policies. First I examine the sovereignty versus self-determination debate and how it affects the case of Kosovo. Then, I consider the sovereignty versus human rights debate and explore to what extent the emergence of the ‘responsibility to protect’ concept at the international level made it possible – if at all – in order to find a basis to legitimise NATO’s intervention in Kosovo. I conclude with a discussion of the consequences of this intervention on the international system as a whole. I also discuss the repercussions it had on the legitimacy of the international actors involved in the post-conflict regulation of Kosovo and the policies they pursued to this end. The chapter maintains that even if arguably legitimate on moral grounds, the intervention was not legal in international legal terms. It merely managed to divide/ alienate parts of the international community and ultimately failed to obtain any grounded support from any of the

¹⁸ Kaldor, M., *New and Old Wars: Organized Violence in a Global Era*, Polity Press, London, 1999, p. 41.

Kosovo population's factions. This failure to secure legitimacy both at the international and local levels had serious repercussions for the fate of the new international mission. Indeed, the basis for the mission's legitimacy proved to be already shaky before it even got the chance to organise and set its policies in place.

The primary concern of Chapter Four is to assess the structures and policies of the international administration and highlight how these affected the established institutions. First, I examine the development of international administrations along the past decades and determine how their forms, aims and policies affected their legitimacy and the legitimacy of their strategies. Then I outline the context in which the Kosovo mission formulated its policies by outlining the expectations of the actors involved, determining the sources of their beliefs in the mission, analysing the structure of the international administration, and mapping out how this structure influenced the legitimisation of the mission and of its policies. Finally, I observe the overall policies set in place by UNMIK, determining how they attempted to legitimise the mission's position. This chapter argues that there was a clear will on the part of the mission to legitimise its actions; yet UNMIK tended to focus on self-legitimisation at the international level rather than on securing the support of the populations its policies affected.¹⁹ Through the observation of the evolution of international territorial administrations, there appears a clear concern on the part of the international community to legitimise missions through their structures and mandates. Nonetheless, despite the modern and innovative design of UNMIK, its constant focus on securing international approval to compensate for the questionable source of its legitimacy at the international level prevented the mission from pursuing the policies necessary to secure the support of the populations it ruled. The lack of accountability of the mission and the lack of consistency in its policies seems more like an *ad hoc* crisis management approach rather than an articulate conflict regulation strategy – that of finding a long-term resolution to the problem. The decisive example of Mitrovica (Serb: *Kosovska Mitrovica*) illustrates this argument as, after imposing itself over the Serbian province, the international administration allowed a resistance pocket develop within its realm, without any real attempt to impose its dominion over it. This lack of consistency and inability to impose itself ultimately prevents the mission from securing the support it needs to ensure the sustainability of the political system it aims to establish.

¹⁹ Legitimisation being defined as the process of acquiring legitimacy.

Chapter Five examines the legitimacy issues surrounding Kosovo's institutions themselves. After a discussion of the role of western liberal democracy in securing – or failing to secure – legitimacy and the specificities that democratisation faces in Kosovo, I proceed to the observation of the development of Kosovo's new institutions at the central and local levels. In this chapter, I argue that democratisation in itself has trouble legitimising the processes and the outcomes of institution-building. The power sharing mechanism at the heart of the international administration's western liberal conception of multiethnic democracy becomes in itself a barrier to long-term settlement. If at first unavoidable – if not necessary – to secure the access to power to all segments of the divided society, with time it entrenches barriers and resentment between groups and prevent the integration of the society as a whole. The resulting increasing lack of political support that the local institutions have and their inability to secure legitimacy ultimately endangers the sustainability of the conflict regulation process, thus the future of the province.

Finally, Chapter Six concludes with an exploration of the influence the status issue has for the future of the province. It first analyses the different dimensions of the 'final status question' before outlining the different alternatives considered for the province. Next, I consider the Ahtisaari proposal, offered by the international community as an alternative after the obvious inability of UNMIK's policies to provide stability. Indeed, as long as the two communities remained deeply divided, no status solution was possible. Yet, very little was done to weaken the ideological basis of the division. I conclude this chapter with some remarks concerning the consequences of the declaration of independence of Kosovo in February 2008, its implications for the international order, and more crucially, for the future of international conflict regulation in general. This chapter argues that it is not the status of the province that determines the legitimacy of Kosovo's institutions, but rather the legitimacy of the system that shapes the sustainability of its future status. Consequently, it concludes that the biggest challenge of the new state and government of Kosovo in securing long-term stability will be to find means to remedy to its failing legitimacy.

Given the complexity of the situation, the ambiguity of the rules and the simple fact that the conditions are now changed, it is difficult to argue the counterfactual that a different approach would have had a different outcome. Nevertheless we can at least note that after nine years of UNMIK rule, basic needs were unmet – e.g. electricity and water supply; nationalist sentiments have since the beginning of the period grown stronger, leaving no space for a will to live if not together then at least side by side. Indeed, the division of Mitrovica,

now even more entrenched, has become the indelible symbol of the inability of ever reaching a common ground between the two communities. Had there been greater consultation with the civil society, at least after the Kouchner period, and with ordinary Kosovo inhabitants as opposed to nationalist leaders, and had this been built into the mandate, it can be argued that the basis for a long-term solution might have been closer.

Chapter 1 - International Actors and Institution Building:

Issues of Legitimacy

As the international community is increasingly involved in regulating conflicts through shaping war-torn societies, an assessment of its role and impact is increasingly pertinent. Beyond the traditional peace-keeping task of keeping the warring parties at bay, the international community has increasingly endorsed the role of managing post-conflict societies to prevent the resurgence and exacerbation of violence. Initiated and led by Western nations, those missions proclaim a dedication to liberal democratic values and to the fulfilment of long-lasting stability through the achievement of democratic regimes.²⁰ Kosovo is a typical example of this trend. With the establishment of UNMIK, the international community has taken total responsibility for the establishment of a democratic political system in a deeply divided and shattered territory.²¹ To achieve this ambitious task, the mission has launched an array of policies, first to respond to the immediate needs of the population, providing humanitarian aid and security; and second, to bestow long-term regulation through the establishment of governmental, economic and social institutions. Contemporary research on democracy is in agreement that in order to establish a sustainable democratic system, a number of elements are required, such as economic development and stable institutions.²² Pursuing these recommendations, the international actors in Kosovo have attempted since 1999 to establish an adequate environment and institutional base to launch the democratic model they aim to develop.

This thesis puts forward the argument that legitimacy is a key component in the establishment of stable democratic institutions.²³ It argues that post 1999-Kosovo is a clear illustration of the importance of legitimacy as well as the consequences the lack of it has for the democratisation process and for the overall political stability of post-conflict divided societies. However, before debating the case of Kosovo, a number of clarifications need to be made about the concept of legitimacy itself. What are the different components involved in the concept of legitimacy? How does one determine the presence or absence of legitimacy? Is legitimacy based on *belief*, as suggested by Max Weber, enough to guarantee the sustainability

²⁰ Paris, R., 'International Peacebuilding and the "Mission Civilisatrice"' in *Review of International Studies*, vol. 28 (4), 2002. pp. 637-656.

²¹ Society divided along religious, ethnic or politic cleavages, entrenched after a violent conflict.

²² Connolly, W., *Legitimacy and the State*, Basil Blackwell, Oxford, 1984.

²³ Lipset, S., *Political Man: the Social Bases of Politics*, Heinemann Educational Books, London, 1983. 2nd ed.

of institutions?²⁴ If not, what are the other dimensions that define legitimate institutions? Furthermore, beyond the implications of the concept of legitimacy at the national level, does it have relevance for the international community, defined as a society organised around supranational institutions? How does the concept of legitimacy apply to the limited power international administrations enjoy? Finally, in what way is the issue of legitimacy pertinent to the specific issue of international involvement in post-conflict management? How does it enlighten us on the process of institution-building, and most crucially how does it enable us to assess the success – or failure – of the new political system in providing sustainable stability?

This chapter outlines the theoretical framework underpinning this research. It proposes both a workable definition of the concept of legitimacy and defines the analytical structure which will enable the analysis of international involvement in post-conflict management throughout this study. I argue that the concept of *belief* introduced by Weber and developed by Seymour Lipset is too restrictive in terms of providing an adequate definition of the criteria on which legitimacy is based. Thus, to develop an appraisal model, as a supplement to their theory, I explore additional dimensions of the concept suggested by the Beethamian model as well as the contribution of the notion of justice developed by Allen Buchanan in determining legitimacy.²⁵ I further advance the argument that international involvement in post-conflict institution-building involves two levels of legitimacy: one international and one local; and that to fully understand all the implications of the international action in Kosovo, two distinct issues need to be considered through this model: (1) the legitimacy framework in which an international actor shapes a political system through the establishment of institutions in a – sovereign – state; and (2) the legitimacy framework in which the new political system evolves. Both are deeply complex and yet both need to be taken into account to have a full picture of the ins and outs of the relevance of legitimacy in situations such as Kosovo.

To pursue this task, I first provide an overview and explanation of the notion of ‘legitimacy’ to develop a set of criteria to define a working concept and to provide the analytical tools necessary for the subsequent analysis. I then consider the relevance of the concept of legitimacy within the international community and the issues that arise from the involvement of international actors in institution-building in a sovereign state. I finish this

²⁴ Weber, M., *Economy and Society: an Outline of Interpretive Sociology*, Bedminster Press, Ney York, 1968. Edited by Guenther Roth & Claus Wittich.

²⁵ Beetham, D., *The Legitimation of Power*, Macmillan, London, 1991. pp. 16-20; Buchanan, A., Justice, Legitimacy and Self-determination: Moral Foundations for International Law, Oxford University Press, Oxford, 2004. p.233.

study by sketching out the analytical rationale running through this investigation and articulating the arguments that will be developed in the thesis, illustrating them with the most compelling case of post-conflict management through institution-building: the case of Kosovo.

1. The Concept of Legitimacy and its Definition

The concept of legitimacy, as others in political theory, is subtle and has given ground to considerable definitional arm wrestling.²⁶ Various eminent theorists have attempted to discredit previous models to bring their own contributions to the debate. The focus of this research is not to establish a chronological progression of the concept; nor is it to establish my own imprint by offering a new definition. The objective of this section is to reach a practical definition of legitimacy, which I will use to conduct this analysis. To do so, I first explore the concept of *belief* in legitimacy elaborated by Max Weber, which is central to my model; second, I analyse Weber's critics in order to develop a working definition of legitimacy and to establish criteria to determine it; I conclude this section with an observation of the relevance of the relationship between democratic institutions and legitimacy.

a. 'Belief in Legitimacy'

The obvious starting point for a study of legitimacy would be Max Weber, as he is considered as the first person to have articulated a coherent concept of legitimacy in relation to political power.²⁷ In his *Economy and Society*, Weber does not define legitimacy as such, but rather makes the 'belief in *legitimacy*' a variable of his domination theory.²⁸ He argues that a 'genuine form of domination implies a minimum of voluntary compliance'.²⁹ In order to operate, a political system needs the support of the entity it rules. If this entity refuses to obey the political system's commands, then the system encounters difficulties in ruling. He also emphasises the voluntary nature of this compliance. The system can impose itself by force, but in the long term, its power will erode and ultimately fail unless there is a minimum degree of voluntary compliance from the entity under rule.³⁰

²⁶ Stillman, P., 'The Concept of Legitimacy' in *Polity*, vol. 7 (1), 1974. p. 39.

²⁷ Beetham, *Op. Cit.*, p. 8.

²⁸ 'Domination' is defined as 'the probability that certain specific commands... will be obeyed by a given group of persons', and endeavours to explain authority. Weber, *Op. Cit.*, p. 212.

²⁹ *Ibid.*, p. 212.

³⁰ Indeed, rather than determining whether there is or not legitimacy, Peter Stillman argues that legitimacy is a matter of degree. He defines 'a degree of legitimacy' as 'a function both of the results of the government output. Results that may be intentionally or unintentionally compared to the value patterns of some system and the value pattern of the relevant system'. Stillman, *Op. Cit.*, pp. 32; 43.

Weber classifies ‘the types of domination according to the kind of claims to legitimacy’ they are based upon.³¹ He identifies three types of what he calls ‘legitimate domination’: a) rational (or legal), b) traditional and c) charismatic.³² Ultimately, the authority’s legitimacy rests on the *belief* of the entity it rules that it is the rightful authority. This *belief* is acquired if the system respects one of the three following criteria: (a) In the case of rational legitimacy, people’s *belief* in the system rests on the fact that the system follows a set of pre-established rules. If the system follows a set of accepted and recognised rules, then it is legitimate. For instance, governmental institutions are considered legitimate if they are formed according to constitutional rules; (b) In case of traditional legitimacy, *belief* is gained on grounds of traditional customs. Contrarily to rational legitimacy, the set of rules does not need to be formally stated or even formally accepted. It is the continuous practice of observing them over time that grants the set its authority. Therefore, if the system follows ancient practices, it will not be questioned. For example in traditional clan societies, the head of the clan will be acknowledged as such according to unquestioned customary rules. The other significant difference between this form of legitimacy and the previous one is that in traditional legitimacy, the rules are harder to change. In a rational context, at any time, provided there is a consensus that the rules should change, the criteria that define legitimacy change. In a traditional context, as the rules are instinctive and require practice, it will thus take more time for them to evolve; finally (c) Charismatic legitimacy rests on the personality of the head of the system itself. It does not require established rules or practices, as long as the people feel that the particular person heading the system deserves confidence – based on the belief that (s)he will act in their best interests – then the system (s)he sets and rules acquires legitimacy. This often occurs in post-war contexts or any similarly difficult situations. If a particular person personifies rebellion during a conflict, chances are that s/he will be considered as the ‘natural’ leader of the post-conflict system. The problem that might occur with this specific form of legitimacy is that when the leader disappears, the system as a whole that relied on him/her might be put into question. Furthermore, Weber emphasises that *beliefs* can rest on a combination of these three types.³³ Yet, should *beliefs* fail to find root in any of those three types of ‘legitimate domination,’ then the authority will fail to secure legitimacy, and ultimately, the whole domination system will be in crisis.

³¹ Weber, *Op. Cit.*, p. 213.

³² *Ibid.*, pp. 215-216.

³³ *Ibid.*, p. 954.

Weber's third contribution to the concept of legitimacy is the distinction he makes between the different actors of the political system.³⁴ As Weber explains, according to what he calls the 'law of small numbers', 'the ruling minority can quickly reach understanding among its members, it is thus able at any given time quickly to initiate that rationally organised action which is necessary to preserve its position of power'.³⁵ Hence, the ruling power can outplay the disorganised masses. By this 'law', the good functioning of the system justifies the establishment of a 'structure of domination' and the need for a concept of legitimacy.³⁶ In this *structure of domination*, Weber identifies three types of actors placed along a pyramidal arrangement. At the top is the power holder heading the system; in the middle is the administration in charge of implementing power, following the power holder's directions; and at the bottom, are the masses that live under the umbrella of the power holder and the administration. The power holder needs to maintain others' *belief* in the legitimacy of its power to continue enjoying the benefits of holding power. Thus, it needs to preserve the *beliefs* of the other two actors, upon which it exercises its domination, that it is entitled to do so. The second actor, the administration, represents the organisational structure of power. As such, it needs to maintain the *belief* of the ruled in the legitimacy of its action. In addition, it also needs to maintain the *belief* of the power holder it represents, so that the power holder continues to trust the intermediary with the administration of power. By its nature, as the intermediary between the power holder and the masses, the administration can potentially be wedged between the two should their respective *beliefs* in legitimacy diverge. Finally we have the masses, whose *belief* in both the power holder and the administration is essential for ensuring the legitimacy of power, as the ruled are the base on which the political system is rooted. Should the ruled refuse for any reason and withdraw their *belief* in the system, it would lead to a systemic crisis. As in any game, should the players of the game start doubting the validity of the rules, they would have the incentive to stop playing, and the game would then lose its purpose. The ruled are not *per se* exercising power; yet they are the pillars of the whole system. As pointed out previously, their *voluntary* belief in the system and in the two other actors is essential for the durability of the system. Because this *belief* should be voluntary, if the ruled withdraw their *belief* in the system or any of its actors, the system will ultimately collapse.

³⁴ *Ibid.*, p. 953.

³⁵ *Ibid.*, p. 952.

³⁶ *Ibid.*, pp. 952-953.

Nonetheless, besides the need of the power executive to justify themselves to the other actors of the domination structure, Weber highlighted another need: self-justification. He argues that ‘[f]or a domination, this kind of justification of its legitimacy is much more than a matter of theoretical or philosophical speculation. It rather constitutes the basis of very real, differences in the empirical structure of domination. The reason for this fact lies in the generally observable need of any power... to justify itself’. Weber continues by pointing out that ‘[i]ndeed, the continued exercise of every domination always has the strongest need of self-justification through the appealing to the principle of legitimization’.³⁷ Beyond securing the support of the other actors within the domination structure, the power holder and the administration need to a certain degree to convince themselves that they are worthy of the power they have.³⁸ Hence they need to reassure themselves by maintaining their *belief* in their own legitimacy. The masses, which by definition do not hold any power, do not need to justify their *belief* in their own legitimacy.

The distinction between the legitimacy obtained through the appeal to the *belief* of the other actors and the one obtained through self-legitimation is theorised by Weber through the development of the notions of ‘external means’ and ‘inner justifications’.³⁹ ‘External means’, defined as ‘the control of a governing apparatus and the material means for running it and using coercion and of the obedience of the subject of political power’,⁴⁰ consist of the instruments used by the power holder and the administration to secure the *belief* of the masses in their legitimacy. ‘Inner justifications’ are the means used to fulfil their constant need to justify their own legitimacy. This last point is particularly relevant in the study of international territorial administrations’ institution-building, as it will be articulated throughout this thesis that international administrations tend to spend more energy on securing ‘inner justifications’ rather than developing coherent ‘external means’.⁴¹

Although the relevance of Weber’s legitimacy theory to political science has been heavily criticised, it does provide us with essential analytical tools for this study. First, due to the nature of international administrations – internationally imposed after a violent conflict – we have to consider to what extent the new political system has achieved the population’s

³⁷ *Ibid.*, pp. 953-954.

³⁸ For an extensive study of this phenomenon, see Barker, R., *Legitimizing Identities: the Self Presentation of Rulers and Subjects*, Cambridge University Press, Cambridge, 2001.

³⁹ Barker, R., *Political Legitimacy and the State*, Oxford University Press, Oxford, 1990, pp. 47-48.

⁴⁰ *Ibid.*, p. 48.

⁴¹ Issue of the ‘audience’, cf. Knoll, B., ‘Legitimacy and UN Administration of Territory’ in *Journal of International Law and Policy*, vol. 4 (1), 2007, p. 1

confidence and compliance and, if so, to what extent it is voluntary, especially when it claims to be running according to democratic principles. Second, we need to identify the type of legitimacy established and eventually sort out the competing legitimacies that result from the confrontational nature of post-conflict Kosovo. Third, we have also to identify the actors and their roles in pursuing both ‘external means’ and ‘inner justifications’. Before proceeding with those tasks, we will have to consider a few other aspects of the concept of legitimacy. As Rodney Barker points in his study *Legitimacy and the State*, ‘Weber does not use legitimacy to explain obedience, but as a way of categorizing different forms of obedience’.⁴² For political theorists – as opposed to sociologists – this represents a problem, as Weber’s categorisation of legitimate domination tends to be descriptive and devoid of any explanatory value. We therefore need to look into some of Weber’s critics to find complementary analytical tools to determine legitimacy, or the lack of it.

b. Beyond *Belief*

David Beetham is one of these critics, whose theory adds to and stages Weber’s concept. In his *Legitimation of Power*, he gives a review of Weber’s concept of *belief*, which he considers to be over-simplistic. According to him, ‘what is wrong with [Weber’s] definition is, first, that it misrepresents the relationship between *belief* and legitimacy; and, secondly, that it takes no account of those aspects of legitimacy that have little to do with the belief at all’.⁴³ He argues that Weber’s theory takes the notion of *belief* to be a mere tool of the power holder to secure legitimacy; rather, he suggests, *belief* should be considered an independent variable through which the existence – or lack of – and the degree of legitimacy of a political system can be assessed. In other words, if the relationship between the power holder and the actors on which (s)he exercises power is based on the latter’s *belief* that the former is entitled to do so, then the power holder’s exercise of power is legitimate. In contrast, Weber’s theory implies that the power holder secures the *belief* of the masses in his/her legitimacy. Even if Weber considers that this *belief* is granted voluntarily by the masses, he implies that it is indeed ‘engineered’ by the power holder. Thus, one cannot rely any longer on the notion of *belief* to assess the true nature of the system, as belief becomes part of the domination system and consequently, is potentially biased. Evidence of this phenomenon can be found in Weber’s theory of ‘external means’ and ‘inner justifications’, where legitimacy is malleable in the hands

⁴² Barker 1990, *Ibid.*, p. 58.

⁴³ Beetham, *Op. Cit.*, p. 11.

of the power holder.⁴⁴ This distinction is indeed ‘a fine distinction, but a fundamental one’ when one expects to use legitimacy to assess the nature of a political system.⁴⁵

The second critique offered by Beetham concerns the central role and the irrational nature that Weber assigns to the notion of *belief*, disregarding other elements that Beetham considers have an equally important impact on legitimacy, such as legality of action or consent. Indeed, as he points out, legitimacy cannot stand solely on some irrational *belief* of the masses but can also involve established laws. According to Beetham, to be legitimate a system needs to secure ‘the legal validity of the acquisition and exercise of power’.⁴⁶ He emphasises the importance of the notions of law and legality in the concept of legitimacy.⁴⁷ The power holder needs to have come into power and exercise this power following pre-existing rules.⁴⁸ Should it come to power and exercise this power against the established rules, then the power holder will not be able to have a claim to legitimacy. It is agreed that those rules do not have to be formal or even written.⁴⁹ Rules are not necessarily made as a result of the explicit agreement of people. In what Weber defines as a ‘rational’ system, rules are rarely adopted by the express agreement of each individual in the system. Even in a so-called democratic system, legislative power is representative. Rare are the examples, like Switzerland, where legislation is drawn up regularly on the basis of referenda. In the same way, in ‘traditional’ systems, rules are established over time and practice, but practice is defined by the group and not by each individual. Yet, this point can be toned down by the fact that even if the masses do have little to no influence on specific rules, they can still have an influence over the ‘rule of law’ system. In a non-coercive political system, if the ruled refused to follow the legal system, then the political system as such has little chance to stand on its own.

In this line of argument, Beetham concedes that rules still have to be accepted as law. He insists that the ‘acquisition and exercise of’ power according to law is not enough. He argues that ‘it is not what the law actually prescribes, but what it ought to prescribe that is here the central issue of legitimacy’.⁵⁰ His concept of legitimacy therefore includes the need for ‘the justifiability of the rules governing a power relationship in terms of the *belief* and values

⁴⁴ cf. Barker 1990, *Op. Cit.*, p. 58.

⁴⁵ Beetham, *Op. Cit.*, p. 11.

⁴⁶ *Ibid.*, p. 12.

⁴⁷ *Ibid.*, p. 4.

⁴⁸ *Ibid.*, p. 17.

⁴⁹ *Ibid.*, p. 16.

⁵⁰ *Ibid.*, p. 5.

current in the given society'.⁵¹ The rules that the power holder follows need to be accepted by the masses. Here the notion of *belief* is key. Yet contrarily to being irrational as Weber is suggested as implying, it is enshrined in the society. Indeed, as Beetham points out, the system of values on which legitimacy is based is not constant and varies from society to society.⁵² He argues that 'there is an underlying structure of legitimacy common to all societies, however much of its content will vary from one to another'.⁵³ The idea that legitimacy should be based on rules grounded in values enshrined in the society is indeed supported by other theorists.⁵⁴ Some of those have even attempted to argue that this 'core structure' presented by Beetham is more important than Beetham supposes, and is in fact a universal core that ought to be common to all systems. In particular, Allen Buchanan clearly defines legitimacy in terms of rules, if and only if those rules are based on 'justice', which he defines in turn in terms of human rights.⁵⁵ In a similar way, Sabrina Ramet, in her study of the legitimacy of the successive Yugoslav states, defines legitimacy in terms of a set of liberal values, which she presents as the only set that can provide the basis for legitimate rules. Yet, contrarily to Buchanan, she recognises that those values are indeed hers and that they may vary depending on the case under consideration.⁵⁶ Therefore, as the legitimacy of a system depends on the type of *belief* rooted in the society it rules, in order to assess the nature and degree of legitimacy of a system, it becomes relevant to determine first the values that shape its *belief*.⁵⁷

Finally, Beetham pursues the development of this legitimacy theory by highlighting the need for 'the evidence of consent derived from actions expressive of it'.⁵⁸ He considers that *belief* without explicit proof of consent is not enough. He insists that there is a need for the people to prove 'evidence of consent expressed through *actions*'.⁵⁹ If no evidence of *belief* can be given, legitimacy is hardly established. Tacit *belief* is for Beetham not enough, for there is a clear need to act upon one's *belief* and this expression of *belief* has to be in some way measurable. Yet it could be argued that the masses show their *belief* when complying with the political system. In liberal systems, such consent can be expressed through elections.

⁵¹ *Ibid.*, p. 12.

⁵² *Ibid.*, p. 22.

⁵³ *Ibid.*, p. 22.

⁵⁴ Stillmann, *Op. Cit.*, p. 42.

⁵⁵ Buchanan, A., *Justice, Legitimacy and Self-determination: Moral Foundations for International Law*, Oxford University Press, Oxford, 2004.

⁵⁶ Ramet, S., *The Three Yugoslavias: State-Building and Legitimation, 1918-2004*, Indiana University Press, Bloomington, 2006. p. 15.

⁵⁷ Beetham, *Op. Cit.*, p. 23-24.

⁵⁸ *Ibid.*, pp. 12-13.

⁵⁹ *Ibid.*, p. 12.

From his criticism of Weber's theory, Beetham develops a theory of legitimacy by the rationalisation of *belief*. He delineates a tripartite structure that he calls the 'levels' of legitimacy based on what he considers to be the three different factors that influence the legitimacy of power: (1) rules; (2) justifications that are grounded in *beliefs*; and (3) actions.⁶⁰ According to Beetham, in order to justify the legitimacy of power, the three components need to be reached collectively. Short on any one, the legitimacy of power cannot be guaranteed. In consequence, when identifying the type of legitimacy our actors are pursuing/enjoying, we have to further look into whether they fulfil the Beethamian 'levels of legitimacy'.

Figure 1 – Political System Legitimacy: Analytical Framework

1. Identification of the actors of the system
 - a. The *power holder*
 - b. The *administration*
 - c. The *masses*
2. Analysis of the normative framework of the domination system.
 - a. Determination of the rules that underlie the domination theory: What kind of legitimate domination is it – i.e. what is the nature of the rules?
 - i. Rational
 - ii. Traditional
 - iii. Charismatic
 - b. Determination of the rules' roots as based on *beliefs* enshrined in the values of the system: What is the function of those rules?
 - i. 'External means'
 - ii. 'Inner-justification'
 - c. Determination of the expression of this *belief* through actions
 - i. Is there compliance?
 - ii. Is it voluntary?

This short review of the concept of legitimacy does not claim to be exhaustive, or to shed any new light on how to resolve the historical debate involved with this notion. What a comparison between Weber and Beetham provides is a general outline of the ground rules necessary to determine the legitimacy of a political system. Although the notion of *belief* is crucial to the concept, other variables need to be considered. The reconciliation of both theories provides us with a set of tools crucial to the analysis of a system's legitimacy (Figure 1). Nonetheless, besides the normative basis of the roots of a system's legitimacy or that of the framework within which it can develop its policies, the policies themselves inexorably have an impact of shaping *beliefs*, and hence ultimately legitimacy. This research aims to assess the impact of the presence or absence of legitimacy on the stability of a particular

⁶⁰ *Ibid.*, pp. 15-25.

system evolving in specific circumstances. To proceed with the analysis of international involvement in deeply divided post-conflict societies, a final set of theories need to be considered to provide further explanatory tools to determine the nature and interrelationship of legitimacy – the object of this research – with the stability of a political system – the declared aim of the international involvement – and the democratisation of divided societies as in our particular case.

c. Legitimacy and Political Stability

Seymour Lipset, in his work *Political Man*, draws a clear relationship between legitimacy, democracy and the stability of a political system, and as such adds a significant element to the debate framed by the positions of Weber and Beetham. Defined as ‘the capacity of the system to engender and maintain the *belief* that the existing political institutions are the most appropriate ones for the society’,⁶¹ legitimacy is a crucial basis in securing an obligation to a political system. As argued previously, in a ‘domination’ system, the Weberian notion of *belief* is subjective and varies according to the entities from which the system wants/needs the cooperation to function/govern adequately. The *belief* is then subjectively based on the entities’ perceptions and evaluation of the system’s ability to fulfil their own set of criteria, and can be based on their assessment of the system’s effectiveness to achieve its task. Consequently, should the political system lose the *belief* of those different entities, the institutional structure loses its support, and cooperation with and participation in the system cease, which ultimately plunges the system into crisis.

In this model, unlike Weber’s, the focus is essentially on the legitimacy of the system itself – the set of formal institutions – and not on the individuals running them, such as the particular government body in power at any given time. The fundamental difference lies in the fact that if a government loses the support/*belief* of the society, it finds itself in a legitimacy crisis, but the society does not necessarily question the system as a whole, which would put the very institutional structure at stake. This phenomenon is particularly relevant in a democratic system, where it is part of the game for the group in power to be constantly questioned by the other segments of society that mandate it to fulfil the society’s will. However, if the institutions themselves lose their popular support, then the system’s legitimacy crisis translates into two reactions: either the population withdraws its support

⁶¹ Lipset, *Op. Cit.*, p. 64.

from the institutions, creating a governance vacuum and leading the society into anarchy; or despite the system's legitimacy crisis, the institutions coerce the society into accepting their authority, leading towards a totalitarian system. Either result reveals a deep systemic crisis and demonstrates the importance of legitimate institutions for the stability of the regime.

Lipset's model is, despite some degree of elusiveness, important in that it highlights the basic principles and criteria found within the concept of institutional legitimacy, and helps us to understand the relationship between a system's stability and the sense of legitimacy. However, his model is based on the assumption that the system is an established democracy – or has previously been democratic – and it is difficult to apply to cases of democratising systems. Within his model, Lipset recognises the 'contemporary' challenges that communism and nationalism represented for the concept of legitimacy and ultimately for the concept of democracy itself.⁶² He dismisses this problem and fails to adapt his model to these evolving situations. However, since the first publication of *Political Man*, the core of the communist system has crumbled and nationalist ideologies have become the beacons of divided societies. The changes in the international society do not imply that Lipset's model has become obsolete, but merely that it requires adaptation to new demands. Evidence is found within the new states that have emerged from communism, where a great demand for the democratisation of their institutions has developed and created the need for the legitimisation of those institutions.

In order to preserve the democratic system's legitimacy, Lipset argues that it is essential that the institutions 'sustain the expectations of major groups' (1).⁶³ The model also advocates that the system meet a number of other conditions, such as the integration of all groups within the system (2), the 'moderation of tensions among its contending political forces' (3),⁶⁴ and the creation of 'cleavage[s] within... groups not between them' (4).⁶⁵ Yet, transitional and ethnically divided societies such as Kosovo do not meet those criteria. By definition, transitional and divided societies are unstable due to the power vacuum left by the inefficiency of the emerging system in regulating the existing tensions between groups, or even from the exclusion of some of those groups from the system. The central questions this thesis addresses are: can these obstacles be overcome? And if so, how?

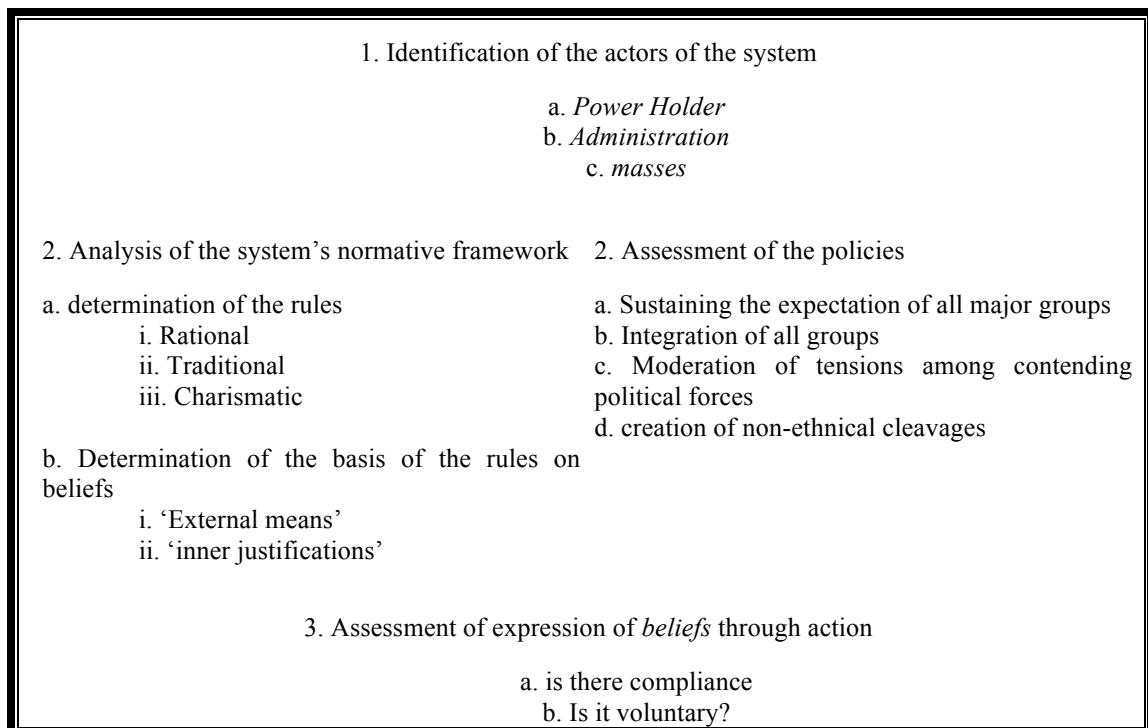
⁶² *Ibid.*, p. 83. Note that the first American edition of the book was published in 1960, at the height of the Cold War and of the independence movements in Africa and Asia.

⁶³ *Ibid.*, p. 65.

⁶⁴ *Ibid.*, pp. 78-79.

⁶⁵ *Ibid.*, p. 81.

Figure 2: Democratising Political Systems' Analytical Framework



In the specific case of Kosovo that illustrates this argument, the international community openly endorsed the task of establishing self-governing democratic institutions in parts of a sovereign state in order to regulate the conflict left by decades of opposition and divisions.⁶⁶ To achieve a stable democratic system in Kosovo, besides the establishment of political system based on a normative framework anchored in the values of the society, the new institutions need to secure the *belief* of the population of Kosovo as a whole, despite the divisions that characterise it, in the new institutional structure's legitimacy. In other words, UNMIK and the institutions they are setting up need to ensure the compliance and participation of the different segments of the society in the new political system, through their engagement in the system. Should they fail to obtain the society's *belief* in the new system – i.e. the support and participation of the different communities – the new institutional structure would fail to integrate the people of Kosovo in a coherent political framework and would risk furthering the divisions left by ethnic tensions. Conscious of this phenomenon, UNMIK has set in place a number of policies to pursue the legitimisation of the system. To assess their success in achieving it, this study will have to further consider the ability of UNMIK and the designed institutions, through their policies, to: sustain the expectations of the major ethnic groups; integrate the different segment of the society; moderate tensions between the different forces;

⁶⁶United Nations Security Council Resolution 1244, (10 June 1999), §11c.

and to substitute inter-group cleavages with non-ethnic ones. Figure 2 illustrates the levels of legitimacy to test the presence or absence of legitimacy of the different actors and their policies that are consistently applied chapter by chapter in this thesis, as sketched out in the last section of this chapter.

2. Legitimacy and the International Community

As Allen Buchanan underlines, the concept of legitimacy is mostly developed in the context of power within states.⁶⁷ One explanation for this phenomenon is that the starting point of the concept of legitimacy is found in Max Weber, who argues that states, having the monopoly of legitimate violence, are the rightful bearers of power.⁶⁸ Yet, in order to cohabit, states have defined rules that regulate their interactions. Through time, this set of rules has evolved into an articulate supra-national system that regulates an international society of states.⁶⁹

As Ian Clark underlines in his book *Legitimacy in the International Society*, the notion occupies an important place at the international level.⁷⁰ Due of the anarchic nature of the international system, there is no formal ‘power holder’; yet states are organised as a community ruled by formal laws, established on common values, which dictate the actions of its members. Evidence of the legitimacy of this society is reflected in the relative stability – absence of major war outbreaks – of the system that perpetuate through time. In his book, Clark observes the evolution of this international legitimacy since its origins – the treaty of Westphalia – to this day. One striking element that appears from this study is the evolution of legitimacy through time in response to the changes in the society. The following section first defines the concept of legitimacy within the international system, and then determines the theoretical implications recent trends of international involvement in institution-building have over the concept of legitimacy.

a. Legitimacy in the International System

The international system does not, as such, have a ‘power holder’. The particularity of the system relies on the states’ wish to remain together, by choice and not because of a supra-national organ coercing them and imposing its power. However, the post Second World War

⁶⁷ Buchanan, *Op. Cit.*, p. 116.

⁶⁸ Barker 1990, *Op. Cit.*, p. 58.

⁶⁹ Cf. Clark, I., *Legitimacy in International Society*, Oxford University Press, Oxford, 2005

⁷⁰ *Ibid.*, p. 11.

international system still relies on an ‘administration’ – the United Nations – which exercises relative power over the ‘masses’ – states. It is interesting to note that the ‘masses’ of the international system are the states and not the people that compose them. The states and not their people are the guarantors of the system’s legitimacy and are the bearers of rights and duties in the system. As Lassa Oppenheim puts it, ‘[s]ince the law of nations is based on the common consent of individual States, and not of individual human beings, States solely and exclusively are subjects of international law’.⁷¹ This phenomenon is interesting as it explains the *quasi-inability* of people – as individuals or groups – to affect the system. This phenomenon originates in the history of the system’s formation and evolution – in the Westphalian system – a system originally made by states, for states.⁷²

The particularity of the international system implies that its administration only enjoys limited authority over states. At the core of the United Nations system, and indeed of the international order, lies the principle of ‘sovereignty’. Sabrina Ramet defines sovereignty as ‘the supreme political authority within a territorially defined area’.⁷³ The bearers of this political authority are ultimately states, which agree to limit this right within limited prerogatives and with their express consent. The authority of the United Nations system relies on the power states grant the authority by treaty. In 1945, a group of nations founded the system by signing the United Nations Charter. Each new state accepted the authority of the administration through joining the system. The system’s authority remains, however, limited to the relation between states, and it preserves the sovereignty of states – i.e. preserves the authority of states within their own territories and over their own populations. Evidence of the limits sovereignty imposes on international authority is provided by the lack of enforcement mechanisms. The rule of non-intervention is embedded in the charter and can be contravened only in extreme circumstances.⁷⁴ The principle of sovereignty is indeed the core value of the system as a whole, lying at the root of the international legal system. The question that arises is: why do states agree to limit their sovereign rights by taking part in the system? Part of this answer was given by the Secretary General Javier Perez de Cuellar: ‘joining the United

⁷¹ Quoted in Malanczuk, P. and M. Akehurst, *Akehurst’s Modern Introduction to International Law*, Routledge, London, 1997, p. 91.

⁷² Clark makes an interesting case relative to the ‘myth’ of Westphalia, where the idea of sovereignty and states as understood nowadays only evolved later in history. Yet, he recognised the importance of the treaty in international relations as the starting point of the concept of legitimacy in international relations. Clark, *Op. Cit.*, pp. 55-57, 70.

⁷³ Ramet, *Op. Cit.*, p. 18.

⁷⁴ Charter of the United Nations, San Francisco, 26 June 1945, chapter VII.

Nations is the final confirmation of independence, nationhood and sovereignty'.⁷⁵ Acceptance of the administration's authority provides membership of the system and enjoyment of the stability it procures. Membership in the system, respect for international law and the resolution of issues through diplomacy are proof of an active *belief* of states in the international system, and hence of its legitimacy.

Yet, besides the concept of sovereignty at the base of the Westphalian system, developments in international relations and politics have given rise to new concepts on which the new international order has grown. In particular, we can point to the idea of national self-determination that flourished after the First and Second World Wars to respond to the demands of new states issuing from the dislocation of empires, as well as the notion of human rights that flourished with the establishment of the United Nations' order.⁷⁶ Both national self-determination and increasingly human rights have grown and given rise to a questioning of sovereignty as the basis of the international order's legitimacy. In particular, the latter has gained exponential importance in the last decades, calling for the strengthening of the role of individual within the international order. This development has been supported and articulated by the Globalisation school, which appeals to the adaptation of the world order to new global realities, articulating an argument in favour of the restructuration of the international order on the rights of individuals rather than states.⁷⁷

b. Legitimacy and International Administrations

As the Westphalian order is based on states, the international community has developed mechanisms to provide against threats to the stability of this balance, including when instability is caused from power vacuums within states themselves. This is not a new phenomenon; however the involvement of international actors in a state's affairs to deal with its power vacuums has spurred concerns as regards the potential violation of the relevant state's sovereignty. Throughout the twentieth century, the international community has institutionalised means to ensure the legitimacy of this practice and prevent any abuse of the system. The legitimacy of this intervention has relied on a number of mechanisms: a

⁷⁵ Quoted in Frank, T., *The Power of Legitimacy among Nations*, Oxford University Press, New York, 1990. p. 9.

⁷⁶ Clark, *Op. Cit.*

⁷⁷ Kaldor, M., 'Democracy and Globalisation' in Global Civil Society 2007 / 8: *Communicative Power and Democracy*, Sage, 2008, pp. 34-44; Kostovičová, D., 'Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective' in *International Peacekeeping*, vol. 15 (5), 2008, pp. 631-647; Held, D., *Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective*, Centre of Global Governance, London, 2003.

legitimate mandate – by invitation of the state or mandated by the international community; legitimate goals based on the aim of resolving the power vacuum; a definite time-frame to prevent overstays; and more recent trends have seen multilateral actors being perceived as more ‘neutral’ and less likely to commit abuses.

Nonetheless, at the turn of the twenty-first century, the cases of East Timor and Kosovo demonstrated an interesting development in the field of international administration. The specificity of these practices lie in the extent of power and the mandates granted to those administrations: the development of a full governmental institutional framework by an international actor on part of a sovereign state’s territory outside of its authority.⁷⁸ Hence, an international body, relying on international rules and legitimacy, is involved in a domestic field without having legitimacy links to the domestic system. In this respect, the argument sketched by Bernard Knoll on the two ‘dimensions’ of legitimacy – ‘international’ and ‘domestic’ – is particularly interesting.⁷⁹

The issue that arises is that the international action in developing domestic institutions occurs in two different legitimacy frameworks, and hence with different actors and different sets of values, from which legitimacy is required. Invested by an international body, the international administration needs to secure the support of the different actors involved in the international system. Yet, to provide success to the new set of institutions it is launching, the approbation of local actors is also essential. Nonetheless, within each of these frameworks, following different rationales and based on different legitimate dominations, rules differ from one level to the other. At the international level, the rules are typically rational and tradition dominated, as enshrined in the United Nations charter and principles of international law – i.e., sovereignty, self-determination and human rights. Justifications of belief are based on the Westphalian system, as well as increasingly on western liberal concepts of human rights, democracy, good governance and the rule of law.⁸⁰ However, with more domestic concerns, local legitimacy is enshrined in sovereignty and national self-determination over territories and people. Justification of the belief in legitimacy is rooted in ‘effective provisions of public goods’, ‘local ideology and cultural background’ and I would add, ownership, defined as the capacity of the local community to influence decisions within the political system.⁸¹ In order

⁷⁸ Knoll, *Op. Cit.* p. 2.

⁷⁹ *Ibid.*, pp. 4-6.

⁸⁰ Cf. *Ibid.*, p. 4.

⁸¹ *Ibid.*, p. 7.

to respond to the different demands, it is essential for the international administration to develop different strategies aimed at its different audiences.⁸² Nonetheless, wedged between what are sometimes mutually exclusive demands that fail to provide for all, the administration has a tendency to reinforce its ‘inner justification’ rather than to develop coherent ‘external means’, with consequences for the effective legitimacy of the administration.⁸³

Given the distinction and definition of the legitimacy frameworks in which a study of international institution-building evolves, it is important to make a further point. Indeed, Beetham claims that ‘to be justified, power has to be derived from a valid source of authority’.⁸⁴ From the demonstration of an international administration’s legitimacy, it appears that this source of legitimacy is not straightforward and involves further considerations. To evaluate the legitimacy of the new political system of the province being administered, it is relevant to analyse primarily the way in which it has been instigated, and hence the source of its authority. As a result of the peculiarity of the situation in Kosovo, an analysis of the province’s new political system inevitably has to take into account outside influences. The nature of this system, imposed as it has been upon Kosovo’s society by a foreign body, calls out for two distinct analytical levels – international and local – adding an interesting wider dimension to this study.

3. *Kosovo and Legitimacy*

Decades of social and armed conflicts, which culminated with NATO’s airstrikes, left in the Yugoslav province with a power vacuum, which made it unable to deal with the challenges it had to face. The international community, through Security Council resolution 1244, endorsed its own responsibility to fill this void and prevent the instabilities that it entailed. It established a subsidiary organ to administer the territory through the post-conflict transition and mandated it to establish a new political system capable of taking over and maintaining governance in the long-term. This strategy was adopted on the basis of the nature of the instability experienced in Kosovo. In 1999, the Yugoslav state proved unable to provide for the deeply divided society of its province. As the sovereign state proved unable to secure the stability needed for the exercise of governance, the international community offered an alternative involving outside intervention. Unbiased towards any of the parties to the conflict

⁸² *Ibid.*, p. 4.

⁸³ *Ibid.*, p. 11.

⁸⁴ Beetham, *Op. Cit.*, p. 17.

and believing itself capable of securing support from all sides, the international community considered that their ‘neutral’ role represented a unique opportunity to regulate the conflict. Yet, through their actions, the international community gave an international dimension to a problem that fundamentally was a domestic issue.

Given the complexity of the situation and the emergency nature in which the international actors had to perform at the time, we are only left to hypothesise potential alternatives to explain the failures of the international actors’ policies. Nevertheless, based on concrete examples and armed with our analytical framework, this study aims to provide some explanation of the shortcomings of those policies. The remainder of this section sketches out the theoretical rationale behind the analysis conducted in this thesis and articulates the theoretical tools identified in the first part of this chapter to assessing the legitimacy of the new Kosovo political system. The different arguments raised in this section will be developed fully in the next chapters of this thesis. In the light of the argument developed and provided for the particular case of Kosovo, to assess the province’s post-conflict political system, two distinct scenarios need to be considered: (1) the legitimacy issues surrounding international involvement in post-conflict crisis management; and (2) the legitimacy of the newly established institutions. Those two scenarios will be tested through both legitimacy frameworks – (a) international; and (b) local.

a. UNMIK and Institution-building

When considering the legitimacy of international institution-building in post-conflict Kosovo, the analytical framework identifies three relevant actors: (1) The United Nations Security Council which, as the executive organ of the international community, represents the ‘power holder’ of the system. It exercises the overall decision-making power in the international society. Due to the anarchic nature of the international society, it does not have as such a ‘power holder’ to which it needs to legitimise itself. As a unitary actor, its exercises power by the consensus of its members. Yet, it is important to keep in mind that the multiplicity of individuals that forms the Council and the requirement to reach decisions by consensus have an impact both on its exercise of power and its self-legitimation; (2) UNMIK, the subsidiary organ in charge of administering the policies set out by the international community represents the ‘administration’. It is in charge of implementing the decisions initiated from the Security Council; (3) Finally, in this analysis there are two kinds of ‘masses’ that reflect the peculiarity of the involvement of an international actor in a sovereign state, and

thus the superposition of international and local legitimacies. In the international framework, the ‘masses’ are the states that are the individual units of the international system. They are not technically affected by UNMIK’s decisions, and yet given that the international administration acts in an international framework, it ultimately needs to sustain its action through their beliefs. Within the local framework, the people of Kosovo, who accept the power administered by UNMIK, represent the ‘masses’ in this domination theory’s pyramidal structure.

The non-unitary natures of both the power holder and the ‘masses’ are particularly relevant as their differences in the perception of rules and ultimately the basis of their beliefs, as determined by their individuality based on their own interests, has a potential impact on the legitimacy of the system. In the case of the Security Council, interests that impact on the ‘power holder’ are: (a) NATO countries led by the Security Council’s veto powers: the United States, the United Kingdom and France, in favour of the stabilisation of the region through intervention of the international community; (b) Russia, also a veto power but in favour of the resolution of instability under the cover of Serbian sovereignty; (c) other state actors, who as non-veto powers do not have the express power to reject Security Council resolutions, but can however have and express their own support in the Council’s decisions according to their own specific interests.

The population of Kosovo naturally reflects the diversity of the deeply divided Kosovo society. After the violent ethnic conflict that the society underwent, it is characterised by heterogeneity, and lies divided along deep fault-lines. Beyond the obvious inter-ethnic divisions between Kosovo’s Serbs and Albanians, the society experiences further intra-ethnic rifts, products of the evolution of the difficult political and sociological situation of the region. In particular, it is interesting to note that in this international framework, Serbia – the state with sovereign power over the province – is indeed a mass, both at the international and local frameworks. It does not have direct control over the policies implemented by UNMIK, and yet is affected by them. Furthermore, as a member of the international society, it can express support or oppose the overall actions of the international administration. The heterogeneity of the different actors is important to note, as it strongly reflects on the legitimacy of the administration. The mutually exclusive expectations of the different actors, complicated by the multiplicity of analytic frameworks which involve different set of rules, heavily influence the legitimate domination framework of the international administration.

In this system, the Security Council, through its subsidiary organ, has established a political system in one of its sovereign states. The authority of the Security Council, and by

extension UNMIK, relies on the Charter – the basis of the post-Second World War international order – and norms of international law based on a balance between the principles of sovereignty, national self-determination and human rights. Sovereignty protects states from outside interference but allows intervention in their affairs under strict circumstances. To retain their legitimacy, both the Security Council and UNMIK need to follow those prerogatives. International law allows intervention only in two cases: either with the express and formal approval of the state; or with the ‘benediction’ of the Council rooted on the consensus of its members, on the basis of defined circumstances as laid out in chapter VII of the Charter. In either case, the aims and means should be determined prior to intervention, either by agreement between the state and the intervening power or by the Security Council through the adoption of a resolution. Both exceptions to the non-intervention principle emphasise the importance of rules to legitimise such an intervention action.

Figure 3 - Scenario 1 'Actors'

Power holder	United Nations Security Council		
	US; UK; France	Russia	Other States
Administration	United Nations Administrative Mission in Kosovo		
Masses	States (Serbia) Kosovo population Serbs; Albanians, other minorities, Belgrade		

The justification of the rules that maintain the legitimacy of the system is based on the values of the Westphalian system upon which the international order itself is based. Yet, some actors of the system increasingly have based their belief on alternative internationalist principles such as human rights or, for example the developing notion of a ‘responsibility to protect’ for states. Through the respect of the international legal norms, the international community and UNMIK not only maintain their self-legitimacy but also legitimise themselves to the different masses. It can be argued that Yugoslavia, a member of the international order, supports the international mission by letting UNMIK take authority and run policies in its Serbian province. Yet, down the years, Serbia has questioned the international mission and the international community’s action by arguing that: (1) the settlement was coerced on them through the use of illegal force – i.e. NATO intervention; and (2) the mission did not respect the commands of the Security Council resolution, which recognised the Yugoslav sovereignty over the province even as the mission was developing an institutional structure that ultimately drove the province toward the option of independence.

Furthermore, it is difficult to find a legitimization link between the Kosovo society and the other actors of the system. The international legal system has been established by states for states, and therefore does not grant legal personality and indeed authority to local populations. It is unable to influence a system based on a different system of values. Thus it is hard to establish the belief of the Kosovo population in either of the two actors. In fact there is a certain distrust of the populations in laws that they cannot affect, which they hence consider as against their interests.⁸⁵ For Kosovo's Albanians, the Westphalian principle of sovereignty violates what they view as their right to national self-determination. In the same way, Kosovo's Serbs distrust a system of law which did not protect them either from NATO's intervention or the Kosovo Albanians' retaliations, and made them second class citizens in their own nation-state. In fact, the problem is deeper, as both communities' beliefs rely on a set of values shaped and even entrenched in nationalist ideologies.⁸⁶ Decades of opposition on national grounds and the ensuing violent conflict had entrenched their conceptions of legitimacy along nationalist lines.

The first conclusion that comes out from the study of the legitimacy of the international action in post-conflict Kosovo is the confirmation that there is, within the same system, two set of beliefs in legitimacy: one international and one local. At the international level, there is a tension between the dominant geo-political set of assumptions drawn from the Westphalian system, and the growing salience of human rights. At the local level, embedded national ideologies make it very difficult to establish a shared set of beliefs that could underpin legitimacy for all. As the actors of the system rely on two different sets of values to define the legitimacy of the system, what is legitimate for one is not obviously legitimate for the other. The central argument of my thesis is that the international administration got wedged between the two legitimacy frameworks. The failure to sustain both ultimately calls into question the legitimacy of both the international administration and its post-conflict regulation actions. In this context, a number of factors have consequences in shaping the beliefs of the different actors involved in the process, and hence, in shaping their domination's legitimacy. First, part of the international legitimacy requirements is to establish political stability in the province; yet the failure to obtain the support of the local population – i.e., their participation in the new institutions – is a source of illegitimacy, instability and ultimately questions the legitimacy of

⁸⁵ Knoll, *Op. Cit.*, p. 8.

⁸⁶ Hayden, R., 'Constitutional Nationalism in the Formerly Yugoslav Republics' in *Slavic Review*, vol. 51 (4), 1992. pp. 654-673.

both the administration and of the process. Second, their overall legitimization is indeed complicated by the multiplicity of actors at the ‘power holder’ and ‘masses’ levels. In the former case, there is a tension between geopolitics and rules, as well as within the hierarchy of norms. Political interests exercised within the Security Council bring into question the impartiality and reliability of the executive branch in enforcing international law. Moreover, the commitments of states to the international legal framework are questionable on the basis of the inconsistency in their support for international rules. Finally, the inability of UNMIK to assess for its own purposes the nationalist ideologies had a further effect on the legitimacy of the process. Indeed, national ideologies shape the local notion of belief; yet after ignoring this reality at first, UNMIK took for granted that the integration of extremism in its overall policy would provide it the legitimacy it lacked. Instead of promoting and relying on moderate trends, it created further polarisation.

Figure 4 - Scenario 1 'Levels of Legitimacy'

	International level	Local level
Rules	United Nations Charter, International Law (principles of sovereignty, national self-determination and human rights)	Sovereignty and National Self-determination
Justification	Westphalian system, increasingly promotion of Human rights	National ideology
Action	Adhesion and participation to the system in accordance with its rules, Renewal of UNMIK’s mandate	Participation in the new political system

Figures 2 and 3 schematise the analytical framework of the international conflict resolution’s legitimacy in Kosovo. The next chapters of this thesis will develop the arguments sketched out in this section. Chapter two observes the origins and determines the nature of the national ideologies that shape the belief in legitimacy of the local actors, thus defining the legitimacy framework at the local level. It outlines the mutually exclusive interests of the local actors, prefiguring the difficulties of reconciling the different groups. Yet, it also argues that those national ideologies are indeed not pre-determined but rather the result of a long development process, which leaves potential breathing space that might be adapted for alternative ideologies to grow. Chapter three turns to the source of international legitimacy. It evaluates the strength of the concept of sovereignty *vis à vis* two other significant concepts of international law: national self-determination and human rights. I assess the practical implications that this theoretical debate has for the case of NATO intervention and the overall

legitimacy of the Security Council. Ultimately, it advances the articulation of a concept of a ‘responsibility to protect’ as evidence of the tensions at the basis of international order, and outlines the implications this tension has over the management of post-conflict Kosovo itself. Chapter four analyses the legitimacy framework of international institution-building in Kosovo. After observing the development of the root of international administration’s legitimacy, it analyses how UNMIK adapted its policies to find a balance between inner-justification and external means in order to reconcile the various expectations from the different legitimate domination levels. This chapter tests the international actors’ policies in relation to the criteria developed by Lipset. In particular, it highlights three fundamental flaws: (1) their inability to provide a secure environment for the population to prosper; (2) the relative failure to develop and rely on a strong civil society to check and balance the political institutions; and (3) the contradiction of UNMIK and the international community in dealing with the division of the city of Mitrovica, which ultimately became the landmark and emblem of the rift within the Kosovo society.

b. Legitimacy and the Kosovo Political System

In the analytical framework of the new Kosovo political system’s legitimacy, the identified relevant actors are: (1) the international administration, in charge of establishing the institutions that support the political system, which plays the role of ‘power holder’. The interesting aspect of this legitimate domination structure is the fact that in this domestic frame, the power holder is actually a foreign actor. This has a number of implications as regards legitimacy relationships. Its involvement undeniably affects the overall legitimacy of the political system, and yet the masses have a limited amount of leverage in affecting the legitimacy of the power holder, as there are no formal accountability mechanisms for the administration to the ‘masses’ actors. (2) In charge of administering the power delegated to them by the international mission, the institutions of provisional self-government are the ‘administration’ of the system. It is composed of central and municipal institutions. The former is divided between an executive and a legislative organ. Given the sensitivity of justice in post-conflict society, the judicial power is withheld within the power holder. For similar reasons, especially at the beginning of the international involvement, both the legislative and executive branches were mostly run by international personnel. The lack of separation of powers caused by the involvement of the power holder in the administration has inevitable consequences for the legitimacy framework. (3) Finally the Kosovo society, divided along inter- but also intra-ethnic lines, represents the ‘masses’ in the system. It is interesting to note that there seems to

be an additional divide that affects the system, between the elites and the people that they represent. Indeed, it is often taken for granted that elites represent their groups; yet by concentrating on elites' demands, there is a risk of missing important requirements of the community simply ignored by the elites for 'the sake of the greater good'.

In this system, both the authority of the international administration and the Kosovo institutions rests on resolution 1244, which founded the international administration and mandated it to establish local institutions according to international norms.⁸⁷ As a subsidiary organ of the Security Council, UNMIK is entrusted to define the legal and political structures of the new political system of the province. Nonetheless, the questionable legitimacy of the founding document on which the system bases its self-legitimacy has important implications at the root of the system itself.⁸⁸ Although the institutions of self-government are the focus of this analysis, they enjoy only a limited authority. As in the previous scenario, the rules that establish the authority of the two actors are based on international norms. The Security Council, as the ultimate political authority within the United Nations system, entrusts them with international legitimacy. This legitimacy is validated at the international level as long as the actions and policies of the two actors follow international norms and principles: human rights, good governance, rule of law, democracy based on the liberal concept of multiethnicity.⁸⁹ Yet again, those justifications at the basis of *belief* are in sharp contrast with the *belief* of local actors, who base their claims on sovereignty and national self-determination, require local ownership and the provision of economic and social benefits.

Figure 5 - Scenario 2 'Actors'

Power holder	United Nations Administrative Mission in Kosovo			
Administration	Institutions of Provisional Self-government			
	Legislative	Executive	Municipal	(International)
Masses	Kosovo population		Elites	Belgrade
	Albanians	Mitrovica	Enclaves	

In the same way as in the previous scenario, the gap between the beliefs in the international and local legitimacy frameworks has deep implications for the sustainability of

⁸⁷ Resolution 1244, *Op. Cit.*

⁸⁸ Bain, W., *Between Anarchy and Society: Trusteeship and the Obligation of Power*, Oxford University Press, Oxford, 2003, p. 153.

⁸⁹ Resolution 1244, *Op. Cit.*; Knoll, *Op. Cit.*, p. 5.

the system itself, in an even more acute manner, as in this case, an international model is imposed from the top in a domestic context. The lack of leverage the ‘masses’ have over the norms that shape the system reinforces their distrust. It weakens their support for the authority, and hence its legitimacy. In particular, the population blames the international administration for the lack of clarity of its goals and for its lack of accountability to the Kosovo institutions and population.⁹⁰ The institutions, on their part, are blamed for their lack of autonomy *vis à vis* the international community, their limited prerogatives and their lack of accountability to the population despite their – supposedly – democratic nature.⁹¹ As in the previous scenario, local legitimacy is based on values shaped by national ideologies, and in the same way, those values have played little role in the establishment of the authority of the system. It can be argued that resolution 1244 reflects a balance between the Kosovo Albanian and Serb national ideologies, in attempting to design institutions that respect Yugoslav sovereignty while providing self-government to Kosovo. Yet their mutually exclusive nature and the inability of the international community, despite its responsibility to take a proactive stance to influence the efficiency of the system ultimately plagues the legitimacy of the system as a whole. A classic example of this trend would be the way in which international actors failed to take and enforce decisive policies in Mitrovica. Indeed, by attempting to favour one or the other, through *ad hoc* policies rather than by developing an integrative strategy for the population as a whole, the international administration increasingly alienates itself from all parts of the population.

Finally, the participation of the Kosovo population – or its lack of participation – in political life according to the rules designed and enforced by both UNMIK and the Kosovo assembly illustrate the support – or lack of support – for the ‘power holder’ and ‘administration’.⁹² This phenomenon is all the more important for the institutions as the system claims to be democratic, and hence to reflect the will of the population. The lack of participation in elections, in the institutions, and lack of respect for the regulations and laws by a part of the population demonstrates the limited legitimacy of the system and the compromised prospects of success of the process as a whole.

⁹⁰ *Ibid.* p. 13.

⁹¹ *Ibid.*, p. 5.

⁹² *Ibid.*, pp. 10-11.

Figure 6 - Scenario 2 'Levels of Legitimacy'

	International level	Local level
Rules	Resolution 1244, UNMIK regulations, Assembly laws	National self-determination and sovereignty
Justification	Human rights, liberal democracy based on multiethnicity, good governance and rule of law.	Local ownership, economic and social benefit
Action	Participation in the new political system including participation to election process	

The study of the legitimacy of the institutional system of Kosovo validates the analytical framework based on two levels of legitimacy. Based on the different and diverging values of the international order and the local population, it becomes difficult to legitimise the new institutions in the eyes of both at the same time. Furthermore it proves increasingly difficult for the international administration to develop a domestic political system on the basis of international norms of democracy while taking little account of local needs. The international administration's inability to reconcile the goals and aims of the international community with local needs and wishes ultimately influences the overall legitimacy of the system, and thus its stability. Conscious of the issue, the international community nonetheless has been unable to respond adequately and has ultimately failed, at the time of the Kosovo declaration of independence, to resuscitate its legitimacy as well as that of its actions.

The last two chapters of the thesis further reflect on the overall institutional structure of the Kosovo political system. Chapter five assesses the relevance of UNMIK's democratisation policies and their relevance as a legitimising factor for the political system. It assesses the liberal conception of multiethnicity in post-ethnic conflict societies and analyses the relevance of the central and local institutions of Kosovo, and in particular, how the institutional design managed to provide stability as defined by Lipset's criteria. Chapter six concludes this study by considering the issue of status that is fundamentally at the root of local beliefs. I finish with a review of the Ahtisaari plan and of the consequences of the February 2008 declaration of independence on the prospects of the province. Ultimately, all this highlights the failures of the international community to depart from their top-down approach,⁹³ further worsened by their inability, despite the critical situation, to settle their political differences for the good of Kosovo.

Conclusion

⁹³ Kostovičová 2008, pp. 631-647.

This chapter outlines the theoretical and analytical framework supporting this research. Legitimacy is an old concept that forms the basis of power domination theories. Originally developed within a state framework, the evolution of the international community on a similar power domination structure implied the need to define a specific system to respond to the particularities of this society of states. This prerequisite has been integrated into the development of the legal framework underlying the international order. Clark's remark about the evolution of the legitimacy framework in line with changes within the international political system is interesting and relevant to the study of the case of Kosovo.⁹⁴ Indeed the specific requirements of the resolution of the Kosovo crisis required the international community to develop new conflict regulation mechanisms and entailed a reappraisal of the international legitimacy framework. It is clearly not the first time that the international community got involved in the regulation of threats to the international order in unstable states through the administration of territories. Yet with Kosovo, it was the first time that the international community, through the United Nations, was granted so much power and responsibility in a sovereign state without its full support, ultimately leading to the secession of the territory. The study of international involvement in institution-building indeed requires an open mind and a constant questioning of the basis of the international order. Ultimately the case of Kosovo requires us to reflect upon the fundamental basis of the state-based order, perhaps to decide in favour of alternative models such as global governance. The next chapters illustrate and explain this argument.

⁹⁴ Clark, *Op. Cit.*

Chapter 2 - The Yugoslav Context and the Question of Kosovo

In the last two decades, the term ‘the Balkans’ has come to be associated with war, ethnic cleansing, genocide and other inhuman behaviours. The terrifying images of destruction and suffering broadcasted over and over across the globe during the 1990s enabled, in people’s minds, the association of the Balkan region with the phenomenon of perpetual hatred and conflict, to the point where terms such as ‘Balkanisation’, have become synonymous with disaster.⁹⁵ In an attempt to rationalise these behaviours, ‘ancestral ethnic hatreds’ have been commonly blamed: these horrible and inhuman deeds can only be explained because these people have been hostile to each other for so long that the accumulation of such tensions has naturally resulted in such levels of violence. The danger of so simplistic a syllogism is that, beyond being historically inaccurate,⁹⁶ it induces the false assumption that it is a logical outcome, and consequently unavoidable; hence ultimately, little can be done about it. As Elisabeth Allen Dauphinée argues that the international community’s approach to the Kosovo conflict has been biased from the start by such erroneous judgments.⁹⁷ I would further argue that such judgments are at the root of the international community’s approach to the resolution of the Kosovo issue and are, to a certain extent, the source of the difficulties encountered by the current international mission in Kosovo.

It would be absurd to ignore or dismiss the dramatic and chaotic history of the Western Balkans and of the central role played by the national ideologies that have shaped it. Yet, it would be far too simple to define the Balkans’ dynamics purely in terms of ‘ancestral hatreds’. The history of the Balkans is rich in short- and long-term forces that indisputably played a role in the 1990s conflicts, and these will continue to play a role in shaping the region for the next decades. But in order to assess the political situation in Kosovo and determine its future, it is essential to go beyond this prejudice and endeavour to understand the wider forces that influence the political context in the province. The aim of this chapter is

⁹⁵ For example, in the French political discourse on issues such as the possibility of rehabilitating regional languages, establishing decentralisation, etc. cf. Grbac, D., ‘Balkanisation, un nom fourre-tout pour toutes les saisons?’ in *Newropeans Magazine*, 5 March 2008.

⁹⁶ See e.g. Ramet, S., *The Three Yugoslavias: State-Building and Legitimation, 1918-2004*, Indiana University Press, Bloomington, 2006; Woodward, S., *Balkan Tragedy: Chaos and Dissolution after the Cold War*, The Brookings Institution, Washington, 1994. Kaldor, M., *New and Old Wars: Organized Violence in a Global Era*, Polity Press, London, 1999. p. 155.

⁹⁷ Allen Dauphinee, E., ‘Rambouillet: A Critical (Re) Assessment’ in Bieber, F. and Z. Daskalouski (eds), *Understanding the War in Kosovo*, Frank Cass Publisher, London, 2003. p. 114.

not *per se* to determine the cause of the Kosovo conflict. Instead, it attempts to pinpoint the underlying influences that continue to have an effect over the future of the province.

Through an analysis of the historical and political developments in the Former Yugoslavia and Kosovo over the last century, I wish to determine the context in which the post-conflict political system has developed. In particular, I analyse the development of the rival Serb and Albanian national ideologies, determine how they have shaped people's allegiances and ultimately, the legitimacy structure of the present political system. This chapter argues that contrary to common belief, the Former Yugoslavia's political culture is not based on irrational 'ancestral ethnic hatreds'. On the contrary, this culture has been shaped by carefully and consciously designed nationalist ideologies that developed within a specific regional context. Ultimately, this chapter demonstrates that the way these ideologies were 'constructed' leaves room for potential alternatives. To reach this goal, I first analyse the development of national ideologies in the context of the Former Yugoslavia, and then observe the particular context that developed in Kosovo before concluding with a description of the allegiance patterns in the wake of the recent international involvement.

1. *National Ideologies and the Disintegration of Yugoslavia*

Like in other parts of Europe, nationalist ideologies have been a driving force across the Balkans through the nineteenth and twentieth centuries. Nationalism places the 'Nation' at the centre of its discourse. Ultimately, it strives for the creation of a 'nation-state', where the *Nation* defines the state: territorially, politically, economically and historically.⁹⁸ Under this concept, the nineteenth-century model of 'modern' state is defined in terms of territory, population, effective government and capacity to enter into relations with other states.⁹⁹ The definition of *Nation* has been the object of subtle and tortuous academic debates that bring little light in the context of our present analysis. A *Nation* can be defined as a group of people united around a common identity. Theorists of nationalism have made the distinction between 'civic' as opposed to 'ethnic' concepts of *Nation*.¹⁰⁰ In the former case, the people unite around a common project, such as in 1789 France, while in the latter case, people unite around a natural criterion defined in 'ethnic' terms, as in Germany (1871) or Greece (1829). Nationalism expresses the claim to political authority over a territory in the name of a

⁹⁸ Gellner, E., *Nations and Nationalism*, Blackwell Publishing, Oxford, 2005. 2nd Edition. pp. 2-5.

⁹⁹ Cf. definition of the state codified by the Montevideo Convention on the Rights and Duties of States, 26 December 1933. Article 1.

¹⁰⁰ Hermet, G., *Histoire des Nations de l'Europe*, Seuil, Paris, 1996. pp. 13-15.

common identity.¹⁰¹ It includes demands for political independence or ‘national self-determination’.¹⁰² This national ideology is indeed the dogma that promotes the congruence of a territory and a people within the political realm of a nation-state.

The concept of *Nation* and its related corollaries, such as national ideology and national self-determination, have played a major role in the creation, transformation and disintegration of the Former Yugoslavia. Understanding the checks and balances this involves is crucial to comprehending the role these will play in the creation of any future institutions for Kosovo. National ideologies have served, through twentieth century Yugoslavia, two essential functions: first of integration and then, increasingly of disintegration. In both cases, their importance has been promoted by the central role they have held in the political discourses and games of the different political actors of the Former Yugoslavia. For that reason, understanding the evolution of national ideologies within the Yugoslav context is crucial to understanding the way in which they developed in Kosovo.

a. The First Yugoslavia and the Growth of National Ideologies

During the nineteenth century, national ideologies were nurtured and gained increasing support within intellectual circles in the Western Balkans as the principle of nation-state building spread across Europe. Intellectual and political elites, upset by the submission of their lands to foreign empires,¹⁰³ developed the concept of *Yugoslavism*, which aimed at the unification of the ‘Southern Slavs’ scattered across the different empires that divided the Balkan Peninsula.¹⁰⁴ The self-determination claims of the Southern Slavs eventually materialised on 1 December 1918 with the proclamation of the Kingdom of the Serbs, Croats and Slovenes. The ‘Yugoslav’ enthusiasm displayed at the Versailles Peace Conference (1919) in support of the creation of a united kingdom of the Southern Slavs, which emerged from the dismemberment of the older European empires, concealed the divergences of its different constituent parts as regards the practical implementation of a single united state.¹⁰⁵

¹⁰¹ Nationalism ‘exprime d’abord la revendication de populations qui pensent se ressembler et qui aspirent, également, à se trouver rassemblées sous l’autorité de gouvernants dont elles estiment qu’ils leur ressemblent’. *Ibid.*, p. 11.

¹⁰² ‘[the right of] all peoples [...] freely to determine, without external interference, their political status’ in General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV), 1970.

¹⁰³ Austria-Hungary and the Ottoman Empire also known as the ‘Porte’.

¹⁰⁴ Rusinow, D., ‘The Yugoslav Idea before Yugoslavia’ in Djordić, D. (ed.), *Yugoslavism: Histories of a Failed Idea 1918-1992*, Hurst, London, 2003. p. 12.

¹⁰⁵ Singleton, F., *A Short History of the Yugoslav People*, Cambridge University Press, Cambridge, 1985, p. 134.

The Serbian political elite aimed, in line with the nation building aspirations they had pursued throughout the nineteenth century, to use the new kingdom to fulfil their ambition of a ‘Greater Serbia’,¹⁰⁶ where Serbia would be the dominant constituent unit in charge of a strong centralist state. Unlike Serbia, the Slovenes and Croats had not, by the beginning of the First World War, attained independence. Hence, they saw in the new kingdom a sponsor to secede from the Austro-Hungarian Empire. Devoid of a state of their own, they were in a weak position to quell Serbian hegemonic claims. Nevertheless, they attempted to promote a looser association on a federal or even confederal model, and stressed the idea of equality between the three national subgroups to constrain Serbian aspirations of dominance.¹⁰⁷ The clash of those mutually exclusive conceptions of the Yugoslav state had heavy repercussions for the development of the state and ultimately led to the failure of the first implementation of Yugoslavism. Interestingly, the Yugoslavist ideal, rather than adopting an outright ‘civic’ or ‘ethnic’ model, seemed to blend these two conceptions of the *Nation*. The new Yugoslav nation centred on an ideal of political unity while recognising and preserving ethnic differences. It attempted to establish a balance between the two models in order to counterbalance their respective deficiencies; yet, this fragile equilibrium proved difficult to maintain given the radically different conceptions on which it was built. It is, however, interesting to notice that this concept of double-layered nationhood at the base of Yugoslavism seemed to reproduce the Austria-Hungarian and Ottoman models of state, where both empires controlled the territory under their command but recognised and supported, to a certain extent, the different nationalities that composed the state.¹⁰⁸

Beyond the centralist versus federalist disagreement, a number of other flaws inherent to the creation of the Kingdom of Serbs, Croats and Slovenes, in terms of the implementation of national claims, quickly surfaced. Although the Kingdom was founded on the recognition of the equality of the brotherly but distinct three constituent nations, governmental policies came to assume a collective civic identity and to disregard cultural specificities.¹⁰⁹ Besides, by definition the Kingdom of the Serbs, Croats and Slovenes assumed the existence of only three constituent South Slav nations, hence ignoring other Slav identities: Montenegrins, Macedonians who were considered to be Serbs, and even a separate identity for Muslim Slavs

¹⁰⁶ The idea of ‘Greater Serbia’ covered the ambition to put all Serbs, defined as all Orthodox Slavs, within the same territory and under Belgrade’s rule. Grmek, M., Gjidara, M. & N. Simac, *Le Nettoyage Ethnique: Documents Historiques sur une Idéologie Serbe*, Fayard, Paris, 2003, p. 75-81.

¹⁰⁷ National groups defined in ethnic terms.

¹⁰⁸ The *Vilayet* system in the Ottoman Empire defines administrative units.

¹⁰⁹ For example, linguistic distinctiveness. Singleton, *Op. Cit.*, p. 135.

who were considered as either Muslim Serbs or Croats.¹¹⁰ In the same way, non-Slav nations were ignored and refused any political role in the new kingdom.¹¹¹ In the case of the Albanian clans living in Southern Serb territory, this stance stirred up specific resentments linked to the territorial settlement of the London Peace Conference (1912). At that conference, the dismemberment of the weakened Ottoman Empire enabled the creation of an Albanian state. However, following different European geo-political concerns, Kosovo and the surrounding Albanian-majority populated areas were handed over to Serbia, much to the great displeasure of Albanian nationalist elites.

The different issues raised by the different national concerns within the new kingdom soon gained importance and deepened. What was then to become known as the first Yugoslavia easily fell apart in 1941, in the face of the Axis threat. Despite the different attempts to reassert the Yugoslav state during the 1920s and 1930s, either by force or through more liberal means,¹¹² Yugoslav leaders had failed to respond adequately and find a balance between the different national claims and to acquire sufficient elite and popular support for its preservation. This inability to either accommodate national aspirations, or reunite the national aspirations around a stronger central civic theme, led to further resentment and increasing radicalisation along national/ethnic lines.¹¹³

The disenchanted ethnic claims of the first Yugoslavia were easily seduced by National Socialist racial rhetoric that promoted the redistribution of territory according to national expansionist strategies and the implementation of ethnic cleansing policies.¹¹⁴ By 1942, Serbian territory was heavily cut down, while the *Ustaša* Independent State of Croatia (*Nezavisna Država Hrvatska, NDH*) was granted a large portion of historic Bosnia. The Albanian state, under the Fascist Italian protectorate, was allowed to satisfy its territorial cravings to build a Greater Albania. The ensuing fascist policies implemented within the new Croat and Albanian states contributed further to the radicalisation of ethnic divisions and became a crucial issue in future nationalist rhetoric.¹¹⁵ Despite the increasing ethnic division, Josip Broz (known as ‘Tito’) and his Partisans succeeded in their attempt to mobilise the

¹¹⁰ *Ibid.*, p. 131.

¹¹¹ Albanians, Mygars, Germans, Romanians, Roma, etc.

¹¹² Imposition of a royal dictatorship in 1929 and of a semi-parliamentarian system in 1934.

¹¹³ Ramet 2006, *Op. Cit.*, p. 109.

¹¹⁴ Defined in terms of genocide, forced conversion, and expulsion.

¹¹⁵ Serbians’ fear of Croat and Albanian nationalists.

different anti-fascist factions within the Yugoslav territory.¹¹⁶ The success of the Partisans essentially depended on their success in sweeping aside ethnic dissension in favour of the realisation of a common goal. The resultant organisational structure that was shaped around this common aspiration formed the ideological basis for the establishment of the so-called ‘second’ Yugoslav state.¹¹⁷

b. Titoist Model of National Self-determination

The Federative People’s Republic of Yugoslavia endeavoured from the very beginning to correct the mistakes committed in previous decades as regards national self-determination issues in two ways: first through attempting to respond to the different and exacerbated national claims, and second by trying to unite the different Yugoslav state’s entities around a common politico-economic theme, communism. One striking example of this dual policy is encapsulated in the Yugoslav motto: ‘Brotherhood and Unity’ (*‘Bratstvo i Jedinstvo’*), symbolising the independence of the different groups living peacefully, alongside, building a higher project together.

From the end of the Second World War until the death of Tito (1980), those two policies were used in parallel, with the emphasis one or the other according to the different internal and external political contexts at hand. The 1946 Constitution of the Federative People’s Republic of Yugoslavia illustrates this stand very clearly.¹¹⁸ It encompassed the 1943 ANVOJ principles of equality of the Yugoslav people and of acknowledgement of the Montenegrins and Macedonians as constituent people/nations (*narodni*) through the recognition of their right to self-determination within the Yugoslav state. The constitutional interpretation of this right was heavily rooted in the Leninist approach to national self-determination, namely that the *de jure* recognition of national self-determination was imperative to the stability of the country, but it could not have any kind of *de facto* application.¹¹⁹ This element is reflected in the Soviet format of the 1946 Constitution, where the republics, home to the constituent nations, are legally recognised but enjoy no decisive decisional power, which is monopolised by the central government.

¹¹⁶ Anti-fascist Council for the National Liberation of Yugoslavia (Antifašističko Veće Narodnog Oslobodenja Jugoslavije – ANVOJ), 29 November 1943.

¹¹⁷ Singleton, *Op. Cit.*, p. 202.

¹¹⁸ Constitution of the Federative People’s Republic of Yugoslavia, 31 January 1946.

¹¹⁹ ‘Federative People’s Republic of Yugoslavia is a federal people’s state republican in form, a community of people’s equal in rights who, on the basis of the right of self-determination, including the right of separation, have expressed their will to live together in a federative state’. FPRY Constitution (1946), art. 1 & chapter III ‘fundamental rights of the peoples and people’s republics’.

In this context, the 1946 Constitution has a number of interesting elements regarding Bosnia-Herzegovina, Kosovo and Vojvodina. First, the constitutional implementation of national self-determination was achieved through the territorial division of the country into different republics, each attributable to one overarching nation which enjoyed a *de jure* national self-determination right over it. However, despite the non-recognition of a distinct identity for the Muslim Slavs, Bosnia-Herzegovina was also granted the status of a ‘republic’, attributed to no specific nation and delimited according to its historical borders, in preference to the alternative of splitting it up between the Serb and Croat Republics. Second, while not given the same rights as republics, Kosovo and Vojvodina were respectively granted the status of ‘autonomous region’ (*autonomski oblast*) and ‘autonomous province’ (*autonomomska pokrajina*) within the Republic of Serbia.¹²⁰ Under the 1946 Constitution, the status of the two Serbian territories appeared to be little more than an issue of terminology as no specific rights were attached to it.¹²¹ Yet, the creation of those two entities demonstrated the will to tackle the Albanian and Hungarian national minority issues, as well as an attempt to mitigate Serb nationalist demands. As Aleksandar Pavković argues, the creation of those entities intentionally attempted to restrain Serb nationalism, but unintentionally enabled the creation and strengthening of other national myths.¹²²

Despite the communists’ attempts to contain nationalist demands, external and internal pressures led to political adjustments and numerous changes in the fragile Yugoslav constitutional balance over the next thirty years. Events such as the Tito/Stalin split forced drastic international and national policy changes. At the international level, *Realpolitik* advanced the need to look for alternative political and economic support. The loss of its foremost partner/patron and the ensuing rupture with its Albanian neighbour compelled Yugoslavia to open up to the West and look for alternative partnerships.¹²³ Those international strategic changes implied national adaptation, such as a containment policy towards the Albanian minority, suspected at first to be a fifth column of the now-hostile Albanian neighbour. As Yugoslav–Albanian relations improved, the status and rights of Albanians in Kosovo also improved; particularly important was the opening of diplomatic relations between the two countries in 1971, which corresponded with the achievement of the

¹²⁰ FPRY Constitution (1946), art. 2.

¹²¹ Rights and protection of their ‘cultural development’ and to use their own language. FPRY Constitution (1946), art. 13.

¹²² Pavković, A., ‘Kosovo/Kosova: A Land of Conflicting Myths’, in Waller, M., K. Drezov and B. Gökay (eds), *Kosovo: The Politics of Delusion*, Frank Cass, London, 2001, p. 5.

¹²³ i.e., Non Aligned Movement, Muslim countries.

de facto republican status of Kosovo, formally codified in the 1974 Constitution of the Socialist Federal Republic of Yugoslavia.¹²⁴ As de Waele and Gjeloshaj argue, Tito hoped that the Kosovo Albanians would play the role of a bridge between the two countries.¹²⁵ Improvements in the Yugoslav Albanian minority's conditions were believed to have a potentially positive impact on the relations between Yugoslavia and Albania themselves. Another effect of the Tito/ Stalin split was the need to change policies to justify the ideological break between the two leaders.¹²⁶ At the state level, divisions along economic lines, such as the economic disparity between the republics and the redistribution of wealth, continuously created pressure to enable the greater political and economic independence of the republics.¹²⁷ This drive for the liberalisation of the system was progressively reflected in successive constitutions. Ultimately these internal and external pressures led to the 1974 Constitution and its loose confederal arrangements.

The 1974 Constitution was the last constitutional attempt to appease the constant growing national self-determination demands and save the Yugoslav model.¹²⁸ The federal republics gained sovereignty over most governance powers, while the autonomous provinces gained, if not in name at least in fact, the same rights as the other republics. The Albanians and Hungarians living in Yugoslavia were each upgraded from 'national minority' to the status of 'nationality' (*narodnost*). Article 245 guaranteed that '[t]he nations and nationalities of the Socialist Federal Republic of Yugoslavia shall have equal rights'. Yet the distinction of terminology between 'nation' and 'nationality' implied that the latter, if entitled to self-government, did not enjoy the right to secession that the former had in theory. This distinction was argued on the grounds that the Albanian and Hungarian nations already had separate independent states and therefore already enjoyed their nation's right to self-determination. Although, the constitution seemed to enforce greater decentralisation in favour of the republics, the socialist state tried to keep a balance, and to maintain links between the different nations through the establishment of a complex constitutional system, where the republics' increasing autonomy was interwoven with social entities and principles. The new constitution strengthened the 1963 Constitution's principle of self-management, and

¹²⁴ Artisien, P., 'A Note on Kosovo and the Future of Yugoslav-Albanian Relations: a Balkan Perspective' in *Soviet Studies*, vol. 36 (2), 1984, p. 268.

¹²⁵ Waele de, J.-M. & K. Gjeloshaj., 'Un Indispensable Retour sur le Passé' in Waele de, J.-M. & K. Gjeloshaj (eds), *De la Question Albanaise au Kosovo*, Edition Complexe, Paris, 1999, p. 26.

¹²⁶ Malcolm, N., *Kosovo: a Short History*, Papermac, London, 1998, p. 320.

¹²⁷ Kaldor 1999, *Op. Cit.* p. 40.

¹²⁸ Constitution of the Socialist Federal Republic of Yugoslavia, 21 February 1974.

reinforced its complex governance levels.¹²⁹ Through outweighing the republics' influence within the Yugoslav institutions, by using trade unions and other civil society based entities,¹³⁰ the constitution attempted to compensate for the power gained by nations in the republics' emancipation process.¹³¹

Nevertheless, those safety mechanisms relied on very thin ground: a power-sharing form of national self-determination, the cohesion of the communist league and industrial economic welfare, to represent alternatives to nationalist inducements. First, the 1974 Constitution raised high expectations with regard to the right to national self-determination, especially for the Kosovo Albanians, who saw in the accession to *de facto* republic status a highway to full accession within the decade.¹³² The failure to achieve this status led to increasing discontent, violent protests and retaliation against the Serbian state and what was perceived as their fifth column: the Kosovo Serbs. Second, with the death of Tito, the communist league and the rotating presidential system found themselves in limbo in the middle of individual politics and disputes. The inability of the weakened league to respond adequately to the need for ideological change that was fostered by the collapse of the communist/socialist model across Eastern Europe ultimately lead to the final implosion of the league at the Fourteenth Extraordinary Party Congress in January 1991.¹³³ Finally, the decline in Western aid and the growing governmental ineptness that resulted provided grounds for national ideologies to shape their discourses on the limiting of resources to governance.¹³⁴ The deep economic crisis that affected Yugoslavia represented the last straw that convinced the wealthier Republics of Slovenia and Croatia that the weak federal economic policies and the principle of redistribution of wealth to poorer underdeveloped regions were slowing them down in the international competitive market, and convinced them to find refuge under the increasingly attractive secessionist nationalist rhetoric.¹³⁵

Although Tito's Yugoslavia attempted to reinforce a civic sense of national identity, it failed to impose it over ethnic nationalist claims. Ironically, instead of taming the latter, it

¹²⁹ Constitution of the Socialist Federal Republic of Yugoslavia, 7 April 1963, Basic Principles, arts. 6; 9 & 19.

¹³⁰ Army, League of Communists of Yugoslavia.

¹³¹ 'The legislative body is composed of two chambers: the federal chamber and the chamber of republics and autonomous provinces composed of representatives of the republics, nations, nationalities but also other socio-political groups', SFRY Constitution (1974), art. 284.

¹³² Pavković, *Op. Cit.*, p. 6.

¹³³ Cohen, L., *Broken Bonds: the Disintegration of Yugoslavia*, Westview Press, Boulder, 1993. p. 64.

¹³⁴ Kaldor 1999, *Op. Cit.*, p. 79; Hayden, R., 'Constitutional Nationalism in the Formerly Yugoslav Republics' in *Slavic Review*, vol. 51 (4), 1992. p. 664.

¹³⁵ Cohen 1993, *Op. Cit.*, p. 83; Woodward, S., *Op. Cit.*, pp. 114-115.

increasingly got coerced into integrating them into the system: because of the natural strength of the ideologies, but also because it reinforced the system as it used nationalist ideologies to play higher *Realpolitik* at the international and internal levels. Communism, as in the first Yugoslavia, failed to impose itself over or integrate fully the disparate national ideologies. Crucially, the lack of public debate and discussion about the fundamentals of the Yugoslav state as embedded in the socialist model of the state prevented the development of an alternative ‘civic’ identity. This in turn enabled the polarisation and strengthening of socio-political forces against the socialist Yugoslav ideal.

c. Nationalist Rhetoric and the Dissolution of the Yugoslav Ideal

As secessionist and counter-secessionist discourses began to take increasing predominance within the political arena over the traditionally pursued strategy of ethno-nation balancing,¹³⁶ nationalist rhetoric appeared to the elite as an opportunity rather than a threat.¹³⁷ After an initially unexpected political success on the theme of the defence of the Kosovo Serbs in April 1987,¹³⁸ Slobodan Milošević used the opportunity presented by the six hundredth anniversary celebrations of the Serbian national day to deliver a speech in defence of the ‘oppressed’ Kosovo Serbs.¹³⁹ The incredible support he received for this speech had two important consequences. One was for Kosovo, as the speech prompted the Serbian state to attempt a policy to reintegrate the province within its realm.¹⁴⁰ Another was for Yugoslavia as a whole, as by presenting himself as the defender of the Kosovo Serbs and of their cause, Milošević turned himself into a champion of the Serbian minority cause in other republics.¹⁴¹ Both developments sparked further polarisation along ethnic lines. In the Yugoslav republics, the mobilisation of Serbian national minorities by Milošević was perceived as a threat and further alienated the republics from involving their minorities in the internal political life of each. As tensions between the republics grew along with the wider political and economic crisis and new national radicalisation, the republics of Slovenia and Croatia decided to call for

¹³⁶ Referred to as the ‘Ethnic Key’, Kola, P., *The Search for Greater Albania*, Hurst, London, 2003. p. 64.

¹³⁷ Cohen 1993, *Op. Cit.*, p. 51.

¹³⁸ Cohen, L., *Serpent in the Bosom: The Rise and Fall of Slobodan Milošević*, Westview Press, Oxford, 2000. pp. 106-108.

¹³⁹ Head of Serbian Communist Party 1986-89. 28 June: St. Vidov’s day. Anniversary of the 1389 defeat in the Battle of Kosovo against the Ottomans, it has become in the Serbian mythology a strong national rallying symbol.

¹⁴⁰ The autonomous status was suppressed earlier that year (28 March 1989).

¹⁴¹ Cohen 1993, *Op. Cit.*, p. 52.

republican elections, and soon after, petitioned for their respective rights of secession as guaranteed by the 1974 Constitution.

The 1990s events exposed the fatal flaw of the socialist Yugoslav expression of national self-determination. In the 1974 Constitution, the right to national self-determination was granted to the republics of the federation, but also to the different nations that were constituent parts of the state.¹⁴² In theory, both republics and nations had a right to self-government and ultimately to secession. In practice, this element did not present any major difficulty in cases such as the Republic of Slovenia, where the republic was relatively ethnically homogeneous (hence where the republic and its 'nation' were congruent). However, it became a source of conflict in other cases where large ethnic minorities dissented from the principal nation's will. For instance, in the case of Croatian secession, the Croat nation claimed its right to national self-determination through the secession of its national republic. However, Serbs from Croatia assumed that if there were to be a change in the status of the republic in which they were living, they had the right to call for their own claim to national self-determination and, in turn, to secede from the Croat republic.¹⁴³ The problem essentially stemmed from the ethnic claim to sovereignty, which defined citizenship of the republic in terms of ethnicity, discriminating *de facto* against other ethnic groups and coercing those who refused to identify themselves through their ethnic appurtenances.¹⁴⁴

National ideologies have clearly been, all along the past century, a significant driving force for political instability in the Former Yugoslavia. From its origins, Yugoslavia has been teetering between two concepts of the *Nation*. It was unable to establish a 'civic' nation due to the multiplicity of cultures that embraced nineteenth century national romantic ideals and no real framework to address the problem through free public debate.¹⁴⁵ It was also unable to form an 'ethnic' nation because of the divisions and weaknesses of the national groups, split across the territory between the different colonial powers which prevented them from being economically viable, but also because of a general lack economic incentives. The Yugoslav ideal required establishing a balance between the two. Yet as history, politics and economics

¹⁴² SFRY Constitution (1974), art. 1.

¹⁴³ Weller, M., 'The Rambouillet Conference on Kosovo' in *International Affairs*, vol. 75 (2), 1999. p. 214.

¹⁴⁴ Contrary to other cases of multiethnic states where the different groups assert national self-determination claims, Serb and Croat national identities are based on their religious appurtenances and not on their origins. Serbs and Croats in Bosnia-Herzegovina and Croatia are therefore not the fruit of recent colonial displacements but the result of the spread of religions on autochthonous populations. This peculiarity enforces a certain degree of legitimacy to their claims to territory. Malcolm, N., *Bosnia: a Short History*, Papermac, London, 1996.

¹⁴⁵ Lakshmann-Lepain, R., 'L'Albanie: une Nation Encore à Inventer?' in Waele de, J.-M. & K. Gjeloshaj (eds), *De la Question Albanaise au Kosovo*, Edition Complexe, Paris, 1999, pp. 61-62.

played an increasing role in reinforcing ethno-national discourses, the lack of support for a civic discourse made the balance tilt toward the ‘ethnic’ side. Other political ideologies such as communism/socialism, at first, played that role as they managed to integrate national self-determination claims in their discourse; yet they proved unable to emerge as clear alternatives. On the other hand, other ideologies such as democracy or liberalism were also unable to impose themselves for different reasons, including the lack of a liberal democratic culture or the weight of historical influence.¹⁴⁶

The recent history of ethnic cleansing has further polarised the local populations and elites on ethno-national terms, putting into evidence the legitimacy crisis of Yugoslavia as a nation and promoting ethno-national ideologies as a key variable in the future reorganisation of the region and shaping the concept of legitimacy along ethnic lines. This phenomenon demonstrates that contrary to popular assumptions, national ideologies are not the product of irrationality, but are embedded in a complex socio-economic and political matrix. Given the complex general Yugoslav context, we need to address the specific issue of the question of Kosovo to determine and understand the legitimacy allegiance structures.

2. *The Question of Kosovo*

The region commonly known as Kosovo is roughly formed where two valleys plateau: Kosovo and Metohija (Alb: *Dukagjin*).¹⁴⁷ This region has been the scene of the clash of two nationalisms: Albanian and Serbian. The issue known as the ‘Question of Kosovo’ lies at the heart of the region’s instability for the past century, and deals with the accommodation of both ethno-national claims. Although nationalist politics plays a central role in the whole of the Former Yugoslavia, Kosovo has been one of the more persistent issues, accommodated to different degrees but never resolved up to this day. Understanding the question of Kosovo requires understanding the two ideologies as well as the evolution of the competing claims over the central issue of territory.

As Hugh Poulton highlights, the Albanian sense of national identity and related demands occurred very late compared with other national self-determination movements in the region.¹⁴⁸ However, as in the case of the other Balkan nationalist movements,¹⁴⁹ it

¹⁴⁶ Communist mobilisation versus fascism during the Second World War.

¹⁴⁷ Cf. An alternative description, Krstić-Brano, B., *Kosovo: Facing the Court of History*, Prometheus Books, London, 2004, pp. 27-28.

¹⁴⁸ Poulton, H., ‘Macedonians and Albanians as Yugoslavs’, in Djorkić, D. (ed.), *Yugoslavism: Histories of a Failed Idea 1918-1992*, Hurst, London, 2003, pp. 115-135.

appeared with the rapid decline of the Ottoman Empire and the subsequent loss of grip of the *Porte* over the region. Poulton argues that the lack of national sentiment under the Ottomans could be explained by the religion shared between the majority of Albanians and the occupiers, which gave them access to governmental positions and enabled them to benefit from numerous advantages within the empire.¹⁵⁰ Without dismissing this explanation, I would rather emphasise as an alternative explanation the deep divisions within Albanian society, essentially rural and based on clan units that left little room for a united national consciousness. In fact some of the big names of the national Albanian *Renaissance* were part of the small urban Albanian community educated in Istanbul, which would have taken advantage of the returns offered by the Ottoman administrative system.¹⁵¹

Regarding Serb nationalism, without trying to oversimplify an intricate phenomenon, it finds its roots in a complex balance of myths, victimisations and religious beliefs. The first component rests on the glorious myth of the first Serbian state established under the Nemanjić dynasty in the twelfth century, who built their power base at the centre of their empire: the Plateau of Kosovo. The second component is the overinflated myth of the Battle of Kosovo where a Balkan coalition led by the Serbian prince Lazar was defeated by the Ottomans in June 1389, which forced Serbia to abandon large parts of its prosperous empire to the invaders and consequently to give up their regional supremacy.¹⁵² Finally the last component of Serbian nationalism is the Autocephaly Orthodox Patriarch established in Peć (Alb: *Peja*) in the thirteenth century, and closely linked to Serbian power. The establishment of the Serbian autonomous patriarchate enabled Serbia to break free from the domination of the Byzantine Empire first and Greece thereafter, to become a power in its own right.¹⁵³ Kosovo, being geographically at the centre of those three components of Serbian nationalism, represents the jewel of the Serb nation, the symbol around which the Serb national ideology defines itself, which explains the importance of the region in Serbian nationalist rhetoric.

a. Origins of the ‘Question of Kosovo’ (1878-1945)

Without attempting to ignore the long and intricate history of the province, the Kosovo question has its roots in the end of the First Balkan War (1878) where two significant events

¹⁴⁹ i.e., Greece, Serbia, Bulgaria, etc.

¹⁵⁰ Poulton, *Op. Cit.*, p. 125.

¹⁵¹ i.e. the Fraseri brothers. Malcolm 1998, *Op. Cit.*, pp. 219-220.

¹⁵² Cohen 2000, *Op. Cit.*, p. 144.

¹⁵³ In Orthodoxy, church and state are closely intertwined. An independent church implies the recognition of some independent power. Malcolm 1998, *Op. Cit.*, pp. 42-43.

for both Serbian and Albanian national ideologies took place. The first, resulting from the weakening of the Ottoman Empire over the region, was the independence of Serbia. The central concern of the newly constructed Serbian state was to expand to all the territories inhabited by Orthodox Slavs defined as Serbs.¹⁵⁴ Part of this claim encompassed the valleys of Kosovo and Metohija, considered as the heartland of the Serbian nation because they were at the centre of the first Serbian state,¹⁵⁵ and thus held a fundamental place in the Serbian national myth.

That same year, the ‘League of Prizren’ was created. It originally was a loosely associated military brotherhood composed of Albanian intellectuals who pledged to further the Albanian national interest. Their main claims grew from the creation of a largely autonomous Albanian administrative structure within the Ottoman Empire.¹⁵⁶ They endeavoured to unite the Albanian tribes, merge the territories they inhabited, and protect them from the expansionist claims of surrounding newborn nations, mainly Serbia but also Montenegro and Bulgaria. The League clearly wanted the Albanian community to be recognised as a distinct autonomous entity with specific rights such as the use of their own language within the administration.¹⁵⁷ But at this stage, there was a decisive will to remain within the sovereignty of the *Porte*, and claims to outright independence were contained within the members of the League itself.¹⁵⁸ As the first significant expression of Albanian national consciousness, the ‘League of Prizren’ has gained a mystical aura in their national ideology. This new myth elevated the town of Prizren in Western Kosovo into some kind of national ‘heartland’. However, as regards the roots and development of Albanian nationalism itself, Rajwantee Lakshman-Lepain underlines:

‘La construction du modèle identitaire albanais à cette époque suit avec un certain décalage une trajectoire tout à fait similaire aux modèle serbe et bulgare. Elle se centre autour de la construction de mythes historiques: mystification du héros national Skandërbeg, mystification de la lutte contre les Ottomans... mystification des Illyriens qui font des Albanais le plus vieux peuple des Balkans et de l’Albanie le berceau de l’Europe’.¹⁵⁹

¹⁵⁴ In other words, Orthodox slaves. Cf. Vuk Karadžić quoted in Grmek & al, *Op. Cit.*, p. 60-71.

¹⁵⁵ King Stefan of the Nemanjić dynasty, Malcolm 1998, *Op. Cit.*, p. 43.

¹⁵⁶ Lakshman-Lepain, *Op. Cit.*, p. 60.

¹⁵⁷ Kostovičová, D., *Kosovo: The Politics of Identity and Space*, Routledge, London, 2005, p. 31.

¹⁵⁸ Kola, *Op. Cit.*, p. 9.

¹⁵⁹ Lakshman-Lepain, *Op. Cit.*, p. 63.

The collapse of the Ottoman Empire after the Second Balkan War, and the ensuing territorial rearrangement of the Balkans, were seen by both Serbs and Albanians as an opportunity for national enhancement.¹⁶⁰ The Serbs aimed to satisfy their dream of a Greater Serbia, and attempted to obtain access to the sea through claims to those areas that nowadays roughly comprise Kosovo, Macedonia and Albania; while the Albanians aimed to fulfil their growing desire for a nation-state that had been overlooked by the international community at the treaty of San Stefano (1878). With their competing claims, both sides sought the support of the different European empires, turning their local competition into a full-blown European arm wrestling match. The Albanian claims received support from Britain and Austria-Hungary, who opposed the Kingdom of Serbia, which was naturally backed by its traditional allies, Russia and France. Both Britain and Austria-Hungary saw the growth of a new power within Europe as very suspicious, the former wanting to prevent a new competitor on the seas and the latter fearing the growing role of Serbia in steering nationalist feelings within its own territory.¹⁶¹ The ensuing London Peace Treaty (1913) settled the creation of an Albanian nation-state short of a number of Albanian inhabited territories, which were granted to Montenegro and Serbia.¹⁶² As a large portion of the Albanian population was left out of what was intended to be their nation-state, deep resentment within the Albanian national consciousness emerged. As Noel Malcolm points out, it is also interesting to note that despite the fact that Serbia claimed the territory of Kosovo for historical and religious reasons, it still agreed to grant the patriarchy of Peć, despite its crucial significance, to Montenegro.¹⁶³ The exact boundary design was relegated to a special international commission, which ran short of time to deliver its findings as the First World War broke out in Europe.

The frustration that the Albanian nationalists had felt after the London Peace Conference deepened when, in 1918, the Albanian-inhabited areas of Montenegro, Kosovo and Macedonia were definitely placed under Serbian sovereignty. Albanians within those boundaries organised themselves within an insurgent movement, the *Kaçak*, which aimed to pursue the reunification of these Albanian inhabited territories within the Albanian national

¹⁶⁰ ‘Serbs’ and ‘Albanians’ are here used as generic term to distinguish between the two national ideologies motor of the specific nationalist claims. Yet, as we will see further in this thesis those very generic terms mask important divisions and distensions within the two groups.

¹⁶¹ Such as in Bosnia, but also in Slovenia and Croatia where the growing Yugoslavist ideas circulated within Slav intellectual circles.

¹⁶² Nowadays Kosovo and Macedonia.

¹⁶³ Malcolm 1998, *Op. Cit.*, p. 257.

state and to oppose the insertion of Kosovo into the new Yugoslav kingdom.¹⁶⁴ However this movement soon fell short due to the lack of political and financial support from Albania proper, which was suffering internal political difficulties of its own.¹⁶⁵ As mentioned earlier, under the Kingdom of Serbs, Croats and Slovenes, all nations within the Serbian boundaries were considered as Serbian and denied any self-identity other than a Serb one. Despite being party to the Treaty on the Protection of Minorities (1919),¹⁶⁶ Serbia openly disregarded rights such as education in its own language to its Albanian minority.¹⁶⁷ In fact, two stances were promoted in order to justify this attitude: either that Albanians were in fact Slavs that had been corrupted by Turks and simply needed to be ‘Serbianised’ again, or simply that they were immigrants who just needed to be sent back from where they came from. The latter became the main stance adopted. From the 1920s, the Serbian state set in place a vast agrarian policy aimed at giving land to Serbian settlers, taking it from Kosovo’s Albanian farmers. This resettlement policy became an outright official strategy with the publication in 1937 of the Čubrilović Memorandum on ‘The Expulsion of Arnauts’ and the later signing of an agreement between Yugoslavia and Turkey on the deportation of Albanians to Turkey (1938).¹⁶⁸

This situation was reversed during the Second World War with its territorial division under the Axis countries’ zones of influence; fascist Italy set in place a puppet regime in Tirana and supported their Greater Albanian aspirations. The territory of Kosovo was divided into three parts, with the rich northern mining zones attributed to Germany, an eastern strip to pro-Axis Bulgaria along with a large part of Macedonia, while the rest was granted to Albania along with the Albanian inhabited parts of Montenegro and Macedonia. Strengthened by the support of Italy and behind it, the other Axis powers, the Albanian regime did not have many second thoughts on taking revenge on the Serbian population under its control for what they considered to be the abuses undergone by the Albanian people under Serbian rule. However, despite the support of the Axis for the Greater Albanian cause, anti-fascist and outright communist movements also developed and were organised in Kosovo and Albania supporting the wider anti-axis effort. In order to win the support of Albanians to the Partisan cause, Tito

¹⁶⁴ Kola, *Op. Cit.*, p. 18.

¹⁶⁵ Malcolm 1998, *Op. Cit.*, p. 277.

¹⁶⁶ Treaty between the Allies and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes on the Protection of Minorities, Saint Germain and Laye, 10 September 1919.

¹⁶⁷ Malcolm 1998, *Op. Cit.*, pp. 267-268; Kostovičová, *Op. Cit.*, p. 37.

¹⁶⁸ i.e., Albanians; Quoted in Grmek & al., *Op. Cit.*, pp. 179-202. Also Malcolm 1998, *Op. Cit.*, pp. 284-285; Kola, *Op. Cit.* pp. 101-104.

dangled in front of their eyes the possibility of accessing to the right of self-determination for Kosovo within his larger Balkan confederation ideal.¹⁶⁹

b. Kosovo under Tito's Yugoslavia (1945-1981)

Wartime promises were, however, poorly kept. The 1946 Constitution indeed granted Kosovo an 'autonomous' status; yet it remained within the sovereignty of the Socialist Republic of Serbia and it was granted the status of 'region' (*oblast*) only, as opposed to Vojvodina, which was promoted to 'province' (*pokrajina*). The distinction between the two, although subtle at first glance, has a heavy significance and implications indeed in Yugoslav constitutional terms. The status of 'region' as opposed to 'province' implied a stronger degree of control from Belgrade and was clearly perceived as such, by both the Serbs who wanted to retain a maximum control over the province and by the Albanians who had hoped for maximum autonomy.¹⁷⁰ A strong Serbian centralist system was imposed, with repression against Albanians quasi-institutionalised by the Serbian Minister of Interior Aleksandar Rancović.¹⁷¹ He considered Kosovo Albanians as fascist collaborators responsible for exactions against the Serbs during the war, and suspected them of being the fifth column of Enver Hoxha's regime in Albania. For that reason, the consequences of the Tito/Stalin split worsened the condition of Yugoslav Albanian minorities now that Albania was considered to be an outright foe.¹⁷² Further mass expulsions of Albanians were conducted in line with the emigration policies promoted by Vaso Čubrilović, who had joined the party and pursued the nationalist policies that he had developed in the 1930s, now implemented under the cover of the communist ideology.¹⁷³ In line with the Rancović policy, the 1963 Constitution aimed to further reduce the status of Kosovo. Although the region was upgraded to the status of 'province' on the same terms as Vojvodina, the autonomy of both Vojvodina and Kosovo was now guaranteed only by Serbia. They no longer had a constitutional existence at the federal level, strengthening the already firm grip of the Serbian central government.¹⁷⁴

The fall of Rancović in 1966, and the new *détente* and ensuing *rapprochement* undertaken with Albania from 1962, permitted a loosening of the situation and significant

¹⁶⁹ Kola, *Op. Cit.* p. 83.

¹⁷⁰ Malcolm 1998, *Op. Cit.*, p. 316; Cohen 2000, *Op. Cit.*, pp. 61-62; Dérens, J.-A., *Kosovo, l'Année Zero*, Paris-Méditerranée, Paris, 2006, p. 73.

¹⁷¹ Malcolm 1998, *Op. Cit.*, pp. 320-322.

¹⁷² Enver Hoxha, the Albanian State's leader decided to support Russia against Tito, because of his fear of Tito's plan to include Albania in his Balkan federation plan, Kola, *Op. Cit.*, pp. 95, 97.

¹⁷³ Malcolm 1998, *Op. Cit.*, pp. 322-3; Grmek and al., *Op. Cit.*, pp. 238-241.

¹⁷⁴ SFRY Constitution (1963), arts. 111-112.

improvements for the Kosovo Albanian community.¹⁷⁵ In an effort to reflect that trend, the 1968 revision of the constitution endeavoured to reset the injustices done in 1963.¹⁷⁶ Amendment VII re-established the province at the federal level and withdrew the Serbian nationalist appellation of Kosovo-Metohija (or *Kosmet*) from the official name of the Socialist Autonomous Province. Amendment XVIII granted a constitutional equality between nations and nationalities in line with Tito's 1946 aspirations, giving the Albanians at least a semblance of autonomy *vis-à-vis* Serbia proper.¹⁷⁷ This first step towards greater autonomy from Serbia only encouraged the Kosovo Albanians to claim additional rights. Demonstrations conducted in November 1968 enabled, beyond the lobbying for additional amendments to the constitution, the opening of the University of Prishtina (Serb: *Priština*) in 1969, with classes taught in Albanian, which led to the creation of an Albanian elite core.¹⁷⁸ In addition, during those demonstrations, the idea of a sovereign republic of Kosovo within Yugoslavia was for the first time publicly voiced.

In line with the gains achieved in 1968, the 1974 constitution furthered Albanian ambitions by providing at the federal level for the complete constitutional equality of the province with the other republics including Serbia.¹⁷⁹ The Albanians, the most populous ethnicity in the province gained, through the province's representation, direct access to federal governance structures. Despite being still officially part of the Socialist Republic of Serbia, the republic still had little to no right of control over the internal affairs of the province though. At the federal level, the Socialist Autonomous Province of Kosovo was granted the right to participate in federal decisions 'according to the principle of agreement among the Republics and Autonomous Provinces' and to have a say on the coming into force of changes to the federal constitution.¹⁸⁰ In order to achieve this, the province was granted a distinct representation in federal organs and the ability to determine its own constitution.¹⁸¹ In

¹⁷⁵ The Albanian-Soviet Split occurred in 1961 when Enver Hoxha decided to support Mao Zedong's harder line against Nikita Krutschev. Rapprochement was completed with Yugoslavia when Hoxha in turn disavowed Mao's policy and was forced to rely on alternative partnerships.

¹⁷⁶ Constitution of the Socialist Federal Republic of Yugoslavia. Constitutional amendments, December 1968.

¹⁷⁷ Malcolm 1998, *Op. Cit.*, 324-325.

¹⁷⁸ Kostovičová 2005, *Op. Cit.*, p. 44.

¹⁷⁹ SFRY Constitution (1974), Basic Principles.

¹⁸⁰ SFRY Constitution (1974), Basic Principles; art. 298.

¹⁸¹ SFRY Constitution (1974), at the Federal Chamber, art. 291; and the Chamber of Republics and Provinces, art. 192; art. 268.

addition, it was awarded state-like attributes such as a national bank and the power to engage in foreign relations within the limits conferred by the federation.¹⁸²

At the level of the republic, the province did secure the rights to autonomy and sovereignty.¹⁸³ The province was granted its own constitution, which its own organs had ‘directly and exclusively powers to amend’.¹⁸⁴ Article 427 states, though, that changes in the Republic’s constitution can only be made ‘with the consent of the Assemblies of the Autonomous Provinces’.¹⁸⁵

As mentioned earlier, this *de facto* republic status still fell short of *de jure* recognition. The only, but very important, ‘right’ that the province was still denied was the legal recognition of a right to secession. In Belgrade, meanwhile, the double representation of Kosovo within the new constitution both at the federal and republic levels was denounced. Serbia strongly resented its inability to influence the province’s affairs. As the Kosovo Serb community became a minority on the territory of its own republic, its lack of decisive representation within the province’s institutions was perceived as an injustice and as placing it at the mercy of those whom they perceived as ‘barbarians’ and ‘foreigners’. Within the Kosovo Albanian community, the improvements contained in the 1974 constitution were nevertheless welcomed by the Albanians, who saw in this document and in its implementation the sizeable advancements they had achieved since the Rancović era. Yet, far from fully satisfying them, the constitutional improvements succeeded in unlocking further ambitions for self-determination, while the failure to achieve them led to further discontent.

c. The Break-up of Yugoslavia and the Milošević Era (1981-1999)

After the death of Tito, the father of the convoluted 1974 constitutional arrangements, Serbs in both Belgrade and Kosovo increasingly voiced their discontent with them. The Kosovo Serbs’ dissatisfaction with their living conditions became more acute. First, since their birth rate was lower than that of the Albanians,¹⁸⁶ they represented a decreasing proportion of the population of the province, despite the numerous – failed – colonisation policies implemented over decades by Serbia, and were therefore losing political power

¹⁸² SFRY Constitution (1974), arts. 262, 271.

¹⁸³ Constitution of the Socialist Republic of Serbia, 1974. Basic Principles, arts. 2, 3, 291.

¹⁸⁴ Constitution of the Socialist Autonomous Province of Kosovo, 1974, art. 300.

¹⁸⁵ SRS Constitution (1974).

¹⁸⁶ Though still far higher comparatively than in Serbia proper and the rest of Yugoslavia, Malcolm 1998, *Op. Cit.*, pp. 331-333.

within the local institutions. Second, in parallel with the increasing representation of Kosovo Albanians in the province's institutions, their traditional customs – deeply anchored in their society – gained further ground, slowly excluding non-Albanians from the political and cultural life of the province.¹⁸⁷ Finally, the miserable economic situation of the province increasingly convinced Kosovo Serbs to move out of the province to find better living conditions elsewhere.¹⁸⁸

Within the Kosovo Albanian community, the same irritation with the economic difficulties of the province, coupled with growing frustration over the non-recognition of Kosovo as a republic, peaked in March 1981 with a student strike that soon turned into a province-wide general demonstration. The psychological impact of the demonstration was deep and the protests were soon met with the establishment of a momentary state of emergency, mass arrests, and a deep purge of the local party apparatus. As Malcolm points out, '[i]n the final analysis, the political reaction to the crisis in Kosovo did little to improve the situation and much to harm it'.¹⁸⁹ The socio-economic grievances of the protesters were never taken seriously, and instead were dismissed as an Albanian irredentist and nationalist move.

The mass exodus of Kosovo's Serbs and the growth of Albanian grievances gave rise to growing nationalist rhetoric on both sides. On the Serbian side, a significant step occurred in 1986 with the publication of the Memorandum of the Serbian Academy of Arts and Sciences.¹⁹⁰ While criticising the Yugoslav apparatus as a whole and formulating a Serbian nationalist case, it clearly attacked the constitutional status of its autonomous provinces, and what it perceived and portrayed as a quasi-ethnic cleansing of Kosovo Serbs. Considered as the basis of the subsequent growth of Serb nationalism, it represents the platform on which Milošević formulated his rhetoric. As Lenard Cohen notes, '[i]t was the question of Kosovo... that was the "trigger" or "catalyst" for greater "self-awareness" among the Serbian people regarding their situation as an ethnic group in the country'.¹⁹¹ As already observed, the use of the issue of Kosovo at the centre of Milošević's speech in Kosovo Polje (Alb: *Fushë Kosovë*) on 28 June 1989 brought him strong popular support, not only from the Kosovo Serbs but also

¹⁸⁷ Run on the basis of clan favouritism and quarrels, Dérens, J-A. & C. Samary., *Les Conflits Yugoslaves*, L'Édition de l'Atelier, Paris, 2000, p. 203.

¹⁸⁸ Dérens, *Op. Cit.*, p. 219.

¹⁸⁹ Malcolm 1998, *Op. Cit.*, p. 336.

¹⁹⁰ Serbian Academy of Arts and Sciences, Memorandum, September 1986.

¹⁹¹ Cohen 2000, *Op. Cit.*, p. 105.

from Serbs across the federation. From then on, the constitutional status of the province and the situation of Kosovo's Serbs became two essential concerns of his policy and ultimately, of Milošević's tactics to stay in power.¹⁹²

In early 1989, the Serbian Assembly prepared constitutional amendments that aimed to restrain the powers of the province's institutions: 'they would give Serbia control over Kosovo's police, courts and civil defence, as well as such matters as social and economic policy, educational policy, the power to issue "administrative instructions", and the choice of official language'.¹⁹³ These amendments were received in Kosovo by a series of strikes that paralysed the country, giving an excuse to the Serbian government to re-establish a state of emergency in February 1989 and send in troops to 'calm down' the situation. As I pointed out above, under article 268 of the 1974 Federal Constitution, changes to the constitution needed to be approved by a two-thirds majority of the Kosovo assembly. On 23 March 1989, the Kosovo assembly delegates were coerced into approving the amendments. Despite the absence of the constitutionally required two-thirds majority, the Serbian parliament ratified those amendments on 28 March 1989. Apart from the questionable way in which they were adopted, it is interesting to note that Milošević insisted on pursuing a constitutional procedure to convey the amendments through a puppet vote at the Kosovo assembly, enwrapping this *coup* in a veil of legitimacy. Deprived of authority and under Serbian military occupation, Kosovo's institutions lost control over the internal affairs of the province, leaving the Serbian government in control. In June 1990, under the cover of the Serbian Parliament's 'Law on the Activities of Organs of the Republic in Exceptional Circumstances', Serbia imposed 'temporary' measures that led to the suspension of the Kosovo Assembly on 7 July 1990, the suppression of the main Albanian language newspaper *Rilindja*, the closing down of the Kosovo Academy of Arts and Sciences, and the mass dismissal of state employees.¹⁹⁴

Lacking any constitutional or military means to appeal against the Serbian 'discriminatory' and unconstitutional policies, the Kosovo Albanian political and intellectual elite decided to react within what they still considered as the legitimate institutions of the autonomous province. In early September 1990 the assembly, as the self-acclaimed parliament of Kosovo, convened secretly and voted for the promotion of the province to

¹⁹² *Ibid.*, pp. 95-133.

¹⁹³ Malcolm 1998, *Op. Cit.*, p. 243.

¹⁹⁴ Rugova, I., *La Question du Kosovo: Entretiens avec Marie-Francoise Alain et Xavier Galmiche*, Fayard, Paris, 1994, pp. 92, 105-106.

republic status, federated within Yugoslavia. Despite its lack of realistic implications, this act remains important in two ways: first, the lack of enforcement of this act became an important symbolic and moral ground for ‘victimisation’ – Kosovo was now an independent republic under occupation. Second, it shows that at this stage, Kosovo’s Albanians were still promoting their independence within the context of the Yugoslav federation and did not intend to secede or join Albania as Serb nationalists claimed.

With the situation further worsening in 1991, Kosovo’s Albanian elites organised in September a underground referendum on the sovereignty of Kosovo to demonstrate the legitimate support of the majority of the population for their project and to denounce the oppression of the population’s will, and hence the illegitimacy of the Serbian government.¹⁹⁵ The referendum was followed in early 1992 by clandestine general elections to elect a legislature and a president, and to enable the formation of a government in charge of providing basic services that the Serbian authorities were not providing any longer to Kosovo Albanians.¹⁹⁶ Elected President Ibrahim Rugova, head of the Democratic League of Kosovo (LDK),¹⁹⁷ became the charismatic figure of this ‘parallel’ government, promoting a policy of peaceful resistance.¹⁹⁸ This strategy aimed to boycott Serbian institutions and prevent confrontation with the Serbian authorities, while expecting the international community to condemn Belgrade’s abuses, support their cause and put pressure on Serbia to recognise the sovereignty of Kosovo.

Following the recognition of the independence of Slovenia, Croatia and Bosnia-Herzegovina by the international community, the new shadow institutions attempted a last symbolic gesture by declaring the full independence of the legitimate and sovereign Republic of Kosovo and voting for a new constitution.¹⁹⁹ They supported the argument that the 1974 Constitution had granted Kosovo a *de facto* republic status, and that the withdrawal of

¹⁹⁵ Additional mass dismissal of teachers and university professors, banning de facto education in Albanian, etc. Clark, J., ‘National Minorities and the Milošević Regime’ in *Nationalities Papers*, vol. 35 (2), 2007; Dérens, *Op. Cit.*, p. 99.

¹⁹⁶ Kostovičová 2005, *Op. Cit.*, p. 85-89.

¹⁹⁷ Historical Kosovo Albanian party formed in 1989 in the wake of the withdrawal of Kosovo’s autonomy. It was mainly composed of cultural elites – university professors, member of the writers’ association – but rapidly gained a wide popular support.

¹⁹⁸ This policy is often compared to Mahatma Gandhi’s pacifist philosophy; yet Jean-Arnault Dérens dismisses this explanation and argues: ‘Le choix d’une stratégie non-violente résulte essentiellement d’une analyse du rapport de forces et des possibilités de lutte et de résistance qui s’offraient aux Albanais’ Dérens & al., *Op. Cit.*, 105. Also Salla, M., ‘Kosovo, Non-violence and the Break-up of Yugoslavia’ in *Security Dialogue*, vol. 26 (4), 1995, p. 432; Clark, H., *Civil Resistance in Kosovo*, Pluto Press, London, 2000.

¹⁹⁹ Declaration of Kaçanik and Constitution of the Republic of Kosovo, 7 September 1990.

Kosovo's autonomy was unlawful while the declaration of republic status by the assembly in 1990 was constitutional and legitimate – as expressed by the people in the 1991 referendum. As the international community had supported the right to secession of the other Yugoslav republics, they believed the international community should recognise the right of Kosovo to full independence.²⁰⁰ At this stage, the claim to national self-determination had changed in nature, as the Kosovo Albanian political elites were not supporting sovereignty within the Yugoslav federation any longer but clearly wanted complete independence. As the international community failed to support their case down the years,²⁰¹ and specifically when dealing with the break-up of Yugoslavia at Dayton, Rugova's peaceful strategy started to lose support within the population to groups that promoted more radical alternatives.²⁰²

In parallel to the creation of the LDK, other small political groups emerged to oppose the Serbian policies. Yet, as a result of the conscious need for the Kosovo Albanians to remain united in front of the Serb enemy and because of their radical nature, those groups did not gain much popular support at first.²⁰³ One of them, the Popular Movement of Kosovo (LPK),²⁰⁴ originated among the 1981 student demonstrators who, disillusioned with the Dayton negotiations and the general strategy of the so-called 'parallel' government, became more active in promoting an armed response to end Serbian oppression and to reach independence.²⁰⁵ From 1996, a paramilitary group linked to the LPK, the UCK, started regular small-scale offensives on the Serb military and police. This movement raised funds, as Mary Kaldor has argued, thanks to the Albanian diaspora's support, through their support of a 'Home Calling' fund. More crucial was the sudden availability of large quantities of weapons in the region, following the collapse of the Albanian state in 1997 and the ensuing looting of its large arms reserves.²⁰⁶ The UCK's actions were strongly criticised by Rugova, who accused them of being Belgrade's agents, and giving a good reason to the Serb police and

²⁰⁰ cf. Government of Kosova, 'A Case for Independence', 31 September 1998, in Weller, M., *The Crisis in Kosovo 1989-1999: From Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities*, Cambridge University Press, Cambridge, 1999, p. 44.

²⁰¹ The Badinter commission specifically refused to recognise the right of minorities to external self-determination. In this commission, Kosovo Albanians were still considered as a minority in the same way as the Republika Srpska. cf. European Community Conference on Yugoslavia, Arbitration Commission, Opinion No.2. 11 January 1992.

²⁰² Lukić, R., *L'Agonie de la Yougoslavie (1986-2003): Les Etats Unis et l'Europe Face aux Guerres Balkaniques*, Les Presses de l'Université Laval, Saint Nicolas, 2003, p. 317.

²⁰³ Evidenced by blood feuds reconciliation tribunals, Clark, H., *Civil Resistance in Kosovo*, Pluto Press, London, 2000, pp. 61-64.

²⁰⁴ Dérens and al, *Op. Cit.*, pp. 175-176.

²⁰⁵ Kaldor 1999, *Op. Cit.*, p. 157.

²⁰⁶ *Ibid.*, p. 158; Tröbst, S. *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998*, European Centre for Minority Issues, Working Paper no. 1, May 1998, p. 46.

military to intensify their repression. Despite those accusations, UÇK started to gain more popular support and the growth of violence linked to their actions increasingly captured international attention.

The social, political and economic situation left at the death of Tito by the general decay of the Socialist Federal Republic of Yugoslavia and the rise of nationalism across the country did not spare Kosovo. On the contrary it propelled the Kosovo issue into the first rank of growing jingoistic discourses, exacerbating the radicalisation of national ideologies on both sides. After the failure of the ‘civic’ communist alternative, and unable to counter a Serbian nationalism in full expansion, Kosovo’s Albanians, increasingly saw their salvation in the involvement of the international community. However, the inability and/or unwillingness of the international community, who felt constrained in getting involved to appease the tensions given Serbian sovereignty over the province, left space for increasingly violent clashes between the two nationalisms. The intensification of hostility between Albanian paramilitaries and Serbian military forces, and its dramatic humanitarian consequences, left little room for the international community to ignore the problem any longer.²⁰⁷

3. The Question of Kosovo and the International Community

Lacking leverage within the Yugoslav federation to push forward their demands and under continuous pressure from Serb forces, which enjoyed exclusive control over the province, the Kosovo Albanian community as a whole saw their ultimate salvation in the involvement of the international community. They felt it would be the only actor capable of pressurising Belgrade into granting them more freedom and alleviating the humanitarian crisis in Kosovo. Ibrahim Rugova and his ‘elected’ shadow government established a strategy of pacific resistance which encompassed two axes: (1) the organisation of parallel infrastructures to provide help for the Kosovo Albanian population that did not enjoy the social services offered by Serbian state run institutions any longer,²⁰⁸ and (2) prevention of the escalation of violence in response to Serb provocations as well as that within the Kosovo Albanian population itself by organising a moratorium on clan feuds. The ultimate goal of this strategy was to ensure the international community’s compassion and support for what they presented as a pacific population, a victim of a brutal Serb policy, rather than what the Serbian government portrayed as the repression of criminals and terrorists. Indeed this tactic gained

²⁰⁷ That is, increase of refugees and international displaced persons.

²⁰⁸ Schools, hospitals, etc.

Rugova the support and compassion of a large part of the international community, but it was clearly not enough to instigate their active involvement.²⁰⁹

The failure of the international community to include the case of Kosovo in the Dayton agreement demonstrated the limits of the pacific resistance tactic and encouraged the radicalisation of the Kosovo Albanians' actions.²¹⁰ This radicalisation of the anti-Serb movement expressed itself in two ways: first with the growth of the UÇK and the intensification of its engagement, and second within the general population as evidenced by the student demonstrations in autumn 1997, which met with a violent crackdown by Serbian forces.²¹¹ Alas, as Stefan Tröbst points out, this alternative proved to be more effective as '[i]t was the possibility of a flare up of violence which in the winter 1995/96 significantly increased the awareness of international actors'.²¹² The remaining section of this chapter observes the internationalisation of the conflict before analysing the different actors' positions on the eve of the allies' intervention.

a. The Internationalisation of the Conflict

The international community observed with a suspicious eye the growth of violence in the province that threatened to spread to and destabilise the whole region – all just a few years after the bloodshed in Bosnia-Herzegovina and in Croatia. Yet, bound by the international principle of sovereignty and by a Serbia that ultimately viewed the Kosovo issue as an internal problem, the international community favoured the option that the problem should be solved within Yugoslav borders.²¹³ Besides, at the geopolitical level, bounded by the game of alliances, the community was divided in two: between, on the one hand, the European Union and the United States who were worried about the human rights and humanitarian abuses and the resulting wide movements of populations that would inevitably impact the fragile regional balance; and, on the other hand, Russia which inflexibly supported Serb territorial integrity and threatened to veto any international decisions that would impose decisions on its Slav ally. This division and the boundaries imposed by the international legal framework shaped the different approaches initiated by the international community to deal with the Kosovo issue.

²⁰⁹ Tröbst, *Op. Cit.*, pp. 68-69.

²¹⁰ *Ibid.*, p. 39.

²¹¹ *Ibid.*, p. 1.

²¹² *Ibid.*, p. 21.

²¹³ Tröbst, *Op. Cit.*, p. 22.

The first decisive impact of the international community's division came in the form of the inability of the United Nations to occupy a leading role on the political scene to solve the conflict. Bounded by the persistent threat of Russian and Chinese vetoes, the United Nations General Assembly as well as the Security Council limited themselves to monitoring the deteriorating human rights conditions in the Serbian province and issuing mild and unbinding resolutions to condemn the situation.²¹⁴ Because it was unable to take any decisive action, the space left by the supreme multilateral organisation was filled by smaller and less political organs, which attempted to deal with the critical situation.

The first body to deal with the Kosovo issue was the Conference on Security and Co-operation in Europe (CSCE).²¹⁵ Designed by the Helsinki Final Act, this inter-governmental organisation grounded its legitimacy in its relatively apolitical and technical role of pursuing regional stability. Its involvement was justified through the mandate of its National Minority Office, which had expressed concern for the situation of Kosovo's Albanians in the Serbian province from 1991. In 1992, thanks to a loosening of the pro-western political forces on the Yugoslav political scene, the multilateral organisation was allowed to initiate an 'Observer Mission of Long Duration' in Sandžak, Vojvodina and Kosovo to monitor the conditions of Serbia's minorities.²¹⁶ Yet, the mission was short lived as it was quickly asked to leave Serbia after another shift in Belgrade's political make-up in July 1993. The organisation then limited its monitoring actions to annual parliamentary observer missions relying on the strict approbation of the Serbian authorities.²¹⁷ In the same way, the Council of Europe's parliament attempted mediation between Belgrade and Prishtina, focusing on technical issues like education. Nevertheless, Milošević also boycotted this mediation, pleading in 1993 the tense political situation in Yugoslavia.²¹⁸

²¹⁴ United Nations Security Council resolution 1199 on the Situation in Kosovo (FRY), S/RES/1199 (1998), 23 September 1998; United Nations Security Council resolution 1203 on the Situation in Kosovo, S/RES/1203 (1998), 24 October 1998.

²¹⁵ Restructured in 1995 as the Organisation for the Security and Cooperation in Europe (OSCE). The CSCE was established following the Final Act of the Conference on Security and Cooperation in Europe, known as the Helsinki Final Act. This conference aimed to provide Europe, divided by the cold war, with an organisation in charge of providing regional stability through apolitical organs in charge of dealing with technical issues. A precursory sign of the *Détente*, the organisation continued its work after the fall of the iron curtain, providing for the transition of countries released from the communist bloc countries. It has attempted to remain a platform of cooperation between Eastern and Western Europe.

²¹⁶ Tröbst, *Op. Cit.*, p. 27.

²¹⁷ *Ibid.*, p. 29.

²¹⁸ *Ibid.*, p. 38.

The first body that really attempted to weigh in on the situation was the Contact Group on Bosnia-Herzegovina,²¹⁹ which from 1996, after the addition of Germany and Italy, declared that it would focus on Kosovo as a matter of high priority.²²⁰ In a first *communiqué*, the group emphasised that it would support neither the independence nor the status quo, calling for the parties to settle their differences through negotiations.²²¹ Yet, here as well, the efficiency of the group was plagued by internal dissensions. As Tröbst argues, the Drenica massacre in March 1998 proved to be the first big test for the Group, and its ensuing statement ‘indicated, the contact group was completely preoccupied with sorting out its internal differences in opinion. There was only little energy left to tackle the issue of preventing conflict in Kosovo’.²²² As a consequence, the Contact Group limited itself to enabling indirect negotiations through ‘shuttle diplomacy’ between Belgrade and Prishtina.²²³

As the humanitarian situation in the province deteriorated and the threats to regional stability became more acute, three significant initiatives were undertaken by Europe and the United States. The first one, in November 1997 resulted from the growing concerns of the Contact Group and the European Union over the intensification of the violence between the UCK and Serb military forces. Led by the foreign ministers of France and Germany, the Kinkel-Védrine initiative called upon Belgrade to: (1) participate in a dialogue with Prishtina; (2) accept third party mediation; and (3) grant a special status to Kosovo.²²⁴ This first European attempt to take a decisive lead on the situation in its periphery was met with disdain by the Yugoslav authorities and, the following year, by more violence exemplified by the Drenica massacre in March 1998.²²⁵

Following the failed European attempt to weigh in decisively on the resolution of the Kosovo issue, a second initiative was conducted by the American Ambassador to Macedonia, Christopher Hill. Over the summer 1998, he conducted a round of shuttle diplomacy between Prishtina and Belgrade to attempt to find some agreement between the parties.²²⁶ The ‘Hill process’ eventually led to the draft of a document proposing an interim period where North

²¹⁹ Initially composed of Britain, France, the United States and Russia.

²²⁰ Tröbst, *Op. Cit.*, p. 41.

²²¹ *Ibid.*, p. 42.

²²² The Drenica Massacre (5 March 1998), where the Serb army intervened against the family house of Adem Jashari, believed to be one of the leaders of the UCK, which caused his death along with 58 members of his family, including women and children. *Ibid.*, p. 46.

²²³ Weller 1999, *Op. Cit.*, p. 219.

²²⁴ Tröbst, *Op. Cit.*, p. 59.

²²⁵ The Federal Republic of Yugoslavia’s Minister of Foreign Affairs Milan Milutinović’s response to the Kinkel-Védrine call: ‘Kosovo is an internal affair and nobody else’s business’ quoted in *Ibid.*, p. 62.

²²⁶ Weller 1999, *Op. Cit.*, p. 249.

Atlantic Treaty Organisation (NATO) troops would ensure the security of populations in the province. The remainder of the document failed to have any effect on the final settlement of the status of the province, but provided an outline for a structure of authority with different levels of governance for the province.²²⁷ The document was met with suspicion by the Kosovo Albanians, who considered that the proposed three years of interim status would lock the province into limbo status for an undetermined period of time.²²⁸ On their side, Yugoslavia and Serbia favoured the less political settlement proposed by another initiative, conducted in parallel by and relying on the personal charisma of the Special Presidential Envoy to the Balkans, Richard Holbrook. Belgrade legitimised their choice to the international community by arguing that they had the support of the non-Albanian minorities of Kosovo, and to the Yugoslav public by the agreement's acknowledgement of the subordination of the province to Serbia. The Holbrook–Milošević agreement, announced in Belgrade on 13 October 1998, provided for the withdrawal of the Serb military force and its replacement by a 2000-strong Organisation for Security and Cooperation in Europe (OSCE) force to ensure compliance with previous Security Council resolutions, backed by non-combat aerial support.²²⁹

Nevertheless, with the failure of political initiatives to retard, let alone scale down tensions in the province, strategic and military concerns were raised in anticipation of a potential spillover of the conflict beyond the region. Already in 1992, President George Bush senior had sent a strong message to Milošević known as the 'Christmas Warning'; he threatened Serbia with unilateral airstrikes against strategic targets should the ongoing violence in Kosovo against minorities intensify.²³⁰ This threat, taken up by the new Clinton administration on 10 February 1993, was however never given an opportunity to be taken seriously, as violence in Croatia and Bosnia-Herzegovina intensified and pre-empted the attention of the allied military forces. Later on, with the need to secure the implementation of Dayton, the allies felt that they needed to rely on Milošević' support, leaving their initial threats without any real sting.²³¹ Bound by diplomatic and political concerns, NATO followed the lead of the Contact Group until the end of 1997. At this time, the non-containment and expansion of violence in Kosovo increasingly concerned the strategic organisation. After the

²²⁷ *Ibid.*, p. 219.

²²⁸ *Ibid.*, p. 220.

²²⁹ 'Agreement in Belgrade' in *BBC News*, 13 October 1998.

²³⁰ Woodward, *op. Cit.*, pp. 306 & 500.

²³¹ Weller 1998, *op. Cit.*, p. 218.

Drenica massacre, the European Commissioner for External relations, Hans Van den Broek, warned the Belgrade authorities that due to the threat of the spillover of violence, the European Union had started to consider Kosovo as no longer merely an internal matter for Yugoslavia, opening the door to potential military coercive threats on the Federation.²³² Indeed with the deterioration of the situation in the province and the increasing failure to contain the conflict within the international legal framework,²³³ threats about a military enforcement of peace by NATO were increasingly made.

The intensification of violence over the question of Kosovo demonstrated the limits of the Yugoslav structure's capacity to provide an answer or simply to contain the discontent of both parties. The growth of violence and threat to regional stability drew the attention of the international community. Yet despite its growing concerns, the community as a whole did not dare to take any decisive initiative that might have prevented the degradation of the situation. The lack of involvement of the international community demonstrated a grave malfunctioning in the structure and operation of the international order. This involved a number of features. First, there was a multiplication of actors with mandates that crossed over, leaving none with any real power to influence the situation and confining them to the role of observers. Second, there was a clear lack of political will on the part of the actors bound by international law as well as the configuration and needs of the international political scene. Third, a clear misunderstanding of the roots of the problem itself existed; the clash of ideologies was taken for granted and dealt with as such within the international framework. With the internationalisation of the question of Kosovo, an issue that until now fundamentally was a problem of local legitimacy entered the international legitimacy framework. With this shift, the question was no longer about the local people but clearly became an issue of states. As such, it had to be dealt with by states within states' rules. Eventually, faced with the flagrant disjunctions between the existing international procedures and the needs on the ground, segments of the international community came to question the legitimacy framework itself.

After the Raçak massacre in January 1999,²³⁴ the international community finally decided to take the Kosovo question into its own hands and recognised the inadequacy of its

²³² Tröbst, *Op. Cit.*, p. 56.

²³³ Including the expulsion of the head of the OSCE Kosovo Verification Mission in January 1999. Weller 1999, *Op. Cit.*, p. 221.

²³⁴ The Raçak massacre (15 January 1999) refers to an incident where a number of men dressed in civilian clothes were found murdered in a small village whose the population had been displaced. At the time, the Serbian military forces were accused of having killed civilians, while they argued that they were paramilitary

attempts in the last decades to prevent human rights and humanitarian violations in Kosovo through the framework of various multilateral forums. The first decisive involvement of the international community on the issue of Kosovo occurred in February/March 1999 at Rambouillet, where the European Union attempted to have the different parties to the conflict to agree over a Dayton-type agreement to settle the conflict and arrange a governance settlement between Belgrade and Prishtina.

b. The Rambouillet Conference

Despite the international community's clear awareness of the urgency of the situation and the need to find an outcome to the question of Kosovo, Marc Weller, legal advisor to the Kosovo Albanian delegation at the conference, noted that '[t]he Rambouillet Conference represents a theatre in which many of the tensions underlying the continuing post-cold war transformation were played out'.²³⁵ He describes two fault lines: (1) between the West and Russia, as the latter would not accept any settlement that might be imposed by NATO; and (2) within the Western camp itself, between the United States and the European Union, the latter hoping to portray itself as the strong international actor it had not managed to portray during the earlier Bosnian struggle. The first tensions became manifest when considering the implementation body for the peace process. Russia backed the OSCE, over which it had influence in its decision-making process, rather than the European Union or even NATO as advocated by the United States and the United Kingdom. The second opposition was noticeable in the choice of the negotiation's venue. The choice of the French *Chateau* symbolised the will of the Europeans to influence their periphery.²³⁶ Although the conference convened in Rambouillet endeavoured to obtain a compromise between the two conflicting parties over the issue of the status of the Yugoslav province, international concerns that had previously plagued the ability of international actors to settle the issue also invited themselves to the negotiations.

Nevertheless, the delegation sent by Serbia was composed essentially of Kosovo Serbs and other minorities from Kosovo. This choice, far from being innocent, followed a carefully crafted strategy that aimed to point out that: (1) the issue of Kosovo was genuinely a problem

forces that had died in combat and were later set up as civilian victims. Although the general opinion still supports the latter hypothesis, there are still a number of doubts as to the circumstances of death of the men found that day, Dérens & al. *Op. Cit.*, pp. 130-132.

²³⁵ Weller 1999, *Op. Cit.*, p. 211.

²³⁶ *Ibid.*, p. 212.

of Serbs living in the province rather than a nationalist instrument; (2) they represented the interests of the minorities contrary to those of the Albanian majority;²³⁷ and ultimately, (3) to prevent Belgrade from taking responsibility for the consequences that the failure of the negotiations might have over Serbian politics.²³⁸ The composition of the Albanian delegation reflected the international community's attempt to represent the different factions of the community. The next major fault of these negotiations arose from the heterogeneity of the Albanian delegation. Ultimately the Kosovo Albanian negotiators mirrored different and contradicting approaches to resolving the issue, which had developed over the last decade within the Kosovo Albanian community. In the end, the delegation was headed by a young, then not well-known politician emerging from UÇK's elite, Haçim Thaçi, who had strong support from Madeleine Albright,²³⁹ while Rugova, who was considered by comparison moderate and favoured by the Europeans, was relegated to a subordinate position.²⁴⁰

The third obstacle to the success of the negotiations derived from the format of the talks. Locked up in different rooms with a minimum access to or contact with the outside world, the two negotiation teams were not given the opportunity to enter into direct communication. The aim of this negotiation tactic was to coerce both parties into settling as soon as possible. The lack of direct exchange between the two delegations has been later criticised for its lack of transparency.²⁴¹ Strategically, it gave leverage to the international actors in bridging the two sides, by controlling the information and advancement of the negotiations. The leverage of the international community was indeed furthered by the constant threat of the use of force, hardly masked, should the parties fail to come to a compromise.²⁴² Those negotiating tactics are clearly questionable in the face of the legitimacy and the sustainability of their outcome. Worse, the insistence of the international actors on influencing the talks increasingly made them a third party to the conflict, far removed from their intended role as neutral mediators.

²³⁷ Dérens & al. *Op. Cit.*, p. 297.

²³⁸ Weller 1999, *Op. Cit.*, pp. 226-227.

²³⁹ Foreign Secretary of the United States. As the negotiations started, it seems that the United States believed that they would, in this way, have leverage over the Albanian delegation. Yet they quickly realised that the young Thaçi would not let himself be manipulated but would push forward his own agenda, Dérens & al., *Op. Cit.*, p. 298.

²⁴⁰ Lukić, *Op. Cit.*, p. 332; Weller 1999, *Op. Cit.*, 227.

²⁴¹ Decaux, E., 'La Conference de Rambouillet: Négociations de la Dernière Chance ou Contrainte Illicite?' in Tomuschat, C (ed.), *Kosovo and the International Community: A Legal Assessment*, Martinus Nijhoff Publishers, The Hague, 2002; Allen Dauphinee, E., 'Rambouillet: A Critical (Re) Assessment' in Bieber, F. and Z. Daskalouski (eds), *Understanding the War in Kosovo*, Frank Cass, London, 2003.

²⁴² Weller 1999, *Op. Cit.*, pp. 217, 221 & 223.

Entering the first round of negotiations, it was clear to the Serb delegation, which had been summoned unwilling to the negotiation table, that they would have to compromise their sovereignty over the province. Yet, they came with a choice of two alternatives for which they would be ready to settle: (1) either the preservation of Kosovo within Serbia, with a large autonomy for either community; or (2) the division of the province into two, with independence granted to Albanian inhabited territories. The former solution was supported by the Serbian parliament. This alternative would have indeed maintained Serbian sovereignty over the province while granting autonomy to their nationals, hence giving them a margin of manoeuvre over their community and the affairs of the province. The latter solution was somehow favoured by the political circles surrounding ex-president Dobrica Ćosić and the Science Academy of Belgrade, as it aimed for Serbia keeping control over the natural wealth of the north of the province. As regards the Kosovo Albanian delegation, the Europeans hoped that the ‘moderates’ would somehow subdue the radical core into accepting a ‘substantial autonomy’ rather than outright independence. Although by the end of the negotiations they eventually accepted settling for autonomy, it is clearly not convincing that this was the aim pursued by any of the Kosovo Albanian participants. Although it can be argued that some genuinely favoured avoiding violence, all of them ultimately pursued the territorial integrity of the province and its independence.²⁴³ If any of them accepted settling for less, they clearly saw it as a step towards their final goal and were hoping that if they showed signs of goodwill, the international community would in the end coerce Serbia into giving them independence.

The proposal made by the international community was issued in a document ‘The Interim Agreement for Peace and Self-Government’, which was composed of a framework recognising Yugoslav sovereignty over the province while underlining the need for the Province’s autonomy.²⁴⁴ It contained eight chapters dealing with the governance mechanisms of the autonomous province on the basis of the earlier Hill proposal.²⁴⁵ The proposal was first rejected by the Albanian delegation, which refused to settle for a simple autonomy without guarantees for a revision of status in the future, or for the maintenance of Serb troops within the province. The delegation was ultimately assured of a revision of the status by means of a referendum, enforced by the international community, without however including any

²⁴³ Dérens & al., *Op. Cit.*, p. 298.

²⁴⁴ www.usip.org/library/pa/kosovo/kosovo_rambtoc.html.

²⁴⁵ Weller 1999, *Op. Cit.*, pp. 238-248.

precision on whom would the referendum include,²⁴⁶ and of the deployment of NATO troops in the province but also on Serbia's territory.²⁴⁷ This last point could obviously not be accepted by the Serb delegation, which naturally refused to sign the compromise, despite showing some encouraging signs of willingness to compromise at the beginning of the negotiations.

The inability of the international community to appreciate the fundamentals of the Serb–Albanian opposition over Kosovo and its insistence on imposing its own view vitiated the outcome of the negotiations. Through the internationalisation of the issue, the international community attempted to solve the problem by considering it within the international legitimacy framework, ignoring the fact that the question of Kosovo was fundamentally a local legitimacy issue. Through trying to fit the parties and the problem within their own perspective while ignoring the deep local implications, they missed the opportunity to provide any sustainable answer to the problem at best, and in fact worsened the chance of settlement. The issue of Kosovo is particularly intricate and occurs in a rather complex setting. Dealing with it requires a good understanding of the aspirations of the different parties, decisive actions and a tailor-made solution attuned to the difficulty of the situation. Instead of working on a common platform, the Rambouillet negotiations entrenched existing divisions. They crystallised the political environment and legitimacy allegiances in Kosovo and overshadowed the possibilities of the ensuing negotiations: the relatively powerless Kosovo Serbs depended on Belgrade's power elite; a divided Kosovo Albanian political elite was left competing for power; and an international community, unable to find a sustainable solution to a problem that they did not understand fully, became deadlocked. The ensuing controversial bombing did little to resolve the issue and left at the end a total political, social and economic vacuum that the international community had to fill to avoid chaos spreading throughout the whole region.

Conclusion

²⁴⁶ This issue has great importance as if the referendum were conducted in Kosovo, Kosovo Albanians would be assured of a majority. However, if the referendum were treated as a Serbian internal matter and conducted in the whole of Serbia, Kosovo Albanians would be in a minority and would not be able to have a favourable decision on their independence, Lukić, *op. Cit.*, p. 335.

²⁴⁷ Annex B to the Agreement.

The ‘Question of Kosovo’ symbolises the clash of two nationalisms competing over the same territory.²⁴⁸ Two nationalisms claimed two distinct ‘truths’. As Julie Mertus argues in her book *How Myths and Truths Started a War*, each of these ‘truths’, although contradicting the other, is real and makes sense within each national rationale.²⁴⁹ Defining the opposition between Serbs and Albanians as grounded in ‘ancient hatreds’ is inappropriate. The Balkan region, at the meeting point between two great civilisations, religions and empires,²⁵⁰ has naturally for centuries been the scene of clashes between those entities. Furthermore, the rugged geographical situation of the region did also play a role in creating physical barriers between the different communities. Yet, none of this explains fully the visceral violence between the different groups that is witnessed nowadays. The convoluted history of the region and the central role played by nineteenth century romantic idea of the nation and eighteenth century concept of ‘modern’ state, provide a more rational explanation of the phenomenon. Attempts to establish their own nation-states by each claiming the territory and establishing a political structure has been at the centre of the dispute between the Serbs and Albanians in Kosovo. The competition of two national ideologies over the same territory has brought them to define themselves in opposition to each other, with the situation being exacerbated by the failure of the civic ideal to bring real long-lasting benefits to the local population. As Jean-Arnault Dérens argues:

‘L’objectif des deux nationalismes était et demeure de créer – ou de défendre – des Etats-nations homogènes, où toute la légitimité politique reviendrait à un seul peuple. L’enjeu porte donc à la fois sur la définition même de ce peuple et sur les territoires auxquels il peut prétendre, d’une manière dont l’exclusivité est plus ou moins ouvertement revendiquée’.²⁵¹

The history of the national ideologies’ confrontation is characterised by the oscillation between balance and counterbalance of power politics. A power relationship, where the ‘strong’ uses its comparative advantage to take revenge and impose itself against the ‘weak’, has repeated itself in turn all through the century.²⁵²

²⁴⁸ Chiclet, C., ‘L’importance de la Question Albanaise’ in Waele de, J.-M. and K. Gjeloshaj (eds.), *De la Question Albanaise au Kosovo*, Edition Complexe, Paris, 1999, p. 15.

²⁴⁹ Mertus, J., *Kosovo: How Myths and Truths Started a War*, University of California Press, Berkley, 1999.

²⁵⁰ European and Ottoman; Christianity and Islam; Austro-Hungarian and Ottoman.

²⁵¹ Dérens, *Op. Cit.*, p. 306.

²⁵² i.e. For example, when in 1942 and 1966, the Albanians used the support of the Italians or Tito to take revenge and impose itself on the local Serb population; or when in 1912, 1946 and 1981, the Serbian state, strengthened by its sovereign right and the weakness of the Albanian position, subdued the Albanian population to its dictatorial power, Dérens et al., *Op. Cit.*, p. 334.

During the period of Socialist Yugoslavia, both Serb and Albanian nationalists sought to pursue their causes through federal institutions: Belgrade attempted to impose the recognition of its sovereignty over the province, while the Kosovo Albanians lobbied for greater autonomy. Unfortunately, it was not possible to find a sustainable solution that satisfied all parties. In the 1980s and 1990s, Kosovo witnessed the building of resentments over political deceptions, which were now entrenched in the political discourse. Milošević, but also Kosovo's Albanian politicians, increasingly polarised the political debate on the Kosovo issue and used nationalist rhetorics to affirm their respective claims to political power. During this period, as a political and economic crisis affected the whole of the former Yugoslavia, all 'evils' occurring in the province were explained through the prism of nationalist rhetoric and on the basis of political myths.

The issue of constructivism in relation to the nation and nationalism is hotly debated.²⁵³ In this research, I do not aim to establish if Serb or Albanian identities are constructed or not. For Kosovo's Serbs or Kosovo's Albanians, an academic explanation that their identity is not natural but constructed is irrelevant. The distinction between Serbs and Albanian, and its implications, are very clear within the Kosovo population, where everyone knows what they are and how they feel. In the same way, I do not aim to determine the reality of the Serb and Albanian nations. The attachment of the respective communities to their own ideas of the nation is a reality of the province. Nevertheless, I argue that visceral opposition of the two nations, far from being an irrational sentiment originating in some shadowy past, is a carefully crafted outcome of their respective national ideologies and ensuing policies. Evidence can be found in the interesting research that has been conducted by Denisa Kostovičová,²⁵⁴ which demonstrates how nationalist policies and their implementation have enabled the establishment of geographical, and ultimately psychological, barriers between the two communities.

²⁵³ Kostovičová 2005, *Op. Cit*, p. 19-22.

²⁵⁴ *Ibid.*

Chapter 3 - International Legitimacy and Legitimation

By the time the Rambouillet negotiations failed, the divisions engendered by the Kosovo question on the Yugoslav political scene had served to entrench the stance of the international community. The rifts reflect the fundamentally different conceptions various actors had of the relative roles of and relations between the principles of sovereignty, national self-determination and human rights, which have underpinned the international order since 1945. NATO's intervention in Yugoslavia over Kosovo, beyond the consequences it had over the province and the Balkan regions, more crucially put into question the future of the international order as established under the United Nations regime.

This chapter investigates the impact the issue of Kosovo had on the fundamentals of the international order, and how those fundamentals now affect the prospects for the province. It analyses: (1) the way in which the issue of Kosovo affected the relationship between the principles of sovereignty and the concepts of national-self determination and human rights; (2) the impact this situation and the ensuing intervention had on the international order; and (3) the consequences it held for the legitimacy of the international community's action and future international involvement in the territory.

This chapter demonstrates that the events that occurred in 1999 Kosovo had an important impact on the international order as they brought into question its normative roots as well as its political configuration as embodied in the United Nations Security Council. Furthermore, it argues that if the 1999 events call for a reappraisal of the existing normative order, to date the international community has not been ready to upset, for purely political reasons, the primordial role sovereignty has played and continues to play in this order. Ultimately, it reveals the extent to which United Nations Security Council (UNSC) resolution 1244 served more to legitimise NATO's intervention through the reconciliation of its action with international law than it attempted to establish the necessary basis for a post-conflict settlement, thereby foreshadowing the lack of any legitimate basis for future international missions.

To argue those points, I first propose to analyse the sovereignty versus national self-determination debate and to provide an international legal outlook on the Kosovo Albanian and Serbian feud. I then consider the inconsistency between sovereignty and the human rights violations that were permitted under its realm, and in particular, the causes of the allies' intervention against Serbia from March till June 1999. I finally complete this study with an

analysis of the consequences of the intervention on the UN regime and the implications of resolution 1244 for the legitimacy framework in which any post-conflict settlement for Kosovo will evolve.

1. ***Sovereignty vs. National Self-determination***

The principle of national self-determination, on which the Kosovo Albanians based their claim to independence, is an ancient and well-established principle under international law. This norm grants ‘peoples … [the right] freely to determine, without external interference, their political status’.²⁵⁵ In response to the danger this principle represents for the international tenet of sovereignty, the cornerstone of the international order, the international community has attempted throughout the twentieth century to limit the purpose and scope of this principle to well defined cases.²⁵⁶ As explained in chapter one, sovereignty is the cornerstone of the international legal order as it provides the guarantee for states that their territorial and political integrity will be respected, and kept free from outside obstruction. In fact, Stephen Krasner defines the international system in terms of ‘Westphalian states, understood as unitary rational actors operating in an anarchic setting and striving to enhance their well being and security’.²⁵⁷ National self-determination at first underwrote state sovereignty in the nation-state era of the eighteenth and nineteenth centuries. Later, with the growth of the concept of nations within states, it increasingly became a threat to the international principle. To determine the implications national self-determination has in the case of Kosovo, it is essential to first determine the field of application of the notion and the implications this entails.

a. ***Sovereignty vs. National Self-determination***

As one can observe from the number of legally and non-legally binding documents that deal with national self-determination, the international community has a clear and distinct concern to define the field of application and consequences of this principle. With the 1960

²⁵⁵ General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV), 1970. The nature of the principle as a right subject to a number of controversies, e.g. Individual vs. Group rights, who is entitled to the right, and under what conditions.

²⁵⁶ For example, the destabilisation and weakening of the state, internal and regional conflicts with economic, political and humanitarian consequences over the region, Jackson, R., *Quasi-states: Sovereignty, International Relations, and the Third World*, Cambridge University Press, Cambridge, 1993.

²⁵⁷ Krasner, S., ‘Compromising Westphalia’ in *International Security*, vol. 20 (3), 1995, p. 121.

Declaration on the Granting of Independence to Colonial Countries and Peoples,²⁵⁸ the international community provided a set of definitions, rules, and rights intended to restrict the application of national self-determination to a limited number of cases. Under this regime, the right to national self-determination is restricted to the enjoyment of a defined colonial ‘people’, under strict decolonisation rules.²⁵⁹ This framework allowed for a consistent application of the principle to the cases of African and Asian colonies seeking independence from their colonial powers on the grounds of national self-determination. In 1966, with the inclusion of the concept in two international covenants,²⁶⁰ the principle found new support within the human rights regime. Although national self-determination claims on the grounds of human rights violations had little empirical application at this stage, it does indicate the will of the international community to give the principle some additional relevance beyond the strict decolonisation context. Yet, at this stage, the crucial questions that the international community failed to clarify are: (1) who is entitled to the right to national self-determination; and (2) what implications does national self-determination entail?

According to different international documents, national self-determination grants rights to a ‘people’; yet, these documents only provide a vague definition of what constitutes such a *people*. Beyond the general definition of a *people* as ‘an aggregate or a mass of individuals who have a common identity and are entitled to express their collective and political potential capacity’,²⁶¹ the international community has attempted to clarify the understanding of the term by redefining it within precise circumstances. Under General Assembly resolution 1514,²⁶² where national self-determination is only intended to apply to the decolonisation context, a *people* are colonised entities defined under strict rules.²⁶³

Beyond the decolonisation context, the universality principle of the human rights regime creates a further problem for the applicability of the principle of national self-

²⁵⁸ General Assembly declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV), 14 December 1960.

²⁵⁹ Principles Which Should Guide Members in Determining Whether an Obligation Exists to Transmit the Information Called for Under Article 73e of the Charter, General Assembly Resolution 1541 (XV), 15 December 1960.

²⁶⁰ International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), 16 December 1966 (ICCPR); International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI), 16 December 1966 (ICESCR).

²⁶¹ Black, H., *Black's Law Dictionary*, St Paul: West Publishing, 1990.

²⁶² General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV), 14 December 1960.

²⁶³ *Ibid.*, annex.

determination.²⁶⁴ As all individuals are normally entitled to human rights, if national self-determination is a human right, then national self-determination holds a universal application and the limits imposed by the decolonisation context fail to serve as a strict constraint. Yet, the universal nature of national self-determination holds a number of doctrinal limits. Those limits can be found in the answers to the following questions: (1) is national self-determination granted to an individual or a community? and (2) to what extent can national self-determination be given to ‘everyone’ without restrictions?²⁶⁵

A partial answer to the first question can be found in the *International Covenant on Civil and Political Rights*, which grants human rights to ‘persons belonging to such [groups]’.²⁶⁶ Therefore rights are granted to individuals on the grounds that they belong to a community of individuals, not on the grounds that they are individuals. In regard to the second question, the international order is quite clear. Although national self-determination has grown into a legally accepted principle, it has not been granted without qualification. On a practical level, the reluctance of states to grant national self-determination to entities such as the Basques in Spain, Chiapas Indians in Mexico and Tibetans in China, is a proof of the unwillingness of states to grant a boundless universal character to the principle of national self-determination.

On the doctrinal level, beyond the expressed will of states to limit national self-determination to the decolonisation context, the *Declaration on Principles of International Law*²⁶⁷ is further evidence of the wish of the international community to limit the scope of national self-determination to defined entities, even within the human rights regime. According to that declaration, in order to be legally accepted by the international community, the *people* should not endanger the sovereignty of the state of which they hold citizenship, or international peace and security. However, beyond those criteria remains a grey area in which the debate over minorities and their right to national self-determination develops.

In contrast to the terms ‘self-determination’ and ‘people’, ‘minority’ is a well-established legal principle under international law. The concept was legally recognised at the

²⁶⁴ United Nations Declaration of Human Rights, General Assembly Resolution 217 A (III), 10 December 1948, art. 1.

²⁶⁵ *Ibid.*, art. 2.

²⁶⁶ ICCPR, art. 27.

²⁶⁷ Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV), 24 October 1970.

end of the First World War through ‘special treaties on minorities with the allied or newly created states ... on the rights of minorities within their borders ... [and] included in the peace treaties with ex-enemy states ... [as well as] declarations before the Council of the League of Nations as a condition of their admission to the league’.²⁶⁸ The minority rights regime was originally established as a response to minority claims within multi-ethnic states, by attempting ‘to prevent those ethnic groups which had been separated from their respective nation-states ... from claiming a right to self-determination’.²⁶⁹ The concept of minority was adopted as a way to reconcile state territorial integrity and heteroclite groups’ demands. According to Thomas Musgrave, the concept of minority was specifically differentiated from the concept of a *people* entitled to national self-determination. This argument is supported by the ICCPR’s interpretations, where a distinction is drawn between a ‘people’ entitled to national self-determination and a ‘minority’ entitled ‘to enjoy their own culture, to profess and practice their own religion, or use their own language’ within a larger state.²⁷⁰

Under international law, the distinction between a ‘people’ and a ‘minority’ is further enforced as modern international opinion tends toward the idea that minorities should be granted a specific kind of self-determination. In the case of the Former Yugoslavia, the Badinter Commission dealt with the topic of minority rights to self-determination in its opinion no. 2,²⁷¹ yet, the distinction this decision supports remains subject to debates. In particular, the Badinter opinion created a precedent, while failing to specify the exact legal implications of this right for minority.

The first relevant implication of the distinction between the rights granted to a ‘people’ and a ‘minority’ appears when it comes to its legal consequences. It is commonly assumed by secessionist groups that this right automatically implies the right to break away from the state and attain independence. However, according to the international normative

²⁶⁸ Robertson, A., *Human Rights in the World: an Introduction to the Study of the International Protection of Human Rights*, Manchester University Press, Manchester, 1996, p. 19.

²⁶⁹ Musgrave, T., *Self Determination and National Minorities*, Oxford University Press, Oxford, 1997, p. 167. See also the ICCPR, art. 27; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, General Assembly Resolution 47/ 135, 18 December 1992.

²⁷⁰ ICCPR, art. 27.

²⁷¹ European Community Conference on Yugoslavia, Arbitration Commission Opinion No. 2, 11 January 1992. (Badinter Commission) According to the Commission, the Serbian minorities of the Krajina and Srpska are entitled, under international human rights law, to have their minority rights respected (§ 2). In addition, they affirm that ‘the principles of rights of self-determination serve to safeguard human rights. By virtue of that right, every individual may choose to belong to whatever ethnic, religious or language community he or she wishes’ (§ 3). However it introduces an important limitation to that right in that ‘self-determination must not involve changes of frontiers’ (§ 1).

framework, national self-determination can be achieved only with the approbation of the sovereign state from which it wishes to separate. This tenet is legally supported by General Assembly resolution 2625, which states that national self-determination should ‘not consist of any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states’.²⁷² As such cases rarely occur, modern international law has introduced an alternative to secession that could result from a consensus between the parties. In this respect, international law professor Antonio Cassese, in a study of the legal implications of self-determination, highlights an interesting trend for the concept.²⁷³ He observes that self-determination can take two distinctive forms: internal and external. According to this distinction, on the one hand, external self-determination is the ability of the entity granted self-determination to determine its own status under international law, to establish its position within the international community, and to launch relations with other states free from third-party intervention.²⁷⁴ On the other hand, internal self-determination is the ability of an entity to establish self-government over a defined territory in agreement with the state to which the territory belongs. In other words, a group seeking national self-determination would be granted the right to secession should it fulfil certain defined criteria. Should it not, it can still enjoy self-determination through autonomy within a sovereign state. In international legal terms, the distinction lies in the former right being granted exclusively to a ‘people’ with the latter being the prerogative of minority groups. This trend reflects the Yugoslav practice and was promoted by the Badinter Commission, which supported the right of the Serb minority in Bosnia-Herzegovina to internal self-determination, but clearly not to secession, independence or association with the Republic of Serbia.²⁷⁵

Nevertheless international law, in its distinction between a *people* and a *minority*, fails to provide criteria for defining how groups can be rigorously defined as one or the other, and hence what exactly they are entitled to. The second debate that lingers is the one over the determination of who makes the distinction to grant a given group the status of a *people* or *minority*. Due to its nature, international law tends to leave to existing states the prerogative of deciding the nature of the groups that constitute each. The state is therefore judge and party in securing the legitimacy of all groups it represents, and can prevent any given group from

²⁷² General Assembly Resolution 2625 (XXV), preamble.

²⁷³ Cassese, A., ‘Political Self-determination: Old Concept and New Development’ in A. Cassese (ed.), *UN Law/Fundamental Rights: Two Topics in International Law*, Alphenan den Rijn, The Netherlands, 1979.

²⁷⁴ Cassese, A., *Self-determination of People: a Legal Reappraisal*, Cambridge University Press, Cambridge, 1995. p. 5.

²⁷⁵ The inability to change frontiers; cf. Badinter Commission, Opinion No. 2, § 1.

parting without its consent. Contrary to the literal meaning of ‘minority’, a group that qualifies as such is not obviously a group that contains fewer members than another. Given this, a *minority* should be defined as a group that has less leverage within the state’s political and decisional systems. In the case of Yugoslavia, this distinction has particular relevance. Constitutionally, the Yugoslav state makes the distinction on ethnic criteria between *nations* (*narodni*) and *nationalities* (*narodnosti*). The former are defined as the founding ethnic groups of the state, while the latter are groups which are ethnically different, but whose nations already have a state outside of the Yugoslavia. As demonstrated in Chapter two, the definition of a group according to one or the other typology has great relevance for the rights the group enjoys within the state, and consequently shows how important it was for groups to be defined as one rather than the other. In the first Yugoslavia, groups such as Macedonians and Montenegrins were not given a status at all, and fought to gain one in the succeeding state. More crucially to this argument, the distinction between *nation* and *nationality* was and is at the centre of the conflict between Albanians and Serbs in Yugoslavia as the former aim for more rights and the latter aim to restrain the former’s expansion of power within the Yugoslav state.

As the distinction remains the prerogative of the state, the problem that arises is that of how to prevent the state from abusing the system. As Krasner contends, ‘national self-determination ... could not resolve the problem of minorities. Therefore, the rights of minorities had to be protected so that they would accept and support the democratic polities within which they resided’.²⁷⁶ Then again, in cases where the state uses the distinction to bolster the power of the group whose interests it defends at the expense of other groups, to what extent does an outside power, such as that of the international community, have a right to repair the ongoing injustice? In the case of Kosovo, the Rambouillet negotiations and the subsequent NATO intervention directly challenged the international legal base on which the system was based.

b. Kosovo and National Self-determination

In this context, the issue now consists in determining whether the claim to independence of Kosovo’s Albanians is admissible under the principle of national self-determination and, if so, what form of self-determination they are entitled to. Kosovo

²⁷⁶ Krasner, *Op. Cit.*, p. 143.

Albanians argued their entitlement to independence on three grounds: (1) that the province under the 1974 Socialist Federal Republic of Yugoslavia Constitution was granted a *de facto* republic status, and as such had the same right to self-determination as the other republics; (2) that Kosovo had been, since 1912, a *de facto* colony of Serbia and as such could claim the right to national self-determination granted in the decolonisation context; and (3) that they were part of the Albanian *people* and therefore should enjoy the same rights as Albanians in Albania.

With respect to the first claim, Chapter two clearly demonstrated that the 1974 Constitution of the Socialist Federative Republic of Yugoslavia (SFRY) did *not* grant Kosovo the right to secession, since Albanians were considered as a nationality (*narodnos*) and not as a constituent nation (*narod*). The second claim can also easily be dismissed, as the case of Kosovo clearly does not fit the international legal definition of decolonisation. According to the criteria listed in the General Assembly resolution 1514, the colonised territory should be ‘geographically separated’ and ‘distinct ethnically and/or culturally from the country administering it’.²⁷⁷ Although, Kosovo Albanians are distinctly different ethnically and culturally from Serbs,²⁷⁸ the geographical criterion does not apply. Moreover, under the Serbian Constitution,²⁷⁹ the province is clearly an integral part of the republic and therefore neither a colony nor a ‘non self-governing territory’. Finally the Kosovo Albanians’ claim of belonging to the Albanian *nation* cannot be accepted. This claim relies on the continuous rejection of the border drawn in 1912, which, as Kosovo Albanians argue, has divided the Albanian people into two separate territories and condemned part of the Albanian people to oppression and non-recognition of their legitimate rights.²⁸⁰ This claim can easily be rejected on three legal grounds. First, the change of internationally recognised borders would be condemned on the grounds of *uti possidetis*, an international principle that prevents any change of international borders without the express consent of the countries involved. This tenet is closely associated to the principle of national self-determination, including in the case of the Former Yugoslavia, as the Badinter Commission recalls.²⁸¹ For Kosovo to become independent or to join Albania, it would, in any case, need the express consent of Serbia.

²⁷⁷ General Assembly Resolution 1541 (XV), annex, principle IV.

²⁷⁸ Language (Serb/Albanian) and religion (Orthodox/ Muslim & Catholic).

²⁷⁹ Constitution of the Socialist Republic of Serbia, 1974, art. 1.

²⁸⁰ Government of Kosova, ‘A Case for Independence’, 31 September 1998 in Weller, M., *The Crisis in Kosovo 1989-1999: From Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities*, Cambridge University Press, Cambridge, 1999, p. 42.

²⁸¹ Badinter Commission, Opinion No.2, § 1.

Second, the Badinter Commission reminds us that there is a clear international principle that prevents a *people* that has attained independence to claim sovereignty over further territory belonging to another sovereign state.²⁸² This principle is an ultimate safeguard intended to prevent any further instability caused by the multiplication of irredentist claims.²⁸³ Thirdly, the Yugoslav claim that the Albanian people already enjoy external self-determination within the Albanian state is already accepted according to international legal principles, thereby not permitting Kosovo's Albanians a further right to national self-determination.

While, according to these arguments, international law would have difficulty recognising the right of Kosovo to secede, the province could however qualify for internal self-determination. As demonstrated in the previous chapter, the SFRY constitution clearly recognised Kosovo Albanians as a minority which, as such, entitled them a certain right of autonomy.²⁸⁴ They also would qualify under our legal definition of minority groups, and as such, should enjoy the protection granted by the minority rights regime. This distinction becomes important when the political and human rights violations of Kosovo's Albanians since 1989 are considered. As the autonomous status of the province was an expression of the rights of the Kosovo Albanians as a minority, the withdrawal of this autonomy without their consent,²⁸⁵ besides being unconstitutional,²⁸⁶ was also illegal under international law. It represented without doubt a violation of the Kosovo Albanians' right to internal self-determination as granted under the minority rights regime.²⁸⁷ The crucial issue which then arises is to determine whether there is a moral case for groups whose minority rights are grossly violated to claim independence in order to preserve their group and its members. And if not, what might be an acceptable alternative?

In conclusion, although there has been some liberalisation within the national self-determination vs. sovereignty debate, states are still very fond of their territorial integrity and are uneasy when it comes to granting statehood to a new entity. In strict international legal terms, and as far as the principle of national self-determination is concerned, it seemed fair to presume that Kosovo was not, in the wake of 1999, a potential candidate for independence.

²⁸² Badinter Commission, Opinion No.3., § 4.

²⁸³ Musgrave, *Op. Cit.*, p. 170.

²⁸⁴ Constitution of the Socialist Federal Republic of Yugoslavia, 21 February 1974.

²⁸⁵ Constitutional Amendments of the Socialist Republic of Serbia, 1989, in Official Gazette of the Republic of Serbia, No. 30/89, in Weller 1999, *Op. Cit.*, p. 59.

²⁸⁶ The suppression of autonomic status of the province of Kosovo without the prior approval of the Provincial Assembly is clearly a breach of article 427 of the Serbian Constitution. Cf. Serbian Constitution (1974).

²⁸⁷ Badinter Commission, Opinion No. 2, § 2 & ICCPR, art. 27, etc.

Nevertheless, under the minority rights regime, international law did provide an alternative to pressurising Yugoslavia for external self-determination for Kosovo through enabling its self-government. Nonetheless, it is interesting to note that a theory claiming minority rights can lead to external self-determination has been formulated. According to this ‘right of reversion’,²⁸⁸ when ‘a minority suffers oppression; [...] the minority attains the status of a people and may exercise a right to self-determination’.²⁸⁹ To support this theory, Lee Buchheit argues that the secession of Bangladesh from Pakistan in 1971 is an example of a successful expression of the minority right to secession.²⁹⁰ However, this remains an isolated case and it has failed to translate into an international legal norm to this day. Indeed the international community has adopted quite a different attitude towards other oppressed minorities, and the suppression of secessionist movements such as in the autonomous province of Chechnya by the Russian government in the late 1990s early 2000s. Those cases, and the absence of an international norm establishing a ‘right of reversion’, reinforce the conviction that at the turn of the century, states were still not willing to accept the granting of external self-determination to minorities.

2. ***Sovereignty vs. Human Rights***

Beyond issues of national self-determination, the principle of sovereignty has come into conflict with the regime of human rights. According to the United Nations system, as a condition of their sovereignty states have the duty to promote human rights within their borders.²⁹¹ In cases where states fail to fulfil this duty and conceal themselves behind their sovereignty, the international community is now armed with a legal framework to promote and defend human rights, but this lacks efficient implementation mechanisms. NATO attempted to legitimise the bombing of Yugoslavia with claims of preventing human rights abuses by that state against its population. Nevertheless, outside of the international legal framework, this action marked the beginning of a serious legal and political debate regarding the fundamentals of the international order.

²⁸⁸ Buchheit, L., *Secession: The Legitimacy of Self-determination*, Yale University Press, New Haven, 1978, pp. 51–58.

²⁸⁹ Musgrave, *Op. Cit.*, p. 171.

²⁹⁰ Buchheit, *Op. Cit.*, p. 213.

²⁹¹ United Nations General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution 53/144, 8 March 1999, art.2. Also, United Nations General Assembly Resolution on 2005 World Summit Outcome, United Nations General Assembly Resolution 60/1, 24 October 2005, §138.

a. The Human Rights Regime

The principle of human rights is at the base of the United Nations system, as evidenced by the United Nations Charter.²⁹² Since 1945, the international community has codified the human rights regime's principles and attempted to spread the concept across political and cultural boundaries.²⁹³ *Akehurst's Modern Introduction to International Law* notes that '[t]he concept of human (or fundamental) rights is certainly a dynamic one and has been subject to change and expansion as can be seen from constitutional history of Western states. But it is important to retain the essence of the concept, which is that every individual has certain inalienable and legally enforceable rights protecting him or her against state interference and the abuse of power by government'.²⁹⁴ Although, human rights have come to be accepted as fundamental, issues remain regarding their definition, nature and most importantly, their implementation. Those issues ultimately undermine the regime as a whole when it comes to imposing itself over states hiding behind their sovereignty to avoid their obligations *vis-à-vis* human rights.²⁹⁵

The first predicament concerns the problem of finding a consensus over the definition of 'universal' rights.²⁹⁶ The most crucial example concerns the opposition between, on the one hand the 'liberal' West emphasising the need for civil and political rights, and on the other hand developing countries stressing instead the importance of economic and social rights.²⁹⁷ This discrepancy was concretely codified in 1966 with declaration of two separate covenants.²⁹⁸ The two covenants established two sets of rights and, in effect, enabled states to subscribe to what they defined as core rights while refusing to legitimise the rights that they did not wish to subscribe to. This failure of the international community to establish universal human rights beyond a core few principles leaves human rights law, to a large extent, in the domain of treaty law. The problem of basing the human rights regime on treaty law is that it further undermines the 'universality' of the system as a whole, as states have the option of not taking part in the system by not being party to the relevant treaties, or even opting out of

²⁹² UN Charter, *Op. Cit.*, preamble, Arts. 1, 13 (1), 55, 56, 73, 76. Cf. Malanczuk, P. and M. Akehurst, *Akehurst's Modern Introduction to International Law*, Routledge, London, 1997, p. 212.

²⁹³ Universal Declaration of Human Rights; ICCPR; ICESCR.

²⁹⁴ Malanczuk and al, *Op. Cit.*, p. 209.

²⁹⁵ Modern examples include: Democratic People's Republic of Korea, Sudan, Zimbabwe, etc.

²⁹⁶ Malanczuk and al, *Op. Cit.*, p. 210.

²⁹⁷ *Ibid.*, p. 210.

²⁹⁸ ICCPR; ICESCR.

certain provisions of each by stating reservations about certain clauses of the regime.²⁹⁹ Finally the last debate that undermines the human rights regime is that, besides the moral obligation on states to implement what they interpret as human rights, in practical terms the regime remains subordinate to the principle of sovereignty, thus allowing freedom to the state to enforce it to whatever degree it chooses.³⁰⁰ If a state agrees to abide by the human rights regime but fails to implement it, the anarchic nature of the international community prevents it from enforcing punishment on the state that hides behind its sovereign prerogative.³⁰¹

Nevertheless, article 2 of the United Nations Charter attempts, under the cover of the principle of sovereignty, to constrain states to refrain from violence towards other states and to respect the sovereignty of other states within their own borders.³⁰² In this system, the international community is armed with measures to condemn states that violate their obligations under the international order – including those relating to human rights, with a whole set of non-violent measures – enumerated within chapter VI of the Charter.³⁰³ Armed measures can only be legitimised under three strict and well-defined circumstances: (1) following the failure of non-violent measures to resolve the situation; (2) as a response to a threat to the peace and stability of the international order resulting from armed violence;³⁰⁴ and (3) on the express mandate of the Security Council within the boundaries defined by chapter VII of the Charter. Yet, should the Security Council fail to find a consensus to launch measures against the rogue state, there is no scope for appeal; nor do alternative pressure mechanisms to impose punishment exist. This situation has occurred in a number of cases, where the international community has helplessly witnessed a breach of international and human rights law without any licence to interfere.³⁰⁵

²⁹⁹ Malanczuk and al, *Op. Cit.*, p. 210, also Steiner, H., P. Alston and R. Goodman (eds), *International Human Rights in Context: Law, Politics, Morals: Text and Materials*, Oxford University Press, Oxford, 2008, p. 1124; Goodman, R., ‘Human Rights Treaties, Invalid Reservations and State Consent’ in *American Journal of International Law*, vol. 96 (3), 2002.

³⁰⁰ Malanczuk and al, *Op. Cit.*, p. 210.

³⁰¹ Krasner, *Op. Cit.*, p. 148.

³⁰² Citation of Michael Matherson in Kirgis, F., ‘Security Council Governance of Post-conflict Societies: A Plea for Good Faith and Informed Decision Making’ in *American Journal of International Law*, vol. 95 (3), 2001, p. 579.

³⁰³ General Assembly Resolution 2625 (XXV), 1970 *Op. Cit.*; Falk, R., ‘Humanitarian Intervention after Kosovo’ in Mertus, J. and J. Helsing (eds), *Human Rights and Conflict: Exploring the Link Between Rights, Law and Peacebuilding*, United States Institute of Peace Press, Washington, 2006; Simma, B., ‘NATO, the UN and the Use of Force: Legal Aspects’ in *European Journal of International Law*, vol. 10 (1), 1999, p. 2.

³⁰⁴ Simma, *Ibid.*, p. 3.

³⁰⁵ A contemporary example would be human rights and humanitarian violations in Zimbabwe or the humanitarian crisis in Darfur, Sudan.

To respond to the regime's failures to take on a universal character at the international level, human rights systems have developed at the regional level, as evidenced by the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.³⁰⁶ These regimes aim to overcome the problems encountered at the international level through the definition of a clear and applicable set of rights attuned to the relevant regional political, economic and social cultures, while attempting to provide efficient enforcement mechanisms.³⁰⁷ Within the European framework, Stephen Krasner notes that the Europeans have attempted, under the cover of the Cold War *détente*, to establish a regime balancing the demands of sovereignty and human rights. He points out that the Helsinki accord 'was a contract between the Soviets and the West in which the Soviets nominally accepted some human rights principles and the West recognised existing borders and regimes in Europe'.³⁰⁸ Yet, he argues that 'the West used the Helsinki accord to pressure the Soviet Union on human rights, rejecting the charge that this amounted to interference in internal affairs by claiming that human rights were universally recognized and that non-interference referred only to efforts to dictate to other countries'. Thus in effect, the West established a basis of reprisal in cases of human rights abuses, thereby compromising what Krasner calls 'the principle of autonomy' at the base of sovereignty.³⁰⁹

In the 1990s, after the atrocious genocides witnessed in Bosnia-Herzegovina and Rwanda, the international community started to question the omnipotent state's impunity. Images of mass graves haunted Western countries, which blamed themselves for their lack of suitable responses. In particular, the images released of the Srebrenica massacre in July 1995, when the international community, unwilling to take decisive military action against Yugoslav troops in Bosnia-Herzegovina, stood by while eight thousands Bošniaks were murdered, remains a vivid memory in the Western consciousness. The promise of 'never again', made after the Second World War and the discovery of the genocide against the Jewish community, didn't seem to have been fulfilled. The United Nations system, shaped

³⁰⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950. (ECHR).

³⁰⁷ Malanczuk and al, *Op. Cit.*, p. 217.

³⁰⁸ 'Principle VI of the "Declaration on Principles Guiding Relations between Participating States" endorsed non-intervention while Principle VII endorsed human rights including freedom of thought, conscience, and religion', Krasner, *Op. Cit.*, p. 144.

³⁰⁹ Krasner defines sovereignty as 'institutional arrangement for organizing political life that is based on territoriality and autonomy' in *Ibid.*, p. 119.

with the explicit goal of never allowing the horrors of the Second World War to be repeated, had clearly failed to prevent further atrocities at the turn of the new century.³¹⁰

b. NATO and the Intervention Precedent

It was in the tense atmosphere left by the failure of the Rambouillet negotiations that, on 25 March 1999, NATO started the bombing of Yugoslavia. Fighting between the Yugoslav military and Albanian paramilitaries had intensified, claiming a growing number of civilian victims and causing thousands of others to flee their homes. After the failure of a number of peace initiatives, the escalation of the armed conflict and increasing displacement of the local population, the international community³¹¹ felt it could no longer sit aside and watch what some portrayed as another ‘genocide’ occurring at the European periphery. After intense discussions at the Security Council, the Americans, British and French, while supported by their NATO allies, failed to convince their Russian and Chinese counterparts of the urgency of the situation and of the necessity for intervention. The Russians, supporters of their traditional Slav ally, would not allow any sort of military intervention, while the Chinese government, fervent opponents of intervention and secessionist movements, was not supportive of any kind of action that might threaten the territorial integrity or sovereignty of Yugoslavia. Both threatened to use their vetoes against any resolution presented to the Security Council promoting military action against the sovereignty of the Yugoslav state. Nonetheless, as the economic sanctions and arms embargo set in place against Yugoslavia since the Bosnian and Croatian conflicts had clearly failed to prevent Milošević’s Machiavellian scheme,³¹² NATO started to consider military alternatives outside of the Security Council mandate on the grounds of the serious humanitarian crisis occurring in Kosovo, in line with the threats evoked at Rambouillet.

By the time the bombing started, the violence between the Yugoslav forces and Albanian paramilitaries had intensified, with important consequences within the civilian populations – deaths, but also internally displaced persons. Nevertheless, a debate regarding the cause of the mass displacement of population in the province appeared. Leonard Cohen argues that Milošević used the time ‘wasted’ trying to achieve a consensus in Rambouillet to

³¹⁰ United Nations Charter, preamble. Cf. ‘Report of the Independent Inquiry into the Action of the United Nations During the 1994 Genocide in Rwanda’, S/1999/1257, 15 December 1999; Also ‘UN Admits Rwanda Genocide Failure’ in *BBC News*, 15 April 2000.

³¹¹ The Holbrooke agreement, OSCE Kosovo Verification Mission and finally of the Rambouillet negotiations.

³¹² Cohen, L., *Serpent in the Bosom: The Rise and Fall of Slobodan Milošević*, Westview Press, Oxford, 2000, p. 274-292.

realise his policy of the expulsion of the Albanian population from the province.³¹³ On the other hand, Milošević defended himself in front of the International Crime Tribunal for the Former Yugoslavia by arguing that the mass flow of Kosovo Albanians to neighbouring states was in fact provoked by the NATO bombing rather than by any articulated Serbian ‘ethnic cleansing’ plan.³¹⁴ Although the mass exodus did indeed correspond with the start of NATO intervention, large population movements had started in zones where Yugoslav military and Albanian paramilitary clashes had intensified in the run up to March 1999. Conscious of the questionable legality of their action in international legal terms, NATO member states organised a vast public relations campaign to justify the legitimacy of their action. This legitimisation campaign had two lines of argument, aimed at two different audiences. NATO argued first to the international community that its action was indeed justified under the human rights regime.³¹⁵ Then, as Roland Paris underlines, these arguments were also aimed increasingly to their own populations to gain the support they needed for their action.³¹⁶

As to the arguments, first, conscious of the doubtful legality of their intervention outside of a clear Security Council mandate,³¹⁷ NATO attempted to argue for the deep humanitarian crisis and the grave human rights violations caused by the Yugoslav state against its own population as a justification for the breaching of their international legal obligations not to intervene in the internal affairs of another state. What they presented as a ‘genocide’ orchestrated by Milošević, was, for a number of protagonists, a compelling enough reason if not an obligation to take action.³¹⁸ Others went further and underlined the need for international law to adapt to the new international order’s realities. They argued that the allies’ intervention in Kosovo revealed the evolution of a new trend in the principle of non-intervention and the origin of a ‘responsibility’ to protect populations, even from their own state if necessary.³¹⁹ Furthermore, as previously discussed, Krasner has ambiguously argued

³¹³ *Ibid.*, p. 312.

³¹⁴ Cf. International Crime Tribunal for Yugoslavia, Milošević trial transcripts, 18 October 2005, pp. 45362-45415, Jennings, S., ‘Witness Blames NATO for Kosovo Exodus’ in *IWPR*, 22 February 2008.

³¹⁵ Simma, *Op. Cit.*, p. 22; Anderson, P., ‘Air Strike: Nato Astride Kosovo’ in Weymouth, T. and S. Henig (eds.), *The Kosovo Crisis: the Last American War in Europe?* Pearson Education, London, 2001. pp. 197-201.

³¹⁶ Paris, R., ‘Kosovo and the Metaphor War’ in *Political Science Quarterly*, vol. 117 (3), 2002, pp. 423-450.

³¹⁷ Cassese, A., ‘Ex Iniuria Ius Oritur: Are We Moving Towards International Legitimation of Forceable Humanitarian Countermeasures in the World Community?’ in *European Journal of International Law*, vol. 10 (1), 1999, p. 23.

³¹⁸ Kouchner, B., *Les Guerriers de la Paix: du Kosovo à l'Irak*, LGF, Paris, 2004.

³¹⁹ Cassese 1999, *Op. Cit.*, p. 23; Weiss, T., ‘Humanitarian Intervention after Kosovo - Commentary’ in Falk, R., ‘Humanitarian Intervention after Kosovo’ in Mertus, J. and J. Helsing (eds.), *Human Rights and Conflict: Exploring the Link Between Rights, Law and Peacebuilding*, United States Institute of Peace Press, Washington, 2006. pp. 209-214; General Assembly Resolution 60/1, *Op. Cit.*

that regional practice and law had developed to consider a threat to regional stability as providing a rationale for intervention, although this argument was never fully developed in the case of the Kosovo intervention.

Second, NATO states felt the need to legitimise their action to their own populations. From a practical point of view, the failure of NATO's democratic governments to obtain the support of their own legislative branches – as representatives of their populations' wills – would have entailed a failure to obtain funding for military intervention and a *de facto* desertion of any such action.³²⁰ Paris makes an interesting analysis of the way in which they attempted to gain this support. He focuses his study on the vocabulary and historical analogies used by state leaders, which he claims, demonstrate the conduct of politics at large.³²¹ In particular, he studies the emotional appeals governments made to their own populations by comparing Milošević's policies and the situation in Kosovo to painful moments of their own past.³²² He argues that by comparing Milošević to Hitler and the situation in Kosovo to the horrors of the Second World War – or even to the Srebrenica massacre, closer in history and vivid in the publics' memories – they justified their action by underlining the need, indeed their quasi-obligation, to intervene.³²³ Both sets of arguments employed by the allies aimed to legitimise their military action in two ways: (1) at the legal level by attempting to undermine the structure of the international legal system itself – which they now portrayed as archaic; and (2) at the political level by obtaining support from their bases – i.e. their citizens – for their action through emotional appeals. In these tasks, the role of the media proved crucial. The support obtained from the media, which faithfully relayed and even amplified the governments' rhetoric, enabled Western governments to secure the backing of their populations.³²⁴

The bombing of Yugoslavia by NATO launched a heated legal and political debate within the academic and political communities.³²⁵ Those who opposed the intervention based their arguments in international legal terms, stressing the dangers of breaching the sacrosanct

³²⁰ Henig, S., 'Britain: To War for a Just Cause'; Ramet, S. and P. Lyon, 'Germany: the Federal Republic, Loyal to Nato'; Lamizet, B. and S. Debras, 'France: questions of Identity'; Ramet, S., 'The USA: To War in Europe Again' all in Weymouth, T. and S. Henig (eds.), *The Kosovo Crisis: the Last American War in Europe?*, Pearson Education, London, 2001.

³²¹ Paris 2002, *Op. Cit.*, p. 425.

³²² *Ibid.*, pp. 428; 447.

³²³ *Ibid.*, p. 438.

³²⁴ *Ibid.*, pp. 433-434; Weymouth, A., 'The Media: Information and Deformation' in Weymouth & al, *Op. Cit.*, pp. 143-162.

³²⁵ Witnessed by the number of academic and newspaper articles published over the period March-December 1999 and beyond.

principle of sovereignty at the very base of the international legal order. Those who favoured intervention based their case on the malleable nature of international law and the need to adapt it to the needs of modern international society. The former stressed the dangers of opening the door to violence and the risks embedded in the subjectivity of this kind of *ad hoc* policy, as any state could find an excuse to invade its neighbour with questionable justification.³²⁶ They emphasised the importance of the Security Council as the ultimate authority and the need for it to retain its monopoly over violence at the international level.³²⁷ Yet, in cases where states abused their right to sovereignty to breach basic obligations within their own borders, in particular towards their own populations, the latter argued that there should be clearly established rules that would clearly define the grounds for intervention.³²⁸ International law professor Antonio Cassese drafted a list of seven conditions that had to be fulfilled in order to legitimise any intervention.³²⁹ To promote such a change in international law, proponents of intervention argue that international involvement is a necessity;³³⁰ therefore, designing strict rules and defining specific conditions in which such interventions could occur would be the best way to prevent abuses in cases where the United Nations Security Council could not agree. In particular, they emphasised the emergence of a ‘responsibility’ to protect that falls upon states in cases of abuse in third countries. They denounced the hypocrisy of a system that placed human rights at its centre, but nevertheless turned a blind eye when actual infractions occurred.³³¹ Beyond the international legal community, high-ranking officials such as United Nations Secretary General Kofi Annan have called for an evolution of the system.³³²

In 2000, the Independent International Commission on Kosovo concluded in its report that even if unquestionably illegal in terms of international law, the NATO intervention was, to a certain extent, legitimate.³³³ The legitimacy of the action rested on its aim: to put an end to a serious humanitarian crisis. Yet, the Commission questioned the overall legitimacy of the

³²⁶ Simma, *Op. Cit.*, p. 1.

³²⁷ Falk, R., ‘Humanitarian Intervention after Kosovo’ in Mertus, J. and J. Helsing (eds.), *Human Rights and Conflict: Exploring the Link Between Rights, Law and Peacebuilding*, United States Institute of Peace Press, Washington, 2006.

³²⁸ Weiss, *Op. Cit.*, pp. 209-216.

³²⁹ Cassese 1999, *Op. Cit.*, pp. 25-26.

³³⁰ Krasner, *Op. Cit.*

³³¹ Weiss, *Op. Cit.*, p. 211.

³³² Annan, K., ‘Two Concepts of Sovereignty’ in *The Economist*, 18 September 1999.

³³³ Created on the initiative of Swedish Prime Minister Goran Persson, the commission composed of a group of international experts delivered a report in 2000 that aimed to assess the situation in Kosovo after NATO intervention and propose options open to the province. Independent International Commission on Kosovo (IIC), *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford: Oxford University Press, 2000.

intervention on the grounds of the means set in place to achieve those aims. Although the ends were arguably noble, the means set in place were much less so. NATO bombing caused a large number of civilian casualties, a further mass displacement of civilians, and even a regrettable diplomatic incident when NATO bombed – allegedly mistakenly – the Chinese Embassy in Belgrade.³³⁴ The ‘collateral damage’, as NATO called it, involved a high human toll, which undermined its efforts to legitimise the mission.³³⁵

Although NATO claimed it had to intervene to alleviate human suffering, it is indisputable that the bombing greatly increased the distress of the local population, and the Western allies failed to prevent retaliation by Kosovo Albanians against the Kosovo Serb population when the bombing ended. Under international law, there is a norm compelling an occupying power to protect the population it occupies.³³⁶ Hence, as NATO officially took control of the province with the signature of the technical military agreement with Yugoslavia on 9 June 1999,³³⁷ it inherited the duty to protect the remaining Serb population and all other minority groups under threat. The lack of a post-intervention strategy for this and the inability of the allies to organise themselves in time caused a power vacuum as the Yugoslav troops withdrew. During those few days, the inability of NATO to protect the Kosovo Serb and Roma populations from the Kosovo Albanians’ thirst for revenge was an indisputable mistake on their part, and put a serious question mark on the legitimacy of their overall intervention.

Professor Bruno Simma goes further by arguing that even if, according to the International Court of Justice, ‘in the face of Genocide, the right of states, or collectives of states, to counter breaches of human rights most likely becomes an obligation’³³⁸ – hence evoking an evolution in the international legal frameworks establishing an obligation of intervention – in fact ‘in Kosovo however... [there were] massive violations of human rights and rights of ethnic minorities, but no act of genocide in the sense of the 1948 convention’.³³⁹ In addition, he further emphasises that a mass exodus of the kind experienced in Kosovo does not qualify as an armed attack, and hence did not justify the implementation of military

³³⁴ North Atlantic Council, *Statement on the Bombing of the Chinese Embassy in Belgrade*, 08 May 1999.

³³⁵ Ingruber, D., ‘Reflections on the War on Terrorism’ in Davis, M., W. Dietrich and B. Scholdan, *International intervention in the post-Cold War World: Moral Responsibility and Power Politics*, M.E.Sharpe, 2003, p. 190.

³³⁶ IIC, *Op. Cit.*

³³⁷ Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, Kumanovo, 9 June 1999.

³³⁸ International Court of Justice, Judgement on Genocide (Bosnia Herzegovina Vs. Yugoslavia), 1996. Cited in Simma, *Op. Cit.*, p. 3.

³³⁹ *Ibid.*, p. 3. Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III), 9 December 1948.

measures.³⁴⁰ Besides discrediting the foundation of NATO's argument, the polemic went further to question the root of the allies' motives for intervention. Anthony Weymouth comments: 'in Kosovo, in the apparent aftermath of the Cold War, a clear Western motive was more difficult to perceive. The Balkans, historically turbulent, geographical inaccessible and of little direct strategic or economic interest to the West seemed a most unlikely region for NATO to intervene militarily, and yet that is precisely what happened.'³⁴¹ Yet arguments have been developed to demonstrate that in fact, NATO intervention in Yugoslavia did enable the United States, Britain, France, Germany as well as the European Union and NATO itself to reassert their position on the international scene and within their own constituencies.³⁴² Along this line, Professor Mary Kaldor makes the case that '[t]he preference for bombing as a military strategy has to be understood in terms of a combination of American domestic politics and institutional interests'.³⁴³

Nevertheless, the fundamental question remains: 'should one remain silent and inactive only because the existing body of international law rules proves incapable of remedying such a situation?'.³⁴⁴ There is clearly a discrepancy between the international law of states inherited from the Westphalian system and the evolving system of modern international law,³⁴⁵ which grants human beings – i.e. individuals – rights in the system. In this evolving system, it becomes obsolete for states to hide behind their sovereignty rights and violate their obligations.³⁴⁶ There is therefore a need for international law to develop enforcement mechanisms. The Security Council has been blamed as being inadequate to deal with to this issue. There is a need for international law to adapt in order to improve the compliance of states with universal rules and their concomitant responsibilities. Examples like the later American intervention in Iraq show that there is a real need to develop clear boundaries for an intervention doctrine. The NATO bombing, although condemned as illegal,

³⁴⁰ Simma, *Ibid.*, p. 5.

³⁴¹ Weymouth, A., 'Why War, Why NATO?' in Weymouth et al. *Op. Cit.*, p. 1.

³⁴² Falk, *Op. Cit.*; Henig, *Op. Cit.*; Ramet, S. and al, *Op. Cit.*; Lamizet, B. and al, *Op. Cit.*; Ramet 2001, *Op. Cit.*; Ramirez, J.D. and M. Szapiro, 'The EU: Old Wine From New Bottles'; in Weymouth et al., *Op. Cit.*; Anderson, *Op. Cit.*

³⁴³ Kaldor 1999, *Op. Cit.*, p. 160

³⁴⁴ Cassese 1999, *Op. Cit.*, p. 25.

³⁴⁵ Krasner argues that since its conception the idea of the Westphalian state has been under constant compromise through the development of international politics and in particular by peace treaties – i.e. contracts. He claims that '[any claim that] sovereignty seems to be so much at risk is not well founded: it ignores the fact that violations of the principles of territoriality and autonomy have been an enduring characteristic of the international system both before and after the peace of Westphalia' in Krasner, *Op. Cit.*, p. 123; also pp. 116-137.

³⁴⁶ Cassese 1999, *Op. Cit.*, p. 23.

created a precedent for intervention. It opened the door to abuses of the system, as the Iraq intervention was not even openly argued for on the basis of human rights violations by the Saddam Hussein regime, but rather as a preventive action meant to pre-empt what the regime might do to other states. The lack of suitable regulation of such cases and the inability of the international community to face the changes it is undergoing can prove to be more dangerous than admitting the need for intervention. In this regard, beyond Cassese's criteria, the proportionality of means used and the duty to protect turn out to be crucial in the development of an intervention doctrine.

At the 2005 United Nations World Summit organised on the occasion of the General Assembly's sixtieth anniversary, a first step was taken in that direction.³⁴⁷ In the summit's outcome, the United Nations' members emphasised the responsibility of a state 'to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity'. The resolution emphasises that '[t]his responsibility entails the prevention of such crimes'.³⁴⁸ In cases where a state would seek to escape its responsibility, the draft resolution provides that

'[t]he international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate should peaceful means be inadequate and national authorities manifestly fail to protect their populations'.³⁴⁹

The resolution demonstrates that there is a clear will on the part of the international community as a whole to recognise and endorse the responsibility of states to prevent and protect their populations from humanitarian and human rights abuses. Even further, it attempts to impose a duty on the community to enforce this responsibility in cases where states do not live up to their obligations. Yet, it is important to note that the international community has acknowledged that this duty should be exercised first through peaceful means. Nevertheless, should that avenue fail, the resolution anticipates military action only with the Security Council's express agreement through the provisions enumerated in chapter VII of the

³⁴⁷ General Assembly Resolution 60/1 (2005); also Weiss, *Op. Cit.*

³⁴⁸ *Ibid.*, § 138.

³⁴⁹ *Ibid.*, § 139.

Charter. It is further important to note that the document does not consider any other punishment for states that fail to protect their populations (such as possible independence for populations victimised by such abuses).

Before turning to the specific issue of the Security Council and its role in legitimising interventions, we should conclude this discussion with a remark regarding the issue of the legitimacy of intervention *vis-à-vis* the Kosovo local population. NATO's efforts to legitimise their action centred on justifying their action to the international community and to the populations of the allied countries. Indeed little was done to justify their action to the population of Kosovo. This failure will prove detrimental to the future of the allies' and the international community's actions in the region. Kosovo's Albanians welcomed the international involvement on the Kosovo issue. For a long time, they had been longing for the international community's support against Yugoslav policies. The intervention was very popular among these Kosovo Albanians; yet it spurred a number of false expectations. They assumed that the international community had gotten involved to solve the human rights abuses and humanitarian crisis of course, but also, in the longer term, to give them their long awaited independence. They believed that the military intervention would be followed by independence and the return of political power to local elites. As their long awaited independence remained beyond reach, with the establishment of a long-term international post-war mission, specific resentments arose. As for the Serbs, both Belgrade and the Kosovo Serbs viewed the intervention as illegal and as a blatant aggression. The mass revenge campaign against the Kosovo Serbs and other minority populations following the intervention, and the inability of the international community to protect them did little to alter their views and further alienated the Serbs against anything that would come from the allies or the international community as a whole. This resentment inevitably deepened with time as Belgrade was kept away from the governance of their province, and it had tremendous implications for the legitimacy of the post-war mission.

3. *Kosovo, the Security Council and the International Legitimacy Framework*

Besides the direct consequences of NATO's bombing for the province and the region and the Balkans as a whole, the allies' unilateral intervention highlighted the failure of the United Nations system in general, and the role and legitimacy of the Security Council in particular. Intervention outside of any Security Council mandate revealed the flaws of the

principal political organ of international society as it raised new issues, but also revived older issues regarding its functioning, and brought into question its overall legitimacy.

a. The United Nations Security Council and Issues of Legitimacy

The Security Council is one of the principal organs of the United Nations.³⁵⁰ According to the United Nations Charter, '[UN] members confer on the Security Council primary responsibility for the maintenance of international peace and security', and as such it is the primary political organ of the organisation.³⁵¹ The Council finds its legal roots and legitimacy within the United Nations Charter, where, under treaty law, signatories agree to subordinate their sovereignty willingly to its power. On this point, article 24 is particularly enlightening as it states that '[UN] members ... agree that in carrying out its duties under this responsibility the Security Council acts on their behalf'. This specific provision has two implications: first, it demonstrates that the Security Council is the ultimate authority in international politics; and second, it establishes that its decisions are binding for its member states.³⁵² These two implications have a binding effect on states' sovereignty within the international sphere. States retain their sovereignty within their boundaries, and accept willingly, through becoming members of the United Nations, the Charter's prescriptions, the Security Council's decisions, as well as any responsibility they face to implement them. In concrete terms, states retain the liberty to engage freely in international activities as long as they respect the mandatory provisions of the Charter.

The essential problem faced by the Security Council's working is the issue of implementation. As noted previously, the United Nations and its bodies lack implementation mechanisms because of the anarchic nature of the society established by the principle of sovereignty. As states enter freely into the United Nations system, its decisions have only a moral value and cannot be enforced on them with one exception, namely in cases of severe breaches against peace and security. The Security Council is granted by article 29 the right to create subsidiary bodies in charge of implementing its decisions. In cases requiring the enforcement of peace and security, it can ask member states to form an international peace-keeping military force, which would then act within very strict rules as defined by a clear

³⁵⁰ United Nations Charter, art. 7.

³⁵¹ United Nations Charter, art. 24.

³⁵² Yet short of an independent implementation body.

mandate obtained by consensus at the Security Council.³⁵³ The failure of the Council to reach an agreement over a possible intervention in Yugoslavia, and to deal with the threat it represented in the Balkans, underlined the question of the Security Council's effectiveness in pursuing its goals and purpose.

This specific problem raised by the malfunctioning of the regulatory mechanisms of the United Nations system brought up some old issues regarding the structure and functioning of the system itself. According to the Charter, the Security Council is composed of fifteen members: ten chosen on a rotating basis, and five permanent.³⁵⁴ The permanent members are granted – individual – veto power over any decisions taken by the Council. Hence any one permanent member can block a decision, without having to justify its decision. The choices and privileges associated with the so-called 'permanent members' are a legacy of the Second World War and of the bargaining that occurred at the end of the war between the winning powers. The then victorious allies and instigators of the United Nations system relied on the United Nations' structure to create a form of post-war balance between the superpowers of the time, granting themselves the role of regulators. Changes in the international political balance of power and the advancement of the international relations since 1945 have led a number of states to question this structure and ask for major changes in the organisation's structure. Specifically, the way permanent members use their vetoes has been criticised as it turns the Council into an arena of interest feuds between the superpowers. The Yugoslav bombing was a clear example of opposition between the 'liberal West' – United States, Britain and France, which were in favour of the intervention, and the post-communist states – Russia and China, which were against. The Security Council system was created in the first place to act as an independent and impartial organ; yet, in practice, decisions have often been taken not on the basis of solving the problem under consideration, but of serving the great powers' interests along the traditional divide: liberal West versus former communist totalitarian block. As regards the specific case of Kosovo, the question of the legitimacy of the Security Council had heavy implications for the overall international involvement in the Kosovo situation. Neither Serbs nor Kosovo's Albanians, the main parties to the conflict, were represented. This lack of representativeness encouraged backstage bargaining and partisan tactics to gain the support of the veto powers to their respective causes, relegating the humanitarian crisis to a

³⁵³ United Nations Charter, art. 27.

³⁵⁴ United Nations Charter, art. 23.

distinctly second rank position. Moreover, the Serb/Kosovo Albanian rift clearly seemed to become secondary to United States/Russian interests.³⁵⁵

The existence of such partisan feuds within the system undermines the support for its decisions and actions, and hence its legitimacy. As Agnes Hurwitz argues, the partisan decision making ‘demonstrate[s] that the … agenda has been guided for the most part by external considerations, rather than domestic demands, and that the notion that … [the] processes should be demand driven’.³⁵⁶ Through her specific analysis of the development of the rule of law, she notes that the new bottom-up approach developed recently within United Nations circles has not succeeded in imposing itself as the norm.³⁵⁷ Besides, she points out that ‘in institutional terms, the limited legitimacy … [of these decisions as perceived] within the UN membership is partly due to the relative absence of General Assembly involvement and the overwhelming prerogatives of the Security Council in this policy area’.³⁵⁸ As a response, she underlines that there have been recommendations to enlarge Security Council’s membership with a view to making it more representative, and hence more legitimate. In particular, states such as India, Japan, Brazil and Germany have called for a revision of the Council’s structure on a model more representative of the structure of modern international relations through their demands for seats as permanent members.³⁵⁹ Such demands further undermine the legitimacy of the Security Council as well as its legal basis.

Another criticism of the legitimacy of the Security Council concerns its lack of accountability. As the ultimate international political organ, the Charter has not provided for any accountability mechanisms. In particular, as Hurwitz notes, the link with the General Assembly, the only United Nations body to represent all the members of the organisation’s membership, and the Security Council is minimal.³⁶⁰ There is no mechanism designed for the Council to be accountable either to the whole community of states or to their populations. In

³⁵⁵ Weller, M., ‘The Rambouillet Conference on Kosovo’ in *International Affairs*, vol. 75 (2), 1999. pp. 211. This argument was further developed in 2008, with the declaration of Kosovo’s independence with the benediction of the Western allies’ core (17 February 2008), followed by the recognition by Russia of the independence of the Georgian provinces of Ossetia and Abkhazia, leaving a clear feeling that the right to external national self-determination was indeed based on patrons’ support.

³⁵⁶ Hurwitz, A., ‘Towards Enhanced Legitimacy Rule of Law Programs in Multidimensional Peace Operations’ presented at the conference *Legitimacy and Accountability of International Administrations*, European Society of International Law, Geneva, 26-28 May 2005, p. 9.

³⁵⁷ *Ibid.*, p. 9.

³⁵⁸ *Ibid.*, p. 13.

³⁵⁹ Germany and Japan as now established economic powers, India and Brazil as populous and significant emerging economies.

³⁶⁰ Hurwitz, *Op.Cit.*, p. 17.

addition to the specific claims to permanent UNSC membership from a few countries that have gained importance within the international community since the Second World War, there is a further demand to expand the representativeness of the Council, based on the limits imposed by the current design limiting it to fifteen members. Finally, the veto system and the criticisms associated with it further alienate popular support for the Council's decisions and work.

The Security Council's legitimacy, grounded in norms and beliefs, is losing its support through its structure, processes and outputs. With the issue of Kosovo and the controversial bombing campaign carried out by the allies, the problems that appeared could not be hidden or ignored any longer. Yet, as Hurwitz underlines, close to a decade later, those flaws have still not been rectified. The later crises in Iraq and Afghanistan demonstrated that not only had they not been addressed, but that they were in fact becoming more acute. Ultimately, it leads us to question the specific implications this legitimacy crisis of the Security Council had on the conflict regulation initiated in Kosovo following its failure to prevent the 'aggression' against one of its sovereign member states.

b. United Nations Security Council Resolution 1244

After the differences that surfaced at the Rambouillet conference, the questionable bombing of Serbia and Kosovo proved to be not very efficient in coercing the parties into an agreement over the question of the province's status. Indeed, it worsened the situation by entrenching the Serbian position and polarising the international community over the status issue. Russia and China condemned the allies' military intervention and endorsed Serbian interests within the Security Council. Furthermore, numerous negotiation attempts fell through as Milošević used the allies' action to underpin his nationalist rhetoric. As the allies and Serbia finally reached an agreement, sealed by the signature of a ceasefire in Kumanovo on 9 June 1999,³⁶¹ the international community faced the difficult task of filling the political vacuum as well as of resolving the economic and humanitarian crises left by the long-term Serbian/Albanian as well as the more immediate international conflicts. On 10 June 1999, the Security Council passed resolution 1244 as a means to set in place an adequate response to these crises and to provide a *status quo* position to the status questions that remained unresolved.

³⁶¹ Kumanovo Technical Military Agreement.

In light of the difficult international and local conditions under which resolution 1244 resolution was forged, it could only aim to provide a diplomatic – i.e. simplified – alternative for the province. Based on the Rambouillet draft agreement, resolution 1244 provided the guidelines for, what was assumed to be, a temporary settlement of the province's legal status. Based on the minimum political consensus reached between the parties at Rambouillet, it aimed to satisfy Serbian claims by recognising Yugoslavia's sovereignty over the province; as well as to satisfy the Kosovo Albanians' claims by formally recognising the province's right to 'substantial autonomy' and suggesting the possibility of a final settlement later on in time.³⁶²

Sobered by the experience of Rambouillet, the document attempted to respond to a number of significant issues that might turn out to be potential problems for the settlement. First, it recognised the sovereignty of Yugoslavia and not formally of the Republic of Serbia. It could be suspected that the text was purposely ambiguous so as to leave an exit door should Kosovo evolve into the third entity of the then Federation of Yugoslavia on an equal footing with the republics of Serbia and Montenegro.³⁶³ This interpretation was in total contradiction with Serbian sovereign claims to the province that they considered to be part of Yugoslavia only as a sub-entity of Serbia. Second, the document failed to provide a clear definition of the concept of 'substantial autonomy'. It is clear that the drafters deliberately aimed to reassure Kosovo Albanians of their autonomy from, what they considered as, a repressive government.³⁶⁴ Yet again, the vague formulation of the document left a wide range of future alternatives open to the province. Finally, it failed to provide a timeline for negotiations or a deadline for the resolution of the final status of the province. In favour of a relatively uncomplicated 'freezing' strategy,³⁶⁵ the international community clearly aimed to leave all options open in the hope that time would bring the necessary changes needed for the peaceful resolution of the issue.

Despite its weaknesses, it should be kept in mind that resolution 1244 was the expression of the unfavourable situation in which it was approved. First, the bombing of Serbia and Kosovo and the ensuing humanitarian crisis it created on both territories required urgent action and a rapid ceasefire acceptable to all parties. Second, it bore the heavy burden

³⁶² Security Council Resolution 1244, S/RES/1244 (1999), 10 June 1999, preamble.

³⁶³ State Union of Serbia and Montenegro since March 2002.

³⁶⁴ In June 1999, Milošević was still in power and little could be speculated as to his downfall in October 2000.

³⁶⁵ Yannis, A., *Kosovo under International Administration: an Unfinished Conflict*, Hellenic Foundation for European and Foreign Policy, Athens, 2001.

of the diplomatic imbalance between the two superpowers divided on the issue. In order to reach its aim, the document required a measure of diplomatic subtlety and ambiguity. Finally the political situation in Serbia itself, where Slobodan Milošević was still in power, required caution and the idea was to leave doors open in the event of a political change in the region. Indeed, Milosevic was considered to be the mastermind behind Yugoslavia's Kosovo policy as he had used it from the start to establish his power in Serbia and Yugoslavia. Should he be later removed, Western leaders believed that Yugoslav policy in Kosovo would be liberalised, and they hoped Kosovo Albanians would then drop their independence claims and calm the lingering animosity in the province.

Given the conditions in which it was negotiated and voted for, it can be acknowledged that resolution 1244 succeeded in achieving its prime objective: an end to the conflict around a workable consensus. Yet it did not provide the province with a sustainable settlement for the future. When in March 2004 violence erupted in Kosovo, the international community figured that the 'freezing' policy pursued since 1999 was failing and a legal settlement of the province's status had to be reached. Yet, questions about the adequacy of the document had by then appeared.

Conclusion

The Yugoslav government's inability to contain the Kosovo crisis propelled the issue onto the international stage. The instability of the situation in Kosovo and the threat it presented to the regional balance obliged the international community to give serious attention to the issue. Yet, as the crisis became internationalised, it left the local political arena to be dealt with at the international level and in international terms. This chapter explains how the international legal framework and actions based on it failed to provide adequate answers to the issues at stake, and outlines the consequences this failure has had over the establishment of a legitimate framework for any alternative settlement. The international legal system, based as it is on state interests, cannot provide adequate answers for populations that feel that their state has failed them. The concept of sovereignty at the base of this legal system, made by states and for states to rule the relations between them, fails to provide satisfactory solutions in cases of modern national self-determination claims and intra-state human rights abuses. In line with the argument developed in the previous chapter, we observe that the present state system, designed in another time, fails to provide answers for contemporary problems. As such, the system is called into question and the legitimacy crisis

of the legal aspects of the system foments a further political legitimacy crisis. As people cannot recognise themselves and their interests in the legal system, they cannot give their support to the solutions it offers them. The allies' bombing of Yugoslavia is a flagrant example of the failure of the system, as the norms and the organs that are in charge of maintaining its balance failed to provide for issues beyond those that concerned states.

Beyond these formal issues, the legitimacy of the system is further brought into question by the top-down approach it embodies, which the international community does not seem to be able to change. All along, when dealing with issues of national self-determination, or humanitarian crises, or even with the structure of the system itself, states seem preoccupied with maintaining their legitimacy at the international level rather than with their obligations to the populations who ultimately experience the consequences of their actions. Kosovo's Serbs and Albanians seem to be involved in a game of skittles which they cannot influence due to the lack of accountability of the system, where they have little say due to their lack of access to the decision-making structures and decision makers, and where their interests seem to be subordinated to the higher interests of the great powers. As those higher interests are served, the population's expectations are lowered and their resentment grows, and the failure of the system to provide specifically for their needs brings an ever deeper resentment towards the international top-down approach.

Finally, the failure of the allies to find a legitimate basis within the international legal framework for their actions continues to have serious consequences for their subsequent efforts to deal with the Kosovo issue.³⁶⁶ With resolution 1244, the Security Council established a subsidiary organ to pursue its action in the province. This organ, founded according to a predetermined regional policy, inherited the resentment forged against the international community and their general Balkans policy. The legitimacy of the new international mission was missing from the start due to the inability of the international community to legitimise its earlier actions and its policies. Before the United Nations Administrative Mission in Kosovo had a chance to establish itself and provide a framework for its work, it was tarnished by the resentment associated with issues linked to the fundamentals of the international community's crisis as a whole. The Kosovo Albanians expected the international community to grant them outright independence and saw the establishment of a lengthy international mission as an obstacle to their goal. Meanwhile, the

³⁶⁶ Bain, W., *Between Anarchy and Society: Trusteeship and the Obligation of Power*, Oxford University Press, Oxford, 2003, p. 153.

Kosovo Serbs considered this mission to be biased against them as it has been imposed on them by an illegitimate organ which had coerced them through an illegitimate act of aggression. In this context, next chapter analyses the difficulties and responses faced by the mission in establishing its own political legitimacy and that of its policies.

Chapter 4 - International Territorial Administrations and the Case of Kosovo

By the end of the North Atlantic Treaty Organisation airstrikes, Kosovo was left in total chaos. A decade of state emergency, civil conflict and finally allied bombing left the poorest province of the federation with hundreds of thousands of displaced persons, a nonexistent economy, no governmental services or institutions, a population in shock and a total power vacuum, with no authority in charge or capable of dealing with the situation.³⁶⁷ This apocalyptic scenario fits what is commonly referred to as a *collapsed state* or *failed state*. William Zartman defines the concept as ‘a situation where the structure, authority – legitimate power, law, and political order have fallen apart and must be reconstituted in some form, old or new’.³⁶⁸ This situation has crucial consequences for the Westphalian System. As the ‘state’ is the central unit of the international order, the failure of a state to sustain itself is perceived as a threat to established society as a whole. Conscious of this problem, the international community has, over the last one hundred years, developed formal institutional mechanisms to deal with the problem of power vacuums in collapsed states.³⁶⁹ These mechanisms have the objective of restoring the missing state structure and preserving international equilibrium.³⁷⁰

UNMIK is arguably the most developed version of such attempts.³⁷¹ The United Nations Security Council passed resolution 1244 to establish a subsidiary organ in charge of ‘provid[ing] transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo’.³⁷² The powers and responsibilities granted to this mission were far beyond the scope of any international territorial administration mandate to

³⁶⁷ ‘Le Kosovo Dans le Chaos’ in *Dnevnik*, 15 June 1999. [Translated by *Courier des Balkans*].

³⁶⁸ Zartman, I., *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Lynne Reinner, Boulder, 1995, p. 1; Bain, W., *Between Anarchy and Society: Trusteeship and the Obligation of Power*, Oxford University Press, Oxford, 2003, pp. 141-142; Jackson, R., *Quasi-states: Sovereignty, International Relations, and the Third World*, Cambridge University Press, Cambridge, 1993.

³⁶⁹ Paris, R., ‘International Peacebuilding and the “Mission Civilisatrice”’ in *Review of International Studies*, vol. 28 (4), 2002, p. 639.

³⁷⁰ Bain, *Op. Cit.*, p. 4; Matheson, M., ‘United Nations Governance of Post-conflict Societies’ in *American Journal of International Law*, vol. 95 (1), 2001, p. 78.

³⁷¹ Caplan, R., *International Governance of War-torn Territories: Rule and Reconstruction*. Oxford University Press, Oxford, 2005, p. 9; Bain, *Op. Cit.*, pp. 146, 152, 154; Report on United Nations Peace Operations, S/2000/809, 17 August 2000 (Brahimi Report), § 13.

³⁷² United Nations Security Council Resolution 1244 on the Situation in Kosovo, S/RES/1244, 10 June 1999, § 10; Matheson, *Op. Cit.*, p. 8.

date, their extent justified only by the extent of the needs of the ravaged province.³⁷³ Nevertheless, the questionable circumstances that resulted in the establishment of the mission – its nature as well as its goals and means – raise a number of issues, in particular as regards the legitimacy of the mission and inevitably, over the legitimacy of its action.³⁷⁴

In this chapter, I assess the legitimacy of the framework of the mission and of its policies. I develop the argument that UNMIK has proven, like/because of the international community that mandated it, to focus disproportionately on securing international legitimacy rather than on gaining support from the local population it is meant to govern. This phenomenon has ultimately affected the overall success of its long-term action in the province. The evolution and adaptation of the policies set in place by the mission demonstrate some awareness of this deficiency, but at the same time, also its inability to respond adequately to the increasing lack of local support. To develop this argument, I first review the basis of the legitimacy of previous administrations in similar circumstances, observe the ‘lessons learned’ there and establish the legitimacy framework within which these international territorial administrations evolved. Second, I review the stances and expectations of the different actors involved that shaped the *beliefs* on which the mission’s legitimacy was based at the international and local levels. Finally, in line with the legitimacy analytical framework developed earlier, I analyse the ground upon which UNMIK attempted to reinforce its legitimacy both in terms of its design – i.e. the actual structure of the mission which, in line with past experience, attempted to provide the mission with a solid institutional basis to put down the roots of its administration – as well as the specific policies implemented in response to the specificities of Kosovo’s divided society to determine how – and to what extent – they manage to reinforce this legitimacy.

1. International Territorial Administrations

Unstable and failed states are perceived by the international community as a threat to its equilibrium. This fear is based on the concern of a possible ‘domino effect’,³⁷⁵ where the instability of one state would successively spill over into surrounding states, shaking the

³⁷³ Resolution 1244, § 11 ; Caplan 2005, *Op. Cit.*, p. 3; Bain, *Op. Cit.*, p. 145.

³⁷⁴ Bain, *Ibid.*, p. 153.

³⁷⁵ American foreign policy expression first voiced by President Harry Truman, later used by President Dwight Eisenhower in 1954, referring to the spread of communism in Europe and Asia.

overall equilibrium of the community.³⁷⁶ This fear, legitimate or not, has persuaded the international community to develop mechanisms to contain potential instability and restore state control over the relevant population and territory. In extreme situations, the international community has developed policies that enable international actors to get involved in a state's internal affairs when that state reveals itself to be incapable of responding to its internal instabilities. However, in cases where the international community unilaterally decides to get involved in a state's internal affairs, concerns over the breach of this state's sovereignty arise. Such concerns are taken seriously by the international community, which has carefully designed safeguards to prevent the ultimate subjugation of the state to a foreign power.

International territorial administrations are the mechanism the international community has adopted to respond both to its needs and its concerns. Limited in time, those administrations' primary role is to substitute for deficient state institutions and assist in re-establishing them until international support is no longer needed and the state can reclaim its prerogative. Experience over the past century shows that these missions have taken different forms, encountered different problems and responded to them in different ways. There is no consensus on which the first of these missions was. The lack of consensus derives from the difference in defining what represents an international territorial administration.³⁷⁷ Nevertheless, there seems to be an agreement that this phenomenon is relatively modern and appeared as a response to the development of modern international relations politics at the turn of the twentieth century. From then on, the succeeding design of international administrations evolved to respond to the needs created by international politics.³⁷⁸

Since then, the international community, through the League of Nations and later the United Nations, has attempted to bring a formal framework to bear on the problem of states lacking functional governmental institutions. The evolution of international involvement can be seen through the establishment of the 'mandate system' under the League, and later in United Nations' 'trusteeship system', which dealt with the so-called non self-governing territories. The importance the international community places upon states' domestic stability is demonstrated by the fact that mechanisms to deal with state-level political vacuums were expanded from a single article within the League's Covenant to three entire chapters in the

³⁷⁶ Chesterman, S., *You, the People: the United Nations, Transitional Administration, and State-building*, Oxford University Press, Oxford, 2004, p. 2; Zartman, *Op. Cit.*, p. 1.

³⁷⁷ Caplan 2005, *Op. Cit.*, p. 2; Chesterman, *Op. Cit.*, p. 5.

³⁷⁸ Such as the First and Second World Wars, decolonisation, end of the Cold War, etc.; cf. Chesterman, *Ibid.*, pp. 99-153.

United Nations' Charter.³⁷⁹ Nevertheless, in establishing those frameworks, the international community faced a number of practical and ethical issues to which they provided responses through a commitment to constantly improve the system.

a. The Mandate System

The mandate system was initiated through article 22 of the Covenant. It was meant to be implemented within the 'colonies and territories' of the defeated empires of the First World War that were 'inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world'. The system allowed the League to assign a sovereign 'advanced nation' the *mandatory* responsibility to govern and provide a territory the necessary, but lacking, governance capacity.³⁸⁰ The territories subsumed by the system were divided into three categories according to their stages of development, the amount of resources available and their existing governmental capacity.³⁸¹ The mandated state was given the responsibility of administering the territory following a number of principles including: 'guarantee the freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses... the prevention of the establishment of fortifications or... military training of the natives... secure equal opportunities for the trade and commerce of other Members of the League'. In other words, the territory under consideration was not to become another colony of the mandated state and was to be ruled according to defined criteria set by the international community.³⁸²

Beyond the immediate responsibility to administer domestic governance, the responsible state had to establish proper self-running and sustainable administrative institutions, established according to defined principles. The article also provided for a monitoring mechanism where the mandatory state had to deliver an annual report to the League's Council. This Council had the responsibility of defining and regulating the conditions of authority for the control and administration of the territory by the mandated state. All those precautions were aimed at giving the arrangement full legitimacy in the eyes of the international community and providing normative justification for the intervention of the mandated state in the governance issues of another state.

³⁷⁹ The Covenant of the League of Nations, 28 June 1919, art. 22; United Nations Charter, San Francisco, 26 June 1945.

³⁸⁰ Bain, *Op. Cit.*, p. 78.

³⁸¹ Chesterman, *Op. Cit.*, p. 14.

³⁸² Bain, *Op. Cit.*, p. 79.

The mandate system can be considered as the first articulated attempt by the international community to solve the problem of *failed states* through institutionalised mechanisms.³⁸³ The success of the initiative relied in the first instance on the institutionalisation of the process. The mandate given by the international society to intervene in another state gave legitimacy to the mandated state without contradicting the sovereignty principle so dear to the Westphalian state system. The next crucial element was that the mandate system was strictly limited in time. The mandated state was in charge of setting up governance mechanisms to enable, in the longer run, the territory to govern itself.³⁸⁴ Finally, the last important aspect was emphasised by the rules binding the system and the requirement to transfer a number of international normative principles to the newly established institutions. Before the formal codification of human rights, a number of acceptable governance principles, defined as appropriate and necessary, regulated the actions of the mandated state.

Nevertheless, the system has been criticised on various grounds, not least the colonialist attitude underlying the framework. The territories were placed under their mandated state's tutelage because they were considered as underdeveloped.³⁸⁵ The concerns of the local populations were generally not acknowledged. Furthermore, the system remained limited to colonies of empires defeated at the war.³⁸⁶ The colonies of the victorious allies were not considered candidates for self-determination, which left a feeling of resentment within victorious imperial territories. Finally, the system heavily relied on the League itself. As the League lost credibility and influence in the 1930s, so did the mandated states' commitments, and slowly the territories under mandates were to become just another set of colonies of the mandated states.³⁸⁷

With the end of the League of Nations and the beginning of the Second World War, the mandate system collapsed. Yet, with the rise of a new world order, the issue of non-governing states reappeared. In the footprints of the previous attempt to institutionalise a remedy to this problem, the international community revived and expanded the older system into the so-called 'trusteeship system'. Throughout this development, the international community dedicated much more time and attention to defining and delimiting the normative

³⁸³ *Ibid.*, p. 53.

³⁸⁴ *Ibid.*, p. 102.

³⁸⁵ Caplan 2005, *Op. Cit.*, p. 31; Chesterman, *Op. Cit.*, pp. 17-18; Bain, *Op. Cit.*, p. 2.

³⁸⁶ Chesterman, *Ibid.*, p. 17.

³⁸⁷ For example, the former German colony of Shandong, initially under the mandate responsibility of Japan who colonised it when it left the League of Nations in 1933. Cf. Bain, *Op. Cit.*, p. 82-86, 103-104.

principles underlying the system. These principles were concerned with both the new post-war international ethical trends as well as with consolidating the new structure by addressing some of the criticisms of the mandate system.³⁸⁸

b. The Trusteeship System

Chapters XI to XIII of the United Nations' Charter are entirely dedicated to the question of non self-governing territories.³⁸⁹ Articles 73 and 74 both outline the recognition of non self-governing territories by the international community and underline the community's commitment to respecting, considering and treating the territories and their populations as equals. They outline the status of such territories, aiming to counterbalance the underlying discriminations of the former article 22 by recognising the territories and their populations as part of the international community as well as providing for their sovereign identities free from any colonial threats.³⁹⁰ However, article 78 introduces the idea that even if they are part of the international community, the trusteeship territories are not recognised as being equal to other states, even though the ultimate aim is for them to become so. This distinction has important repercussions for the rights and obligations of non-governing territories.

Article 76 explicitly articulates the aims of the new scheme. The Trusteeship system is established in order to pursue 'international peace and security'. Paragraph 2 outlines the aims – *per se* – of the system, namely: the promotion of 'the political, the economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence ... and the freely expressed wishes of the peoples concerned'. In other words, the system intends to pursue the setting up of governance through the establishment of principles underlying the Charter and the international community's 'new' global order.³⁹¹ The difference of the aim expressed in this article to the aim sketched in the old article 22 is that here the aim is clearly stated, and the principles on which the new governance mechanisms have to be built are clearly defined to mirror the evolution of the international community's concerns and principles. Finally, chapter XIII of the Charter outlines the composition, functions and working mechanisms of the Trusteeship Council responsible for supervising the system. The detailed explanation of

³⁸⁸ Chesterman, *Op. Cit.*, p. 38.

³⁸⁹ Bain, *Op. Cit.*, p. 122.

³⁹⁰ Chesterman, *Op. Cit.*, p. 38-39.

³⁹¹ Caplan 2005, *Op. Cit.*, p. 32.

the role and functions of the Council indicates the will to monitor the performance of the ‘administering authority’ in pursuing its mission in accordance with its given mandate.³⁹²

In its concern to formalise and further institutionalise the process, chapter XI largely describes the responsibilities and duties of the administering state to the international community and to the trust territory. Article 81 indicates that the mandate of the administering authority should be clearly determined by agreement at the beginning of the mission and that it is required to remain within the boundaries of this mandate. Article 84 emphasises the administering state’s duties in regards to its responsibility to keep the trust territory within the established international order so that it does not disrupt peace and security. However, the Charter remains silent with regard to the procedure for the administering authority to establish self-government within the trust territory.

An interesting aspect of the trusteeship system is that, beyond its original purpose to bring towards independence the post-war non self-governing territories,³⁹³ the system eventually played a role within the decolonisation process in the 1960s. In this context, the trusteeship system became an institutionalised mechanism for territories that were recognised as having the right to self-determination but was not yet capable of self-government to pursue statehood.³⁹⁴

The system came to an end in 1994 with the accession to independence of the Republic of Palau, the last trust territory.³⁹⁵ However, rather than dissolving the framework, the United Nations emphasised that the Trustee Council would only be adjourned until the day a new demand for the system might arise.³⁹⁶ In fact, the suspension of the trusteeship system has not meant the disappearance of the problem of non self-governing territories.³⁹⁷ On the contrary, the multiplication of internal conflicts, and in particular of ethnic conflicts and ensuing collapse of states in the Balkans and elsewhere, has renewed the need for external help in setting up governing institutions.³⁹⁸ Nevertheless, since 1994, it seems that new alternatives have been used by the international community to deal with those demands, away

³⁹² Chesterman, *Op. Cit.*, p. 39.

³⁹³ Bain, *Op. Cit.*, p. 123.

³⁹⁴ Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV), 14 December 1960.

³⁹⁵ Bain, *Op. Cit.*, p. 140.

³⁹⁶ Chesterman, *Op. Cit.*, p. 41.

³⁹⁷ Distinction between trust territories and other non self-governing territories: Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV), 1970.

³⁹⁸ Zartman, *Op. Cit.*, pp. 1; 272.

from the single state involvement on which the mandate and trusteeship systems were based, and increasingly towards a corporatist system of intervention.³⁹⁹

c. Modern Trends of United Nations Involvement

Although the United Nations' involvement in peace building is not recent,⁴⁰⁰ since the late 1990s it has taken increasing predominance. This new role can be observed in two ways: (1) in the role of the organisation, and (2) in the scale and nature of its involvement.⁴⁰¹ The essential difference is that, instead of resorting to the trusteeship system that mandated a state to establish self-governing institutions in non self-governing territories, the responsibility is given to the United Nations itself as an independent entity, whose multilateral character is considered to be more appropriate to constraining the partial interests of individual states in getting involved.⁴⁰² However, despite the 'neutral' nature of a joint action, United Nations involvement still represents interference in a state's sovereignty. Short of a specific agreement from the state to accept the takeover of its governance prerogatives, the Security Council plays an important role. As the supreme political entity of the international order, the Council plays a primary role in legitimising the action of the United Nations through the establishment of each mission's mandate, as was the case with the Trusteeship Council within the trusteeship system.⁴⁰³

United Nations involvement represents a further asset as its specialised agencies are able to provide states with assistance in disparate specialised fields. In fact, its involvement in peace-building has been historically limited to technical assistance and capacity building.⁴⁰⁴ Nevertheless, in the 1990s, a new trend developed where technical assistance was increasingly focused on governmental capacity building. Through an analysis of the missions undertaken, it can be observed that the role of the United Nations has become ever more extensive in this field, to the point of taking over the role of administering authority.⁴⁰⁵ The growth of the United Nations' involvement can be seen in the transition from a technical

³⁹⁹ Caplan 2005, *Op. Cit.*, p. 34; Koskenmäji, R., 'Introductory Remarks' presented at the conference *Legitimacy and Accountability of International Administrations*, European Society of International Law, Geneva, 26-28 May 2005, p. 2.

⁴⁰⁰ Taras, R. and R. Ganguly, *Understanding Ethnic Conflict: the International Dimension*, Longman, New York, 1998. pp. 110-114; Bain, *Op. Cit.*, p. 145.

⁴⁰¹ Chesterman, *Op. Cit.*, p. 49.

⁴⁰² Chesterman, *Op. Cit.*, p. 45; Paris 2002, *Op. Cit.*, p. 650.; Koskenmäji, *Op. Cit.*, pp. 2-3.

⁴⁰³ Ruffert, M., 'The Administration of Kosovo and East Timor by the International Community' in *International and Comparative Law Quarterly*, vol. 50 (3), 2001. pp. 616-618.

⁴⁰⁴ Chesterman, *Op. Cit.*, p. 3.

⁴⁰⁵ Caplan 2005, *Op. Cit.*, p. 35.

assistance and capacity building mandate in Eastern Slavonia⁴⁰⁶ to full responsibility for building and running the administration in Kosovo.⁴⁰⁷

The different missions and involvement of the United Nations' agencies in peace building have received various responses, reflecting a generally ambiguous feeling. On the one hand, the argument has been made that '[peace building should] obtain the backing of the international community but should be carried out by individual states – historically, the most successful agents of state building.⁴⁰⁸ On the other hand, the important role the United Nations has in carrying out those missions has been defended on the ground that the aims pursued by those missions fall within the purpose and competencies of the organisation, such as democratisation, the reinforcement of human rights and development, and above all, the maintenance of peace and security as prescribed by article 24 of the Charter.⁴⁰⁹ In sum, the United Nations' involvement enables the internationalisation of the issue. The international organisation appears more neutral than states, which can be suspected of plotting to manipulate the mandate in order to pursue colonial aims. Finally, its technical capacity, through the expertise of its different specialised agencies, is perceived as valuable. Yet, with the increase of its responsibilities in the field of governance, traditionally a state's duty, the international organisation reinforces the discrepancy between its obligations towards the international community that mandates it and the local population that it will govern – and with respect to which, accountability mechanisms are often lacking.

Nonetheless, it is interesting to note that most major critics of United Nations involvement in peace building have come from within the United Nations itself. Objections came from the Secretariat, which commissioned a detailed report on the organisation's peacekeeping activities. The report, later known as the 2000 Brahimi Report, underlined a number of important concerns, such as the inadequacy and lack of readiness of the organisation to maintain such missions and above all its lack of preparation, structure, cohesion and planning.⁴¹⁰ Missions appeared to be set up at the last minute and a huge number

⁴⁰⁶ United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), United Nations Security Resolution 1037, 15 January 1996. (1996-1998).

⁴⁰⁷ Caplan 2005, *Op. Cit.*, p. 37.

⁴⁰⁸ Mandelbaum quoted in Taras & Ganguly, *Op. Cit.*, p. 105.

⁴⁰⁹ Chesterman, *Op. Cit.*, pp. 54-55; Matheson, *Op. Cit.*, pp. 77, 83-84.

⁴¹⁰ *Ibid.*, p. 49.

of elements such as the structure, coordination and personnel seem to be unequal to the demanding situation on the ground.⁴¹¹

An essential element of the report is its discussion of the lack of ‘exit strategies’. The term *exit strategy* indicates a planned policy to establish a sustainable structure in the state, capable of handling responsibilities, which will be gradually devolved to it. The ultimate aim of such *exit strategies* is the total withdrawal of the international administration when its assistance is no longer required. There are three sets of reasons to push the organisation to develop an exit strategy: legal, economic and logistical. First, the essential criterion legitimising the breach in the state’s sovereignty is its temporal limitation. The mandates delivered to the external mission are always temporary.⁴¹² The missions need to keep this in mind, as there is a point beyond which the legal justification of their presence lacks legitimacy and they need to retire.⁴¹³ Second, peace-building missions require vast financial resources. The funding comes ultimately from member states and donors, which are certainly not ready to donate vast amounts of money indefinitely without positive results. Finally, in addition to money, those missions require a large degree of human and technical logistical support. With the multiplication of conflicts around the globe and the consequent multiplication of requests for assistance, it becomes difficult to stretch the available logistical resources between the different necessary missions around the world. The United Nations therefore needs to cut down on certain missions in order to provide others with adequate amounts of the necessary resources. Consequently, to achieve a coherent exit strategy, thorough planning is necessary to efficiently match the resources to the needs. Failure to achieve this in planning does undermine the successes of the mission and consequently its ability to withdraw.⁴¹⁴

The review of the development of international territorial administrations clearly shows that prevailing international practice on issues of non self-governing territories has turned, for clear legitimacy reasons, away from individual states to international community involvement.⁴¹⁵ Nevertheless, it is important to keep in mind that this 1990s trend has in no way excluded the future of state involvement. There was a clear will to maintain the Trusteeship Council, which had after all only been suspended, not abolished. In addition,

⁴¹¹ Caplan 2005, *Op.Cit.*, p. 9.

⁴¹² Chesterman, *Op. Cit.*, p. 54.

⁴¹³ *Ibid.*, p. 131.

⁴¹⁴ *Ibid.*, p. 204. Caplan 2005, *Op. Cit.*, p. 212-229.

⁴¹⁵ Paris 2002, *Op. Cit.*, p. 650.

since the suspension of the trusteeship system, no state has been empowered to administer a non self-governing territory, but states have still been involved in the process.⁴¹⁶ As Mandelbaum points out, states are the ideal candidates to administer states. The essential reason is that they have the expertise, the capacity, and the structure to do so, which international organisations often lack.⁴¹⁷ As they are states themselves, they plausibly have a greater expertise in the intricacies of state administration and governance. Besides, they can provide the appropriate civilian structure with experienced civil servants. Finally, they already have the chain of command to enable unity in decision-making and implementation. Those advantages over international organisations enable states to have a more direct and precise impact on governance. Yet, for the political and legal reasons outlined here, international territorial administrations have recently come to implement the mission mandates set for them by the United Nations. It is important to note that, even if the multilateral framework of the mission seems to reinforce its international legitimacy, the lack of decision-making by the local populations and the externally imposed nature of the mission in its establishment, running and policy making represent a serious problem as regards the legitimacy of such administrations at the local level.⁴¹⁸

2. *International Administration, Kosovo and the Question of ‘Belief’*

The evolution of the international territorial administration model demonstrates the international community’s concern to define a political, institutional and legal framework to provide legitimacy for its actions while ensuring an efficient answer to the problem of ‘failed states’.⁴¹⁹ The international involvement in Kosovo enters this category, as the international community endorsed the task of UNMIK’s fulfilling governmental functions to fill the vacuum left after a conflict.⁴²⁰ Yet, legitimacy does not depend solely on a legislative framework. As defined in Chapter one, to be truly legitimate, the law needs to be accepted and acted upon as such. In order to fully understand the legitimacy concerns faced by UNMIK, it is essential to understand the interests and stakes of all the actors involved. A

⁴¹⁶ Such as Afghanistan and Iraq. Without an international mandate, the reason that brought the United States and the United Kingdom to choose direct administration rather than a United Nations administration shows their scepticism towards the international organisation’s capacity to perform, especially after the example of Kosovo. Chesterman, *Op. Cit.*, p. 26.

⁴¹⁷ Brahimi report.

⁴¹⁸ Zartman, *Op. Cit.* pp. 267-273; Caplan, R., ‘Who Guards the Guardians? International Accountability in Bosnia’ in *International Peacekeeping*, vol. 12 (3), 2005a, p. 465.

⁴¹⁹ Matheson, *Op. Cit.*, p. 70.

⁴²⁰ Caplan 2005, *Op. Cit.*, p. 19.

pattern of what each actor considers as legitimate needs to be mapped out to figure out on what grounds they are ready to support the mission before observing more closely the structure and policies of the international administration and determining to what extent this reinforces – or not – UNMIK’s legitimacy.

The issue of Kosovo, both in the Yugoslav and international contexts, has been a particularly thorny issue when it comes to considering the legitimacy framework in which it evolves. The distinction in the understanding of the concept of legitimacy across the international and local levels on the one hand, but also within those levels on the other hand, reflect the multiplicity of actors and ultimately, of what those actors consider as legitimate, based largely on what seems to be their specific interests in the conflict. At the international level, the issue of legitimacy polarised the international community roughly between interventionist and non-interventionist countries. Meanwhile, at the Yugoslav level, there is a clear split between Kosovo’s Albanians, the Serb government in Belgrade and the Kosovo Serbs.

a. The International Community and Legitimacy

Within the international context, the legitimacy of the international administration rests on its ability to re-establish order under international law. To do so, UNMIK was mandated to develop and perform within the limits of a compromise between Serbian and Kosovo Albanian claims.⁴²¹ Bound by international legal principles, the international community could not legally impose any decision on the state of Serbia; nor could it implement any decisions that might have long-term consequences for the republic’s sovereign prerogatives, such as its borders. Yet, the continuous claims for self-determination from Kosovo’s Albanians entailed specific concerns about the potential domino effect that those demands could have on other secessionist movements, and the ensuing catastrophic consequences it would have on the international order if successful by threatening the stability of a large number of multiethnic states in the region and beyond, causing further unsteadiness through the multiplication of microstates.⁴²² Despite this delicate situation, the international administration bears the heavy responsibility of responding to specific internal disorders in

⁴²¹ Resolution 1244.

⁴²² The international community is greatly concerned by the effect the management of the Kosovo question would have on overall regional stability. Given the dismal record of the region in dealing with ethno-secessionist movements, a further questioning of the geopolitical balance might threaten the already difficult equilibrium achieved by previous settlements – i.e. Dayton agreement.

the province and providing for the population undergoing their effects. The resurfacing of these wounds represents a further destabilising factor for the international order. To counteract those effects, the international mission is expected to manage the different issues according to standards recognised by the international community: human rights, the rule of law, good governance and democracy.

Although the principles on which international legitimacy is based are codified in international law, considerable divergences in the interpretations of such international law and its means of implementation appear among the different actors of the international community, ultimately affecting the legitimacy of the mission. In this case, divergences appeared along the split, between the allies – roughly the United States and the European Union; versus Russia – supported silently by China, which had similar concerns.

i) The ‘Allies’

Home to a large and politically very active Albanian Diaspora community,⁴²³ the United States was a key actor behind the Rambouillet negotiations and the launching of the bombing of Kosovo and Serbia in 1999. Besides the meticulous lobbying by American-Albanian associations in Washington, the interest of the United States in getting involved on the issue of the province is explained by the Clinton administration’s overall policy for the Balkans.⁴²⁴ No matter the motives behind the American involvement, the United State’s stance and support on the issue of Kosovo gained it a hero’s status among the Kosovo Albanian community, who granted it unquestionable loyalty.⁴²⁵ Despite this fervour and the hopes that it raised after NATO airstrike, the Clinton administration pursued its pre-war policy, which did not support Kosovo Albanians’ claims to outright independence, which was believed to be impracticable and which would only spur additional destabilisation at the regional and international levels.⁴²⁶ Clearly opposed to Milošević’ schemes in Kosovo and the wider Western Balkans, the United States did not support the return of the province to unlimited Serbian rule either. Instead, it pushed for the alternative it had supported all along,

⁴²³ Albanian American Civil League (AACL); Albanian American Trade and Development Association (AATDA); Albanian-American Association (*Malesia e Madhe*).

⁴²⁴ Ramet, S., ‘The USA: To War in Europe Again’ in Weymouth, T. and S. Henig (eds.), *The Kosovo Crisis: the Last American War in Europe?*, Pearson Education, London, 2001.

⁴²⁵ Examples of the depth of Kosovo Albanian devotion were witnessed on September 11 when, Kosovo Albanians, majority Muslim, spontaneously demonstrated in support of the United States and stoned the headquarters of a number of Islamic non-governmental organisations. Kelmand, A., ‘Kosovars Refute Islamic Terror Claims’ in *IWPR*, 11 November 2001.

⁴²⁶ Nazi, F., ‘The Honey Moon is over in Kosovo’ in *IWPR*, 21 March 2000.

since its initial mediation involvement, which implied the establishment of an international administration to regulate the deep humanitarian crisis in the province and establish the appropriate political and social conditions to enable a dialogue between the parties, towards the development of a permanent settlement of the issue.⁴²⁷

Nevertheless, with the election of a new administration, the United States withdrew perceptibly from the front scene of Kosovo after 2000, although its participation remained active in the fields of peace-keeping, humanitarian assistance, capacity building and micro-economic support through organisations such as the United States Agency for International Development (USAID).⁴²⁸ In comparison to the United States' decisive role in the settlement of Bosnia-Herzegovina, the Bush administration decided not to occupy the forefront of decision-making for two important reasons: first, because of the belief of the administration that the Balkans should be dealt with by Europeans;⁴²⁹ second and more importantly, because of the high demand on American resources caused by the 'War on Terror' launched following the 2001 September 11 attack.⁴³⁰

Divided over the issue of the bombing of Serbia in 1999, the European Union nevertheless developed a common policy regarding the management of the Kosovo issue. With the extension of its borders to the east, and the reinforcement and affirmation of its institutional structures, the European Union has consciously asserted itself as a credible and strong geopolitical actor in the region.⁴³¹ The attempts to take and demonstrate its lead in the management and settlement of the issue were demonstrated by the choice of venue of Rambouillet in France for the negotiations in winter 1999,⁴³² and its active involvement in the management of the province post-crisis, as leader of the economic reconstruction pillar of the international administration. In line with their Atlantic ally, further motivated by the clear opposition of some of its member states, the European Union did not support outright independence for Kosovo Albanians. Instead, pursuant of its core philosophy,⁴³³ the Union

⁴²⁷ Tröbst, S. *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998*, European Centre for Minority Issues, Working Paper no. 1, May 1998, p. 22.

⁴²⁸ Interview Daniel Ratier, 1st Secretary, Political Affairs, French liaison office, Prishtina, 15 June 2004.

⁴²⁹ Presidential candidate George W. Bush based his campaign to the 2000 election on the withdrawal of American troupes from 'nation building' missions across the world, cf. Chesterman, *Op. Cit.*, p. 4.

⁴³⁰ Deployment of troupes in Afghanistan and Iraq. "Le Kosovo ne Fait plus Partie des Priorités Américaines: Entretien avec Ylber Hysa" in *Koha Ditore*, 5 May 2002.

⁴³¹ Caplan 2005, *Op. Cit.*, p. 10; Chesterman, *Op. Cit.*, p. 83; Ramirez, J.D. and M. Szapiro, 'The EU: Old Wine From New Bottles' in Weymouth, T. and S. Henig (eds), *The Kosovo Crisis: the Last American War in Europe?*, Pearson Education, London, 2001.

⁴³² Weller, M., 'The Rambouillet Conference on Kosovo' in *International Affairs*, vol. 75 (2), 1999, p. 211.

⁴³³ Stability Pact for South Eastern Europe.

nourished the belief that the improvement in the socio-economic conditions of the province and eventually a change of government in Serbia would provide the environment necessary for the negotiations between the parties over the issue of a long-term political settlement to succeed, clearly favouring a solution within a federal framework.⁴³⁴ As such, the European Union was supportive of the international administration's mandate. In line with the American position, the European Union backed an international mission that it expected would deal with the social and economic crisis, while developing a political environment to establish a sustainable long-term solution of the Kosovo question.

ii) Russia

As a historical ally of its Southern Slav cousins, Russia unsurprisingly supported Serbia throughout the negotiations that preceded and occurred during the bombing. It had a crucial role in promoting Serbian interests at the international level, stalling the Security Council's decision to side with the United States and European Union's clear inclination towards the Kosovo Albanians, or at least of open opposition to Milošević.⁴³⁵ In addition to the Slav brotherhood argument, Russia, along with China, had a strong interest in preventing the multiplication of successful secessionist movements. Fear of the effect the independence of Kosovo could have on reinforcing secessionist claims within the Russian Federation and the People's Republic's borders remained vivid.⁴³⁶

After the bombing, despite their involvement in the negotiations, Russia bitterly agreed not to be granted control over any military zone, which was distributed between the United States, Britain, France, Italy and Germany.⁴³⁷ Instead Russia was formally attributed the protection of the Serbian enclaves scattered across the Province's territory and other strategic zones that they had managed to occupy before allied troops.⁴³⁸ Yet their humanitarian presence proved to be very difficult to maintain. Their army on the ground encountered violent opposition from the Kosovo Albanians, who perceived them as the instrument of the Serbian government.⁴³⁹ Besides, the military presence in Kosovo received

⁴³⁴ Tröbst, *Op. Cit.*, p. 35.

⁴³⁵ Williams C. and Z. Golenkova, 'Russia: Walking the Tightrope' in Weymouth, T. and S. Henig (eds.), *The Kosovo Crisis: the Last American War in Europe?*, Pearson Education, London, 2001.

⁴³⁶ Chechnya, Dagestan or Taiwan, Tibet etc.

⁴³⁷ Agreement on Russian Participation in KFOR, *U.S. Department of Defense*, 18 June 1999.

⁴³⁸ Prishtina airport. Beaver, P. I. Traynor and O. Bowcott, 'Russians Bar Way to Airport: Standoff Doubts Grow over Kremlin's Ability to Control Army' in *The Guardian*, 14 June 1999. Cf. Norris, J., *Collision Course: NATO, Russia and Kosovo*, Praeger Publisher, Westport, 2005.

⁴³⁹ The Ohravac blockade episode, 'Kosovo Albanians to Try to Block Russians' in *New York Times*, 23 August

increasing criticism at home on the grounds that Russian soldiers should instead be defending Russian interests on its own territory, especially in Chechnya.⁴⁴⁰ After a few years, the Russian military presence in Kosovo was scaled down drastically to just a few posts in some Serb inhabited areas by mid-2003. In the political arena, Russian active involvement also diminished substantially. It confined itself for a number of years to monitoring the respecting of Serbian sovereignty through remaining active within the Security Council and the Contact Group's initiatives. Moreover, proactive with its recognition of the legitimacy of Serbia's claim to its province, Russia did not hold formally a liaison office in Prishtina, leaving such representation to one of its high-ranking UNMIK officials.⁴⁴¹

For Moscow, UNMIK represented a barrier to the Kosovo Albanians' unilateral declaration of independence after the NATO airstrikes and a means to delay the settlement of the issue since. Realistically short of the option to let Serbian rule return to its province, UNMIK became a tool to supervise the running of Kosovo. As a subsidiary organ of the Security Council, the administration was meant to administer the province within the boundaries set by the Council. While it remains far from gathering the majority within the United Nations' political organ, Russia nevertheless holds the crucial right of a veto. Russia's position enabled it to prevent the Security Council from going too far towards the Kosovo Albanians' wish of independence. The decisive role played by the international administration in Russia's political game is clearly illustrated in the way that Moscow has insisted on UNMIK running the province beyond the declaration of independence in February 2008, *de facto* leaving the province in further political and legal limbo.⁴⁴² Its argument rested on the greater legitimacy of an international mission as opposed to a European one – over which, incidentally they would have no leverage. UNMIK became the international legitimate obstruction to the European mission's assisting in the development of a post-independent Kosovo.⁴⁴³

Whatever the stances and motivations of the international actors, it is clear that they expect the new international mission to provide enough internal stability within Kosovo to

1999, p. 9.

⁴⁴⁰ Buckley, M., 'Russian Perceptions' in Buckley, M & S. Cummings (eds), *Kosovo: Perceptions of War and its Aftermath*, Continuum Internatinoal Publishing Group, 2001, p. 167.

⁴⁴¹ Head of the UNMIK Political affairs. Cf. Interview Daniel Ratier, *Op. Cit.*; Interview Carel Brands, 1st Secretary, Dutch Liaison Office, Prishtina, 16 June 2004.

⁴⁴² United Nations Security Council meeting records, S/PV.5839, 18 February 2008.

⁴⁴³ International Crisis Group, *Kosovo Countdown: A Blueprint for Transition*, Europe Report no. 188, 6 December 2007, p. 3.

restore its political balance at the international level along international legal and political principles. Hence, to be legitimate in the eyes of the international community, which it represents and acts in the name of, UNMIK needs to establish a balance between Serbia's sovereignty and the Kosovo Albanians' aspiration to national self-determination. To do so, the international community deputed the mission to develop a democratic political system representative of the multicultural specificity of the society and in line with its aspirations.⁴⁴⁴ Unable to promote a balance between Serbs and Kosovo Albanians' prescriptions throughout the negotiations that preceded the controversial airstrike, the international community unrealistically put enormous pressure on the new mission. Yet, in order to retain its legitimacy in the eyes of the power that established it, the mission needs to fulfil the expectations of its mandate to gain and retain its support.

b. The Yugoslav Context and Legitimacy

Established, run and supported by the international community, the international mission performs, however, by nature in a specific national environment with specific national actors. Besides the expectations of the international community, the efficiency, and ultimately the legitimacy, of UNMIK and of its policies also rest on the *belief* of the local actors. In the same way as at the international level, the national level at which Kosovo evolves is fragmented along the aspirations of the different groups that compose it.

i) Kosovo's Albanians

Longing for the internationalisation of the Kosovo question all through the 1990s, the bombing of Kosovo and Serbia in the spring of 1999 enhanced the Kosovo Albanians' hopes for an independent state, free from the Serb government's threats. The establishment of the international administrative mission in the province after the bombing was perceived by the Kosovo Albanians in two ways: first positively, as it demonstrated that the international community was finally determined to get actively involved in the political change of the province, and made it clear that Belgrade would not have further *carte blanche* in the province again; second, with suspicion and some disappointment, as Kosovo's Albanian elites understood that they would not have their way in the manner they had hoped to run the territory. It seems that in the Kosovo Albanians' eyes, there was a clear distinction between the allies' military peacekeeping presence – the Kosovo Force (KFOR) – welcomed in its

⁴⁴⁴ Zartman, *Op. Cit.*

large part as a liberator and protector versus Serb forces, and UNMIK, a civilian administrative organ that ultimately obstructed their aspiration to self-government. Initially, the Kosovo Albanians resigned themselves to the international presence, which they assumed was meant to be temporary and helping them in the establishment of a clear and effective institutional structure that would enable them ultimately to run an independent Kosovo.⁴⁴⁵

Hence, the Kosovo Albanians' expectations of the international mission are to provide them with the tools necessary to eventually run an independent state.⁴⁴⁶ Furthermore, pursuant of their policy to gain support from the international community to their cause to speed up the process towards independence,⁴⁴⁷ the Kosovo Albanian elites realised that the political system established by UNMIK ultimately would gain the support of the international community, and in the end both the institutions that composed the system and the decisions that they would take would be legitimised in their eyes. Before the bombing and especially after, the Kosovo Albanian elites' discourse was filled with 'buzz words' such as 'democracy' and 'multiethnicity', which sounded relatively awkward in the ethnically deeply divided society that had never experienced liberal democracy and clearly was longing for independence at any cost. This phenomenon is observable through the multiplication of good intentions expressed in Western liberal rhetoric, while the apparatus in Kosovo clearly lacked the structures and mechanisms necessary for its implementation. Elites' discourses intertwined independence and democracy without explaining how all this would eventually emerge in concrete terms.⁴⁴⁸

Nevertheless, the participation of Kosovo Albanian elites in the UNMIK-designed new political system clearly rested on their belief that their support would facilitate the quick development of the situation towards their ultimate goal. Suspicion and frustrations grew with the slow pace or even lack of positive improvement in that direction. The international administration, failing to help them reach their aims, and worse, increasingly representing the main obstacle between Kosovo Albanians and independence, became the focus of all the discontents of the elites and population. Conscious that their participation in the newly designed institutions was purely representative, or at best used by the international administration on a consultative basis but lacking any real decision-making power, the elites'

⁴⁴⁵ Interviews Ramush Haradinaj, President of the AAK, Prishtina, 21 June 2004.; Alush Gashi, LDK, Prishtina, 15 June 2004; Hajradin Kuci, Vice president of PDK, Prishtina, 14 June 2004.

⁴⁴⁶ Interview Ramuj Haradinaj, *Ibid.*

⁴⁴⁷ Tröbst, *Op. Cit.*, p. 21.

⁴⁴⁸ Interviews Ramush Haradinaj, *Op. Cit.*; Alush Gashi, *Op. Cit.*; Hajradin Kuci, *Op. Cit.*

resentment towards UNMIK grew, as it did within the Kosovo Albanian population as a whole.⁴⁴⁹

On 17 March 2004, what was portrayed as an ethnically motivated incident that resulted in the tragic death of Kosovo Albanian children,⁴⁵⁰ became transformed into a violent protest directed at the Kosovo Serb population but also, and equally as violently, at the international community.⁴⁵¹ This event made the point that the international administration's top-down approach and consequently its legitimacy was being seriously questioned and needed serious reconsideration. Ultimately, it underlined the expectations the Kosovo Albanians had of the international administrative mission: that of driving them towards their long awaited dream of independence.⁴⁵²

ii) Belgrade

Resulting from a violent assault and imposed on it literally at gunpoint, UNMIK is perceived by Belgrade as an intruder interfering in its internal affairs. Although a signatory of the ceasefire agreement,⁴⁵³ Belgrade had no say in the elaboration of the mission and it was coerced into accepting its presence and involvement.⁴⁵⁴ Worse, all of this was based on a series of compromises and agreements to which they had clearly been opposed.⁴⁵⁵ Furthermore, resolution 1244 specifically provides for the reintegration of 'Yugoslav' civil servants in the province in due course. Yet, the international administrative mission, in addition to taking over the administration of their province and making all decisions without any consultation with the sovereign – i.e. legitimate – government, never made any efforts to comply with this particular term of the Security Council resolution.⁴⁵⁶

From the start, Belgrade resented bitterly the lack of consultation of the international administration and its inability to participate in the decision-making process. Considering the

⁴⁴⁹ Qirezi, A., 'Le Torchon Brûle Entre Les Albanais et la MINUK' in *IWPR*, 10 February 2003; 'Une Résolution Très Ferme' in *IWPR*, 11 June 1999.

⁴⁵⁰ To this day, the exact events of that day at the Ibar river are unclear. Zanoni, L., 'Questions Sans Réponses sur les Emeutes du Mois de Mars' in *Osservatorio Sui Balcani*, 29 April 2004.

⁴⁵¹ Interview Daniel Ratier, *Op. Cit.*; Delisse, F.-X. and J.-A. Dérens, 'La MINUK "Surprise par les Événements"' in *Le Courrier des Balkans*, 23 March 2004; Dérens, J.-A., 'Une Administration Internationale Impuissante' in *Le Courrier des Balkans*, 23 Mars 2004.

⁴⁵² Semin, L., 'The United Nations did not Hold their Promises to the Kosovars' in *IWPR*, 9 June 2000.

⁴⁵³ Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, Kumanovo, 9 June 1999; Matheson, *Op. Cit.*, p. 78.

⁴⁵⁴ Bain, *Op. Cit.*, 153.

⁴⁵⁵ Resolution 1244.

⁴⁵⁶ Resolution 1244, § 4.

international administration as clearly biased towards the Kosovo Albanians and working towards their independence, the Serb government quickly organised itself to provide for the Serb population of Kosovo through the establishment and financing of institutions in what it deemed – and which was still acknowledged at the international level – as its territory. In effect, those institutions undermined UNMIK's efforts to establish a coherent and articulate institutional structure and were reminiscent of the tactics Kosovo Albanians had resorted to against the Serbian state's policies in the 1990s.⁴⁵⁷ This system aimed to provide for the Kosovo Serb community that lacked basic commodities, but also to ensure their loyalty.⁴⁵⁸ The Serb government launched a new department of state with an independent budget voted for by the Serb parliament in charge of managing those 'parallel' institutions.⁴⁵⁹ The Coordination Center for Kosovo and Metohija (*Koordinacioni Centar za Kosovo i Metohiju*) effectively managed a whole set of civilian services intended for the Kosovo Serb population north of the Ibar River and in accessible enclaves. It proceeded with the distribution of salaries to Serb civil servants such as teachers and medical personnel in addition to normal UNMIK wages or simply, in some cases, instead of it.⁴⁶⁰ Until 2002 and the opening of the first official UNMIK office north of the Ibar,⁴⁶¹ the Coordination Centre was clearly and effectively the only source of authority in this zone. The role and influence of the Coordination Centre and of its head, Dr. Nebojša Čović (SDP) was clearly aimed at weakening UNMIK's legitimacy and that of its policies, which Belgrade perceived as contributing towards the independence of its province. The importance of the centre and its animosity towards UNMIK was obvious before the different elections in the province. The election campaign period was marked by difficult negotiations between the centre and the office of the Special Representative to convince the Centre to support UNMIK in its efforts by using its influence to convince Kosovo Serbs to take part in the elections. The propensity of the Kosovo Serb community to participate or not in the elections that had been organised by the international administration according to the direction of the Coordination Centre

⁴⁵⁷ Interview Olivier Revah, Officer for Minority Rights, OSCE, Prishtina, May/ June 2004.

⁴⁵⁸ Interview with Olivier Revah, Democratisation Officer, OSCE, Prishtina, 27 May and 6 June 2004.

⁴⁵⁹ "The Coordination Center for Kosovo and Metohia was established at the joint session of the governments of the Federal Republic of Yugoslavia and the Republic of Serbia, on 2nd August 2001. Its responsibilities are specified in the Program for Implementation of the Resolution of the United Nations Security Council No 1244, ratified by the Government of Serbia on 2nd October the same year." Statement by Dr. Nebojša Čović at the session of the National Assembly of the Republic of Serbia Belgrade, 27 August 2003.

⁴⁶⁰ Holliday, G., "Kosovo/a Standing Technical Working Group", Second Meeting: Health Sector and Reconstruction, UN Government Building, Prishtina, 26 May 2001, *ECMI Report* no. 14, August 2001.

⁴⁶¹ International Crisis Group, *UNMIK's Kosovo Albatross: Tackling Division in Mitrovica*, Balkan Report no. 131, Pristina/Belgrade/Brussels, 3 June 2002, p. 5.

demonstrates the influence the centre holds over this crucial part of the Kosovo population, and consequently the absence of grass roots legitimacy of UNMIK.⁴⁶²

iii) Kosovo's Serbs

Without any real decision power and crippled by their numerical inferiority, the Kosovo Serbs are however essential in the legitimisation process of the international administrative mission. For the same reasons as Belgrade, yet more acutely, they resented the mission that entrenched the conflict and made them lose the political connection of their government, and more concretely their homes and everyday lives. Divided politically and geographically, they are trapped between genuine fear for their own physical security and their lack of access to resources needed to fulfil basic needs.⁴⁶³ Instinctively, the Kosovo Serb population was not inclined to accept UNMIK's authority and policies. Yet, out of pragmatic considerations, essentially needing resources which Belgrade had difficulties providing for either for ideological or geographical reasons, they grew more predisposed to accept, to some extent, UNMIK's authority.⁴⁶⁴ In concrete terms, for those that were ready to take part in Kosovo's new political system, the base of the mission's legitimacy depended on the ability of the international administration to provide normal living conditions, including access to effective decision-making.⁴⁶⁵ Ultimately, in line with Lipset's criteria, the support of the largest minority of the province is essential for the legitimisation of the international mission and of its policies. Short of this support, the international administration fails to secure the *belief* of a large part of the population, appears partial towards the Kosovo Albanians, and therefore loses any kind of legitimacy.

Entangled as they were in the age-old issue of the Kosovo question, instead of taming the claims of local actors, the bombing of the province exacerbated them. The expectations of all parties were for the mission to help them in achieving their mutually exclusive goals. But to gain the support of one party, the mission risked alienating the others. The international mission therefore found itself in the delicate situation where the expectations of the local actors focused on the issue of status, rather than on the political and social progress that it could achieve and which it was ultimately mandated to pursue. Increasingly, much less

⁴⁶² Syla, G., 'Steiner Demande à Belgrade de Ne Pas Intervenir Dans Les Affaires de Pristina' in *Koha Ditore*, 6 March 2002.

⁴⁶³ Jeknic, P., 'Serbs' Pristina Misery' in *IWPR*, 5 May 2000.

⁴⁶⁴ Interview with Milorad Todorović, Milorad Todorović, Interministerial Coordinator for Returns, Office of the Prime Minister, Prishtina, 17 June 2004.

⁴⁶⁵ *Ibid.*

attention was given to long-term strategy and policies the international administration was pursuing according to its mandate. Under these circumstances, UNMIK found itself in an uncomfortable position of trying to secure the unanimous legitimacy it required for the achievement of its assignment to which it attempted to respond in two ways: through the design of its structure and the adoption of appropriate policies in order to ensure the international and local *belief* in its role and action.⁴⁶⁶

3. *The United Nations Administrative Mission in Kosovo*

The dubious circumstances that resulted in the establishment of the international administrative mission revive the issue of its legitimacy at the root of the mission itself. To counter this effect, the international community has paid attention to the design of a modern international territorial administration to respond, both to the international concerns raised by previous missions – the *lessons learned* – and to the diverging expectations of different actors. Wedged between clearly diverging expectations, the mission has attempted to respond to both concerns, first through its design and then, through the different policies it has implemented in an attempt to depoliticise the mission by focusing on technical issues – i.e. the humanitarian needs to the population of Kosovo.

a. The International Territorial Administration's Design

United Nations Security Council resolution 1244, which founded the international territorial administration, remained vague as to the structure it should take, leaving a large degree of latitude to the mission itself to determine the most appropriate structure to perform its tasks. The resolution, however, specifies three significant guidelines: first it entrusts the United Nations 'Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence';⁴⁶⁷ second, it 'authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo';⁴⁶⁸ finally, it openly 'welcomes the work in hand in the European Union and other international organizations'.⁴⁶⁹ Those parameters emphasise the overall structure of the mission: under the leadership of the United Nations, the scrutiny of the Security Council and with the collaboration of a number of

⁴⁶⁶ Chesterman, *Op. Cit.*, p. 80.

⁴⁶⁷ Resolution 1244, § 6.

⁴⁶⁸ *Ibid.*, § 10.

⁴⁶⁹ *Ibid.*, § 17.

expert multilateral organisations.⁴⁷⁰ Technically working under the umbrella of the United Nations Department of Peacekeeping Operations typically used more for the deployment of military peacekeeping operations, it later acknowledged that it was indeed ill-prepared for such a mission.⁴⁷¹ Nonetheless, the structure that was then allotted to UNMIK reflected the will of the mission to perform the task assigned to it in the best possible manner.

i) The Pillar Structure

Thus, to respond to the concerns raised by the sensitivity of the issue of Kosovo and the multitude of interests at stake, both at the international and local levels, the overall management of the mission was attributed to the United Nations itself. This choice reflects the trust in the impartiality of the organisation, the need for its technical expertise and to some extent, the stakeholders' confidence in their ability to balance the decision-making power of the organisation. As a subsidiary organ of the Security Council, the different international actors retain some leverage over the mission's overall strategy.

As outlined previously, it was the first time that an international organisation had been granted such a colossal task. The management of the mission was entrusted to the executive branch of the international organisation: the Secretariat. The Secretary General appointed a Special Representative in charge, within his office, to coordinate the mission as a whole.⁴⁷² Yet, showing some concern for effectiveness, specialised governmental and intergovernmental agencies were appointed to second the office of the Special Representative in various fields of their specialisation.⁴⁷³ The administration was divided into four pillars according to four areas of concern: (1) policing and justice; (2) civil administration; (3) democratisation and institution building; and (4) economic reconstruction.⁴⁷⁴

Pillar I was in charge of dealing with the crucial task of re-establishing a sense of security and justice after decades of ethnic opposition and bitter conflict. The long opposition between the local population and the central government, the atrocities backed by Serb totalitarian rule under the cover of a state of emergency along the 1990s and finally the airstrike left deep feelings of insecurity and injustice among all segments of the population.

⁴⁷⁰ Caplan 2005, *Op. Cit.*, p. 34; Dziedzic, M., 'Kosovo' in Durch, W. (ed.), *Twenty-first-century Peace Operations*, US Institute of Peace Press, Washington, 2006, p. 346.

⁴⁷¹ Dziedzic, *Op. Cit.*, p. 343. Also cf. Caplan 2005, *Op. Cit.*, p. 16; Chesterman, *Op. Cit.*, p. 49.

⁴⁷² Caplan 2005, *Op. Cit.*, p. 37; Chesterman, *Op. Cit.*, p. 75; Bain, *Op. Cit.*, p. 146.

⁴⁷³ Matheson, *Op. Cit.*, p. 79.

⁴⁷⁴ Dziedzic, *Op. Cit.*, pp. 347-348; Matheson, *Op. Cit.*, p. 79-80.

Void of all formal executive institutions and in the face of a flagrant lack of properly trained personnel, the United Nations first substituted a police corps and justice structure with trained professionals who were seconded by its member states. The sensitive nature of both tasks, which required a sense of impartiality to enforce the rule of law, naturally meant that the United Nations picked itself for the job, both for its expertise and presumed neutrality.

For similar reasons the United Nations was assigned the management of the second pillar: civil administration. This pillar aimed at first to fill the void left by the withdrawal of the Serbian governmental agencies by running the current affairs of the province and managing its administration, while local staff and institutions were developed. Subsequently, pillar II engaged in the development of the new political system through the design of legislative, executive and judicial institutions.⁴⁷⁵ Finally, this department was in charge of gradually transferring governance responsibilities to the new institutions. Again, in this role the United Nations was expected to provide a sense of impartiality and stability to ensure the support of both local and international actors.

Closely involved with the Kosovo Question for the past decade, and specialised in post-socialist transitions, the OSCE was given the duty of securing the third pillar, i.e. to proceed with the democratisation process, training of local staff and the establishment of core democratic institutions, including some segments of the civil society.⁴⁷⁶ In contrast with pillars I and II, the organisation was not in charge of running the administration but rather of developing the technical capacity of local personnel to progressively take over the administration of the province. Police, rule of law, community rights, party development, elections, etc. being within its remit, the organisation used its decades of expertise in assisting in the democratic transition of post-communist countries to develop the basis of the new political system for the province.⁴⁷⁷ The long-term knowledge of the specificities and sensitive issues of the Kosovo problem and the technical expertise of the organisation guaranteed the central position of the organisation within the mission.

The last pillar was assigned to the European Union,⁴⁷⁸ which was put in charge of providing at first for the material immediate humanitarian needs, and later, for the

⁴⁷⁵ Beauvais, J., 'Benevolent Despotism: a Critique of the UN State Building in East Timor' in *New York University Journal of International Law and Politics*, vol. 33, 2001, pp. 1009-1110; Paris 2002, *Op. Cit.* p. 645.

⁴⁷⁶ i.e. media, political party development, civil society projects, etc.

⁴⁷⁷ OSCE Mission in Kosovo Mandate, Decision No. 35, 237th Plenary Meeting, PC Journal No. 237, Agenda item 2, PC.DEC/302, 1 July 1999.

⁴⁷⁸ Resolution 1244., § 17.

reconstruction of the economically ravaged province. Eager to gain ground on matters occurring at its doorstep and strong in local and technical expertise, the European Union accepted this challenging task. The expertise, capacity and role of the EU in the regulation of conflicts in the Western Balkans made this inter-governmental organisation an appropriate candidate for the task.⁴⁷⁹

Strengthened by the support provided by the moral and technical legitimacy of both the United Nations and the European institutions, UNMIK's design responded to the concerns raised through former international territorial administrations and to the specific needs of the Kosovo case. Nevertheless, despite the care the international community put into the design of the mission, a number of concerns arose around the core of the mission and its staff. Planned in a situation of deep crisis and granted it had never assumed such a demanding responsibility before, the United Nations, and to a lesser extent the European Union, did not have adequate personnel and the structures required readily at hand. The last minute organisation of the mission, the one-year renewable mission mandate,⁴⁸⁰ and the difficult working and living conditions, especially at the beginning, compelled UNMIK to be less rigorous on the training of the staff chosen and sent by member states. In addition, the six-month renewable contracts and the inflexible 'quota' method of recruitment imposed by multilateral organisation, and the sometimes-exorbitant salary requests, were blamed for attracting less than the best candidates for the jobs.⁴⁸¹ In some cases, the staff was judged as lacking in professionalism or simply being not properly trained and sufficiently aware of the specific issues involved in the ethnically-sensitive case of Kosovo. More crucially, criticism increasingly targeted the lack of structured internal controls that allowed the development of corruption and organised crime within the ranks of the mission and under its cover. In the case of the European Union, despite its economic development and governance expertise, it realistically was the first time that this federal type inter-governmental organisation – lacking a coordinating decision-making centre – was involved in post-conflict management on such a scale and with such responsibilities. Finally, it is important to note that, at the centre of the coordination of the pillar structure, the Office of the Special Representative is ultimately empowered with giving the impulse to the civilian mission. Furthermore the overall structure relies *de facto* on the efforts of the Special Representative himself. The importance of the responsibility, but also power, in the hands of

⁴⁷⁹ Stability Pact for South Eastern Europe.

⁴⁸⁰ Resolution 1244, § 19.

⁴⁸¹ Conflict, Security and Development Group, 'Kosovo Report', § 29 quoted in Dziedzic, *Op. Cit.*, p. 348.

this one individual, without clear control mechanisms highlighted the critical issue of accountability.⁴⁸²

ii) Accountability Issues

With respect to control mechanisms, resolution 1244 does not provide any instructions. As a subsidiary organ of the Security Council, the international mission is indeed accountable to the Council, but no real formal liability framework was designed. In practical terms, the Security Council retains all rights on the selection of Special Representative. Moreover, the Secretariat was required to report regularly on the progress of the mission to the Security Council in order to, eventually, renew the mission mandate on a twelve-monthly basis. In actual fact, the leverage of the Council on the day-to-day operation of the mission was limited by a lack of real concern for UNMIK's daily functioning and policing.⁴⁸³ In 2004, after the blatant failure of the international mission to maintain internal stability, the Secretary General ordered a number of assessment missions, which were not however directly aimed at the evaluation of the international administration itself. The Eide mission in the summer 2005 and the Ahtisaari one in 2007 were concerned with the settlement of Kosovo's status and the development of the local institutions' progress to pursue this settlement; indeed they paid little attention to the international administration's policies and their implementation.⁴⁸⁴

Nonetheless, mandated by the international community but managing local actors – thus affecting their daily lives and future – the international mission soon faced increasing demands for accountability towards the people they were administering. In 2000, UNMIK regulation 2000/38 established an Ombudsperson's office in charge of investigating individual complaints against international and local administrations.⁴⁸⁵ This mechanism, if not aimed at providing accountability of the mission and its policies to the population of Kosovo, at least provided those people with a formal channel of complaint against individual members of the mission, setting a limit to the *de facto* impunity of the mission staff.⁴⁸⁶ Although not a formal judicial official, the Ombudsperson had the duty to investigate complaints and provide opinions and recommendations to the mission, which could then

⁴⁸² Caplan 2005a, *Op. Cit.*, pp. 463-464.

⁴⁸³ *Ibid.*, p. 467.

⁴⁸⁴ Situation in Kosovo, S/2005/635, 7 October 2005 (Eide Report); 'Comprehensive Proposal for the Kosovo Status Settlement', S/2007/168, 26 March 2007 (Ahtisaari Report).

⁴⁸⁵ UNMIK Resolution 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo, UNMIK/REG/2000/38, 30 June 2000.

⁴⁸⁶ Caplan 2005a, *Op. Cit.*, pp. 469-470.

eventually prosecute suspected individuals.⁴⁸⁷ Yet, the efficiency and impartiality of this office was questioned on the grounds that the office was founded and financed by the OSCE, itself part of the international administration. Furthermore, the international Ombudsperson himself, Marek Nowicki, complained that the international mission rarely acted upon his reports and conclusions.⁴⁸⁸ Ultimately, UNMIK resolution 2006/06 prescribed the transfer of competencies of this office to the local administration and with it,⁴⁸⁹ the regulation eliminated the capacity of the office to investigate any case against international administrations. In this way, it waved away the only real framework where the international administration had to face some kind of accountability towards local actors.

Despite the concern to take into account the set of lessons learned from previous international territorial administrations, UNMIK's structure reflects a difficult compromise between the international actors' expectations and concerns. The 'top-down' structure and decision-making process failed to take into account effective ways in which local actors could have an impact, such as the existence of operative mechanisms of check and balances for them to hold accountable the international administration. The failure to involve local actors in executive decisions, let alone to provide them with a framework of accountability, has been the source of much criticism against what is portrayed as a hypocritical administration that claims to launch 'democracy' through manifestly undemocratic means.⁴⁹⁰ Dr. Kouchner's efforts to establish early on integrated consultative political organs – i.e., JIAS – demonstrates a clear consciousness of the need to involve all segments of the local society within the institutional structure. Yet the failure to speed up the devolution of effective power in later stages, once the institutions were established and running, inevitably affected the legitimacy of the international administration, as local actors called for increasing responsibility. Eventually, some form of access to effective decision-making is essential to sustain the legitimacy of the intervening mission and ultimately its success. Failure to transfer effective power to the institutions that they created proved a heavy handicap and one of the causes at the root of its failure to secure the *belief* of the local actors in its legitimacy over the years. Consciousness of this deficiency is evidenced by the development of the 'light foot approach'

⁴⁸⁷ *Ibid.*, pp. 467-468.

⁴⁸⁸ In Dérens, J.-A., *Kosovo, L'Année Zero*, Paris-Méditerranée, Paris, 2006, preface.

⁴⁸⁹ UNMIK Resolution 2006/06 on the Ombudsperson Institution in Kosovo, UNMIK/REG/2006/06, 16 February 2006; Nowicki, M., 'Le Médiateur Nowicki Fait ses Adieux' in *Courrier des Balkans*, 1 December 2005.

⁴⁹⁰ Caplan 2005a, *Op. Cit.*, p. 464; Beauvais, *Op. Cit.*, pp. 1114-1116, 1133; Koskenmäji, *Op. Cit.*, p. 4.

in the later missions that was supposed to be applied in Iraq and Afghanistan, where the local actors were directly empowered from the beginning of the institution-building effort.⁴⁹¹

b. UNMIK's Policies

Aware of the deficiencies rooted at its core and the growing criticism against its operation, the international administration attempted, through its policies, to close the increasing gap in its perceived legitimacy. As the first Special Representative Bernard Kouchner pointed out, the mission was given an unclear and somehow contradictory mandate – establishing an ‘autonomous’ political framework within a sovereign state – in a politically sensitive setting where any action was bound to be politicised and the mission would be given the role of scapegoat.⁴⁹² *De facto*, the mission found itself confronted by the realities on the ground, that is to say stretched between the mutually exclusive expectations of, first the international and local actors, and then the actors within those levels.

In this setting, the mission resigned itself to fulfilling the technical tasks mandated under paragraph 11 of resolution 1244. Those errands included the alleviation of the deep humanitarian, economic and social crises and development of the political structure required to sustain governance in the longer term, based on international principles of democracy, the rule of law, good governance and human rights.⁴⁹³ The mission therefore entered a difficult game, seeking to avoid influencing either way the sensitive political issue of the final status of the province, which ultimately, it had no mandate to affect. Nevertheless, with increasing pressure from the Kosovo Albanian majority, adaptations were made by UNMIK in their policy, sometimes clearly on an *ad hoc* basis. Those changes follow two patterns: (1) realities on the ground and their evolution, in particular growing ethnic tensions; and (2) the frequent changes of Special Representative observed in the first five years of the mission, which coincide each time with a change of strategy.⁴⁹⁴ Ultimately, UNMIK’s policies in responding to its legitimacy crisis seem to have had mixed results.

⁴⁹¹ Chesterman, *Op.Cit.*, pp. 88-92.

⁴⁹² ‘No Balkan Stability in Kosovo, SRSG tells Security Council’ in *UNMIK News*, no. 68, 20 November 2000; Caplan 2005, *Op. Cit.*, p. 22; Dérens 2006, *Op. Cit.*, pp. 247-248; Chesterman, *Op. Cit.*, pp. 75, 80.

⁴⁹³ Beauvais, *Op. Cit.*, p. 1111.

⁴⁹⁴ Interview Owen Master, Country Director, Council of Europe, Prishtina, 3 June 2004.

i) The Emergency Period

The first set of policies UNMIK implemented coincides with the establishment of the mission on the ground, and is referred to as the ‘emergency’ period. Despite the difficulties on the ground – the deep divisions of the society – and the intricacy of its founding document, the economic and humanitarian crisis called for the international mission to mobilise rapidly and set in place a series of policies to alleviate the population’s distress and provide a sense of security. UNMIK’s strategy was threefold: (1) to prevent the cooptation of power by extremist forces – political security; (2) to restore law, order and justice – physical and psychological security; (3) to provide for the humanitarian crisis – economic and social security.

Following NATO airstrikes, the power vacuum left by the withdrawal of Serb forces and civil institutions was rapidly filled by members of the Kosovo Liberation Army (*UÇK*) who proclaimed themselves Kosovo’s legitimate representatives.⁴⁹⁵ The *UÇK* based its legitimacy on its active participation in the ‘liberation war against Serbian oppression’. To limit their role and avoid the spill over of violence, Bernard Kouchner launched the first set of policies to appease tensions in July 1999. Regulation 1999/1 attributed all governmental powers – executive, legislative and judicial – to UNMIK on the basis of powers granted under resolution 1244 and on the grounds of its aura of international legitimacy.⁴⁹⁶ The aim of this regulation and ensuing policies in the following six months was to prevent the extremist elites that had gained support during the conflict from monopolising power and imposing a totalitarian regime.⁴⁹⁷ The international mission, on the account of its supposedly ‘neutral’ nature and legitimacy ‘imposed’ some normalisation in the relations between the different communities. The first aim of this ‘emergency’ period was to establish a secure environment for all communities with respect to each other. This was the first step that represented an imperative in the wake of a violent conflict where the different groups still deeply feared each other.

Second, after years of the ‘state of emergency’ imposed under the Milošević regime and the violent military and civil ethnic conflict that followed, the population as a whole

⁴⁹⁵ Dérens 2006, *Op. Cit.*, p. 249.

⁴⁹⁶ UNMIK regulation no. 1999/1 on The Authority of the Interim Administration in Kosovo, UNMIK/REG/1999/1, 25 July 1999; Matheson, *Op. Cit.*, p. 81.

⁴⁹⁷ i.e. reintegration of members of the paramilitary in the civil society. Cf. Kouchner, B., *Les Guerriers de la Paix: du Kosovo à l'Irak*, L.G.F., Paris, 2004, pp. 152-158.

needed reassurances about their personal safety.⁴⁹⁸ This was pursued through two steps: (1) the establishment of policing, first relying on the military presence of KFOR and then on the backing of a civilian police force, staffed with trained police officers seconded by the international organisation's member states; and (2) the rehabilitation of a justice system that could prosecute the crimes committed over the long period of lawlessness. This phase is particularly relevant after large-scale ethnically – or not – motivated crimes. Nonetheless, to implement this policy, the mission faced the crucial problem of the void of judicial structures at all levels: judges, prosecutors, registrars as well as lawyers.⁴⁹⁹ Serbian judicial civil servants had left with the rest of the Serb civil service in June 1999; as for the Kosovo Albanians, most of them had been out of office since the beginning of the 1990s, and thus lacked training and practice.⁵⁰⁰ Besides, the ethnic sensitivity of the crimes under review required impartiality. Accordingly, UNMIK flew in a number of international judges assisted by local officials.⁵⁰¹ Yet this practice proved problematic on a number of grounds, including the unfamiliarity of the judges with the local laws and legal practices,⁵⁰² as well as the crucial question of which law they should implement.⁵⁰³

The issue of legitimate applicable law proved delicate.⁵⁰⁴ The Kosovo Albanians refused to be governed by Yugoslav law, which had been applicable in Kosovo until the NATO airstrikes. Enforced under the cover of state emergency, Kosovo's Albanians believed the law to be partial and representing the symbol of a totalitarian and oppressive regime. Given that it was one of the first times that a territorial administration was asked to define applicable law over a sovereign territory, the international community did not have a ready set of municipal laws applicable to the case of a post-conflict society.⁵⁰⁵ Yet, UNMIK resolution 1999/24 provided an answer to this issue by declaring that the law in force on 22 March 1989 – i.e. before the establishment of the state of emergency – would be in force,⁵⁰⁶ along with international instruments of humanitarian and human law and more controversially

⁴⁹⁸ Caplan 2005, *Op. Cit.*, pp. 51, 56; Chesterman *Op. Cit.*, p. 116.

⁴⁹⁹ Caplan 2005, *Ibid.*, p. 61.

⁵⁰⁰ Holliday, G., “Kosovo/a Standing Technical Working Group”, Training Workshop: Administration of the Judiciary & Human Rights’, Flensburg, 12-15 July 2001, *ECMI Report* no. 16, August 2001.

⁵⁰¹ Caplan 2005, *Op. Cit.*, p. 67.

⁵⁰² Holliday, G., “Kosovo/a Standing Technical Working Group”, Third Meeting: Administration of the Judiciary’, UN Government Building, Prishtina, 30 June 2001, *ECMI Report* no. 15, August 2001;

⁵⁰³ Stahn, C., ‘Constitution Without a State? Kosovo Under the United Nations Constitutional Framework for Self-government’ in *Leiden Journal of International Law*, vol. 14, 2001, p. 521-561.

⁵⁰⁴ Caplan 2005, *Op. Cit.*, p. 63; Dziedzic, *Op. Cit.*, p. 356.

⁵⁰⁵ Matheson, *Op. Cit.*, p. 80.

⁵⁰⁶ UNMIK Regulation no. 1999/24 On the Law Applicable in Kosovo, UNMIK/REG/1999/24, 12 December 1999, art. 1.1(b); Matheson, *Op. Cit.*, p. 81.

‘regulations promulgated [unilaterally] by the Special Representative of the Secretary-General’.⁵⁰⁷ Armed with all these powers according to regulation no. 1999/1, the Office of the Special Representative also awarded itself the power to legislate. This prerogative was heavily criticised on the grounds of the lack of transparency – of a non-accountable entity that was granting itself the power to impose law in a sovereign state, which would furthermore have legal implications beyond his term of governance.⁵⁰⁸ Nevertheless the urgency of the situation and the need for the international administration to provide for the legal vacuum justified, if not legitimised, this specificity of UNMIK.

Third, owing to the difficult history of the province over the past ten years, investments in public facilities, infrastructure, public companies, and social facilities had been largely scaled down if not virtually abandoned.⁵⁰⁹ In addition, months of violence, which peaked with the NATO airstrikes, had damaged what was left and spurred mass movements of populations, leaving behind them their homes and belongings. From the onset, the mission, under the auspices of its pillar IV, set in place a whole program of reconstruction of housing and infrastructure as well as legislation to enable the recovery of the economy and the return of the large numbers of internally displaced persons. Within the first year, the mission achieved a number of significant successes in providing for the return of a large number of Kosovo Albanian refugees. Yet, recurring issues marred the performance of the mission: first the inability of UNMIK to provide a secure environment and proper living conditions to Kosovo Serbs and promote their return; second, its failure to provide basic infrastructure, such as electricity and running water, years after their taking over the reins of governance;⁵¹⁰ and finally the inability of UNMIK to contain corruption, especially within its own ranks, further weakened the legitimacy of the ruling institutions.⁵¹¹

Ultimately, the discrepancies in UNMIK’s ability to enforce the rule of law, provide basic services, as well as to contain rampant corruption, greatly undermined its legitimacy among the Kosovo Albanians and crucially encouraged the Kosovo Serbs’ dependence on

⁵⁰⁷ UNMIK regulation no. 1999/24, art. 1.1(a).

⁵⁰⁸ Stahn, C., ‘Justice under Transitional Administration: Contours and Critical of a Paradigm’ in *Houston Journal of International Law*, vol. 27 (2), 2005. pp. 311-344.

⁵⁰⁹ Caplan 2005, *Op. Cit.*, p. 19. Cf. Report of the Secretary General to the Security Council, S/1999/779, 12 July 1999.

⁵¹⁰ Minister of Education embezzlement case, the corruption cases linked to the KEK power plant, etc

⁵¹¹ Kelmendi, A. and A. Gashi, ‘UNMIK Corruption’ in *IWPR*, 9 December 2002; Curris, R. and C. Monteux, ‘‘Kosovo/a Standing Technical Working Group’’, 5th and 6th Session Economic Development and Reconstruction’, UN Government Building, Prishtina, 27 October and 8 December 2001, *ECMI Report* no. 23, March 2002.

Belgrade's structure. The lack of access to effective decision-making power was increasingly resented by the Kosovo Albanian elites, at the central and municipal levels. For example, it became increasingly difficult to deny power to extremist groups that enjoyed *de facto* control within municipalities.⁵¹² Ultimately, from an ethical point of view, as the administration was charged with establishing autonomous institutions, it would become increasingly difficult to justify the monopoly of decision power for an inappropriate period of time. To respond to both needs, Dr. Kouchner initiated a move to empower local elites as a means to appease resentment and legitimise the institutional structure he had established through the advancement of a 'democratisation' process.⁵¹³

ii) Between a Multiethnic Society and Pacific Co-existence

When UNMIK took over the governance of the province, its first action was to ensure the non-cooptation of power by extremist groups and ensure a legislative basis for its own authority.⁵¹⁴ Nonetheless, instructed by resolution 1244 to work on 'organizing and overseeing the development of provisional institutions for democratic and autonomous self-government',⁵¹⁵ the office of the Special Representative cautiously set in place policies to organise the political environment of Kosovo. The ideological basis of the politics pursued is rooted in the dominant western liberal concept of peace building. In practical terms, the policy pursued by the international administration consists of a model of democracy based on multiethnic participation, established through power-sharing mechanisms.⁵¹⁶ The basis of this concept and how it was implemented in Kosovo is extensively analysed in chapter five; yet, here I wish to sketch out and assess the ideological basis and the evolution of the policies pursued by UNMIK.

When the international administration launched its 'emergency' phase, the political scene of the province was deeply divided along inter- and intra-ethnic lines. Dr Kouchner set in place a series of measures to reintegrate all segments of the political scene at the central but also local level. He organised a consultative council in which were rerepresented the main Kosovo Albanians political parties as well as representatives of the Kosovo Serb

⁵¹² Derens 2006, *Op. Cit.*, p. 254.

⁵¹³ Kouchner 2004, *Op. Cit.*

⁵¹⁴ UNMIK resolution 1999/1 *Op. Cit.*

⁵¹⁵ Security Council resolution 1244, § 11(c).

⁵¹⁶ Paris 2002, *Op. Cit.*, p. 639.

community.⁵¹⁷ This council was formally institutionalised in December 1999 as the Joint Interim Administrative Structure (JIAS).⁵¹⁸ This structure was composed of bodies with consultative powers on decision-making and executive issues, structured on a so-called system of ‘co-heads’, where governance departments were headed by international administrators and local counterparts. The importance of this system lies in the fact that it attempted, first, to involve local actors in the political system both at the decision-making and implementation levels; and second, that it institutionalised the participation of all segments of the society. Yet, at this stage, the system suffered increasing pressure from the Kosovo Albanian elites, who perceived their participation in the system as purely formal and without real political impact;⁵¹⁹ it was also questioned by the Kosovo Serbs who, beyond not having any impact on the decision-making process, further protested against the inability of the political system to provide for their safety and to ameliorate their difficult living conditions.

To respond to some of those concerns, UNMIK established a formal basis for the system by launching local elections in the autumn of 2000. The elections were perceived as a success by the administration thanks to the Kosovo Albanians’ enthusiasm in taking part and the balanced result, which elected as a majority the historical Democratic League of Kosovo (LDK), perceived in international circles as less radical. Yet, in my experience as an election supervisor during those elections, a large number of electors, unprepared for the rules of democratic elections, came to vote for what they perceived as a referendum on independence.⁵²⁰ Moreover, the vote suffered from its boycott by the Kosovo Serb minority.

Nevertheless, with the JIAS system, the institutional basis of UNMIK’s multiethnic Kosovo was set. This policy was reinforced in the next stages of development of the political system. Under increasing pressure to devolve power to the local population, the new Special Representative Hans Haekkerup launched the ‘Constitutional Framework for Provisional Self-Government’ that formalised the institutionalisation of local empowerment.⁵²¹ This document aimed to give the local population a feeling of progress towards local empowerment. Besides the institutionalisation of the executive, it enabled the creation of a legislative body in which local actors would be able to legislate. In concrete terms, the international co-heads, and

⁵¹⁷ Beauvais, *Op. Cit.*, p. 1133.

⁵¹⁸ UNMIK, Regulation 2000/1 On the Kosovo Joint Interim Administrative Structure, 14 January 2000.

⁵¹⁹ Beauvais, *Op. Cit.*, p. 1134.

⁵²⁰ Personal experience as Election Monitor for the OSCE in Gilan, October 2000.

⁵²¹ UNIMIK Resolution 2001/9, on a Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.

especially the Special Representative, retained the last word on any sensible decisions and even veto power over the legislative decisions of the local body on the basis of a ‘reserved powers’ clause in the framework.⁵²² On the model of the so-called ‘Bonn powers’ attributed to the High Representative in Bosnia-Herzegovina, this clause enabled the Special Representative to veto laws passed by the assembly and remove elected members of government as he saw fit.⁵²³ This measure in effect granted a single unaccountable individual the power to overrule the will of the people. As the international administration attempted to establish democratic institutions representative of and accountable to its population, it created an undemocratic supra-institutional body to censor the expression of the people’s will.

Beside the technical aspect of those policies,⁵²⁴ what is interesting is the way in which the international administration institutionalised multiethnicity through the creation of institutions and regulatory mechanisms. Efforts to develop multiethnicity went further than the political sphere. Through a system of quotas the scheme was established at all levels of formal and informal power. In particular, the OSCE played an important role in attempting to ethnically diversify recruits for the new police force and to develop ‘multicultural’ radio and television programs. In 2003, in front of the European Parliament Foreign Affairs Committee, the next Special Representative Michael Steiner declared:

‘Multi-ethnicity is the key to stability in Kosovo and the region. It is also Kosovo’s key to Europe. Kosovo’s integration in Europe requires the integration of all communities in Kosovo... Some commentators say that we should just settle for coexistence. But this is simply not good enough. The European Union embraces multi-ethnic society and it should expect nothing less from Kosovo.’⁵²⁵

This address spells out clearly UNMIK’s policy line and the will of the international community to this day. The multiethnic character of Kosovo is recognised and has to be preserved under all circumstances. Kosovo is, according to them, inhabited by different populations that should in the end form an entity, together. A number of reasons explain this attitude: from ethical ones, not to promote cleansing policies by rewarding conflict, to more practical ones, preventing population movements and consequently new discontents.⁵²⁶ Yet

⁵²² *Ibid.*, chapter 8.

⁵²³ Bain, *Op. Cit.*, p. 147; Caplan 2002a, *Op. Cit.*, pp. 468, 470.

⁵²⁴ Covered in details in the next chapter.

⁵²⁵ ‘SRSG Michael Steiner’s Intervention in the European Parliament Foreign Affairs Committee’, Press Release, UNMIK/PR/985, 10 June 2003.

⁵²⁶ Caplan 2005, *Op. Cit.*, p. 82.

realities on the ground – the multiplication of violent ethnically motivated crimes, physical division of the society along ethnic lines, etc. – call into question this strategy and promote a more realistic approach of ‘peaceful coexistence’.⁵²⁷ In practical terms, UNMIK encountered serious problems in maintaining the participation of Serbs and other minorities in all institutions.⁵²⁸ Jacques Rupnik questions the legitimate basis of what he calls ‘armed multiethnicity’, arguing that multiethnicity was imposed on Kosovo’s society through NATO intervention, and then the imposition of a political system without any clear agreement of Kosovo’s people.⁵²⁹ Moreover, it can be argued that instead of enabling the integration of the different groups to find a common basis necessary to the stability of the political system – as proposed by Lipset’s model – the imposition of multiethnicity ultimately entrenched ethnically based divisions, and created the conditions for further opposition to grow. Finally, it is interesting to note that the efforts of the Special Representative in developing a multiethnic Kosovo were mainly concentrated on the political level. The promotion of the concept at the level of the society, the crucial base for the maturity of multiethnicity, did not receive high-profile effective support.⁵³⁰ In any case, the UNMIK democratisation policies of the next decade clearly demonstrate the mission’s dilemma, caught between their ideals and reality.

iii) ‘Standard Before Status’

Despite UNMIK’s attempts to pursue the goals set by resolution 1244 through the development of a multiethnic political system, demands from Kosovo’s Albanian elites for more political involvement and ultimately, a political settlement – in the form of independence – became an ever more insistent problem. The United Nations administration found itself increasingly caught between the Kosovo Albanians’ thirst for independence and Belgrade’s allegations that the United Nations had exceeded its mandate and delayed unnecessarily the restoration of Serbian sovereignty to the province.⁵³¹ Despite the attempts by the international administration to focus its political energy on technical issues, the

⁵²⁷ Haxhiu, B., ‘Le Rêve Irréalisable d’un Kosovo Multiethnique’ in *IWPR*, 31 May 2000; Kostunica, V., ‘Les Espoirs de Coexistence Anéantis’ in *IWPR*, 24 March 2000; Udovicic, C., ‘L’Hôpital de Mitrovica Donne le Pouls d’un Kosovo Multiethnique’ in *AIM*, 30 November 1999.

⁵²⁸ Dérens 2006, *Op. Cit.*, p. 265.

⁵²⁹ Rupnik, J., ‘Kosovo: Dilemmas of the Protectorate’ in *East European Constitutional Review*, 2000.

⁵³⁰ Kosovo/a Civil Society, European Centre of Minority Issues, Flensburg; interviews with members of the OSCE, Prishtina, Mai/June 2004. An official from the Democratisation Department acknowledged the lack of any track record of association micro-projects, which the OSCE financed and developed between 1999 – 2004; Julia Nietsh, Civil Society and Reconciliation, OSCE, Prishtina, 2 June 2004.

⁵³¹ Sullivan, S., ‘Kosovo and the UN Standards: Impossible Mission?’ in *IWPR*, 1 April.

question of the status issue indeed remained at the centre of local political interest. The attempts to pursue what Alexandros Yannis, former political advisor to Special Representative Bernard Kouchner, called a '*freezing strategy*' – i.e. the freezing/immobilisation of the issue of status – clearly failed to achieve its aim.⁵³² Instead of bringing the final status issue to a standstill in order to enable the development of an efficient political infrastructure and improvement in the local social and economic situation, local actors pursued and increasingly voiced their discontent over the lack of progress in what remained clearly their prime objective. Consequently, the issue of status increasingly weighed on the legitimacy of the mission inasmuch as its capacity to lead towards a political settlement represented the base on which the local actors based their 'belief' in the administration and the new political system. Instead of sustaining the expectation of major groups or enforcing non-ethnically based cleavages, UNMIK found itself wedged between their divergent claims and faced with a still weak and anarchic political system. Under growing pressure, it eventually gave in and responded to those diverging claims by laying down the performance of the local institutions as a prerequisite to the opening of status talks – not independence.

In autumn 2002, the office of the Special Representative laid out a number of 'benchmarks' that Kosovo institutions had to meet in order to start the considerations of the final political settlement of the province.⁵³³ This set of criteria was based on the idea that under the current circumstances Kosovo's institutions would be unable to sustain political stability in either an autonomous or independent Kosovo. The institutions were too inexperienced and would have to face the challenging socio-economic situation in the province. Despite UNMIK's efforts to improve democratisation, there were still several problems: the integration of minority groups in policy-making remained weak, ethnic cleavages and hostility still dominated the political agenda, permanent fears of ethnic cleansing predetermined and reinforced the divergent aspirations of both factions. Using the old 'carrot and the stick' method, the 'Special Representative of the Security General's benchmarks' ultimately attempted to strengthen the democratic foundations of the institutions and to secure their legitimacy in the eyes of the wider Kosovo population. Through reinforcing integrative institutions, run by the rule of law, and by ensuring the physical

⁵³² Yannis, A., *Kosovo under International Administration: an Unfinished Conflict*, Hellenic Foundation for European and Foreign Policy, Athens, 2001.

⁵³³ Standards for Kosovo: Functioning Democratic Institutions, Rule of Law, Freedom of Movement, Returns and Reintegration, Economy, Property rights, Dialogue with Belgrade, Kosovo Protection Corps. David Carne Ross, Strategy Coordinator, SRSG Office, UNMIK, Prishtina, 18 June 2004

integrity as well as the protection of every citizen's rights, UNMIK ultimately aimed to further reduce mutual fears as well as to strengthen the Kosovo population's 'belief' in the political system.

Nevertheless, far from strengthening and broadening the allegiance of the people of Kosovo to the new institutions, the Special Representative's initiative was again received with suspicion and hostility. Kosovo Albanians viewed this new policy as yet another device to delay the transfer of power, and thus independence. The political elites accused UNMIK of fixing a set of random and evasive criteria.⁵³⁴ Kosovo's Albanian elites argued that the benchmarks lacked formal evaluation criteria to judge the institutions' progress, which made the measurement of improvements impossible. Furthermore, they also protested that UNMIK had created unequal standards that were not met by other independent Balkan countries. On the other hand, in Belgrade the 'Standards before Status' policy of UNMIK was perceived as an implicit public acknowledgement and support for secession. Instead of reassuring the Serbian government and Kosovo Serbs that their support of the institutions was essential to the political future of the province, it made them see UNMIK efforts to strengthen Kosovo's institutions as reinforcing the Kosovo Albanian capacity to override Serbian sovereignty and proceed with their policy of cleansing the province.

On 17 March 2004, the Ibar River incident, which set alight the accumulated frustrations of the Kosovo Albanian community, clearly indicated to UNMIK but also to the international community that the *status quo* could not hold for much longer and that substantive progress needed to be made towards a political settlement. As a response, the 'Standards for Kosovo' were launched in April 2004. Based on the earlier Benchmarks, the standards were further developed and proposed a number of formal criteria divided into eight areas of improvements, which the Kosovo institutions needed to fulfil to enable a sustainable political system. As opposed to the previous Benchmarks, the Standards aimed to be the *feuille de route* for the development of the political system. The conditionality of the fulfilment of those standards to initiate the status talks were underplayed, and in the autumn 2005, after just a year, the Eide report gave the green light to the opening of the talks, despite doubts about the evaluation of the local institutions' actual progress.⁵³⁵ The rapid development in the international action to proceed with the opening of the status talks following the Kosovo Albanian demonstration of force leaves an

⁵³⁴ Interviews Ramush Haradinaj, *Op. Cit.*; Alush Gashi, *Op. Cit.*; Hajradin Kuci, *Op. Cit.*

⁵³⁵ Johnson, C. and M. Salihu, Les standards evraient uvrir la oie aux iscussions sur le tatut du Kosovo' in *IWPR*, 23 September 2005.

^{acute} feeling of the failure of the democratisation initiative undertaken by UNMIK.⁵³⁶ Beside the failure to obtain the support of Kosovo's population as a whole, the shift of the international community's strategy after the March 2004 demonstrates the end of its support to the administration, which they believe ultimately failed in the development of a democratic and multiethnic Kosovo.

The 'standards before status' concept was interesting but proved to be not enough. Ultimately, the international administration and the international community did not manage to establish and enforce a more effective dialogue with Belgrade, and to enable the integration of the Kosovo Serb minority into the process. Just as the mission failed to set in place policies to back-up their institutional design, such as policies aimed at shifting the local political elites and the people's energy away from ethnic concerns to more concrete concerns common to all segments of the society. As argued earlier, this point is crucial for the development of an integrated society capable of sustaining stability. Yet, the violence and the entrenchment of the conflict and opposition within groups raise the justifiable question to what extent this prospect would have been realistic? It is clear that given the complexity of the situation and the impossibility of testing counterfactuals, it is difficult to argue that a different approach could have had a different outcome. In the same way, it is difficult to convincingly argue that the problems of Kosovo were fully soluble. Yet given the *ad hoc* nature of international policies and the flagrant inability to enforce them, it can surely be argued that had the administration had clearer goals, a more co-ordinated and integrated strategy and the capacity to implement them, they could have relied on their 'neutral' role and contributed to a stronger integration of Kosovo's society. Thus, if not solving the problem, at least they could have provided some of the conditions that might have enabled the people of Kosovo to advance towards stability.

Indeed the 'Standards before Status' approach is proof of the *ad hoc* nature of policy. The administration never managed to enforce these standards and when the March 2004 riots took place, exemplifying the lack of standards, the policy was abandoned. Another compelling example is the case of north Mitrovica, which in the aftermath of the bombing became the refuge of a large part of the Kosovo Serb population. Ultimately, it became a secluded anti-UNMIK resistance pocket within Kosovo, rejecting the administration's authority and institutions with the help of Belgrade and its financing. A major question is that

⁵³⁶ Surroi, V., ' "Standards" et Décentralisation: des Mots Magiques pour l'Avenir du Kosovo?' in *Koha Ditore*, 15 December 2004.

of why the international administration allowed the city to remain under Belgrade's influence without convincingly imposing itself. Why did the international community not make an effort to demilitarise Mitrovica, deal with the various militias and criminal gangs in the city, and create a situation free of fear where at least there would have been a possibility of Serbs and Albanians living together? Some might argue that the imposition of UNMIK authority through military occupation and policing of the city might not have been sustainable. Yet the same argument could have been made about the unrealistic prospect of maintaining Kosovo under international supervision through military means prior to the bombing in 1999, or about implementing an electoral process in October 2000, when the international community feared a flamboyant act from Milošević, who earlier that month had denied the election victory to its opponents and was desperate to show its strength and capacity to stay in power.⁵³⁷ Yet, in just over a hundred days of bombing, Serbia left its 'sacred' lands in the hands of the international community, which managed – with difficulty at times – to preserve its authority over Kosovo. In the same way, that October, despite the movement and deployment of troops along the border, the Yugoslav forces did not attempt to undermine the electoral process or threaten the province. Therefore there is no evidence that enforcement of UNMIK's authority through military and policing over the north of the Ibar river would have been more challenging for the allied forces than it was for them to occupy the rest of the province. Indeed, in the first year of UNMIK rule, KFOR had a number of violent encounters with Kosovo Albanian extremist demonstrations of force, in particular regarding the issue of the division of Mitrovica.⁵³⁸ Yet, in those cases, KFOR did pursue their agenda and arguably managed to establish some order. This is not to say that pursuing the same policy in the north of Mitrovica would have been an easy task. Yet, I am arguing that by not enforcing their policy in the north as they did in the south of the province, UNMIK inevitably showed some weakness, a lack of commitment, of a coherent strategy and an unfortunate lack of confidence in its own policies and its capacity to fulfil them.

Why didn't the international community pursue the same policy in both north and south Mitrovica? Rather than finding an answer within the un/realistic prospect of establishing military power in Kosovo Serb area, I would instead look into the political

⁵³⁷ Personal experience, as OSCE election supervisor in the border region of Gilan. Stationed under the American Army protection in camp Montheath, I was able to witness KFOR concern and emergency alert, expecting a possible eminent attack from Yugoslav troops to disturb the elections that Yugoslavia considered as illegitimate.

⁵³⁸ Riots in August 1999 and March 2000.

concerns of the international community at the time. Indeed, the *de facto* loss of Kosovo was perceived as an insult by Serbia; the allies possibly wanted to soften the affront. Possibly in autumn 1999, the international community did not want to contribute to the reinforcement of the existing pro-Milošević sentiment, while after 2000, they did not want to undermine the new government. Should those hypotheses turn out to be true, it would only be evidence of the supremacy of the international political agenda at the expense of the local good, and eventually, of ensuring local support. Ultimately, the international administration entered negotiations with Belgrade and the Kosovo Serbs as the underdog, unable to impose its conditions and thus undermining its own legitimacy.

Despite UNMIK's attempt to concentrate its efforts on strengthening integrative institutions, the persistence of the 'final status' question, which polarises the communities of Kosovo, is a clear indication of the deep legitimacy crisis faced by the international administration. The mission's will to set the basis for democratic and legitimate foundations can be observed through the evolution of its policies. Yet, its success in achieving this goal is relatively limited. Beyond the limited effective integration of minorities is the inability of the institutions to provide for the populations. The attention of UNMIK and its critics has tended to focus on the number of Serb or other minority participants in the new institutions. Yet, no real attention has been given to the fact that beyond ethnic issues, this lack of participation could be due to the lack of efficiency of the administration's policies in providing for the basic needs of the population. The failure to provide a safe and just environment, and access to basic commodities, can indeed explain part of why minorities, and Serbs in particular, have turned to Belgrade's parallel services.⁵³⁹ The international administration did realise this partly, but seemed to have its energies caught in providing political justifications rather than in developing the efficiency of the institutions they were setting up. The response of the international community after the March 2004 events is evidence that UNMIK was given little credit or support for its technical work, and that international attention was indeed also focused on political issues. Nevertheless, on the ground, the inability of the international mission to sustain the divergent expectations of the Kosovo Albanians, Belgrade and the Kosovo Serbs nourished the growing tensions between the ethnic groups and further built up inter-group cleavages. The Kosovo question continues to be a crucial issue deeply rooted in the society, which represents a severe barrier to the solution of the conflict.

⁵³⁹ OSCE, Parallel Structures in Kosovo, 7 October 2003.

Conclusion

International territorial administrations are not a new occurrence but the fruit of a long international practice to bring a solution to collapsed states. The legitimacy of those missions has always been of concern to the international community. When one observes the evolution of successive missions, some ‘lessons learned’ seem to have been taken into account in the establishment of new missions. Yet, a crucial problem lies at the root of the principle of international territorial administration: the interference of an outside power in the governance of a sovereign state, outside of its political control mechanisms. Thus, a foreign power interferes in the state without any accountability to either the state or its population. To counteract the potential effects this situation might have on its order, the international community has carefully elaborated a legal framework to prevent the abuse of the system. Yet this design fails to take into account another crucial aspect of the problem: the lack of accountability to the population governed. As Bain puts it, an international administration’s ‘legitimacy [is not determined] by the consent of the governed but by the will of the Security Council’,⁵⁴⁰

Nonetheless, as Chapter one argues, in order to be legitimate, an international administration needs both the support of its ‘power holder’ and its base. Until now the international community has ignored that latter need and failed to establish review mechanisms of the administration by the population it rules, with awkward results, as the case of Kosovo illustrates. Established as a result of controversial events, UNMIK’s mandate ‘appears more like a substitute for a solution’.⁵⁴¹ Thrust between diverging expectations, UNMIK has concentrated its policies on fulfilling what it deems to be the expectations of the authority that mandated it. However, beyond the establishment of the political system relying on *belief* rooted in rules, as Lipset argues, the legitimacy that will enable sustainable stability also depends on an ability to integrate the society and enable competition on cross partisan issues. Yet, lacking support from its divided authority and unable to sustain the divergent expectations of the local actors – and thus to secure grassroots support – and unable to establish a situation free of fear, the international administration attempted to adapt its policies in an *ad hoc* manner, too late and without conclusive success.

⁵⁴⁰ Bain, *Op. Cit.*, 146. Also Caplan 2005a, *Op. Cit.*, p. 470.

⁵⁴¹ Chesterman, *Op. Cit.*, 80.

Despite the international administration's efforts to concentrate the political debate on the purpose of its mandate – the establishment of a new political framework – the mission has been assessed on its failure to provide something which ultimately it had no power to influence: the final status of the province. Even if it is acknowledged that the international administration has indeed managed to establish a political structure in Kosovo, especially at an early stage, its failure lies in its inability to integrate the population within it. This failure is even more regrettable as the governance structure UNMIK has instituted in the province is essential for the future of Kosovo. Undeniably, whatever its final status, the ability of the institutions to provide for the population is crucial, and this seems to have been overlooked from time to time in the overall debate. Indeed, the sustainability of a long-term political solution for the province relies on stable and legitimate institutions. Thus, before approaching the hot subject of the status issue in the last chapter, I wish to discuss the new political system of Kosovo and analyse its legitimacy base.

Chapter 5 – Democratisation and Legitimation

By definition, ‘democracy’ is about the people. In practical terms, people express their political will through a set of institutions. Institution building plays, therefore, a critical role in the process of democratisation as it involves the development of the institutions that will reflect the will of the people. As Seymour Lipset argues, democracy rests on stable/legitimate institutions. Thus, the conflict resolution literature, faced with extreme cases of instability, has focused on the development of institutions in post-conflict societies to ensure the pursuit of democracy and to restore – or in some cases, establish – stability.

Mandated by resolution 1244 for ‘[o]rganizing and overseeing the development of provisional institutions for democratic and autonomous self-government’,⁵⁴² the United Nations Administrative Mission in Kosovo set out to develop governance institutions that would ultimately exercise the power necessary to run and stabilise Kosovo in the long term. In this chapter, I propose to assess the legitimacy framework of the central and local institutions of the province and examine the reasons why they struggle to secure sustainable rule. I argue that these institutions, established by an international administration, have failed to gain the support of the different segments of the population, and hence lack legitimacy. This happened for two important reasons: first, the questionable legitimacy of the international actors and their methods have heavy repercussions on their output: the institutions they establish – i.e., the way the institutions are created – influence their own legitimacy; second, the format of the institutions themselves, which are clearly designed to ensure international legitimacy and fit the international legal framework rather than ensuring the supporting of people and getting the people’s support. This argument is demonstrated through the analysis of the evolution of the international community’s institutional design attempts at the central and local levels.

To support this argument, I begin with an analysis of the concept of democracy and relevant democratisation mechanisms, before briefly outlining the social, political and economic contexts in which institution building occurred in Kosovo. Then, I examine the institutional design introduced by UNMIK to establish the new political system at the central

⁵⁴² United Nations Security Council Resolution 1244 on the Situation in Kosovo, S/RES/1244, 10 June 1999, § 11 c.

level; I finish with an assessment of the efforts to develop local democracy, and in particular some issues related to the decentralisation process in Kosovo.

1. *Democratisation and Legitimisation*

Democracy is one of the fundamental concepts on which the international community relies. From Kant's *Perpetual Peace* essay to modern day international theory, democracy has been adopted by Western thinkers as the essential stabilising model for the international order.⁵⁴³ Although there exists a vast debate over the relationship between democracy and peace, it is not the focus of this research. Yet it is interesting to note that democracy has come to be accepted as the most appropriate way to solve 'failed state' problems.⁵⁴⁴ Roland Paris underlines that this has become in itself a source of legitimisation for the international community.⁵⁴⁵ Any international action becomes unquestionably legitimate if the intervening administration pursues the establishment of democracy. However, this simplistic equation entails a number of concerns, from basic definitional issues – what kind of democracy to implement? – to more fundamental ones – if the aim pursued to establish democracy is legitimate, does that imply that any means to implement this political model are also legitimate?

a. Aim

Without attempting to provide a simplistic definition of democratisation, the term can primarily be understood as the process that enables the development of a democratic political system. Yet, what is implied by the term 'democracy'? It is often argued that when one talks about democracy in the international context, it is assumed to be of a western liberal democratic type.⁵⁴⁶ To establish this type of democracy, two criteria are essential: (1) bringing the concept of democracy to the conscious level of citizens. Since democracy is first about the role of the *demos'* participation – i.e. the people, in order to develop a 'form of government in

⁵⁴³ Kant, I., *Perpetual Peace: A Philosophical Sketch*, Hackett Publishing, 2003 [Translated by Ted Humphrey]. See also Doyle, M. 'Kant Liberal Legacies and Foreign Affairs', *Philosophy and Public Affairs*, vol. 12 (3), 1983. pp. 204-235; Kant, Schumpeter, Rummel quoted in Sorensen, G., *Democracy and Democratization: Processes and Prospects in a Changing World*, Westview Press, Boulder, 1998. pp. 93-97.

⁵⁴⁴ Ottawa, M., 'Democratization in Collapsed States' in Zartman, I. (ed), *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Lynne Reinner, Boulder, 1995, p. 235.

⁵⁴⁵ Paris, R., 'International Peacebuilding and the "Mission Civilisatrice"' in *Review of International Studies*, vol. 28 (4), 2002. p. 650.

⁵⁴⁶ Paris 2002, *Op. Cit.* p. 639.

which the [people] rule',⁵⁴⁷ the people should be able to understand the rules of the game so that they can influence the political system; (2) establishing democratic institutions, which represent the people's will. Both are essential, indeed complementary, and should be pursued jointly. Despite the rise of a number of criticisms of the liberal democratic model, it has come to be accepted by the international community as the model to be promoted in institution building.⁵⁴⁸

To pursue democratisation, a number of measures and concepts need to be implemented.⁵⁴⁹ First, it is important to strengthen the basis of democracy, namely the rights that democracy encompasses – rights of expression, association, etc. – but also a number of duties – i.e. civil duties. Without respecting those principles, a democratic system cannot sustain itself. Second, an electoral system should be designed and set in place, so as to enable the expression of the people's will. Third, appropriate institutional structures should be pursued through constitutional arrangements. The democratisation process should enable the establishment of: (1) a representative government that will pursue socio-economic policies and other governmental tasks for the benefit of the population; (2) a parliamentary assembly to legislate in a manner supporting the community as a whole; and (3) a judicial system, which implements the rules of law.

Post-ethnic conflict societies feature a number of characteristics that will inevitably influence the development of the democratisation process. First an issue specific to democratisation itself: the literature recognises that the development of democracy is a long-term process. To assess the results of democratisation, a reasonable time frame is necessary to enable the observation of an evolution in the political consciousness of the population and the full development of institutions. People used to non-democratic traditions need to adapt their mentalities and behaviours to the requirements of the new system. A long educational process has to be set in place to change the traditional habits of the society – whether patriarchal, clan-based or totalitarian etc., where the population is used to abiding by the leader's will, or where there is a traditional use of violence to gain power.⁵⁵⁰ Besides changes in their attitudes, parallel socio-economic improvements are necessary to reach optimum benefits. These

⁵⁴⁷ Sorensen, *Op.Cit.*, p. 3.

⁵⁴⁸ d'Aspremont, J., 'Legitimacy of Government in the Age of Democracy' in *Journal of International Law and Politics*, vol. 38 (4), 2006, p. 880; Kaldor, M., 'Democracy and Globalisation' in *Global Civil Society 2007/8: Communicative Power and Democracy*, Sage, 2008. p. 39.

⁵⁴⁹ This list is not exhaustive; I chose to concentrate here on the measures relevant to the argument and analysis.

⁵⁵⁰ Barnes, S. 'The Contribution of Democracy to Rebuilding Postconflict Societies' in *American Journal of International Law*, vol. 95 (1), 2001. p. 91.

improvements also require time. The advancement of political freedom turns out to be futile in a society where the population's prime concern is access to basic human needs. Improvements in health, education, and economic opportunities have to be reached to proceed towards a successful transition to democracy.⁵⁵¹ Furthermore, ethnic conflict settlements are characterised by fear and resentment among the population. There is a need to restore the population's confidence in the institutions and in their representatives. This fear and resentment is not a phenomenon that disappears overnight but one more likely to lift along a generational timeframe.

Secondly, a number of other specific issues will arise in regards to democratisation in the context of post-conflict societies. Generally groups that have undergone conflict are characterised by the fear of being under the rival group's rule, especially in cases where there are a clear minorities or no clear majority. Thus, during the democratisation process, it is important to avoid the creation of an oligarchy where the concentration of power is in a majority group or a coalition's hands and could be used against a third party. This concern should be addressed through the establishment of an appropriate institutional architecture together with the emphasis on key principles such as accountability, peaceful management of issues and renewal of elites, etc.

Nonetheless, despite the positive connotations democracy and democratisation have gained, concerns remain as to their effect on legitimisation: the fact that liberal democracy has proved to be a stabilising factor in the West does not imply that it will automatically have the same effect on politically destabilised and economically underdeveloped countries. The question of whether democracy is 'exportable' is too often avoided. Democracy has gained, within the Western liberal world, the reputation of being the best, and hence most legitimate form of government. This halo has been transposed to international circles.⁵⁵² Yet the fact that the process has gained international legitimacy does not automatically imply that it will gain local support. As has been pointed out, the process is long and difficult to implement. As a result it can appear meaningless to a population in dear need of the rapid changes that the democratisation process is unable to provide in an appropriate, timely manner. Again the international community clearly seems to avoid the issue and maintain its belief in its prime syllogism: democracy ensures legitimacy.

⁵⁵¹ Barnes, *Op. Cit.*, p. 87.

⁵⁵² Harland, D., 'Legitimacy and Effectiveness in International Administration' in *Global Governance*, vol. 10, 2004; d'Aspremont, *Op. Cit.*, p. 85.

Besides the crucial issue of democracy's goals raises the question of the effective means used to implement democratisation.⁵⁵³ Should democratisation be established according to democratic means or should a transitional period of state emergency be established in order to launch the basis for democracy? In the latter case, who should be the responsible actor in charge of emergency rule? As Paris notes, often democracy is imposed through highly non-democratic means.⁵⁵⁴ The whole system is imposed on peoples without their say in the process. Decisions are usually taken by leading elites that have gained power during the conflict, if not imposed on them too. Little to no consultation is allowed to the people themselves, who are obliged to accept the democracy forced on them. Often, the administration in charge of establishing and running the political system is not chosen through a democratic process and therefore, accountable to no one. Nominated by their own states or organisations, the international territorial administrations' personnel in charge of establishing democracy are neither chosen by, nor accountable to, the people they are in charge of governing.⁵⁵⁵ In a word, both the process and the administration in charge of establishing democracy are in themselves undemocratic. This fundamental contradiction at the root of the democratisation process has simply been avoided by international actors concerned primarily with the legitimisation that their 'good' intentions will, or so they assume, provide the process as a whole.⁵⁵⁶

b. Means

Despite the dubious legitimacy of both aims and actors, it is important for this study to investigate the different means of implementation of democracy in failed states. In particular, it is interesting to examine the nature of those means – legitimate or not – and to understand how, ultimately, they influence the legitimacy of the system. Mary Kaldor develops a distinction between 'formal' and 'substantive' democracy. The former is based on the development of a set of institutions, and the latter on institutions 'accompanied by and indeed

⁵⁵³ Kaldor 2008, *Op. Cit.*, p. 36.

⁵⁵⁴ Paris 2002, *Op.Cit.*, p. 638.

⁵⁵⁵ Caplan, R., 'Who Guards the Guardians? International Accountability in Bosnia' in *International Peacekeeping*, vol. 12 (3), 2005, p. 464; Beauvais, J., 'Benevolent Despotism: a Critique of the UN State Building in East Timor' in *New York University Journal of International Law and Politics*, vol. 33, 2001, pp. 1114-1116, 1133.

⁵⁵⁶ Beauvais, J., 'Benevolent Despotism: a Critique of the UN State Building in East Timor' in *New York University Journal of International Law and Politics*, vol. 33, 2001; Bain, W., *Between Anarchy and Society: Trusteeship and the Obligation of Power*, Oxford University Press, Oxford, 2003, pp. 140-172.

constructed by a strong and active civil society'.⁵⁵⁷ Based on this distinction and for the purposes of this research, I have identified two means that are essential to the democratisation process in post-conflict societies: (1) the design and establishment of the new institutions for the new state; and (2) policies aimed at the civil society, in particular policies developing a civil society consciousness within the territory and giving the people a sense of citizenship rights and duties. Yet, to those two crucial elements I would like to add another crucial one, i.e. (3) the design of an electoral system, which in a democratic system links the citizens to the institutions by providing a channel for expressing their will in the system.

i) Institutional Engineering

Conflicts are characterised by anarchy. The development of institutions, and hence the establishment of an ordered structure, is believed to be the most efficient way to launch regulatory means dealing with lawlessness and the subsequent discontent of the population. The new institutions need to respond to demands of the conflicting parties and deal with the roots of the conflict, such as the lack of access to government, economic resources, and the experience of unfair violations. The concern is then to give enough strength to the institutions to allow them to deal with the deepest roots of the conflicts.⁵⁵⁸ For the past few decades, conflict regulation has concentrated on reinforcing existing institutions that have proved too weak to deal with the issues at the root of the conflict, or in the case of absence or inadequacy of such institutions, to set up new ones from the ground.⁵⁵⁹

Attempting a democratic transition in a failed state implies reinforcing or founding appropriate institutions. In the case of ethnic conflicts, there has been a conscious will on the part of the international community to maintain the multiethnic structures of the relevant states, and this is reflected in their institution designing activities. Indeed, models of institutional design were specifically developed to respond to the needs of divided societies for their governance mechanisms. Those models entail power-sharing mechanisms intended to involve the different groups of the society and prevent the cooptation of power by a majority as is common in a traditional representative democracy.⁵⁶⁰ Thus power-sharing mechanisms have revealed themselves as increasingly important in peace building.

⁵⁵⁷ Kaldor 2008, *Op. Cit.*, p. 42.

⁵⁵⁸ Barnes, *Op. Cit.*, p. 100.

⁵⁵⁹ That is, Kosovo, Bosnia-Herzegovina, Afghanistan, Iraq.

⁵⁶⁰ Kaldor 2008, *Op. Cit.*, p. 36.

Power-sharing aims to respond to divided societies' need for governance mechanisms through the engineering of a division of power among the different parties.⁵⁶¹ The aim is to involve, in the governance process, all the different groups and give them each a sense of ownership. It intends to enable minorities to gain access to power while not excluding the groups already in power. In this way, it is believed that the needs of all for governance would be to a certain extent fulfilled, thereby diminishing the tensions between the minority and the majority.

In power sharing, the concept of ownership has a central role. To achieve this goal, the different parties need to see the benefits of their participation in the process. All parties need to feel that their action within the newly engineered system is going to have an effect in orienting the system to being beneficial for them. In sum, all parties need to feel that through their participation in the engineered system, they can master their destinies free from outside threats. Since the aim of power sharing is to diminish tensions through institutional engineering, it is in essence *the* institutional mechanism of peace building. It is essentially pursued through constitutional arrangements.⁵⁶² As is evidenced through the long and wearing debates that have been going on over the past decades, institutional engineering is a complex matter with considerable mitigating factors. Finding a working compromise between the claims of opposing parties is further obscured by the dramatic nature of ethnic conflicts and their associated claims. The debate over institutional arrangements has been divided into what are presented as two opposite poles:⁵⁶³ Arendt Lijphart's consociational and Donald Horowitz's integrative models.

Lijphart presented his consociational model in an article published in 1969 before refining the concept in his later work *Democracies in Plural Societies*.⁵⁶⁴ He defines a 'consociational democracy' as a 'government by elite cartel designed to turn democracy with a fragmented political culture into a stable democracy'.⁵⁶⁵ The model attempts to design an institutional framework that explicitly recognises the ethnic divisions of the society and attempts to establish governance mechanisms where all parties would have the ability to

⁵⁶¹ Bieber, F & S. Wolff., 'Election in Divided Society' in *Ethnopolitics*, vol. 4 (4), 2005, p. 359.

⁵⁶² Balmont, K, S. Mainwaring and A. Reynolds, 'Institutional Design, Conflict Management and Democracy' in Reynolds, A. (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, Oxford University Press, Oxford, 2002, p. 1- 11.

⁵⁶³ Cf. Sisk, T., *Power Sharing and International Mediation in Ethnic Conflicts*, United States Institute of Peace, Washington, 2002.

⁵⁶⁴ Lijphart, A., *Democracy in Plural Societies: a Comparative Exploration*, Yale University Press, Yale, 1980.

⁵⁶⁵ Lijphart, A., 'Consociational Democracy' in *World Politics*, vol. 21(2), 1969, p. 216.

control outcomes. Consociational democracy is based on a number of institutional devices: (1) a power-sharing government and parliament where all parties will take part in policy formulation and implementation; (2) a mutual veto right where all groups can veto a decision or law they feel is harmful to their group; (3) proportionality in the electoral system, so that the society's plurality and proportions can be represented in parliament; (4) civil service segmental autonomy is needed for each group to deal with its own relevant technical issues, independently of the central authority. This last mechanism is particularly advised in cases where groups are not homogenous and therefore cannot subscribe to territorial autonomy. Thus, this elaborated model attempts to reflect the ethnic ratios of the relevant society, thus enabling, according to democratic principles, the majority of groups access to decision-making power irrelevant of their actual numerical size. It attempts to secure the minorities from the majority's 'dictatorship' and enables them to deal at the local level with group specific issues.⁵⁶⁶

Although considered as a major breakthrough, Lijphart's theory has been subjected to a large number of criticisms. Among others, it has been argued that the veto mechanism has the potential to block the decision-making process, leading to the constant rejection of policies and a political dead end. In addition, it is argued that allowing a specific mechanism for segmental autonomy reinforces group identities and restrains the incentive for groups to participate in a shared public life.

Donald Horowitz's integrative model has been developed as a critique and an attempt to fill the gaps in Lijphart's theory. Horowitz's theory is considered within the power-sharing debate as occupying the strategic opposite end of the spectrum. He focuses his argument around the concept of elite incentives to cooperate within institutional arrangements. Far from Lijphart's concern for the preservation of group identities, Horowitz aims to establish an institutional design that will ultimately reduce ethnic divides. In order to achieve this, his theory concentrates on electoral engineering. The aim is to design a preferential system where, to be elected, elites will have to gain the maximum of support, not only from their own group, but also from others. This system has a double implication: first for elites who, in order to achieve exogenous support, need to moderate their discourse; and second, for the voters, who have to consider a second preference in their choice of candidates outside their group. Similarly to a consociational mechanism, the integrative model does focus on the federalist

⁵⁶⁶ Bieber and al, *Op. Cit.*, p. 360.

system and the concept of devolution. However, *contra* Lijphart, its federal system should in no way be based along homogenous lines. On the contrary, it should be based on heterogeneous zones to further promote ethnic cooperation. The ultimate focus of the institutions is not groups but citizens as a whole. In the same way, policies should not support the segregation of the society through the promotion of group rights; instead, the centre of attention should be on individual rights. In the same way, devolution of power to heterogeneous local governments should support inter-ethnic cooperation through the entire society's participation in public life at all levels.

Neither theory has been applied in a systematic manner to cases of deeply divided post-conflict societies. However, the institutional designs applied in peace-building efforts have usually been based on a mixture of the two, depending in each given case on the nature of the society and the extent of the divide between the groups. Power-sharing arrangements have proved essential for promoting peace through institution building. Not as such democratic in *stricto sensu*, such approaches attempt, however, to respond to the society's division and find a power balance between the different groups interested in maintaining peace.

Nevertheless in practice, institutional engineering tends to demonstrate two further flaws. First, power arrangements tend to assume groups to be unitary and seek to accommodate them without integrating intra-ethnic cleavages in the matrix and, most crucially, without recognising individuals' wishes. What is perceived as group interests might in fact be very different from the individual interests of the members of the group. Second, when considering groups as units, institutional engineers tend to consider elites as the sole representatives of these units. However, by the end of a conflict, elites tend to push forward radical agendas, which are quite far from the concerns and needs of most individuals within their groups. To get around relying on radical wings, international actors have attempted to look for alternatives within diasporas. Yet, cut off from their cores and given their painful histories, they have not proved to be credible alternatives.

Institutional engineering attempts, through different mechanisms, to legitimise itself by attempting to provide the support of all segments of the society in which it performs. Yet, as Kaldor points out, 'the spread of rules and procedures is not the same as the spread of

substantive democracy'.⁵⁶⁷ Further mechanisms need to be implemented to achieve substantive democratisation.

ii) Citizens

Citizens are indeed the basis of any democratic system. Beyond the notion of 'people', the concept of 'citizen' grants the people a political dimension and an attachment to both the state and the territory.⁵⁶⁸ In a liberal democracy, they are the basis of the state. By definition, the institutions should represent the citizens. Besides, according to the conception of legitimacy developed in Chapter one, these are the actors that should hold the belief that the system is legitimate. In any democratisation process and in particular in a case of democratisation after ethnic conflict, it is fundamental for the international administration to establish a 'citizen consciousness' within the population of the failed state, as well as a feeling of ownership of the system.⁵⁶⁹

In the case of institution building at the end of an ethnic conflict, the international community has invariably attempted to maintain the multiethnic character of the state.⁵⁷⁰ In cases where the roots of the conflict indeed lie in the diversity of ethnic groups, the international community considers that finding a balance between the groups' demands is, indeed, a factor of stabilisation of the conflict and ultimately of peace. At the root of this policy is the belief that partition on the basis of the post-conflict demographics, which involve movements of populations or more radically exchanges of populations, would be a factor in causing further instability and grievances.⁵⁷¹ Yet, authors like Nicolas Sambanis have argued in favour of partition on the grounds that it would 'freeze' the *status quo* between the warring parties.⁵⁷² Hence, halt the conflict by separating the conflicting parties. Nonetheless, with the partition approach, even if the conflict is put on hold, grievances would still remain and new causes of conflict would emerge. In practice, after the exchange of populations between Greece and Turkey at the end of the First World War, this alternative was rarely considered,

⁵⁶⁷ Kaldor 2008, *Op. Cit.*, p. 34.

⁵⁶⁸ *Ibid.*, p. 37.

⁵⁶⁹ *Ibid.*, p. 40.

⁵⁷⁰ Ottaway, *Op. Cit.*, p. 236.

⁵⁷¹ Barnes, *Op. Cit.*, p. 96. See also, European Stability Initiative, *The Lausanne Principle: Multiethnicity, Territory and the Future of Kosovo's Serbs*, Berlin/Prishtina, 7 June 2004.

⁵⁷² Sambanis, N. 'Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature' in *World Politics*, vol. 52, 2000). pp. 437–83.

let alone favoured.⁵⁷³ One further reason is that it would justify the ethnic cleansing and the conflict in the first place. Thus it has in fact generally been very opposed by the international community.

As a democratic system rests on the will of the people, the international community has felt obliged to reflect and enforce the multiethnic nature of states in any new political system. To do so in each specific case, the international administration needs to design specific institutions to accommodate multiethnicity. To maintain frail ethnic balances, the international community needs to create a sense of security within populations, so that all members of the population do not feel the threat and fear engendered by the conflict. This should be done in the initial phase through two sets of policies: first, by securing the area through military force followed by the deployment of civilian police to prevent further threats on the population; and second, through healing the wounds left by war and meeting the calls for revenge/justice of the population through the establishment of transitional justice and reconciliation policies. Nevertheless, when this first emergency phase is in place, the nature of the deeply divided society poses a number of further problems that have consequences for the establishment of a multiethnic democracy in a post-conflict society.

First, as the democratic system rests on its representativeness of the population, there is a need to deal with the problem of displaced persons.⁵⁷⁴ As one characteristic of ethnic conflicts is to create ethnically pure zones, should the post-conflict demographic stand, the new system might indeed acknowledge, or even worse, legitimise, the ethnic cleansing policy of the conflict period, as was observed in Bosnia-Herzegovina.⁵⁷⁵ To maintain the pre-conflict multiethnic character of various regions, international administrations have put in place strong return policies for internally displaced persons, which until now have been pursued with mixed results.

Second, the international administration's main task is to develop the understanding of the population about its role in the new political system and ultimately, to establish a feeling of ownership. Yet, international administrations usually act in a population that has rarely

⁵⁷³ Greece and Turkey: Agreement Respecting the Reciprocal Restitution of Interned Civilians and the Exchange of Prisoners of War, Signed at Lausanne, 30 January 1923. (Treaty of Lausanne). Cf. Johnson, C., 'Partitioning to Peace: Sovereignty, Demography and Ethnic Civil Wars' in *International Security*, vol. 32 (4), 2008, p. 140-170; Kaldor 1999, *Op. Cit.*, p. 61.

⁵⁷⁴ Caplan, R., *International Governance of War-torn Territories: Rule and Reconstruction*. Oxford University Press, Oxford, 2005, p. 68-85.

⁵⁷⁵ *Ibid.* p. 84.

experienced democracy. This situation brings additional difficulties and requires additional time, to explain and let sink in through the population the ideas and principles of democracy. In particular, the fundamental role ‘the people’ have in the future system has to be understood, as they will elect their representatives and most importantly, they are the entity to which the new system is accountable. This requires the tutoring of the population in the principles of democracy and in their roles as citizens.⁵⁷⁶ Specialised agencies such as the OSCE have developed specific structures to do this.⁵⁷⁷ Yet, the resources dedicated to this fundamental step of democratisation are often meagre and provide very poor results, as can be observed in the case of Kosovo.

Third, when it comes to establishing a feeling of ownership, the international administration itself – as an unaccountable actor imposing a new political system from above – has been the object of strong criticism. Those critiques denounce the hypocrisy of the situation, of preaching about a sense of ‘ownership’ among the very same population that the mission is preventing from running the institutions.⁵⁷⁸ Yet, in cases of collapsed states, which by definition lack the appropriate political structures and administrations to run the states, a time span is indeed needed to establish those institutions, and more fundamentally, to train the staffs that will be in charge of running them. The ultimate goal is to transfer competencies as the staffs and structures are consolidated.

Finally, it is important to note that at the end of an ethnic conflict, some sort of civil system indeed exists. As the state institutions have collapsed, the people have often managed to reorganise themselves in parallel circles that provide for themselves while the state is unable to.⁵⁷⁹ This is particularly true in the case of Kosovo during the 1990s ‘state of emergency’. However, although the resources dedicated to the consolidation of civil society exist, this aspect of democracy is largely under-resourced and often not the centre of attention for international administrations, undermining to a certain extent the legitimacy of the system as a whole.

Although essential to the new democratic system and in particular to its legitimisation, the citizens, either on their own or organised within the civil society, have been underestimated by the international administrations. This reality is often due to a lack of

⁵⁷⁶ What Kaldor puts in more politically correct terms: ‘communication’, Kaldor 2008, *Op. Cit.*, p. 39.

⁵⁷⁷ Office for Democratic Institutions and Human Rights (ODIHR).

⁵⁷⁸ Caplan, *Op. Cit.*, pp. 180-194.

⁵⁷⁹ Barnes, *Op. Cit.*, p. 100.

resources, but also to an underplaying of the role of citizens in stabilising the system, and in fact of their capacity to legitimise it.

iii) Electoral Engineering

The last element essential to democratisation, and one to which international administrations pay careful attention, is the issue of electoral laws. Elections are a basic element of democracy where citizens are given the opportunity to interact and influence the institutions that govern them. As such, election rules design is a tricky, but important, part of the whole process of peace building. This is first because participation of the population in elections grants the system some legitimacy, and second, because the outcome of elections has an impact on the running of the institutions themselves. An essential element of the success and sustainability of a political system is the ‘belief’ that people put in it. Participation in elections shows the willingness of the population to participate in the institutions, and hence, their belief in the institutions as appropriate and legitimate.⁵⁸⁰ The boycott of elections within a democracy is a clear sign of the failure of the political system to maintain this legitimacy. Indeed, just as participation in the electoral process enables individuals to have their say in the political process, their refusal to participate reflects their rejection of the system as a whole, or at least the feeling that their vote does not have a significant influence on the system.

Furthermore, the electoral process is at the root of any democratisation process because it enables the citizens’ voices to be heard, through their choice of representative agents as well as in the policies they pursue. In this framework, the concept of accountability should be emphasised in relation to both the elected representatives and to the population. This means that representatives should be elected by an expression of the citizens’ will, to accomplish a specific mission. This mission, or goal, is to pursue the citizens’ will as a whole, and not just the personal aims of the representatives or of an oligarchy. Thus, the representatives should be ready to give feedback to the whole population on their successes or failures in pursuing the people’s mandate. In the same way, the population, in electing their representatives, should understand the importance of this act. They need to keep in mind that their representatives will have to be accountable to them, and they should be ready to ask their

⁵⁸⁰ Chesterman, *Op. Cit.*, pp. 223-235.

elected representatives to give feedback on their actions and, should the need arise, to sanction them through a vote of no confidence in the next election.

Due to the importance of the electoral system in legitimising and ultimately enabling the success of the political system as a whole, international territorial administrations have ‘devis[ed] new electoral systems to ‘manage’ democracy and diversity in post-conflict society’.⁵⁸¹ Yet, given that after conflicts extremist elements are galvanised by the tensions within the political arena, the international community has been tempted to play with electoral rules to influence the results, so as to prevent the system legitimising such groups through elections.⁵⁸² Yet as Florian Bieber and Stefan Wolff interestingly argue, after a review of electoral laws and their effects in different post-ethnic conflict situations, that such electoral engineering is ultimately counterproductive. In fact, they argue that this practice tends to bias the running of the institutions and makes them less efficient, ultimately undermining them rather than strengthening them.⁵⁸³ On a more theoretical level, such electoral engineering brings us to question the legitimacy of a system resting purely on international design efforts. Indeed it will result in a system, which, even if technically legal, is questionably legitimate.

In conclusion, to enhance the process of democratisation, three processes need to be conducted in parallel: the design of democratic institutions, reinforcement of the society, and the development of an electoral system to ensure the access of the citizens to their institutions. Yet, before looking at the specific strategies set in place by the international mission for pursuing democratisation in Kosovo, it is crucial to have a general understanding of the social, political and economic environment in which the democratisation of Kosovo has to evolve. Those factors have an impact on the process, and are thus essential for understanding and evaluating institution-building processes in the province.

2. *Democratisation in the Kosovo Context*

The context of Kosovo is primarily defined by the claims of two nationalisms over the same territory. Yet, pretending that the socio-political scene of Kosovo is solely determined by nationalism would be to ignore the rich and intricate social and political evolution of the province. Indeed, to understand post-conflict Kosovo, one needs to go beyond this prejudice

⁵⁸¹ Bieber and al., *Op. Cit.*, p. 359.

⁵⁸² Bastian, S. & R. Luckham (eds), *Can Democracy be Designed? The Politics of Institutional Choice in Conflict-torn Societies*, Zed books, London, 2003, pp. 11, 252.

⁵⁸³ Bieber and al., *Op. Cit.*, p. 362.

and observe the socio-political development of the province that enabled the growth of nationalism, as well as some of the responses that the society has set in place to regulate some of its ill effects.⁵⁸⁴ Owing to the nature of the conflict, the literature has been inclined to analyse the case of Kosovo on a par with other post-conflict situations. Yet, this case entails a large number of specificities embedded in the socio-political and economic development of Kosovo that distinguishes it from others, even barring its similarities to the conflict in Bosnia-Herzegovina. Indeed, as both conflicts issued from the break-up of Yugoslavia and arguably involved a number of similar actors, both conflicts are often conflated; yet they have little in common in their roots, development of tensions and post-conflict situations. The next section outlines the context of Kosovo international actors will have to face to successfully implement democratisation. It first delimits the general socio-political and economic environment of the province and then delimits the specific political context.

a. Socio-political and Economic Environment

Two kinds of factors intricately shape Kosovo's post-conflict socio-political and economic environment: first, the influences found in cases undergoing similar circumstances, such as countries issuing from the break-up of Yugoslavia, communist transitions and/or post-conflict reconstructions; and second, issues specific to the socio-political and economic heritage of the province itself.

i) Inheritance from the Former Yugoslavia

The socio-economic environment of post-conflict Kosovo has been influenced by the break-up of Yugoslavia on three levels: first, by issues linked to the post-communist transition, and the ensuing trials and errors towards a model of liberal democracy; second, by the rise of nationalism as a response to the collapse of communism and the dislocation of the state,⁵⁸⁵ and third, by the heavy heritage of the long and violent civil conflict that resulted.

Even if the idea/ concept of democracy had arguably existed and developed in the Former Yugoslavia for a number of decades, it remained in an embryonic stage compared to Western liberal conceptions. When Tito took power in 1945, his inclination towards a Soviet-style socialism as opposed to Western democracy can be explained by three factors: (1) the

⁵⁸⁴ Zartman, *Op. Cit.*, pp. 267-273.

⁵⁸⁵ Hayden, R., 'Constitutional Nationalism in the Formerly Yugoslav Republics' in *Slavic Review*, vol. 51 (4), 1992, p. 665.

failure of an embryonic form of democratic experience in the interwar period, which did not spur democracy as a raw model to respond to the needs of the Yugoslav state;⁵⁸⁶ (2) Tito's personal history, as he joined the Red Army after being captured by the Russian forces during the First World War, explaining his personal inclination towards Communism/ Socialism;⁵⁸⁷ (3) the outcome of the Second World War, where Yugoslavia's status was negotiated, between Stalin and Churchill in Teheran, within the Russian Sphere of influence leaving, ultimately, little opportunity for Yugoslavia to choose an external patron.

Despite the failure of the democratic experience of the Kingdom of Serbs, Croats and Slovenes, Tito's personal inclinations, and the outcome of the post-war strategic game, some democratic principles were pursued by Tito's Yugoslavia and introduced in the 1946 Constitution.⁵⁸⁸ Yet, following a strict communist model, it established a single party state, in which the government, vested with the citizens' sovereignty, governed according to the party's directives with the approval of its charismatic leader. With the decentralisation of power from Belgrade in favour of the republics and autonomous provinces, the 1974 constitution seemed to respond in part to demands for liberalisation from certain elites. Yet, the nomination of Comrade Tito to lifelong presidency and the concentration of decision-making power in the hands of the Communist League of Yugoslavia⁵⁸⁹ left little room for further improvements to Yugoslav 'democracy' that would enable it to reach a Western model.⁵⁹⁰

Even after the death of Tito and the dissolution of the Yugoslav Communist League, Yugoslavia failed to embrace liberal democracy. Regarding the causes of the break-up of Yugoslavia, Susan Woodward argues that the failure of Marković to hold multi-party elections at the federal level, thus providing a federal solution to the power vacuum before the holding of elections in Slovenia and Croatia, left space for the growth of nationalism.⁵⁹¹ This failure to provide another alternative to nationalism to fill the ideological vacuum and the need for quick economic and social changes created by the collapse of communism across Eastern Europe enabled nationalism to appear as a natural response. The failure of Yugoslav

⁵⁸⁶ Ramet, S., *The Three Yugoslavias: State-Building and Legitimation, 1918-2004*, Indiana University Press, Bloomington, 2006, p. 109.

⁵⁸⁷ Campbell, J., 'Tito: the Achievement and the Legacy' in *Foreign Affairs*, vol. 58 (5), 1980, p. 1046.

⁵⁸⁸ Federal People's Republic of Yugoslavia Constitution, 31 January 1946. Art. 6 & 7.

⁵⁸⁹ Federal Socialist Republic of Yugoslavia Constitution, 21 February 1974. Art. 333.

⁵⁹⁰ Hayden, *Op. Cit.*, pp. 654-673.

⁵⁹¹ Woodward, S., *Balkan Tragedy: Chaos and Dissolution after the Cold War*, The Brookings Institution, Washington, 1994, p. 114.

institutions to liberalise and respond to the calls for change from the republics left a space for the republics to feel increasingly the need to find their own way, and left space for nationalism to present itself as a ‘solution’. In the case of Yugoslavia, the rise of nationalism, as an alternative to socialism, was partly due to the heavily nationalistic history of the region, but also to opportunistic moves such as Milošević’s first visit to Kosovo’s Serbs in April 1987.⁵⁹²

Finally, the length and the violence of the civil conflict left individuals with a particularly deep level of resentment and worse, fear towards individuals belonging to other groups. Besides the obvious psychological and social effects of such violent conflict, ethnic conflicts have a particular effect on potential democratisation. As the ethnic conflict regulation literature notes, this fear of other ethnic groups and the individuals belonging to them creates a political map divided along group lines and does not take individuals into account.⁵⁹³ Establishing a liberal democracy, which is based on the individual in a society that bases identity on group appurtenances raises a number of issues. First, there is the need for the accommodation of the democratic game to the society, and then, the need for a long time-period and appropriate policies to enable changes in the society’s structure along the lines of more liberal norms. This issue is at the heart of the problem faced in all post-ethnic conflict democratising societies, and requires specific adjustments.

ii) The Kosovo Environment

In addition to the general lack of democratic culture common to states issuing from the Former Yugoslavia, a number of local characteristics also have consequences over the democratisation efforts in the province. The particular social configuration, ethnic set-up and historical significance of the province distinguish its socio-political dynamics from other societies issuing from the break-up of Yugoslavia. These factors inevitably have an impact on political allegiances and consequently on the political structure. Thus, understanding those factors and their consequences is essential for determining an appropriate political structure for post-conflict Kosovo and for assessing the capacity of liberal democracy to take root and grow; and ultimately, to ensure the capacity of democratisation to succeed. Three factors have such an impact: first, the specific nature of the society within ethnic groups; second, the

⁵⁹² Cohen, L., *Serpent in the Bosom: The Rise and Fall of Slobodan Milošević*, Westview Press, Oxford, 2000. pp. 106-108.

⁵⁹³ Hayden, *Op. Cit.*, p. 666.

consequences of the ethnic divisions, and in particular the consequences they had on alternative socio-political development in the province; third, the less discussed intra-ethnic divisions deriving from historical but also social factors within both ethnic groups.

Despite the modernisation and industrialisation attempts undertaken over the Yugoslav period, Kosovo and its society remain mainly rural and patriarchal.⁵⁹⁴ The socialist system brought to Kosovo and its difficult-to-reach mountains the gifts of basic education, health and other social services. Its rich mining resources in the north enabled the development of some industry.⁵⁹⁵ Yet, the province remained renowned within Yugoslavia as its poorest and roughest region. Kosovo Albanian society singularises itself by being deeply attached to its traditions, which rule every aspect of the social life of its inhabitants. Although the Balkan peoples as a whole are arguably deeply attached to their respective traditions and lifestyles, the structure of the Albanian society in particular does have specificities that influence significantly the social organisation of its people. Notably, Albanian society is based on what is known as the *Kanun*.⁵⁹⁶ This code of conduct stands as law and codifies the behaviour of the members of its society and the way it should be run. In particular, it is famous for its codification of *Vendetta*, which allows a clan to seek revenge for the murder of one of its members by killing any male member of the murderer's clan.⁵⁹⁷ In this social organisation, the basic unit is, beyond the family, the clan. Indeed, the political and social development of the region can be observed through the feuds and alliances between clans.⁵⁹⁸ An example of the significance of this unit is the religious division of the community. Religious divisions can be observed strictly along clan limits, as members of certain clans as a whole embraced Islam, while other clans decided to remain Catholic or, in some case, followed Orthodoxy.⁵⁹⁹ In political terms, the consequence of this phenomenon is a top-down approach to decision-making where unquestionable allegiance is given to the *Pater* or leader. This allegiance

⁵⁹⁴ Ramet, S., *Balkan Babel: the Disintegration of Yugoslavia from the Death of Tito to Ethnic War*, Westview Press, Boulder, 1999.

⁵⁹⁵ Palairet, M., 'Ramiz Sadiku: a Case Study in the Industrialisation of Kosovo' in *Soviet Studies*, vol. 44 (5), 1992. pp. 897-912.

⁵⁹⁶ Also known as the Kanun of Lekë Dukagjin. Cf. Vickers, M., *The Albanians: a Modern History*, IB Tauris, 1999, pp. 5-6; Mangalakova, T., *The Kanun in Present Day Albanian, Kosovo, and Montenegro*, International Centre for Minority Studies and Intercultural Relations, Sophia, 2004.

⁵⁹⁷ Gut, C., 'La Vendetta dans le Kanun' in *Autrement*, no. 90, 1996. pp. 62-67; Musliu, J. and B. Bessianë, 'La Vendetta Retrouve Tous ses Droits' in *IWPR*, 14 July 2005.

⁵⁹⁸ For an argument against the role of the Kanun in the Kosovo Albanian Society, cf. Pula, B., 'Is it true that Kosova is a clannish society still regulated by the Kanun, or the customary law, and does not belong to the West?' in di Lellio, A. (ed), *The Case for Kosova: Passage to Independence*, Anthem Press, London, 2006, pp. 179-184.

⁵⁹⁹ Malcolm, N., *Kosovo: a Short History*, Papermac, London, 1998.

structure is still very much present in modern-day Kosovo and has consequences for the democratisation process of the society.⁶⁰⁰ An understanding of the politics of party alliances and politics can be gained by studying the clans' history, but more importantly by noting the allegiance given to charismatic political leaders and more generally, within political parties' dynamics. An example can be observed within the structure of the LDK where its charismatic head Ibrahim Rugova remained, until his death, little to unopposed within its party, as in local politics.⁶⁰¹ Indeed, at the first election after his death. It lost the party support of its electoral base and its lead as the major party on the Kosovo Albanian political scene.⁶⁰²

Yet, the tight and traditional structure of this society enabled the growth of an interesting phenomenon: the so-called parallel institutions.⁶⁰³ In response to the exclusionary policies set in place by the Milošević regime, Kosovo's Albanian society established parallel structures to respond to its own growing needs. The significance of this structure is twofold and lies in its design and policies. Despite its traditional heritage and lack of democratic culture, the Kosovo Albanians designed institutions on a democratic representative model. The exact imprint of the democratic spirit is, however, hard to evaluate given the circumstances in which the system evolved and performed. In particular, it is difficult to judge the influence of the base on the policies or the existence/efficiency of accountability mechanisms. Furthermore, the creation of parallel structures alongside the legal authority eventually shaped a culture of defiance to authority. Nevertheless, it succeeded in running efficient parallel services for the population, emphasising a clear inclination and ability to pursue basic democracy. Besides, the Kosovo Albanian community succeeded in mobilising itself against some of the perverse aspects of its tradition. Facing an upsurge of blood feuds based on the *Kanun*, the parallel government called for a moratorium on all vendettas and organised mass reconciliation events. This peculiarity of the Kosovo Albanian community arguably positively demonstrated a degree of political maturity as well as the ability of the

⁶⁰⁰ Xharrà, J., 'Mettre un Terme à la Guerre des Clans au Kosovo' in *IWPR*, 20 April 2005.

⁶⁰¹ e.g. Division of the LDK in 2002 after the failure of Bujar Bukoshi, eminent member of the party to push forward a restructuring of the party and the development of review mechanism of decision by the party base; Rugova's refusal to withdraw his candidacy for the presidency after his failure to obtain twice in a raw majority vote in the assembly in December 2001, throwing the whole system into a political dead-end.

⁶⁰² In the 2006 legislative elections following the death of Rugova in January 2006, the LDK, which had until then dominated the electoral process, moved into opposition.

⁶⁰³ Clark, H., *Civil Resistance in Kosovo*, Pluto Press, London, 2000.

civil society to organise, beyond its traditional heritage and lack of democratic culture, and showed its readiness to take over governance in case of an institutional breakdown.⁶⁰⁴

Nonetheless, despite the energy of the Kosovo Albanian community in organising governance structures, deep social and economic failings marked the Kosovo context. In the 1990s, under the cover of the ‘state of emergency’, Belgrade reduced substantially investments in the province’s infrastructure and its main source of revenue, its industries. When Serb authority withdrew in June 1999, it left behind a shattered economy with hardly any basis for reconstruction.⁶⁰⁵ Besides, in the same way that the Kosovo Albanian society had built and relied on a parallel social structure, they developed a parallel economy that relied on an alternative source of income through the tight web of the Diaspora. Without any income in Kosovo, whole families lived on the salary of a single member of the family, one designated to earn an income abroad.⁶⁰⁶ This source of income enabled the rapid set-up of small privately owned enterprises after the withdrawal of the Serb authorities. However, it rapidly appeared that this source of investment would only provide for a short period and would not be enough to respond to the massive needs of the Kosovo economy. In addition, despite the organisation of a parallel school system, the lack of educational materials, poor working conditions, and lack of qualified teachers left a whole generation with poor academic credentials. Both phenomena left little hope for the high proportion of unemployed persons, especially among the burgeoning young population,⁶⁰⁷ providing grounds for the rapid development of corruption and an organised-crime based economy closely linked to political power.⁶⁰⁸

As regards the Kosovo Serb population, after the NATO airstrike a large part of the minority Serb population fled – or was strongly encouraged to leave – the province as the Yugoslav troops withdrew in line with the Military Technical Agreement.⁶⁰⁹ Victims of severe retaliation in the wake of the conflict, the already small numbers of Serbs in Kosovo

⁶⁰⁴ Zartman, *Op. Cit.*, 5-9.

⁶⁰⁵ Poor condition of the main/only power source of the province ‘KEK’ on which depends the provision of water and heating in this mountainous region, shattered and underdeveloped roads and industries. Cf. Curis, R. & C. Monteux, “Kosovo/a Standing Technical Working Group: 5th and 6th Session, Economic Development and Reconstruction”, Prishtina, 27 October and 8 December 2001’, ECMI Report no. 23, March 2002.

⁶⁰⁶ i.e., Switzerland, Germany, United Kingdom, etc. Cf. Curis and al., *Op. Cit.* Informal interviews with members of the Kosovo Albanian Diaspora community, Geneva, April-June 1999.

⁶⁰⁷ Loshi, F. and A. Bytyqi, ‘Après le Bac, à la Rue’, in *Zéri*, 11 June 2005.

⁶⁰⁸ At all levels: construction, hotels, smuggling, etc. Cf. Curis and al., *Op. Cit.*; Xharra, A., ‘Gangs of Kosovo’ in *IWPR*, 6 April 2005; Nowicki, M., ‘Bakchich en Tout Genre et à Tous les Moments de la Vie Quotidienne’ in *Le Courrier des Balkans*, 17 December 2004.

⁶⁰⁹ Military Technical Agreement, *Op. Cit.*

was further reduced. The community has been divided between three groups: a group that left Kosovo, one that found refuge in the mainly Serb-inhabited northern region of Kosovo, and a scattered third one that found refuge within enclaves scattered across the provinces.

The first group has generally left the region for good. Few seem to really want to come back as the low figures of returnees reveal, and increasing numbers of Kosovo Serbs attempt to sell their properties to fund a new life somewhere else in Serbia. For the two remaining groups that chose to or were forced to stay in the province, Belgrade, in an attempt to help the Kosovo Serb population living in tough conditions as well in order to secure their loyalty, established a governmental department. The Coordination Centre for Kosovo and Metohija funded by the Serb budget was mandated to establish and run Serb institutions that would provide Kosovo Serbs with access to services such as education, justice, civil registry, etc. In effect, this policy managed to further divide the remaining Serbs in Kosovo, already the victims of geographical divisions. The largest Kosovo Serb settlement situated north of the Ibar River, remained in a quasi-homogeneous area. Despite the recognition of UNMIK's administrative power over this region as in the rest of Kosovo, the international administration did not manage to open an office in this sector until spring 2002. Before that period, the Serbs living in Northern Kosovo essentially survived exclusively on their Belgrade-financed parallel institutions. Their geographical situation, neighbouring mainland Serbia, enabled them primarily to receive continuous financing and services from Belgrade, but also to travel around the region as well as to Serbia safely without any Albanian interference. Yet, in the enclaves scattered around Kosovo, Serb inhabitants failed to receive this assistance. Often surrounded by hostile populations, unable to receive funds and services from Belgrade to travel freely to work or get basic necessities, these enclave Serbs continue to suffer heavy unemployment, an aging demographic and lack of commodities. The socio-economic conditions and geographic distribution of the Kosovo Serbs has a clear influence on their political behaviour.

In this picture of the socio-political context of Kosovo, a last word needs to be said about the case of Mitrovica. Multiethnic before the withdrawal of the Serb authority, it remained multiethnic afterwards, but with a natural boundary between its communities: the Ibar River. The main crossing point between the two sides, the city and especially its bridges became the

symbols of Serb resistance to UNMIK and the division between the two communities.⁶¹⁰ Despite, the opening of an office in the Serb area of town, UNMIK never managed to impose its authority or institutional structures in the Serb inhabited area, unable to compete with the ideological and financial support of Belgrade's Coordination Centre for Kosovo. In addition, the violence that occurred on this bridge in March 2000 and the development of the 'Bridge Watcher' programme represent a clear indication of the depth of the ongoing mistrust between the two ethnic groups.

b. Ethnic Divisions

i) Inter-ethnic Divisions

The roots of the interethnic division in Kosovo are deep and intricate. As elsewhere in the Balkans, the national appurtenances of the groups play a determining role in the choice of political allegiances. Despite centuries of cohabitation, the conviction that only national links can provide for the needs and the protection of the society is still anchored in the society as a whole. The development of nationalist rhetoric and ethnic cleansing policies, which occurred along the twentieth century, have only helped to reinforce this feeling, as much within the Kosovo Albanian community as within the Serb one. As a consequence, the society is divided along ethnic lines, where the fear of the other reflects on the political scene, which becomes thus defined in ethnic terms. Political parties are based on ethnic appurtenances and promote clear ethnic agendas at the expense of the economic and social policies so dearly needed in a post-conflict situation.

If one observes the evolution of the political agenda of the main Albanian parties in Kosovo,⁶¹¹ despite rare notable exceptions, the main policy pursued by each of them is independence for the province. Very little in the way of articulated policy addresses the pressing issues such as the rocketing unemployment, the lack of a sustainable economy, the failings of the educational system, etc.⁶¹² This has an even more dramatic significance as, in the elections for which these programs were presented, a decision on independence was not a

⁶¹⁰ Borden A., 'Le Syndrome de Mitrovica' in *IWPR*, 28 March 2000; Nikolic, Z., 'Mitrovica Après les « Grands Désordres »' in *Danas*, 14 April 2002; Malqi, S., 'Mitrovica, Une Histoire sans Fin' in *Java*, 20 April 2002; Isufi, P., 'Le Pont de la Discorde Continue de Diviser Mitrovica' in *IWPR*, 30 June 2005.

⁶¹¹ LDK; PDK; AAK. Electoral program for the 2004 general elections, cf. Sergio Martin-Moreno, Electoral Commission, OSCE, Prishtina, 8 June 2004.

⁶¹² Cocozzeli, *Op. Cit.*; UNDP, *The Kosovo Mosaic*, Prishtina, 2003.

prerogative of the elected representatives. This resulted only in rerouting the electoral debate away from social and traditional political issues concerning the basic needs of the society.

At the basis of this phenomenon is the assumption that only a political party representing one's ethnic group will represent one's own interests, promote one's rights and needs, and push forward fair policies. This phenomenon has added to the lack of a democratic culture and explains the weakness of the political party program and the search for alternative policies to respond to the socio-economic needs of the province. In such a society, political parties have an interest to promote the protection and interests of their own group to gain their support. In particular, it is quite common to see those parties campaigning on the fears of their groups. They present themselves as the only ones capable of protecting the group from others, undermining other ethnic parties, presenting them as either collaborators or too weak to promote the group's well being and sometimes even safety. In the same way, parties and political figures are prevented from pursuing an open policy towards members of other ethnic groups because of the risk of being accused of treachery. Opening the door of the party or simply promoting reconciliation is politically seen as a weakness and could lead to a rapid political demise, if not physical threats.⁶¹³ In sum, the ethnic agenda has become the basis of legitimacy.⁶¹⁴

The violence of the conflict in 1998/1999 exacerbated and crystallised the divisions between the two groups. The evolution of Yugoslav and Serbian politics since the airstrike has not managed to change the perceptions Kosovo Albanians have of Belgrade and the Kosovo Serbs. Contrary to Western expectations that the fall of Milošević would appease tensions and, eventually, enable the integration of the province within a Yugoslav framework,⁶¹⁵ the successive pro-European/ liberal governments in Belgrade were perceived as being driven by the same nationalism as was Milošević.⁶¹⁶ The involvement of Belgrade in

⁶¹³ Indeed, in the context of the project of development of the civil society involving civil society members and junior political elites, we noted on different occasions that the dynamic of members with respect to Kosovo Serb participants eased in training sessions outside of Kosovo, demonstrating the weight of pressure on Kosovo politicians to even be seen speaking with Kosovo Serb politicians. Cf. Holliday, G., “Kosovo/a Standing Technical Working Group”, Training Workshop: Administration of the Judiciary & Human Rights’, Flensburg, 12-15 July 2001, *ECMI Report* no. 16, August 2001; Monteux, C. and G. Holliday, “Kosovo/a Standing Technical Working Group”, Training Workshop: Reconstruction of Health Systems in a War-torn Society’, John Knox Center, WHO Geneva, 26 August - 1 September 2001’, *ECMI Report* no. 19, December 2001.

⁶¹⁴ Hayden, R., ‘Constitutional Nationalism in the Formerly Yugoslav Republics’ in *Slavic Review*, vol. 51 (4), 1992. pp. 654-673.

⁶¹⁵ Tröbst, S. *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998*, European Centre for Minority Issues, Working Paper no. 1, May 1998, p. 22.

⁶¹⁶ Semini, L., ‘Kostunica Plonge les Kosovars Dans le Doute’ in *IWPR*, 17 October 2000; Bajrami, A., ‘L’élection de Tadic, du Pareil au Même?’ in *Koha Ditore*, 29 June 2004.

negotiations with the Former Yugoslav Republic of Macedonia over a change to the border between Kosovo and Macedonia (2001) was perceived as a further sign that Serbia would always act against Kosovo Albanian interests.⁶¹⁷ Regarding the Kosovo Serb minority, Kosovo Albanians continued to consider them as Belgrade's fifth column, in charge of ensuring a continuous Serbian presence in the province. They believed that ultimately Kosovo Serbs would be exploited as a bargaining tool to restore Serb sovereignty over Kosovo, to amputate the territory or to simply delay the settlement of the issue. Kosovo's Albanian elites continuously argued that independence would quieten down fears of Serbian return and consequently would ease Kosovo Albanians' attitudes toward the Kosovo Serbs.⁶¹⁸

ii) Intra-ethnic Divisions

Besides the traditional interethnic divisions common to all post-conflict and, most particularly, post-ethnic conflict societies, less acknowledged divisions are also frequent and can be observed in the province.⁶¹⁹ Owing to social and historical specificities, the Kosovo Albanian and Serb societies underwent deep intra-ethnic divisions. Within the Albanian community, the clan system on which the society is based has two types of consequences. First there are the traditional clan divisions that run deep in the history of the Albanian people, and then there are the more contemporary divisions issuing from the challenge to the traditional authority. As we explained earlier, the clan system and the principles upholding it are very much alive in the Kosovo Albanian consciousness and influence the system of allegiances.

Besides, the criteria on which the choice of representative is based, tend to be rooted on traditional principles rather than on its capacity to pursue its elected mandate. This lack of an accountability culture is exemplified many times in the development of the party structure in Kosovo. The LDK's political support rested for the whole eight years of its supremacy on the Kosovo political scene on its historical role as the resistance to the Serbian oppression of the 1990s. Yet, Fred Cocozzeli notes that '[t]his trepidation towards democratizations persists in the LDK's internal party system... According to the [OSCE], the party's internal statutes

⁶¹⁷ Knoll, B., 'Legitimacy and UN Administration of Territory' in *Journal of International Law and Policy*, vol. 4 (1), 2007, p. 7; Semini, L., 'Les Serbes du Kosovo Provoquent la Colère des Albanais' in *IWPR*, 4 July 2000; Shala, B., 'Editorial: Refusing Realisy' in *Zëri*, 27 Mai 2002. [Quoted in *UNMIK Local Media Monitoring*]

⁶¹⁸ That is, President Rugova's speech, Prishtina, 25 March 2004..

⁶¹⁹ Caspersen, N., *Intra-ethnic Competition and Inter-ethnic Conflict: Serb Elites in Croatia and Bosnia, 1990-1995*, London School of Economics and Political Science, London, 2005.

still do not conform to the Kosovo party law [designed by the international community]'.⁶²⁰ In particular, the results of the 2007 legislative elections and the failure of the party to maintain its pre-eminence shows the importance of the support to the party that was based on its charismatic leader Ibrahim Rugova. Indeed, his disappearance threw the party into chaos as internal succession fights were set off and led to the loss of a significant support for the party.⁶²¹

Furthermore, the history of Albanian political parties is plagued by party divisions. The pattern traditionally involves the challenge of a charismatic leader within a party that leads to the creation of a dissident party.⁶²² This model of division has led to the creation of a number of small parties that, with the notable exception of the Alliance for the Future of Kosovo (AAK), did not even manage to take away support from the mother party.⁶²³ Although challenges to the mainstream line and creation of new parties could be beneficial to democracy, this is not the case in Kosovo, as usually the cause of schism is based on an issue of personal discord and does not involve the party's policies.⁶²⁴ In fact the new parties formed in this way inevitably fail to bring any new argument or policies to the Kosovo political scene. The failure of those new parties to do so is partly due to the crucial lack of this being on the agenda for all parties, where the support for the main parties lies in the vigour with which they promise what everybody wants – in this precise case independence – and in trying to undermine opposition parties with their failures to do so.

The Kosovo Albanian political scene is mainly characterised by its historical development. In the 1990s, the Kosovo Albanian community was united around its charismatic leader Ibrahim Rugova, who led the pacific resistance against the Serbian totalitarian state. The party's legitimacy relied on the establishment of successful parallel institutions and its non-violent strategy in the hope that this policy would win the support of the international community to the Kosovo Albanian cause.⁶²⁵ The failure of this strategy,⁶²⁶ as well as its failure to prevent the deterioration of the socio-political conditions in the

⁶²⁰ Cocozzelli, F., 'Kosovo at the Crossroads: Competing Solidarities' in GSC Quarterly, vol. 11, 2004.

⁶²¹ Bajrami, A., 'Les Prétendants au Trône de Rugova se Déchirent en Coulisse' in *Koha Ditore*, 9 January 2006.; Bjelica, J., 'La Guerre de Succession d'Ibrahim Rugova est-elle Déjà Ouverte?' in *Danas*, 10 September 2005.

⁶²² Creation of the AAK, when Ramush Haradinaj left the LDK. Attempt in 2002 by Bujar Bukoshi and Edita Tahiri to leave the LDK without success.

⁶²³ De Vrieze, F., 'Towards Self-Government in Kosovo' in *Helsinki Monitor*, Vol. (1), 2002, p. 16.

⁶²⁴ Interview with Arta Ramaj, National Democratic Institute, Prishtina, 17 June 2004.

⁶²⁵ De Vrieze, *Op. Cit.*, p. 16.

⁶²⁶ Lukić, R., *L'Agonie de la Yougoslavie (1986-2003): Les Etats Unis et l'Europe Face aux Guerres Balkaniques*, Les Presses de l'Université Laval, Saint Nicolas, 2003, p. 317-318.

province, led to a deterioration of the party's legitimacy. Indeed, it encouraged the rise of military alternative to pacific resistance and resulted in the creation of the UÇK.⁶²⁷ The division between the two strategies became obvious first at the Rambouillet negotiations and intensified with the ensuing bombing that followed, with the UÇK winning increasing support from the Albanian population. In the wake of the conflict, the Democratic Party of Kosovo (PDK), the political wing of the UÇK, filled the power vacuum left by retreating Serbian civil servants and proclaimed itself the legitimate representative of Kosovo's Albanians.⁶²⁸ In this regard, the PDK based its legitimacy on the UÇK's active involvement in the 'liberation war against Serbian oppression'. As Cocozzeli puts it: 'it claims to represent those who have sacrificed the most for the war effort is backed up by the provision of social services and assistance, primarily to the legitimately poor, but also to the war affected'.⁶²⁹ This attempted *coup* crystallised the divisions within the Albanian community. The beginning of the post-conflict Kosovo Albanian political scene was marked by chaos and violence. This violence reflected the struggle culture in which the Kosovo Albanian society grew in the last years and decades leading to the NATO airstrikes.⁶³⁰

A notable exception to this pattern is the AAK. The party issued from the split of its leader, Ramush Haradinaj from the PDK leadership. The success of this party rests on a couple of factors. The first was the charisma of the party leader, a general of the UÇK, considered as a war hero, coming from a family renowned for its involvement in the guerrilla warfare that occurred at end of 1990s;⁶³¹ but also because of its popularity in interacting with international circles.⁶³² After realising that Hashim Thaçi and his party would not be as easily manipulated as originally expected,⁶³³ United States diplomats supported the dissident Haradinaj. Yet, far from being a puppet, Haradinaj managed to use this support to present a modern style party.⁶³⁴ His charismatic image of war hero enabled him not to have to prove his allegiance to the Albanian cause, giving him the freedom to promote the creation of a

⁶²⁷ Tröbs, *Op. Cit.*, p. 10; Cocozzelli, *Op. Cit.*

⁶²⁸ de Vrieze, *Op. Cit.*, p. 15.

⁶²⁹ Cocozzeli, *Op. Cit.*

⁶³⁰ 'Effondrement de la Scène Politique Albanaise' in AIM, 21 May 1999; Mushkolaj, I., 'Qui Lance des bombes Contre la Ligue Démocratique du Kosovo ?' in *IWPR*, 30 November 1999; Kelmendi, M., 'Le Schisme Inter-Albanais' in *Java*, 16 January 2003.

⁶³¹ Hamzai, B., *A Narrative About War and Freedom*, Zëri, Prishtina, 2000.

⁶³² Cocozzeli, *Op. Cit.*

⁶³³ Dérens, J-A. & C. Samary., *Les Conflits Yugoslaves*, L'Édition de l'Atelier, Paris, 2000, p. 298.

⁶³⁴ Interview with Arta Ramaj, Party Development, Democratisation department, OSCE, Prishtina, June 2004.

multiethnic party.⁶³⁵ Although the multiethnicity of his party remained limited, he openly promoted an open hand policy towards minority members.⁶³⁶ In particular, after being elected as prime minister in 2004, he was seen meeting Kosovo Serbs politicians openly in cafes of Prishtina without specific protection.⁶³⁷ The support from international actors that he secured for his party enabled him to build a modern type of party, as proven by the structure of the party and a more modern and socially minded political agenda.⁶³⁸ Yet the success of this party has been short lived as, despite some signs of modernisation, the party still rests on its charismatic leader, and has failed to pursue its stated agenda after Haradinaj was indicted and imprisoned in The Hague.⁶³⁹

In the same manner, the end of the conflict revealed the growing divisions within the Serb community.⁶⁴⁰ Milošević's policies at the international and national levels increasingly divided the political scene in Belgrade. What the Serbs considered their 'loss' of Yugoslavia and the ensuing economic sanctions imposed on Serbia in the early 1990s increasingly brought the elites opposed to Milošević to monopolise the growing discontent of the population, which was suffering increasingly from the difficult living conditions in the Republic. Yet, the unity demonstrated by the anti-Milošević movement in 2000 was highly artificial and the coalition that resulted was very unstable. In the following year, the question of the delivery of war criminals to the Hague Tribunal and the issue of joining the Stabilisation and Association agreement increasingly weighed on the political scene in Belgrade.

Belgrade's political divisions were reflected on the Kosovo Serb political scene. Yet, this division was further complicated by more pragmatic fault lines. The gap between the Serbs living north of the Ibar and those living in enclaves increasingly deepened. The former, relying on services provided by Belgrade could afford to maintain a radical policy. Their policy stand was one of staunch opposition to the international authority and Kosovo's institutions, placing their 'belief' in legitimacy in Belgrade's authority. The latter, suffering

⁶³⁵ Interviews with Ramush Haradinaj, *Op. Cit.*; Arta Ramaj, *Op. Cit.*

⁶³⁶ Interview with Ramush Haradinaj, *Ibid.*

⁶³⁷ Comments by Gjakush Kabashi, Federalism Summer University, Fribourg, September 2005.

⁶³⁸ Interview with Arta Ramaj, *Op. Cit.*

⁶³⁹ Xherra, J., 'Le Départ de Ramush Haradinaj crée un Grand Vide Politique au Kosovo' in IWPR, 11 March 2005.

⁶⁴⁰ Altmann, F.-L., 'Le Statut du Kosovo', Institut d'Etudes de Sécurité Union de l'Europe Occidentale, *Quel Statut pour le Kosovo?*, Cahiers de Chaillot, No. 50, 2001, p. 25.

increasingly from the lack of many basic necessities, at first became radicalised,⁶⁴¹ but increasingly came to terms with the fact that they would have to cooperate to some extent with the local institutions.⁶⁴² The worsening of the relationship between Belgrade and UNMIK/ Kosovo institutions inevitably affected the living conditions of some segments of Kosovo Serb society. Increasingly, Belgrade's policy shifts raised discontentment as it appeared to enclave Serbs that their difficult living conditions were not the focus of Serbia's policy but indeed had become a bargaining tool within Belgrade's political circles.⁶⁴³ Ultimately, some agreed to participate in the new institutions, organising themselves within a coalition (KP) to increase their weight, and withdrawing from the process when they deemed that Kosovo's institutions did not promote their interests.

3. *Institutional Framework: Trials and Errors*⁶⁴⁴

In June 1999, although the violence had officially ended, the province faced a deeply divided society, in the grip of nationalist claims exacerbated by the pain of the conflict, and a total lack of governmental structures needed to respond to the humanitarian, economic and social crises left by the hostilities. To deal with the underlying struggle, the international actors had to quickly find solutions to the issues that undermined the establishment of a stable governmental structure capable of administering the province. This task appeared problematic in a socio-political scene that clearly did not have the basic requirements for the establishment and flowering of liberal democracy:⁶⁴⁵ democratic principles and concepts rooted in the society; integration of the different segments of society; responsiveness to different groups' expectations; moderation of tensions between the different political forces; and appeasement of group cleavages. Yet, pressed by the international community and the humanitarian situation, UNMIK had to launch an emergency strategy to plant and develop the institutions needed to govern the province.⁶⁴⁶

⁶⁴¹ Père Jan, S., 'Dispair of Kosovo Serbs' in *IWPR*, 7 October 2002.

⁶⁴² Interview Milorad Todorović, *Op. Cit.*

⁶⁴³ Qirezi, A., 'Kosovo Serbs break Away from Belgrade' in *IWPR*, 22 July 2005.

⁶⁴⁴ Steiner, M., 'For Example Kosovo: Seven Principles for Building Peace', Transcript of the Speech Delivered at the London School of Economics, London, 27 January 2003, p. 7.

⁶⁴⁵ Lipset, S., *Political Man: the Social Bases of Politics*, Heinemann Educational Books, London, 1983, p. 64.

⁶⁴⁶ King, I. & W. Mason, *Peace at Any Price: How the World Failed Kosovo*, Cornell University Press, 2006.

a. Provisional Institutions of Self-Government

The first task of the international administration has been to prevent the cooptation of power by victorious local extremist elites. Yet, in the face of the growing demand for self-management, UNMIK has set in place a number of policies to organise a political system that would respond to those demands while maintaining the multiethnic society ideal. Those policies aim to enforce a common political system, one which would encompass all segments of Kosovo society. The first attempt at a multiethnic political system came about with the adoption of regulation 2000/1 after long and arduous negotiations.⁶⁴⁷ This regulation established formally the Joint Interim Administrative Structure (JIAS) as the organ that would administer Kosovo until the establishment of democratically elected institutions. The aim of this structure was, first, to initiate the transfer of power, monopolised by the international community and yearned for by extremist elites, to ‘the people’. The second aim was to prevent a takeover by UÇK and to enable other political and ethnic factions, including Kosovo’s Serbs, to participate in decision-making. The JIAS system, headed by the Special Representative, is based on three institutions: the Interim Administrative Council (IAC), the Kosovo Transitional Council (KTC) and a system of co-administered ministerial departments.⁶⁴⁸ All organs are composed of international civil servants and of local representatives, the latter being selected on the basis of a quota system enabling proportional representation between the different ethnic and political groups. Franklin de Vrieze notes an interesting aspect regarding the KTC: ‘[i]ts formation reflected the UNMIK aspiration to include a broad spectrum of Kosovo civil society into the administration’. Indeed eminent members of the civil society, well known intellectuals and journalists such as Veton Surroi or Blerim Shala were invited to take part in the institutions. Yet, despite this promising attempt to include the civil society in decision-making, this practice was not pursued in succeeding institutional frameworks. Furthermore, in practice JIAS only enjoyed a consultative role. The final decision making power continued to rest in the hands of the Special Representative and the international civil servants remained the actual decision-makers on crucial issues. Despite the limited role of local representatives in the decision making process, this system enabled the introduction of power sharing mechanisms at all levels of the political system. However, regardless of its multi-ethnic character, the system failed to convince the local Serb

⁶⁴⁷ UNMIK, Regulation 2000/1 On the Kosovo Joint Interim Administrative Structure, 14 January 2000.

⁶⁴⁸ De Vrieze, *Op. Cit.*, p. 12.

community to participate in the new institutions. They refused to participate in the various councils, but demanded alternatively *ad hoc* observation posts.

At the local level, the promulgation in August 2000 of Regulation 2000/45 established the roles and powers of the municipal assemblies.⁶⁴⁹ This document attributes to local authorities decision-making powers regarding health, education, and the economy at the local level, while reinforcing multiethnic management at the municipal level. After a period of hesitation due to the unstable political environment, municipal elections were held in October 2000 to replace the local institutions – which had been monopolised by UÇK members – by ‘elected representatives, and thus to strengthen and legitimise the multiethnic system established.

With the holding of violent less pluralist elections, the international mission seemed to have achieved some relative success in setting the foundations for a new political system. Nevertheless, UNMIK’s monopoly over the executive, legislative and judicial powers at the central level, as well as its inability to guarantee the participation of the Serbian community in the new institutions, brought into question the legitimacy of the institutions as a whole, and thus weakened the stability of the system itself. The need for an institutional structure that would grant more power to Kosovo’s representatives and guarantee the protection and participation of minorities became imperative.

b. Constitutional Framework for Provisional Self-Government

The launch of the Constitutional Framework for Provisional Self-Government in May 2001 marked the first decisive step of UNMIK towards securing the legitimacy of its policy and that of the new institutions in the province.⁶⁵⁰ The fourteen-chapter document deliberately failed to tackle the issue of the future status of the province, but rather aimed to lay out the structure of the ‘*provisional institutions for democratic and autonomous self-government*’, the foundation for the introduction of democratic practices and the base for a sustainable system.⁶⁵¹ In fact the title itself of the document was purposely given as a ‘Constitutional Framework’ and not ‘constitution’, against Kosovo Albanian wishes, so as to prevent the

⁶⁴⁹ UNMIK, Regulation 2000/45 On Self-Government of Municipalities in Kosovo, 11 August 2000.

⁶⁵⁰ UNMIK Resolution 2001/9, on a Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.

⁶⁵¹ Resolution 1244, §11 c).

feeling that the mission was pushing towards the establishment of independence, and consequently to ensure the support of Belgrade and Kosovo's Serbs.⁶⁵²

The Constitutional Framework laid the foundations of an institutional structure reflective of UNMIK's democratic aspirations: separation of powers; establishment of an elected parliamentarian assembly, government, a representative president indirectly elected; and provisions for the devolution of a number of local competencies to elected municipal assemblies.⁶⁵³ Due to the fragile nature of the political system in Kosovo, the international community adopted – as its underlying approach to the Framework – the method of progressive devolution of power. The international administration was to initially retain the prerogative over key competencies – i.e., justice and the police – and gradually hand them over to local institutions as they built up their capacity to cope with the tasks assigned to them. Other devices, such as power-sharing mechanisms or regulatory powers granted to the Special Representative, were also designed within the framework to respond specifically to the concerns of ethnic minority issues.⁶⁵⁴

In its design, the Constitutional Framework attempted to find a compromise between the expectations of both Serbs and Kosovo's Albanians. Through the establishment of locally run executive and legislative bodies in charge of substantial governance issues, the Framework seeks to respond to Kosovo Albanian calls for self-government, while using a certain degree of consociational mechanisms; at the same time, the Special Representatives' reserved powers aim to ensure minority participation in the institutions, control any counter-democratic tendencies and guarantee a *de jure* Serbian sovereignty over the province. The attempt to respond to these divergent expectations, while assuring the inclusion of all ethnic groups in the political process and obtaining the support of Serbia is a clear indication of UNMIK's determination to secure legitimacy for the new institutions to sustain a stable democratic political system.

In practical terms, the Framework generated a number of positive achievements, such as the participation, to some extent, of some Kosovo Serbs in the province's institutions – which had not been the case until then – and the organisation of operational legislative and executive bodies. Yet, those achievements did not succeed in masking the Constitutional Framework's failures. The initial optimism of having gained the Kosovo Serbs' support in the

⁶⁵² de Vrieze, *Op. Cit.*, p. 12.

⁶⁵³ UNMIK Regulation 2000/45; de Vrieze, *Op. Cit.*, pp. 12-13.

⁶⁵⁴ UNIMIK Resolution 2001/9, Chapter 8.

institutions, with the participation of a minority of Kosovo Serbs in the parliamentary elections and the participation of a Kosovo Serb coalition in parliament, soon faded. The frequent Serb self-suspension from parliament, the widespread parallel institution network and the very controversial nature of their participation in the new institutions are clear indications of the overall lack of Kosovo Serb support for them. The Serbs in general considered those institutions to be a preamble to the independence of the province. Clearly a small minority of Kosovo Serbs were willing to participate in the system, not out of conviction, but out of resignation. Due to their lack of resources and institutional support as well as of an alternative place to live, they believed that not to lose the little that they had left – i.e. house, lands, etc – they would have to cooperate with Kosovo's central government.⁶⁵⁵ On the Albanian side, the establishment of the first self-governing institutions encouraged ambitions to push forward for independence. The first sessions of the parliamentary assembly were literally high jacked to the independence cause, with different attempts by the Albanian parliamentarians to proclaim independence, or overrule Serbia's decisions affecting what was still, under international law, their territory.⁶⁵⁶ The Special Representative's reserved power and other consociational stipulations were perceived by the Kosovo Albanians as excessive, undemocratic and in total breach of their right to self-determination. Their inability to have an effect on the status of the province and to enjoy full self-determination entitlements, such as foreign relations, increasingly alienated the support of Kosovo's Albanians to what came to be perceived as theatre governance.

The Constitutional Framework for Provisional Self-Government is incontestably a fundamental document in the transitional process of the Kosovo political system. It managed to lay out a comprehensible institutional structure to integrate minority groups, responding to some divergent demands and maintaining the international *status quo* while not impeding the future status of the province. Given the particularly hostile environment in which it was elaborated, shaped by the profound grievances and mutually exclusive demands of the deeply divided society that is Kosovo, those achievements represent a creditable first step in the transition. Yet, the arrangements failed to satisfy either side, thereby demonstrating the indisputable need for further policies to sustain the system.

⁶⁵⁵ Interview Milorad Todorović, *Op. Cit.*

⁶⁵⁶ 23 May 2002 assembly resolution on condemnation of the February 2001 border agreement between the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia. Cf. Surroi, V., 'Assembly surpassed its competencies' in *Epoka e Re*, 27 May 2002. [Translated in *UNMIK Media Monitoring*].

c. Concerns

Despite the efforts of the international administration to establish a coherent democratisation process, a number of concerns marred their efforts and ultimately affected the legitimacy of the new governance system. The major issues Kosovo's new political system faced were: (1) the power sharing mechanisms embedded in the Constitutional Framework; (2) the 'reserved powers' and the disproportionate powers of the Special Representative; (3) the failure of elections to legitimise the system; and (4) the enduring Serb issue.

i) Power Sharing Mechanisms

Beyond the initial criticisms that dogged the Constitutional Framework when it was first introduced, the power sharing mechanisms it entailed were critical to the difficulties encountered in legitimising the new institutions. Despite a number of flaws, consociational arrangements are central in the literature on conflict regulation and have been adopted as the foundation for numerous post-ethnic conflict peace building efforts.⁶⁵⁷ Carefully designed to ensure power sharing, proportionality and a reasonable local autonomy, Kosovo's institutional framework aimed to empower the majority group while assuring minority participation. Despite this legitimate aim, this power-sharing model was criticised on the basis that it entrenched differences and failed to assure the institutions' legitimacy.

Consistent with traditional criticisms of such power sharing mechanisms, Kosovo's Albanians blamed the Constitutional Framework's minority protection mechanisms for being undemocratic. Traditionally, 'consociational' proportionality has ensured that non-homogeneous populations have a natural balance of power between the different groups. However, in Kosovo, Albanians form about ninety percent of the population,⁶⁵⁸ so the mechanisms in this case were specifically designed by UNMIK to outweigh the numerical disadvantage of the minorities and prevent a majority dictatorship. On the other hand, the Albanian ninety percent majority resented the outweighing mechanisms that granted up to twenty-five percent of the one hundred and twenty parliamentary seats to minorities.⁶⁵⁹ Unreflective of the demographics, in a society where numerical superiority is a precondition for ethnic survival and a source of power, Kosovo Albanians felt the power given to the

⁶⁵⁷ i.e., Libanon, North Ireland, cf. Kerr, M. and B. O'Leary, *Imposing Power-Sharing: Conflict and Coexistence in Northern Ireland and Lebanon*, Irish Academic Press, Dublin, 2006.

⁶⁵⁸ Roughly 88% Albanians, 7% Serbs and 5% other -Statistical Office of Kosovo (SOK), yet Kosovo Albanians represent a minority within Serbia proper.

⁶⁵⁹ de Vrieze, *Op. Cit.*, p. 12-13.

disproportional minority represented an unjust and a further obstacle to their legitimate national goal of self-determination. Despite the need to maintain mechanisms for minority protection, those measures became the focus of the majority's discontent towards minorities and perceived as an obstacle to the majority's belief in the institutions' legitimacy, thus furthering the problem of ethnic polarisation.

Beyond the Kosovo Albanian resentment of such mechanisms, consociational arrangements represented a further obstacle to the institutions' legitimacy, as they polarised the society along ethnic lines. Ensuring and protecting representation on an ethnic basis entailed that only representatives of an ethnic group are capable of protecting it from other groups' coercion and domination. Entrusted with this role, experience has shown that political elites then tend to focus their actions on this protective role and neglect other crucial socio-economic concerns. It has been argued that in post-conflict situations, consociational arrangements were, if not the top alternative, at least the best political compromise for regulating the smouldering conflict.⁶⁶⁰ This statement is probably true for Kosovo, as at the end of the conflict consociational arrangements enabled reasonable multicultural foundations for the new institutions. Nevertheless, in the long run, ethnically focused politics – as demonstrated by the Albanian resentment towards minority protection mechanisms – only lead to the deepening of tensions between various political forces and increased inter-group cleavages. It is usually argued that in deeply divided societies, cross-ethnic polities would be a utopian dream. However, Kosovo's institutions needed to ensure legitimacy, and under the cover of the transitory period, sought specific policies to achieve such a political ideal. In order to secure such policies, appropriate protections against ethnic retaliation fears needed to be ensured, to free the political discourse and allow institutional attention to focus on the specific socio-economic issues of the society as a whole.

ii) 'Reserved Powers'

The 'reserved powers' of the Special Representative, granted under chapter eight of the Constitutional Framework, constitute a specific conflict regulation mechanism aimed at minority protection. They enable the head of the international administration to block any legislative or executive decision that could be considered as anti-constitutional or hostile toward minorities and their rights. In the case of Kosovo, 'reserved powers' were

⁶⁶⁰ Bose, S., *Bosnia after Dayton: Nationalist Partition and International Intervention*, Hurst, London, 2002.

institutionalised to replace the traditional consociational minority veto that can potentially block the decision-making process, leading to the constant rejection of policies, and ultimately, to a political dead end. Despite the crucial importance of those powers in post-conflict Kosovo, their institutionalisation entailed a major flaw: their lack of any accountability mechanisms. Despite the awkward situation of UNMIK setting up institutions in a foreign state, ruling over a foreign population, the international administrator is, by law, not required to be accountable to either the sovereign state or the Kosovo population. Far from any democratic principle, the ‘reserved powers’ grant UNMIK a totalitarian capacity, dismissing elected decisions and representatives, without providing Kosovo’s population with the most crucial of democratic devices: accountability.

As the international administration attempted to establish elected institutions which were supposed to be accountable to and representative of the will and the soul of the people, UNMIK set up a supra institutional body that could override their decisions. This phenomenon left the Kosovo Albanian elite feeling deceived and coerced into giving their trust to an arrangement which in itself was not managed in accordance with the purported democratic principles of the new system. Just as in the other power sharing mechanisms, these *reserved powers* became an essential regulatory mechanism in post-conflict Kosovo, dominated as it was by ethnic fears and grievances. Since its application, the Special Representatives have used their powers to essentially coerce the parliament into turning away from their agenda for independence, and to focus instead on what they believed to be the genuine problems of Kosovo. Nevertheless, in the long run, UNMIK continued to send mixed messages to the Kosovo population and ultimately jeopardized the population’s belief, trust and respect for their institutions.

iii) Elections as Legitimation

Elections are the link between the citizens and their institutions. Through their votes, citizens can show their support for the policies of a candidate and, should the candidates not fulfil their mandate, the citizens can vote them out in the next round. Thus, the election process legitimises the political system through the expression of the people’s belief. Yet, in the case of international administration led institution building in post-conflict societies, Kaldor notes that ‘elections are often held as an exit strategy for the international

community'.⁶⁶¹ The holding of elections is presented as the achievement of democratisation; the administration has fulfilled its mandate and can therefore retire. This false syllogism demonstrates that indeed elections have become a means for the international administration to legitimise itself to the international community.

In 2000, the Kosovo political scene was characterised by chaos, where political interactions were ruled by violence. In this context, the effect of organising elections was questioned, given that conditions overruled by fear were not favourable for holding fair and meaningful campaigns. Besides, holding polls in such conditions threatened to legitimise extremists. Yet, Special Representative Bernard Kouchner insisted on holding elections as soon as possible to settle the basis for the institutions he had been developing. After the holding of violence-free elections, UNMIK congratulated itself for what it portrayed as a success.⁶⁶² The Kosovo Albanian turnout was significant, and the election result balanced power between the two main contenders, tilting slightly towards the party the international community considered less radical.⁶⁶³ Yet this result failed to show the motivations of the voters, a vast majority of whom had voted in what they considered a plebiscite for independence.⁶⁶⁴ In practical terms, those elections technically enabled the replacement of self-proclaimed UÇK municipal governments with elected representatives. Yet, the actual effectiveness of the new assemblies proved to be very poor. Elected mostly on a program supporting independence and not the development of a local economy or social services, the representatives settled into the roles of critics of UNMIK's policies, which they blamed on the basis of the lack of transfer of competencies at the municipal level. In the next municipal polls, most of the representatives were re-elected on the basis of personality; thus they were not sanctioned on the basis of their inefficiency. Finally, despite the huge turnout for what was largely portrayed as the first democratic elections in the province, the Kosovo Serb population boycotted on a large scale what they considered as an illegitimate vote.⁶⁶⁵ In an effort to comply with the requirement to reflect the multiethnic nature of municipalities in their assemblies, with no elected Serb representatives, UNMIK was obliged to reserve seats for the Kosovo Serbs, who eventually might wish to participate; in vain. In order to secure

⁶⁶¹ Kaldor 2008, *Op. Cit.*, p. 34.

⁶⁶² Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/200/1196, 15 December 2000.

⁶⁶³ Maliqi, S., 'Rugova Triumph' in *IWPR*, 31 October 2000; Maliqi, A., 'First Organised Elections are a Success' in *IWPR*, 31 October 2000.

⁶⁶⁴ Personal experience as election monitor for the OSCE during the October 2000 elections, Gilan.

⁶⁶⁵ Cf., OSCE, *Boycott at Municipal level*, 15 May 2003.

their voting in the next elections, UNMIK entered on a regular basis into discussions with the Kosovo Serb elites, the Coordination Centre, and ultimately Belgrade. Agreements with the Serb authorities to support the participation of Serb voters resemble increasingly a bargaining process between the international administration and the Serb authorities, casting a veil over the actual legitimacy of a vote where the minority needed to be ‘bought out’.

A last note on the electoral process relates to the actual electoral laws designed by the international administration, in particular the issue of open party lists. A segment of Kosovo Albanian elites called on the international community to allow an open list system in the general elections. The basis for this call was the rigid party structure that did not permit the constant renewal of party elites. They argued that enabling electors to choose their representatives from within a list would increase representativeness and counter the grip of the old political elites on their parties and Kosovo political life. Yet, the international administration refused this proposition on the grounds that instead of enhancing democracy, this system would favour nepotism, and preferred to enforce stricter rules on list formation, such as the obligation to have a woman for every three names on the list.

Elections in Kosovo have had mixed results. Generally portrayed as a ‘success’ for the international community because of the participation of the Kosovo Albanian population, it failed to show the actual poor support for the new institutions by the Kosovo population. Indeed participation does not automatically imply support. Holding elections where people participated and mechanically elected representatives enabled UNMIK to proclaim, for the benefit of the international community, that the democratisation process in Kosovo was ongoing, reassuring themselves that they were fulfilling their mandate. Yet, the lack of participation of the minority and the actual lack of political power and the inefficiency of the institutions failed to legitimise the system itself.

iv) The Enduring Serb ‘Minority’ Issue

Beyond the inconsistencies of institutional design, ethnic-related issues also undermined the new institutions. Despite UNMIK’s attempts to develop inclusive institutions, Kosovo’s political system remained anchored in ethnic terms. Keeping in mind Serb grievances against UNMIK and the new political institutions, two elements of the Serb ‘minority’ question still represent a major obstacle to the new institutions’ legitimisation: the phenomenon of parallel institutions and the problem of returns.

The concept of parallel institutions sprang from the Serbs' resentment of the loss of *de facto* sovereignty over their heartland, and was a response to the inability of the international administration to secure protection and the appropriate living conditions for the Serb minority. Embittered, Belgrade entered into a harmful competition with UNMIK, *de facto* undermining the new, autonomous institutions. Conscious that the stability of the new system relied on the peoples' belief in the legitimacy of the institutions – and therefore on the support and integration of all segments of the population – Belgrade sought to fill the institutional vacuum before the international administration could. This move aimed to take advantage of the inability of UNMIK to provide for the Kosovo Serbs' needs, and was meant to secure Belgrade the allegiance of the Kosovo Serbs and their consequent rejection of the new system. In practice, Serb parallel institutions have had two significant consequences: for the Kosovo Albanians, and more importantly, for the Kosovo Serbs themselves.

Perceiving its moves as an act of sabotage, Kosovo Albanians resented Belgrade's manipulation of their self-governing institutions. The Kosovo Serb endorsement of the parallel system and their unwillingness to take part in the new institutions provided the Kosovo Albanians with a justification against granting more rights to minorities. Since the Kosovo Serbs were believed to have no interest in the success of the democratisation and stabilisation of Kosovo, some Kosovo Albanian elites promoted their exclusion whenever possible. Within the Kosovo Serb community, the establishment of those parallel institutions had a further divisive effect. As a result of their access difficulties and the ability of the international administration to keep a tighter control over their enclaves, the parallel institutions soon could not be sustained. Living in these challenging conditions and unable to receive assistance from Serbia, an increasing number of enclave Serbs had a strong incentive to cooperate with the new Kosovo institutions.⁶⁶⁶ Participation in Kosovo's autonomous institutions was considered and depicted in Serbian nationalist rhetoric as cooperation with the Albanians in their efforts to rip the Serbian heartland from the Serbs. Portrayed as traitors, the Kosovo Serb political elite that decided to participate in the new institutions became the object of sharp criticism and public denigration campaigns in Belgrade.

The difficult living conditions experienced by Serbs in Kosovo were constantly exploited by Belgrade spin-doctors and blamed, at best, on the inability of the international administration to secure protection for the Serbian community; or of a deliberate international

⁶⁶⁶ High unemployment, difficult access to schools and hospitals, etc. Interview Milorad Todorović, *Op. Cit.*

policy to cleanse Kosovo of its minority at worst. In either case, UNMIK faced the real problem of ethnic grievances expressed in the harassment of minority populations, which tend to frighten away possible Serbian returnees. In line with Resolution 1244 and its goal of establishing a multicultural stable democracy, the international administration was conscious of, but unable to provide for, a safe environment for both the return of displaced Serbs and their expressions of support for the new political system.⁶⁶⁷

Belgrade's parallel institution policy clearly succeeded in undermining the legitimacy of the new Kosovo institutions by forcing a sense of alienation on the Kosovo Serbs and by creating further ethnic cleavages between Serbs and Albanians. They worsened the chances of legitimisation by further dividing the already weak Kosovo Serb group, creating further internal cleavages and fomenting unsolvable divisions between the population living north of the Ibar River and the one living in the enclaves. The international administration's attempted responses to this new challenge were inadequate. Despite the opening of an UNMIK office in Mitrovica North in spring 2002, Serb civil servants still received a second salary from Serbia.⁶⁶⁸ In addition, courts north of Ibar still recognised Serbian jurisdiction. Lastly, the denigration campaigns against Serb officials involved in the new UNMIK institutions were virulent. As the new institutions had to ensure the support of the Serb minority to secure legitimacy, it was essential that the international administration actively pursue policies specifically targeting ethnic cleavages. Yet, considering the nature and intensity of the cleavages, the short-term solutions that were provided by UNMIK were like band-aids on a knife wound. Specific support for minority living conditions was needed, as well as a bigger return to targeted projects so essential to winning the hearts and minds of Kosovo's Serbs.

4. *Decentralisation*

Decentralisation commonly appears in states where the population has entrusted political legitimacy in segmented distinct groups which require access to decision-making power.⁶⁶⁹ As the literature demonstrates, a number of decentralisation options are offered to multiethnic states to enforce devolution, and thus ownership, to all segments of the heterogeneous society. The primary goal of what is called here decentralisation is to respond

⁶⁶⁷ Nowicki, M., 'Déplacé du Kosovo: l'Eternel Retour' in *Courrier des Balkans*, 28 October 2004.

⁶⁶⁸ European Stability Initiative, People or Territory: A Proposal for Mitrovica, Berlin, 16 February 2004; Minna Jarvenpaa, Former Municipal Officer for Mitrovica (March 2003-March 2004), UNMIK, London, 26 May 2006.

⁶⁶⁹ Decentralisation defined here in generic terms to encompass all the different forms of devolution of power from the central government to different institutional entities – federalism, autonomy, self-governement, etc.

to specific demands for access to political decision-making through an appropriate amount of devolution of power. This concept is not innovative, but it has become a central concern of international administrations involved in the establishment of modern state apparatuses upon multiethnic territories.

The arguments generally advanced to justify the need for decentralisation in ethno-national states centre on the ability to find a mechanism to distribute political power among the different segments of the society in a manner perceived as legitimate by the various factions. First, decentralisation provides limits to the central authority. 'It introduces a type of control over central government... [it] allows a system of checks and balances which is likely to set limits on the central government in its attempts to overstep or abuse its powers'.⁶⁷⁰ Second, decentralisation aims to enhance numerical minority group participation in the political process through enhancing their political weight in decision-making process. It attempts to protect them from the failures in political systems – such as the risk of the so-called 'majority dictatorship'. Finally, it enables groups to deal with local issues on a localised level and leaves the possibility open for immediate issues to be dealt with more efficiently.

However, decentralisation mechanisms also raise criticisms focused on the practical implications involved with their implementation.⁶⁷¹ First, the establishment of decentralisation mechanisms on an ethnic basis is believed to reinforce and legitimise ethnic divisions instead of limiting conflicting antagonisms between groups. Second, the territorial implementation of decentralisation may be difficult to apply in situations where ethnic groups are not homogeneously distributed. The new territorial division(s) will inevitably create new numerical minorities, which in turn will grow dissatisfied with the new political settlement. Finally, the extensive devolution of political power is often viewed suspiciously by state-minded critics who are concerned with its implications for issues of state sovereignty. The devolution of too many state prerogatives to homogeneous territories is feared to increase the chances of secession. The failures of decentralisation in such cases as in the Union of Soviet Socialist Republics and Yugoslavia – but not only these – which have allowed grave ethnic conflicts to foment, have spurred doubts within the international community as to the

⁶⁷⁰ Kälin, W., 'Decentralized Governance in Fragmented Societies: Solution or Cause of New Evils?' presented at the Conference *Facing Ethnic Conflicts*, Center for Development Research, Bonn, 16 December 2000, p. 4.

⁶⁷¹ Kurti, A., 'Is it true that an independent Kosova will inevitably be a mono-ethnic state, unless Serb communities - and their territories become autonomous?' in di Lellio, *Op. Cit.*, p. 145-154.

adequacy of decentralisation mechanisms to respond adequately to the needs of multiethnic states.

a. Decentralisation in Post-conflict Settlements

Despite the shortcomings of political decentralisation that the Yugoslav and Soviet examples illustrate, and a palpable scepticism that can be sensed within certain segments of academia, federalism and other forms of political autonomy arrangements are still on the agenda of international peacemakers. In cases of post-ethnic conflict, the realities of the multiethnic state are even more acute, as the population is more divided as a direct consequence of the continued culture of violence embedded within the conflict. Fear and distrust of other groups is more intense, spurred by the displacement of large parts of the population that have usually suffered discrimination and abuse. More than ever, the challenges faced by the international community from claims to national self-determination have pressed peacemakers to reconsider the alternatives offered by decentralisation to appease various ethnic demands without threatening the balance of the international order. For the same reasons that made the model attractive for dealing with multiethnic states in the first place, decentralisation is used to deal with the demands for self-government of different groups.⁶⁷² However, because of the more acute ethnic divisions and hatreds left by the conflict, the international community is faced with the burden of trying to establish autonomous arrangements sensibly, while also operating in an environment that threatens to make the implementation and success of these models even less likely. Beyond trying to provide the different ethnic groups equal access to decision making, the international community expects the model to provide faith in the political system. However, such reassurances are not entirely convincing for ethnic groups that have lost faith in both the system and the possibility of reconciliation due to the deep divisions left by the violent nature of the conflict. Hoping to stabilise the entity, the international community has aimed to appease these secession claims with the goal of ultimately preserving a weakened and loosely held together state. Decentralisation is no longer a factor of democratic advancement but becomes a political device against secession.

⁶⁷² Rothchild, D. (1998). 'Settlement Terms and Post Agreement Stability in Ending Civil Wars' in Lake, D. & D. Rothchild (eds), *The International Spread of Ethnic Conflict. Fear Diffusion and Escalation*. Princeton University Press, Princeton, 1998. pp. 12x.

An attachment to decentralisation as the means of choice to regulate conflict is heavily reflected in the contemporary literature, where advocates have re-actualised and refined the concepts, in an attempt to bring solutions to some of the models' failures. A classic example can be found in literature involved in the Dayton or Ohrid settlements of the Bosnian and Macedonian crises, where Lijphart's 'consociational' or Horowitz' 'integrative' arrangements are said to be unavoidable, even if deployed in some hybrid form.⁶⁷³ In other words, decentralisation has become a major component for providing long-term solutions to the problems of post-conflict regulation. However, the assumptions and principles underlining decentralisation need to be reworked and re-examined in relation to addressing the causes of ethnic conflicts if it is to be at all tenable.

Two broad categories of decentralisation models are offered in the academic literature and in international practice: territorial decentralisation and, non-territorial arrangements. The first category is the most commonly implemented, for practical reasons. As John Coakley reminds us in the introduction to his book, the demands of ethnic groups nearly always have territorial implications.⁶⁷⁴ In addition, modern states, through the exercise of their governmental prerogatives and sovereignty rights, involve an inescapable territorial dimension. Alternatively, to respond to the criticism that ethnic groups are rarely distributed homogeneously on a contiguous territory, scholars have attempted to articulate a model of autonomy that would satisfy certain demands of dissenting groups through non-territorial autonomous arrangements.⁶⁷⁵ Each model has its advantages, disadvantages and inconveniences, which makes the practical implementation of decentralisation models in post-conflict situations arduous.

Scholars have developed a further literature on hybrid forms of these models: two among these are the 'asymmetric federation' and the canton system.⁶⁷⁶ *Asymmetric federation* aims for units within a state to gain additional autonomy from central government, in relation

⁶⁷³ Caspersen, N., 'Good Fences Make Good Neighbours? A Comparison of Conflict-Regulation Strategies in Postwar Bosnia' in *Journal of Peace Research*, Vol. 41 (5), 2004, pp.569-588; Dimitrova, K., 'Municipal Decisions on the Border of Collapse: Macedonian Decentralisation and the Challenges of Post-Ohrid Democracy' in *Southeast European Politics*, vol. 5 (2-3), 2004, pp. 172-186.

⁶⁷⁴ Coakley, J., *The Territorial Management of Ethnic Conflict*, Routledge, London, 2003, p. 1.

⁶⁷⁵ Kymlicka, *Op. Cit.*

⁶⁷⁶ McGarry, J. 'Federalism (Federation) as a Method of Ethnic Conflict Regulation' presented at the Conference *From Power-sharing to Democracy: Post-conflict Institutions in Ethnically Divided Societies*, London, Ontario, November 9-10 2002.

to other units or, in some cases, to the rest of the state – e.g. Italy, Spain.⁶⁷⁷ The *canton system*, also referred to as ‘communisation’, is an administrative territorial division that is usually specifically designed for territorialised ethnic groups in order to provide them with self-management.⁶⁷⁸ The degree of autonomy from central government is defined according to the decentralisation system adopted.⁶⁷⁹

Finally, a word on the concept of *non-territorial autonomy*. Much less developed in the literature than in practice, this type of model aims to provide non-homogeneous groups with a certain degree of autonomy in fields that are not of common interest, such as culture or education.⁶⁸⁰ This model specifically aims to grant ethnic groups satisfaction in fields relevant to them while not disturbing existing ethnic territorial distributions, which can entail, as witnessed in Kosovo and Bosnia-Herzegovina, large population movements. Free from the burden of dealing with core ethnic issues, a general administration in charge of current affairs can be established on a non-territorial basis. Some degree of local autonomy can be provided to these administrations, with specific power-sharing mechanisms, but such settlements cannot threaten the fulfilment of core ethnic interests through another apparatus that does not require ethnic territorial divisions.⁶⁸¹ This type of autonomy arrangement appears particularly appealing to prevent ethnic entrenchments; yet it might be difficult to implement. In particular, specific mechanisms need to be developed to ensure the safety of isolated minority group members that a non-territorial arrangement would not provide for.⁶⁸²

b. The Decentralisation Problem in Kosovo

The international community was faced increasingly with the issue of the status and political future of the province. The precedents behind the settlement of ethnic conflict through decentralisation in Bosnia-Herzegovina in 1995 and Macedonia in 2002 provided some sorts of ‘lessons learned’ for peacemakers in Kosovo. In both these earlier cases,

⁶⁷⁷ McGarry, J., ‘Asymmetrical Federalism and the Plurinational State’ presented at the Third International Conference on Federalism, Brussels, 3-5 March 2005, p. 3.

⁶⁷⁸ For a counter argument to territorialisation of ethnic groups, cf. Smith, G., ‘Sustainable Federalism, Democratization and Distributive Justice’ in W. Kymlicka & W. Norman (eds), *Citizenship in Diverse Societies*, Oxford University Press, 2000.

⁶⁷⁹ McGarry, J. & B. O’Leary (eds), *The Politics of Ethnic Conflict Regulation*, Routledge, London, 1993.

⁶⁸⁰ Coakley, J., ‘Approaches to the Resolution of Ethnic Conflict: the Strategy of Non Territorial Autonomy’ in *International Political Science Review*, vol. 5 (3), 1994; Lapidot, R., *Autonomy: Flexible Solutions to Ethnic Conflicts*, Institute of Peace Press, Washington DC, 1997.

⁶⁸¹ Smith, *Op. Cit.*, p. 365.

⁶⁸² Orentlicher, D., ‘International Responses to Separatist Claims: Are Democratic Principles Relevant?’ in S. Macedo and A. Buchanan (eds.), *Secession and Self-Determination*, New York University Press, New York, 2003. pp. 19-49.

decentralisation had proven to have made some positive strides in regards to the appeasement of tensions and the immediate conflict. However, in both cases, they have failed to provide any substantial reconciliation, strong political cooperation and/ or the taming of ethnic divisions in the longer term. In Kosovo, owing to the successes and failures of various decentralisation strategies, the debate surrounding decentralisation has become extremely polemical.⁶⁸³ Radically diverse solutions were suggested with significantly different outcomes, and new fears have grown among the different ethno-political actors of the province. Within academic and politics circles the theme of the decentralisation of Kosovo has revolved mainly around the issue of the accommodation of Kosovo Serbs in the new political system. Nonetheless, the issue of decentralisation in Kosovo in reality entails two dimensions: one external and one internal.

i) External Decentralisation

Although the decentralisation debate in Kosovo has mainly focused on internal political arrangements, the first and foremost dimension that should have been considered was the external dimension behind the devolution of power in the province. In other words, the first priority should have been to determine the future relationship of the province with what was, under international law, its sovereign state. After the end of the Kosovo conflict in 1999, the international community through Resolution 1244 reaffirmed its recognition of the sovereignty of the Republic of Yugoslavia over the province, while acknowledging the right to self-government of Kosovo through ‘substantial autonomy’ and postponing the decision over the final status to a future date.⁶⁸⁴ Due to the diplomatic nature of the document, it remained relatively vague over a number of important and key issues. These included the relationship that should exist between Serbia and the province, the degree of autonomy that should be given to the province, and what alternatives would be available in regards to the final status of the province. In the meantime, the Constitution of the State Union of Serbia and Montenegro – formerly the Federal Republic of Yugoslavia – explicitly stated that ‘the state of Serbia which includes ... the Autonomous Province of Kosovo and Metohija’,⁶⁸⁵ thus waiving any confusion over the status of the province, making Kosovo clearly a sub-unit of the Federal state of Serbia.

⁶⁸³ Cf. International Crisis Group, *Kosovo’s Ethnic Dilemma: The Need for a Civic Contract*, Europe Report N°143, 28 May 2003.

⁶⁸⁴ Resolution 1244, preamble.

⁶⁸⁵ Constitutional Charter of the State Union of Serbia and Montenegro, 14 March 2002, preamble.

In an attempt to enforce this idea, Belgrade has proposed down the years a number of decentralisation alternatives within Serbia. The most articulated was the proposal made by Prime Minister Đindjić before his assassination. He enunciated a proposal where Kosovo could be decentralised on an asymmetric federal basis, in which Kosovo Serbs would be granted the status of a ‘constituent people’ of Kosovo and would be able to retain an administrative link with the central government in Belgrade, while the Kosovo Albanians would enjoy strong autonomy within the province free from Belgrade’s involvement.⁶⁸⁶ Yet, accepting the realities on the ground, voices were increasingly raised to propose the independence of the province on the basis of an exchange of populations between the homogeneous Serb area north of the Ibar river and the Albanian dominated area of Southern Serbia. The latest proposal was met with reluctance from Serbs living in enclaves in that they did not favour either losing all constitutional links with their motherland or having to leave their homes and last belongings.⁶⁸⁷ On their side, the Kosovo Albanians unsurprisingly rejected as a whole anything less than independence.

Despite their attempts to postpone the major issues involved in the situation of Kosovo so as to avoid further conflict,⁶⁸⁸ the international community was increasingly pressed by both Belgrade and Prishtina to come to terms with the question of status. Yet, as the international community was about to start talks over the status of the province at the beginning of January 2006, it was faced with very divergent alternatives, complicated by the multiplicity of actors and expectations.

ii) Internal Self-Determination or Local Self-Government?

In line with ethnic conflict regulation practice, decentralisation is strongly considered as an essential tool to empower the Kosovo Serb community and give them a sense of ownership within the boundaries of Kosovo. As the international community established new self-governing institutions – in accordance with Resolution 1244 – the problem of involving the Serbian minority has weighted increasingly on the process of legitimisation that requires

⁶⁸⁶ This proposition was first suggested by the late Prime Minister Zoran Đindjić in 2003. Bilbija, Dj. and Ognjanovic R., ‘Djindjic: le « Modèle Chypriote » pour le Kosovo ?’ in *Vecernje Novosti*, 6 March 2003 ; Miladinovic, Z., ‘Non à l’Indépendance, Oui Peut-être à la Partition’ in *Danas*, 11 April 2003; Reformulated by Sanda Rasković, President of the Coordination Centre of Kosovo from 2005, cf. Tasic, J. and Bjelica, J., ‘Belgrade et le Kosovo: Souveraineté Serbe, Pouvoirs Etendus pour le Territoire’ in *Danas*, 22 September 2005.

⁶⁸⁷ Interview Milorad Todorović, *Op. Cit.*

⁶⁸⁸ Yannis, A., *Kosovo under International Administration: an Unfinished Conflict*, Hellenic Foundation for European and Foreign Policy, Athens, 2001.

Serb identification with these new institutions. In addition to not taking part in local political life, the Serb-inhabited territories voluntarily maintained a system of parallel institutions, supported by Belgrade, which enabled them to live independently from Kosovo's institutions. In order to secure the participation of Serbs in the first general elections and in attempts to solve the increasingly difficult and disgraceful situation in Mitrovica, the then Special Representative Michael Steiner put the idea of decentralisation on the table in 2002. The proposed decentralisation project consisted in institutionalising ethnically based self-government. This project was first proposed on 1 October 2002 as part of Steiner's 'Seven Point Plan' to solve the problem of Mitrovica.⁶⁸⁹ This plan entailed a bargain with the Serb population of North Mitrovica and a promise of allowing the formation of self-governing municipal units if they were to take part in the general election. This strategy was later extended to the rest of the Serb inhabited areas.⁶⁹⁰ Municipal units could be established for sizable non-majority communities within a municipality and could be composed of one or more villages, settlements and urban quarters. Such sub-units would be established on the basis of a request to have elected municipal assembly participants or through a petition from community residents'.⁶⁹¹ In practice, this project aimed to 'cantonise' Kosovo along ethnic lines, as was done for the Bosnian model, and as a result is in total contradiction with the non-territorially based precedent set by the Ohrid Agreement signed a year earlier.⁶⁹² This project of the compartmentalisation of the province along ethnic lines was violently rejected by the Kosovo Albanian community because they saw the long-term possibility of territorially defined self-governing units choosing future secession from Kosovo.⁶⁹³ Steiner's plan was eventually abandoned and the term 'decentralisation' became marked with a negative connotation. This forced the Special Representative to entrust the Council of Europe with looking into a more appropriate model of what has now been labelled 'local self-government'. Unfortunately, by the time the Council of Europe presented its report nine months later, the new Special Representative Harri Holkeri did not believe in the relevance of a decentralisation/local self-government model, and left the Council of Europe and different

⁶⁸⁹ Steiner, M. 'A choice for Mitrovica: The Seven Point Plan', UNMIK/PR/837, Prishtina, 1 October 2002. Surroi, V., 'Le Projet Steiner pour la Décentralisation du Kosovo: « Oui, Mais... »' in *Koha Ditore*, 18 October 2002.

⁶⁹⁰ UNMIK, 'Announcement by the SRSG Michael Steiner', *Press Release*, UNMIK/PR/850 Prishtina, 21 October 2002.

⁶⁹¹ International Crisis Group, *Op. Cit.*, p. p.18.

⁶⁹² Framework Agreement, Ohrid, 13 August 2002. Marovic, J., 'Cantonisation ou Partage?' in *Nezavisna Svetlost*, 27 March 2004.

⁶⁹³ Kostic, S., 'L'écrivain Cosic Plaide Encore une Fois pour le Partage Ethnique' in *Vreme*, 11 November 2004.

local initiatives drift away without any concrete results.⁶⁹⁴ After the March 2004 events, the issue of local self-government was placed once again on the institutional and political agenda. Given the history of the province and the particularly high political stakes, the implementation of decentralisation mechanisms proved difficult because of the need to obtain support from all segments of the society. Nevertheless, some sort of agreement appeared increasingly crucial for the institutional structure of the province. The positions of the ethnic groups were clearly diverging.

Kosovo's Serbs, after Steiner's failure to provide his promise of self-governing municipal units, have launched in early 2003 their own Union of Serb Municipalities.⁶⁹⁵ This movement, supported by the Coordination Centre for Kosovo and Metohija, aimed to create 'the reorganisation of Kosovo Serbs in the sense of federalisation or the forming of two entities'.⁶⁹⁶ It established a *de facto* ethnic self-governing unit, which ironically reinforced what Steiner had aimed to weaken. This movement failed to gain the support of UNMIK, who did not believe it was well organised enough to be effective. Besides, this union only managed to alienate some parts of the Kosovo Serb population further, especially within the enclaves that were not benefiting from what remained of the north Ibar movement. Within Belgrade, the issue of decentralisation in Kosovo did not manage to gain a consensual view or change anyone's position on the overall status of the province. Even if most proponents agree that administrative divisions should reflect ethnic territorial distributions, the fact that internal political feuds continue to hamper these wishes reflects the multiplicity of the plan proposed. In Prishtina, most Albanian parties have reconciled themselves to the idea of the creation of local self-governments rather than decentralisation, but have refused to consider cantonisation, which would imply hermetic territorial units that could evade central government and ultimately might form a basis for potential secession.⁶⁹⁷ Along with the recommendations of the Council of Europe, they supported the idea that administrative units must be drawn up using non-ethnic criteria and must retain a degree of connection with the central government. Under the pressure of responding to the failures underlined by the upsurge of March 2004, a Working Group on Local Government composed of international

⁶⁹⁴ Interview with Owen Master, *Op. Cit.*

⁶⁹⁵ Culafic, Z., 'Serbs Unite' in *IWPR*, 4 March 2003.

⁶⁹⁶ Rada Trajković quoted in UNMIK Local Media Monitoring, 27 March 2003.

⁶⁹⁷ Limani, Z. and Salihu, A., 'A Contested Decentralisation Plan' in *IWPR*, 4 March 2005.

and local actors – yet without Serb representation – was established in May 2004 and released a Framework for the ‘Reform of Local Self-Government in Kosovo’ on 19 July 2004.⁶⁹⁸

Yet with the launch of negotiations over the future of the province in October 2006, the issue of local self-government became subordinate to the issue of status. In fact, decentralisation did become the core of the Ahtisaari proposal on which the independence of Kosovo is based. As far as decentralisation is concerned, it should be kept in mind that despite its shortcomings, the Bosnian agreement had been negotiated and accepted by all parties. Support from the Kosovo Serbs and Albanian population is therefore essential to the future of the project. As some Kosovo Serbs, especially in some enclaves, are faced with harder living conditions and Belgrade’s solutions are increasingly viewed as counter-productive, a few are now willing to consider that their future might ultimately lie with mutual cooperation in Kosovo’s institutions.⁶⁹⁹ Yet, the rejection of Belgrade’s policy does not mean support for UNMIK’s. Furthermore, those Serbs still represent a small minority and more of them need to be convinced in order for the system to gain legitimacy.

Conclusion

Kosovo is the first articulated international attempt to democratise a territory from scratch. In 1999, when the international community took on board this mission, it was conscious of the extent of the challenge, and yet, it did not seem able to provide the appropriate means to fulfil the colossal task. Inscribed on a page of European history – the fall of Communism and the breakup of Yugoslavia – Kosovo, with its generalities and specificities demonstrates an obvious lack of democratic culture. Few of the conditions for a stable democratic political system existed here. Thus, if not impossible, its democratisation required careful planning and strict policies to first deal with the humanitarian crisis and then the development of a long-term democratisation strategy. Yet, this analysis of the institutional set-up in the province reinforces the argument that the international community did put more emphasis on legitimating themselves at the international level by providing a set of institutions and processes acceptable to the international community that mandated it, rather than on consolidating the institutions themselves through the integration of all segments of the society or their reinforcement within the civil society.

⁶⁹⁸ Gjoni, R., *Decentralization as a Conflict Transformation Tool: The Challenge in Kosovo*, Presentation Paper, Institute of Federalism, 10 September 2007.

⁶⁹⁹ Interview Milorad Todorović, *Op. Cit.*

Yet, the study of the international administration's institutional design, and more specifically, the observation of the trials and errors of those policies and their constant *ad hoc* adaptation to the new situation on the ground, gives us an important insight into the fact that the mission was aware of this deficiency and attempted to remedy it. It is interesting to note that the solutions provided were always considering further institutional alternatives and did not involve securing the process within the civil society, which is crucial for the process.⁷⁰⁰ Yet, the observation of the institution building process in Kosovo clearly demonstrates the heaviness of the international and local imperatives involved, but also, a clear conscience on the issues and the will to pursue a democratisation policy despite the inimical environment. Alternatives like the emphasis on local government are a clear example of this trend. Yet, considering the complexity of the international and local imperatives, no one-size-fits-all solution is feasible. The next chapter examines the roots and alternatives offered to the pressing imperative of the status question which, despite the efforts of the international administration, has remained the main legitimating factor for the local population. This study will enable us to complete this analysis of legitimacy or its lack thereof in international post-ethnic conflict regulation.

⁷⁰⁰ Kaldor 2008, *Op. Cit.*, pp. 42-43.

Chapter 6 – Towards a ‘Final Status’

On 17 February 2008, the assembly of Kosovo declared independence. It was not the first time that the province’s legislative organ did so;⁷⁰¹ yet it was the first time that it received some acknowledgement from the international community. This event has historical significance on two scores: (1) for the province, stuck in constitutional limbo for decades, this declaration demonstrated the will to make a decisive step towards a constructive change; (2) for the international community as a whole, as it was the first national self-determination movement based in Kosovo that found some support outside of the decolonisation context. Yet, in sharp contrast to the euphoria this declaration sparked among the Kosovo Albanian community,⁷⁰² it did not produce a ‘done deal’ and has remained far from providing a conclusion to the ‘Kosovo Question’. Several issues that were left unanswered still need to be addressed appropriately to ensure the sustainability of the new equilibrium. Indeed, the institutions on which this new state relies are far from legitimate, let alone stable.

Instead of providing a solution, the internationalisation of the Kosovo issue has complicated its overall matrix. The inability of the international community to take a common position over the future status of the province bears increasing consequences for the legitimacy of both the international administration and the Kosovo political system. Ultimately, international political concerns, under the cover of international law, have weakened the position of the international administration and enabled the entrenchment of the issue. In other words, an international concern became of the criterion for judging perceived local legitimacy. In this context, it would be difficult to finish a study of the international institution building exercise in Kosovo without considering the ‘final status’ issue.

Thus, to conclude this research, I would like to reflect upon the issue of the final status of Kosovo and assess its significance for the legitimacy of the international action and the resulting framework. Political and academic circles have both emphasised the determinant role that the final status question had over the future development of the province.⁷⁰³ Nonetheless, I argue that despite its importance in shaping the ‘beliefs’ of the Kosovo

⁷⁰¹ ‘Declaration on Secession of the Republic of Kosovo’, 2 July 1990; Kosovo Assembly, ‘Declaration of Kosovo Independence’, Prishtina, 13 February 2003; cf. Ministry for Kosovo and Methoja, ‘Comments on the Report of the UN Secretary-General on the United Nations Interim Administration Mission in Kosovo’, S/2008/211, Begrade, 20 April 2008, § 14.

⁷⁰² Bilefski, D., ‘Kosovo Declares Independence from Serbia’ in *The New York Times*, 18 February 2008.

⁷⁰³ Krasniqi, J., ‘Independence Guanrante Peace’ in *IWPR*, 24 March 2000; Rugova quoted in ‘Independence Would Accelerate Fulfilment of Standards’ in *Kosova Sot*, 28 December 2002.

population, the resolution of Kosovo's status only proved marginal in the overall legitimacy framework of the province, owing to the fact that it remains greatly determined by international concerns. Indeed, the declaration of the independence of the province by its assembly and its recognition by a portion of the international community has only granted marginal legitimacy to the new state, and has not succeeded in bringing stability to the province. On the contrary, it has managed to divide the international community and place the province in a legal and political grey zone that the international community has so far not been able to fully handle.⁷⁰⁴

To support this argument, I wish to map out the background to the status issue before analysing the current developments in Kosovo. I first consider the key elements that have an influence over the issue. In the light of those factors, I then review the different alternatives offered to the province, determining the strengths and weaknesses of each to understand the path eventually chosen by the international community. Finally, I review the option followed and analyse the implications of the current status for the legitimacy framework of the province.

1. *Issues*

After the bombing of Serbia and Kosovo by the North Atlantic Treaty Organisation, an independent working group was commissioned by the Swedish Government to analyse the consequences of the Kosovo crisis and to evaluate options open for the province to resolve the pressing political, social and economic crises that existed. In late 2000, the Independent International Commission on Kosovo published a report where it presented a number of status alternatives open to the province.⁷⁰⁵ At the base of the problem, the Independent International Commission identified 'four essential elements' that had to be addressed to provide reasonable alternatives to the conundrum: (1) 'the relationship of the province to the Federal Republic of Yugoslavia'; (2) 'the relationship of Kosovo's institutions of self-government to any continuing UN administrative presence and to the NATO/KFOR security presence'; (3) 'the nature of Kosovo's borders and its relationship to neighbouring states'; and (4) 'the definition of Kosovo as an entity within the international community'.⁷⁰⁶ Key to the

⁷⁰⁴ Cf. International Crisis Group, *Kosovo's First Month*, Europe Briefing N°47, Pristina/Belgrade/Brussels, 18 March 2008.

⁷⁰⁵ Independent International Commission on Kosovo, *The Kosovo Report: Conflict; International Response and Lessons Learned*, Oxford University Press, Oxford, 2000.

⁷⁰⁶ *Ibid.*, p. 259.

settlement of a long-term solution for Kosovo, those points need to be considered to understand the issues at stake, and ultimately, to enable the development of a credible alternative for the province.

a. Kosovo and the Federal Republic of Yugoslavia

The relationship of the province to the Federation of Yugoslavia has been the key issue at the root of the ‘Kosovo Question’. For decades, successive constitutions of Socialist Yugoslavia have attempted to define and redefine the status of the province within the federal framework, without managing to satisfy fully all the parties involved. Prishtina was always pushing for more autonomy within – and later out of – the federation, while Belgrade consistently attempted to limit the province’s autonomy within its sovereignty.

Beyond the relationship of the province to the federation lies the crucial question of the relationship of Kosovo to Serbia. The distinction is extremely important. On the one hand, by claiming an equal position within the federation, Kosovo’s Albanians refuse to recognise Serbia’s sovereignty over them. Instead, they present Kosovo on an equal footing with Serbia and the other Yugoslav Republics. On the other hand, Belgrade’s claim has been that Kosovo is defined within the Yugoslav framework only as part of Serbia, which is itself member of the federation. By withdrawing the status of Kosovo as a federal entity in the late 1980s, Belgrade attempted to restrain the latitude Kosovo had gained within the federation and to bring it back firmly within its realm. It wished not only to restrain the role of the province in the federation, but also to limit the influence of the federation over the province. From then on, the Federal Government’s sovereignty over the province could only be exercised through Serbia.

The third dimension to the Kosovo-Yugoslavia/Serbia relation issue is the question of the Kosovo Serb community. Whatever long-term settlement the province will eventually adopt, the province is assured by the international community of its autonomy from the republic of Serbia;⁷⁰⁷ thus the status of the Kosovo Serb population in the new Kosovo entity and their relationship to the motherland becomes crucial – all the more so should the ‘autonomy’ of the province *vis à vis* the Serbian state increase to outright ‘independence’.

Before 1999, under the Yugoslav and Serbian constitutions, Kosovo’s Serbs enjoyed sovereignty within Kosovo as one of the ‘constituent people’ of the Republic of Serbia. With

⁷⁰⁷ United Nations Security Council Resolution 1244 on the Situation in Kosovo, S/RES/1244, 10 June 1999.

the withdrawal of sovereignty in 1999, the Kosovo Serbs became *de facto* a minority within what was legally still part of their motherland. Besides the psychological problem of becoming a ‘minority’ within their own state, especially in the context of the former Yugoslavia, this raises a practical issue as regards the fulfilment of ‘national’ interests and the inability to influence decisions on crucial issues relevant to their community due to their numeral inferiority. To address this deficiency, two relationships need to be carefully designed: (1) the relationship of the Kosovo Serb community to Kosovo’s central institutions; and (2) the relationship of the community to their motherland: Serbia. The fulfilment of those two links has been perceived as mutually exclusive as it encompasses a sensitive web of cross-allegiances. If the community retains too strong a link to the motherland, fears of their lack of allegiance to the central institutions appear. In the same way, should they be forced to have strong links to the central authorities, the community fears the deterioration of their links with the motherland, which they clearly see as the only sincere defender of their community needs.⁷⁰⁸ In fact, a balance between the two is important. To respond specifically to this concern, three major proposals were elaborated: (1) granting Kosovo Serbs within the province’s new constitutional framework the status of ‘constituent people’; (2) developing models of decentralisation; and (3) redrawing borders and proceeding with the movement of populations, thus enabling the creation of ethnically pure zones.

The first option was at the heart of the proposal of late Prime Minister Zoran Đinđić (DS).⁷⁰⁹ Although this labelling might seem trivial, it bears in fact important political and constitutional implications. In the context of the Former Yugoslavia, granting a ‘constituent people’ status to a national group gives them a number of inalienable rights. First, groups granted this status have in constitutional terms equal access to decision-making as other groups, irrespective of their demographics. Second, it enables them to benefit from minority protection mechanisms. Minority groups enjoying this status have a right of veto over decisions that they consider would violate their interests, which in normal circumstances their numerical minority would not allow them to outvote in a majority democratic system. Third, it grants them the opportunity to establish and maintain political and institutional links with their motherland. Finally and more crucially, although not clearly stated, this status implies a right of secession should they choose to exercise it. Given the emotional baggage the status of

⁷⁰⁸ Kostovičová, D., ‘Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective’ in *International Peacekeeping*, vol. 15 (5), 2008. p. 641.

⁷⁰⁹ ‘Proposal for Kosovo Autonomy Offered Instead of Independence’ in *New York Times*, 13 August 2003. p. 4.

a ‘constituent people’ has in the Former Yugoslav context, Kosovo’s Albanian political leaders remain reluctant to accept such a clause.

The second option offered the Kosovo Serbs a better representative weight within the new institutions. Based on the model of ‘cantonisation’, this alternative would grant them a certain degree of autonomy from Kosovo’s institutions and enable the community to maintain close links with Serbia. In particular, the Serbian parliament’s proposal, adopted in unanimity in May 2004, entailed cultural and personal autonomy as well as specific protection mechanisms for cultural properties.⁷¹⁰ The different plans which supported this concept, from Michael Steiner to Marti Ahtisaari’s proposals, have undergone strong criticism from Kosovo’s Albanian elites, who saw these as attempts to provide the Kosovo Serbs with an escape route from accepting the former’s sovereignty.⁷¹¹

The third and more radical alternative implicitly acknowledged the loss of Kosovo for Serbia and a redrawing of Serbian internal and external borders. Far from providing a sustainable solution, this alternative generates new issues, such as that of entrenching homogeneous ethnic blocks living side by side in an unstable region like the Western Balkans, thus creating a potential future conflict spot.⁷¹² This alternative has been opposed by the international community and found little support within some segments of the Kosovo Serb and Kosovo Albanian communities.

Clearly a sensitive issue and a source of conflict, the relationship of the province to its sovereign state’s being defined in constitutional terms makes it crucial to the long-term settlement of the Kosovo Question. In 1999, when the international administration initiated its work, Belgrade and Prishtina’s positions were the same as they had been at Rambouillet. If anything, NATO’s airstrikes only entrenched the positions of the protagonists as divisions between the communities were exacerbated. Conscious of the sensitivity of the issue, resolution 1244 remained purposefully equivocal on this aspect of the conflict so as to enable the appeasement of immediate tensions without influencing a final solution. Nonetheless, by recognising the sovereignty of Yugoslavia – and not Serbia – over Kosovo, and by supporting a large degree of autonomy for the new political institutions of the province, the resolution endeavoured to deceive the parties to the conflict into their own understandings of the

⁷¹⁰ Milosevic, M., ‘Belgrade Dévoile son Plan pour le Kosovo’ in *Vreme*, 6 May 2004.

⁷¹¹ Kostovičová 2008, *Op. Cit.*, p. 639.

⁷¹² Coppieters, B., *Kosovo and the Principles of Just Secession*, CEPS Policy Brief no. 146, 3 December 2007, p. 9; Kostovičová 2008, *Op. Cit.*, p. 639.

implications of the resolution, in a – failed – attempt to focus attention on immediate, crucial and more practical emergencies. Yet, the postponing of the status issue only led to further tensions.⁷¹³ The sensitive nature of the issue places the international actors in the difficult position of facing diverging alternatives complicated by the multiplicity of actors and expectations.

b. Kosovo's Institutions and the International Administration

The second element required to determine an appropriate settlement for the Kosovo question is that of the relationship between the new institutions and any eventual international mission. Lacking a political power capable of running the territory, the international community substituted itself as the sovereign state and the local government in order to manage a province in the grip of a deep social, economic and political crisis. As the local institutions are strengthened and begin to reclaim their natural power, yet conscious of their inability to run the province on their own,⁷¹⁴ external help is still required. Yet, the role, mandate and terms of engagement of the international actors need to be clearly defined within the new framework. In concrete terms, the new international actor would need to play two essential roles in Kosovo's 'post-conflict settlement: as providers of technical support and as guarantors of the new status, which needs to be defined and codified in the settlement proposal.

At the end of the NATO airstrikes, the province faced difficulties which Kosovo's Albanian elites acknowledged they were unable to provide adequate answers to. Through its experience in dealing with transitional and democratising countries, the international community had gained a wealth of resources in the form of the technical expertise necessary for the management of Kosovo's challenges. In particular, through its schemes of 'Stabilisation and Accession', the European Union played a similar role in a number of other Western Balkan countries. This scheme is a European Union negotiation framework for Western Balkans countries. It consists of an agreement to provide tariff-free access to the European market as well as financial or technical assistance in exchange for commitments from the Balkan parties to undertake significant reforms in the fields of politics, economics, trade and human rights. This framework aims to help countries issuing from the dissolution of

⁷¹³ Yannis, A., *Kosovo under International Administration: an Unfinished Conflict*, Hellenic Foundation for European and Foreign Policy, Athens, 2001.

⁷¹⁴ Interviews Ramush Haradinaj, President of the AAK, Prishtina, 21 June 2004; Alush Gashi, LDK, Prishtina, 15 June 2004; Hajradin Kuci, Vice President of the PDK, Prishtina, 14 June 2004.

Yugoslavia and Albania to reach European standards in the hope of eventually integrating them into the European Union. In practical terms, it set in place ‘carrot and stick’ mechanisms to motivate those countries, which went through a difficult transition period out of communism/socialism, to set in place policies to liberalise their economies, political scenes and societies.⁷¹⁵

Nonetheless, the most important role the international actor must play is as guarantor of the process. The difficulties encountered in the settlement of the final status come primarily from the problems fomented by the deep distrust between the parties and their reluctance to make concessions to each other. As bargaining tools to enforce the final status process, the international community could act as a guarantor of the good faith of the parties. In other words, the international community would ensure the security of both parties, in that each of the opposing sides would respect its engagement, through the imposition of sanctions on the party failing to fulfil their commitments. In this case, the European Union’s role is potentially crucial. Through its multi-layered framework system, the European Union has the potential to propose significant economic advantages that would appeal to both parties in accepting a compromise. The European Union favoured, from the beginning of its involvement, a resolution of the Kosovo question within a federal Yugoslavia, itself integrated within the accession framework.⁷¹⁶ This solution was also pushed forward and implemented for the resolution of the Serbia/Montenegro issue.⁷¹⁷ Yet, as the departure of Montenegro from the State Union in 2007 and the difficulties encountered by the stabilisation and accession negotiations with Serbia the following year demonstrated, the European Union’s incentives had only a limited effect. In the case of Kosovo, the option of the province remaining under Serbia’s sovereignty, or at least within the Yugoslav federation, was proposed in exchange for the European Union’s guarantee of the rights of the Kosovo Albanians to self-management. Yet this guarantee was judged as being unrealistic by Kosovo’s Albanians, who were proven right by the inability of the European Union to get the cooperation of the Serbian Government with the Hague war crimes Tribunal. Following the same line of argument, the ability of the European Union to convince the Kosovo Serb community of its capacity to preserve their safety and rights in an independent Kosovo is also questionable.

⁷¹⁵ C.f. Coppieter, B. & al, *Europeanization and Conflict Resolution: Case studies from the European Periphery*, Academia Press, Gent, 2004, p. 39.

⁷¹⁶ Tröbst, S., *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998*, European Centre for Minority Issues, Working Paper N°1, May 1998, p. 61.

⁷¹⁷ Noutcheva, G. and M. Huysseune, ‘Serbia and Montenegro’ in Coppieter 2004, *Op.Cit.*, p. 107-148.

c. Kosovo's borders and Regional Stability

The third determinant element of the settlement of the Kosovo status issue relates to the territorial configuration of the new Kosovo entity. This issue has two dimensions, namely the determination of Kosovo's internal and external borders respectively. Thus what is involved is the definition of the territory of the former Yugoslav province, and then the socio-political impact this design has over the durability and preservation of regional stability.⁷¹⁸

Linked to the relationship of the province to Serbia and the status of the Kosovo Serb minority, a clear definition of the nature and design of Kosovo's internal borders is essential to the settlement of the issue. As this is primarily a territorial problem, a political agreement clearly defined in territorial terms is fundamental. In the aftermath of the NATO bombing, Kosovo is ethnically divided along the River Ibar, which roughly divides a homogeneous Serbian community in the north bordering with Serbia and a quasi-homogeneous Albanian population in the south. As discussed previously, Serbia made a proposal, endorsing the idea first sketched by the International Independent Commission in their report,⁷¹⁹ for a partition of the province along this ethnic line with, in possible compensation for Kosovo, the incorporation of the Albanian-inhabited regions known as Eastern Kosovo into Southern Serbia.

Although this alternative seemed to receive some support, especially in the North of Mitrovica,⁷²⁰ it has been opposed by the Kosovo Albanians and Kosovo Serbs living in enclaves, and is looked upon with suspicion by the international community. On the one hand, Kosovo's Albanians reject this proposition on doctrinal and economic grounds. The ethnic division line runs through the industrial, thus potentially richest, economic region of Kosovo. Most of the industrial and mineral infrastructures are situated either north of the Ibar River or are divided by the fault line. Losing access and control of this apparatus is perceived as damaging the economic future of the province. Furthermore, the Kosovo Albanian leaders refuse to amputate what they consider as being legitimately their territory. On the other hand, the Kosovo Serbs living in enclaves also did not favour this alternative, which would isolate them conclusively from Serbia proper, leaving them only the option to depart from Kosovo

⁷¹⁸ Danaj, K., 'Quelles Frontières Pour le Kosovo?' in *Koha Ditore*, 13 April 2004; Karanovic, P., 'Kosovo Independence Threats to Neighbouring Villages' in *BIRN*, 2 December 2005.

⁷¹⁹ ICC, *Op. Cit.*, p. 266.

⁷²⁰ Sambanis, N. 'Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature' in *World Politics*, vol. 52, 2000. pp. 437–483.

leaving behind most of their assets. On the same lines, this alternative was never seriously supported by the international community, which feared the entrenchment of ethnic territories in the heart of an unstable region of the Western Balkans.⁷²¹

Besides its international and local dimensions, the issue of Kosovo also has substantial regional significance.⁷²² Owing to its geographical location, ethnic nature and political characteristics, it has a great potential for causing instability within the whole region. First, the province is contiguous with a number of politically and economically unstable states with weakly enforced borders.⁷²³ A political vacuum in the province favouring the breeding of criminal activities would quickly spread to the whole region and could destabilise neighbouring governments.⁷²⁴ Second, a strong nationalist government in Kosovo not under anyone's control could turn the province into a breeding centre of Albanian nationalism, stirring up nationalist sentiments and territorial claims in neighbouring countries with unstable Albanian minorities,⁷²⁵ further destabilising their governments and throwing the whole region into unrest.⁷²⁶ Finally, it was feared that the independence of Kosovo might set a precedent that would spur independence claims not only within Albanian inhabited areas elsewhere but also from Republika Srpska, reviving further quarrels and nurturing unrest. In all these cases, the international community could not afford to risk resolving a local problem by setting off a 'domino' effect, starting more unrest in a region that already suffered its share of instability, as argued in the following section case by case.

i) Former Yugoslav Republic of Macedonia

The last Republic of the Yugoslavia to declare independence, the Former Yugoslav Republic of Macedonia claims to be the 'Switzerland of the Balkans' thanks to its unusual peaceful transition towards statehood in the context of the breakup of Yugoslavia.⁷²⁷ Yet by 2001, the spectre of conflict had emerged in the Southern Republic. Macedonia, neighbouring

⁷²¹ Kostovičová 2008, *Op. Cit.*, p. 639.

⁷²² Feilcke-Tieman, A., 'Rugova et Zivkovic s'expriment sur l'Avenir du Kosovo' in *Koha Ditore*, 16 June 2003.

⁷²³ Situated in mountainous areas difficult to control, ie the steep Rugova Valley between Montenegro, Kosovo and Albania. Regarding cross-border traffic and crime cf. Glenny, M., *McMafia: Crime Without Frontiers*, Bodley Head, London, 2008.

⁷²⁴ Glenny 2008, *Op. Cit.*

⁷²⁵ Montenegro, Serbia, Macedonia.

⁷²⁶ Ordanoski, S., 'Contre l'Indépendance du Kosovo' in *Forum*, 4 November 1999.

⁷²⁷ Later on Macedonia. Concept first promoted by Ivan Michailov, leader of the Macedonia liberation movement (*Vnatrešna Makedonska Revolucionerna Organizacija, VMRO*) in his book *Macedonia: a Switzerland in the Balkan* (1950), cf. Michailov last interview in 1989 published in *Democratsia*, Sofia, 8 January 2001.

Albania and Kosovo, has a large ethnic Albanian minority.⁷²⁸ Far from the idea Ivan Michailov had in mind, but aware of the significance of its Albanian minority, the 1991 Constitution featured the political recognition of its minority groups and incorporated provisions to defend their political participation.⁷²⁹ Yet it did not enable those groups to be well represented in public administration and security services, and did not adequately provide for the use of their language for administrative matters.⁷³⁰ A multiethnic coalition helped to shape the political scene of Macedonia into ‘non transparent and elitist modes of decision making’, but had little effect on the reinforcement of a multiethnic character of the society as had been expected from this type of political cooperation.⁷³¹ The different groups within the society lived side by side, but exchanges were kept to a minimum and allowed the deepening of divisions between groups. In fact, elite deals within majority parties did little to enhance the development of a healthy democratic multiethnic state. As the decade passed, these bargaining elites failed to resolve the growing discontent of the Albanian minority. Although the 1991 Constitution recognised minority groups – considered as ‘national minorities’ – the state of Macedonia was recognised as the fatherland for all Macedonian people, leaving the so called ‘national minorities’ with a sense of non-belonging.⁷³²

In 2001, ethnic violence erupted in the Albanian inhabited zones in the north/north east of the republic bordering with the province of Kosovo. The events that started the unrest are still unclear. Violence from militarised Albanian groups started against Macedonian military forces, and intensified with time to involve increasing attacks against civilians.⁷³³ The demands of those militarised groups were also unclear and evolved over time to include the whole spectrum from total independence for the Albanian inhabited areas, to the recognition of their status as constituent people, to calls for a simple revision of the constitution and extended local self-government powers.⁷³⁴ The first demand was negatively received by both

⁷²⁸ Roughly between 25 and 40%. 17 % according to Republic of Macedonia State Statistical Office, *Census of Population, Households and Dwellings in the Republic of Macedonia, 2002*, Skopje, 2005, p. 34.

⁷²⁹ Constitution of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia*, No. 51/1991.

⁷³⁰ Dimitrova, K., ‘Municipal Decisions on the Border of Collapse: Macedonian Decentralisation and the Challenges of Post-Ohrid Democracy’ in *Southeast European Politics*, vol. 5 (2-3), 2004, p. 173.

⁷³¹ Dimitrova, *Ibid.*, p. 174.

⁷³² ‘[A] common home for the Macedonian people with the nationalities living in the Republic of Macedonia’, 1991 Constitution, preamble; Cf. Hayden, R., ‘Constitutional Nationalism in the Formerly Yugoslav Republics’ in *Slavic Review*, vol. 51 (4), 1992, pp. 654-673.

⁷³³ Linked to cigarette smuggling; cf. informal conversation with Robert Curris, Internal Crisis Group, Prishtina, December 2001; also Glenny, M., ‘Criminal Gangs Running the Balkans’, BBC news, 21 April 2001.

⁷³⁴ Treneska, R., ‘Multiethnic Coexistence in the Republic of Macedonia Before and After the Conflict of 2001’ in Dimitrijevic, N. & Kovacs, P. (eds), *Managing Hatred and Distrust: The Prognosis for Post-Conflict*

the international community and the Macedonian government; both feared the disruption of the regional and ultimately, international order. Furthermore, the carving out of an ‘Albanian’ territory would prove difficult as the population is not homogeneously distributed on clearly demarcated territories. Besides, giving in to Macedonian Albanian nationalists’ demands, it was feared, would open the door to further disruptions in Kosovo, Southern Serbia and eventually to the Albanian populations living in Montenegro. The second demand proved equally as problematic for the government, since the title of ‘constituent people’ in the Yugoslav context has attached to it the right to national self-determination. Recognising the status of Albanians as a ‘constituent people’ would be a tacit agreement to give them the option to secede in the future, providing fuel for further nationalistic disruptions. The Ohrid Framework Agreement that was eventually signed on 13 August 2001 thus responded to the final and most acceptable demand for decentralisation.

Despite the settlement reached in the Ohrid agreement, tensions between ethnic Macedonians and Macedonian Albanians remained vivid. Certain essential provisions of the agreement, such as the return of refugees, failed to be implemented. Furthermore the governmental coalitions, inclusive of the Albanian representatives, did not seem to consider it as a priority. Considering the still tense situation in the country, it seems fair to appreciate the potential danger that a weak Kosovo would represent for its southern neighbour. If long-lasting violence erupted in Kosovo, there would be a risk of a spill over effect with a potential crossover of arms and paramilitaries into Macedonia. In the same way, a corrupted or weak government in Kosovo could encourage further illegal trade.⁷³⁵ Finally, the Macedonian government feared that an independent Kosovo would trigger a potential reaction within the Macedonian Albanian community for secession or the promotion of a pan-Albanian agenda.⁷³⁶

ii) Southern Serbia

In the same way, after the allies’ bombing and the establishment of an international ‘protectorate’ in Kosovo, further violence erupted in the Albanian inhabited territories of

Settlement in Multiethnic Communities in the Former Yugoslavia, Local Government and Public Service Reform Initiative, Open Society, Budapest, 2004. p. 228.

⁷³⁵ Cf., Glenny 2008, *Op. Cit.*

⁷³⁶ International Crisis Group, *Pan-Albanianism: How Big a Threat to Balkan Stability?*, Europe Report No. 153, 25 February 2004; Rusi, I., ‘La Macédoine n’est pas Gagnée par le Syndrome du Kosovo’ in *IWPR*, 23 March 2004; Dimevski, S., ‘La Macédoine Ignore (Dangereusement) les Réalités du Kosovo’ in *Utrinski Vesnik*, 20 May 2005.

Southern Serbia bordering with Kosovo. In 2000, the Liberation Army of Presheva, Medveđa, and Bujanoc (*UÇPMB*) called for autonomous status on the same grounds as their Kosovo counterparts.⁷³⁷ In fact, more than autonomy, they demanded to be reattached territorially to the neighbouring autonomous province on the basis of their ethnic appurtenances. At this stage, the political connection between Kosovo's politicians and the Albanian elites of Southern Serbia is unclear. However, it seems fair to consider that underground groups within Kosovo did provide the necessary men and artillery resources for the development of the *UÇPMB*.⁷³⁸ A contributing factor to the development of this guerrilla group is the fact that three municipalities were situated within a buffer zone imposed on the Yugoslav army after the military settlement of Kosovo.⁷³⁹ Serbia blamed NATO forces for not letting them use the necessary policing capacity within this buffer zone while not ensuring a proper control of the border and letting paramilitaries enter from Kosovo. Nevertheless the conflict remained mostly limited, with a minimum displacement of population and a few altercations between the local police and the guerrilla group.

After the fall of Milošević, the new Serbian government entered into negotiations with local representatives. Unwilling as it was to grant them at this stage either the redrawing of borders with Kosovo or formal autonomy, the parties negotiated a compromise granting the three municipalities a certain degree of autonomy through partial decentralisation, while the paramilitary groups agreed to dissolve and stop their secessionist activities.⁷⁴⁰ As this and the Macedonian episodes demonstrate, there is a genuine concern about the capacity of the situation in Kosovo to influence the behaviour of Albanian communities in neighbouring countries. The March 2004 violence clearly demonstrated that militaristic extremist forces were active in Kosovo. The question was then raised as to what extent the new Kosovo institutions would have the capacity to control them in a future autonomous or independent Kosovo, assuming they would not support them.⁷⁴¹ Although violence in those three municipalities has been negligible since 2001, Belgrade is aware of the growing potential problem they might represent should they recognise Kosovo's independence. In fact the

⁷³⁷ Named after the three municipalities concerned Preševo, Bujanovac and Medveđa.

⁷³⁸ 'Presevo Valley Tension' in *BBC News*, 2 February 2001; Pettifer, J & M. Vickers, *The Albanian Question: Reshaping the Balkans*, I. B. Tauris, 2007, p. 263.

⁷³⁹ Ground Safety Zone (GSZ); Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, Kumanovo, 9 June 1999, § 3 e).

⁷⁴⁰ Čović Plan, May 2001.

⁷⁴¹ Bardos, G., 'Containing Kosovo' in *Mediterranean Quarterly*, vol. 16 (3), 2005, p. 23.

region became a bargaining chip for Belgrade, as the proposal considering the exchange of the three municipalities of Preševo, Bujanovac and Medveđa against the northern region of Kosovo in case the province attained independence demonstrates.⁷⁴²

iii) Montenegro

The ‘Albanian’ issue seems to have had slightly different consequences in the case of Montenegro. Numbering 7% of the population, the Albanian population in Montenegro has never really presented a challenge to the government and, until now, there has been little sign of tensions involving ethnic Albanians and other ethnic groups in the republic.⁷⁴³ In fact, part of the explanation can be found in the strategy of Montenegro’s emblematic politician Milo Đukanović, who targeted ethnic Albanians’ electoral support, including in the crucial secession referendum to leave the State Union with Serbia in 2006.⁷⁴⁴ The interrelationship between Montenegro and the final status of Kosovo concerned, until 2006, the membership of the Republic in the shadow successor entity to Yugoslavia along with Serbia. Although Montenegro was the only Former Yugoslav Republic to stay within the Yugoslav Federation after its dissolution, from 1997 on the Montenegrin Government, lead by Milo Đukanović questioned the politics and control of Serbia over the federal entity. As a result of the catastrophic economic consequences of the embargo imposed on Yugoslavia after the Croatian and Bosnian conflicts and the increasingly nationalist politics of Milošević, Montenegro started to publicly acknowledge its political and diplomatic differences with Serbia. During the bombing of Serbia and Kosovo, Montenegro officially remained neutral and maintaining a pro-western discourse in the hope of gaining support from the West for its aspiration to leave the Federation. Finally in 2001, despite the fall of the Milošević regime, Đukanović called for a referendum of independence. Concerned about the effect the secession of Montenegro would have on an economically and politically weakened Serbia and the general objection to another micro state in an unstable region, the European Union used their influence to reconcile the two parties into remaining within one state.⁷⁴⁵ In early 2002, Javier Solana secured an agreement between Serbia and Montenegro to remain within a looser confederal arrangement, with the option of holding a referendum on independence after

⁷⁴² Kamberi, B., ‘Les Albanais de la Vallée de Presevo et les Discussions Sur le Statut du Kosovo’ in *Hapi / Korak*, May 2005; Kostić, S., ‘Les Albanais du Sud de la Serbie vont Peser sur les Négociations au Kosovo’ in *Hapi Korak*, January 2006.

⁷⁴³ 7% - Montenegrin Statistics Institute, 2003 Population Census cited in Coppieters 2004, *Op.Cit.*, p. ¹⁰⁹.

⁷⁴⁴ Lazarević, N., ‘Montenegro Independence by Minority?’ in *Transition Online*, 4 November 2006.

⁷⁴⁵ Kullashi, M., ‘La Solution du Compromis’ in *Zëri*, 23 March 2002.

three years of cohabitation. The aim behind this provision was that the liberalisation of the framework and the supervision from the European Union that it involved would have been enough to convince Montenegrins to see their interest in staying within a union with Serbia. In March 2002, the Federal Republic of Yugoslavia became officially the State Union of Serbia-Montenegro,⁷⁴⁶ which was officially dissolved with the creation of two independent states after a referendum on independence held in Montenegro in 2006. This dissolution of the State Union had three important consequences for Kosovo: (1) it indirectly affected the Serb national consciousness and Serbian politics; (2) it had an influence on the options of status open to the province; and (3) it reflected on the credibility of the European Union's capacity to undertake such a responsibility.

First, the independence of Montenegro was experienced in the Serbian national consciousness as a further blow to the Serbs' supremacy within the former Socialist Federal Yugoslavia. Second, Kosovo Albanian politicians argued that according to the wording of Resolution 1244, Kosovo was legally under Yugoslav and not Serbian sovereignty. Should Montenegro decide to leave the Federation, there should not be any obligation on Kosovo to stay on with Serbia. Members of the political extremist fringes further argued that the dissolution of the Federation into the State Union was enough to justify the immediate independence of the province, which despite being part of the Federation – according to Resolution 1244 – had not been invited to the negotiations on the creation of the new state. Although all those arguments appear farfetched, they remain relevant when considering the options open to the province. Yet, in 2002, the Constitution of the State Union of Serbia and Montenegro made sure to fix the imprecise wording of the Security Council Resolution by explicitly stating that 'the state of Serbia which includes ... the Autonomous Province of Kosovo and Metohija',⁷⁴⁷ thus making Kosovo an official sub-unit of the Federal state of Serbia.⁷⁴⁸ This establishes the clear sovereignty of Serbia rather than Yugoslavia over Kosovo. Thus, when Montenegro attained its independence in May 2006, despite some criticisms in Kosovo, the granting of formal independence to Kosovo was never a realistic issue.

⁷⁴⁶ Shala, B., 'L'Accord Serbo-monténégrin vu de Pristina' in *Zéri*, 15 March 2002; Bushati, A., 'La Promesse Oubliée de Rambouillet' in *Korrieri*, 19 March 2002; Isufi, P., 'Les Kosovars Nerveux à Propos du Statut Final de la Province' in *IWPR*, 11 November 2002.

⁷⁴⁷ Constitutional Charter of the State Union of Serbia and Montenegro, 14 March 2002, preamble.

⁷⁴⁸ Constitutional Charter 2002; Aliu, L., 'L'Union de Serbie-Monténégro vue de Pristina: une "Aggression Constitutionnelle"' in *Koha Ditore*, 6 February 2003.

Finally, the inability of the European Union's multi-layered framework to provide enough guarantees to convince the Montenegrins to remain within the State Union with Serbia raised some doubts over Brussels' ability to deal with the more delicate case of Kosovo. The economic advantages incorporated into the framework had not proved attractive enough while the coercive mechanisms had completely failed to convince Montenegrins to trust the international actors to protect them from Serbian hegemonic tendencies. The framework appears to be too weak to deal with the roots of the suspicions and resentments present in Kosovo. It would need to be drastically reconsidered to enable a peaceful guarantee to the province to proceed towards a long-term, peaceful and sustainable status.

iv) **Albania**

In the case of Kosovo's last neighbour, the Republic of Albania, the consequence of the final status is not a problem of a spill over of instability, but concerns the regional and international fear of the consequences of a potential 'Greater Albanian' scheme.⁷⁴⁹ The fear of a Greater Albanian movement following the possible independence of the province finds ground in both Southern Serbia and Macedonia, where local secessionist groups seem to find support among extremist and criminal groups based in Kosovo. Thus, it is important to evaluate the Albanian position on possible irredentist claims. Although opponents to Kosovo's independence have developed this argument, the proponents of a Greater Albania seem to be limited to a set of small, non-powerful groups enjoying little support from the political elites in both Kosovo and Albania.⁷⁵⁰ Despite their primordial ethnic ties, Albania and Albanian minorities across the Balkan region are economically, politically, socially, and to some extent culturally, very different.⁷⁵¹ Those differences are explained mainly by the different political cultures in which the different parts of the Albanian population have evolved since 1912. Suffering from deep economic and social problems following the forty years of its Stalinist regime, Albania is despised by the Kosovo Albanians who, under Tito, had better economic and living conditions.⁷⁵² Although the economic trends of both territories

⁷⁴⁹ Although the growth of organised crime in Kosovo could have some effect in Albania and ultimately weaken the fragile emerging democratic government in Tirana.

⁷⁵⁰ See also Kola, P. 'Is Greater Albania a threat?' in di Lellio, A. (ed), *The Case for Kosovo: Passage to Independence*, Anthem Press, London, 2006, p. 192; International Crisis Group 2004, *Op. Cit.*; Maraku, I., 'La "Grande Albanie" n'a pas la Cote à Tirana' in *Osservatorio sui Balcani*, 8 February 2005.

⁷⁵¹ i.e., significant cultural differences between the Tosks issued from Southern Albania which have primacy in Tirana, thus in official organs of the Republic and the Gheg majoritarian in northern Albania, Kosovo etc.; Pettifer and al., *Op. Cit.*, p. 48; Dérens, *Op. Cit.*, pp. 154-155.

⁷⁵² ICG 2004, *Op. Cit.*

seem now to be reversed and despite the existence of a minority that claims that the two ancestral lands should be reunited, no credible Kosovo politician is ready to give credit to such a political move. After the 1997 economic collapse of Albania, Tirana has put a lot of its efforts into rebuilding the country economically and politically. Turning towards the West, Albania, like other Western Balkan states is tuned towards membership of the European Union, having entered into preliminary talks to join the stabilisation and accession framework in 2003.⁷⁵³ Consequently, no official in Tirana would be ready to compromise Western support for what they only consider now as ‘cousins’.⁷⁵⁴

v) Republika Srpska

Finally, beyond the implication of the Kosovo question for its neighbours, the final status of the province entails possible repercussions for the federal entity of Republika Srpska. Under international law, as the Badinter Commission stressed, both Kosovo and Republika Srpska have the same status.⁷⁵⁵ According to the Commission, both Kosovo’s Albanians and Bosnia’s Serbs are only entitled to internal self-determination as provided by their minority status. The parallel drawn by the Badinter Commission between the two territories has potentially important consequences. Should Kosovo be granted more than the autonomy enjoyed by Republika Srpska within Bosnia-Herzegovina, fears that the Bosnian Serbs might ask for a reappraisal of their status have appeared.⁷⁵⁶ In addition, the future of the two territories has been further intertwined with a proposal of an exchange of territory, where Serbia would gain Republika Srpska in compensation for the loss of its province.⁷⁵⁷ However this argument has not received much support from traditional parties in Belgrade, and in any case does not make much sense politically and legally. It is very hard to justify under international norms the settlement of a national problem by involving and destabilising another state. In addition, if the logic is pursued, the question of the compensation of Bosnia Herzegovina for the loss of Republika Srpska would arise, and there are serious doubts that

⁷⁵³ Partos, G., ‘Les Albanais Tentent d’apaiser les Inquiétudes de l’Occident’ in *IWPR*, 1 August 2000; Adili, B., ‘La Question Albanaise et l’Intégration Euro-atlantique’ in *Fakti*, 19 November 2002.

⁷⁵⁴ Raxhimi, A., ‘Les Frères sont devenus de Lointains Cousins’ in *AIM*, 17 September 1999; Kola, *Op. Cit.*, p. 191; Tröbs, *Op. Cit.*, pp. 69-70.

⁷⁵⁵ European Community Conference on Yugoslavia, Arbitration Commission, Opinion No. 2. 11 January 1992.

⁷⁵⁶ Ivanic, M., ‘L’indépendance du Kosovo et Methohija provoquerait une Reaction en Chaine’ in *Tanjung*, 13 November 2006; Pond, E., ‘The EU Test in Kosovo’ in *The Washington Quarterly*, vol. 31 (4), 2008, p. 99.

⁷⁵⁷ Vojislav Selsej, see also Kotsovilis, S., ‘Problems of Multiethnic State-Building in the Post-Conflict Balkans: Western Hopes on Paper, Balkan(ized) Realities on the Ground’ presented at the ASN 10th Annual World Convention, New York, April 2002.

the international community would accept the endless redrawing of borders in this unstable region.

The political and legal settlement of the province will have important consequences for the stability of the region. Whatever the positions of Belgrade, Prishtina and the Kosovo Serbs, the negotiation of the settlement of the status question should also consider the potential repercussions it will have on its unstable neighbours. For this reason, arguments for a regional settlement of the Kosovo issue have developed, offering the opening of negotiations not only between Belgrade and Prishtina, but also involving the other regional neighbours.⁷⁵⁸ In addition to securing the fulfilment of regional interests, the aim of this proposal is to add a regional guarantee to the settlement by neighbouring countries. Regional implications and indeed the consequences the issue of Kosovo has for the stability of the fragile region are important concerns for the design of the final status of the province, if for no other reason than to secure a successful exit from the Kosovo problem.

d. Definition of Kosovo in the International Order

The last critical element in the settlement of the political and legal status of the province is the international dimension of the problem. What should/would be the position of Kosovo within the international community? Besides the national dimension, the nature of the conflict and its repercussions has propelled what was primarily an internal matter onto the international scene. As observed throughout this research, all legitimate developments in the province inevitably revolve around the politico-legal definition of the province in international terms, despite the international administration's attempts to focus the political debate on more concrete and practical issues relevant to the well-being of its population. As the province's institutional maturity has been circumscribed within the international legitimacy framework rather than a national one, the settlement of Kosovo's status requires support on the international scene and will receive careful international scrutiny.⁷⁵⁹ Nonetheless, the international community has been divided over the issue of Kosovo, especially as regards what might be politically and legally acceptable in international terms. Ultimately, understanding the position of the main actors and what they are ready to support

⁷⁵⁸ Project on Ethnic Relations, 'Kosovo 2005: Assuring Security for the Neighbourhood', Bucharest, 13 November 2004.

⁷⁵⁹ Server, D., 'Il faut un Engagement Fort des USA et de l'Union Européenne' in *IWPR*, 10 October 2003.

and accept becomes relevant to capturing the international dimensions of the issue as well as its implications for the province itself.

i) The United States

From the beginning of their involvement in the Kosovo question, the United States has favoured, along with the European Union, the settlement of the problem within the context of Yugoslavia for practical reasons.⁷⁶⁰ They did not see with a favourable eye the creation of another micro state in such an instable region as the Balkans. Despite their clear lead in involving the international community to settle the dangerously deteriorating situation in 1999, the new Republican administration, elected in 2000, attempted to withdraw from this role, leaving primacy to the European Union for ideological reasons – the Western Balkans should primarily be a European issue – and practical ones – the strain the war on terror was putting on American resources. Yet, their strategy was rather short-lived as, with the outbreak of further violence in Kosovo and the clear inability of the international administration to regulate the tensions in the province,⁷⁶¹ the United States acknowledged the need for stronger political involvement on its part and signalled its determination to ‘place a high priority [to] help to lead international efforts to stabilize the Balkans’.⁷⁶² Following the first anniversary of the March 2004 riots against the Kosovo Serbs and the international administration, the new Secretary of State Condoleezza Rice reiterated the conviction of the United States that it would be necessary for the new Kosovo institutions to meet strong standards in order to pursue a long-term final settlement. Yet, the American administration also emphasised the need to pursue negotiations over the status issue as soon as possible in order to avoid further violence and destabilisation in the region.⁷⁶³ On 18 May 2005, the Under Secretary of State for Political Affairs, Nicholas Burns, presented a statement in front of the House Committee on International Relations advocating the need for a rapid opening of negotiations between the different local parties regarding the status.⁷⁶⁴ Although the United States refrained from advocating any final solution, Burns reiterated that the criteria defined by the Contact Group should serve as ‘basic principles [which] should guide a settlement of Kosovo’s final

⁷⁶⁰ Tröbst, *Op. Cit.*, p. 61.

⁷⁶¹ Cf. Bardos, *Op. Cit.*

⁷⁶² Burns, N., ‘Kosovo: Current and Future Status’, Statement before the House Committee on International Relations, 18 May 2005; Bjelica, J., ‘Des Experts Américains Préparent une Constitution pour le Kosovo Indépendant’ in *Danas*, 17 February 2005.

⁷⁶³ Holbrooke, R., ‘New Course For Kosovo: Rice Makes Her Presence Felt’ in *The Washington Post*, 20 April 2005. Page A25.

⁷⁶⁴ Burns, *Op. Cit.*

status'.⁷⁶⁵ Yet, he also emphasised the need for Belgrade 'to accept some change from the pre-1999 situation'.⁷⁶⁶ Although the United States' objectives as presented by Burns remained as vague as the terms of resolution 1244 over the issue of status, the repeated warnings towards Belgrade seem to confirm the general feeling within international circles in Kosovo that anything less than independence would be hard to obtain support for from any Kosovo Albanian negotiating team.⁷⁶⁷ As Richard Holbrook noted: 'Belgrade will have to accept something politically difficult: giving up Serbian claims to Kosovo ... the Serbs will have to choose between trying to join the European Union and trying to regain Kosovo. If they seek their lost province, they will end up with neither'.⁷⁶⁸ The position of the chief negotiator of the Dayton peace accords and United States Ambassador to the United Nations from 1999 to 2001 reflects well the unacknowledged policy that the United States pursued on the issue of Kosovo, and its stance as regards the settlement of the Kosovo issue.

The post-2004 renewed efforts of the American administration to be more active on settling the issue of Kosovo illustrated a number of important trends in the attitude of the United States towards the future of the province. First, the United States was determined to deal with the issue and commit to the stability of the region. Second, any decision had to be taken with the consent of the European Union, which the US considered ultimately as the guarantor of the region's stability through its multilayered frameworks.

ii) The European Union

In line with its North Atlantic Alliance ally, the European Union was not inclined to further instabilities at its doorstep and favoured the resolution of the Kosovo question within the Yugoslav state. Aware that the *status quo* was not sustainable and would only lead to further instability, the EU favoured at first a peaceful transition of the province within the Federation, under the supervision of their Stabilisation and Accession process.⁷⁶⁹ As the situation in the province deteriorated and proactive involvement was required, the European Union joined the international mission as its fourth and crucial pillar in charge of the reconstruction and development of a sustainable economy in the wrecked province.⁷⁷⁰ Unable

⁷⁶⁵ *Ibid.*

⁷⁶⁶ *Ibid.*

⁷⁶⁷ Interviews with David Carne Ross, Strategy Coordinator, SRSG Office, UNMIK, Prishtina, 18 June 2004; Carel Brands, 1st Secretary, Dutch Liaison Office, Prishtina, 16 June 2004.

⁷⁶⁸ Holbrooke, *Op. Cit.*

⁷⁶⁹ Tröbst, p. 61; Noutcheva and al, *Op. Cit.*, p. 144.

⁷⁷⁰ Resolution 1244, § 17.

to lead the mission for ethical and practical reasons,⁷⁷¹ the European Union nevertheless aimed to play a more significant political role beyond mere economic and technical reconstruction, in particular on the issue of the long-term settlement of the status of the province.⁷⁷²

However, across the policies and actions of the European Union on the settlement of the Kosovo issue lies one core issue with serious consequences, with its endemic internal divisions at two levels: (1) specifically as regards Kosovo; and (2) more generally concerning the European Union's integration and geostrategic political future.⁷⁷³ From the beginning of Brussels' involvement, there has been a clear divergence among member states about the degree of support to Kosovo Albanians' national self-determination demands, with clear opposition to uncontrolled self-management from a number of member states based on two grounds: first, the fear that the fulfilment of the Kosovo Albanians' independence claims would be regarded as a precedent by secessionist movements within their own borders – e.g. Spain, Cyprus; second, the fear the regional stability would be shaken by the rise of an Albanian nationalist and secessionist core within the Balkans – i.e. Greece, Bulgaria. This divergence of opinion among its member states triggered the lack of a clear common policy from the European Union on a subject crucial to its strategic concerns. Besides the damaging consequences this lack of consensus has on its credibility as a core international actor, it has a further harmful effect over its ability to deal with the problem at hand.⁷⁷⁴ In particular, the lack of an articulate common policy further enhanced the division within European institutions. In 2004, faced with the need to react in a coherent manner, but unable to obtain a clear position from the council of ministers, the High Representative for the Common Foreign and Security Policy Minister, Javier Solana, had a liaison office opened to influence negotiations alongside the member states' and European Union's liaison offices.⁷⁷⁵ This trend reflected the divisions within the European Union regarding the allocation of competences and the question of the future of the province, and occurred both along national lines and institutional ones.

⁷⁷¹ Ethical: the multilateral dimension of the mission grants it legitimacy; practical: lack of efficient financial and institutional mechanism to hold such a responsibility.

⁷⁷² Trenin, D., 'Kosovo: A Case for a European Dayton' in *Frankfurter Allgemeine Zeitung*, 19 November 2007.

⁷⁷³ Pond, *Op. Cit.*, p. 99.

⁷⁷⁴ Surroi, V., 'L'Intégration Européenne et la Question Albanaise' in *Koha Ditore*, 17 September 2002; 'L'Union Européenne, les États-Unis et le Statut du Kosovo' in *Zëri*, 31 May 2005.

⁷⁷⁵ Interview Carel Brands, *Op. Cit.*

Ultimately, internal divisions affected the European Union's ability to impose itself – and its stabilisation framework – as a credible actor and facilitator for the long-term settlement of the issue. In the volume *Europeanization and Conflict Resolution*, Bruno Coppieter and other authors develop through case study analysis a model of European involvement in conflict resolution at its periphery on two levels: first as an actor and then as the provider of a multilateral integration framework.⁷⁷⁶ As actor, it has aimed to play a decisive role in solving the problems, lying as they do within what it ultimately considers as its zone of influence. The American policy of the first Bush administration supported this idea. During his first presidential campaign in 2000, candidate Bush ran his foreign affairs program on scaling down American involvement in Europe and European affairs.⁷⁷⁷ Then, the European Union has developed a multilayered framework of integrative policies towards neighbouring countries which ultimately aspire to join the integrated European institution.⁷⁷⁸ As in the case of earlier Western Balkans countries, the European Union attempted to integrate post-conflict territories through treaty bodies with cooperation and assistance as incentives to settle their internal conflicts. Using a 'carrot and stick' strategy, the European Union aimed to integrate Kosovo in the stabilisation framework which already involves other Balkan states.⁷⁷⁹ As had been done in the case of the State Union solution to Serbia and Montenegro's dispute, the incentive of European Union accession was used to coerce/attract both parties into a settlement.⁷⁸⁰ Yet, in order to integrate it within the European framework, the province crucially needed a defined status *vis à vis* Serbia and the international community. In legal terms it was tricky to justify the integration of Kosovo as a single unit into a framework that usually involves exclusively independent states.⁷⁸¹ Yet, even if Prishtina ultimately sees its future in the European Union for strategic and practical reasons,⁷⁸² it took a dim view of potential conditions that might be linked to this status.⁷⁸³ In the same way, conditions imposed on Belgrade regarding cooperation with the Hague tribunal and the approval of the status of Kosovo, in addition to the inability of the process to prevent

⁷⁷⁶ Coppieter, B. & al, 'Europeanization and Secessionist Conflicts: Concepts and Theories' in Coppieter, B. & al, *Europeanization and Conflict Resolution: Case studies from the European Periphery*, Academia Press, Gent, 2004. pp. 13-62.

⁷⁷⁷ Holmes, S., 'The 2000 Campaign: Foreign Policy; Gore Assails Bush on Plan to Recall U.S. Balkan Force' in *The New York Times*, 22 October 2000, p. 1.

⁷⁷⁸ Coppieter and al, *Op. Cit.*, p. 20-35.

⁷⁷⁹ Kirezi, A., 'Le Kosovo, Maillon de la Complexité Balkanique' in *Karavan*, July 2003.

⁷⁸⁰ Noutcheva and al, *Op. Cit.*, pp. 129-139.

⁷⁸¹ Skopjak, Z., 'Adhésion de la Serbie-Monténégro au Conseil de l'Europe: et le Kosovo ?' in *Evropski Forum*, April 2003.

⁷⁸² Bjelica, J., 'Veton Surroi: l'Avenir du Kosovo Est Dans l'Europe' in *Danas*, 12 May 2005.

⁷⁸³ Haradinaj, R., "Le Kosovo n'est pas le Monténégro, Monsieur Solana!" in *Koha Ditore*, 27 June 2003.

the secession of Montenegro, increasingly weighed on Serbian politics, and ultimately on their cooperation with European institutions.⁷⁸⁴ Furthermore, Prishtina and Belgrade nourish divergent views on how the integration process should be implemented, i.e. whether Kosovo should be integrated as part of Serbia or as an independent state.

As far as the European Union's policy towards Kosovo is concerned, in political terms neither the prospective integration into the Stabilisation and Association process nor the involvement of the European Union as actor has been very enticing in persuading the parties to settle their differences. Yet, the opportunities offered by the European Union to the region remain an essential tool of the international policy for the province to ultimately leave the international governmental framework and play an important role in the settlement of the Kosovo issue.⁷⁸⁵ The question that persists is to determine whether their role in the future settlement of the province's status will be as determinant as the European actor wishes, or just remain another tool in a wider international policy.

iii) Russia

The Russian Federation's conception of the settlement of the final status issue clearly differs from those of its Western counterparts. In terms of political support, despite its continued pro-Serbian and anti-secessionist stances, Russia kept a relatively low profile on the issue of Kosovo's status until the allies pushed towards a settlement. Although they did not abandon the Serbs' claim to the province, it seemed at first that Russia did not want to oppose strongly the other members of the Contact Group whose support they needed on other strategic issues.⁷⁸⁶ Nevertheless, as its Contact Group counterparts pressed for a rapid settlement of the Kosovo issue, clearly in favour of the independence of the province, the Kremlin emphasised the risk that Kosovo would be as international legal precedent, and threatened to recognise other secessionist movements under its sphere of influence. As President Vladimir Putin advocated in a 'prophetic' way:

⁷⁸⁴ Aljaf, B., *Parliamentary, Provincial and Local Elections in Serbia: EU Interferes in the Election Campaign*, International Institute for Middle East and Balkan Studies, Ljubljana, 7 Mai 2008; Also, McMahon, P and D. Forsythe, 'The ICTY's Impact on Serbia: Judicial Romanticism meets Network Politics' in *Human Rights Quarterly*, vol. 30, (2), 2008, pp. 412-435.

⁷⁸⁵ Bickel, M., 'L'Union Européenne Va-t-Elle Remplacer les Nations Unies?' in *IWPR*, 14 October 2004; Pond, *Op. Cit.*, p. 99.

⁷⁸⁶ i.e. Kamperi, B., 'What Does Belgrade Proposes?' in *Zëri*, 11 May 2005; Judas, T., 'Kosovo Faces Renewed War' in *Dawn/The Guardian News Service*, 30 May 2005.

'If someone believes that Kosovo should be granted full independence as a state, then why should we deny it to the Abkhaz and the south Ossetians? I am not talking about how Russia will act... However, we know that Turkey for instance, has recognised the Republic of Northern Cyprus. I don't want to say that Russia will immediately recognise Abkhazia or South Ossetia as independent, sovereign states, but such precedents do exist in international practice.'⁷⁸⁷

At the international level, it is clear, from the Security Council resolution 1244 and the evolution of the international administration, that the legitimacy of the mission and of its policies increasingly relied primarily on its ability to maintain international order, as measured in two ways: (1) The lack of violence within the province, and (2) maintenance of international boundaries. This trend can be observed in the attention of the international community, slowly shifting away from improvements in the policies implemented to bring about the political improvements necessary for the sustainability of any status resolution, to being increasingly concerned with the potential impact of the settlement over the international order. At the beginning, the administration's progress in securing stability was closely monitored, as observed within the successive General Secretaries' mission reports or the fact that the settlement talks were initially conditioned on the ability of the local parties to set in place the right conditions for the settlement of status. Yet, the constant push from local actors to settle the status issue despite their inability to find a common ground to solve technical problems brought the international community to consider alternatives to avoid any international spill over of the conflict. Evidence of the trend can be observed in the focus of international assessment missions that were organised after the 2004 *tour de force*. In particular, one can point to the Eide and Ahtisaari reports, which focused on settling the status alternative despite the lack of social, economic and political cohesion within the province, but also to the evolution of the rhetoric used within the Security Council itself, which showed a growing concern for international rather than local stability.⁷⁸⁸ The fact that the international decision to finally resolve the issue coincided with the rise of violence in the region clearly sent a mixed message to secessionist movements that violence indeed attracts international attention.

⁷⁸⁷ Vladimir Putin speaking at his annual news conference in the Kremlin on 2 February 2006 quoted in Bugajski, J., 'Is it True that the Independence of Kosova would Destabilise the Balkans and Endanger the Possibility of Stabilising other Areas of the World, for Example Chechnya or Nagorno Karabach?' in di Lellio, A. (ed), *The Case for Kosova: Passage to Independence*, Anthem Press, London, 2006. pp. 196.

⁷⁸⁸ Cf. Reports of the Secretary-General to the Security Council on the United Nations Administrative Mission in Kosovo; United Nations Security Council meeting records, S/PV.5839, 18 February 2008.

2. *Status Alternatives*

To provide a solution to those different concerns, the International Independent Commission identified five potential alternatives to regulate the relationship of Kosovo *vis à vis* Serbia: (1) protectorate; (2) partition; (3) full independence; (4) autonomy within a democratic Federal Republic of Yugoslavia; and finally (5) conditional independence. Those alternatives responded to the situation of Kosovo at the time of writing, 1999/2000. Indeed, some of those options were gradually waved away following developments and realities on the ground. In particular, the first option was never seriously considered by an international community that was neither ready nor able to commit itself to a long and costly mission in the region.⁷⁸⁹ Although the United Nations Administrative Mission to Kosovo was often compared to an effective international protectorate, the March 2004 violence against the international mission demonstrated the limits of this option. The remaining proposals are hereafter examined in order of the increasing degree of autonomy for the province which they entail.

a. **Autonomy within a Democratic Federal Republic of Yugoslavia**

This option, in line with resolution 1244, proposed that Serbia retain sovereignty over Kosovo, while Kosovo's Albanians could enjoy a large degree of autonomy on matters of their interests. Late Prime Minister Zoran Đindjić's used this alternative as the base of his own proposal, which offered Kosovo Albanians an asymmetric federalism in which they would enjoy a large autonomy over internal affairs while Serbia would limit its prerogatives to foreign affairs and other matters strictly relative to the interests of Serbia.⁷⁹⁰

At the time of the Independent International Commission report's publication, the fall of Milošević had just occurred. Changes in the Serbian political scene bolstered hopes within the international community that the new Serbian government would have a more lenient approach towards the issue of Kosovo and that democratisation in Serbia would temper the Kosovo Albanian extremists' call for independence. However, those hopes did not materialise. The new Serbian government faced a country in deep economic, social and political crisis. In addition to high unemployment and a society still alienated by the Milošević era and the successive Yugoslav wars, the Kosovo issue remained high on the

⁷⁸⁹ Cf. Caplan, R., *International Governance of War-torn Territories: Rule and Reconstruction*. Oxford University Press, Oxford, 2005, p. 179.

⁷⁹⁰ Ognjanovic R., 'Djindjic: le « Modèle Chypriote » pour le Kosovo ?' in *Vecernje Novosti*, 6 March 2003.

Serbian political agenda and discourse. In addition, the federal context and the push from Montenegro for a political transition from the Federal Republic to a State Union weighed heavily on the development of a stable democratic regime capable of dealing with maturity with such a sensitive issue as Kosovo. Besides, the Kosovo Albanians did not see the nationalist rhetoric of the new Serbian president, Vojislav Kostunica (DDS) as being more lenient than was Milošević's. The strong Kosovo Albanian belief that eight decades of Serbian domination were enough, sustained the determination to push for outright independence.

After the death of Đindjić and the opening of formal negotiations over the status of the province between the conflicting parties in 2006, Serbian politicians held on to the belief that Kosovo should be granted 'more than autonomy, less than independence',⁷⁹¹ failing to explain how this would be achieved in institutional terms. To have any real chance to be considered, the degree of autonomy would have been rigorously defined as well as its implications for the European integration framework. Nevertheless, faced with the uncompromising stance of the Kosovo Albanians over the issue of autonomy, this alternative never really proved realistic in either national or international circles.

b. Kosovo as an Entity of the Federation of Yugoslavia

The second option offered to the province was to become a formal entity of the Federal Republic of Yugoslavia – later State Union of Serbia-Montenegro – on an equal footing with Serbia and Montenegro. This option received criticism from both parties, although it represented a balanced compromise between the mutually exclusive claims of both parties. In this proposition, Serbia would have lost its sovereignty over the province while Kosovo would not quite reach independence. This solution gained the support of the United States and the European Union, which since the beginning of their involvement, made the point that they were not ready to deal with another unstable micro state in the region. The major problem of this solution lay in the fragile relations between Serbia and Montenegro. The year 2006 turned out to be a critical year for the State Union, which was dissolved after a referendum on independence in Montenegro. The insertion of Kosovo and its fragile balance would have, on the one hand further weakened the State Union, and on the other, the dissolution of this fragile state would have provided an argument for Kosovo's Albanians to

⁷⁹¹ Raskovic-Ivic, S., 'More than Autonomy, Less than Independence: A Fair Offer' in *KiM Info Newsletter*, 10 October 2005.

make a final push for independence. To ensure the success of this alternative, the European Union should have played the same role it did for Serbia and Montenegro in 2002 as guarantor of the process and status of each entity. Yet, the limited success of European Union in ensuring the continuity of the State Union beyond the 2006 Referendum cast serious doubts on the ability it would have had in guaranteeing the status of Kosovo in such an institutional structure.

c. Conditional Independence

Proposed by the International Independent Commission in their report, conditional independence implies:

‘expanding the autonomy and self-government promised by 1244 in order to make Kosovo effectively self-governing outside the [Federal Republic of Yugoslavia], but within an international framework. The international community would take responsibility for an initial security guarantee and for overseeing the protection of minority rights and would also integrate Kosovo into an effective stability pact.’⁷⁹²

In effect, this provided for the province to reach independence: (1) under international supervision in the field of security and minority protection; and (2) on the condition that it worked towards fulfilling the criteria set by the stabilisation and accession framework already in place in other states of the region. This option would have granted Kosovo’s Albanians the independence they have been striving for decades, securing a certain degree of regional and national stability while responding to the concerns of its minorities.

Given the weak economic and political condition of the province and the fear that the new political system could collapse within a short period, this alternative was legitimate. Despite European Union policies and efforts to resuscitate the economy and reconstruct the territory, half of the population still remained unemployed and lived under the poverty threshold. In those poor conditions, little success could be expected from a micro state, while threatening to destabilise the whole region. March 2004 and the violent action against the Kosovo Serbs and other minorities reinforced this fear within the international community.

Although the ‘conditional independence’ proposed and supported by the International Independent Commission encompassed the idea of a loose ‘trusteeship’ that would guarantee the stability of the newly independent territory, the term ‘conditional’ was understood as

⁷⁹² ICC, *Op.Cit.*

being linked to a catalogue of stipulations that the new Kosovo institutions would have to fulfil in order to qualify for independence. This understanding was associated with the policy of 'Standards before Status' proposed by the international administration in November 2003 and enforced in April 2004. The Security Council declaration in April 2004 that negotiations towards the resolution of status would not be initiated unless the new institutions proved themselves competent for self-management on the basis of UNMIK standards further reinforced this idea,⁷⁹³ beyond the initial intention of the International Independent Commission. Yet, this declaration is evidence of the uneasiness of the international community and is wedged between local expectations and international *Realpolitik*, ultimately failing to provide a clear-cut answer to the Kosovo issue. Nonetheless, the proposed standards defined by the international administration are indeed crucial components necessary for the sustainability of the province. As the local politicians acknowledged, their capacity to deal properly with the challenges that the province faces is limited. Most of them were happy to recognise the need for international assistance in certain political and economic fields.⁷⁹⁴ Yet, they insisted on the fact that this assistance should be rendered only as technical expertise, without accompanying veto powers going to the international community.

The alternative of conditional independence, already favoured by the International Independent Commission,⁷⁹⁵ remained the most realistic alternative and in fact formed the basis of the Ahtisaari suggestions that were eventually followed at the time of the declaration of independence.⁷⁹⁶ Nonetheless, it faced some opposition from the different local actors. Although the Kosovo Albanian elite recognised the need for international technical assistance and supervision, no one wished to have their status dependent on their achievements. In their minds, the suffering their community underwent in the hands of Serbia should have been enough to justify their secession. On their side, Belgrade maintained their position opposed to any concept of independence. Although conditional independence ensures some protection for their ethnic minority, this alternative was perceived as a further national failure and injustice imposed on Serbia after the dissolution of Socialist Federal Republic of Yugoslavia. Few politicians in Belgrade would, without having any other alternative, accept the loss of Kosovo. Should they have to, they would impose a number of conditions, clearly different

⁷⁹³ United Nations Security Council, 'Security Council Reiterates that Kosovo Standards Plan Should be the Basis for Assessing Provisional Institutions of Self-government', *Press Release*, SC/8082, 4960th Meeting, 20 April 2004.

⁷⁹⁴ Interviews Ramush Haradinaj, *Op. Cit.*; Alush Gashi, *Op. Cit.*; Hajradin Kuci, *Op. Cit.*.

⁷⁹⁵ ICC, *Op. Cit.*, p. 271.

⁷⁹⁶ Pond, *Op. Cit.*, p. 98.

from the ones envisaged by the international community, as they would imply a change of borders and/or an exchange of populations.

d. Independence Alternatives

The last two potential alternatives offered to the province were unconditional independence or secession from Serbia and union with Albania. Both options entail their own sets of concerns at very different levels. Unconditional independence does involve risks over the stability of the region and the protection of Kosovo's minorities. The alternative of the unification of the province with Albania was rejected on the basis of the lack of interest in both Prishtina and Tirana to pursue this alternative.⁷⁹⁷ Besides, in international legal and political terms, the union of Kosovo with Albania would present grave concerns. Such a union would be considered as irredentism. Irredentism is defined as the claim of a state over the population and territory of another generally on historical grounds, and is condemned under international law as a source of instability for the international order.⁷⁹⁸ Should Kosovo reach independence, it would already present a predicament for the international community that might face an outpouring of secessionist threats across the world, and could certainly not afford the further disruptions likely to emerge from the precedent of a successful irredentism claim.

Besides, the accession to independence from the province would further call into question the stability of the Republika Srpska's status. According to the Badinter Commission in charge of arbitrating over the issues of territorial status in the context of the Former Yugoslavia, both Kosovo and the Republika Srpska are subordinated to the sovereignty of states and are therefore entitled only to autonomy within those sovereign states. The question of the repercussions of the accession to independence of Kosovo for the case of Republika Srpska or any other secessionist territory can rightfully be asked. In strict international legal terms, the drawing of legal status parallels between the two entities of the former Yugoslavia is perfectly justifiable.⁷⁹⁹ Depending on the grounds on which the international community justifies the independence of Kosovo rather than any other self-determination movements, such recognition poses a deep legal predicament with broader implications.

⁷⁹⁷ Kola 2006, *Op. Cit*, ICG 2004, *Op. Cit.*

⁷⁹⁸ Musgrave, T., *Self Determination and National Minorities*, Oxford University Press, Oxford, 1997, pp. 211-236.

⁷⁹⁹ Badinter Commission, Opinion No. 2, *Op. Cit.*

Beyond the case of Republika Srpska, the literature has attempted to make parallels between Kosovo and the similar case of East Timor. This comparison rests on the similarity and temporality of the two cases, which benefited from similar international administrative missions. Yet in the case of East Timor, it eventually benefitted from the recognition of its independence after an internationally sponsored referendum. However, in strict international legal terms, both cases cannot be compared, as East Timor gained international support on the basis of its claim to self-determination in a decolonisation context. After the withdrawal of the Portuguese from their South East Asian colonies, Indonesia unilaterally annexed East Timorese territory without giving them a chance to express their right to national self-determination. Thus the referendum organised in 2002 that legitimised the independence of East Timor cannot represent a precedent for the case of Kosovo under international legal terms. Indeed, regardless of the different attempts to compare the cases of Kosovo, Republika Srpska, East Timor or any other self-determination movements, when some members of the international community eventually recognised the independence of the province, they failed to support convincingly the exceptional character of the case of Kosovo in international legal terms.⁸⁰⁰

In conclusion, a large number of options were open to Kosovo's Albanians and Serbs to settle the issue of the province's status. Yet, the international transitional management has clearly not been able to forge a consensus between the parties on the most appropriate solution to pursue. Indeed it has only succeeded in alienating them and reinforced their diverging expectations. As the negotiations over the status of the province were launched, the alternatives favoured by Kosovo Albanians and Belgrade were on diametrically opposite ends on our spectrum of options: the former going for the largest degree of independence, while the latter opted for the minimum. Neither of those two alternatives was realistic, and both sides needed to make concessions to reach a sustainable agreement.

3. *The Way Forward*

After five years of international administration, the riots that occurred in March 2004 revealed that the *status quo* policy pursued by the international community was no longer tenable.⁸⁰¹ Increasing pressure from local elites, but also from the political, social and economic realities of the province convinced the international community to no longer ignore

⁸⁰⁰ Cf. Security Council Meeting Records, S/PV.5839, New York, 18 February 2008.

⁸⁰¹ 'A Comprehensive Review of the Situation in Kosovo', S/2005/635, 7 October 2005. (Eide Report).

the issue of status and assume its responsibilities towards the people of Kosovo, namely: to assist the province in getting out of the constitutional limbo in which it had been in since June 1999; and to solidify its legal and political position on the international scene. In autumn 2004, the United Nations Security General nominated the Norwegian diplomat Kai Eide to evaluate the situation on the ground and to assess the relevance of the opening of negotiations between the parties on the status options. Following the positive response to his report, Kofi Annan further appointed former Finnish President Marti Ahtisaari to launch and supervise the status negotiation and, should the case arise, to advise on an alternative strategy to settle the Kosovo question.⁸⁰²

The remaining section of this chapter maps out the local context in which the initial negotiations between Belgrade and Prishtina began before analysing the specifics of the international settlement proposal. I finish this analysis by assessing the relevance of the unilateral declaration of independence by the Kosovo assembly in February 2008 and observe its consequences for the prospective future of the province.

a. Between ‘Dialogue’ and ‘Negotiations’

After the fall of Milošević, hopes rose in Belgrade of breaking with the isolationism that his politics had buried the country in – with their severe economic consequences – and of opening to the West and more precisely to the European Union’s accession scheme. Indeed, by attempting to appear more conciliatory on certain aspects of sensitive issues such as Kosovo or collaboration with the Hague Tribunal, Serbia wished to benefit from a number of economic advantages to alleviate the economic and social crisis of the Republic. Nevertheless, the legacy of Milošević’s nationalist strategy stood strong at the roots of the Serbian political scene. Kosovo remains to this day too important for Serbian political elites to secure their legitimacy for them to appear to be losing too much ground on the issue to the international community. Beside the hardcore nationalists who have refused categorically to envisage anything else other than the ultimate return of the province to Serbian sovereignty, some political ‘democrats’ or ‘moderates’ were coerced into adapting the traditional Serbian position towards Kosovo. In this context, two broad proposals were supported: those of the

⁸⁰² Judah, T., ‘Négociations, Compromis ou Décision Internationale ?’ in *IWPR*, 18 May 2005; Robelli, E., ‘Kofi Annan Donne son Feu Vert à l’Ouverture des Négociations sur le Statut du Kosovo’ in *Koha Ditore*, 8 October 2005; Bjelica, J., ‘Il est Temps d’Ouvrir les Négociations’ in *Danas*, 10 October 2005.

proponents of the return of the province to the sovereignty of Serbia,⁸⁰³ and those of the proponents of the secession of the province provided that there could be a change of borders and an exchange of ethnic populations.⁸⁰⁴ The latter accepted the realities of the situation and were ready to grant independence to the province provided that all the territories dominated by Serbs were returned to Serbia in exchange for Albanian-inhabited areas in Southern Serbia.

Nonetheless, in recent years, the weight of its socio-economic difficulties and the fear of hard-core nationalist policies that endangered Serbian chances to move on with the European Union accession process has grown within segments of the Serbian population. This trend was reflected in 2004/2005 in the rising popularity of alternative parties such as the G17,⁸⁰⁵ which ran for elections on a pro-European platform, or even what appeared to be a more conciliatory attitude from some Serbian officials to the opening of a dialogue with Prishtina. In fact by 2005, an increasing number of Serb politicians were tempted to acknowledge in private that Kosovo was indeed a weight on the development of Serbia.⁸⁰⁶ Yet, these trends should not be overstated or hide the significance of the unstable politics in Belgrade. Events such as the 2004 election, which saw the Radical Party's victory or the dismissal of Goran Svilanović for his participation in the International Commission on the Balkans report supporting the independence of Kosovo in Spring 2005,⁸⁰⁷ underline the sensitivity of the question in Serbian politics. Indeed, in a country where legitimacy is defined with a strong nationalist rhetoric, supporting in public such announcements would surely result in a political 'suicide', if not actual physical threats.⁸⁰⁸

The divisions within Belgrade over the Kosovo issue are mirrored within the Kosovo Serb population, which became further divided over more pragmatic issues. The international community's inability to protect the Kosovo Serbs from Albanian retaliation in June 1999 and sporadically until March 2004 has exacerbated a lack of trust in the international administration, but more importantly in any Albanian-run government. The 17-19 March

⁸⁰³ This proposition was first suggested by the late Prime Minister Zoran Đindić in 2003. Bilbija, Dj. and Ognjanovic R., 'Djindjic: le «Modèle Chypriote» pour le Kosovo?' in *Vecernje Novosti*, 6 March 2003; Miladinovic, Z., 'Non à l'Indépendance, Oui Peut-être à la Partition' in *Danas*, 11 April 2003; Reformulated by Sanda Rasković, President of the Coordination Centre of Kosovo from 2005, cf. Tasic, J. and Bjelica, J., 'Belgrade et le Kosovo: Souveraineté Serbe, Pouvoirs Etendus pour le Territoire' in *Danas*, 22 September 2005.

⁸⁰⁴ 'Kosovo Partition "on the Table"' in *BBC News*, 12 August 2007.

⁸⁰⁵ Kelmendi, A., 'La Balle est Dans le Camp Albanais' in *Koha Ditore*, 29 May 2003.

⁸⁰⁶ Ahel, I., 'Et si la Serbie Avait Tout Intérêt à Abandonner le Kosovo?' in *IWPR*, 18 May 2005; Lukac, J., 'Le Gouvernement de Belgrade Cherche un Alibi pour Abandonner le Kosovo' in *Danas*, 19 November 2005.

⁸⁰⁷ International Commission on the Balkans, *The Balkans in Europe's Future*, April 2005.

⁸⁰⁸ Hayden, *Op. Cit.*; Cocozzelli, F., 'Kosovo at the Crossroads: Competing Solidarities' in *GSC Quarterly*, vol. 11, 2004.

2004 riots proved that their security and status in the province remained fragile and few could seriously be convinced that life in an independent Kosovo would improve dramatically their living conditions, despite Kosovo Albanian claims. The view that the new institutions developed in Kosovo are the preamble to the independence of the province is widespread. Consequently, the Kosovo Serbs living north of the Ibar River, who are homogeneously distributed and living contiguously to the Serbian border, remained fervent supporters of the return of Serbian sovereignty over the province, and in the worse of case would be ready to accept the independence of Kosovo provided that they were themselves reattached to Serbia proper. For reasons of their inauspicious geography, these views are less supported in enclaves. Independence on the basis of an exchange of population would imply that they would have to leave their homes and properties and move to Serbia, where little is waiting for them. Although they would clearly prefer the return of Serbian sovereignty, they recognise the poor chance that this alternative has and prefer to start preparing for their future through cooperation with the new institutions. What is interesting is that both UNMIK and the international community have tended to concentrate their attentions on extremist elements rather than supporting moderates and building through them a strategy to win the ‘hearts and minds’ of the Kosovo Serb community. In practice, the international community has interacted with Belgrade, which it has taken to be acting on their behalf, demonstrating once more concerns for international rather than local support.

Within the Kosovo Albanian community, no political party was ready to promote anything less than total and full independence.⁸⁰⁹ As the then Prime Minister Kosumi (AAK) made clear, conditional independence would not be an acceptable option.⁸¹⁰ This opinion entered into the political discourse with Serbia, since Kosumi refused to negotiate the future of the province with Belgrade on the grounds that Belgrade had ultimately no say in the running of any independent Kosovo of the future.⁸¹¹ Nevertheless, in private spheres, political leaders were ready to acknowledge the need for concessions provided it would gain them independence.

As early as 2003, the international community attempted to engage the different parties in a dialogue for the sake of the future of the province. In line with the ‘benchmark’ policy initiated by the Special Representative Michael Steiner, the ‘dialogue’ that opened in

⁸⁰⁹ Interviews with Ramush Haradinaj, *Op. Cit.*; Alush Gashi, *Op. Cit.*; Hajradin Kuci, *Op. Cit.*

⁸¹⁰ Local newspapers, reported in UNMIK Local Media Monitoring, 1 April 2005.

⁸¹¹ Local newspapers, reported in UNMIK Local Media Monitoring, 6 April 2005.

Vienna in October 2003 aimed to have Belgrade and Prishtina working together on a number of ‘technical’ issues to improve the conditions of the Kosovo population as a whole.⁸¹² This first attempt met with a number of difficulties, including the inability of the Prishtina delegation, supposedly representing the Kosovo community as a whole, to involve the Kosovo Serbs,⁸¹³ the focus of the discussion remained on the final status of the province despite the international community’s efforts; and ultimately, all of this demonstrated the clear entrenchment of all parties on their mutually exclusive positions.⁸¹⁴

The next round of official negotiations that opened in 2006 under the auspices of former President Ahtisaari did not prove to be more reconciling. Although the Serbian team managed to involve a wide segment of the Kosovo Serb community,⁸¹⁵ beyond the enclave divide, the negotiation team stumbled on similar issues as the obstacles the delegations met in Rambouillet, which ultimately led to the same results.⁸¹⁶ Although in international circles few expected to return Kosovo to Serbian administration, none seemed ready to make a committed prognosis on Kosovo’s final status until the very last few months before the unilateral declaration of independence.⁸¹⁷

b. The Ahtisaari Plan

In spring 2007, after months of the limited success of the direct negotiations between the Kosovo’s Albanians and Serbs, the United Nations envoy Ahtisaari delivered to the new United Nations Secretary General his conclusions. In his report, Ahtisaari recommended that ‘Kosovo’s status should be independence, supervised by the international community’.⁸¹⁸ He highlighted what the international community was very well aware of, namely that ‘reintegration into Serbia is not a viable option’ and that a ‘continued international administration is not sustainable’. Yet, he emphasised that the inability of the existing

⁸¹² Van Meurs, W., ‘Kosovo’s Fifth Anniversary – on the Road to Nowhere?’ in *The Global Review of Ethnopolitics*, vol. 3 (3-4), 2004, p. 69; ‘Zogiani, A., ‘Comment Sommes-nous Arrivés Jusqu’à Vienne?’ in *Koha Ditore*, 16 October 2003.

⁸¹³ ‘Rencontre de Vienne sur le Kosovo: Bilan en Demi-teintes’ in *Danas*, 15 October 2003.

⁸¹⁴ Karabeg, O., ‘La Communauté Internationale Ne Sait Pas Quoi Faire du Kosovo’ in *Danas*, 8 November 2003.

⁸¹⁵ Lukac, J., ‘Qui Composera la Délégation Serbe?’ in *Danas*, 26 October 2005; ‘La Serbie Forme une Equipe de Négociateurs très Politique’ in *Danas*, 25 November 2005; Tasic, J., ‘L’Equipe Serbe Adopte un Programme Commun’ in *Danas*, 6 January 2006.

⁸¹⁶ Bisenic, D., ‘Comment Négocier le Statut du Kosovo ?’ in *Danas*, 5 November 2005.

⁸¹⁷ Interviews with David Carne Ross, *Op. Cit.*; Daniel Ratier, 1st Secretary, Political Affairs, French liaison office, Prishtina, 15 June 2004. See also International Crisis Group, *Kosovo: Toward Final Status*, Europe Report N°161, 24 January 2005; Shala, B., ‘Les Derniers Détails d’une Solution Déjà Connue’ in *Zëri*, 23 November 2005.

⁸¹⁸ ‘Comprehensive Proposal for the Kosovo Status Settlement’, S/2007/168, 26 March 2007. (Ahtisaari Report).

institutions to run Kosovo and the remaining important minority issues justified ‘independence with international supervision [as] the only viable option’. The report is accompanied by a sixty-page detailed proposal detailing implementation mechanisms.

The Ahtisaari plan involved a number of important elements: first, a time element. Contrarily to Russia and Serbia’s claims, Ahtisaari pointed out that further negotiation would not bring any benefit to the resolution of the status issue. On the contrary, according to his conclusions, the settlement of the issue should be made as soon as possible in order to ensure support for the plan and therefore its success. The impatience of the local political elites was obvious and further delays would only undermine the credibility of the international community. In fact, the greatest fear of the international community was that Kosovo’s Albanians would declare independence unilaterally, without any prior preparation and adjustment of resolution 1244. This catastrophic scenario would put UNMIK and the rest of the international community in an awkward and unsustainable position. Yet, Russia insisted that any settlement should be obtained on the ground of a consensus between the two parties. In the face of the failure of the talks that occurred in 2006/2007, where each side stuck to their guns, a negotiated agreement of both parties was highly unrealistic.⁸¹⁹

The second important element of the Ahtisaari plan laid emphasis on the exceptional nature of the situation of Kosovo. Recommending the independence of a territory under a national self-determination claim represents a serious issue in international legal terms. Access to independence by a secessionist group is feared for its potential to initiate a domino effect. It is therefore essential for the Ahtisaari plan to promote independence as an exceptional circumstance.⁸²⁰

Third, the Ahtisaari plan insisted on the multiethnic nature of the resulting future state, in line with the policy pursued by the international community since the beginning of its involvement. For the success of any transition, he emphasised that it was essential for the international community to preserve the multiethnic character of Kosovo. To prevent the rewarding of ethnic cleansing and from a practical point of view, and to prevent a further humanitarian crisis with the further displacement of populations was regarded as essential. To ensure the multiethnic character of the province, the proposal suggests the enforcement of

⁸¹⁹ International Crisis Group, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, Europe Report N°182, 14 May 2007.

⁸²⁰ Jia, B., ‘The Independence of Kosovo: a Unique Case of Secession?’ in *Chinese Journal of International Law*, vol. 8 (1), 2009. pp. 27-46.

minority participation in the political life of the province through local self-government.⁸²¹ The decentralised units proposed would be redesigned municipalities that would ensure a significant majority for the minorities in the municipalities concerned. In this framework, the competencies of municipalities would be enlarged to enable the local management of key aspects of the community's life. In particular, the plan contemplates inter-municipal cooperation and cooperation with institutions in the Republic of Serbia, and includes provisions on the funding of municipal activities by the Republic of Serbia.⁸²² Despite the controversial nature of ethnic base decentralisation, especially in the Kosovo context, this measure forms an essential tool to inspire the confidence of the Serb population in Kosovo's institutions, and to thereby secure their support to the system as a whole.⁸²³ In particular, it ensures them a degree of decision-making power on important issues such as education in their own language, and gives them some sort of institutional link with Serbia.

Finally, the last significant provision of the Ahtisaari plan concerns the role granted to the international community. In the same way as the Eide report made the previous year,⁸²⁴ the Ahtisaari plan emphasises the urgency of reaching a solution, but remains realistic about the capacity of the local institutions to live up to the responsibilities that will face them as an independent state. He proposed independence under international supervision. Conscious of the limits of UNMIK, the Ahtisaari plan considered two new international institutional supports. First, it suggested the establishment of an International Civil Representative (ICR).⁸²⁵ On a similar basis as the office of the High Representative in Bosnia-Herzegovina, the ICR would be in charge of 'supervising the implementation of this Settlement and support the relevant efforts of Kosovo's authorities'.⁸²⁶ In particular, powers would be granted to this ICR to ensure the respecting of the settlement's spirit: multi-ethnicity, democracy and adherence to the international human right norms. Then, the ICR would be in charge of coordinating the work between the international actors, and of them with the Kosovo institutions. The second international institutional support proposed was the creation of a European Security and Defence Policy mission (ESDP) to form the executive branch of the

⁸²¹ Ahtisaari Report, annex III, pp. 22-34.

⁸²² Ahtisaari Report, annex III, art. 9; 10; 11, pp. 27-29.

⁸²³ International Crisis Group, *Kosovo: No Good Alternatives to the Ahtisaari Plan*, Europe Report N°182, 14 May 2007, pp. 8-9.

⁸²⁴ Eide Report.

⁸²⁵ Ahtisaari Report, annex IX, pp. 52-56.

⁸²⁶ Ahtisaari Report, annex IX, art. 1, p. 52.

European mission.⁸²⁷ Ultimately, both the ICR and the ESDP were to take over the role of UNMIK, enforcing the role and responsibility of the European Union in the settlement of Kosovo.⁸²⁸

The Ahtisaari plan attempted to provide an answer for a situation that did not manage to solve itself through decades of conflict. Understandably, it cannot be considered as an ideal solution to the question of the final status of Kosovo. Yet, despite the difficulty of its task, it did manage to provide a clear decision on a number of issues that the international community had been unable to do until then. The reception of the document was as might have been predicted. The United States, France, United Kingdom and the German presidency of the European Union welcomed the document which, if not perfect, brought sensible solutions to a thorny situation.⁸²⁹ It was expectedly rejected by Serbia and Russia, with the latter threatening to oppose it by veto if it was submitted to a Security Council vote. In order to gain time and support for the proposal, the European Union offered to send a mission to assess the situation on the ground and the capacity of the European Union's institutions to provide for it. However, after months of back and forth discussions between the supporters and opponents of the plan, the feasibility of the plan's gaining support grew following the Security Council thaw and the impatience of the Kosovo Albanians to declare unilateral independence without Security Council backing, hence legitimacy.

After the legislative elections of November 2007 and the nomination of a new PDK-led government, the risk of a unilateral declaration increased. To prevent the imminent declaration of independence from occurring outside of international supervision, the European Union gave the green light for the launch of a European Union support mission to Kosovo outside of any Security Council mandate on 15 February 2008. This decision is significant for two reasons: first, it gave a clear indication of the possible support of the European Union for an independent Kosovo; and second, it secured the European Union a positive reception from the new state's institutions. In tactical terms, it would have been problematic for the European Union to lose leverage over the new State's government, and thus the capacity to influence its future. Yet, in practical terms, outside of any the Security Council mandate, the European mission lacked the internationally legitimate basis vital for its deployment. To respond to this issue Elizabeth Pond gives an interesting argument: '[the European mission] turned to

⁸²⁷ Ahtisaari Report, annex X, p. 57.

⁸²⁸ Pond, *Op. Cit.*, p. 98.

⁸²⁹ ICG 2007, *Op. Cit.*

alternative sources of legitimacy for the changeover [from UNMIK to the European mission]. These consisted of direct invitations from the newly independent government in Prishtina to the EU to supervise Kosovo's independence'.⁸³⁰ Indeed it is an interesting argument but one which lacks a legal basis. It would be difficult in international legal terms to justify an unrecognised/illegitimate government's legitimisation of an international intervention, which in turn legitimises this government. In fact, to fully deploy, the European mission had to wait for a formal invitation from the United Nations itself before it could legitimately enter into functioning.⁸³¹

Nonetheless, the Ahtisaari plan involves two further concerns: legal and political. What was meant to be a blueprint entails international legal consequences. Indeed, it dangerously intertwines political needs with international law. It could be argued that Ahtisaari, through its conclusions, implied that political concerns could overrule the established international order. By drawing the independent institutional structure of a territory which would otherwise not qualify for independence, this framework undeniably opened the 'Pandora's box' of international law.⁸³² Yet it should be kept in mind that the Ahtisaari plan was intended to be endorsed by the Security Council, and did not aim as such to upset the international order. Another sharper criticism of this plan concerns the clear top-down approach of this framework.⁸³³ Indeed once more, the international community designed a process within the international legitimacy framework, imposing a solution from above with little care about its enforcement or the securing of grass-roots support.

c. Declaration of Independence and its Consequences

On 17 February 2008, the province's assembly declared 'Kosovo to be an independent and sovereign state'.⁸³⁴ According to the declaration, the new state claimed to be 'a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law.' It swore to 'protect and promote the rights of all

⁸³⁰ Pond, *Op. Cit.*, p. 99.

⁸³¹ By invitation of the Security General to join in to assist UNMIK on 12 June 2008, cf. Pond, *Op. Cit.*, p. 102. Nonetheless, EULEX meet further legitimacy and technical problems before it fully deployed beginning of 2009; cf. International Crisis Group, *Kosovo's First Month*, Europe Briefing N°47, Pristina/Belgrade/Brussels, 18 March 2008.

⁸³² Revah, O., 'Le Status du Kosovo: Boite de Pandore du Droit International', unpublished.

⁸³³ Kostovičová, *Op. Cit.*

⁸³⁴ Declaration of Independence, Assembly of Kosovo, Prishtina, 17 February 2008, art. 1.

communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes'.⁸³⁵

Although the declaration endorsed resolution 1244 and the Ahtisaari plan, including the responsibility to minorities that they entailed,⁸³⁶ the declaration was issued unilaterally without any approval from the Security Council. The following day, Russia called for an emergency meeting of the Security Council where given the clear disagreement between the permanent members, no formal decision over the response to be given or any resolution was submitted to a vote.⁸³⁷ The United States, France and the United Kingdom supported the recognition of the new state on the basis of the difficult history of the province and the lack of significant alternatives offered since the implementation of resolution 1244. They further emphasised that the recognition of Kosovo's independence would be a beneficial step for the region as a whole. They insisted on the unique character of the case of Kosovo and defended themselves as not supporting the emergence of a new international law; nor did they believe that this declaration of independence could act as precedent for other national self-determination movements.

On the other side, the newly re-elected Serbian President Boris Tađić emphasised the unfairness of the recognition of the independence of Kosovo for the Serbian people on three grounds. First, Serbia had agreed to play along with the international community's rules in 1999 by withdrawing their effective sovereignty from the province; second, Serbia was being further punished for the actions of Milošević, who had since long gone and died in prison; finally by re-electing him in January 2008, Serbia had chosen to face an open international community rather than entrenching itself in obscurantism and radical nationalism. Thus, the recognition by the international community of the secession of Kosovo would be perceived as a failure to reward Serbia's transition towards liberalism and democracy.

Finally, Russia condemned the declaration of independence on the basis of the sacrosanct international principle of sovereignty, emphasising the dreadful precedent the case of Kosovo would have on demands from other national self-determination claims. Yet more importantly, Russian Ambassador Vitaly Churkin condemned the mission European Union had sent to Kosovo as illegitimate, as it was acting outside of any Security Council mandate, and it asked the Secretary General to ensure that the legitimate international presence,

⁸³⁵ Declaration of Independence, art. 2.

⁸³⁶ Declaration of Independence, art. 5.

⁸³⁷ Cf. Security Council Meeting Records, S/PV.5839, New York, 18 February 2008.

UNMIK, pursued its mission within the resolution 1244 framework. Caught between two fires, Secretary General Ban Ki Moon stressed the preservation of UNMIK in the region, but also stated that the new European Union mission had its place within the overall UNMIK framework. Still, it was not until 12 June 2008 that he openly supported the incorporation/replacement of UNMIK by the new European Rule of Law Mission (EULEX).⁸³⁸

Contrary to the Kosovo Albanians' expectations, the declaration of independence did not rescue the territory from its constitutional imbroglio. Indeed, the 'state' of Kosovo received some recognition as such and entered into diplomatic relations with other states to fulfil the last requirement of the Montevideo Convention's criteria to gain 'state' status.⁸³⁹ Yet once more it also found itself in international legal limbo, which threatens its legitimacy and overall its sustainability. Beyond the diverging interests of the Serbs and the Kosovo Albanians, international *Realpolitik* dictated its rule. Since the declaration of independence, Kosovo exists within different/diverging realities: independence for the Kosovo Albanians; occupation for the Serbs; and virtual purgatory for UNMIK, which is required to remain there without any real powers and uncertain of its new – if at all – role.⁸⁴⁰

In practical terms, Kosovo's Albanians have been recognised by a portion of the international community to be sovereign over their territory, yet without effective control over the Serb inhabited areas of the North and with an 'invited' power that withholds the right to veto decisions which it deems as violating minority interests.⁸⁴¹ Belgrade, ignoring the realities on the ground, continues half-heartedly to defend its sovereignty by opposing the deployment of the 'illegitimate' European Mission, continuing the parallel structure in Kosovo Serb areas and pushing forward for the General Assembly to put a case to the International Court of Justice to deliberate on the legality of this declaration of independence.⁸⁴² As for UNMIK, the only 'legitimate' international administration according to Russia – and its veto rights – it maintains reluctantly a shadow administration in Serb

⁸³⁸ Pond, *Op. Cit.*, p. 102.

⁸³⁹ Cf. definition of the state as codified by the Montevideo Convention on the Rights and Duties of States, 26 December 1933, art 1; Fierstein, D., 'Kosovo's Declaration of Independence: An Incident Analysis of Legality, Policy and Future Implications' in *Boston University International Law Journal*, vol. 26. pp. 417-442, pp. 439-440.

⁸⁴⁰ 'The New International Presence' in *Life in Kosovo*, 19 June 2008.

⁸⁴¹ Pond, *Op. Cit.*, p. 98.

⁸⁴² International Court of Justice, *The General Assembly of the United Nations Requests an Advisory Opinion from the Court on the Unilateral Declaration of Independence of Kosovo*, Press Release, No. 2008/35, 10 October 2008,

inhabited areas that refused to recognise the European mission's authority. To respond to the genuine fear of unilateral secession of the Kosovo Serbs, the international community has legitimised both the deployment of the EULEX and the Serbian parallel institutions under the terms of resolution 1244 and the Ahtisaari plan. Indeed, the former legitimises the European mission as it enables UNMIK to rely on other agencies to perform administrative tasks; the latter, under its annex III art. 11, allows the financing of a Serb institutional structure within Kosovo.⁸⁴³ *De facto*, UNMIK, unable to dissolve owing to international *Realpolitik*, is confined to the pathetic role of keeping up appearances to allow the different actors to save 'face'. This latest international imbroglio, in an attempt to provide international legitimacy for a framework that clearly should, but in fact lacks local support, provides a sad end to a mission that should have been the pioneer of its kind.

Conclusion

The resolution of the final status issue has been a trying experience both for the international community and for the local actors. The latest international effort to deal with the question as well as its failure to provide an appropriate answer has been in line with former attempts and the inability to respond adequately to them by the successive Yugoslav regimes. With the internationalisation of the issue, the resolution called for international solutions defined in an international framework. As a result, the different actors increasingly forgot or ignored that at the root of the problem lay very local issues and concerns. The latest episodes of the Kosovo question demonstrate the lack of international commitment to set *Realpolitik* aside in order to provide for local communities, who besides immediate humanitarian needs, crave a peaceful and stable political environment to live in and prosper. More crucially, the political games that occurred over Kosovo – and later in the summer of 2008 with the recognition of independence of South Ossetia and Abkhazia by Russia in retaliation⁸⁴⁴ – heavily weaken the international legal framework and as a consequence the basis of international legitimacy.⁸⁴⁵ Those two episodes send a message that only national self-determination movements with strong international sponsors were really entitled to secession rights. By recognising states that do not qualify under international law for independence, international actors have demonstrated their lack of belief in the international

⁸⁴³ Pond, *Op. Cit.*, p. 102.

⁸⁴⁴ Medvedev, D., 'Why I had to Recognise Georgia's Breakaway Regions' in *Financial Times*, 26 August 2008.

⁸⁴⁵ Corten, O., 'Déclarations Unilatérales d'Indépendance et Reconnaissances Prématurées du Kosovo à l'Ossétie du Sud et à l'Abkhazie' in *Revue Générale de Droit International Public*, 2008. pp. 721-760.

legal framework and have consequently weakened the legitimacy framework at the international level as a whole. Destabilised, international legitimacy now calls for a reappraisal: either for the international actors to reassert their ‘belief’ in the international legal system, or for the international legal system to develop in order to reflect the evolution of this ‘belief’.⁸⁴⁶

As regards international involvement in post-conflict reconstruction, this study of the Kosovo status question teaches us that the definition of the international constitutional framework of the territory is indeed essential to the development of a suitable political environment.⁸⁴⁷ Issues over the possibility of Kosovo joining the European Stabilisation and Association process because of the uncertainty of its status were the prime arguments to support this claim. Yet it is also not enough. I argue that the reason why the international community did not manage to secure international legitimacy for an independent Kosovo, beyond international legal and political concerns, lies in their failure to build an appropriate structure on which to ground the new state. The international mission failed to use its supra-conflict role to impose the changes necessary in the society and in fact became another party in the struggle matrix. Indeed, it missed the opportunity to use its position to demystify the ‘belief’ that the problems of Kosovo would be solved with the resolution of its final status. Thus, the declaration of independence generated great dissatisfaction on all sides, which were all coerced into absurd compromises. *De facto*, the Kosovo Albanians missed the independent state they were striving for and had to settle for an independent territory. The enthusiasm of the international community about the recruitment of a few Kosovo Serbs in early 2009 and the final deployment of the European mission (one year later than it should have)⁸⁴⁸ are pale consolations that will not stand long unless the international community redesigns its strategy in Kosovo.

⁸⁴⁶ Revah, *Op. Cit.*, Fierstein, *Op. Cit.*

⁸⁴⁷ See for example: Surroi, V., “‘Standards’ and Decentralisation: Magic Words for Kosovo’s Future?” in Koha Ditore, 15 December 2004.

⁸⁴⁸ ‘Status Talks on Kosovo-Metohija to be Renewed’ in *Tanjung*, 25 January 2009; Council of the European Union, ‘Javier Solana, EU High Representative for the CFSP Welcomes EULEX full Operations Capabilities’, *Press Release*, Brussels, S095/09, 6 April 2009.

Conclusion

Through the development of an analytical framework applied to the case of Kosovo, this thesis has aimed to test the impact of the presence or absence of legitimacy over the capacity of international involvement to achieve sustainable conflict resolution through institution-building. It argues that in order to provide long-term stability in a post-conflict divided society, the legitimacy of the institution-building process and its outcome, both in relation to the international community and the relevant local populations, are critical preconditions for the success of international missions in reaching stability. I developed a two-level working concept and analytical framework of legitimacy specific to the study of international administration and institution-building in deeply divided societies drawing on the theories of Max Weber, David Beetham, and Seymour Lipset. I analysed the degree, nature and impact of legitimacy of the international actors and their policies at each stage that led to the establishment of a new political system in Kosovo. From this analysis, I argued that the failure of the international community to establish local legitimacy in Kosovo is the main explanation for its inability to offer a satisfactory and sustainable solution to the Kosovo issue.

As General Assembly resolution 180/LX underlined, the international community '[r]ecogniz[es] that development, peace and security and human rights are interlinked and mutually reinforcing, [and] *Emphasiz[es]* the need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace'.⁸⁴⁹ On the basis of Seymour Lipset's argument, I related the achievement of a 'sustainable peace' with the founding of a legitimate political system to deal with the needs of the divided society. Nonetheless, by nature, the development of a political system is a 'domestic' affair; thus the involvement of international actors in sovereign prerogatives entail specificities when it comes to considering the legitimacy framework of any political system that might be developed. Thus, through a concept of legitimacy defined in terms of beliefs based on rules and actions shaped by rational elements and powerful ideologies, I developed a two-dimensional analytical framework that considers the issue of legitimacy at the international and local levels.

⁸⁴⁹ United Nations General Assembly Resolution 180 (LX) on the Peacebuilding Commission, A/RES/60/180, 20 December 2005.

On this basis, I set out to analyse the process of international actors' institutional-building through the prism of legitimacy, illustrating my argument with the case of the international involvement in Kosovo. The study of the convoluted history of the province demonstrates that Kosovo is defined by the clash of two nationalisms competing over the same territory, which consequently developed in opposition to each other. With the fall of the integrating socialist ideals, the power vacuum provided the space for these nationalist ideologies to redefine the fundamentals of the Yugoslav state. From then on, Kosovo witnessed the building of resentment against political deceptions in its political discourse. Yet, contrary to the usual assumptions, I argued that the visceral opposition of the two ideologies, far from being rooted in an irrational sentiment originating in some shadowy past, is a carefully crafted design of the respective national ideologies and their ensuing policies. Indeed, they have enabled the establishment of geographical and ultimately psychological barriers between the two communities. But there was a window of opportunity in the aftermath of the NATO bombing, had the appropriate policies been set in place to reconcile the society to, if not live together, at least alongside each other.

Thus, based upon the evidence, the 'local' legitimacy framework of Kosovo is firmly entrenched in the political discourse of local elites that through their claims to power and decision-making seek to ensure the trust and support their communities. In opposition, Bernhard Knoll makes an interesting remark. He notes that in a framework defined in terms of local ideologies and cultural backgrounds, the international administration is by its nature unable to root its legitimacy on the crucial foundation myths that form the ultimate source of such national ideologies.⁸⁵⁰ Nonetheless, instead of using its natural leverage as not being party to the conflict as an opportunity to implement policies to enforce the cohesion of the society, depoliticise the local discourse through the support of non-political actors, the development of a politically conscious civil society and the running of parallel debates,⁸⁵¹ UNMIK, despite initial attempts to integrate the different factions in the institution, soon had to face a deepening lack of local support and was ultimately increasingly tempted to play along the established ideological roots. The ethnic conflict literature argues that the realities of violent post-conflict environments make it impossible not to play by national ideological

⁸⁵⁰ Knoll, B., 'Legitimacy and UN Administration of Territory' in *Journal of International Law and Policy*, vol. 4 (1), 2007, p. 7.

⁸⁵¹ Cf. Kaldor, M., 'Democracy and Globalisation' in Global Civil Society 2007/2008: *Communicative Power and Democracy*, Sage, 2008, p. 40.

rules.⁸⁵² One flagrant example would be the lack of any political alternative to the extremist elites that have gained support during the conflict. Yet, those assumptions take for granted that ‘the rules’ of the local legitimacy framework cannot be ‘changed’. Indeed, such elites play on the fears of their communities to ensure grass-roots support. Should the international community be in a position to ensure the security and meeting of the basic needs of the population, this would provide it with a window of opportunity to implement the grass-roots work needed to ‘shift’ the political discourse to more constructive debates than those about mere survival. In the same way, I developed the argument that by not enforcing fully their policies in North Mitrovica, the international administration showed a lack of coherent strategy as well as will and capacity to enforce it, undermining further their legitimacy in the eyes of all segments of the local community. It is clear that, given the impossibility of testing the counterfactual, it is hard to prove that pursuing those policies would have indeed won the hearts and minds of the Kosovo society to the international administration; yet it is relatively easy to see how the lack of progress in those fields did undermine their overall goal. Indeed, I would argue that the case of Kosovo demonstrated that the failure of the international administration to secure local legitimacy is indeed rooted in the lack of real support from the international community itself, which becomes the victim of a politically based self-legitimacy crisis.

The international legitimacy framework is based on a legal system primarily aimed at fulfilling state interests. In this context, it has difficulties in providing adequately for populations that do not have a legal personality, but are still not adequately represented by their sovereign states. Based as it is on concepts from another time, the legal system fails to provide answers to the contemporary problems of an ever more globalising international society. This inability set up a serious handicap at the base of the system itself. The case of Kosovo highlights this phenomenon very well, as NATO’s airstrikes on a sovereign state, far from endorsing the norms and the legitimate authority that ruled the system, instead opened to question its ability to maintain international stability, and thus legitimacy. Indeed what this episode demonstrates is the failure to prevent the legal legitimacy framework from being taken over by *Realpolitik*. In this case, as William Bain points out, resolution 1244 *de facto* ‘legitimised’ the allies’ action in an attempt to allow the system to keep face in spite of its own deficiencies. In addition, I would suggest that the ‘diplomatic’ and blunt nature of the

⁸⁵² Bose, S., *Bosnia after Dayton: Nationalist Partition and International Intervention*, Hurst, London, 2002.

document, reflecting the political antagonisms of a core few members of the international community, is further proof of the failings of the international system's legitimacy. On this basis, UNMIK was vitiated from the start, which explains its attempts to reinforce itself through self-legitimacy and its conscious attempts to secure international legitimacy for itself and for the pursuance of its mandate. This phenomenon is evidence by the top-down approach implemented by the international administration, pursuing a policy of democratisation according to international principles, but one which lacked a coherent strategy to enforce a key component of democracy: grass-roots empowerment.⁸⁵³ Unable to secure proper support from the organ that created it, UNMIK set off upon a dangerous path of *ad hoc* policies, increasingly sliding towards nationalistic ideological demands in a desolate attempt to pursue its mandate. Eventually, these policies, or rather their lack of any overall strategy, undermined its legitimacy at both the international and local levels, overshadowing the initial – and relative – success of the establishment and enforcement of the institutional structure of the new political system. Indeed, UNMIK found itself to be the unfortunate link between two parallel dimensions evolving in closed circles.

The March 2004 riots, which turned into a Kosovo Albanian nationalist display of force against Serbs, but even more crucially against the international community, were the basis that caused the collapse of the international administration. The launch of the Eide and Ahtisaari missions were clear proof of the withdrawal of the international community's support for UNMIK. Indeed, both reports concluded by noting the fragile basis of Kosovo's institutions; yet they appealed for the pursuance of a final status leaving little doubt as to the outcome. At no point did the reports consider providing the administration the necessary political support that it lacked. The result consigned the international administration to being its own shadow in the middle of the veto-powers' arm wrestling. Yet, contrary to what the nationalist discourses promised, the declaration of independence has not solved Kosovo's issues. Lacking the institutions necessary to support sustainable stability, it is still prey to a deep economic and social crisis. Besides, the refusal of Belgrade, the Serb community as well as a portion of the international community to recognise Kosovo's independence leaves the new state in a new political limbo, even if now upgraded to the international rather than national level.

⁸⁵³ Ottawa, M., 'Democratization in Collapsed States' in Zartman, I. (ed.), *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Lynne Reinner, Boulder, 1995, p. 247.

Besides the issue of Kosovo itself, the failure of UNMIK is evidence of a much deeper issue. The recognition of the independence of the province by some of the leading Western nations and the ensuing recognition of the independence of South Ossetia and Abkhazia by Russia sends an ambiguous message that only national self-determination movements with powerful international sponsors are entitled to a right of secession. The astonishing significance of these events in international political and legal terms met with disproportionately little response in the media and in the academic literature. Undeniably, NATO's bombing of Serbia in 1999 had instigated an industrious political and academic debate at the time of the event. Beyond the strict context of conflict regulation, this study of Kosovo through a double-layered legitimacy framework highlights the deepening legitimacy crisis of the international order. Clearly international rules do not meet the 'beliefs' of states any longer, which manifestly do not act according to them. In this scenario, two alternatives are indeed possible: first, the community's belief adapts to fit the established rules. In a framework without enforcement mechanisms such as that characterising the international community, this is highly unlikely; the other possibility is that international rules evolve to match the new 'belief demands' of the society of states.

The irony lies in the fact that the international order, in an attempt at self-preservation, is indeed undermining its own stability. The Westphalian system had its relevance in the eighteenth century. As Clark has underlined, since the signing of the treaty, there has been a constant reappraisal of the rules undermining the system in order to adapt to the new demands of political ideologies. The fundamental question that the international community nowadays faces is: to what extent is a state order made for states still relevant? At the time the Westphalian system was established, the aim was to prevent war, and thus suffering. At the time, the state appeared as the most sensible unit for protecting populations from the afflictions of conflict; hence it made sense to preserve them as central units of the system. Yet at a time when state sovereignty has become a screen behind which governments can proceed with gross human right violations, the international community should consider whether the need of states for sovereignty is still relevant.⁸⁵⁴ Contemporary cases of gross humanitarian violations in Zimbabwe and Sudan are reminders of the relevance of this debate.

Nonetheless, beyond the failures of Kosovo, the relevance of adopting coherent international institution-building as an efficient conflict regulation mechanism in the case of

⁸⁵⁴ Bain, W., *Between Anarchy and Society: Trusteeship and the Obligation of Power*, Oxford University Press, Oxford, 2003, p. 163-170

collapsed states is indeed still highly relevant. Beyond the context of the fall of the socialist/communist model in Europe, cases such as Afghanistan demonstrate the threat power vacuums can hold for the international order. Certainly, in addition to the threat represented by internal instability, the power vacuum was filled in this case by offensive ideologies towards foreign states. ‘Lessons learned’ in the field of conflict regulation are difficult to export, especially to cases of ethnic-based struggles. Indeed, the case of Kosovo is hardly comparable to the intricacies of the difficulties faced in Afghanistan. Yet, what this thesis has attempted to do is develop an analytical framework that could potentially be applied to other conflicts to analyse the deep-rooted causes of international efforts’ struggle to develop institutions to deal with such conflicts. As the international community got involved in the restoration of the Afghan state, it decided to adopt, probably based on the lessons of the unconvincing results in Kosovo and East Timor, what Simon Chesterman calls the ‘light footprint approach’,⁸⁵⁵ which implies increasing local empowerment from the beginning of institution-building efforts. Yet, the particularly difficult political conditions, still major sources of political instabilities after eight years of international involvement, brings up the heuristic value of the double layer model developed in this thesis. While I do not have the capacity to enquire further at this point into the case of Afghanistan, I would like, however, to hypothesise that the legitimacy analytical model and test developed here could address some of the difficulties encountered by the international actors involved there in establishing institutions as basis for the state’s stability. In particular, it could provide insights into the lack of a coherent international strategy to address the conflict, or the assessment of grounding local legitimacy on ‘local ideologies and cultural backgrounds’.

Nevertheless, as regards this research, the choice of illustrating my analysis with the case of Kosovo has been relevant for two reasons. The first is empirical, in the sense that the international administration established in Prishtina was unique in its nature and outcome. It was the first time that the international community, through the United Nations, was granted such extended powers and responsibilities in a sovereign state, though without its outright support – thus ultimately leading to the secession of the territory. Ultimately, the case of Kosovo proved to be the impetus for a large and diverse academic literature on relevant topics: the breakup of Yugoslavia, nationalism studies, conflict regulation, humanitarian law, and around ‘recognition’ as constitutive or declarative element of state formation. The case

⁸⁵⁵ Chesterman, S., *You, the People: The United Nations, Transitional Administration, and State-building*, Oxford University Press, Oxford, 2004, pp. 88-92.

of Kosovo has engendered reflection beyond the conflict regulation scholarship and enabled the development of a model with interesting implications beyond the simple syllogisms that were developed on the theme of ‘to be or not to be’ independent, which earlier tended to dominate a large part of the literature about Kosovo. Second, the choice of Kosovo proved relevant for methodological reasons. Indeed it provided a valuable analytical opportunity. The development of the mission occurred within a time-span of ten years, which permitted the observation of the full implementation and development of the relevant policies, ultimately enabling a better assessment of the outcome. Because I was personally involved in research on the region since the summer 1999, it enabled me to gain a thorough understanding of the intricacies of the issues at stake and their consequences. Besides the relevance and originality of the nature of international involvement in the case of the Kosovo conflict, the sizes involved in the development of the mission are interesting. Indeed, UNMIK was comparatively a large mission for a relatively and comparatively small territory. From a practical point of view, the size of the area covered and the relatively safe conditions favoured the development and outcome of my fieldwork. The concentration of relevant actors, relatively all willing to exchange their points of view, has also proved beneficial. High-ranking officials and local leaders were quite easy to access and demonstrated a particular eagerness to talk. In sum, the specific circumstances enabled me to have a better understanding and benefitted this research more than they might have been given the difficult conditions in which missions dealing with conflict/post conflict zones generally evolve.

Since the first presentation of my work in progress, then entitled ‘In Search of Legitimacy: The Obstacle to Conflict Regulation in Kosovo’, at the ninth Annual World Convention of the Association for the Study of Nationalities in April 2004, the theme of legitimacy and international administration has gained increasing relevance in the academic literature. Yet, this research modestly contends that it finds its place by adding to the existing significant work on the issue international administration, such as Dominik Zaum’s *The Sovereignty Paradox* or even Knoll’s work, which develops a similar concept of double legitimacy. Indeed, this research has aimed to provide an analytical model that might be of constructive explanatory value, identifying and stressing one of the – many – crucial variables necessary to account for the complexity of ethnic post-conflict regulation. Concentrating on a single case study – hence proceeding with a vertical rather than horizontal/comparative analysis – enables this research to explore the deeper sources of the difficulties encountered by UNMIK. Indeed, the literature that deals with the international administration in Kosovo

tends to use a comparative approach to highlight the issues relevant to the structure and procedure failures of international administration – lack of accountability, corruption, etc. Beyond technical issues, which are in any case covered by political analysts and other academics in an articulate way, this thesis aims to add to a heuristic contribution, in the form of analytical concepts that, for the investigation of models of international involvement in institution-building, are relevant for the stabilisation of collapsed states around the world. Indeed, this research has not exhausted the topic of legitimacy as regards the role of international institutions. It has, however, developed a critical perspective that may help to expose and resolve certain tensions illustrated by the Kosovo case study for cases similar to it in the future.

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3. *Documents*

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