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Post-Conflict: Peacebuilding in Kosovo – The international administration of territories as a method of peacebuilding

Post-conflict rebuilding of states is an issue that has attracted a growing amount of attention by the international community since the mid 1990s. So far most of the missions in this field of action have been realized with a substantial participation of the United Nations. However, the specific design of the missions and the installed post conflict order varies widely with each case. The involvement of the United Nations in post-conflict rebuilding missions is rooted in its long standing involvement in peacekeeping missions which were called into being under UN auspices. The range of tasks fulfilled by UN-peacekeeping missions has constantly been expanded. Even as early as in the late 1980s the mandates of UN-peacekeeping missions covered a multidimensional spectrum of tasks which joined traditional peacekeeping tasks with elements of post-conflict peacebuilding. With the creation of the *United Nations Interim Administration Mission in Kosovo* by the Security Council through resolution 1244 (1999) the development of peacekeeping missions reached a temporary peak. For the first time all governmental functions were jointly entrusted to an UN-peacekeeping mission which – supported by a NATO-led international security mission – took over the complete responsibility for the territory. UNMIK thus became to be regarded as a model for the so-called fourth generation peacekeeping.

Security Council resolution 1244 (1999) comprises an ambitious program not only directed at peacekeeping but also at the longer term objective of comprehensive peacebuilding. However, with its far reaching consequences regarding the taking over of state authority in a given territory by a UN mission, resolution 1244 (1999) also raises numerous questions most of which are – concerning the consequences – completely new to the United Nations themselves. From a legal point of view two basic problems need to be addressed: First of all there is the fundamental question of the legality of a thus far reaching engagement of the United Nations. A positive answer to this question provided, there is – on a second level – an urgent need to specify the legal responsibilities of a governance mission as well as the limits for its engagement. The present study is dedicated to the pursuit of these two questions.

The first part of the study analyses the legal basis of both international missions – UNMIK and KFOR. The study shows especially that the capacity of the Security Council under chapter VII of the Charter of the United Nations comprises both the taking over of governance

functions for an interim period while establishing a territorial state order ad interim as well as all the accompanying measures of peacebuilding.

Whereas the possibility of entrusting a UN-mission with governance functions under chapter VII is now widely accepted, the question of the legal limits for this interventionist post-conflict engagement is still under discussion and yet to be answered. The second part of the present study engages in a thorough examination of the legal limits for the enforcement measures taken by UNMIK and KFOR. Necessary starting point for any examination is the legal act mandating the missions. Since resolution 1244 (1999) uses very broad language, however, there is an apparent need to integrate the mandate into the broader legal frame of the UN-Charter as well as general international law in order to gain a clear-cut definition of the mandate and its limits under international public law. The study identifies three central principles of international public law which necessarily guide a governance mission; these are the principle of sovereignty of states, the principle of self-determination of the people and international human rights law. Aside from these, the study carries on to identify additional legal principles and jurisprudential guidelines which help to define the overall legal framework for governance missions.

Having thus identified the legal basis and framework of a governance mission under chapter VII UN-Charter the study proceeds to check the activities undertaken by UNMIK and KFOR against the identified legal background.

Key words:

United Nations, international territorial administration, governance functions