Introduction

The international administration of territory, in which comprehensive administrative powers are exercised by, on behalf of or with the agreement of the United Nations (UN) has recently re-emerged in the context of reconstructing (parts of) states after conflict. The cases of Kosovo and East Timor have frequently been described as ground-breaking and unique in peace-building and post-conflict reconstruction literature, and have triggered both interest and criticism. The subsequent post-conflict operations in Afghanistan and Iraq have prompted similar mixed reactions, in respect of both their achievements and their differing approaches. In Kosovo and East Timor, the UN was endowed with wide-ranging executive and legislative powers. In Afghanistan, it was decided to rely principally on local capacity with minimal international participation. In Iraq on the other hand, the occupying forces exercised administrative powers based on both the laws of occupation and Security Council resolutions. In Afghanistan and Iraq, the UN itself was not granted any direct administrative powers.

These four operations share similar objectives and are the latest examples of comprehensive international efforts aimed at rebuilding societies emerging from years of conflict and internal strife. In addition to the similarities in the objectives, these four cases are characterized by the creation of 'transitional' or 'interim' administrations to oversee the reconstruction process. The level of internationalisation of these transitional structures was nevertheless dependent on the approach taken. In Kosovo and East Timor, these interim structures were purely international. Afghanistan, in which it was decided to rely on a maximum participation of local actors with a minimum of international participation – referred to as the 'light footprint' approach[2] – was an explicit reaction against the internationalisation of administrative structures in Kosovo and East Timor, and thus resulted in the creation of entirely national interim and transitional structures. In Iraq, a United States-led administration – the Coalition Provisional Authority – was established, in conjunction with a domestic consultative 'Governing Council'. After one year, responsibility for the administration of Iraq was retransferred to domestic interim and transitional structures.

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[2] Report of the Secretary-General, The Situation in Afghanistan and its Implications for International Peace and Security, UN Doc A/56/875-S/2002/278 (18 March 2002), para. 98.

The increasing involvement of international actors in various forms of international missions set up to supervise reconstruction or peace-building processes has resulted in an expanding debate on the subject. Nevertheless, less attention has been paid to the context in which these missions have been set up, the legal framework of these operations and the practical implications of this in the particular context. Similarly, the influence of the differing legal framework applicable to international actors on these missions has often been neglected. It therefore seems necessary, first, to both clearly establish and delineate the origins of the concept, and to analyse the context in which it has resurfaced, namely post-conflict peace-building or reconstruction. Secondly, the international legal framework needs to be methodically established, and must take into account the conditions in which these administrations need to operate. Thirdly, an enquiry into the practice of recent cases is vital to ensure a practical analysis of post-conflict administrations and to understand how these projects work 'on the ground'. The influence of the international character of the administration and the legal framework applicable to these administrations can indeed only be thoroughly analysed when the operative context is taken into account. To analyse and understand the ways in which the reconstruction processes have been addressed in Kosovo, East Timor, Afghanistan and Iraq, one needs to start with the mandates given to these missions, and the ultimate goals of these exercises, which extends well beyond the mere physical rehabilitation of the territory. These recent cases reveal an explicit aim to set up viable and functioning democratic institutions. Finally, the use of post-conflict administrations, and the presence of international actors in a post-conflict context do raise questions in terms of accountability of international actors, exit strategies, local ownership, appropriateness of internationalising domestic institutions and applicable legal framework. It is thus necessary, after having identified the concept, its legal framework, and its practice, to draw lessons as to its compatibility with the aim pursued.

The Context of Post-Conflict Administration

It is important to emphasise at this preliminary stage that international administrations are only the method to achieve a certain objective. The term 'international administration' or 'international territorial administration' refers only to the *regime* of the administration, and describes the nature of authority exercised by international actors. International administration can thus be defined as the regime of administration of a territory conferred upon one or more states, or to one or more international organisations.[3] International administration is thus

[3] Cf. 'Administration internationale', in Salmon, J. (ed.), *Dictionnaire de droit international public* (Brussel: Bruylant, 2001), p. 42.

merely the counterpart of the 'conventional' national or local administration. The concept of international administration has thus to be seen as a 'method' – like the 'light footprint' approach – within the broader framework of peace-building missions. In the case of Iraq, the United-States-led administration was equally international, but we will reserve the term 'international administration' for the cases of Kosovo and East Timor, in which the transitional administration was in fact purely international, and a subsidiary organ of an international organisation. Equally, the use of 'transitional administration' denotes the interim or non-elected character of the governmental structures created in the emergency phase, pending the holding of elections to set up democratic institutions, as opposed to a government elected or appointed after free and fair elections, according to the state's constitution. The notion of post-conflict administration thus clearly identifies both the method used and the environment in which they operate, since it stands for those administrations set up in a post-conflict environment.

Considering that Kosovo, East Timor, Afghanistan and Iraq are part of a similar process, any analysis must transcend the purely institutional approach. Full UN-led administration, the 'light footprint' approach, and the foreign occupation of Iraq are processes with a similar aim. Any analysis of this topic which is limited to the institutional dimension of either international administrations or foreign occupation misconceives the similarities in the aims and objectives of these cases. The creation of 'transitional' or 'interim' administrations is similar in the four cases; only the level of 'internationalisation' of these structures differs, resulting in the application of a different legal framework. The international administration of territory certainly is an established practice, with certain, but very limited normative implications. Any restriction of an analysis to the mere concept of international administrations thus overlooks the varying legal framework applicable to such administrations, in function of the use made of it. It is therefore in our view paramount to study the concept of international administrations with reference to the contexts in which they operate, in this case a post-conflict environment. It is equally this context which confirms the similarities between the cases of Kosovo and East Timor, and Afghanistan and Iraq. However it is true that international administrations, and this will be evidenced in the historical analysis contained in the first part, have traditionally served other purposes than peace-building or post-conflict reconstruction. Some authors thus view the concept of international territorial administration merely as an independent institution which serves a particular policy.[4] Other authors focus on the use of international administrations as a method to serve to fill a

[4] See e.g. Wilde, R., *International Territorial Administration. How Trusteeship and the Civilizing Mission Never Went Away* (Oxford: Oxford University Press, 2008). Cf. Stahn, C., *The Law and Practice of International Territorial Administration. Versailles to Iraq and Beyond* (Cambridge: Cambridge University Press, 2008).

power vacuum or have construed it as a response to a governance problem.[5] The basic premise of this book is that it is specifically by placing these operations in the situation in which they operate, that one can see how the international legal framework influences the reconstruction process, and which questions this practice raises. In addition, not placing the current missions in a peace-building perspective leads to ignore the very reasons why international administrations can be considered as manifesting the re-emergence of an old notion.

The approach used in this book does not therefore suggest, first, that the use of international administration of territory is limited to post-conflict scenario's, and secondly, that the creation of international administrations is always a response to a (post-conflict) governance problem. The use that is made of the post-conflict label in this book only aims at situating the administrations in their operational context; it does not imply that we view the creation of such an administration as a response to an administrative vacuum, that it necessarily is a *result* of the conflict or that it can only be established after the end of all hostilities. Rather, this book is founded on the pragmatic viewpoint that international administration is an already existing concept which recently resurfaced as a method of to re-build states or territories in a post-conflict environment, which is the context in which these should be analysed.

Outline of the Argument

In the first part of this book we will examine the extent to which the international administration of a territory is truly pioneering, considering the allegations about the unique character of such comprehensive mandates. Often, such an assessment is based on the fact that the reconstruction of states and territories has never been addressed in such a way. Though this may seem correct if one limits the analysis to the current context, historical examples will nevertheless show that the exercise of administrative functions by international actors has frequently taken place in the past. The first part will therefore aim to establish the historical context in which the current forms of international administration need to be placed. The historical precedents are essential to the evaluation of the current operations. Mapping the current missions from a historical standpoint will not only clearly ascertain that the concept of delegating sweeping powers to international actors cannot be seen as entirely new, but will also enable us to analyse to what extent the current missions could have been better planned and executed if their historical origins had been taken into account. The historical

[5] See e.g. Chesterman, S., Ignatieff, M. and Thakur, R. (eds.), *Making States Work: State Failure and the Crisis of Governance* (Tokyo / New York / Paris: United Nations University Press, 2005).

analysis is equally aimed at determining that the current resurgence of international administrations is the result of an evolution in addressing post-conflict and peace-building scenarios. We will indeed establish that a continuous expansion of peacekeeping mandates, which have gradually shifted from *keeping* peace to *building* peace, has resulted in the complete take-over of administrative functions by international actors encompassing the commitment to engage in large-scale and comprehensive reforms in all governmental sectors. The identification of such an evolution is important for us to see to what extent the *objectives* of international administration have shifted over the years.

The second part addresses the applicable legal framework, which is fundamental, as it has a direct influence on the exercise of administrative powers by international actors. Establishing the legal framework applicable to international administrations and peace-building missions requires an analysis of various branches of international law, ranging from the UN's legal capacity to undertake and authorise such intrusive missions and the transitory nature of these missions, to the application of human rights law and the laws of armed conflict. The different forms of the engagement of international actors resulted in different applicable legal frameworks. In the case of Iraq, we will see that the laws of occupation have played a substantial role in determining the powers of the Coalition Provisional Authority (CPA). Another example is the legal status of Kosovo, which has directly influenced the capacity of the United Nations Interim Administration Mission in Kosovo (UNMIK) to engage in reform of the economic sector for instance. The legal obligations of international actors involved in international administration will equally form an important aspect of our research, as issues of accountability of foreign actors involved in international administration have frequently been raised in order to criticise such intrusive powers. This part is thus intended not merely to categorise and identify the complex rules which apply in post-conflict reconstruction, but also to locate the legal limits inherent in the exercise of administrative functions by international actors. Therefore, the second part does not aim to be an in-depth analysis of these various international legal issues. Rather we will adopt a 'functional approach', which implies that these subjects will only be analysed in function of the subject of this book.

The pith of this book is the examination of the various ways in which reconstruction has been approached in Kosovo, East Timor, Afghanistan and Iraq, which is grouped in the third part. The discussion of the practice of post-conflict reconstruction in these four cases is not intended to be comprehensive. Our third part will necessarily be selective, as we aim to illustrate certain developments and concerns, in particular those related to application of the legal framework and the involvement of the UN. The selection of these four cases does not imply that other cases are less important. Precedents need to be seen as significant steps in the evolution described in the first part of the book. In addition, this

selection of leading cases does not imply that we will not refer to other cases when necessary, in order to illustrate the evolution in UN reconstruction efforts established in part one. The analysis of the implementation of the mandates will be grouped in three chapters. The first chapter will deal with civil administration, including economic reconstruction, security aspects, emergency aid and the issue of refugees. The second chapter will deal will with the reconstruction of the judicial system, and other issues pertaining to the rule of law. In the third chapter, we will analyse institution-building and democratic governance in the four cases.

The fourth and final part of this book addresses overarching issues of post conflict administrations. In a sense, the last part groups several 'concluding' chapters. The aim is to suggest improvements to the concept by proposing a comprehensive legal framework for post-conflict administrations. It is not, however, the purpose to establish a 'model' post-conflict mission. Rather, the last part is based on a lessons-learned exercise, not only from the analysed practice, but also from the established legal framework and origins of these missions, and the interaction between these.

Methodology, Approach and Selection of Cases

The rationale behind this methodology is twofold. Firstly, it ensures a practical analysis of the effective implementation of the mandates entrusted to the different forms of post-conflict administration, based on both the international mission's approaches and achievements. Secondly, it allows us to see how the theoretical findings in respect of the legal framework established in the first part influenced in a very different way the capacities of the administrations to deal with the reconstruction processes in each case. This four-tiered approach reflects the need to analyse the concept of peace-building in post-conflict scenarios within a broader framework.

The selection of these particular four cases hinges on various reasons. From the viewpoint of the UN's involvement in post-conflict reconstruction, Kosovo and East Timor represent the first cases of full administration by a UN subsidiary organ, representing a culmination in the evolution of peacekeeping mandates, which we described in our first part.[6] As far as the later two operations

[6] See also Bothe, M. and Marauhn, T., 'The United Nations in Kosovo and East Timor—Problems of a Trusteeship Administration', 6 *International Peacekeeping* 152 (2000), p. 218 *et s*. The authors clearly distinguish the Kosovo and East Timor administrations from the previous cases, especially that of Bosnia and Herzegovina, which has often been compared to the administrations in Kosovo and East Timor, as the foreign civil presence is not the sole authority in the territory, leading to the co-existence of two parallel authorities.

in Afghanistan and Iraq are concerned, they are to be considered as alternative approaches to post-conflict reconstruction, considering that in Afghanistan the emphasis was placed on a maximum participation of local actors with a minimum of international participation – the 'light footprint' approach – as a kind of reaction against the broad authority granted to the Special Representative of the Secretary-General in Kosovo and East Timor. While the case of Afghanistan is sometimes equated with an international administration, we nevertheless favour the view that Afghanistan represents an alternative approach to addressing post-conflict reconstruction, since the interim and transitional structures were purely national.[7] Transitional Afghan authorities had been set up, but the UN was not entrusted with direct administrative powers. Iraq represents yet another approach to addressing a similar post-conflict reconstruction mandate,[8] as the administrative functions were exercised by the occupying powers, on the basis of the laws of occupation and a Security Council Resolution. However, it has to be acknowledged that the case of Iraq presents certain similarities with those of Kosovo and East Timor, considering the direct exercise of powers by the United States and United Kingdom.[9] The overall mandates and major objectives of the missions in Kosovo, East Timor, Afghanistan and Iraq do, however, reveal major similarities, as we will point out throughout this book. In addition, they have all taken place in the context of enlarged peace-building mandates in post-conflict situations.

The general approach of this book is thus descriptive and analytical rather than normative. It aims principally to describe the evolution in the use of international administration, the legal framework applicable to post-conflict administration and the practice of recent cases of post-conflict administration and reconstruction. The book is thus mainly based on an empirical analysis. The second and fourth parts will necessarily include normative elements. However, these normative elements are intended to represent the state of the law rather than to propose a new normative framework. In the same line, we will address the subject from

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[7] Also Dahrendorf, N. *et al.*, 'A Review of Peace Operations: A Case for Change: Overall Introduction and Synthesis Report', *Conflict Security & Development Group, King's College London* (13 March 2003).

[8] On the relationship between Iraq and other cases of international territorial administration see Ratner, S.R., 'Foreign Occupation and International Territorial Administration: The Challenges of Convergence', 16 *European Journal of International Law* 697 (2005) and Wilde, R. and Delcourt, B., 'Le retour des "protectorats". L'irrésistible attrait de l'administration de territoires étrangers', in Delcourt, B., Duez, D. and Remacle, E. (eds.), *La guerre d'Irak. Prélude d'un nouvel ordre international?* (Bern: PIE Peter Lang, 2004), p. 219, and in particular Part III 'L'Irak: nouvel avatar de l'administration étrangère de territoires', p. 237.

[9] See also de Wet, E., 'The Direct Administrations of Territories by the United Nations and its Member States in the Post Cold War Era: Legal Basis and Implications for National Law', 8 *Max Planck Yearbook of United Nations Law* 291 (2004).

a functional perspective. This implies that we will only discuss those issues and themes necessary for our research, and that theoretical debates will be only be engaged upon if these are necessary for the subject matter.