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THE EFFECT OF TERRITORIAL ADMINISTRATION BY INTERNATIONAL ORGANIZATIONS ON LOCAL COMMUNITY- BUILDING

Ralph Wilde*

I. INTRODUCTION

In recent years, there has been a striking resurgence in the use of a particular international policy device: the granting of certain rights over territorial administration to international organizations. I term this policy device international territorial administration (ITA), and its operation can be seen in certain UN-run camps housing forced migrants, many of which are in Africa, as well as in Bosnia and Herzegovina, Kosovo, and East Timor.¹ In this article, I will explore the role of ITA in shaping the local community in the territorial unit concerned. To what extent does it play a part in the construction or reconstruction of a particular cultural, political, economic and social system?

II. THE TWO MODES OF INTERNATIONAL TERRITORIAL ADMINISTRATION: GOVERNANCE AND COMMUNITY-BUILDING

Elsewhere, I have defined international territorial administration in the following manner:

Each project involves a claim made by an international organization relating to territorial administration. Here, "territorial administration" refers to a formally constituted, locally based management structure operating with respect to a particular territorial unit; it can be limited (e.g., a territorial program concerned with certain matters) or

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¹ For the idea that ITA constitutes an international policy device, and a comparative purposive analysis of current projects and historical precedents running back to the creation of the League of Nations in 1920, see Ralph Wilde, *From Danzig to East Timor and Beyond: the Role of International Territorial Administration*, 95(3) AM. J. INT'L L. 583 (2001).

plenary (e.g., a territorial government) in scope. The international organization asserts the right either to supervise and control the operation of this structure by local actors, or to operate the structure directly. The right is exercised from within the territory, and can pertain to the structure as a whole, or certain parts of it (e.g., the legislature). This activity should be contrasted with merely monitoring and/or assisting local actors in operating such a structure, although the distinction is sometimes difficult to make in practice, particularly in the case of conduct and assistance. The spatial identity of the international organization and its officials—as “international”—is distinct from and opposed to the “local” identity of the territorial unit and population affected, even if the organization’s activities are limited to that territory and some of the “internationals” are actually local nationals.²

ITA can operate in two complementary modes. The first mode, which I shall term governance ITA, involves the provision of governance in the territory concerned. In many developing countries, host states often give over most, if not all responsibility for running camps housing forced migrants to the United Nations High Commissioner for Refugees (UNHCR). One example would be the Dadaab camps in North-East Kenya, where UNHCR exercises full administrative control, deciding who has the right to enter and leave and co-ordinating the provision of food, water, shelter, and medical and educational services by other international agencies.³ The only role played by Kenyan authorities is the limited provision of security, and this is funded by UNHCR. In Bosnia and Herzegovina, the Office of the High Representative (OHR) asserts the right to dismiss government officials and introduce laws.⁴ In Kosovo and East Timor respectively, the UN Mission in

² Wilde, *supra* note 1, at 585.

³ This information is drawn from my own work in the camps; see Wilde, *Beyond the Yoke: Women’s Rights in the Dadaab Refugee Camps of Kenya* (London: Parliamentary Human Rights Group, 1997), and Wilde, *Quis Custodiet Ipsos Custodes?: Why and How UNHCR Governance of ‘Development’ Refugee Camps Should Be Subject to International Human Rights Law*, 1 YALE HUM. RTS. DEV. L.J. 5 (1998). See also Verdirame, *Field Report, Human Rights and Refugees: the Case of Kenya*, 12 J. REFUGEE STUD. 54 (1999), and Marc-Antoine Perouse de Montclos & Peter Mwangi Kagwanja, *Refugee Camps or Cities? The Socio-economic Dynamics of the Dadaab and Kakuma Camps in Northern Kenya*, 13 J. REFUGEE STUD. 205 - 222 (2000).

⁴ OHR is a *sui generis* organization that was created by the Dayton Agreement and is controlled by the inter-state Peace Implementation Council. Its asserted right to dismiss officials and introduce new laws is based on the vague powers OHR is given by the Dayton Peace Agreement, Annex 10, as these powers have been interpreted by the intergovernmental Peace Implementation Council that controls OHR. Annex 10 of the Dayton Peace Agreement

Kosovo (UNMIK) and the United Nations Transitional Authority in East Timor (UNTAET), assert plenary powers of territorial administration, effectively making the UN the government of these two places.⁵

authorizes OHR to 'promote full compliance' with civilian aspects of the Agreement through 'maintaining close contact' with the parties (Article II.1.b); OHR is also to 'facilitate,' as it deems necessary, 'the resolution of any difficulties arising in connection to civil implementation,' (Article II.1.d). See Bosnia and Herzegovina – Croatia – Federal Republic of Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Done at Paris, 14 December 1995, 35 ILM 75 (1996), < <http://www.ohr.int/gfa/gfa-home.htm>>, [hereinafter 'Dayton Peace Agreement'], Annex 10. See also Security Council Resolution 1031, UN Doc. S/RES/1031 (1995), 15 December 1995, 35 I.L.M. 235 (1996), <<http://www.ohr.int/docu/u951215a.htm>>, [hereinafter 'SC Res. 1031']. For the PIC interpretation, see Bonn Peace Implementation Conference 1997, Bosnia and Herzegovina 1998: Self-sustaining Structures, Conclusions, Bonn, 10 December 1997, <<http://www.ohr.int/docu/d971210a.htm>>, [hereinafter 'PIC Bonn Conclusions']. On OHR's powers generally, see e.g. Cox, *The Dayton Agreement in Bosnia and Herzegovina: a Study in Implementation Strategies*, 69 BRIT. Y. B. INT'L L. 201 (1996) ['Cox 1999'] [hereinafter 'Cox']. The purported right to dismiss government officials was cited as authority for OHR's removal of Nikola Poplasen from the Presidency of Republika Srpska in 1999. See OHR, Press Release, Removal from Office of Nikola Poplasen, Sarajevo, 5 March 1999, <<http://www.ohr.int/press/p990305b.htm>>; PIC Bonn Conclusions, X.2.c; and Cox, 218. As for introducing laws, See Bonn Conclusions, X.2.b and Cox, 214. Cox remarks that OHR ...

has imposed a number of major, substantive laws, on subjects including foreign investment, vehicle licensing, privatization, media, telecommunications and property rights ... [and] measures on important symbolic matters, such as the design of the national flag, the design of the currency, and the selection of the national anthem.

Cox, at 215.

⁵ In Kosovo, international administration was introduced in June 1999. The NATO-led force KFOR enjoys plenary military control, and the United Nations Interim Administration Mission in Kosovo (UNMIK) has total responsibility for the conduct of civil administration, including the deployment of an international police force. In East Timor the United Nations Transitional Authority in East Timor (UNTAET) was created towards the end of 1999 to take over both civil and military administration during the transitional period before independence. For Kosovo, see Security Council Resolution 1244, UN Doc. S/RES/1244 (1999), 10 June 1999, <<http://www.un.org/Docs/scres/1999/99sc1244.htm>>, [hereinafter 'SC Res. 1244']. See also Agreement on the principles (peace plan) to move towards a resolution of the Kosovo crisis presented to the leadership of the Federal Republic of Yugoslavia by the President of Finland, Martti Ahtisaari, representing the European Union, and Viktor Chernomyrdin, Special Representative of the President of the Russian Federation, 3 June 1999, UN Doc. S/1999/649, <<http://www.un.org/peace/kosovo/s1999649.pdf>>, [hereinafter 'Kosovo Peace Plan 1999']; Military-technical agreement between the international security force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (9 June 1999), S/1999/682, <<http://www.un.org/peace/kosovo/s99682.pdf>>, [hereinafter 'NATO - FRY - Serb Republic Agreement 1999']. For East Timor, see Security Council Resolution 1272, 25 October 1999, UN Doc. S/RES/1272 (1999), <<http://www.un.org/Docs/scres/1999/99sc1272.htm>> [hereinafter 'SC Res. 1272'], in

In Bosnia and Herzegovina, Kosovo and East Timor, *governance* ITA is allied to what I shall refer to as *community-building* ITA. Administration is conducted not only to provide governance in the territory, but also "to construct or reconstruct institutions, broadly defined, including material infrastructure, public bodies, commercial enterprises, media and telecommunications, and civil-society organizations."⁶ In Bosnia and Herzegovina, the Dayton Agreement sets out the new constitutional structure of the state, and OHR exercises governmental prerogatives to support the implementation of this new structure.⁷ In Kosovo and East Timor, by contrast, international organizations have been mandated to initiate and/or support the development of new constitutional and governmental structures from scratch. In Kosovo, this mandate is complicated by the uncertain future status of the territory. Thus, on the one hand, UNMIK has the responsibility for,

... 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,⁸

and is also responsible for

... overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities.⁹

particular articles 1, 2(a) and (b), 3(a) and 6. See also Indonesia - Portugal, Agreement on the Question of East Timor, 5 May 1999, <http://www.un.org/peace/etimor99/agreement/agreeFrame_Eng01.html>, Appendix, A Constitutional Framework for a Special Autonomy for East Timor, <http://www.un.org/peace/etimor99/agreement/agreeFrame_Eng02.html> [hereinafter 'Indonesia-Portugal Agreement 1999']. For a discussion of some of the legal and policy consequences of regarding the UN the government of Kosovo and East Timor, as that term is understood in international law, see Ralph Wilde, *The Complex Role of the Legal Adviser When International Organizations Administer Territory*, 2001 AM. SOC'Y INT'L L. PROC. 251.

⁶ Wilde, *supra* note 1, at 601.

⁷ The constitution of Bosnia and Herzegovina is contained in the Dayton Agreement, *supra* note 4, Annex 4. OHR's community-building mandate is based on the same provisions in the Dayton Agreement as its purported powers to introduce certain administrative measures outlined earlier. For these provisions, and the administrative powers that have been interpreted out of them, see *supra* note 2 and accompanying text.

⁸ SC Res. 1244, *supra* note 5, para 10. In para 11(c), this endeavour is described as

organizing and overseeing the development of provisional institutions for democratic and autonomous self government pending a political settlement...

⁹ SC Res. 1244, *supra* note 5, para 11(d).

On the other hand, however, UNMIK is also mandated to facilitate the "political process designed to determine Kosovo's future status" and, on the outcome of this process, it is responsible for

... overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.¹⁰

In East Timor, the institution-building mandate is comparatively straightforward, in that the future status of the territory, as a state, is clear. UNTAET is mandated to "support capacity-building for self-government,"¹¹ and the Security Council,

... [s]tresses the need for UNTAET to consult and co-operate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution...¹²

In all three places, international organizations are also responsible for promoting, either directly or through appointees, the development of public services, and, more generally, economic development and (re)construction.¹³

¹⁰ SC Res. 1244, *supra* note 5, para 11(f).

¹¹ SC Res. 1272, *supra* note 5, para 2(e).

¹² *Id.*

¹³ For Bosnia and Herzegovina, see the Dayton Agreement, *supra* note 4, Annex 9, which establishes a Commission on Public Corporation to set up corporations that will operate public facilities such as the post and telecommunications systems. Certain members of this Commission are appointed by the European Bank for Reconstruction and Development. In Kosovo, the Security Council gives UNMIK responsibility for '[s]upporting the reconstruction of key infrastructure and other economic reconstruction,' and '[s]upporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid,' (SC Res. 1244, *supra* note 5, paras 11(g) and (h) respectively). It also '[e]ncourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons,' and

[w]elcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation . . .

(SC Res. 1244, *supra* note 5, paras 13 and 17 respectively). In East Timor, UNTAET is mandated to 'assist in the development of civil and social services,' SC Res 1272, *supra* note 5, para 2 (c); 'ensure the coordination and delivery of humanitarian assistance, rehabilitation and

In Kosovo and Bosnia-Herzegovina, the UN is responsible for assisting in the development of local police forces.¹⁴

When a community-building mandate is granted alongside a governance mandate, the two are formally linked and the point of community building ITA is to foster conditions so that governance ITA is eventually unnecessary. Thus in Kosovo and East Timor, part of the community-building mandate involves the creation of local institutions to which the UN can then transfer its administrative authority.¹⁵ Moreover, the community-building mandate may be linked to a particular agenda as far as the territorial status of the unit is concerned. Thus community-building in Bosnia and Herzegovina is attempting to shore-up the idea of Bosnia and Herzegovina as a multi-ethnic state,¹⁶ and in East Timor it is intended to create conditions where the

development assistance,' SC Res. 1272, *supra* note 5, article 2(d); and 'assist in the establishment of conditions for sustainable development,' SC Res. 1272, *supra* note 5, article 2(f). In Security Council 1272, the Security Council "calls upon all parties to cooperate with humanitarian and human rights organizations so as to ensure...the safe return of refugee and displaced persons." SC Res. 1272, *supra* note 5, article 10; see also articles 11 and 12. It also

[w]elcomes the intention of the Secretary-General to establish a Trust Fund available for, *inter alia*, the rehabilitation of essential infrastructure, including the building of basic institutions, the functioning of public services and utilities, and the salaries of local civil servants . . .

and

[e]ncourages member states and international agencies and organizations to provide personnel, equipment and other resources to UNTAET as requested by the Secretary-General, including for the building of basic institutions and capacity . . .

SC Res. 1272, *supra* note 5, articles 13 and 14 respectively.

¹⁴ For Bosnia-Herzegovina, see the Dayton Agreement, *supra* note 4, Annex 11. For Kosovo, see SC Res. 1244, *supra* note 5, para 11(i).

¹⁵ In East Timor, the Security Council,

[s]tresses the need for UNTAET to consult and co-operate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public service functions;

See SC Res. 1272, *supra* note 4, para 2(e) (emphasis added). In Kosovo, once the above mentioned 'provisional institutions' are established, UNMIK is responsible for '[t]ransferring . . . its administrative responsibilities' to these institutions. See SC Res. 1244, *supra* note 5, para 11(d).

¹⁶ For example, the Constitution of Bosnia and Herzegovina, which forms part of the 'civilian' aspects of the Dayton Peace Agreement which OHR is charged with promoting, is "[c]ommitted to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law." Dayton Agreement, *supra* note 4, Annex 4, preamble para. 6.

territory can become an independent state.¹⁷ In Kosovo, the ambivalence of the community-building agenda, creating conditions for "substantial autonomy" within the FRY, while at the same time anticipating some future process where the status of Kosovo will be determined, and thus potentially altered, reflects the uncertain future of Kosovo as far as international policy is concerned.

In UN-run camps for forced migrants, by striking contrast, the UN is not given any explicit community-building mandate in law. Here the agenda for the unit is very different from that in Kosovo, Bosnia and Herzegovina and East Timor, and the purpose for administration reflects this different agenda. As far as the law is concerned, many camp occupants are only resident on a "temporary" basis, since this residency is bound up in their status, whether officially recognized or not, as refugees.¹⁸ Because of this "temporary" residency, there is no sovereignty agenda as far as the unit where these people reside – the camp – is concerned. Indeed, the unit may not be presented officially as a distinct entity at all; camps may not show up on government maps, for example. The agenda is, rather, to provide "temporary" assistance to the "temporary" residents.

III. THE RELATIONSHIP BETWEEN GOVERNANCE AND COMMUNITY-BUILDING MANDATES

I would like to question the distinction between administration, on the one hand, and community-building, on the other, which can be identified in the Kosovo, East Timor and UN-run camp ITA projects outlined above. In Kosovo and East Timor, the relevant legal instruments delineate governance and community-building responsibilities separately. Even when these two types of responsibilities are delineated in the same sentence, they are each presented as separate from the other. For example, UNMIK is mandated "to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions."¹⁹ As far as the relationship between governance and community building is

¹⁷ For example, the Security Council describes 'a process of transition under the authority of the United Nations towards independence,' SC Res. 1272, *supra* note 5, preamble para. 3.

¹⁸ For the applicable international refugee law in most African countries, see Convention relating to the Status of Refugees, 28 July 1951, 18 U.N.T.S. 137

<<http://www.unhcr.ch/refworld/legal/instruments/asylum/1951eng.htm>> (visited 20 Dec. 2000) and Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (20 June 1974) 14 U.N.T.S. 691. Many of these camps house a broader class of forced migrants which may include, but is not limited to, forced migrants who qualify for refugee status.

¹⁹ SC Res. 1244, *supra* note 5, para 10.

concerned, the only link made is that administrative powers will be transferred to institutions that are created as part of the community-building programme. So UNMIK is responsible for "[t]ransferring, as these institutions [of self-government] are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities" ²⁰

In UN-run camps, no link between governance mandates and community-building mandates is made at all, since the latter mandates do not exist. Neither in the East Timor and Kosovo mandates, nor the refugee camp mandates, is there any suggestion about how administration should relate to community-building, or vice versa.

The result, therefore, is a presentation of the two modes of ITA - governance ITA and community-building ITA - as mutually exclusive. These modes can operate in the same place without overlapping; governance ITA can be conducted without community-building being a factor. Such a presentation is unfortunate, because it risks ignoring the way in which governance ITA itself shapes the community it is concerned with. Governance ITA has this effect in at least six different ways. First, the way that governance ITA distinguishes between different groups in the local community can have an empowering and disempowering effect on these groups, thereby affecting their standing in the community. Such distinctions can occur in a wide range of administrative matters, from consultation in decision-making to the provision of food, water and other assistance, and the running of education and training facilities. They can arise out of an active decision on the part of international officials - for example choosing to consult certain individuals - or simply because only certain groups become involved in a particular public service - for example if the children attending schools are mostly boys. In either case, governance engages with society, and shapes it. For community groups, the privilege of being consulted empowers such groups as representatives of their community. By the same token, exclusion from consultation has a disempowering effect. Equally, providing education that will be used mostly by boys may reinforce particular gender roles in the local society.

Second, policy decisions made by international officials in the exercise of governance ITA, for example, the decision to focus on economic reconstruction before introducing political institutions, or to focus on early

²⁰ SC Res. 1244, para 5 (d).

elections are, of course, based on various economic and political assumptions. Carrying out these decisions promotes these assumptions within the social discourse of the community affected. The third way in which international administration missions shape the local communities affected is in the composition of these missions. The language, nationality, religion and gender of international staff will all have an effect on the role played by these identity signifiers locally. For example, many UN officials in East Timor speak Portuguese, the main language of the older generation who were exiled or led the independence guerillas; very few speak Bahasa Indonesian, the main language of those who were born after 1975 and educated in Indonesian institutions.²¹ The older elite have a linguistic advantage over the younger generation when dealing with UN officials and this advantage may further the relative importance and influence of these two groups within East Timorese society.

Fourth, governance ITA shapes the community affected, through the choice of unit within which it is conducted. Conducting governance ITA at the level of a particular unit reinforces that unit as a meaningful basis for collective activity. It supports an idea of community that corresponds to the unit (in Kosovo, being "Kosovar") and undermines the idea of community that cuts across the unit (in Kosovo, being "Yugoslav" and/or "Serb"). It enables the sense of "self" and "other," those within and without the unit, on which community identity can be based. Fifth, the manner in which governance ITA is conducted — how far it is accountable, democratic, fair — operates on a symbolic level to foster certain ideas about how governance should and does work. It sets a precedent that will have an influence when governance is exercised by the people of the local community.

Finally, the type of legal authority on which the ITA mandate rests has an effect on the local community, since legal authority can involve varying degrees of consent by local community representatives. All the administration projects claim authority from legal processes that exclude any local consent. In the case of Kosovo, Bosnia and Herzegovina and East Timor, this imposed authority comes from Resolutions of the Security

²¹ This is part of a wider linguistic problem, since, according to Ruth Wedgwood,

[o]nly a handful of UN staff speak Bahasa Indonesia (a Malay tongue) or Tetun, preventing them from communicating with 80 percent of East Timor's population. Translators offer no substitute, since few local Timorese speak more than rudimentary English.

Council passed under Chapter 7.²² It also comes from agreements signed by the Federal Republic of Yugoslavia in the case of Kosovo,²³ and by Indonesia and Portugal in the case of East Timor.²⁴ In UN-run camps, it comes from agreements made between host states and UNHCR. In Bosnia and Herzegovina, authority for OHR's administrative powers also comes from a process that did involve the participation of certain local actors: the Dayton Agreement. Annex 10 of Dayton, which outlines OHR's role, is signed by both the state of Bosnia and Herzegovina and its two constituent Entities, the Federation of Bosnia and Herzegovina, and the Republika Srpska.²⁵

A legal process involving the consent of certain local actors or institutions can boost the standing of such actors or institutions in the community concerned, and undermine the standing of other local actors or institutions who are not involved. In this regard, it can have an ambivalent effect if two competing actors are both involved. Thus OHR's mandate, involving the consent of both Bosnia and Herzegovina and its two constituent Entities, simultaneously strengthens and undermines the authority of both the central government and the two Entity governments vis à vis each other.²⁶ OHR's mandate thus acknowledges, and also reinforces, the tensions between the Entities and the central government. A legal process that excludes the consent of any local representatives, thereby imposing international administration, can have a disempowering effect on all in the community affected, and a corrosive effect on the very idea of the community itself. An imposed mandate symbolizes, and exacerbates, the weakness of the community on which it is imposed.

To conclude, international territorial administration takes place at a significant moment in the lives of the local people affected, and at an important point in the development of the communities within which these people live. It can have a profound affect on such communities, quite apart from whether it has any community-building agenda. Indeed, when such an

²² For Bosnia-Herzegovina, see SC Res. 1031, *supra* note 5. For Kosovo, see SC Res. 1244, *supra* note 5. For East Timor, see SC Res. 1272, *supra* note 5.

²³ For Kosovo, see NATO - FRY - Serb Republic Agreement 1999, *supra* note 5. Given that Kosovo is considered legally part of the Serb Republic within the Federal Republic of Yugoslavia, this agreement does, formally, involve 'local consent.' However, the meaningfulness of this consent, as far as Kosovar input is concerned, is undermined by the reason for the agreement, which is to reverse the disempowerment and disenfranchisement - both constitutionally and in a wider sense - of Kosovo within the Serb Republic and the Federal Republic of Yugoslavia.

²⁴ See Indonesia-Portugal Agreement 1999, *supra* note 5.

²⁵ See the Dayton agreement, *supra* note 4.

²⁶ Bosnia and Herzegovina is constituted ambivalently as a state divided up into two Entities, see the Constitution of Bosnia-Herzegovina, Annex, Dayton Agreement, Annex 4, *supra* note 4.

agenda does exist, this agenda may be undercut, as well as supported, by the exercise of what I have termed governance ITA. Communities can be reinforced and undermined; political, cultural and social identities can be entrenched and transformed. Understandings of international territorial administration by policy-makers need to take this into account, and incorporate a greater appreciation of the effect administration has on the development of the local community affected.²⁷

²⁷ For the sections covering administrative responsibilities, *see supra* note 3. For the sections covering community-building responsibilities, *see supra* notes, and accompanying text, 4, 10 and 11 (for Bosnia-Herzegovina); 6 – 8, 10 and 11 (for Kosovo) and 8 – 11 (for East Timor).

