the ITPCM
International Training Programme for Conflict Management
newsletter

overview

Dear Friends of the ITPCM,
this issue of our newsletter focuses on Kosovo. This small portion of ground, when compared to the entire earth surface, at the heart of the Balkan chaos, had and still has a great meaning and impact in terms of geopolitics, international relations shape and attention to human rights protection.
It has been ten years since the NATO bombardments of 1999, and just one from the declaration of independence of last 17 February 2008. Kosovo is becoming a State, meeting all international requirements.The United Nations Mission in Kosovo (UNMIK) is working in a completely new scenario. It

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has now to confront itself with the recently established EULEX mission, which finds its own legitimacy in the ex-post endorsement contained in the declaration of independence. Reconstruction, with all aspects revolving around housing rights and property, is still a big issue at stake. Corruption finds in all this a fertile soil to put down roots while the leftovers of 1999 bombing raids still endanger Kosovars every day life.
We discuss and expand on that in various articles in this issue of our Newsletter: it is our attempt to get and give an idea of what is going on - on the other side of the Adriatic Sea. And to forecast if and to what extend Kosovo will look like that multiethnic society as it was planned in the Ahtisaari's Plan.

Along with those contents, as usual, you will find an update of our current activities here at the ITPCM and next trainings in agenda, in Italy and abroad, to be delivered during next months.

Hoping this will be in some way useful in your every day work and commitment, I am pleased to send to all of you my best regards and wishes for a Happy Easter,

Andrea de GUTTRY
Director ITPCM

Contributions

by Andrea de Guttry*

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THE EU RULE OF LAW MISSION IN KOSOVO: REMARKS ON ITS LEGALITY*

the legal basis of the European Union's decision to launch the EULEX Kosovo Mission from an international law perspective

**This contribution is based on an Article written by the Author and published in Diritto e Politiche dell'Unione Europea, 2007, No. 3, pp. 147-169.*

Kosovo has been a very difficult and slippery issue for the international community since the end of the North Atlantic Treaty Organization (NATO) led military operation against the then Yugoslav armed forces in June 1999.[1] The configuration of the architecture of the international presence in Kosovo, stemming from UN Security Council Resolution 1244/1999, has proved to be quite effective in the field. Both the United Nations Mission in Kosovo (UNMIK) and NATO's Kosovo Force (KFOR) have been able to carry out their respective mandates in a not excessively controversial manner. However, it has left untouched the decisive issue of the future status of Kosovo. In recent years the Balkan region has become a key priority for the European Union (EU) as the future of the Western Balkan countries lies firmly in their European outlook.[2] The EU's efforts in Kosovo build on the significant support it has been providing over the past years. At nearly 2 billion euros to date, the EU is already the largest donor to Kosovo. In the coming years (2007-2010), it will allocate more resources to Kosovo per capita than to any other place in the world, nearly 330 million euros.[3] After a long and fruitless round of

1 For an interesting reconstruction of the events that led to the war, see N. MALCOLM, *Kosovo: a Short History*, London, 1998 and F. DE VRIEZE, *Kosovo: Civil Society Awaits a Chance for Reconciliation*, in P.VAN TONGEREN, H. VAN DEN VEEN and J. VERHIEVEN, Searching for Peace in Europe and Eurasia, Boulder (Colorado) 2002, p 289 a

2 In this regard see also the General Affairs and External Relations Council Conclusion on Kosovo of February 18, 2008.

3 See the European Union Background, The EU in Kosovo, available at www.consilium.europa.eu/uedocs/cmsUpload/080216ThwEUinKosovo.pdf. Also see M. ALFONS, *Of Standards and Status: the Role of the European Union in Kosovo from UNSC*

negotiations about the future of Kosovo, the EU decided to increase its role in this area through decisions to deploy the EULEX Kosovo mission and to appoint an **EU Special Representative**. Both these decisions have raised serious criticism from various major international players with specific interests in that area. In recent times, concerns about the legality of the EULEX Mission and its relations with UNMIK also have been raised within the EU. According to press reports appeared during the debate:

> Spanish Foreign Minister Angel Moratinos told a meeting of European Union Foreign Ministers in Slovenia [...] that Madrid will not send its contingent of 15-20 staff to the 2,000-strong EULEX mission until there has been a formal transfer of powers from the United Nations.[4]

The main goal of this contribution is to examine the legal basis of the European Union's decision to launch the EULEX Kosovo Mission from an international law perspective. If, from the point of view of the EU Treaty, the legal foundations of the Joint Action seem solidly based on articles 14 and 25 of the Treaty on European Union, from an international law perspective, the question of the legality of EULEX's deployment seems much more complex and disputable.

As a matter of fact the EU's decision to launch EULEX Kosovo has been fiercely opposed by a few members of the international community. *In primis*, for obvious reasons, by Serbia and the Russian Federation[5]. In a statement delivered on February 20, 2008, the Russian Ministry of Foreign Affairs Spokesman Mikhail Kamynin, declared that:

> The decision to deploy an EU mission in Kosovo likewise has no legal grounds. As is known, the preparations for deploying the EU mission were – and still are – being conducted in circumvention of the UN Security Council. In this context the mentions, in the conclusions, of UNSCR 1244 look absurd. These EU actions do not conform to the principles of interaction set forth in the Russia-EU roadmap for the common space of external security, primarily in the part of strengthening the central role of the UN…..The EU, by continuing to follow the unilateral scenario of solving the Kosovo problem, is acting to the detriment of stability in the Balkans and in Europe and encouraging separatism in the world.[6]

To sum up, two are the main lines of criticism on the EU's decision to deploy EULEX Kosovo. One is related to the illegality of the Kosovo Declaration of Independence of February 17, 2008, and the second is related to the incompatibility of the EU decision with UN Resolution 1244.

Both EU Joint Action 2008/124/CSFP and the Kosovo Declaration of Independence repeatedly make reference to UN Security Council Resolution 1244/1999. Compared to other similar decisions or Joint Actions, the one examined here is not very generous in giving explicit details about the decision's legal basis according to international law. While abundant reference is made in the Council Joint Action to the legal basis within the EU framework (article 14 and article 25 of the Treaty on European Union are mentioned expressly in the preamble of the Joint Action as founding pillars of the Joint action within the EU legal system), the references to the legal basis in international law are drafted in quite an ambiguous manner.

The first element to be noted is the total absence of any reference to the consent of the hosting State to the deployment of the mission. For the first time, the Council of the European Union decided to establish a crisis management operation without the prior approval of the state on whose territory the mission will be deployed.

Although the reasons behind this situation are self-evident and do not need any additional explanation, it must be underlined that the lack of any agreement/invitation by the hosting state, which, as we have seen before, has always represented one of the fundamental pillars and prerequisites for a peace-keeping operation, could have a significant impact on the very nature of the operation.

That said, it remains to be ascertained whether, having been unable to base the legality of the mission on the consent of the hosting state, the EU can base its decision on an enabling UNSC

1244 to the Future Status Talks, in *Suedosteuropa*, n. 3/2006, p. 339 ff.and G. SCORDINO, *L'Unione europea ed il Kosovo*, in *Il Contesto*, No. 5, 2006, p. 141 ss.

4 The Minister was quoted by Balkan Insight, available at http://www.balkaninsight.com/en/main/news/9028/

5 As a matter of fact China as well expressed "grave concern" abut the decision of Kosovo to proclaim unilaterally independence: see the statement of the Chinese Foreign Ministry Spoke-person of February 17, 2008 **available at** http://www.china-un.org/eng/fyrth/t408032.htm

6 Ministry of Foreign Affairs of the Russian Federation, Information and Press Department, MFA Spokesman Mikhail Kamynin Answers a Media Question on Kosovo on February 20, 2008, at http://www.mid.ru/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/fbb3a3226cd8cef7c32573f500405651

resolution. An attempt in this direction was made in the phrasing of the preamble of the Joint Action and in a few (unfortunately rare) statements by EU authorities.[7]

In the preamble of the Council Joint Action several references and quotations are devoted to UNSC Resolution 1244 of June 10, 1999, which authorized the establishment of an international civil presence as well as an international security presence in Kosovo. After careful examination in an international law perspective, these references all seem totally inappropriate and inadequate as legal bases for EULEX Kosovo. In paragraph 10, the UNSC Resolution clearly stipulates that the international civil presence has to be established by the Secretary General with the assistance of the relevant international organisations. In the case we are examining in this paper, it is evident that the UN Secretary General, although repeatedly welcoming EU cooperation in helping to solve the crisis in Kosovo and its contribution to the stability of the region, has never formally endorsed the establishment of EULEX Kosovo.

"In my opinion, after February 17, 2008, the legal basis of the deployment of the EULEX Kosovo mission can be based on the ex-post endorsement of its deployment contained in the Kosovo Declaration of Independence and, later, in the new Constitution of the Republic of Kosovo."

Given what we have seen, it appears that the traditional arguments used in similar cases to establish legality of missions cannot be used. Therefore, additional efforts have to be made to find a solution concerning the mission's legality in an international law perspective.

The decisive elements which have to be taken into consideration are the Declaration of Independence adopted by the Assembly of Kosovo on February 17, 2008 and the subsequent recognition of the new State of Kosovo by several states.[8] At that moment, a new state was born with all rights and obligations under international law. In my opinion, after February 17, 2008, the legal basis of the deployment of the EULEX Kosovo mission can be based on the ex-post endorsement of its deployment contained in the Kosovo Declaration of Independence and, later, in the new Constitution of the Republic of Kosovo. As it has been already pointed out, paragraph 5 of the Declaration the Assembly welcomes:

> the international community's continued support of our democratic development through international presences established in Kosovo on the basis of UN Security Council Resolution 1244(1999)

stating also:

> we invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European Union-led rule of law mission. We also invite and welcome the North Atlantic Treaty Organization to retain the leadership of the international military presence in Kosovo and to implement responsibilities assigned to it under UN Security Council Resolution 1244(1999) and the Ahtisaari Plan, until such time as Kosovo institutions are capable of assuming these responsibilities.

Therefore, the state has given its authorization for the deployment of EULEX Kosovo and any doubt about its legality should be resolved thanks to the subsequent confirmation by the hosting state, which arrived, in any case, prior to the effective deployment of the field operation.

Similar conclusions were reached in a previous case concerning Sudan when the UN Security Council, through Resolution 1706/2006, decided to expand the mandate of the United Nations Mission in Sudan (UNMIS) and to significantly increase its strength without having received any priori consent from the Sudanese Government, which, on the contrary, fiercely opposed the adoption of the Resolution. In that case, as in the one examined here, the actual deployment took place much later and only after formal

"...Kosovo is recognized as a state with all rights and responsibilities. [...that] carries with it *de facto* recognition of the new state by those EU member states who formally have not yet recognized it."

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7 See, for example, the statement delivered at a press conference in Brussels by the President of the European Commission on February 21, 2008 in which the issue of the legality of the mission was touched upon. Extracts of the statement are available at http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=02&dd=23&nav_id=47920

8 As of April 4, 2008, 36 states, including 19 member states of the European Union formally recognized the independence of the Republic of Kosovo.

Constitution of the Republic of Kosovo (selected articles)

Article 3 [Equality Before the Law]
1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.
2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.
[...]
Article 5 [Languages]
1. The official languages in the Republic of Kosovo are Albanian and Serbian.
2. Turkish, Bosnian and Roma languages have the status of official languages at the municipal level or will be in official use at all levels as provided by law.
Article 6 [Symbols]
1. The flag, the seal and the anthem are the state symbols of the Republic of Kosovo all of which reflect its multi-ethnic character.
2. The appearance, display and protection of the flag and other state symbols shall be regulated by law. The display and protection of the national symbols shall be regulated by law.
Article 7 [Values]
1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.
2. The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.
Article 8 [Secular State]
The Republic of Kosovo is a secular state and is neutral in matters of religious beliefs.
Article 9 [Cultural and Religious Heritage]
The Republic of Kosovo ensures the preservation and protection of its cultural and religious heritage.
Article 10 [Economy]
A market economy with free competition is the basis of the economic order of the Republic of Kosovo.

and *de facto* agreement was given by the competent Sudanese authorities.

In the Kosovo case, however, this conclusion is not without its consequences. It implies that Kosovo is recognized as a state with all rights and responsibilities. It also carries with it *de facto* recognition[9] of the new state by those EU member states who formally have not yet recognized it. (As of April 4, 2009, 22 EU member states have formally recognized the new entity).

In any case, it is worth underlining that by applying this line of reasoning it is only possible to solve the problem of the legality of the EU deployment in Kosovo. The issue of relations between EULEX Kosovo and UNMIK remains an open one.

9 It is interesting and relevant to underline, at this regard, that Romania's Foreign Minister stated that the participation of the country's policemen and Gendarmerie in EULEX does not mean " that Bucharest *de facto* acknowledged the unilaterally proclaimed independence of Kosovo": the statement is available at www.mfa.gov.yu/Policy/CI/KIM/210208_html

KOSOVA Formal Recognitions Data as of 4 april 2009:

- **56 out of 192 United Nations (UN) Member States**
- **3 out of 5 UN Security Council (UNSC) Permanent Member States**
- **22 out of 27 European Union (EU) Member States**
- **22 out of 26 NATO Member States**
- **33 out of 47 Council of Europe (COE) Member States**
- **35 out of 56 OSCE Member States**
- **9 out of 57 OIC Member States**
- **7 out of 7 G7 Member Countries**
- **7 out of 8 G8 (G7 + Russia) Member Countries**

by Andrea Cruciani*

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The opinions expressed in the present article are the ones of the author in his individual capacity and not as a staff member of the EULEX KOSOVO. They do not necessarily reflect the views and/or official positions of other staff members of the EULEX KOSOVO.

Kosovo Constitution: national sovereignty arising out of international presence

International and domestic legal orders in the self- proclaimed independent Kosovo: UN resolutions/regulations and Constitution and laws of the Assembly, which set of rules are to obey?

Introduction

On the 17th of February 2009, celebrations took place inside and outside Kosovo for the first recurrence of the self-proclamation of independence of Kosovo. Following this event, the mass-media and the international community have mainly focused their attention on the political implications of such recurrence, whereas little attention has been put on the legal issues of international law on whether the prerequisites for the existence of a new State have been really met, especially as to what the elements of sovereignty and independence concern. Even less attention has been dedicated to a specific and related topic, which is that of the applicable law in Kosovo in the aftermath of the declaration of independence. This is particularly surprising given that the declaration of independence of Kosovo of a year ago temporarily coincided with the launching of the largest ESDP mission that the EU has ever undertaken in the rule of law area.

EULEX KOSOVO

It is well known that the discussions in the EU Council on the status of Kosovo could not lead to any common position, given that the EU Member States adopted different views on that matter. Nevertheless, the still ongoing political uncertainty

among the EU Member States on the status of Kosovo does not mean political uncertainty as to the commonly shared interest of the EU as such to gain political influence on the region of Kosovo, which is considered to be part of the European territory. Thus, the different positions of the EU Member States on the status of Kosovo could not impede the EU Council from adopting, on the 4th of February 2008 (notably just a few days before the declaration of independence of Kosovo of the 17th of February 2008), the Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO. According to the said EU Council Joint Action, the EULEX is supposed to act in the field of the rule of law by providing monitoring, mentoring and advising (MMA) to the local authorities and by exercising some limited executive functions. In doing so, the staff members of the EULEX mission shall maintain the "status neutrality", by operating under the framework of the UN Resolution 1244 (1999) of the 10th of June 1999.

Mission impossible?

Now the question comes: how can the judges/prosecutors, police officers and customs officers exercise their MMA functions and their executive functions in the rule of law area and be at the same time "status neutral"? There is obviously no answer to that question in the official EU documents, as it is left to the operators in the field to deal with such incongruity. Indeed, it is self evident than when it comes to monitoring, mentoring and advising functions in the rule of law area or to exercising judicial functions, those activities can be implemented by the EULEX judges, prosecutors and police officers only if they make a choice on the applicable law in Kosovo, namely UN resolutions/regulations and/or Constitution and laws of the Assembly. Unfortunately, the question of which is the applicable law in Kosovo is strictly interrelated to the one of the status of Kosovo, so that it is not possible to reach a definitive solution on the former if there is no clarity on the latter.

Indeed, the main issue regarding the applicable of law in Kosovo pertains to the relationship between the international legal order (UN Security Council Resolution 1244/1999 and UNMIK regulations) and the domestic legal order (Constitution of the republic of Kosovo and laws adopted by the Assembly of Kosovo).

International order

In the framework of the UN Security Council Resolution

"Indeed, the main issue regarding the applicable of law in Kosovo pertains to the relationship between the international legal order (UN Security Council Resolution 1244/1999 and UNMIK regulations) and the domestic legal order (Constitution of the republic of Kosovo and laws adopted by the Assembly of Kosovo)."

1244/1999, the UNMIK Regulation 1999/1 establishes that "all legislative and executive authority with respect to Kosovo, including the administration of judiciary is vested in UNMIK and is exercised by the SRSG", while UNMIK Regulations 1999/24 and 2000/59 provide that the law applicable in Kosovo shall be: (a) The regulations promulgated by the SRSG; (b) The law in force in Kosovo on 22 March 1989; (c) Internationally recognized human rights standards. As a matter of fact, until the declaration of independence of Kosovo of the 17th of February 2008, the laws approved by the Assembly of Kosovo were promulgated (sometimes with amendments) by the SRSG. Thus, according to the said UNMIK Regulations, the Constitution of the Republic of Kosovo of the 15th of June 2008, which has not been undersigned by the UN SRSG, and all the laws issued by the Assembly of the Republic of Kosovo after the 15th of June 2008 shall not be considered applicable law in Kosovo.

Domestic order

According to Article 63 of the Constitution of the Republic of Kosovo of the 15th of June 2008, the Assembly is the legislative institution of the Republic of Kosovo. Now, among the new laws which have been promulgated by the Assembly of the Republic of Kosovo after the declaration of independence and which have not been undersigned by the UN SRSG, there are a number of laws which are directly linked to the functions of the EULEX staff members.

- First of all, the Law No. 03/L-053 "On the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo" and the Law No. 03/L-052 "On the Special Prosecution Office of the Republic of Kosovo". These two laws constitute the basis for the integration of the EULEX judges and prosecutors in the local judiciary.

- Moreover, just to focus on the criminal law, the Law No. 03/L-002 "On Supplementation and Amendment of the Provisional Criminal Code of Kosovo" and the Law No. 03/L-003 "On Supplementation and Amendment of the Provisional Criminal Procedure Code of Kosovo" not only change the name of the Provisional Criminal Code of Kosovo (PCCK) and Provisional Criminal Procedure Code of Kosovo (PCPCK), respectively, with Criminal Code of Kosovo (CCK) and Kosovo Code of Criminal Procedure (KCCP), but also introduce, *inter alia*, new provisions on the guilty plea agreements.

- Finally, but these are just some examples, Law No. 03/L-054 "On Stamps of the Republic of Kosovo", state that the stamps to be put on the official documents, included the judicial decisions, shall contain, *inter alia*, the writing "Republic of Kosovo"

Preamble to the Constitution of the Republic of Kosovo, entered into force and effect on 15 June 2008.

"We, the people of Kosovo,
Determined to build a future of Kosovo as a free, democratic and peace-loving country that will be a homeland to all of its citizens;
Committed to the creation of a state of free citizens that will guarantee the rights of every citizen, civil freedoms and equality of all citizens before the law;
Committed to the state of Kosovo as a state of economic wellbeing and social prosperity;
Convinced that the state of Kosovo will contribute to the stability of the region and entire Europe by creating relations of good neighborliness and cooperation with all neighboring countries;
Convinced that the state of Kosovo will be a dignified member of the family of peace-loving states in the world;
With the intention of having the state of Kosovo fully participating in the processes of Euro-Atlantic integration;
In a solemn manner, we approve the Constitution of the Republic of Kosovo."

and the "emblem of the Republic of Kosovo", which is contrary to what the UNMIK Regulation 2000/30 "On stamps and headings of official documents of courts, prosecutor's offices and penal establishments", which provides for the use of the logo of the UN and the writing UNMIK, Interim Administration of Kosovo, on top of it.

International order v. domestic order

Now, as already mentioned, a final solution to the question of the applicable law in Kosovo after the declaration of independence of the 17th of February 2008, rotates on the crucial issue of the relationship between the international order (UN resolutions and regulations) and the domestic order (Constitution and laws adopted by the Assembly). In other words, in order to establish whether, after the declaration of independence of Kosovo, the prevailing sources of law shall be the UN resolutions/regulations or the Constitution of the Republic of Kosovo and the laws adopted by the Assembly it is needed to cast light on the issue of the relationship between the international legal order and the domestic legal order.

Of the many possible angles or perspectives by which this complex and broad issue can be approached, it is suggested that a starting point might be the distinction between UN Member Staes and UN non-Member States.

For all those States that are members of the United Nations Organization, the answer to the said question can be addressed by making reference to the traditional categories of the hierarchy of the legal sources. It is clear that by adhering to the UN Treaty the Member States have delegated some duties and powers, when it comes to the international peace and security, to the Organs of the UNO and they are legally bound to respect and to give all the necessary assistance to the decisions of the Organization. This is clearly stated in the general provisions of the UN Charter and especially in its Chapter VII (Articles 2.2, 41, 42). In that respect, to come back to the Kosovo case, it is evident that the UN Member States as such shall respect and abide to all the decisions of the Organization, included the UN Security Council Resolution 1244/1999 and the UNMIK regulations.

On the opposite, a different solution might be envisaged in the States which have never been admitted to the membership in the United Nations, such as the self-proclaimed Kosovo. In this case, the question of the prevalence between the UN resolutions/regulations and the Constitution and the laws of the UN non-Member State cannot be simply solved recurring to the hierarchy of laws. Indeed, in this case the sources of law pertain to different and not communicating legal systems. In other words, the UN Charter, being it an international treaty and in accordance to the principle of international law *pacta tertiis neque nocent neque iuvant* (Articles 34-38 of the 1969 Vienna Convention on the Law of Treaties) cannot be considered to be a direct source of applicable law in new Kosovo State, as it is in the countries which have adopted and ratified it and which have been admitted to the membership of the United Nations Organizations (in accordance with Articles 3-6 of the UN Charter). In the case of a new UN non-Member State it would be improper to

continued

elaborate on the prevalence of a UN resolutions/regulations over the domestic laws, in the same way as it would be incorrect to speculate if in the State X the prevailing law is the Constitution of the State Y or the domestic laws of the State X.

In that respect, reference shall be made to Articles 16-20 of the Constitution of the Republic of Kosovo which establish that "The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution" and that "Every person and entity in Kosovo is subject to the provisions of the Constitution" (Art. 16); "The Republic of Kosovo concludes international agreements and becomes a member of international organizations" (Art. 17); "International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law. Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo" (Art. 19); "The Republic of Kosovo may on the basis of ratified international agreements delegate state powers for specific matters to international organizations. If a membership agreement ratified by the Republic of Kosovo for its participation in an international organization explicitly contemplates the direct applicability of the norms of that organization, then the law ratifying the international agreement must be adopted by two thirds (2/3) vote of all deputies of the Assembly, and those norms have superiority over the laws of the Republic of Kosovo" (Art. 20). Self evident is the implicit reference of Article 20 of the Constitution to International Organizations such as the United Nations.

It follows that Kosovo is under no international obligation to abide to the UN resolutions/ regulations. This also means that Kosovan officers, included judicial personnel and police officers, shall apply and respect only the laws in force in their country, namely the Constitution, the laws adopted by the Assembly, the international customary law (including the international human rights standards) and not the resolutions and regulations adopted by the Organs of a Treaty, such as the UN Charter, of which Kosovo is not Member.

The direct consequence of this conclusion is that the only way for the United Nations to make the UN resolutions and regulations implemented in the territory of Kosovo is to by imposing them, in accordance with the powers of Chapter VII of the UN Charter.

Indeed, this is what has happened from 1999 up to 2008. In particular, the UN Member States, acting in accordance with the Security Council Resolution 1244/1999, which is a Chapter VII resolution, and the UNMIK regulations 1999/24 and 2000/59 have imposed on the UN administrated territory of Kosovo the implementation of the above mentioned sources of law (namely, UN SRSG regulations; the laws in force in Kosovo on 22 March 1989; the internationally recognized human rights standards). Nevertheless, after the declaration of independence of 17th of February 2008, the situation has radically changed. The Kosovan institutions claim to be an independent sovereign country. In this new situation the only way for the UN Member States to continue implementing sources of law which differ from the ones adopted by the local institutions would be by imposing them with the use

"As is evident from the developments on the ground, my Special representative is facing increasing difficulties in exercising his mandate due to the conflict between resolution 1244 (1999) and the Kosovo Constitution, which does not take UNMIK into account"

From the report of the UN SG to the Security Council

of force. In conclusion, at the present time, the question of the applicability of the UN resolutions/regulations in Kosovo turns out to be the question of the enforcement powers of the UN. It is a matter of fact, which has been acknowledged also by the UN SG in his report to the UN Security Council, that at present the United Nations lack the enforcement powers necessary to exercise the competences and to implement the decisions in all those areas on which now the local authorities have started assuming responsibilities.

This is an excerpt from the Report of the UN SG to the Security Council on the UNMIK (S/2008/692): "The Assembly of Kosovo continues to pass legislation, which is now adopted without reference to my Special Representative's powers under resolution 1244 (1999) or the Constitutional Framework" and "As is evident from the developments on the ground, my Special representative is facing increasing difficulties in exercising his mandate due to the conflict between resolution 1244 (1999) and the Kosovo Constitution, which does not take UNMIK into account. The Kosovo authority frequently question the authority of UNMIK in a Kosovo now being governed under the new

Constitution. While my Special Representative is still formally vested with executive authority under resolution 1244 (1999), he is unable to enforce this authority. In reality, such authority can only be exercised if and when it is accepted as the basis for decisions by my Special Representative. Therefore, very few Executive Decisions have been issued by my Special representative since 15 June."

Indeed, as a matter of fact, the UN SRSG, since 15th of June 2008, is refraining from exercising both the powers to amend/repel the laws adopted by the Assembly and to issue new Regulations.

Another direct consequence of the above expressed conclusion is that the EULEX staff members, as it is the case with the members of Kosovan authorities, shall apply and respect only the laws in force in Kosovo, namely the Constitution, the laws adopted by the Assembly, the international customary law (including the human rights standards) and not the UN resolutions/regulations which have not been adopted in the internal legal system in accordance with the Constitution. Indeed, the EU Council has decided that EULEX shall be based on the principles of co-location and local ownership, so that on the one side judges and prosecutors are co-located in the premises of their local counterparts and work with them on a daily basis in mixed panels or mixed teams and on the other side all decisions rendered by EULEX judges and prosecutors will be deemed to be decisions of the local judiciary. Although, it is not stated clearly in any EU official documents - and it could not be as it would contradict the other conflicting assumption that the EULEX shall maintain the "status neutrality" - the EULEX mission, as it has been shaped by the EU Council, can only operate by applying the Constitution and the laws of Kosovo, which obviously implies the recognition of the existence of a sovereign and independent new State of Kosovo.

Conclusions: "aporia" or political inconsistency?

The present situation in Kosovo seems to recall one of those situations, in relation to which the ancient Greek philosophers have made recourse to the term "*aporia*", that is to say a problem in relation to which two opposite and yet both valid solutions can be found.
In particular, in the present Kosovo, from a strict legal point of view, the Member States are right, based on the UN Security Council Resolution 1244 (1999), to proclaim the respect for the "status neutrality" and to abide to the UNMIK Regulations and the same Member States are also right, based on the Constitution of Kosovo, to support the rule of law in Kosovo, by applying the laws adopted by the Assembly of Kosovo.
In reality, the explanation to the said "*aporia*" is quite evident. Some Member States, namely the EU Member States (and the other Contributing States of the EULEX mission), willing to stick to their political agendas by all means, have undergone two different and contradicting international obligations/commitments.
On the one hand, they have launched the EULEX mission, deciding to provide to a self-proclaimed Kosovo the support in the rule of law area, where, for the above mentioned reasons, the rule of law will necessarily have to make exclusive reference to the system envisaged in the Constitution of the new State of Kosovo. On the other hand, the same States, by being Members of the Organizations of the United Nations - and some of them even permanent Members of the UN Security Council which has issued Resolution 1244 (1999) – are bound, by force of the UN Charter, to fully respect the decisions of the Organization, included Resolution 1244/1999, and to refrain from undertaking any other obligation/commitment which is not in accordance with it.
It is surely not the first time in the history of the international relations, and it won't be the last, that States push their political interests to the point of undertaking two contradictory international obligations. As far as what Kosovo pertains, for the time being, there will exist two different legal orders and even the staff members of the same EU States, depending on if they are UNMIK staff members or EULEX staff members, will have to follow two different set of rules.

"Another direct consequence of the above expressed conclusion is that the EULEX staff members, as it is the case with the members of Kosovan authorities, shall apply and respect only the laws in force in Kosovo, namely the Constitution, the laws adopted by the Assembly, the international customary law (including the human rights standards) and not the UN resolutions/ regulations

Interviewing Jens Hasse*

*Civil Engineer, Housing Project Manager
Interviewed by Michele Gonnelli

Interview with Jens Hasse

Reconstruction in Kosovo

Building up on the ruins of the 1999 war
Delivering housing projects in a multiethnic Kosovo
Working side by side with the people and getting to know their point o f view

What was reconstruction in Kosovo, in 2000, like?

For my first mission, I have been working in Prizren/ Kosovo from July 2000 until December 2002, for the German charity Arbeiter-Samariter-Bund (ASB), in three housing reconstruction projects of the European Agency for Reconstruction (EAR). The contracts were (after European-wide tendering) to assist a minimum of 300 families per year in repairing or reconstructing their damaged or destroyed homes. The rapid damage assessment of the EU of late 1999 brought the result that about 120,000 homes in Kosovo were heavily damaged or destroyed, about 95 of them in villages or small towns in the countryside. The EU claimed at the end of 2002, that they assisted about 16,000 families belonging to the "poorest of the poor". A few dozens of NGOs were contracted by the EAR for this programme. In addition, there were many other international NGOs like CARITAS (Swiss, German, Austrian), Danish refugee Council (DRC), other organisations of the Samatarian family, some NGOs belonging to some protestant churches, World Vision, IRC (International Rescue Committee) of course and many others doing reconstruction of housing, at least in 2000 and 2001. It is estimated that between late 1999 and the end of 2002 about 40,000 roofs and housing units were assisted.

What was your role?

I was the so-called "Chief Engineer" but better said the Project Manager of a team of about 20 architects, engineers and social workers who actually did the field work in 25 to 35 villages (depending in which year): the interviewing of families prior to our selection, the technical planning and paper work prior to reconstruction (mostly delivering standard solutions) and the monitoring & consulting of construction process, progress and results. While most of the familie received building materials only and were supposed to rebuild their homes in "self-help", we were also able to assist selected families (mostly 'widow families') with a 'master team' or single workers who were contracted and paid by ASB.
In total, ASB was able to build or rebuild about 950 housing units (as we called them) in the municipalities of Malishevo, Rahovec/Orahovac und Klina, including 32 units in eight 2-storey apartment blocks.

How did you select the families that were be assisted?

The selection of families was done based on candidate lists, which were compiled by Village Reconstruction Committees (VRC). These committees were supposed to have a 50/50 gender balance. It was quite interesting to see how this provision worked out in the countryside where women and girls were sometimes not allowed to leave the house without a man of the family...
The final reconstruction list was approved by the Municipal Housing Committee (MHC) where we presented the cases and explained why we selected or excluded someone. Anyway, it was not easy neither in the VRC nor in the MHC because our selection criteria were not very much liked by many local strongmen and want-to-be's who very often wanted to have their relatives or other friends helped. Nonetheless, it was a very rewarding task in total, with a strong team of very nice Kosovar people.

Did you employ local labour? Were working-teams multiethnic?

The EAR Implementing partners (= the NGOs) only contracted socalled "master teams" for complete works, but without materials which were directly delivered by us. So we monitored performance, meaning progress and quality of work. The teams were mostly from the same area or even the building master from that village, most of the time we let the beneficiary family choose the master and we just did the contracting.
There were no really ethnically mixed teams, sometimes there were Roma people in the teams as helpers or because they are traditionally quite experienced with tin/metal works. But in the predominantly Serb areas we of course had only Serb teams, no way of mixing people or sending teams into another area...

What about minorities housing rights? how where they handled? Which were the *recognised* minorities?

From 2001 on, all NGOs were supposed to include at least 10% minority families* (Serbs, Roma communities, Turks and so on) in their reconstruction projects in order to assist them to return to their villages and neighborhoods if they wanted.
Principally, any Kosovar (Serb, Albanian, Turk, Roma (= Roma, Ashkali, Egyptiens), Bosniak, (Gorani...) registered in Kosovo in the nineties had and has the right to return. The problem was often that, even when their village or neighborhood was safe, those people were somewhere in Serbia or Montenegro or so, not easy to find and difficult to interview if they qualified for assistance.
From 2001 on, the return of Serbs was very sexy in the international community, less sexy were the Roma communities... All together, it was difficult because it was all about figures for the UN, for OSCE, for EAR and thus for us NGOs. It all broke down after the unrests of march 2004, when many of the remaining Orthodox churches were burnt and many Serbs again fled Kosovo. Unfortunately, many rebuild houses in towns were soon sold by their Serb owners, due to the lack of freedom of movement or because of bad economic conditions in general. They often moved to Serbia proper (the heartland) and build up a new existance there. However, no Serb

** The EAR decided on the threshold*

from Kosovo was really welcomed in Serbia and so did not receive assistance from their government. Return of Serbs and some Roma was and still is a very difficult and complex issue.

What did you get to know from the people in Kosovo? What the Albanian Kosovars thought? Did they think that they could live on that ground peacefully along with all other ethnics?

Although none of the K-Albanians or K-Serbs likes war, (too) many people, also educated, had and still have the opinion that Albanians and Serbs cannot live together and that there will always be war, sooner or later, if they do. What the K-A. unites is that they never ever want a Serb uniform, official or superior back in Kosovo - and independence appeared to be the best solutions for that. However, there are Serbs peacefully living among K-Albanians in Kosovo (as it is in Preshovo, Southern Serbia) while in other spots it's complete separation.

How were you perceived? The western boss? The western capacity? The western money? Did they like you, your organisation, other NGOs on the field? were you welcome?

Germans were perceived very well and as a boss you were always respected. At the same time, of course, my boss and me, we could fire staff members. That is what we did with some workers at the end of 2000, when we lost a lot of money/material but could not prove who it was. The new staff members we carefully selected were very nice and loyal, and we worked together as colleagues.
However, yes we were the bosses and had the final word on everything. And as such, we also had to push our staff to work hard and to finish things, like in a normal company. Quite clear that you were not always loved.
What we can say is that, lucky us, most of our staff was quite proud to be with ASB and called themselves "family".
We never let them down in the field when things were getting difficult and we invested quite some time in capacity-building, in involving them in the development of decision-making and in making them understand how our approach of e.g. fairness was.
With the villagers and the labour force from the municipalities instead it was often much harder. We stayed hard when we wanted or did not want somebody on the beneficiary list. Then we played with money the responsible for spending funds according to rules and *our* contract, because we were obliged to pay money back if we selected the "wrong" people. So, no development work at all, but very much business.
Also the rush to finish homes before the winter was sometimes difficult to make some families understood. But the EAR did not leave any space about it.

The presence of EU or UN was it perceived differently?

EAR was respected as long as they delivered assistance (also road construction, economic assistance...), but its reputation was completely ruined when two EU officers ran away with over 100 million Euros allocated for the rotten power plants.
Latest in 2003/2004, frustration about the lack of progress in terms of statehood became very strong among the majority of Kosovars.
That was the time of SRSG Steiner's motto "*Standards before*

European Agency for Reconstruction

The European Agency for Reconstruction manages a cumulative portfolio of some €1.11 billion in different projects and programmes across Kosovo, 99% of which has been contracted as of February 2008.
The Agency had its roots in the aftermath of the Kosovo war. In early 2000, it took over from the European Commission Task Force for the Reconstruction of Kosovo, a temporary emergency assistance body set up in the summer of 1999, following the NATO-led intervention against Yugoslavia. In 2008, the Agency finalised several projects, such as the one facilitating the return of families belonging to the Roma, Ashkali and Egyptian (RAE) communities. A training programme to raise awareness on EU policies has also been completed, as well as the programme providing support to the Kosovo Assembly.

Justice institutions have received support in capacity building. Assistance was also provided on agricultural land utilisation issues. In 2008, one of the key priorities was the **energy sector**, such as an assessment of renewable energy sources, improving technical and management skills in the Kosovo Energy Company and assisting the Energy Regulatory Office.
2007 focused on better management at the border crossing points, greater economic development with an emphasis on the private sector development and strengthening the public administration.

status". This frustration played its role in the unrests although it was probably very much orchestrated by some nationalistic groups or from the outside. UNMIK never got back the respect from the people, but lost it even more in the coming years. They had the power and the final word anyway, not the parliament or the Government. On top of that there were frequent cases of corruption, misuse of power, UNMIK police officers involved in trafficking or prostitution, wasting money by an inefficient administration... it was not a good record. The Kososvar governments were not particularly efficient, but that African or Asian people form failing or at least corrupt states told the Kosovars what to do, was too much for many of them.

Working-team of locals, photo J. Hasse

European Agency for Reconstruction: Committed Funds on 26/09/2008 Kosovo

year	appropr. (in 1,000 euro)	contr. (in 1,000 euro)	contr./appropr.	paid (in 1,000 euro)	paid/appropr.
total	**1,109,868**	**1,109,868**	**100%**	**1,053,349**	**95%**
2007	3,031	3,031	100%	939	31%
2006	44,711	44,711	100%	22,593	51%
2005	76,121	76,121	100%	54,137	71%
2004	71,364	71,364	100%	64,044	90%
2003	58,237	58,237	100%	55,322	95%
2002*	161,795	161,795	100%	161,795	100%
2001	142,529	142,529	100%	142,529	100%
2000*	430,167	430,167	100%	430,167	100%
1999	115,114	115,114	100%	115,024	100%
1998	6,799	6,799	100%	6,799	100%

*This figure includes €134.4 million of EC committed funds, and a further €27,131 million from other sources (UNMIK/KFOR and counterpart funds)
**This figure includes €427,674 million of EC committed funds, and a further €5 million from counterpart funds

by Emanuele Sommario

International Humanitarian Law Researcher, Scuola Superiore Sant'Anna

KOSOVO: the quest for aCCountability

Kids playing with cluster bombs in a *apparently* no man's land in Kosovo. A problem of accountability between KFOR and UNMIK, over the *leftovers* of the NATO bombardments

Introduction

On 11 March 2000 eight boys were playing in the hills around Mitrovica, the town located in the northern part of the province that has become a symbol of Kosovo's ethnic divisions. The group included two brothers, Gadaf and Bekim Behrami, which at that time were aged 8 and 10 respectively. At around midday, the children moved into an area littered with undetonated cluster bomb units which had been dropped during the NATO bombardment of 1999, and they began playing with the devices. Unaware of the danger, one of the children threw one bomblet in the air: it exploded and killed Gadaf. Bekim was also seriously injured and taken to the hospital in Pristina, where he received surgical treatment. In the following months he underwent two further eye operations in a Swiss hospital but to no avail as he is now disfigured and blind.

At the time Mitrovica was within the sector of Kosovo for which a multinational brigade led by France was responsible. UNMIK police investigated the incident and came to the conclusion that it amounted to "unintentional homicide committed by imprudence". When the boys' father, Agim Behrami, complained with the French component of KFOR that under UNSC Resolution 1244 KFOR had the responsibility of supervising de-mining activities in Kosovo, and that by failing to do so it bore responsibility for the incident, his allegations where rejected, as – in the opinion of the French „Troop Contributing Nation Claims Office" - mine clearing operations had been the responsibility of the UN since 5 July 1999. The UN, in its turn, submitted that, while de-mining fell within the mandate of the UN's Mine Action Coordination Centre, the absence of the necessary information from KFOR on the location of the Cluster Bomb Units (CBUs) meant that the impugned inaction could not be attributed to UNMIK.

Having found no redress within UNMIK's *sui generis* and somewhat convoluted legal system, Agim Behrami decided to bring a case against France to the European Court of Human Rights. In Strasbourg, he complained that by failing to mark and/or defuse the un-detonated CBUs - the presence and location of which they were aware of – the French KFOR troops had violated his son's right to life, protected by article

6 of the European Convention on Human Rights (ECHR). Raising "a serious question affecting the interpretation of the Convention", the case was relinquished to the Grand Chamber of the Court, which rendered its decision on admissibility on the 2nd of May 2007. The United Nations as well as the Governments of Denmark, Estonia, Germany, Greece, Poland, Portugal and of the United Kingdom were permitted to intervene, and – rather unsurprisingly - all of them expressed legal views favourable to the respondent Government. In the event, the European Court's ruling accepted France's stance that it had neither the power nor the responsibility to secure the rights and freedoms defined in the European Convention since that responsibility was specifically vested in UNMIK. More precisely, the Grand Chamber maintained that the responsibility for de-mining activities laid with the UN's Mine Action Coordination Centre. Additionally, even if the conduct of a Troop Contributing Nation was found to be in violation of the Convention, the Court would not have jurisdiction on such a case, as the troops' actions (or inactions) should not be attributed to the individual State, but rather to the UN since it was the UN Security Council, who – according to the Court – retained "ultimate authority and control" over the troops. The UN are not a State nor are they a party to the ECHR, and therefore the European Court has no competence to review its conduct. Hence, an act or omission that would undeniably constitute a violation of the ECHR if committed by the military of a State Party on his own territory (thus leading to a finding of responsibility for that State and, possibly, to a duty to give "just satisfaction" to the victims), if committed outside that territory and "under the banner" of the United Nations would not be "justiciable" by the European Court (nor by any other Human Rights Treaty Monitoring Body, if the "organisational veil" theory will establish itself as the correct one).

Indeed, just a few months before the Behrami decision, the European Court had found Turkey to be in violation of Article 6 of the Convention for having laid anti-personnel mines in a grazing area without taking enough precautions to prevent the civilian population from accessing it (Paşa and Erkan Erol v. Turkey, decided on December the 12th 2006). A 9-year-old shepherd strayed into the mined zone while following his animals across the barbed-wire fence the Turkish military had laid to isolate the area. The boy tried to pick up a piece of metal, which turned out to be a mine, and he was wounded by the ensuing explosion and eventually had his left leg amputated at the knee. The judges found that laying two rows of barbed wire was a measure "clearly insufficient" to prevent children from crossing over and it concluded that Turkey had not taken all the necessary measures to ensure protection from the risk of death or injury. As it appears, the circumstances of the case are quite resemblant to the ones in Behrami v. France, yet the outcome of the proceedings are strikingly different.

The Grand Chamber's long and sophisticated juridical reasoning in the latter case will probably stir an intense debate amongst the legal community, both with regards to its outcome and to the arguments put forward by the Court. In the event, even if it would have found the conduct of French and other troops to be attributable to the sending States, the Court would probably have reached an inadmissibility decision anyway, either on the basis that France lacked "jurisdiction" over the Behrami brothers in the sense of Article 1 of the European Convention, or for the failure by the complainants to exhaust domestic remedies. This, however, is not the subject of this contribution. The point here is that the Grand Chamber's ruling epitomises the international community's failure to provide the people of Kosovo with an effective mechanism to challenge the conduct of the international civil and security presence in the region, whenever this conduct is deemed to infringe human rights. Needless to say, this lack of accountability is one of the main causes for the crisis in legitimacy that UNMIK and KFOR are presently facing. The situation is particularly worrisome as local institutions, civil society and the media are weak and do not represent an adequate counterbalance to the unfettered authority of international institutions.

The (somewhat perplexing) legal framework for the protection of human rights in Kosovo

The legal framework and mechanisms established by the UNSC and UNMIK for the protection of human rights in Kosovo are not a model of clarity and effectiveness. Briefly, by virtue of UNSC Resolution 1244 establishing the international presence, the legislative and executive authority (including the administration of the judiciary) was vested in UNMIK and was to be exercised by the Special Representative of the Secretary-General (SRSG) who was also given the power to appoint and remove any person who performs functions in the civil administration, including members of the judiciary. Legislative acts issued by UNMIK (the so called regulations) where given precedence over the laws applicable on the territory of Kosovo prior to March 1999.

Right from the outset, however, UNMIK made clear that all persons undertaking public duties or holding public office in Kosovo were to observe internationally recognised human rights standards and refrain from any discriminatory act, and that domestic law would only continue to apply insofar as compatible with the above standards and with UNMIK's mandate and regulations. In regulation 1999/24, the human rights obligations of public servants and officers where further detailed by making explicit reference to a number of regional and universal instruments, including the European Convention for Human Rights and the International Covenant on Civil and Political Rights. However, the primacy of international human rights law over domestic law and regulations was never expressly stated, nor did the regulations affirm the direct applicability of the Human Rights standards enshrined in the treaties. This shortcoming was partially addressed with the adoption of Regulation 2001/9, setting up the "Constitutional Framework for Self-Government of Kosovo" which incorporated most of the rights and freedoms set forth in the different human rights instruments. However once more the question of whether these rights could be invoked against UNMIK and KFOR remained unanswered.

Considering that the protection of the rights and liberties of the Kosovarians was the reason that prompted NATO to militarily intervene in 1999, that "promoting and encouraging respect for human rights and for fundamental freedoms" is one of the purposes of the UN and that UNSC Resolution 1244 itself listed the protection and promotion of human rights as one of UNMIK's main responsibilities, to conclude that the international presence is not bound by the same standards it is asked to uphold would be rather bizarre. Indeed, the problem was partly tackled with the creation in 2000 of the Ombudsperson Institution, whose mandate included, *inter alia*, to "provide advice and make recommendations to any person or entity concerning the compatibility of domestic laws and Regulations with recognised international standards". Until February 2006, the mandate of the Ombudsperson comprised human rights violations arising from the acts of international institutions in Kosovo, including UNMIK, the international police, and KFOR. However, with the adoption of Regulation 2006/6 the Institution has been effectively stripped of its competence to review claims regarding alleged human rights violations committed by international institutions, a fact that, in the words of Human Rights Watch, "has deprived Kosovo's inhabitants of one of their principal mechanisms for redress against UNMIK and KFOR."

True, UNMIK has established in 2006 a Human Rights Advisory Panel tasked with the duty "to examine alleged violations of human rights by UNMIK". Yet, the same regulation that set up the Panel limited its competence to violations occurring after the 23rd of April 2005, thereby leaving out a spell of some 5 years during which – as compellingly illustrated by Amnesty International's contribution to this issue – UNMIK's human rights record was everything but immaculate. Moreover, the findings of any investigation carried out by the body will at best lead to the formulation of recommendations which will not be binding upon UNMIK. Still more unsettling is that the Panel was not given any power to review the conduct of KFOR. But even UNMIK has little to fear from this new body, since – at the time of writing – it is not yet operational.

The question of immunity

Even assuming that an enforceable legal mechanism for the protection of human rights was in place in Kosovo, victims of violations would face another formidable hurdle in their quest for redress. In August 2000, the SRSG promulgated Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo. The purpose of this piece of legislation was to render UNMIK's and KFOR's property, funds and assets immune from any legal process. This "institutional" immunity was complemented by the personal immunity of UNMIK and KFOR personnel. The former was made immune "from legal process in respect of words spoken and all acts performed by them in their official capacity.", as well as from any form of arrest or detention. The immunity enjoyed by KFOR personnel is even broader in scope, as it encompasses "any administrative, civil or criminal act committed by them in the territory of Kosovo". KFOR personnel are subject to the exclusive jurisdiction of their respective sending States and their immunity can only be lifted by the commander of the "national element" to which he/she belongs. To be on the safe side, the regulation established that immunity from legal process for UNMIK and KFOR personnel shall continue after UNMIK's and KFOR's mandate expires or after such personnel are no longer employed by UNMIK or KFOR. Incidentally, it should also be mentioned that members of KFOR are bound to respect the laws applicable in Kosovo and regulations issued by the SRSG only insofar as they "do not conflict with the fulfilment of the mandate given to KFOR under Security Council resolution 1244 (1999)", which basically puts them in many respects above the law.

Generally, immunities and other

privileges are conventionally granted to protect representatives of States and international organisations against interference by the government of the territory where they operate. But is this rationale still valid where that territory is *de facto* administered by the same entity to which the officers claiming immunity belong? No wonder that the Ombudsperson for Kosovo remarked that the justification for classical grant of immunity, "does not apply to the circumstances prevailing in Kosovo, where the interim civilian administration in fact acts as a surrogate state." The real question, though, is political: how can UNMIK and KFOR be perceived by the local population as credible advocates for the rule of law if they do not practice what they preach?

Concluding remarks

At the time of writing, the future status and institutional architecture of Kosovo may at best be defined as murky. This uncertainty does further hamper the full implementation of human rights in the region. Whatever the composition of the International Civilian and Military Presences envisaged by the Ahtisaari Plan is going to be, incoming international institutions should set as one of their priorities the establishment of effective accountability mechanisms. The moral and political standing of these entities will be measured against their capacity to uphold the highest human rights standards, to thoroughly investigate any allegation of wrongdoing by their representatives and to subject themselves to the scrutiny of independent and transparent judicial bodies. In so doing they would not only enhance the prospects for the success of their mission, and hence for a stable and pacified Kosovo, but also provide a useful model for any prospective peace-keeping or peace-building operation of a similar nature.

Indeed, accountability in international peace operations run by the UN or by regional international organisations has been the object of extensive discussion within these organisations, between States and among scholars. The topic was first addressed in the context of sexual abuse, human trafficking and other cases of major individual misconduct by civilian or military peacekeepers. The case of Kosovo and of other territories under direct international control raises a number of more complex issues due to the nature and broadness of the powers exercised by these international bodies.

From a more legal point of view, it will be of extreme interest to follow the International Law Commission's efforts to identify the normative framework for the attribution of responsibility to international organizations, including responsibility for human rights violations. The Commission has been dealing with the issue since 2002. So far, the main part of the Commission's endeavour has consisted in evaluating if and how far the 2001 Draft Articles on the Responsibility of States could be tweaked to accommodate the inherent differences between States (which are endowed with full sovereignty under international law and have a rather sophisticated and well defined set of rights and obligations) and international organisations (who instead have limited rights and duties). Another problematic factor is the huge diversity in powers, composition and competences amongst different organizations (ranging from sub-regional, extremely technical and narrow-mandated ones to universal organizations with very broad competences and the powers to exercise them even against the will of member States, such as the United Nations), which makes the formulation of general rules capable of being applied to all of them a daunting task. The undertaking is further compounded by the relatively scarce amount of practice and jurisprudence existing in this area, which makes it all the more important that human rights treaty monitoring bodies and other entities entrusted with the interpretation of international law render convincing and thoroughly argumented decisions in this area. The Commission's study, however, should also take into account the changing nature of international organisations' tasks, powers and responsibilities. If international organisations such as the UN, NATO or the EU assume state-like functions with respect to a given territory, it is only reasonable that they become bound to the fullest extent possible by the rules and restrictions imposed on States in relation to how they treat individuals within their jurisdiction, and that they bear full responsibility if they fail to respect these rules.

P.S. On 12 December 2007 the House of Lords rendered its decision in the case *R (Al-Jedda)* v. *Secretary of State for Defence* on alleged violations of the European Convention of Human Rights by British forces in Iraq. One of the arguments of the British government – based on the European Court's Beherami 'precedent' – was that international responsibility for the conduct of Her Majesty's armed forces rested with the UN which had authorized their presence in Southern Iraq, and not with the UK which had invaded that territory back in 2003. That thesis was eventually rejected by the majority of the Law Lords, but the case reveals yet again the worrying trend of States to try to pass the burden of responsibility on to International Organisations.

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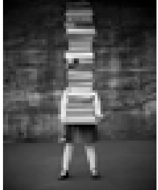

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International Training Programme for Conflict Management, Pisa, Scuola Superiore Sant'Anna

CORSO DI ALTA FORMAZIONE

ulteriori informazioni: www.itpcm.sssup.it

21-24 gennaio 2010

Programma del Corso

Coniugando aspetti teorici e pratici il Corso si propone di:

- analizzare l'importanza ed il ruolo della comunicazione nelle attività di cooperazione internazionale
- offrire una panoramica sui principali mezzi di comunicazione e sul loro utilizzo
- presentare le metodologie di comunicazione utili per raggiungere target specifici
- analizzare gli elementi e le modalità di costruzione di una campagna di sensibilizzazione
- presentare buone pratiche e casi studio nel settore della comunicazione in ambito internazionale

Profilo dei Partecipanti

Il Corso si rivolge a coloro che, a titolo personale o per esigenze professionali, sono impegnati nel settore della cooperazione e solidarietà internazionale e che sono interessati ad incrementare la loro capacità di comunicare le attività promosse e i risultati raggiunti nel settore. Il numero massimo di partecipanti è stabilito in 25.

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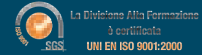
In breve

Data di svolgimento	21-24 gennaio 2010
Ore di Formazione	32
Numero massimo di partecipanti	25
Quota d'iscrizione	400,00 euro
apertura iscrizioni	????? 2009

santAnna school of advanced studies



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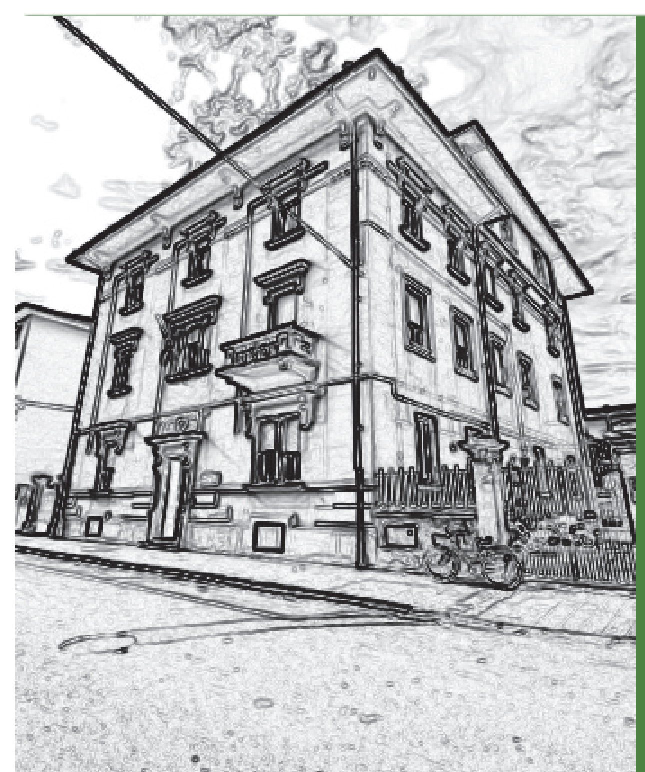

the itpcm & cdg base in Pisa, archive photo

International Training Programme for Conflict Management

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