

A COMPARATIVE ANALYSIS OF INTERNATIONAL TRANSITIONAL ADMINISTRATIONS- *THE NEED TO RECONCILE THE MEANS AND THE ENDS*

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ABSTRACT

This paper, will thus attempt to analyze reports on the aforementioned cases of transitional administrations in East Timor, Kosovo, Afghanistan, and Iraq, to establish the inherent contradictions that currently exist between a need for local ownership for successful transitional administrations, between the set goals and the resources made available to accomplish the goals, as well as the actual intentions of the primary actors of these temporary and “benevolent” foreign autocracy and the actual implementations and execution of the transitional authority. Concepts of justice in such transitions will also be discussed. Certain relevant details of the four case studies will be provided, following which the contradictions will be discussed. The paper will conclude with certain caveats to prevent the issues faced by transitional administrations in the past, as well as a need to predict possible obstacles in the future.

Keywords: Transitional administrations, Benevolent, ITA, NATO, UNMIK

INTRODUCTION

“...it is extremely difficult to make war and peace with the same people on the same territory at the same time.”

Shashi Tharoor, Ex-UN Under-Secretary-General, 1995¹

International transitional administrations (ITAs) have re-emerged in the last two decades, either in agreement with the United Nations or as acting on behalf of it, with respect to peacebuilding efforts in post-conflict regions and states.² *Transitional administration* denotes the operation where quasi-governmental activities are pursued by assuming either in part or in full, the powers

¹ (Tharoor, 1995)

² (Caplan, 2017)

of the state, temporarily.³ In many cases ITAs have been utilized as a response to failing and “weak” states, as well as in response to conflict areas with unstable political situations. The ITA thus is both administrator of the region as well as executes the role of developing institutions for the autonomous capacity for self-governance.⁴

The different cases of transitional administrations in recent times have evoked curiosity as well as criticism, with mixed reactions pertaining to their means and methods, and their ends and achievements. Most of these cases involve similar objectives of peacebuilding and state-building, focused on regions that have had many years of conflict, both due to internal as well as external actors. However, these transitional structures have different forms of organization. While in East Timor and Kosovo, the transitional administration was under the authorization of the United Nations, and had widespread legislative as well as executive powers, in Afghanistan it relied primarily on utilizing local capacity and ownership with the least involvement of international participation.⁵ In Iraq, however, the UN itself did not have any granted administrative powers, yet the forces that occupied it exerted administrative prowess that were based off Security Council resolutions as well as the laws of occupation.⁶

This paper, will thus attempt to analyze reports on the aforementioned cases of transitional administrations in East Timor, Kosovo, Afghanistan, and Iraq, to establish the inherent contradictions that currently exist between a need for local ownership for successful transitional administrations, between the set goals and the resources made available to accomplish the goals, as well as the actual intentions of the primary actors of these temporary and “benevolent” foreign autocracy and the actual implementations and execution of the transitional authority. Concepts of justice in such transitions will also be discussed. Certain relevant details of the four case studies will be provided, following which the contradictions will be discussed. The paper will conclude with certain caveats to prevent the issues faced by transitional administrations in the past, as well as a need to predict possible obstacles in the future.

CASE STUDIES

The United Nations had different approaches but with similar objectives in the cases of Kosovo, East Timor, Afghanistan, and Iraq. Whereas administrative powers were assumed in full by the UN in East Timor and Kosovo, there were alternative approaches in Afghanistan, which utilized a ‘light footprint’ approach, and the post-conflict occupation by coalition forces in Iraq. Whereas in the first two cases the United Nations possessed full administrative powers, in the latter two

³ (Chesterman, 2004, p. 5)

⁴ (Caplan, 2017)

⁵ (Chesterman, 2004)

⁶ (Brabandere, 2009) (Chesterman, 2004)

cases the UN was granted only a limited role in the post-conflict phase.⁷ Within the language of a Responsibility to Protect with regards to sovereignty, there is an evolution into a responsibility to rebuild.

a. Kosovo

The United Nations Interim Administration Mission in Kosovo (UNMIK) was established in 1999, following NATO's armed intervention and the SC's adoption of Resolution 1244.⁸ Eric De Brabandere states the United Nations mission, in the post-conflict context of an international administration, to be "the most comprehensive mission ever deployed by the UN."⁹ There were wide ranging powers given to both UNMIK and the Special Representative of the Secretary-General. There was the deployment of civil and international security presence under UN auspices, which operated under the authority of NATO.¹⁰

Res. 1244 had the UNMIK possess roles including establishing considerable autonomy and self-governance in Kosovo, the determination of Kosovo's future political status, the coordination of humanitarian relief with various international agencies, the promotion of human rights, and the overseeing of the safe return of internally displaced persons and refugees.¹¹ The Special Representative was also given the right to alter existing laws, when existing laws were not compatible with the purposes of the interim civil administration.¹² In the case of the establishment of the UNMIK, the SC did not use the more common one-year renewable terms but rather that the mission would last until revocation by the SC.¹³ Although the SC provided the considerable autonomy to the interim administration in Kosovo, the territorial sovereignty of Serbia over the province was also reaffirmed. The administration thus could not take actions that would prejudice the future status of Kosovo, and doing so would not have only meant a violation of Resolution 1244 but also of the territorial integrity of Serbia.

b. East Timor

With the adoption of the SC Res. 1272, the United Nations Transitional Authority in East Timor (UNTAET) was established.¹⁴ This followed a plebiscite where the East Timorese, despite worldwide opinion expecting the opposite, voted in a clear majority for independence from

⁷ (Brabandere, 2009, p. 37)

⁸ SC Res. 1244, UN Doc. S/RES/1244 (1999)

⁹ (Brabandere, 2009, p. 38)

¹⁰ SC Res. 1244, UN Doc. S/RES/1244 (1999), paras. 5 and 6.

¹¹ *Ibid*, para. 11 (a)-(k)

¹² (UN Doc. S/1999/779, 1999, paras. 39-40)

¹³ (Brabandere, 2009)

¹⁴ Sc Res. 1272, UN Doc. S/RES/1272 (1999)

Indonesia.¹⁵ According to the Resolution, the UNTAET was “endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice.¹⁶” UNTAET had three pillars, under the ambit of the Special Representative. These were namely, the Military Pillar, the Humanitarian Assistance and Emergency Rehabilitation Pillar, and the Governance and Public Administration Pillar. It was on 20th May, 2002 that East Timor achieved the transition to independence, as changed its name to Timor-Leste and joined the UN as the 191st Member State in September, 2002.¹⁷

c. Afghanistan

Having what many call the ‘light-footprint approach’, the transitional administration in Afghanistan arrived following the events of the 9/11 terrorist attacks on the World Trade Center and the Pentagon. A US-led coalition led military intervention in Afghanistan, with the major states of the world including the P-5 being rallied by the lawlessness of Afghanistan, and the general acceptance of the condemnation of the terrorist attacks. George Bush, in September 1992, while addressing the United Nations General Assembly, stated the inability to differentiate the terrorists from the other actors. He stated the regime and the terrorists to be ‘virtually indistinguishable. Together they promote terror abroad and impose a reign of terror on the Afghan people. Women are executed in Kabal’s [sic] soccer stadium. They can be beaten for wearing socks that are too thin. Men are jailed for missing prayer meetings. The United States, supported by many nations, is bringing justice to the terrorists in Afghanistan.’¹⁸ Within a month, the Taliban were effectively removed from power.

Afghanistan, from the inception, was clear to not be a case of the UN assuming widespread administrative and legislative powers like the UNTAET or UNMIK, but in using the largest possible participation of local actors, with the least international involvement. The primary reasons for this included the fact that Afghan’s territorial status of being a sovereign state was never questioned, while East Timor wasn’t a sovereign state and Kosovo’s political status hadn’t been determined at that stage.¹⁹ Furthermore, following the fall of the Taliban, various local commanders assumed local power, and these local leaders had to accept the proposed political course of action, which involved stopping issues like drug trafficking and the illegal economy. However, the presence of a national interim authority did not mean the lack or dissolution of

¹⁵ (Stahn, 2001)

¹⁶ (SC Res. 1272, UN Doc. S/RES/1272 (1999), Article 1) (Brabandere, 2009)

¹⁷ (Stahn, 2001) (Brabandere, 2009)

¹⁸ (Bush, 1992)

¹⁹ (Brabandere, 2009, p. 41)

parallel political and governance structures.²⁰ The light-footprint approach was favored by Lakhdar Brahimi who was the leader of the Bonn talks, who also stated that the UN's role "should be to provide the government with support and assistance, and not to seek to govern in its place or impose upon it our own goals and aspiration".²¹

d. Iraq

'Operation Iraqi Freedom' resulted in the fall of Saddam Hussein's regime, and following this there was the dilemma of reconstruction and administration of the territory. The military intervention was illegal, and its legitimacy is also highly in question. However, the reconstruction process had a different approach. The UN's role in Iraq was very limited, and the administration of the territory and its responsibility was taken by the United States and the United Kingdom, the occupying powers. They had limited powers of administration in the territory due to the Fourth Geneva Convention and the 1907 Hague Regulations, however the Security Council expanded the powers and mandate of the administrative body.²²

The US and the UK established the Coalition Provisional Authority (CPA) which superseded the Office for Reconstruction and Humanitarian Assistance (OHRA) in 2004. The CPA possessed the major governing powers. The CPA was confirmed to be the primary responsibility for Iraq's administration by the SC Resolution 1483.²³ This resolution also expanded the CPA's mandate by calling on the UK and the US to promote the welfare of the population of Iraq. However, it is still a matter of debate of whether Resolution 1483 changed the rights and duties of the authority, due to certain ambiguous parts of the document. The UN was required by Resolution 1483 to coordinate humanitarian and reconstruction assistance, and the following creation of the United Nations Assistance Mission for Iraq (UNAMI), which was endorsed by Resolution 1500. The United Nation's role was thus limited to a level of coordination, with the primary concern being the provision of humanitarian aid, thus primarily 'promoting', 'facilitating', 'working intensively', and 'encouraging'. Iraq was thus the first instance of the United Nations having to work with an occupying power with respect to administration in a post-conflict region.

CONTRADICTIONS

The primary question and contradiction in our consideration of transitional administrations is whether a transitional authority of benevolent autocracy, even if temporary, can result in a democratic governing body that utilizes the local populations and its represents its desires. Local

²⁰ (Chesterman, 2004) (Brabandere, 2009, p. 42)

²¹ (Aita, 2002)

²² (Brabandere, 2009, p. 46)

²³ SC Res. 1483, Un Doc. S/RES/1483 (2003)

ownership in many cases is stated to be the requirement of effective transitional administrations, yet it has been argued that local ownership is the result, the ends, and not the means. There is also discussion about the need for clarity, both with available resources, as well as with the mandates and goals of such authorities themselves. In totality, it is a question of whether the means and the ends can be reconciled.

a. Local ownership

While ownership is frequently used as an important factor in transitions, the meaning is ambiguous. It does not imply direct control or even in many cases a direct input. Thus, in many ways, it implies, during the process of transition, a 'sense of' ownership, where it is more psychological than political.²⁴ Local ownership, in the true meaning of the word, is thus in many ways the end of transitional administration but not the means of it. There is a need for an openness about the trustee-like relationship that the local actors have with the international actors, thus ensuring a certain level of honesty and accountability from transparency, in various stages of the transition. Such an openness would allow the acknowledgement of the effort and input required to achieve the true effect of transition that is required.²⁵ This includes efforts both in terms of trust funds as well as empowering local actors, to aid reconstruction and peace-building efforts.²⁶

b. Clarity

In order to resolve the contradiction between the means and ends that has been highlighted, there is a need for an understanding of the role of power. The state structures that have collapsed in the regions with transitional administration does not have to result in a political or societal void of power, and political life usually continues in one way or the other through informal legal and political structures. This makes it more complicated to construct political and legal structures that work under the rule of the law. Thus, there is a need to engage with the local level and the power on that level, with an understanding of culture and history as well as respect for the political aspirations of the population.²⁷ Thus there is a clarity on whether the international actors exercise quasi-sovereign powers on a temporary basis not. This clarity must exist at the formal level, but leaves much room for nuance in implementation.²⁸ In a case like East Timor, the strategic objective of independence was both clear and uncontroversial leading to a successful implementation of the transitional administration with both its goals and its methods. However, a

²⁴ (Chesterman, 2004, p. 196)

²⁵ (Chesterman, 2004)

²⁶ *Ibid.*

²⁷ (Caplan, 2017) (Chesterman, 2004)

²⁸ (Chesterman, 2004)

lack of such clarity could arrive, such as in the case of Kosovo, where a failure to articulate a position on its final status “inhibits the development of a mature political elite and deters foreign investment”.²⁹

c. Means vs. Ends

The Brahimi Report states a key argument about uncertain mandates and of inadequate resources. It states that such mandates should not be created at all, and that member states must not be led to believe that they are doing something useful for countries in need when they could be, due to a lack of resources in the missions, more contributing to a wastage of human resources as well as capital that could be utilized effectively elsewhere or in better means. This, when applied to transitional administration, finds support in the report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect, which calls for the ‘responsibility to rebuild’ to be seen as an integral part of any intervention.³⁰

Furthermore, there is a need to well qualify the means of transitional administration through effective coordination. The Dayton Peace Agreement, and more than five years after it, required a ‘recalibration’ exercise where the different agencies in Bosnia had to place their material and human resources in the disposal of the transitional administration and where all activities had to be oriented towards an agreed political goal of a legitimate and sustainable government. Coordination thus becomes more important, to avoid some of the difficulties encountered in civil-military relations in Afghanistan.³¹

Furthermore, another issues arrives in a situation like in East Timor, with respect to the means and methods of the transitional administration, where while it would have made sense to approach Portuguese-speaking governments for staff with experience in public administration be seconded to the UN mission, it was not even possible to require Portuguese (or Tetum or Bahasa Indonesia) as a language.³² Thus, the assumption that international staff who possess relevant skills are also able to train others in the same field is one that has in many cases caused issues, where the training itself is another skill which does not merely arrive with a pairing of international and local staff. Thus, an element of the ‘light footprint’ approach adopted in Afghanistan that is can be used to remedy this contradiction is the need for international occupying powers and organizations to justify every post occupied by international staff rather than a local member or actor.³³ In the words of Simon Chesterman, “Cultivating relations with

²⁹ (Chesterman, 2004)

³⁰ (Chesterman, 2004) (Aita, 2002) (Caplan, 2017) (Brabandere, 2009)

³¹ (Chesterman, 2004) (Brabandere, 2009) (Aita, 2002)

³² (Brabandere, 2009) (Caplan, 2017) (Chesterman, 2004)

³³ (Chesterman, 2004)

diaspora communities may help address this problem, serving the dual function of recruiting culturally aware staff and encouraging the return of skilled expatriates more generally.”

CONCLUSIONS

The cases of Kosovo and East Timor have been cited in international relations and legal literature as being unique situations whose conditions may not return, where the UN will perhaps never need to repeat such operations again. However, ITAs still seem possible in various other post-conflict circumstances, where even if an entire sovereign power may not be wielded by a body like the UN on a temporary basis, there will be a need for peacebuilding and transition to democratic and autonomous self-governing institutions following conflict. There is a certainty of the potential recurrence of such interventions and the scenarios that necessitated them. Thus, there is a clear need to learn lessons from past errors of transitional administration, and apply them to situations where international actors including and especially the United Nations, engage themselves in operations that have a policing function, civilian administration, development of the rule of law, establishment of a national economy, staging elections, or all of the above.³⁴ However, the ability of the United Nations to rectify its structural weaknesses and prevent the reoccurrence of past failures is of question.

One such visible contradiction that has been brought about is the role of trust and ownership. As the scholar Simon Chesterman states, “Modern trusteeships demand, above all, trust on the part of local actors. Earning and keeping that trust requires a level of understanding, sensitivity, and respect for local traditions and political aspirations that has often been lacking in transitional administration. How that trust is managed will, in large part, determine its legacy.”³⁵

Just as crucial as the need to remember the past, is the need to anticipate future obstacles. Transitional administrations and their execution will perhaps always remain to be implemented in political scenarios of uncertainty and may continue to depend *ad hoc* and arbitrary functions of member states and contributors of peacekeeping forces. However, they will also perhaps remain rare situations. In these situations, it is crucial for the international actors, particularly the member states and the Security Council members in the case of the United Nations, to reinforce the spirit of the forgotten Articles 24 and 25 of the United Nations Charter, wherein they act as representatives of the countries of the world and not in their own interests. The mandate of these international actors to maintain the temporary state-like powers of benevolent autocracy, must not lose sight of its need to hold that power with a trust with the local populations and actors who

³⁴ (Chesterman, 2004)

³⁵ (Chesterman, 2004)

will eventually take over it.³⁶

Thus, the various contradictions between means and ends have been stated, and the case studies of different approaches to transitional administrations in East Timor, Kosovo, Afghanistan, and Iraq have been analyzed. By doing so, this paper hopes to have delineated certain patterns of successful and failed implementation of the transitional administration, as well as provide a basic overview of its structures of implementation.

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³⁶ (Chesterman, 2004) (Brabandere, 2009)