Building Sustainable Peace: From Practice to Law *de lege ferenda*?
Legal assessment of the concept “post-conflict peacebuilding”

Thesis submitted in fulfillment of the requirements for the Degree of PhD in International Development Studies to the

Institute of Development Research and Development Policy (IEE)
Ruhr-University Bochum

by

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Bochum, 2017
Table of Contents

List of Tables ......................................................................................... IV
List of Abbreviations and Acronyms ...................................................... V
Acknowledgement ................................................................................ IX
Declaration .......................................................................................... X
Abstract .............................................................................................. XI

A. Introduction ...................................................................................... 1
   I. Legal basis of peacebuilding ............................................................. 2
      1. Peacebuilding in the system of collective security ......................... 3
      2. The consent of the host state ......................................................... 6
   II. Linking peacebuilding with the post-Cold War notion of security ....... 10
   III. Peacebuilding and Jus Post Bellum ............................................... 15
   IV. Subject and steps of research .......................................................... 17

B. Conceptual foundations .................................................................... 20
   I. Defining peacebuilding .................................................................... 21
   II. The characteristics of peacebuilding ............................................... 26
      1. Multi-dimensionality ..................................................................... 26
      2. Diversity in approaches and accompanying strategies ................. 30
         a. The relationship between the diverse conflict management mechanisms .. 30
         b. The link between peacebuilding and the approaches of the “Building-Family” .. 32
         c. Peacebuilding strategies .............................................................. 34
         d. The dilemma of democratization ................................................ 36
      3. The diversity of actors and their cooperation .................................. 40
         a. Cooperation in international law .................................................. 40
         b. The UN as a global peacebuilding actor ....................................... 42
         c. The European Union and its conflict management instruments ............. 48
         d. Security organizations as emerging peacebuilding actors ................. 56
         e. The African Union’s peace and security architecture ...................... 57
         f. Development and financial organizations as peacebuilders .............. 60
      4. Intrusiveness ................................................................................. 61
      5. Multi-phased efforts ....................................................................... 64

III. Peacebuilding operational frameworks .............................................. 69

C. Peacebuilding efforts of the UN in Sierra Leone ................................ 69
   I. Background ................................................................................... 70
   II. The road to a peace agreement ...................................................... 74
III. Peacebuilding performed by a multi-dimensional peacekeeping mission ..........81
IV. The engagement of the Peacebuilding Commission with Sierra Leone.............84
   1. The scope of the Peacebuilding Cooperation Framework ..........................86
   2. Mandate implementation by the Peacebuilding Commission within the Sierra Leone
      Configuration ..........................................................................................89
   3. Systemic peacebuilding in line with national poverty reduction strategies ......93
IV. Lessons learned from the peacebuilding process in Sierra Leone...............102
   1. “Progress and Challenges” ......................................................................103
   2. Lessons drawn from the UN’s performance ...........................................108
   3. Strengths and weaknesses of the PBC’s initial practice ............................112
V. Conclusion ..................................................................................................120
D. Multilateral peacebuilding in practice, the case of Kosovo .........................121
I. Background ..................................................................................................121
II. Peacebuilding in Kosovo under the UN administration ..............................128
   1. Legal basis and mandate of the international security presence ...............129
   2. The performance of UNMIK ....................................................................133
      a. Mandate and operational structure ......................................................133
      b. Resolution 1244 and the principle of sovereign equality ....................136
      c. Resolution 1244 and the right to self-determination ............................139
      d. State-building by UNMIK ....................................................................140
      e. The status process ..............................................................................146
III. Peacebuilding in Kosovo during the international supervision .....................150
   1. Reconfiguration without exit .....................................................................150
   2. NATO’s role after the declaration of independence ..................................153
   3. The performance of the OSCE in Kosovo .................................................154
   4. The EU’s programmatic approach to strengthen the rule of law ...............157
      a. The mandate of EULEX ......................................................................157
      b. EULEX Police .....................................................................................160
      c. EULEX Customs .................................................................................165
      d. EULEX Justice ....................................................................................166
      e. EULEX’s exit strategy ..........................................................................170
IV. EU enlargement policy in the context of Kosovo ....................................171
   1. The road to a Feasibility Study ..................................................................171
   2. The conditions and conclusion of the Stabilisation and Association Agreement .........................................................................................174
V. Lessons learned from the peacebuilding process of Kosovo .......................176
   1. Achieving and sustaining stability .............................................................178
   2. Statehood of the independent Kosovo ......................................................182
3. Assessment on the performance of international actors
   a. UNMIK’s struggle to implement UNSCR 1244
   b. The challenge of strengthening the rule of law in Kosovo
   c. EULEX’s achievements in fulfilling its executive functions

VI. Conclusion

E. Law de lege ferenda in the context of peacebuilding
   I. Participation
   II. Local ownership
   III. Performance control

F. Concluding remarks

Bibliography

Appendix A: Sierra Leone Peacebuilding Cooperation Framework
Appendix B: RESOLUTION 1244 (1999)
Appendix C: COUNCIL JOINT ACTION 2008/124/CFSP
List of Tables

Table 1: Five dimensions of peacebuilding .................................................................29
Table 2: Commitments of the PBC within the Sierra Leone configuration .................88
Table 3: Activities of UNIPSIL .....................................................................................95
Table 4: The mandate of the international civil presence in Kosovo under Resolution 1244 (1999) ........................................................................................................136
# List of Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTORD</td>
<td>Activation Order of the North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>AFRC</td>
<td>Armed Forces Revolutionary Council</td>
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<tr>
<td>APC</td>
<td>All People's Congress</td>
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<tr>
<td>APSA</td>
<td>African Peace and Security Architecture</td>
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<td>ASZ</td>
<td>Air Safety Zone</td>
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<td>AU</td>
<td>African Union</td>
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<tr>
<td>CDF</td>
<td>Civil Defence Force</td>
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<tr>
<td>CDO</td>
<td>Common but Differentiated Obligations</td>
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<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>CP</td>
<td>Comprehensive Proposal</td>
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<td>CSC</td>
<td>Country-Specific Configuration</td>
</tr>
<tr>
<td>CSCE</td>
<td>Conference on Security and Co-operation in Europe</td>
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<tr>
<td>CSDP</td>
<td>Common Security and Defence Policy</td>
</tr>
<tr>
<td>CSM</td>
<td>Country-Specific Meeting</td>
</tr>
<tr>
<td>DDR</td>
<td>Disarmament, Demobilisation and Reintegration</td>
</tr>
<tr>
<td>DPKO</td>
<td>Department of Peacekeeping Operations</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
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<tr>
<td>ECOMOG</td>
<td>Economic Community of West African States Monitoring Group</td>
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<tr>
<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<tr>
<td>EEAS</td>
<td>European External Action Service</td>
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<td>EO</td>
<td>Executive Outcome</td>
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<td>EPAP</td>
<td>European Partnership Program Action Plan</td>
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<td>ERSG</td>
<td>Executive Representative of the Secretary-General</td>
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<td>ESDP</td>
<td>European Security and Defense Policy</td>
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<td>ESS</td>
<td>European Security Strategy</td>
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<td>EU</td>
<td>European Union</td>
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<td>EULEX</td>
<td>European Union Rule of Law Mission in Kosovo</td>
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<td>EUSR</td>
<td>Special Representative of the European Union</td>
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<tr>
<td>FCV</td>
<td>Regions affected by fragility, conflict and violence</td>
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<tr>
<td>FRY</td>
<td>Federal Republic of Yugoslavia</td>
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<tr>
<td>G-8</td>
<td>Group of Eight</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GIZ</td>
<td>German Agency for International Cooperation</td>
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<td>GoSL</td>
<td>Government of Sierra Leone</td>
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<td>GSZ</td>
<td>Ground Safety Zone</td>
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<td>HDI</td>
<td>Human Development Index</td>
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<td>HRRP</td>
<td>Human Rights Review Panel</td>
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<tr>
<td>IAC</td>
<td>Interim Administrative Council</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICISS</td>
<td>International Commission on Intervention and State Sovereignty</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICO</td>
<td>International Civilian Office</td>
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<td>ICR</td>
<td>International Civilian Representative</td>
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<td>Abbr.</td>
<td>Full Form</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>IDPs</td>
<td>Internally Displaced Persons</td>
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<td>IFS</td>
<td>Instrument for Stability</td>
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<td>IGAP</td>
<td>Improved Governance and Accountability Pact</td>
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<td>IMATT</td>
<td>International Military Advisory and Training Team</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IMAPP</td>
<td>Integrated Mission Planning Process</td>
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<td>IO</td>
<td>International Organization</td>
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<td>IPA</td>
<td>Instrument for Pre-accession Assistance</td>
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<td>IPBS</td>
<td>Integrated Peacebuilding Strategic Framework</td>
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<td>IPRSP</td>
<td>Interim Poverty Reduction Strategy Paper</td>
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<tr>
<td>IRF</td>
<td>Immediate Response Facility</td>
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<tr>
<td>ITA</td>
<td>International Territorial Administration</td>
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<tr>
<td>JIAS</td>
<td>Joint Administrative Structure</td>
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<td>KFOR</td>
<td>Kosovo Force</td>
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<td>KLA</td>
<td>Kosovo Liberation Army</td>
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<td>MDGs</td>
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<td>MMA</td>
<td>Monitoring, Mentoring and Advising</td>
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<td>Advisory Team of North Atlantic Treaty Organization</td>
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<td>Organisation for Security and Co-operation in Europe</td>
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<td>PCRD</td>
<td>Policy on Post-Conflict Reconstruction and Development</td>
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<td>Peace Consolidation Strategy</td>
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<td>Provisional Institutions of Self-Government</td>
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<td>Peacebuilding Priority Plan</td>
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<td>Peacebuilding and Recovery Facility</td>
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<td>Acronym</td>
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<td>PRSP</td>
<td>Poverty Reduction Strategy Paper</td>
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<td>Peacebuilding and Statebuilding Goals</td>
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<td>RECs</td>
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<td>RFI</td>
<td>Rapid Financing Instrument</td>
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<td>RSP</td>
<td>Regional Strategy Paper</td>
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<td>RUF</td>
<td>Revolutionary United Front</td>
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<td>SAA</td>
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<td>SALW</td>
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<td>SAP</td>
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<td>SAPD</td>
<td>Stabilisation and Association Process Dialogue</td>
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<td>STTF</td>
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<td>Special Representative of the Secretary-General</td>
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<td>Security Sector Reform</td>
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<td>STM</td>
<td>Stabilisation and Association Process Tracking Mechanism</td>
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<td>TEU</td>
<td>Treaty on the European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>United Nations Country Team</td>
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<td>United Nations Development Assistance Framework</td>
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<td>United Nations Development Programme</td>
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<td>United Nations General Assembly</td>
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<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
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<td>UNIOSIL</td>
<td>United Nations Integrated Office in Sierra Leone</td>
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<td>Integrated Peacebuilding Support Office in Sierra Leone</td>
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<td>UNMIK</td>
<td>United Nations Interim Administration in Kosovo</td>
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<td>United Nations Security Council</td>
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<td>Resolution of the United Nations Security Council</td>
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<td>Secretary-General of the United Nations</td>
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<td>UNTAES</td>
<td>United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium</td>
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<td>UNTAET</td>
<td>United Nations Transitional Administration in East Timor</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>UNTS</td>
<td>United Nations Treaty Series</td>
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<td>WFP</td>
<td>World Food Programme</td>
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<td>WGLL</td>
<td>Working Group on Lessons Learned</td>
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<tr>
<td>WHO</td>
<td>World Health Organisation</td>
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</table>
Acknowledgement

I would like to extend my sincere gratitude to my first supervisor, Professor Hans-Joachim Heintze for his valuable scientific guidance, encouragement and unfailing patience. I am also grateful to my second supervisor, Professor Thielbörger for engaging himself to my thesis.

I would like to give thanks to my colleagues at IEE for all their support. I am very grateful to the IEE staff for their flexible and professional attitude towards assisting in the completion of my studies.

A special thanks to the members of my IEE Working Group for their valuable comments and advice.

I am very grateful to the Bischöfliche Studienförderung Cusanuswerk whose financial support enabled me the completion of this thesis. A special thanks to my Cusanuswerk fellows and staff for all the moral support I received during my studies. I also would like to thank the Research School who funded my research stay in Kosovo.

I am the most grateful to my family and friends for their patience and encouragement, having always supported my ambitions and helping me to realize my dreams.
Declaration

I do hereby solemnly declare that this submission is my own original work, undertaken independently and without any illegitimate assistance. To the furthest extent of my knowledge and conviction, it contains no material previously published by any other person in its current or similar form, neither has it been accepted as or part of a dissertation for the award of any other degree or qualification within the university or any other institution of higher learning. Where reference is made to previous academic work, due acknowledgement of the respective authors is made both in the text and in bibliography of this dissertation.

Furthermore, I endeavored to maintain my study as adherent as possible to the latest version of the “Guidelines for Good Scientific Practice” (Leitlinien guter wissenschaftlicher Praxis) in the Bulletin of the Ruhr-University Bochum (Amtliche Bekannmachung der Ruhr-Universität Bochum), No. 476, to the best of my ability.

I have endeavored to state the law as at 28 March 2017.

Errors and omissions in this document remain my personal responsibility.

Eva Mihalik

Bochum, 28 March 2017
Abstract

During the past decades, peacebuilding has become a widely accepted conflict management mechanism in response to contemporary threats to international peace and security, attracting a number of diverse international actors to engage in measures which address the root causes of war in post-conflict states. Although the mechanism has been progressively applied, the evolution of its conceptual foundations is lagging behind. As a consequence, peacebuilding practices reflect an inconsistency both in the international actors’ conceptual understanding and approaches to creating the conditions of sustainable peace. This thesis aims at exploring the areas where greater uniformity in practices could increase the success of peacebuilding processes, and assessing the relevance and feasibility of the adoption of legal standards for ensuring a more coherent and effective implementation of post-conflict agendas. Through evaluating the lessons learned from the peacebuilding processes in Sierra Leone and Kosovo, the paper identifies primary factors which influence the performance of the diverse actors and the final outcome of their efforts. It will be discussed whether, relating to these factors, a need for future law emerged with the aim of providing more consistency by regulating matters of the conduct and participation of peacebuilding actors. This paper concludes that the adoption of international law rules on certain aspects of the operationalization of the principle of local ownership and accountability would contribute to obtaining positive results in peacebuilding. However, the political will to reform the current legal framework for international conflict management is yet to develop.
A. Introduction

The international engagement to assist war-torn states in creating conditions for sustainable peace and development has significantly increased over the past decades. The reason for the internationalization of post-conflict assistance was the recognition that these states are prone to relapse into violent conflict and are insufficient in tackling the contemporary transboundary threats to international peace and security such as terrorism or transnational organized crime. Peace consolidation in fragile states, characterized by an erosion of the state’s monopoly of force, lack of rule of law and delivery of basic functions to their population, has become a primary international security objective in the post-Cold War era.¹ Peacebuilding is one of the mechanisms that emerged in the 1990s as a response of the international community to modern crisis and conflict situations.

According to its core idea, the concept aims at assisting post-conflict states to establish conditions for sustainable peace by addressing short to medium term conflict factors that may pose a risk for a lapse or relapse into conflict, and eliminating the root causes of conflicts that may threaten peace in the long term.² This ambitious mechanism has gained widespread acceptance as an integral part of peace operations undertaken by the United Nations (UN) and an array of other international actors. The mandate of international peacebuilding missions typically includes tasks to strengthen national capacities in conflict management and reestablish political, economic, and social structures which became dysfunctional over the course of hostilities. In addition, in extreme cases, if the security situation requires the creation of safe environment for civilian peacebuilders on the ground, peacebuilding operations are secured by coercive military measures. Nevertheless, the international efforts for eliminating the root causes of conflict frequently aim not only for the reestablishment of

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² De Croning, Cedric (2008), Understanding Peacebuilding: Consolidating the Peace Process, Conflict Trends, 4, 45-51, p. 46.
existing frameworks of the state prior to the conflict but also shaping the future functioning of post-conflict states and their societies through creating the conditions for a just political and social order.\(^3\) Consequently, while performing peacebuilding, the international community may affect the exercise of certain individual and collective rights of the local population and interfere, to some extent, in the domestic affairs of the host states which contradicts the international law principles of non-interference and sovereign equality of states.\(^4\)

I. Legal basis of peacebuilding

The principle of sovereign equality of states is anchored in Article 2(1) of the Charter of the United Nations (UNC)\(^5\) and considered to be one of the basic pillars of international law. The elements of sovereign equality imply that each state enjoys the rights inherent in full sovereignty and "has the right freely to choose and develop its political, social, economic and cultural systems"\(^6\) without any form of external interference. The latter is enshrined in the customary international law principle of non-intervention and Article 2(7) of the UNC which formulates a duty not to intervene in matters within the domestic jurisdiction of other states.\(^7\) In order to avoid the violation of the principles of non-intervention and sovereign equality of states, the involvement of international actors in comprehensive post-conflict reforms requires a legal basis. Since the delegation of certain state-run competencies to other actors "is a form of exercise of the rights of a sovereign state"\(^8\), the primary source of such an authorization is the post-conflict state and its authorities. The transmission of competencies can take

\(^3\) Ibid. p. 49; and Schaller, Christian (2009), Towards an International Legal Framework for Post-Conflict Peacebuilding, Research Paper, Berlin: German Institute for International and Security Affairs, p. 5.

\(^4\) Schaller, ibid.

\(^5\) Charter of the United Nations, 1 UNTS XVI, 24 October 1945 (hereinafter UNC)

\(^6\) UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/25/2625 (XXV), 24 October 1970 (hereinafter Friendly Relations Declaration)

\(^7\) Ibid.

place either by consenting the presence of international missions, or indirectly as a consequence of being a member of the UN, by granting the power to the UN Security Council (UNSC or Council) to take action under Chapter VII of the UNC and authorize the deployment of a peacebuilding mission "as may be necessary to maintain or restore international peace and security".\footnote{9}

1. **Peacebuilding in the system of collective security**

Consequently, in addition to the consent of the host state, the only institution which can authorize any external intervention in domestic sphere of states is the UNSC. Pursuant to Article 24 of the UNC, the UN Members confer the primary responsibility for the maintenance of international peace and security on the Council and through Article 25 commit themselves to accept and carry out its decisions. When exercising its responsibility, the Council is entitled to "\textit{investigate any dispute, or any situation which might lead to international friction or give rise to dispute, in order to determine whether the continuance of the dispute or situation is likely endanger the maintenance of international peace and security}" and decide upon the measures which shall be taken "\textit{in order to prevent the aggravation of the situation}".\footnote{10}

While measures requested by the UNSC in line with Chapter VI of the UNC on issues of pacific dispute settlement are recommendatory in nature, under Chapter VII, when the situation endangers international peace and security, the Council has the decision-making power to adopt binding resolutions. Once the Council determined the existence of a threat to, or a breach of the peace, or an act of aggression, the UNC allows the authorization of two types of actions. Firstly, under Article 41, the UNSC can respond with non-military measures, such as the complete or partial interruption of economic or diplomatic relations. Secondly, in case when non-forcible measures of Article 41 (would) prove to be inadequate, under Article 42, the UNSC can authorize actions taken by the air, sea or land forces of UN Members. Pursuant to Article 2(7) of the UNC, a

\footnote{9}{Article 42 of the UNC}
\footnote{10}{Articles 34 and 40 of the UNC}
mandate for the use of force adopted by the UNSC under Chapter VII constitutes an exception of the non-intervention principle.

The term "collective security" frequently refers to the provisions of the UNC on maintaining international peace and security and the relevant provisions of diverse regional organizations. It is defined as "a system, regional or global, in which each state in the system accepts that the security of one is the concern of all, and agrees to join in a collective response to threats to, and breaches of, the peace". Under the UNC, the system of collective security is reflected in the powers of the UNSC to authorize measures under Chapter VII. The scope of exercising Chapter VII competences has recently undergone a dynamic expansion. Although the UNSC condemned gross violations of human rights and the oppression of certain population groups already during the Cold War era, it avoided to classify these incidents as threat to international peace and security. The practice of the Council began to reflect on a broadening interpretation of peace and security threats during the 1990s. In 1991, the UNSC condemned "the repression of the Iraqi civilian population in many parts of Iraq [...] which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions which threaten international peace and security in the region". The focus on transnational consequences of human rights violations represented the first milestone of the expanded notion of the threats to international peace and security. Subsequently, in 1992, the Council authorized the intervention in an internal armed conflict for the first time in the history of the UN solely on the basis of humanitarian concerns. In Resolution 794, the UNSC determined that "the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security". Due to the increasing number of internal conflicts, the first example of intervention in Somalia was followed by the progressive authorization

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of enforcement mechanisms under Chapter VII, ranging from embargoes to military actions.\textsuperscript{15}

In addition to the dynamic expansion of the notion of threats to international peace and security, recent practices have illustrated an extending scope and temporal dimension of the UNSC’s responses to conflict and crisis situations. The reason behind its altered attitude was the urgent need for adjusting the UN’s conflict management capacity to a broadened catalogue of peace and security threats. While recalling the traditional understanding that inter-state conflicts constitute the major challenge to international peace and security, in 2004, the \textit{Report of the High-level Panel on Threats, Challenges and Change} identified six inter-connected clusters of threats, which must be the concern of the international community as a whole, and called for an upgraded security strategy based on the understanding that “\textit{today’s threats recognize no national boundaries, are connected, and must be addressed at the global and regional as well as national levels. No State, no matter how powerful, can by its own efforts alone make itself invulnerable to today’s threats. And it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbors}”.\textsuperscript{16}

The call of the High-Level Panel for a revised concept of collective security was further elaborated by the 2005 Report of the UN Secretary-General (UNSG), \textit{In Larger Freedom: Towards Development, Security, and Human Rights for All},\textsuperscript{17} which influenced the authorization of a wide variety of actions under Chapter VII, such as certain special mandates to implement within the post-conflict period. Examples include, firstly, the deployment of the newly emerged multidimensional peacekeeping missions, whose mandate combines the application of diverse

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\item The identified threats included poverty, infectious disease and environmental degradation; inter-state conflict; internal conflict, including civil war; genocide and other large-scale atrocities; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime. See UN General Assembly, \textit{A more secure world: Our shared responsibility}, Report of the High-level Panel on Threats, Challenges and Change, A/59/565, 2 December 2004, p. 12.
\end{enumerate}
\end{footnotesize}
conflict management mechanisms inclusively of the performance of certain security and political tasks in the post-conflict period.\textsuperscript{18} Secondly, Chapter VII provided the legal basis for the establishment of the UN ad hoc Tribunals mandated to try crimes against international law committed during the conflicts in the former Yugoslavia and Rwanda.\textsuperscript{19} Finally, in the early 1990s the Council, acting under Chapter VII, began to establish international territorial administrations after armed conflicts for purposes of state and peacebuilding.\textsuperscript{20}

2. The consent of the host state

Nevertheless, a UNSC resolution adopted under Chapter VII provides the exclusive legal basis for the international involvement in peacebuilding efforts only in exceptional cases. As a general rule, international peacebuilding operations are conducted with the consent of the host state. States express their consent in various ways depending on the type of assistance they require, such as requesting the establishment of a mission at the relevant UN body, including the issue in a peace agreement, or signing bilateral contracts with diverse international donors. The specific terms of the deployment of larger UN missions are usually defined through concluding a Status of Mission Agreement (SOMA). Further general rules for the UN engagement, which do not require a Chapter VII authorization, are specified by the 1994 \textit{Convention on the Safety of United Nations and Associated Personnel}.\textsuperscript{21} The \textit{Convention} stresses the conclusion of a SOMA in order to define the status of UN missions including the privileges and

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\item \textsuperscript{18} An example for the comprehensive functions of the multi-dimensional missions is provided by the mandate of the United Nations Mission in Sierra Leone (UNAMSIL) which included tasks in assisting in the disarmament, demobilization and reintegration of combatants, facilitating the delivery of humanitarian assistance, and providing support to the first post-conflict elections. See Security Council Resolution 1270 (1999) on establishment of the UN Mission in Sierra Leone, S/RES/1270, 22 October 1999, para. 8.
\item \textsuperscript{21} Convention on the Safety of United Nations and Associated Personnel, UNTS 2051, p. 363, 9 December 1994
\end{itemize}
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immunity provisions for the military and police components of the operation. \(^{22}\) Furthermore, the *Convention* underlines that the UN and its personnel shall respect local laws and regulations of the host state and refrain from any action or activity incompatible with the impartial and international nature of their duties. \(^{23}\)

Although the consent of the host state legitimizes the presence of international missions in the first place, there are specific situations when such an agreement is difficult to reach. When a country lacks effective state power in the aftermath of a devastating intra-state conflict, external actors are challenged to identify the relevant and capable local authorities which are entitled to act in behalf of the host state. Giving consent requires not only the existence of an effective government but also legitimacy to represent the will of the people. Since post-conflict settings experience a "political flux" it is challenging to connect the request for international engagement to a viable political entity "with a legitimate claim to be an embodiment of the will of the people". \(^{24}\) It applies especially in cases when the government prior to the conflict does not remain in power and peacebuilding actions are launched before the first post-conflict elections take place. In addition to the challenge of identifying the local counterparts who legitimately represent the society of the host state, the priorities set by the domestic government with a high level of aid dependency raise concerns as well. The post-conflict political elite often tend to pursue their own political or economic interests instead of facilitating a nation-wide consultation on the peace process or alternatively, in exchange for financial assistance, they agree on the preferences of international actors. \(^{25}\)

According to Matthew Saul, the key condition of successful peacebuilding process would be that international actors maximize the level of support for their actions through obtaining consent which satisfies the legal right to self-determination. \(^{26}\)

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\(^{22}\) Ibid. Article 4  
\(^{23}\) Ibid. Article 6  
\(^{25}\) Ibid. p. 6.  
\(^{26}\) Ibid. p. 21.
domains of international law. Although it is anchored in various international treaties and the UN human rights covenants of 1966 as well as confirmed by the International Court of Justice (ICJ) as an *erga omnes* obligation under international law, its exact scope and who is entitled to this right beyond the decolonization context have been remained contested. In this regard, the 1970 UN Friendly Relations Declaration provided some clarification by making an implicit distinction between internal and external dimension of the right to self-determination. Accordingly, the former grants “all peoples” the right "freely to determine without external interference, their political status and pursue their economic, social and cultural development". External self-determination is understood as the right to establish "a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people". While subsequently several international legal and political documents referred to the right to self-determination, including the Final Act of the Conference on Security and Cooperation in Europe (CSCE) of 1975, its subject has remained undefined. So far state practice has shown inconsistency when it comes to applying the term “people”, ranging from the citizens of a nation-state to an ethnic group. Furthermore, while the internal dimension of self-determination has gained recognition by the international community, there are different views on the freedom of choice embraced by the external dimension to establish an independent state. On the one hand, there is a contradiction between the right to secede and the international law principle of territorial integrity. The duty to refrain from "any attempt aimed at the partial or total disruption of the national..."
unity and territorial integrity of a State or country or at its political independence\textsuperscript{34} is included by the Friendly Relations Declaration and Article 2(4) of the UNC. According to the contrarious interpretation, “in some circumstances the right to secede overcomes the principle of territorial integrity. [...] In fact, territorial integrity does not mean the lack of legal obligation - the former only has precedence over the latter in case of internal self-determination, that is when all of the rights of a ‘people’ are guaranteed and enabled to exercise within the framework of an existing sovereign state. In the opposite situation, when a ‘people’ is denied its right to internal self-determination and heavily oppressed, territorial integrity cannot be the sole argument against self-determination”.\textsuperscript{35} However, state practice has not yet reaffirmed this view. This is illustrated by the frequent reluctance of the international community to admit states to the UN which has been created by unilateral secession, such as in the case of Bangladesh in 1972 or Kosovo today.

It is difficult to determine in which cases the international post-conflict engagement contravenes the legal right to self-determination. Over the last two decades of practice, peacebuilding actors demonstrated their commitment to the right to self-determination in several key documents and resolutions which provided the legal basis of international interventions.\textsuperscript{36} Furthermore, in order to ensure the balance between the international influence and the interests of the local population, the peacebuilding practice has promoted respect for the principle of local ownership. Accordingly, lead international actors have acknowledged the primary responsibility of local actors for defining priorities and implementing reforms during the peacebuilding process in a number of policy papers and developed strategies on how to put the principle into practice.\textsuperscript{37}

\textsuperscript{34} Annex of the Friendly Relations Declaration, supra note 6.
\textsuperscript{35} Cnić-Grotić and Kasipović, supra note 29, p. 899.
\textsuperscript{36} See UN Security Council, Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Bonn Agreement), S/2001/1154, 5 December 2001, Preamble: “Acknowledging the right of the people of Afghanistan to freely determine their own political future in accordance with the principles of Islam, democracy, pluralism and social justice”; Security Council Resolution 1483 (2003) on the situation between Iraq and Kuwait, S/RES/1483, 22 May 2003, para. 4: “Stressing the right of the Iraqi people freely to determine their own political future and control their own natural resources”.
\textsuperscript{37} See UN Peacebuilding Commission-Sierra Leone Configuration, Sierra Leone Peacebuilding Cooperation Framework, PBC/2/SLE/1, 3 December 2007, p. 2. Principles of Cooperation
II. Linking peacebuilding with the post-Cold War notion of security

As is stated above, apart from certain exceptional cases when missions are authorized by the UNSC acting under Chapter VII, the involvement of international actors in peacebuilding is voluntary in nature. Nevertheless, the aforementioned rules which regulate the legal basis of interventions are insufficient to explain why the international community is committed to perform peacebuilding efforts. The roots of the engagement in conflict-stricken states have rather been addressed through certain extra-legal concepts. These have emerged in the international diplomatic arena with the aim to reconcile interventions in the domestic sphere of states for conflict management purposes with the international law principles of sovereign equality and non-intervention.

The traditional interpretations of these principles became challenged by the development of a broader understanding of the sovereignty concept which encompasses both the rights and responsibilities of states.38 The issue of shifting boundaries of sovereignty was raised by UNSG Boutros Boutros-Ghali in his policy paper, An Agenda for Peace, stating that "the time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality".39 While Ghali stressed that "a major intellectual requirement [...] is to rethink the question of sovereignty"40, a response was made by his successor, UNSG Annan, who formulated a powerful argument on redefining the sovereignty doctrine in his article “Two Concepts of Sovereignty” by introducing a juxtaposition of two versions of sovereignty, one is applied to states, and the other to people. According to Annan, "state sovereignty, in its most basic sense, is being redefined—not least by the forces of globalisation and international cooperation. States are now widely understood to be instruments at the service of

their peoples, and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights”.

The security dimension of the emerging notion of “peoples’ sovereignty rather than the sovereign’s sovereignty” appeared in the concept of Human Security, introduced by the United Nations Development Programme (UNDP) in its *Human Development Report* in 1994. According to the UN’s basic understanding, peace operations pursue two different objectives: freedom from fear and freedom from want. While the freedom from want has become the field of action of development cooperation, freedom from fear has been the area of responsibility of foreign and security affairs aiming at preventing the eruption of inter-state conflicts. The concept of Human Security proposed to set people instead of the state as the central point of reference for both objectives. In relation to the freedom from fear objective, the Report urged for a shift in the existing state-centered notion of security in two different aspects: “from an exclusive stress on territorial security to a much greater stress on people’s security” and “from security through armaments to security through sustainable human development”.

Consequently, the Human Security concept challenged the traditional understanding that the use of external military force constitutes the absolute threat to physical security of individuals. The catalogue of security threats was extended with a bundle of social and political causes of internal conflicts which later reflected in the evolution of the peacebuilding concept.

A further elaboration of the changing notion of security was provided by the International Commission on Intervention and State Sovereignty (ICISS), which was mandated to develop a concept to reconcile intervention for human

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protection purposes with the principle of sovereign equality. In its Report, The Responsibility to Protect, the ICISS introduced a new sovereignty understanding, transforming it into a dual responsibility described as follows: "The defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people. [...] It is acknowledged that sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship". Accordingly, the ICISS proposed the conceptual shift in the sovereignty notion from control to responsibility by presenting the obligation of “Responsibility to Protect”.

The “Responsibility to Protect” doctrine is comprised of three pillars. The first pillar, the “Responsibility to Prevent”, aims at addressing both the root and direct causes of internal conflicts and other man-made crises which put populations at risk. The Pillar represents a link to the UN’s long-term approach for conflict prevention included in Article 55 of the UNC that calls for solutions of international economic, social, and health problems, as well as promotes international cultural and educational cooperation, and universal respect for human rights. The second pillar, the “Responsibility to React”, requires a response to situations of compelling human need through appropriate measures such as sanctions, prosecution, and in extreme cases, military intervention in accordance with Article 41 and 42 of the UNC. The Commission emphasized the priority of non-military, political, economic or legal sanctions over military measures which should be restricted to situations with large scale loss of civilian

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47 Ibid. para. 1.35.
48 Ibid. para. 3.
49 Ibid.
life, or ongoing, or threatening ethnic cleansing.\textsuperscript{50} The third “Responsibility to Rebuild” pillar indicates that the international community is responsible, particularly after a military intervention, to support post-conflict recovery, reconstruction and reconciliation, and address the causes of harm the intervention was aimed to halt or avert.\textsuperscript{51} Through the idea of the “Responsibility to Rebuild”, the ICISS proposed a duty-based approach for intervening actors to engage in post-conflict efforts “as long as necessary in order to achieve self-sustained stability”.\textsuperscript{52} Within the “Responsibility to Rebuild”, peacebuilding is considered to be an integral part of the post-intervention obligation which involves “the commitment of sufficient funds and resources and close cooperation with local people, and may mean staying in the country for some period of time after the initial purposes of the intervention have been accomplished”.\textsuperscript{53}

The High Level Panel and UNSG Annan have repeatedly referred to the “Responsibility to Protect” doctrine as an emerging norm of international law. Although a general state practice has not yet been established, there are several examples which illustrate gaining \textit{opinio iuris} on an explicit permission of a military response in cases of serious human rights violations.\textsuperscript{54} The most significant reference to a partial recognition of the concept is included by UN’s \textit{World Summit Outcome Document} of 2005 that endorsed the responsibility of each state to protect its populations from genocide, war crimes, ethnic cleansing and the subsidiary responsibility of the international community to take collective action “through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing” to do so.\textsuperscript{55} Since then, the UN reaffirmed its

\textsuperscript{50} Ibid. para. 4.19.  
\textsuperscript{51} Ibid. para. 3.  
\textsuperscript{52} Ibid. para. 7.40.  
\textsuperscript{53} Ibid. para. 5.2.  
\textsuperscript{55} UN General Assembly, 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, para. 139.
commitment to the notion in several resolutions.\textsuperscript{56} The UN framework for its implementation is comprised of three different pillars, “the protection responsibilities of the state” (Pillar I), “international assistance and capacity-building” (Pillar II) and the “timely and decisive response” of the international community (Pillar III).\textsuperscript{57} Within this framework, the peacebuilding concept is detached from an involvement in collective actions under Pillar III, but included in Pillar II which addresses the collective responsibility of the international community to encourage and support states to fulfill their primary responsibility to protect their populations. The 2015 Report of the UNSG on the results of the implementation of “Responsibility to Protect” outlined that, while the international engagement succeeded to avert the recurrence of atrocity crimes the in cases of Côte d’Ivoire, Guinea, Kenya and Kyrgyzstan, in certain crisis situations, failed to deliver an adequate response.\textsuperscript{58} Furthermore, the international practice has been heavily criticized in the context of the Middle East for the high level of selectivity on the basis of geopolitical interests.\textsuperscript{59} In 2011, disagreement about the scope of the military mandate to intervene in the Libyan conflict has generated increased reluctance in the UNSC to implement the concept.\textsuperscript{60} Consequently, a consistent state practice with regard of all the three pillars is yet to develop. At present the “Responsibility to Protect” doctrine has rather embedded in the political sphere than show the quality of an evolving norm of customary international law.\textsuperscript{61}


\textsuperscript{58} UN General Assembly/ Security Council, \textit{A vital and enduring commitment: implementing the responsibility to protect}, Report of the Secretary-General, A/69/981–S/2015/500, 13 July 2015, para. 1; Examples for the outbreak of violence include, among others, the Central African Republic, South Sudan or Yemen.

\textsuperscript{59} Mahdavi, Mojtaba (2015), \textit{A Postcolonial Critique of Responsibility to Protect in the Middle East}, \textit{Perceptions}, XX(1), 7-36, p. 12.

\textsuperscript{60} According to the opposing states, including the BRICS countries (Brazil, Russia, India, China, and South Africa) NATO acted beyond the scope of the UNSC resolution which authorized the use of force in Libya by interpreting it as an authorization to effect regime change. See De Wet and Wood, supra note 11, para. 16.

\textsuperscript{61} Winklemann, \textit{supra} note 54, paras. 21-22.
III. Peacebuilding and Jus Post Bellum

In addition to the aforementioned concepts, peacebuilding has become connected with the recently emerged *jus post bellum* theories which aim at redefining the legal framework for the management of post-conflict situations. While *jus post bellum* has its origins in the field of political philosophy and ethics, these extra-legal approaches served as foundations for conceptualizing the legal notion of a post-conflict doctrine.\(^{62}\)

Eric de Brabandere offered a classification of the *jus post bellum* theories through dividing them into two categories.\(^{63}\) The first category of *jus post bellum*, similar to the “Responsibility to Protect” doctrine, establishes a link between the involvement of states and international organizations (IOs) in the *ad bellum* and *post bellum* stage.\(^{64}\) Accordingly, *jus post bellum* theorists focus on defining obligations for intervening actors to engage in post-conflict peacebuilding and rules for their operations. Nevertheless, scholars who support a broader understanding argue that the post-conflict responsibilities of states and international organizations need to be revisited regardless of their participation in a military intervention. From this point of view, *jus post bellum* is understood as a normative framework designed "to address post-conflict peacebuilding" and "encapsulates the laws and rules applicable in the transitory phase from conflict to peace".\(^{65}\) The need for the adoption of a new legal framework is supported by the argument that post-conflict activities are carried out in a “legal void” since the transition from conflict to peace constitutes a grey zone between the law applicable in war and the law applicable in peacetime.\(^{66}\) *Jus post bellum* would then be the third independent legal framework within the law applicable to armed conflicts together with *jus ad bellum* (the law on recourse to force) and *jus in


\(^{64}\) Ibid. p. 126.

\(^{65}\) Ibid.

bello (the law governing the conduct of hostilities). The new legal framework would bring together rules from areas of human rights law, humanitarian law and criminal law which guide how peacebuilding actors should perform their mandate and exercise their authority in order to “achieve a higher level of human rights protection, accountability, and good governance in the post-conflict phase than it had in the period before the conflict”. Connected to this theory, certain scholars understand the concept of jus post bellum as a normative set of principles which would enable the uniform interpretation of various norms, rules and practices applicable in the post-conflict phase. Jus post bellum, as an interpretative framework, may include principles such as the accountability of foreign actors or the principle of proportionality.

Both the “Responsibility to Protect” and jus post bellum are considered to be emerging concepts that “provide a fresh lens on the conception of international peace and security, based on ethical and legal duties, which is line with the idea of human security”. Critique, however, pointed out that both concepts promote intervention, or propose the development of undesirable normative frameworks which anchor existing inequalities and contradict the value-neutral attitude of the international legal order. Some authors understand jus post bellum as an embodiment of the “Responsibility to Rebuild” Pillar equating to an “obligation to rebuild” or a “responsibility for post-conflict reforms”. Others argue that jus

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68 Österdahl and van Zadel, supra note 66, p. 179.


post bellum is a specific part of the broader concept of “Responsibility to Protect” which provides a framework for its implementation.\textsuperscript{74} According to the opposing view of Carsten Stahn, these concepts show significant normative differences.\textsuperscript{75} On the one hand, the UN adopted a technical approach to “Responsibility to Protect” through translating its notion into policy guidelines without any obligatory character. Accordingly, the peacebuilding component of “Responsibility to Protect” turned into an institutional concept which aims, under Pillar Two, at promoting cooperation and partnership between states and the UN by encouraging collective actions.\textsuperscript{76} On the other hand, the \textit{jus post bellum} theories intend to offer a framework to evaluate post-conflict actions based on a set of normative criteria and identify legitimacy standards for behavior. While the application of all Pillars of the “Responsibility to Protect” is triggered by errors in domestic governance, \textit{jus post bellum} intends to operate on the basis of factual considerations, such as the termination of hostilities, and regulate the conduct of external and internal peacebuilding actors alike.\textsuperscript{77} Nevertheless, the exact content of \textit{jus post bellum} and its added value to the existing legal framework has remained ambiguous. The concept is challenged to convince sceptics that there is a need for a post-conflict law as an alternative legal framework or “any utility in categorizing already existing norms in this respect”.\textsuperscript{78}

IV. Subject and steps of research

Although peacebuilding has become one of the focal points of the contemporary discourse on international conflict management, the emerging concepts have remained extra-legal in nature, or in case of the \textit{jus post bellum} theories, at a very early stage of their development. At the same time, the peacebuilding practice has experienced an intense evolution. While on a practical level there is widespread agreement that post-conflict efforts aim at creating conditions of

\textsuperscript{73} De Brabandere, Eric (2010), The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept, Vanderbilt Journal of Transnational Law, 43(1), 119-149.
\textsuperscript{74} Österdahl and van Zadel, supra note 66, p. 191.
\textsuperscript{75} Stahn, supra note 70, p. 107.
\textsuperscript{76} Ibid.
\textsuperscript{77} Ibid. p. 109.
\textsuperscript{78} De Brabandere, International Territorial Administrations and Post-Conflict Reforms, supra note 8, p. 90.
sustainable peace and eliminating the root causes of conflict, "consensus breaks down, over the substance behind the symbol of peacebuilding".\textsuperscript{79} Paradoxically, over the last decades, neither a universal peacebuilding definition, nor a consistent accompanying strategy has evolved.\textsuperscript{80} In fact, peacebuilding is applied in various operational frameworks in context-specific post-conflict settings and performed by means of diverse approaches depending on the conceptual understanding and the resources of the different actors. This lack of coherence often resulted in the duplication of measures, competition between the actors and the emergence of rivaling instruments and priorities at the expense of the final outcome of the international assistance.

Furthermore, as a general rule, the international actors operate on the basis of self-commitment, consent-based engagements, and partnerships among states and international organizations. From a legal point of view, their actions need to be in compliance with the existing framework of international law which is comprised of \textit{jus cogens}, international treaties, and in exceptional cases UNSC resolutions. While these basic norms of international law regulate lawful conduct, they do not impose any legal obligation either to engage in peacebuilding or to deliver a specific result.\textsuperscript{81} It raises the dilemmas of how effectively peacebuilding functions while being guided by moral obligations, extra-legal operational principles, and diverse strategic guidelines, and how the adoption of legal standards on if and how actors exercise their post-conflict mandates could affect the outcome of the peacebuilding process.

This thesis focuses on the question whether there is law \textit{de lege ferenda} related to the participation and conduct of international actors which evolved from the lessons learned from the performance of peace operations, and aims at achieving greater success in implementing peacebuilding mandates. The overall aim of this research is to identify certain fields of action in the peacebuilding practice where the lack of consistent approaches and mechanisms prevent the success of post-


\textsuperscript{81} Stahn, \textit{supra} note 70, p. 106.
conflict efforts and assess the relevance and feasibility of adopting legal
obligations to ensure greater uniformity in these regards. In order to achieve this
aim, the research pursues the objectives of developing a general understanding
on the characteristics of peacebuilding, illustrating the mandates and activities
undertaken by the major international peacebuilding actors, identifying best
practice and lessons learned of mandate implementation processes as well as
discussing the sufficiency of existing regulation and possible methods for its
improvement.

Following the introductory section, the thesis is divided into five Chapters.
Chapter 2 will give an overview of the conceptual foundations and common
characteristics evolved during the past two decades of international
peacebuilding practice. Through the introduction of the peacebuilding process in
Sierra Leone and Kosovo, Chapters 3 and 4 will illustrate diverse post-conflict
scenarios, as well as various instruments and approaches that the key
international actors, including the UN Peacebuilding Commission (PBC) and
European Union (EU), use to address the root causes of conflict. Furthermore,
these chapters will place an emphasis on assessing the performance of
international organizations and analyzing the legal, political and operational
challenges which emerged during the peacebuilding processes in these countries.
Based on the lessons learned, identified in the previous chapters, Chapter 5 will
outline the factors of peacebuilding practices which have a major impact to the
outcome of international post-conflict efforts, and discuss the need for, and
options of, more consistent regulation in these areas. Finally, Chapter 6 will
summarize the main findings and offer an overview on the current state and
future perspectives of the evolution of an international law regime designed to
regulate peacebuilding efforts.

The research has been conducted on the basis of primary and secondary
literature. This review embraces the textual analysis of the founding documents,
policy papers and declarations of international organizations including the UN,
EU, Organization for Security and Co-operation in Europe (OSCE), North-Atlantic
Treaty Organization (NATO) and African Union (AU), international law treaties, as
well as resolutions and documentation of the UN Security Council. Findings of the
impact assessment on the performance of international peacebuilding actors were gained through the document analysis of internal evaluations, periodic reviews on the mandate implementation of peacebuilding missions, external strategic studies, and scholarly literature. The selection of case studies aims at illustrating the peacebuilding practice of the most relevant peacebuilding actors. The case of Sierra Leone offers an overview on the UN’s approach to peacebuilding including the actions of diverse field missions and the instruments of the recently established UN peacebuilding bodies. The peacebuilding process in Kosovo portrays the engagement of further influential international organizations, in particular the EU, which perform peacebuilding in accordance with their organization-specific agendas and interests. Contrasting the performance of the global organization, the UN, and one of its key partners and main competitor, the EU, provides a comprehensive picture of the inconsistent conceptual understanding and operational strategies prevailing in the practice. Nevertheless, at the time of writing, the engagements of both the UN with Sierra Leone and the other international organizations with Kosovo have been ongoing, and therefore the assessment of the impact of their efforts on the peacebuilding process in these countries can only lead to tentative conclusions. Through analyzing present experience in peacebuilding, the ambition of this paper is to provide a humble contribution to the scholarly discourse on how to improve the effectiveness of future interventions.

B. Conceptual foundations

While the end of an armed conflict is to recognize on the basis of objective indicators such as the ultimate victory or surrender of one of the warring parties and most commonly the conclusion of a peace agreement, for peacebuilding actors the absence of violence represents the starting point for the implementation of diverse post-conflict reform agendas. It raises the question, what does “peace” in peacebuilding stand for beyond the lack of violence. Since neither the international treaties, nor the UN has adopted a universal definition of peace there are no applicable legal standards which would provide guidance in this regard. Instead, since the early 1990s, the conceptual foundations of
peacebuilding were influenced by the evolving political understanding and diverse policies of key international actors.

I. Defining peacebuilding

The scientific origins of peacebuilding first appeared in the concept of positive peace developed by the peace and conflict scholar, Johan Galtung. While Galtung defined negative peace as the "absence of direct and organized violence between human groups or nations", positive peace was understood as the result of long term efforts on fostering the cooperation between these groups or nations and eradicating the root causes of conflict.\textsuperscript{82} In his essay \textit{Three Approaches to Peace: Peacekeeping, Peacemaking and Peacebuilding}, he introduced the conceptual foundations of three complementary conflict management mechanisms: peacekeeping, which pursues the end of immediate violence and hostilities; peacemaking, which focuses on resolving the conflict peacefully through methods of negotiation, mediation and arbitration; and peacebuilding, which aims at addressing the root causes of conflict and establishing sustainable peace.\textsuperscript{83} John Lederach, another key scholar in the field of peace and conflict research, promoted a more extended notion of peacebuilding. He argued that peacebuilding is "a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships. The term thus involves a wide range of activities that both precede and follow formal peace accords. Metaphorically, peace is seen not merely as a stage in time or a condition. It is a dynamic social construct".\textsuperscript{84} While Galtung emphasized that the objective of peacebuilding measures is to "remove root causes of wars to offer alternatives to war in situations where war might occur"\textsuperscript{85}, according to Lederach "the key lies in the relationship of involved parties [...] at the psychological, spiritual, social,


\textsuperscript{85} Galtung, \textit{supra} note 83, p. 297.
economic and military levels”. In the context of the latter, peacebuilding aims the transformation of relationships of a society through establishing new patterns, processes and structures.

The concept of post-conflict peacebuilding, defined as “an action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict”, was introduced in the diplomatic arena in 1992 by UNSG Ghali in his policy paper An Agenda for Peace. The Agenda presented a new classification for post-Cold War UN peace operations through establishing a chronologically linear framework of four key conflict management mechanisms where “preventive diplomacy seeks to resolve disputes before violence breaks out; peacemaking and peacekeeping are required to halt conflicts and preserve peace once it is attained. If successful, they strengthen the opportunity for post-conflict peace-building, which can prevent the recurrence of violence among nations and peoples.” Consequently, in 1992, peacebuilding was considered to be, depending on their success, a natural extension of the three further mechanisms.

This concept was elaborated in a series of follow-up documents including An Agenda for Development, An Agenda for Democratization, the aforementioned UNDP Report on Human Security, and An Inventory of Post-Conflict Peace-Building Activities which progressively promoted a conceptual link between four key concerns: security, development, democratization and human rights. The call for an institutional framework for post-conflict engagement was formulated in 2000 by the Report of the Panel on United Nations Peace Operations (hereinafter Brahimi Report) that defined peacebuilding as a set of “activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than

86 Lederach, supra note 84, p. 75.
87 An Agenda for Peace, supra note 39, para. 21.
88 Ibid.
89 UN General Assembly, An Agenda for Development, Report of the Secretary-General, A/48/935, 6 May 1994
92 Duke and Courtier, supra note 80, p.18; and Chetail supra note 82, p. 3.
just the absence of war”.\textsuperscript{93} In response to the Brahimi Report, the organs of the UN peacebuilding architecture, the Peacebuilding Commission, the Peacebuilding Fund (PBF) and the Peacebuilding Support Office (PBSO), were established in December 2005 with the mandate to propose and implement integrated and coordinated peacebuilding strategies.\textsuperscript{94} The PBC identified itself “as a dedicated institutional mechanism to address the special needs of countries emerging from conflict towards recovery, reintegration and reconstruction and to assist them in laying the foundation for sustainable peace and development”.\textsuperscript{95} Despite the ambitious purposes, neither the PBC’s mandate has clarified the notion of peacebuilding nor has the organ itself elaborated a universal definition.

A new input for the conceptual foundations was provided by the policy paper of the United Nations Peacekeeping Operations: Principles and Guidelines (hereinafter Capstone Doctrine) which described peacebuilding as “a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development. Peacebuilding is a complex, long-term process of creating the necessary conditions for sustainable peace. It works by addressing the deep-rooted, structural causes of violent conflict in a comprehensive manner. Peace-building measures address core issues that affect the functioning of society and the state. In this regard, they seek to enhance the capacity of the State to effectively and legitimately carry out its core functions”.\textsuperscript{96} The Capstone Doctrine reaffirmed that the main objective of peacebuilding is the transformation of the initial situation, which escalated into violence, to a regime of sustainable peace by altering the local cultural, economic, political and societal structures. Consequently, the significant difference between the UN’s conflict management mechanisms is that while peacemaking, peacekeeping and peace-enforcement focus on restoring and

\textsuperscript{94} UN General Assembly Resolution 60/180 (2005), A/RES/60/180, 30 December 2005; and Security Council resolution 1645 (2005) on the establishment of Peacebuilding Commission, S/RES/1645, 20 December 2005
maintaining the state of negative peace, peacebuilding aims at the establishment of positive peace through fostering a comprehensive change in the functioning of the host state.97

The Capstone Doctrine, however, challenged this understanding as it recalled the linear approach of the Agenda for Peace and pointed to the increasingly blurred boundaries between the conflict management mechanisms by noting: "While United Nations peacekeeping operations are, in principle, deployed to support the implementation of a cease-fire or peace agreement, they are often required to play an active role in peacemaking efforts and may also be involved in early peacebuilding activities. United Nations peacekeeping operations may also use force at the tactical level, with the authorization of the Security Council, to defend themselves and their mandate, particularly in situations where the State is unable to provide security and maintain public order".98 Furthermore, the document stressed that notwithstanding the PBC's mandate to propose integrated strategies for peacebuilding and promote linkages between peacemaking, peacekeeping and peacebuilding, the abilities of the international community to implement such a comprehensive approach have remained limited.99 The Report of the Secretary-General on Peacebuilding in the Aftermath of Conflict addressed the need for improved coherence as well. According to the Report, the first two years after the end of the conflict represent a “window of opportunity” to avoid the relapse into conflict which "requires that international actors are, at a minimum, capable of responding coherently, rapidly and effectively".100

The latest conceptual input was proposed in 2015 by the independent Review of the UN Peacebuilding Architecture (hereinafter 2015 Review) which aimed at assessing "the entire approach to peacebuilding taken by the United Nations at

98 Capstone Doctrine, supra note 96, p. 19.
large”. The assessment concluded that the notion of peacebuilding needs to be transformed into a more holistic approach and introduced the concept of “sustaining peace”. It has been argued that "for many States Members of the United Nations and United Nations entities alike, peacebuilding is left as an afterthought: underprioritized, underresourced and undertaken only after the guns fall silent. Sustaining peace, however, is among the core tasks established for the Organization by the vision set out in the Charter of the United Nations of saving succeeding generations from the scourge of war. It must be the principle that flows through all the Organization’s engagements, informing all its activities — before, during and after violent conflicts — rather than being marginalized.” Accordingly, the new concept offered the “liberation” of peacebuilding from the post-conflict context and its replacement with a holistic approach which also encompasses efforts to prevent a lapse into conflict and requires a “fully integrated approach at the strategic and policymaking level as well as at the operational level”. The conceptual renewal was endorsed by Security Council Resolution (UNSCR) 2282 that recognized the comprehensive approach to sustaining peace, its relevance to all stages of conflict, and the wide spectrum of embraced activities.

While diverse policy papers and reviews have continuously extended the scope of the concept, a universal understanding on the exact meaning of peacebuilding has never developed. Instead, a vast diversity of hybrid expressions and terminological substitutes has appeared in the diplomatic vocabulary unaccompanied by a precise definition. Examples include such terms as "stabilization" and "peace support" used by NATO, "civilian crisis management" applied by the European Union within the framework of its Common Security and Defence Policy (CSDP). While the African Union refers to "post-conflict

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102 Ibid. Summary, p. 3.
103 Ibid. paras. 7. and 26.
105 Chetail, supra note 82, p. 4.
reconstruction and development”, the UNDP or the International Monetary Fund (IMF) associates peacebuilding with reconstruction and recovery.\textsuperscript{106}

Nevertheless, the inconsistent understanding of the scope and meaning of peacebuilding represent not only the weakness, but also the strength of the concept. It greatly influenced the expansion of the peacebuilding practice that its notion is vague and flexible enough to accommodate the different interpretations of its actors.\textsuperscript{107} As a study on the vast diversity of terminology used to describe post-conflict engagement concluded, "the willingness of so many diverse constituencies with divergent and sometimes conflicting interests to rally around peacebuilding also suggests that one of the concept's talents is to camouflage divisions over how to handle the post conflict challenge. In this respect, it functions much like a favored political symbol. Symbols are often highly ambiguous. Ambiguity can facilitate collective action because different constituencies can support the symbol without necessarily achieving consensus on the substance".\textsuperscript{108} As a result, over the last two decades, peacebuilding has evolved into a unique mechanism, attracting a number of international and national actors to engage in post-conflict efforts.

\section{II. The characteristics of peacebuilding}

Despite the multiplicity of how the diverse actors included the conceptual foundations in their conflict management agendas, it is widely acknowledged that the peacebuilding practice has developed certain common characteristics.\textsuperscript{109}

\subsection*{1. Multi-dimensionality}

Firstly, peacebuilding is considered to be a multi-dimensional mechanism. In 1992, the \textit{Agenda for Peace} described peacebuilding as a "cooperative work to deal with underlying economic, social, cultural and humanitarian problems".\textsuperscript{110}
which may include "disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation". Reflecting on the expanded practice, the recent policy papers narrowed down the list of actions to essential core areas which need to be addressed during the peacebuilding process. Relating to this, the Capstone Doctrine specified “four critical areas”: a) restoring the State’s ability to provide security and maintain public order; b) strengthening the rule of law and respect for human rights; c) supporting the emergence of legitimate political institutions and participatory processes; d) promoting social and economic recovery and development, including the safe return or resettlement of internally displaced persons and refugees uprooted by conflict.

Similarly, the Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict of June 2009 defined the core peacebuilding priority areas as follows: a) support to basic safety and security, including mine action, protection of civilians, disarmament, demobilization and reintegration (DDR), strengthening the rule of law and initiation of security sector reform (SSR); b) support to political processes, including electoral processes, promoting inclusive dialogue and reconciliation, and developing conflict-management capacity at national and sub-national levels; c) support to the provision of basic services, such as water and sanitation, health and primary education, and support to the safe and sustainable return and reintegration of internally displaced persons (IDPs) and refugees; d) support to restoring core government functions in particular basic public administration and public finance, at national and sub-national levels; e) support to economic revitalization, including employment generation and livelihoods particularly for youth and demobilized former combatants, as well as rehabilitation of basic infrastructure.

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111 Ibid. para. 55.
112 Capstone Doctrine, supra note 96, p. 25.
113 Report of the UN Secretary-General on peacebuilding in the immediate aftermath of conflict, supra note 100, para. 17.
Other policy papers specify key thematic areas of action. Most of these models vary in differentiating between three to eight different peacebuilding dimensions. According to the UN Secretary-General’s Report *No Exit without Strategy* these encompass: consolidating security, strengthening political institutions, and promoting economic and social transformation.\(^{114}\) Subsequently, Secretary-General Annan’s Note on Integrated Missions provided a more elaborate list which included political, development, humanitarian, human rights, rule of law, social reconciliation, and security dimensions.\(^{115}\) Similarly, the African Union’s *Post-conflict Reconstruction and Development Framework* enumerated six areas: security, humanitarian/emergency assistance, socio-economic reconstruction and development, political governance and transition, human rights, justice and reconciliation, women and gender.\(^{116}\) The latest conceptual input has been provided by the members of the International Dialogue on Peacebuilding and Statebuilding, which is comprised of a number of fragile and conflict affected states, development partners, and international organizations. Their policy paper, the *New Deal for Engagement in Fragile States*, adopted at the high-level meeting of the Organisation for Economic Co-operation and Development (OECD) in 2011, articulated five Peacebuilding and Statebuilding Goals (PSGs) which serve as “an important foundation to enable progress towards the MDGs and to guide […] work in fragile and conflict-affected states”.\(^{117}\) These include fostering inclusive political settlements and conflict resolution (legitimate politics), establishing and strengthening people’s security (security), addressing injustices and increasing people’s access to justice (justice), generating employment and improving livelihoods (economic foundations), and managing revenue and building capacity for accountable and fair service delivery (revenues and services).

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Table 1.: Five Dimensions of peacebuilding

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Humanitarian Assistance</td>
<td>providing emergency and early recovery services in the areas of food, water and sanitation, shelter, health, supporting the returns of refugees and IDPs</td>
</tr>
<tr>
<td>Security and Rule of Law</td>
<td>providing safe and secure environment, mine action, security sector reform (SSR), disarmament, demobilization and reintegration (DDR) of combatants, police, corrections and judicial system reform</td>
</tr>
<tr>
<td>Political and Governance</td>
<td>supporting the political transition and fostering the political participation, national dialogue and reconciliation, electoral capacity building and oversight, capacity-building of state and government institutions, public administration and civil service</td>
</tr>
<tr>
<td>Socio-economic Recovery</td>
<td>reconstructing of physical infrastructure, social services, and population registration stimulating and facilitating economic growth and employment, strengthening civil society</td>
</tr>
<tr>
<td>Human Rights</td>
<td>human rights education, advocacy and monitoring</td>
</tr>
</tbody>
</table>

Source: ACCORD Peacebuilding Handbook

It is to observe that despite the broad convergence on core peacebuilding dimensions, certain models include specific areas as self-standing elements such as the AU’s gender approach, revenue collection and improved service delivery as part of the PSGs, or the aspect of regional stabilization added by Schneckener.118 In addition to these differences, the inclusion of humanitarian assistance within the peacebuilding dimensions became a contested issue. Opponents argue that humanitarian assistance “needs to be recognized as independent, neutral and impartial” instead of being part of the inherently political peacebuilding framework.119 Other models, such as the UN’s integrated approach, while acknowledging the independent and special status of the humanitarian dimension, include it into the overall peacebuilding strategy in order to enhance the coherence and effectiveness of the planning and coordination mechanisms.120

118 Scheckener suggests that due to the destabilizing effects of a conflict and a failed state status quo, such as the flow of refugees, proliferation of weapons and increasing presence of transnational organized crime and criminality in the certain region, peacebuilding efforts should encompass measures for the stabilization of the entire region by establishing a political and economic partnership between the countries. See Scheckener, Ulrich (2005), Frieden Machen: Peacebuilding und peacebuilder, Die Friedens-Warte, Journal of International Peace and Organization, 80(1-2), 17-39, p. 22.
120 See ibid. and de Coning, supra note 2, p. 46.
2. Diversity in approaches and accompanying strategies

a. The relationship between the diverse conflict management mechanisms

In 1992, the Agenda for Peace made a clear distinction between five conflict management mechanisms which were reflected in the subsequent policy papers. The Capstone Doctrine describes peacemaking as any measures that aim at addressing conflicts in progress and involve “diplomatic action to bring hostile parties to a negotiated agreement”, and refers to peacekeeping as "a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers".¹²¹ Unlike peace enforcement operations with a mandate which "involves the application, with the authorization of the Security Council, of a range of coercive measures, including the use of military force", traditional peacekeeping missions are typically deployed with the consent of the host state(s) to create conditions for the negotiation of peace settlements and monitor the parties’ adherence to a cease-fire agreement or demilitarized zones.¹²² As a response to post-Cold War security challenges, the UN extended the scope of peacekeeping operations in various manners. Firstly, with the authorization of the UNSC, UN peacekeeping missions began to use force at the tactical level "to defend themselves and their mandate, particularly in situations where the State is unable to provide security and maintain public order".¹²³ However, unlike peace enforcement which is prohibited for Member States under Article 2(4) of the UNC without an UNSC authorization, “robust” peacekeeping operations have always taken place on the basis of consent from the host state.¹²⁴ Secondly, the UN started to deploy “multi-dimensional” peacekeeping missions in the aftermath of a violent internal conflict and combine military, police and civilian units to support the implementation of a comprehensive peace agreement through performing the following core functions: a) creating a secure and stable environment while strengthening the State’s ability to provide security, with full respect for the rule

¹²¹ Capstone Doctrine supra note 96, pp. 17-18.
¹²² Ibid. p. 18 and 21.
¹²³ Ibid. p. 19.
¹²⁴ Ibid.
of law and human rights; b) facilitating the political process by promoting dialogue and reconciliation and supporting the establishment of legitimate and effective institutions of governance; c) providing a framework that all United Nations and other international actors pursue their activities at the country-level in a coherent and coordinated manner.\footnote{125} Consequently, the new generation of peacekeeping operations, in addition to providing support and monitoring the implementation of a cease-fire or peace agreement, began to perform peacemaking and early peacebuilding activities. The mandate of the multidimensional missions started to combine more than one type of conflict management mechanism in the post-conflict period.

Hybrid approaches, in particular between conflict prevention and peacebuilding, have been increasingly promoted on a conceptual level as well. Over the early 2000s, the restriction of peacebuilding activities to post-conflict scenarios was a result of political considerations rather than efforts to foster conceptual clarity. While the High Level Panel suggested that the PBC performs preventive diplomatic and early-warning tasks, UNSG Annan opted for proposing a mandate limited to post-conflict situations due to the influence of a group of developing countries which opposed an intervention into domestic affairs on the basis of a preventive mandate. Through the aforementioned Resolution 2282, the UNSC recalled the post-conflict temporal limitations and endorsed the new comprehensive approach to “sustaining peace” which seeks to combine conflict prevention and peacebuilding responsibilities at all stages of conflict. As a consequence of the emerging operational practice and conceptual evolution, which promote the simultaneous application of different types of activities, the literature refers to peacebuilding as synergy “since it links together different threads” from conflict management mechanisms.\footnote{126} Nevertheless, at this early stage of conceptual shift, it is difficult to estimate how the operational practice intends to integrate the typically diplomatic and confidence-building preventive measures and transformative peacebuilding actions under a single conceptual umbrella.

\footnote{125} Capstone Doctrine, supra note 96, p. 23. 
\footnote{126} Duke and Courtier, supra note 80, p. 15.
b. The link between peacebuilding and the approaches of the "Building-Family"

Peacebuilding has a conceptual connection with the so-called "Building-Family" comprised of nation-building, state-building, institution-building, and capacity-building.\(^{127}\) Nation-building refers to an essentially indigenous process of collective identity formation based on existing traditions, institutions and customs. This process aims at redefining these attributes as national characteristics in order to justify a nation’s claim to sovereignty and legitimizing public power within a given territory.\(^{128}\) During the early 2000s, the term served in the Anglo-American literature to subsume measures which were carried out by external actors to support the establishment of democratic institutions and economic reconstruction.\(^{129}\) Although today the formation of a national identity and a nation-wide reconciliation may be one of the context-specific peacebuilding objectives, the usage of nation-building as a terminology subsided and has been replaced by a policy supporting the consolidation of “modern” multi-cultural societies.

State-building focuses on the (re)establishment and strengthening of the capacities of state institutions in delivering public goods.\(^ {130}\) The approach aims at creating sovereign capacities including a "*monopoly of legitimate use of physical force*" \(\ldots\) "*without the need to exercise coercion*".\(^ {131}\) Since peacebuilding serves as a concept designed to assist fragile states in regaining the capacity to deliver political goods, such as security, a functioning legal system, or economic infrastructures, elements of state-building are typically included in the country-specific peacebuilding agendas. Scheckener, however, points out that state-

\(^{127}\) Scheckener, *supra* note 118, p. 20.


\(^{129}\) See Dobbins, James et al. (2003), *America’s Role in Nation-Building: From Germany to Iraq*, St. Monica, CA: RAND Corporation

\(^{130}\) von Bogdandy et al., *supra* note 128, p. 583.

\(^{131}\) Ibid. p. 584.
building may be facilitated independently from post-conflict situations as part of a general process of social and political development in a given country. The term institution-building refers to the process of the (re)establishment of political and administrative organs. While this approach is an integral part of state-or peacebuilding, it is not applied for addressing issues in economic, social, and security areas, rather for providing a framework for the establishment of democratic institutions or decentralization. Finally, capacity-building is considered to be a core approach of peacebuilding programmes aiming at supporting local institutions and communities to achieve their full potential in technical skills, institutional and organizational capacity, and the ability to prevent, manage and resolve conflicts. The approach typically intends to strengthen three types of capacities through providing training and advocacy: political capacity, conflict resolution capacity, and the ability to implement sustainable development strategies. The main difference between the approaches of “Building-Family” and the concept of peacebuilding was pointed out by the 2015 Review of the UN’s Peacebuilding Architecture. Accordingly, while capacity-building, state-building and institution-building require technical expertise, peacebuilding “must be understood as an inherently political process”. The political nature of peacebuilding activities have been confirmed by a number of UN documents including the UNSG’s Report on peacebuilding in the immediate aftermath of conflict which notes that the central goal of peacebuilding is to support the national process of reconstituting a stable and peaceful political order.

132 Scheckener, supra note 118, p. 21.
133 Ibid.
135 Ibid.
137 Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict, supra note 100, para. 18.
c. Peacebuilding strategies

The concept of peacebuilding not only combines different approaches, but is also characterized by the implementation of diverse strategies. Peacebuilding strategies vary in a number of aspects, such as the methods of dealing with the root causes, priorities and sequencing, the time-frame of the engagement, the required resources, and the roles performed by the external actors. Despite the differences, the diverse strategies are never mutually exclusive but applied by the peacebuilding actors simultaneously and complementarily. Scheckener divided the peacebuilding actions into four categories on the basis of their strategic priorities: Liberalization First, Security First, Institutionalization First, and Civil Society First.\(^\text{138}\) The Liberalization First strategy puts an emphasis on the political and economic liberalization, and promotes the perception of the democratic peace theory on the best eligibility of market-based democracies for maintaining durable peace. Accordingly, prior peacebuilding measures include the prompt conduction of elections, protection of fundamental rights, and promotion of good-governance, economic growth and privatization. The Security First strategy has emerged based on the assumption that if a State is unable to secure physical security for its citizens, performing tasks in other areas of governance would be equally impossible. Thus, the primary focus lays on creating a secure environment for the civilian population and supporting the restoration of the effective state power, in particular, through (re)establishing and strengthening the State’s monopoly on the use of force. Furthermore, this strategy gives a preference for DDR and SSR projects and the fight against organized crime. In order to reduce the risk of renewed violence, the primary aim of the Institutionalization First strategy is to empower state institutions to provide essential services and develop a strong ability in dealing with social conflicts on an institutional level. Prior actions include the (re)establishment of legitimate and effective governmental institutions and the constitutional structures of state, including police, juridical system, public administration, and independent bodies, developing the foundations of a welfare state, combating corruption, and consolidating conflict management structures. Finally, in the

\(^{138}\) Scheckener, supra note 118, pp. 22-25.
center of the Civil Society First strategy lays the mobilization of social efforts in order to foster the development of a political culture of non-violent conflict resolution in the host state. The diverse psycho-social measures promoted by this strategy aim at supporting civil society actors such as human rights and peace organizations or religious and political groups to fulfill their role in facilitating political education, transitional justice, and the national reconciliation processes.

All the aforementioned peacebuilding strategies have been addressed with criticism. Regarding the Security First strategy, it has been pointed out that prioritizing security measures might turn into a security-only approach which promotes the formation of authoritarian and semi-authoritarian state institutions with the tendency to oppress opposition groups and marginalize certain segments of the society. The top-down perspective of the resource-intensive institutionalization has been criticized on its elitist approach while the prioritized empowerment of civil society may encourage the creation of parallel society structures which are reluctant to cooperate with the post-conflict political elite. The ideologically biased promotion of market-based democracies within the framework of the Liberalization First strategy has been met with the highest level of critique. On the one hand, critics called into question if “exporting” a neoliberal model of democracy and market economy in fragile post-conflict societies has a peace-promoting impact. The liberalization strategy opponent Roland Paris concluded, on the basis of diverse case studies, that massive economic liberalization and democratization can contribute to the recurrence of violence. It became contested if these measures are in the host states’ best interest, since "the impossibility of standing up to extreme economic competition may cause

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new social inequalities, whereas premature democratization is thought to lead to the polarization of political antagonisms within already destabilized societies”.142

d. The dilemma of democratization

On the other hand, giving precedence to a certain governmental and economic system by some international actors corrupted the neutral attitude of peacebuilding as a conflict management mechanism. Since international law takes a neutral stance towards the different forms of government, applying peacebuilding as a tool for the "universalization of the Western liberal democracy”143 called the legitimacy of these measures into question. Although today the majority of states in the international community refer to themselves as a democracy, the multi-faceted understanding on the exact meaning behind the term prevented the adoption of its universal definition.144 An attempt to pin down the elements of democracy was undertaken in the framework of the UN World Conference on Human Rights which concluded that "democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives".145 Since a direct obligation for “democratization” cannot be deduced from this definition, it hardly provides guidance for narrowing down the diverse interpretations on the concept of democratic governance.

The promotion of a democratic form of governance has become connected with the evolution of international law. Today, international law provides not only legal order to coordinate the diverse interests of states, but also connects the international community on the basis of a common value-system and fundamental principles.146 The legal dimension of these universal values reflects in jus cogens norms and erga omnes obligations such as the respect to the right to self-determination which allows peoples to freely choose their political

142 Chetail supra note 82, p. 7.
143 Paris, supra note 141, p. 20.
144 Wierse, supra note 97, p. 160.
146 Wierse, supra note 97, p. 161.
The existence and priority of the protection of common value-system and fundamental principles enabled the emergence of tendencies which promote that certain forms of governance function most effectively to safeguard them, without being contradictory to the principles of international law. While today the majority of the international community openly favors democracy, the UN as a global organization has been challenged to preserve its neutral attitude towards the diverse political orders.

Differences among the key actors in this regard affected the peacebuilding practice as well. Democratization assistance has had a long tradition within the UN through the deployment of missions mandated with monitoring, supporting and conducting elections. The promotion of “free and fair” elections became one of the focal points on the agenda of the UN General Assembly (UNGA) and the Security Council. Furthermore, in his policy statement, the Agenda for Democratization, UNSG Ghali argued that the promotion of democracy is vital because “peace, development and democracy are inextricably linked”. Nevertheless, the general UN practice was characterized by the notion that understood democracy as a procedural mechanism to ensure full participation in governance and protect political fundamental rights, such as the freedom of expression, freedom of assembly or freedom of media. A reference to a direct linkage between elections and democracy promotion was, however, included in the UNSC Resolutions on the situation in Haiti in 1994 and Sierra Leone in 1997. Both resolutions called for the restoration of democracy, which in the case of Haiti provided the reason for the authorization of military measures under Chapter VII. Despite these instances, no general UN practice of interventions has evolved on the basis of the violation of “democratic rights”, but rather against the background of the systematic abuse of human rights which

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147 International Court of Justice, Case concerning East Timor, Judgement, supra note 28, para 29.
148 Wierse, supra note 97, p. 162.
149 See UN General Assembly, General Assembly Resolution 45/150 on enhancing the effectiveness of the principle of periodic and genuine elections, where the UNGA stressed “that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed”. A/RES/45/150, 18 December 1990, para. 2.
150 An Agenda for Democratization, supra note 90, para. 118.
certainly include, but are not limited to the protection of political rights such as the right to self-determination. With the evolution of the peacebuilding practice, regional organizations have begun to compete with the UN’s limited approach to support the procedural dimension of democracy. In particular, European organizations established themselves as peacebuilding actors for which democracy is considered to be one of their fundamental principles. This philosophy reflects in the Treaty of the European Union that states that the Union is founded on the values of democracy and included among the principles the organization "seeks to advance in the wider world". Similarly, in the Charter of Paris for the New Europe, the members of the CSCE committed themselves to promote "democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security".

The reason the UN’s procedural approach to democracy became connected with the self-commitment of these regional organizations to democracy promotion within the peacebuilding practice, can be explained through a historical point of view. As Roland Paris pointed out, the origin of peacebuilding and the multiplication of actors was the end of the Cold War. During the Cold War period, due to the ideological contest between the superpowers, the UN was hindered from mandating missions with tasks other than monitoring and observation which were considered to be neutral in nature and always carried out with the consent of the host state. In addition, regional organizations were called upon to engage in humanitarian relief, peacemaking and peacekeeping "at a scale usually manageable within the scope of the independent capabilities of the organizations, or at a level that could be managed with limited cooperative arrangements". The complexity of the peace and security threats in the post-Cold War era, however, required a more comprehensive response from the international community. On the one hand, the reactivated UN began to deploy missions whose mandate encompassed all peacebuilding dimensions. On the

153 Ibid. Article 21
156 De Coning, supra note 2, p. 45.
other hand, a wide-range of governmental, non-governmental, regional or international actors had started performing peacebuilding related activities. The broad range of interlinked post-conflict efforts and the limited resources, in particular within the UN, required coherence and cooperation between the diverse agencies. According to Roland Paris, these emerging peacebuilding partnerships between the UN and regional organizations, which strongly promote the establishment of democratic structures, led to the practice of liberalization as a prior strategy for post-conflict engagement. A study of the Norwegian Agency for Development Cooperation on Democracy Support through the UN confirmed that democracy promotion became a key element of international development assistance by the early 1990s. Nevertheless, the study concluded that, for the time being, the approach has become only one aspect of a broader international concept of “good governance”, which is based on the assumption that state-building and democracy are identical. It was emphasized that “experiences of donor support have often been disappointing, with most countries that began their democratic transition in the 1990s now mired in ‘gray zones’. Donors have begun to reassess the impact of their interventions and to accept the need to be realistic about what can be achieved. Efforts to impose democracy without strong domestic support are now seen as unlikely to succeed in the long run. Meanwhile, there is a need to place goals and timeframes into context in places that are often defined by weak state and professional capacities”. Consequently, it has become contested that democratization as a single blueprint leads to progress in the peace consolidation process. The latest and most powerful statement on the related UN’s policy was provided by the UNSG’s 2009 Guidance Note on Democracy. The UNSG pointed out that the UN advocates a holistic concept of democracy and reaffirmed that “the ideal of democracy is rooted in philosophies and traditions from many parts of the world. The Organization has never sought to export or promote any particular national or

158 Ibid. p. xl.
159 Ibid.
160 UN Secretary-General, Guidance Note of the Secretary-General on Democracy, 2009, available at: <http://www.un.org/democracyfund/guidance-note-un-secretary-general-democracy> (last accessed on 15 December 2016)
regional model of democracy”. Furthermore, in response to the rivalry between the UN and other international actors and the competition between approaches, the Guidance Note also expressed a call for better consistency and coherence of the international assistance.

3. The diversity of actors and their cooperation

The third characteristic of peacebuilding is the cooperative and simultaneous engagement of a wide range of internal and external actors. Internal refers to local stakeholders from all segments of society who "have become peacebuilders by necessity". They frequently represent the political elite, government institutions, traditional leaders, civil society, or the private sector. The group of external actors includes international organizations with a mandate to engage in conflict management such as the UN and NATO, or regional organizations with specialized capacities in performing certain peacebuilding functions including the EU, AU and OSCE, as well as international financial institutions and non-governmental organizations which usually aim at supporting economic and social reconstruction. Additionally, involvement in peacebuilding may arise from bilateral interests between single donor or neighbouring countries and the country in concern.

a. Cooperation in international law

The cooperation of international actors is one of the main features of the peacebuilding practice, and the basic pillar of the conflict management related doctrines such as the collective security system or the “Responsibility to Protect” doctrine. The principle to cooperate, anchored in the UNC in Article 1(1) and (3), promotes cooperation with the UN in the maintenance of international peace and security and cooperation among states in solving international problems of an economic, social, cultural, or humanitarian character. The latter establishes a particular link to the peacebuilding concept, since the paragraph goes beyond the

161 Ibid. p. 2.
162 Democracy Support through the United Nations, supra note 157, p. xii.
163 ACCORD Peacebuilding Handbook, supra note 119, p. 36.
rules of traditional international law on preserving negative peace by calling for combined efforts to create the conditions of positive peace.\footnote{164} The existence of a general legal obligation to cooperate is a contested issue. A relevant source of soft law, the \textit{Friendly Relations Declaration}, includes “\textit{the duty of States to co-operate with one another in accordance with the UN Charter}” in the maintenance of international peace and security, the promotion of universal respect for human rights and fundamental freedoms, and the elimination of all forms of racial discrimination and religious intolerance.\footnote{165} However, during the negotiations on the \textit{Friendly Relations Declaration}, industrialized states questioned the legal nature of the principle. They argued that the duty to cooperate does “\textit{not express a legal obligation under international law but rather a moral duty in terms of international behavior}”.\footnote{166} Although a contractual obligation would derive from the provisions of the UNC, Article 1 of the Charter describes only the objectives of the UN and Article 2 imposes the relevant legal obligations on Member States for the achievement of the purposes expressed in the previous Article. Consequently, a principle of cooperation in Article 1 is considered to be declaratory in nature, similarly to Article 56 of the UNC, which addresses international, economic, and social cooperation among the diverse UN agencies. Positivists, on the other hand, argue that the cooperation principle entailed by the UNC and the \textit{Friendly Relations Declaration} has an obligatory character. Accordingly, in particular Articles 1, 11, 13 and 56 provide a sufficient legal basis for the duty of states to cooperate for development.\footnote{167} Such an approach interprets the UN Charter as a constitution of the international community which includes a collection of enforceable principles, rules and obligations not only on the management of peaceful coexistence of states, but also the development of international relations. While a consensus on the obligatory nature of the cooperation principle in the UN framework is difficult to reach, at a regional level, organizations have been able to formulate more definite commitment in this regard. For instance, the Final Act of the CSCE

\footnote{165} See \textit{Friendly Relations Declaration}, \textit{supra} note 6.  
\footnote{166} Wolfrum, \textit{supra} note 164, para. 16.  
\footnote{167} Ibid. para. 15.
stressed that “the participating States will develop their co-operation with one another and with all States in all fields.”\textsuperscript{168} Nevertheless, despite the reference to “all States”, only CSCE Member States are bound by this obligation to cooperate.

The practice of the international community to enter into cooperation shows different patterns. In case of bilateral relations or relations among a small number of states, it may aim at pursuing the mutual interests of the parties involved. In the post-Cold War era, however, international cooperation has begun to serve as a mechanism to address the peace and security concerns of the international community as a whole. Although a general obligation to cooperate in building positive peace cannot be explicitly deducted from the UN Charter, or from any other international law treaties, it is widely accepted that strengthening the capacities of post-conflict states in dealing with the causes of their fragility evolved into a common interest of the international community. For this purpose, international organizations represent the most important actors through which cooperation can be developed and institutionalized.

\textbf{b. The UN as a global peacebuilding actor}

Fulfilling its role as a guardian of international peace and security, since the early 2000s, the UN has consciously developed an institutional framework and strategies to improve coherence and cooperation in peacebuilding among the diverse UN agencies as well as the UN and its international partners. According to the \textit{2010 Review of the UN peacebuilding architecture} (hereinafter 2010 Review), the UN "is an external actor which in the best circumstances, is accepted by some national players as an impartial, honest broker and a helpful source of political, technical and financial accompaniment".\textsuperscript{169} This vague phrasing suggests that the UN acts through a neutral, universal attitude, and is not only mandated, but is also well equipped to take the lead role among the peacebuilding actors.

\textsuperscript{168} Helsinki Declaration, \textit{supra} note 32, Principle IX.

The UN is typically represented in post-conflict countries though the deployment of specialized agencies, bound together in the UN Country Team (UNCT). The UNCTs frequently include members of the UN family with expertise in humanitarian and development aid, such as, the UNDP, the World Bank, the UN High Commissioner of Refugees (UNHCR), the World Food Programme (WFP), the UN Children’s Fund (UNICEF), the World Health Organisation (WHO), the UN Development Fund for Women (UNIFEM), the Office for the Coordination of Humanitarian Affairs (OCHA), among others. In order to promote cooperation, avoid duplication or contradiction of their efforts, and improve the quality of response within the UN, the organization developed the approach of integrated missions which aims at subsuming the various objectives and tasks of the UN agencies on the ground into an overall political-strategic conflict management framework.\(^{170}\)

The promotion of the integrated peacebuilding strategies between the UN and other international actors is embedded in the mandate of the UN Peacebuilding Commission. The idea of the UN peacebuilding architecture was developed by Secretary-General’s High Level Panel on Threats, Challenges and Change which stated that: “Our analysis has identified a key institutional gap: there is no place in the United Nations system explicitly designed to avoid State collapse and the slide to war or to assist countries in their transition from war to peace. That this was not included in the Charter of the United Nations is no surprise since the work of the United Nations in largely internal conflicts is fairly recent. But today, in an era when dozens of States are under stress or recovering from conflict, there is a clear international obligation to assist States in developing their capacity to perform their sovereign functions effectively and responsibly”.\(^{171}\)

Furthermore, the Panel expressed critique on two aspects of the peacebuilding practice. Firstly, when the country in concern turned into a state of negative

\(^{170}\) According to the Capstone Doctrine: “An integrated mission is one in which there is a shared vision among all United Nations actors as to the strategic objectives of the United Nations presence at the country-level. This strategy should reflect a shared understanding of the operating environment and agreement on how to maximize the effectiveness, efficiency, and impact of the United Nations overall response.” Capstone Doctrine, supra note 96, p. 53.

peace, the situation is removed from the UNSC’s agenda.\textsuperscript{172} Secondly, at field level, the engagement of the international community is often hindered by an ineffective coordination and a “practice leads theory” approach.\textsuperscript{173} As a response to these concerns, the Panel recommended the establishment of “a single intergovernmental organ dedicated to peacebuilding, empowered to monitor and pay close attention to countries at risk, ensure concerted action by donors, agencies, programmes and financial institutions, and mobilize financial resources for sustainable peace”.\textsuperscript{174}

The proposal was endorsed by the Secretary-General in his report \textit{In Larger Freedom} and became reality through the approval of the 2005 World Summit Outcome. The UN Peacebuilding Commission was established jointly by the UNGA and UNSC as an intergovernmental advisory body to fulfill the following responsibilities: a) to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery; b) to focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and to support the development of integrated strategies in order to lay the foundation for sustainable development; c) to provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, to develop best practices, to help to ensure predictable financing for early recovery activities and to extend the period of attention given by the international community to post-conflict recovery.\textsuperscript{175}

The structural framework of the PBC was designed to address both of general policy-related issues and country-specific situations through three components, the Organizational Committee, the Country-Specific Configurations (CSC), and the Working Group on Lessons Learned (WGLL). The Organizational Committee is responsible for establishing the PBC’s operational agenda including its own rules of procedure and working methods, as well as for defining the operational

\textsuperscript{172} Ibid. para. 225.

\textsuperscript{173} Ibid. para. 226.

\textsuperscript{174} Ibid. para. 225.

framework of the country-specific configurations. The Committee encompasses Members both within, and outside of the UN which may serve for renewable terms of 2 years.

In order to respond to the specificity of each post-conflict situation, the CSCs bring together all relevant actors involved in the peacebuilding process of a country in concern through holding a series of formal and informal meetings at the Headquarters in New York and conducting field visits. As a general rule, the CSC’s comprehensive membership includes the representatives of the country concerned, the UN, and further international organizations and donors who are engaged with the agenda countries. Cooperation with the Commission is offered for countries emerging from conflict preconditioned by the expression of interest of the post-conflict government for the inclusion on the PBC’s Agenda. Due to the establishment of the PBC, “forgotten” countries, such as Guinea-Bissau and the Central African Republic, were able to receive revived attention from the UN.

The Working Group for Lessons Learned serves as a platform among academics, experts, and UN diplomats for collecting practice related insights in accordance with the PBC’s mandate to “develop best practices”. The WGLL discusses thematic issues with a direct link to peacebuilding aspects with relevance to the CSCs. Furthermore, in the course of its nearly ten years of activity, the Working Group...

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176 Ibid. para. 4.
177 The membership is made up of: seven members elected by the UNGA, seven members elected by the SC, seven members elected by the United Nations Economic and Social Council (ECOSOC), five top military and police personnel providers to the UN Missions, five of the top providers of assessed contributions to United Nations budgets and voluntary contributions including a standing peacebuilding fund and permanent participants, such as the EU, IMF, World Bank and the Organization of Islamic Cooperation. See ibid. paras 4-6.
178 “In accordance with General Assembly resolution 60/180 and Security Council resolution 1645 (2005), participants in the country-specific meetings should include, in addition to the members of the Organizational Committee, representatives of the country concerned; representatives of countries in the region that were engaged in the post-conflict process and other countries involved in relief efforts and/or political dialogue; and the relevant regional and subregional organizations; representatives of the major financial, troop and civilian police contributors involved in the recovery effort; the senior United Nations representative in the field and other relevant United Nations representatives; and such regional and international financial institutions as might be relevant.” UN Peacebuilding Commission-Organizational Committee, Summary Record of the 2nd Meeting, PBC/1/OC/SR.2, 16 May 2007, p. 3.
180 At present, the countries included on the PBC’s agenda are Burundi, Sierra Leone, Guinea-Bissau, Central African Republic, Guinea, and Liberia.
Group has set out to dwell on both peacebuilding relevant, cross-cutting issues and regional aspects deriving from the PBC’s direct experience of post-conflict countries.\(^{181}\)

According to its mandate, the PBC is responsible to provide a coherent and coordinated approach to peacebuilding. This function reflected the UN’s intention to fill the gap of a common vision and a comprehensive framework in peacebuilding. In order to fulfill its mandate, the PBC operates on the basis of the Integrated Peacebuilding Strategic Framework (IPBS) instrument that aims “on the one hand, to help weak local authorities emerging from a conflict situation to define their priorities, to clarify their needs and to agree on an implementation process; on the other, to bring together the international community in its various forms, to facilitate the understanding of local priorities by the international actors and to avoid the traditional donor-led approach to post-conflict crisis solutions”.\(^{182}\) The main feature of the IPBS approach is to determine shared responsibilities and thereby generate a new type of peacebuilding partnership between the UN, the international community, and the local authorities. In addition to the unique framework of cooperation, the PBC has been able to guarantee additional financial support for the agenda countries through the Peacebuilding Fund.

The PBF functions as a global multi-donor fund with three different facilities. The first option offers disbursements to the PBC agenda countries, in which case the PBC provides advice on the PBF’s country-specific focus areas.\(^{183}\)

\(^{181}\) Thematic examples include policy papers on the issue of reintegration of former combatants, enhancing gender-responsive national reconciliation process, national capacity-building, security sector reform and rule of law in peacebuilding, or drug trafficking in West Africa and the Great Lakes region. See Tomat, Stefano and Onestini, Cesare (2010), The EU and the UN Peacebuilding Commission: A short account of how the EU presence has influenced the newest UN body, In: Blockmans, S., Wouters J., and Ruys T. (Eds.) The European Union and Peacebuilding, Policy and Legal Aspects, The Hague: TMC Asser Press, 141-159, p. 147.

\(^{182}\) Ibid. p.148. Peacebuilding Strategic Frameworks are defined as “mutually accountable and time-bound agreements, between a government and international partners, for directing scarce foreign and public technical, financial, and political resources towards building national capacities to address the root causes of violent conflict”. Working Group Lessons Learned (2007), Lessons Learned from Peacebuilding Strategic Frameworks since the late 1990s, Briefing Paper of the Peacebuilding Support Office, p. 3. available at: <http://www.un.org/en/peacebuilding/pdf/doc_wgll/strategic_frameworks_meeting/wgll_pbsf_briefing_papervorstte_14Sep07.pdf> (last accessed on 20 November 2016)

\(^{183}\) UN General Assembly, Arrangements for the revision of the terms of reference for the Peacebuilding Fund, Report of the Secretary-General, A/63/818, 13 April 2009, para. 3.1
Response Facility (IRF) is designed as a flexible and rapid funding tool granting a maximum of $15 million for single or multiple projects up to 18 months in duration.\textsuperscript{184} Finally, the Peacebuilding and Recovery Facility (PRF) serves to support a more structured peacebuilding process with longer term financing, typically within the first 5 years after the conflict and/or in case of the emergence of a significant risk of lapsing into conflict.\textsuperscript{185} The conditions of eligibility of the PRF are more comprehensive than those of the “emergency facility”. The longer term facility requires an existing joint analysis of the needs between local actors and the international community such as an existing United Nations Development Assistance Framework (UNDAF) or Poverty Reduction Strategy Paper (PRSP) incorporating the national peacebuilding goals, as well as the establishment of an effective government partnership to identify PBF priority areas and oversee the provided resources. The allocation of funding is based on a PBF-specific Priority Plan which delegates the project approval authority to a UN-national government-civil society Joint Steering Committee.\textsuperscript{186}

The UNSG has delegated the overall management and administrative responsibilities, including the project approval authority and monitoring of PBF activities, to the Peacebuilding Support Office.\textsuperscript{187} Together with the PBC and the PBF, the PBSO is one of the three pillars of the UN peacebuilding architecture. In addition to the management of the PBF, the PBSO is mandated to assist the PBC through collecting and analyzing information thereby providing input for the PBC’s meetings.\textsuperscript{188} The PBSO fulfills the same function towards the UN lead departments through supporting the planning process for peacebuilding operations.

In addition to the engagement of UN peacebuilding-specialized organs, effective partnerships with other international or regional organizations are essential for the UN to successfully overcome the diverse political, technical, and financial

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  \item \textsuperscript{184} Ibid. para. 3.3(a) and see Peacebuilding Fund, Description of the funding facilities, available at: <http://www.unpbf.org/how-we-fund> (last accessed on 1 March 2017)
  \item \textsuperscript{185} Arrangements for the revision of the terms of reference for the Peacebuilding Fund, supra note 183, para. 3.3 (b)
  \item \textsuperscript{186} Ibid. paras 3.3 (b) and 3.6
  \item \textsuperscript{187} Ibid. 3.5 (b)
  \item \textsuperscript{188} Security Council Resolution 1645 (2005) on the establishment of the Peacebuilding Commission, para. 23.
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challenges of long-term peacebuilding interventions. The UN Charter includes very limited provisions which refer to the cooperation of international organizations in matters of international peace and security. Only Chapter VIII establishes mechanisms of arrangements between regional organizations and the UNSC, by addressing the Council’s powers to encourage peaceful settlements of international disputes by regional arrangements\textsuperscript{189}, its authority to utilize regional organizations for enforcement actions\textsuperscript{190}, and its right to be kept informed on activities undertaken, or are in contemplation, by regional organizations in security or collective self-defense related matters\textsuperscript{191}. Although the UN have developed deepened partnerships with regional and sub-regional organizations to perform peacekeeping and peacemaking on both intergovernmental and operational levels, according to the 2015 Review, a practice of “similar cooperation in the area of peacebuilding has yet to materialize”\textsuperscript{192}. In order to promote an idea of burden-sharing between the UN and regional organizations, a number of UN documents encouraged cooperation in peace operations\textsuperscript{193}. As a response to that call, either under the UN umbrella or individually, a wide range of (sub)-regional organizations has been engaged in peacebuilding, depending on their areas of expertise and organizational capacities.

c. The European Union and its conflict management instruments

As was pointed out in the 2015 Review, due to its expansion to a key global actor in the field of peace and security, the EU has become one of the UN’s most important peacebuilding partners\textsuperscript{194}. Since its establishment, the EU has been considered to be a “peace project” aiming at Europe’s unification and pacification.
along the values of stability, prosperity and democracy. In the wake of the fall of the Soviet Union, the EU took on the challenge of becoming an international security actor. Through the creation of the Common Foreign and Security Policy (CFSP), the EU set out to provide a coherent position and unified actions for its Member States in external affairs and security matters. As Article J 1.2 of the Treaty on the European Union (TEU) points out, one of the EU’s objectives is “to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter.” In the 1990s, due to its geographic proximity, the Balkan-conflict posed a large security threat for the EU. In response, the Union started to upgrade its security capacities and the related strategies. Through the establishment of the Common Security and Defense Policy (CSDP), the EU intended to take greater responsibility in international security matters that required military capabilities, and formulated the list of the Petersberg Tasks on its military and security priorities which included actions of humanitarian, disarming, peacekeeping, and peacemaking nature. At the Feira European Council in 1999, the EU decided to expand the involvement in international security situations through the deployment of civilian units in the framework of the newly established CSDP. The aim of the development of civilian competencies was to complement the CSDP’s military capabilities through their engagement in four priority areas: police and security sector, strengthening the rule of law, strengthening civilian administration, and civil protection. According to Article 42(1) TEU, CSDP missions outside of the Union will be mandated to perform peacekeeping, conflict prevention, and strengthen international security. The concrete fields of actions of combined civilian and military operations, specified by Article 43, “shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks,

196 Ibid. p. 29.
198 Article 42(1) of the Consolidated Version of the Treaty on European Union, supra note 152.
conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization”.\textsuperscript{199}

As the wording of the aforementioned EU documents demonstrates, apart from a few references in the EU’s policies, the EU has not used the term peacebuilding to describe its operations. An implicit reference to the concept from the EU can be deduced from Article 11 of the Treaty on European Union which defines the objectives of the CFSP as "to safeguard common values [...] in conformity with the principles of the UN Charter [...], to strengthen the security of the Union in all ways [...], to preserve peace and strengthen international security in accordance with the principles of the United Nations Charter, to promote international co-operation, and to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms".\textsuperscript{200}

Accordingly, the CFSP objectives are in accordance with the UN’s objectives to maintain international peace and security complemented with the commitment to promote a culture of democratic values and human rights. Another implicit connection to peacebuilding is conveyed by Articles 177-181 of the founding Treaty of the European Community, in which the Community policy in the areas of development, economic, financial and technical cooperation aims to "contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms".\textsuperscript{201}

Nevertheless, the UN and the EU apply different conceptual frameworks for peacebuilding. The UN peacebuilding architecture and integrated approach has been designed to address and improve coherence and consistency within the unrelated actions of the international response and evolved into a systemic effort to “build sustainable peace”. In contrast, the concept within the EU is associated with a wide range of long-term development activities to support structural

\textsuperscript{199} Ibid. Article 43(1)
\textsuperscript{200} Ibid. Article 11
stability and short-term measures with direct conflict prevention objectives without any institutional coherence.\textsuperscript{202}

A conceptual connection between conflict prevention and peacebuilding was drawn by the 1996 EU policy Paper, \textit{The European Union and the Issue of Conflict in Africa}, which states that "activities of conflict prevention in a wider sense should be summarized under the term peacebuilding".\textsuperscript{203} Accordingly, conflict prevention in the EU context aims at preventing the outbreak of imminent violence as well as the recurrence of such a situation.\textsuperscript{204} As it is outlined in the EU Commissions \textit{Communication on Conflict Prevention}, the term links both short and long-term actions under a common umbrella, where the latter includes efforts to address the root causes of conflict through engagement in the priority areas of development, trade, arms control, human rights, and environmental policies.\textsuperscript{205} In addition, actions of conflict management aim at preventing the intensification of violence or the territorial spread of existing conflicts, while conflict resolution is a mechanism applied over the short term to end violent conflict.\textsuperscript{206} As far as the timeframe of peacebuilding concerned, according to the EU policy, measures could be implemented in "all phases of conflict and peace. However, peacebuilding measures will generally embrace projects and programmes with the longer term aim of the stabilization of societies, their impact will be greatest in non-violent situations".\textsuperscript{207}

Consequently, the EU's policy, expressed by the \textit{Communication on Conflict Prevention} and later complemented by the European Security Strategy (ESS)\textsuperscript{208},

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\item \textsuperscript{202} Gourlay, Catriona (2010), EU-UN Cooperation in Peacebuilding: Natural Partners? In: Blockmans, S., Wouters J., and Ruys T. (Eds.) \textit{The European Union and Peacebuilding, Policy and Legal Aspects}, The Hague: TMC Asser Press, 107-140, p. 109; Structural stability is defined in the EU’s policy "as a situation involving sustainable economic development, democracy and respect for human rights, viable political and healthy social and environmental conditions, with the capacity to manage change without to resort conflict". Communication from the Commission to the Council: \textit{The European Union and the Issue of Conflicts in Africa: peace-building, conflict prevention and beyond}, 6 March 1996, SEC (96) 332 final, p. 2.
\item \textsuperscript{203} Ibid. p. 5.
\item \textsuperscript{204} Duke and Courtier, \textit{supra} note 80, p. 24.
\item \textsuperscript{206} Duke and Courtier, \textit{supra} note 80, p. 24.
\item \textsuperscript{207} The European Union and the Issue of Conflict in Africa \textit{supra} note 202, p. 6.
\end{enumerate}
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placed the emphasis upon conflict prevention instead of following the UN’s early post-conflict peacebuilding understanding. The conceptual overlap between peacebuilding and conflict prevention was reaffirmed by the EU *Programme on the Prevention of Violent Conflict* which defined the latter as a “co-operative approach to facilitate peaceful solutions to disputes and implies addressing the root-causes of conflicts”. Nevertheless, due to the expansion of security challenges the EU had faced during the 2000s such as organized crime or terrorism, conflict prevention became a mechanism to respond to key threats to the organization’s security interests. The *Report on the Implementation of the European Security Strategy* integrated peacebuilding in this conceptual framework by stating that “preventing threats from becoming sources of conflicts early on must be at the heart of our approach. Peace-building and long-term poverty reduction is essential to this. Each situation requires coherent use of our instruments, including political, diplomatic, development, humanitarian, crisis response, economic and trade co-operation, and civilian and military management”. In sum, the EU has developed comprehensive capacities to respond to the contemporary security challenges including a practice of undertaking actions with conflict prevention character and, due to the evolution of the CSDP, with an increasing post-conflict or crisis stabilization focus as well.

Since the UN, starting with the 2009 *Capstone Doctrine*, tends to eliminate the temporary limitation of peacebuilding to the post-conflict phase, the conceptual understanding of the two key actors has been approaching. Experts emphasize that the “distinctive European approach to foreign and security policy” is fully compatible with the UN’s peacebuilding efforts, which has been demonstrated

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through several post-conflict partnerships such as the UN-EU cooperation in Kosovo.\textsuperscript{211}

At an institutional level, peacebuilding activities often fall into grey areas of competencies between the EU's first pillar, the European Community, and the second CFSP/CSDP pillar. In contrast to the UN's attempt to combine all peacebuilding related coordination in the hands of the PBC, the EU organs do not operate in an integrated manner. Due to the broad understanding of peacebuilding, not only an institutional disconnect characterizes the EU, but also the application of an array of related strategies and instruments. The peacebuilding related engagement of the Community Pillar includes the following fields of action: facilitating political dialogue at various levels and formats, in particular promoting "good governance practices and attempts to lay a viable democratic, international order"\textsuperscript{212}; utilizing trade policies and trade related instruments to promote economic development and regional integration\textsuperscript{213}; engaging in development cooperation to address issues such as poverty reduction, forced migration, or sustainable development\textsuperscript{214}; practicing its enlargement policy, which links the implementation of peacebuilding reforms to meeting the criteria of EU membership including the political elements of the Copenhagen criteria\textsuperscript{215}; and pursuing the European Neighbourhood Policy aiming at "developing a special relationship between the EU and each of its partner countries, contributing to an area of security, prosperity and good neighbourliness"\textsuperscript{216} on the EU periphery.

\textsuperscript{212} Duke and Courtier, p. 32.
\textsuperscript{213} See Council of the European Union, EU Strategy on Aid for Trade: Enhancing EU support for trade-related needs in developing countries, 14470/07, Brussels, 29 October 2007
\textsuperscript{215} The Copenhagen criteria, adopted in 1993, include political, economic and social criteria. In the first category this includes stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. See European Council, (1993), Presidency Conclusions, SN 180/1/93, Copenhagen European Council, 21-22 June 1993
While the Community Pillar is better suited to perform longer-term measures, activities under the Second Pillar tend to serve short-term crisis management objectives. The extension of military components with civil capabilities resulted in the deployment of increasingly comprehensive civilian missions in the areas of rule of law, police operations, human rights and civilian administration. According to Duke and Courtier, since the CSDP peacebuilding practice is "relatively young, there has been a certain amount of duplication of effort” between the first and second pillar "most notably in civilian aspects of crisis management". The involvement in the Western Balkans illustrates cross-pillar efforts through a combination of CSDP missions financed by the Member States with Community instruments such as the Stabilisation and Association Process (SAP). The latter associated with an instrument to provide long-term peace and stability by gradually transposing the acquis communautaire and supporting the Balkan countries during the pre-accession period. Although the EU’s terminology does not refer to the term, the cross-pillar engagement is considered to be a unique approach to peacebuilding as is the case in Kosovo.

Equivalent to the PBF, the EU has also developed instruments to offer financial assistance for countries facing with emerging, or existing crises situations. Although the Instrument for Stability (IfS), similarly to the Community Pillar actions, has not been applied as an exclusive peacebuilding instrument, its objectives and availability may be connected with a wide range of peacebuilding related activities. The Peacebuilding Partnership (PbP), as an integral part of the IfS, was designed to "provide support for long-term measures aimed at building and strengthening the capacity of international, regional and sub-regional organisations, state and non-state actors in relation to their efforts in: promoting early warning, confidence-building, mediation and reconciliation, and addressing emerging inter-community tensions; and improving post-conflict and post-

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217 Duke and Courtier, supra note 80, p. 44.
"disaster recovery."²²⁰ Through the IfS funded Partnerships, the EU has supported an array of peacebuilding actors such as the AU, Member State Agencies, and specialized NGOs. The EU has provided UN peace operations with financial, technical and human resources as well. In partnership with the UN, the EU was engaged in peace operations, in Kosovo, Bosnia, Macedonia and Democratic Republic of Congo, among others.²²¹ However, the UN-EU partnership in peace operations has a multi-faceted character. At a political-strategic level, it has been confirmed by several policy papers that the EU acknowledges the UNSC’s primary responsibility for the maintenance of international peace and security, and seeks for its related actions a legitimate mandate provided by a UNSC resolution.²²² On the level of funding relationship, the UN and EU are considered to be “natural partners in peacebuilding”, since over a third of EC assistance is channeled through the UN, in particular, through UNDP on the grounds “that it is often the only actor with the mandate, legitimacy and capacity to act in many fragile contexts”.²²³ Finally, in the context of the operational cooperation, the relationship between the CSDP mission and the UN has proven to be more competitive over resources and roles. EU Member States often redeploy their civilian personnel to CSDP missions, which tends to weaken the civilian capacity of UN operations.²²⁴ In sum, the UN-EU partnership has provided examples so far for successful and mutually beneficial missions, as well as in certain instances, for an insufficient operational cooperation. The mixed record of cooperation in field operations has, however, been well balanced by the EU’s active membership in the PBC.

²²¹ The joint consultative mechanism of the UN-EU cooperation is the Joint Declaration on Crisis Management aiming at enhancing the mutual co-ordination and compatibility in the areas of planning, training, communication and best practices of crisis management between the organizations. Council of the European Union, Joint Declaration on UN-EU Co-operation in Crisis Management, 12730/03, Brussels, 19 September 2003
²²³ Gourlay, supra note 202, p. 138.
²²⁴ Ibid, p. 139.
d. Security organizations as emerging peacebuilding actors

The post-Cold War international security environment, where "weak states can pose as great as danger to international stability and security as a strong state", required from security organizations with traditional military resources to adapt their capacities to the need for an engagement in all phases of a conflict and participation in multi-dimensional peace operations. NATO embarked upon a process to redefine its functions and turn into an institution which is equipped to perform not only conventional defense responsibilities, but also diverse additional tasks. NATO established itself as a peacebuilding actor through its involvement in the peacebuilding process in Kosovo, Bosnia and Afghanistan under the UN’s umbrella. In addition to a mandate for enforcing peace agreements, the organization has sought to play a role in direct assistance to the civilian population through, among others, rebuilding infrastructure and supporting security sector reform. The 2010 Strategic Concept has already referred to crisis management as one of the NATO’s core tasks by stating: "NATO has a unique and robust set of political and military capabilities to address the full spectrum of crises – before, during and after conflicts. NATO will actively employ an appropriate mix of those political and military tools to help manage developing crises that have the potential to affect Alliance security, before they escalate into conflicts; to stop ongoing conflicts where they affect Alliance security; and to help consolidate stability in post-conflict situations where that contributes to Euro-Atlantic security". The text of the Strategic Concept reflected on the NATO’s self-commitment to play the role of a political-security actor with competencies to engage in all-phases of conflict management.

Similarly to the NATO’s “reinvention process”, in the Paris Summit in 1990, the Conference on Security and Co-operation in Europe took up the challenge to play an enhanced role in the response to the new challenges of the post-Cold War period. Since then, the renamed OSCE, the world’s largest regional security

organization, has been actively engaged in the field of early warning, conflict prevention, crisis management, and peacebuilding through a permanent institutional framework. The OSCE divides its understanding of security into three dimensions: the politico-military; the economic and environmental; and the human dimension.\textsuperscript{227} Furthermore, the organization aims to address cross-dimensional transnational security challenges such as terrorism, organized crime, cybercrime or trafficking in human-beings.\textsuperscript{228} On a policy level, the organization pointed out a linkage between peace and security, and (the quality of) internal governance by stating in the 1990 OSCE Charter of Paris for a New Europe, "that in order to strengthen peace and security among our states, the advancement of democracy and respect for and effective exercise of human rights, are indispensable".\textsuperscript{229} The OSCE is characterized not only by its democracy and human rights promoting attitude, but also by its engagement in the field of minority rights. OSCE field missions contributed to the peacebuilding process and/or to fostering local capacities in the countries of South-Eastern Europe, Eastern Europe, the South Caucasus, and Central Asia.

\textbf{e. The African Union’s peace and security architecture}

Since its foundation in 2001, the African Union has made great progress in improving its conflict management capacities. While the predecessor organization OAU emphasized the non-intervention principle and sovereign equality, the AU’s Constitutive Act reflects on the UN’s approach of "Responsibility to Protect" and established the right to intervene in a Member State "in respect of grave circumstances, namely war crimes, genocide and crimes against humanity".\textsuperscript{230} The adoption of the Constitutional Act was followed by the establishment of

\textsuperscript{227} The OSCE Concept of Comprehensive and Co-operative Security, An Overview of Major Milestones, SEC.GAL/100/09, 17 June 2009; This comprehensive approach covers a broad range of security-related fields of activities, including: supporting arms control, confidence building, policing, military reform, election monitoring, democratization, human rights, rule of law and the freedom of media.
\textsuperscript{228} Ibid.
\textsuperscript{229} Charter of Paris for a New Europe, supra note 154, p. 5.
several key institutions of the African Peace and Security Architecture (APSA).\textsuperscript{231} Within the APSA, the newly established African Peace and Security Council (PSC) became the key decision-making organ in matters of conflict prevention, management, and resolution with the mandate to ensure timely and efficient response to African conflict situations. The PSC is supported by several advisory bodies and subsidiary mechanisms such as the Panel of Wise or the Continental Early Warning System. The AU’s institutional development was coupled by an intense conceptual progress. Its \textit{Policy on Post-Conflict Reconstruction and Development} (PCRD) reflected on the notion of positive peace by stressing the objective of laying down the foundations for social justice and sustainable peace, whereas the PCRD process is viewed as an opportunity for the reconstruction and social, political, economic, and physical transformation of the affected state and society in line with the human security concept.\textsuperscript{232} While the PCRD promoted partnership and complementarity with the PBC\textsuperscript{233}, it did not use the term peacebuilding to describe the actions undertaken within the AU’s peace and security framework. Despite the difference in terminology, the AU’s conceptual understanding shows similarity with the peacebuilding definition in the \textit{Capstone Doctrine}. Accordingly, post-conflict reconstruction and development, defined as "\textit{a comprehensive set of measures that seek to: address the needs of countries emerging from conflict, including the needs of affected populations; prevent escalation of disputes; avoid relapse into violence; address the root causes of conflict; and consolidate sustainable peace".}\textsuperscript{234}

Cooperating with the AU in conflict management has been a topic on the UNSC’s agenda since the mid-1990s, in line with Chapter VIII of the UNC which envisages that regional organizations attempt to address regional security matters before the UNSC intervenes. Examples for cooperation have also resulted from the UNSC’s unwillingness, or seizure to authorize actions, such is

\begin{itemize}
\item \textsuperscript{232} African Union, Policy on Post-conflict Reconstruction and Development, supra note 116, paras. 8. and 9.
\item \textsuperscript{233} Ibid. para. 19(e)
\item \textsuperscript{234} Ibid. para. 14(a)
\end{itemize}
the case of the AU’s early engagement in Sudan or in Somalia.²³⁵ As a response, innovative partnership approaches have been explored including the deployment of the AU-UN hybrid operation in Darfur (UNAMID), or providing financial assistance for AU missions through UN assessed contributions. The latter approach of UN-AU cooperation has become further solidified through an increased engagement in ensuring sustainable and predictable funding for AU-led peace operations, as well as the establishment of strengthened coordination and consultation mechanisms. The UN committed itself to provide support to implement different components of the recently adopted African Peace and Security Architecture Road Map (2016-2020) which aims at improving the APSA’s operational capacity, ensuring greater coordination within the AU as well as between AU and African sub-regional organizations, and maximize the effectiveness of the AU’s conflict management measures.²³⁶ Furthermore, the PBC has been continuously working with the AU to increase synergies and improve the coherence and complementarity of joint peacebuilding efforts.²³⁷ Despite the conceptual and institutional evolution, at present, the AU has been restricted from engaging in long-term peacebuilding assistance by shortfalls in capacity and financial resources. In order to strengthen the AU to fulfill its mandate in the area of peace and security, both the EU and UN provide continuous support through launching several capacity-building programmes for their African counterpart.²³⁸

²³⁷ Ibid.
f. Development and financial organizations as peacebuilders

Beside the aforementioned actors, a number of organizations with focus on development assistance pursue peacebuilding objectives as well. At a regional level, the ASEAN and the members of the African Regional Economic Communities (RECs)\textsuperscript{239} have been actively engaged in this field. The Bretton Woods Institutions, the World Bank and the International Monetary Fund, have been key actors in supporting economic growth in states through providing loans and financial grants. Since the 1990s, the lending practices of the Bretton Woods twins promoted the conception of encouraging recipient states to follow economic liberalization policies on creating conditions for sustainable growth. Based on their structural adjustment programmes, these institutions increasingly expected that recipient states implement not only the economic, but also political liberalization policies. In particular, the World Bank conditioned its lending to a requirement for “good governance” which is based on the notion of "'holding those in positions of authority responsible for their actions through the rule of law and due process rather than by administrative fiat’ and ‘giving citizens a voice in governmental decisions and activities not only through voting and representation but also through direct involvement in shaping and implementing programs that affect their lives and well-being’".\textsuperscript{240} Although the World Bank denied either the promotion of any particular form of government in recipient countries, or a practice of interfering in the political affairs of the Member States, its policy harvested heavy critique from the opponents of the Liberalization First approach. Similarly, a number of studies suggested that the IMF’s "structural adjustment programmes often have adverse effects on social stability, and at times contribute or even cause conflicts".\textsuperscript{241} Today, besides an engagement in the PBC, both institutions use specific instruments to support peacebuilding in fragile states.

\textsuperscript{239} The African Union currently recognizes eight RECs which include the Arab Maghreb Union, Common Market for Eastern and Southern Africa, Community of Sahel-Saharan States, East African Community, Economic Community of West African States, Economic Community of Central African States, Intergovernmental Authority on Development, and Southern African Development community. Available at: <http://www.au.int>.

\textsuperscript{240} Article IV, Section 10 of the World Bank’s Articles of Agreement, cited by R. Paris, supra note 141, p. 30.

In 2008, the World Bank established its State and Peace-Building Fund (SPF), which serves as a global multi-donor trust fund "to finance innovative approaches for state and peacebuilding in regions affected by fragility, conflict and violence (FCV)."\(^{242}\) The SPF pursues two objectives: founding measures to improve governance and institutional performance in FCV countries, and supporting their reconstruction and development. Through the SPF, the World Bank sets out, on the one hand, to explore new instruments and cutting edge development approaches to enable improved engagement and achieve tangible results in recipient states. On the other hand, the SPF aims to promote greater coordination between development, security, and humanitarian actors.\(^{243}\) In addition to the World Bank, the IMF offers, besides a number of instruments for non-concessional and concessional lending to provide financial support for countries in need, rapid and low access loans available in cases of "natural disasters, conflict and post-conflict situations, and emergencies resulting from fragility."\(^{244}\) The Rapid Financing Instrument (RFI) is available to all IMF members in situations when a fully-developed economic programme is either not required, because of the transitory or limited nature of the crisis, or due to fragilities not feasible.\(^{245}\) In addition to the fund facilities, the IMF’s engagement in post-conflict and fragile situations focuses on capacity-building through providing trainings for government officials, and policy advice for more innovative economic solutions in the recipient countries.\(^{246}\)

4. Intrusiveness

Peacebuilding operations can be categorized according to the level of intrusion into domestic affairs of the host state. The peacebuilding literature associates the levels of intrusion of civilian missions with three different levels of an

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\(^{243}\) Ibid.


\(^{245}\) Ibid.

“intervention continuum”, which spans from missions with mere advisory functions to a mandate for exercising full state authority.  

Firstly, at advisory level, external actors provide consultative and/or advisory services for government institutions and other local stakeholders through limited field presence. The advisory mandate frequently includes capacity-building measures such as the training of police and personnel of the state administration, or human rights education. At this level, cooperation between the international peacebuilding actors and the host state takes place on a voluntary basis and the scope of activities is defined by their agreement. This model of partnership can be applied when the state authority in the aftermath of the conflict has already been restored and, despite an unavoidable lesser degree of fragility, is fully functional. Peacebuilding at the least intrusive level “attracts” the highest number of “traditional” international peacebuilders, such as the diverse UN agencies, complemented by those actors which have recently been established, or have expanded their areas of action for the post-conflict phase, such as the EU and the PBC.

At the middle level of the intervention continuum stand field missions that intrude deeper into the domestic affairs of host states through performing supervisory functions and/or establishing a hybrid governance structure between international and local actors. In this case, the scope of peacebuilding operations can span from monitoring functions, to the takeover of certain governmental or public administrational responsibilities complementary to the existing weak state structures. Examples for peacebuilding with middle level intrusiveness include UN-led and mandated missions with civilian and military components, and an extensive mandate such as the multi-actor intervention in Afghanistan, the UN Transitional Authority in Cambodia, and the European Union Rule of Law Mission in Kosovo (EULEX) which has been operated under UNSCR 1244. 

Peacebuilding, at the most intruding level, is applied in the framework of a mandate for international territorial administration (ITA). The ITA can be defined

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248 See Scheckener, supra note 118, p. 28.
as a “formally constituted international body that has been entrusted temporarily with responsibility for the principal governance functions of a state or a territory”. While ITAs can be established in several instances, in the context of peacebuilding, the instrument represents the international response when an armed conflict generated an administrative, political, and institutional vacuum, or the remaining local structures are unable to exercise any state authority. The legal basis of the peacebuilding related, UN-led ITAs is to be found in a UNSC Resolution under Chapter VII of the UNC. ITAs outside of the UN-Framework can be established on the basis of an international agreement, such as the Office of the High Representative in Bosnia, created by the Dayton Peace Agreement. Furthermore, in certain cases, international agreements provide complementary legal basis to Chapter VII resolutions. Examples include the 1995 Erdut Agreement, in the case of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), the 1999 Agreement between Indonesia and Portugal which envisaged the establishment of the UN Transitional Administration in East Timor (UNTAET), or the Military Technical Agreement between the Kosovo Force (KFOR) and the Federal Republic of Yugoslavia (FRY) additional to the UNSCR 1244 on the deployment of the international civil and security presences in Kosovo. Despite some opposing


250 Weidemann, supra note 247, p. 68, and Caplan, ibid.

251 The international territorial administration installed in the context of peacebuilding differs from other forms of international administration included in the UN Charter, such as the administration of non-self-governing territories (Articles 73-74), the Trusteeship system. According to Article 77 of the Charter, in the case of latter, the trusteeship is limited to territories either currently held under mandate, or detached from enemy states as a result of the Second World War, or voluntarily placed under the system by states responsible for their administration. Although it is widely accepted that Chapter XI and XII of the Charter are not exclusive, and allow further forms for the UN to administer a territory, the aforementioned institutions have generally been applied in situations of decolonization and do not provide the legal basis of ITAs established after the end of armed conflicts. This type of ITA differs from other forms of political authority exercised by one or more States over a territory such as protectorates, condominium, or occupation. In the case of the latter, a State or territory is placed under the authority of a hostile army without its consent, while the relationship between the occupying power and the occupied State is regulated by the law of belligerent occupation under the Hague Conventions (1899 and 1907) and the Fourth Geneva Convention of 1949. The main difference between these forms and the peacebuilding related ITA, apart from their legal basis, is that the latter “does not serve the interests of one single State, but rather the interests of a larger group of States, an international or regional organization, or the international community as a whole.” Benzing, Markus (2010), International Territorial Administration of Territories, In: Max Planck Encyclopedia of International Law, Oxford Public International Law, Oxford: Oxford University Press, para. 2.

252 Ibid. para. 18.
views in the scientific literature, the power of the UNSC for authorizing missions to exercise governmental functions is uncontested.253 The establishment of an ITA is subject to the requirements of Chapter VII of the UNC, thus, is preconditioned by a threat to, or breach of international peace and security. The competence of the UNSC to install an ITA can be either based on Article 41 of the UNC, or derive from its implied powers, whereas Article 42 serves as the legal basis for military components of the administrations.254 The consent of the states in question, however, provides additional legality for the establishment of ITAs. Although this consent is not considered to be legally necessary to complement a Chapter VII resolution, “in fact, all UN-led ITAs established under Chapter VII have been established with the consent of the respective countries, even though the free giving of this consent is sometimes doubtful” such as in the case of Kosovo.255 Overall, the recent intrusive and comprehensive post-conflict instruments, including the ITAs, illustrates the UN’s increasing focus on peacebuilding, and the expanding scope of the measures the Council has adopted under its Chapter VII powers to pursue peacebuilding objectives.256

5. Multi-phased efforts

"Peacebuilding is situated in the time-period between the cessation of violent conflict and the return to a normal development process”257 Nevertheless, estimating the duration of the transition from the state of negative peace to sustainable peace is a challenging issue. It is widely acknowledged that peacebuilding processes require a long-term engagement. Peacekeeping and peacebuilding are often contrasted on the basis of the duration of the missions’ mandates. While peacekeeping operations focus on short-term actions with the primary objective of stemming violence, peacebuilding involves mid to long-term measures designed to address deeply rooted causes of conflict.258 Just as the

253 For opposing opinion see Dickerson, Hollin, K. (2006), Assumptions of Legitimacy and the Foundations of International Territorial Administration, Proceedings of the Annual Meeting, American Society of International Law, 100, 144-147, p. 144.
254 Benzing, supra note 251, para. 20.
255 Ibid. para. 21.
256 De Brabandere, International Territorial Administrations and Post-Conflict Reforms, supra note 8, p. 6.
257 ACCORD Peacebuilding Handbook, supra note 119, p. 28.
258 Capstone Doctrine, supra note 96, p. 25.
course and causes of each conflict are different, the peacebuilding process varies
country by country. Due to the context-specific and multi-dimensional character,
a clear categorization of peacebuilding into chronological stages is hardly
feasible. In case of severe disruption of a state, the peacebuilding literature
refers to three phases which span from the termination of physical violence to
the establishment of the state of sustainable peace.  

Accordingly, the emergency phase follows immediately the cessation of hostilities
with primary focus on preserving the state of negative peace by preventing the
resurgence of violence, ensuring physical security, addressing immediate
humanitarian needs, as well as supporting the implementation of the negotiated
peace agreements, if available, and/or the reestablishment of State authority.  
The measures of this start-up phase of the peacebuilding process are usually
implemented by multi-dimensional peacekeeping operations. The Capstone
Doctrine described the current practice for the deployment of a new-generation
of peacekeeping missions in the aftermath of an internal conflict as follows:
"Some multi-dimensional United Nations peacekeeping operations have been
deployed following a request from the national authorities to support the
transition to legitimate government, in the absence of a formal peace agreement.
In exceptional circumstances, the Security Council has also authorized multi-
dimensional United Nations peacekeeping operations to temporarily assume the
legislative and administrate functions of the State, in order to support the
transfer of authority from one sovereign entity to another, or until sovereignty
questions are fully resolved (as in the case of transitional administrations), or to
help the State to establish administrative structures that may not have existed
previously".  
In addition, the policy paper pointed to the financial and technical
shortcomings of the UN peacekeeping missions to implement effective
peacebuilding programmes, thus, they are mandated to "initiate a limited
number of peacebuilding activities” such as DDR programmes, mine action, SSR
and other rule of law related measures, protection and promotion of human
rights, electoral assistance, as well as support to the restoration and extension of

259 ACCORD Peacebuilding Handbook, p. 28.
260 Ibid. p. 30.
261 Capstone Doctrine, supra note 96, p. 22.
State authority. In sum, the efforts in the emergency phase focus on creating the conditions for those actors within and outside of the UN system who are mandated and equipped to provide long-term peacebuilding assistance.

The launch of long-term peacebuilding efforts is normally enabled by progress in the stabilization of the security situation and the restoration of state authority on the ground. Since the deployment of peacebuilding missions, with the exception of the Chapter VII based operations, requires the consent of the host state, external actors need to contract with the local government. In this respect, when the sovereign governance of the state in concern was never interrupted, the pre-war government is to address. When the conflict caused a complete breakdown of the state order and the pre-conflict government did not remain in power, a transitional government will act on behalf of the state. In the case of the latter, a transitional phase of peacebuilding follows the emergency period which spans from the inauguration of an interim government to the first post-conflict elections. With the consent of the transitional government, peacebuilding measures usually focus on fostering the political transition through supporting institution and capacity-building of state institutions, completing the DDR process, as well as assisting in the return of refugees and IDPs, and the rehabilitation of infrastructure. In the transitional phase, the interim institutions frequently conduct law reform including the adoption of a new constitution, new electoral law, and laws reflecting on the root causes of the conflict, such as minority law, land reform which aim at creating credibility for the interim political process, and involving civil society into the decision-making process.

The three-phase model refers to the final period of peacebuilding as the consolidation phase in which international actors support the newly elected government through a wide range of actions in all peacebuilding dimensions, such as social-economic recovery and development, SSR, rule of law, human rights, and reconciliation. In adherence with the local ownership principle, the national government has the main responsibility for planning and implementing

263 ACCORD Peacebuilding Handbook, supra note 119, p. 31.
264 Ibid. p. 32.
265 Ibid.
the peace process according to their political agenda and takes the lead role in coordinating peacebuilding efforts. Until the mid-1990s, the international practice in peace operations followed a pattern of relatively short-term mandates which were normally terminated at the time of the first post-conflict elections. Thereafter, the short-term deployment strategy has been replaced with longer-term mandates and a more gradual exit policy. In his 2001 Report, No Exit Without a Strategy, the UNSG put the emphasis on the need "to develop planning tools for peace operations that would help to integrate the wider UN system, and take account not only of different dimensions of peace consolidation (e.g. security, political, and economic), but also give greater attention to transition issues and supporting greater continuity in key peace consolidation tasks".266

In addition to developing new planning instruments such as the Integrated Mission Planning Process (IMPP), Dominik Zaum specified three changing aspects in exit practices of the UN-led peace operations.267 Firstly, instead of serving as an indicator for exit, elections have started to function as an instrument to identify national partners which are entrusted by the local population to define the peace process and implement peacebuilding associated reforms, as well as give consent to the external involvement. Secondly, higher emphasis has been put on long-term support in peacebuilding through the deployment of consecutive missions where the successor missions normally had a less intrusive mandate than their predecessors. Finally, Zaum suggested that international peacebuilding actors developed a common understanding on the key elements of political order which post-conflict countries need to develop prior to the exit of peace operations. "These include in particular legitimate and inclusive political settlements, reasonably responsible political and administrative institutions, the protection of human rights (including protection of minorities), and security sector reform".268

268 Ibid.
The peacebuilding practice has, however, been highly inconsistent in using monitoring and evaluation instruments for the measurement of progress in the peace process and developing benchmarks for exit strategies. Although field missions are normally terminated due to a completed mandate implementation or reconfiguration, there are also other decisive factors which influence the exit of international peace operations. Political and financial considerations, in particular, in the case of UNSC authorized missions have often played an important role in determining the duration of deployment. Consequently, it has become highly challenging to develop objective benchmarks to identify when a country is transitioning from peacebuilding to a “normal” development process. The peacebuilding process in conflict-affected countries might last several decades depending on the needs of the country in concern, and the progress achieved in addressing the root causes of conflict. While peacebuilding is determined by peace consolidation imperatives and the prevention of renewed violence, development assistance aims at reducing or eradicating the traditional development concerns and pursuing goals such as economic growth or food security.²⁶⁹ As the causes of conflict often overlap with development challenges, the line between peacebuilding and development is often blurred. Related to this issue, it has been argued that "a line needs to be drawn between peacebuilding and maximizing the various levels of social, economic and political development possible in a given society. Otherwise, if the term peacebuilding becomes a synonym for all the positive things we would want to include in development in order to reduce any and all of a society’s ills, it becomes useless for guiding knowledge gathering and practical purposes".²⁷⁰ A “premature” shift in priorities from peacebuilding to development may leave important potential conflict factors unaddressed, such as incomplete process of inter-ethnic reconciliation or a weak rule of law.

²⁶⁹ ACCORD Peacebuilding Handbook, supra note 119, p. 34.
III. Peacebuilding operational frameworks

As a general rule, peacebuilding measures are implemented in two different operational frameworks: systemic or programmatic peacebuilding. Systemic peacebuilding is guided by system-wide strategies or integrated frameworks which encompass overall priorities of all peacebuilding dimensions for the host country. These comprehensive blueprints determine country-specific objectives, as well as guide and combine international peacebuilding efforts. This holistic approach to peacebuilding is illustrated by the UN practice in Sierra Leone where the assistance of both the PBC and the UN agencies on the ground were directed at supporting the implementation of the national PRSP.

Programmatic peacebuilding refers to short to medium-term activities with focus on addressing immediate or imminent threats to the peace process. In order to determine country-specific peacebuilding objectives, actors who follow a programmatic approach conduct an assessment or risk analysis which reveals the potential conflict factors that may contribute to a lapse or relapse into violent conflict. The assessment is followed by the planning and implementation of programme responses which aim at addressing the identified factors exclusively. This approach has been followed by the EU in Kosovo through the deployment of a mission which implemented measures solely in the area of rule of law.

The peacebuilding processes in Sierra Leone and Kosovo illustrate not only the differences in approaches of how peacebuilding can be operationalized, but also provide an overall impression on the diversity of root causes of conflict, international responses, and the challenges of successful implementation of peacebuilding mandates.

C. Peacebuilding efforts of the UN in Sierra Leone

Almost twenty years after the end of the decade long and devastating civil war, Sierra Leone currently stands in an early development phase. The UN has continuously involved itself through the course of conflict and post-conflict period

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271 ACCORD Peacebuilding Handbook, supra note 119, p. 16.
272 Ibid. p. 17.
in the West-African country with peacemaking efforts and successive field operations stretching from traditional peacekeeping to peacebuilding missions. The diverse UN operations stand out for applying new conflict management approaches such as the deployment of peacekeepers with a robust mandate, or the establishment of integrated offices. In addition to field presence, Sierra Leone has been one of the first agenda countries of the New York-based PBC since 2007. Just as the UNSG emphasized in the Final Report of the UN Integrated Peacebuilding Support Office (hereinafter Final Report on UNIPSIL), there were important lessons to be drawn from the experience in Sierra Leone that can be considered by future UN operations.273

I. Background

Since the declaration of independence in 1961, Sierra Leone has gone over five military coups and been affected by the succession of various inefficient governments.274 Consequently, the root causes of the Sierra Leonean conflict have already existed for decades before the rebel movement Revolutionary United Front (RUF) invaded the country from neighbouring Liberia with the goal to overthrow the Government of President Joseph Monroh in 1991.275 The ruling elite were characterized by an authoritarian attitude and took advantage of maintaining an extensive patronage network. In 1978, ten years later, the All People’s Congress (APC) replaced the Sierra Leone People’s Party (SLPP), which had been ruling since 1961, and the then president, former trade union leader Siaka Stevens declared the one-party state.276 His successor, General Monroh, continued to maintain the state of weak rule of law and the insufficient performance of political institutions in delivering public services and creating employment opportunities. His irresponsible agenda on natural and financial resources led to an increasing dependence on commercial partnerships with Lebanese, Israeli, and Russian traders, as well as with diverse financial and

274 Wolter, supra note 241, p. 196.
275 Ibid. p.197.
security networks that showed great interest, in particular, in the Sierra Leonean diamond reserves.\textsuperscript{277}

The responsibility of the country’s leadership for the eruption of civil war was clearly confirmed by the Final Report of the Truth and Reconciliation Commission of Sierra Leone (TRC)\textsuperscript{278} and UN respectively.\textsuperscript{279} The TRC’s Report concluded that the "endemic greed, corruption and nepotism\textsuperscript{280}" of the political elite and other traditional leaders was one of the underlying root causes of conflict. The eruption of the civil war rooted in continuous instability caused by poor governance, the lack of rule of law, and the exclusion of the wider population of the Freetown centralized political and economic power.\textsuperscript{281} While excluded from political decision-making prior to conflict, marginalized groups, particularly young people and women had to tackle social alienation and a lack of economic future perspectives. The failing governmental efforts in creating educational and training opportunities generated high scale youth unemployment and poverty.\textsuperscript{282} Viewed through a lens of growing frustration, young people considered insurrection as a chance to change the unjust power relations.\textsuperscript{283} Joining the rebels offered the opportunity to take revenge on the ruling elite as well as abolish traditional customs and authority of rural chiefs.\textsuperscript{284}

The RUF propaganda document "\textit{Footpaths to Democracy: Toward a New Sierra Leone}" presented the general objectives the movement intended to put into practice after gaining power. They called for the reestablishment of a multi-party democracy, educational reform, a fair distribution of resources, and a trade policy irrespective of foreign interests.\textsuperscript{285} As the RUF addressed the people’s dissatisfaction with the unstable political climate and continuous economic decline, followers joined to the insurrection from all over the country with all sorts

\begin{footnotesize}
\begin{enumerate}
\item[Ibid. p. 2.]
\item[\textsuperscript{278}] Sierra Leone Peacebuilding Cooperation Framework, PBC/2/SLE/1, \textit{supra} note 37, para. 4.
\item[\textsuperscript{279}] Witness to Truth: Final Report of the TRC, Volume Two, Chapter 3, para. 34.
\item[\textsuperscript{280}] Ibid. para. 39.
\item[\textsuperscript{281}] Ibid. para. 42.
\item[\textsuperscript{282}] The RUF was also famous about the forcible recruitment and abuse of child soldiers. International Crisis Group, \textit{Africa Report} No. 28, p. 15.
\item[\textsuperscript{283}] International Crisis Group (2008), \textit{Sierra Leone: A New Era of Reform?} \textit{Africa Report} No. 143, p. 22.
\item[\textsuperscript{284}] International Crisis Group, \textit{Africa Report} No. 28, p.15.
\end{enumerate}
\end{footnotesize}
of ethnic origins. Nevertheless, during the course of conflict, it became apparent that the RUF did not prove to be a promising alternative to replace the Sierra Leonean ruling elite. RUF members committed not only serious war crimes and crimes against humanity, but tended to operate primarily for financial profit by occupying territories rich in the country’s diamond reserves.\textsuperscript{286}

While the RUF clearly intended to sustain the state of war in order to obtain further financial advantage, it also contributed to the prolonged duration of conflict that the constantly changing Sierra Leonean Government (GoSL) failed to defeat the rebels and prevent further escalation of violence. Although the military coup of Valentine Strasser in 1992 was popular among the population, his National Provisional Ruling Council (NPRC) did not comply with the hopes of its supporters. The NPRC succeeded neither in facilitating attitudinal change in the political culture nor stemming violence. In 1995, the UNSG appointed Special Envoy Dinka who in collaboration with the Organization of African Unity (OAU) and the Economic Community of West African States (ECOWAS) strived for negotiating a ceasefire agreement and the return of a civilian Government.\textsuperscript{287} Strasser was removed from power by democratic elections in 1996, which ended with the victory of former UN diplomat Ahmad Tejan Kabbah.\textsuperscript{288} Although President Kabbah was known for missing attachment to the population, weak influence among the members of his party, and questionable political decisions, the Sierra Leonean voters took the opportunity to replace the APC ruling elite by SLPP candidates.\textsuperscript{289} The new president was faced with the challenging task of transforming the Sierra Leonean Army (SLA) into an effective opponent for the RUF. Due to a culture of coup’d etat, prior to the civil war, the SLA had a highly politicized attitude and functioned as a tool for serving the private interests of the political elite.\textsuperscript{290} While the NPRC expanded the SLA from 3000 to around

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\textsuperscript{286} Dobbins, James et al. (2005), \textit{The UN’s Role in Nation-Building, From the Congo to Iraq}, Santa Monica, CA: Rand Corporation, p. 133. \\
\textsuperscript{287} UN Security Council, Letter Dated 1 February 1995 from the Secretary-General addressed to the President of the Security Council, S/1995/120, 7 February 1995 \\
\textsuperscript{288} The pre-election period in 1995 was ill-famed of the systematic terror against the civil population. Reacting on the election slogan “The future is in your hands”, the rebels used cutting hands of civilians in order to deter them from voting. See International Crisis Group, Africa Report No. 28, supra note 276, p. 6. \\
\textsuperscript{289} Ibid. p. 5. \\
\textsuperscript{290} In the “name of national security” soldiers and the police were authorized to eliminate political opponents. See Witness to Truth: Final Report of the TRC, supra note 278, para. 40.
\end{flushright}
13,000 men, the rapid expansion exhausted the available financial and human resources. The SLA soldiers were poorly trained and insufficiently equipped, operating without a qualified leadership and regular disbursement of their monthly ratios and salaries. These shortcomings eroded the moral attachment towards serving the Government and the SLA units tended to avoid battles with the RUF, instead colluded with the rebels and systematically targeted the civilian population.\textsuperscript{291} Rather than accomplishing a successful military reform, President Kabbah failed to provide the SLA with sufficient financial and ideological support.\textsuperscript{292} While striving against the RUF without a reliable military, the GoSL became increasingly dependent on external assistance.

In addition to the internal causes, certain regional factors contributed to the eruption and prolongation of the Sierra Leonean conflict. The civil war served the interests of both the Liberian President Charles Taylor, and RUF leader Foday Sankoh, who came into contact while attending guerrilla training in Libya.\textsuperscript{293} In order to pursue his personal and regional ambitions, Taylor enabled the RUF to invade Sierra Leone from Liberia in 1991, and provided the rebels with key weaponry through “diamond-for-arms trade”.\textsuperscript{294} Through sponsoring the RUF, Taylor intended to weaken military units of the ECOWAS which used Sierra Leone as a logistical base and, based on prior encounters, proved to be a serious threat for his power.\textsuperscript{295} The destabilisation of Sierra Leone enabled him to launch military attacks against Guinea and foster his ambitions of gaining control over the countries of the Mano River region.\textsuperscript{296} The prolonged and devastating conflict

\textsuperscript{291} International Crisis Group, Africa Report No. 28, supra note 276, p. 6.
\textsuperscript{292} Instead of resolving the loyalty issues of the SLA, President Kabbah offered the impartial civilian initiative the Civil Defence Force (CDF), the role of becoming a pro-government militia. He especially favored the Kamajor movement representing the Mende ethnic group among the six different ethnic fractions, which organized themselves within the CDF. See ibid. p.8; Although the CDF was well known for human rights abuses against prisoners and civilians, they enjoyed President Kabbah’s material and moral support during the course of the conflict. Dobbins et al., supra note 286, p. 131.
\textsuperscript{293} International Crisis Group, Africa Report No. 28, supra note 276, p. 14; Dobbins et al., supra note 286, p. 137.
\textsuperscript{294} Dobbins et al., p. 133.
\textsuperscript{295} Iro, Andrea (2009), The UN Peacebuilding Commission-Lessons from Sierra Leone, Potsdam: Universitätsverlag Potsdam, p. 36; ECOMOG successfully prevented in 1990 Taylor’s attempt to overthrow the regime of the former Liberian President, Samuel Doe. See International Crisis Group, Africa Report No. 28, supra note 276, p. 14.
\textsuperscript{296} International Crisis Group, ibid.
posed a serious challenge to the Kabbah Government, requiring an increased involvement of the UN and other external actors.

II. The road to a peace agreement

While the eruption of conflict can be traced back to diverse root causes, it is a controversial issue as to why the implementation of several peace accords between the Government and the RUF failed. On the one hand, the prolongation of the conflict can be accredited to the RUF, who was willing to negotiate only after a rash of lost battles, seeking to gain time for recovering and reorganizing its forces. On the other hand, the UN’s engagement with Sierra Leone in the course of the conflict was characterized by an uncoordinated response, inconsistent strategy, and overconfidence in the RUF to comply with the provisions of the peace accords. In the early stages of conflict, the RUF offered negotiations which failed when Sankoh refused the unconditional surrender demanded by the self-confident NPRC junta. The more military success the RUF obtained, the less the RUF leader was willing to negotiate during the years of 1994 and 1995. The first negotiations took place due to the military success obtained by the South-African private military company, Executive Outcome (EO), which was hired previously by the Strasser Government to fight the RUF. In 1996, Sankoh and President Kabbah signed the Abijan Peace Accord, brokered by the UN Special Envoy. The Abijan Accord included provisions on the withdrawal of the EO, the DDR process, and the RUF’s transformation into a political movement. Furthermore, the parties officially recognized the socio-economic dimensions of conflict and adopted guidelines for the post-conflict reconstruction process. For the oversight of the implementation, the Abijan Accord envisaged the establishment of a Commission for the Consolidation of Peace and the deployment of a UN peacekeeping mission with a monitoring mandate.

297 Dobbins et al., supra note 286, p. 147.  
299 Ibid. p. 11.  
Without the support of the EO, President Kabbah was unable to enforce the peace agreement and prevent a renewed eruption of violence. In 1997, his Government was overthrown by another military coup d’etat of a spin-off SLA fraction. The new ruling junta, the Armed Forces Revolutionary Council (AFRC) led by General Jonny Paul Koroma, invited the RUF to form a coalition Government. After the new UN Special Envoy Okelo failed to convince the junta to step down, the UNSC imposed an oil and arms embargo on Sierra Leone and, acting under Chapter VIII of the UNC, mandated the ECOWAS Monitoring Group (ECOMOG) to enforce its implementation. In October, the ECOWAS Committee of Five and an AFRC/RUF delegation succeeded to negotiate a six-month peace plan in Conakry. The Conakry Accord required an immediate cease-fire monitored by ECOMOG in cooperation with a UN military observer mission, dependent on the approval of the UNSC. Another key provision of the peace plan was an agreement on the restoration of the constitutional order and power of the Kabbah Government scheduled on 22 May 1998. Although the Conakry Accord set a six-month deadline for the AFRC/RUF junta to step down, in February 1998, ECOMOG launched an offensive and ousted the junta from Freetown which enabled the democratically elected Government to return to office.

ECOMOG’s pre-emptive action raised certain legal concerns since the military operation lacked a UNSC authorization for the use of force in Sierra Leone. ECOMOG argued “on the basis of intelligence that indicated that the junta might not be willing to hand over power after all”. The UN referred to the offensive as a response to an attack of the junta forces that, at the same time, led to their expulsion from Freetown. The UNSC reacted merely by issuing a statement

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301 International Crisis Group, Africa Report No. 28, supra note 276, p. 11.
305 Bah, ibid.
which welcomed the end of the military junta regime and the return of the democratically elected president.\textsuperscript{307} Apart from the OAU, that expressed its retroactive support for ECOMOG’s operation, other key members of the international community “\textit{turned a blind eye to the legality of the intervention}.”\textsuperscript{308}

The progression of the UN field missions began with the deployment of the United Nations Observer Mission in Sierra Leone (UNOMSIL) in July 1998. UNOMSIL functioned as an unarmed traditional peacekeeping mission with the mandate to oversee and assist in disarmament efforts, document human rights abuses committed against civilians, and monitor the performance of ECOMOG.\textsuperscript{309}

The rationale behind the deployment of a small unarmed unit in an unstable setting is highly ambiguous. One of the decisive factors which affected the UN’s stance to support ECOMOG’s permanent lead role in peacekeeping in Sierra Leone was that simultaneous to the Sierra Leonean civil war the UNSC was occupied with the crisis of the former Yugoslavia. While peace enforcement and peacebuilding on the Western Balkans received enhanced attention and considerable financial support, UNOMSIL’s deployment served to satisfy the demand for increased international assistance without significant costs.\textsuperscript{310}

Although ECOMOG started actively fighting on the side of the GoSL, it revealed the vulnerability and insufficiency of the UN’s engagement when the RUF overran Freetown in January 1999.\textsuperscript{311} While the UNOMSIL forces were evacuated, the Nigerian-dominated ECOMOG troops were heavily burdened to force the RUF to retreat from the capital.

The period during the aftermath of the RUF’s rampage in Freetown marked the beginning of a broader international engagement in Sierra Leone. In addition to

\textsuperscript{307} According to the Press Release of the Security Council: “\textit{Acting under Chapter VII of the United Nations Charter, the Security Council this morning welcomed the return to Sierra Leone of its democratically elected President on 10 March and decided to terminate, with immediate effect, its prohibitions on the sale or supply to Sierra Leone of petroleum and petroleum products in its resolution 1132 of 8 October 1997}.” SC/6486, 16 March 1998

\textsuperscript{308} Bah argues that this operation had the most important contribution in preventing Sierra Leone’s descent into a Somalia-type state failure. See Bah, \textit{supra} note 302, p. 102.


\textsuperscript{310} Bah, \textit{supra} note 302, p. 108.

\textsuperscript{311} International Crisis Group, Africa Report No.28, \textit{supra} note 276, p. 7.
the UN Special Representative Okelo, diplomats of the U.S., the UK, and further West African States facilitated the negotiations that led to the Lomé Peace Agreement. The attitude of the international actors was driven by the ambitions to sign a peace agreement and end the hostilities in the shortest possible time which empowered the RUF to negotiate favourable terms.  

The Lomé Peace Agreement promised RUF members to hold public offices and obtain four cabinets among other political positions within the framework of a broad-based Government of national unity. RUF leader Foday Sankoh became appointed vice president and chairman of the Board of the Commission for the Management of Strategic Resources. While the implementation of the agreement was delegated to subject-specific commissions, it also envisaged the deployment of a joint ECOMOG-UNOMSIL peacekeeping mission to assist in the DDR process and the establishment of the Truth and Reconciliation Commission to address impunity and document human rights violations. In order to promote national reconciliation, the GoSL agreed on the absolute amnesty for Sankoh and all members of the diverse military factions involved in the conflict.

Since the Lomé Peace Agreement sought an expanded role for UNOMSIL, after a temporary increase of troop strength, the UNSC decided to transform the mission into a larger peacekeeping force with 6,000 military personnel in October 1999. Unlike UNOMSIL, the United Nations Mission in Sierra Leone (UNAMSIL) was authorized under Chapter VII of the UNC to assist the GoSL and other signing parties of the Lomé Agreement in its implementation. UNSCR 1270 gave UNAMSIL the power to take necessary action to protect civilians under imminent threat of physical violence and ensure the freedom and security of the UN personnel to implement their mandate. For an initial period of six-months, the Mission was mandated to assist in the DDR process, monitor adherence to the

312 Ibid. p. 12.
313 Ibid. Part Two, Article V. available at: <http://www.sierra-leone.org/lomeaccord.html> (last accessed on 12 October 2016)
314 Ibid. Part Four, Articles XIII-XVI.
315 Ibid. Part Five, Articles XXV-XXVI.
316 Ibid. Part Three, Article IX.
318 Ibid. para. 14.
ceasefire, facilitate the delivery of humanitarian assistance, and offer support for the forthcoming elections.\textsuperscript{319} Nevertheless, in its early days of deployment, UNAMSIL proved to be ineffective in implementing its robust peacekeeping mandate. The newly authorized mission nearly collapsed when it faced the challenge to fill the security gap resulting from the sudden partial withdrawal of ECOMOG units from Sierra Leone. The operational capacities of UNAMSIL were determined based on the premises of a co-deployment and shared peacekeeping responsibilities between the UN and ECOMOG. The reason behind the failed co-deployment was the complete withdrawal of Nigerian forces that accounted for about 90 per cent of ECOMOG’s troop strengths. Since Nigeria has been engaged as the main troop and financial contributor of the ECOWAS mission since 1993, the continued deployment and funding of its military units became an issue during the electoral campaign of the 1999 general elections. In order to keep his election promise, Nigeria’s newly elected civilian president Obasanjo, intended to downsize the Nigerian military presence immediately after his inauguration. The initial intention of downsizing turned into a full-scale withdrawal after the new assembly did not approve either the further deployment, or the financial resources for Nigeria’s ongoing involvement in ECOMOG.\textsuperscript{320}

Another issue that weakened UNAMSIL became known as the “Jetley Affair”, through which UNAMSIL’s force commander General Kumar Jetley, from India, accused high ranking Nigerian military officers of acting in favour of Nigerian interests and colluding with the RUF for financial benefits gained through the illegal diamond trade.\textsuperscript{321} Due to the pressure of Nigerian authorities, Jetley was relieved of his post, which induced the withdrawal of Indian units from UNAMSIL.\textsuperscript{322} In addition to the allegations on Nigeria’s involvement, Commander Jetley believed that the main obstacle of effective mandate implementation was the Mission’s poor capacities, including insufficient equipment. His view was confirmed by the fact that by early 2000, the UN was able to allocate less than one-third of the required operational costs of $25 million.\textsuperscript{323} The RUF benefitted

\textsuperscript{319} Ibid. para. 8.  
\textsuperscript{320} Bah, \textit{supra} note 302, p. 104.  
\textsuperscript{321} Dobbins, \textit{supra} note 286, p. 139.  
\textsuperscript{322} Bah, p. 105.  
\textsuperscript{323} Dobbins, p. 139.
from UNAMSIL’s crisis and the security gap, left behind by the withdrawal of the Nigerian troops, and launched renewed attacks.\textsuperscript{324} The UNSC responded through the revision of UNAMSIL’s mandate which resulted in the expansion of the civilian, military, and police components to 11,100 personnel; the additional authorization for ensuring security at key infrastructural, governmental, and DRR related locations; and the coordination with “\textit{in common areas of deployment, the Sierra Leone law enforcement authorities in the discharge of their responsibilities}”.\textsuperscript{325}

Despite the expansion of UNAMSIL, the situation was on the edge of relapsing into civil war when in May 2000 the RUF abducted and held hostage more than 500 mostly Kenyan peacekeepers.\textsuperscript{326} UNAMSIL’s fiasco compromised “\textit{not only the credibility of the UN but also peacekeeping as an effective instrument of conflict management}”.\textsuperscript{327} The GoSL and UNSG Annan called for immediate support from the international community.\textsuperscript{328} As a response, the United Kingdom launched Operation Palliser with the primary aim to evacuate British nationals from Sierra Leone undertaken with the consent of the GoSL.\textsuperscript{329} After the successful evacuation, the UK troops focused on “over the horizon” manoeuvres that effectively drove back the RUF and enabled UNAMSIL to reinforce its units.\textsuperscript{330} Although at the end of May, with the exception of a small residual presence, the UK troops left Sierra Leone, in September a new British operation was needed to deal with a further hostage-taking action of an AFRC military group, the so-called “West Side Boys”.\textsuperscript{331} Operation Barras succeeded not only in rescuing the hostages but, through its psychological impact on the remaining fighters, marked a turning point for the peace consolidation process. Although neither of the British operations was authorized by the UNSC, the UK’s

\begin{thebibliography}{99}
\bibitem{324} Bah, p. 108.
\bibitem{326} Paris, supra note 141, p. 222.
\bibitem{327} Bah, p. 105.
\bibitem{328} Fleschman, Michael (2000), Sierra Leone: peacekeeping under fire, UN mission short on trained forces, equipment, global backing, \textit{Africa Recovery}, 14(2), p. 8.
\bibitem{330} Bah, supra note 302, p. 106.
\end{thebibliography}
intervention was praised by the Secretary-General as a "pivotal factor in restoring stability"\(^{332}\) instead of querying its legality. The UK remained engaged in Sierra Leone through the International Military Advisory and Training Team (IMATT), which was mandated to support the capacity-building of the Sierra Leonean military.

The UK’s presence allowed UNAMSIL to concentrate on its core task and intensify the DDR process. In addition to the UK’s assistance, due to the intensive personal engagement of Secretary-General Annan, the UNSC adopted further resolutions which authorized the mission to respond more robustly to the RUF attacks.\(^{333}\) With expanded troop strength of 17,500, UNAMSIL became the largest UN peacekeeping mission at the time. These developments and Foday Sankoh’s imprisonment transformed UNAMSIL into a "success story in UN peacekeeping".\(^{334}\) As a further achievement, in August 2000, the UNSC adopted Resolution 1315 which established the Special Court for Sierra Leone (S CSL), the first mixed international-national tribunal to try war crimes, crimes against humanity, and other serious violations of international and Sierra Leonean law. In November, the GoSL and the RUF signed the Abuja I Ceasefire Agreement and reconfirmed their commitment to the Lomé Peace Agreement and DDR programme.\(^{335}\) After continued minor skirmishes, in particular in the Kono district, the final capitulation of the RUF took place through signing the Abuja II Peace Agreement of May 2001.\(^{336}\)


\(^{334}\) United Nations Department of Public Information (2005), United Nations Mission in Sierra Leone, UNAMSIL: A Success Story in Peacekeeping, DPI/2412A


III. Peacebuilding performed by a multi-dimensional peacekeeping mission

From May 2001, the DDR programme took its course. Since the ceasefire under Abuja II proved to be durable, President Kabbah officially declared the end of the civil war.\(^{337}\) Due to UNAMSIL’s security and logistical support, humanitarian agencies became increasingly able to deliver humanitarian aid and a great number of refugees and IDPs were able to return to their homes.\(^{338}\) The security environment became increasingly stable due to the common efforts of UNAMSIL, ECOWAS, the OAU, and the UK which enabled Sierra Leone to hold general elections in 2002.\(^{339}\) The elections ended with the overall victory of President Kabbah’s SLPP party, leaving the RUF without a single seat in parliament. Defeating the RUF on the battlefield and in the political arena created conditions for a stable security situation and sufficient political stability for launching the first measures of the peacebuilding process.

Through its extended mandate to perform tasks in the post-conflict period, UNAMSIL became the prototype for the new generation of UN multi-dimensional missions.\(^{340}\) In the course of its deployment, the Mission supported the disarmament and demobilization of 75,490 combatants from the main warring factions, the destruction of 42,330 weapons and more than 1.2 million rounds of ammunition, and the reintegration of almost 55,000 ex-combatants.\(^{341}\) The reintegration programme offered the opportunity to participate in educational and business development projects which included formal education, skills training, entrepreneurial support, and tool-kits for different craft categories. Child soldiers received particular attention in the DDR programme. With the help of UNICEF, over 6,800 demobilized child soldiers were reunited with their families. Furthermore, following the presidential and parliamentary elections in 2002,

\(^{337}\) Ibid.
\(^{338}\) Dobbins, supra note 286, p. 143.
\(^{339}\) Bah, supra note 302, p. 109.
\(^{340}\) UNAMSIL: A Success Story in Peacekeeping, supra note 334.
\(^{341}\) United Nations Department of Public Information (2005), United Nations Mission in Sierra Leone, Fact Sheet 1: Disarmament, Demobilization and Reintegration, Thousands of Ex-Fighters Disarmed and Reintegrated, DPI/2412B
UNAMSIL provided organisational and logistical support for the 2004 elections at community level.\(^{342}\)

Although the main focus remained on peacekeeping activities, during the campaign period, the Mission also assisted in voter education, and provided the National Electoral Commission (NEC) and international election observers with logistical support. Moreover, UNAMSIL delivered trainings in human rights education to local activists, as well as, supported the establishment of Human Rights Committees throughout Sierra Leone and the Sierra Leonean Truth and Reconciliation Commission.\(^{343}\) The Mission also participated in the recruitment and training of local police officers and the reconstruction of their facilities. In addition to these tasks, UNAMSIL was involved in the rehabilitation of the judicial system and assisted the GoSL in developing monitoring mechanisms for the performance of courts, the police, and penal institutions. As a key contribution of the international assistance, UNAMSIL, and other UN agencies with the help of their regional partners, supported the reestablishment of governmental authority and local administration structures in Sierra Leone, particularly in diamond-rich areas, which were focal points of the civil war.\(^{344}\) The climate of increasing stability encouraged the Sierra Leonean people who fled from the war to return and start to revive the economy throughout the country. At a strategic level, in order to provide a framework for “the transition from relief to development and from peace-keeping to peace-building” in Sierra Leone, the UNCT formulated the UN’s Development Assistance Framework (UNDAF) for the period of 2004-2007.\(^{345}\) The UNDAF confirmed the UN’s support in achieving the GoSL’s national priorities defined in the Sierra Leonean Interim Poverty Reduction Strategy Paper (IPRSP) by addressing the root causes of conflict in

\(^{342}\) United Nations Department of Public Information (2005), United Nations Mission in Sierra Leone, Fact Sheet 2: Elections Democratic Government established in Sierra Leone, DPI/2412C

\(^{343}\) United Nations Department of Public Information (2005), United Nations Mission in Sierra Leone, Fact Sheet 3: Human Rights and Rule of Law, Respect for human rights and rule of law brings stability, DPI/2412D


four areas of action: poverty reduction and reintegration; human rights and reconciliation; good governance, peace and stability; and economic recovery.\textsuperscript{346}

After UNAMSIL’s withdrawal in 2005, the UN expressed its commitment to a continued support for “the Government of Sierra Leone to consolidate peace by enhancing political and economic governance, building the national capacity for conflict prevention, and preparing for elections in 2007”.\textsuperscript{347} For that purpose, the UNSC extended the follow-up mission’s mandate with multi-dimensional peacebuilding tasks. In contrast to UNAMSIL’s strong security focus, the United Nations Integrated Office in Sierra Leone (UNIOSIL) was mandated to assist the GoSL in the capacity-building of state institutions aiming at improving their performance in addressing the root causes of the conflict, providing basic services, and accelerating progress towards achieving Millennium Development Goals (MDGs). Further key tasks included assistance in implementing the reforms in the areas of human rights, rule of law, justice and security sector reform, good governance and anti-corruption, media, and election support.\textsuperscript{348} This comprehensive mandate reflected the UN’s developing practice in bringing together “the political, security, human rights and development dimensions of the Organization’s work in Sierra Leone”.\textsuperscript{349} UNIOSIL operated on the basis of the new integrated approach, which aims at maximizing the effectiveness of the UN’s contribution by linking measures in different areas of peacebuilding into a coherent support strategy.\textsuperscript{350} UNIOSIL dealt with the “coordination of strategy and programmes between the United Nations agencies, funds and programmes in Sierra Leone, between the United Nations and other international donors, and between the integrated office, the Economic Community of West African States and other United Nations missions in the region”.\textsuperscript{351} Furthermore, the Mission coordinated the efforts of the UN agencies and other regional organisations for

\textsuperscript{346} Ibid. pp. 2-6.
\textsuperscript{347} Security Council resolution 1620 (2005) on the establishment of the United Nations Integrated Office in Sierra Leone (UNIOSIL), S/RES/1620, 31 August 2005, Preamble; UNIOSIL, headed by an Executive Representative of the Secretary-General (ERSG), was established with the consent of the GoSL for an initial period of 12 months, ibid. para. 4.
\textsuperscript{348} Ibid. para. 1.
\textsuperscript{349} Sierra Leone Configuration, Summary Record of the 1st meeting (12 October 2006), PBC/1/SLE/SR.1, 18 May 2007, para. 33.
\textsuperscript{350} UN Secretary-General, Note of Guidance on Integrated Missions, supra note 115, para 4.
\textsuperscript{351} Security Council Resolution 1620 (2005), supra note 347, para. 3.
addressing cross-border security challenges such as illicit movement of small arms, human trafficking and smuggling, and illegal trade in natural resources.\textsuperscript{352}

IV. The engagement of the Peacebuilding Commission with Sierra Leone

As the GoSL expressed its interest in the cooperation with the newly established PBC in February 2006, a number of already existing strategy documents guided the peacebuilding and development process in Sierra Leone.\textsuperscript{353} These included, among others, the national PRSP\textsuperscript{354} for the period of 2005-2007, which focused on short to medium-term measures on addressing immediate improvement in living conditions, and the long-term development agenda known as the Vision 2025.\textsuperscript{355} In the framework of the Improved Governance and Accountability Pact (IGAP), the GoSL agreed with direct budget support donors on a number of governance and accountability reforms planned to be implemented by July 2007.\textsuperscript{356} Furthermore, a joint effort of the UN and the GoSL was the adoption of a Peace Consolidation Strategy (PCS) on guidelines for addressing the immediate threats to peace\textsuperscript{357}, while the UNCT issued a revised UNDAF in line with the priorities of the PCS and the aforementioned PRSP.\textsuperscript{358}

\textsuperscript{352} Ibid. para. 1(c)
\textsuperscript{353} Iro, supra note 295, p. 41.
\textsuperscript{356} The donors providing direct budget support included the African Development Bank, the Department for International Development, the European Commission and the World Bank. See, Joint Communiqué on Improved Governance and Accountability Pact (IGAP) for Poverty Reduction and Sustainable Development in Sierra Leone, 18 July 2006, available at: <http://news.sl/drwebsite/exec/view.cgi?archive=3&num=3174> (last accessed on 14 January 2017)
\textsuperscript{357} Sierra Leone Configuration, Summary Report of the 1st meeting, supra note 349, para. 82.
The PBC explained the reasons of the cooperation with Sierra Leone at its first session by stating that "[n]otwithstanding many of the achievements in restoring stability and peace over the last few years, a number of critical peacebuilding challenges as well as the root causes of conflict in Sierra Leone are yet to be fully addressed. In addition, there are several immediate constraints to the implementation of existing commitments and frameworks".\(^{359}\) At the first Country-Specific Meeting (CSM) in October 2006, the GoSL, in consultation with the CSC members, identified priority areas where further peacebuilding efforts were needed. In addition to the crosscutting fields of action such as gender-equality and human rights, these critical sectors included youth unemployment and empowerment, justice and security-sector reform, democracy consolidation and good governance, and capacity building.\(^{360}\) In December 2006, the PBC advocated for the allocation of at least $25 million in financial contribution to Sierra Leone’s peacebuilding programmes. As a result of the advocacy efforts, Sierra Leone received $35 million in PBF funding at the beginning of 2007 aiming at supporting the recovery process and preventing a relapse into conflict.\(^{361}\) In January 2007, a consultation process began on defining the provisions of the IPBS for the cooperation between the PBC and Sierra Leone.\(^{362}\) In addition to the consultations, in March, a nine-member PBC delegation visited Sierra Leone to receive first-hand information about the progress and challenges on the ground.\(^{363}\) The visit contributed to the reach of an agreement on the timeframe and further guidelines regarding the development of the IPBS.\(^{364}\) The GoSL, supported by the UN, in particular by UNIOSIL, in consultation with the relevant

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\(^{360}\) See ibid; The Members of the Sierra Leone country-specific configuration (in accordance with paragraph 7 of General Assembly resolution 60/180 and Security Council resolution 1645 (2005)) included in 2007: Sierra Leone, Guinea, Ireland, Liberia, Sweden, African Development Bank, African Union, Central Bank of West African States, Commonwealth, Economic Community of West African States, European Community, Executive Representative of the Secretary-General, International Monetary Fund, Mano River Union, Organization of the Islamic Conference, World Bank, Economic Commission for Africa, Special Representative of the Secretary-General for West Africa complemented with the members of the Organizational Committee, Chairman: Mr. Gaspar Martins (Angola)


\(^{362}\) Iro, supra note 295, p. 43.

\(^{363}\) Report of the Peacebuilding Commission on its first session, supra note 359, para. 22.

\(^{364}\) Ibid. para. 23.
multi- and bilateral partners and civil society actors, developed the first draft of the cooperation strategy in June 2007. After several reviews, the *Sierra Leone Peacebuilding Cooperation Framework* (hereinafter Framework) was adopted jointly by the newly elected APC Government and the PBC on the 3rd of December 2007.

1. The scope of the Peacebuilding Cooperation Framework

The *Framework*, based on the principles of national ownership, mutual accountability, and sustained engagement, defined itself as a guide for the cooperation between the GoSL and the PBC "by highlighting key peacebuilding gaps in existing national strategies and commitments and ensuring their timely and effective implementation". The partnership aimed at ensuring sustained international attention in providing additional political, financial, and technical support for the Sierra Leonean peace consolidation efforts. The mutual commitments were identified based on three main criteria. Firstly, their implementation was considered to be critical for avoiding a relapse into conflict. Secondly, the *Framework* contained only short to medium-term commitments aimed at addressing "challenges and threats most critical to sustaining and consolidating peace". Finally, fulfilling the commitments required mutual actions and shared responsibility between the GoSL, the PBC, and other national and international stakeholders.

After consultations with the newly elected Koroma Government, the priority areas identified at the first CSM were extended with a new priority on energy support. Consequently, the final *Framework* included five priority sectors for risk reduction and peace consolidation: youth employment and empowerment, consolidation of democracy and good governance, justice and security sector reform, capacity-building, and energy sector development. These focal areas were complemented with a special focus

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365 Ibid. para. 24.
366 Sierra Leone Peacebuilding Cooperation Framework, *supra* note 37, (hereinafter Framework)
367 Framework, para. 5.
368 Ibid.
369 Framework, para. 6.
370 Framework, para. 5.
371 Framework, para. 6.
on sub-regional dimensions of peacebuilding, and the cross-cutting issues of gender equality and human rights. According to the PBC, the mutual commitments were defined to address the constraints in implementation of existing strategies in the jointly agreed priorities areas. The Commission’s commitments were determined in accordance with its mandate and the configuration-specific requirements discussed at the CSMs. Accordingly, the PBC committed itself to advocating for long-term partnerships between the GoSL and its international partners, promoting an increase in the donor base, as well as galvanizing attention for sustained levels of financial resources and technical assistance for the Sierra Leonean peacebuilding efforts. In addition, as a configuration-specific function, the Commission aimed at encouraging the relevant stakeholders to support the implementation of the Framework through individual and collective actions performed on the focal points identified for the five priority areas. (See Table 2.) In return, the GoSL agreed to review existing legislation and strategies or adopt new laws and blueprints regarding those matters in the priority sectors where guidelines are missing, and ensure their effective implementation. While the PBC pledged to maintain its engagement with Sierra Leone for a minimum period of three years, the Framework referred to itself as a flexible document which does not aim to replace commitments in other existing strategic documents or agreements and can be modified jointly by the GoSL and the PBC in line with the developments on the ground. Progress on the implementation of the Framework was planned to be reviewed on the basis of bi-annual progress reports, and discussed through CSMs and regular consultations with all relevant stakeholders.

373 Framework, para. 9.
374 Framework, para. 8. The Framework stated that the “primary challenges in the implementation of many of the existing strategies and commitments are related to political will, limited financial and human capacity of the Government, civil society organizations and the Parliament, as well as constraints in coordination mechanisms and arrangements with international partners. These challenges are further compounded by the poor state of basic infrastructure, such as electricity, water and roads”.
376 Framework, para. 25.
377 Framework, para. 26(a) A joint review on a continued engagement was scheduled in 2010.
378 Framework, para. 6.
379 Framework, para. 7.
380 Framework, para. 30.
Table 2.: Commitments of the PBC within the Sierra Leone configuration

<table>
<thead>
<tr>
<th>Commitments</th>
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<tbody>
<tr>
<td>a) Maintain its engagement with Sierra Leone for a period of three years and jointly review</td>
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<tr>
<td>continued engagement after 2010;</td>
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<tr>
<td>b) Support the efforts of the Government and the people of Sierra Leone for peace consolidation</td>
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<tr>
<td>consistent with the present Framework;</td>
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<tr>
<td>c) Support the implementation of the present Framework within the context of the governing</td>
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<td>bodies of international institutions;</td>
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<tr>
<td>d) Advocate for a sustained partnership and an enhanced dialogue between the Government of</td>
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<tr>
<td>Sierra Leone and its international partners, including through efforts to increase the number</td>
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<tr>
<td>of international partners supporting peace consolidation efforts in Sierra Leone;</td>
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<tr>
<td>e) Support the development of a Sierra Leone National Aid Policy to ensure effective and timely</td>
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<td>implementation of aid effectiveness policies and good practices, such as the Paris Declaration;</td>
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<tr>
<td>f) Galvanize attention and sustained levels of financial resources and technical assistance to</td>
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<tr>
<td>support the implementation of the present Framework. This may include the development of</td>
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<tr>
<td>multi-donor sector-wide funding mechanisms, such as multi-donor trust funds;</td>
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<tr>
<td>g) Support the efforts of the Government and the people of Sierra Leone, taking into account</td>
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<tr>
<td>existing instruments, such as the Extractive Industries Transparency Initiative and the</td>
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<tr>
<td>Kimberley Process, by advocating for appropriate action in the engagement of the relevant</td>
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<td>stakeholders, in ensuring national ownership for effective, transparent and sustainable</td>
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<td>exploitation and management of Sierra Leone’s natural resources;</td>
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<tr>
<td>h) Encourage effective coordination of United Nations and other actors on peace consolidation</td>
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<td>issues consistent with the present Framework;</td>
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<tr>
<td>i) Integrate a subregional dimension in its engagement with Sierra Leone, notably through</td>
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<tr>
<td>enhanced partnerships with the countries in the subregion and support for the Mano River</td>
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<tr>
<td>Union and its secretariat;</td>
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<tr>
<td>j) Support national research and learning institutions to conduct research, collect and share the</td>
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<tr>
<td>national, regional and international levels, lessons learned and best experiences related to</td>
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<tr>
<td>peacebuilding;</td>
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<tr>
<td>k) Encourage tangible contributions to support Sierra Leone in its peacebuilding efforts and</td>
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<tr>
<td>implementation of the present Framework through individual and collective actions by all</td>
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<tr>
<td>relevant stakeholders for, inter alia;</td>
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<tr>
<td>- Youth employment and empowerment</td>
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<tr>
<td>l) Support capacity-building of the Ministry of Education, Youth and Sports to ensure</td>
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<tr>
<td>mainstreaming of youth concerns;</td>
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<tr>
<td>m) Support the Government’s efforts for the generation of youth employment;</td>
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<tr>
<td>n) Support the upscaling of existing vocational, literacy training and civic education</td>
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<tr>
<td>programmes;</td>
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<tr>
<td>- Justice and security sector reform</td>
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<tr>
<td>o) Support the implementation of the recommendations of the Truth and Reconciliation Commission</td>
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<tr>
<td>in addressing the root causes of conflict;</td>
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<tr>
<td>p) Support the work of the Sierra Leone Special Court;</td>
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<tr>
<td>q) Support capacity-building initiatives for the armed forces and the police, in particular to</td>
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<td>enhance Sierra Leone’s participation in United Nations peacekeeping operations;</td>
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<tr>
<td>r) Broaden donor support for the Justice Sector Development Programme;</td>
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<td>s) Support additional management training and capacity-building for mid-level management of the</td>
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<td>Sierra Leone Police;</td>
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<td>t) Provide technical assistance in support of Sierra Leone courts and in support of the</td>
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<td>capacity-building of traditional courts;</td>
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<tr>
<td>- Consolidation of democracy and good governance</td>
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<tr>
<td>u) Support Sierra Leone’s efforts to promote accountable democratic governance and the rule of</td>
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<td>law;</td>
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<tr>
<td>v) Support the work of the Human Rights Commission, the National Electoral Commission, the</td>
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<td>Political Parties Registration Commission, the National Commission for Democracy and other</td>
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<tr>
<td>national institutions;</td>
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<tr>
<td>- Capacity-building</td>
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<tr>
<td>w) Support the Government’s programmes to address the immediate socioeconomic needs of the</td>
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<td>population, in accordance with the Sierra Leone Poverty Reduction Strategy Paper and the</td>
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<td>Millennium Development Goals, and the development of basic services and infrastructure,</td>
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<td>including water, electricity and roads, as essential conditions for peacebuilding;</td>
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<tr>
<td>x) Support capacity-building of the Sierra Leone Parliament;</td>
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<td>y) Support capacity-building for civil service reform, including the Senior Executive Service;</td>
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<tr>
<td>z) Support capacity-building to enhance the Government’s efforts in the management of natural</td>
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<td>resources, in particular the Ministries of Marine and Mineral Resources;</td>
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<tr>
<td>aa) Support capacity-building initiatives for the private sector and civil society, especially</td>
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<td>women’s and youth organizations, which contribute to peace consolidation, reconciliation and</td>
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<td>community-based socio-economic recovery and reconstruction;</td>
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<tr>
<td>bb) Support the efforts of the Government of Sierra Leone in the area of gender mainstreaming;</td>
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<tr>
<td>- Energy</td>
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<tr>
<td>cc) Marshall support for the implementation of the short-term emergency plan of the Government</td>
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<tr>
<td>of Sierra Leone for electricity generation and distribution, including the restructuring of the</td>
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<tr>
<td>National Power Authority and other public institutions in that sector;</td>
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<tr>
<td>dd) Marshall support for the enhancement and rehabilitation of the electricity generation</td>
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<tr>
<td>capacity, distribution networks and transmission lines;</td>
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<tr>
<td>- Subregional dimensions of peacebuilding</td>
</tr>
<tr>
<td>ee) Provide additional technical and financial support for the revitalization of the Mano</td>
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<tr>
<td>River Union, especially in fostering cross-border confidence-building and addressing common</td>
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<tr>
<td>peacebuilding challenges, including at the community level;</td>
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<tr>
<td>ff) Provide assistance to the Mano River Union and Economic Community of West African States</td>
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<tr>
<td>in addressing cross-border issues, such as the illicit trade in small arms.</td>
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</table>

2. **Mandate implementation by the Peacebuilding Commission within the Sierra Leone Configuration**

Following the adoption of the *Framework*, the CSC members adopted a six-month work plan on resource mobilization, outreach, and advocacy.\(^{381}\) In accordance with this work plan, in order to mobilize resources and ensure political support for the implementation of the *Framework*, the CSC Chairman arranged bilateral meetings with representatives of Member States and financial institutions, visited capitals of major donors, as well as consulted with private sector representatives and non-traditional donors.\(^{382}\) The advocacy efforts peaked in May 2008 in a High-Level Stakeholders Consultation, which concluded on the need for further financial assistance for the GoSL’s peacebuilding efforts through direct budget support and sector programmes.\(^{383}\)

In order to learn about the status of the *Framework*’s implementation, and to raise international attention for the Sierra Leonean peacebuilding process, a nine-member PBC delegation visited Sierra Leone from 1 to 7 June 2008. The visit acknowledged the progress made in Sierra Leone, and reaffirmed the need for continued international support, in particular, in the areas of national reconciliation, greater political dialogue, and the promotion of economic growth and job creation.\(^{384}\) Furthermore, the PBC encouraged the GoSL to develop sector-wide strategies, adopt the next PRSP, and renew donor coordination mechanisms to enable more effective and targeted assistance.\(^{385}\)

Fulfilling the PBC’s advisory function, the CSC Chairman advocated for the formation of an Integrated Peacebuilding Office in Sierra Leone, mandated to improve coordination and coherence among the UN actors on the ground, and encouraged the UNDP and other UN agencies to strengthen their country offices.\(^{386}\) In addition to the advocacy and outreach efforts, twenty-one CSC members were actively engaged in Sierra Leone with providing support in the

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\(^{381}\) Sierra Leone Configuration, *Progress report on the implementation of the Sierra Leone Peacebuilding Cooperation Framework*, PBC/2/SLE/9, 23 June 2008, para. 26. (hereinafter First Progress Report)

\(^{382}\) Ibid.

\(^{383}\) Ibid, para. 30.

\(^{384}\) Ibid. para. 29.

\(^{385}\) Ibid. para. 30.

\(^{386}\) Ibid, Annex II, p. 22.
priority areas either bilaterally or through multilateral channels.\(^{387}\) The *Progress Reports* on the *Framework*’s implementation noted that in the area of youth employment, several CSC members actively supported the capacity-building of the Ministry of Education, Youth and Sports, the establishment of the National Youth Council, and the revision of the national youth policy. Furthermore they galvanized attention for the youth basket fund, as well as promoted programmes of youth employment generation, vocational and literacy training, and civic education.\(^{388}\) The UK, the U.S. and the UN were involved in capacity-building initiatives in the area of SSR, and facilitated trainings for the military and police personnel with a special focus on management training for mid-level officers. The efforts in the field of justice sector reform included assistance in the operation of the SCSL and the implementation of the TRC’s recommendations.\(^{389}\) The PBC made efforts to broaden the donor base of the Justice Sector Development Programme, pursuing, in particular, the mobilization of resources for filling the $3 million financial gap in the Justice Sector Strategy and Investment Plan.\(^{390}\) In 2008, supporting the national institutions in promoting democratic governance and rule of law was a key issue in CSM discussions and the High-Level Stakeholders Consultation. The CSC members gave particular focus on strengthening the capacities of the National Anti-Corruption Commission, assisting in the development a new anti-corruption strategy and action plan, as well as providing support for the GoSL to review all mining contacts and their related concessions.\(^{391}\) While several CMS members were engaged in the capacity-building of various ministries and departments, and the implementation of the GoSL’s socio-economic programmes, the PBC advocated for additional support for the Sierra Leonean Parliamentary Service Commission, the Capacity-Building Trust Fund, and the Sierra Leone Business Forum.\(^{392}\)

\(^{387}\) See ibid. Annex I: Matrix for review of progress in the implementation of commitments

\(^{388}\) Sierra Leone Configuration, *Progress report on the implementation of the Sierra Leone Peacebuilding Cooperation Framework*, PBC/3/SLE/3, 16 December 2008, (hereinafter Second Progress Report) p. 21. These CSC members active in the area of youth employment include Irish Aid, Japan, United States, World Bank, GIZ, UNDP, European Commission, and UNIOSIL.


\(^{390}\) Ibid. p. 25.

\(^{391}\) Ibid. p. 27.

\(^{392}\) Ibid., and Second Progress Report, p. 25.
At the centre of efforts stood also the promotion of civil society and private sector engagement, and supporting the GoSL to implement policies in the field of gender mainstreaming and women’s empowerment. The EC, the World Bank, and Japan were actively engaged in the rehabilitation and enhancement of the energy sector. The PBC played a vital role in bringing together all relevant actors active in this priority area, and advocated for greater resources for the implementation of the GoSL’s emergency energy plan on electricity generation and distribution. Furthermore, the PBC took over monitoring responsibilities for the implementation of an energy plan, and the completion of the Bumbuna hydroelectric power plan project. In addition, the Commission advocated for restructuring the National Power Authority and the development of an overall energy sector strategy. In order to strengthen sub-regional cooperation, CSC members and the UN provided support for the activities of the Mano River Union, and encouraged follow-up actions to the commitments made at Presidential Summits and ministerial meetings. Furthermore, with the lead role of Japan, several CSC members assisted the Union and ECOWAS in addressing cross-border issues. The Sierra Leone and the Guinea-Bissau configurations organized a joint high-level briefing on the threat of illicit drug trafficking in West-Africa. Following the briefing, a number of CSC members expressed their interest in providing additional support for this issue.

In the second half of 2008, two important documents were adopted which affected the PBC’s engagement with Sierra Leone. Firstly, the GoSL introduced the second Poverty Reduction Strategy Paper, An Agenda for Change. The Agenda for Change referred to the cooperation with the PBC under the section of “Preconditions for Achieving the Strategic Priorities”, and stated that "good governance, rule of law, human rights, and peace and security are essential pre-requisites for sustainable growth and economic development and indeed for

393 First Progress report, p. 28.
394 Second Progress report, p. 28.
395 Ibid.
396 Ibid. para 45.
successful implementation of the second PRSP”. The GoSL reaffirmed its commitment to address the root causes of conflict and undertake constant efforts to avoid its reoccurrence. To that end, the Agenda for Change sought for the GoSL’s continued engagement with the PBC “to bolster its peace building efforts, broaden its donor base and strengthen its partnership with the existing donors”. Secondly, in order to enhance “the impact of the United Nations’ assistance as part of the international communities’ efforts of consolidating peace and promoting sustainable development in Sierra Leone”, the UN organizations, agencies, and programmes active on the ground agreed on combining efforts and set common priorities that guide their activities by adopting the Joint Vision of Sierra Leone of the United Nations’ Family. The Joint Vision served as a general framework for the cooperation within the UN and defined the UN’s contribution on implementing the GoSL’s Agenda for Change, fulfilling their mandate, and supporting the goals and work of the PBC. While the second Progress Report on the Framework’s implementation referred to the Agenda for Change as an ambitious reform agenda, it pointed out that its implementation posed serious challenges due to the severe infrastructural and human deficits the GoSL was faced with. In order to fill the $1.2 billion funding gap, identified as missing for the successful implementation of the PRSP, the Report called the GoSL for mobilizing financial resources and revitalizing its donor coordination mechanisms. The PBC supported the GoSL’s fundraising efforts for the Agenda for Change through organizing a Consultative Group meeting as a follow-up of the High-level Stakeholder Consultation. Additionally, the PBC made efforts to mobilize greater resources for the local elections. Furthermore, the PBSO, in

399 Ibid.
401 The Joint Vision (2009) included four programmatic priorities: a) integrating rural areas into the national economy; b) economic and social integration of the youth; c) equitable and affordable access to health; and d) accessible and credible public services, See ibid. pp.1-4.
402 Second Progress Report, supra note 388, para. 1.
403 Ibid. paras. 7-9.
404 Ibid. para. 44.
cooperation with all CSC members, conducted an analysis of the ongoing programmes in the Framework’s priority areas. The analysis pointed out that the implementation of the commitments in the areas of youth unemployment, capacity-building and regional cooperation require redoubled support. In the wake of that call, several CSC members increased their volume of support for Sierra Leone.\textsuperscript{405}

V. Systemic peacebuilding in line with national poverty reduction strategies

The developments on the ground influenced the UN to reconfigure its field presence. The Integrated Peacebuilding Support Office replaced the Integrated Office on the 1\textsuperscript{st} of October 2008.\textsuperscript{406} According to the second Progress Report, the Mission’s mandate combined both political and development tasks in four activity areas: "a) political facilitation and peace consolidation, including the continuation of multi-party talks and other conflict prevention activities; b) promotion of rule of law and human rights issues, including support for the constitutional review process and assistance to the National Human Rights Commission and other human rights organizations; c) support for democratic institutions, including through assistance to the Anti-Corruption Commission, the media, the Parliament and the decentralization of Government institutions; and d) support for the internal security and the police, concentrating on maintaining general police standards and supporting the Government in its fight against illicit drug trafficking and international crime".\textsuperscript{407} However, as pointed out by the Joint Vision, UNIPSIL’s mandate was not designed to implement its own programmes but to "focus on political facilitation and outreach with local political stakeholders, promotion and advocacy of international standards as well as in developing

\textsuperscript{405} Ibid. paras. 31-36. The Netherlands, for example, increased their activities in cooperation projects on fighting illicit drug trafficking and in capacity-building of the Sierra Leonean Ministry of Foreign Affairs.


\textsuperscript{407} Second Progress Report, supra note 388, para. 51.
assessments, reviews and evaluations of issues of common concern”. While the UN agencies were responsible to engage in their operational and programmatic activities, the main function of UNIPSIL was to act in a supportive capacity limited to political guidance, technical advice and evaluations. Furthermore, the Mission was mandated to coordinate with and provide support for the engagement of the PBC, the implementation of the Framework, and further PBF funded projects. (See Table 3.)

The next review on the implementation of the Framework took place in June 2009 in the framework of a PBC High-level Special Session on Sierra Leone. The Special Session, chaired by the GoSL and Canada, concluded on the reconfiguration of several aspects of the Commission’s engagement with Sierra Leone in response to the political developments on the ground. It was acknowledged that in addition to a strong focus on economic growth, the Agenda for Change put an emphasis on peacebuilding related areas such as good governance, rule of law, human rights, and security. Furthermore, from the PBC’s point of view, the GoSL’s explicit commitment to promote positive attitudinal change in the areas of national security, public sector, and anti-corruption served as an indicator for continued peacebuilding efforts. Consequently, the PBC recalled the Framework and endorsed the Agenda for Change as the primary strategic document to guide its further activities and all future peacebuilding efforts, as well as called upon the CSC members and all international partners to align their assistance with the national priorities and increase their financial support for Sierra Leone.

408 Joint Vision for Sierra Leone of the United Nations’ Family, supra note 400, p. 6.
409 Ibid. p. 15.
410 Sierra Leone Configuration, Outcome of the Peacebuilding Commission High-level Special Session on Sierra Leone, PBC/3/SLE/6, 10 June 2009 (hereinafter Outcome document)
411 Ibid. para. 4.
### Table 3.: Activities of UNIPSIL

<table>
<thead>
<tr>
<th>Area of operation</th>
<th>Activities of UNIPSIL</th>
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</table>
| **1** Providing political facilitation and peace consolidation                                        | • Maintained regular contact with the main political parties in order to promote the need for political dialogue, political tolerance and the role of the Political Parties Registration Commission in its facilitation;  
• Provided technical advice to district code-of-conduct monitoring committees and district security committees in managing political disputes and addressing security issues;  
• Implemented a comprehensive programme with the goal to promote non-violence and political participation, especially by women and youth, and to build the capacity of democratic governance institutions;  
• Supported the resolution of disagreement over the results of the 2007 elections between the National Electoral Commission and the SLPP;  
• Assisted the GoSL in preparing and carrying out peaceful and credible elections. |
| **2** Monitoring and promoting human rights, democratic institutions and the rule of law                | • Supported the establishment of the independent Sierra Leone Broadcasting Corporation and facilitated the creation of the Guild of Editors, an association of the country’s major newspaper editors;  
• Strengthened the capacity of national human rights protection mechanisms, especially the Human Rights Commission of Sierra Leone;  
• Developed an advisory note on rationalizing the system of external funding to the civil and public service in Sierra Leone;  
• Supported the capacity-building efforts directed at parliamentarians, which resulted in the enactment of the Parliamentary Service Act and the establishment of the Parliamentary Service Commission;  
• Assisted the Government in implementing the recommendations of the Truth and Reconciliation Commission;  
• Supported the efforts of the Government, the United Nations country team and civil society in promoting gender equality, women’s empowerment and political participation, as well as in combating violence against women, which resulted in the development of a national action plan and establishment of the All Political Parties Women’s Association;  
• Provided support for the ongoing national constitutional review process and organized a series of dialogues to facilitate discussion of the process with political parties, women’s and youth groups and religious and traditional leaders; |
| **3** Consolidating good governance reforms, with a special focus on anti-corruption instruments         | • Developed an assistance package for the Anti-Corruption Commission that provides essential training and logistical support;                                                                                                                                                                      |
| **4** Supporting the internal security and the police and efforts to counter transnational organized crime and drug trafficking | • Supported the reform, institutional development and capacity-building of the police, including with respect to combating illicit drug trafficking and organized crime, as well as corruption within the police force;  
• Supported the Government of Sierra Leone in implementing the West Africa Coast Initiative to combat transnational organized crime;  
• Assisted in the establishment of a transnational organized crimes unit and the Independent Police Complaints Board;  
• Provided support for the Mano River Union for efforts to tackle transnational crime, ensure cross-border security and promote stability during the elections in 2012 and to establish more than 15 cross-border security units; |

Table 3. Source: Final Report of the Secretary-General on the United Nations Integrated Peacebuilding Office in Sierra Leone
Secondly, the Special Session called for political support for the implementation of the Sierra Leonean political parties’ Joint Communiqué. The Communiqué was adopted following the outbreak of five days heavy fighting between APC and SLPP supporters in March 2009, with the aim of overcoming "recent differences, to help quell all forms of political violence, and to speed the country’s progress towards peaceful development".

The parties condemned all forms of violence, agreed on the important role of the Sierra Leonean Police in upholding the rule of law, and on undertaking further efforts to strengthen democratic institutions. The Special Session urged the Sierra Leonean Parties to implement the Joint Communiqué and called the international actors, including UNIPSIL, to support these efforts.

Thirdly, the Special Session endorsed the Joint Vision as a new and innovative peacebuilding approach which directs the contribution of the UN Family to the implementation of the Agenda for Change, and integrates the political mandate of UNIPSIL with the development and humanitarian mandates of 17 UN agencies currently active in Sierra Leone. The PBC called upon the Member States, in particular, non-traditional donors without local representation, to provide financial assistance for the 21 programmes planned to be implemented in the five priority areas of the Joint Vision channelled through the newly established coordinating body, the Multi-Donor Trust Fund.

Finally, the PBC expressed its commitment for continued efforts to enhance dialogue, broaden the donor base, and strengthen partnership between Sierra Leone and its international partners. The focus of the engagement from 2009 remained on the peacebuilding priorities of the Agenda for Change which overlapped the priority areas of the recalled Framework, such as promoting good

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413 Outcome Document, supra note 410, para 4; Furthermore, as a follow-up to the adoption of the joint communiqué, the CSC chair undertook a fact-finding mission to Sierra Leone from 20 to 24 April 2009. See Report of the Peacebuilding Commission on its third session, A/64/341-S/2009/444, 8 September 2009, para. 42.

414 All the UN agencies and programmes in Sierra Leone were integrated under the supervision of the Executive Representative of the Secretary-General and head of UNIPSIL.

415 Outcome Document, supra note 410, para 4.
governance and the rule of law, combating illicit drug trafficking, and addressing youth unemployment. Furthermore, the PBC intended to stay engaged in advocating for greater sub-regional cooperation and promoting gender equality and human rights.

In accordance with the conclusions of the Special Session, during the third year of engagement with Sierra Leone, the PBC focused on three main objectives: a) maintaining attention and reviewing progress in peacebuilding efforts; b) broadening the donor base and enhancing the coherence of international assistance; c) supporting new or improving existing activities in peacebuilding priority areas. Following the reconfiguration, the Outcome Document of the High-level Special Session on Sierra Leone served as a basis of engagement for the configuration. As a follow-up to the Special Session, the PBC and the GoSL held bi-annual meetings to review the progress made in the Sierra Leonean peace consolidation process, and in the implementation of the peacebuilding elements of the Agenda for Change. The Reviews were used to enumerate the main areas of progress and urge for further international assistance.

Yet through facilitating a smaller number of formal meetings, after 2009, the CSC continued to function as a forum for discussing issues of the Sierra Leonean peacebuilding process. The Commission provided political accompaniment with the main focus on supporting the implementation of the Joint Communiqué, the efforts of the Executive Representative of the Secretary-General (ERSG) on enhancing political dialogue, and the preparation of the 2012 elections. In the framework of a high-level delegation visit in May 2011, the PBC stressed the importance of inter-party dialogue and the cooperation with the National Electoral Commission to clarify the rules of engagement prior to the elections.

416 Organizational Committee, Report of the Peacebuilding Commission on its third session, supra note 413, para. 38.
417 See Outcome document, para. 4(n)
418 See Sierra Leone Configuration, Review of the outcome of the High-level Special Session of the Peacebuilding Commission on Sierra Leone, PBC/4/SLE/3, 1 October 2010, paras. 4. and 20.
421 Report of the Peacebuilding Commission on its fifth session, supra note 419, para. 38.
In addition, the PBC made efforts to mobilize resources of the UN’s Joint Vision through raising awareness of the financial constraints of its implementation. As a response several CSC members increased their financial contribution. Finally, through the second Review of the Outcome Document the PBC began raising awareness and advocating for additional resources for the third PRSP of Sierra Leone, The Agenda for Prosperity (2013-2017) and the Transitional Joint Vision (2013-2014).

The Agenda for Prosperity, with a strong development focus, marked a turning point in the UN’s engagement in Sierra Leone. Already in March 2011, ERSG Schulenburg addressed the UN with considerations on the transition of UNIPSIL to a UNCT presence scheduled in 2013. Schulenburg pointed out that the decisive event for downgrading should be the forthcoming elections. Similarly to the ERSG’s observations, the second review of the Outcome Document referred to intentions to conduct an assessment on the scope of the PBC’s engagement with Sierra Leone in order to determine a viable exit strategy following 2012.

As requested by Sierra Leone, the UNSG withdrew Schulenburg in February 2012. The outgoing ERSG addressed the UNSC with concerns on potentially destabilizing developments in Sierra Leone. He reported "that the Government imported assault weapons worth millions of dollars in January to equip a recently enlarged paramilitary wing of its police, the Operational Services Division (OSD)" and mentioned other worrying signs "such as the attack on the opposition presidential candidate in September of last year, which was followed by an attack by members of the opposition on property of the governing party, the questionable imposition of a three-month ban on all political party rallies, violence surrounding a win by the opposition in by-elections for the Freetown City Council and the recent break-in into a newspaper critical of the

422 These included Australia ($1,000,000), Canada ($500,000), Italy ($685,000) and the United States ($200,000). Ibid. para. 40.
423 Sierra Leone Configuration, Second review of the outcome of the High-level Special Session of the Peacebuilding Commission on Sierra Leone, PBC/6/SLE/2, 2 October 2012
425 Second Review of the outcome of the High-Level Special Session, supra note 418, para. 15.
Government”. In addition, Schulenburg stressed again that the elections will be the major test for the country’s nascent democracy. Short before the elections, the UNSC extended UNIPSIL’s mandate and authorized the Mission to perform several post-election tasks, as well as develop a transition plan and exit strategy. Shortly afterwards, UNSCR 2097 renewed the mission’s mandate for an additional twelve months, with the main focus on “facilitating political dialogue, including support to the government, particularly related to the planned constitutional review, security sector support, and strengthening of human rights institutions and their long-term sustainability”.

As requested by the UNSC, the review of the PBC’s engagement in Sierra Leone took place in the framework of a field visit by an assessment mission from the 18th to 22nd of November 2013. The Report of the PBC Assessment Mission to Sierra Leone (hereinafter PAM Report) aimed at taking stock on the progress made on peacebuilding in Sierra Leone and making recommendations for the potential role of the PBC following UNIPSIL’s withdrawal, scheduled in March 2014. It was concluded that the PBC should remain engaged with Sierra Leone in a scaled-down manner which reflects "both the steady progress made to date and the expected level of international assistance ahead". According to the PAM Report, several indicators suggested that modifying the PBC’s engagement would be warranted. Firstly, the third PRSP, the Agenda for Prosperity, addressed mainly long-term development challenges with an overall objective to achieve a middle-income country status by 2035. The shift in the GoSL’s focus

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427 UN Security Council, Report of the 6739th Meeting of the Security Council on the situation of Sierra Leone, S/PV.6739, 22 March 2012, p. 3. Address of Mr. von der Schulenburg
431 Ibid. Executive Summary (f) and para. 30.
432 Ibid. para. 30.
from peacebuilding objectives to development goals, confirmed that Sierra Leone is ready to complete the peace consolidation phase. Secondly, an important indicator for the acknowledgment of the country’s stability was the UNSC’s decision to withdraw UNIPSIL, and delegate assistance in the key peacebuilding areas to the remaining UN agencies under the umbrella of the Resident Coordinator-led UNCT. Finally, in addition to the UN actors who were willing to strengthen their peacebuilding capacities, resident international partners intended either to extend their existing commitments, or expand their support in relevant areas.\footnote{PAM Report \textit{supra} note 430, para 30.}

Despite these factors, the \textit{PAM Report} stated that "a general consensus emerged from national, international and UN interlocutors that there is merit in the Peacebuilding Commission remaining engaged"\footnote{Ibid. para. 31.} in Sierra Leone. As recommended, the PBC’s scaled-down role would be performed with a different level of emphasis on its core functions. "The Commission could thus continue to serve as a forum for sustaining international attention, including through pointing to emerging needs and challenges as required"\footnote{Ibid. para. 33.} and engage in alignment with the national priorities of the \textit{Agenda of Prosperity} in the areas of governance and public sector reform, gender and women’s empowerment, managing natural resources, and the cross-cutting priority of youth employment and empowerment.\footnote{Ibid. para. 38.} Consequently, the Assessment Mission envisaged the PBC as a political accompaniment with a role in monitoring the progress on the ground, and responding to requests for support if required\footnote{Ibid. para. 39.}.

The UN’s transition process began with the gradual transfer of UNIPSIL’s residual responsibilities to the relevant UN agencies in 2013. The lead UN actors scaled up their activities and programming, particularly, the UNDP broadened its field of actions through deploying advisors in peacebuilding related areas.\footnote{Ibid. para. 3.} The key UNIPSIL tasks of advocacy, and the coordination among the UN, national, and international stakeholders were delegated to the UN Resident Coordinator. In the
framework of the successor Resident Coordinator System\textsuperscript{440}, the UNCT aligned its support with the objectives of the national development agenda, the \textit{Agenda for Prosperity}. In addition to the UNCT presence on the ground, as proposed by the Assessment Mission in 2013, the PBC remained engaged with Sierra Leone through informal configuration meetings, held on request of the GoSL or other international CSC members. As requested by the UNSC, the Commission continued to mobilize funds for the third PRSP and support the coordination of international development efforts in Sierra Leone.\textsuperscript{441} The PBC’s advocacy efforts focused on emphasising three peacebuilding-related operational aspects: raising awareness for the continuous engagement of the international community in respect of the peacebuilding needs and political activities in Sierra Leone following the transition to a development-oriented assistance\textsuperscript{442}; encouraging the international partners to consider the \textit{Agenda for Prosperity} as the primary document which guides all external assistance and national development efforts\textsuperscript{443}; as well as sensitizing and engaging key partners to fill the financial gap and respond to the \textit{“need for investments in building of critical state institutions”}\textsuperscript{444} during and after the downgrade of mandated missions. The 2014 Ebola outbreak in West-Africa required, however, that the PBC reconfigures its low-scale engagement with Sierra Leone. As a reaction to the Ebola crisis, the Commission strengthened the cooperation with the World Bank and other international actors involved in the crisis response, and focused on the effects of the epidemic on state fragility, social cohesion, and political institutions.\textsuperscript{445} In this connection, the PBC offered a platform for discussions and information-sharing

\begin{footnotesize}
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\item \textsuperscript{440} United Nations Integrated Peacebuilding Office and the United Nations Country Team Sierra Leone (2012), \textit{Transitional Joint Vision for Sierra Leone of the United Nations Family (2013-2014)}, available at: \texttt{<http://www.undp.org>}. (last accessed on 10 January 2017); The document defines the Resident Coordinator System as the routine coordination mechanism that the UN family in all countries that are without a special Security Council mandate. p.7.
\item \textsuperscript{441} Organizational Committee, Report of the Peacebuilding Commission on its sixth session, A/67/715-S/2013/63, 29 January 2013, para. 15.
\item \textsuperscript{443} Ibid. para. 18.
\item \textsuperscript{444} Organizational Committee, Report of the Peacebuilding Commission on its eighth session, A/69/818-S/2015/174, 11 March 2015, para. 47; According to the Report capacity-building efforts \textit{“will include support for the development of national capacity to generate domestic resources and to curb illicit financial flows and for the creation of a legal and economic infrastructure for private sector growth”}. Ibid.
\item \textsuperscript{445} Ibid. para. 19.
\end{itemize}
\end{footnotesize}
among Ebola-affected agenda countries, the UN and further international partners.\textsuperscript{446} The 2015 Annual Report on the PBC stated that “the Commission’s discussions highlighted the ways in which the Ebola outbreak has exposed ongoing State fragility and the weaknesses of governance structures despite the important investments made in institution-building in Guinea, Liberia and Sierra Leone over the past decade”.\textsuperscript{447} The PBC responded to these concerns through monitoring the recovery efforts in Sierra Leone, releasing several statements on the potential impact of the Ebola crisis on institutions and political stability, and convened a number of informal meetings.\textsuperscript{448} The WHO declared Sierra Leone Ebola-free in November 2015. Although in the first quarter of 2015, a review was envisaged to determine the appropriate timing for Sierra Leone’s exit from the PBC’s agenda, the discussion of the exit process has been postponed and the engagement has been adjusted to the recently emerged needs of the country.\textsuperscript{449} As it was highlighted at the informal expert-level meeting on Sierra Leone in May 2016, the PBC’s continued engagement in providing policy advice and enhancing coordination among the relevant actors remains an important contribution for addressing the peace consolidation-related challenges that were revealed by the Ebola-crisis.\textsuperscript{450}

VI. Lessons learned from the peacebuilding process in Sierra Leone

Through the adoption of the \textit{Transitional Joint Vision} strategy in 2013, the UN acknowledged Sierra Leone’s transition process “from being in a ‘post-conflict situation’ under a UN Security Council mandate, to that of a routine, long-term developmental trajectory”.\textsuperscript{451} With the withdrawal of UNIPSIL, a reference to the root causes of conflict disappeared from the reform agendas, which have now become oriented around traditional development objectives. While in the third

\textsuperscript{446} Ibid. para. 62.
\textsuperscript{447} Ibid. para. 60.
\textsuperscript{448} Ibid. para. 57.
\textsuperscript{449} Ibid. para. 47.
\textsuperscript{450} Organizational Committee, Report of the Peacebuilding Commission on its ninth session, A/70/714-S/2016/115, 4 February 2016, para. 29.
PRSP the GoSL acknowledged that the processes of "post-conflict recovery and peace-building have re-established the conditions for resumed economic growth and social development"\(^{452}\), the 2015 UNDAF addressed the diverse "root and underlying causes that accounted for under-achievement in many developmental targets".\(^ {453}\) The latest UNDAF points out that the UNSC agreed on downgrading the UN presence to a standard UNCT in Sierra Leone on the basis of progress made in achieving key political, security, and governance objectives.\(^ {454}\)

1. "Progress and Challenges"

Through maintaining stability during the 2012 elections, Sierra Leone confirmed progress in the aforementioned areas, and success in 10 years of peacebuilding. This is how the UN claims, after investing enormous efforts in the facilitation of political dialogue among the parties, and the implementation of the Joint Communiqué. The relevant UN assessments uniformly confirmed the “tremendous progress” in post-conflict recovery, peace consolidation, and democratic transition Sierra Leone has made since the end of the civil war, and acknowledged the “relative” stability in terms of both the political and security situation.\(^ {455}\) According to the UNSG’s Final Report on UNIPSIL, apart from the 2009 riots, the overall security situation in Sierra Leone has remained calm and stable.\(^ {456}\) The GoSL assessed that the interpersonal violence and risk of violent incidents have stayed low without any further cases of political violence.\(^ {457}\) Equally, the level of gun crimes has been low with no evidence that ex-combatants were any more or less likely to be involved in criminal offences than any other citizens and except for the concern of porous borders, there are no

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\(^{452}\) Agenda for Prosperity, supra note 433, p. 100.


\(^{454}\) Ibid p. 9.


\(^{456}\) Final Report on UNIPSIL, para. 27.

\(^{457}\) The Government of Sierra Leone (2013), Fragility Assessment, p.5, available at: <http://www.g7plus.org/sites/default/files/resources/Fragility-Assessment-SierraLeone.pdf> (last accessed on 21 January 2017)
cross border threats to stability deriving from the neighbouring Guinea or Liberia.\(^{458}\) Further achievements in addressing internal security threats were expected from the ongoing security sector reform with the main focus on improving human security and capacity-building, and the adoption of the National Security Policy, which covers areas of concern such as national disaster management, youth discipline, extractive industries, organized crime, and the stability of the Mano River region.\(^{459}\)

Progress in the consolidating political stability is illustrated by the establishment of the multi-party state and political pluralism. Sierra Leone demonstrated its capacity for a peaceful transfer of power through three subsequent elections, and the democratically elected Government exercises control throughout the country, supplemented with the services of the local councils.\(^{460}\) Since the end of the war, a number of independent national institutions were established and strengthened to play a critical role in safeguarding democratic governance and human rights protection.\(^{461}\) The continuous capacity-building efforts of these institutions enhanced the culture of human rights, as well as ensured, in particular, the promotion of gender and social equality, guarantee for freedom of association and opinion, and respect for freedom of religion.\(^{462}\) Although its prompt conduction was strongly recommended by the TRC, the constitutional review process was launched first in July of 2013. A referendum on adopting the new Constitution will take place in 2017 following a nation-wide validation process on its final content. In order to improve the access to justice, the GoSL launched a number of reforms and measures including the construction of new courts in the provinces and in capital, and the establishment of Backlog Courts to aid the serious backlog of cases.\(^{463}\) Efforts made to decentralize the formal justice sector through the adoption of the Local Court Act (2011) and the introduction of

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\(^{459}\) Ibid. and PAM Report supra note 430, para. 21.

\(^{460}\) Sierra Leone Fragility Assessment, supra note 457, p. 3.

\(^{461}\) These include the National Electoral Commission (NEC), Parliament, the National Commission for Democracy (NCD), the Human Rights Commission of Sierra Leone (HRCSL), the National Commission for Persons with Disabilities, the Anti-Corruption Commission (ACC), the Political Parties Registration Commission (PPRC), and the Independent Media Commission (IMC). PAM Report, supra note 430, para. 19.

\(^{462}\) Final Report on UNIPSIL, supra note 273, para 46.

Alternation Dispute Mechanisms, aimed at improving the cooperation between the formal and customary systems of justice.\textsuperscript{464}

According to the UN assessments, the stabilizing political and security situation was coupled with improving socio-economic indicators and the adoption of a legal framework regulating the extractive industry and environmental protection. While the gross domestic product (GDP) increased by 15\% in 2012, and continuous growth was estimated for the following years, the human development index (HDI) was improved by only ten places from rank 187 of 187 countries in 2000.\textsuperscript{465} The domestic revenue collection has also increased to 12.2\% of the GDP in 2012, along with a positive trajectory in poverty reduction with an estimated rate to 53\% in 2015 from 66\% in 2003.\textsuperscript{466}

Despite these achievements, the PBC Reviews and the Reports of the UNSG reported on several challenges linked to the root causes of conflict which remain to be addressed and require sustained international attention.\textsuperscript{467} The PAM Report indicated that Sierra Leone continued "to be politically divided along regional and ethnic lines"\textsuperscript{468}, which contributed to the attitude of validating the GoSL’s policies through the lens of the political and ethnical affiliation.\textsuperscript{469} Additionally, the UNSG expressed its concerns about the mutual distrust between the two main political parties, tensions generated by the intra-party disputes, and lack of cohesion in the Sierra Leonean political arena.\textsuperscript{470} In spite of the achievements in institution and capacity-building of independent organs, according to the PAM Report, the limited institutional capacity of the judiciary hinders these organs to fulfill their mandate of governance and human rights oversight.\textsuperscript{471} Inadequately trained personnel, as well as poor and insufficient infrastructure constitute the major challenges of the judiciary, coupled with a specific concern for the challenging

\begin{footnotes}
\footnotetext[464]{Sierra Leone Fragility Assessment, \textit{supra} note 457, p. 7.}
\footnotetext[465]{PAM Report, \textit{supra} note 430, para. 26.}
\footnotetext[466]{Final Report on UNIPSIL, \textit{supra} note 273, para. 30.}
\footnotetext[467]{Ibid. para. 47.}
\footnotetext[468]{PAM Report, \textit{supra} note 430, para. 16.}
\footnotetext[469]{Ibid.}
\footnotetext[470]{Final Report on UNIPSIL, \textit{supra} note 273, para 54.}
\footnotetext[471]{PAM Report, para. 19.}
\end{footnotes}
coexistence of a formal-informal justice system.\textsuperscript{472} A perception generated by the limited capacities of courts risks undermining the public confidence in key post-conflict institutions mandated to fight against corruption.\textsuperscript{473} The widespread corruption has remained a major challenge of peace consolidation in Sierra Leone.\textsuperscript{474} While the GoSL referred to corruption in the police force as an ongoing concern\textsuperscript{475}, the UN reported on corruption issues with respect, not only to the police, but also Government procurement and the delivery of basic social services.\textsuperscript{476} In the \textit{Final Report on UNIPSIL}, the UNSG urged the GoSL to address mismanagement and combat corruption in order to create an attractive investment-friendly environment.\textsuperscript{477} Despite the improving socio-economic indicators\textsuperscript{478} and an increased promotion of transparency and equal opportunities in the extractive industry, the UN assessments referred to the high poverty rate and youth unemployment as a constant challenge the population is faced with. The \textit{PAM Report} underlined that Sierra Leone has continued to lag behind most African countries in terms of ensuring social well-being, including "access to basic social services such as water and sanitation for the rural population".\textsuperscript{479} In addition to the aforementioned areas of concern, potentially sub-regional destabilizing factors, such as transnational maritime and organized crime or terrorism, pose a further challenge to the GoSL and international community. The lack of funding and capacity to counter cross-border threats, and ensure the stability of the Mano River Region, require continuous national and international efforts.

It is difficult to identify in the UN’s “progress and challenges” rhetoric the exact benchmarks which the UNSC took as reference while deciding on the withdrawal


\textsuperscript{473} PAM Report, \textit{supra} note 430, para. 19.

\textsuperscript{474} The Transparency International’s Corruption Perception Index ranked Sierra Leone 119 out of 175 countries and territories in 2013, available at: <http://www.transparency.org> (last accessed on 12 February 2017)


\textsuperscript{476} Report of the Chair’s visit to Sierra Leone (2014), \textit{supra} note 455, para. 16.

\textsuperscript{477} Final Report on UNIPSIL, \textit{supra} note 273, para. 53.

\textsuperscript{478} According to the PAM Report, in 2013, the GDP growth was estimated to be 13%. PAM Report, \textit{supra} note 430, para. 26.

\textsuperscript{479} Ibid. para. 28.
of UNIPSIL or the reconfiguration of the PBC’s engagement. The UN illustrates the progress made in the diverse peacebuilding priority areas through abstract references to political stability, nation-wide stable security situation, a strengthened culture of human rights, and improving socio-economic indicators.

Although the conduction of three post-conflict elections is considered to be an important benchmark for democracy consolidation, in Sierra Leone, the election results of 2012 further solidified the two-party Parliament of 124 members, where the ruling majority party, the APC, with 70 seats dominates over the SLPP opposition. Although the civil war in Sierra Leone was not characterized by ethnic rivalry since followers joined the RUF from all regions of the country with diverse ethnic background, the political competition between the APC’s supporter Temne and Limba groups from the northern areas, and the Mende SLPP voters from South Sierra Leone pose a potential risk to peace consolidation. Concerns on the polarization of the Sierra Leonean society along regional and ethnic lines were repeatedly pointed out by the PBC’s reviews. Since UNIPSIL played a vital role in promoting political dialogue and tolerance among the parties, as the Report of the PBC Chair stated, the opposition party SLPP “admitted to initial concerns regarding the transformation of the UN presence in Sierra Leone and scaling down of the PBC’s role. However, the party noted that the county has since made progress, that the United Nations will continue to provide support, and that Sierra Leone is increasingly well placed to consolidate peace on its own, partly due to the extensive assistance provided by UNIPSIL. The majority of the other political parties concurred that they would still expect and want support, including providing legal advice, funding, and technical assistance”. Furthermore, a need for further assistance in capacity-building was noted by the Political Parties Registration Commission, and the Anti-Corruption Commission.

The aforementioned example of contrast between the needs on the ground, and the UN’s response, raises the question of to what extent UNIPSIL’s withdrawal, and the downgrade of the PBC’s engagement serve as a benchmark for a successful peacebuilding process. The UN has continuously reported on

481 Report of the Chair’s visit to Sierra Leone (2014), supra note 455, para. 11.
482 Ibid. paras. 12. and 16.
challenges linked to the root causes of past conflict and called for sustained attention "in order to mitigate the risks of any potential relapse". While in 2007 the Framework took stock on the root causes which remain largely unaddressed, the 2013 PAM Report could confirm only minor concrete achievements in the identified areas of concern. The lack of economic opportunities, unemployment and marginalization of youth, and inadequate state capacity to deliver basic public services were the main sources of dissatisfaction prior to the conflict, and remained to be addressed through the implementation of the third PRSP and completion of the ongoing public service, justice, and security sector reforms. The Ebola crisis in 2014 revealed extensive socio-economic challenges, or even set back critical efforts aimed at poverty reduction and youth employment. The statement of the CSC Chair summarizes the UN’s understanding for future engagement with Sierra Leone after migrating from the UNSC’s agenda: "Addressing the root causes of Sierra Leone’s conflict remains a long-term issue. Combatting corruption, developing a more inclusive political system, addressing poverty as well as inequality, providing basic social services, and mitigating youth unemployment represent generational challenges. They also require steady change in Sierra Leone’s political and social culture. It is essential that the development assistance provided after UNIPSIL’s withdrawal continues to support national efforts to overcome these challenges".

2. Lessons drawn from the UN’s performance

In the 2014 Final Report on UNIPSIL, the UNSG concluded that the overall success of 15 years of successive UN peace operations in Sierra Leone is attributed to the determined attitude of a majority of Sierra Leonean citizens towards the peacebuilding process, the high-level multilateral cooperation among the UN, the host country and its people, and other regional and international partners, as well as to the innovative approaches to peacekeeping, post-conflict

483 PAM Report, supra note 430, para. 7.
485 Report of the Chair’s visit to Sierra Leone (2014), supra note 455, para. 4.
recovery, and peacebuilding. “Success” through the eyes of the UN embraces several aspects of lessons learned and best practice concerning the application of diverse conflict management approaches and instruments.

An important lesson can be drawn from the UN’s peacekeeping performance which reflects on ambiguities towards the division of responsibilities and the operational framework of co-deployment with regional organizations. Although ECOWAS repeatedly requested the UN to provide support for ECOMOG, through the deployment of UNOMSIL, the UNSC provided only an inappropriate and dissatisfactory response. Since a joint UN-ECOWAS peacekeeping mission was envisaged by the Lomé Agreement, ECOWAS hoped that the formal cooperation with the UN would aid the resource constraints the organization had to tackle to ensure ECOMOG’s prolonged deployment. The UN, however, failed to provide financial and logistical support which resulted in the partial withdrawal of ECOMOG forces including the full drawback of Nigerian troops and the inability of remaining UN peacekeepers to implement the DDR programme and sustain the fragile stability offered through the hard-earned Lomé Agreement. The UNAMSIL-ECOMOG fiasco illustrated the poor capacities of sub-regional organizations to offer significant financial contributions to joint peacekeeping missions, and the inability of the UN to ensure a complementary partnership through providing a flexible response to the needs in diverse context-specific conflict situations.

The UN’s performance was characterized not only by the imbalances in financial support and inadequate strength of the peacekeeping mission to the situation in Sierra Leone back in 1998-2000, but also by its passivity in responding to matters of the use of force by international actors taken place in the course of conflict. The case of ECOMOG’s offensive to end the rule of the AFRC military junta and restore the democratic Kabbah Government represented significant differences in the operational approach and principles between the UN and ECOWAS. Unlike the UN practice in peacekeeping, ECOWAS deployed in Sierra Leone before the adoption of a peace agreement and played an active role in

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486 Final Report on UNIPSIL, supra note 273, para. 51.
creating the conditions for the negotiations. In the case of the Conakry Peace Plan, ECOWAS acted as one of the singing parties pursuant to its mandate "to implement proposals for the resolution of the Sierra Leone crisis". While active peacemaking was in line with the UN’s objectives, ECOMOG’s preemptive action to oust the junta before the six-month implementation period of the peace plan ended violated the rules of Chapter VII of the UN Charter. The UN’s silence appeared to be dissatisfactory considering the OAU’s ex post facto “blessing” on the Nigeria-led intervention. Although the UNSC condemned the AFRC coup, the presidential statement, issued following the ECOMOG intervention, failed to comment on Nigeria’s role in the use of force without former authorization. The UN encountered the same stalemate with respect to the UK-led Operation Palliser which was implemented outside the UN command. Both examples illustrated the UN’s ineffectiveness to enforce the legal norms regulating the legitimacy of the use of force and maintain its image as “the primary custodian of international peace and security”. On the one hand, ECOWAS represented an African regional organization, which takes confident actions to restore security in its Member States in crisis situations even if it requires military measures. On the other hand, the UK operations in Sierra Leone, outside of the UN umbrella, are considered to be examples of the reluctance of Western States to deploy their forces as UN peacekeepers. This practice is heavily opposed by the main troop providers from Africa and Southern Asia, and provides a continued source of tension in matters of UN peacekeeping.

Nevertheless, the UK support in Sierra Leone enabled UNAMSIL to recover from the collapse of the UN-ECOWAS partnership and transform into an effective peacekeeping force. Once UNAMSIL was equipped to successfully implement its mixed peacekeeping-peacebuilding mandate, based on the lessons learned from the impact of ECOMOG’s abrupt withdrawal without a viable exit strategy, a great value was placed on the smooth transition in the deployment of successive UN missions. UNAMSIL’s achievements in the disarmament and demobilization, as well as the successful holding of elections, paved the way for the UN operational...

489 See Preamble of ECOWAS Six-Month Plan for Sierra Leone 23 October 1997-22 April 1998 (Conakry Accord, 23 October 1997), supra note 303.
490 Bah, supra note 302, p. 107.
491 Ibid.
best practice in Sierra Leonean peace consolidation phase. While UNIOSIL was mandated to assist the GoSL in consolidating the results of UNAMSIL’s presence and addressing the root causes of conflict, the Mission’s conversion into an Integrated Peacebuilding Support Office reflected on a strong UN focus on peacebuilding, put into practice through an innovative institutional framework. The 2015 Review of the UN Peacebuilding Architecture specified several notable features which were included in UNIPSIL’s establishing resolution. Accordingly, UNSCR 1829 reaffirmed the primary responsibility of the GoSL for peacebuilding, security, and long-term development, and defined the Mission’s functions as a mix of classical peacebuilding tasks and a strong political mandate. The establishment of the fully integrated office served the objective “to deliver as one United Nations on the ground” through the “coordination of strategy and programmes throughout the entire United Nations family”.492 Furthermore, the Council extended the mandate of the Integrated Office with the function to coordinate with, and support the PBC’s work and the implementation of the Framework and PBF-funded projects. The 2015 Review referred to the intensive collaboration between the Security Council and the Peacebuilding Commission as a unique feature of the UN’s engagement with Sierra Leone. This collaboration reflected in the active role taken by the Sierra Leone configuration’s chair in advising the UNSC on the establishment of UNIPSIL.493 The advisory function was repeatedly performed by all configuration chairmen who had participated in thematic debates on post-conflict peacebuilding and regularly addressed the UNSC at formal meetings on the situation of Sierra Leone, in particular, during its consideration of the periodic Reports of the Secretary-General on UNIOSIL or UNIPSIL. The Council, on the other hand, has consistently referred to the PBC’s engagement in its resolutions on the matters of Sierra Leone.494

493 First Progress Report, supra note 381, para. 43.
494 These references promoted the Framework and its determined priority areas, emphasized the need for active support to the PBC’s actions, and encouraged the GoSL to continue its close engagement with the Commission, as well as implement the recommendations of the bi-annual reviews. See Security Council Resolution 1829 (2008) S/RES/1829, para. 6; While UNSCR 2065 requested the PBC to review of its engagement with Sierra Leone, UNSCR 2097 called for continued efforts for mobilizing resources for the Agenda for Prosperity, and the elaboration of an exit strategy. See supra notes 428-429.
Although the 2015 Review emphasized the strong collaboration between the UNSC and the PBC on the matters of Sierra Leone as operational best practice, according to the general experience, the interaction between these UN organs has been limited. The origin of the problem appears to be the Council’s missing convincement that the PBC’s advice could provide much added value.\textsuperscript{495} In fact, since its establishment, the PBC’s biggest challenge has been to convincingly demonstrate the advantages of its engagement towards the UN organs and the international peacebuilding actors. In the case of Sierra Leone, the PBC welcomed that the UNSC entrusted it with continued resource mobilization tasks despite its mixed record in fulfilling this function. The 2013 Annual Report pointed out that "it is increasingly noted that the Commission was designed for and is well placed to provide sustained attention and political accompaniment for countries on its agenda, beyond the span of attention of other actors. The intergovernmental and representative nature of the Commission confers a degree of legitimacy on its political engagement at the country level".\textsuperscript{496} The PBC performed its mandate for political accompaniment through promoting dialogue on the mutually agreed peacebuilding priorities with national counterparts and performing various functions in the fields of resource mobilization, advocacy, and coordination.\textsuperscript{497} Since Sierra Leone was one of the first countries on the Commission’s agenda, the PBC was challenged to translate its mandate into operational practice, and effectively fulfill its country-specific commitments while undergoing the process of self-identification and institutional learning.\textsuperscript{498} Consequently, the PBC’s performance in Sierra Leone has been rich in insight.

\textbf{3. Strengths and weaknesses of the PBC’s initial practice}

To the date of the referral to the PBC, Sierra Leone had already entered the late peace consolidation phase and the GoSL was engaged with implementing the numerous national strategies supported by diverse donors, partnerships, and programmes. It raised the question of how an engagement with the PBC would

\textsuperscript{495} 2010 Review, \textit{supra} note 169, para. 105. \\
\textsuperscript{496} Organizational Committee, Report of the Peacebuilding Commission on its sixth session (2013), \textit{supra} note 441, para. 22. \\
\textsuperscript{497} Ibid. \\
\textsuperscript{498} Iro, \textit{supra} note 295, p. 17.
differ from the traditional donor-recipient relationships, how the PBC’s integrated strategic framework would vary from the existing peacebuilding agendas, and how it could aid constraints in their implementation. While the Framework set out to address the underlying causes of past conflict, from the part of the GoSL, defining the priority areas appeared to be next in a series of often repeated formal recognitions of challenges in the political, socio-economic, and security sectors. Critique was addressed at the limited inclusion of civil society representatives in the development of the peacebuilding strategy. The PBC’s civil society engagement, in the case of Sierra Leone, was perceived to be Freetown-centric which raised two specific concerns. On the one hand, it resulted in an information deficit on the PBC’s work in the rural areas and risked aggravating the pre-war division between the grassroots communities of the provinces and the capital-based urban social class. On the other hand, the PBC lacked an overview on the people’s needs and concerns outside Freetown. The final Framework included classic peacebuilding priorities, complemented with the irregular prioritization of the energy sector support. It remains a disputable issue whether the energy sector development constitutes a feasible objective for peacebuilding efforts. Including the energy sector development in the Framework requested by the newly elected Government illustrated the lack of consensus among stakeholders about the exact notion behind the concept of peacebuilding. Through the incorporation of energy sector support, the PBC showed flexibility towards a wide interpretation of the catalogue of conflict causes and acknowledged “that an economic risk can pose as significant a threat to peace as security or political risks and that all these risks are deeply

500 Ibid. p. 12.
502 Iro, supra note 295, p. 61.
A strategic review on the PBC’s performance suggested that the energy issue provided an opportunity for the PBC to support the new Sierra Leonean Government to demonstrate its leadership abilities and generate pressure among donors to assist the GoSL in holding its promise of restoring energy supply in Freetown. According to the opposing view, the Framework’s primary functions were to link existing peacebuilding strategies under a common umbrella, and ensure their implementation through the accomplishment of the mutually agreed commitments. Consequently, through promoting the GoSL’s narrow focus on development priorities, the PBC and the PBF risked neglecting important peacebuilding focus areas such as reconciliation.

Another characteristic of the PBC’s early operational practice was the vague and limited articulation of both the mutual commitments and the findings of the bi-annual reviews on the Framework’s implementation. As a matter of fact, it is difficult to translate the Framework into concrete actions. The document failed to explain the commitments in more detail than general indications such as calling the GoSL for providing "additional support for the work of the Human Rights Commission” or consolidating “democratic governance by strengthening governance institutions”. It was similarly undefined what specific actions were understood behind the “support” the PBC committed itself to provide in each priority area, among others, for the work of the Special Court for Sierra Leone or the capacity-building of the Sierra Leonean Parliament. While the bi-annual reviews aimed at monitoring and evaluating the progress on the Framework’s implementation, and proposing corrective actions, the language of the Progress Reports remained vague and revealed limited information on the concrete achievements the parties obtained during six-months of engagement. Instead, the matrix on the implementation of the PBC’s commitments referred to the relevant CSC members who were active or increased their support in the five priority areas. As Richard Ponzio summarized, the Sierra Leone Progress Reports "have reflected a low level of rigor, in terms of data gathering, analysis, and

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503 CIC-IPI, Taking Stock, Looking Forward, supra note 501, para. 29.
504 Ibid. para. 30.
505 Ibid. para. 295, p. 61.
506 Bah, supra note 302, p. 305.
507 Framework, para. 25.
reporting, as well as the effective use of benchmarks and indicators for assessing progress and ensuring accountability.”

It has remained unclear how the Framework would have served as an instrument to ensure the commitment to tackle political will and governance related implementation deficits of existing peacebuilding strategies. According to several studies, the PBC’s greatest potential for added value would have been the facilitation of political consensus, both within Sierra Leone, and between the country and its international partners to overcome the obstacles of peace consolidation. Nevertheless, in 2008, the PBC could only very limitedly exploit its capabilities to address “difficult political sticking points” in the Sierra Leonean peacebuilding process. Although the new Koroma Government obtained prompt progress in implementing several governance-related commitments, by strengthening the anti-corruption strategy and the National Human Rights Commission, or adopting a new justice sector reform and investment plan, it is difficult to identify to what extent the PBC contributed to the revitalization of the national political processes. The PBC showed limited capacities to live up to the expectations towards facilitating an inclusive national dialogue between the GoSL and the Sierra Leonean population on addressing the root causes of conflict, or urging the implementation of the TRC recommendations through the underexploited monitoring and review process, or limited number of field visits.

Once the national PRSP, the Agenda for Change, replaced the Framework, the reconfiguration reduced frustration towards the PBC on duplicating the existing strategies, and dissolved the administrative burden of monitoring and implementing the mutual commitments. The approach of operating on the basis of a single strategy document aimed at linking the international support behind nationally determined priorities while promoting national ownership for the peacebuilding process. According to the PBC, the alignment of its engagement with the second PRSP successfully ensured coherence among

510 Mollet et al., supra note 501, p. 36.
511 2010 Review, supra note 169, para. 38.
international peacebuilding actors. The 2011 Annual Report stated "the Commission has de facto elevated the Agenda, making it the central peace and development framework of the international community as a whole". Consequently "the United Nations family, the World Bank and other international partners have tailored their programmes in line with the Agenda and coordinated their activities to avoid any duplication". The PBC upheld the monitoring mechanism of the bi-annual meetings to review progress made in the implementation of the peacebuilding elements of the Agenda for Change. While neither the summaries of the formal meetings, nor the reviews of the Outcome Document provided a comprehensive analysis of the progress on the peacebuilding process on the ground in 2009, it improved the monitoring and accountability deficit of the PBC’s practice so that the GoSL fulfilled its request to submit, jointly with UNIPSIL, yearly progress reports on the PRSP’s implementation. According to the PBC "the report represented an innovation in terms of both content and process; it provided the information necessary to assess all stakeholders’ contributions to the implementation of the Agenda and was prepared in a collaborative manner".

The key expectation towards the PBC’s engagement with Sierra Leone has been a successful performance of its resource mobilization function. In this regard, ensuring complementarity between the PBC and the PBF during their first years of operation represented an unexpected challenge. In the case of Sierra Leone, the allocation of $35 million in PBF funds took place prior to the adoption of the Framework which generated confusion among the peacebuilding actors regarding the functions of the newly established UN-organs. The PBC’s mandate for mobilizing additional resources for the peacebuilding process in the agenda countries became compounded with the PBF’s financial assistance which serves to address "immediate needs in countries emerging of conflict" and aims at bridging the funding gap before donor conferences or multi-donor trust funds.

512 Report of the Peacebuilding Commission on its fourth session, supra note 420, para. 40.
513 Ibid.
514 Outcome Document, supra note 410, p. 4.
515 Ibid. para. 15.
516 Report of the Peacebuilding Commission on its fourth session, para. 38.
517 Mollet et al., supra note 501, p. 34.
provide financial assistance for post-conflict efforts. On the one hand, the reversed sequencing of the allocation and disbursement of the PBF funds and the negotiations of the Framework limited the PBC’s ability to generate political commitment and encourage progress in its implementation. On the other hand, "it seemed that the PBF money was intended as supplementary donor funding to support existing national priorities." The Report of the Final Evaluation of the PBF Programme in Sierra Leone indicated that the $35 million, and an additional $2 million in emergency assistance, were to fund five priority areas identified by the GoSL. Although the funded areas were mainly identical to the Framework’s priority sectors, the Report confirmed that, due to the pressure to start the first operation as soon as possible, the PBF’s Sierra Leone Programme was launched prior to the drafting of the PBF strategic instrument, the Peacebuilding Priority Plan (PPP) and without a comprehensive conflict analysis. While the evaluation emphasized the PBF’s relevant and significant contributions to the Sierra Leonean peacebuilding process, it admitted that the lack of conflict analysis resulted in missed opportunities to fund projects in several important areas such as the management of natural resources or land tenure.

The PBC Mission to Sierra Leone in 2007 confirmed the limited awareness in Freetown about the separate functions of the PBC and PBF, and the disproportionate focus of stakeholders on the disbursement of the PBF funds at the expense of the political dialogue. In its first years of operation, the Commission was faced with the challenge to demonstrate the difference between the PBF’s financial assistance and its resource mobilization function. In the case of the Sierra Leone configuration, apart from the $37 million in PBF funds, the results of the PBC’s advocacy efforts for mobilizing donor support are ambiguous. On the one hand, the PBF stated that until the closure of its Programme in Sierra Leone

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518 Arrangements for the revision of the terms of reference for the Peacebuilding Fund, Report of the Secretary-General, supra note 183, para 2.3
519 Mollet et al., supra note 501, p. 38.
521 Ibid.
522 Ibid.
Leone, the PBC failed to mobilize any additional funding for the GoSL’s peacebuilding efforts. On the other hand, as the first Joint Progress Report on the Agenda for Change confirmed, Sierra Leone’s traditional development partners, who are at the same time members of the CSC, has been provided steady support since the end of the civil war. It is difficult to determine to what extent their support is attributable to the Commission’s resource-mobilization efforts. Several annual reports noted that “the engagement of the Commission has resulted in sustained and heightened international attention being devoted to Sierra Leone and has helped in coordinating donor support.” According to figures provided by the annual reports, several traditional and non-traditional donors responded to the PBC’s advocacy activities. The results included investments of the CSC members in the areas of youth employment and energy, such as the three-year project of Joint Response to Youth Employment in Sierra Leone (2010-2012) funded by the World Bank, the German Agency for International Cooperation (GIZ), and the UN Family with $46 million, $45 million donation from the PBF, and further modest contributions received for the Multi-Donor Trust Fund for Sierra Leone, or for the implementation of the Joint Vision. As the 2012 Annual Report pointed out, “contributions indirectly derived from the success of the Commission in keeping the attention of the international community on Sierra Leone well after the end of the conflict remain difficult to assess” notwithstanding that the country “enjoyed a level of financial support from traditional and non-traditional donors”.

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527 Report of the Peacebuilding Commission on its fourth session, supra note 420, para. 47; and Report of the Peacebuilding Commission on its fifth session, supra note 419, para. 40.
529 Indication about approximately $10 million financial contribution received by the multi-donor trust fund See Report of the Peacebuilding Commission on its fourth session, supra note 420, para 39; The Second Joint Progress Report on the on the Agenda for Change reported $391,469,749.00 financial aid that was disbursed by Donor Agencies in 2010, See, Annex B, p. 90, supra note 458.
support above the average level of assistance to post-conflict countries.” The relevant assessments have been rather skeptical instead of acknowledging. The PBC faced criticism on its mixed record in resource mobilization from the side of the GoSL and the 2010 Review of the UN Peacebuilding Architecture as well.

Although the PBC’s performance in the framework of one of its CSCs has had certain shortcomings, the young organ also demonstrated adaptability to adjust its engagement to the specific needs and developments on the ground. Firstly, after pursuing the approach to base its partnership with Sierra Leone on the organization-specific IPBS, the Commission showed flexibility to recall the Framework and align its efforts with the agenda of the newly-adopted national PRSP. The PBC was willing to “deframe” the objectives of the Framework, and link them to the peacebuilding-related priorities of the Agenda for Change. It contributed, on the one hand, to the maintenance of sustained attention on the peacebuilding process while, on the other hand, promoted of the “One Vision, One Plan” approach, through which the national strategy serves as a blueprint for all international assistance. Secondly, the Commission intensively performed its advisory function while accompanying Sierra Leone’s migration from the phase of peace consolidation to development, as well as the transformation of the UN presence on the ground. The PBC argued for adopting an approach which responds to the need for sustained support for funding and technical capacity gaps, as well as for an inclusive political process following the drawdown and withdrawal of UNSC mandated missions. The PBC’s policy advice warned on the risks of overemphasizing the gains of short to medium-term peacebuilding efforts as it stated: "While a decrease in attention from the Council could be seen as a sign of positive developments in a post-conflict country, the development of sustainable national capacities and resources is a long-term process that requires clear commitment from national stakeholders, strong national leadership and

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530 Report of the Peacebuilding Commission on its fifth session, supra note 419, para. 40.
531 UN Security Council, Record of the 6805th Meeting of the Security Council on post-conflict peacebuilding, S/PV.6805 (Resumption 1), 12 July 2012, Address of Mr. Kamara (Sierra Leone), p. 10; and 2010 Review, supra note 169, p. 10.
532 New Deal for Engagement in Fragile States, supra note 117.
Finally, the PBC showed operational best practice in engaging in the Ebola crisis response through the application of innovative working methods. The Commission acknowledged that a contribution to emergency medical and public health response fell outside its competence, thus, it provided support through utilizing its strength in political accompany. The joint efforts of the Guinea, Liberia, and Sierra Leone Configurations aimed at monitoring and drawing attention to the peacebuilding-related impact of the epidemic, and providing an intergovernmental platform to discuss strategies for a long-term response to the Ebola-outbreak. This flexibility in approach enabled the Commission to fulfill the objectives of its scaled-down role characterized by lighter engagement but responsive activities to the emerging needs of the GoSL. The Commission’s political accompany and awareness-raising on peacebuilding-related issues, in this case, sufficiently complemented by the PBF though reprogramming its three ongoing projects in Sierra Leone to fill funding gaps for addressing the peacebuilding relevant dimensions of the crisis.

VII. Conclusion

Although today traditional development goals dominate in the national reform agenda of Sierra Leone, the peacebuilding process appears to be far from completed. The Ebola-outbreak revealed continued challenges in peace consolidation which remains to be addressed by the GoSL, dependent on the support of the international community. While the international assistance supported "the promotion of constitutional democracy and human rights, civilian control of security forces, liberalization of the national economy, civic peacebuilding and the enforcement of the rule of law", the peacebuilding efforts achieved limited results in sustainable employment generation, poverty-reduction, erasing pre-war social tensions, and ensuring transparency and accountability of the political elite. As it is illustrated by the aforementioned

534 Ibid.
536 Ibid.
lessons drawn from the performance of the diverse UN actors, their operation represents, in this case, best practice of “institutional learning”\textsuperscript{538} rather than a success story of peacebuilding. The UN has been involved in Sierra Leone through a continuous and innovative engagement which encompassed the deployment and timely transition of successive missions, and introduced the first practical attempts for the simultaneous application of diverse conflict management mechanisms through UNAMSIL and the integrated peacebuilding approach combined with a political mandate through actions of UNIPSIL and the PBC. As far as the PBC is concerned, the “young” organ still faces challenges in developing institutional strength to successfully put its main instrument, the integrated peacebuilding strategy, and in particular the principle of mutual accountability into practice.

\textbf{D. Multilateral peacebuilding in practice, the case of Kosovo}

Ongoing since 1999, the peacebuilding process in Kosovo has been supported by the most comprehensive engagement of the UN and its international partners. The Kosovo conflict and its aftermath, represent a case of \textit{sui generis} with regard to international conflict management coupled with several debated aspects which have polarized the international community and challenged the legal scholarship. Hence, the case of Kosovo offers a holistic overview of the challenges of the peacebuilding practice, the compatibility of peacebuilding objectives with political interests in the international diplomatic arena, and the diverse strategies of main peacebuilding actors.

\textbf{I. Background}

Kosovo represents equally an important area for history and self-identification for both Serbians and Albanians. While the territory of 11,000 km\textsuperscript{2} has been inhabited by an ethnic Albanian majority, who consider themselves the indigenous population of the region, the province functioned as a center for medieval Serbia and has hosted the major Serbian-Orthodox monasteries and

\textsuperscript{538} Iro, \textit{supra} note 295, p. 17.
the site of their victorious 1389 Battle of Kosovo Polje against the Ottoman Empire. Under the rule of the socialist leader Josip Broz Tito (1945-1980), Kosovo enjoyed an autonomous status within Serbia, one of six republics of the Socialist Federal Republic of Yugoslavia, and Albanians were recognized as a national minority with guaranteed rights to education on their mother tongue. The Constitution of 1974 enhanced the province’s level of autonomy by recognizing its own legislative assembly, judiciary, central bank, and security forces. Nevertheless, with the death of Tito in 1980, the multi-ethnic Yugoslavia lost the central figure who managed to balance the diverse nationalist ambitions and sustain stability. After 1980, aspirations for Kosovo’s recognition as an independent republic of Yugoslavia raised tensions between Albanians and the Serbian minority in the region. As a response, in 1986, Kosovo Serbs issued a public memorandum which called for the restoration of Belgrade’s authority over the province.

Through utilizing Serbian nationalist efforts in favor of his political ambitions, Slobodan Milosevic became the leader of the Socialist Party and in 1989 the President of Serbia. In order to suppress the separatist pretensions and regain control over Kosovo, Milosevic launched a discriminatory politic against ethnic Albanians. Following the adoption of several laws which gradually diminished the province’s autonomy, its autonomous status was ultimately revoked by the new Serbian constitution in 1990. Re-imposing Belgrade’s direct rule over Kosovo was only the first step in Milosevic’s vision “to unite all Serbs under one state and form ‘Greater Serbia’”. According to Louis Sell, Milosevic was determined to create a separate Serbian state even by using armed force despite "the full knowledge that this would cause the disintegration of Yugoslavia and war".

539 Wierse, supra note 97, p. 18.
541 Ibid. p. 25.
542 Wierse, supra note 97, p. 20.
543 Dziedzic and Kishinchand, supra note 540, p. 25.
In the early 1990s the Kosovo Albanian responded to the oppressive Serbian politics through establishing a parallel political and educational system under the “presidency” of Ibrahim Rugova. Nevertheless, the Rugova-led non-violent resistance against the ethic discrimination received limited international attention. As the Dayton Peace Agreement put an end to the Bosnian War (1992-1995) without addressing Kosovo’s status, the Kosovo Albanian tended to increasingly make a stand in violent manner. This radicalization led to the formation of the Kosovo Liberation Army (KLA) which conducted systematic attacks against Serbian police and governmental institutions. As Milosevic responded through launching a military offensive in early 1998, the situation evolved into a humanitarian catastrophe causing the exodus of more than 300,000 Kosovo-Albanian refugees.

The aggravated conflict claimed the increased attention of the international community. In March 1998, the UNSC imposed an arms embargo on Yugoslavia by Resolution 1160, which was to remain in effect until a “meaningful dialogue” on Kosovo’s status between Belgrade and the Pristina can take place. When Milosevic reinforced his troop strength in Kosovo instead of seeking a diplomatic solution, NATO announced its considerations to take military actions in order to prevent further violence. Any request by NATO from the UNSC for an authorization of the use of force was faced, however, with the certainty that Serbia-ally Russia would veto such a decision. Although the subsequent UNSC resolution on the situation in Kosovo was adopted under Chapter VII, the Council called only for an immediate cease-fire, the withdrawal of the Serbian forces monitored by an international mission, and a negotiated political solution without an explicit authorization of a military intervention. The compromise-oriented Resolution put NATO’s credibility at stake. Consequently, in October 1998, NATO

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545 The elected parliament has never met and the “Republic of Kosovo” was recognized only by Albania. See Weidemann, supra note 247, p. 100.
548 Security Council Resolution 1199 (1998) on the situation in Kosovo, S/RES/1199, 23 September 1998; According to para. 16, the UNSC decided “to consider further action and additional measures to maintain or restore peace and stability in the region” in case of noncompliance with the provisions.
issued an activation order (ACTORD) on the authorization of an air campaign.\textsuperscript{549} Under the pressure posed by the ACTORD, Milosevic accepted the deployment of international presence to verify compliance with UNSCR 1199, performed by the OSCE-led Kosovo Verification Mission (KVM), with the support of NATO’s reconnaissance aircraft.\textsuperscript{550} Nevertheless, international monitoring proved to be an ineffective method for the resolution of the Kosovo crisis. The Mission failed to deter either the KLA to regain lost territories, or the Serbian forces to launch renewed attacks on civilians.\textsuperscript{551} After the massacre of more than forty ethnic Albanians at Racak on the 19th of January 1999, the KVM declared the collapse of ceasefire.

As a result of the incident of Racak, the international peacemaking efforts took their course. Resulting from the international pressure posed by the Balkans Contact Group\textsuperscript{552} Serbian and Kosovo Albanian leaders attended the Rambouillet peace talks in February. The proposal of the U.S., EU, and Russian mediators included provisions on the disarmament of the KLA within the next 3 months, the withdrawal of the Serbian security forces, and the restoration of Kosovo’s autonomous self-governance. Although the Kosovo-Albanian delegation signed the proposal on the 18th of March, the Serbian representatives refused to do so, instead, Milosevic launched an offensive against the KLA.\textsuperscript{553} Consequently, NATO began the Operation Allied Force air campaign with the aim of halting “the humanitarian catastrophe unfolding in Kosovo”.\textsuperscript{554}

Despite the expectations of a prompt capitulation of the Serbian military, the operation lasted until June of 1999. From a legal point of view, NATO’s military intervention in the Kosovo crisis without the approval of the UNSC violated the rules of international law on the prohibition of the use of force. The leaders of NATO Member States argued during the course of the air strikes that the main goal of their military actions was to stop the human tragedy. President Clinton

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\textsuperscript{549} Dziedzic and Kishinchand, supra note 540, p. 27.\\
\textsuperscript{550} The Kosovo Verification Mission was established on 25 October 1998 by the Decision No. 263 of the Organization for Security and Co-operation in Europe’s Permanent Council, PC.DEC/263.\\
\textsuperscript{551} Dziedzic and Kishinchand, supra note 540, p. 27.\\
\textsuperscript{552} The Balkan Contact Group included France, Germany, Italy, Russia, the U.S., and the UK.\\
\textsuperscript{553} Weidemann, supra note 247, p. 102.\\
\textsuperscript{554} NATO, On the Kosovo Air Campaign, available at: <http://www.nato.int/cps/en/natohq/topics_49602.htm> (last accessed on 11 February 2017)
\end{flushright}
articulated the U.S. position on humanitarian intervention by stating "if somebody comes after innocent civilians and tries to kill them en masse because of their race, their ethnic background or their religion, and it’s within our power to stop it, we will stop it".\textsuperscript{555} UK Foreign Secretary Robin Cook outlined similar arguments, combined with ambitions to preserve NATO’s credibility. He emphasized, that "[t]he first reason why we took action was that we were aware of the atrocities that had been carried out and we had the means to intervene, but that is not the only reason. Our confidence in our peace and security depends on the credibility of NATO. Last October, NATO guaranteed the cease-fire that President Milosevic signed. He has comprehensively shattered that cease-fire. What possible credibility would NATO have next time that our security was challenged if we did not honour that guarantee? The consequences of NATO inaction would be far worse than the result of NATO action."\textsuperscript{556} Nevertheless, NATO Member’s arguments fell short in providing sufficient legal justification for an unauthorized use of force.

According to Article 2(4) UNC "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations”. The only exceptions to the norm of non-intervention in the UNC are actions authorized by the UNSC under Chapter VII, and the right to individual and collective self-defense enshrined in Article 51. A lawful exercise of the right to collective self-defense, in the case of Kosovo is excluded since it applies when an armed attack occurs against a UN member state only until the UNSC has taken the necessary measures to maintain international peace and security. The definition of self-defense lacks any reference to intra-state conflicts. As Kosovo was part of the FRY in 1999, the offensives of the Serbian security forces can hardly be equivalent to any external threat, in response to which self-defense may be legitimate. Furthermore, grounds of justification of the law of state responsibility, such as emergency aid or assistance, cannot apply


in this case either, since a duty to protect would oblige only states in relation to their own citizens within their sovereign territory. Consequently, in respect to Kosovo Albanians, NATO Member States were not subjects of such a legal obligation. The argument that the former UNSC resolutions permitted the NATO intervention, fails as well. Although the Council acted under Chapter VII when it called for a ceasefire and political solution, any further actions or additional measures were subject to consideration in case of non-compliance with the binding provisions. Even though the UNSC determined that the deterioration of the conflict in Kosovo constitutes a threat to peace and security in the region, the authorization of military measures was prevented by Russia. Finally, the emerging concept of permissible intervention on the basis of humanitarian necessity also fails to provide sufficient legal justification for the self-mandating of states and international organizations other than the UN for the use of force. Proponents of the evolving customary international law norm of humanitarian intervention, which was later enshrined in the first pillar of the “Responsibility to Protect” doctrine, refer to the provisions of the UNC and further international treaties which oblige states to respect fundamental human rights and prohibit genocide and crimes against humanity. They argue that the UNSC proved its inability in enforcing these peremptory norms by authorizing collective UN actions which influenced the formation of customary international law on an "independent right of military intervention in the affairs of other states on the purpose of protecting individuals from continuing grave violations of fundamental human rights". Examples for state practice of interventions aiming at terminating or preventing human rights violations against the population of the target state include military actions of Arab States against Israel in 1948, Belgium against the Congo in 1960 or the U.S. intervention in Grenada in 1983. Nevertheless, the evolution of a legal right to intervene into customary

international law suffers from *opinio juris* deficiency. Official pronouncements of states very rarely, if ever, relied on explicit “humanitarian intervention” justifications for their use of force.\(^{561}\) NATO Governments confined themselves in 1998-1999 to argue on the basis of "*technical and procedural issues*”, and the exceptional nature of the Kosovo crisis, instead of presenting arguments for legal defense with reference to an emerging right to humanitarian intervention.\(^{562}\)

In addition to the legality of NATO’s use of force, the effectiveness of the air campaign was also fraught with problems. While "*bombs dropped from an altitude of fifteen thousand feet*” aimed at preventing NATO aircraft loss, they produced only limited results on the ground.\(^{563}\) Air strikes alone, combined with a strategy of avoiding any military casualties, proved to be insufficient to deter Milosevic from achieving further military success and causing the displacement and exodus of around half of Kosovo’s two million ethnic Albanian population.

The international reaction on the ineffective intervention was twofold. On the one hand, NATO started developing a strategy for a ground invasion. On the other hand, on a diplomatic level, a peace plan was elaborated by the initiation of the German Government which served as a basis for the negotiations facilitated by Russian, U.S. and EU special envoys. The ten point peace plan included diverse principles regarding the withdrawal of all military, police and paramilitary forces from Kosovo, introduced the idea of the deployment of international civil and military presences by the UN based on Chapter VII of the UNC, as well as contained provisions about the post-withdrawal performance of Serbian military, the return of refugees and political and economic reconstruction.\(^{564}\) The idea of the establishment of a UN transitional administration in Kosovo was reaffirmed by the Group of Eight (G-8) foreign ministers who formulated identical principles on the political solution of the Kosovo crisis.\(^{565}\) In addition, NATO linked the conditions of the termination of the air campaign to a compliance with the


\(^{563}\) Dziedzic and Kishinchand, *supra* note 540, p. 28.


\(^{565}\) Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre, Annex 1 of UNSCR 1244 (1999)
aforementioned proposals as well. On the 2nd of June, Milosevic accepted the NATO conditions and the aforementioned diplomatic road maps. While these peace plans were annexed to UNSCR 1244 on the international civil and military presences in Kosovo, the withdrawal of the Serbian forces and the deployment of the NATO-led Kosovo Force was regulated by the Military Technical Agreement (MTA or Kumanovo Agreement), signed on the 9th of June 1999.

II. Peacebuilding in Kosovo under the UN administration

The cessation of hostilities revealed the grave humanitarian crisis left behind by the war in Kosovo. About 800,000 of its ethnic-Albanian inhabitants fled from the province in the course of the conflict and the number of IDPs was estimated to be approximately 500,000 people. As a result of the long-term inter-ethnic violence, the basis of a peaceful coexistence of the Albanian and Serbian population was completely broken down. This became apparent through two waves of migration at the end of the conflict. One flow took its course by the gradual return of the Kosovo-Albanian refugees, and a second mass exodus began as the members of the Serbian minority started to leave the province driven by concerns about their personal security. Post-war conditions of the destroyed infrastructure, lack of basic public services, human security, and the rule of law prevailed in Kosovo as the UNSC decided on the deployment of international civil and security presences by adopting UNSCR 1244. Nevertheless, as the Resolution lacked any references to the root causes of the Kosovo conflict, the ethnic discrimination pursued by the Serbian authorities against the Albanian population did not receive any official acknowledgement. The UN refrained from assessing the Yugoslavian domestic affairs and took a neutral position by condemning all acts of violence against the Kosovo population, as well as all...
terrorist acts by any party. Although UNSCR 1244 acknowledged the humanitarian tragedy taking place in Kosovo, it remained silent in regards to the UN’s position on NATO’s unauthorized military operation, which aimed at halting the violence and creating conditions for political solutions. However, the need for the UN to undertake the most comprehensive peace operation of the organizations history was clearly a consequence of NATO’s initial intervention.

1. Legal basis and mandate of the international security presence

The establishment of an international security presence in Kosovo represented a coercive military measure under Article 42 of the UNC. According to Article 42, the application, or collapse of non-military measures is not a condition for the authorization of coercive actions, but left to the wide discretion of the UNSC. The necessity and proportionality of complementing the international civil presence with the deployment of military units was undoubtedly justified in light of the disastrous security situation in Kosovo at the time of the adoption of UNSCR 1244. The first elements of the NATO-led peacekeeping mission entered Kosovo on the 12th of June 1999. The KFOR’s initial troop strength was 50,000 soldiers including 15,000 Russian troops under unified command and control. In the emergency phase, the Mission’s main functions were to contribute to the deterrence of renewed hostilities; maintain, and where necessary, enforce ceasefire; ensure the complete withdrawal and prevent the return of FRY military, police, and para-military forces to Kosovo; as well as support the safe return of all refugees and IDPs, and the work of the humanitarian aid organizations. In particular, the enforcement of the ceasefire, and prevention

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570 Ibid. Preamble
571 UNSCR 1244 recalled the Statement of the Secretary-General of April 1999 by which he confirmed the humanitarian crisis in Kosovo, called upon the Yugoslav authorities to accept the conditions for ending the hostilities and the NATO to suspend the air bombardments upon the acceptance of the Yugoslav authorities. See UN Secretary-General, Press Release, Secretary-General offers conditions to end hostilities in Kosovo, SG/SM/6952, 9 April 1999
572 See NATO Press Release: Political and Military Objectives of NATO Action with Regard to the Crisis in Kosovo 1999/043, 23 March 1999 and Statement to the Press by the (NATO) Secretary-General 1999/045, 1 April 1999
574 See Articles Art. 9. (a) and (c) of UNSCR 1244 (1999); and NATO Press Release, The Situation In and Around Kosovo, Chairman’s Statement issued at the Extraordinary Meeting of Foreign and Defence Ministers of the North Atlantic Council held at NATO Headquarters Brussels on 18 June 1999, 1999/097, 18 June 1999
of the return of Serbian forces represented coercive measures against the FRY. Since in 1992, UNSCR 757, which imposed international sanctions on the Milosevic-regime, noted that the claim "to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted"575, it raises the question of to what extent these obligations, authorized under Chapter VII, bound the non-UN member FRY. Under Article 2(6) of the UNC, the UN shall ensure that non-member states act in accordance with the principles of the Charter as far as may be necessary for the maintenance of international peace and security. In order to meet this obligation, the UNSC has applied different approaches to urge non-UN members to implement its resolutions. While in its initial practice, the Council preferred to appeal for cooperation in relevant resolutions576, it later demanded "all states" to comply with its binding provisions.577 Similarly, through UNSCR 1244, the Council welcomed the FRY’s acceptance of the purposes and principles of the UN Charter, and the primary responsibility of the UNSC for the maintenance in international peace and security, and demanded the full cooperation in a rapid implementation of the deployment of the international civil and security presences.578

According to the Articles 34 and 35 of the Vienna Convention on the Law of Treaties, a treaty “does not create either obligations or rights for a third State without its consent,” and an obligation from a treaty emerges for a third State only if it “expressly accepts that obligation in writing”.579 Although the FRY agreed to the deployment of the KFOR through signing the MTA, the voluntary

577 In resolution 418 (1977) the UNSC required all states to comply with imposed arms embargo on South Africa, S/RES/418, 4 November 1977; Furthermore in UNSCR 827 (1993) the Council demanded that “all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute”. S/RES/827, supra note 19, para. 4.
578 Article 2 of UNSCR 1244 (1999)
nature of the given consent has remained questionable.\textsuperscript{580} The conclusion of the Agreement took place under the pressure of the ongoing NATO military intervention, which created the impression that the conditions of the MTA were not accepted free from coercion. The same ambiguity applies in regards to the FRY’s voluntary compliance with the provisions of UNSCR 1244. \textsuperscript{581} Nevertheless, through the FRY’s admission in the UN on the 1\textsuperscript{st} of November 2000, the concerns about the binding effect of the Council’s coercive measures were resolved. \textsuperscript{582} The request for gaining a UN Membership can be interpreted as illustrating the FRY’s commitment to fulfill the obligations under the UNC and ex nunc those of UNSCR 1244. \textsuperscript{583}

While the UN Resolution defined the KFOR’s substantive mandate, the Kumanovo Agreement provided a framework for the military aspects of its deployment and the implementation of the demilitarization process. Article II required the FRY to “refrain from committing any hostile or provocative acts of any type against any person in Kosovo and [...] order armed forces to cease all such activities” immediately after the Agreement entered into force and agree on “a phased withdrawal [...] to locations in Serbia outside Kosovo”. In exchange, NATO intended to suspend the air campaign. Although the MTA included a reference to the cessation of the military operations of the FRY and NATO respectively, the phrasing of the agreement lacked the reciprocity in obligations that characterizes a ceasefire agreement. While the Yugoslavian authorities were required to “understand and agree”\textsuperscript{584} on the KFOR’s deployment on the basis of UNSCR 1244, the NATO’s commitment to suspend the air campaign once the FRY’s compliance with the MTA is verified seemed to be conditional rather than obligatory in nature. Based on the asymmetric division of the obligations, the

\begin{itemize}
\item \textsuperscript{580} Benzing, supra note 251, paras. 18. and 21.
\item \textsuperscript{581} Wierse, supra note 97, p. 100.
\item \textsuperscript{582} It applies to Serbia and Montenegro and from 2006 to Serbia which became the legal successor of the FRY.
\item \textsuperscript{583} Wierse, supra note 97, p. 101.
\item \textsuperscript{584} Article I.(2) MTA
\end{itemize}
Kumanovo Agreement did not function as a ceasefire agreement but determined the rules of the FRY’s capitulation.\textsuperscript{585}

The MTA specified the establishment of a Ground Safety Zone (GSZ) which extended 5 kilometers beyond Kosovo’s border into the rest of the FRY’s territory, as well as a 25 kilometer Air Safety Zone (ASZ).\textsuperscript{586} Entering into, reentering, or remaining on the territory of Kosovo and the GSZ or the ASZ was strongly prohibited for the FRY and Serbian forces. The Agreement vested the KFOR commander final authority regarding the interpretation of its provisions and the security aspects of the Kosovo peace plan, as well as authorized the KFOR to enforce their implementation.\textsuperscript{587} Following the complete withdrawal of the Serbian security forces by the 20\textsuperscript{th} of June, the KFOR began focusing on traditional peacekeeping tasks.\textsuperscript{588} These included assistance in demilitarization of the KLA, weapons destruction and border security complemented by continued responsibilities for ensuring public order and safety, and supervising the de-mining until these tasks were taken over by UNMIK Police.\textsuperscript{589} In addition to the peacekeeping functions, UNSCR 1244 mandated the KFOR to support and, as appropriate, coordinate with the work of the international civil presence.\textsuperscript{590} The abstract formulation allowed the KFOR a comprehensive involvement in civil activities, which according to NATO, embraced "support for the establishment of civilian institutions, law and order, the judicial and penal system, the electoral process and other aspects of the political, economic and social life of Kosovo".\textsuperscript{591}

The disarmament process was regulated by an agreement signed between the KFOR and KLA Commander Hashim Thaci on the 20\textsuperscript{th} of June 1999.\textsuperscript{592}


\textsuperscript{586} Article I.(3) d. and e. MTA

\textsuperscript{587} Appendix B. 2. MTA


\textsuperscript{589} Article 9(d) and (e) of UNSCR 1244 (1999)

\textsuperscript{590} Article 9(f) of UNSCR 1244 (1999)

\textsuperscript{591} NATO, Kosovo Force (KFOR) initial and additional tasks, available at: <http://jfcnaples.nato.int/kfor/about-us/history/tasks> (last accessed on 11 February 2017)

Accordingly, the KLA committed itself to cease all hostilities and complete its disarmament within 90 days. On the 20th of September, former KLA Lieutenant-General Ceku announced that the process was successfully completed. The subsequent demilitarization and reintegration efforts included, on the one hand, the KLA’s transformation into a civilian emergency service agency, the Kosovo Protection Corps (KPC)\(^{593}\), and on the other hand, the admission of a larger number of former KLA combatants in the Kosovo Police Service School which functioned as a training institution for the newly established Kosovo Police Service.\(^{594}\)

2. The performance of UNMIK

Based on Article 10 of UNSCR 1244, the international civil presence in Kosovo was established to “provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.” Since the implementation of this comprehensive mandate would have presented a single organization with an insurmountable challenge, the United Nations Interim Administration in Kosovo (UNMIK) was designed to operate in cooperation between diverse UN agencies and other international partners such as the OSCE and the EU.\(^{595}\)

a. Mandate and operational structure

According to the UNSG, the structure of the Mission aimed at ensuring "that all activities of the international community in Kosovo are carried out in an integrated manner with a clear chain of command".\(^{596}\) Accordingly, UNMIK relied

\(^{593}\) Special Representative of the Secretary-General, Regulation No. 1999/8 on The Establishment of the Kosovo Protection Corps, UNMIK/REG/1999/8, 20 September 1999, According to the Regulation the tasks of the KPC shall be the following: provide disaster response services; perform search and rescue; provide a capacity for humanitarian assistance in isolated areas; assist in demining; and contribute to rebuilding infrastructure and communities.

\(^{594}\) See Wierse, supra note 97, p. 366

\(^{595}\) Dziedzic and Kishinchand, supra note 540, p. 30.

on “the capacities and expertise of various international organizations [...] while maintaining coherence and effectiveness”.

UNMIK was structured around four pillars, led by their own deputy Special Representative of the Secretary-General (SRSG). Each pillar was assigned to an agency or IO which took the lead role in each specific area. The humanitarian assistance pillar, led by the UNCHR, was responsible for supporting the repatriation and resettlement of refugees and IDPs, and provided support for humanitarian relief through conducting mine action. Due to the temporary nature of these tasks, after completing its mandate in 2001, the UNCHR pillar was reconfigured into a new “Police and Justice” component which brought together all operations related to strengthening the rule of law. The interim civil administration pillar, operated by the UN Department of Peacekeeping Operations (DPKO), was comprised of three main departments. The Civil Affairs Department focused on establishing the multi-ethnic governmental structures and delivering public services as long as required. UNMIK Police provided interim law enforcement services and supported the development of the new Kosovo Police Service. Finally, the Office for Judicial Affairs Office was responsible for “the administration of courts, prosecution services and prisons, the development of legal policies, the review and drafting of legislation, as necessary, for the goals and purposes of UNMIK, and the assessment of the quality of justice in Kosovo, including training requirements.”

The OSCE-led institution-building pillar was mandated with capacity-building of the local and central institutions and civil society organizations, as well as the promotion of democracy, good governance and respect for human rights. Furthermore, the OSCE was entrusted with the organization of elections at local and provincial levels. Finally, the pillar of reconstruction and economic development, supervised by the EU, was responsible for rebuilding Kosovo’s economy in three phases which encompassed

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597 Ibid.
598 Ibid. para. 5.
599 Ibid. para. 12.
600 Ibid. para. 8.
601 Ibid. para. 79.
"immediate humanitarian relief, reconstruction and rehabilitation, and the creation of viable marked-based economy and equitable social system".\textsuperscript{603}

Through the adoption of Resolution 1244, the UNSC placed Kosovo under the direct administration of the international community. The extent of UNMIK’s mandate has been unprecedented in the UN’s conflict management practice. Besides an exceptional authority to perform basic administrative functions and promote a political solution for the Kosovo’s unresolved status issue, the fields of action of the international civil presence covered all peacebuilding dimensions. Although operative Article 11 of UNSCR 1244 provided only an enumeration of UNMIK’s tasks without explicitly defining the exact scope of the Mission’s powers, the list of large-scale responsibilities suggested that in order to implement this comprehensive mandate, the UN and its partners must be entitled to perform extensive state powers. (See Table 4.)

An assessment on the extent of the Mission’s authority and competencies was provided by the UNSG who stated that "[t]he Security Council, in its resolution 1244 (1999), has vested in the interim civil administration authority over the territory and people of Kosovo. All legislative and executive powers, including the administration of the judiciary, will, therefore, be vested in UNMIK".\textsuperscript{604} While performing these functions, UNMIK was to respect the local laws "insofar as they do not conflict with internationally recognized human rights standards or with regulations issued by the Special Representative in the fulfilment of the mandate given to the United Nations by the Security Council".\textsuperscript{605} The Special Representative of the Secretary General, appointed by the UNSG, exercised the overall authority vested in UNMIK. The SRSG was authorized to control the implementation of Resolution 1244, and ensure that both the civil and military presences operate in mutually supportive manner. Bernard Kouchner, the first SGRG, adopted Secretary-General Annan’s interpretation of UNMIK’s powers and included it in his future regulatory acts by reiterating that "[a]ll legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK, and is exercised by the Special Representative of

\textsuperscript{603} Ibid. para. 103.
\textsuperscript{604} Ibid. para. 35.
\textsuperscript{605} Ibid. para. 36.
“the Secretary General”. Accordingly, the SRSG was authorized to change, repeal or suspend existing laws when they were incompatible with UNMIK’s mandate, aims, and purposes. Furthermore, he was entitled to issue legislative acts in the form of regulations and appoint the UNMIK personnel including the judiciary.

Table 4.: The mandate of the international civil presence in Kosovo under Resolution 1244 (1999)

<table>
<thead>
<tr>
<th>The main responsibilities of the international civil presence included:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);</td>
</tr>
<tr>
<td>(b) Performing basic civilian administrative functions where and as long as required;</td>
</tr>
<tr>
<td>(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;</td>
</tr>
<tr>
<td>(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peacebuilding activities;</td>
</tr>
<tr>
<td>(e) Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords (S/1999/648);</td>
</tr>
<tr>
<td>(f) In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement;</td>
</tr>
<tr>
<td>(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;</td>
</tr>
<tr>
<td>(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;</td>
</tr>
<tr>
<td>(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;</td>
</tr>
<tr>
<td>(j) Protecting and promoting human rights;</td>
</tr>
<tr>
<td>(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;</td>
</tr>
</tbody>
</table>

Source: UN Security Council Resolution 1244 (1999), Article 11

b. Resolution 1244 and the principle of sovereign equality

The UN Charter contains only one explicit reference to the UN’s administering authority. Under Article 81, the UN is entitled to exercise the administration of a trust territory in the framework of the international trusteeship system. The UNSC established UNMIK, however, not on the basis of a trusteeship agreement according to Chapter XII of the UNC but a Chapter VII resolution. Outside the

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606 Special Representative of the Secretary-General, Regulation No. 1999/1 on the authority of the interim administration in Kosovo, UNMIK/REG/1999/1, 25 July 1999, para. 1(1)  
608 Ibid. and para. 41.
framework of the trusteeship system, there are two options available to the Council to establish a territorial administration.\footnote{Wolfrum, Rüdiger (2005), International Administration in Post-Conflict Situations by the United Nations and Other International Actors, In: von Bogdandy, A. and Wolfrum, R. (Eds.), \textit{Max Planck Yearbook of United Nations Law}, Vol. 9, 649-696, pp. 667-668.} Firstly, the establishment of a UNSC-authorized ITA can take place through the consent of the host state. The agreement of the local government might be complemented by a resolution with a reference to Chapter VII at the Council’s discretion. Secondly, when state consent is missing, the UN involvement can be based upon a binding UNSC resolution under Chapter VII of the UNC. When the Council has determined the threat to international peace and security, the establishment of an international administration can be authorized under Article 41 of the UNC, which provides a wide range of non-military instruments for international conflict management.

While the UNSC’s competence to establish UNMIK remains uncontested\footnote{Benzing, supra note 251, para 20.}, vesting such extensive powers in the civil presence raises the question of to what extent UNMIK’s authority is compatible with the sovereignty of the FRY. The related references of UNSCR 1244 appear to be vague and contradictory.\footnote{Crampton, Ben (2012), Kosovo, In: Caplan, Richard (Ed.) \textit{Exit Strategies and State Building}, Oxford: Oxford University Press, 159-176, p. 160.} On the one hand, the Preamble and Article 8 of Annex 2 reaffirmed the commitment to the sovereignty and territorial integrity of the FRY. In addition, Article 10 authorized the UNSG to establish UNMIK "\textit{under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia}". These references suggested that Kosovo’s secession was not the solution to how the UN sought to resolve the status question. Furthermore, according to Article 1(1) of the UNC, while taking effective collective measures to prevent or remove the threats to the peace and facilitating peaceful settlements of disputes, the UNSC is bound by the principles of justice and international law. Consequently, the Council is not authorized to impose any measures in the framework of Chapter VII which would compulsorily regulate the substantive rights of states, including provisions on changing the legal status of territorial units.\footnote{Wierse, supra note 97, p. 104.} UNSCR 1244 overcame the prohibition of compulsory settlement of disputes in Article 1(1) of the UNC through leaving Kosovo’s status issue open.
On the other hand, through the transfer of extensive state powers to UNMIK, Kosovo obtained the special status of a territory under direct international administration. Since UNMIK was the "only legitimate authority in Kosovo"\(^{613}\), any actions of the FRY within the province required the UN’s approval. From a legal point of view, even though the FRY sustained its territorial sovereignty over Kosovo, UNMIK exercised the domestic jurisdiction. While in the general state practice territorial sovereignty and jurisdiction over a territory coincide, their detachment is by no means without former precedents. The territorial sovereignty will not cease without the physical control of territory when states accept restrictions on the exercise of their sovereign rights.\(^{614}\)

The varying references to both the FRY’s sovereignty and a political settlement on Kosovo’s status illustrated a disagreement within the UNSC regarding these matters. While Russia and China insisted on the adherence to the principle of sovereign equality, the U.S., the UK, and France pursued a future settlement without delimitating its outcome.\(^{615}\) Article 11 of UNSCR 1244 connected Kosovo’s final status with the Rambuillet Accords\(^{616}\) which stated that "[t]hree years after the entry into force of this agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of the relevant authorities [..]."\(^{617}\) Similarly to UNSCR 1244, the Rambuililet Accords were characterized by an ambiguous formulation. While they reaffirmed the commitment to the FRY’s sovereignty and territorial integrity, they also recognized the need for a democratic self-government in Kosovo. Overall, the above mentioned provision can be interpreted in a way that allows the option of holding a referendum on

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\(^{614}\) See Permanent Court of International Justice, Case Lighthouses in Crete and Samos, France v Greece, Judgement, (1937) PCIJ Series A/B, No. 71, ICGJ 322, (PCIJ 1937) 8 October 1937, p. 13. According to the Court, "[n]otwithstanding its autonomy, Crete had not ceased to be a part of the Ottoman Empire. Even though the Sultan had been obliged to accept important restrictions on the exercise of his rights of sovereignty in Crete, that sovereignty had not ceased to belong to him, however it might be qualified from a juridical point of view". See also Wierse, supra note 97, pp. 106-107.

\(^{615}\) Crampton, supra note 611, p. 161.


\(^{617}\) Ibid. Chapter 8, Article I(3)
Kosovo’s final status. It reflected on the fact that resolving Kosovo’s status issue was strongly connected with exercising the right to self-determination.

**c. Resolution 1244 and the right to self-determination**

UNSCR 1244 lacks explicit references in regards to the right to self-determination as well. Article 10 placed the main focus on "the people of Kosovo", and specified that the overall objective of the transitional administration was "to ensure conditions for peaceful and normal life for all inhabitants in Kosovo". The explicit inclusion of the inhabitant’s interests in the legal consequences of the resolution could be interpreted as a reflection on the purpose of Operation Allied Force, namely, to protect Kosovo’s population from the unfolding humanitarian catastrophe. While UNSCR 1244 referred to the welfare of the inhabitants as one of the objectives that the international presence aimed to achieve, the resolution lacked any explicit references which would have clarified to what extent the UN recognized the right to self-determination in the context of Kosovo’s population. On the one hand, Article 10 speaks from "the people of Kosovo" whose phrasing is identical to the articles of the UNC and the ICCPR relevant to self-determination. In this sense, the wording of the Resolution could be interpreted as an implicit reference to the right to self-determination and the identification of the Kosovo Albanian population as the holder of such a right. On the other hand, the resolution explicitly guaranteed the sovereignty and territorial integrity of the FRY, and envisaged a solution for the status issue within its own national framework. From this point of view, the resolution did not intend to recognize the right of the people of Kosovo to secede from the FRY and establish an independent Kosovar state.

Nevertheless, the limitation of conflict management within the borders of the FRY, and the non-recognition of the external dimension of the right to self-determination do not exclude the lawful exercise of such a right by the people of Kosovo per se. The establishment of the international civil presence, which aimed at enabling that the people of Kosovo can enjoy substantial autonomy and

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618 Crampton, supra note 611, p. 161.
619 Wierse, supra note 97, p. 108.
empower them for self-government, can be interpreted as an implicit recognition of the internal right to self-determination to freely determine their political status and pursue their economic, social, and cultural development. To this end, the concepts of autonomy, self-government, and self-administration are applied as options to exercise such a right within a sovereign state. However, aiming at the establishment of institutions of self-government does not confirm recognition of the internal dimension of the right to self-determination through UNSCR 1244 either. In accordance with the Friendly Relations Declaration, decisive in this regard is whether the autonomy will be freely determined by the people. Nevertheless, due to the inconsistency in the wording of UNSCR 1244 with reference to the “people of Kosovo”, it remains ambiguous whether the Resolution recognizes the Kosovo Albanian population as holders of the right to internal self-determination. Article 10 spoke of “all inhabitants of Kosovo” which suggests that the reference to “the people of Kosovo” was a mere indication as to the province’s population who fell under the jurisdiction of the transitional administration. This interpretation on the territorial target group is supported by the Preamble of the Resolution, which condemned all violations against the Kosovo population. In sum, the UN’s approach to internal self-determination, with regard to the Kosovo Albanians, cannot be concluded from the analysis of UNSCR 1244.

d. State-building by UNMIK

The transitional administration was designed to operate on a temporary basis as long as a political solution could be agreed on. Thus, UNMIK was established for an initial period of 12 months but with an open ended mandate which is to continue until the Council decides otherwise. UNSCR 1244 defined the civil presence’s progressive mandate implementation, encompassing a gradual state and institution-building process, which was intended to end with the final transfer of authority to Kosovo institutions established under a political settlement. In his Report of July 1999, the UNSG presented UNMIK’s general strategy which

620 Ibid. p. 116.
621 Article 19 of UNSCR 1244 (1999)
622 Ibid. Article 11(f)
was comprised of a five-phase work plan.\textsuperscript{623} The main focus in the first phase lied on the establishment and consolidation of UNMIK’s authority, and the creation of interim administrative structures.\textsuperscript{624} Following the establishment of basic stability, the second phase aimed at consolidating the rule of law, encouraging the revival of political activities and the formation of political parties, strengthening the civil society and promoting a grassroots level of reconciliation, and restoring basic economic structures. Furthermore, it was expected that, during the later stages of phase two, UNMIK transfers the management and administrative functions of specific sectors to local or regional authorities such as health and education issues.\textsuperscript{625} The third phase was intended to focus on the preparations and conduct of elections, which would lead to the establishment of the “Kosovo Transitional Authority”\textsuperscript{626}. Additionally, this phase intended to involve efforts for the facilitation of the political process to determine Kosovo’s final status. In the fourth phase, UNMIK was expected to oversee the establishment of the provisional institutions for democratic and autonomous self-government by the newly elected Kosovo representatives, and transfer the remaining administrative responsibilities.\textsuperscript{627} Based on UNSCR 1244, in the final stage, UNMIK would have transferred the authority from the provisional organs, to institutions established under the political settlement on Kosovo’s status.\textsuperscript{628}

In practice, however, UNMIK was challenged to meet the expectations set by the general strategy in 1999, in particular, with regards to the fourth and fifth phase. Throughout 1999-2000, the Mission exercised the absolute legislative and executive authority both on provincial and community level.\textsuperscript{629} The UNMIK-led institution-building process followed a bottom-up approach which suggested that the lowest administrative level provides the most ideal platform for promoting

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\textsuperscript{623} Report of the Secretary-General on UNMIK, S/1999/779, supra note 588, para. 110.
\textsuperscript{624} Further priorities included the accelerated deployment of civilian police liaison offers with the KFOR’s public security units, the provision of emergency assistance to returning refugees and IDPs, as well as the restoration and maintenance of basic public services, and the capacity-building of the police and judiciary. Throughout the first phase, UNMIK set out to establish a self-sustaining economy to meet Kosovo’s public expenditures, starting with reviving the collection of customs revenues through the deployment of civilian customs agents. See ibid.
\textsuperscript{625} Ibid. para. 113.
\textsuperscript{626} Ibid. para. 114.
\textsuperscript{627} Ibid. para. 115.
\textsuperscript{628} Ibid. para. 116.
\textsuperscript{629} Ibid. para. 110.
\end{flushleft}
the emergence of new political parties and introducing the principles of
democratic elections.630 Accordingly, UNMIK divided the province into multi-level
administrational units comprised of five main regional administrative districts and
a number of municipalities. The former ones were overseen by regional
administrators who supervised the work of public services, local governmental
bodies, and the UNMIK staff in their region.631 The public administration, on a
community level, was led by international municipal administrators, whose
responsibilities included reactivating or establishing and overseeing
administrative structures and their systems of financial management. UNMIK
ensured the inclusion of local actors in the decision-making processes by
establishing a consultative organ, the Kosovo Transitional Council (KTC).632 The
KTC served as a platform for the representatives of diverse Kosovar political, civil
society, and minority groups, and exercised its advisory functions through weekly
meetings directly with the SRSG. Although the KTC missed any discretionary
competence, the regular consultations aimed that the upcoming UNMIK
regulations incorporate the interests and opinion of the local population.

As a second step, UNMIK addressed the challenge that the parallel Kosovo-
Albanian Governmental and administrative bodies, which were established during
the Milosevic era, agreed on and accepted its authority. On the 15th of December
1999, a "power-sharing agreement" was signed between UNMIK and the three
main Kosovo-Albanian parties about a Joint Administrative Structure (JIAS).633
The parties committed themselves to dissolve their parallel administrative
structures by the 31st of January 2000 and/or integrate them into the newly
established JIAS. The Agreement was endorsed by UNMIK Regulation 2000/1
that confirmed the SRSG’s legislative and executive authority, as well as the
willingness of the “representatives of political forces of Kosovo to share
provisional administrative management with UNMIK”.634 The new administrative
structure included three institutions on a provincial level, led by mixed

630 Wierse, supra note 97, p. 283.
631 Special Representative of the Secretary-General, Regulation No. 1999/14 on the appointment of regional
and municipal administrations, UNMIK/REG/1999/14, 21 October 1999, para. 2.1
633 Ibid. para. 5.
634 Special Representative of the Secretary-General, Regulation No. 2000/1 on the Kosovo Joint Interim
Administrative Structure, UNMIK/REG/2000/1, 14 January 2000, Section 1(a)
international and local personnel. Firstly, the KTC continued to function as the SRS
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g’s advisory body of 36 representatives. Secondly, the newly established Interim Administrative Council (IAC) was mandated to advise the SRS on "amendments to the applicable law and for new regulations”, and propose “policy guidelines for Administrative Departments in applying the applicable law.\(^{635}\) Thirdly, the Administrative Departments, which were led jointly by a UNMIK and a Kosovo Co-Head of Department, were responsible for performing "provisional administrative tasks to implement the policy guidelines formulated by the Interim Administrative Council".\(^{636}\) In accordance with Regulation 2000/1, the administration on a community level was performed by a newly established Municipal Administrative Board Municipal Council headed by the UNMIK Municipal Administrator.\(^{637}\) Furthermore, the citizens of the municipality were represented by the Municipal Council which served as a consultative body after the pattern of the KTC.\(^{638}\)

UNMIK Regulation 2000/45 replaced the interim organs on a community level with a permanent municipal public administration structure.\(^{639}\) The Municipal Assembly became the successor of the Municipal Council to perform some functions of a communal decision-making body. The Assembly had exclusive responsibility for approving the budget, adopting regulations, as well as electing and appointing its management. Following the first post-conflict municipal elections on the 28th of October 2000, UNMIK began to transfer executive responsibilities to the local self-government bodies. Although these organs started exercising “all powers not reserved to the Central Power”\(^{640}\) by overtaking the decision-making power in local affairs, as well as administering and implementing UNMIK regulations, the transfer of these responsibilities did not

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\(^{635}\) Ibid. para. 3.1; The IAC consisted of 8 members, of which besides 4 UNMIK members 3 were Kosovo Albanian and one Kosovo Serbian.

\(^{636}\) Ibid. para. 7.2.

\(^{637}\) Ibid. para. 8.1.

\(^{638}\) Ibid. para. 8.5.

\(^{639}\) Special Representative of the Secretary-General, Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, UNMIK/REG/2000/45, 11 August 2000

\(^{640}\) Ibid. para. 2.1
affect the scale of the SRSG’s powers to dissolve the Municipal Assembly in case of a non-compliance with Resolution 1244 and call for new municipal elections.\footnote{Ibid. para. 47(1)}

The gradual transfer of responsibilities to the newly established institutions at the provincial level began in May 2001. Serving as an interim constitution, the “Constitutional Framework for Provisional Self-Government” was introduced by the UNMIK Regulation 2001/9.\footnote{Special Representative of the Secretary-General, Regulation No. 20001/9 on a constitutional framework for provisional self-government in Kosovo, UNMIK/REG/2001/9, 15 May 2001} The Constitutional Framework established the “Provisional Institutions of Self-Government” (PISG) which included the Assembly, the President of Kosovo, the Government comprised of a Prime Minister and Ministers, as well as a new justice system divided into a Supreme Court of Kosovo, District Courts, Municipal Courts, and Minor Offense Courts.\footnote{Ibid. para. 1.5}

Furthermore, the Constitutional Framework explicitly enumerated the governing competencies which were to be transferred to the PISG following the parliamentary elections in 2001. Nevertheless, the main responsibilities were retained by the SRSG including actions in the field of external relations, the final authority to set the financial and policy parameters, dissolving the Assembly, and calling for new elections in circumstances of non-compliance with UNSCR 1244.\footnote{See ibid. Preamble}

Although the establishment of the PISG and the 2001 parliamentary elections were important milestones in Kosovo’s peacebuilding process, from that point on, the implementation of UNMIK’s roadmap was hindered by various challenges. The difficulties arose from the UN’s strategy to link the transfer of the remaining responsibilities to the PISG to Kosovo’s unresolved status issue. In 2002, UNMIK developed the “Standards for Kosovo” with the aim of defining certain criteria the PISG needed to meet before overtaking governance functions. The benchmarks addressed eight core areas which included functioning democratic institutions, rule of law, freedom of movement, sustainable returns and the rights of communities, economy, property rights, dialogue with Belgrade, and (the

\footnote{\textsuperscript{641} Ibid. para. 47(1)}  
\footnote{\textsuperscript{642} Special Representative of the Secretary-General, Regulation No. 20001/9 on a constitutional framework for provisional self-government in Kosovo, UNMIK/REG/2001/9, 15 May 2001}  
\footnote{\textsuperscript{643} Ibid. para. 1.5}  
\footnote{\textsuperscript{644} See ibid. Preamble}
According to SRSG Steiner, “only the fulfillment of these standards will give the International Community confidence that Kosovo is ready for substantial self-government. The fulfillment of these standards is also necessary to remove the causes of future conflict-and to make Kosovo a normal European society.”

The Standards addressed three different audiences although in a different way. Firstly, it allowed the Kosovo-Albanian population and political elite to develop an impression that improving their governmental competencies would lead to obtaining full authority and an agreement on the final status which might be independence. Secondly, the benchmark-policy aimed at assuring the Kosovo-Serbian community that the Albanian political leadership was compelled by a political framework to guarantee their rights. Finally, the message of the Standards process for the international community suggested that UNMIK’s policy will result in the resolution of the status, and the general strategy would be implemented. The Standards policy, however, failed to meet the expectations, in particular those of the Kosovo-Albanian and international community. The PISG were unable to make progress in meeting the benchmark criteria because most of the competencies they were required to develop belonged to UNMIK’s exclusive powers. On the other hand, the “Standards before Status” approach operated on the basis of ambiguous and vaguely formulated objectives, and the absence of working partnership between the PISG and the UN. The Standards were specified and bolstered with an implementation plan first in December 2003 that was reviewed on a quarterly basis by the UNSC and the Balkans Contact Group. According to the UNSG, "a first opportunity for a comprehensive review of progress should [have] occur[ed] in mid-2005. Initiation of the political process

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647 Crampton, supra note 611, pp. 165-166.
649 Covey, supra note 646, p. 121.
to determine Kosovo’s future status will depend on the outcome of the review”.\textsuperscript{650}

e. The status process

The procrastinative and conditional approach of the international community to address the status question fueled the frustration among the Kosovar population. It promptly led to a riot when in March 2004, in the Serbian-inhabited city of Mitrovica, three Albanian children were killed. The turbulence was quickly spread throughout the province.\textsuperscript{651} The deteriorated security situation made the UN acknowledge that the Standards policy did not serve as a suitable strategy to resolve the status problem. Consequently, the UNSG assigned special representative Kai Eide with conducting a comprehensive analysis on the situation of Kosovo, and providing recommendations for viable solutions. The Eide-Report\textsuperscript{652} pointed out that Kosovo made progress in the development of a sustainable framework of governance, and acknowledged that a “comprehensive set of institutions has been established which includes executive, legislative and judicial bodies at the central as well as the local levels”\textsuperscript{653}. While “paying lip-service” to the UN’s impressive performance in Kosovo and the positive effect of the Standards process in achieving these results, according to Eide, the PISG were lagging behind in meeting the requirements of the Standards implementation plan. He pointed out that the time-consuming challenge of fulfilling the benchmarks was “stretching into and beyond the process of defining the future status of Kosovo”\textsuperscript{654} and warned against the serious instability its postponement could generate in the province. As a conclusion, Eide recommended the reconfiguration of the international presence in Kosovo, based on the idea of replacing UNMIK with the long-term post-conflict engagement of regional organizations, such as the OSCE and the EU coupled with a continued


\textsuperscript{651} Violent actions targeted not only at the Serbian minority but also the UN. See Weidemann, supra note 247, p. 107.

\textsuperscript{652} UN Security Council, Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council, Annex: A comprehensive review of the situation in Kosovo, S/2005/635, 7 October 2005

\textsuperscript{653} Ibid. p. 2.

\textsuperscript{654} Ibid. p. 8.
NATO presence. In Eide’s view, "[t]he United Nations has done a credible and impressive job in fulfilling its mandate in difficult circumstances. But, its leverage in Kosovo is diminishing. Kosovo is located in Europe, where strong regional organizations exist. In the future, they—an in particular the European Union (EU)—will have to play the most prominent role in Kosovo. They will have the leverage required and will be able to offer prospects in the framework of European integration process".656

The Eide-Report was followed in 2005 by eight rounds of negotiations between the representatives of PISG and Belgrade, facilitated by the UN special envoy Martti Ahtisaari. The talks were guided by ten Principles which were formulated by the Contact Group for the settlement of the status of Kosovo with the aim of determining the concrete requirements that the final agreement needed to fulfill.657 These included, among others, ensuring the consolidation of a multi-ethnic society, protection of human rights and democratic values, participation in decision-making, decentralization, as well as regional security and stability. Through Principle 6, the Contact Group explicitly refused a unilateral solution or a status obtained by the use of force and affirmed that “there will be no changes in the current territory of Kosovo, i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country. The territorial integrity and internal stability of regional neighbours will be fully respected.” In addition, Principle 10 reflected on the willingness to support the continued deployment of the international civilian and military presences in Kosovo, mandated to supervise the compliance with the Status settlement. Despite the lack of a specified successor presence, the principle suggested that the general expectation of the international community was that the Ahtisaari process enables UNMIK the successful completion of its mandate and launch an exit process through handing over the responsibilities to other IOs.

The ongoing discussions in Brussels about the EU’s future involvement in Kosovo’s peacebuilding process suggested already in 2006, that the organization

655 Ibid. p. 5.
656 Ibid. p. 5.
was ready to perform an enhanced role.⁶⁵⁸ According to the preliminary concept of 2006, the EU considered the deployment of a larger CSDP mission⁶⁵⁹, mandated with capacity-building in the rule of law sector and a smaller political office, headed by an EU Special Representative (EUSR). The EUSR was to perform a double-hatted role while representing not only the EU but also the international community as International Civilian Representative (ICR). The concept behind the International Civilian Office (ICO) aimed at involving the U.S. and Russia in the framework of the new political presence in Kosovo, while envisaging the lead role of the EU.⁶⁶⁰ Since the EU deployed a special envoy to the status process and planning teams in Pristina for the establishment of the EU offices already in 2006, the EU exerted a dominant influence on the status negotiation process. Special Envoy Ahtisaari stated in his final Report that after more than one year of negotiations, "both parties have reaffirmed their categorical, diametrically opposed positions: Belgrade demands Kosovo’s autonomy within Serbia, while Pristina will accept nothing short of independence. Even on practical issues such as decentralization, community rights, the protection of cultural and religious heritage and economic matters, conceptual differences — almost always related to the question of status — persist, and only modest progress could be achieved".⁶⁶¹ Although the diplomatic process failed, Ahtisaari pointed to the urgent need to resolve the status problem because "uncertainty over its future status has become a major obstacle to Kosovo’s democratic development, accountability, economic recovery and inter-ethnic reconciliation".⁶⁶² In his Comprehensive Proposal (CP), he formulated guidelines for an envisaged Kosovo Status Settlement which addressed, among others, the protection of community rights, decentralization, protection of religious and cultural heritage, as well as constitutional, economic, and security matters.⁶⁶³

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⁶⁵⁸ Crampton, supra note 611, p. 168.
⁶⁵⁹ In 2006 known as European Security and Defence Policy (ESDP).
⁶⁶⁰ Ibid.
⁶⁶² Ibid.
Furthermore, the CP introduced the idea of an independent Kosovo, which would remain to be supervised by the international community. Under the premise, that "Kosovo shall be responsible for the implementation of the Settlement"\textsuperscript{664}, Ahtisaari elaborated a concrete proposal on the supervisory role of the international community. In consistency with the EU’s concept, the CP envisaged the expiry of UNMIK’s mandate, the establishment of a CSDP Mission with primarily focus on the area of the rule of law, the appointment of a double-hatted EU-International Civilian Representative with "strong corrective powers"\textsuperscript{665}, as well as the continued presence of a NATO-led military mission and the OSCE.

In accordance with the CP, even before its official publication, UNMIK launched a preparatory process on elaborating the details of transferring its responsibilities to the Kosovo authorities.\textsuperscript{666} It suggested that the Mission acknowledged and supported the idea of an exit and the transfer of its remaining powers, even if engaging in this process could have undermined its ability to continue the implementation of its mandate in the case of the collapse of the status process.\textsuperscript{667} Although the CP was strongly supported by the UNSG, Russia’s opposition prevented the UNSC to endorse its implementation. Russia argued that "[a]dopting a plan based on that proposal would not only clearly set a negative precedent for international practice, but would also have dangerous consequences for regional and international stability: by rewarding separatism it would encourage that phenomenon in other regions, and could spark a chain reaction that would eventually affect regions throughout the world."\textsuperscript{668} From the summer of 2007 on, a US-Russia-EU troika facilitated a final round of dialogue between Pristina and Belgrade in the hopes of overcoming the diplomatic deadlock. It was, however, obvious that the troika will fail to reach an agreement between the parties and the renewed talks were considered to aim at buying

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{664} Report of the Special Envoy of the Secretary-General on Kosovo’s future status, S/2007/168, supra note 661, Annex, para. 10.
\item \textsuperscript{665} Ibid. para. 11.
\item \textsuperscript{667} Crampton, supra note 611, p. 169.
\item \textsuperscript{668} UN Security Council, Record of the 5673rd Meeting of the Security Council on the Report of the Security Council Mission on the Kosovo issue, S/PV.5673, 10 May 2007, pp. 3- 4., Address of Mr. Churkin (Russia)
\end{enumerate}
\end{footnotesize}
time for the “pro-independence” actors, such as the EU and the U.S. to agree on the timing and management of its declaration.669

III. Peacebuilding in Kosovo during the international supervision

On the 17th of February 2008, Kosovo was declared to be an independent and sovereign state by the "democratically-elected leaders" of its people.670 The Declaration of Independence welcomed the international community’s continued support through international presences established on the basis of UNSCR 1244, expressed the commitment to implement the Comprehensive Proposal, and invited an international civilian presence to supervise its implementation. Furthermore, it welcomed the deployment of EU-led Rule of Law Mission and NATO to retain the leadership role of the international military presence in Kosovo until the local institutions are capable of assuming these responsibilities.671 As it was recommended by Ahtisaari, shortly after the declaration of independence, an International Steering Group was formed to perform the supervisory functions.

1. Reconfiguration without exit

The declaration of independence became not only an internationally debated issue, but affected the UN’s further performance through placing an unexpected pressure on the process of transferring the administrative and executive powers from UNMIK to local institutions. Although both the Eide-Report and the Comprehensive Proposal have already suggested the reconfiguration of the international presences, in adjustment to the requirements on the ground, Kosovo’s independence found the UN unprepared and trapped in the limited leeway provided by the UNSC. Under Resolution 1244, UNMIK will retain its executive authority until the UNSC decides otherwise. Although the SRSG’s veto

669 Weidemann, supra note 247, p. 110. The deadline set by the troika to close the negotiations was 10th of December 2007.
671 Ibid. para. 5.
power remained undiminished, from the UN’s side, no official action has been taken to annul the declaration of independence on the basis of incompatibility with UNSCR 1244 or the CP. In his Report of March 2008, the UNSG reaffirmed that "pending guidance from the Security Council"672 UNMIK would continue to implement its mandate. The UNSG also reported on concerns regarding the reaction of the Kosovo Serbs, who "with the support of the Serbian authorities"673, expanded their ongoing boycott of Kosovo institutions to UNMIK Customs, the police and correctional service, as well as to the judicial system and municipal administrations. While the SRSG undertook outreach activities towards the Serbian minority in order to reiterate that UNMIK continues to operate under the framework of UNSCR 1244, and in cooperation with the KFOR made efforts to ensure the stability of the political and security situation, the Kosovo Albanian expectations have intensified towards UNMIK’s exit and the transfer of its powers to the local authorities.674 Similarly to the case of the declaration of independence, the UN took no actions to prevent that UNMIK’s powers would undergo a process of rapid erosion. Kosovo’s new constitution, adopted in April 2008 and scheduled to come into force in June, envisaged the end of the traditional civil administration, and reduced the UN’s role to the performance of some “limited residual tasks”.675 UNMIK was faced with the challenge of arranging the transfer of its executive functions to the Kosovo authorities in most areas, and the handover to the EU those responsibilities which were to be performed by EULEX within the framework of UNSCR 1244.

The situation was resolved by the UNSG, who in the absence of any guidance from the UNSC, availed his authority vested in him by Article 10 of UNSCR 1244, and reconfigured the international civil presence in Kosovo. In his Report of June 2008, the UNSG noted a "new reality"676 in Kosovo and stated that, "following the entry into force of the Kosovo constitution, it is my assessment that UNMIK

673 Ibid. para. 8.
674 Ibid. para. 10.
676 Ibid. para. 7.
will no longer be able to perform effectively the vast majority of its tasks as an interim administration."  

Firstly, he presented a six-point plan which mandated the SRSG to negotiate temporary agreements with the Kosovo Serbian community in six areas: police, courts, customs, transportation and infrastructure, boundaries, and cultural heritage. Secondly, UNSG Ban argued that a reconfigured international presence would better suit to the current and emerging operational requirements in Kosovo, and announced its intention to move forward with practical arrangements to enable the EU to perform its enhanced operational role in the area of rule of law under the framework of UNSCR 1244, and the overall authority of the UN.

Furthermore, he expected that the OSCE mission continues its work as part of the reconfigured UNMIK and welcomed the commitment of NATO for a continued engagement in Kosovo. While the EU was to overtake operational responsibilities in the areas of policing, justice, and customs, the UNSG proposed that the UN presence performs the following limited functions: a) monitoring and reporting; b) facilitating, where necessary and possible, arrangements for Kosovo’s engagement in international agreements; c) facilitating dialogue between Pristina and Belgrade on issues of practical concern; and d) further provisional functions in particular in the areas of policing, judiciary and customs in the Serb-majority areas. Today, UNMIK provides technical support for rule of law institutions, is active in monitoring and reporting on community issues, rule of law and political developments, supports the implementation of the agreements reached between Pristina and Belgrade, and offers a service of certification of documents of Kosovo residents for recognition by non-recognizing UN Member States.

The June 2008 Report of the UNSG represented a turning point in the stalemate generated by Kosovo’s unilateral declaration of independence, and provided a

677 Ibid. para. 17.
678 Ibid. Annex 1
679 Ibid. para. 13.
680 Ibid. para. 16.
681 Ibid. para. 20.
basis for the smooth transfer of UNMIK’s powers to the local and successor international actors. On the other hand, the UNSG’s action prevented the polarized UNSC from taking any position on UNMIK’s future performance. Although a draft resolution for endorsing the CP, and recalling UNSCR 1244 has already been submitted to the Council in 2007\(^{683}\), the UNSC merely issued a Presidential Statement in November 2008 which welcomed “the cooperation between the UN and other international actors, within the framework of Security Council Resolution 1244 (1999)” and the continuing EU efforts to advance the European perspective in the Western Balkans.\(^{684}\) Consequently, UNSCR 1244 has remained in force, and UNMIK continued to be deployed. As the EU Special Envoy for Kosovo’s status process, Stefan Lehne noted “[c]ontrary to the Ahtisaari proposal, which envisaged a clear transition from the old international civilian presence to the new, Kosovo now saw itself confronted with a proliferation of international interlocutors. These found it difficult to coordinate their efforts effectively in view of the divergent legal bases and separate chains of their command.”\(^{685}\)

2. NATO’s role after the declaration of independence

Following the reconfiguration, NATO continued to lead the international security presence in Kosovo under UNSCR 1244 and the MTA. Due to the stable security situation on the ground, the organization has gradually adjusted its functions and performed an increasingly flexible role. This reflected in the nature of additional tasks that NATO started to perform in June 2008.\(^{686}\) Firstly, it assisted in the standing down of the Kosovo Protection Force which performed community service tasks under the supervision of UNMIK.\(^{687}\) In parallel to the process of the KPC’s dissolution, NATO supervised the establishment and training of the

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686 See NATO, Kosovo Force (KFOR) initial and additional tasks, supra note 591.
687 The mandate of the Kosovo Protection Force included providing disaster-response services, performing search and rescue, providing a capacity for humanitarian assistance in isolated areas, assisting de-mining and contributing to rebuilding infrastructure and communities. See ibid.
professional and civilian-controlled Kosovo Security Force (KSF). The KSF began its function as a multi-ethnic, lightly armed volunteer force without heavy weapons, with the primary responsibility for security tasks which fall outside of the capabilities of the Kosovo Police in emergency situations. Secondly, NATO supported the capacity-building of the KSF by a Pristina-based Liaison and Advisory Team (NLAT), and the NATO Advisory Team (NAT) at the Headquarters which also supervised the establishment of the KSF’s civilian control body. After the merger of these two teams, today, the reconfigured NLAT performs capacity-building measures for security actors in Kosovo. Thirdly, while NATO has continued to offer political support for the Agreement reached between Belgrade and Pristina in April 2013, the KFOR has provided support to its implementation by ensuring the stable security situation within its current mandate.688

Besides implementing these additional tasks, NATO’s operational capacity in Kosovo underwent an adjustment process as well. NATO Defense Ministers decided to transform KFOR’s “force posture” towards a “deterrent presence” from 2009 on.689 At an informal meeting in February 2010, it was declared that KFOR had successfully achieved the so-called Gate 1 stage in its transition which led to the reduction of troop strength on the ground to 10,200. The stage of Gate 2 was declared in February 2011, allowing the reduced deployment of approximately 5,000 troops. Furthermore, due to the improved security situation in Kosovo, NATO continued to implement the so-called unfixing process, which provides a framework for the gradual transfer of the oversight of religious and cultural heritage sites from KFOR to KP responsibility.

3. The performance of the OSCE in Kosovo

The OSCE Mission in Kosovo, the largest field operation of the Organization for Security and Co-operation in Europe, has been responsible for the management of UNMIK’s institution-building pillar since 1999. The reconfiguration of the international civilian presence in 2008 increased the significance of the OSCE's

688 See NATO’s role in Kosovo, supra note 573.
689 Ibid.
field presence, in particular, due to its engagement at the community level. According to its mandate, the Mission has operated in four different areas which included capacity-building of human resources, democratization and governance, organization and supervision of elections, as well as human rights monitoring and promotion.

The OSCE’s human resources capacity-building efforts included the training of police, judicial personnel, and civil administrators at various levels. Tasks in this area also embraced assistance for the Kosovar law enforcement agencies in improving and implementing strategies related to organized crime and intelligence-led policing. In order to enable the professional training of a new multi-ethnic police service in Kosovo, the Mission established a police school, which under the current name of Academy for Public Safety, evolved into a training center for other public safety institutions and a certified higher education institution. As a current activity, the Mission plays a lead role in all training and community safety co-ordination activities in Kosovo.

As a main task in the area of promoting democratization and good governance, the OSCE Mission has supported the institutional-development of democratic institutions in Kosovo by monitoring their performance, identifying progress and shortcomings, as well as recommending relevant remedial activities. Since its establishment in 2001, the OSCE has been monitoring and assisting the Assembly of Kosovo in developing legislative know-how, and supported the parliamentary committees to intensify their legislative drafting and oversight

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691 Organization for Security and Co-operation in Europe, Permanent Council Decision No. 305 on the establishment of the OSCE Mission in Kosovo, PC.DEC/305, 1 July 1999
693 Ibid. p. 60.
694 As a further task in the field of public safety, the OSCE Mission supported the Local Public Safety Committees to serve as a forum of residents, police, and municipal representatives for addressing issues on safety, living conditions, and inter-ethnic relations. Ibid. p. 70.
initiatives.\footnote{OSCE, Human Rights, Ethnic Relations and Democracy in Kosovo (Summer 2007-Summer 2008), Background Report, para 67. available at: <http://www.osce.org/kosovo/33282?download=true> (last accessed on 22 February 2017)} Furthermore, the Mission promoted the inclusion of non-Albanian communities and civil society groups in the legislative processes.\footnote{Ibid. para. 43.} At a municipal level, the OSCE monitored and supported the efforts of local institutions for improving their services and facilitating the local governance reform in line with the European and international standards.\footnote{Ibid. para. 79.} In the area of media development, the OSCE played an active role in the establishment of the public broadcaster and diverse regulatory bodies for broadcast and print media, as well as advised public institutions on ensuring media independence.\footnote{Ibid. para. 129.}

Between 2000 and 2007, the OSCE assisted in the organization of five rounds of elections in Kosovo and the supported the work of national election institutions such as the Central Election Commission.\footnote{Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2010/5, 5 January 2010, para. 16.} Since 2008, the Mission has been providing non-executive technical advice to election institutions and has been involved in the election reform process. OSCE greatly contributed to the maintenance of stability in Kosovo through the facilitation of balloting for the Serbian presidential and parliamentary elections for voters in Kosovo in May 2012\footnote{Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2012/603, 3 August 2012, para. 4. and 42.}, and the elections for mayors and municipal assemblies in four northern Kosovo municipalities in late 2013 and early 2014.\footnote{Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2013/631, 28 October 2013, para. 4.}

In the framework of its human rights monitoring and promoting mandate, the OSCE Mission supported the Kosovo institutions, including the law enforcement agencies, to improve their mechanisms and capacities in complying with international human rights standards.\footnote{OSCE, Human Rights, Ethnic Relations and Democracy in Kosovo, Background Report, supra note 696, para. 105.} Activities included assistance in the review of Kosovar laws and secondary legislation, and monitoring the work of the judiciary and police for human and community rights compliance. Finally, the
OSCE Mission played a key role in the establishment and monitoring of the Ombudsperson Institution which is responsible for the investigation of human rights violations and provides legal services.704

4. The EU’s programmatic approach to strengthen the rule of law

a. The mandate of EULEX

The European Union Rule of Law Mission in Kosovo, the largest civilian mission of the EU thus far, was established shortly before Kosovo’s declaration of independence by a Joint Action adopted by the Council of the European Union.705 The Joint Action confirmed "the readiness of the EU to play a leading role in strengthening stability in the region in line with its European perspective and in implementing a settlement defining Kosovo’s future status […] including by means of a European Security and Defence Policy (ESDP) mission".706 EULEX indicated that while the Joint Action and its amendments provide the legal basis for its deployment, the Mission will operate within the framework of UNSCR 1244. The question whether the Resolution allows the establishment of EULEX became a disputed issue in the international and Kosovar community.707 Although the Joint Action referred to Article 10 of UNSCR 1244, which authorized the Secretary-General to establish the four-pillar structure and delegate certain functions of UNMIK to other international organizations, the Council has never introduced EULEX as UNMIK’s official successor. While some interpreted the aforementioned UNSC’s presidential statement from November 2008, which implicitly endorsed the reconfiguration of the UN presence, as an ex-post facto authorization for EULEX’s deployment708, the legitimacy of the Mission remained

704 Ibid.
706 Ibid. para. 7.
707 UN Security Council, Record of the 5839th Meeting of the Security Council, S/PV.5839, 18 February 2008, Just as Kosovo’s declaration of independence, the legal basis of EULEX was disputed by Serbia and Russia, See the addresses of Mr. Churkin (Russia) and President Tadić (Serbia) pp. 4-7.
highly controversial throughout its first year causing serious operational obstacles, especially in the northern, Serbian populated areas.\textsuperscript{709}

Article 2 of the Joint Action defined EULEX’s Mission Statement by stating that “EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices”. The Mission Statement summarized not only the major objectives, but also reflected on the challenges the EU was faced with in Kosovo at the time of EULEX’s establishment, such as the lack of accountability, ethnic tensions, and the presence of political interference. In addition, Article 2 defined the Mission’s methodology which included monitoring, mentoring, and advising (MMA) Kosovar rule of law institutions complemented with retaining certain executive functions.\textsuperscript{710} In EULEX’s operational practice, “advising” involves expert consultation and professional counselling to be provided for their local counterparts. In contrast, “mentoring” is understood as a more comprehensive assistance in the capacity-building of the Kosovar staff which included, besides the transfer of knowledge, the follow-up and the assessment of the local actions and decisions. Additionally, “monitoring” indicated that EULEX observes and evaluates the performance of the Kosovo rule of law institutions in relation to the Mission’s objectives.\textsuperscript{711} Finally, the executive responsibilities which EULEX retained were defined by Article 3 of the Joint Action. Accordingly, EULEX shall

"ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities";

\textsuperscript{709} Ibid. pp. 84-86.
\textsuperscript{711} Ibid.
“ensure that cases of war crimes, terrorism, organised crime, corruption, inter-
ethnic crimes, financial/economic crimes and other serious crimes are properly
investigated, prosecuted, adjudicated and enforced, according to the applicable
law, including, where appropriate, by international investigators, prosecutors and
judges jointly with Kosovo investigators, prosecutors and judges or
independently (...)

and

“assume other responsibilities, independently or in support of the competent
Kosovo authorities, to ensure the maintenance and promotion of the rule of law,
public order and security, in consultation with the relevant Council agencies”.712

The possibility to retain these executive functions from UNMIK’s powers shows
certain contradictions between EULEX’s objectives. While the MMA approach
operated on the basis of cooperation with Kosovar counterparts and aimed at
ensuring that they are competent in enforcing the rule of law, the Mission’s
mandate suggested that the EU has not considered “the local capacities as
sufficiently developed to take full responsibility for all tasks”.713 The
incompatibility between the partial or entire substitution of the local actors in
certain rule of law areas, and the promotion of domestic capacities and
responsibilities has remained one of EULEX’s main characteristics until the
reconfiguration of the Mission’s tasks in 2016.

In its early years of operation, EULEX’s institutional framework was divided into
three components: police, justice, and customs component. In each component,
the reform strategies were jointly agreed on by EULEX experts, including police
officers, judges, prosecutors, and customs specialists, and their local
counterparts. EULEX has operated on the basis of a programmatic approach
which incorporated the subsequent stages of defining general aims and strategic
objectives; identifying the areas of strengths and weaknesses of the performance
of police, justice, and customs sector; analyzing the causes of poor performance;

712 Joint Action, Article 3(b), (d) and (h)
713 Keukeleire, and Thiers, supra note 710, p. 362.
and elaborating strategies for improvement.\footnote{EULEX Programme Office and Office of the Head of Mission EULEX Kosovo (2009), \emph{EULEX Programme Report of July 2009}, p. 9.} The results of stocktaking on the rule of law situation in Kosovo were presented by the 2009 Programme Report. Subsequently, the recommendations outlined in the Report were translated into MMA Actions to be implemented by the diverse components, in cooperation with the local counterparts. As part of the programmatic approach, EULEX established a structured reporting system of annual programme reports which served to assess the performance of the rule of law components, and allowed the mission to (re)adjust its activities to the needs and progress achieved on the ground.

\textbf{b. EULEX Police}

Through the deployment of 1,400 international police officers, the police component has been the largest division of the three EULEX components.\footnote{Keukeleire and Thiers, supra note 710, p. 364.} The police officers have been co-located with their local counterparts at diverse hierarchical levels within the Kosovo Police (KP). EULEX applied the "strengthening over substituting" approach\footnote{Spernbauer, Martina (2010), \emph{EULEX Kosovo–Mandate, Structure and Implementation: Essential Clarifications for an Unprecedented EU Mission}, Centre for the Law of EU External Relations, CLEER Working Papers 2010/5, p. 32.} towards the KP, which is illustrated by the established hierarchy on the basis of the "three-stage cascade of responsibilities for security incidents"\footnote{Report of the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy to the Secretary-General of the United Nations on the activities of the European Union Rule of Law Mission in Kosovo, S/2009/149, 17 March 2009, para. 11.} among the local police and the international actors. In accordance with the local ownership principle, the first responder is always the KP when security incidents occur. In these cases EULEX performs only its MMA functions. In cases where the capacity of the KP is proven to be insufficient, EULEX’s Special Police Units function as a secondary responder.\footnote{EULEX special police assisted the Kosovo Police in restoring order with KFOR support after unrest broke out in December 2008 in Northern Mitrovica. See ibid. para. 14.} While performing this role, in cases deemed to be necessary, the Mission’s mandate allowed exercising executive authority. The executive mandate also embraced the right to intervene in the work of the KP in particular cases of necessity, such as ethnic based violence or political interference. Finally,
in instances where maintaining peace and order would overburden EULEX capacities, the third responder is the NATO-led KFOR.

Outside of the context of responsiveness in security-related emergencies, in the police component, the MMA and executive functions have been strictly separated between the Police Executive Department and the Strengthening Department. As part of the long-term EULEX MMA efforts to build sustainable capacity for the KP personnel, the Mission supported the strengthening of independent capabilities at management level, the implementation of systemic changes in the KP budget, the consolidation of the Kosovo Police Criminal Intelligence System, and the development of community and intelligence-led policing competences.\(^719\) Accordingly, EULEX Police assessed all working levels of the KP’s management and oversaw the restructuring of the management structures and selection of senior police staff.\(^720\) EULEX monitored, mentored, and advised the establishment of ethnically balanced police units, and promoted, in particular, the reintegration of Serbian police officers into the service. In addition, the Mission contributed to the drafting of a Crime Reduction Strategy, several laws and policies on issues, such as integrated border management, organized crime, terrorism, and migration, as well as advised on the establishment of the Contract Management Unit designed to oversee the KP’s procurement processes.\(^721\)

Based on Article 3 and 4 of the Joint Action, EULEX executive police have been active in six areas: financial crime, organized crime, war crimes, terrorism, corruption and inter-ethnic crime. EULEX’s executive mandate allowed that the Mission investigates these crimes under its own command structure independently from the Kosovo authorities. Accordingly, EULEX police and prosecutors identified and launched investigations in a number of priority cases. In the area of war crimes investigation, EULEX completed a comprehensive


review of 888 from UNMIK inherited cases, for which the Special Prosecution Office of Kosovo issued a request for investigation in 2009.  

As a result, EULEX and the Kosovo Police placed several war crimes suspects under arrest. Following EULEX’s inquiries on suspending the immunity from arrest of Kosovo Assembly members, the Government of Kosovo referred the issue to the Kosovo Constitutional Court which declared that neither members of parliament, nor the Prime Minister or other members of the Government, are immune from the criminal prosecution, arrest, and detention for actions taken outside the scope of their political duties. Subsequently, EULEX launched investigations on prominent figures such as the former Minister of Transport and Telecommunications, Fatmir Limaj, who was arrested together with nine other former KLA members in March 2011. The suspects were believed “to have committed war crimes in Kosovo in 1999, in an improvised prison, where detainees were subjected to inhumane conditions, torture and beatings that in some cases led to their death”. EULEX also cooperated with the International Criminal Tribunal for the Former Yugoslavia (ICTY) on war crimes issues. The ICTY involved EULEX in several discussions, such as the request of Lahi Brahimaj and Ramush Haradinaj for provisional release. Moreover, the Mission provided witness protection services both for the ICTY and in local cases as well.

As part of its efforts for combating corruption in Kosovo, EULEX was mandated to support, track, and report related prosecutions. In this area, EULEX activities, in

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724 Ibid.
725 Ibid. p. 15.
726 Since EULEX had jurisdiction for crimes committed in Albania as well, in a case of murder and mistreatment of prisoners in a KLA prison camp in Albania during the Kosovo conflict of 1998 and 1999, the EULEX Witness Security Unit was able to facilitate the key video testimony provided through anonymous video links. See Report of the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy to the Secretary-General of the United Nations on the activities of the European Union Rule of Law Mission in Kosovo, S/2011/514, 12 August 2011, p. 15.; Since EULEX had jurisdiction for crimes committed in Albania as well, in a case of murder and mistreatment of prisoners in a KLA prison camp in Albania during the Kosovo conflict of 1998 and 1999, the EULEX Witness Security Unit was able to facilitate the key video testimony provided through anonymous video links.
cooperation with their local counterparts, encompassed the identification, prioritization, and prosecution of major cases of corruption at various levels in the Kosovar political arena. These cases included search and arrest operations for charges of bribery and misappropriation of office of several high-ranking political figures, such as the former Minister for Community and Returns, the Head of Kosovo Customs, the Governor of the Kosovar Central Bank, Kosovo Police officers, and employees of the Ministry of Internal Affairs and Kosovo Ministry of Health.

In addition to the corruption related-actions, EULEX investigations led to several trials on charges of organized crime. Examples of high-profile cases included the “Tisa River” trial, which involved eight defendants accused of causing the death of 15 Kosovo Albanians as part of a failed attempt to cross the border between Serbia and Hungary in October 2009. The trial served to abolish an international organized crime ring that offered migrants illegal passage from Kosovo to the European Union. Additionally, the so-called “Medicus” case involved 11 suspects of prominent local doctors who were charged with illegal kidney transplants performed in a private clinic in Pristina known as “Medicus.” Furthermore, EULEX succeeded to investigate and launch court proceedings in cases of drug trafficking in and out of Kosovo to various European countries, human trafficking, and sexual exploitation.

729 S/2011/514, supra note 727, p. 17; The trial ended with the conviction of seven of the defendants to imprisonment ranging from 2 to 19 years, for a total of 65 years.
730 UN Security Council, Report of the Secretary-General on the United Nations Interim Administration in Kosovo, Annex I: Report of the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy to the Secretary-General of the United Nations on the activities of the European Union Rule of Law Mission in Kosovo, S/2012/275, 27 April 2012, p. 15. Kidneys were allegedly removed from impoverished individuals, recruited on false promises of payment that they never received, and then transplanted to wealthy foreign patients. The case was initiated by Kosovo and UNMIK police officers in November 2008.
Another important development regarding the fight against organized crime in Kosovo has been that the Parliamentary Assembly of the European Council endorsed the Report of the Council of Europe Special Rapporteur Senator Dick Marty, entitled "Investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo" in January 2011. The Report accused Kosovo leaders of involvement in an organized crime ring including drug smuggling, organ trafficking, and murder. After allegations were made public, EULEX stated that the Mission had the capacity, expertise, and jurisdiction to handle the case, and assumed responsibility for the investigation. The Mission also opened preliminary investigations into the matter, and arranged a meeting with Senator Marty to discuss his findings. The EU opted for the establishment of a Special Investigative Task Force (SITF), led by Lead Prosecutor, Clint Williamson, who immediately visited Pristina, Belgrade, and Tirana to reaffirm high-level support for the work of the SITF. Williamson also noted that, in addition to the allegations of organ trafficking, the Task Force would examine "possible abductions, detentions, mistreatments, and killings during the period in question, as well as any other crimes related to the allegations" of Senator Marty.

After 3 years of investigation, on the 29th of July 2014, Williamson announced that the investigative findings are largely consistent with the Marty Report of 2011 and stated that the SITF could file indictments against the suspected individuals once an appropriate judicial mechanism is established. In 2016, the Netherlands made it public that in response to the EU’s request, The Hague will host the special court officially called the Kosovo Relocated Specialist Judicial

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734 Ibid.

735 The SITF was established on 17 October 2011. See S/2012/72, supra note 728, p. 15; and Council of Europe, Parliamentary Assembly Resolution 1782 (2011) on the investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo, 25 January 2011

736 S/2012/72, Ibid.


c. EULEX Customs

The second component, EULEX Customs, has been the smallest division within EULEX aiming at the professionalization of the Kosovar customs service in line with international standards and European best practices.\footnote{Keukeleire and Thiers, supra note 710, p. 366.} EULEX Customs officers have operated mainly through MMA actions, and performed executive functions in mixed international and local teams, only when deemed necessary. The MMA actions in the field of customs served the improvement of the legal framework, management, and avoidance of political interference. The biggest challenge for the Customs component at the start of its deployment in November 2008 was to reestablish the customs infrastructure at the two border crossings, Gate 1 and 31, in the north and thereby prevent the secession of the Serbian-inhabited areas.\footnote{S/2009/300, supra note 720, p. 12.} At these Gates, EULEX took up executive responsibility through ensuring customs control and data collection activities. Sharing the collected information with both of the Kosovo Customs Service and the Serbian Customs Administration enabled these authorities to launch investigations in a number of cases.\footnote{Ibid. p. 14. The information collected by EULEX included date and time of crossing, details of the driver and vehicle, importing company, quantity of cargo, invoice number and value of invoice, currency and customs seal or International Road Transport (TIR) number.} Further EULEX activities included the review and advocacy on amendments to the Customs and Exercise Code for Kosovo, as well as the monitoring of an establishment of an Independent Review Board by the Ministry of Economic and Finance which was to deal with appeals against Customs and Tax Administration decisions.\footnote{S/2010/169, supra note 722, p. 16.} Moreover, EULEX advised on the adoption of the strategic operating framework for the Kosovo Customs, and the upgrade of their communication database and data processing system.\footnote{Monitoring, Mentoring and Advising Tracking Mechanism, 2012, supra note 719.} Finally, the Mission contributed to the key effort of the Kosovo Police and Customs to adopt an
approach to fight organized crime through decreasing “the number of porous areas around Pristina airport and identified important gaps in the streamlined measures” on customs control.\textsuperscript{744}

d. EULEX Justice

Supporting local capacity-building, and at the same time living up to the executive powers in the Kosovar justice system, posed a serious challenge to EULEX. While EULEX judges and prosecutors have exercised MMA and executive functions within the Kosovo Judiciary, further legal experts have been co-located with the Ministry of Justice (MoJ) and other bodies and agencies, such as the Kosovo Property Agency, Kosovo Judicial Council, or the Kosovo Correctional Service.\textsuperscript{745} Furthermore, in the framework of the justice component, forensic experts, deployed at the Office of Missing Persons and Forensic Medicine, have been responsible for cases of unidentified and missing persons. EULEX’s advisory role in the framework of the MMA function included advising “on the appropriate legislation”.\textsuperscript{746} Accordingly, EULEX legal experts reviewed and advised the MoJ on a number of rule of law related draft laws prior to their submission to the Assembly of Kosovo.\textsuperscript{747} Furthermore, the Mission assisted the Kosovo authorities with the drafting of a number of policy documents including “those on anti-corruption, organized crime, counterterrorism, and counter-narcotics, [and] an action plan against trafficking in human beings”.\textsuperscript{748}

\textsuperscript{745} Keukeleire and Thiers, supra note 710, p. 367.
\textsuperscript{746} Spernbauer, supra note 716, p. 29.
\textsuperscript{747} The draft laws regulated, on the one hand, the functioning of the Kosovo judiciary such as draft laws on judicial reform, witness protection, confiscation, the Prosecutor’s Office, the Kosovo Judicial and Prosecutorial Council and, on the other hand, addressed a wide range rule of law related areas including law on fight against terrorism, money-laundering, the Ombudsperson institution, the execution of penal sanctions and obligations, the new criminal code, the criminal procedure code, and the juvenile justice code. Furthermore, EULEX participated in the review of a the “judicial package”, adopted in 2016, which embraced the Law on the Kosovo Prosecutorial Council, the Law on the State Prosecutor, the Law on the Kosovo Judicial Council, the Law on Courts, and the Law on the Special Prosecution Office of Kosovo. See Report of the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy to the Secretary-General of the United Nations on the activities of the European Union Rule of Law Mission in Kosovo, S/2013/372, 4 February 2013, p. 19.
\textsuperscript{748} S/2009/149, supra note 717, p. 11.
The MMA actions of the EULEX judges and prosecutors have been part of a three stage process which began with monitoring activities at the least intrusive level. This was followed by a more structured phase of mentoring, and was completed by performing advisory functions in cases where monitoring has revealed the need for further action. Mentoring were provided on an individual basis between the EULEX judges and prosecutors and their local counterparts while exercising their judicial and prosecutorial functions, in particular, within proceedings adjudicated in mixed panels. Mentoring, on the other hand, took place in informal meetings between EULEX and Kosovo judges with respect to issues such as "case allocation, workload distribution, witness protection, corruption and discrimination or enforcement of judicial decisions". Consequently, the mentoring and monitoring functions of EULEX judges were simultaneously exercised alongside their executive functions. In addition to the above mentioned issues, these activities aimed at improving the handling of execution cases upon appeal, the accessibility to the courts, the establishment of a registration, evaluation, and service system of appeals in criminal law cases, and a proper case allocation system. The advisory function, on the other hand, was implemented only through formal guidelines and recommendations to the Kosovo judicial, legislative, or governmental authorities which were issued by the Assembly of EULEX judges on all matters of emerged during the monitoring and mentoring activities. The recommendations addressed, among others, the public announcements of verdicts, the distribution of the Official Gazette and new laws throughout the Kosovo courts, and the establishment of a proper case allocation system between the courts of Kosovo.

While exercising their executive functions "EULEX judges and prosecutors worked on a number of cases received from UNMIK and on new cases, including in mixed panels with Kosovo judges and prosecutors". In 2008, approximately 40 EULEX judges and 20 prosecutors from all EU countries were deployed at the

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749 Spernbauer, supra note 716, p. 27.
751 Ibid.
District Courts and District Prosecutor Offices throughout Kosovo, as well as the Supreme Court and the Office of the Special Prosecutor.\textsuperscript{753} Their executive powers were addressed by the "Law on the jurisdiction, case selection and case allocation of EULEX judges and prosecutors in Kosovo" of the Assembly which endorsed that international judges and prosecutors become an integral part of the Kosovar judicial and prosecutorial system, and exercise compulsory or optional jurisdiction in both civil and criminal law.\textsuperscript{754} In the field of criminal law, Article 3 of the above mentioned Assembly law established EULEX jurisdiction over any case investigated or prosecuted by the Special Prosecution Office (SPRK). In accordance with the Joint Action, the crimes for which the SPRK has had exclusive investigative and prosecutorial competence, and EULEX judges have compulsory jurisdiction included "terrorism, genocide and crimes against humanity, war crimes, inter-ethnic cases, organized crime, financial crimes and other serious crimes listed in the amended Criminal Code of the Socialist Federal Republic of Yugoslavia".\textsuperscript{755} EULEX can exercise optional jurisdiction only in cases when the SPRK do not launch investigation or prosecution such as smuggling, piracy, ethnic hatred crimes, torture, and grave cases of theft or robbery.\textsuperscript{756}

In the area of criminal law, EULEX’s priority after the start of its deployment has been to reduce the severe backlog of cases inherited from UNMIK.\textsuperscript{757} These included cases on war crimes against the civilian population committed during 1998-1999, and crimes committed during the unrest in March 2004.\textsuperscript{758} These cases have been gradually complemented with prosecution and trials on issues of corruption and organized crime. According to the general rule, EULEX judges exercised their jurisdiction in mixed panels of one local, and two European judges. It belonged to the competencies of the President of the Assembly of

\textsuperscript{753} Keukeleire and Thiers, supra note 710, p. 368.
\textsuperscript{756} Spernbauer, supra note 716, p. 24.
\textsuperscript{757} According to the 2009 Programme Report, the case backlog in the Kosovo Judiciary at the end of 2008 amounted 280,683 cases. See supra note 714, p. 100.
\textsuperscript{758} S/2009/149, supra note 717, p. 13.
EULEX judges to decide on the derogation from the hybrid composition, and assign a panel of only local or three EULEX judges.\footnote{759} According to Article 5 of the Assembly law on EULEX jurisdiction, EULEX judges were assigned to deal with civil law proceedings in a public or private property related dispute as well. These cases involved compensation claims of both the Kosovo Serbs against local municipalities who failed to protect their properties following the NATO intervention in 1999 and in March 2014, and Kosovo Albanians, against the Serbian Government for destruction of their properties by fleeing Serbs in 1999.\footnote{760} The involvement of EULEX judges in civil law proceedings was deemed necessary due to the political dimension of such property claims and further legal challenges which surrounded civil cases such as falsified documents or the lack of official records on transactions.\footnote{761} While the KCJ functioned as a watchdog for Kosovo judges, the body had no competence for proceedings against EULEX judges. The Annual Report on the Judicial Activities in 2009 noted that the property-related inter-ethnic cases have been unreasonably prolonged and involved allegations of fraudulent property transactions and political influence.\footnote{762} Until present, complaints about being a victim of a human right violation by EULEX must be filed to the Human Rights Review Panel (HRRP), whose competence is limited to formulating recommendations for remedial actions.\footnote{763}

\footnote{759} Spernbauer, supra note 716, p. 25.  
\footnote{760} The number of the compensation claims amounted 20,000 to 22, 000 in the year of 2010. See S/2010/401, supra note 744, p. 16.  
\footnote{761} The Annual Report on the Judicial Activities in 2009 noted that the property-related inter-ethnic cases have been unreasonably prolonged and involved allegations of fraudulent property transactions and political influence. Cited by Spernbauer, supra note 716, p. 26.  
\footnote{762} EULEX Kosovo, Annual Report on the judicial activities of EULEX judges, 2009, cited by Spernbauer, ibid.  
e. EULEX’s exit strategy

Following a strategic review in 2012, EULEX was reconfigured into a two-pillar structure, composed of a Strengthening and an Executive Division. While the Strengthening Division continued to provide MMA functions to assist in further developing and strengthening the key rule of law institutions, the Executive Division kept delivering rule of law services by carrying out investigation, prosecution, and adjudication on ongoing EULEX cases until the complete transfer of these executive functions to the local authorities. After the reconfiguration, the Mission also focused on providing MMA activities in the north of Kosovo, as well as supporting the EU-facilitated Pristina-Belgrade dialogue and the implementation of rule of law related provisions of the agreements reached in the dialogue process. In November 2013, the Kosovo rule of law institutions, the EULEX, and European Union Office in Kosovo adopted a new strategy document, the *Compact*, which formulated joint rule of law objectives that the parties intended to achieve in a cooperative manner. Progress in the implementation of the *Compact* has been regularly reviewed by the newly established Joint Rule of Law Coordination Board. On the basis of the Compact Progress Reports and further strategic reviews, the European Council extended the mandate of EULEX for a period of two years in 2014 and 2016 respectively. Although on the 10th of September 2012, the local authorities and the International Steering Group announced the end of the “supervised

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765 These included, among others, the continued strengthening of police, customs, correctional and judicial institutions; enhancing the ability of rule of law institutions to deal with inter-ethnic crimes, organized crime, corruption, and issues related to minorities; consolidating their strategic, operational, and organizational capacity; as well as promoting inter-institutional cooperation and further development of the witness protection system. EULEX Head of Mission, the European Union Special Representative and the Kosovo Deputy Prime Minister/Minister of Justice, Compact on Joint rule of Law Objectives for the period until June 2014, See Report of the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy to the Secretary-General of the United Nations on the activities of the European Union Rule of Law Mission in Kosovo, S/2013/72, 4 February 2013, p. 13.


170
independence” of Kosovo and the closure of the International Civilian Office, up to the present EULEX continues to perform both MMA and executive functions. Under the latest mandate of the Mission, EULEX judges and prosecutors remain embedded in the rule of law institutions and continue to adjudicate and prosecute in mixed teams until the complete transfer of responsibilities to the local authorities can take place.

IV. EU enlargement policy in the context of Kosovo

1. The road to a Feasibility Study

In addition to the involvement in Kosovo’s peacebuilding process in partnership with the UN and later through the EULEX mission, the EU included Kosovo in the Stabilisation and Association Process which was launched as a mechanism of the “Stability Pact for South-Eastern Europe” at the Feira Summit. The SAP was designed in 1999 as a special strategy for the war-torn Balkan Peninsula. While the EU concluded with the Eastern European countries uniform “European Agreements”, which provided the perspective of a full membership, the Stabilisation and Association Agreements (SAA) offered to the Western Balkan countries included region-specific requirements. The need for applying different instruments for the accession process derived from the EU’s objective that the Balkan countries need to create the conditions for durable stability before integrating with the EU. In order to overcome inter-ethnic tensions among the successor states of the FRY, all the SAAs entailed clauses on the commitment to pursue regional cooperation and good neighbourly relations. This concept was reaffirmed by the final declaration of the EU Zagreb Summit which states that "[d]emocracy and regional reconciliation and cooperation on the one hand, 

770 Skara, supra note 195, p. 36.
and the approachment of each of these countries with the European Union on the other, form a whole”.

Integrating Kosovo in the regional cooperation process has faced certain impediments due to the refusal of Serbia and Bosnia-Herzegovina to recognize its independence. While all countries of the Western Balkans made progress by the mid-2000s in the SAP, by reason of the unresolved status issue, signing the SAA with Kosovo on the 22nd of October 2015 was the result of a fifteen-year negotiation process. Particularly, before the declaration of independence, the EU faced the challenge of how to refer to Kosovo in official documents so that it satisfies both the recognizing and non-recognizing Member States. Consequently, the EU has avoided any concrete references on Kosovo’s integration process, instead, stressed its “willingness to assist the economic and political development of Kosovo through a clear European perspective, in line with the European perspective of the region”. Furthermore, in order to provide a “forum to discuss Kosovo’s process in implementing European Partnership”, the EU developed a special instrument, the Stabilisation and Association Process Tracking Mechanism (STM). The STM enabled Kosovo institutions to participate in so-called “dialogues” with EU experts that aimed at sensitizing about the European standards, and moving Kosovo towards an acceptable legal base with sufficient administrative capacity in facilitating the future integration process. Although the unresolved status problem prevented that these meetings function as official negotiations, in 2005 and 2006, several STM meetings were held between the Commission and Kosovo authorities. The high-level policy and technical dialogue was complemented by workshops on issues of trade, customs

772 Council of the European Union, Stabilisation and Association agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part, 10728/1/15 REV 1, Brussels, 2 October 2015; The Agreement entered into force on the 1th of April 2016.
775 Pakolaj, supra note 769, p. 9.
and taxation, and rural development.\textsuperscript{776} In addition to the STM meetings, the EU has provided guidance to the Kosovo authorities “on reform priorities” through the European Partnership Program Action Plan (EPAP) which was approved by the PISG in August 2006.\textsuperscript{777} In 2007, the EU introduced the “Extended Tracking Mechanisms of Stabilisation-Association” and held restructured sectoral meetings in the areas of good governance, economy, internal market, innovation, and infrastructure. The 2007 Progress Report noted that the new structure provided “the mechanism for a more detailed analysis of the conformity of the legislation, practices and policies in Kosovo with European standards”.\textsuperscript{778}

Although Kosovo declared its independence in 2007, the absence of a common stance on the status question hindered the achievement of significant progress in its integration process. Due to the opposition of five Member States\textsuperscript{779}, the Commission was unable to conduct a feasibility study on accession, instead issued a Communication, “Kosovo-Fulfilling its European Perspective”, which stated that “in line with Council conclusions, the EU can agree on measures to support Kosovo’s political and economic development without prejudice to EU Member States’ positions on status”.\textsuperscript{780} Although the Communication emphasized the willingness to engage with Kosovo, the EU faced the serious challenge of how to enter into formal contractual relations to start the pre-accession process. Used as a compromise, the EU transformed the STM into a Stabilisation and Association Process Dialogue (SAPD) to provide a framework for the continued high level plenary and sectoral meetings, with the aim of monitoring and following up on the progress of implementing the EU integration priorities set out


\textsuperscript{778} Ibid, p. 5; 2007 was also the first year when Kosovo benefited from the EU’s new financial assistance programme, the Instrument for Pre-accession Assistance (IPA). The priority areas of the IPA funding included strengthening the administrative capacity at all levels, enhancing rule of law, human rights and good governance, improving socio-economic conditions for all communities, and developing regional co-operation. In addition to the IPA assistance, the EU provided funds for civil society organizations through the CARDS instrument as well. See Commission of the European Communities, Kosovo (under UNSCR 1244/99) 2008 Progress Report, SEC (2008) 2697, 5 November 2008, p. 7.

\textsuperscript{779} EU States which do not recognize Kosovo’s independence are Spain, Slovakia, Cyprus, Romania and Greece.

\textsuperscript{780} Kosovo-Fulfilling is European Perspective, COM (2009) 5343, supra note 773, p. 4.
in the EPAP.\textsuperscript{781} Subsequently, the EU enhanced the non-contractual relationship with Kosovo through launching several dialogue programmes including the visa liberalization dialogue, a Structured Dialogue on the Rule of Law, and the ongoing Stabilisation and Association Process Dialogue. On the other hand, based on the UNGA Resolution of September 2010, the EU began to facilitate a dialogue between Serbia and Kosovo to promote cooperation and "achieve progress on the path to the European Union".\textsuperscript{782} The dialogue resulted in 2012 in agreements on minor issues including, among others, the free movement of persons, custom stamps, recognition of university diplomas and civil registries.\textsuperscript{783}

2. The conditions and conclusion of the Stabilisation and Association Agreement

The \textit{Feasibility Study for a Stabilisation and Association Agreement} between the EU and Kosovo was issued by the European Commission in October 2012. The Study aimed at assessing Kosovo’s readiness to begin SAA negotiations and meet the obligations determined by the Agreement. The assessment concluded "that Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement. It is also essential that Kosovo continues implementing in good faith all agreements reached between Belgrade and Pristina to date and that it engages constructively on the full range of issues with the facilitation of the EU".\textsuperscript{784} Although the conclusion pointed to Kosovo’s sufficient capacity in the start of negotiations, the study identified "significant gaps and many issues that need to be addressed by Kosovo, to meet its obligations under" an SAA, and specified the priorities that Kosovo was required to engage with in the short run.\textsuperscript{785} The SAA negotiations were formally opened in June 2013 with the aim of


\textsuperscript{783} Ibid. p. 12.

\textsuperscript{784} Ibid. p. 12.

\textsuperscript{785} These included, among others, demonstrating a clear commitment to deliver results in the fight against organized crime and corruption; launching investigations and ensuring continuous good cooperation with EULEX; adopting the legislation on confiscation of assets and revising the law on prevention of money laundering and financing of terrorism; formulating a new anti-corruption strategy and the necessary secondary
achieving a draft agreement by the spring of 2014. The in-country and diplomatic engagement served to meet the conditions determined by the Feasibility Study. Additionally, the EU-facilitated dialogue resulted in the "First agreement of principles governing the normalization of relations" between Serbia and Kosovo on areas of high importance, such as police, justice, and municipal elections. As a result of the policy reforms undertaken by the Kosovo authorities in 2013, the Commission and the EU High Representative for Foreign Affairs and Security Policy stated that Kosovo fulfilled the short-term conditions of the Feasibility Study in the areas of rule of law, public administration, protection of minorities, and trade. Furthermore, the 2013 Progress Report welcomed the efforts undertaken to meet the political criteria of integration which included actions on improving the Assembly’s oversight on the Government, intensifying the fight against organized crime and corruption, implementing the judicial reform and adopting legislation on rule of law issues. The Report, however, confirmed that "Kosovo needs to provide concrete evidence of results in fighting organized crime and corruption as a matter of priority, and strengthen legislation and its implementation" and "improve further the reliability of statistics in these areas".

The focus on the election campaign for the 2014 local and general elections caused a setback in the SAA process. The 2014 EU Progress Report called for a re-energized commitment on the implementation of the reform agenda from the side of the new Government and the Assembly. Key reforms were further delayed by a six-month political stalemate following the elections, which ended in

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786 According to the 2013 Progress Report, “[f]ollowing the First Agreement, Serbian police stations operating in northern Kosovo have been closed; salary payments from Serbia to police officers employed by Kosovo have ceased; Serbian courts have stopped processing criminal cases in Kosovo; and municipal assemblies in the four northern municipalities have been dissolved. The municipal elections scheduled for November are also to take place in northern Kosovo". European Commission, Kosovo 2013 Progress Report, SWD (2013) 416 final, Brussels, 16 October 2013, p. 1.


789 Ibid. p. 2.

December 2014 when the Democratic Party of Kosovo formed a coalition with the Democratic League of Kosovo and further minority parties. The relationship between the Government and the opposition remained tense, in particular, in matters of the establishment of the Special Chambers and dialogue with Belgrade. The latter achieved further results through finalizing key agreements on the establishment of a community of Serbian majority municipalities, as well as on issues in the fields of justice, civil protection integration, vehicle insurance, or customs collection.\footnote{Ibid. p. 6.} According to the summary of the \textit{2015 EU Progress Report} on the implementation of reforms for the period of October 2014 to September 2015, Kosovo was "at an early stage" of alignment with European standards in several areas such as the judicial system reform, the fight against corruption and organized crime, the adoption of the legislative and institutional framework for human rights protection, and the effective safeguarding of minority rights.\footnote{European Commission, \textit{Kosovo 2015 Progress Report}, SWD (2015) 215 final, Brussels, 10 November 2015, pp. 1-6.} Despite the negative assessment provided by the 2015 Report, the EU signed the SAA Agreement with Kosovo on the 27\textsuperscript{th} October of 2015. The SAA established the first contractual relationship between the EU and Kosovo, as well as served as a framework "for closer political dialogue and economic relations [...] including opening EU markets to Kosovo products".\footnote{Ibid, p. 4.} The Agreement defined a set of legal, administrative, institutional, and economic reforms that Kosovo would need to implement within a period of ten years, with an estimated annual contribution of €70 million provided by the New Instrument for Pre-Accession Assistance (IPA II). While Article 2 of the SAA stressed that the Agreement does not constitute the recognition of Kosovo as an independent state by the EU itself, or by any of the non-recognizing Member States, achieving consensus about Kosovo’s accession will put the 27 EU Member State to the test.

\section*{V. Lessons learned from the peacebuilding process of Kosovo}

While acting on the basis of their security interests, in 1999, the West was determined to turn the intervention in Kosovo into a “success story” of
peacebuilding. Since 1999, on their own, the EU and its Member States have provided more than €4 billion in aid for Kosovo’s 1.8 million citizens which is considered to be the largest contribution ever offered for a third country.\textsuperscript{794} The opened-ended missions of key international organizations have been mandated with all the necessary tasks to effectively support the Kosovar peacebuilding process such as supporting DDR, SSR, strengthening the rule of law or assisting in the establishment of a framework of political and economic competition. As a result of the assistance in achieving physical and political security, Kosovo did not relapse back into violent conflict after the end of the armed conflict in 1999 and held more than one parliamentary and municipal election without an escalation of violence. Although the short-term peacebuilding objectives of stability and institutionalization have been met, today, Kosovo is still at an early stage in the process of addressing long-term economic, political, and social challenges. Even if the status issue, which posed as the major obstacle for the peacebuilding process, has been resolved, Kosovo remained the poorest and worst governed country in the Balkan Peninsula.\textsuperscript{795} The fragility of the young democracy became apparent when following the 2014 elections, Kosovo was not able to inaugurate a new Government due to a political and constitutional deadlock, and a care-taker Government implemented policies without parliamentary oversight. The six-month stalemate showed, on one hand, the weak capacity of the Assembly in minimizing political and institutional crises, such as handling the numerous boycotts of plenary sessions, adopting laws in a timely manner, and ensuring the oversight of the executive and independent institutions or regulatory authorities. On the other hand, the post-election situation showed that Kosovo is able to manage political crises without an eruption of violence. Since Kosovo’s post-conflict period has embraced a number of similar ambiguous and polarizing issues, the success of the international assistance is challenging to measure.

\textsuperscript{794} See European Court of Auditors, \textit{European Union Assistance to Kosovo related to the rule of law}, Special Report No. 18/2012, 16 October 2012, p. 11.

1. Achieving and sustaining stability

The role of the international community in ending the armed conflict in Kosovo, which led to today’s stability, has remained contested. The NATO intervention raised serious doubts, not only regarding its legitimacy, but also to its sufficiency as a peace enforcement method. On the one hand, Milosevic’s surrender was a result of the withdrawal of Russia’s political support and endorsement of the solution proposed by the G-8, rather than being owed to a successful aerial campaign. Although Russia participated in the late peacemaking efforts which aimed at ending the crisis, including the elaboration of the G-8 proposal on an international interim administration, the agreement within the veto powers of the UNSC did not suffice for taking a stand on the NATO intervention, let alone adopting a resolution on its ex post facto approval. On the other hand, the biased involvement of Western States on the side of the Albanian population intensely overburdened the UN’s capacity in post-conflict peacebuilding. While the UN is generally mandated and equipped for global crises and conflict management, pursuing solutions is unprecedented in the Organization’s practice which result in a full institutional vacuum and the complete lack of rule of law as it occurred in Kosovo after the withdrawal of Serbian forces. The administration of the province became a costly and open-ended challenge when combined with political pressure to produce positive results in peacebuilding in the wake of the much debated NATO intervention.

As far as short-term stability is concerned, the recently announced establishment of a new criminal court to try serious crimes allegedly committed in 1999-2000 by members of the KLA reflects on the incapability of the 50,000-strong NATO-led peacekeeping force to ensure physical security right after the withdrawal of the Serbian forces. KFOR was criticized on its passivity in preventing the organized, systematic campaign of the KLA, and the returning Albanian refugees against the Serbian minority. Alleged crimes of reverse ethnic cleansing, which caused a second wave of refugees in the region, have not been the subject of

796 Dziedzic and Kishinchand, supra note 540, p. 29.
investigation until the establishment of the EU ad-hoc task force to collect evidence on the matter.\footnote{Report Inhuman treatment of people and illicit trafficking in human organs in Kosovo, supra note 732, paras. 7-8.}

While the KFOR facilitated the DDR process of 10,000 KLA fighters, which resulted in the formal dissolution of the KLA and the integration of its members in the ad hoc civil protection force, the KPC by the end of 2000, reports stated that the organization of regional and personal groups, whose leaders entered politics, business and organized crime, has stayed intact.\footnote{A presentation prepared by the intelligence services of KFOR, Organized Crime in Kosovo: clan structure, main links, published by Matt McAllester, Kosovo’s mafia, in Globalpost, 27 March 2011, cited by Capussela, supra note 795, pp. 48-49.} Their fighters remained well armed, as only a small percentage of weapons were handed over in response to amnesties guaranteed by UNMIK. Tolerating the violation of disarmament orders and the possession of illegal arms seriously weakened the credibility of the international administration and endangered short term stability. Fighters and weapons from Kosovo appeared in the armed uprising in the year of 2000 against the Serbian Government by the remaining Albanian minority of Presevo Valley, as well as a few months later in the Albanian side of conflict in Macedonia.\footnote{Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/538, 6 June 2000, para. 24.}

The seemingly stable security situation was compromised when widespread riots abruptly erupted for a period of three days in March 2004. The violence was organized and directed against the Serbian minority and UN administration alike as a signal of dissatisfaction on the lack of progress towards Kosovo’s independence.\footnote{Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/348, 30 April 2004, paras. 2-10.} The riots showed a high level of preparedness, and a potential of the Kosovo-Albanian population to organize and implement violent campaigns. While the (re)establishment of the control of military power by political institutions is a priority of peacebuilding interventions and a basic condition for creating physical security, the KFOR–UNMIK efforts delivered unsatisfactory results. Since enforcing DDR might have enhanced the risk of clashes between KFOR and KLA fighters, by tolerating the noncompliance with disarmament
orders, the short-term stability was sacrificed at the long-term stability’s expense. What is more, even the small number of incidents directed against UNMIK and the KFOR would have weakened the justification for the 1999 (humanitarian) intervention in the international diplomatic arena, and impaired the public image of victimization of the Kosovo Albanian population created by intervening powers. As peacebuilding in the region served to justify former diplomatic decisions, the stability of Kosovo became an over-politicized issue. At the same time, the international community failed to assert their monopoly on the use of force in Kosovo, which enabled the political elite to shape the social order according to its interests. The 2004 riots showed that regardless of its troop strengths, the KFOR failed to function as a deterrent force in the eyes of the local population. Nevertheless, the declaration of independence altered the security threats considering Kosovo’s stability. Following the protests of the Serbian community, the informal secession of North Kosovo and UNMIK’s reconfiguration led to the gradual the omission of the inter-ethnic violence and the frustration towards the international presence.\(^{802}\)

Sustaining stability through ensuring minority protection was another central question of the negotiations on Kosovo’s final status. The multi-ethnic character of the Kosovar state, envisaged by Ahtisaari, was actively promoted by Western powers. Nevertheless, Kosovo has become one of the most ethnically homogenous states in the region and the only European country where the two major ethnicities have been living in complete individual and institutional segregation.\(^{803}\) It can be stated that the international community showed the highest degree of political support towards the Serbian minority in Kosovo by ensuring the extensive autonomy in their municipalities and guaranteed seats in the Assembly. Although the EU has repeatedly stressed the need for an improved implementation of the law and policies on minority protection, the Kosovo


authorities have shown "disinterest or ingrained resistance" towards aiding the segregation.\textsuperscript{804}

Thus, social tension between Kosovo’s Serbian and Albanian population has posed a continuous challenge. According to the 2015 Reports of the UNSG, the overall security situation in Kosovo remained stable with the exception of a series of violent incidents in North Mitrovica, and violent protests in Pristina demanding the dismissal of the Minister for Communities and Returns who condemned attacks against IDPs with Serbian descent.\textsuperscript{805} Although the UNSG confirmed "some increase in the number of potentially ethnically motivated incidents"\textsuperscript{806} the current focus of the international community is centered on curbing the transnational threats stemming from Kosovo. Firstly, the proliferation of small arms remains a security concern in Kosovo even today.\textsuperscript{807} In 2006, an EU study pointed out that there have been at least 310,000 unregistered firearms in Kosovo held by organized crime rings, former groups of guerillas, as well as ordinary citizens, which poses a fundamental challenge to the stability.\textsuperscript{808} Although legislation on weapons control has been adopted, and both EULEX and ICO were mandated to provide assistance in drafting and implementing policies on small arms and light weapons (SALW), and laws for regulating the collection of unregistered weapons and countering their uncontrolled trade and possession, these efforts have failed to produce any significant success. Secondly, Kosovo has remained "at an early stage of delivering results in the fight against organized crime" coupled with a low number of "indictments and judgements in cases of trafficking in narcotics and human beings".\textsuperscript{809} While the related legislative framework has also improved, the implementation of laws and resolutions has been considered inefficient. Although efforts of the Kosovo Police and the EU have led to modest success in dismantling criminal networks

\textsuperscript{804}Kosovo 2015 Progress Report, supra note 793, p. 20; and Capussela, supra note 795, p. 87.
\textsuperscript{807}Ibid. para. 22.
\textsuperscript{809}Kosovo 2014 Progress Report, supra note 790, p. 16.
specialized in smuggling migrants from Kosovo to European countries, due to the dissatisfactory results, in March 2015, the European Parliament called the Kosovo authorities to step up their actions against criminal groups which enable illegal crossings into the EU, and address the root causes of the problem. In sum, neither of the in-country challenges, nor the transnational security threats stemming from Kosovo has been overcome.

2. Statehood of the independent Kosovo

The unique post-war history made Kosovo’s peacebuilding process a case of *sui generis*, coupled with several challenges. The unresolved status issue was considered as one of the major burdens of the province’s post-conflict period. While neither the Dayton Agreement nor the Rabouillet Accords addressed the relations between the FRY and Kosovo, UNSCR 1244 only set out to facilitate a political process to determine Kosovo’s future status, and reaffirmed the commitment to the sovereignty and the territorial integrity of the FRY. The unresolved status issue resulted in rounds of UN and EULEX brokered negotiations between Pristina and Belgrade which are left inconclusive in certain aspects even today.

In order to assess the peacebuilding process in Kosovo, the UN set up two benchmarks, the Standards for Kosovo and the Comprehensive Proposal. Through the Standards policy, the UN intended to establish a link between progress in peacebuilding and Kosovo’s final status and stimulate a commitment from the Kosovo authorities to fulfill the peacebuilding objectives while suggesting that an improved performance will be rewarded through the complete transfer of UNMIK’s powers to local institutions. Although the UN’s concept of fulfilling the Standard’s requirements were not considered to be equivalent to the foundation of a new state, the benchmarks conditioned process was interpreted by the Kosovo Albanian people as a road to an “earned sovereignty”\(^\text{811}\). UNMIK’s

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approach, however, failed to facilitate progress in the resolution of the status issue, and fueled the already existing frustration among the Kosovar population.

The "earned sovereignty" approach was followed by a proposal on Kosovo’s "supervised independence". The CP served as a second benchmark to link the status process with a desirable outcome that Kosovo was required to achieve in terms of all dimensions of peacebuilding, and recommended a solution which granted the province the secession, but under the tutelage of the international community. While the Standards policy focused on revitalizing the capacity-building process of the Kosovar authorities without clear indications on the final status fulfilling the requirements could lead to, the CP’s provisions defined the parameters of an independent state. Since the proposal took an explicit stance on the status question through recommending Kosovo’s secession, the focus shifted from the CP envisaged results of the peacebuilding process to the legality of the suggested independence. The differences of opinion among the members of the UNSC prevented the approval of the CP. However, its content gained acceptance by the Kosovar authorities who committed themselves for its implementation in the declaration of independence, as well as by members of the international community who recognized Kosovo’s independence.

The polarizing effect of the unilateral declaration of independence in the international diplomatic arena suggested that Kosovo’s secession from Serbia lacked a convincing legal basis. The self-determination argument which appears in the preamble of the declaration is highly contested. The Kosovo case showed "that some crucial questions are still open, such as who is entitled to the right, what the conditions for remedial secession are and if the right to self-determination can ever overcome the right to territorial integrity of a state".812 Through the concept of self-determination, international law defines which cases of secession are favored or disfavored.813 A legal privilege of unilateral secession, based on the right to external self-determination which was exercised in the case of Kosovo, is generally disfavored and overridden by the principle of territorial

812 Crnić-Grotić and Kasipović, supra note 29, p. 908.
integrity. While concerning itself with the possible secession of Quebec, the Supreme Court of Canada stated that the right to external self-determination “arises only in the most extreme cases and, even then, under carefully defined circumstances.”814 A study on the international legal issues concerning the secessionist conflict in Moldova specified minimum requirements on which an attempt to claim legal secession might be based: a) the secessionists are a “people”; b) the state from which they are seceding seriously violates human rights; and c) there are no other effective remedies under either domestic law or international law.815 The assessment of whether the case of Kosovo meets the aforementioned criteria led to the following conclusions. Firstly, from the legal point of view, the term “people” has been used to “signify citizens of a nation-state, the inhabitants in a specific territory being decolonized by a foreign power, or an ethnic group” which excludes treating a small fraction of people as a nation “as a whole”.816 The restrictive definition of “people” as a complete ethnic “nation” is, however, hardly to apply for the Kosovo Albanian community. According to Christopher J. Borgen, since the Kosovo Albanians have rather been perceived as an ethnic enclave within the Former Yugoslavia, supporting Kosovo’s independence would illustrate a shift in the international community’s traditional understanding on “people” as a “nation” to “a homogenous ethnic enclave within another nation”. In terms of the second criterion, Borgen pointed to the credibility of the argument that the Serbia committed serious human rights violations against the Kosovo Albanian population. However, it remains unclear, whether the human rights abuses need to be ongoing or occurred in the past to meet this criterion. Nevertheless, considering the failed series of negotiations, Kosovo clearly met the third requirement of last resort, since it appears to be unrealistic that prior to the declaration of independence, any alternative solutions to the secession could have been agreed on. Although meeting two of the three criteria can be affirmed, the international community

816 Borgen, supra note 813.
has not reached a consensus regarding the recognition of Kosovo as a sovereign, independent state.

Serbia’s president, Boris Tadić, in his address to the UNSC stated that the "illegal declaration of independence by the Kosovo Albanians constitutes a flagrant violation of Security Council resolution 1244 (1999), which reaffirms the sovereignty and territorial integrity of the Republic of Serbia, including Kosovo and Metohija". Belgrade’s position was supported by Russia who called for the restoration of Serbia’s territorial integrity and demanded that the SRSG annuls the unilateral declaration of independence. According to the opposing view, represented by the UK and the U.S., UNSCR 1244 "took an unprecedented step: it effectively deprived Belgrade of the exercise of authority in Kosovo. [...] In resolution 1244 (1999) the Security Council recognized that the human rights of the people of Kosovo and the stability of the region could be secured only if Serbia did not govern Kosovo". Recognizing states referred to the unfruitful negotiations of more than two years between Belgrade and Pristina which justified that the secession was used as a last resort. In the view of the U.S., the people of Kosovo “decided to bring the issue to a close to themselves [...] in mature, non-violent and responsible manner.” Therefore "Kosovo’s declaration of independence is a logical, legitimate and a legal response to the situation at hand [...] and fully consistent with resolution 1244". The case of Kosovo illustrated that various interpretations on the legality of the declaration of independence may depend on the political interests of states. In this regard, several questions remained open including whether international law prohibits unilateral declarations of independence outside of the colonial context, whether the PISG had power to declare independence, and whether it is a violation of UNSCR 1244 and Serbia’s territorial integrity.

In addition to the scholarly assessment, the International Court of Justice could have played a major role in establishing clarity on the legality of Kosovo’s secession. In 2010, the ICJ issued an Advisory Opinion at the request of the UN.

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817 UN Security Council, Record of the 5839th Meeting of the Security Council on Kosovo, S/PV.5839, 18 February 2008, p. 4, Address of Mr. Tadic (Serbia)
818 Ibid. p. 12., Address of Sir Sawers (United Kingdom)
819 Ibid. p. 18., Address of Mr. Khalilzad (USA)
General Assembly on the question as to whether the unilateral declaration of independence by the PISG is in accordance with international law. The Court declared that the question was clearly formulated, narrow and specific but it "does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those states which have recognized it as an independent state". Consequently, the Court made it obvious that in the framework of the Kosovo Advisory Opinion, it will not address the questions which arose around the sovereignty of Kosovo.

In order to answer the UNGA’s question, the ICJ assessed both the general provisions of international law and UNSCR 1244. The Court noted that while during the second half of the twentieth century, the international law of self-determination entitled peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation to exercise the right to independence, there were also examples of declarations of independence outside of this context. "The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases". The Opinion then discussed the question whether the principle of territorial integrity entails an implicit prohibition of unilateral declarations of independence. With regard to this issue, the ICJ concluded that the scope of the principle "is confined to the sphere of relations between States". Although certain resolutions of the UNSC condemned particular declarations of independence, according to the ICJ, the illegality of those declarations resulted not from their unilateral character, but from an "unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (jus cogens)". The Court stated that since in the context of Kosovo the UNSC has never taken this position, no general prohibition against unilateral declarations of

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820 International Court of Justice, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403. 22 July 2010,
821 Advisory Opinion, para. 51.
822 Ibid. para. 79.
823 Ibid.
824 Ibid.
825 Ibid. para. 81.
independence derives from the practice of the Council. Based on the reasons above, the Court concluded that general international law does not contain any applicable prohibition of declarations of independence. Accordingly, Kosovo’s declaration of independence did not violate general international law.826

While assessing the aspect whether UNSCR 1244 or other measures adopted on its basis contain any prohibition against issuing a declaration of independence, the ICJ stated that the resolution and the Constitutional Framework of Kosovo clearly impose legal obligations. Both instruments "entrust the Special Representative of the Secretary-General with considerable supervisory powers with regard to the Provisional Institutions of Self-Government established under the authority of the United Nations Interim Administration in Kosovo"827, therefore they constituted the international law applicable to the situation in Kosovo on the 17th of February 2008. Firstly, the ICJ concerned itself with the question whether the declaration was adopted in the framework of a session of the Assembly of Kosovo, operating as a PISG within the limits of the Constitutional Framework. The declaration does not violate UNSCR 1244 only in the case when it "was not the work of the Provisional Institutions of Self-Government and did not take effect within the legal framework created for the government of Kosovo during the interim phase".828 The Court based its opinion on the arguments that the Albanian version of the declaration’s text lacked any reference to the fact that it was an act of the Assembly. Furthermore, it was signed by the President of Kosovo, who was not the member of the Assembly. The Advisory Opinion interpreted the silence of the SRSG in a way that "he did not consider that the declaration was an act of the Provisional Institutions of Self-Government designed to take effect within the legal order for the supervision of which he was responsible".829 Accordingly, the ICJ concluded that the authors of the declaration acted in their capacity as representatives of the people of Kosovo outside of the framework of the interim administration.830

826 Ibid. para. 84.
827 Ibid. para. 90.
828 Ibid. para. 103.
829 Ibid. para. 108.
830 Ibid. para. 109.
Following the identification of the authors of the declaration, the Court turned to the question whether their act violated UNSCR 1244 or the Constitutional Framework. Regarding this question, two conclusions have been made. Firstly, UNSCR 1244 did not contain any provisions which determine the desirable final status of Kosovo or the conditions for its achievement. If the Council wished to make any definitive determination on final status issues, it would have specified its conditions, how it did in Resolution 1251 concerning Cyprus. Secondly, there was no indication that UNSCR 1244 imposed any specific obligations to act or a prohibition of acting on actors other than the UN Member States, the organs of the UN, or the KLA and other armed Kosovo Albanian Groups. Based on these arguments, the Court concluded that the resolution contains no prohibition binding on the authors against the declaration of independence. Consequently, the declaration did not violate UNSCR 1244. Moreover, since the independence was not issued by the PISG, nor was it an act intended to take effect within the legal order in which the PISG operated, the authors or the declaration of independence did not violate the Constitutional Framework. In conclusion, the ICJ decided that the adoption of the declaration of independence "did not violate any applicable rule of international law".

Critique on the results expressed disappointment not only with the limited extent of the question posed by the UNGA but also with the narrow scope of the Opinion. The ICJ’s assessment was considered to be a missed opportunity to "resolve problematic issues, such as self-determination, secession or recognition. [...] It fell short of confirming Kosovo as an independent state or recommending that Kosovo should be admitted to the United Nations and other international institutions or affirming its right to establish diplomatic relations with other sovereign states". Most of all, the Advisory Opinion did not provide any clarification on the issues of whether or not Kosovo gained the status of a

831 Ibid. para. 114.
832 Ibid. para. 115.
833 Ibid. para. 122.
835 Crnić-Grotić, and Kasipović, supra note 29, pp. 906-907.
sovereign state and the legal effects of its recognition. According to the 1933 Montevideo Convention, recognition itself is, however, not one of the formal criteria of statehood, but has a declaratory character.\textsuperscript{836} Recognizing Kosovo’s independence divided the international community along political priorities instead of opposing legal arguments. As Borgen notes “in difficult situations such as these, the issue of legality often shifts from the question of the legality of secession, to the question of the legality of the recognition of secession […] There is no such resolution here, but rather a growing momentum to accept Kosovo's declaration. This does not, in and of itself, make Kosovo's secession legal. But it does show that, in cases of secession, law and politics are especially tightly intertwined”\textsuperscript{837} Countries refuse to recognize Kosovo as an independent state when they support Serbia’s sovereignty and territorial integrity, or argue that unilateral secession outside of the colonial context violates international law and sets a negative precedent for further separatist aspirations.\textsuperscript{838} In contrast, recognizing states support Kosovo’s independence on the basis of several factors, such as its commitment to accept the “supervised independence” and the CP, statehood capacities, exhaustion of final status negotiations, maintenance of regional peace and security, or human rights abuses under the Milosevic regime.\textsuperscript{839} In addition, supporter states pointed out that Kosovo has been a case of \textit{sui generis}. U.S. Secretary of State Rice condensed this position by stating: “\textit{The unusual combination of factors found in the Kosovo situation - including the context of Yugoslavia's breakup, the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of UN administration - are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as precedent for any other situation in the world today}”\textsuperscript{840}

\textsuperscript{836} Montevideo Convention on the Rights and Duties of States, 165 LNTS 19, 49 Stat 3097, 26 December 1933, Article 3

\textsuperscript{837} Borgen, Kosovo’s Declaration of Independence, \textit{supra} note 813.

\textsuperscript{838} Bolton and Visoka, \textit{supra} note 811, p. 2.

\textsuperscript{839} Ibid. and p. 19.

Several studies point to the “effectiveness principle” when analyzing why Western States supported Kosovo’s independence.\textsuperscript{841} The solution was based on the fact, that Pristina would never have accepted the reinstatement of Serbian sovereignty even if would have been coupled with the highest degree of autonomy. At the same time, due to the growing frustration of the Kosovo Albanian population, the delay in the resolution of the status issue risked provoking further riots and the destabilization of the Western Balkans. As any breach of peace would have contradicted the Western rhetoric about the progress in Kosovo, independence seemed to be the only viable option. The reconfiguration of the international presence offered the chance for the West to address security threats stemming from Kosovo, and to develop an effective system of political accountability enforced by a more responsive Government through a direct intervention rather than through traditional instruments of political dialogue or aid conditionality.\textsuperscript{842} The principle of effectiveness in international law, in the context of Kosovo’s independence, became satisfied by the facts that the Kosovar Government effectively controls (most of) its territory, it has been recognized by more than one hundred states, Kosovo no longer stays under international supervision, and has the capacity to enter into international relations.\textsuperscript{843} The UN took a “status neutral” approach to the question of recognizing Kosovo’s independence, which allowed the cooperation with both of the Serbian and Kosovar authorities without openly contradicting UNSCR 1244.\textsuperscript{844} The same approach has been applied by several international organizations which often use the still operating UNMIK as intermediary.

Nevertheless, as a serious consequence of the declaration of independence, in 2008, Kosovo failed to extend the territorial control over the region of Serbian populated municipalities at the northern border contiguous of Serbia. “The North” radically rejected Kosovo’s independence and the jurisdiction of the Kosovar


\textsuperscript{842} Capussela, \textit{supra} note 795, p. 96.

\textsuperscript{843} Benedek, \textit{supra} note 841, p. 407; and Capussela, p. 65.

\textsuperscript{844} S/2009/149, \textit{supra} note 717, para. 5.
authorities. Neither the international community, nor Kosovo could prevent the separation, thus in a practical manner, the territory remained subject to Serbia’s sovereignty. There were contesting views on the incomplete secession. According to Serbia, the partition of Kosovo had not occurred since Belgrade refused to accept the independence. The West considered the situation unacceptable because breaching Kosovo’s territorial integrity would have contradicted the principle uti possidetis. However, the common interest of the three parties was to reinstate the rule of law on the north and thereby prevent organized crime which flourished in the region. After reaching its full operational capacity, EULEX attempted to increase its presence and activities in the north to reestablish the rule of law. The Mission was, however, unable to overcome the opposition of the Kosovo Serbian population who remained reluctant to directly communicate with EULEX. Since EULEX proved to be an inadequate instrument to achieve success in the issue of North Kosovo, the mediator role was taken up by the EU itself. The rationale behind the EU mediation was linked to the ambitions of both Serbia and Kosovo to become members of the Union. Through the conditional approach of the pre-accession process, the EU was able to influence the outcome of the negotiations. The EU marked it as a great success as an agreement of the principles of governing the normalization of relations between the Kosovo and Serbia was reached in April 2013, which granted the Kosovo Serb minority additional prerogatives, and the parties agreed on holding the first elections in the four municipalities of the North under Kosovar law.

While the EU was successful in mediating the Belgrade-Pristina dialogue, the organization-intern differences on Kosovo’s status have remained intact. Although the SAA explicitly took a status neutral approach by stating that "this designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence”, the

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846 See Record of the 6025th meeting of the Security Council, S/PV.6025, 26 November 2008
848 Keukeleire and Thiers, supra note 710, p. 358.
2012 Feasibility Study conveyed the message that there is a legal basis in the Treaty on the Functioning of the EU (TFEU) for conducting the SAP despite the non-recognition of five Member States. The Study argued that on the basis of Article 218 TFEU "the Union can conclude such an agreement with a third country if its political and judicial authorities are capable to ensure that the terms of the agreement are respected, applied and implemented". Consequently, from a legal point of view "the fact that some Member States do not recognise Kosovo as an independent state does not constitute a legal obstacle for the Kosovo authorities. The association of Kosovo to the European Union is not in conflict with the fact that the Member States of the Union have different positions on the status of Kosovo under international law". In fact, the EU has signed agreements with entities other than sovereign states in the past, without taking position on their statehood or recognition. Nevertheless, concluding former agreements with “entities” outside of Europe which do not intend to integrate with the EU, can hardly serve as clear legal precedents for the Kosovo-EU relationship, even if they involved "reciprocal rights and obligations, common action and special procedure". This view was reaffirmed by the non-recognizing state, Cyprus, who stressed that "agreements with other states or international organizations do not necessarily apply to the case of Kosovo".

Although, the fact that the SAA entered into force in 2016 underlines that up to this point, the non-recognizing states have subordinated their objections to the EU’s security priorities and not hindered the SAP process in Kosovo, the final decision on the accession will require a unanimous agreement of all member states. Despite the arguments of the 2012 Feasibility Study, Kosovo’s prospects to join EU have remained contested. A study on the EU-Kosovo relations referred, on the other hand, to the advantages of the differences in opinions on Kosovo’s status within the EU, by citing a senior official of the European External

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850 Feasibility Study, supra note 782, p. 3.
851 Ibid. p. 4.
852 Examples include the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China on the readmission of persons residing without authorization or similar cases of Agreements with Macao and Taiwan. See Pakolaj, supra note 769, p. 22.
854 Informal non-paper sent by Cyprus before taking over the EU presidency in 2012 cited by Pakolaj, supra note 769, p. 21.
Action Service (EEAS) who stated that "[d]ivisions in the EU regarding the recognition of Kosovo are an advantage because this enables us to be the best possible facilitator of the dialogue between Kosovo and Serbia. We tell the Kosovars that your independence is a done deal, because you have been recognized by 22 of our member states. We tell to the Serbs that five EU countries do not recognize Kosovo; therefore, we are status neutral". The ongoing integration process in Serbia is characterized by contradictions just as in Kosovo. Even though the EU facilitated dialogue with Serbia achieved positive results and may remove diplomatic obstructions from the way of the EU integration, Serbia participates in the SAP without any willingness to recognize Kosovo’s sovereignty. On the other hand, the EU supports Kosovo’s illusion of advancing in the EU integration process despite the ineffectiveness in implementing EU-related reform priorities.

3. Assessment on the performance of international actors

The international civil presence in Kosovo operated on the basis of a strong cooperation between the UN, EU, and OSCE. Although the OSCE has deployed its field mission since 1998, the Organization’s role has remained limited to perform specific peacebuilding tasks within UNMIK’s democratization pillar. Both the UNMIK and EU-dominated frameworks benefitted from the OSCE’s strength of extending its activities at local levels throughout Kosovo. While the OSCE’s presence was perceived as a stabilizing force for Kosovo by the CP and its continued deployment was explicitly requested by the UNSG, the Organization’s involvement in Kosovo has never been the subject of the political and diplomatic debates surrounding Kosovo. The diverse political and security interests that influenced the international community’s involvement in Kosovo’s peacebuilding process and the polarizing declaration of independence, however, affected the performance of the UN and EU to a great extent. The seizure of the UNSC to adjust the legal basis, and the operational framework of the international

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856 Kosovo 2015 Progress Report, supra note 792, p. 7.
presence to the development on the ground, left the UN without a viable exit strategy. In addition, the “quasi”-UNMIK successor EU has had to tackle several differences within the UNSC and between its own members which influenced EULEX’s deployment and the success of the pre-accession policy towards Kosovo.

a. UNMIK’s struggle to implement UNSCR 1244

Due to the difficulties to achieve a viable solution for the status problem, which is accepted by both of Belgrade and Pristina, it is questionable whether UNMIK could have managed an exit through mandate implementation. Although UNMIK was responsible for facilitating the political process on Kosovo’s future status, the Mission has never played the role of the lead actor in this regard, since the negotiations were influenced by the interest of major powers and guided by a UN Special Envoy. Both the Eide Report and the CP disagreed with UNMIK’s policy which aimed at stimulating progress in the status question through the conditional approach of the Standards for Kosovo. Nevertheless, UNMIK’s preparations for its own exit through the bureaucratic arrangements made by the transition working groups proved to be valuable when the irregular transfer of powers to the Kosovar authorities took place after the declaration of independence. The establishment of the working groups suggested that UNMIK agreed on the need for reconfiguration and envisaged its exit in the framework of a “transition to the future international presence”.

Ideally, UNMIK’s exit would have taken place on the basis of a UNSC resolution which recalls and/or reconfigures the international civil presence. In case of an open-ended mission, such as UNMIK, the stage of the mandate implementation and the needs of the ground serve as reference points for the Council’s decision on an extension or termination of deployment. In Kosovo, UNMIK achieved “full or substantial implementation of a large proportion” of its mandate already by the end of 2002. Through the adoption of the Constitutional Framework, the

860 Crampton, supra note 620, p. 164.
Mission managed to create a full legal system and establish the key governmental, police, legal and municipal authorities that overtook the first executive responsibilities. The newly established Assembly was democratically elected both at a central and local level with guaranteed seats for minorities.

Nevertheless, the Mission’s achievements in certain areas have been repeatedly challenged by Serbia, including shortcomings in the implementation of provisions of UNSCR 1244 related to ensuring public safety\textsuperscript{861} and maintaining civil law and order.\textsuperscript{862} Belgrade argued that “there is a lack of opportunity for Serbs and other non-Albanians to find employment in the public sector, and a lack of elementary security for Serbs and other non-Albanians, whose freedom of movement is limited to the ‘humanitarian bus service’ and the ‘freedom of movement’ train. The ongoing illegal privatization serves as a basis for the further ethnic cleansing of Serbs and other non-Albanians by economic measures. The constant attacks and incidents against Serbs are neither isolated, nor condemned, nor countered by efficient measures by the local political leadership. [...] There have been no returns of expelled and displaced persons or any efforts to encourage returns”\textsuperscript{863}.

Although the Reports of the UNSG entailed only vague references regarding this issue, they partly confirmed that Kosovo Serbs continued to consider themselves at risk and were reluctant to leave their communities. UNMIK stated that despite the fact that after the critical period of 2004 there has been no serious inter-ethnic crime, the Mission intended to continue addressing “minority communities’ fears over safety and freedom of movement, particularly through cooperation with authorities at the municipal level and community policing initiatives”\textsuperscript{864}.

UNMIK’s achievements in the areas of establishing a secure environment for, and facilitating the safe and unimpeded return of refugees and IDPs remained questionable as well.\textsuperscript{865} Both the UNMIK Reports and the OSCE’s assessment stressed that “the number of members of minority groups returning voluntarily to

\begin{footnotes}
\item[861] Article 9 (d) of UNSCR 1244 (1999)
\item[862] Ibid. Article 11(i)
\item[863] Addresses of Mr. Covic (Serbia) at the 5130th Meeting of the Security Council, S/PV.5130, 24 February 2005. p. 6; and the 5188\textsuperscript{th} Meeting of the Security Council on Kosovo, S/PV.5188, 27 May 2005, pp. 6-8.
\item[865] Articles 9(c) and 11(k) of UNSCR 1244 (1999)
\end{footnotes}
Kosovo continued to be low⁸⁶⁶, and despite the substantial international assistance, it is decreasing every year. According to the OSCE, the impeding factors on the progress of returns include property issues such as obstacles to exercising and confirming ownership of property and land allocation for housing assistance programmes, as well as various security incidents committed against returnees, coupled with the resistance of receiving communities.⁸⁶⁷ Nevertheless, it is difficult to determine to what extent the low number of returns can be attributed to the ineffectiveness of the international presence in creating safe environment, or dependent on the missing intention, particularly, among the Serbian community to return to Kosovo.

In addition to the questionable achievements in the above mentioned areas, there are three provisions of UNSCR 1244 which remained unimplemented by the date of the declaration of independence.⁸⁶⁸ These include Article 4 on the permission of an agreed number of Serbian military and police personnel to return to Kosovo to perform limited functions, the facilitation of the political process to define Kosovo’s status, and the transfer of authority to the institutions established under the status settlement. Consequently, before its reconfiguration, despite some questionable areas where further improvement has been required, UNMIK completed the implementation of its mandate to the extent that the Mission could have achieved without addressing the status problem. For the reasons discussed above, since facilitating the status process fell outside of UNMIK’s competencies, it is entirely excluded that the UNSC could have terminated the deployment of the international civil presence on the basis of completed mandate implementation. UNMIK’s exit could have taken place only by a UNSC-endorsed replacement. Due to Russia’s opposition, the seizure of the UNSC prevented UNMIK’s exit by reconfiguration as well. As a response to the reconfiguration plan presented by the UNSG in July 2008, Moscow insisted that

According to the UNCHR there are 220,000 persons remain displaced from Kosovo as a result of the 1998-1999 conflict and the 2004 riots. By July 2014, 25,430 DPs having returned voluntarily to Kosovo of whom 192 persons returned in the year of 2014. See UNCHR statistical overview of September 2014 cited by the OSCE Assessment p. 6.
⁸⁶⁸ Crampton, supra note 620, p. 164.
UNSCR 1244 remains in force without any changes in UNMIK’s mandate.\textsuperscript{869} Russia opposed exit of the UN on basis of two arguments. Firstly, UNMIK’s departure from Kosovo’s Serbian populated areas would be a destabilizing factor for the region as whole. Secondly, it would negatively affect the further implementation of the “Standards for Kosovo” and the “\textit{guaranteed rights and security of national minorities including the return of Serb refugees and internally displaced persons}”.\textsuperscript{870} While Russia acknowledged the EU’s commitment to enhance its role in Kosovo, it refused unilateral solutions which fell outside of the scope of UNSCR 1244 and the statutory prerogatives of the UNSC. According to their proposed procedure, the UNSG should have facilitated further negotiations with Belgrade, Pristina, and all interested members of the international community which could have led to a formula for UNMIK’s reconfiguration that can be unanimously accepted by the UNSC.

Despite Russia’s steady opposition, the EU began EULEX’s deployment which enabled UNMIK’s “exit” as an administrative power. Since EULEX operates under the UN umbrella, the reconfiguration of the international presence took place in legality and compatibility of UNSCR 1244 which moderated the Serbian-friendly voices in the UNSC and the satisfied the claims that the resolution “\textit{remains the only platform for resolving the situation in Kosovo}”.\textsuperscript{871} In sum, despite the fact that UNMIK’s exit as an interim administration did not take place in a way which was expected from a mission established under Chapter VII, the transition was achieved remarkably easily in the face of the heavy opposition in the international diplomatic arena.\textsuperscript{872} Nevertheless, it can be hardly understood as a triumph of the will of the local population over a post-conflict strategy imposed by external actors. It may rather be a success in enforcing strategic interests and the ambitions to preserve the credibility of major powers who want to produce sustainable results in peacebuilding after an involvement in the 1999 NATO intervention.

\textsuperscript{869} Record of the 5944th Meeting of the Security Council, supra note 804, p. 16. Address of Mr. Churkin (Russia)
\textsuperscript{870} Ibid.
\textsuperscript{871} UN Security Council, Record of the 7693th Meeting of the Security Council on Kosovo, S/PV.7693, 16 May 2016, p. 21, Address of Mr. Safronkov (Russia)
\textsuperscript{872} See Crampton, supra note 620, p. 173.
b. The challenge of strengthening the rule of law in Kosovo

The reestablishment of the rule of law has remained a key area of efforts in Kosovo’s peacebuilding process. The rule of law area intersected multiple political and security challenges, making it the most important and, at the same time, the most difficult field to succeed in. Achieving sustainable results will eventually determine not only EULEX’s success but also the exit policy of the international presence, and Kosovo’s accession process to the EU. The basis for EULEX’s performance was provided by the performance of UNMIK’s Pillar I of which, following its reconfiguration in the early 2000s, strengthening the rule of law became the main objective. The 2008 Progress Report of the EU’s enlargement strategy evaluated the progress Kosovo made towards meeting the Copenhagen criteria.\(^{873}\) The assessment reflected on UNMIK’s achievements and the main challenges that EULEX inherited in the rule of law sector. The Progress Report considered KP’s performance satisfactory regarding the maintenance of public order and combating minor crime in the majority-populated areas, while high-level crime and strategic deficiencies remained in 2008 a serious concern.\(^{874}\) Furthermore, due to the declaration of independence, the functioning of the multi-ethnic police force became compromised by the Kosovo Serbian officers. In 2008, there was little progress to report in the field of border control as well. According to the Progress Report, the KP had only a limited degree of control on the movement of persons into and out of Kosovo, and the capacity of the Border and Boundary Police to carry out an effective border and boundary control remained to be significantly improved, in particular in northern Kosovo and on the green borders.\(^{875}\) While the legal framework was incomplete in 2008 in the above mention areas, Kosovo’s customs legislation was assessed as being in line with European standards and required efforts from EULEX to ensure its effective implementation.\(^{876}\) The judicial system, established by UNMIK, remained weak at all levels and failed to increase the low level of trust in the judiciary among the


\(^{874}\) The latter included poor investigative capacities, lack of improvement in the use of intelligence for police purposes and the implementation of a crime reduction strategy, as well as the ineffective enforcement of an incomplete legislation on weapons control. Ibid. p. 53.

\(^{875}\) Ibid. p. 52.

\(^{876}\) Ibid. p. 36.
The Progress Report stated that corruption has continued to be widespread and a major challenge in Kosovo, due to the insufficient legislative and implementing measures, lack of an adopted anti-corruption strategy, unclear institutional framework, and the weakness of the judicial system. While civil servants continued to be vulnerable to political interference, corruption and nepotism, further allegations of political interference in the selection and appointment of a number of key positions have affected the credibility of the Government. Finally, the Progress Report concluded on very limited to no progress in the area of fighting organized crime, trafficking in human beings and drug trafficking.

In sum, the EU assessment reported on very limited progress that Kosovo made in strengthening the rule of law during the UNMIK era. The moderate results of 2008 have often been attributed to UNMIK’s security policy since “[s]tability in Kosovo has been understood by the international community as a situation free from violence - be it inter-ethnic or against the international presence and local institutions – as well as free from any significant outbreak of demonstration of dissatisfaction”. The promotion of the “stability paradigm”, in this context, aimed at preventing violent reactions among the local population through avoiding the confrontation with the top-level elite. According to Capussela, UNMIK followed the same approach as it concluded a “non-aggression pact” with Kosovo’s influential figures. UNMIK rather opted for a strategy of negotiation instead of investigation in order to exercise control to some degree over the potential “spoilers” of the peacebuilding process. UNMIK’s discretion to define such a policy derived from its structure which concentrated all legislative, executive, and judicative authority in the hands of the SRSG. Due to the lack of

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877 In addition, the court system, just as the prosecution, had limited capacities in technical and human resources, as well as required a completed legislative framework and progress in terms of a serious backlog of cases. Ibid. p. 14.
878 Ibid. p. 15.
879 The Report pointed out that the police focused on maintaining order rather than on organized crime and the judiciary and public prosecutors lacked the capacity and motivation to tackle related cases due to the lack of adequate working conditions, salaries, and social protection. Ibid. p. 53.
881 Capussela, supra note, 795, p. 36.
the separation of powers, prosecutors and judges were subject to UNMIK’s hierarchical powers, thus, the political arrangements seriously weakened the independence of the judiciary, as well as affected the quantity and quality of indictments. Consequently, UNMIK conducted a very few number of investigations on high-level corruption, organized crime, or war crimes, and none on any members of Kosovo’s elite, whose affiliation to organized crime circles had been confirmed by several reports of intelligence. According to the EU Progress Report of 2008, “[m]any war crimes-related cases have not been forwarded to the prosecution”\(^882\). Furthermore, in 2008, 36,000 criminal cases were pending.\(^883\) On the one hand, through promoting the stability paradigm, UNMIK’s was able to maintain the hard–won peace in Kosovo. On the other hand, declining the administration of justice in sensitive cases created an opportune environment for criminality. Not only did the corruption index rise during the UNMIK era, but Kosovo remained an area of origin and transit of smuggling, money laundering, and trafficking in human beings.\(^884\)

Overall, in 2008, despite the establishment of the institutional framework for democratic governance and the adoption of laws and a new constitution in line with European standards, law enforcement was undermined by an ineffective international system of checks and balances, and the lack of sufficient capacity and commitment of the local authorities. EULEX was designed to tackle these problems by providing capacity-building for rule of law institutions in the framework of its advisory functions, and substitute the Kosovo authorities while gaining full capacity through delivering rule of law services within its executive functions.

c. EULEX’s achievements in fulfilling its executive functions

The 2014 EU Assessment summarized Kosovo’s rule of law situation as follows: "the main institutions have been set up and legislation has been adopted. The legislative framework is largely complete. However, local capacity and expertise

\(^883\) Ibid. p. 14,
\(^884\) Ibid. p. 53.
in the rule of law is still weak and interference in the judiciary is still a major concern. The fight against organised crime and corruption still remains a significant challenge: corruption and informal business practices including drug trafficking, are widespread and hinder economic development. Kosovo’s experience and expertise in carrying out complex criminal investigations and conducting complex operations are improving, but are still limited. Institutional responsibilities are not always clearly attributed and can lead to a lack of accountability of the relevant institutions. (...) Key institutions of the judiciary are in place but are still weak despite a progressive increase in their capacity. As a consequence, Kosovo citizens have very little confidence in the judiciary."  

Apparently, apart from results in completion of the legislative framework, there has been little difference between the 2008 and 2014 assessments in the rule of law sector. The rhetoric of the EU yearly Progress Reports during six years of deployment has stayed similar by stating that Kosovo is “at an early stage” of delivering results in the most critical areas of rule of law. Although the capacity-building of the institutions has been on-going, EULEX supported the drafting and adoption of several laws, assisted in the establishment of diverse anti-corruption agencies, the Kosovo Judicial Council, and the Office of the Ombudsman, all the assessments reported only limited progress. As an exception, a 2013 EEAS report entailed more positive findings and welcomed that "Kosovo has demonstrated its commitment to the fight organize crimes and corruption including launching investigations and ensuring continuous good cooperation with EULEX". In order to support this conclusion, the report listed diverse laws, strategies, and action plans that Kosovo adopted in 2012. Nevertheless, it is doubtful that these reports provide sufficient empirical evidence to assess the actual conditions of the rule of law in Kosovo.

886 See Kosovo 2015 Progress Report, references of Kosovo’s early state of developing a well-functioning justice system, fight against corruption, fight against organized crime, protection of personal data, in developing a functioning market system, in achieving the capacity to cope with competitive pressures and market forces within the Union, taxation and enforcement of a centralized public procurement. Supra note 793.  
888 Ibid, pp. 3-4, and 8-9.
Capussela suggested that any progress, EULEX may have achieved through capacity-building or institution-building in Kosovo is negligible, in light of the Mission’s negative record in strengthening criminal deterrence or the accountability of rule of law institutions. \footnote{Capussela, supra note 795, pp. 131-132.} EULEX’s weakness can be attributed to diverse factors. Firstly, structural analyses showed an imbalanced allocation of resources in the favor of the advisory functions. Allocating the majority of the active staff to EULEX Police could be the reason for the ineffectiveness of the justice component. \footnote{See Keukeleire, S., Fonck, D., and Metais, R. (2015), The EU’s structural diplomacy towards Kosovo, In: Smith, M., Keukeleire, S., and Vanhoonacker, S. (Eds.) The Diplomatic System of the European Union: Evolution, change and challenges, Oxford: Routlegde, 215-231, p. 224.} While, the police advisory unit was unnecessary large, there were only a few positions reserved for judges and prosecutors, of which, about 40% remained unfulfilled. \footnote{See Spernbauer, supra note 716, pp. 14-15} Although this organizational structure might have been in consistency with the concept of local ownership, taking into account the limited progress in deterring serious crime, a reconfiguration would have generated more positive and visible results. Secondly, EULEX was considered to apply the same policy to eliminate the “spoiler problem” of the Kosovo elite as UNMIK. While promoting the “stability paradigm”, the Mission seemed to be reluctant to confront prominent figures and prosecute corruption cases in order to avoid their violent reactions. \footnote{Keukeleire, et al., supra note 890, p. 224,} Finally, further critique addressed EULEX’s insufficiency in protecting the independence of the judicial staff, the autonomy of the prosecutors, and the secrecy of investigations. \footnote{Capussela, supra note 795, pp. 137-139.} Similarly to UNMIK, due to a weak external and internal accountability system, EULEX judges and prosecutors were subject to the discretionary influence of the management. A study on EULEX’s executive functions concluded that EULEX did not pursue any high level crime except in cases where the publicity of the case prevented its inaction, or where the suspect was the political opponent of the leading faction of the elite. \footnote{Capussela, Andrea L. (2015), *Eulex’s Performance of its Executive Judicial Functions*, available at: https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2561856 (last accessed on 4 January 2017)} There is an absence of any reference in EU reports which could confirm this hypothesis. Only one example suggested that the EU itself might consider the Mission’s investigatory capacity as ineffective. Instead of assigning
EULEX, the EU established an ad-hoc task force to conduct investigation on crimes allegedly committed by Kosovo Albanian fighters in 1999-2000. It can be interpreted as an indication for the EU’s awareness of the Mission’s weaknesses. All of the yearly EULEX Progress Reports indicate the persistence of serious crimes. Moreover, a 2013 World Bank survey of foreign investors in Kosovo concluded that corruption and organized crime have become more permeating since 2009.\textsuperscript{895} In addition, Europol reported that Kosovar criminal groups strengthened themselves between the periods of 2008-2011.\textsuperscript{896} The European Commission’s Visa Liberalization Report confirmed the same assessment, and pointed out Kosovo’s limited capacity to combat organized crime and corruption which has a severe impact to the EU’s internal security.\textsuperscript{897} By implication, it can be considered as an indirect critique on EULEX’s performance.

A more direct opinion was published by the European Court of Auditors in a 2012 assessment on EULEX’s rule of law assistance.\textsuperscript{898} The Audit evaluated whether the EU assistance in the field of rule of law in Kosovo can be proven to be effective. It concluded that despite the significant capacity-building performed by EULEX’s advisory function, the progress in improving the rule of law stayed limited, and the levels of organized crime and corruption have remained high.\textsuperscript{899} The only field found to be successful by the Audit was the area of Kosovo customs\textsuperscript{900}, while only some progress could have been noticed in the area of policing. Finally, the Audit reiterated the fundamental weaknesses of the judiciary and EULEX’s limited results in tackling corruption and stated that the EU’s internal security priorities were not adequately taken into account.\textsuperscript{901}

\textsuperscript{898} European Court of Auditors, European Union Assistance to Kosovo Related to the Rule of Law, supra note 795.
\textsuperscript{899} Ibid. pp. 21-66.
\textsuperscript{900} Ibid. pp. 42-45.
\textsuperscript{901} Ibid. pp. 34-41.
The official response to the Audit contested the latter findings and reaffirmed that “[t]he deployment of EULEX in 2008 and its activities since then reflect the importance the EU places on the impact of Kosovo rule of law issues on the EU’s internal security.”\textsuperscript{902} Furthermore, the EU’s response highlighted the considerable achievements of EULEX despite the difficult situation the Mission inherited from UNMIK in Kosovo, and concluded "that EULEX, in many instances, has acted as a deterrent and preventative actor, defusing situations which would have otherwise erupted into conflicts. Considering the fragile state of Kosovo rule of law institutions at the time of the Mission’s establishment, the current relative stability is worth taking into account in assessing the effectiveness of the EU’s investment".\textsuperscript{903} Overall, there are very contradictory assessments on the efficiency of EULEX’s assistance in the framework of its executive functions. However, presumably in response to the Audit Report, the entire senior management was replaced and EULEX’s performance was improved.\textsuperscript{904} According to the Visa Liberalization Report of 2016, "Kosovo is actively working towards strengthening its track record in the fight against organised crime, corruption and terrorism".\textsuperscript{905}

\textbf{VI. Conclusion}

Despite more than fifteen years of international involvement, Kosovo faces significant challenges in the areas of social reconciliation, economic development, and rule of law even today. While the process of addressing these concerns is still ongoing, the international community’s experience in Kosovo illustrated the complex situations the actors need to deal with in the peacebuilding practice. One lesson learned is the thin line between politics and international law which revealed itself through the examples of the NATO intervention and the unilateral declaration of independence. Kosovo’s peacebuilding process has been

\textsuperscript{903} Ibid. para 1.
\textsuperscript{904} Capussela, \textit{supra} note 795, p. 148.
significantly affected by power relations in the international diplomatic arena where the position and interests of states who have been actively engaged in post-conflict efforts on the ground could prevail over their opponents. Secondly, instruments deployed both by the UN and EU represented novelties in the practice of peacebuilding. The case of Kosovo allowed that the UN-led ITA and the EU enlargement policy are tested as peacebuilding tools. While the latter became a dominant instrument to determine current reform priorities in the Balkans, UNMIK’s performance has offered a significant learning experience. Separate from the insufficient capacities to facilitate the status process, UNMIK proved to be effective to perform institution-building in the short run, and failed to balance between promoting stability and strengthening the rule of law in the long term. It remained unknown whether UNMIK could ensure law enforcement through impartial and independent judiciary while operating on the basis of concentration of power without any checks and balances.

The accountability deficit was intended to be aided by EULEX’s hybrid model for judicial activities. Although EULEX Justice represented an innovation in the peacebuilding practice, it needed to meet the expectations to perform MMA and executive functions within the same component. While this comprehensive mandate might have been feasible at an operational level, EULEX had to struggle with empowering local counterparts and simultaneously succeed in law enforcement in an environment where trials on inter-ethnic crimes and indictments against former “freedom fighters” could jeopardize stability and progress in the peace process. Evidently, both the UN and EU fell short of finding the balance between performing executive and/or judicial functions and pursuing peacebuilding objectives. The vulnerability of UNMIK and EULEX to the dynamics of post-conflict societies illustrated the challenges of peacebuilding with high level interference into domestic affairs. Kosovo has represented a trial for the EU of engaging as a global peacebuilding actor, as well as for the UNSC of overcoming emerging differences on geopolitical interests between its veto powers. The long-lasting process of coping with these issues left both UNMIK and EULEX without any scheduled exit strategy.
E. Law de lege ferenda in the context of peacebuilding

The peacebuilding processes of Sierra Leone and Kosovo have embraced operations of all the three levels of the intervention-continuum. The case of Sierra Leone illustrated the “classic” UN transitions path which has gradually emerged in the practice since the early 2000s. The UN’s approach provided a framework for the sequential deployment of field missions starting with a peacekeeping mission that was followed, at first, by a specialized political mission, then an integrated peacebuilding office, and finally became limited to the presence of the UNCT with special focus on development assistance. Although UNAMSIL’s mandate represented one of the UN’s first efforts to abolish the linear approach where peacebuilding follows peacekeeping operations, linearity has remained the prevalent UN practice. On the other hand, the subsequent deployment enabled permanent UN assistance while the level of intrusiveness was gradually decreased from a multi-dimensional peacekeeping mission with a robust mandate, to the least intrusive form of assistance of the UNCT and the PBC.

In the case of Kosovo, such a clear linearity in the international peace operations is not to identify. Kosovo’s peacebuilding process began on the most intrusive level, through the deployment of the international security and civil presences. Due to the polarizing effect of Kosovo’s unilateral declaration of independence within the Council, since 1999, UNSCR 1244 has provided the legal basis for an ongoing international engagement. Despite the steady Chapter VII framework, the actors facilitated the adjustment of their functions to the developments on the ground including the handover of UNMIK’s executive, legislative and judicial powers to the Kosovo authorities and partially to EULEX.

The engagement of international organizations in the focus of case studies has had different legal bases. The consent of the host state served as a legally sufficient basis and granted legitimacy for the peacebuilding efforts of external actors in most of the assessed cases. While there was no doubt to the GoSL’s consent, ambiguity arose regarding both the agreement of the FRY on the

906 2010 Review, supra note 169, p. 10.
establishment of the international transitional administration in Kosovo, and the deployment of EULEX. In this exceptional case, the international post-conflict assistance gained its legality from a UNSC authorization. However, the less intrusive the engagement of international actors, the less involvement by the UNSC acting under Chapter VII has been required. According to the general practice, peacebuilding takes place at the less intrusive level of the intervention-continuum.

There is, however, a minor connection to observe between the procedural legality for deployment and a successful mandate implementation through the examples of peacebuilding processes in Kosovo and Sierra Leone. The only case when ambiguities concerning the legal basis of international presence negatively affected the performance of a mission is illustrated by the difficulties EULEX experienced in reaching its full operational capacity, as the seizure in the UNSC prevented UNMIK’s reconfiguration on the basis of the Comprehensive Proposal. Nevertheless, through the unresolved status issue, Kosovo has represented a case of *sui generis* in the international diplomatic arena, and despite the political discourse and legal skepticism towards its independence, the international involvement in the Kosovar peacebuilding process has been ongoing just as in the case of Sierra Leone. Due to the very differing context, a comparison between peacebuilding performed by Western donors in Kosovo and the UN in Sierra Leone is hard to draw. It is, however, to conclude that in certain areas, the peacebuilding processes of both countries show common results. Despite more than 15 years of international assistance, neither of these countries has been able to deal with either of the causes of poverty and unemployment, or those of the weak rule of law and corruption.\(^{907}\) While the former economic aspect, as it can be seen in the case of Sierra Leone, remains a priority of international assistance in the development phase, success in building sustainable peace inevitably depends on positive results in creating public trust in

\(^{907}\) In the 2015 GDP ranking table of the World Bank, Kosovo was ranked at 150 and Sierra Leone at 157 out of 193 counties. See World Bank, World Development Indicators, available at: <http://databank.worldbank.org/data/download/GDP.pdf> (last accessed 18 February 2017); According to the Corruption perceptions Index of the Transparency International where 0 (highly corrupt) -100 (very clean), in 2015 Kosovo was ranked 33 (103 out of 167 countries) and Sierra Leone at 29 (119), available at: <http://transparency.org> (last accessed on 12 February 2017)
the rule of law institutions. Although the transformation of the political structure of host states and strengthening the rule of law has been one of the key priorities of international peacebuilding assistance and an inherent objective of the diverse strategies, such as the programmatic approach of EULEX or the Integrated Peacebuilding Strategic Framework of the PBC, the efforts have achieved limited success. Based on the lessons learned from the performance of international actors in the cases of Sierra Leone and Kosovo, three factors can be identified where prevalent inconsistent approaches in practice negatively influence the effectiveness of international peacebuilding engagement including the performance in strengthening the rule of law and combating corruption.

I. Participation

Success in peacebuilding depends to a large extent on obtaining the widest possible participation of a high variety of actors.\textsuperscript{908} Since as a general rule, engagement in peacebuilding is voluntary in nature, international organizations play a key role in encouraging the participation of different stakeholders through the promotion of cooperative approaches to peacebuilding. The PBC’s approach to instrumentalize cooperation is characterized by two unique features. Firstly, the Commission intends to serve as a platform for creating a linkage between the different peacebuilding dimensions and bridging the gap “between the Security Council’s ‘security’ lens and the ‘development’ lens of the international financial institutions, the UN development system, and the donors”.\textsuperscript{909} Accordingly, the Integrated Peacebuilding Strategies aim at bringing together a wide range of actors under a common peacebuilding strategy which simultaneously addresses the different peacebuilding dimensions and connects the currently compartmentalized international approaches. Secondly, the PBC promotes cooperation through joint decision-making about the integrated strategies within its unique membership. The CSCs are designed to facilitate dialogue not only between UN internal and external peacebuilding actors, but also between local and international stakeholders. The inclusion of representatives of the recipient

\textsuperscript{908} Fleck, \textit{supra} note 69, p. 55.
\textsuperscript{909} CIC-IPI, \textit{Taking Stock, Looking Forward: A Strategic Review of the Peacebuilding Commission, supra} note 501, para. 18.
governments within CSMs aims at ensuring the host countries active participation in defining peacebuilding priorities and establishing a new scheme for communication between donors and agenda countries, instead of following the traditional donor-led approach. In addition, through its resource mobilizing functions, the PBC attempts to address the widest possible range of actors within the UN, the international financial institutions and non-traditional donors of the private sector, and encourage their involvement in the peacebuilding process of the agenda countries.\textsuperscript{910} Consequently, the PBC offers to play a double role of the best situated advisory body within the UN system through its connection to the main decision-making organs, and that of a lead peacebuilding actor which integrates and mobilizes diverse peacebuilding actors, as well as coordinates country-specific efforts under a common strategic framework.

Although the PBC shows great potential for institutionalizing voluntary cooperation in peacebuilding, the success of the organ has been dependent on the willingness of its membership to support it in reaching its full potential and living up to its mandate. Until present, the PBC has been challenged to meet the expectations which were raised by the World Summit Outcome in 2005. The 2010 PBC Review pointed out that by 2010 "one would have assumed a wider demand from countries to come on the Peacebuilding Commission agenda; that there would be a clearer sense of how the engagement of the Commission had made a difference on the ground;[...] that stronger relationships would have been forged between the Commission and the Security Council, the General Assembly and the Economic and Social Council; [...] and that the Commission would be perceived as a key actor by those outside as well as inside the United Nations system, including by the international financial institutions".\textsuperscript{911} Indeed, the PBC’s capacities for functioning as an intergovernmental advisory body have been limited for several reasons. Instead of exercising the collective ownership of the new organ, and promoting cooperation within the UN in peacebuilding, the UN bodies which nominate its membership appear to be disconnected from the PBC.\textsuperscript{912} Most of all, the UNSC showed very limited commitment to regularly

\textsuperscript{910} 2010 Review, supra note 169, para. 28.
\textsuperscript{911} Ibid. para. 9.
\textsuperscript{912} 2015 Review, supra note 101, para. 96.
request and draw upon the PBC’s advice.\textsuperscript{913} In addition, the PBC’s credibility was negatively affected by the "\textit{apparent resistance shown by other States}" to join the small number of countries on the Commission’s agenda.\textsuperscript{914} While the CSCs serve as the main mechanism through which the PBC coordinates cooperation among the diverse peacebuilding actors, their added value was significantly downgraded by the 2015 Review. Accordingly, the CSCs “\textit{have proved time-consuming, unclear and improvisational in objectives and outcomes and insufficiently relevant to the countries on their national agendas.} [...] the configurations became open forums that met frequently, often attended by numerous participants but at low levels of diplomatic representation and sometimes without host country participation. Where it had been hoped that the configuration would become a vehicle for close concert with the international financial institutions on countries of focus, the institutions generally report finding the utility of configuration meetings too low to engage their interest”\textsuperscript{915}

Consequently, the PBC’s institutional strength to foster participation and mobilize its full membership is still to evolve. Nevertheless, its unexploited potential to function as a lead actor which promotes strategic coherence and unites diverse stakeholders has already been demonstrated at a regional level through a successful engagement in highlighting the impact of the Ebola crisis on the peacebuilding processes in West Africa.

A different understanding on how to promote cooperation is applied by the EU in the framework of its enlargement policy. In the context of peacebuilding in the Western Balkans, the additional objective of the EU’s enlargement policy has been to encourage progressive partnership among the candidate countries and potential candidates in order to stabilize the region. Unlike the PBC’s strategy, which gives precedence to equality between donors and agenda countries through joint decision-making, the EU’s Stabilisation and Association Process follows a top-down approach by conditioning the perceived benefits of a full EU membership to the candidates’ commitment to regional cooperation and

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\item \textsuperscript{913} Ibid p. 4, 2010 Review, \textit{supra} note 169, para. 105.
\item \textsuperscript{914} 2015 Review, para. 97.
\item \textsuperscript{915} Ibid. para. 102.
\end{enumerate}
\end{footnotesize}
maintenance of good neighbourly relations. In return, the EU offers a package of pre-accession assistance to support the implementation of (post-conflict) reform agendas aiming at fulfilling the criteria of membership which includes, among others, strengthening the candidate country’s institutional and administrative capacity, creating domestic laws which meet EU standards, modernizing the administration and the judiciary, and harmonizing the national legislation with the EU acquis.

The EU succeeded by means of a conditional approach in negotiating two landmark agreements between Serbia and Kosovo which significantly contributed to the normalization of their bilateral relations. Progress in diplomatic relations is, however, far from achieving success in peacebuilding which requires flexibility and context-specific assistance. In the framework of the SAP, the conditions of regional partnership and gaining membership are defined exclusively by the EU and prescribe a universal applicability irrespective of the specific context of the potential candidate countries. In contrast, peacebuilding in the Western Balkans has involved certain issues which demanded complementary measures to the traditional reform agenda of the enlargement policy. Achieving progress has required a shift in political culture, the adoption of constitutions and further laws, capacity-building of state institutions, strengthening the legal order, and reforming the economy. While measures in these areas might be financed by the pre-accession assistance, there have also been particular challenges the EU has needed to face such as addressing issues related to state sovereignty in Kosovo, the fight against corruption and organized crime, and dealing with war crimes and reconciliation.

Nevertheless, meeting the EU’s security priorities has had little or no relevance for the population in the Balkans, which is rather concerned with region-specific social and economic matters including the extremely high unemployment. The SAP has frequently been criticized on neglecting these local, socio-economic concerns and resting upon very limited country-specific input. Instead of

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917 Blockmans, supra note 219, p. 100.
generating broad domestic consensus for reforms, the EU risks to polarize "the political landscape in these countries and potentially disrupt a valuable process that is helping to build stable and effective states in one of the poorest and most volatile parts of Europe, with all its possible consequences". Thus, the conditional approach could ensure viable partnership with and within the Western Balkans, and more effectively promote the implementation of a reform agenda when the EU would have an enhanced focus on addressing those problems that preoccupy the local population. In addition, there is a general paradox between applying EU conditionality and the primacy of the "stability paradigm" that often influences the actions of international peacebuilders at a national level, as it is illustrated by the case of Kosovo. The dependence on the local political elite to sustain stability is considered as an impediment in making use of the conditional approach. It has been confirmed by the European Commission which "from the start has been very hesitant to use the threat of discontinuing its financial support under the IPA".

Overall, the approaches in both examples are characterized by a mixed record. While the PBC is still developing its institutional strengths to be perceived as a powerful actor which provides a platform for coherence and cooperation in the engagement of the CSC members, the EU is faced with the challenge of strengthening its adaptive capacity to respond better to the needs of diverse post-conflict settings. Although aiding these shortcomings could certainly stimulate improved participation and enhanced results in peacebuilding, the approximation of these approaches is hardly to expect. The main difference lies in the objectives pursued by the cooperating parties. While EU membership offers clear benefits such as free movements of goods, persons, and capital in return to maintaining regional cooperation among states in the Western Balkans, the PBC has not articulated the overall objectives of cooperation for peacebuilding. The Commission rather adopted a technical approach in order to promote coherent support for the implementation of national peacebuilding priorities instead of living up to its potential to formulate a universal

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920 Keukeleire et al, supra note 890, p. 224.
peacebuilding definition including the general objectives that post-conflict efforts need to accomplish.

As a consequence of the absence of common purposes, the evolution of a legal obligation to cooperate in peacebuilding is not provided, either with sufficient state practice, or *opinio juris*. The lack of customary international law quality is to observe, in particular, with regard to the “Responsibility to Rebuild”. While the PBC was claimed to institutionalize the concept of “Responsibility to Protect”, there has been no reference in the organ’s practice which confirms the emergence any obligation for actors who participated in the *ad bellum* stage to get involved in the post-conflict phase and assist in the peacebuilding process. Although the case of Kosovo could offer an example for the self-commitment of NATO to the “Responsibility to Rebuild”, the grounds of justification which underlined the *sui generis* character of the intervention lacked any evidence of *opinio juris* on a customary international law obligation for a post-conflict involvement of intervening actors. Furthermore, Security Council resolutions, such as Resolution 1244, have consciously avoided formulations which could establish a link between post-conflict mandates and previous use of force, especially in cases when it would suggest a retroactive validation of unauthorized interventions. The deployment of peacebuilding missions notwithstanding the legality of the use of force reaffirms the neutral stance of the peacebuilding concept towards the *ad bellum* stage. Moreover, in contexts of internal conflicts, international actors who participate in the peacebuilding process are not identical to those who were involved in the conflict. Overall, while active participation is essential for successful peacebuilding, evidence of law *de lege ferenda* regarding cooperative approaches and an obligation to engage in post-conflict efforts is lacking. As a first step towards the evolution of such legal rules, international actors must reach a consensus on the common objectives of their actions in the post-conflict phase, and develop best practices in cooperative approaches which capitalize on their willingness and ability to engage in peacebuilding.

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II. Local ownership

The concept of local or national ownership refers to "the capacities of political, social, and community actors in a particular country to set, and take responsibility for, the peacebuilding agenda and to muster and sustain support for it".923 The 2010 Review confirmed that national ownership is not only a desirable and politically correct side effect of peacebuilding, but an imperative and absolutely essential principle.924 Although ensuring the ownership of the post-conflict society over their own peace process has been a prerequisite for the achievement of a sustainable outcome, international actors have put the concept highly inconsistently in practice. The PBC refers to local ownership as one of the main principles for cooperation and emphasizes the primary responsibly of the local population and government for peace consolidation and development in their country.925 Within the framework of the CSC’s, local ownership has been ensured through joint -PBC and host country- identification of country-specific peacebuilding priorities and the definition of mutual commitments for the implementation of the integrated strategy. In the case of Sierra Leone, the Commission allowed the GoSL to exercise full ownership over determining a blueprint for the peacebuilding process through recalling the Framework and committing itself to support the implementation of the national strategy papers. The same approach has been uniformly followed by the UN on the ground.

The EU has accorded to local ownership in its operational practice as well. According to certain interpretations, through active assistance in the pre-accession process of countries in the Western Balkans, the EU "has taken a level of local of ownership itself" for the implementation of reforms and the outcome of the peacebuilding process in the region.926 As a matter of fact, there is a difference between the approaches that the EU applies in other regions of the world and the SAP model used in South-Eastern Europe, since the latter pursues the goal of qualifying the candidate countries for an accession to the Union. In

924 2010 Review, supra note 169, para. 17.
925 (Sierra Leone Peacebuilding Cooperation) Framework, supra note 37, p. 2.
926 Duke and Courtier, supra note 80, p. 45.
the special case of EULEX, local ownership was also declared as one of the main operational principles. The counterpart model, followed by EULEX Strengthening Division, aimed at ensuring permanent dialogue, the joint adoption of a roadmap, and the cooperative implementation of MMA actions between EULEX and the Kosovar rule of law personnel. Asserting local ownership has, however, been controversial in terms of the justice component. While the Mission’s primary objective was to “immediately ensure the creation of a legacy to the Kosovo judiciary by enhancing local ownership towards a judicial system which is committed to the Rule of Law, sustainably independent, autonomous and impartial”\textsuperscript{927}, EULEX Justice retained the executive authority to try certain serious crimes. Thus, EULEX’s effectiveness in promoting the ownership of the Kosovar judiciary will remain very limited, while the Mission is mandated to its partial substitution.

UNMIK’s performance until the 2008 reconfiguration showed similarly contrasting issues. Although UNMIK intended to cooperate with representatives of the Kosovar society from the early stages of its operation, the KCJ served merely as an advisory body and the subsequently established Administrative Councils and PISG organs had only limited decision-making competence. Furthermore, whereas UNMIK was mandated to the gradual transfer of administrative responsibilities to the Kosovo authorities, difficulties to meet the requirements of the “Standards for Kosovo” prevented that the local actors exercise ownership over the peacebuilding process. In addition, in the \textit{sui generis} case of Kosovo, the international administration was challenged to reconcile its control over the status process with the secessionist ambitions of the Kosovo Albanian population.

The aforementioned examples show that the operationalization of the local ownership principle and the degree of authority exercised by local actors can significantly differ depending on to what extent international actors interfere in the domestic affairs of the host state.\textsuperscript{928} As is illustrated by the case of UNMIK, the absence of clear guidelines on minimum requirements of how to put local

\textsuperscript{927} EULEX Programme Strategy 2009, cited by Spernbauer, \textit{supra} note 716, p. 34.

ownership into practice have a major influence on the success of the peacebuilding process. The adoption of uniform standards on the involvement of local actors in international peacebuilding efforts, however, poses a challenge in several aspects. A fundamental dilemma of the practical implementation of the local ownership principle is to identify who the “local owners” are. From a conceptual point of view, the ownership over the peacebuilding process should be exercised by the entire local population.\(^{929}\) Although the law of self-determination could provide guidance for determining, who are the “people” of the host state, neither has a universal definition nor a uniform state practice been developed with regard to identifying the holders of the right to self-determination.\(^{930}\) While the 2010 Review addressed the importance of “national birthing processes”\(^{931}\) with reference to the local ownership principle, the exact notion behind this term is difficult to interpret in the context of peacebuilding. Due to the colonial history, African States do not follow the “one-nation=one state” concept, rather ethnic loyalties are dominant which often have a transnational character.\(^{932}\) Pursuing a “national birthing process” seemed to be an unrealistic approach to reconciliation in the case of the ethically-divided Kosovo. Up to today, Kosovo has been challenged to function as a modern multi-ethnic state on the pattern of its Western donors. This raises the question of how international actors ensure the ownership of the local population when “owners” disagree on the objectives of the peacebuilding process.

Although the “people” of the host state are the primary addressee of international peacebuilding assistance, external actors need to select the appropriate local counterparts with sufficient capacity and legitimacy for the representation of local peacebuilding interests. As a general rule, the peacebuilding practice treats the consent of the national government as an embodiment of the will of the “people”. It has been gaining a widespread acceptance as one of the key political dimensions of the right to self-

\(^{929}\) Gallen, ibid.

\(^{930}\) Saul, supra note 24, p. 2.

\(^{931}\) 2010 Review, supra note 169, para. 18.

determination that "a state should be constituted along democratic lines to enable people to participate in the state’s social, political, economic, and cultural systems". Consequently, the democratic form of governance represents the main indicator of the entitlement of a government to act on behalf of the local population. Nevertheless, as it is illustrated by the challenges of the Kabbah Government in Sierra Leone, in certain conflict settings, local governments might lack effective control over the state or get overthrown by diverse non-state actors. In this case, the democratic criterion for identifying the local counterparts seems to slide into the background, and the international recognition of governmental status gains an increasing importance. International recognition, according to the various interests of members of the international community, can bolster the claim for the status of governance in instances of non-democratic governments or can have the opposite effect when its denial intends to prevent that an entity gains effective control over a territory. While international recognition in these cases validates the consent of struggling governments to international involvement, there is little evidence that it takes place in accordance with the will of the people. Although contracting with ineffective but internationally recognized governments may satisfy the legal requirements of self-determination, it is doubtful that it asserts the principle of local ownership as well.

Nevertheless, the objective of the international involvement in these ambiguous post-conflict situations without effective government is to maintain international peace and security. On this account, the peacebuilding practice has often given precedence to the stability paradigm instead of fostering local ownership. What is more, the approach of engaging without, or on the basis of the consent of a government with minimal claim of representing the will of the local population, has frequently been justified through the need for international assistance to re-establish physical security and the rule of law. Where international engagement is considered to be necessary, on the basis of Chapter VII and/or the consent of ineffective governments, the law of self-determination seems to lack any effective enforcement mechanisms to ensure adherence to the local ownership.

934 Ibid. p. 18.
principle. This gap may be aided through the adoption of legal standards which determine when governmental consent qualifies for representing the will of the host state’s population, strengthen the entry criteria for international peacebuilding missions, and create more consistency in the practice of the right to self-determination.  

Although such legal rules could address the ambiguities around the identification of “local owners” and their interests, it is doubtful that they would provide guidance for context-specific challenges which may emerge during longer-term peacebuilding engagement. While insisting on the local involvement in decision-making at the emergency phase might be unfeasible, the ownership of the host state will ideally be increased during the course of the peacebuilding process. In this sense, local ownership is understood as “an outcome in that local capacity and local institutions are the means to sustain the rule of law”. As the case of Kosovo shows, the transfer of responsibility to local actors depends on the assessment of whether they developed sufficient capabilities and willingness to enforce the rule of law effectively and impartially. One of the biggest shortcomings of the local ownership concept is that it fails to give consistent instructions on how to influence the local stakeholders’ willingness to fulfill that role. The limited scope of action is illustrated by the difficulties of the UN and EULEX when, despite their considerable efforts for the social and political inclusion of the Serbian minority in the Kosovar society and political decision-making, Pristina has not shown noticeable willingness to take any responsibility for the national process of social reconciliation. Furthermore, both cases of Sierra Leone and Kosovo reflected the tension between local ownership and ineffective governmental efforts for fighting corruption and facilitating sustainable change in the local political culture.

In order to meet the challenges of the peace consolidation phase, international actors must adopt an effective strategy on the basis of best practice in overcoming the limitations of the local ownership principle. While the PBC’s ambitions to establish an equal relationship between the Commission and the

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935 Saul, supra note 24, p. 34.
936 Hansen and Wiharta, supra note 928, p. 137.
937 Ibid. p. 132.
agenda countries and EULEX’s counterpart model provide best practice in regards to the inclusion of local authorities in the processes of planning and implementing peacebuilding measures, the availability of locally-owned effective oversight structures are considered to be vital for exercising local ownership.  

The establishment of independent bodies or monitoring and complaint mechanisms is often complemented with the capacity-building of civil society actors to fulfil such a role. Empowering civil society to shape peacebuilding roadmaps through representing community interests aims at providing "democratic counterweight" to the post-conflict political elite and ensuring improved practicability for the local ownership principle in asymmetrical donor-recipient relationships. In sum, while there are certain aspects where adopting legal standards could ensure more consistency in the operationalization of local ownership, such as linking governmental consent to the lawful exercise of the right to self-determination, the challenge of maximizing the effectiveness of the principle in the peace consolidation phase must be solved at policy level. The identification of best practice and adoption of strategic guidelines would be a suitable task for the PBC.

III. Performance control

The third factor which influences the success of peacebuilding processes is the inconsistent practice in performance control. In current peacebuilding operations, defining control mechanisms seems to be left to the discretion of donor states and international organizations. In the PBC’s practice, the integrated peacebuilding strategies aim at creating a collaborative relationship between international actors and the agenda countries and formulating mutual commitments. While the PBSO defined peacebuilding strategic frameworks as "mutually accountable and time-bound agreements, between a government and international partners", the exact meaning of the notion of “mutual accountability” has remained vague. According to the peacebuilding literature,

938 Ibid. p. 148.
939 Pouligny, supra note 923, p. 178.
940 Working Group Lessons Learned, Lessons Learned from Peacebuilding Strategic Frameworks since the late 1990s, supra note 182, p. 3.
mutual accountability implies the right of certain actors to “hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards and to impose sanctions if they determine that these responsibilities have not been met”. Based on this definition, mutual accountability is comprised of three dimensions: standard-setting, assessing and sanctioning. The PBC implements the first, standard-setting dimension by the adoption of specific commitments for each party involved in the strategic framework. The Commission referred to the Sierra Leonean Framework as a “living document” which allowed joint modifications between the PBC and the GoSL according to the progress on the ground. The Sierra Leone benefited from this approach when in 2007 the newly elected Government initiated the inclusion of energy sector support within the Framework’s priorities.

Similarly to the PBC’s approach for standard-setting, the Compact Agreement identified the joint rule of law objectives that the Kosovar Authorities, EULEX and the EU Office in Kosovo set out to achieve. A common deficiency of both instruments has been the vague and general formulation of the actions which needed to be implemented by the parties. The lack of specified activities reflects the challenge that peacebuilding actors have to face with when it comes to quantifying their efforts. None of these documents ventured to split up commitments, such as “supporting capacity-building” or “galvanizing attention and sustained level of financial resources”, into concrete actions that are required from the actors to undertake within the framework of their peacebuilding assistance. While the PBC, in the case of Sierra Leone, committed itself to raise additional funds for the implementation of the national PRSPs, the lack of the definition of specific results prevented that the Commission could be made accountable for the insufficient implementation of this commitment. The issue of deficient formulation characterizes the second dimension of mutual accountability as well.

The assessment of whether the mutual commitments have been fulfilled is ensured in the PBC’s practice through periodic configuration meetings, delegation

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942 Baetens, supra note 932, p. 367.
visits in the agenda countries, and bi-annual reviews. While the field missions and CSMs are the organization-specific review mechanisms of the New York based Commission, periodic reporting is considered to be a common approach to evaluate progress in peacebuilding. Alternatively, international peacebuilding actors measure the achievements on the basis of those predetermined political and security benchmarks or exit criteria which they included in the integrated planning process. For peacekeeping operations benchmarks are used for evaluating the local government’s capacity to maintain external and internal security without international assistance. In the case of Sierra Leone, the UN used explicit security-related benchmarks in order to enable the transition from UNAMSIL to UNIOSIL in 2005 which included, among others, progress in demobilization, rebuilding of the local security forces, and the consolidation of state authority. Insufficient results in meeting these benchmarks, in particular, concerns about the capacities of the local police, delayed UNAMSIL’s exit by a year. “Benchmarking” in peacebuilding processes is, however, more frequently based on political benchmarks which determine the desired results of institutional and legislative reforms as well as sustained changes of conduct. The “Standards for Kosovo” defined by UNMIK for the Kosovar PISG, represents an example for such criteria.

Nevertheless, these assessment mechanisms are ideally not characterized by a unilateral benchmark-setting which in Kosovo was enabled by the asymmetrical power relations between UNMIK and the PISG. The PBC, for instance, has sought to guarantee reciprocity in terms of the review process as well. According to the 2010 Review, "ensuring mutual accountability is critical to the entire peacebuilding effort and is a natural corollary of resource mobilization. Applying tools developed by the Organizational Committee, each configuration should map and track delivery of peacebuilding commitments with respect to its agenda country. Combining its evaluations of delivery both by national stakeholders and by the international community, the configuration will be in a position to

943 Zaum, supra note 266, p. 339.
authoritatively assess how each is meeting its responsibilities.” Among the PBC’s review mechanisms, the bi-annual reviews appeared to show the highest potential to provide “the PBC and its national and international partners with timely and rigorous trends analysis and emerging risks identification.” The reports aim not only at assessing the progress in the implementation of the strategic frameworks and reaffirming the mutual commitments, but also served to signal when the developments on the ground required corrective actions or the reconfiguration of assistance. Nevertheless, the quality and informative value of the bi-annual reviews have been lagging behind with regard to meeting these expectations in the practice of the CSCs. It is illustrated by the bi-annual Progress Reports on the implementation of the Sierra Leonean Framework which entailed only limited information and assessment on to what extent the parties have fulfilled their commitments. The deficiency in reporting appears to be a consequence of the general and vague formulation of the actors’ tasks. The Framework for Sierra Leone failed to define any clear benchmarks which would provide the monitoring mechanisms with a point of reference for the quantification of progress. Similarly to the PBC’s reviews, the EULEX Programme Reports reflect on the lack of effective use of benchmarks and indicators as well. Most of these documents include only general information on the status of implementation of the MMA actions and are often limited to enumerating newly adopted action plans and legislation on the relevant areas.

The reason behind the deficiency of standard-setting and assessment appears to be a twofold challenge. The technical side embraces the aforementioned difficulties to translate peacebuilding commitments and strategies into measurable benchmarks. The other challenging aspect is the political process of assessing whether these benchmarks have been fulfilled. As far as the latter is concerned, peacebuilding actors have often been confronted with criticism on manipulating the yields of the assessments according to their own interests, such

946 2010 Review, supra note 169, para 93.
947 Ponzio, supra note 508, p. 298.
948 Baetens, supra note 932, p. 368.
949 Capussela, supra note 795, p. 128.
950 Zaum, supra note 266, p. 340.
as justifying their continued presence in the host country or early exit policy.\textsuperscript{951} In addition, the question of how it should be sanctioned when peacebuilding actors fail to implement their commitments has remained an uncharted territory of the peacebuilding practice. The forms of operationalizing the third dimension of mutual accountability have been very inconsistent and underdeveloped during twenty years of practice.

There are certain remedies available for international peacebuilding actors to hold local actors to account which are indirectly linked to the peacebuilding process, such as the non-execution articles in the SAAs allowing the EU to adopt sanctions in the case of a material breach of these agreements.\textsuperscript{952} In particular situations such as during the election-related political crisis in Burundi, international partners suspended the implementation of their programmes and the allocation of their financial support, and announced targeted sanctions against individuals. The withdrawal of assistance, however, often contradicts the prevailing “stability paradigm” and the main objective of short to medium term peacebuilding measures to prevent a relapse into conflict. Since the cancellation of negotiations, suspension of cooperation, or retaining the financial grants could have a destabilizing and polarizing effect in the peace consolidation phase, international actors tend to avoid these sanctions. This understanding is to identify in the PBF’s practice that despite the uncertain context in Burundi, did not suspend its ongoing programmes.\textsuperscript{953}

While international actors can launch certain sanctions in case of non-compliance, recipient governments and the population of the host states have very limited instruments available to hold external peacebuilders to account. Although the PBC documents have frequently emphasized mutuality in cooperation, they lack any indication of what, and how, remedies could be utilized to hold non-compliant actors accountable, in particular, what instruments would be available for the agenda countries when CSC members or the PBC itself fail to fulfil their commitments. To this day, neither have post-conflict states

\textsuperscript{951} Weideman supra note 247, p. 107; International Crisis Group (2003), \textit{Two to Tango: An Agenda for the new Kosovo SRSG}, 2003, Europe Report No. 148, p. 16; and Zaum, ibid.

\textsuperscript{952} Tocci, supra note 916, p. 58.

developed any visible practice, nor have the IOs applied a consistent policy in this regard. For example, EULEX’s concept of accountability consists of three elements: operational, internal, and external accountability.\(^{954}\) The Mission’s operational accountability derives from the monitoring and reporting responsibilities of the Programmatic Approach which measures the progress made by the Kosovar rule of law institutions and assesses EULEX’s performance against the strategic objectives. The internal element ensures the legal accountability of EULEX personnel through the national judicial mechanisms of the respective delegating states. This was complemented with the establishment of the Internal Investigations Unit and disciplinary boards which deal with violations of mission-intern rules and regulations, including the Code of Conduct. Finally, external accountability vis-à-vis the Kosovar authorities is ensured through regular contacts, such as meetings of the joint Rule of law Board, while the Kosovar population is provided with the possibility to hold EULEX accountable through the Human Rights Review Panel in the case of a human rights violation claim caused by the Mission while conducting its executive mandate.\(^ {955}\)

The accountability mechanisms of the UN-led ITAs, including UNMIK, are even more limited. Since the executive, legislative and judicative authority was concentrated in the hands of the SRSG, UNMIK operated on the basis of an accountability deficit. It enhanced the Mission’s anti-democratic attitude that Regulation 2000/47\(^ {956}\) established immunity for both the UNMIK and KFOR personnel from the jurisdiction of Kosovar law which made it impossible that the local population seeks remedies against unlawful decisions and actions of the international presences.\(^ {957}\) However, UNMIK was not entirely free from legal accountability. Individual staff members, including the SRSG, were accountable to UNSC and the UNSG for unlawful conduct and their power was restricted by the content of Resolution 1244. On the other hand, while the quarterly reports of

\(^{954}\) See EULEX Accountability Concept, available at: <http://www.eulex-kosovo.eu/?page=2,23> (last accessed on 13 January 2017)

\(^{955}\) Between 2010 and 2014 the HRRP registered 128 cases of which in 10 cases was declared a violation against human rights. Statistics are available at: <http://www.hrrp.eu> supra note 763, (last accessed on 15 January 2017)

\(^{956}\) Special Representative of the Secretary-General, Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, UNMIK/REG/2000/47, 18 August 2000

\(^{957}\) Benzing, supra note 251, para. 41.
the UNSG served for the monitoring and evaluation of progress in UNMIK’s mandate implementation, an impartial review of the UNMIK regulations has never taken place. The establishment of an independent review and compliant mechanism would have been required merely due to the fact that the unification of the legislative, executive, and judicial branches violated the principles of democratic governance. Instead, UNMIK intended to aid the accountability deficit through the installation of the Detention Review Commission for Extra-Judicial Detentions Based on Executive Orders958, and the establishment of the Ombudsperson Institution.959 Since the legality of extra-judicial detentions always remains doubtful, the former mechanism has hardly been effective in ensuring UNMIK’s accountability.960 Furthermore, while the Ombudsperson functioned as an independent supervisory body mandated to investigate complaints against UNMIK and the local public administration, the scope of his actions were limited to conducting investigations, issuing recommendations and publishing reports to which, in most of the cases, were given no response by either the UNSG or the UNSC.961

Accountability in the peacebuilding practice is, thus, fragmented into a wide range of mechanisms and actor-specific approaches. While the actions of international actors are generally measured against the international law rules of due process and international human rights law, their legal responsibility for unlawful acts is normally limited by state and institutional immunities on the basis of Status of Mission Agreements or further bilateral contracts between donor states or international organizations and the local government.962 Accordingly, multilateral international organizations enjoy comprehensive immunities from local laws, whereas judicial control is often "left to the discretion of sending states".963 The peacebuilding practice has become established around the principles which do not grant host states and their citizens any access to

958 Special Representative of the Secretary-General, Regulation No. 2001/18 on the establishment of a detention review commission for extra-judicial detentions based on executive orders, UNMIK/REG/2001/18, 25 August 2001
959 Special Representative of the Secretary-General, Regulation No. 2000/38 on the establishment of the Ombudsperson Institution in Kosovo, UNMIK/REG/2000/38, 30 June 2000
960 Benzing, supra note 251, para. 43.
961 Ibid.
962 Gallen, supra note 69, p. 72.
963 Fleck, supra note 69, p. 46.
legal remedies to enforce international actors to comply with their commitments. On the other hand, most frequently, international organizations refrain from imposing sanctions to post-conflict political elites in order to sustain stability in accordance with their security and political interests. It would be preferable when international law could reconcile these disparities in both positions. Nevertheless, while in the case of the former adopting coherent rules for accountability could aid the deficit, the IOs’ approaches to how they address the ineffectiveness of host states in meeting peacebuilding priorities, such as combating corruption or strengthening the rule of law, could barely gain a de-politicized legal dimension.

Yet the rule of law of peacebuilding processes, in particular in the case of ITAs, could essentially be improved through the adoption of a uniform mechanism for legal accountability which is available for members of post-conflict societies to hold international actors accountable. The proposals on how to improve the legal accountability of international actors include adopting law on extended liability of international organizations based on the International Law Commission’s Draft Articles on the Responsibility of International Organization, reforming immunity rules especially those of the IOs, or the establishment of a consensually agreed mechanism following the example of the World Bank’s Inspection Panel which would combine state, international and local institutions.964 Another suggestion prefers to apply the principle of Common but Differentiated Obligations (CDO) of international environmental law for peacebuilding related interventions.965 The rationale behind the CDO is to differentiate between "developed and developing countries, holding the latter either no immediate obligations or to lower standards or to obligation phased over time".966 Based on the fact that the CDO principle has not evolved into customary international law, creating an accountability mechanism for peacebuilding which applies different standards for measuring performance presents a great challenge. Although performance control can be identified as a subject of a law de lege ferenda, up to the present, there has been no evidence that "the political will for such an interpretation of

964 Gallen, pp. 73-74; Baetens, supra note 933, p. 369.
966 Ibid.
mutual accountability would currently exist”. Here again, it remains to expect from the PBC to elaborate and propose a more coherent framework of extra-legal accountability and forward the evolution of best practice in promoting equal partnerships in peacebuilding.

F. Concluding remarks

While the multi-actor efforts of peacebuilding meet the overall objective of the post Second World War international relations to make conflict management a collective concern, unlike in the ad bellum stage, external peacebuilders started to operate without the guidance of post bellum-specific norms and the stewardship of the UNSC. As a consequence, the peacebuilding practice became fragmented along the political understanding and strategic interests of the diverse international players. At the same time, peacebuilding has faced with the challenge to function as an effective mechanism which generates sustainable results in building positive peace in exchange of the time-consuming and high-cost engagement. Success in peacebuilding has, however, rarely been declared, and the status of the processes has remained stagnant at the level of “progress and remaining challenges”. In order to improve the effectiveness of post-conflict assistance, efforts started to seek for better coherence among the actors and consistency between their actions. Accordingly, international donors such as the UN committed themselves to support the idea of host country-led “one vision and one plan” by adopting integrated strategies, promoting local ownership and strengthening multilateral cooperation mechanisms.

Although the integrated approach to peacebuilding illustrates best practice at operational level, there is no evidence that actors incline towards transforming these strategic principles into binding obligations which would regulate their conduct or participation in post-conflict efforts. Nevertheless, as the previous assessment concludes, there are certain areas where legal regulation would contribute to improved consistency, and enhance the effectiveness and the rule of law in peacebuilding practices. Specific aspects of local ownership, in particular

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967 Baetens, supra note 932, p. 369.
968 See New Deal for Engagement in Fragile States, supra note 117.
when ineffective governments questionably represent the will of the population, would require the adoption of binding standards which assess the validity of consent. Furthermore, the evolution and codification of customary international law with regard to the holders of the right to self-determination would offer essential guidelines for the peacebuilding practice. In addition, the development of legal obligations would substantially improve the quality of performance control during the peacebuilding process. The need for legal remedies was noted in context of the local population with the aim to enable citizens of the host state to call international actors to account. While there are several suggestions on how to reform legal accountability, their realization do not seem to be viable in the near future.

The reason why the identified law de lege ferenda cannot evolve into legally binding norms is a complex issue. Applying international law to diverse contexts "is a general challenge inherent in the international legal system". The areas where the need for uniform regulation was identified are not exclusively limited to the scope of peacebuilding but touch upon most generic underdeveloped domains of international law. This consideration applies not only to the law of self-determination, but also to the law of international organizations. The conduct of IOs in the current international law regime is regulated by norms which are "almost exclusively directed at states". Law de lege ferenda in the context of peacebuilding reflects this gap in regulation by addressing the need for uniform rules on the accountability of international organizations. State parties, however, show little willingness to expand international treaty law to multilateral actors, in particular admitting them as parties to the international human rights treaties. Peacebuilding practices illustrate this issue through the prevailing accountability deficit and widespread immunities which enable IOs and their members to maintain asymmetrical power relations towards host states.

At this moment, the adoption of legally binding rules which would reform the current legal framework of peacebuilding seems to be unrealistic. Although contemporary international law is guided by the principles of neutrality,

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969 Gallen, supra note 69, p. 63.
970 Fox, supra note 965, p. 232.
971 Ibid. p. 237.
impartiality and universality, its norms and values are still the imprint of the ideology of Western political system and free market economy.\textsuperscript{972} A normative renewal would require a shift from the Western universal model to a pluralist approach to conflict management which is reflective on the needs and subordinate position of fragile states. This idea corresponds with the objectives of the PBC that pursues to reform the traditional donor-recipient relationship and abolish the North-South divide through ensuring joint decision-making and mutual accountability among the CSC members. A proposal for new law from the PBC is, however, hardly to expect. While the young organ is challenged to effectively implement its mandate and live up to its functions as an intergovernmental advisory body, it will fail to provide an exemplary approach to peacebuilding and take a lead role among the international actors. It remains questionable whether the PBC will successfully function within its current scope of actions. The Commission’s deficiency in performance control could be aided when its accountability concept would be complemented with some form of sanctioning mechanism which offers remedies in the case of non-compliance with the mutual commitments.\textsuperscript{973}

In conclusion, the assessment indicates that the legal dimension of peacebuilding is very limited. While the peacebuilding process in Sierra Leone portrayed the UN’s challenges at an operational level with minor legal relevance, the case of Kosovo illustrated the resilience of the peacebuilding concept and the vulnerability of international law to the competition in the international diplomatic arena. In particular, the latter appears to confirm the Realist skepticism towards the effectiveness of legal regulation of international conflict management. "In the Realist view, a jus post bellum body of law may have little influence on the existence of peace, since its existence is not determined by rules, but rather it is within the power of states, and non-state parties, to determine based on their interests."\textsuperscript{974} From a legal perspective, even limited “encounters” between the concept of peacebuilding and international law sufficed

\textsuperscript{973} Baetens, supra note 932, p. 369.
to identify areas and situations where the neutral position of international law had proved to be unsatisfactory and the over-politicized attitude coupled with missing political will barred the way to a normative renewal.
Bibliography

Books and Articles


Alayi, Titilope (2008), The UN, the AU and ECOWAS - A Triangle for Peace and Security in West Africa? Briefing Paper No.11, New York, NY: Friedrich Ebert Foundation


Bellamy, Alex (2005), Responsibility to Protect or a Trojan Horse? The Crisis in Darfur and Humanitarian Intervention in Iraq, Ethics & International Affairs, 19(2), 31-54.


Bolton, Grace and Visoka, Gezim (2010), Recognizing Kosovo’s Independence: Remedial secession or earned sovereignty? Occasional Paper No. 11/10, St. Antony’s College of Oxford


De Coning, Cedric (2008), Understanding Peacebuilding: Consolidating the Peace Process, Conflict Trends, 4, 45-51.

De Coning, Cedric and de Carvalho, Gustavo (2013), ACCORD Peacebuilding Handbook, Durban: The African Centre for the Constructive Resolution of Disputes


Dobbins, James et al. (2003), America’s Role in Nation-Building: From Germany to Iraq, St. Monica, CA: RAND Corporation

Dobbins, James et al. (2005), The UN’s Role in Nation-Building, From the Congo to Iraq, St. Monica, CA: Rand Corporation


Fleshman, Michael (2000), Sierra Leone: peacekeeping under fire, UN mission short on trained forces, equipment, global backing, Africa Recovery, 14(2), 8.


Iro, Andrea (2009), The UN Peacebuilding Commission-Lessons from Sierra Leone, Potsdam: Universitätsverlag Potsdam


Lehne, Stefan (2009), Resolving Kosovo’s Status, Policy Paper, Austrian Institute for International Affairs, available at: <http://www.oiip.ac.at> (last accessed on 24 February 2017)


Mahdavi, Mojtaba (2015), A Postcolonial Critique of Responsibility to Protect in the Middle East, Perceptions, XX(1), 7-36.


Zygojannis, Philipp A. (2003), *Die Staatengemeinschaft und das Kosovo, Humanitäre Intervention und internationale Übergangsverwaltung unter Berücksichtigung einer Verpflichtung des Intervenienten zur Nachsorge*, Berlin: Duncker & Humblot

**Court Judgements and Opinions**

Permanent Court of International Justice, Case of the SS “Wimbledon”, United Kingdom and ors v Germany, Judgment, (1923) PCIJ Series A, No. 1, ICGJ 235, (PCIJ 1923), 17 August 1923

Permanent Court of International Justice, Case of Lighthouses in Crete and Samos, France v Greece, Judgement, (1937) PCIJ Series A/B, No. 71, ICGJ 322, (PCIJ 1937), 8 October 1937

International Court of Justice, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403. 22 July 2010


**International Treaties**

Charter of the United Nations, 1 UNTS XVI, 24 October 1945


International Covenant on Civil and Political Rights, UNTS 999, p. 171, 16 December 1966

International Covenant on Economic, Social and Cultural Rights, UNTS 993, p. 3, 16 December 1966

Montevideo Convention on the Rights and Duties of States, 165 LNTS 19, 49 Stat 3097, 26 December 1933


**Documents and Reports of International Organizations**

Documents of the organs and agencies of the United Nations (UN)


United Nations Department of Public Information (2005), United Nations Mission in Sierra Leone, UNAMSIL: A Success Story in Peacekeeping, DPI/2412A

United Nations Department of Public Information (2005), United Nations Mission in Sierra Leone, Fact Sheet 1: Disarmament, Demobilization and Reintegration, Thousands of Ex-Fighters Disarmed and Reintegrated, DPI/2412B

United Nations Department of Public Information (2005), UN Missions in Sierra Leone, Fact Sheet 2: Elections, Democratic Government established in Sierra Leone, DPI/2412C

United Nations Department of Public Information (2005), UN Mission in Sierra Leone, Fact Sheet 3: Human Rights and Rule of Law, Respect for human rights and rule of law brings stability, DPI/2412D


UN General Assembly, General Assembly Resolution 45/150 on enhancing the effectiveness of the principle of periodic and genuine elections, A/RES/45/150, 18 December 1990


UN General Assembly, 2005 *World Summit Outcome*, A/RES/60/1, 24 October 2005

UN General Assembly, Resolution 60/180 on the establishment of the Peacebuilding Commission, A/RES/60/180, 30 December 2005

UN General Assembly, *Arrangements for the revision of the terms of reference for the Peacebuilding Fund*, Report of the Secretary-General, A/63/818, 13 April 2009

UN General Assembly, General Assembly Resolution 63/310 on the cooperation between the United Nations and the African Union, A/RES/63/310, 7 October 2009

UN General Assembly, Press Release: *Adopting Consensus Resolution*, General Assembly Acknowledges World Court Opinion on Kosovo, Welcomes European Union Readiness to Facilitate Process of Dialogue, GA/10980, 9 September 2010


UN Secretary-General, Press Release: *Secretary-General offers conditions to end hostilities in Kosovo*, SG/SM/6952, 9 April 1999


UN Secretary-General (2009), *Guidance Note of the Secretary-General on Democracy*, available at: <http://www.un.org/democracyfund/guidance-note-un-secretary-general-democracy> (last accessed on 15 December 2016)


UN Security Council, Security Council resolution 955 (1994) on the establishment of the International Criminal Tribunal for Rwanda, UN/RES/955, 8 November 1994

UN Security Council, Letter Dated 1 February 1995 from the Secretary-General addressed to the President of the Security Council, S/1995/120, 7 February 1995


244


UN Security Council, Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, S/2001/1154, 5 December 2001


UN Security Council, Record of the 5130th Meeting of the Security Council on Kosovo, S/PV.5130, 24 February 2005

UN Security Council, Record of the 5188th Meeting of the Security Council on Kosovo, S/PV.5188, 27 May 2005


UN Security Council, Record of the 5839th Meeting of the Security Council on the situation in Kosovo, S/PV.5839, 18 February 2008


UN Security Council, Record of the 6025th meeting of the Security Council on Kosovo, S/PV.6025, 26 November 2008

UN Security Council, Statement by the President of the Security Council, S/PRST/2008/44, 26 November 2008

UN Security Council, Statement by the President of the Security Council, on the interaction with regional and other international organizations, S/PRST/2010/1, 13 January 2010

UN Security Council, Record of the 6739th Meeting of the Security Council on the situation of Sierra Leone, S/PV.6739, 22 March 2012
UN Security Council, Record of the 6805th Meeting of the Security Council on post-conflict peacebuilding, S/PV.6805 (Resumption 1), 12 July 2012


UN Security Council, Record of the 7693th Meeting of the Security Council on Kosovo, S/PV.7693, 16 May 2016


**Documents and reports of the UN Peacebuilding Commission**


Organizational Committee, Summary Record of the 2nd Meeting, PBC/1/OC/SR.2, 16 May 2007


Organizational Committee, Report of the Peacebuilding Commission on its eighth session, A/69/818-S/2015/174, 11 March 2015,


Sierra Leone Configuration, Summary Report of the 1st meeting (12 October 2006), PBC/1/SLE/SR.1, 18 May 2007

Sierra Leone Configuration, Sierra Leone Peacebuilding Cooperation Framework, PBC/2/SLE/1, 3 December 2007

Sierra Leone Configuration, Progress report on the implementation of the Sierra Leone Peacebuilding Cooperation Framework, PBC/2/SLE/9, 23 June 2008

Sierra Leone Configuration, Progress report on the implementation of the Sierra Leone Peacebuilding Cooperation Framework, PBC/3/SLE/3, 16 December 2008

Sierra Leone Configuration, Outcome of the Peacebuilding Commission High-level Special Session on Sierra Leone, PBC/3/SLE/6, 10 June 2009

Sierra Leone Configuration, Review of the outcome of the High-level Special Session of the Peacebuilding Commission on Sierra Leone, PBC/4/SLE/3, 1 October 2010


Sierra Leone Configuration, Second review of the outcome of the High-Level Special Session of the Peacebuilding Commission on Sierra Leone, PBC/6/SLE/2, 2 October 2012


**Reports of the Secretary-General concerning Sierra Leone**


Sixth report of the Secretary-General on the United Nations Integrated Office in Sierra Leone, S/2008/281, 29 April 2008


**Reports of the Secretary-General concerning Kosovo**

Report of the Secretary-General pursuant to Paragraph 10 of Security Council Resolution 1244 (1999), S/1999/672, 12 June 1999


250


**UNMIK-Regulations**

Special Representative of the Secretary-General, Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo, UNMIK/REG/1999/1, 25 July 1999

Special Representative of the Secretary-General, Regulation No. 1999/8 on the Establishment of the Kosovo Protection Corps, UNMIK/REG/1999/8, 20 September 1999

Special Representative of the Secretary-General, Regulation No. 1999/14 on the appointment of regional and municipal administrations, UNMIK/REG/1999/14, 21 October 1999

Special Representative of the Secretary-General, Regulation No 2000/1 on the Kosovo Joint Interim Administrative Structure, UNMIK/REG/2000/1, 14 January 2000

Special Representative of the Secretary-General, Regulation No. 2000/38 on the establishment of the Ombudsperson Institution in Kosovo, UNMIK/REG/2000/38, 30 June 2000

Special Representative of the Secretary-General, Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, UNMIK/REG/2000/45, 11 August 2000

Special Representative of the Secretary-General, Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, UNMIK/REG/2000/47, 18 August 2000

Special Representative of the Secretary-General, Regulation No. 20001/9 on a constitutional framework for provisional self-government in Kosovo, UNMIK/REG/2001/9, 15 May 2001
Special Representative of the Secretary-General, Regulation No. 2001/18 on the establishment of a detention review commission for extra-judicial detentions based on executive orders, UNMIK/REG/2001/18, 25 August 2001

**Documents of the European Union (EU)**


Council of the European Union, *EU Strategy on Aid for Trade: Enhancing EU support for trade-related needs in developing countries*, 14470/07, Brussels, 29 October 2007


252

European Council (1993), Presidency Conclusions, SN 180/1/93, Copenhagen European Council, 21-22 June 1993

European Council (2000), Presidency Conclusions, No. 200/1/00, Santa Maria da Feira European Council, 19-20 June 2000


**Documents and Reports the European Union concerning Kosovo**


253
Council of the European Union, Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part, 10728/1/15 REV 1, Brussels, 2 October 2015


**Documents of the North Atlantic Treaty Organization (NATO)**


NATO, Press Release: Political and Military Objectives of NATO Action with Regard to the Crisis in Kosovo, 1999/043, 23 March 1999
NATO, Press Release: Statement to the Press by the (NATO) Secretary-General 1999/045, 1 April 1999

NATO, Press Release: The Situation In and Around Kosovo, Chairman’s Statement issued at the Extraordinary Meeting of Foreign and Defence Ministers of the North Atlantic Council held at NATO Headquarters Brussels on 18 June 1999, 1999/097, 18 June 1999


NATO, Highlights of the Kosovo Air Campaign (Archived), available at: <http://www.nato.int/cps/en/natohq/topics_49602.htm> (last accessed on 11 February 2017)


NATO, Kosovo Force (KFOR) initial and additional tasks, available at: <http://jfcnaples.nato.int/kfor/about-us/history/tasks> (last accessed on 11 February 2017)

Documents of the Organization for Security and Co-operation in Europe (OSCE)

Final Act of the Conference for Security and Co-operation in Europe, (Helsinki Declaration) 14 I.L.M. 1292, 1 August 1975


Permanent Council Decision No. 305 on the establishment of the OSCE Mission in Kosovo, PC.DEC/305, 1 July 1999


**Documents of the African Union (AU)**


**Documents of the Council of Europe**

Council of Europe, Parliamentary Assembly Doc. 12462 *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*, 7 January 2011


**Documents of International Financial Institutions**


**Independent assessments and policy papers**


European Court of Auditors, *European Union Assistance to Kosovo related to the rule of law*, Special Report No. 18/2012, 16 October 2012


**Internet Sources**


EULEX, Accountability Concept, available at: <http://www.eulex-kosovo.eu/?page=2,23> (last accessed on 13 January 2017)


Government of Sierra Leone (2013), Fragility Assessment, available at: <http://www.g7plus.org/sites/default/files/resources/Fragility-Assessment-SierraLeone.pdf> (last accessed on 21 January 2017)


Joint Communiqué of the All Peoples Congress and Sierra Leone People's Party, 2 April 2009, available at: <https://unipsil.unmissions.org/portals/unipsil/sections/signed_jointcomunique20020409.pdf> (last accessed on 15 January 2017)


Appendix A: Sierra Leone Peacebuilding Cooperation Framework

I. Principles for cooperation

1. The Republic of Sierra Leone and the Peacebuilding Commission,
   In accordance with the mandate975 of the Peacebuilding Commission, inter alia, to bring together all relevant actors to marshal resources and advice on and propose integrated strategies for post-conflict peacebuilding and recovery,
   Determined to strengthen the partnership and cooperation between Sierra Leone and the Peacebuilding Commission,
   Recognizing the progress made in Sierra Leone’s stabilization, recovery and peacebuilding since the signing of the Lomé Peace Agreement (1999),
   Mindful that lasting peace and sustainable development in Sierra Leone would require addressing the remaining threats to stability and the root causes of the conflict,
   Stressing the need to build on existing achievements, strategies and commitments for peace and development and to continue their implementation,
   Noting the strong partnership and coordination structures in Sierra Leone between the national authorities and the international community,
   Recognizing that peace consolidation in Sierra Leone requires full national ownership and the participation of all relevant stakeholders, such as the central and local governments, civil society, the private sector and international partners,
   Further recognizing the need for continued engagement of the international community in the process of peace consolidation until the objectives of sustainable peace are met,
   Have developed the present Peacebuilding Cooperation Framework based on the following principles:

(a) National ownership: the primary responsibility and ownership for peace consolidation and the development of a prosperous and democratic Sierra Leone rests with the Government and the people of Sierra Leone;

(b) Mutual accountability: sustainable peacebuilding requires a strong partnership on the basis of mutual respect and accountability between the Government and the people of Sierra Leone and their international partners;

(c) Sustained engagement: peacebuilding is a long-term process requiring sustained and predictable engagement from all stakeholders.

II. Context

2. Since the signing of the Lomé Peace Agreement in 1999, the Government of Sierra Leone and its people, with the support of the international community, have made tremendous progress in rebuilding the country and securing peace. Among key achievements are the peaceful and democratic national elections held in 2002 and 2007 and the local government election held in 2004; the establishment and completion of the work of the Truth and Reconciliation Commission; the comprehensive reform and restructuring of national security institutions, such as the Sierra Leone Police, the Republic of Sierra Leone Armed Forces and the Office of National Security; and the

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creation of a number of democratic institutions, such as the National Electoral Commission, the Political Parties Registration Commission, the Human Rights Commission and the Anti-Corruption Commission.

3. A number of national frameworks and strategies for peace and development, such as Sierra Leone Vision 2025, the Sierra Leone Poverty Reduction Strategy Paper, the Peace Consolidation Strategy, the Improved Governance and Accountability Pact and the report of the Truth and Reconciliation Commission have contributed to the achievements made thus far and continue to guide the process for recovery and stabilization.

4. Notwithstanding the significant progress made, peace and stability in Sierra Leone remain fragile. The root causes of the conflict — widespread corruption, marginalization and disempowerment of the rural and some sectors of urban communities, lack of economic opportunities and inadequate State capacity to deliver basic services — remain largely unaddressed. The unemployment and marginalization of youth in particular present a serious threat to stability and peace.

5. Sierra Leone’s engagement with the Peacebuilding Commission is aimed at ensuring sustained attention of the international community in providing additional political, financial and technical support to the country’s peace consolidation efforts. The present Framework is a medium-term document for partnership and mutual accountability, with specific actions that the Government of Sierra Leone and the Peacebuilding Commission commit themselves to undertake to address the challenges and threats most critical to sustaining and consolidating peace. It will guide the work of the Peacebuilding Commission and the Government of Sierra Leone by highlighting key peacebuilding gaps in existing national strategies and commitments and ensuring their timely and effective implementation. The Peacebuilding Commission will also use the Framework to enhance dialogue and strengthen the partnerships between Sierra Leone and its international partners.

6. The commitments in the present Framework are identified based on three main criteria: they are critical to avoiding relapse into conflict, they are short-to-medium term in duration, and they require mutual action from the Government and other national stakeholders and Sierra Leone’s international partners. The focus on these elements should not be seen as replacing the commitments in other existing frameworks and bilateral and multilateral cooperation agreements.

7. The present Framework is a flexible document which can be modified jointly by the Government of Sierra Leone and the Peacebuilding Commission in response to developments in the peace consolidation process in Sierra Leone. It has been developed through a consultative process in Sierra Leone and the deliberations of the Peacebuilding Commission.

III. Analysis of priorities, challenges and risks for peacebuilding

8. Consistent with existing national strategies, the present Framework highlights critical and inter-dependent priorities for risk reduction and peace consolidation in Sierra Leone. It also identifies constraints in the implementation of existing strategies and identifies mutual commitments of the existing strategies and commitments are related to political will, limited financial and human capacity of the Government, civil society organizations and the Parliament, as well as constraints in coordination mechanisms and arrangements

976 The root causes of the Sierra Leone conflict have been explored fully in the report of the Truth and Reconciliation Commission.
with international partners. These challenges are further compounded by the poor state of basic infrastructure, such as electricity, water and roads. The Government of Sierra Leone has also stressed the need to ensure harmonization of benchmarks and monitoring requirements for its international commitments to ensure effective implementation of existing priorities.

9. The priority areas contained in the Framework were identified by the Government of Sierra Leone in country-specific meetings of the Peacebuilding Commission and subsequent consultations with all relevant stakeholders. These include: youth employment and empowerment, consolidation of democracy and good governance, justice and security sector reform, capacity-building, and energy sector development. In addition, the subregional dimensions of peacebuilding and cross-cutting issues of gender equality and human rights are considered in the analysis of priorities for peacebuilding and the selection of commitments.

A. Youth employment and empowerment

10. The marginalization and political exclusion of youth was identified by the Truth and Reconciliation Commission as one of the root causes of the civil war and is widely perceived to be a threat to peace consolidation today. The Government defines youth as persons between 15 and 35 years, who are estimated to represent approximately two million people out of a total population of about five million. Close to two thirds of those young people are considered to be unemployed or underemployed. Young people also tend to have less paid employment and fewer opportunities in the public and formal sectors. They face a number of employment constraints, such as low levels of education, limited access to land, social capital and credit. Ex-combatants, urban slum youth, poor and socially excluded youth in rural areas and youth in squatter settlements in border areas of Sierra Leone comprise key sections of marginalized young men and women requiring special measures to address their needs. The challenge of youth marginalization, however, goes beyond the issue of economic opportunities and employment. It is also necessary to ensure the full participation of young men and women in the political process and protection of their rights. Ensuring equal participation of women, especially young women, within the political process constitutes a specific challenge and requires targeted interventions, such as legislative reform and sustained capacity-building.

11. A few short- and medium-term initiatives are under way to address youth unemployment, such as the Youth Employment Scheme launched by the Government in 2006 with the aim of generating up to 135,000 short-term jobs for young people. The Government of Sierra Leone has also developed a National Youth Policy and is setting up a National Youth Commission to promote youth empowerment and greater participation in decision-making. The United Nations Peacebuilding Fund has also provided support for the Government’s Youth Enterprise Development Programme. The World Bank and the Government of Sierra Leone have produced a comprehensive study on youth employment, noting the need to develop both medium- and long-term solutions to the problem.

12. The challenge of addressing youth unemployment is closely linked to the creation of long-term economic growth, reviving agricultural production and marketing, and creating an enabling environment for private-sector development and domestic, diaspora and
foreign investment. A number of preconditions, such as improved availability of electricity, water and other basic infrastructure and support for entrepreneurs and the self-employed, would need to be addressed in that context. Although the importance of long-term economic growth in the context of peace consolidation is recognized as part of the present Framework, specific activities under this sector fall within the purview of the Poverty Reduction Strategy Paper. Within this Framework, a more targeted and medium term focus on addressing youth unemployment will be prioritized, in particular in the areas of policy reform and youth empowerment through the implementation of the National Youth Policy, strengthening of the National Youth Council, District Youth Committees and the expansion of the Government’s Youth Employment Scheme.

B. Justice and security sector reform

13. Despite some progress made in the re-establishing of judicial institutions throughout the country, lack of access to justice for the majority of the population, coupled with lack of capacity in the justice system, are serious concerns for peace and stability. The justice system is plagued with outdated laws, inadequate personnel and logistical problems. Almost 80 per cent of the population relies on the traditional (chieftaincy-based) system of justice, which lacks the capacity to effectively dispense justice and is seen as biased against women and young people and lacking in transparency and accountability.

14. A number of initiatives are under way to rebuild the institutions of justice in Sierra Leone. With the support of the Peacebuilding Fund, considerable progress has been made in the reduction of the backlog of cases and providing urgently needed capacity-building support to the judiciary and the justice sector as a whole. However, addressing the longstanding challenges facing the justice sector, in particular improving access to justice, requires a holistic approach. To that end, the Government of Sierra Leone, with the support of international partners, in particular the United Kingdom Department for International Development, has launched a Justice Sector Development Programme, a Justice Sector National Policy Framework and a Justice Sector Reform Strategy for 2008-2010. Legal and constitutional review and reform programmes are also under way, through a Law Reform Commission and a Constitutional Review Commission.

15. These efforts need to be closely coordinated and further measures are needed to raise the population’s confidence in the justice system and to ensure timely and equal access to justice. In that regard, the implementation of the recommendations of the Truth and Reconciliation Commission, support for the continued work of the Special Court, support for the newly established National Human Rights Commission and support for the efforts enhancing traditional dispute mechanisms and community-based mediation and “peace-monitoring” initiatives will be critical.

16. Since the end of the conflict, successful security sector reform initiatives have been undertaken to transform and restructure security institutions to effectively respond to threats to the State and citizenry of Sierra Leone. Further consolidation of those reforms is needed, with a focus on making the Republic of Sierra Leone Armed Forces effective and affordable. The Conditions and Terms of Service of the Republic of Sierra Leone Armed Forces also need to be reviewed and updated. There is also a need for further training to improve police and community relations, and the expansion and strengthening of the Family Support Units. Recognizing that poor coordination among the security institutions was a contributing factor to the conflict, further support is needed for the Government’s strategy to strengthen coordination among security institutions through the Office of National Security, including in strengthening the conflict prevention and early-warning capacity of the District and Provincial Security Committees and promoting policy dialogue between the Office of National Security and civil society organizations.
C. Consolidation of democracy and good governance

17. Democratic governance and the establishing and strengthening of national institutions are indispensable for durable peace, economic and social progress and promotion of human rights and the rule of law. One of the key strategies of the Government of Sierra Leone in the consolidation of democracy and the establishment of an accountable Government has been the expansion of State authority and service provision to all parts of the country. That strategy is based on the recognition that the marginalization from the political process of a significant portion of the population and the unequal access to economic opportunities were contributing factors to the civil war and continue to remain risk factors for peace consolidation. Additional efforts are needed in the lead-up to the 2008 local council elections to strengthen institutions of local governance and ensure effective decentralization in accordance with the Local Government Act (2004) and in particular to clarify the division of roles and responsibilities between local councils and the traditional chiefdom authorities. Adequate resources and technical support need to be mobilized in the lead-up to the local council elections.

18. Further support is also needed to enhance the capacity of national institutions such as the Parliament, the National Electoral Commission, the Political Parties Registration Commission, the Anti-Corruption Commission, the National Commission for Democracy and the Human Rights Commission. Efforts in support of governance institutions need to be complemented through enhanced dialogue among political parties and the reconciliation and full participation of all segments of the population in decision-making. In that context, enhancing the role and participation of civil society, including youth and women’s groups, in political transformation is critical and requires urgent attention and support through capacity building activities and the strengthening of coordination mechanisms.

19. Many efforts have been taken to address corruption, such as the adoption of Anti-Corruption Act (2000) and the creation of the Anti-Corruption Commission. However, corruption remains a major challenge and a threat to the country’s stability and socio-economic progress. Additional concrete measures and political commitment are critical to combat corruption. Such measures would require, among other things, strengthening of the Anti-Corruption Commission, revision of the Anti-Corruption Act and strategy and capacity-building of law enforcement institutions and the civil service as a whole. Further efforts are also needed to strengthen the capacity of the Government of Sierra Leone, in accordance with the Extractive Industries Transparency Initiative, for the management and governance of natural resources for the benefit of the people of Sierra Leone. Initiatives such as the Improved Governance and Accountability Pact signed by the Government and the four donors who provide direct budgetary support in July 2006 provide important measures for strengthening mutual accountability and good governance in Sierra Leone.

D. Capacity-building

20. Progress on the identified peacebuilding priorities cannot be separated from capacity-building in its broadest sense and at all levels. After many years of neglect and as a result of the civil war, Government institutions and other national stakeholders have limited capacity to deliver services, implement reforms and ensure adequate economic and financial management. This is also manifested at the provincial and district levels, where State institutions in many instances remain weak or non-existent, hindering the
process of decentralization. In addition, capacity limitations undermine the oversight roles of the national Parliament, civil society organizations and the media.

21. A number of public-sector initiatives and accountability measures have been implemented, including through the Institutional Reform and Capacity-building Programme. However, further progress is needed, in particular in the area of civil service reform. A comprehensive and sustainable civil service reform strategy needs to be developed to ensure opportunities for merit-based recruitment, stronger performance and accountability and to address urgent capacity gaps, including the low percentage of women in the civil service. A comprehensive capacity review of Ministries, Departments and Agencies is also needed to identify and address the short-to-mid-term challenges and capacity gaps. To ensure the long-term sustainability of peacebuilding efforts, all programmes and activities must incorporate capacity-building as a key element. Furthermore, international agencies operating in Sierra Leone should assess their own capacities to effectively support the country’s peacebuilding and development efforts.

E. Energy sector

22. Sierra Leone’s energy sector, particularly its electricity subsector, is in a state of crisis. The country’s energy crisis is one of the main challenges to its economic growth and recovery and it impedes continued progress on peace consolidation. The current electricity needs of the country stand at 250 MW, with current production at 10 MW. The shortcomings in the supply of electricity constitute a critical and overarching challenge affecting all peacebuilding priorities identified in the present Framework. Addressing the energy crisis will have a significant positive impact on employment generation, public revenue generation, poverty reduction and the overall recovery of the country. It will also deliver a critical and long-awaited peace dividend to the population five years after the end of conflict.

23. While many of the challenges in the energy sector are of a long-term nature, the present Framework will prioritize and address short-term emergency issues, such as the generation, distribution and management of electricity supply to Freetown and its surrounding areas.

F. Subregional dimensions of peacebuilding

24. Long-term peace consolidation in Sierra Leone is closely linked to developments in the wider subregion, in particular the Mano River Basin, comprising Guinea, Liberia, Côte d’Ivoire and Sierra Leone. For decades, instability in one country has spilled over to its neighbours and border areas have in many instances served as safe havens for armed militias. There is a continued need to enhance dialogue between the countries in the sub-region and promote conflict prevention, resolution and mediation capacities. The cooperation within the Mano River Union, the Economic Community of West African States, the African Union and other regional and subregional organizations constitute key platforms for such dialogue and need to be enhanced through a more proactive political leadership and increased resource allocation. The Mano River Union secretariat should also be strengthened to ensure effective coordination among the member States of the Union. Peace consolidation efforts at the national and international levels must also be supplemented by confidence-building measures between border communities, through specific dispute resolution mechanisms and strengthened trade relations.
IV. Mutual commitments

A. Commitments of the Government of Sierra Leone

25. Recognizing that responsible and democratic leadership, effective management of resources and adequate capacity are the prerequisites for peace consolidation in Sierra Leone, the Government of Sierra Leone will fulfil the following commitments:

Youth employment and empowerment

(a) Develop and implement targeted programmes for youth employment and empowerment, including through literacy, vocational training programmes, and civic education programmes;
(b) Promote efforts to strengthen youth organizations and increase the participation of youth in decision-making, paying particular attention to the needs of young women and girls;
(c) Revise and implement the National Youth Policy;
(d) Review and revise the Youth Employment Scheme in order to benefit from the most effective programmes for youth employment generation and empowerment;
(e) Support the participation of young men and women as candidates and voters in the 2008 local council elections;

Justice and security sector reform

(f) Develop a plan for, and embark on, timely implementation of the recommendations contained in the report of the Truth and Reconciliation Commission;
(g) Ensure inclusive, participatory and transparent legislative and constitutional reform processes, including through support for the efforts of the Law Reform Commission and the Constitutional Review Commission;
(h) Provide additional support to the Family Support Units of the police to adequately address sexual and gender-based violence and other crimes against women and children;
(i) Establish an Independent Police Complaints Review Board aimed at preventing police excesses or misbehaviour and improve accountability, professional standards and police-community relations;
(j) Ensure timely and full implementation of the laws on the Registration of Customary Marriages and Divorce, Domestic Violence and the Devolution of Estates;
(k) Provide additional support for the work of the Human Rights Commission;
(l) Implement the Republic of Sierra Leone Armed Forces Core Review Programme, including on the size and the terms and conditions of service, to ensure that the armed forces are affordable and effective;

Consolidation of democracy and good governance

(m) Ensure adequate preparations for the local council elections in 2008 through increased political dialogue, support to the National Electoral Commission and the Political Parties Registration Commission;
(n) Consolidate democratic governance by strengthening governance institutions, especially local governance institutions;
(o) Ensure and support greater participation of women in national decision-making and political processes, especially in the 2008 local elections;
(p) Review the Local Governance Act of 2004 and clarify the roles and responsibilities of local councils and traditional authorities;
(q) Develop and support programmes for civic education and participation and greater information-sharing between the Government and the people;
(r) Review the Anti-Corruption Strategy (2000) and develop a holistic strategy which gives the Anti-Corruption Commission independent powers to prosecute and takes into account the need for capacity-building efforts;
(s) Separate the positions of the Attorney General and the Minister of Justice;
(t) Review the Core Minerals Policy and related regulations to improve the Governance and management of natural resources, including on current contracts and revenue collection, to prevent smuggling and illicit trade, and to ensure participation at the local and community levels;

**Capacity-building**

(u) Review civil service reform proposals and undertake a comprehensive reform of the service, including the Senior Executive Service, ensuring greater participation of and enhanced career opportunities for women and young people;
(v) Accelerate the capacity-building of Local Councils so that they can take responsibility for the devolved functions from line ministries;
(w) Facilitate and support capacity-building initiatives for the private sector and civil society, especially women’s and youth organizations, which contribute to peace consolidation, reconciliation and community-based socio-economic recovery and reconstruction;
(x) Develop a strategy for holistic support to the Sierra Leone Parliament;

**Energy sector**

(y) Develop and implement an emergency plan for improving electricity generation and distribution in Freetown and Western Area;
(z) Elaborate a short-to-medium-term comprehensive energy sector-wide strategy;

**Subregional dimensions of peacebuilding**

(aa) Fully participate in and support initiatives of the Mano River Union and other organizations for subregional peace consolidation, with a special focus on initiatives aimed at building confidence and cooperation among border communities and generating youth employment;
(bb) Support the capacity-building of the Mano River Union secretariat;

**Support for the work of the Peacebuilding Commission**

(cc) Utilize existing coordination mechanisms to support implementation of the present Framework and raise awareness for the work of the Peacebuilding Commission;
(dd) Encourage and facilitate documentation and sharing of the lessons learned from Sierra Leone’s experience in restoring and building peace with other post-conflict countries.

**B. Commitments of the Peacebuilding Commission**

26. Recognizing the primary responsibility of the people and the Government of Sierra Leone for peace consolidation and development in their country, the Peacebuilding Commission, in accordance with its mandate as defined in General Assembly and Security Council resolutions (General Assembly resolution 60/180 and Security Council resolution 1645 (2005) of 20 December 2005), and the discussions at its country specific meetings on Sierra Leone, will:
(a) Maintain its engagement with Sierra Leone for a period of three years and jointly review continued engagement after 2010;
(b) Support the efforts of the Government and the people of Sierra Leone for peace consolidation consistent with the present Framework;
(c) Support the implementation of the present Framework within the context of the governing bodies of international institutions;
(d) Advocate for a sustained partnership and an enhanced dialogue between the Government of Sierra Leone and its international partners, including through efforts to increase the number of international partners supporting peace consolidation efforts in Sierra Leone;
(e) Support the development of a Sierra Leone National Aid Policy to ensure effective and timely implementation of aid effectiveness policies and good practices, such as the Paris Declaration;
(f) Galvanize attention and sustained levels of financial resources and technical assistance to support the implementation of the present Framework. This may include the development of multi-donor sector-wide funding mechanisms, such as multi-donor trust funds;
(g) Support the efforts of the Government and the people of Sierra Leone, taking into account existing instruments, such as the Extractive Industries Transparency Initiative and the Kimberley Process, by advocating for appropriate action in the engagement of the relevant stakeholders, in ensuring national ownership for effective, transparent and sustainable exploitation and management of Sierra Leone's natural resources;
(h) Encourage effective coordination of United Nations and other actors on peace consolidation issues consistent with the present Framework;
(i) Integrate a subregional dimension in its engagement with Sierra Leone, notably through enhanced partnerships with the countries in the subregion and support for the Mano River Union and its secretariat;
(j) Support national research and learning institutions to conduct research, collect and share, at the national, regional and international levels, lessons learned and best experiences related to peacebuilding;
(k) Encourage tangible contributions to support Sierra Leone in its peacebuilding efforts and implementation of the present Framework through individual and collective actions by all relevant stakeholders for, inter alia:

**Youth employment and empowerment**

(l) Support capacity-building of the Ministry of Education, Youth and Sports to ensure mainstreaming of youth concerns;
(m) Support the Government’s efforts for the generation of youth employment;
(n) Support the upscaling of existing vocational, literacy training and civic education programmes;

**Justice and security sector reform**

(o) Support the implementation of the recommendations of the Truth and Reconciliation Commission in addressing the root causes of conflict;
(p) Support the work of the Sierra Leone Special Court;
(q) Support capacity-building initiatives for the armed forces and the police, in particular to enhance Sierra Leone’s participation in United Nations peacekeeping operations;
(r) Broaden donor support for the Justice Sector Development Programme;
(s) Support additional management training and capacity-building for mid-level management of the Sierra Leone Police;
(t) Provide technical assistance in support of Sierra Leone courts and in support of the capacity-building of traditional courts;
Consolidation of democracy and good governance

(u) Support Sierra Leone’s efforts to promote accountable democratic governance and the rule of law;
(v) Support the work of the Human Rights Commission, the National Electoral Commission, the Political Parties Registration Commission, the National Commission for Democracy and other national institutions;

Capacity-building

(w) Support the Government’s programmes to address the immediate socioeconomic needs of the population, in accordance with the Sierra Leone Poverty Reduction Strategy Paper and the Millennium Development Goals, and the development of basic services and infrastructure, including water, electricity and roads, as essential conditions for peacebuilding;
(x) Support capacity-building of the Sierra Leone Parliament;
(y) Support capacity-building for civil service reform, including the Senior Executive Service;
(z) Support capacity-building to enhance the Government’s efforts in the management of natural resources, in particular the Ministries of Marine and Mineral Resources;
(aa) Support capacity-building initiatives for the private sector and civil society, especially women’s and youth organizations, which contribute to peace consolidation, reconciliation and community-based socio-economic recovery and reconstruction;
(bb) Support the efforts of the Government of Sierra Leone in the area of gender mainstreaming;

Energy

(cc) Marshall support for the implementation of the short-term emergency plan of the Government of Sierra Leone for electricity generation and distribution, including the restructuring of the National Power Authority and other public institutions in that sector;
(dd) Marshall support for the enhancement and rehabilitation of the electricity generation capacity, distribution networks and transmission lines;

Subregional dimensions of peacebuilding

(ee) Provide additional technical and financial support for the revitalization of the Mano River Union, especially in fostering cross-border confidence-building and addressing common peacebuilding challenges, including at the community level;
(ff) Provide assistance to the Mano River Union and Economic Community of West African States in addressing cross-border issues, such as the illicit trade in small arms.

C. Roles and responsibilities of the United Nations in support of the Framework


(a) Support the implementation of the present Framework and the work of the Peacebuilding Commission;
(b) Take into account the priorities of the present Framework in reviewing the United Nations Development Assistance Framework and related United Nations programmes and activities in the country;
(c) Enhance coordination within the United Nations system on peacebuilding priority issues;
(d) Ensure coordination among all actors and programmes in peacebuilding to ensure coherence and avoid duplication of efforts;
(e) Develop and implement a peacebuilding sensitive approach to United Nations activities and programming;
(f) Provide continued support to initiatives and programmes promoting greater subregional cooperation and development, including through the programmes undertaken by the Economic Commission for Africa.

D. Roles and responsibilities of bilateral and multilateral partners in support of the Framework

28. Within the framework of their respective cooperation programmes and taking into account the Paris Declaration on Aid Effectiveness and the commitments in the United Nations Millennium Declaration, bilateral and multilateral partners are encouraged to:

(a) Support the implementation of the present Framework and the work of the Peacebuilding Commission;
(b) Integrate the priorities of the present Framework into their cooperation programmes;
(c) Support the implementation of Government of Sierra Leone priorities as reflected in the Poverty Reduction Strategy Paper (2008-2010);
(d) Join with the Peacebuilding Commission in advocacy on behalf of Sierra Leone, including in galvanization of additional resources;
(e) Fulfil the commitments made at the 2005 and 2006 Consultative Group meetings;
(f) Ensure the coordination of programmes and interventions to avoid the duplication of peacebuilding efforts;
(g) Develop and implement a peacebuilding-sensitive approach to activities and programmes.

E. Roles and responsibilities of the States in the West African region in support of the Framework

29. The States in the subregion are encouraged to:

(a) Contribute to peacebuilding in Sierra Leone by supporting the work of various subregional organizations, including through the revitalization of the Mano River Union;
(b) Contribute to, and cooperate on, joint subregional projects aimed at cross-border confidence-building;
(c) Commit to the peaceful and diplomatic resolution of outstanding disputes and promote enhanced cooperation for conflict prevention and early warning;
(d) Contribute to a comprehensive approach to addressing economic and social challenges, including in the development and implementation of subregional energy-sector cooperation strategies.

V. Review and tracking of progress

30. The Government of Sierra Leone and the Peacebuilding Commission will review, through semi-annual country-specific meetings and regular consultations with all relevant stakeholders in Sierra Leone, progress on the implementation of the present Framework. Key stakeholders in the peacebuilding process of the country will be invited to attend at least one of the semi-annual meetings. The purpose of the formal meetings will be: (a)
to review progress in achieving the objectives and commitments of the Peacebuilding Cooperation Framework and the overall engagement of the Peacebuilding Commission with Sierra Leone; (b) to focus the attention of the international community on key peacebuilding issues requiring additional action; (c) to ensure that the Government of Sierra Leone, the Peacebuilding Commission and all other relevant stakeholders honour their commitments under the present Framework; (d) to draw lessons and good practices; and (e) to update the present Framework, as appropriate. The meetings will result in advice and recommendations on how relevant stakeholders might achieve their commitments contained in the present Framework.

31. The semi-annual review process will be based on progress reports comprising several key elements, such as: (a) a trend analysis describing important developments under each peacebuilding priority issue and cross-cutting area; (b) review of progress in the implementation of mutual commitments; and (c) recommendations for follow-up actions. The progress reports will be developed by the Government of Sierra Leone, with critical inputs from the Development Assistance Coordination Office and civil society organizations and the support of the United Nations in Sierra Leone and the Peacebuilding Support Office. The account of progress on the commitments of the Peacebuilding Commission will be prepared by the Peacebuilding Support Office, in consultation with the Peacebuilding Commission. To the extent possible, the analysis in the periodic reports will be based on existing indicators and benchmarks contained in the Poverty Reduction Strategy Paper, the Medium-Term Expenditure Framework, the Multi-Donor Budget Support Framework, and the Improved Governance and Accountability Pact.

32. The Government of Sierra Leone, with support from the international community, will allocate sufficient resources to existing aid coordination mechanisms to support the review and implementation of the present Framework. In addition, the Government of Sierra Leone and the Peacebuilding Commission will also develop a monitoring tool or “matrix” to facilitate the effective implementation of the present Framework and its review process. The matrix will have specific benchmarks and indicators, will include existing peacebuilding efforts and will identify additional support required for the implementation of the commitments listed in the present Framework (for matrix template, see annex).

33. Informal civil society briefings, with the participation of both international and local civil society organizations, will precede the formal meetings of the Sierra Leone configuration of the Peacebuilding Commission. Civil society groups will play an important role in raising awareness about the partnership of the Government of Sierra Leone and the Peacebuilding Commission and will contribute to the review and monitoring of the present Framework, including in the further development of the matrix for the review of progress and the implementation of commitments.

34. The calendar of formal meetings of the Sierra Leone configuration of the Peacebuilding Commission will be established in consultation with the Government of Sierra Leone and its partners so as to minimize additional administrative requirements. Those formal meetings will be complemented by additional meetings or briefings and an annual visit of the member States of the Peacebuilding Commission to Sierra Leone, as appropriate. Such additional meetings and field visits will result in advice and recommendations from the Peacebuilding Commission to the Security Council, the General Assembly, the Economic and Social Council and other relevant institutions.

Annex

– Matrix for review of progress in the implementation of commitments [Note: This matrix will be a “living document”, continuously updated following the adoption of the Sierra
Leone Peacebuilding Cooperation Framework. It will provide the basis for the generation of the six-monthly periodic reviews of the implementation of the Framework for consideration by the Peacebuilding Commission and the Government of Sierra Leone.

- Commitments Benchmarks and indicators; Ongoing international support Status of implementation; Additional requirements

**Source:** Sierra Leone Configuration, Sierra Leone Peacebuilding Cooperation Framework, PBC/2/SLE/1, 3 December 2007
Appendix B: RESOLUTION 1244 (1999)

Adopted by the Security Council at its 4011th meeting,
on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,


Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia’s agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,
**Determining** that the situation in the region continues to constitute a threat to international peace and security,

**Determined** to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. **Decides** that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;

2. **Welcomes** the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;

3. **Demands** in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;

4. **Confirms** that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;

5. **Decides** on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;

6. **Requests** the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. **Authorizes** Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

8. **Affirms** the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. **Decides** that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:
(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;
(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;
(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;
(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;
(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
(g) Conducting border monitoring duties as required;
(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

10. **Authorizes** the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. **Decides** that the main responsibilities of the international civil presence will include:

(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
(b) Performing basic civilian administrative functions where and as long as required;
(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peacebuilding activities;
(e) Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords (S/1999/648);
(f) In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement;
(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;
(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
(j) Protecting and promoting human rights;
(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. **Emphasizes** the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. **Encourages** all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors’ conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. **Demands** full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. **Demands** that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. **Decides** that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;

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

18. **Demands** that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. **Decides** that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. **Requests** the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. **Decides** to remain actively seized of the matter.
Annex 1

Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;

- Withdrawal from Kosovo of military, police and paramilitary forces;

- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;

- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;

- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;

- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;

- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.

2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.

3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.

5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.

6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
   - Liaison with the international civil mission and the international security presence;
   - Marking/clearing minefields;
   - Maintaining a presence at Serb patrimonial sites;
   - Maintaining a presence at key border crossings.

7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.

8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.1 A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

   **Withdrawal**
   - Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

   **Returning personnel**
   - Equipment associated with returning personnel;

282
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 and the third paragraph of Article 25 thereof,

Whereas:

(1) On 10 June 1999, the United Nations Security Council adopted Resolution 1244 (hereinafter Resolution 1244), and within this framework, the United Nations Security Council:

— ‘Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise’ (Paragraph 19),

— ‘Authorises the Secretary-General, with the assistance of relevant international organisations, to establish an international civil presence in Kosovo …’ and ‘Decides that the main responsibilities of the international civil presence will include … (f) in a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement … (i) maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo’ (Paragraphs 10 and 11),

— ‘Welcomes the work in hand in the European Union and other international organisations to develop a comprehensive approach to the economic development and stabilisation of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation’ (Paragraph 17).

(2) The Kosovo organs, institutions and authorities referred to in this Joint Action are the institutions (hereinafter the Kosovo institutions) created on the basis of Resolution 1244. They include, inter alia, the Kosovo Police Service, the judiciary and the associated Ministries of the Interior and of Justice.

(3) There is a need to prevent, on humanitarian grounds, possible outbreaks of violence, acts of persecution and intimidation in Kosovo, taking account, as appropriate, of the responsibility towards populations as referred to in Resolution 1674 by the United Nations Security Council on 28 April 2006.

(4) On 10 April 2006, the Council adopted Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis
management operation in Kosovo in the field of rule of law and possible other areas in Kosovo (1).

(5) On 11 December 2006, the Council approved the Crisis Management Concept for a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo.

(6) Joint Action 2006/304/CFSP lays down that the Head of EUPT Kosovo is, in particular, to act under the direction of the Head of the EU crisis management operation in Kosovo once the latter has been appointed.

(7) The Brussels European Council of 14 December 2007 underlined the readiness of the EU to play a leading role in strengthening stability in the region in line with its European perspective and in implementing a settlement defining Kosovo's future status. It stated the EU's readiness to assist Kosovo in the path towards sustainable stability, including by means of a European Security and Defence Policy (ESDP) mission and a contribution to an international civilian office as part of the international presences. The General Affairs and External Relations Council was invited to determine the modalities for the mission and when to launch it. The Secretary-General/High Representative (SG/HR) was requested to prepare the mission in discussion with the responsible authorities in Kosovo and the United Nations. In this regard, the United Nations Secretary-General has stated that the United Nations, with the support of the relevant international organisations, is committed to assisting Kosovo in the path towards sustainable stability. The United Nations Secretary-General also noted the readiness of the EU to play an enhanced role in Kosovo, as reflected in the conclusions of the Brussels European Council on 14 December.

(8) In parallel with this Joint Action, the Council is adopting a Joint Action appointing an EU Special Representative for Kosovo.

(9) In accordance with the guidelines of the Nice European Council of 7-9 December 2000, this Joint Action should determine the role of the SG/HR in accordance with Articles 18 and 26 of the Treaty.

(10) Article 14(1) of the Treaty calls for the indication of financing for the whole period of implementation of the Joint Action. The indication of amounts to be financed by the general budget of the European Union illustrates the will of the political authority and is subject to the availability of commitment appropriations during the respective budget year.

(11) Considering the scale and nature of the mission established by this Joint Action, specific provisions are required concerning staff recruitment and procurement.

(12) The command and control structure of the mission should be without prejudice to the contractual responsibilities of the Head of the mission towards the Commission for implementing the mission's budget.
(13) The watch-keeping capability established within the Council Secretariat should be activated for this mission.

(14) The European Union Rule of Law Mission in Kosovo will be conducted in a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy as set out in Article 11 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

**Article 1**

**The mission**

1. The EU hereby establishes an European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (hereinafter EULEX KOSOVO).

2. EULEX KOSOVO shall operate in accordance with the Mission Statement set out in Article 2 and shall carry out the tasks as set out in Article 3.

**Article 2**

**Mission Statement**

EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. EULEX KOSOVO, in full cooperation with the European Commission Assistance Programmes, shall fulfil its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.

**Article 3**

**Tasks**

In order to fulfil the Mission Statement set out in Article 2, EULEX KOSOVO shall:

(a) monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;

(b) ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities;

(c) help to ensure that all Kosovo rule of law services, including a customs service, are free from political interference;
(d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities;

(e) contribute to strengthening cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime;

(f) contribute to the fight against corruption, fraud and financial crime;

(g) contribute to the implementation of the Kosovo Anti-Corruption Strategy and Anti-Corruption Action Plan;

(h) assume other responsibilities, independently or in support of the competent Kosovo authorities, to ensure the maintenance and promotion of the rule of law, public order and security, in consultation with the relevant Council agencies; and

(i) ensure that all its activities respect international standards concerning human rights and gender mainstreaming.

Article 4
Planning and preparation phase

1. During the planning and preparation phase of the mission, EUPT Kosovo shall act as the main planning and preparation element for EULEX KOSOVO.

The Head of EUPT Kosovo shall act under the authority of the Head of EULEX KOSOVO (hereinafter the Head of Mission).

2. The risk assessment carried out as part of the planning process shall be updated regularly.

3. EUPT Kosovo shall be responsible for recruiting and deploying staff and procuring equipment, services and premises intended for EULEX KOSOVO, financed from the EUPT Kosovo budget.

4. EUPT Kosovo shall be responsible for drawing up the Operation Plan (OPLAN) and developing technical instruments necessary to execute the mandate of EULEX KOSOVO. The OPLAN shall take into account the risk assessment and shall include a security plan. The Council shall approve the OPLAN.
Article 5
Launching and transition period

1. The decision to launch EULEX KOSOVO shall be taken by the Council upon approval of the OPLAN. The operational phase of EULEX KOSOVO shall start upon transfer of authority from the United Nations Mission in Kosovo, UNMIK.

2. During the transition period, the Head of Mission may direct EUPT Kosovo to undertake the necessary activities in order for EULEX KOSOVO to be fully operational on the day of transfer of authority.

Article 6
Structure of EULEX KOSOVO

1. EULEX KOSOVO shall be a unified ESDP mission across Kosovo.

2. EULEX KOSOVO shall establish:
   (a) its main Headquarters in Pristina;
   (b) regional and local offices across Kosovo;
   (c) a Brussels support element; and
   (d) liaison offices, as required.

3. Subject to detailed arrangements in the OPLAN, EULEX KOSOVO shall be structured as follows:
   (a) the Head of Mission and staff as defined in the OPLAN;
   (b) a police component, co-located where appropriate with the Kosovo Police Service, including at the border crossing points;
   (c) a justice component, co-located where appropriate with the relevant Ministries, the Kosovo judiciary, the Kosovo Property Agency, the Kosovo Correctional Service; and
   (d) a customs component, co-located where appropriate with the Kosovo Customs Service.

4. Specialised police may be hosted in camps designed to cater for their operational needs.

Article 7
Civilian Operation Commander

1. The Civilian Planning and Conduct Capability (CPCC) Director shall be the Civilian Operation Commander for EULEX KOSOVO.

2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the SG/HR, shall exercise command and control of EULEX KOSOVO at the strategic level.

3. The Civilian Operation Commander shall ensure proper and effective implementation of the Council’s decisions as well as the PSC’s decisions, including by issuing instructions at strategic level as required to the Head of Mission and providing him with advice and technical support.
4. All seconded staff shall remain under the full command of the national authorities of the seconding State or EU institution concerned. National authorities shall transfer Operational Control (OPCON) of their personnel, teams and units to the Civilian Operation Commander.

5. The Civilian Operation Commander shall have overall responsibility for ensuring that the EU's duty of care is properly discharged.

6. The Civilian Operation Commander and the European Union Special Representative (EUSR) shall consult each other as required.

**Article 8**

**Head of Mission**

1. The Head of Mission shall assume responsibility and exercise command and control of EULEX KOSOVO at theatre level.

2. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility including over assets, resources and information placed at the disposal of EULEX KOSOVO. The exercise of such command and control shall be without prejudice to the principle of the independence of the judiciary and the autonomy of prosecution when considering the discharge of judicial duties of EULEX KOSOVO judges and prosecutors.

3. The Head of Mission shall issue instructions to all EULEX KOSOVO staff, including in this case the support element in Brussels, for the effective conduct of EULEX KOSOVO in theatre, assuming its coordination and day-to-day management, and following the instructions at strategic level of the Civilian Operation Commander.

4. Until the expiry of Joint Action 2006/304/CFSP, the Head of Mission shall be supported by EUPT Kosovo established thereby.

5. The Head of Mission shall be responsible for the implementation of the EULEX KOSOVO's budget. For this purpose, the Head of Mission shall sign a contract with the Commission.

6. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national or EU authority concerned.

7. The Head of Mission shall represent EULEX KOSOVO in the operations area and shall ensure appropriate visibility of EULEX KOSOVO.

8. The Head of Mission shall coordinate, as appropriate, with other EU actors on the ground. The Head of Mission shall, without prejudice to the chain of command, receive
local political guidance from the EUSR, including with regard to the political aspects of issues related to executive responsibilities.

9. The Head of Mission shall ensure that EULEX KOSOVO works closely and coordinates with the competent Kosovo authorities and with relevant international actors, as appropriate, including NATO/KFOR, UNMIK, OSCE, third States involved in the rule of law in Kosovo and an International Civilian Office.

10. Under the direct responsibility of the Head of Mission, internal legal and financial control functions shall be performed by personnel independent of the staff responsible for the administration of EULEX KOSOVO.

Article 9
Staff

1. The numbers and competence of the EULEX KOSOVO staff shall be consistent with its Mission Statement set out in Article 2, the tasks set out in Article 3 and the structure of EULEX KOSOVO set out in Article 6.

2. EULEX KOSOVO shall consist primarily of staff seconded by Member States or EU institutions. Each Member State or EU institution shall bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances other than daily allowances and applicable risks and hardship allowances.

3. EULEX KOSOVO may also recruit, as required, international staff and local staff on a contractual basis.

4. Third States may also, as appropriate, second staff to EULEX KOSOVO. Each seconding third State shall bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances. Exceptionally, in duly justified cases, where no qualified applications from Member States are available, nationals from participating third States may be recruited on a contractual basis, as appropriate.

5. All staff shall abide by the mission-specific minimum security operating standards and the mission security plan supporting the EU field security policy. As regards the protection of EU classified information with which they are entrusted in the course of their duties, they shall respect the security principles and minimum standards established by Decision 2001/264/EC (1).

Article 10
Status of EULEX KOSOVO and of its staff

1. The status of EULEX KOSOVO and its staff, including the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EULEX KOSOVO, shall be agreed as appropriate.
2. The State or EU institution having seconded a member of staff shall be responsible for answering any claims linked to the secondment, from or concerning the member of staff. The State or EU institution in question shall be responsible for bringing any action against the seconded person.

3. The conditions of employment and the rights and obligations of international and local civilian staff shall be laid down in the contracts between the Head of Mission and the members of staff.

**Article 11**

**Chain of command**

1. EULEX KOSOVO shall have a unified chain of command, as a crisis management operation.

2. Under the responsibility of the Council, the PSC shall exercise political control and strategic direction of EULEX KOSOVO.

3. As also laid down in Article 7, the Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the SG/HR, shall be the commander of EULEX KOSOVO at strategic level and, as such, shall issue the Head of Mission with instructions and provide him with advice and technical support.

4. The Civilian Operation Commander shall report to the Council through the SG/HR.

5. The Head of Mission shall exercise command and control of EULEX KOSOVO at theatre level and shall be directly responsible to the Civilian Operation Commander.

**Article 12**

**Political control and strategic direction**

1. The PSC shall exercise, under the responsibility of the Council, political control and strategic direction of EULEX KOSOVO.

2. The Council hereby authorises the PSC to take the relevant decisions for this purpose, in accordance with the third paragraph of Article 25 of the Treaty. This authorisation shall include the powers to amend the OPLAN and the chain of command. It shall also include powers to take subsequent decisions regarding the appointment of the Head of Mission. The Council, on the recommendation of the SG/HR, shall decide on the objectives and termination of EULEX KOSOVO.

3. The PSC shall report to the Council at regular intervals.

4. The PSC shall receive, on a regular basis and as required, reports by the Civilian Operation Commander and the Head of Mission on issues within their areas of responsibility. Planning for specific areas may be reviewed by the PSC on a regular basis.
Article 13  
Participation of third States

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, third States may be invited to contribute to EULEX KOSOVO provided that they bear the cost of the staff seconded by them, including salaries, allowances and travel expenses to and from the theatre of operation, and to contribute to the running costs of EULEX KOSOVO, as appropriate.

2. Third States making contributions to EULEX KOSOVO shall have the same rights and obligations in terms of day-to-day management of EULEX KOSOVO as Member States taking part in it.

3. The Council hereby authorises the PSC to take the relevant decisions on acceptance or otherwise of the proposed contributions and to establish a Committee of Contributors.

4. Detailed arrangements regarding the participation of third States shall be laid down in an agreement to be concluded in accordance with Article 24 of the Treaty. The SG/HR, assisting the Presidency, may negotiate such arrangements on its behalf. Where the EU and a third State conclude an agreement establishing a framework for the participation of such third State in the EU crisis management operations, the provisions of such agreement shall apply in the context of EULEX KOSOVO.

Article 14  
Security

1. The Civilian Operation Commander shall direct the Head of Mission's planning of security measures and ensure their proper and effective implementation for EULEX KOSOVO in accordance with Articles 7 and 11 and in coordination with the Security Office of the General Secretariat of the Council.

2. The Head of Mission shall be responsible for the security of the operation and for ensuring compliance with minimum security requirements applicable to the operation, in line with the policy of the EU on the security of personnel deployed outside the EU in an operational capacity under Title V of the Treaty and its supporting instruments.

3. The Head of Mission shall be assisted by a Senior Mission Security Officer (SMSO), who will report to the Head of Mission and also maintain a close functional relationship with the Security Office mentioned in paragraph 1.

4. The Head of Mission shall appoint Area Security Officers in the regional and local EULEX KOSOVO locations, who, under the authority of the SMSO shall be responsible for the day-to-day management of all security aspects of the respective EULEX KOSOVO elements.

5. EULEX KOSOVO staff shall undergo mandatory security training before or upon taking up their duties, in accordance with the OPLAN. They also receive regular in-theatre refresher training organised by the SMSO and the Area Security Officers.
6. The Head of Mission shall ensure that the numbers of EULEX KOSOVO staff present and of authorised visitors never exceed EULEX KOSOVO’s capabilities to ensure their safety and security or to manage their evacuation in an emergency situation.

7. The Head of Mission shall ensure the protection of EU classified information in accordance with Decision 2001/264/EC.

Article 15
Watch-keeping

The watch-keeping capability shall be activated for EULEX KOSOVO.

Article 16
Financial arrangements

1. The financial reference amount intended to cover the expenditure related to a period of 16 months starting from the approval of the OPLAN shall be EUR 205 000 000.

2. All expenditure shall be managed in accordance with the Community rules and procedures applicable to the general budget of the EU, with the exception that any pre-financing shall not remain the property of the Community.

3. Subject to the Commission’s approval, the Head of Mission may conclude technical arrangements with EU Member States, participating third States and other international actors deployed in Kosovo regarding the provision of equipment, services and premises to EULEX KOSOVO. Nationals of the countries of the Western Balkans region or of contributing third States shall be allowed to tender for contracts. The position of contract holder of contracts or under arrangements concluded by EUPT Kosovo for EULEX KOSOVO during the planning and preparation phase shall be transferred to EULEX KOSOVO, as appropriate. Assets owned by EUPT Kosovo shall be transferred to EULEX KOSOVO.

4. The Head of Mission shall report fully to, and be supervised by, the Commission on the activities undertaken in the framework of his contract.

5. The financial arrangements shall respect the operational requirements of EULEX KOSOVO, including compatibility of equipment and interoperability of its teams, and shall take into consideration the deployment of staff in regional offices.

6. Expenditure shall be eligible as from the date of approval of the OPLAN.

Article 17
Coordination with Community actions

1. The Council and the Commission shall, each in accordance with its respective powers, ensure consistency between the implementation of this Joint Action and external
activities of the Community in accordance with Article 3 of the Treaty. The Council and
the Commission shall cooperate to this end.

2. The necessary coordination arrangements shall be put in place in the EULEX KOSOVO
area, as appropriate, as well as in Brussels.

**Article 18**

**Release of classified information**

1. The SG/HR shall be authorised to release to the United Nations, NATO/KFOR and to
other third parties, associated with this Joint Action, EU classified information and
documents generated for the purposes of EULEX KOSOVO up to the level of the relevant
classification respectively for each of them, in accordance with Decision 2001/264/EC.
Local technical arrangements shall be drawn up to facilitate this.

2. In the event of a specific and immediate operational need, the SG/HR shall also be
authorised to release to the competent local authorities EU classified information and
documents up to the level ‘RESTREINT UE’ generated for the purposes of EULEX
KOSOVO, in accordance with Decision 2001/264/EC. In all other cases, such information
and documents shall be released to the competent local authorities in accordance with
the procedures appropriate to those authorities’ level of cooperation with the EU.

3. The SG/HR shall be authorised to release to the United Nations, NATO/KFOR, to other
third parties associated with this Joint Action and to the relevant local authorities, EU
non-classified documents related to the deliberations of the Council with regard to EULEX
KOSOVO covered by the obligation of professional secrecy pursuant to Article 6(1) of the
Council’s Rules of Procedure.

**Article 19**

**Review**

The Council shall evaluate, not later than six months after the start of the operational
phase, whether EULEX KOSOVO should be extended.

**Article 20**

**Entry into force and duration**

This Joint Action shall enter into force on the date of its adoption.

It shall expire 28 months from the date of approval of the OPLAN. The budget for the last
12 months before expiry shall be decided upon separately by the Council.

**Article 21**

**Publication**

1. This Joint Action shall be published in the Official Journal of the European Union.

294
2. The decisions of the PSC pursuant to Article 12(1) regarding the appointment of the Head of Mission shall also be published in the Official Journal of the European Union.

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EDUCATION

2012-2017  Ruhr University Bochum, Institute of Development Research and Development Policy, Bochum, Germany
            PhD in International Development Studies

2014  American University in Kosovo, Pristina, Kosovo
            Participant in the Peacebuilding, Post-Conflict Transformation and Development Summer Programme

2010-2012  University of Kiel, Walther Schücking Institute for International Law, Kiel, Germany
            Master of Laws (LL.M.) with specialisation in Public International Law
            Thesis: Transitional Justice and Public International Law- An Analysis of the Criminal Prosecution of Crimes under International Law

2005  University of Strasbourg, Strasbourg, France
            Participant in the Academic Programme of International Comparative Law Association

1999-2006  Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest, Hungary
            Diploma in Law and Political Sciences
            Thesis: Formation and Development of Human Rights and the Charter of Fundamental Rights of the European Union

SELECTED TRAININGS

2012-2013  Training of Trainers  Course in “Training and Networking” at Salto-Youth Training and Cooperation Resource Centre, in Germany, Bulgaria, France

2008-2009  Training Course in Nonviolent Conflict Transformation at KURVE Wustrow and Friedenskreis Halle, in Königshorst, Germany

2008  Advanced Training in Transitional Justice at KURVE Wustrow, in Wustrow, Germany

2008  International Training in Nonviolence in the Context of War and Armed Conflict at KURVE Wustrow, in Wustrow, Germany

LANGUAGE SKILLS

Hungarian  Native language
English  Full professional proficiency
German  Full professional proficiency
French  Elementary proficiency

SCHOLARSHIPS AND AWARDS

2013- 2016  German Government scholarship for academic excellence