
Representing International Territorial Administration: A Critique of Some Approaches

Ralph Wilde*

Abstract

This piece highlights some of the ways in which the administration of territory by international organizations has been represented in certain academic texts, discussing the manner in which these representations frame the nature of and the purposes served by the practice in general and certain administration projects in particular. It draws from commentary on current and previous projects, and also considers some of the concepts with which the practice has been associated, including the 'failed states' paradigm, 'generations' of peacekeeping, and the idea of 'post-conflict reconstruction'. The point of this inquiry is to explore how accurate these representations are in their own terms, and more broadly to evaluate the political consequences of framing international territorial administration in the manner identified. It is suggested that some of the pictures painted of the recent administration missions risk undermining attempts at a critical evaluation of the missions. The risk is identified in the presence of four different discursive strategies within the texts discussed.

1 Introduction

In 1999, the United Nations embarked on an unusual task — taking over the administration of two territories, Kosovo and East Timor. Even though these are supposed to be temporary arrangements — the East Timor administration (the United Nations Transitional Administration in East Timor, UNTAET) ended in May 2002, and the Kosovo administration (the United Nations Interim Administration Mission in Kosovo, UNMIK) is pending a settlement on the territory's future status — like other short-lived but remarkably intrusive forms of intervention (for instance, so-called

* Lecturer in Law, University College London (UCL), London University, ralph.wilde@ucl.ac.uk. This piece was prepared as the author's contribution to a research project under the auspices of the United Nations University (UNU) in Tokyo on 'The Faultlines of Legitimacy in International Law', convened by Hilary Charlesworth of the Australian National University and Jean-Marc Coicaud of the UNU. It will be published in an edited volume by the UNU in 2004. Warm thanks are due to the other participants in the UNU workshop and to James Crawford and Josh Holmes for their helpful comments on earlier drafts.

‘humanitarian intervention’) they raise important political and practical questions. How can the displacement of local people by foreign actors in the activity of territorial governance, an activity that echoes certain aspects of the colonial paradigm, be justified? What are its objectives, and are these both politically sustainable and achievable?¹ To what extent are international organizations practically capable of carrying out the activity of territorial administration?² Are adequate mechanisms in place to ensure accountability?³

In this piece, I consider some of the different ways in which international territorial administration has been represented in certain academic texts, and discuss the manner in which these representations frame the nature of and the purposes served by the activity in general and certain administration projects in particular. I draw from commentary on current and previous projects, and also consider some of the concepts with which international territorial administration has been associated, including the ‘failed states’ paradigm, ‘generations’ of peacekeeping, and the idea of ‘post-conflict reconstruction’.

The point of this inquiry is twofold. In the first place, I explore how accurate these representations are in their own terms, and expose various deficiencies in this regard. In the second place, I consider a more important matter: the political consequences of these representations, in terms of analysing the kind of questions highlighted above. I discuss how some of the pictures painted of the recent administration missions risk influencing such analysis in a negative way, by either obscuring such questions, or attenuating their significance. The risk is identified in the presence of four different ‘discursive strategies’ within the texts discussed. In this regard, my appraisal owes much to ‘ideology critique’ developed from certain ideas of Marx by social theorists such as John Thompson, Terry Eagleton and Slavoj Žižek, and further explicated and applied in the context of international legal discourse by Susan Marks.⁴

The first discursive strategy situates international territorial administration within a progressivist historical narrative, positioning the Kosovo and East Timor projects as

¹ Wilde, ‘The Ambivalent Mandates of International Organizations in Bosnia-Herzegovina, Kosovo and East Timor’, in *Proceedings of the Joint Meeting of the Australian & New Zealand Society of International Law and the American Society of International Law* (2000), 311, available at <<http://law.anu.edu.au/anzsil/>>, [hereinafter ‘Ambivalent Mandates’]; Wilde, ‘From Danzig to East Timor and Beyond: The Role of International Territorial Administration’, 95 *AJIL* 583 (2001) [hereinafter ‘From Danzig to East Timor’].

² Wilde, ‘The Complex Role of the Legal Adviser When International Organizations Administer Territory’, 95 *ASIL Proc.* (2001) 51 [hereinafter ‘Complex Role’].

³ See Wilde, ‘Complex Role’, *supra* note 2; Wilde, ‘*Quis Custodiet Ipsos Custodes?*: Why and How UNHCR Governance of “Development” Refugee Camps Should Be Subject to International Human Rights Law’, 1 *Yale Human Rights & Development Law Journal* (1998) 5, available at <http://www.yale.edu/yhrdlj/index_enhanced.htm>; Ralph Wilde, ‘Accountability and Administration in Bosnia, Kosovo and East Timor’, 7 *ILSA Journal of International & Comparative Law* 455 (2001) [hereinafter ‘Accountability’].

⁴ See J. B. Thompson, *Ideology and Modern Culture: Critical Social Theory in the Era of Mass Communication* (1990); T. Eagleton, *Ideology — An Introduction* (1991); S. Žižek (ed.), *Mapping Ideology* (1994); S. Marks, *The Riddle of All Constitutions: International Law, Democracy and the Critique of Ideology* (2000), esp. Ch. 1; Marks, ‘Big Brother is Bleeping Us — With the Message that Ideology Doesn’t Matter,’ 12 *EJIL* (2001) 109.

the pinnacle of an evolutionary process. The second unifies all the administration projects through a simplified presentation of their purposes, using the 'post-conflict' and 'state-building' labels. The third associates international territorial administration with the concept of the 'failed state'. Finally, the fourth discursive strategy presents international territorial administration in a wholly or primarily technocratic manner.

By identifying these four discursive strategies within the texts discussed, and explaining their potentially negative consequences, I suggest why important questions risk not being asked about the administration projects, and suggest alternative approaches that might better frame international territorial administration so as not to undermine considerations of the wide range of political and practical issues it raises.

2 Historical Narratives: Exceptionalism and Progressivism

It is common to describe the administration projects in Kosovo and East Timor as unique because of the plenary administrative powers asserted, the involvement of the United Nations in this activity, and the problems caused by the supposed lack of pre-existing institutions. The Brahimi Report places two post-Cold War missions (this can only refer to UNMIK and UNTAET) in a class of their own as responding to 'extreme' situations: 'United Nations operations were given executive law enforcement and administrative authority where local authority did not exist or was not able to function.'⁵

Michael Matheson refers to '[t]he novel ... undertakings in Kosovo and East Timor'.⁶ He also states that in Kosovo, 'the mission of the international civil presence ... was unprecedented in scope and complexity', and that the task of UNTAET in East Timor was 'of comparable scope and complexity' to this.⁷ Michèle Griffin and Bruce Jones state that the missions take the UN into 'uncharted territory ... with mandates that are broader in scope and ambition than anything that went before'.⁸

For Hansjörg Strohmeyer, '[t]he scope of the challenges and responsibilities deriving from these mandates [UNMIK and UNTAET] was unprecedented in United Nations peacekeeping operations'.⁹

As for working on the territory's legal and judicial system in particular, Strohmeyer states that '[n]owhere other than Kosovo and East Timor [where such a task was part of a UN mandate] ... did this task require the establishment of a coherent judicial and

⁵ Panel on United Nations Peace Operations, Report to the United Nations Secretary-General, 21 August 2000, UN Doc. A/55/305 — S/2000/809, reprinted in 39 *ILM* (2000), 1432 [hereinafter 'Brahimi Report'], at para. 19.

⁶ Matheson, 'United Nations Governance of Postconflict Societies', 95 *AJIL* (2001) 76, at 83.

⁷ *Ibid.*, at 79 and 81 respectively.

⁸ Griffin and Jones, 'Building Peace through Transitional Authority: New Directions, Major Challenges', 7 *International Peacekeeping* (Winter 2001) 75, at 75.

⁹ Strohmeyer, 'Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor', 95 *AJIL* (2001) 46, at 46.

legal system for an entire territory virtually from scratch'.¹⁰ Boris Kondoch remarks that '[t]he scope of the responsibilities and the range of the mandate in these cases [UNMIK and UNTAET] were unprecedented in the history of UN peacekeeping missions'.¹¹

An extreme view holds that the East Timor undertaking is unprecedented, since nowhere else has UN administration been used to bring a new state into existence. Jarat Chopra, for example, proclaimed that 'the UN is exercising sovereign authority within a fledgling nation for the first time in its history'.¹²

John Sanderson identifies 'unprecedented boldness' in the scope of the mandate given to UNTAET, and states that '[t]he United Nations has not "occupied" a country before [UNTAET], depending on all previous occasions on some other body to perform the enforcement provisions while it goes about the business of helping to build new foundations for governance'.¹³

The current projects are also often portrayed as exceptional when they are situated within the popular taxonomies of 'peacekeeping'.¹⁴ These taxonomies provide a framework for comparison across (usually UN-conducted) peace operations by grading such operations *inter alia* according to their complexity.¹⁵ Whether operations are 'basic' or 'complex', 'simple' or 'multifunctional' is usually determined according to size, scope of mandate, and the presence or absence of a civilian component in addition to a military component. Granting partial and certainly plenary administrative authority over territory to international organizations would seem to fall within the 'complex' and 'multifunctional' category.

¹⁰ *Ibid.*, at 60.

¹¹ Kondoch, 'The United Nations Administration of East Timor', 6 *J. Conflict & Security L.* (2001) 245, at 246.

¹² Chopra, 'The UN's Kingdom in East Timor' 42 *Survival* (2000) 27. See also Traub, 'Inventing East Timor', 79(4) *Foreign Affairs* (July/Aug. 2000) 74, at 75 (East Timor mission is exceptional because of the broad mandate and lack of pre-existing institutions).

¹³ Sanderson, 'The Cambodian Experience: A Success Story Still?', Ch. 9 in R. Thakur and A. Schnabel (eds), *United Nations Peacekeeping Operations: Ad Hoc Missions, Permanent Engagement* (2001) 159.

¹⁴ For the representation of certain administration missions as 'peacekeeping' operations, see, for example, W. J. Durch (ed.), *The Evolution of UN Peacekeeping* (1994); C. Gray, *International Law and the Use of Force* (2000), at 159; A. James, *Peacekeeping in International Politics* (1990); Kondoch, *supra* note 11, at 246; Morphet, 'UN Peacekeeping and Election Monitoring', in A. Roberts and B. Kingsbury, *United Nations, Divided World* (2nd ed., 1993); S. Ratner, *The New UN Peacekeeping, Building Peace in Lands of Conflict after the Cold War* (1995); United Nations, *The Blue Helmets: A Review of United Nations Peacekeeping* (3rd ed., 1996); A. Zacarias, *The United Nations and International Peacekeeping* (1996).

¹⁵ Another basis for classification is, of course, the relationship of the operation to the pursuit of peace: 'peacekeeping', 'peace-building', etc.

The dichotomy between simple and complex peace operations is usually described in terms of 'old' versus 'new',¹⁶ or 'first generation' versus 'second generation',¹⁷ suggesting that in general changes in the complexity of peace missions have occurred in a linear fashion, with missions becoming progressively more complex. Such a suggestion is no accident; for many commentators, there was a sea change in the nature of peacekeeping from the late 1980s onwards; a 'turning point', in the words of Jarat Chopra.¹⁸ With the backdrop of the supposed post-Cold War internationalist revival, and the emergence of 'new' types of conflict that were both international and internal in character, there was a dramatic growth in complex UN peace operations starting with UNTAG in Namibia in 1989.¹⁹ Accordingly, there was a paradigm shift from 'first generation' to 'second generation', from 'old' to 'new' peacekeeping.²⁰ With the Kosovo and East Timor administration projects, it has been suggested that complexity has reached such a level that we can now talk about a further 'generation' of peacekeeping. Christine Gray remarks that these two projects could be described as 'third generation' peacekeeping.²¹ Boris Kondoch, citing W. Kühn, considers 'peace enforcement' missions such as UNOSOM II in Somalia 'third generation' peacekeeping and UNTAET and UNMIK — because of their complexity — examples of 'fourth generation' peacekeeping.²²

Thus the language of 'generations' and the 'old/new' dichotomy presents the history of international peace operations as a progressive evolution through successive generations of ever-increasing complexity. The exceptionalist portrayal of the complexity of the Kosovo and East Timor administration missions fits nicely into this historical narrative, taking the process one step further to a new generation of

¹⁶ For example, Durch, *supra* note 14, at 9; O. Ramsbotham and T. Woodhouse, *Encyclopedia of International Peacekeeping* (1999); Ratner, *supra* note 14.

¹⁷ For example, Thakur and Schnabel, 'Cascading Generations of peacekeeping: Across the Mogadishu Line to Kosovo and Timor', in Thakur and Schnabel, *supra* note 13; Akashi, 'The Politics of UN Peacekeeping from Cambodia to Yugoslavia', in *ibid.*; Chopra, 'Remarks', in 'UN Peacekeeping: An Early Reckoning of the Second Generation' *ASIL Proc.* (1995) 275; Doyle, 'Remarks,' in *ibid.*; Gray, *supra* note 14, at 159; Karns and Mingst, 'Peacekeeping and the Changing Role of the United Nations: Four Dilemmas', in Thakur and Schnabel, *supra* note 13, at 230; Ramsbotham and Woodhouse, *supra* note 16, at 93, 218–219; Ratner, *supra* note 14; Kondoch, *supra* note 11, at 246.

¹⁸ Chopra, *supra* note 17, at 280.

¹⁹ On the supposed change in the nature of conflict since 1988, see, for example, M. Kaldor, *New and Old Wars* (1999). On UN peace operations since 1988, and the increase in them, see, for example, Durch, *supra* note 14, at 9–12; Ramsbotham and Woodhouse, *supra* note 16, at xiii–xix. Many scholars assert a causal relationship between the post-1988 upsurge in peacekeeping and the end of the Cold War. See, for example, Ratner, *supra* note 14, at 14–16. For a critique of this thesis, see, for example, James, *supra* note 14, at 362–366.

²⁰ In a complementary development in academic discourse, Mary Kaldor describes a paradigmatic shift in the nature of armed conflict, from 'old wars' to 'new wars'. Kaldor, *supra* note 22.

²¹ Gray, *supra* note 14, at 159.

²² Kondoch, *supra* note 11, 246. Most scholars consider 'peace enforcement' missions as a special type of 'second-generation' peacekeeping, rather than a separate 'generation' of the peacekeeping paradigm. See, for example, the various remarks in 'UN Peacekeeping: An Early Reckoning of the Second Generation', *ASIL Proc.* (1995) 275.

peace operation. Equally, the historical narrative supports the exceptionalist portrayal, by providing a basis — the progressive increase in complexity over time — for the notion of historical distinctiveness. How do these mutually reinforcing presentations stand up to scrutiny? As I shall suggest, they are misleading in their own terms, and unhelpful at a normative level.

In the first place, the history of international territorial administration suggests that describing the relative complexity of peace operations so as to denote a progressive increase in complexity over time as between individual missions is in its own terms mistaken. Elsewhere, I have described this history in the following terms:

[i]nternational organizations first exercised territorial administration in the Free City of Danzig, where the League of Nations enjoyed certain governmental prerogatives from 1920 to 1939. In addition, the League administered the German Saar Basin (the Saar) between 1920 and 1935, and the Colombian town and district of Leticia (Leticia) from 1933 to 1934. It also appointed the president of the Upper Silesia Mixed Commission in 1922 and the chair of the Memel Harbor board in Lithuania in 1924. Immediately after the Second World War, Germany and Austria were administered by the Allies. With the creation of the United Nations, the new international organization was authorized in 1947 to exercise certain governmental powers in what would have become the Free Territory of Trieste, but the free territory plan was never realized.

The United Nations first exercised territorial administration in the 1960s, asserting [through the United Nations Operation in the Congo (ONUC)] various administrative prerogatives in the Congo between 1960 and 1964, and administering West Irian for seven months between 1962 and 1963. In 1967, the UN Council for what was then South West Africa (later Namibia) was established to administer the territory, but South Africa prevented the council from taking up this role. Over twenty years later, in 1991 the United Nations was authorized to perform administrative functions in Western Sahara and Cambodia; although these functions were exercised in Cambodia from 1991 to 1992, they are yet to be fully performed in Western Sahara. From 1994 to 1996, a different institution — the EUAM [the European Union Administration in Mostar] — administered the city of Mostar in Bosnia and Herzegovina. Then, as part of the Dayton process, the territory of Eastern Slavonia, Baranja, and Western Sirmium (Eastern Slavonia) in Croatia was placed under UN administration from 1996 to 1998. In some of the aforementioned missions, and in others as well, the mandates of international organizations have called for the performance of two particular administrative functions: controlling or conducting some form of territory-wide popular consultation and/or 'community building' through the creation of local institutions. In addition to the authorized projects, other ITA projects were proposed but never agreed upon for Fiume in Dalmatia (in 1919), Memel (between 1921 and 1923), Alexandretta in Syria (in 1937), Jerusalem (since 1947) and Sarajevo (in 1994).²³

In addition to the plenary administration project in Kosovo, another mission, involving partial administration by the Office of the High Representative of the International Community (OHR), has taken place in Bosnia and Herzegovina since the start of 1996.²⁴

Whether one is focusing on plenary administration or partial administration, international organizations generally or the United Nations in particular, this history

²³ Wilde 'From Danzig to East Timor', *supra* note 1, at 586 (footnote omitted).

²⁴ See *ibid.*, at 584, text accompanying note 8 and sources cited therein.

suggests that the complex international peace operations from 1988 onwards are, in terms of their complexity, nothing new.²⁵

The first complex peace operations involving plenary international territorial administration were the Saar in 1920 (in the League era) and West Irian in 1962 — three (in the UN era); the first such missions involving partial administration were Danzig in 1920 (in the League era) and the Congo in 1960 — four (in the UN era).²⁶ Insofar as the Kosovo and East Timor missions involve plenary administration exercised by the United Nations, they are not unprecedented but follow on from the West Irian and Eastern Slavonia missions. If the focus is broadened to international organizations generally, the precedents run back even further to the start of the League of Nations in 1920.

Some of the ‘generational’ commentators focus on the ‘state-building’ aspect of ‘post-conflict’ peace operations: that exercising territorial prerogatives is one thing, but the use of such prerogatives with a ‘nation-building’ purpose is a relatively new phenomenon. A similar approach is adopted by many of the ‘exceptionalist’ commentators, who emphasize not only the scope of the administrative prerogatives asserted in Kosovo and East Timor, but also the conditions in which these prerogatives are exercised, in particular the perceived absence of pre-existing institutions.

As far as the ‘nation-building’ purpose is concerned, whereas ONUC in the 1960s is widely regarded as the first UN operation to engage in ‘peace enforcement’,²⁷ the equally pioneering ‘nation-building’ administrative activities of that same mission — exercising administration to enable the operation of certain government institutions, for example — are rarely acknowledged.²⁸ Yet once the full scope of ONUC’s operation is borne in mind, it becomes just as difficult to see a clear distinction between post- and pre-1998 operations on ‘state-building’ grounds as it is on ‘enforcement’ grounds.²⁹ Certainly, the next operations of these types did not take place until the post-1998 era (Namibia in 1989 for ‘state-building’ and UNOSOM II in 1991 for ‘peace enforcement’). The point is that the enterprise that lay behind these later operations was not unprecedented.

‘Nation-building’ is not, then, an exclusively post-1998 phenomenon. But a qualitative distinction can perhaps be made between UNMIK and UNTAET, on the one hand, and the ‘nation-building’ missions that came before them, on the other. Arguably, the degree to which these two missions have engaged in the reconstruction

²⁵ For an overview of international territorial administration projects, see, for example, *ibid.*, above note 1.

²⁶ On these missions, see, e.g., *ibid.*

²⁷ E.g. Durch, *supra* note 14, at 8; Lee, ‘United Nations Peacekeeping: Developments and Prospects’, 28 *Cornell Int’l L.J.* (1995) 619, at 624.

²⁸ A notable exception is Steven Ratner. See Ratner, *supra* note 14, at 105–109.

²⁹ Like ‘state-building’, ‘peace enforcement’ is often presented as a ‘new’ phenomenon through the use of generational language, whether second or third.

of infrastructure and governmental institutions is unprecedented — at least if one discounts the Allied administration in Germany after the Second World War.³⁰

A question remains, however, whether the scope of a ‘state-building’ mandate should be the primary indicator, in addition to the breadth of the administrative prerogatives exercised, by which complexity and distinctiveness are measured. For example, what of plenary administration concerned with territorial disposition? Was the UN administration in Eastern Slavonia, for example, from 1995–1997, which necessitated the eventual transfer of a population to authorities from whom local militias had hitherto sought independence, necessarily less complex than the two and a half-year East Timor mission, where, infrastructural problems notwithstanding, the eventual outcome for the territory was overwhelmingly supported?³¹ Similarly, what of administration missions aimed at facilitating a particularly controversial policy? Stepping back to the League-era, can it really be said that the three-year long mission in East Timor is more complex than the 15-year mission in the Saar? The League was involved in administering a territory bitterly contested between France and Germany, enabling a key component of Germany’s much-resented reparations programme to proceed, before organizing what was in effect a self-determination referendum and then implementing the result of that referendum.³²

Neither *Agenda for Peace* nor *Agenda for Peace Supplement* nor the Brahimi Report seem to show much interest in a progressivist presentation of the complexity of international peace operations, even though they are able, by virtue of their remit, to discount the League-era projects that so obviously undermine such a presentation. In *Agenda for Peace*, the terms ‘new’ and ‘second-generation’ peacekeeping are conspicuous by their absence.³³ Only one passing reference (in a table) is made to ‘classical’ and ‘multifunctional’ peacekeeping in *Agenda for Peace Supplement*;³⁴ similarly, Brahimi makes the odd reference to ‘new generation’ or ‘newer generations’ of peacekeeping, without defining these terms or drawing any conclusions from their use.³⁵

Nonetheless, the language of ‘generations’ has come to play a central role in academic discourse on peace operations since the early 1990s. So we have, on the one hand, a set of historical circumstances placing into question the notion that complex

³⁰ Writing in 1999, before the Kosovo and East Timor projects, Ramsbotham and Woodhouse remarked that ‘[t]he most extensive peace-building effort in history took place in Europe and Asia in the post-World War II era when the US and its allies assisted nations in those continents devastated by a decade of war.’ Ramsbotham and Woodhouse, *supra* note 16, at xx. On the Allies in Germany, see Wilde, ‘From Danzig to East Timor’, *supra* note 1, at 592 text accompanying note 47, and sources cited therein.

³¹ On Eastern Slavonia, see Wilde, ‘From Danzig to East Timor’, *supra* note 1, at 589.

³² Wilde, ‘From Danzig to East Timor’, *supra* note 1, at 589.

³³ As are the terms ‘old’ and ‘first-generation’ peacekeeping. UN Secretary-General, ‘Agenda for Peace: Preventative Diplomacy, Peacemaking and Peacekeeping’, UN Doc A/47/277 — S/24111, 17 June 1992, 31 *ILM* (1992) 956 [hereinafter ‘Agenda for Peace’].

³⁴ UN Secretary-General, ‘Supplement to Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations’, UN Doc A/50/60 — S/1995/1, 3 Jan. 1995, Table.

³⁵ Brahimi Report, *supra* note 5, at paras 102, 128, 140.

international peace operations are an exclusively late 20th-century phenomenon and, on the other hand, an established academic discourse predicated on this notion.

One of the few scholars writing in the 'new' era to acknowledge the long-standing existence of complex international peace operations is Steven Ratner in *The New UN Peacekeeping*.³⁶ However, as his title suggests, Ratner nonetheless adopts the language of 'generations' and the 'new/old' dichotomy in his study of such operations, perhaps because of the widespread currency such an approach now enjoys. One quarter of his book concerns operations — the League projects and ONUC, for example — that took place before the 'new' era, in some cases 70 years before.³⁷ Ratner must describe these projects as examples of the 'new peacekeeping', and in an effort to accommodate the obvious problem this raises with the new/old dichotomy, the presence of these projects in the 'old' era is explained in terms of 'earlier efforts' at the 'new' paradigm.³⁸ For example, the League administration in the Saar is 'second generation peacekeeping before its time'.³⁹ When there are so many earlier efforts, stretching back over such a long period, of a supposedly 'new' phenomenon, one should surely ask whether or not the dichotomies of new/old and first generation/second generation are helpful. Why insist that 1989 is the 'time' of complex peace operations, and not also 1919?

Clearly some peace operations are more complex than others; moreover, some projects have a 'state-building' purpose, others do not. The point is that the complexity of peace operations has waxed and waned since the start of the League; similarly, the involvement of such operations in 'nation-building' has been present since at least the 1960s — and much earlier if one includes the Allies in post-war Germany. The 'time' of complexity and civilian involvement in international peace operations has been the entire 20th century.

To be sure, with the administration projects in Cambodia, Mostar, Eastern Slavonia, Bosnia and Herzegovina, Kosovo, East Timor, and UN-run refugee camps,⁴⁰ and the other complex peace missions without an administration component, the final decade of that century witnessed a marked upsurge in the use of peace operations that are both complex and engaged in a 'nation-building' enterprise. However, an upsurge in and intensification of an activity with a long-standing pedigree (with the possible exception of the ambitious scope of state-building in Kosovo and East Timor) is not the same as the emergence of a 'new' type of peace operation. The year 1988, then, marks a particular moment of renewal, not a qualitative (rather than quantitative) 'turning point'. Also, it is perhaps worth pointing out that the increase in peace operations since 1988 has covered both 'complex' and relatively straightforward operations. Just

³⁶ Ratner, *supra* note 14.

³⁷ *Ibid.*, at Part II.

³⁸ *Ibid.*, at Ch. 4.

³⁹ *Ibid.*, at 91. The League mandate in Danzig is 'a variation on a theme' (*ibid.*, at 94) and the various uses of international territorial administration in Leticia, Upper Silesia and Memel are described as 'forgotten forays here and there' (*ibid.*, at 95). On these missions, see, for example, Wilde, 'From Danzig to East Timor', *supra* note 1, at 587–588 (Leticia), 597–600 (Upper Silesia), 600 (Memel) and sources cited therein.

⁴⁰ On these administration missions, see Wilde 'From Danzig to East Timor', *supra* note 1, 584–585 and sources cited therein.

as the ‘old’ era contains several important examples of the ‘new peacekeeping’, so the ‘new’ era is replete with ‘old’-style peacekeeping operations.⁴¹

Concerns of accurate historical description aside, the language of ‘generations’ also manifests problems of a political nature. Adopting a progressivist narrative to denote changes in complexity may be problematic because of the way it can serve as a legitimizing device. As ‘third’ or ‘fourth’ generation missions, the projects in East Timor and Kosovo are positioned as the culmination of a historical process. They represent progress in the development of peace operations from the ‘old’ or ‘traditional’ days. Not only does relative complexity mean ‘newness’, then, suggesting a break from the past; the language of generations, with its evolutionary connotations of progressive improvement, has a normative import. By ascribing differences in complexity through the use of this language, therefore, peace operations are classified normatively simply according to the changes in their complexity. Thus UNMIK and UNTAET, merely by virtue of their comparatively complex nature, are presented in terms that suggest relative legitimacy.

Of course, the adoption of relative complexity as the benchmark of legitimacy seems absurd. The point is not that scholars who use the language of ‘generations’ necessarily wish to make such a suggestion, but rather that the language used risks having this effect. Indeed, some commentators do seem to suggest that increased complexity is somehow inherently superior. John Sanderson, for example, although not using the generational language, focuses exclusively on the degree of powers exercised by the East Timor mission and proclaims this to be a ‘step forward of millennial proportions’ in UN peace operations with the mission being of a ‘high-quality’.⁴²

The language of ‘generations’ and ‘old’ versus ‘new’ peace operations (or peacekeeping) should perhaps be substituted with a taxonomy that does not connote a linear process of historical evolution, for example ‘basic’ versus ‘complex’ or ‘multifunctional’.

The exceptionalist portrayal of the Kosovo and East Timor projects may similarly be damaging on a normative level, in that it hampers any attempt to identify commonalities, as well as differences, between these projects and the earlier administration projects. No doubt, these projects are unusual and each is in some respects unique. However, whether or not something is unique or ordinary is not self-evident. Rather, one must choose a particular definition of the projects, and then use this definition as the basis for comparison with previous operations. The question, then, is whether this definition and the conclusion of uniqueness it allows are

⁴¹ Most scholars accept that in the ‘new’ era, ‘old’ and ‘new’ peacekeeping coexists. Ratner, for example, states that ‘[t]oday we witness both the continuation of older first-generation missions as well as the establishment of new ones. Moreover, a given operation can evolve from one [first generation] to the other [second generation] over time . . .’. Ratner, *supra* note 14, at 17.

⁴² Sanderson, *supra* note 13, at 159. A mirror image of this approach is adopted by Roger MacGinty and Gillian Robinson, who assert that smaller-scale missions ‘hold a greater possibility for success’ than their larger counterparts. See MacGinty and Robinson, ‘Peacekeeping and the Violence in Ethnic Conflict’, in Thakur and Schnabel, *supra* note 13, at 26.

politically sustainable when compared to possible alternative definitions and the conclusions they lead to.

What marks the Kosovo and East Timor missions out for most exceptionalist commentators is the scope of the 'state-building' mandate being engaged in. Whereas this can, as I have suggested above, stand up to scrutiny, the question to be asked is whether singling out the projects on this basis is helpful to begin with. The main problem is that in many other respects, the two projects do share commonalities with other projects. For example, the nature of the activity being conducted — the exercise of territorial prerogatives by an international organization — has taken place in various missions since the start of the League of Nations. Certainly, as I discuss below, it has been put to many different uses, including 'state-building'; at the same time, however, there are certain important policy and practical issues that are raised simply by virtue of the activity itself, as I suggested in the Introduction above. Necessarily, these issues are not unique to the Kosovo and East Timor projects. Setting the two projects aside, therefore, although helpful insofar as one identifies a particular point of distinctiveness, necessarily shifts the focus away from the commonalities that operate in many other areas. As a result, valuable lessons that could be learned from previous projects, both political and practical in nature, are overlooked.

3 Unifying Narratives: Purposive Simplification and Essentialism

As well as emphasizing the nature of the activity being performed, representations of international territorial administration projects can also suggest the purposes served by the activity. How these purposes are delineated in turn influences the manner in which the questions outlined in the Introduction are framed, and sometimes whether such questions are even posed in the first place. In this section, I discuss two related purposes with which international territorial administration projects are commonly associated: addressing the consequences of armed conflict and so-called 'state building'.

I suggest that most commentary provides a false unity between the administration projects, by simplifying the purposes they serve both individually and collectively. Not only is this process misleading in terms of explaining the projects; on a normative level it risks partially obscuring the range of contested political issues at stake. By doing so, it downgrades the political significance of international territorial administration generally, and individual projects in particular, potentially undermining calls for scrutiny and accountability.

Earlier I highlighted the positioning of international territorial administration within the taxonomy of 'peace operations', and the effect this has in the presentation of the Kosovo and/or East Timor project(s) as unique and ground-breaking in terms of the activity performed. A further consequence is that the institution is associated, in a particular manner, with the pursuit of peace. Many academic commentators have chosen to label international territorial administration in terms suggesting that it is

essentially a ‘post-conflict’ phenomenon, using the word ‘conflict’ in the narrow sense of an armed conflict. Michael Matheson’s article purporting to cover the administration of territory by the United Nations describes this activity as ‘United Nations Governance of Postconflict Societies’.⁴³

Such presentations imply two things about international territorial administration: in the first place, that it is always used in the ‘post-conflict’ context; in the second place, that it is necessarily concerned with addressing the consequences of conflict. In particular, the suggestion is that because of conflict, governance has broken down either partially or completely, and so administration by international actors is introduced to fill the gap and ‘reconstruct’.

The first problem with the ‘post-conflict’ label is that it is incorrect to state that international territorial administration is always used after conflict. In West Irian, for example, UN administration was used in 1962–1963 not because the territory was ‘war torn’ and so required external administration, but rather to ensure the smooth transfer of territorial control from the Netherlands to Indonesia.⁴⁴ The UN acted as a neutral ‘buffer’ in between control by the two states, avoiding the potential conflict feared had the transfer been made directly between one state and the other. Rather than picking up the pieces after the end of a conflict, here it was a device for preventing armed hostilities from breaking out in the first place.

Most international territorial administration missions, however, have taken place after conflict. That said, it is unhelpful to assume that all or any of the purposes each has served can be understood in terms of responding to the consequences of conflict — an assumption arguably made if one labels the activity a ‘post-conflict’ phenomenon.

When ONUC tried to fill the governmental vacuum in the Congo in the early 1960s, the perceived inability of local officials to perform governance was associated as much with the failure of the former colonial power, Belgium, to train them in governmental skills as it was with the armed conflict that ensued after independence was realized.⁴⁵ To be sure, ONUC was a ‘peacekeeping’ operation; it had been created to address the conflict, and its military component pursued this objective vigorously, *inter alia* attempting to prevent the secession of Katanga province (and so moving into what is now regarded as ‘peace enforcement’).⁴⁶ However, the installation of ONUC to pursue these military objectives placed it in a position to exercise certain governmental

⁴³ Matheson also uses the phrases ‘governance of societies affected by conflicts’ and, on UNTAET in particular, ‘governance of a territory shattered by conflict’. Matheson, *supra* note 6, at 76 and 82 respectively. Although Matheson concerns himself with the administration of territory by the United Nations, he mentions neither the UN administration in Eastern Slavonia, nor the UN conduct of popular consultations, nor the administrative activities of ONUC between 1960–1963. On these administrative activities, see e.g. Wilde ‘From Danzig to East Timor’, *supra* note 1, at 589 (Eastern Slavonia), 597 (consultations), 592 (ONUC) and sources cited therein. Matheson’s article, together with an article by Hansjörg Strohmeier discussing the Kosovo and East Timor projects are included as part of a ‘Symposium on State Reconstruction after Conflict’ in the *AJIL*.

⁴⁴ Wilde ‘From Danzig to East Timor’, *supra* note 1, at 588.

⁴⁵ *Ibid.*, *supra* note 1, at 592 text accompanying n. 50, and source cited therein.

⁴⁶ *Ibid.*, *supra* note 1, at source cited in n. 50.

functions for a broader set of reasons than merely the conflict. The fact that these functions were performed by the civilian component of a peacekeeping force perhaps led to the perception that they were to be explained wholly in terms of conflict. Indeed many commentators mention these administrative activities only briefly, or ignore them altogether, focusing instead on ONUC's military role.⁴⁷

Similarly, in Bosnia and Herzegovina the role of the military force SFOR in maintaining the cessation of armed hostilities receives much more attention than the governmental activities of the Office of the High Representative (OHR). This *sui generis* international entity was created by the Dayton Peace Agreement and over time has asserted the right *inter alia* to impose legislation and dismiss elected government officials.⁴⁸ Even when OHR's activities are discussed, they are frequently represented as being exclusively concerned with the consequences of the 1992–1995 armed conflict in the country. Again, the presentation is that international territorial administration is used in circumstances where there are no functioning institutions, and that these circumstances were brought about by the previous armed conflict.

In fact, the legislative activities of OHR operate alongside the law-making of domestic legislatures at both the state and entity level.⁴⁹ The reason for OHR's performance of these activities is not the absence of institutions run by local officials, but that such institutions sometimes fail to operate in a manner deemed suitable by OHR. Whereas this is sometimes a matter of war-related practicalities, it is often because the political agenda being pursued by the legislature runs counter to that promoted by OHR, or because members of the legislature are not deemed sufficiently rooted in the democratic tradition to perform their functions adequately. Again, whereas the latter reason (whatever its merits) may be explained in part because of the war, one must somehow discount altogether other factors, such as the consequences of decades of totalitarian rule, in order to suggest that conflict is its only cause. In removing government officials, OHR is clearly not attempting to fill a practical breakdown in governance; such actions actually create a governmental vacuum until the relevant position can be filled through appointment or election. Moreover, in most cases dismissal has not been because of incompetence (which sometimes may be explained as a consequence of the conflict), but because of the policies espoused by the official in question, such as Serb nationalism in the case of Republika Srpska President Nikola Poplasen (removed from office by OHR in 1999).⁵⁰

⁴⁷ E.g. D. Bowett, *United Nations Forces* (1964), Ch. 6 on ONUC. Bowett takes the position that '[a] detailed description of the civilian relief operations in the Congo would be out of place in this present study of United Nations Forces' (at 248).

⁴⁸ On OHR, see, for example, Wilde 'From Danzig to East Timor', *supra* note 1, at 584, text accompanying n. 8 and sources cited therein.

⁴⁹ On the domestic legislatures, see the Constitution of Bosnia and Herzegovina, contained in the Dayton Peace Agreement: Bosnia and Herzegovina — Croatia — Federal Republic of Yugoslavia, General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Done at Paris, 14 December 1995, 35 *ILM* (1996) 75, Annex 4.

⁵⁰ See Office of the High Representative, Press Release, Removal from Office of Nikola Poplasen, Sarajevo, 5 March 1999, obtainable from www.ohr.int.

In Bosnia and Herzegovina, an institution installed as part of a peace agreement has been engaged in promoting a liberal political and economic order. To suggest that this is essentially a 'post-conflict' agenda is to ignore the degree to which it is also addressing the perceived problems arising out of a centrally planned economy and a totalitarian system of governance, both of which, of course, pre-date the war.

In contrast to the Congo and Bosnia and Herzegovina, the presence of international territorial administration missions in Kosovo and East Timor is rarely ignored in the discussion of these territories. At the same time, this activity is again often explained wholly in terms of responding to the consequences of conflict. Ramesh Thakur and Albrecht Schnabel situate the Kosovo and East Timor missions within a class of missions 'in countries affected by civil wars' where the 'United Nations substitutes for collapsed local governments'.⁵¹ When UNTAET is described as a 'post-conflict' mission (or that it is the administration of a 'war-torn territory') the implication is that the reason for the mission is that conflict — in particular, the post-referendum violence by pro-Indonesian militias — created a governmental vacuum and breakdown in infrastructure that rendered governance by the East Timorese impossible. Michael Matheson states that the Australian-led military force INTERFET, created to prevent the violence by the militias,

quickly restored order, but the violence had already destroyed a large number of homes and other buildings, caused the collapse of the civil administration and judicial systems, and damaged or destroyed much of the waterworks and other essential public services. As a result, the Security Council . . . decided to entrust the United Nations with the burden of governance of a territory shattered by conflict.⁵²

What this typical presentation of UNTAET's creation ignores is that UN administration was actually envisaged before the violence, and the referendum, had taken place. In fact, it was provided for in the May Agreements that also set up the terms of the referendum.⁵³ The original reason for UN administration had nothing to do with conflict; rather, it concerned the perceived inability of the East Timorese, in the short term, to govern themselves once Indonesia withdrew. Of course, the violence that followed the referendum made governance by any actor, Timorese or international, extremely difficult. But as an explanation for the very idea of UN administration, as opposed to the particular challenges that administration faced once it was introduced, it is incorrect.

⁵¹ Thakur and Schnabel, *supra* note 13.

⁵² Matheson, *supra* note 6, at 82.

⁵³ The relevant agreement states that, in the event that the East Timorese rejected the option of substantial autonomy within Indonesia in the popular consultation, '... the Governments of Indonesia and Portugal and the Secretary-General shall agree on arrangements for a peaceful and orderly transfer of authority in East Timor [from Indonesia] to the United Nations. The Secretary-General shall, subject to the appropriate legislative mandate, initiate the procedure enabling East Timor to begin a process of transition towards independence.' Indonesia-Portugal Agreement, Indonesia and Portugal, Agreement on the Question of East Timor, 5 May 1999, obtainable from <http://www.un.org/peace/etimor99/agreement/agreeFrame_Eng01.html> (checked 10 Oct 2003), Art. 6.

A similar problem can be seen in relation to the Kosovo mission. In describing the background to UNMIK, Matheson explains the ‘state of economic and social chaos’ in Kosovo following the NATO bombing campaign, the military campaign by Serb forces against the Albanian population, and the withdrawal of all Serb and Yugoslav military and civilian officials.⁵⁴ He remarks that ‘[c]learly, the international community had to establish a system of governance, at least for an interim period. Without such governance, the chaotic situation would present a continuing, acute threat of escalating violence and regional instability, as well as a serious humanitarian crisis’.⁵⁵

This suggests that UNMIK was conceived to respond to the pre-existing situation of a governmental vacuum. Its purpose is essentially practical: ‘establishing a system of governance’ where one did not exist. Such a presentation fails to acknowledge that the withdrawal of Serb and Yugoslav officials that created the governmental vacuum was actually part of the same overall settlement — the Peace Plan agreed to by the then FRY — that provided for UN administration.⁵⁶ The absence of the Serb and Yugoslav administrative authorities, therefore, cannot be considered separately from the presence of the UN administration mission; the very purpose of the Serb and Yugoslav pull-out was to make way for UNMIK. The United Nations was there not to fill a governmental vacuum, but to replace an administration committed to the disenfranchisement of the Kosovar Albanians with another administration committed to the enfranchisement of that population. In other words, the reason for the UN administration was not to remedy a governmental breakdown, but to engineer a fundamental change in government policy.

A similarly simplistic and misleading presentation of the purposes served by international territorial administration missions can be seen when these missions are labelled collectively as ‘state-building’, ‘nation-building’ or ‘state-reconstruction’ enterprises.⁵⁷ International territorial administration is often associated with the ‘failed states’ paradigm, in that it has been sometimes used to respond to a problem — the collapse of governmental infrastructure — that has come to be described in terms of state ‘failure’. The notion of the ‘failed state’ came to prominence within academic discourse through an article by Steven Ratner and David Helman, in which plenary territorial administration by the United Nations (labelled ‘United Nations conservatorship’) was proposed as a mechanism for ‘saving’ what were described as ‘failed

⁵⁴ Matheson, *supra* note 6, at 78.

⁵⁵ *Ibid.*

⁵⁶ Agreement on the Principles (Peace Plan) to Move towards a Resolution of the Kosovo Crisis Presented to the Leadership of the Federal Republic of Yugoslavia by the President of Finland, Martti Ahtisaari, representing the European Union, and Viktor Chernomyrdin, Special Representative of the President of the Russian Federation, 3 June 1999, UN Doc. S/1999/649, paras 2 and 6 (on the withdrawal) and 3 and 5 (on the UN administrative presence).

⁵⁷ On the representation of international territorial administration as a ‘state reconstruction’ enterprise, see, for example, the inclusion of the articles by Matheson (describing some, but not all, of the UN projects) and Strohmeyer (discussing the Kosovo and East Timor projects) as part of a ‘Symposium on State Reconstruction after Conflict’ in the *AJIL*. Matheson, *supra* note 6; Strohmeyer, *supra* note 9.

states': entities where government had collapsed.⁵⁸ The 'failed states' paradigm has rightly been criticized on a number of levels, from its essentialist use of language to the particularist basis for defining 'failure', the manner in which it sets up a dichotomous opposition within international relations between 'successful' and 'failed' states, and the way it condemns people for the deficiencies of their elites, from whom in practice they may be unable to escape.⁵⁹ I shall address one criticism, concerning responsibility for governmental breakdown, below.

For our present inquiry, the 'failed states' paradigm is germane because for many commentators 'state failure', viz. governmental collapse, is presented as the sole context in which international territorial administration is used, in general and/or in particular missions. The policy device is always concerned with promoting the existence of organized social and political institutions, especially governmental institutions, when these institutions are not functioning properly. As with the 'post-conflict' label, this presentation is misleading, in that some administration projects are aimed at entirely different objectives (for instance, West Irian).

Adopting the terms 'post-conflict' and 'state-building' as labels to describe the administration projects holistically obscures the many other purposes that these missions can be created to serve, sometimes outside a 'post-conflict' situation and in the absence of any 'state-building' objective. On a descriptive level, therefore, they are unhelpful, and if we are seeking to understand why international territorial administration takes place, they may be misleading. For example, when Michael Matheson discusses the international approach taken with respect to Bosnia and Herzegovina at Dayton in 1995, he suggests that 'governance was left to the Bosnian political entities'.⁶⁰ The reason for this is presented as self-evident: '[c]learly, the United Nations was reluctant to assume the functions of governing the territory of a sovereign state if indigenous institutions were available for the purpose'.⁶¹

Having set international territorial administration up as a policy institution used only when 'indigenous institutions' break down after conflict, Matheson reinforces his thesis by invoking a situation that does not fit this scenario, and implying a causal relationship between the presence of indigenous institutions and the absence of international territorial administration. Quite apart from the nature of the causal relationship, which is surely not axiomatic, he seems to ignore what has happened in Bosnia and Herzegovina since Dayton. As I have mentioned, partial international territorial administration (albeit by OHR rather than the UN) has ended up being exercised in that country, despite indigenous institutions being 'available for the

⁵⁸ Helman and Ratner, 'Saving Failed States', 89 *Foreign Policy* (1992) 3. The uncritical use of the term 'failed state' is widespread; for another example, see Karns and Mingst, *supra* note 17, at 217–218.

⁵⁹ For some of these criticisms, see e.g. Gordon, 'Saving Failed States: Sometimes a Neocolonialist Notion', 12 *Am. U.J. Int'l L. & Pol'y* (1997) 903; Richardson, "'Failed States," Self-Determination, and Preventative Diplomacy: Colonialist Nostalgia and Democratic Expectations' 10 *Temp. Int'l & Comp. L. J.* (1996) 1.

⁶⁰ Matheson, *supra* note 6, at 78.

⁶¹ *Ibid.*

purpose'.⁶² Matheson's approach perhaps illustrates the problems that follow from assuming that international territorial administration is only ever concerned with filling a governmental vacuum.

Considering the problems with the 'post-conflict' and 'state-building' labels on a descriptive level, we can see what is perhaps a more important problem on a normative level. The adoption of the labels for the projects collectively can operate as a legitimizing device, concealing other, relatively controversial policies that the projects can sometimes be used to prosecute. Of course, the circumstances in which international organizations fill a vacuum when governance has broken down do raise many political questions (is consent obtained from local actors?; how long do such missions last?; how accountable are they?, etc.). However, as an idea, this use of international territorial administration is relatively uncontroversial.

If we consider some of the other objectives outlined above, however, we see ideas that are much more politically contested. For example, the use of the institution to effect a territorial transfer promotes a particular territorial outcome, thereby mediating the realization of self-determination claims. The transfer of West Irian to Indonesia treated the local population as if they weren't entitled to external self-determination, even though the agreement that provided for the transfer envisaged a post-transfer self-determination consultation.⁶³ Moreover, by enabling control by Indonesia, the UN administration made possible Indonesia's manipulation of the subsequent consultation, which was widely regarded as a sham.⁶⁴ Similarly, the use of international territorial administration because local actors are deemed incapable of administration, as in East Timor, or incapable of 'liberal' governance, as in Bosnia and Herzegovina and Kosovo, involves contested political decisions concerning the abilities of local actors and the standards adopted for governance. It is somewhat reminiscent of the civilizational standard associated with foreign state administration under both colonialism and the Mandate and Trusteeship systems, a standard that was, of course, criticized *inter alia* as a racist alibi for imperial conquest and exploitation.

The purposes variously served by different international territorial administration projects, therefore, often raise fundamental political questions. Should West Irian have been handed over to Indonesia? By what standard were local actors deemed to be deficient in East Timor? Who applies that standard? What ideas of democracy and multi-ethnic politics underline the use of international territorial administration to 'promote' democracy in Bosnia and Herzegovina and Kosovo, and are these ideas supportable? To what extent does this use of international territorial administration replicate certain aspects of the colonial paradigm?

The West Irian mission was criticized for selling out the local population, many of whom have engaged in a self-determination struggle ever since the consultation; OHR

⁶² Although Matheson mentions OHR in a footnote, its status as a counter-example to the thesis he puts forward in his main text is neither acknowledged nor addressed. *Ibid.*, at n.19.

⁶³ Wilde, 'From Danzig to East Timor', *supra* note 1, at 588 n. 27 and accompanying text; 591.

⁶⁴ *Ibid.*, at 591 n. 43.

in Bosnia and Herzegovina is criticized for seeking to promote democracy through dictatorial measures (for example, the legally-unreviewable removal of elected officials); UNTAET was criticized by the East Timorese for assuming that local people were incapable of governance; UNMIK in Kosovo has been criticized for promoting the rights of the Kosovar Albanians in ways that disenfranchise the local Serbs. These and other important political questions are obscured by the presentation of all administration projects as concerned exclusively with governmental reconstruction after conflict. The ‘post-conflict’ and ‘war-torn territories’ labels legitimize the pursuit of entirely different and more controversial policy objectives, by concealing these objectives and thereby preventing them from being scrutinized.

A further legitimizing feature of the ‘state reconstruction after conflict’ label is that it presents the activity of international territorial administration as essentially passive and reactive. Governmental institutions collapse, and international administrators go in to rebuild. The reactive nature of this activity downgrades its political importance. When carrying out territorial administration, international organizations are not positive agents of change, but merely reacting to events.

So in Kosovo, for example, Michael Matheson talks about how the so-called international community ‘had to’ create a system of governance in Kosovo because of the pre-existing governmental breakdown. External events create an imperative which the UN and Western states, as hitherto uninvolved bystanders, must respond to. This ignores the fact that the main feature of the ‘governmental breakdown’ — the withdrawal of the Serb and Yugoslav administrative presence — had been engineered by the West through the EU- and Russian-brokered ‘Peace Plan’, the terms of which had been accepted by the then FRY following the NATO bombing campaign of that country. At some level, governance did not break down in Kosovo — the West forced out one administration and replaced it with the United Nations. The degree to which the UN Secretariat and UN members generally, rather than particular members of the Security Council, had any control over this is of course another matter. The point is that UN administration was being used to actively displace one administration with another: it was part of the very process that created the governmental vacuum that it then went in to ‘fill’.

A further problem arises when international territorial administration missions are labelled ‘peace operations’ or ‘peacekeeping missions’, as often happens when their purposes are presented in the ‘post-conflict’ manner discussed above. In addition to the problems highlighted earlier, the use of these labels implies that international territorial administration is an enterprise essentially concerned with the promotion of peace and the end of conflict. Taking into account the many different policies that the institution is concerned with, one cannot escape the normative implication of this label that each policy — such as, say, internal self-determination for the population of Kosovo — is being pursued because it leads to peace and an end to conflict, and not also because it is of independent value. No doubt, one can debate about whether or not the pursuit of peace is the fundamental objective of any political system; the problem with the ‘peace operation’ classification is that it implies that this debate is closed.

The ‘peace operation’ classification also operates as a further legitimating device:

Who can argue with the prevention of conflict? Considering the West Irian mission, for example, a conflict-prevention operation is fine on its own terms — arguably, it did end up preventing hostilities (although only between the Netherlands and Indonesia — the hostilities between local separatists and Indonesia continue to this day). At the same time, it effectively prevented the realization of self-determination on the part of the local population. Labelling that mission a ‘conflict-prevention’ mission, rather than, say, a ‘denial of self-determination mission’ legitimizes it by focusing on what it achieved (in terms of security), without highlighting the price that was paid for this achievement (in terms of self-determination).

4 Skewed Responsibility Narratives: Blame and the ‘Failed States’ Paradigm

Earlier I illustrated how the association of international territorial administration projects collectively with the failed state concept was unfortunate because the institution is not only used in circumstances of governmental collapse. I also suggested that the very idea of using the label ‘failed state’ to denote governmental collapse is problematic. One such problem is that this label arguably denotes exclusive responsibility on the part of the state for the breakdown in governance. The state, its people and its leaders alone have ‘failed’.

Henry Richardson highlights this feature of the ‘failed state’ concept, and criticizes it as simplistic.⁶⁵ Of course state collapse is often due, to a considerable degree, to indigenous factors, for example, civil conflict and corrupt leadership. At the same time, clearly the involvement of foreign states, international financial institutions and multinational corporations and the like can and does play a major role in mediating the state of local conditions, thereby affecting the viability of the economy and governmental infrastructure.

For example, should exclusive responsibility for the governmental breakdown in the Congo in the 1960s lie at the door of the Congolese people and their leaders? To make this assertion, one should somehow discount the role of Belgium, for example, who ‘failed’ to prepare local people for government before independence, and then intervened militarily in the country afterwards to support certain factions during the civil war.⁶⁶ East Timor became a state in May 2002. If, a few years after that date, the government there collapsed, would it really be appropriate to conceive responsibility for that solely in terms of the local population? Clearly, one cannot look only at the behaviour of local actors in seeking to appraise a particular national economy and political system. Regrettably, this is exactly what the ‘failed state’ concept encourages us to do.

The skewed notion of responsibility arguably suggested by the failed state idea is not only misconceived; it also leads to policy prescriptions that, by themselves, may ignore the structural causes of the problems they seek to address. The ‘state building’ use of

⁶⁵ Richardson, *supra* note 59, *passim*.

⁶⁶ Wilde, ‘From Danzig to East Timor’, *supra* note 1, at 592.

international territorial administration is a case in point. Necessarily, this is concerned exclusively with the local causes of a collapse in infrastructure, seeking, for example, to improve local capacities for governance. Clearly, it has no remit with respect to, for example, the foreign states, international financial institutions and multinational corporations that will play as important a role in shaping the future of the territory's economy as local people and their leaders. I am not suggesting that international territorial administration should somehow be able to perform that second role; the point is that as a policy device, it is necessarily limited to addressing the local causes of whatever problem it is concerned with. If we consider the remarkably intrusive nature of this policy device, there is no comparable device that intervenes within other states and international institutions, to try to prevent, as international territorial administration does on the national level, these states and institutions from making decisions that contribute to the factors that hamper a recovery from governmental collapse, or precipitate such a collapse in the first place.

When Helman and Ratner discuss the 'saving' of failed states, their prescription — foreign administration — is necessarily limited to the indigenous governmental structure. They do not concern themselves with proposing other, similarly intrusive mechanisms with respect to, say, rich countries and multinational corporations. Necessarily, the prescription is reactive, in that it is concerned with responding to state collapse when it has happened, thereby focusing exclusively on indigenous factors, rather than seeking to prevent it in the first place, which would require a focus on both indigenous and exogenous factors. The result is a somewhat naïve and simplistic proposal that fits well with the narrow notion of responsibility of the 'failed state' paradigm. So when Margaret Karns and Karen Mingst state that the 'key question for the international community is what are the responsibilities of states, the United Nations (or regional IGOs), and other actors when states fail', the responsibilities in question concern remedial measures of intervention 'post-failure' in the territory concerned, not prophylactic measures concerning the behaviour of these actors that might lead to state collapse in the first place.⁶⁷ Moreover, the 'responsibilities' are conceived in terms suggestive of the charity of innocent bystanders (cf. the 'saving' of failed states), not the liability of those who are partially complicit. The sub-title to Karns and Mingst's question about the 'international community's responsibilities when states fail' is: 'How should choices be made as to where to direct scarce resources?'⁶⁸

The asymmetrical conception of responsibility of the failed state concept, then, is reflected in and supported by the regime of international policy institutions. One might venture that this asymmetry is, of course, no accident. One might ask who uses the language of 'failed states' and what their interests are in doing so. The 'failed states' concept originated in Western scholarship, and has been utilized in Western policy discourse. Examining this language may be helpful, therefore, in understand-

⁶⁷ Karns and Mingst, *supra* note 17, at 218.

⁶⁸ *Ibid.*, at 220.

ing Western ideas of a 'failed' other and a 'successful' self. Just as Edward Said studied 'Orientalism' *inter alia* as a way of understanding how Western culture conceives itself through an alienated, oriental 'other', the failed state concept may be illuminating insofar as our understandings of those who use it are concerned.⁶⁹ As a basis for policy, however, it may be limited, precisely because it reflects the interests of those who use it, and these interests may conflict with the interests of those in relation to whom it is used. Indeed, exclusively locally-based connotations of responsibility exculpate Western states and multinationals, and the international financial institutions they control, in terms of whatever actions these actors may have conducted that contributed to the so-called 'failure' by the state concerned. Similarly, these actors do not face the prospect of intrusive policy institutions, like international territorial administration, that seek to prevent whatever policies they may prosecute that lead to state collapse.

We have, therefore, a suggestion of responsibility, and an institution for addressing this responsibility, that only takes in part of the picture. Can this not be supported, however, as the best that can be hoped for in an unequal world? Was Helman and Ratner's limited focus an attempt to address legitimate concerns about state collapse, while staying within the bounds of what was realistic in terms of the proscription put forward?

In the first place, on pragmatic grounds it may have little effect. The work done on the ground with local people may be undermined by the absence of comparative processes operating in those other arenas that are equally determinative of the policies concerned. Even if this were not the case, however, there is a further problem: the failed states concept is not only about emphasizing a certain area of responsibility; it can also be seen as repudiating the notion that responsibility can reside elsewhere as well. The notion of the failed state, then, and its associated policy institutions like international territorial administration, may reflect and constitute not good first steps, but rather the impediments that exist to broader notions of responsibility and mechanisms for implementing that responsibility.

The 'failed state' concept not only reflects our unequal world, but buttresses that inequality. When international territorial administration is used in circumstances of state collapse, it may be serving merely to distract attention away from the structural, exogenous factors that both contributed to the collapse and will mediate the future economic and political development of the territory.

5 De-idealizing Narratives: The Technocratic Approach

... there is a pressing issue in transitional civil administration that must be addressed, and that is the issue of 'applicable law'.⁷⁰

Granting prerogatives over territorial administration to international organizations, although not, as I have suggested above, unique, is unusual. International

⁶⁹ E. Said, *Orientalism: Western Conceptions of the Orient* (1995, reissue with new Afterword).

⁷⁰ Brahimi Report, *supra* note 5, at para. 79.

organizations are not usually engaged in administering territorial units, and so when this activity takes place, a range of distinctive practical and political issues are raised. What is striking about some of the commentary on international territorial administration is that it presents the challenges raised by this unusual activity wholly in practical terms. Technocratic matters, in particular relating to the ability and willingness of UN institutions to create, prosecute and monitor territorial administration missions, are set out as the only issues of consequence. This has a ‘de-idealizing’ effect, in that it presents international territorial administration as a phenomenon to be appraised exclusively in practical terms, and not also according to political ideas. The merit of individual projects, and international territorial administration generally, then, is at best judged according to practical issues (is the UN up to the job?) and not also political factors. At worst, it is set aside altogether.

In a first for UN peace operations reports, the Brahimi Report of 2001 devotes a particular section to ‘transitional administrations’, which from the missions it covers would seem to denote UN operations involving the exercise of plenary administrative prerogatives.⁷¹ In this section, the Report concerns itself exclusively with the capacity of the UN to engage in an activity that, because of its scope, involves ‘challenges and responsibilities that are unique among United Nations field operations’.⁷² Thus it highlights the ‘struggles of the United Nations to set up and manage’ the operations in Kosovo and East Timor, given the ambitious nature of those two missions.⁷³ When it then states that ‘[b]eyond such challenges lies the larger question of whether the United Nations should be in this business at all’, it goes on to discuss the willingness and capacity of the Secretariat.⁷⁴ The ‘larger question’, therefore, is presented solely in terms of whether the Secretariat wants to be given such difficult work.

Similarly, after describing some of the UN administration projects, Michael Matheson turns to what he describes as the ‘policy’ and the ‘legal’ questions these projects raise. Under the ‘policy’ heading, Matheson remarks that the projects

raise serious policy questions about the practical capability of the United Nations to perform this role, the long term political viability of relying on the United Nations to bear such burdens, and the availability of feasible alternatives to the United Nations for this purpose. Much will depend on whether the Organization is ultimately judged to have succeeded or failed in Kosovo or East Timor.⁷⁵

Although the words ‘policy’ and ‘political’ are used, actually only practical issues are discussed. Like Brahimi’s ‘larger question’, Matheson’s ‘policy’ concerns are essentially technocratic.

For Brahimi, the only other concern highlighted is in the above quotation: the problem of deciding in Kosovo and East Timor what the applicable local law is, and

⁷¹ *Ibid.*, section H, from para. 76. Cf., for example, *Agenda for Peace*, *supra* note 33, and *Agenda for Peace Supplement*, *supra* note 34.

⁷² Brahimi Report, *supra* note 5, at para. 77.

⁷³ *Ibid.*, at para. 76.

⁷⁴ *Ibid.*, at para. 78.

⁷⁵ Matheson, *supra* note 6, at 83.

what it should be.⁷⁶ Typically, UN officials have no background in the national law of the territory concerned, and this law may be considered problematic anyway because of its association with the previous regime in the territory and/or its incompatibility with the relevant standards of international human rights law. This issue, and the related matter of getting the institutions of law and order up and running, is the main focus of Hansjörg Strohmeyer's discussion of the Kosovo and East Timor projects.⁷⁷ Both Brahimi and Strohmeyer make proposals about how the 'applicable law' issue might be addressed in future missions.⁷⁸

Given the managerial approach adopted as the basis for appraisal, it is perhaps no surprise that when the choice between international organizations and states is discussed, in terms of the identity of the administering actor, matters are sometimes considered on a purely practical level. The only question is who is best able to perform the task of territorial administration. When the Brahimi Report discusses the circumstances that led to the UN missions in Kosovo and East Timor, it mentions the idea of 'individual Member States taking over entire sectors of administration (sectoral responsibility)', as an alternative to the UN.⁷⁹ Deciding between the alternatives, however, is presented exclusively as a practical matter — state administration is in principle attractive over UN administration because of the expertise of state officials in the very business of government that is required in administration missions.⁸⁰ The reason sectoral responsibility was not considered in Kosovo and East Timor is similarly down to practicalities: it was proposed 'too late in the process to iron out the details'.⁸¹ Again, this approach presents the choice — here concerning the identity of the administering actor, rather than foreign administration itself — as if it had no normative, in addition to practical, implications.

In their proposal for 'UN conservatorship', Helman and Ratner nominate the United Nations in the role of the administering actor, but do not explain their choice in this regard.⁸² Equally, when at one point they suggest an alternative international organization, they make no comment on the basis for choosing this actor over the UN: '[i]n general, the United Nations would act as the administering authority, although a group of states might also perform that function, such as the European Community with respect to Bosnia'.⁸³

This is one step further from Brahimi: the choice of administering actor is made without any explanation, practical or normative. Either, then, there is nothing in the

⁷⁶ Brahimi Report, *supra* note 5, at paras 79–83.

⁷⁷ Strohmeyer, *supra* note 9.

⁷⁸ Brahimi Report, *supra* note 5, at paras 82–83. Strohmeyer, *supra* note 9, at 62–63.

⁷⁹ Brahimi Report, *supra* note 5, at para. 129.

⁸⁰ *Ibid.*, at para. 129.

⁸¹ *Ibid.*

⁸² Matheson, *supra* note 6, at 83.

⁸³ The Bosnia and Herzegovina suggestion was prescient: the Member States of the EC, acting within the framework of the European Union, created the European Union Administration in Mostar (the EUAM), which administered the City between 1994 and 1996. See, for example, Wilde, 'From Danzig to East Timor', *supra* note 1, at 590 and sources cited therein.

choice, or, more plausibly, whatever factor, normative or practical, leading to the choice of the UN is considered self-evident.

The practical issues highlighted in the technocratic approach are, no doubt, ‘large’ and ‘pressing’. Involving foreign actors in territorial administration is a remarkably ambitious enterprise on a practical level, and the choice of particular foreign actors — international organizations or states — to perform this task may well be crucial to the effectiveness of the mission. At the same time, however, the ‘large’ issues arising out of foreign territorial administration do not go only to capacity and willingness; nor are the only ‘pressing’ issues practical ones like the matter of applicable local law.

If one is asking, as Brahimi does, whether or not the United Nations should be ‘in this business at all’, one should surely also be concerned with the nature of ‘this business’ on a political level, and the normative character of the United Nations when compared with the alternatives of foreign states and other international organizations. One should address the political factors arising out of both the granting of the power of territorial government to a foreign actor, and the choice of foreign actor to perform this role. For example, how does the idea of foreign administration replicate the colonial paradigm? Does the choice of foreign actor — international organizations or states; different international organizations — alter the answer to that question? The exclusively or overwhelmingly technocratic approach adopted by the commentators above necessarily excludes such an analysis. Moreover, engaging in this analysis is not only worth doing in its own right; one cannot fully appreciate the technical problems faced by the missions without addressing it first.

A related approach is to acknowledge and address certain normative questions raised by international territorial administration, but to situate such a discussion within a broader focus of inquiry that is overwhelmingly technocratic. When Helman and Ratner discuss the merits of the idea of what they term ‘UN conservatorship’, they address the potential challenges of reconciling this idea with classical notions of state sovereignty, advocating consent by the territory concerned as a model to be adopted when such arrangements are constituted.⁸⁴ They then turn to five different ‘practical considerations’ including cost and the need for a management facility within the UN Secretariat.⁸⁵ By addressing the issue of consent, and not any other normative issue (for example, accountability), it is as if the other normative issues do not exist, or are, at least, so lacking in importance as not to merit even a brief mention. Moreover, presenting this one normative issue in the context of five practical issues leaves the overall impression that the merits of the idea of international territorial administration are to be assessed overwhelmingly in practical terms.

Normative questions are similarly avoided when they are labelled and discussed as practical and not also political in nature. Much of what Helman and Ratner address under the heading of ‘practical considerations’ raises issues that are highly political. For example, the question of which UN organ should be assigned ‘overall responsibility for conservatorships, including the power to initiate and terminate them’, is

⁸⁴ Helman and Ratner, *supra* note 58, at 16–18.

⁸⁵ *Ibid.*, at 18–20.

discussed in terms of practicability alone.⁸⁶ The General Assembly is ‘too large and unwieldy for effective oversight’; ECOSOC is also ‘too large’; the Security Council, by comparison, ‘is the most efficient organ available’.⁸⁷ So it is proposed that the Security Council passes a resolution establishing the conservatorship, and then because of its lack of experience in economic and social matters, establishes a sub-group, not all of whose members need be on the Council, to oversee each conservatorship.⁸⁸ The only role for the General Assembly is to approve the budget.⁸⁹

It is as if the only significance of the relative composition and remit between the Security Council, ECOSOC and the General Assembly is a practical one: composition goes only to efficiency; remit goes only to ‘experience’. Of course, size can often have such a practical effect, and the history of the United Nations would certainly support a pessimistic conclusion in this regard. Equally, the remit of a particular organ undoubtedly affects the degree to which that organ is able to discharge responsibilities in a particular subject-area. However, to suggest that such practical considerations alone should be the sole determinants of the choice of UN organ, as Helman and Ratner appear to do, ignores the political differences between the different institutions that are both well known and significant to the particular issue of territorial administration. For example, the Security Council’s size makes it relatively streamlined, but also comparatively unrepresentative, when considered alongside the General Assembly. Given the colonial echoes of international territorial administration, it may be that, as far as UN authority is concerned, the General Assembly would prove politically more legitimate, ‘internationalizing’ the phenomenon further by shifting the authoritative procedures into an arena where all states are represented, and on an equal basis. This and other political factors surely need to be considered, alongside practical issues, when discussing the relative merits of each UN organ.

6 Conclusion

International territorial administration raises far-reaching normative and practical questions. Regrettably, this activity is often represented within academic literature in terms that obscure or downgrade the importance of these questions. Such representations are realized through four different discursive strategies.

The first discursive strategy situates international territorial administration within a progressivist historical narrative, positioning the Kosovo and East Timor projects as the pinnacle of an evolutionary process. Misleading on its own terms, this presentation may also be damaging on a normative level in that it legitimates the current projects on spurious grounds. The second discursive strategy unifies all the administration projects through a simplified presentation of their purposes, using the ‘post-conflict’ and ‘state-building’ labels. Again, this is both misleading on its own

⁸⁶ *Ibid.*, at 18.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, at 18–19.

⁸⁹ *Ibid.*, at 19.

terms, and unhelpful normatively because it obscures the full range of purposes with which international territorial administration has been associated, many of which are relatively controversial when compared to the ‘post-conflict’ and ‘state-building’ objectives.

The third discursive strategy associates international territorial administration with a concept — the notion of the ‘failed state’ — that arguably implies a skewed conception of responsibility. Apart from other problems, this legitimizes international territorial administration by portraying the indigenous factors it is concerned with as the exclusive cause of the problems it seeks to address. It is easier to justify the introduction of international territorial administration with this narrow conception of responsibility than if the causes were presented in a more complex manner. The fourth discursive strategy presents international territorial administration in a wholly or primarily technocratic manner, obscuring and/or downgrading its political aspects and thereby potentially attenuating the range of issues considered in appraisals of the activity in general and individual missions in particular.

Commentary on international territorial administration not only reflects the political factors raised by the activity; by delineating the contours of the institution, it is also partially responsible for setting the terms by which it will be understood and its merit appraised. Representing international territorial administration, therefore, is a political act, and the particular approach taken needs to be defended on a normative level. Such representations should be rooted in the desire to facilitate as broad a range of practical and political questions as possible.

The current projects need to be situated within a historical context that highlights commonality without implying legitimacy through a progressivist narrative. At the same time, the projects should be disaggregated on a purposive level so that the full range of purposes with which they have been associated are appreciated.⁹⁰ A narrow set of purposes, based on a misreading of the current projects, should not be used to stand for international territorial administration itself. When one such purpose — state-building — is focused on, it should not be conceptualized in terms of state ‘failure’; in particular, responsibility for state collapse needs to be considered in a complex manner, taking in both indigenous and transnational actors. Finally (and it is perhaps surprising that this needs to be said), granting international organizations administrative prerogatives over territory raises political, as well as practical, issues. The legitimacy of current, previous and future international territorial administration missions needs to be appraised on a normative as well as a technocratic basis.

⁹⁰ This is attempted in a monograph by the author, to be published by OUP in 2004. For a preliminary attempt, see Wilde, ‘From Danzig to East Timor’, *supra* note 1.