

UN support in the formation of new states: South Sudan, Kosovo and Timor-Leste

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Statebuilding refers to activities undertaken to help a society recovering from conflict to create new government institutions and strengthen existing ones. Statebuilding as a form of peacebuilding is a relatively novel concept in international approaches to conflicts. It was not until the mid 1990s that international organizations and Western governments adopted statebuilding as a remedy for 'fragile states'. The 1992 United Nations (UN) *Agenda for Peace* refers to peacebuilding as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict".¹ The document is ambiguous on whether these structures are state institutions. In contrast, its *Supplement*, prepared three years later, clearly emphasizes the intrinsic connection between peacebuilding and statebuilding. It states: "international intervention must extend beyond military and humanitarian tasks and must include the promotion of national reconciliation and the re-establishment of effective government".² By the turn of the century the idea of building peace through building institutions found its ideational underpinnings also in scholarly writings. For example, Francis Fukuyama's influential book on statebuilding criticized the international community for failing to make "headway in creating self-sustaining states in any of the countries it has set out to rebuild",³ and Roland Paris' core argument in his is that peacebuilders had not made sufficient efforts in building the basic institutional structures.⁴

In the majority of international statebuilding attempts, including those by the UN, assistance is intended to help states with fragile institutions establish their functionality and legitimacy after a conflict. In exceptional situations, a conflict results in the emergence of a new state. A statebuilding exercise in these cases raises an additional set of issues as states and their institutions do not have the same kind of a legacy. These new states were previously governed by another centre, from which they sought independence. Core issues about the nature of the emergent state—administrative divisions, type of a political system, electoral rules, and a broader legal framework—all have to be settled in a relatively short timeframe. The region that now forms a new state has as a rule been disenfranchised in the previous territorial arrangement. In consequence, there is often also a lack of individuals with sufficient expertise and experience to assume vital positions in a new state.

¹ United Nations, "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping, Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992, A/47/277 - S/24111, 17 June 1992, <http://www.un.org/Docs/SG/agpeace.html>," (1992), para. 21. paragraph 21

² ———, "Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, A/50/60-S/1995/1, 3 January 1995, <http://www.un.org/Docs/SG/agsupp.html>," (1995): para. 13. paragraph 13

³ Francis Fukuyama, *State-building: Governance and world order in the 21st century* (Ithaca: Cornell University Press, 2004), 103.

⁴ Roland Paris, *At war's end: Building peace after civil conflict* (Cambridge: Cambridge University Press, 2004). For similar arguments see also James D. Fearon and David D. Laitin, "Neotrusteeship and the problem of weak states," *International Security* 28, no. 4 (2004). Simon Chesterman, *You, the people: the United Nations, transitional administration, and state-building* (Oxford: Oxford University Press, 2005).

Since the end of the Cold War the collective international community has been more willing to assist in the growing pains of new states. On three such occasions—Kosovo, Timor-Leste, and South Sudan—such tasks were assigned to a UN peacekeeping operation, albeit with different levels of engagement. Questions about the appropriate role of international actors under such circumstances have been widely debated over the last two decades, with many prominent scholars finding neo-imperial tendencies of Western powers and international organizations in their patterns of supporting new states.⁵ As demonstrated in this chapter, UN support for new states also raises important dilemmas for UN peacekeeping principles, in particular regarding consent, impartiality, and the use of force in a new sovereign state. When the magnitude of decisions to be made are about the make-up of a sovereign state, international preferences and support for any option inevitably stretch doctrinal underpinnings of UN peacekeeping.

The three cases where UN peacekeepers have engaged in support of a new state are very different. In Kosovo the mission was asked to support a ‘state’ whose sovereignty remains contested, not just by a party to the conflict but also by two permanent members of the UN Security Council. In Timor-Leste, peacekeepers were tasked with building a state virtually from scratch, with no recognized ‘government’. In South Sudan, the UN mission was supporting the establishment of a state through a vast geographical area with almost no physical infrastructure. At the same time, South Sudan reverted into a civil war in which the government became a party to the conflict. Moreover, UN missions in Kosovo and Timor-Leste were established before the so-called Brahimi report clearly confirmed the peacekeeping principles; their experience fed greatly into the findings of the Brahimi panel. On the other hand, the South Sudan mission could build on more than a decade long experience of the UN as a statebuilder. And lastly, the support for the three new states varies. In two of the earlier cases the UN Security Council decided to establish transitional international administrations, thus assigning a range of sovereign powers to a UN peacekeeping mission. In South Sudan, peacekeepers are tasked to assist the state and simultaneously hold it accountable to international norms and standards, but do not hold legislative, executive, or judicial powers.

The three cases all raise questions about UN peacekeeping operations’ abilities to live up to their doctrinal principles. However, they point at a diverse range of challenges. In this chapter we thus first treat them separately, allowing for an examination of the specificities of these challenges. The three sections that follow examine each case study along three dimensions: first, overview of the state of affairs that the UN peacekeeping operation entered, both the international constellation and on the ground; second, the mandate of the UN mission, what is new and what challenges does the mandate raise for the peacekeeping doctrine; third, the implementation of the mandate, how the evolving situation on the ground and the missions’ approaches to their mandates challenge the doctrine. The concluding section reflects on the common

⁵ For a broader discussion see Richard D. Caplan, *International governance of war-torn territories: rule and reconstruction* (Oxford: Oxford University Press, 2005). Dominik Zaum, *The sovereignty paradox: The norms and politics of international statebuilding* (Oxford University Press Oxford, 2007). For critical views see David Chandler, *Empire in Denial: The Politics of State-building* (London: Pluto, 2006). Omar G. Encarnacion, "The Follies of Democratic Imperialism," *World Policy Journal* 22, no. 1 (2005); Mateja Peter, "Whither sovereignty? The limits of building states through international administrations," in *From mediation to nation-building: Third parties and the management of communal conflict*, ed. Joseph R. Rudolph and William J. Lahneman (Boulder, Colorado: Rowman and Littlefield (Lexington Books), 2013).

challenges to peacekeeping principles highlighted by the UN's support in the formation of new states.

Kosovo: the asterisk state

The Kosovo conflict was the last of a series of conflicts that led to the disintegration of the former Yugoslavia in the 1990s.⁶ It was and still remains legally and politically the most controversial one. While all other entities that emerged as new states held the status of a republic in the former Yugoslavia, Kosovo was, due to historical reasons, a province within the Republic of Serbia. However, Kosovo's population is, unlike Serbia's, largely Albanian (around 90% at the time of the conflict). Throughout the two decades preceding the 1998–99 war, Serbia's leadership escalated its marginalization and 'Serbianization' of the province, among others curtailing the official use of the Albanian language. Following a period of non-violent resistance by the Kosovar Albanians, the conflict escalated after the adoption of the Dayton Accords. In order to secure Belgrade's support for the peace agreement on Bosnia and Herzegovina, international sanctions against the Federal Republic of Yugoslavia were lifted without addressing the Kosovo problem. The international community initially criticized the armed uprising of the Albanian population, partly due to fears that the Kosovo conflict could spill over into the neighbouring Macedonia. However, after an increasingly violent response by the Yugoslav army, which resulted in hundreds of thousands of refugees leaving the contested province, Western governments started changing their sentiment. The humanitarian crisis and what was beginning to look like another ethnic cleansing attempt by the Serbian leadership required a response.

The UN Security Council passed a number of resolutions to address the Kosovar crisis as it was unfolding, but could not agree on the use of force mandate due to Russian and Chinese opposition. The two countries saw the intervention as interference into internal matters of a sovereign state and a potential threat to its territorial integrity. Bypassing the UN Security Council, the North Atlantic Treaty Organization (NATO) launched a campaign of air strikes justified as a humanitarian intervention.⁷ This action was decisive and led to the withdrawal of Serb troops from Kosovo. To address the immediate power and security vacuum (in particular, the revenge violence by Albanians against the minority Serb population of Kosovo), it was decided that a UN peacekeeping operation was to administer the territory, with NATO-led forces (KFOR) providing security. This division of labour meant that the

⁶ For background readings on Yugoslavian disintegration and Kosovo conflict see Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War* (London: Penguin Books, 1996). Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington: Brookings Institution Press, 1995). William G. O'Neill, *Kosovo: An unfinished peace* (London: Lynne Rienner, 2002). Marc Weller, *Contested statehood: Kosovo's struggle for independence* (Oxford: Oxford University Press, 2009).

⁷ Press statement Javier Solana, Secretary General of NATO, 23 March 1999, Press Release 1999(040). For more on humanitarian intervention see Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (Columbia University Press, 1996). Jeff L. Holzgrefe and Robert Owen Keohane, *Humanitarian intervention: ethical, legal and political dilemmas* (Cambridge University Press, 2003). Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge: Polity Press, 1996). Jennifer M. Welsh, ed. *Humanitarian intervention and international relations* (Oxford University Press, 2006). Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, 2000).

use of force dilemmas did not pertain directly to a UN peacekeeping operation itself, as the military component was outside of its control.

An initial doctrinal dilemma for UN peacekeeping arising out of the Kosovo case concerns how the UN mission came into being and under what conditions the parties had consented to the operation. A UN peacekeeping operation covering Kosovo had been discussed before the escalation of the crisis, with Yugoslav authorities rejecting the possibility. However, after losing control over the territory, Belgrade feared “NATO attempts to deploy its troops in Kosovo and Metohija by way of insisting on some political elements without a decision and a mandate from the Security Council”.⁸ NATO’s air intervention changed the situation on the ground, putting into question how the consent to the international presence was obtained. While Yugoslav authorities openly welcomed the establishment of the UN civil administration, this was militarily supported by NATO-led forces. These same forces were seen by Belgrade as having sided with Albanians during the conflict, making their impartiality suspect by one party from the beginning.

The powers of the UN Interim Administration of Kosovo (UNMIK) established in the Security Council resolution 1244 were unprecedented and virtually suspended Yugoslavia’s sovereignty over the territory.⁹ UNMIK’s regulation provided that “all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the SRSG [Special Representative of the Secretary General]”.¹⁰ While this was not the first time that the UN assumed some administrative functions inside a state,¹¹ Kosovo was fully entrusted to the administration of a UN peacekeeping operation. Timor-Leste, discussed below, followed a couple of months later. At the same time, the resolution that established UNMIK is riddled with ambiguities and contradictions. In order to secure the agreement of both conflicting parties and to obtain the support of Russia and China for the resolution, its text affirms the “territorial integrity of the Federal Republic of Yugoslavia”, and at the same time repeatedly calls for “the establishment of democratic self-governing institutions” and “substantial autonomy” for the province.¹² Because the UN placed Kosovo under international administration without a clear road map for its final status, the two parties to the conflict understood UNMIK’s mandate differently, leading to complications about its perceived impartiality from the beginning.

The Kosovo operation was the first time that UN peacekeepers had to deal with the dilemmas of establishing a state. UNMIK was asked to provide solutions for administrative questions, which while interpreted as technical decisions, are highly political and continually drew criticism about the mission’s impartiality. For example, while it is important for the functioning of any state to have a clear legal framework, the question of whether and to what extent law as enforced before the conflict is

⁸ Statement by the Federal Republic of Yugoslavia, UN Security Council debate, S/PV.4011, 10 June 1999.

⁹ UN Security Council resolution, S/RES/1244 (1999), 10 June 1999.

¹⁰ UNMIK Regulation No. 1999/1, 25 July 1999.

¹¹ There were a number of cases throughout the Cold War, where the UN exercised some transitional administrative functions. In the post-Cold War era the UN was partly administering Namibia, Cambodia, El Salvador and Eastern Slavonia in Croatia. For more on the history of UN administrations see Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford: Oxford University Press, 2008).

¹² UN Security Council resolution, S/RES/1244 (1999), 10 June 1999.

applicable, is laden with political struggles. In the Kosovo case, the decision to apply the Yugoslav legal system led to accusations of partiality of UNMIK and boycott of the judiciary by Kosovo Albanians. Similarly, the establishment of customs in Kosovo led to protests by Belgrade as they saw this as a sovereign right of a state.¹³ As Alexandros Yannis, a political advisor to the first SRSG in Kosovo summed up: "Any policy or decision by the international administration has been interpreted by Kosovo Albanians and Serbs as promoting either independence or the return to Serb rule, and contested or undermined by one side or the other".¹⁴ Maintaining impartiality when both sides see the conflict as a zero-sum game is virtually impossible.

At the same time, the interim administration and KFOR had immense problems assuming control over the northern municipalities, where the now minority Serb population is concentrated. Regardless of UNMIK's lack of position on the question of Kosovo's status, the Serbian minority saw the mission supporting Kosovar state-like institutions in Pristina and thus undermining their aspiration to integrate Kosovo within Serbia. Financed by Serbia, these municipalities maintained 'parallel institutions' to Kosovar ones, including law enforcement and judiciary.¹⁵ Through everyday protest the minority population was clearly manifesting the lack of consent to UNMIK authority. The fact that they received support from Belgrade indicates that while the Former Republic of Yugoslavia was *de jure* supporting UNMIK, *de facto* it was not. This situation got exacerbated after Kosovo declared its independence in 2008. In one instance, disregarding the fact that their territory was under the jurisdiction of UNMIK, in May 2008 northern municipalities elected their own authorities (parliament) in the municipal elections called by Serbia.¹⁶ These parallel structures have been largely dismantled and integrated into Kosovo's institutions following European Union (EU) facilitated 2013 agreement on the normalization of relations between Kosovo and Serbia.¹⁷

What further complicated the impartiality of the UN mission was the magnitude of the Kosovo statebuilding exercise. Given the scale of the task of administering a state and building new institutions, the UN was not able to take on these tasks by itself. UNMIK was thus composed of four pillars, with police and justice (Pillar I) and civil administration (Pillar II) initially UN-led, and democratization and institution building (Pillar III) led by the Organization for Security and Co-operation in Europe (OSCE), and reconstruction and economic development (Pillar IV) led by the EU. Over time, as the UN transferred many of its functions to the institutions of provisional self-government in Kosovo and the EU increased its footprint, the role of the UN in the UNMIK framework decreased. This created problems for the

¹³ For more examples see Alexandros Yannis, "Kosovo under international administration," *Survival* 43, no. 2 (2001).

¹⁴ *Ibid.*, 34.

¹⁵ For more on parallel institutions see Elena A Baylis, "Parallel Courts in Post-Conflict Kosovo," *Yale Journal of International Law* 32(2007)., International Crisis Group, "North Kosovo: Dual Sovereignty in Practice, Europe report No. 211, 14 March, <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/211-north-kosovo-dual-sovereignty-in-practice.aspx>," (2011). Sven Gunnar Simonsen, "Nationbuilding as peacebuilding: Racing to define the Kosovar," *International Peacekeeping* 11, no. 2 (2004).

¹⁶ Igor Jovanovic and Blerta Foniqi-Kabashi, "Kosovo Serbs convene parliament; Pristina, international authorities object," *Southeast European Times*, 30 June 2008.

¹⁷ EEAS, "Serbia and Kosovo reach landmark deal, 19 April, http://eeas.europa.eu/top_stories/2013/190413__eu-facilitated_dialogue_en.htm," (2013).

impartiality principle of a UN mission, as EU institutions have been seen by Serbia and Russia as supporting Kosovo's statehood. Such objections are raised despite the fact that several EU member states to this date do not recognize Kosovo as an independent state and that the EU in its own documents refers to Kosovo with an asterisk, denoting that all its actions are without prejudice to positions on status.

The situation reached its height around Kosovo's declaration of independence. In December 2007, a couple of months before Kosovo proclaimed independence, EU leaders decided to send an EU mission to Kosovo. The mission was to be responsible for rule of law issues, focusing on policing and judiciary problems of the province. This would mean that the EU would lead on the issue of Kosovo's future and effectively take over the remaining functions of the UN. However, Serbia strongly objected, seeing the proposed mission as an EU attempt to recognize Kosovo.¹⁸ Initially, Russia blocked the transfer of functions from the UN to the EU. However, after an agreement was signed between Serbia and the UN, the Security Council approved the addition of EULEX as an assistance mission subjected to UNMIK, rather than outright replacing it. EULEX is explicitly not allowed to address the Kosovo status question. However, in practice, the mission is tasked to strengthen state-like structures of Kosovo. *De jure* UNMIK remains in control over political decisions, *de facto* its role is marginal. While EULEX has around two thousand personnel, only a good hundred international civilian personnel remain under the direct control of the Special Representative of the Secretary General. The UN mission therefore does not have the capacity to guarantee that other institutions subject to its control in practice respect the UN peacekeeping principles. Its own impartiality thus only remains on paper.

Timor-Leste: how to build a state from scratch

Timor-Leste or East Timor is a former Portuguese colony that shares the island of Timor with a former Dutch colony.¹⁹ While the Dutch had transferred the western half of the island to an independent Indonesia in 1949, the Portuguese control over the eastern part continued for another quarter of a century. In 1975, Portugal hastily withdrew from the island and East Timor declared itself independent, a move that was not internationally recognized. Nine days later, East Timor was overrun and annexed by Indonesia, turning the eastern part of the island into Indonesia's 27th province. The majority of East Timorese resisted the annexation. However, the international community was reluctant to support calls for independence of East Timor, fearing alienation of Indonesia and Australia, both with a vested interest in the oil reserves in the Timor Sea.²⁰ An independence struggle was brutally suppressed by 1983. Around 200,000 people, out of a population of fewer than a million, died of violence, starvation, and disease.²¹ The region was isolated from the rest of the world, with the Indonesian government holding a tight grip over any key political and societal decisions and posts. Nevertheless, the independence movement remained strong in

¹⁸ Elitsa Vucheva, "EU Kosovo mission 'unacceptable' for Serbia," *EU Observer*, 17 December 2007.

¹⁹ For more on the history of Timor-Leste see Andrea Katalin Molnar, *Timor Leste : Politics, History, and Culture* /, Routledge Contemporary Southeast Asia Series ; (London ; New York : Routledge, 2010).

²⁰ G. J. Aditjondro, *Is Oil Thicker than Blood? : A Study of Oil Companies Interests and Western Complicity in Indonesia's Annexation of East Timor* (Commack, N.Y. : Nova Science Publishers, 1998).

²¹ James Traub, "Inventing East Timor," *Foreign Affairs* 79, no. 4 (2000).

and outside of the country. Following the collapse of a three-decade long presidency of Suharto, the new president Habibie was more amenable to calls for greater autonomy of Timor-Leste. In early 1999, he agreed to let the Eastern Timorese hold a referendum on autonomy or independence.

In the run up to the popular vote, as pro-independence forces were gaining salience, anti-independence militias supported by Jakarta havocked the region. With violence escalating, the UN Secretary-General Annan requested from Indonesia to permit UN forces to provide security during the popular ballot.²² The UN did not want to deploy a peacekeeping mission without the consent of the state. Indonesia denied the request. Instead, Indonesian police oversaw the ballot, with unarmed UN civilian police officers acting as their advisers.²³ The UN Mission in East Timor (UNAMET) administered the vote,²⁴ which had to be postponed twice due to violence. After voters overwhelmingly rejected a continuing relationship with Indonesia, the anti-independence militias struck in full intensity, looting and burning houses and public buildings, forcing almost the entire population to flee to the mountains or across the border to West Timor. Outraged by the violence and on request of traditional leadership of Timor-Leste, Australia and Portugal pushed for a UN Security Council response. Indonesia initially rejected a military mission, denying the scale of violence. Its consent to an international presence was in the end obtained through threats that its loan requests from the World Bank and the International Monetary Fund (IMF) would be denied. In September 1999, the Security Council authorized an Australian-led multinational military force (INTERFET) to restore peace and security in East Timor and oversee humanitarian assistance.²⁵ A month later it authorized a UN peacekeeping operation—the United Nations Transitional Administration in East Timor (UNTAET)—to provide an interim civil administration over the territory.²⁶

UNTAET's mandate on paper in many ways resembled the one of the operation in Kosovo: the Security Council gave the UN peacekeeping operation complete control over the territory.²⁷ However, there are at least four differences that substantially impacted how UNTAET was able to adhere to UN peacekeeping principles. First, unlike UNMIK in Kosovo, UNTAET operated with a clear parameter that it was preparing Timor-Leste for independence. This on the one hand eased the strategic orientation of the mission, but at the same time gave it a short time-scale for completion of its tasks. Second, unlike in Kosovo, where northern provinces objected to UNMIK's control, Timor-Leste has a fairly homogenous population, which overall supported the presence of UNTAET and its goals. Most of anti-independence forces left Timor-Leste after the arrival of the international presence. Third, in stark contrast to UNMIK, the entire operation in East Timor was run by the UN, with heads of the

²² For more on Timor-Leste self-determination process and UN's role in it see the account of the head of UNAMET Ian Martin, *Self-determination in East Timor: The United Nations, the ballot, and international intervention* (New York: International Peace Academy occasional paper series, 2001).

²³ UN Security Council resolution, S/RES/1236 (1999), 7 May 1999.

²⁴ UN Security Council resolution, S/RES/1246 (1999), 11 June 1999.

²⁵ UN Security Council resolution, S/RES/1264 (1999), 15 September 1999.

²⁶ UN Security Council resolution, S/RES/1272 (1999), 25 October 1999.

²⁷ There is a dearth of literature on UNTAET's role in Timor-Leste. See for example Jarat Chopra, "The UN's kingdom of East Timor," *Survival* 42, no. 3 (2000). Paulo Gorjao, "The Legacy and Lessons of the United Nations Transitional Administration in East Timor," *Contemporary Southeast Asia* 24, no. 2 (2002). Michael Geoffrey Smith and Moreen Dee, *Peacekeeping in East Timor: the path to independence* (New York: International Peace Academy occasional paper series, 2003). Astri Suhrke, "Peacekeepers as Nation-builders: Dilemmas of the UN in East Timor," *International Peacekeeping* 8, no. 4 (2001).

various pillars not representatives of other international organizations, but rather UN personnel. The UN mission in Timor-Leste was also in charge of the military component. This created a more conducive situation for the whole mission to be able to adhere to UN peacekeeping principles. Fourth, unlike Kosovo that has a relatively highly educated population and whose post-conflict institutions had a legacy in the former Yugoslavia, East Timor had no functioning institutions and very few trained personnel—the top ranks of the previous administration were almost entirely drawn from the Indonesian civil service that returned to Indonesia after the referendum.²⁸ UNTAET was thus building a state from scratch.

UNTAET was initially organized into three pillars.²⁹ The first and the largest was the military pillar in charge of security. The UN blue helmets took over from INTERFET in February 2000, with some 70 per cent of troops re-hatting into UNTAET. UN peacekeepers inherited a territory where security was largely restored. After re-hatting Australia remained the largest troop contributor. Australia's willingness to use force under INTERFET meant that the continued presence of its peacekeepers was enough of a deterrent to prevent major outbreaks of violence. In addition, by the time UNTAET took over, relations between East Timor and Indonesia had improved exponentially due to changes in the Indonesian regime. James Sloan argues that these factors explain why security breaches in East Timor were minimal and why despite having a robust mandate, UNTAET did not have to resort to the use of force.³⁰ The second pillar was in charge of humanitarian assistance and emergency rehabilitation. The work of these two pillars resembles traditional peacekeeping tasks.

The third, and the most novel part of the peacekeeping operation, was known as Governance and Public Administration (GPA). This pillar was responsible for “re-establishing governance at the central and district levels, for regenerating public and social utilities, for establishing the rule of law, and for encouraging and regulating investment in the private sector”.³¹ This was an enormous task for an operation headed by the Department for Peacekeeping Operations (DPKO), which possessed little governance expertise or local knowledge. Questions over which personnel to train, which legal provisions to adopt, when to schedule elections, how to engage the private sector are all highly political questions, making it difficult for a mission to remain impartial. The GPA approach was seen as Dili-centric. Because of low levels of education and development, UNTAET often assumed it was entering *terra nullius*. Many analyses point in particular to the problems that UNTAET experienced with ‘inventing’ justice and rule of law components.³² Due to the short-term timeline and technocratic practices, the mission relied on western models for rule of law, “failed to appreciate the resilience of local structures, and therefore did not reconcile the two

²⁸ IISS, "East Timor's transition to independence: Starting from scratch " *IISS Strategic Comments* 7, no. 8 (2001).

²⁹ UN Security Council resolution, S/RES/1272 (1999), 25 October 1999.

³⁰ James Sloan, *The Militarisation of Peacekeeping in the Twenty-First Century* (Bloomsbury Publishing, 2011).

³¹ Smith and Dee, *Peacekeeping in East Timor: the path to independence*: 63.

³² See for instance Tanja Hohe, "The Clash of Paradigms: International Administration and Local Political Legitimacy in East Timor," *Contemporary Southeast Asia* 24, no. 3 (2002); ———, "Justice without judiciary in East Timor," *Conflict, Security & Development* 3, no. 3 (2003). Traub, "Inventing East Timor."; Joanne Wallis, "A liberal-local hybrid peace project in action? The increasing engagement between the local and liberal in Timor-Leste," *Review of International Studies* 38, no. 4 (2012).

contrasting systems of justice”.³³ It was not seeking consultation or consent from the Timorese, which in the end resulted in two parallel legal systems on the island and little sustainability of the western model in practice.³⁴

One of the biggest challenges for peacekeeping principles stemmed from the concern of the mission to be perceived as impartial. Its ambition to uphold this peacekeeping principle led it to problematically sideline another: the question of consent. The Timorese had no formal standing in the planning process of UNTAET mission, and very little in its implementation. Astri Suhrke writes that some earlier plans prepared by the UN Department of Political Affairs (DPA) envisaged a dual-structure, where “the Timorese would have political power while the UN would assume legal authority and serve in an advisory role”.³⁵ However, in the final proposal forwarded to the Security Council both the dual structure and the timetable for elections disappeared. In fact, while the resolution establishing UNTAET mentions the importance of consulting and cooperating with East Timorese people, this is not only completely left to UNTAET’s discretion, but is also addressed after the importance of UNTAET’s cooperation with Indonesia and Portugal.³⁶ In practice, the question of Timorese participation in governance was further complicated by the question of whether to recognize the National Congress for Timorese Reconstruction (CNRT)—the faction that led Timor-Leste to its independence—as the Timorese government. Suhrke writes that at the time it was argued that “[e]arly recognition would amount to political favouritism and could encourage corruption”³⁷ The quest for neutrality and impartiality meant that little Timorese participation and consent to UNTAET’s policies was actively encouraged in the first phase. With the first parliamentary elections organized only in August 2001, the peacekeeping mission was operating without a recognized local counterpart for almost two years.

South Sudan: from euphoria to estrangement

South Sudan achieved its independence from Sudan on 9 July 2011, the outcome of a process that started with the signing of the Comprehensive Peace Agreement (CPA) in 2005 between the Sudan’s People Liberation Movement/Army (SPLM/A) and the Government of Sudan. The CPA was sponsored by the Intergovernmental Authority on Development (IGAD) composed of East African countries, and a consortium of donor countries, particularly the USA, UK, and Norway. It provided for a referendum on southern self-determination, which was held in January 2011 with the support of the United Nations Mission in Sudan (UNMIS). On the first day of the new nation, UNMIS was succeeded by the United Nations Mission in South Sudan (UNMISS), shifting from a Chapter VI to Chapter VII mandate and concentrating entirely on internal issues, simultaneously tasked with supporting the host government and holding it accountable.

The independence of South Sudan gave way to a wave of euphoria, hope and optimism, both internally and internationally, but this was to be short-lived. Overcoming the longest civil war in Africa—which lasted from 1956, when the

³³ Hohe, "Justice without judiciary in East Timor," 335.

³⁴ For more on Timor-Leste post-independence see Damien Kingsbury and Michael Leach, *East Timor: beyond independence* (Melbourne: Monash University Press, 2007).

³⁵ Suhrke, "Peacekeepers as Nation-builders: Dilemmas of the UN in East Timor," 9.

³⁶ UN Security Council resolution, S/RES/1272 (1999), 25 October 1999, para 7 and 8.

³⁷ Suhrke, "Peacekeepers as Nation-builders: Dilemmas of the UN in East Timor," 11.

British left Sudan, until 2005, with a short break between 1972 and 1983—would be no easy feat. The long conflict had claimed at least two million lives, caused the displacement of more than four million people, and destroyed what little infrastructure existed.³⁸ The provision of essential services such as education, health and water remain very limited and most service delivery was and continues to be carried out by NGOs.³⁹ Most of the country remains isolated with few or no roads, particularly during the long rainy season, and many areas are only accessible by air.

The civil war had been fought between the North and the South, but it had also led to serious internal clashes between different factions in the SPLM/A. Critically, after the 1991 SPLM/A split, more Southerners died at the hands of other Southerners than from clashes with the North.⁴⁰ The first two and a half years of independence were tarnished with numerous localized conflicts exploiting ethnic divides for political objectives. By December 2013 the new nation fell into a war between the government's SPLA led by president Salva Kiir, an ethnic Dinka, and the SPLA in Opposition (SPLA-IO), led by former vice-president Riek Machar, an ethnic Nuer, yet again tangling political tensions and ambitions with tribal identities and grievances.⁴¹ The conflict quickly spread from the capital Juba to several other states. Within weeks, thousands of people were killed or wounded in the violence, and hundreds of thousands displaced from their homes. A Cessation of Hostilities Agreement was signed in January 2014 and a recommitment to the peace process in May, but fighting continued. At the time of writing, 1.4 million people were internally displaced, over 100,000 of these seeking protection inside overstretched UNMISS camps, over 460,800 people had fled to neighbouring countries, and some 3.9 million people were at serious risk of food insecurity.⁴²

UNMISS was initially mandated to support the Government of the Republic of South Sudan (GoRSS) to establish the institutions necessary to govern a new country in a complex and fragile regional and internal environment, and to protect civilians at risk of becoming victims of violence. It also had a mandate to promote socio-economic development, peacebuilding, and recovery efforts.⁴³ The UNMISS mandate was innovative in the emphasis it placed on the protection of civilians and on its support to peacebuilding, as well as in its attempt to decentralize and operate widely across

³⁸ For a history of the conflict in South Sudan see Douglas H. Johnson, *The Root Causes of Sudan's Civil Wars: Peace or Truce*, Revised Edition, African Issues (Oxford: Kampala: Bloomington: International African Institute in association with James Currey; Fountain Publishers; Indiana University Press, 2011).

³⁹ Jonathan C Agensky, 2013 "Dr Livingstone, I Presume? Evangelicals, Africa and Faith-Based Humanitarianism," *Global Society* 27, no. 4.

⁴⁰ Sharon E. Hutchinson, "A Curse from God? Religious and Political Dimensions of the Post-1991 Rise of Ethnic Violence in South Sudan," *Journal of Modern African Studies* 39, no. 2 (2001): 307–31.

⁴¹ International Crisis Group, *South Sudan: A Civil War by Any Other Name*, Africa Report (Washington/Brussels/New York: International Crisis Group, April 10, 2014), <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/south-sudan/217-south-sudan-a-civil-war-by-any-other-name.aspx>.

⁴² UN Office for the Coordination of Humanitarian Assistance, *South Sudan Crisis Situation Report No. 56 (as of 2 October 2014)*, Text (South Sudan, October 4, 2014), <http://reliefweb.int/report/south-sudan/south-sudan-crisis-situation-report-no-56-2-october-2014>.

⁴³ *Special report of the Secretary-General on the Sudan* (S/2011/314, 17 May 2011). For a more extensive analysis of UNMISS see also Diana Felix da Costa and Cedric de Coning, "United Nations Mission in the Republic of South Sudan (UNMISS)," in *The Oxford Handbook of U.N. Peacekeeping Operations*, ed. Joachim Koops et al., Oxford Handbooks (Oxford: Oxford University Press, forthcoming).

South Sudan's rural areas through County Support Bases.⁴⁴ But reconciling UNMISS' support to the host government with protection of civilians and peacebuilding, in the context of the highly divided socio-political space of South Sudan, proved extremely difficult. Tensions soon emerged between the various aspects of the mandate, leading to questions about the traditional notions of consent and impartiality.

Since UNMISS' start, protecting civilians from violence was a central part of its mandate and had a twofold purpose: to provide advice and assist the GoRSS to fulfil its responsibility, but also to "act independently and impartially to protect civilians when the GoRSS is not providing security".⁴⁵ A few months into its mandate, it became apparent that these two aspects were not compatible and UNMISS struggled to strike a balance between supporting the host government, and protecting civilians, by holding the government accountable. The close relationship between UNMISS and the GoRSS effectively meant that government failures were also perceived as UNMISS failures, tainting the mission's legitimacy and credibility, both in the eyes of South Sudanese and of other international organizations operating in the country.

UNMISS faced intense pressure over the internal political struggles within the GoRSS and the SPLM. The UN mission's approach to asserting its impartiality was oftentimes perceived as a refusal to act. The most serious incidents followed President Salva Kiir's decision on 23 July 2013 to dismiss his entire Cabinet, including the Vice-President Riek Machar. International actors, including UNMISS, underestimated the significance of these developments. The tension between the mandate of UNMISS to support the GoRSS to establish the institutions necessary to run a state, and its mandate to hold the GoRSS accountable to international norms and standards became evident. Notably, in the context of the alleged abuses of human rights by the SPLA during the forcible disarmament of civilians and during the violence that began in December 2013. Referring to UNMISS's support to the SPLA during the disarmament campaign in Jonglei in 2012, Amnesty International pointed out that "UNMISS continues to provide support to the government's sensitization campaign including by providing transport to government officials to areas where forced disarmament has been carried out."⁴⁶ Although UNMISS contends that it only provided logistical support to the GoRSS sensitization campaign on civilian disarmament in March 2012, it is indicative of the wider perception held by the population and many NGOs operating in the country.

Since the 15 December 2013 crisis, UNMISS' mandate, and success, became more closely connected with protecting civilians from violence, particularly those who fled in large numbers to UNMISS compounds when the fighting started. With over 100,000 people seeking refuge at UN compounds across the country, by May 2014 UN Resolution 2155 had placed protecting civilians as the priority in UNMISS' mandate.⁴⁷ While the loss of life averted through these safe havens has been significant, the interpretation of the protection of civilians mandate was reactive not proactive. In this respect, there were calls for UNMISS to patrol "areas surrounding bases" and "other areas where civilians are present and may be under threat" as well

⁴⁴ Diana Felix da Costa and Cedric de Coning, *UNMISS County Support Bases: Peace-keeping–Peacebuilding Nexus at Work?*, Policy Brief (Oslo: Norwegian Institute of International Affairs, 2013).

⁴⁵ *UNMISS Protection of Civilians Strategy* (UNMISS: Final Draft Approved by SRSG, 4 June 2012), 1.

⁴⁶ Amnesty International, *South Sudan: Lethal Disarmament – abuses related to civilian disarmament in Pibor County, Jonglei State* (London: Amnesty International, 2012), p. 17.

⁴⁷ UN Security Council resolution, S/RES/2155 (2014), 27 May 2014.

as plan “for extending protection to civilians taking shelter to areas beyond UNMISS bases, such as churches and other community focal points”.⁴⁸

Although there have been a large number of humanitarian organizations operating from within UN bases and working side by side with UN peacekeepers, it was hoped that the Protection of Civilians (PoC) sites would be temporary and hence, with very limited humanitarian services. According to Damian Lilly, a former senior advisor on protection of civilians at UNMISS, “there was concern that the PoC sites could act as a magnet for some of the 800,000 IDPs in other parts of the country.”⁴⁹ Lilly suggests that the term ‘PoC Site’ should theoretically “only provide refuge for civilians ‘under threat of physical violence’, rather than the broader definition of IDPs who are forced from their homes due to conflict. In reality, though, there was little difference between the status of IDPs sheltered at UNMISS bases and those in other settlements elsewhere.”⁵⁰

Paradoxically, the December 2013 crisis represented both the biggest challenge UNMISS faced and an opportunity to change its public image and to revise the way it manages its relationship with the GoRSS. For the first time, UNMISS privileged protecting civilians at risk of violence—whether targeted by the SPLA or the SPLA-IO—over its relationship with the host government. This led to accusations from both sides that UNMISS was supporting ‘the other side’. However, given the challenges UNMISS faced in providing adequate physical security to civilians and the fact that humanitarian conditions in the PoC sites remained extremely poor, the population did not feel UNMISS was doing enough. Crucially, it also led to questions of consent from the GoRSS, which started questioning the need for UNMISS in the country. While formally the government continued to give its consent to UNMISS’ presence, in reality UNMISS faced increased restrictions in movement and access, including open hostility to its civilian staff, making operations extremely difficult.

Estrangement between South Sudanese, both population and the government, and UNMISS continued to intensify. In March 2014 an UNMISS convoy mistakenly carrying weapons from Juba destined for Ghanaian peacekeepers in Unity State (a rebel disputed area) was seized in Rumbek.⁵¹ UNMISS reacted immediately explaining that “[s]everal containers were wrongly labelled and inadvertently contained weapons and ammunition. This is regrettable.”⁵² However, the damage had been done and reinforced perceptions of UNMISS’ support to the opposition and its lack of legitimacy in the eyes of the population. Having originally arrived at a time of peace and mandated to support the new state, UNMISS found itself estranged from the host government, in the midst of active fighting and limited consent. In turn, the

⁴⁸ See for example Louise Arbour, “Open Letter to the UN Secretary-General - International Crisis Group,” Open Letter, (December 24, 2013), <http://www.crisisgroup.org/en/publication-type/media-releases/2013/africa/south-sudan-open-letter-to-the-un-secretary-general.aspx>.

⁴⁹ Damian Lilly, “Protection of Civilians Sites a New Type of Displacement Settlement?,” *Humanitarian Exchange Magazine - Humanitarian Practice Network*, September 2014, <http://www.odihpn.org/humanitarian-exchange-magazine/issue-62/protection-of-civilians-sites-a-new-type-of-displacement-settlement>.

⁵⁰ Ibid.

⁵¹ South Sudan Tribune, “UNMISS Cargo of Arms Destined for Dr. Riek Rebels Seized by Security Forces in Rumbek,” March 7, 2014, <http://southsudantribune.org/states-news/128-unmiss-cargo-of-arms-destined-for-dr-riek-rebels-seized-by-security-forces-in-rumbek>.

⁵² UNMISS, “The UN will investigate error in transport of weapons for new contingent”, 6 March 2014; <http://reliefweb.int/report/south-sudan/un-will-investigate-error-transport-weapons-new-contingent>

opposition saw UNMISS as remaining too close to the government. In August 2014, a second UN helicopter was shot down in Unity State by the SPLA-IO.⁵³ The SPLA-IO commander in Unity State had previously accused UNMISS that its aircrafts were being used to transport SPLA troops and had threatened to shoot down the Mission's aircraft.⁵⁴ Although UNMISS has since its inception had a Chapter VII mandate, allowing it to take 'all necessary actions' to protect civilians its own personnel and humanitarian workers, including with the use of force, it was for the most part reluctant to do so.⁵⁵ In cases where civilians were under direct threat of violence, such as in Pibor county, UNMISS was not willing to use military force to protect people.⁵⁶

Since the December 2013 national conflict, UNMISS had become more proactive in resorting to force to protect civilians and its own staff. One instance where it did use force was in April 2014 when Dinka armed youths stormed into and attacked the PoC Site inside the UNMISS base in Bor that was hosting over 5000 mostly Nuer civilians.⁵⁷ UN peacekeepers responded with a Quick Reaction Force (QRF) that reached the PoC site approximately thirty minutes into the shooting. According to the UNMISS Human Rights Division: "[o]nce inside the PoC site, the QRF opened fire on the attackers, with rifles, machine guns, and rounds from an armoured personnel carrier (APC)" and that "10 to 15 minutes after the QRF's arrival, the attack subsided".⁵⁸ The attack in the PoC Site left fifty-three people dead and over one hundred wounded.⁵⁹

In light of the on-going conflict between the SPLA and SPLA-IO characterized by serious human rights abuses committed by both parties, UNMISS is between a rock and a hard place, reluctantly hosting thousands of IDPs in its bases under appalling conditions while facing threatening language and actions by the host state, as well as the opposition warring party. Yet, one thing that has become evident is that protecting civilians at risk of extreme violence is not a secondary feature in peacekeeping operations, and that at times the use of force may have to be employed for these purposes. Importantly, it has also become very clear that it may not always be compatible for a peacekeeping mission to support a host government in institution-building and extension of state authority, while simultaneously being tasked to hold it accountable in cases of human rights abuses and violence against its citizens.

IGAD-led Monitoring and Verification Teams (MVTs) began their monitoring operations over violations of the Cessation of Hostilities Agreement signed by the SPLA and SPLA-IO in early 2014. Comprised of representatives of the parties to the conflict, IGAD member states and the African Union, and reporting to the IGAD Special Envoys leading the South Sudan mediation process, the MVTs were

⁵³ A UN helicopter was first shot down in Jonglei by the SPLA in December 2012. See BBC, "South Sudan army 'shoots down UN helicopter'", 21 December 2012; <http://www.bbc.co.uk/news/world-africa-20819468>

⁵⁴ UN News Centre, "South Sudan: Preliminary UN probe shows helicopter was shot down", 9 September 2014; <http://www.un.org/apps/news/story.asp?NewsID=48674#.VLjsx8bA7R0>

⁵⁵ Jort Hemmer, "We Are Laying the Groundwork for Our Own Failure" - *The UN Mission in South Sudan and Its Civilian Protection Strategy: An Early Assessment*, Policy Brief (Clingendael Institute Clingendael Conflict Research Unit (CRU) and NOREF, January 2013), 4.

⁵⁶ Human Rights Watch Human Rights Watch, "They Are Killing Us" *Abuses Against Civilians in South Sudan's Pibor County* (HRW, September 2013).

⁵⁷ Human Rights Division UNMISS, *Attacks on Civilians in Bentiu & Bor April 2014*, Human Rights Division (United Nations Mission in South Sudan, January 9, 2015).

⁵⁸ *Ibid.*, 21–22.

⁵⁹ UNMISS, *Attacks on Civilians in Bentiu & Bor April 2014*.

logistically supported by UNMISS. The teams were essentially monitoring a ceasefire that did not exist, and by August they had produced a report listing violations by both parties,⁶⁰ leading to further accusations of support by both sides. Any attempt to hold one party accountable has been seen as supporting the other conflict party, again demonstrating UNMISS' continuous challenges in being perceived as impartial.

Concluding remarks

The three case studies of UN peacekeeping interventions in new states have a number of commonalities in how they have challenged existing peacekeeping doctrinal principles, particularly those of consent and impartiality, but also of non-use of force and legitimacy, credibility, and ownership.

One major doctrinal dilemma for UN peacekeeping arising out of the three country cases concerns how a UN mission comes into being, the conditions under which it is accepted and how the parties consent to its continued operation. Supporting a new state is an inherently political task. It is thus not surprising that in all three cases, as the conditions and the political environment changed and the mandates shifted, questions about the host governments' consent to the peacekeeping mission emerged. *De jure* states consent to the UN missions, partly due to international pressure. However, *de facto*, host states often deliberately establish challenging, near-impossible working environments through administrative and operational restrictions by, for example, impeding movement and access. This has been most clearly seen in the northern provinces of Kosovo and in the case of South Sudan.

Under these circumstances, consent came to be understood by new states as conditional to the peacekeeping missions' support and allegiance to the political goals of either the host government or other key parties. In the inevitably fragile and divisive context of state formation where there are a number of actors and factions, and where there may be other contradictory aspects to the peacekeeping mandate (such as protecting civilians from violence, including from the state, or ensuring the territorial integrity of the administered territory), this is not straightforward and affects the on-going consent to the mission. In order for their presence not to be challenged, peacekeeping missions would not only have to be impartial, but also neutral, something that is virtually impossible in the circumstances under which they are operating and with the mandates that they are pursuing.

In fact, in light of the vast and often contradicting mandates given to UN missions in new states, it becomes problematic to even claim impartiality while simultaneously offering direct support to a host government. In Kosovo, the two parties to the conflict understood UNMIK's mandate differently with each side interpreting the transitional administration's actions as promoting the others' perspective. Experience in South Sudan demonstrated that protecting civilians from actions of the host government which the mission was expected to support, was not feasible for UNMISS's work. In both contexts, any attempt to hold one party accountable was seen as promoting the opposition's interests. Having said that, going in the opposite direction does not resolve doctrinal dilemmas for UN peacekeepers either. In Timor-Leste, UNTAET

⁶⁰IGAD - Office of the IGAD Special Envoys for South Sudan, "Summary of Reports of Cessation of Hostilities (COHs) Violations (as at 21August 2014)" (IGAD, August 21, 2014), http://igad.int/index.php?option=com_content&view=article&id=944:igad-mvm-reports-on-violations-of-the-coh-agreement-as-of-21-august&catid=1:latest-news&Itemid=150.

assumed full sovereign powers with very little real Timorese participation to avoid any accusations of favouritism and partiality. The mission thus ran into a problem of designing a state with little buy-in from local actors. To achieve impartiality, consent cannot be compromised either. These issues of impartiality are compounded by the fact that due to the extent of the mandates, in all three cases the UN was working side-by-side with other international actors, particularly regional bodies, which had their own views and biases.

UN missions have traditionally been extremely hesitant to use force, even when they have the mandate to do so.⁶¹ All three cases discussed had a Chapter VII mandate. In the case of Kosovo and Timor-Leste, security was largely restored by the time UNMIK and UNTAET arrived. In South Sudan, despite early optimism around independence, violence re-emerged, leading to repeated calls for greater proactiveness of UNMISS in protecting civilians, including by using force. After the attack in the PoC site at UNMISS in Bor, Toby Lanzer, UNMISS's Deputy Special Representative of the Secretary General, stated that UNMISS would "do everything necessary to protect the lives of people in our protection, including the use of lethal force".⁶² The disposition of UN peacekeepers to use force as per their mandates, is contingent on having troops that are appropriately equipped and supported. As mandates become more driven towards protecting civilians, troops also have to become more willing to use force.

To add to the doctrinal dilemmas, all three peacekeeping missions discussed above were instructed to engage in supporting the host government with administrative and governance issues as if these were technical exercises. Such approach overlooks that statebuilding is a highly political process that requires negotiations and compromise of a wide array of actors. The emphasis on technocratic statebuilding detached the UN missions from the everyday experiences of citizens of these newly formed countries. It limited UN engagement to focus only on formal government at the expense of informal structures of authority. This severely affected the UN's legitimacy and credibility in the eyes of the population. Furthermore, in particular Timor-Leste and South Sudan were assumed to be blank slates, with no political histories or local contexts to draw on, either because of presumed low human resources or simply lack of knowledge of these areas. The lack of attention to nation-building and reconciliation partly explains the relapse into conflict in Timor-Leste in 2006 and the on-going crisis in South Sudan.

Finally, UNMISS' recent reprioritisation of its mandate with protection of civilians taking precedence above all else, including its support to the host government, has shown that successfully negotiating relations with a myriad of actors in the context of a new state is extremely challenging and may be too much to ask. Impartiality may in the end mean taking the side of civilians, whatever side they may be from. This certainly carries consequences as to how host government consent has traditionally been understood. Some of the existing doctrinal principles are not compatible with the expanding mandates of UN peacekeeping operations and how they are implemented on the ground. By putting forward all-encompassing peacekeeping mandates and asking these missions to uphold peacekeeping principles, the Security Council may be

⁶¹ Simon Chesterman, *The Use of Force in UN Peace Operations*, External Study (New York: UN Department of Peacekeeping Operations / New York University School of Law, August 2004).

⁶² Al Jazeera, "Attack on S Sudan UN base may be 'war crime'", 19 April 2014, <http://www.aljazeera.com/news/africa/2014/04/attack-s-sudan-un-base-may-be-war-crime-20144195198569537.html>

charging UN missions with an impossible task of trying to fulfil their mandate by continuously compromising on that same mandate.