

**Military Conflict and its consequences:
Lessons of Kosovo, Afghanistan and Iraq for international community**

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Introduction.

It is a great honor for me to address such a distinguished gathering on a topic, which has growing importance for world politics since the very moment of creation of the United Nations and NATO, but especially since the end of the Cold War. It is at that moment 15 years ago the issue of peace creation and post-conflict reconstruction of countries, suffered from internal conflicts, was put into agenda of international community.

In the aftermath of military conflicts can be good occasion for transforming politics and society in some regions or in the world in general. In post-World War II Europe the formula of developing democracy was based on massive U.S. financial assistance and search for common political identity by Europeans. A decade of civil conflicts and humanitarian catastrophes in the Balkans, Middle East and Africa now leaves an equally challenging task of social reconstruction. The United Nations Agenda for Peace of 1992 propose "peace building" as a way of preventing the resumption of civil conflicts¹ but didn't suggested appropriate medicine for doing so. There is an understanding that something new should replace dogmas of power politics and classical realism, but it is difficult to find out this new magic formulas of peace and stability.

In recent years, the United Nations has been entrusted with providing assistance to the legal and judicial systems of several countries in post-conflict situations, including, most recently, Cambodia, Haiti, Kosovo, East Timor, and Bosnia-Herzegovina. The experience of international community in fulfilling mission of reconstruction of post-conflict countries is growing, as well as attempts to develop theory for explanation of mission and goals of reconstruction missions.

The key question of postconflict societies remains mostly political: how to construct a stable form of domestic power sharing and governance. The countries, suffered during last 10-1 years from internal conflicts, differ in a great scale. Some seem poorly endowed to make democracy work. Many are economically underdeveloped, linguistically, religiously, and ethnically divided; lacking in natural resources; and often deficient in economic, human, and social capital.²

In recent civil conflicts we can not find any internal equivalent to the hegemonic stability and bloc-security commitments that allowed Asian and European states to contain their traditional rivalries during the Cold War. Even with the new and expanded power of the Security Council under Chapter VII of the

¹ An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping (Report of the Secretary-General pursuant to the statement adopted by the summit of the Security Council on January 31, 1992).

² Samuel H. Barnes. The Contribution of Democracy to Rebuilding Postconflict Societies. In: The American Journal of International Law. Vol. 95, P. 86.

UN Charter permitting international interventions in internal conflicts, the resources and energies of effective international actors are still limited.

We are now witnessing debates about relationship between existing importance of sovereignty and growing role of supranational values. The resolution of this debate is likely to shape future role of the United Nations, as well as influence the attitude of the most powerful sovereign states as to the relationship between international law generally and the use of force as an instrument of foreign policy, in particular. The present context of the debate regarding the interplay between sovereign discretion of matters of force and UN authority was framed in the late 1990s around the topic of humanitarian intervention, especially in relation to the Kosovo War. The Independent International Commission on Kosovo concluded in 2002 that the intervention in Kosovo was "illegal, but legitimate".³ The legality/legitimacy gap, however, was recognized to be unacceptable, eroding the authority of international law over time, and the International Commission recommended strongly that it be closed at the earliest possible time by UN initiative.

In recent years, multilateral or humanitarian occupation, particularly that aimed at enforcing international human rights law, and atrocity law, has become the more relevant factor in occupation practice. Occupation law was never designed for such transforming exercises. While the humanitarian condition of the occupied society is a paramount concern of the Hague Regulations of 1907, the Fourth Geneva Convention, and Geneva Protocol I, a society in political, judicial, and economic collapse or a society that has overthrown a repressive leader and seeks radical transformation requires far more latitude for transformational development than would be anticipated under these instruments. The society may require revolutionary changes in its economy, rigorous implementation of international human rights standards, a new constitution and judiciary, and a new political structure, most likely consistent with principles of democracy. There is a good reason, therefore, to retain occupational law in order to discipline aggressor armies and hold them accountable for their actions on foreign territory. But liberalizing armies that operate with international authority, advance democracy, and save civilian populations from atrocities should be regulated by a new legal regime. It can be created under the UN Charter. Doing so puts those forces, their commanders, and the states deploying them at far less risk of legal liability than has been the case with respect to Kosovo, Afghanistan and especially, Iraq.

On crisis of international law after Kosovo.

³ Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* 185-98 (2002).

The damage to the international legal system from Kosovo War and War in Iraq is all too visible even after 5 years of the Kosovo War began. It is a time for skepticism – the moment is approaching when the UN Charter risks being reduced to “a scrap of paper”⁴ and the collective security system faces collapse. Many scholars, and not just in Russian Federation, consider this perspective as real threat to future of international community. It is time to pose questions, which go to the very existence of the UN Charter system – questions about the normativity of the Charter, the role and functions of the Security Council, the relationship between collective security and self-defense, and the development of the international legal system itself.

Ideologically, the UN Security Council’s loss of authority can be ascribed to the traditional weaknesses of the collective security system; namely, the lack of representativeness of the Council and the veto power of the five permanent members, whose consent was considered necessary in 1945 to ensure the operation of checks and balances between the world’s power blocks.

The challenges to the Council’s authority are founded on idealistic theories about majoritarian decision-making power and the democratization of international law. Proponents of the “democratic school” argue that decisions taken by regional organizations, such as by NATO in Kosovo, may under certain circumstances offer enough “collectiveness” to outweigh the absence of authorization by the Security Council, because a group of states using force without a Council mandate may be more representative of the international community than a group of Council members blocking military action.

Recent great powers’ practice indicates that unauthorized, unlawful interventions to enforce will of some powers may be retroactively validated. Ex post facto validation is the strongest form of legitimation of unlawful actions because it implies a positive value judgment about the initial violation. This technique was applied in the cases of Liberia, Sierra Leone, and Kosovo, where the Security Council later took action that may be interpreted as explicit or implicit endorsement of the respective strikes.

Another form of dealing with unlawful interventions is to maintain their illegality but to insulate them from legal sanctions. A good example is Operation Iraqi Freedom, which afterward was neither condemned nor approved by the Council.

The modern law of occupation should accommodate the twin realities of the impact of UN authorization and delegation of responsibilities to military forces

⁴ Thomas M. Franck, *La Charte des Nations Unies est-elle devenue un chiffon de papier?* Le Monde, April 2, 2003.

deployed into a territory and the international community's intent to transform a society under military occupation.

The lessons of conflicts after the end of the Cold War show that the Security Council is needed more urgently than ever in the aftermath of the Kosovo and Iraqi conflicts. While still trying to get enough power to become effective enforcement body, the Security Council is needed in its capacity as: 1) a normative framer of the collective will of international community; 2) an organ of reasoned interstate discourse over the use of force, and 3) a body for organizing the conduct of post-conflict relations. It is a burden and legal challenge that can be hardly transmitted to a single state or selective group of states.

On May 22, 2003, the UN Security Council adopted Resolution 1483. In the preambular clauses of the resolution declared its understanding of the status of foreign military powers in Iraq. The Council recognized "the specific authorities, responsibilities, and obligations under applicable international law" of the USA and UK "as occupying powers under unified command (the Authority)."⁵ The Security Council also called upon "the Authority, consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working toward the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future." The "relevant international law" must include, in this instance, occupational law. But promoting the welfare of the Iraqi people is a goal that cannot be guided by occupation law alone. To pull Iraq out of its repressive past and return it to the community of civilized nations, the Authority will aggressively employ international human rights law, principles of democratization (as the engine of self-determination), economic initiatives, and use of force in the name of domestic security. Many of the principles advanced by the Authority will not have occupational law as their source. They are deeply rooted in the normative principles of the UN Charter. Under Resolution 1483, the Security Council supported "the formation, by the people of Iraq and with the help of US-British Authority, of an Iraqi interim administration as a transitional administration, run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq and assumes the responsibilities of the Authority. The other responsibilities the Security Council delegated to the Authority included the establishment of the Development Fund for Iraq (under control of the Authority) and the near-term administration of food assistance tied to the production of oil.

It is true that Operation Iraqi Freedom represents a structural shift in the international community. It institutiolizes a modern form of forceful liberalism,

⁵ See SC Res. 1483, supra note 1, pmb. The "Authority" became identifies as the "Coalition Provisional Authority."

which uses hegemonic power to promote in Iraq imported communitarian standards of law and governance. The Operation of Enduring Freedom in Afghanistan was impressive exception from the tendency – it combined both hegemonic and cosmopolitan tendencies in a setting where several states acted as representatives of a Charter VII-defined community interest. In distinction to that, some one year later the adoption of UN Security Council’s Resolution 1441 was overshadowed by open U.S. threat to declare the collective security system “optional” or “irrelevant”.⁶ Moreover, the international legal system itself has been shattered by a variety of attacks on the uniformity of the law through attempts to introduce double standards and exceptionalist rules that serve U.S. interests.⁷

Growing importance of providing security in post-conflict countries.

The real solution of the security problems of post-conflict countries should include political strategy. At the same time in Iraq, for example, the greatest contribution to stabilization of the country by US forces come in the form of training, supplying, and mentoring Iraqi security institutions while providing rapid response, emergency back-up to supplement Iraq’s forces or take offensive actions where needed. The international community also need to understand the side effects of its interventions, especially in secessionist controversies. It was predictable that the Serbs remaining in Kosovo would be targeted for retaliation by Kosovar Albanians, in an another wave of ethnic cleansing after NATO’s military campaign.

Economic aspects of reconstruction.

Very urgent issue for discussion at the level of leadership of intergovernmental organization is their cooperation in frameworks of international activities to restore order and economy in some countries. Now there is no mechanism existing for such cooperation and coordination. For example, in Kosovo, OSCE is in charge of election planning and democratization. The High Commissioner for Refugees is in charge of emergency relief. The European Union has responsibility for economic development. The NATO-led military force, KFOR, has responsibility for overall security. And the United Nations as such is in

⁶ See George W. Bush, Address to the United Nations General Assembly in New York City, 38 Weekly Comp. Pres. Doc. 1529, 1532 (2002) (asking whether United Nations would serve purpose of its founding or become irrelevant). On the reported “optionality” of the collective security system, see David E. Sanger, U.S. Says U.N. Could Repeat Errors of 90’s, *New York Times*, March 11, 2003.

⁷ The most prominent examples are the exemption of U.S. peacekeepers from the jurisdiction of the International Criminal Court by Security Council Resolution 1422, the deviation from the imminence requirement of the law of self-defense pronounced by the *National Security Strategy*, and the U.S. opposition to the Kyoto Protocol on climate change.

charge of reforming the police and de-mining, as well as, in theory, the over-all mission. So, there is a possibility to play one agency against the other, and the absence of singular responsibility for the mission.

Among the best known and still non-solved problems of reconstructions are:

- 1) lack of transparency in the process of collection of voluntary aid (episodic conferences of international donor countries mixing pledges and political inputs with real assistance);
- 2) the slow mobilization of aid;
- 3) the slow rollout of project plans by international financial institutions;
- 4) lack of knowledge of local languages and culture by international missions' personnel.

The “bubble economy” of post-conflict intervention, where millions of dollars and euros are suddenly injected into local markets through the salaries on international personnel, can easily distract attention from the lack of any workable plan or long-term self-support. The idea of an exit-strategy, in such situation, can be self-defeating – for the exit itself will cause the collapse of the economy and remove the disincentives to fighting.

The economic basis of post-conflict peace should include engagement of private companies and entrepreneurs in postconflict peace building. Other important spheres of activities are:

- 1) the return of refugees;
- 2) reshaping the school curricula and public culture;
- 3) the flexible approach to structure and mandate of peacekeeping forces;
- 4) establishment of appropriate international structures for consultations among interested powers.

Each international mission, oriented on post-conflict reconstruction, have to rebuild partly or entirely the public sector, including the reconstruction and operation of public utilities, ports, airports, and a public transportation system; establish of functioning civil service, including employment offices and health care; rehabilitate and maintain road systems; ensure the provision of primary, secondary, and higher education; create the necessary conditions for economic development, including the establishment of a banking system, the formulation of budgetary and currency policies, the attraction of foreign investments, and the establishment of a comprehensive tax, customs, and levied scheme; and develop public-broadcasting and mass-media capabilities. Broadly speaking, it is a full-scale programme of the “nation-building operation”, which should be developed and implemented by international community.

On democratization.

Democratization does not follow a single path, and is unlikely to have universally applicable necessary or sufficient conditions. A political process analysis of democratization defines it as movement toward broad and equal citizenship, binding consultation of citizens, and protection of citizens from arbitrary state action.

Democracy is generally associated with economic well-being. If democracy does not produce prosperity in post-conflict countries, at least in the medium term, it is likely to lose legitimacy. Most democrats hold as an article of faith that democracy contributes to economic growth, prosperity, and peace as well – but the empirical record of past transitions may be inconclusive in a new economy. Anyone seeking to build a stable democratic regime, especially after civil war, cannot ignore the need to address issues of both economic growth and social justice as probable necessary conditions for successful democratization. Perhaps most dangerous is observation that democratization itself may destabilize a society, at least in the short run, due to using by extremists of ethnic sentiments to retain power.

History of international relations after the end of the Cold War gave us several examples of using double standards of democracy while pursuing national interests of leading world powers. The democratic transformation of the Middle East, for example, emerged as a central objective of the U.S. foreign policy during the Bush administration. But this new policy is in sharp reversal of several decades of active support for many autocratic regimes in the region, such as those in Egypt, Saudi Arabia, and Jordan. At the same time it is clear that USA has a long list of other priorities in the region: access to oil, cooperation and assistance on counterterrorism, fostering peace between Israel and its neighbors, stemming the proliferation of weapons of mass destruction, and preventing Islamist radicals from seizing power in countries of the region. Repeated U.S. justification of the war in Iraq as a democratizing mission has discredited the very idea of democracy for many citizens of the region. Many Arabs have come to view democracy itself as a code word for U.S. regional domination. The recent hope for stabilization of political situation is based on possible success of January 30th, 2005 national elections in Iraq. But already nowadays much of the Arab world view such elections as highly flawed. Some parts of the predominantly Sunni areas of Iraq are not expected to participate in the elections, and many Arabs will inevitably accuse the United States of manipulation, because the elections will be held under U.S. occupation. At the April 2004 press-conference President George W. Bush declared that, in invading and occupying Iraq, the USA had not acted as “an imperial power,” but as a “liberating power.” Of course, USA are not going to declare Iraq their fifty fifth state. But the invasion and occupation may demonstrate U.S. turn to neo-imperialist strategy, well-known since the collapse of colonial powers in 1950-50s: instead of permanent occupation of former colonies, “neo-imperialist countries” (if we will use terminology of President of Ghana Kwame

Nkrumah), retain control of former colonies by vetoing unfriendly governments and dominating national economic systems. Predictably, these policies provoked a nationalist backlash. US President is trying now to blame opposition to the occupation entirely on foreign terrorists or on high-level loyalists from the old regime. But it is rather clear that the Iraqi resistance includes people who opposed and even suffered under Hussein's regime.

Conclusion.

The Iraqi crisis marks a crucial moment in the history of international politics and international law. Scholars and practitioners all over the globe rightly perceive it as a threat to the UN Charter system and warning about its damaging effect on the multilateral security architecture and international public order must be taken extremely seriously. Postconflict security and state reconstruction cannot be achieved without the support of an UN-authorized military presence and the concurrent participation of the United Nations as the most experienced actor in civil administration.

Cooperation in framework of UN Security Council should be strengthened by bilateral cooperation of leading regional powers. The defining characteristic of our period of history is not a shift of power upward to supranational institutions, but downward. With the end of states' monopoly on weapons and the collapse of their control over channels of communication, humanity has entered an era characterized as much by disintegration as integration. As Niall Ferguson recently pointed out: "If free flows of information and of means of production empower multinational corporations and non-governmental organizations, the free flow of destructive technologies empowers both criminal organizations and terrorist cells.

There is a critical need in world politics and international law to develop a more effective and legally acceptable means to respond to civilian populations that are at risk or desire participation in their country's political transformation into a more democratic form of government. The end result could become what might be called "transformational occupation" by one or more military powers acting under the authority of the UN Security Council.

The crafting of a realistic settlement and postconflict transition must take account of the strategic interests of major international and regional actors. The end of ideology has not abolished the pursuit of national self-interests, and settlements that are opposed by powerful nations may not survive in the long term.