

ARTICLES

SPECIAL ISSUE – WHAT FUTURE FOR KOSOVO ?

Book Review

Michaela Salamun's *Democratic Governance in International Territorial Administration* (2005)

and

Daniel Sven Smyrek's *Internationally Administered Territories – International Protectorates?* (2006)

*By Hartmut Pürner**

A. On A Personal Note ...

I worked seven years in the OSCE missions in Bosnia-Herzegovina and in Kosovo. In the last stage, I was Deputy Director of the Democratization Department with Omik/UNMIK pillar III. Accordingly, he dealt intensively with the practical questions of human rights, democratisation and the transfer of responsibilities in internationally administered territories. I returned with a lot of questions. Some of those now form the basis of my research for a PhD thesis on Municipal Governance in Kosovo. I have happily accepted the *GLJ's* invitation to write a review of two recently issued books, Michaela Salamun's *Democratic Governance in International Territorial Administration*¹ and Daniel Sven Smyrek's *Internationally Administered*

* Hartmut Pürner M.A, studied Law, History, German Literature and Geography at Julius-Maximilians Universität Würzburg. M.A (phil) on the usage of history in national-socialistic propaganda shown at the example of Würzburg regional newspapers. Erstes Juristisches Staatsexamen at Friedrich-Alexander Universität Erlangen-Nürnberg. Currently PhD student at Rheinische Friedrich-Wilhelms-Universität Bonn. From 1997 to 1999 Human Rights and Democratization Officer with OSCE Mission in Bosnia-Herzegovina. Head of Field Office. 2001 to 2005 Democratization Officer, Team leader Municipal Government Support and finally Deputy Director/Democratization Department with OSCE Mission in Kosovo. Lives in Berlin. hpurner67@yahoo.de.

¹ MICHAELA SALAMUN, *DEMOCRATIC GOVERNANCE IN INTERNATIONAL TERRITORIAL ADMINISTRATION, INSTITUTIONAL PREREQUISITES FOR DEMOCRATIC GOVERNANCE IN THE CONSTITUTIONAL DOCUMENTS OF TERRITORIES ADMINISTERED BY INTERNATIONAL ORGANISATIONS* (2005).

*Territories - International Protectorates?*² The authors focus on different questions, yet they unavoidably touch upon each other in the topics which personally interest me the most. This made it intriguing to read their works in tandem.

B. The Content of the Two Volumes in Overview

In the first chapter of her dissertation submitted to the university of Graz, Austria, Michaela Salamun aims to “establish the reasons for why governance in such territories has been based on democratic principles only in part.”³ In chapter two she deals with the legal framework in historic and contemporary International Territorial Administration (ITAs) examining the scope of the authority of governance of the international administrations versus the scope of the authority of the local institutions. In chapter three, she looks at the democratic substance of these documents. She concludes with a final chapter providing proposals for the improvement of the democratic quality of international administrations.

Smyrek, after an introduction, examines the “notion of sovereignty.” In his third chapter, he runs through the historical examples of ITA, establishing their sovereignty status. He dedicates a chapter to Kosovo alone. In his chapter E he reflects on “democracy and international administration of territories,” using what he collected *en route* while following the red line of his analysis. In chapter F he summarises his conclusions.

C. Salamun’s Democratic Governance – The Conundrum of Sovereignty, Peace and Democracy

A proclamation is at the centre of Salamun’s thesis: “Indeed, I believe that the concept [of democratic governance] should be applied not only with regard to the decision making processes of the local institutions of self-government, [...], but also with regard to those of the international institutions.”⁴ In a nutshell, her thesis aims at proving that this political conviction can be underpinned with legal arguments in the sphere of international law.

However, this puts her in the difficult position of driving her writings forward against the very early findings of her book. She acknowledges that the concept of

² DANIEL SVEN SMYREK, *INTERNATIONALLY ADMINISTERED TERRITORIES - INTERNATIONAL PROTECTORATES? AN ANALYSIS OF SOVEREIGNTY OVER INTERNATIONALLY ADMINISTERED TERRITORIES WITH SPECIAL REFERENCE TO THE LEGAL STATUS OF POST-WAR KOSOVO* (2006).

³ SALUMUN, *supra* note 1, at 11.

⁴ SALUMUN, *supra* note 1, at 43.

democracy is state-centred, while most ITA lack the classic elements of statehood. She concedes that there is no commonly agreed concept of democracy beyond the state. That the principle of self-determination is potentially “in conflict with ... the principle of sovereignty and the maintenance of international peace and security”⁵ is recognised. In consequence she cannot help but conclude that “the concepts of international law governing the territorial administration of international organisations...do not involve an obligation...to base their authority on principles of democratic governance.”⁶

Despite this, she tries to make the point that concepts of international law in general “imply a certain democratic foundation, which aim at creating the conditions for the exercise of democratic governance.”⁷ For this purpose she compiles the concepts of the “prevention of the adverse effects of war on the population,” the “application of the principle of the right to self-government,” “reestablishment of stability,” “conflict resolution and respect for human rights” and “democracy-building.”

Yet, she disregards the fact that these concepts often conflict with each other in the reality of internationally administered territories. Salamun is aware of the necessary caveats, yet she hides them in her footnotes: “However, in the initial period of peace-building operations established immediately after a war or armed conflict in a power vacuum, organised crime and mafia-like structures, which are inherently opposed to democracy, may be strengthened until the power vacuum is overcome.”⁸ And, “there cannot be progress in terms of democracy for as long as the old ethno-national elites are in power despite free elections.”⁹

All this could have been the starting point for an interesting discussion. Can a peace-building mission start with democratisation right away, or does the establishment of peace and security take preference? Is democratisation conditioned on resort to the rule of law?

She fails to address these questions. The belief that “early devolution allows the local population to learn from their experience and helps to prevent the

⁵ SALUMUN, *supra* note 1, at 45.

⁶ SALUMUN, *supra* note 1, at 49.

⁷ SALUMUN, *supra* note 1, at 49.

⁸ SALUMUN, *supra* note 1, at 57 footnote 256.

⁹ SALUMUN, *supra* note 1, at 63 footnote 295.

administrative equivalent of aid dependency,"¹⁰ however, does not seem to be a sufficient answer in itself. The same is true for the argument that a "dictatorship of virtue" exerted by international administrators, would be counterproductive, as it sets the wrong example by allowing local politicians to avoid compromise. While all of this is true for the long run, what, if the "mistakes" bring about the reoccurrence of the "adverse effects of war," de-stabilisation or human rights violations, in the short run?

In this context, it is regrettable that the author only superficially discusses what she calls the "perception of the absence of democratic maturity of certain local elements." She makes reference to the League of Nations' mandate system and the criteria developed during its tenure, such as "stable government and administration, the capability to sustain territorial and political independence, to keep public order and security[...], a legal system and a court organisation that ensures everybody ordinary justice."¹¹ She would have highlighted the relevance of these historical criteria if she had acknowledged that they have been used by UNMiK in Kosovo to formulate "benchmarks," followed by "standards" for Kosovo,¹² and can also be found in the EU accession criteria.¹³

The complex, arguably even inappropriate notion of "maturity" raises salient questions. Should the fulfilment of certain minimum standards be a pre-condition for an increased involvement of local actors in the management of the ITA? Can such standards be effectively measured - or only "perceived"? What role is played by the mentioned mafia-structures and nationalistic elites in making determinations of "maturity"?¹⁴ What is the common local perception of "democracy" and "human rights"? How does this perception relate to the local cultural, economic and social context? These are questions reaching beyond the law, reaching out to political science, history and sociology, and touching upon the prerequisites of a democratic society in general, yet they can not be set aside.

While her thesis at this point does not appear convincing in substance, Salamun adds to the woes of her readers by a somewhat blurred style of argumentation. To start with, the author grapples with *why* there is a "democratic deficit" in

¹⁰ SALUMUN, *supra* note 1, at 59; *see id.*

¹¹ SALUMUN, *supra* note 1, at 64.

¹² <http://www.unmikonline.org/standards>.

¹³ http://ec.europa.eu/enlargement/glossary/terms/accession-criteria_en.htm.

¹⁴ An interesting reader on this topic for the Balkan region is: NORBERT MAPPES-NIEDECK, *BALKAN-MAFIA* (2nd ed. 2003).

international administration before moving on to argue, on the basis of her case studies, *that* this deficiency indeed exists. In addition, conclusions seem sometimes to be drawn for convenience rather than as a result of proper legal argumentation, e.g. when the author opts for a *sui generis* status for territories administered by international organisations because this “has the potential to take account of the unique division of authority in each territory between the former state, the local institution, the international organisation(s) and the population.”¹⁵ On other occasions, the reader is suddenly left alone with a mass of citations from a broad corpus of literature¹⁶ by an author obviously reluctant to take a clear position herself.

The analysis of her sources and examples remains unsystematic. Sometimes Danzig and the Saar are used as historic examples to illustrate a point, next time Kosovo, Bosnia and Herzegovina or Cambodia might be the better pick. Her criteria for the selection of certain examples from a broad range of case studies never becomes clear, in particular as she does not sufficiently explain why historical examples from a period before the existence of the UN Charter, the ICCPR and the ECHR matter at all.

Whether all examples are dealt with in a sound way is then already a secondary question, which can be left to historians. However, on some instances, there is reason for severe doubt. At one point, Salamun states that “the main political motive for the internationalisation of the Saar Territory consisted in guaranteeing France the exploitation of the coal mines situated in the Bassin, as part of the reparation payments of Germany.”¹⁷ How she could then justifiably conclude that “the internationalisation of a territory itself usually implies that governance is exercised to a greater extent for the benefit of the population than before internationalisation”¹⁸ simply defies understanding.

Fortunately, the centre part of Salamun’s work provides a clear structure. Salamun categorises international administrations along the lines of restricted, partial or comprehensive power; these categories are set against the background of a complete absence of co-governance of local institutions, mere consultative, partial

¹⁵ SALUMUN, *supra* note 1, at 41.

¹⁶ Most prominently, see C. Stahn, *The United Nations Transitional Administration in Kosovo and East Timor: A First Analysis*, in 5 Max Planck Yearbook of United Nations Law (J.A. Frowein and R Wolfrum eds., 2001).

¹⁷ SALUMUN, *supra* note 1, at 51.

¹⁸ SALUMUN, *supra* note 1, at 51.

and largely independent decision making powers. Whilst for local institutions a separation of powers usually existed, she finds, legislative, administrative and judicial powers lay exclusively in one hand on the side of the respective international governor, High Representative or SRSG. The independence of the judiciary is often limited by the fact that the head of the international administration appoints and dismisses judges. Popular sovereignty is often limited as “most internationalised territories [...] were established by treaties *inter alios*” and “were adopted absent popular participation.”¹⁹ While political, legal and financial accountability of the local institutions is mostly provided for, the international administration is generally not accountable to the local population. On paper, political rights are guaranteed, as are minority rights.

The author’s findings, albeit in general not to be contested on a factual level, are rarely analysed in their broader political context. This is a pity, as Salamun highlights interesting parallels and similarities in territories and circumstances distant from each other in time and space, such as Danzig and Bosnia-Herzegovina. Obviously, a check list is ticked off, shortcomings are noted but rarely explained. On the side of local institutions, the author is content to tell her readers that certain things have been laid down on paper, but she never examines how they work in reality. Salamun describes over two pages the Municipal Communities Committees in Kosovo as a means of minority protection. Yet, despite availability, she does not address reports that hint that they might simply not function as they should.²⁰ Arguably, one need not go into such detail when writing such a dissertation – into detail which would probably have required some field research. But even a quick look at the utterly diplomatic and vague Secretary General’s reports to the Security Council, published on the UN website could have provided some hints²¹ on the realities of the local part of the international administrations.

Especially when determined to stick to a concept of democracy which “relies on a participatory approach by emphasizing the principle of popular sovereignty in institutional decision-making processes,”²² a detailed analysis of local situations is indispensable. The question whether there are legitimate and competent local actors, committed to democracy and human rights must be answered before lamenting over their lack of competences. A thorough analysis of both the

¹⁹ SALUMUN, *supra* note 1, at 39.

²⁰ “Assessment of Municipal Community Committees,” available at http://www.osce.org/documents/mik/2004/03/2335_en.pdf.

²¹ <http://www.un.org/Docs/sc/>.

²² SALUMUN, *supra* note 1, at 39.

international and local part of ITAs could provide a good starting point for developing proposals to enhance democratisation.

Yet, her proposals for “democratisation of governance in international territorial administration” in her final chapter are exclusively proposals for the democratisation of the international part. Her proposals will be looked at in more detail at the end of this review.

D. Smyrek’s *Internationally Administered Territories* – The Conservative Approach

The composition of Daniel Smyrek’s thesis, successfully defended at the University of Tübingen, is pristine. Along the way, every step provides the basis for the next one. Questions are dealt with once and for all, having been brought to justifiable conclusions once they surface. The reader might wish to agree or disagree, he might weigh differently the arguments and view points – but he is never left in the dark about Smyrek’s reasoning and guiding ideas, about what he stands for and why.

Smyrek provides a concise guide through the existing interpretations of sovereignty. Based on civil law concepts of the right to ownership, he comes to the conclusion that “territorial sovereignty designates title to land.”²³ This is very conservative, and Smyrek leaves no doubt that he wants nothing less than to prove the validity of the applied *Begriffsjurisprudenz* also for today. Smyrek, thus revealing himself as an antipode to Michaela Salamun, speaks out against the use of *sui generis* categories, “as long as the existing ones are sufficient to allow new scenarios be categorised.”²⁴

In his chapter titled “Historic Examples,” he wisely lightens his vessel by drawing a line: “[...] more restricted types of administration will not be considered.”²⁵ He focuses on Danzig, the Saar, Trieste, Jerusalem, West Irian, Namibia, East Timor, Bosnia and Herzegovina. He dedicates a chapter exclusively to Kosovo. In a nutshell, these cases also provide the backbone for Salamun’s work, but with Smyrek the focus is much more visible. He is able to justify why he selected the examples, as remote as they might seem, as he demonstrates what they have contributed to the development of the concept of sovereignty and ITA.

²³ SMYREK, *supra* note 2, at 56.

²⁴ SMYREK, *supra* note 2, at 137.

²⁵ SMYREK, *supra* note 2, at 57.

Danzig for him “represented the first time a universal international organisation, the League of Nations, participated in the creation of a state.”²⁶ With respect to the Saar, for the first time the sovereignty of an international organisation, “had been contemplated and considered to be possible.”²⁷ The planned international administration of Trieste laid the basis for the “implied powers doctrine.”²⁸ And so on. He continues with this precision, and while he is also not denying the particularities of each single case, the evolution becomes comprehensible until he finally concludes: “During the last century, the concept of sovereignty has evolved in such a way, that it is no longer a characteristic exclusive to independent states. Indeed it is also conceivable that universal international organisations may hold sovereignty.”²⁹ Yet, and this is important with respect to his more detailed discussion of the Kosovo case, “this has yet to occur.”³⁰ Once more, the reader might wish to agree or disagree. But Smyrek that opportunity open.

Smyrek remains at the height of his concise and stringent methodology also in his chapter on Kosovo. Anyone seeking a quick overview on UNMiK and its historic and political background is advised to study Smyrek, page 172 to 204, with some reservation regarding his very cursory one-page overview on Kosovo’s history before 1999. Based on his formerly well argued support of the concept of territorial sovereignty, “it must [...] be concluded that the power of disposition over Kosovo is still retained by Yugoslavia.”³¹ Being faithful to his presumptions, this is nothing less than coherent. But it also hints at the only major point of criticism that could be made against Smyrek’s otherwise excellent book. He is realistic in his judgement that the remaining prospects for compromise solutions, such as a loose federation, the creation of an Albanian and Serbian entity, are not likely to happen. Instead he advises the international community to remain involved with a “robust UN administration of Kosovo, backed by sufficiently strong international troops”³² in order to buy time until the situation is ripe for compromise.

And it is at this point that Smyrek, who has written so lucidly on legal issues and history, finally clashes with the political reality of today. Smyrek’s naked

²⁶ SMYREK, *supra* note 2, at 67.

²⁷ SMYREK, *supra* note 2, at 75.

²⁸ SMYREK, *supra* note 2, at 90.

²⁹ SMYREK, *supra* note 2, at 170.

³⁰ SMYREK, *supra* note 2, at 171.

³¹ SMYREK, *supra* note 2, at 207.

³² SMYREK, *supra* note 2, at 214.

conservatism simply does not provide an answer. There will be no compromise on the status question, even if this would, of course, be the ideal solution. At the same time, the unresolved status has taken the political processes hostage in the whole area, blocking progress in Serbia as much as in Kosovo, influencing domestic politics in FYRoM as much as Bosnia-Herzegovina. After all, it is also a matter of resources and there are just too many more crisis areas to be attended. The UN mission has already considerably downsized, the same is true for KFOR. For this reason, in the seventh year after UN Resolution 1244, the *status quo* can no longer be kept up.

E. On a Blue Note: Taking a Closer Look at the Proposals for Democratizing ITA

It is in the very last chapter "Principle of Democracy and the International Administration of Territories," in which Smyrek officially enters Salamun's turf. He deals with the matter much more concisely and he remains on the surface of general considerations. His merit is, however, that he provides a clear structure for the topic, something which is so painfully missed with Salamun. He delineates the "conflict between the international administration of territories and democracy,"³³ which Salamun refused to do. Then he turns to the UN's commitment to democracy in the Charter, the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights and declarations of the UN Commission on Human Rights. Subsequently, he describes where he sees "the limits of democracy" as imposed by the concept of trusteeship, his interpretation of Chapter VII of the UN Charter, "the aptitude of the local representatives to share in the governance, i.e. their democratic maturity" and the role of "benevolent despot." Finally he would address the limitation of these limits by the principles of "good governance" and "human rights standards."

In doing so, he successfully tries to outline the guiding principles that should be applied in a process of transfer of responsibilities. Democratic rights may temporarily be suspended in order to lay foundations necessary for a future stable, democratic and peaceful self-governing polity. The limitations must not be disproportionate and minimum standards must at all times be kept and mechanisms of legal redress for the population must be provided. Finally, the individual measure depends on the stage of the mission. For this obvious reason, Smyrek does not propose individual remedies, but leaves them silently to the management of the respective mission.

³³ SMYREK, *supra* note 2, at 217.

Salamun in her last chapter is not shy of giving operational advises, but her proposals must be read very critically. Salamun holds, that “democratisation can be achieved through the increased involvement of the population in the decision-making process by conferring genuine powers of governance on local institutions *as early as possible*.³⁴” Should the UN, accordingly, seriously hand over responsibilities to local actors before they have themselves been democratically legitimised as early as possible? There is a worrying tendency to perceive local actors under all circumstances as being more “democratic” and “legitimate” for the simple reason that they are “local.” Salamun herself – in footnotes however – made some mentioning of such dubious but powerful characters, and these truly have to be kept in mind. Any attitude to claim power as a fair share from the war effort should not be supported. The message must be this: political power derives from the public vote, nothing else. As unsatisfying as it in indeed is, a period in which the international mission operates with local advisors only, can probably not be avoided

Salamun seems to see the flaw, this is why she recommends that furthermore, “elections should be conducted as early as possible so that local institutions are democratically legitimated.”³⁵ This makes her proposal not much more than a reflection on the existing praxis. It might have been wished that elections would have happened earlier. But if elections are supposed to be free, fair and equal, if they are supposed to be well organised, with the involvement of local staff rather than being only an internationally managed affair, if the environment is meant to be secure and if the candidates are supposed to be given a minimum time for campaigning, this process can hardly be accelerated. Last but not least, the institutions in question might have to be established first.

With respect to Salamun’s proposal to link “moderate” election results to financial incentives for the population, the comment might suffice that it was exactly one of the achievements of the OSCE conducted elections on the Balkans to widely exclude bribery from the election process.

Salamun recommends that “international officials should be employed in the administration in an advisory function, rather than in leading positions.”³⁶ Again, this is the desired end result, but there cannot be a wholesale answer regarding the point in time when this should happen. Firstly, qualified personal must be readily

³⁴ Emphasis is from the reviewer.

³⁵ SALUMUN, *supra* note 1, at 181.

³⁶ SALUMUN, *supra* note 1, at 181.

available. In East Timor, judges had to be trained quickly in only week-long crash courses. In Kosovo qualified Kosovo Albanians had been out of official positions for a decade, therefore expertise had been lost or become outdated. Secondly, to avoid nepotism and bribery, a proper recruitment process has to be put in place.

Salamun's next strategic proposal that "transfer...should be performed as fast as possible and involve all those areas which can be transferred in view of the administrative capacities [...]"³⁷ again just seems to present the general policy line on the ground, while of course individual delays could be a matter of discussion. Also her suggestion that "the areas of human rights and protection of minorities might retain within the competencies of the international administration until democratic decision-making processes and the rule of law have been consolidated"³⁸ is not disputed. But when are they consolidated? Additionally, human rights protection and protection of minorities can in reality not be as clearly delineated from general "administrative capacities." A wide array of simple administrative activities can have immensely high human rights relevance, such as the issuing or refusal of certain documents or permits.³⁹

At this point, Salamun simply seems to recommend accelerating the processes, without considering the possible negative side-effects this might have. Also the advice "to provide capacity building through training and continuing education of local officials" does not offer anything new. UN Organisations, OSCE, EAR, US Aid; UNDP; Council of Europe, UN Habitat, and many more have been heavily involved for years. No doubt, huge efforts have been made to provide the very "capacity building" proposed by Salamun.

Much more sympathy can be expressed for her proposals to provide the international administration with a better system of checks and balances. Salamun's proposal to give the ECHR jurisdiction is probably conceivable only for ITA in Europe, whereas her proposal to establish an independent UN commission seems to be more universally applicable. Yet, it is not quite clear how this scheme relates to her later suggestions to make human rights violations of the international executive punishable at international courts or before a body with comparable international status.

³⁷ SALUMUN, *supra* note 1, at 182.

³⁸ SALUMUN, *supra* note 1, at 182.

³⁹ The reviewer spent weeks over weeks to claiming simple ID cards for minority returnees in BiH.

For, admittedly very personal reasons, at least in part, I cannot agree with the general proposal to do away with the immunity of peace keepers and to hold them responsible before local courts. Immunity from local institutions is an indispensable condition for effective human rights work with the local institutions. What about a situation in which a court monitor would be exposed to reprisal prosecution by the very courts he is supposed to monitor and criticise? Immunity has an important function and is not a luxury. Finally, it should be noted that immunity in the mission area does not mean impunity. Immunity can and has been lifted on a couple of occasions.⁴⁰ Furthermore, the members of missions may fall under their own domestic jurisdiction when returning home. Domestic practice might admittedly differ.

Most problematic is the proposal to extend the jurisdiction over acts, "in which international officials conduct ITA and issue decisions with immediate effect on the legal position of individuals."⁴¹ This is a situation where in most legal orders the state or institution the individual works for would be held liable, but not the individual civil servant personally, unless the decision equals a crime. Why should stricter rules apply to officials in ITA?

In principle, I agree with Salamun's proposal to reduce the role of the international administrator and restrict him or her to executive powers. Whether it is a practicable proposal to have the legislative functions in ITA conducted by a kind of *ad hoc* parliament consisting of European Parliament and US Congress members can be questioned. It should be kept in mind that they democratically represent only their respective electorates. Appointed to the ITA they would not enjoy more democratic legitimacy towards the population of the ITA than any other international official. Additionally, the process of identifying these parliamentarians could easily be caught in the back scene struggle over positions and influence not too uncommon in the international community. Time and energy, however, are better spent on the establishment of a local legislature.

The idea of having an international administrator appointed by the local legislature is not only impracticable, but would give his position a democratic kiss of death. Salamun points out that internationally administered territories are usually deeply divided societies. The international administrator can only be effective if he or she

⁴⁰ CoE Commissioner for Human Rights, 3rd Annual Report January to December 2002, to the Committee of Ministers and the Parliamentary Assembly; Appendix I Reports and Recommendations, "Kosovo the Human Rights situation and the fate of persons displaced from their homes," V.1.5. <http://www.coe.int/commissioner>.

⁴¹ SALUMUN, *supra* note 1, at 186.

is accepted as impartial and above these divisions. The very moment he or she is visibly backed by a political or ethnic majority within the territory, all credibility is lost with the respective minorities, and his or her moral authority and role as a mediator is harmed.

The question of formal accountability has to be separated from creation of transparency. To this degree, it indeed could be a good idea to oblige the international administrator to communicate formally with the ITA's assembly or parliament and explain his or her policies and decisions. Yet, there should be reluctance to give committees investigative powers over mismanagement of the international part of the administration. The first reason is formal. The international administration usually does not operate based on local finances, but uses international funds. To the degree that the proposal to establish a court of auditors that should scrutinise the activities of the international administration makes sense, but there is no reason why it should be answerable to the locally elected legislature. The second reason is political, but also has to do with the long term perspective of democracy building. The purpose must be to establish local institutions that would create a sound local tax base, make transparent and justifiable decisions on their spending and finally create a functional system of checks and balances with respect to the territories' own politicians and officials. This is a difficult process as it is, as it implies to seriously tackle lack of efficiency, incompetence and perhaps even corruption among its "own" power holders. It is very seductive to avoid this and put all the energy into scrutinising the international administration as something all parties could more easily agree on.

Similarly, the concrete proposal to have dismissals of officials reviewed by an "independent commission of parliamentarians" is doubtful. First, a word about the dismissal of officials in principle. It is of course a double edged sword. The idea that an administrator would dismiss even people who were properly appointed or even elected conflicts with the ideal of democracy. On the other hand, my observation simply is that in many cases in Bosnia there has been a link between the dismissal of local politicians and police officers and minority returns to certain areas. Still, review is necessary. For this particular purpose, however, parliamentarians seem to be the wrong group to involve. They are by definition political and would probably tend to conduct a political evaluation of the case. An attempt should be made to get the process out of the political grey zone and base dismissals on legal criteria. The idea to widen the authority of such a commission to assessing "the effect of every legislative imposition" might be counter-productive. If so, this evaluation of legislation should happen by the elected legislators in the respective local parliaments, so that all legislative questions would be in one hand. The tendency to establish extra commissions and round tables outside of the

institutional framework has also always the tendency to weaken nascent institutions.

In a nutshell, Salamun's recommendations suffer from the same ills as the remainder of the study. They make sense in the light of the "paper concept" of democratisation. But they have not been considered in relation to and tested at the intricate reality on the ground.

F. Conclusions - On Shaky Ground Between Past and Future

Salamun deserves respect for her attempt to try and provide a comprehensive study on the issue of democratic governance in international territorial administration on a wide historic and contemporary base of case studies. I wish Salamun could show a way out, but I did not see real answers to my questions and I was deeply disappointed with the strategies proposed. Salamun only rarely analyses. Somehow, she gets lost in the interdisciplinary challenges posed by her dissertation topic. While abandoning the legal methodology the reader would have expected, she also does not offer the historical and political background enabling the reader to follow her often confusing argument. She should have taken a closer look at the realities on the ground not too far away from Graz. Her book is insufficiently structured, jumpy in its line of argumentation, not self-explanatory enough and partly not well written at crucial sections. The central part might be useful to look up some details on the institutional set up of former international peace-building missions, but guiding ideas for actual or even future scenarios are dearly missed.

Despite his, at first glance narrower approach, Smyrek's *Internationally Administered Territories* is by far the more preferable reading for someone who, even without a particular interest in specific questions of sovereignty in international law, seeks to obtain a quick and concise overview over the topic. Equally rich in information, it is much better composed, with information much better accessible, even in parts that would actually be much closer to Salamun's chosen topic. While Smyrek, in his classic formal approach, delivers the much better description, he equally brings to the surface that his method obviously no longer provides the desperately needed answers.

As for the underlying question, how democratic international administration by peace-building missions can actually be, the answer remains sobering. As long as international missions have, at the same time, to corral an armed conflict, provide stability and security, secure human rights, balance the interests of the local population and other interested parties, such as the former sovereign, and follow the political decisions of the Security Council - there simply might not be room for

full accountability to the inhabitants and institutions of the territory in question. The dilemma can probably neither legally nor practically be put to an end once and for all; it has to be lived with and resolved step by step in the field missions in cooperation with – understandably dissatisfied – local partners. The only reason this can be tolerated is that international territorial administrations are a necessary intermediate step between the worst in the past – war, civil unrest, massive human rights abuses – and the hopefully best in the future – democracy, human rights and rule of law, made real by the local population.

