Original Article
ISSN (Online): 2582-7472

ShodhKosh: Journal of Visual and Performing Arts
May 2024 5(5), 775–781

MAKING SENSE OF TRANSITIONAL ADMINISTRATIONS OVER KOSOVO AND IRAQ

Santosh Kumar Upadhyay[1]

[1] Assistant Professor, Faculty of Law, University of Delhi, Delhi, India

DOI
10.29121/shodhkosh.v5.i5.2024.4533

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

ABSTRACT

In Kosovo, the United Nations itself adopted the role of transitional administrator and drew its mandate from the Security Council resolution where as in Iraq, an occupying authority was acting as transitional administrator drawing its mandate by disregarding the law of belligerent occupation as well as relying extensively on the Security Council resolution. Both these transitional administrations though belong to different international legal structures, yet they exhibit almost a similar pattern of politico-economic reconstruction. They seek to radically challenge the post-UN Charter notion of international engagement in any sovereign domestic order. This part of the paper summarily mentions some of the interventions made by these administrations in Kosovo and Iraq.

1. INTRODUCTION

The cases of transitional administrations of Cambodia, Bosnia and Herzegovina, Eastern Slovenia, Kosovo, East Timor, Afghanistan and Iraq have resonated the academic debates to a greater extent. Among these, the cases of Kosovo and Iraq stand apart due to their deeply intrusive character that seek to substantially alter politico economic-legal landscape of these territories by unabashedly discarding previous sovereign structures.

In Kosovo, the United Nations itself adopted the role of transitional administrator and drew its mandate from the Security Council resolution where as in Iraq, an occupying authority was acting as transitional administrator drawing its mandate by disregarding the law of belligerent occupation as well as relying extensively on the Security Council resolution. Both these transitional administrations though belong to different international legal structures, yet they exhibit almost a similar pattern of politico-economic reconstruction. They seek to radically challenge the post-UN Charter notion of international engagement in any sovereign domestic order. This part of the paper summarily mentions some of the interventions made by these administrations in Kosovo and Iraq.

2. UNMIK'S ADMINISTRATION OVER KOSOVO

Implementation of transitional administration in Kosovo was the result of the NATO armed action against FRY and the signing of the Military Technical Agreement between these two at Kumanovo, Macedonia. [1] This agreement reaffirmed

[1] Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia. Available at, http://www.unmikonline.org/Pages/kumanovo.aspx ,

the "deployment in Kosovo under UN auspices of effective international civil and security presences" and noted that "the UN security Council is prepared to adopt a resolution, which has been introduced, regarding these presences". [2] This agreement has severely restricted the sovereign rights of FRY over Kosovo. However, the consent of the FRY and Serbia to this agreement is highly contested because it has been affected by apparent use of coercion against them.

United Nations Security Council, through its resolution 1244(1999) decides to deploy the international civil and security presences in Kosovo under the auspices of the United Nations. [3] It further requests the Secretary General to appoint Special Representative to Secretary General (SRSG) in consultation with the Security Council. [4] The Secretary General of the United Nations, in his report to the UNSC on 12 June 1999, discussed a preliminary operational concept for the overall organizations of the international civil presence in Kosovo and named it as United Nations Interim Administration Mission in Kosovo (UNMIK). [5]

The Special Representative of the Secretary General (SRSG), a person of rank of Under Secretary General, was to head the UNMIK and was appointed by the Secretary General in consultation with the Security Council. [6] He enjoyed the overall authority to manage the mission and coordinate the activities of the other UN agencies and international organizations, involved and operating as part of the UNMIK.[7] He is the highest international civilian official in Kosovo and enjoys the maximum civilian power as envisioned in resolution 1244. [8] He is also the final authority of the interpretation of his own power. [9] In order to perform the basic civilian administrative function the SRSG vested in UNMIK "all legislative and executive authority in respect of Kosovo" and authorised himself to exercise all these authorities and to appoint or remove any person to or from civil administration including judiciary in accordance with the existing laws in Kosovo. [10]

UNMIK has executed its task in such a manner that shows its biasness towards particular values of political and economic structure. The Constitutional Framework for Provisional Self Government[11] of Kosovo that was attached to the UNMIK Regulation No. 2001/9 advocated for the establishment of market economy to achieve the economic development and welfare of the people of Kosovo. [12] These institutions were required to align their legislation and practices in all areas of their responsibilities with relevant European and international standards and norms. [13]

UNMIK has extensively undertaken various interventionists measures in the political and economic spheres of Kosovo. The nature of most of these measures stands in contrast with territorial integrity of FRY over Kosovo. These steps were seemed to be in violation of the UNSC Resolution 1244 (1999) as it reaffirmed the territorial integrity of FRY over Kosovo. The creation of the market based economy with the help of International Financial Institutions was advocated as viable mechanism for reconstruction of Kosovo.[14]

UNMIK has made several changes in laws related to currency, taxing, banking and foreign investment that clearly shows that it was working like formal sovereign of the territory. Almost all areas of Kosovo's economy with some exceptions were open up for foreign investors.[15] The principle of national treatment in all areas of business activities was applicable

---

[2] Ibid, Article I, Paragraph 1

[3] UNSC Resolutions, available at, http://www.un.org/en/sc/documents/resolutions/index.shtml , UNSC resolution 1244 of 1999, Para 5

[4] Ibid, Para 6

[5] UN Doc. S/1999/672 of 12 June 1999, para 1, available at www.un.org/en/peacekeeping/missions/unmik/reports.shtml. This report was prepared by the Secretary General of the United nations in pursuance of the paragraph 10 of the UNSC res 1244(1999) that authorizes him to establish, with the help of relevant international organizations, an international civil presence in Kosovo under which people of Kosovo can enjoy substantial autonomy.

[6] Ibid, Paras. 3 and 4

[7] Ibid, Para 3,

[8] Reports of the Secretary General pursuant to paragraph 10 of the UNSC resolution 1244 (1999), n. 48, Report of 12 July 1999, Para 44, UN Doc. S/1999/779

[9] Ibid, Para 44.

[10] UNMIK Regulations available at http://www.unmikonline.org/regulations/unmikgazette/02english/Econtents.htm UNMIK Regulation 1999/1, sec. 1.1 and 1.2

[11] UNSC Resolution, n. 3, Resolution 1244 (1999). In its paragraph 11, it mentioned the development of the provisional institutions for democratic self government in Kosovo as one of the responsibilities of the International Civil Presence. To fulfill this mandate SRSG has promulgated this Framework and attached it to the UNMIK Regulation No. 2001/9. It envisaged democratic governance of Kosovo by executive, legislative and judicial bodies. Thus Permanent Institutions of Self Government in Kosovo was composed of Assembly, President of Kosovo, Government, Courts and other bodies. However, it is important to note that SRSG has supreme authority in Kosovo and PISGs have to function under its overall supervision.

[12] UNMIK Regulations, n. 10, Regulation No. 2001/9, Constitutional Framework, Preamble

[13] Ibid, Chapter 5.7

[14] UN Doc. S/1999/672 of 12 June 1999, n. 5 paragraph 103.

[15] UNMIK Regulations, n. 10, Regulation No. No. 2001/3, sections 5 and 6.

to these investments.[16] These foreign investments were also extensively protected against any takings by the authorities and the definition of authorities includes both the interim administration as well as its successors. [17] The taking was only allowed for an overriding public purposes and itmust be made in accordance with the due process of law and accompanied by prompt, adequate and effective compensation to the foreign investor. [18]

A foreign investor's claim of taking entitled him a prompt judicial or administrative hearing or a hearing before some other competent authority in accordance with due process of the law and if the claim was found valid the compensation equivalent to the fair market value of such foreign investment was ordered. [19] The compensation was to be paid in the currency determined by the International Monetary Fund and also included the international standards of interest rates for the period between the dates of such taking and the complete payment of compensation. [20]

Foreign investors have unrestricted right to use their investments and profits and allowed to freely transfer their lawfully acquired funds without delay inside and outside the Kosovo subject to tax and other liabilities. [21] They were allowed to open bank accounts in Kosovo in the currencies of their choice.[22] They have protection against retrospective application of any adverse law.[23] Most of the European conventions relating to the business principles were imported to Kosovo and the foreign investors were required to observe the business practices consistent with these conventions. [24]

UNMIK also established Kosovo Trust Agency (KTA) to administer the publically and socially owned properties and assets related to them.[25] It enjoyed wide powers of administration in respect of these properties.[26] There were also provisions where these properties could be transferred into leasehold of ninety nine years. Apart from this, a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters was also established to hear the lawsuits against the KTA.[27] It is important to note that this special chamber was consisted of five judges (that were assigned by the SRSG to serve on the Special Chamber by SRSG) three of which were international judges and two were residents of the Kosovo.[28] Only international judge appointed by SRSG could become President of this Special Chamber. The decision of this Special Chamber is final and binding on the parties.[29] has also promulgated international standards of IPR regime for Kosovo.

3. CPA'S ADMINISTRATION OVER IRAQ

The occupation of Iraq and its transitional administration by occupying powers was the result of the long political confrontations that resulted into a war in 2003. After the complete defeat of Iraqi forces in this war, the USA, the UK and other coalition partners had created Coalition Provisional Authority (CPA)[30] to exercise the power of government temporarily.[31] The United Nations Security Council recognized the specific authorities and responsibilities of these

[16] Ibid, Section 3.
[17] Ibid, Section 7 and section 2
[18] Ibid, section 7.1.
[19] Ibid, section 7.2.
[20] Ibid, Section 7.3.
[21] Ibid, section 9.1 and 9.2
[22] Ibid, section 9.2.
[23] Ibid, section 12.
[24] Ibid, section 15. These conventions were: Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Council of Europe, Strasbourg, 8 July 1990), the Convention on Combating Bribery of Foreign Government Officials in International Business Transactions (Organisation for Economic Cooperation and Development, Paris, 21 November 1997), the Criminal Law Convention on Corruption (Council of Europe, Strasbourg, 27 January 1999), and the Civil Law Convention on Corruption (Council of Europe, Strasbourg, 4 November 1999). The violation of any of these might be the cause for disqualification from business operations in Kosovo.
[25] UNMIK Regulations. n. 10, Regulation No. 2002/12.
[26] Ibid, Section 6.
[27] UNMIK, Regulations, n. 10, Regulation No. 2002/13, Section 1
[28] Ibid, Section 3.1.
[29] Ibid, Section 9.7.
[30] To know more about CPA, see, L. Elaine Halchin (2004), "The Coalition provisional Authority (CPA): Origin, Characteristics and Institutional Authorities" Congressional Research Service Report, available at URL: http://www.fas.org/man/crs/RL32370.pdf
[31] Letter from the Permanent Representative of the UK and the US addressed to the President of the Security Council, UN doc S/2003/538 of 8 May 2003, quoted in Adom Roberts (2005), "The End of Occupation: Iraq 2004", International Comparative Law Quarterly, 54(1): 27-48, p 31. This letter states that, "In order to meet … obligations in the post – conflict period in Iraq, The United States, the United Kingdom and Coalition partners, acting under existing command and control agreements through the Commander of Coalition Forces, have created the Coalition Provisional Authority which includes the Office of the Reconstruction and Humanitarian Assistance, to exercise powers of government temporarily, …"; Also

states as occupying powers under the unified command of CPA.[32] In exercise of this power of temporary authority as occupying authority i.e. CPA mainly issued various regulations[33], orders[34], memoranda[35] and public notices[36] . The wide legislative coverage of these instruments have been in question for their compatibility with the nature of the international law of belligerent occupation.

The regulations and orders of the CPA have overarching effect and takes "precedence over all other laws and publications to the extent such other laws and publications are inconsistent" to these regulations and orders. [37] CPA authority over Iraq was mainly directed towards two goals, first to deba'athification of Iraqi society[38] and secondly, to convert Iraq's economy into a market based economy[39]. Various measures in respect of De-Ba'athification of Iraqi political sphere had been undertaken. All individuals who had any relationships were removed from their position and furthered barred from employment in any public sector. [40] It has also established De-Ba'athification Council to achieve this goal. CPA had dissolved seven institutions of Iraqi government and all the assets of these entities had come under control of CPA Administrator in capacity of trustee on behalf and for benefit of Iraqi people. [41]

Apart from this, the CPA has also changed most of the laws related to Iraqi economy. It has promulgated laws related to banking[42] and foreign investment[43], trade liberalisation[44] and IPRs[45]. Most of these laws did not satisfy the restrictive capacity of occupying power to legislate in any occupied territory. Most of these laws were of nature to affect the future of Iraq beyond the period of occupation and to convert Iraq one of the most open economy of the world.

For example, CPA order no. 39 allowed 100% foreign investment in Iraq in most of the economic sectors with some exceptions.[46] There was nowhere any requirement to reinvest the profits into the country. [47] Under previous law, this privilege had only been restricted to national of Arab countries. [48] All the funds associated with the foreign investment could be transferred abroad without any delay and quantitative restriction. [49] There was no requirement for foreign investor to use local products or services.

Though this order formally prohibited the purchase of real property or its usufruct by foreign investors but it permitted the foreign investors to obtain license to use such properties for up to forty years. [50] The Iraqi Interim Constitutions of 1970 and 1990 were prohibited any ownership of immovable property by foreigners. In this sense this order keeps that

see, Also see, Eyal Benvenisti (2003), "Water Conflicts during the Occupation of Iraq", American Journal of International Law, 97(4): 860-872, p. 861.

[32] UNSC Resolutions, n. 3, Resolution 1483 of 2003, 14th preambular paragraph.

[33] Coalition Provisional Authority, Orders, Regulations and Memorandums. URL: http://www.cpa-iraq.org. CPA Regulation No. 1, sec 3(1). It defines Regulations as "those instruments that define the institutions and authorities of the CPA".

[34] CPA, n. 33, Regulation No. 1, Sec 3(1). It defines Orders as a "binding instructions issued by the CPA".

[35] Ibid, Regulation No. 1, Sec4 (1). It understands Memoranda as those instruments that "issued in relation to the interpretation and application to the regulations and orders".

[36] Ibid, Sec. 3 (1). It also states that the CPA Administrator may from time to time issue public notices. The Public notices were issued generally to communicate the intentions of CPA administrator to the public or reinforced aspects of existing law that the CPA intended to enforce.

[37] CPA, n. 33, Regulation No. 1, Section 3(1)

[38] See, CPA, n. 33, Order Nos. 1, 2, 4, 5

[39] The CPA Administrator Mr. L Paul Bremer has announced his agenda to reform the economy of Iraq in an address to the World Economic Forum on 23 June 2003. He described the Ba'athist economy as a 'closed, dead – end system' and argued that its reform was the 'most immediate priority' for the CPA. The Administrator has further noted various reform measures to be undertaken by the CPA to make the Iraqi economy a market based economy. See, Christina C Benson, (2012), "Jus Post Bellum in Iraq: The Development of Emerging Norms for Economic Reform in Post Conflict Countries", Richmond Journal of Global Law and Business, Vol. 11(4), pp. 322-323, pp. 322 – 323; also see G H Fox (2005), "The Occupation of Iraq", Georgetown Journal of International Law, 36(2):195-297, pp. 215 -216.

[40] CPA, n. 33, Order no. 1

[41] CPA, n. 33 Order no. 4, section 1 and section 3.4.

[42] CPA, n. 33, Order nos. 40, 94, 18 and 56

[43] CPA, n. 76, Order no. 39.

[44] CPA, n. 33, Order nos. 12, 17,20, 37, 38, 49, 51, 54, 64 and 78.

[45] CPA, n. 33, Order nos. 80, 81, 83.

[46] CPA, n. 33, Order 39, section 6.

[47] Ibid, Order 39.

[48] Marten Zwanenburg (2004), "Existentialism in Iraq: Security Council Resolution 1483 and the Law of Occupation", P. 757, [Online: Web], URL: http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/Section_ihl_occupird_territory

[49] CPA, n. 33, Order no. 39, section 7(2) (d). These might include (i) shares or profits or dividends, (ii) proceeds from the sale or other disposition of such foreign investment or a portion thereof, (iii) interest, royalty payments, management fees, other fees and payments made under a contract, and (iv) any other transfer approved by the ministry of trade.

[50] Ibid., Section 8 (1).

provision but allowing the lease for forty years definitely undermined the previous constitutional provision. [51] The principle of national treatment was also applied to these investments. [52] However, any international agreement to which Iraq was a party and that provided for more favorable treatment to the foreign investors in Iraq was remain applicable. [53]

4. MAKING SENSE OF TRANSITIONAL ADMINISTRATIONS OF KOSOVO AND IRAQ

The transitional administration of Kosovo and Iraq has attempted to establish a liberal democratic model of development. The infusion of this particular model was the result of the biased or value loaded interpretation of the UN Security Council resolutions. UNMIK itself was directly formed under UN Security Council resolution while CPA has always quoted UNSC's authorization to implement long lasting legislative measures. However, the readings of the respective UNSC resolutions do not suggest that any particular set of legislative measure was sought. It seems that these administrations have understood the general language of UNSC resolutions with a specific interpretation where various other interpretations are also possible.[54] It is also important to note that prospective unwillingness of the UN to deliberate upon these undertakings, due to whatsoever reasons also somewhat amounts to a tacit acceptance to these enterprises. Thus it seems that international legal techniques are used to serve the particular interests of market dominated political and economic structures.

Considering the nature of their extensive engagement in Kosovo and Iraq, it is also pertinent to study structure of accountability embedded in these two administrations. Both these seem to be free from any accountability structure for the legislative changes that they have introduced into the political and legal realm of Kosovo and Iraq. The UNMIK Regulation No 47/2000 on "the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel" provided wide ambit of immunities for UNMIK and KFOR. Sections 2 and 3 of this regulation granted KFOR and UNMIK immunity from any legal process respectively. [55] In similar fashion, the CPA in Iraq avoided any degree of accountability by denying the jurisdiction of the Iraqi courts over any CPA personnel in respect of both civil and criminal matters. [56] This blanket immunity have reduced the possibility to redress the human right violations caused by military internal investigations and further excluded the impartial and independent review of human rights violations by civilian personnel in Iraq.

It is important to note that, the modern system of governance was based on the system of legislation, execution and adjudication to check the excesses of each of it in their function. If international actors assume these powers in any territory then they must also be subject to the same principle of accountability and check and balances particularly to ensure the protection of the persons affected by the activities of these international actors. The blanket immunity enjoyed by the international actors in Iraq and Kosovo negates the basic notion of rule of law and democratic governance that are well propagated as inspiring goals for these missions.

Apart from this, it is also important to note that the modern immunity doctrine only immunises the act of person from the jurisdiction of the national courts and the person himself. It seems that the immunity is not granted because of the fact that the particular defendant in legal proceedings is a subject of international law and therefore supposed to be

---

[51] Iraqi Interim Constitution of 1970, Article 18, available at, Iraq Interim Constitution of 1970, available at, http://www.mallat.com/imag/pdf/InterimConst1970.pdf Iraq Interim Constitution 1970 , Iraqi Interim Constitution of 1990, Article 18, available at Iraq Interim Constitution of 1990, available at, http://confinder.richmond.edu/admin/docs/local_iraq1990.pdf .

[52] CPA, n. 33, Order no. 39, Section 4.

[53] Ibid, Order 39, Sec 14

[54] UNSC Resolutions, n. 3, For Iraq see, UNSC Resolution 1483 of 2003, operative paragraphs 4 and 5. For Kosovo, see, UNSC Resolution 1244 of 1999, operative paragraph 11.

[55] UNMIK Regulations, n. 10, Regulation No. 2000/47, sections 2 and 3, n. 15. Section 2(1) of this regulation states that "KFOR, its property, funds and assets shall be immune from any legal process". Similarly, section 3(1) of this regulation states that "UNMIK, its property, funds and assets shall be immune from any legal process".

[56] See, CPA, n. 33, Memorandum No. 3 and Order No. 17 and CPA Public Notice of 26 June 2003 regarding the status of Coalition, Foreign Liaison and Contractor personnel. The legal position of the CPA concerning the immunity was declared in the concerned public notice of 26 June 2003 as "In accordance with international law, the CPA, Coalition Forces and the military and civilian personnel accompanying them, are not subject to local law or the jurisdiction of local courts. With regard to criminal, civil or administrative or other legal process, they will remain subject to the exclusive jurisdiction of the State contributing them to the Coalition. A mechanism exists for this immunity and jurisdiction to be waived by the State contributing personnel to the Coalition at their discretion." Further section 2(1) of the CPA Order No. 17 states that "CPA, Coalition Forces and Foreign Liaison Mission, their property, funds and assets shall be immune from Iraqi Legal process". In the similar continuity, section 2 (4) adds that "[a]ll Coalition personnel shall be subject to the exclusive jurisdiction of their Parent States, and . . . shall be immune from local criminal, civil, and administrative jurisdiction and from any form of arrest or detention other than by persons acting on behalf of their Parent States". Apart from this a similar kind of immunity was also granted to private contractors in Iraq have also enjoyed immunity by virtue of sections 1(11) and 4(3) of the CPA Order No. 17.

beyond the jurisdictional reach of a court, but rather because the act in question is performed by a foreign actor in the course of its official functions. [57]

This argument questions the legitimacy of the standard of absolute immunity for a foreign actor that is involved in such a deeply imbedded transitional administration of the territories and acts as its territorial sovereign. Moreover, the international human rights law also places limits on the principle of functional necessity that are generally advocated as a justification for the immunity of international organizations.[58] The non-availability of domestic courts seriously impinges on various international human rights provisions that particularly deal with the right of the individuals to access courts. [59]

Apart from this, both these administrations have also constituted the institution of Ombudsperson. The power of Ombudsperson in Iraq was limited only to investigate the complaints in penal and detention matters. [60] It is important to note that the jurisdiction of the Ombudsperson has specifically excluded the investigation of conduct of the detaining powers which had taken place prior to 27 June 2004. This condition has exempted the detention practices of the US and UK during the core period of occupation, including the incidents in the Abu Ghraib prison from any independent scrutiny. Thus it seems that these administrations were working though in a fashion like domestic actor but immune from the accountability structures that are common in any democratic and rule of law oriented society. Concentration of all legislative, administrative and judicial power in a single entity also compromises the legitimacy of these administrations. Thus, these administrations present a strange situation where an ideal of rule of law is introduced through its denial.

These administrations sometimes seek legitimacy from the argument that they gradually include and promote the domestic voices of the territories. It is important to note here that the nature of this participation of local actors is highly questionable. This participation does not take place on equal basis and the domestic actors have to act in accordance with the will of the international administration. The ultimate power in respect of any decision always lies with the international administrator. Apart from this, the involvement of the domestic voices is dependent of the discretion of the international administration.

Moreover, the language biasness of the international actors seems to affect the participation of the domestic actors in transitional administrations. English language has been designated as the final interpretative authority in respect of any conflict as to the interpretation of the regulations/orders both in Kosovo and Iraq. [61] Thus the clear and unambiguous meaning and understanding of the orders and regulations of these administrations seems to be a distant reality for the domestic actors. Apart from this, the complexity of the international involvement in very minute and sophisticated economic and trade practices puts the domestic involvement in a precarious condition in respect of its capability to appreciate such involvements.

Thus, the above discussion shows that the transitional administration of Kosovo and Iraq was an attempt to reconstruct these societies in a particular politico economic manner. These examples clearly manifest the structural biases of these projects. They seem to be used as "privileged channels for the exportation of political technologies, economic recipes and juridical models".[62] It seems that the 'standard of civilization' has not strictly banished from the jurisprudence of international law and continues to be implicated in loose worded concepts of human rights, economic and technological progress and self determination. Thus these administrations seem to deny the aspirations of most of the third world

---

[57] Carsten Stahn (2008) The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond, Cambridge: Cambridge University Press, pp. 588.

[58] Michael Singer (1995), "Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns", Virginia Journal of International Law, Vol. 36, p. 53.

[59] For the sake of example this study takes the examples of Article 14 (1) of the ICCPR; Article 6 (1) of the ECHR and Article 10 of the UDHR. Article 14(1) states that "[a]ll persons are equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Further, Article 6(1) of the ECHR states that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair public hearing within reasonable time by an independent and impartial tribunal established by law". In the similar fashion, Article 10 of the UDHR states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

[60] CPA, n. 33, Order No. 98

[61] UNMIK Regulations, n. 10, Regulation No. 2001/9, section 14.4. it states that "The English, Albanian and Serbian language versions of this Constitutional Framework are equally authentic. In case of conflict, the English language version shall prevail…". Also see, UNMIK Regulation No. 1999/1, section 5.2, it states that "UNMIK regulations shall be issued in Albanian, Serbian and English. In case of divergence, the English text shall prevail…". Also see, CPA, n. 33, Regulation No. 1, section 3.2. It states that "… the Regulation or Order … shall be promulgated in the relevant language and shall be disseminated as wildly as possible. In the case of divergence, the English text shall prevail"

[62] Nicholas Guilhot, (2002) The Democracy Makers : Human Rights and International Law, New York : Columbia University Press, p. 8, quoted in Nehal Bhuta (2008), "Against State – Building", Constellations: An International Journal of Critical and Democratic Theory, vol. 15, p.7.

countries that have been expressed through various UNGA resolutions and that talk about the inalienable right of any state to choose its political, economic, social and cultural systems without any external interventions. [63]

5. CONCLUSION

The project of transitional administrations undertaken after cold war seem to engage aggressively with the inside orders of particular territories. These post cold war transitional administrative engagements shows that foreign actors are much eager to transform the internal legal structures of the territories. The transitional administration of Kosovo and Iraq are the extreme manifestation of this post cold war emerging trend. It seems that these administrations were aimed to place Kosovo and Iraq in the web of liberal democratic setup that caters the need of market based economies of the globe.
This further shrinks the sovereign space of incoming government. Their choices of economic and political development become out of their reach and they always have to depend upon western economic structures for their survival. This helplessness of incoming sovereign governments is susceptible to be used exploitatively for other geopolitical benefits. Thus these transitional administrations put the concerned societies on the circular path of development – collapse – development.

[63] UNGA Resolution 1803 of 1962 and UNGA Resolution 2625 of 1970, UNGA Resolutions are available at http://www.un.org/documents/resga.htm