Characteristics of International Administration in Crisis Areas*

Outi Korhonen

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1. Introduction

First, I would like to express my gratitude to the International Academy of Comparative Law, M Roland Drago and Mme Aliette Voinnesson, and the Finnish Branch, Martti Koskenniemi and Tore Modeen, for inviting me to act as the general reporter on the international law topic for the World Congress 2006. It has been a great pleasure. Secondly, I would like to thank all the national reporters for the wonderful work and the highly interesting reports that I received in the course of this project. It was most informative, enjoyable and inspiring to compile the general report based on those eight/nine papers.

This endeavour already started in the autumn of 2004 with the identification of the reporters and the key areas of interest in the field of international administration in crisis areas. Of course, many different possibilities presented themselves: A survey of the cases, an analysis of the relationship of the different countries towards the United Nations and the Charter obligations, the role of different intergovernmental organizations and so forth. Considering these options with the aim being to obtain the most interesting tenets of comparable information, I prepared the note on the general direction of the reports in the spring of 2005.¹ I received comments, questions and, of course, wonderful papers, some complemented with additional tables and supplementing updates, up until the summer of

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¹ Reproduced in Korhonen, supra note *, p. 47-48.
2006. Inspired by the enthusiasm of, e.g., our Spanish colleague Yolanda Gamarra and, in particular, the quality and importance of the papers, I decided to prepare an independent publication on the topic under the working title: “International Administration of Crisis Areas: National Approaches” (forthcoming 2006). I am indebted to the Academy, the authors and their national publishers for granting the necessary permissions.

1.1.

In international law there is hardly a more interesting and timely topic than the present one: The characteristics of international administration in crisis areas. It is currently on the agendas of all inter-governamental organizations including the European Union and the international financial institutions (e.g. the World Bank). It also relates closely to the debates concerning the methods for combating terrorism, international and transnational security and police measures in general. Much institutional reporting and planning was focused on the very topic of crisis areas at the same time as we prepared the papers, i.e. the country reports.

It is also noteworthy that the first decade and a half of post-Cold War peace operations is drawing to a close with a small institutional revolution brought about within the United Nations. In 2005-2006 we witnessed the setting-up and inauguration of the Peacebuilding Commission, the accompanying Peacebuilding Support Office and the Peacebuilding Fund at the headquarters in New York. Their purpose and mandate is to bring order, co-ordination and leadership to the field of extended peacekeeping, peacebuilding, integrated missions, etc., in other words, also to those various efforts that can be grouped under the broad umbrella of international administration of crisis areas. The new forms of international co-operation and engagement have grown from the post-Cold War politics and been reflected in global policy initiatives, such as the United Nations Secretary-General Boutros Boutros-Ghali’s An Agenda for Peace (1992).

With the United Nations and the European Union working together for peace in the Middle East, a new era of European engagement with the hottest of the world’s potatoes has been opened. The European Union, an essentially economic power and a group of sovereign States, seeks unity in the field of foreign relations and international security management to curb the most difficult and long-standing crises on the global scene and also to offer an effective alternative to the unilateralism of the United States.

The definitions of the different and interlocking terms associated with international administration or governance of crisis areas are abundant. Perhaps it would suffice to say that the international administration of crisis areas may encompass different forms of engagement ranging from traditional development co-operation and humanitarian assistance

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[2 An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, Report of the Secretary-General, UN Documents A/47/277 - S/24111 (17 June 1992).]
to the more forcible forms of peacemaking and peacekeeping and, finally, to the overarching concepts of peacebuilding and sustainable development. The concrete operations, thus, are alternately described as operations of ‘extended peacekeeping’, ‘integrated missions’ or ‘international (transitional/interim) administrations’ and include general administrative, police and peacekeeping tasks, different types of monitoring, electoral assistance, logistic support, funding and other aid provided by bilateral donors, multilateral organizations or international non-governmental organizations or all of them in concert.

Judging by the importance, frequency, volume and cost of the crisis alleviation operations – numbering some forty active operations at the moment – the organizational reform is long overdue. As seen from the perspective of United Nations Controller Warren Sach:

> [T]he increased scope, dynamic nature and volatility of peacekeeping activities (has) continued to challenge the Organization’s ability to deploy and manage […] the missions […] [T]he range of peacekeeping activities has broadened in scope, dimension and complexity resulting in a commensurate growth in the overall peacekeeping budget level.3

At the same time, however, much inexcusable inefficiency and a waste of resources has been suffered through a lack of co-ordination, adequate leadership and blatant inter- and intra-agency competition; not to mention the fact that the interests of the largest donor countries have sometimes unduly shaped the agendas of the concrete missions; a point that is also made by some of the national reporters below. As Necla Tschirgi at the International Peace Academy has written:

> There are multiple layers of disconnect between the growing body of knowledge on post-conflict peacebuilding, hortatory commitments by policy makers to more effective peacebuilding, and international engagement on the ground. The chasm between knowledge, policy and practice is no longer sustainable. Too much is at stake for countries emerging from conflict to continue serving as laboratories for ongoing experimentation by the international community through trial and error.6

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3 The largest donor, the US, reports to have spent more than USD 4 billion in active peacekeeping operations in mid-2005 and budgeted about 5.03 billion for UN DPKO missions this year. See, Budget-Approved resources for the period from 1 July 2005 to 30 June 2006 at http://www.mondediplo.com/maps/unpeacekeeping. The US funds the lion’s share of the UN operations. The budgets for the operations of other IGOs are considerably smaller. For the UN see, Fifth Committee Takes Up USD 4.8 Billion Peacekeeping Budget (…), General Assembly GA/AB/3734 (22 May 2006); available at http://www.un.org/News, Press/docs/2006/gaab3734.doc.htm. As the apparent discrepancy between the overall UN peacekeeping budget (4.8 for 2006-2007) and the budget committed to the UNDPKO by the US alone last year (5.03 for 2005-2006) suggests, the differing instruments, funds and budget lines, and the many international organizations involved in these operations make their finances most non-transparent for the public.

4 The numbers here encompass the successive operations in a particular location, e.g. UNISOM I and II for Somalia are counted separately. The UN alone reports 15 peacekeeping and 16 peacebuilding and political missions active in the past 12 months. See, Fifth Committee Takes Up USD 4.8 Million Peacekeeping Budget (…), General Assembly GA/AB/3734 (22 May 2006); available at http://www.un.org/News, Press/docs/2006/gaab3734.doc.htm.

5 Id. at 1 (Warren Sach, UN Controller).

Similarly, in appealing for renewed engagement by the Security Council with Timor Leste after the June 2006 upsurges of violence the United Nations Secretary-General Kofi Annan concluded that:

> [w]e have learned – at a painful price for Timor Leste – that the building of institutions on the basis of fundamental principles of democracy and rule of law is not a simple process […].

The present state of affairs in Iraq and in many African locations underlines the same conclusion.

The present comparative project initiated by the Academy and completed by the reports featured here will, for its part, seek to alleviate the above-mentioned disconnect between the layers of knowledge and action in shedding light on the national and intra-state approaches, experiences and pieces of knowledge in this growing field. As such, our project fills an important gap between the layers of knowledge and concrete experiences; this project introduces the national rules, the policies and the administrative procedures of (8+1) countries members to the international organizations and coalitions on whose concurrence, donations and resources all activities are based.

Thus, I hope that this project will contribute to increasing transparency and decreasing the waste of resources among the different actors – national, supranational as well as international. This is done through providing reciprocal and comparative knowledge for international co-operation – to be utilized in both multilateral and bilateral contexts – in order to reduce the painful price that results from the uninformed decisions, inefficiencies and trial-and-error approaches of the administrators and that the hungry, displaced and war-scorched victims of the world’s crises will ultimately always pay. It is helpful to learn about the procedures of one’s co-operation partners in seeking to overcome the challenges presented by the multiple tasks of contemporary international administration of the various forms and situations brought about by complex crises and emergencies.

2. Comparative Tables on Volumes, Legal Bases and Administrative Structures of National Participation in International Administration of Crisis Areas (IACA)

Out of ten initial expressions of interest by national reporters I eventually received eight reports and have undertaken to complement the list by a survey on Finland. The reporting countries in alphabetical order are:

Belgium, France, Greece, Japan, Poland, Spain, the United Kingdom, the United States of America (the first three reports were originally in French and the others in English), and complemented by Finland.

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It is not surprising that the reports come from those countries where the topic is high on the national agenda and which are also the world leaders in the field. The group of reports is also highly representative in that it includes countries from three continents, permanent members of the Security Council of the United Nations and of the Group of Eight (G8), large old and new members of the European Union as well as of the North Atlantic Treaty Organization, the Organization of Economic Co-operation and Development – and yet not only them.

In other words, I was in possession of highly representative national reports from 8+1 countries to compile this general report. Finland is not included in the comparative matrixes since the Finnish survey was made outside the initial programme.

It is perhaps somewhat trite to point out the fact that the national reports were very different in character; i.e. in their approach, format, length, tone, as to the facts that were judged relevant by the authors and much else despite (if not because of) the general guidelines given in my ‘note to authors’. Therefore, my efforts as the general reporter were very much focused on understanding the beautiful richness and heterogeneity that emerges when one puts the same question to eight or nine legal professionals in as many different countries.

The reports could – with much epistemic injustice – be grouped into two different format categories:
1) Essays (the longer reports)
2) fact-sheets (the short reports)

This categorization does not mean that the essays would not have contained facts but rather that the fact-reports did not contain the same type of argumentation and the drawing of conclusions that the former did. Because of the sensitive nature of the topic and the national information given thereon by the authors or their interviewees, one must note that some authors and interviewees have considered it necessary to explicitly forgo the making of any conclusions or the expression of any personal opinions relating to the facts discussed or reported while others have utilized the full extent of the freedoms of an academic and critical exercise (including the present authors). The implication of these different styles of reporting is that in the brief introductions below (Part Two of this paper) I have mainly concentrated on the essays and any concluding opinions presented are solely mine.

Most of the authors had understood the topic approximately the same as I did, i.e. to address the characteristics pertaining to ‘international administration’ from the point of view of their national systems; in fact, only one report contained an elaborate part on the domestic administration of emergencies.

Together with my research assistant Sudeshna Basu we compiled three tables as matrixes of the comparable facts and supplemented the missing details by further questions to the

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authors or, alternatively, by our own research. We did this in order to offer some statistical comparisons to our audience, although it must be born in mind that since the information relates to the highly sensitive fields of security and military affairs, many governments and organizations have withheld an important part of the numbers. Even with only indicative results, we decided to retain the tables. They concern the following aspects of the international administration of crisis areas (IACA):

1) Participation of countries in international administrations of crisis areas; i.e. the volumes of staff and the number of international missions (“Volumes of Participation in IACA”)

2) National laws providing a basis for the participation of countries (“Legal Basis for Participation in IACA”)

3) National bodies and instruments involved in international administration of crisis areas; i.e. decision-makers (the executive), planning and co-ordinating bodies, funding instruments (“National Instruments and Bodies Involved in Participation in IACA”)

Table 1: Volumes of Participation in IACA

<table>
<thead>
<tr>
<th>Country</th>
<th>Region</th>
<th>UN Missions</th>
<th>NATO Missions</th>
<th>EU Missions</th>
<th>Civilian Staff (Admin, HR, aid workers, etc.)</th>
<th>Military Staff</th>
<th>Police (Engineers, scientists, technicians, etc.)</th>
<th>Other</th>
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Many details for a number of the missions have to be marked with no further information available. The list of abbreviations used in the tables is attached below (at the end of the article).
<table>
<thead>
<tr>
<th>Country</th>
<th>Sub- &amp; W. Saharan Africa</th>
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The first comparative matrix has been compiled on the basis of the tables provided by the reporters from Spain, Japan, the United Kingdom, and Poland, and complemented by a few additional details and for the other countries through our researches in publicly available resources. Thus, there may be differences in accuracy for which I take the due responsibility as explained before.

The table illustrates most strikingly how much the Iraq operation has taxed the participation of the P2 countries of the United Nations Security Council (the United Kingdom and the United States) and the resources that they can commit for international crisis...
administration. Their participation in the operations mandated and conducted by the inter-governmental organizations (UN, NATO, EU) pales in comparison to the participation of mid-size powers, e.g. Poland and Spain; notwithstanding the sizeable budgetary commitments for the United Nations peacekeeping that we saw above. Nobel prize-winning scholars have, of course, explained that the Iraq mission was already a trillion-dollar war in 2005, which would make this fact comprehensible. The United States had installed some 135,000 and the United Kingdom 8,000 troops in Iraq in 2006.

It may perhaps also be interesting to consider already at this point that the policy, e.g., of the United Kingdom has been to commit its resources to where it calculates it will be able to make the most difference. To develop this argument further in a somewhat blunt way – perhaps unjustifiably – would lead to the conclusion that, of course, in order to stand out the most a country would prefer to act unilaterally. This line of argument, is, of course, in direct contrast to the much more popular approach of multilateralism on which the entire postwar and United Nations system is based. Unilateralism and its critiques have, however, both been in the increase since 9/11, 2001.

On the other hand, for countries such as Poland and Spain – for similar and for different reasons illustrated by the national reporters – their strong participation in the multilateral efforts of the international organizations is important in the shaping of their national image and identity vis-à-vis the community of states. It is highly interesting to read how, e.g., the tumultuous constitutional history of Spain illustrates the national desire to build up – through law or legal commitment – an image of an internationally active peace-loving and peace-promoting nation.

Table 2: Legal Basis for Participation in IACA

<table>
<thead>
<tr>
<th>Country</th>
<th>Constitutional Level</th>
<th>National Law</th>
<th>2nd level legislation</th>
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<tr>
<td>USA</td>
<td>X</td>
<td>Case-specific acts e.g. Sudan Peace Act (2002), War Powers Res. &amp; Foreign Ops, Exp.Fin. &amp; Rel’d Progs Approps Act</td>
<td>(military rules)</td>
</tr>
<tr>
<td>UK</td>
<td>(*)</td>
<td>Prerogative powers of the Crown</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>X</td>
<td>Organic law on defence</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>X</td>
<td>Loi org. s/ la loi d. finances</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

10 See above at note 3 and accompanying text.
12 See infra section 3 and Y. Gamarra (National Report, Spain), at 22-36.
The second matrix compares the legal bases for the participation of countries in the international crisis administrations and post-conflict missions. It seems that most of the reporters have indicated that participation in international administration is strongly grounded in their constitutional order. The constitutions do not, however, offer much precision beyond the general commitments to international co-operation and the powers to conduct foreign affairs or conclude agreements. What was most striking was how little of lower level legislation and regulations on authorization procedures, objectives, terms, conditions, codes, co-ordinations and modalities (including the financial side) were reported. Poland and Spain reported ongoing legal reforms in this field – and they certainly seemed appropriate given the many complexities and the questions involved when sending staff numbering in thousands to the field as these countries do. The many questions pertain to the general conditions of service and return, the replacement and substitution of lacking staff domestically, benefits, family affairs, social security, co-ordination between government agencies, funding approval etc.
Table 3: National Bodies and Instruments Involved in Participation (in IACA)

<table>
<thead>
<tr>
<th>Country</th>
<th>National Authorising Body</th>
<th>Funding Mechanisms</th>
<th>Bodies of External Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>Commander in Chief- Congressional leadership</td>
<td>US Congressional Budget Office</td>
<td>USAID and Millennium Challenge Corporation</td>
</tr>
<tr>
<td>UK</td>
<td>Executive Body- Parliament</td>
<td>FCO, MoD, DFID and Global Pools</td>
<td>DFID</td>
</tr>
<tr>
<td>Spain</td>
<td>Cabinet, Consejo de Ministros, Parliament</td>
<td>Ministry of Finance</td>
<td>Agencia Española de Cooperación Internacional</td>
</tr>
<tr>
<td>France</td>
<td>Gouvernement</td>
<td>DAEF (economic and financial affairs)</td>
<td>DGCID and AfD</td>
</tr>
<tr>
<td>Belgium</td>
<td>Council of Ministers</td>
<td>Budget et control de la Gestion</td>
<td>DGDC and Belgian Technical Cooperation (BTC)</td>
</tr>
<tr>
<td>Japan</td>
<td>Government</td>
<td>ODA system</td>
<td>MOFA, JICA JBIC</td>
</tr>
<tr>
<td>Poland</td>
<td>President, Council of Ministers or Prime Minister</td>
<td>MoND Budget</td>
<td>MOFA- Development Cooperation Department</td>
</tr>
<tr>
<td>Greece</td>
<td>Ministère de la Défense, Conseil Suprême de Défense</td>
<td>NFI</td>
<td>MOFA (Hellenic Republic Development Cooperation programme)</td>
</tr>
</tbody>
</table>

To illustrate the domestic agencies and mechanisms involved in participation in international crisis administration, we prepared a table on national authorization and funding instruments and bodies. This table could have been made much more complicated than above because – as the usual complaint concerning co-ordination problems suggests – there are many cooks for this broth in every country and internationally. The intra- and inter-agency competition problem that we saw on the international level above fully applies to the domestic level as well.

In this table only the major domestic actors were featured. It seems that most countries channel the concrete resources through their development and aid agencies. The same was the case in the United Nations until the setting-up of the Peacebuilding Commission, Office and Fund as described above.\(^{13}\) The development offices, however, are not usually the main interlocutors when a country is considering its participation in a conflict or crisis area. The decision is made much higher up, the participation is planned in a more or less co-ordinated manner between a number of ministries and/or agencies and, only as a last step, the development agencies receive the authorization to execute the participation plan in terms of practical resources. One can see that this type of a procedure might be quite time-consuming, lacking in essential information and even frustrating to the different bodies involved; it may contribute to some of those famous delays – between the pledging and the actual execution – from which international missions so often suffer.

To address this general problem, a few countries have made reforms in their administrations; for instance, the United States, Canada, the United Kingdom and Denmark

\(^{13}\) “Peacebuilding was an institutional orphan … (that) found tenuous shelter under the roof of development agencies.” N. Tschirgi, Post-Conflict Peacebuilding Revisited: Achievements, Limitations, Challenges (2004); quoted in Tschirgi, *supra* note 6, at i.
(and a small number of others) have established a peace- or democracy-building or crisis operations unit – usually, under the auspices of the foreign services – where most of this administration is planned and co-ordinated from decision-making to execution; the United Kingdom and perhaps Belgium, among our group of countries, were the only ones who reported established and rather formalized inter-agency procedures in this field. For most countries, it would seem that the old ad-hocism holds most of the ground and, consequently, the procedures evolve on a case-by-case basis.

One could compare the development on the national level to the international plane; when preparing my first book in this field at the end of the 1990s it was affirmed to me in various international organizations that the only way to go in peacekeeping, extended peacekeeping and international crisis administration was the ad hoc way; anything else would have been politically unfeasible and impracticable, I was told. Now, six to seven years later the United Nations has established a Peace Building Commission in which to concentrate the knowledge and the conduct of these operations, the World Bank has two offices and a number of new instruments to do the same; The North Atlantic Treaty Organization and the European Union have also set up their integrated crises response bodies and are putting them into practice. In other words, the trend is on the side of the formalization and institutionalization of the procedures of participation in international administration of crisis areas both nationally and internationally.

3. Introduction of National Approaches to International Administration of Crisis Areas

As a result of the current project by the Academy and our international law topic group a wonderful mix of comparable and incomparable facts and observations on national approaches to the international administration of crisis areas arrived on my desk in the course of the year 2005-2006. In addition to comparing the reports in more systematic and graphic terms, as I have done above, I shall briefly introduce the reports below by pointing to the aspects that, in my view, mostly stood out in each and in comparison to the others. Not being an expert in all fields, I apologise in advance for my omissions and for being entirely subjective in my readings, “pick-outs” and introductions. It may also be important to add that due to the difference in the length and style of the reports, some benefit from longer introductions while others written in a more fact-sheet style would only have been unnecessarily duplicated by such an introduction.

It is important to note at the beginning that the international administration of crisis areas is by no means a new phenomenon that would have emerged only in the post-Cold War or even

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in the postwar era. As the more and less ‘gentle civilizing missions’\textsuperscript{15} by the more powerful members of the world community have unfolded in the course of history, several crisis areas have achieved international attention in various forms. In the colonial era, at the Berlin conference of 1884-85, and later with the establishment of the mandates system under the League of Nations these attentions acquired ever more organized forms.

The French, the Spanish and to some extent the Polish national reports, interestingly and – in my view – quite importantly, go back in history to list and to ground the present endeavours in the experiences gained with, among others, the elaborate forms of the, for example, Saar, Korea, Suez, Congo, and Danzig administrations that included – in some instances and to different degrees of effectiveness – rights of petition for locals, international judicial review and road-maps to locally-instituted republican governance.\textsuperscript{16} In other words, the international administrations of today are not facing entirely new questions or challenges of governance and, in fact and in part, are more modest in scope than some of their predecessors.

3.1.

It is thus highly thought-provoking, informative and welcome to read the opening sections of, e.g., Emmanuel Decaux’s paper discussing the French approach of the past 150 years to the international administration of territories and crises, the administrative and legal frameworks and conditions that were set in the course of the unfolding of the global policies, international alliances and coalitions of the successive républiques, their objectives, aims and practices that sound increasingly familiar to us in this allegedly very different multilateralist era. Indeed, Decaux identifies the post-1945 world of the United Nations with the ideology of multilateralism that has also shaped the French policies even if, as a member of the P5 (five permanent members) in the Security Council, it still enjoys a very special status among the global governing circles.

Among the different countries introduced in this group it seems that Decaux’s paper reports on most elaborate and deep-reaching national dialogues and debates concerning the subject of the international administration of crisis areas. The operations in the Balkans, Somalia and Haiti have received much critical attention in France, e.g. as to the respective, overlapping and not uncontroversial logics of peacekeeping, peacemaking, peace-building and the integrating missions and how these have been set to practice. Today, it seems from the French perspective that the sensitive nature of international administration and the tremendous volume of the responsibility thus assumed are best addressed through multilateralism, to quote from Decaux:

\textsuperscript{15} From an international law perspective, see M. Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960 (2004).

\textsuperscript{16} See Korhonen & Gras, supra note 14, at 77, 83, 86, 92; and Korhonen, Gras & Creutz, supra note 14.
The times of unilateral action having passed it is important to mobilize all the actors, interested States as well as international organizations. If the chapter on the United Nations Charter on tutelage has been rendered in desuetude, the issue is now a new form of international tutelage not trusted to a single power, which is quick to confuse its own interest with those of the local populations, but to the international community. The “peace-building commission” whose creation France welcomes should respond to the need of continuity and the requirement of legitimacy with flexibility and empiricism. (trans. by O. K.)

In France, as in most of the other reporting countries, it seems that the role and privilege of the executive in dealing with international administrations has become more prominent in the era of the United Nations. If a resolution of the Security Council exists, no subsequent democratic controls come to play. Also, the absence of the term “war” does not trigger those legal, often constitutional, mechanisms that would apply in the traditional case of using and/or participating in an operation that utilizes forceful means in a foreign territory. This is the case for France too.

In France, however, parliament seems clearly more active than in the other reporting countries in instigating inquiries concerning the new operations and France’s participation. Such inquiries are backed by the power of the purse, which, in the last instance and often only retroactively, can influence and set the course for a country’s participation in international operations. The French parliamentary inquiries that Decaux’s report discusses are amazingly elaborate, thorough, voluminous and critical in light of the other reports, and in the eyes of someone coming from a country in whose parliament the participation in the activities of the United Nations or the European Union would rather be viewed as self-evident and beyond national reassessment.

Decaux’s paper also prompts the issue of “institution shopping”. While Decaux writes that France decides based on considerations of synergy and efficacy through which international organization it acts in a particular crisis situation, the overlaps in the mandates of the organizations (such as NATO, EU and UN) clearly offer member countries the possibility to practice their international institutional politics by choosing through which agency they wish to commit what resources to crisis alleviation and nation-building. Decaux reports that France prioritizes the role of the European Union to that of NATO and understands the European Union’s role to be an engine of empowerment for its members within the United Nations. France sees international administration as a ‘business’ requiring voluntarism and

17 Decaux (National Report, France), 10.
18 Decaux, 12.
19 Id., 14.
realism rather than as a duty. Decaux reminds us that state-building, especially in post-conflict situations, always entails the risk of “saving the people from themselves” rather than allowing for local interests to emerge and to influence the operation properly. Decaux concludes:

Si l’histoire contemporaine a donné à la France une leçon, à travers ces diverses expériences, c’est bien celle de la primauté du droit des peuples à disposer d’eux-mêmes. C’est bien le message du général de Gaulle, à l’intérieur comme à l’extérieur, face à la décolonisation comme face à tous les impérialismes. Rien de durable ne se bâtit sans la liberté, sans la volonté nationale et l’adhésion populaire. C’est une leçon de démocratie, mais c’est aussi une leçon de diplomatie.

If contemporary history has endowed France with a lesson throughout its diverse experiences, it is undoubtedly the one of the primacy of the right of all peoples to dispose of their own affairs. It was clearly General de Gaulle’s message internally and externally when facing decolonisation as well as all other forms of imperialism. Nothing durable can be built without liberty, without national will and popular support. It is a lesson of democracy, but also a lesson of diplomacy. (trans. by O.K.)

The Spanish report also links the current stance of the kingdom with the historical experiences of colonialism and, further, evolving into the 20th century era of international organizations, the mandate system and, later, peacekeeping and its extensions. Yolanda Gamarra sees the participation of Spain in the international administration of crisis areas motivated by, first, the desire of the country to have an active positive image and a role among the international community of states and, secondly in the post-Franco era, to consolidate internal democracy through the reinforcement of international ties through participating in multilateral administrative efforts.

Reporting for Spain Yolanda Gamarra discusses the ambiguous nature of peacekeeping, beyond the Charter, and the resulting lack of domestic legislation on this topic. In her excellent report she elaborates on the complex processes of decision-making and the agencies involved when it comes to the different forms and generations of the international administration of crisis areas by Spain. Despite the fact that many Spanish governmental agencies are involved here – as in most countries – there are no specialized units to address international operations in their various forms.

‘Institution shopping’ can also be read in the Spanish report in Gamarra’s discussion concerning the Spanish choices between the North Atlantic Treaty Organization and the European Union’s activities. The lack of progress in the reform efforts of the United Nations Security Council is also an issue for Spain in this regard. As a guiding policy Spain applies “effective multilateralism” and is in the process of legal and institutional reform, e.g. in the field of a new act on national defence that would, ostensibly, confer more power to parliament in the international deployment of staff.

Gamarra’s report also contains a most interesting and deep-reaching section on the constitutional questions relating to the country’s participation in international operations and

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20 Id., 17.
21 Gamarra (National Report, Spain), 1-5, 9.
22 Id., 7.
23 Id., 14-15.
24 Id., 21.
its conditions and specifications – that are also common in the constitutions of many other states – such as the requirement of the declaration or at least the existence of a state of war before deployment, on the right to declare war/the outlawing of war since the Kellogg-Briand Pact (1928) and in the United Nations era. Gamarra discusses the modern constitutional history of Spain in elaborate detail and identifies the sources of the grey areas and their implications to democracy with regard to the topic at hand and the many recent international operations, e.g. in the Balkans.25 Gamarra’s report concludes with a recommendation that, without doubt, rings true in most other countries considering their participation in international crisis administration and its domestic conditions:

[I]f Spain aims to play an important role in international peace operations, it needs to integrate its policies of defence and foreign affairs, to define an internal policy on defence and security, to mobilize enough resources to fund its presence in international peace missions as well to ensure the safety of these forces.26

The report declares – as do most of the others with the prominent exception of the French – that assessments on the successes and failures of Spanish participation in international operations are rare if non-existent as of today; a fact that makes Gamarra’s report as a pioneering one in this genre ever more unique and important.27

For Japan, too, the participation in international peace and administrative operations in crisis areas has been a complex internal issue with important considerations of external image. In Japan, however, it seems that the inauguration of the participation in peacekeeping and its extensions has been most systematic in regulatory terms. Tetsuya Yamada reports that Japan’s participation in United Nations peacekeeping was preceded by the enactment of the enabling law on the very issue in June 1992.28 The legal basis concerning the other aspects also seems to be more clear-cut and overarching than in the other reports.

According to Yamada’s report, in the course of the past 15 years the Japanese public has grown supportive of the participation despite the initial doubts in 1992 with regard to Cambodia that derived from the overall post-1945 experience and the internalized reticence toward any external deployment of Japan’s self-defence forces.29 With the enactment of the law in 1992, the appointment of the Japanese national Yasushi Akashi as the Special Representative of the United Nations Secretary-General to head the operation in Cambodia and the formulation of a set of strict conditions, the so-called “five principles”, Japan abandoned the passivity of its chequebook diplomacy in favour of concrete participation through the commission of human resources.30 As in most of the other reporting countries,

25 Id., 22-36.
26 Id., 40.
27 Id., 40.
29 Id., 1.
30 Id., 3.
the legitimacy of the operations hardly arises as an issue for debate in Japan since it is seen as deriving directly from the role of the United Nations as the guarantor of international peace in the world.

The Japanese government also has a well-articulated and highly important policy linking together the aspects of, first, peacekeeping and its extensions and, second, humanitarian and development assistance. To quote:

The linkage between these two dimensions of Japan’s contribution is fully reflected in the notion of “human security”, which the Japanese Government vigorously advocates, emphasizing the two elements of “protection” and “empowerment”.31

This important and commendable policy is affected, e.g., by a considerable trust fund and its role in the Japanese policy is elaborated further in Yamada’s report. The challenge for the future, according to the Japanese report, emanates from the multifaceted new operations that do not fit neatly into the regulatory or administrative categories devised for ‘peacekeeping plus’ operations. Overcoming the domestic doubts that relate to the complexities of extending international administrative crisis policies will continue to prompt debate.32

As already mentioned, the British approach to international crisis administration distinguishes itself by the regularized nature of its inter-agency co-ordination and teamwork. The Department of International Development, the Foreign and Commonwealth Office and the Ministry of Defence have created a Post Conflict Reconstruction Unit “to improve the United Kingdom’s capacity to deal with post conflict stabilisation.”33 In addition, the same agencies approach the topic with teamwork, standardized guidelines and a multitude of strategies prolifically articulated in the most contemporary administrative jargon and elaborate on how to achieve efficiency, effectiveness and economy, best practices, added value, significance, strong impact and a comparative advantage for the United Kingdom in its participation in international administrative efforts.34 Despite these progressive steps, the British report notes that some quite typical problems remain, such as the effective disincentive for the chief constables to contribute to the international operations, which follows from the structures of the administration and the modalities of resource allocation in the field of the police.35 In the Polish report and in many other countries several problems in this vein are also reported.

The British approach reported in a Q&A format, based on the questions posed in my general note, echoes the traditional notions of the duties of civilized nations. When asked

31 Id., 5.
32 Id., 7.
33 See http://www.postconflict.gov.uk/ as reported in Wilde (National Report, United Kingdom), 13.
34 See Wilde, 11-13.
35 Id., 14.
whether there is a clear pattern to the British participation in crisis alleviation, reporting for the United Kingdom Ralph Wilde quotes the Secretary of State Michael Portillo in a debate in the House of Commons in 1996:

[W]hy Britain should become involved in places far from our country and where no vital interest is engaged. It is because we are a civilized nation [...] We recognize our humanitarian obligations. We take pride in our permanent membership of the United Nations Security Council, but it carries with it clear duties.36

The British report confirms the notion that in most countries the legitimacy of the country’s participation in international operations is taken to flow from the overall legitimacy of the international organization creating the mandate, e.g. the United Nations. Notwithstanding the popular acquiescence to policies of the international organizations’ activities, the report on the United Kingdom is one of the few which cites elaborate domestic literature and academic research on this issue. The rare popular debates will reportedly emerge only when there are armed actions involved.37 Though not in so many words, in the various guidelines and list of specific aims – among the reportees – the UK is the most articulate concerning its own national interests, national safety and strength, thereby including protection from illegal immigration, international crime and terrorism, and the securing of global energy supplies among the incentives to engage in concrete operations.38

For the British report Wilde interviewed key government experts and consulted a formidable amount of documents and literature to prepare an outstanding and in-depth extrapolation of the country’s approach to international administrative efforts. Although he reports that the overall strategy of poverty alleviation is the United Kingdom’s motivation to engage in international operations through the international organizations, upon reading the report, little doubt remains that the Iraq operation and the cross-Atlantic partnership have played an equally important role in shaping and formulating the policies and regulatory frameworks of the country.

The similarities between the British and the American approaches emerge when reading the respective national reports by Wilde and by Fred L. Morrison together. Although the reports are very different in style, it seems clear that the two nations have done much inter-Atlantic coordinating in the field of international crisis response.

What has already been observed above when considering the financial side of international operations and what is also evident in the volumes of staff is that, in many respects, the United States is the main actor in the international administration of crises through the international organizations, but also, especially in the G. W. Bush era, through direct unilateral or coalition-building actions. In Morrison’s words:

As the world’s sole remaining superpower, the United States finds itself involved in virtually all international crisis situations. In [...] Afghanistan and Iraq, it has been a major protagonist in the conflict itself before

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37 Id., 17, 20.
38 Id., 19, 20, also n. 70.
turning its attention to post-conflict issues [...] The United States also has a role in establishing the parameter for crisis administration, since its concurrence as a permanent member of the Security Council is necessary to any formal resolution by that body.39

In addition, it offers troops, logistical support, humanitarian assistance, diplomatic influence and operates through conditioning its billions of dollars of foreign aid through different institutions and, directly, to support the settling of international disputes.40

Despite the size, volume and frequency of the international engagements of the remaining giant, Morrison points to the fact that there is scarcely any hard law on the subject. To an extent, the executive privilege applies and many different regulatory frameworks come into play in different situations. For instance, the President can directly deploy troops carrying side-arms, but combat troops need congressional approval.41 The reasons for the absence of black-letter law on the subject are many and Morrison’s report explains them elaborately: the peculiarities of the constitution concerning e.g. treaty-making powers, other division of powers questions, the act of state doctrine, the finesses of various definitions (as the combat v. side-armed troops suggests), the dualism of the system vis-à-vis international law, and more mundane issues, such as the unwillingness of the country to submit to specific international regimes represented, for example, by the International Criminal Court, and the manoeuvring related to it.42

As in most of the other reports, one reads in the American report that “(t)here has been remarkably little commentary in the United States about the legitimacy of international administration in post-crisis areas.”43 In the American approach democracy is the keyword for legitimisation and while short-term legitimacy may require less, in the long-term the legitimacy of the administrations derives from the expediency and success of the efforts to restore or create local democracy. Thus, in contrast to the majority of the other reports, the legitimacy does not flow directly from the involvement of the United Nations (or another international body), but from the realization of the goals of democracy. In achieving this, Morrison criticises the slowness of the Kosovo mission that does not compare to the speed of the American endeavours in Afghanistan and Iraq.44

The Greek report also identifies a clear and established structure of agreements and procedures through which the country participates in the international administration of crisis areas. The United Nations and the European Union’s operations seem to achieve much more attention than, e.g., the North Atlantic Treaty Organization ones – despite, for example, the elaborate civilian and military co-operation (CIMIC) policies and procedures integrated into

39 Morrison (National Report, United States), 1.
40 Id., 1.
41 Id., 15, 18-19.
42 Id., 8-10.
43 Id., 24.
44 Id., 25-6.
the operations of the latter today. Angelos Yokaris from Greece does not report conspicuous problems and the country thus seems to place itself among those scrupulously complying with the crisis alleviation endeavours of the UN Security Council and the European Union, as “volatile”, “dynamic” and vastly increased as these have become since the end of the Cold War.  

The Polish report alerts us to the fact of the quite sizeable and variable activity of the country in the international crisis field. Although many problems and difficulties are created by lacking procedures and regulatory gaps, the country has become a major source of resources in the field.

The Belgian report also emphasizes the role of the European Union in the era of the Common Foreign and Security Policy.  

4. Concluding Remarks

Due to the diversity of the national approaches and the different nature of the reports this general report fails to do justice to the uniqueness, the pioneering quality, the in-depth excavations of information, and the eloquence of the conclusions of the reports themselves. I can only warmly recommend their reading to anyone interested or professionally occupied with this evolving field.  

The common trends that I identified in the reports included the following as seen above:

- the scarcity of the debate on the legitimacy bases for the operations and the procedures by international organizations in this field (except in France);
- the scarcity of first and second-level legislation on the subject (except in Japan);
- the primacy of constitutional provisions with regard to this field (except in Japan);
- the scarcity of formalized and institutionalized procedures in this field (except in the United Kingdom, and to some extent in the United States and Belgium);
- the trend towards more formalization and institutionalisation of the above (both nationally and internationally);
- the delegation of the practical execution of participation in the international administration of crisis areas to the development agencies (both nationally and internationally).

My note on the general direction of the reports has attempted to draw out the similarities and dissimilarities, the best regulatory practices as well as the gaps, conflicts and silence of the national regulatory and administrative structures in the field of the international administration of crisis areas. I claim that the questions that I posed and that incited no reaction from the

45 The quoted descriptions refer back to the United Nations Controller’s words above at p. 687 (note 3).
46 Crisis administration operations by the EU have been explicitly made possible by the Treaty of the European Union since Maastricht 1992 (1993, TEU article 2 and Title V, article 11). The European Council has expanded these policies since 1999.
47 The reports are edited and published in Korhonen, supra note *. 
national reporters are as significant for drawing conclusions as those that did in that they reveal the reverse side of the institutional and legal systems in question; they are telling concerning the paradigm, the idiom, the systemic silence, and, in short, what is judged to be relevant and what is not.\footnote{I have previously written more theoretically on the question of ‘deference’ in the law and the ethics of engagement. See O. Korhonen, International Law Situated (2000) and O. Korhonen, On Strategising Justiciability in International Law, X Finnish Yearbook of International Law 1999, 91-101 (2002); this article contains a five-prong exemplary analysis to assess the adequacy of a deference strategy vis-à-vis the world’s problems (at 99-101).}

The reports were silent on a number of questions posed. As far as any trends could be identified, the following remarks would be in order:

No report revealed any priorities of the sectors of administration in crisis areas that would be preferred by their national authorities; it would have been interesting to know whether the democratisation and rule of law projects in crisis areas would rather be started from, e.g., civil and political or economic, social and cultural rights, or elsewhere – beyond the immediate aims of security and humanitarian assistance. The role of the rights of and opportunities for women, children, labour, the elderly etc. did not feature in the reports although one hears much political rhetoric concerning these issues.

The private side of the administration, i.e. the outsourced activities, the role of non-governmental organizations, and the practice of the externalisation of administrative and security tasks were also not discussed in the national reports.

The applicability of and adherence to the principles of good governance in the field of international operations incited practically no observations. The absence of checks and balances for these operations was also left without any commentary even in the light of the fact that in historical cases, for example from the times of the League of Nations, rights of petition and judicial review etc. were frequent and some contemporary administrations have greatly benefited from the institution of ombudspersons.\footnote{E.g., the Saar Basin administration, the Danzig City, and later the Kosovo UNMIK. For more discussion, see Korhonen & Gras, supra note 14, at 83, 86, 52; or Korhonen, Gras & Creutz supra note 14.}

In my note I had also proposed a list of aims and objectives for the international administration of crisis areas including the obvious goals of international peace and security, but also items such as freedom of trade, environmental concerns and the fight against fraud, corruption and international crime – vices that plague the effectiveness of overall global development, the eradication of poverty (the most important conflict driver) and the particular operations. However, none of the countries was reported to have many articulated aims beyond the most obvious peacebuilding ones (with the exception of the United Kingdom).

In general terms, the reports were very silent on the private, economic, distributional, social and non-governmental side of the administrative efforts in this field. Also, it seems that
France and Spain were the only ones who seemed to be adamant in advancing certain agenda items in this field in the international organizations in which they are members, i.e. the United Nations and the European Union.

The above silences can, of course, partly be attributed to the general policy of *adhocism* that still largely prevails in this field. Another fair part may be attributed to the “disconnects” between knowledge and practice in national and international administration. Nevertheless, it is conspicuous that so much is taken for granted and left beyond questioning in a field that keeps requiring ever more significant material and human resources at home and abroad – not to mention the human suffering and casualties that are directly and indirectly involved. The gravity and extent of the issues are considerable and the price which has to be paid is “painful” and “no longer sustainable” as stated above by Tschirgi and Annan. I believe, however, that with the unique information gained in this project and the silence simultaneously detected one can now proceed to build a much more effective, legitimate and justified agenda both domestically and internationally for the international administration of crisis areas and the various levels of actors involved.

A Preliminary List of Abbreviations Used

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>AFOR</td>
<td>NATO Albania FORces</td>
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<tr>
<td>ARGUS</td>
<td>système d’alerte rapide global</td>
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<td>APRONUC</td>
<td>Nations Unies au Cambodge</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>B-FAST</td>
<td>Belgian First Aid &amp; Support Team</td>
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<td>CEELI</td>
<td>Central European and Eurasian Law Initiative</td>
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<tr>
<td>CECIS</td>
<td>Système de communication et d’information spécifique</td>
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<tr>
<td>CFSP</td>
<td>Common Foreign Security Policy</td>
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<tr>
<td>CGCC</td>
<td>Centre Gouvernemental de Coordination et de Crise</td>
</tr>
<tr>
<td>COPS</td>
<td>Comité politique et de sécurité</td>
</tr>
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<td>CSI</td>
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<td>DIID</td>
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<td>ESDP</td>
<td>European Security and Defence Policy</td>
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<td>Force internationale d’assistance et de sécurité</td>
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<td>FINUL</td>
<td>La Force d’intervention des Nations Unies au Liban</td>
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<td>Host Nation Statements</td>
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<td>Intergovernmental Agency for Development</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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</table>

50 Quote from Tcshirgi, *supra* note 6.

51 See above, pp. 687-688.
ISAF International Security Assistance Force
ISPU l’Institut Supérieur de Planification d’Urgence
JICA Japanese International Cooperation Agency
KFOR NATO Kosovo Forces
MIPRONUC la Mission préparatoire des Nations Unie au Cambodge
MFO Multinational Force of Observers
MoD Ministry of Defence
MOFA Law Ministry of Foreign Affairs Establishment Law
NATO North Atlantic Treaty Organization
NRF Rapid Response Force
ODA Official Development Assistance
OECD Organizations for Economic Cooperation and Development
OMC l’Organisation mondiale du commerce
OPCON Operational Control
OPEX opérations extérieures
OSCE Organisation for Security and Cooperation in Europe
PCRU Post Conflict Reconstruction Unit
PESC politique extérieure et de sécurité commune
PESD Politique européenne de Sécurité et de Défense
PKO Law Law Concerning Cooperation for United Nations Peacekeeping Operations and Other Operations
PSOE Socialist Government of Spain
RED Revisión Estratégica de la Defensa
RoE Rules of Engagement
SC Security Council
SDF Self-Defence Force
Secondment Law Law on Secondment of Government Officials to International Organisations
SFOR Stabalisation Forces in Bosnia and Herzogovina
SOF A Status of Forces Agreements
TA Technical Agreements
TOA Transfer of Authority
UEO l’Union européenne occidentale
UN United Nations
UNAVEM II United Nations Angola Verification Mission
UNDOF United Nations Disengagement Observer Forces
UNDP United Nations Development Programme
UNMIK United Nations Mission in Kosovo
UNMISET United Mission of Support in East Timor
UNTAC United Nations Transitional Authority in Cambodia
UNTAET United Nations Transitional Authority in East Timor
UNTAG United Nations Transition Assistance Group
USAID United States Agency for International Development
WEU Western European Union