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Human Rights Violations in Post-Conflict Areas as a Threat to Peace and Security: UN Mission in Kosovo

Abstract

This paper examines the concept of human rights and security in post-conflict areas in the context of international missions, the process of building a human rights, based on security, and the securement of sustainable peace aims. In Kosovo, the responsibility of the international community to respect human rights have resulted in violations that has seriously put peace and security at risk between Kosovan ethnic groups after 1999. Thus, this article explains how human rights violations continued to be a security threat for Kosovo for two decades until 2008.

Keywords: *human rights, security, international missions, post-conflict areas, Kosovo*

Introduction

The importance of human rights in today's world is about increasing the security of human dignity (Cassese 1990, p. 3). Before 1999, Kosovo was an autonomous province of Yugoslavia, with more than 90% of Albanians. Following reported gross violation of human rights against Albanian civilians leaving over 10,000 civilian casualties and thousands more missing, the province received the attention of the international community resulting in a NATO bombing campaign against Serbia.

In 1999, the establishment of the UN Mission in Kosovo (UNMIK), under the resolution 1244/99 of the security council, marked the end of the Serbian war against Kosovo, and placed the latter under administration of the United Nations, with UNMIK in charge of establishing peace and security in the country among the ethnically divided population. However, in the process of peace and state building of Kosovo, UNMIK failed to consider, amongst others, human rights violations, social justice, and the prosecution of war crimes, making itself a violator of human rights of the Kosovan population in Kosovo, through many unlawful and undemocratic principles that it applied throughout its mission.

The UNMIK mandate constituted one of the biggest violations including the lack of accountability under international law and the lack of procedures by which Kosovans could seek redress for wartime injustices committed by UNMIK and KFOR personnel. Therefore Kosovo, as a post-conflict area, became a practitioner of international law but had no access to international justice institutions. This four-part article aims to represent the situation of human rights in Kosovo from 1999 to 2008, the violation of human rights by international missions, and the security threats that these violations represent for the situation in Kosovo and in the region.

Thus, throughout the examples and illustrations presented, this article aims to validate the working hypothesis that the violation of human rights in post-conflict areas represents a larger decades-long reoccurring threat to security and sustainable peace. Unpunished war crimes in ethnically divided societies, failure to provide access to justice, and protection through absolute immunity, are only some of the factors that lead to the persistent fragility of peace and security.

Defining human rights and security in post-conflict areas

An in-depth analysis of both areas reveals that policies promoting human rights and security in peacebuilding function as processes and that focusing on either one or the other alone can have an ineffective and counterproductive outcome (*Ibidem*). The definition of the terms “human rights” and “security”, either separately or in their intertwined meaning, should reflect the levels of security and human rights in post-conflict contexts, bearing in mind that their classical definition is more sensitive in post-conflict situations (Valters *et al.* 2014).

The importance of human rights in peace has also been elaborated by Former Secretary General Brutus Ghali, who presented three concepts of peace in the World Conference of Human Rights, as peacemaking, peacekeeping, and peacebuilding (Jarvinen 2004). He described peacebuilding as a circumstantial endeavor of identifying and supporting the mechanisms which can advance the sense of trust and well-being of the people. These mechanisms would work to restore social order by supporting security forces, reform and guide governmental institutions, and promote the direct and indirect forms of popular participation in political life, with an emphasis on securing social justice, fighting political oppression and addressing the main causes of conflict (United Nations Secretary-General 1992). The former Secretary General of the United Nations Kofi Annan (1997, p. 3) also stated that, “The direct relationship between respect for human rights and long-lasting peace and sustainable development has been widely recognized”. Thus, human rights needed to take full priority in the agenda and all policy-making programs of the United Nations.

Meanwhile, security in today’s world, as Former Secretary-General Kofi Annan describes, means more than an absence of conflict (McAdam *et al.* 2008, preface). For over 20 years security was traditionally understood in terms of interstate conflicts and their impact on national sovereignty. During the cold war, the international community added military force to the concept of security in order to create a conflict-preventing balance of powers; despite this, devastating conflicts persisted and interrupted economic development in many parts of the world (McAdam *et al.* 2008). New approaches towards the concept in the 1990s offered an alternative to classic security, where countries were the most important actors and in permanent competition in the international system (Walt

1991; Waltz 1979). Lately, security is viewed as a human entitlement, thus moving towards individual-centered security, giving insight on the insecurities that people experience most commonly.

Security has been widely recognized as a foundation on which long-term, sustainable development can be built, and the interdependence between security and development in post-conflict areas is reaffirmed repeatedly in global forums. Furthermore, according to Rebeca Spence, activities and processes in the initial phases of peacebuilding should focus on the roots of the conflict and not only effects, support the restoration, reconstruction, and interaction of the aspects of the society that are torn apart, as well as repairing lost dignity and trust. This is done by recognizing specific aspects of post-conflict society in order to design and implement activities that ensure that rights of human beings will be protected (Spence 2001). Therefore, building a healthy foundation of human rights in post-conflict areas, also ensuring peace and security, not only mean an absence of war but also constitutes an insurance policy that eliminates security threats (Friedrich 2005).

Violation of human rights in Kosovo under international law

The United Nations was founded on the basis to protecting human rights and dignity of all human beings in the world, without discrimination (UN General Assembly 1948). In the latest decades, the most flawed aspects for UN missions in post-conflict areas were the inability to prevent gross violations of human rights, and the reestablishment of security and safety for the population. Meanwhile, ending of the impunity of human rights violations as well as the accountability for war crimes are regarded as an essential factor in social reconstruction and peacebuilding (Chinkin 2008).

Under resolution 1244/99 of the Security Council (United Nations Security Council 1999a), UNIMiK was established with the mission to protect and promote human rights, guided by internationally recognized standards of human rights as the basis of their authority in Kosovo (United Nations Security Council 1999b). According to existing investigations, more than 30 categories of rights had been violated in Kosovo in 1999, leaving a fragile situation devoid of social justice, as well as risks of revenge and inter-ethnic tensions in the country (OSCE/ODIHR 1999). Even the former Special Representative of the Secretary-General (SRSG) Harri Holker declared that “the UN

mission in Kosovo has only one mandate: to ensure the realization of human rights” (Ombudsman Institution in Kosovo 2004).

Many pieces of research and articles have been conducted and published on the paradoxes of UNMIK regarding its unlawful and undemocratic principles. However, this article aims to explain the long-term effect of the misconduct of the UN Mission in Kosovo and about the consequences it has produced after two decades. Regardless of its otherwise brilliant mission, UNMIK, along the way, became one of the biggest violators of human rights in Kosovo, jeopardizing the entire system of human rights as well as the foundations of long-lasting peace and security in the country (OSCE/ODIHR 1999).

Based on reports of international organizations, existing research in this field, court decisions and victim testimony of human rights violations in Kosovo in the period 1999-2008, it is clear that the problem with the UN mission was multifaceted. Some of the most important violations that caused the breakdown of the relationship between the international community and the local population arose from resolution 1244/99 (United Nations Security Council 1999a) included an unclear mandate, and the violation of human rights by UNMIK workers and their lack of accountability before international law and justice institutions. Although other international organizations have taken over UNMIK, these violations are embedded in Kosovo’s peace and state-building process, thereby continuing to pose a threat today.

Mandate

Contemporary political and legal theories, link democracy with accountability as a double doctrine where democracy and accountability promote and support each other. However, the mandate of UNMIK in Kosovo, based on Resolution 1244/99 and legalized by Chapter VIII of the UN Charter exhibits a lack of transparency of its actions and the power of institutional unaccountability (United Nations Security Council 1999a). This situation in Kosovo’s post-conflict society created dissatisfaction with the undemocratic and lawless UNMIK.

The second problem arising from the unprecedented UNMIK mandate in Kosovo is the situation of full authority given to SRSG (Friedrich 2005). In Regulation 1999/1

of 25 July 1999, the SRSG conceives that all the authority vested in UNMIK by Resolution 1244/99, gave him the legislative, executive and judicial authority of administration (Friedrich 2005). As the Ombudsman of Kosovo described in the Second Annual Report, UNMIK created a surrogate state, ignoring all democratic principles, particularly the division of powers (Ombudsman Institution in Kosovo 2002). The jurisdiction of the courts for a range of human rights complaints was revoked and placed under UNMIK control resulting in negligence and misplacement of vitally important (Ombudsman Institution in Kosovo 2002).

Accountability

However, the resolution does not oblige UNMIK to respect human rights and does not bind it to Article 1 of the UN Charter (Friedrich 2005). Furthermore, UNMIK regulation 2000/47 gives full immunity from local jurisdictions for any crime to SRSG, deputies, UNMIK Police Commissioner and other high-ranking officials, during their service in Kosovo and grants other UNMIK personnel with immunity from legal processes in all acts performed during their official duty (Ombudsman Institution in Kosovo 2004).

Moreover, as Kosovo had no right to access justice institutions that deal with violations of human rights, the segregation between the international community and local population became even deeper. The immunity of UN personnel in Kosovo hinders human rights protection by stopping individuals complaining against UNMIK, whose “tasks are of an unprecedented scope” (Friedrich 2005). Ombudsman Nowicki expressed his concern, that “In cases where Kosovans become the victims of human rights violations committed by UNMIK as such or its staff members, there is thus no independent body with judicial character that could intervene or by which these persons could obtain some sort of redress for damages or injuries” (Ombudsman Institution in Kosovo 2004, p. 15). This raises the issue of the violation of one of the most fundamental rights, namely the right to court and public hearing before the establishment of the tribunal that is guaranteed by Article 6 para. 1 of the European Court of Human Rights (ECHR) (Hopgood 2013).

Laws applicable in Kosovo before and after 2008 and unchanged situation of human rights

According to Friedrich, there were two problems with establishment of the hierarchy in Kosovo: the direct application of UN law and regulations that supersede any municipal law placed in the hands of the UN representative; SRSG's application of laws in Kosovo before the 1999's abolishment of the region's autonomy which was found nondiscriminatory towards Albanians, and the application of the "rule of continuity" since these laws were applied from the previous regime (Friedrich 2005).

In 1999 UNMIK considered that among all models of combating crimes committed under international law, Kosovo should continue to be governed by Former Yugoslavian laws with UNMIK Regulations taking precedence as a secondary law (Amnesty International 2008). Regarding International Human Rights law, according to Resolution 1244/99, Kosovo observed the internationally recognized human rights standards reflected in all International conventions and agreements that constitute the International Human Rights Law (UNMIK 1999).

To find a solution for the status of Kosovo, a resolution based on the plan of UN Special Envoy Martti Ahtisaari was put into effect which concluded eight years of UN work and the removal of Kosovo from the international community (International Crisis Group 2007). Former President of Finland, Martti Ahtisaari presented his report to the Secretary-General Ban Ki-Moon in 2007 and then to the Security Council as a plan and a step forward towards the determination of Kosovo's status. The main priority of the comprehensive Ahtisaari proposal was a strong international focus over community rights, protection of the Serbian Orthodox Church and the rule of law (Perritt 2011).

According to Human Rights Watch *World Report 2008* "Kosovo's final status negotiations overshadowed its bleak human rights situation" (Roth *et al.* 2008, p. 245). Minority groups continued to be violated and intimidated, progress in returning refugees was limited, and criminal justice was weak (*Ibidem*). The Ahtisaari Plan not only failed to give necessary focus to human rights in Kosovo but also considered human rights as a "technical issue" that needed to be discussed between Kosovo and Serbia before the adoption of the province's final status (Lezova 2018).

Kosovo declared its independence on February 2008 (The Assembly of the Republic of Kosovo 2008b). The Constitution of Kosovo, adopted in 2008, furthermore gives

priority to human rights and freedoms guaranteed by international agreements including the Universal Declaration of Human Rights, ICCPR, ICEDAW, UNCRC, UNCAT, ECHR, FCNM and other international conventions protecting human rights and freedoms (The Assembly of the Republic of Kosovo 2008a, Art. 22). Surprisingly the “European Social Charter and the International Covenant on Economic, Social and Cultural Rights have been left out of the international human rights agreements directly applicable to Kosovo, although the Covenant is still referred to in regulation 24/1999” (Benedek 2004, p. 215). Among the reasons, according to Benedek, is the lack of a solution for public property since the SRSG continues to have absolute power over the administration. This could lead to conflicts with rights and freedoms guaranteed by the ICESCR and European Social Charter.

First, there are doubts about the basis that the constitution of Kosovo provides in creating an effective interaction between institutions and society, which fails to create a system of “checks and balances” regarding human rights, as well as the crimes committed under resolution 1244/99, which the Constitution and Laws of Kosovo have no judicial power to prosecute. Second, the population feels that it possesses laws which fail to guarantee, in practice, the respect of human rights. Third, there is confusion over the insufficiency of mechanisms that provide an interethnic balance (Marko, Harzl 2009). These flaws in the legislation of Kosovo, continue to reoccur during the process of state-building and the consolidation of institutions and the democratic system, where crimes and violations of human rights have not been addressed, thus, undermining the security system in Kosovo.

Human rights violations as a threat to peace and security in Kosovo

The process of transformation of Kosovo from a war-torn and insecure place into a country that would be an example of multiethnicity, harmony and human rights is still an unfinished business. One of the reasons is that the transformation phase has not focused on reconciliation and rebuilding of society to enable Kosovans to redefine their relations (Jarvinen 2004). This phase requires what Wendy Lambourne describes as a switch of focus from warriors to the socio-economic conditions and attitudes of the entire society and try to build bridges of relations between them (Lambourne 2000),

which did not happen in case of Kosovo. According to Spence, in this phase of transformation and peacebuilding, it is necessary to create a flexible practice that is inclusive and respectful of the comprehensive basis of the causes of conflict (Spence 2001).

Failure to recognize social justice may result in establishing a post-conflict regime that undermines the sustainable development that depends upon the progressive realization of social rights for all (United Nations 1986). Consequences of the failure to act as the situation requires, or at least to speed up the decisions of actions in many cases (such as Rwanda 1944, Bosnia & Herzegovina 1995, and Kosovo 1999) highlights the fact that human rights violations by the international community can lead to further conflict (Annan 1997).

Although Kosovo is an independent country, recognized by 116 states and home to six ethnic groups, and progressing towards European integration, the problems of the past about human rights and transitional justice continue to appear. Cultural attitudes have a big influence in the behavior of the society towards new standards different from their own values; they can produce cultural antagonism towards human rights standards and diminish the performance of these rights (Na'im 1995). Failure to create a credible and practical efficacy of the implementation of human rights standards worldwide and especially in the post-conflict societies relates to the failure to increase the legitimacy of these standards from a wider range of the cultural and traditional aspects of society (*Ibidem*).

In this article, many examples have been presented, of the violations of human rights by the United Nation Mission in Kosovo, with the aim to present a correlation between human rights violations and security threats in post-conflict areas. According to the Ombudsman Institution Report, direct violations of human rights created a wide range of security threats in Kosovo from 1999 (Ombudsman Institution in Kosovo 2002).

Among the most sensitive situations that continue to be an open source of inter-ethnic conflict is the issue of war crimes and victims of sexual violence in Kosovo. With an estimated number of 13,000 civilian deaths and approximately 27,000 victims of sexual violence (Human Rights Watch 2000), according to a list made available to Amnesty International in April 2006 by the UNMIK Department of Justice (International Judicial Support Division), only 23 prosecutions for war crimes have taken place in Kosovan courts since 1999, the majority before 2002 (Perriello, Wierda 2006). Moreover,

there have been only a few prosecutions in the Kosovan courts in cases involving either Serbian or ethnic Albanian perpetrators despite measures taken by women's non-governmental organizations (NGOs) and others to record testimonies and support the victims of such violence (Halili 2017).

Moreover, according to the Ombudsman report in 2002, although Kosovo had one of the highest concentrations of international police personnel in the world, international presence has failed to investigate and prosecute crimes from murder to organized criminal activity (Ombudsman Institution in Kosovo 2002). According to Ombudsman Reports from 2001 to 2004, Kosovo lacked human rights mechanisms and people were deprived of the protection of their rights and freedoms by the very entity that was set up to guarantee their rights (Ombudsman Institution in Kosovo 2002).

The 2007 UNDP/USAID report on Kosovo shows that after eight years of administration, UNMIK has failed to secure the legitimacy from the people of Kosovo and win their support (Bajcinca 2004). Recent cases reported in the local media have revealed that female victims of sexual violence in Kosovo had filed reports with the UNMIK Police in 1999-2000, and that this testimony has never been acted upon. Moreover, one of the alleged rapists had worked in law enforcement for more than 16 years (Zeri.info 2018) Meanwhile, Amnesty International and international organizations that have watched over the implementation of human rights in post-conflict Kosovo, have reported the persistent failure of UNMIK to provide justice for the victims of crimes and violations of human rights, even in the case where evidence was sufficient (Amnesty International 2000).

Conclusion

Human Rights and Security are two notions that have been developed in parallel. The absence of one has historically proven to be a risk for the other. Moreover, in post-conflict areas, where human rights and security are fragile, the appropriate response of the international community is crucial to ensure a long-lasting peace and stability.

This article has presented some of the most important evidence on how the UN Mission in Kosovo has violated the human rights of the local population. These direct and indirect violations have underpinned the security and sustainable peace in Kosovo. Violations that lost the credibility of the UN Mission in Kosovo included problems

with the mandate, international law, accountability, as well as the exclusion of the local population from the peace-building process, direct violations of UN and KFOR personnel, and the negligence surrounding war crime prosecutions. After independence, Kosovo continues to deal with a backlog of war crimes and human rights violations from all sides. In addition, the new state still does not have access to international human rights justice mechanisms.

Therefore, this article has presented important evidence that the violation of human rights as well as the lack of social justice in post-conflict areas, constitute a permanent security threat for the state, society and the region.

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