Human Rights Violations in Post Conflict Areas as a Threat to Peace and Security: a 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 fundament, on which bases security and sustainable peace aims to be secured. In Kosovo, the responsibility of the international community to respect human rights have resulted in violations that have seriously risked peace and security in Kosovo between ethnic groups after 1999. Thus, this article explains how human rights violations did until 2008, continue to be a security threat for Kosovo after two decades.

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, who received the attention of the international community and consequently NATO bombing campaign against Serbia, after gross violation of human rights against Albanian civilians was estimated, that left more than 10,000 of civilian casualties and thousands more missing.

In 1999, the establishment of UN Mission in Kosovo (hereafter UNMIK) under the resolution 1244/99 of the security council, marked the end of conflict and war of Serbia against Kosovo, and placed Kosovo under administration of the United Nations, with UNMIK in charge of establishment of 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 human rights violations, social justice, prosecution of war crimes, and other aspects reported throughout the years, making itself a violator of human rights of the population in Kosovo, through many unlawful and undemocratic principles that it applied throughout its mission.

Among the biggest violations in UN Mission in Kosovo, is the mandate, the lack of accountability under international law, as well as the lack of mechanisms for Kosovo citizens to claim justice, from the wartime, and against UNMIK personnel and KFOR. Therefore, Kosovo as a post-conflict area became a practitioner of international law but had no access to international justice institutions. This article divided into four parts aims to represent the situation of human rights in Kosovo from 1999-2008, the violation of human rights by international missions, as well as 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 represent a larger threat to security and sustainable peace in the country, which will repeatedly reoccur over the decades. Unpunished war crimes in the ethnically divided societies, failure to provide access to justice, as well as protecting oneself through absolute immunity, are only some of the factors that lead to the fragility of the peace and security situation, which repeats itself in time.
Defining human rights and security in post conflict areas

Although the terms originate times different times, human rights and security and the practice of these two fields have reflected in each other’s processes (Abiri 2006). A deep analysis of both areas clarifies that promotion policies of human rights in the peace-building process and security walk along as processes and focusing on either one alone without including the other can have an ineffective and counterproductive outcome (Ibidem). Definition of the terms human rights and security, either separately or in their intertwined meaning, must be reflected in the levels of security and human rights in post-conflict contexts only, considering that the classical meaning of security and human rights, in their classical definition is more sensitive in post-conflict situations (Valters et al., 2014).

The importance of human rights in peace is also 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 the order by supporting security forces, reform and guide the governmental institutions, and promote the direct and indirect forms of participation the people in the political life, with an emphasis on social justice, political oppression and addressing of the main causes of the conflict (United Nations Secretary-General 1992). Also, stated by the former Secretary General of the United Nations Kofi Annan (1997, p. 3): “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, p. preface). While for more than 20 years it was understood and connected with its traditional meaning that interstate conflicts would impact the sovereignty and international peace. During the cold war, the world tightened the concept of security with military force which would create the kind of balance of powers that would prevent the conflict, although conflicts brought devastation and interrupted the 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, gives 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 of 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 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, to repair the lost dignity and trust. This is done by recognizing specific aspects of the post-conflict society, to design and implement sustainment activities that ensure that rights of humans 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 an insurance that the security threats are already eliminated (Friedrich 2005).

Violation of human rights in Kosovo under international law

The United Nations was founded on the base to protect 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 gross violations of human rights that the societies experience, reestablishment of security and safety for the population. Meanwhile, ending of the impunity of human rights but also the accountability for the 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), United Nations Interim Mission in Kosovo was installed, among peace and security, with the mission to protect and promote human rights, guided by internationally recognized standards of human rights as the base of their authority in Kosovo (United Nations Security Council 1999b). According to existing researches, more than 30 categories of rights had been violated in Kosovo during 1999, leaving a fragile situation with the need for social justice, as well as risks of revenge and inter-ethnic tensions in
the country (OSCE/ODIHR 1999). Even the former 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 United Nations Mission in Kosovo (UNMIK), regarding its mission on the resolution and unlawful and undemocratic principles that it followed. However, this article aims to explain the long-term effect of the misconduct of UN Mission in Kosovo, about the effects that it has shown after two decades. Regardless of its 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 researches in this field, court decisions and testimonies of victims of human rights violations in Kosovo in the period between 1999-2008, the problem with UN mission was wide in many aspects. Some of the most important fields that broke off the relationship between the international community and the local population are violations that derived from resolution 1244/99 (United Nations Security Council 1999a), such as unclear mandate, and the violations of human rights that resulted from the UNMIK workers and their lack of accountability before international law and justice institutions. These violations have been embedded in the fundamentals of Kosovo’s peace and state building, leaving gaps and violations covered over bricks of work of many years, that continue to pose a threat to the current peace and state-building process of Kosovo, while other international organizations have taken over UNMIK.

**Mandate**

The contemporary political and legal theories, link democracy with accountability as a mutual approach or double way doctrine where democracy and accountability promote and support each other. However, the mandate of UNMIK in Kosovo, based on the Resolution 1244/99 and legalized by Chapter VIII of the UN Charter, fully resides with the lack of transparency of its actions and the power of any institution not to be held accountable (United Nations Security Council 1999a). This situation in Kosovo’s
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post-conflict society created dissatisfaction and categorized UNMIK as an undemocratic mission and lawless.

The second problem arising from the unprecedented UNMIK mandate in Kosovo is the situation of full authority given to Special Representative of Secretary-General (Friedrich 2005). In the Regulation 1999/1 of 25 July 1999, SRSG conceives that all the authority vested in UNMIK by Resolution 1244/99, gave him the legislative, executive and judiciary authority of administration (Friedrich 2005). As 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 complains was revoked and placed them under UNMIK control, followed with negligence and misplacement of evidence with vital importance (Ombudsman Institution in Kosovo 2002).

**Accountability**

However, the resolution does not oblige UNMIK to respect human rights and does not bind it to the Article 1 of UN Charter (Friedrich 2005). Furthermore, UNMIK regulation 2000/47 gives to SRSG, deputies, UNMIK Police Commissioner and other high-ranking officials, full immunity from the local jurisdictions for any crime committed 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 concern arising from the immunity of UN personnel in Kosovo is also the obstacle that creates for the mechanisms of human rights protection to properly address claims of the individuals complaining against UNMIK, whose “tasks are of an unprecedented scope” (Friedrich 2005). Ombudsman Nowicki expressed his concern: “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 Fredrich, 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 1999’s abolishment of the autonomy which was found nondiscriminatory towards Albanians, and the implication of the “rule of continuity” delicacy 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 Yugoslavia most promising laws UNMIK Regulations took 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, the best way to conclude eight years of UN tiring work and finally removal of Kosovo form limb, international community considered that the solution was the resolution based on the plan of UN Special Envoy Martti Ahtisaari (International Crisis Group 2007). Former President of Finland, Martti Ahtisaari presented his report the Secretary-General Ban Ki-Moon in 2007 and later was presented in the Security Council as a plan and a step forward towards the determination of Kosovo’s status. The Ahtisaari Comprehensive proposal had main priority on strong international focus over the community rights, protection of 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, intimidated whereas there was a very limited progress
in returning of refugees and criminal justice was weak (*Ibidem*). Ahtisaari Plan, not the only failed to give necessary focus the human rights in Kosovo but furthermore considered human rights as a “technical issue” that needed to be discussed between Kosovo and Serbia before the final status (Lezova 2018).

Kosovo declared its independence on February 2008 (The Assembly of the Republic of Kosovo 2008b). Constitution of Kosovo adopted in 2008, furthermore gives priority to human rights and freedoms guaranteed by international agreements including 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 “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, as the SRSG continues to have absolute power over the administration, could lead to conflicts with rights and freedoms guaranteed by ICESCR and European Social Charter.

First, doubts about the basis that the constitution of Kosovo provides in creating an effective interaction between institutions and the society in general 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 feeling of ownership of the population towards an architecture of laws which fail to guarantee in practice, the respect of human rights, and the third, the confusion and insufficiency of mechanisms that provide an inter-ethnic balance (Marko, Harzl 2009). These flaws in the legislation of Kosovo, continue to reoccur during the process of state building and consolidation of institutions and democratic system, where crimes and violations of human rights are untouchable and unprotectable, thus, undermining the security system in Kosovo.

**Human rights violations 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 been focused in reconciliation and salvage of the society, to enable them to redefine their relations (Järvinen 2004). This phase requires of what Wendy Lambourne describes as a switch of the 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, cooperative that respect in the comprehensive basis of the causes of conflict (Spence 2001).

Failure to recognize social justice may result in establishing any post-conflict regime and undermine the sustainable development that depends upon the progressive realization of social rights for all (United Nations 1986). Consequences of the failure to act according to the need of the situation, or at least speed up the decisions of reaction in many cases like Rwanda 1994, Bosnia & Herzegovina 1995, and Kosovo 1999, highlights the need that due to violations of human rights by the international community, there will be a need to prepare for future breakouts (Annan 1997).

Although Kosovo is an independent country, recognized by 116 states and home to six ethnic groups, progressing in the European integration path, the problems of the past about human rights and transitional justice continue to appear along the way. Cultural attitudes have a big influence in the behavior of the society towards new standards different from their own values, where consequently can create a 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 failure to increase the legitimacy of these standards from a wider range of the cultural and traditional aspect of the society (Ibidem).

In this article, many examples have been presented, of the violations of human rights by United Nation Mission in Kosovo, with the aim to present the 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 threat 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. Of an estimated number of 13,000 killed civilians and approximately 27,000 victims of sexual violence (Human Rights Watch 2000), according to Amnesty International. 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 the Kosovo courts since 1999, the majority before 2002 (Perriello, Wierda 2006). Moreover, there have been only a few prosecutions in the Kosovo 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 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 the people of 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).

Based on the UNDP/USAID report on Kosovo in 2007 shows that after eight years of administration, UNMIK has failed to secure the legitimacy from people of Kosovo and win their support (Bajçinca 2004). Latest cases reported in the local media, women victims of sexual violence in Kosovo had filed reports with the UNMIK Police during 1999 and 2000, testimonies which have never been considered. Moreover, one of the alleged rapists has 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 about 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 correctness 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. Starting from the mandate, international law, accountability and the lost battle for the support of the local population from the peace-building process by excluding the population from the active participation, up to direct violations of UN personnel and KFOR, as well as the negligence of war crime prosecutions and loss of evidence, are some of the violations that lost the credibility of the UN Mission in Kosovo. After independence, Kosovo continues to deal with a log of war crimes, human rights violations from all sides, while the new state still does not have access to international human rights justice mechanisms.

Therefore, this article has presented satisfactory 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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