

European Union Approaches to Human Rights Violations in Kosovo before and after Independence

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Abstract

This article examines European Union (EU) approaches to the question of human rights violations in Kosovo before and after its proclamation of independence, in February 2008. While the 1999 NATO-led humanitarian intervention in the region was often justified as necessary due to the continuous abuses of human rights, perpetrated by the Serbian forces against the ethnic Kosovo Albanians, the post-interventionist period has witnessed a dramatic reversal of roles, with the rights of the remaining Serbian minority being regularly abused by the dominant Albanian population. However, in contrast to the former scenario, the Brussels administration has remained quite salient about the post-independence context – a grey zone of unviable political and social components, capable of generating new confrontations and human rights abuses within the borders of Kosovo. Aware of this dynamic and the existing EU official rhetoric, it is possible to conclude that the embedded human rights concerns in Kosovo are not likely to disappear, but even more importantly, their relevance has been significantly eroded.

Key words: Kosovo, Serbia, human rights, Kosovo independence, European Union.

Throughout the 1980s and 1990s the then European Economic Community (EEC) and, to a lesser extent, the United Nations (UN) kept discussing and warning the Yugoslav leadership about its mistreatment of the Kosovo Albanian population, but these signals were largely ignored. As it happened to be the case, deeper ethnic antagonisms led to the outbreak of conflict in the province of Kosovo, culminating in January 1999, when Serbian military forces committed a crime against humanity by killing more than forty civilians in the village of Račak, in central Kosovo (Bideleux and Jeffries 2007, 542; Gordy 2013, 7; Kritsiotis 2000). The consequent involvement of international actors in conflict settlements and mediation processes was often presented as necessary so as to calm down the two parties. The ethnic Albanian leadership declared unilateral independence of the province of Kosovo

from Serbia in February 2008, but without having managed to provide the Serbian minority with a durable solution. The post-independence period has been characterized by a grey zone of unviable political and social components that are capable of generating new confrontations and human rights abuses within the borders of Kosovo. The difference is that while before the 1999 conflict, it was the Serbian forces who largely violated the rights of the Kosovo Albanians, now it is the local Albanians who rely on their dominant position to mistreat the remaining minorities. Even though the international community has continued to call for reconciliation between the local Serbs and Kosovo Albanians, substantial engagement with difficult human rights issues seemed to lag behind – an approach of particular significance if we consider that human rights abuses played a critical role in generating the 1999 NATO-led humanitarian intervention in the Federal Republic of Yugoslavia.

Although the existing literature about the 1999 Kosovo war has extensively dealt with a number of different issues – including the overall context (Bieber and Daskalovski 2005; Buckley and Cummings 2001; Judah 2002; Kostovicova 2005; Mertus 1999; Phillips 2012), the legality and possible consequences of the NATO involvement (Croft and Williams 2006; Falk 1999; Glennon 1999; Husanović 2000; Steinberg 1999; Wedgwood 1999), the post-interventionist local and international positions (Bacevich and Cohen 2001; Bellamy 2002; Capussela 2015; Daalder and O’Hanlon 2000; Ker-Lindsay 2009; Lambeth 2001; Latawski and Smith 2003; Radeljić 2014; Shepherd 2009; Tomuschat 2002; van Ham and Medvedev 2002), Kosovo’s proclamation of independence and its recognition (Borgen 2010; Hilpold 2012; Milanović and Wood 2015; Perritt 2011; Summers 2011; Weller 2009), and, finally, Kosovo’s capacity to pursue necessary reforms in order to become a viable state (Beha 2015; Cocozzelli 2013; Dursun-Ozkanca and Crossley-Frolick 2012; Radin 2014; Skendaj 2014) – the question of human rights abuses in Kosovo, before and especially after its independence has not received enough scholarly attention. Amongst the available accounts, Sarah Kernot’s comparative analysis of two interventions (in Somalia and Kosovo) represents an important contribution, as it questions the link between humanitarian intervention and protection of human rights; she suggests that although some populations can perceive such interventions as beneficial, “the methods employed to conduct interventions have operated in opposition to those required for the protection of human rights” (Kernot 2006, 42). Looking even more closely, Julie Mertus shows convincingly that “the civil and military intervention in Kosovo, although undertaken with the aim of supporting human rights norms, has to some extent

served to undermine efforts to build a sustainable human rights culture in Kosovo” (Mertus 2001, 21–22). The question of human rights protection is further complicated by some additional criticisms, such as the largely insufficient (if not failed) cooperation between human rights officers and the military (Baldwin 2006; Månsson 2001), and slow deployment and lack of knowledge of UN Civilian Police, as a part of the UN Mission in Kosovo arrangement (Decker 2006). From a different, legal, perspective, examinations of the relation amongst sovereignty, human rights and self-determination, tried to suggest that “[t]he final political status of Kosovo is ultimately a human rights issue, and a just and viable solution must balance the sovereignty and territorial integrity of Serbia with the human rights of Kosovar Albanians. At another level, the challenge is how best to achieve self-determination for Kosovar Albanians while ensuring the rights of other groups and minorities within Kosovo” (Brown 2005, 236–237).

This article complements the above-mentioned analyses by tracing the development of European Union official rhetoric that has tackled human rights abuses in Kosovo before and after its proclamation of independence. Given that the EU has become the key player not only in the case of Kosovo, but also in the wider Western Balkan region (due to its aspirations to become part of the EU), I primarily focus on debates and statements produced by the Brussels administration. Accordingly, while it is possible to argue that EU representatives offered rather different understandings as to who was subjected to human rights violations in Kosovo in the 1980s, with the advancement of the Yugoslav state crisis, a clearer picture was established, making it easier to justify the 1999 military intervention. However, aware of a highly problematic post-interventionist and post-2008 dynamics, this article suggests that the embedded human rights issues in Kosovo are not likely to disappear if they are to be addressed within the current framework, largely characterized by the lack of domestic as well as international incentives.

Debating Human Rights Concerns in Kosovo

Based on the official documents of the archives of European Union institutions, the European Economic Community discussed the situation in Kosovo for the first time in July 1981,

following the earlier confrontations between students of the Priština University and the local police which had resulted in a state of emergency and the sealing of Kosovo's borders (Artisien and Howells 1981). The European Parliament, while noting that the riots caused "the deaths of between 11 and 350 people depending on the sources, that between 22 and 3,500 people are reported to have been imprisoned," and that it was "aware of the existence of the strong demand for independence within the Federal Republic of Yugoslavia," requested the Community's highest officials "to express their concern to the Yugoslav Government and to press for the Albanian section of the population of Yugoslavia to be guaranteed equal opportunities for development in the economic, social, cultural and structural spheres" (European Parliament 1981). It is important to note that at this occasion the Brussels officials cited the 1966 UN International Covenant on Economic, Social and Cultural Rights, stating that "[a]ll people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (Ibid.).

However, the available primary sources, both in Brussels and Belgrade, do not tell us if the Yugoslav leadership received the above request; and, what could have been even more relevant, how it responded to the criticism relating to its treatment of Albanians. Still, the possible decision not to criticize Belgrade directly should not be interpreted as signifying that there was some sudden termination of ethnic tensions, but rather as signifying that the Europeans themselves were confused about the Kosovo question. For example, Marco Pannella, Member of the European Parliament (MEP), talked about the endangered Serbs in Kosovo, maintaining that they were actually the ones "likely to see their rights completely denied by the local Albanian majority" (European Parliament 1983). Responding to this view, Doeke Eisma, another MEP, while acknowledging that "[t]he EEC must not create the impression of interfering too much in the internal affairs of Yugoslavia," stressed that what Amnesty International had reported was quite disturbing – that some of the activists during the 1981 riots were given sentences that were "not in line with the stipulations of the United Nations" and that "human rights [were] being infringed" – and thus "in addition to economic cooperation between Yugoslavia and the EEC [they] must have a political reaction from the Council of Ministers meeting in political cooperation on the fate of political prisoners in that country" (Ibid.).

In 1987, Slobodan Milošević, previously elected president of the Serbian branch of

the League of Communists of Yugoslavia, delivered a speech in Kosovo in which he called for the “defense of the sacred rights of the Serbs” (Milošević cited in Noel Malcolm 1998, 346), a rhetorical tool that did nothing more than to encourage fears about Serbian intentions in the province of Kosovo. Somehow, at this particular point, the European Parliament did not realize and thus did not discuss growing nationalistic feelings on the Serbian side, but instead focused on and reported about the Kosovo Albanians: “Groups demanding autonomy have been particularly active in Kosovo, where they are no longer calling for the status of an autonomous region but that of a fully-fledged republic, arguing their point on mainly ethnic grounds” (European Parliament 1988). Similarly to Pannella’s earlier observation, the report stressed that “the danger at present is that non-Albanian communities may be effectively expelled from Kosovo” (Ibid.). In order to understand the Albanian approach, the report went as far as to question whether the economic backwardness of Kosovo (in contrast to other parts of Yugoslavia) could have represented the basis for frustration and nationalistic hatred. Still, it concluded by stressing that “the Kosovo affair ... shows that it is better to prevent the occurrence of nationalistic hatred rather than to cure the damage it can create” (Ibid.).

The ever-present tension between the Serbian authorities and local Albanians culminated with the Serbian takeover of Kosovo’s institutions, securing additional attention and comments from European Community officials. For example, in a resolution on 13 April 1989, the European Parliament, while portraying the situation in Kosovo as “explosive” and “bordering on civil war,” stressed, amongst other concerns, that “the danger to peace, if nationalist sentiments in Yugoslavia continue to be inflamed, could have grave consequences for Europe” and, in order to avoid such scenarios, requested that “the Serbian authorities to show awareness of and sympathy for the anxieties of the Albanian inhabitants of Yugoslavia and call[ed] on the Albanian majority living in the province of Kosovo to respect the rights of the Serb minority” (European Parliament 1989). In June, Milošević visited Kosovo again to deliver his Gazimestan speech, marking the six-hundredth anniversary of the Battle of Kosovo. There, as rightly assessed by James Gow (2003, 10), “large numbers of [the crowd] supported the broad aims of the Serbian nationalist project and were receptive of to the idea of Serbian victimhood. The Milošević campaign was predicated on the notion of redressing this mood of victimization and restoring the sense of Serbian pride and, most important of all, power.” Accordingly, concerned about further erosion of human rights, another EP resolution insisted that “human rights must be granted to all citizens without discrimination, whereas

citizens are fully entitled to liberate themselves from any regime which suppresses their identity and whereas their efforts to secure freedom, democracy and pluralism must be recognized” (European Parliament 1990a). However, in contrast to the earlier resolutions that clearly presented the local Albanians as a potential threat, at this stage the Brussels administration seemed to have adopted a rather different narrative, referring to them as potential victims. The European incapacity to identify and then fully understand the problems of the Yugoslav federation has been exposed to harsh criticism in the literature. In his study on the demise of Yugoslavia, Victor Meier (1999, 217) wrote: “[The Western diplomats in Belgrade, most of whom went beyond the city limits of the capital only with great reluctance ..., seemed, practically without exception in the last two years of Yugoslavia’s existence, to have misunderstood the realities of this country. In the last six months of Yugoslavia, their hostility to reality assumed grotesque dimensions. I must admit that the views which I heard from the circle of Western diplomats at this time made an almost traumatic impression and that I had never before encountered such a colossal jumble of political error, lazy thinking and superficiality as I encountered then among the Western diplomatic corps in Belgrade.]”

Kosovo’s First Proclamation of Independence

The Serbian takeover of Kosovo’s institutions (including the parliament of Kosovo, the courts and police, the industry, Radio and Television Priština) resulted in the local Albanian decision to establish a parallel state, declaring Kosovo first a republic within Yugoslavia in 1990 and then an independent state in 1991. Here, the European Parliament, “having regard to the discriminatory measures taken by the Serbian authorities against ethnic Albanians in Kosovo,” and “having regard to the alarming reports on the situation in Kosovo from numerous recognized and highly respected human rights organizations such as Amnesty International, the UN’s International Federation of Human Rights and the Helsinki International Federation for Human Rights,” called on the Serbian authorities “to take whatever measures are needed to ensure respect for human rights in Kosovo” and “to ensure that (i) the 1974 constitution is recognized and properly respected, (ii) the Albanian population’s right to cultural and political autonomy is recognized, (iii) there is an end to the

removal of Albanians from Kosovo and the ‘recolonization project’ is stopped” (European Parliament 1990b). It is worthy of mention that this was the first motion for a resolution instructing the President of the European Parliament to forward it “to the Commission, the Council, the Foreign Ministers meeting in EPC [European Political Cooperation], the Serbian and Yugoslav authorities, the president of the provincial parliament of Kosovo and the responsible representatives of the Albanian people in Kosovo” (Ibid.).

The subsequent resolutions continued with placing the blame on the Serbian leadership, seeing its policies as capable of “causing an outbreak of civil war in Yugoslavia” (European Parliament 1991a). In addition, they tended to offer rather precise numbers of the ones subjected to human rights abuses: three secondary schools and one primary school were closed, 350 teachers and 7,000 pupils expelled, the Albanian theatre and library in Kosovo shut and the local archives confiscated by the Serbian authorities, numerous doctors and nurses fired and replaced with Serbs, about 50,000 Albanian workers dismissed and so on (Ibid.). Accordingly, the European Parliament urged the Serbian Government “to abandon forthwith its repressive policy in Kosovo which is clearly aimed at destroying the cultural identity, the economy and the democratic rights of its Albanian inhabitants” (Ibid.). A joint debate that followed was scheduled in order to discuss the crisis and assess human rights violations in Kosovo. As expected, the continuing oppression of the Albanian population in Kosovo was confirmed. As Jaak Vandemeulebroucke, one of the participants put it, the Serbian policy was “deliberately aimed at destroying the Albanian language and culture” and the only way to prevent this from happening was to make respect for human rights an explicit precondition for the signature of the forthcoming financial protocol as well as for Yugoslavia’s membership in the Council of Europe (European Parliament 1991b). In addition, Pavlos Sarlis, another MEP, warned the Parliament as a whole that it should not give up on Kosovo in its debates and, in fact, called the colleagues to “include Kosovo among the subjects for urgent and topical debate, for as long as violence and oppression continue to hold sway” (Ibid.).

Apart from the human rights concerns, the aforementioned debate was important for other reasons as well. First, it contributed to the relevance of discourses about ‘us’ *versus* ‘them’, very often implying ‘good us’ *versus* ‘bad them’; as Mechthild von Alemann, phrased it, “[h]ere in Western Europe, we have learnt to get on with each other. We no longer use guns against one another, and the major peoples respect the smaller ones and their cultural

identities” (Ibid.). Later, such an approach towards the Yugoslav space was often used when discussing the Yugoslav state crisis at European Union level and why certain policies should be pursued (Radeljić 2012), as well as in the literature accounts, some of which went as far as to claim that “[t]he Yugoslav conflict shocked the civilized West” (Lucarelli 2000, 1). The second reason for why the debate was important has to do with the fact the MEPs generally agreed that the Kosovo issue “has now become a European issue,” requiring even greater involvement of Europeans in the region (European Parliament 1991b). However, even after this advocacy, the external involvement continued to be very limited. And, finally, the debate was important, as some of its participants seemed already sceptical about the future of the Yugoslav federation as such; one of them said that Yugoslavia was “ill-conceived in historical terms,” characterized by “ethnic, cultural and religious differences” that “can no longer be overcome,” suggesting that “there can only be one solution: since there is no single Yugoslavian nation state, we have to help regions like Croatia, Slovenia and Kosovo achieve their independence” (Ibid.).

By maintaining that “[t]he Serbian regime has begun a process of economic and cultural genocide” in Kosovo and that “[h]uman rights are inseparable from the people’s rights and the right to self-determination,” some European officials were leaving an impression that independence of the province of Kosovo could become an option at some point (European Parliament 1991c). In addition, in their view, the Kosovo problem was not the only one which existed: “There is also the problem of the Serbian minority in Croatia, which has been armed in the form of a militia by the supporters of the Serbian dictator [Milošević] and which for several months now has been creating very serious disturbances in some areas of Croatia,” completely rejecting “to accept freedom,” resulting in “demonstrations in the streets of Belgrade, that this government is both imperialist and totalitarian” (Ibid.).

Kosovo during and after the Collapse of Yugoslavia

The outbreak of the Yugoslav wars in the summer of 1991 and the consequent European Community’s decision to recognize Slovenia and Croatia as independent states in January

1992 contributed to further internationalization of the conflict. Back then, Kosovo seemed to be a marginal issue for policy-makers; in fact, its application to be considered for international recognition of independence was refused without hesitation (Caplan 2005, 139). Still, this does not mean that Kosovo was also marginal in official debates, especially ones including notions of self-determination and therefore insisting that “the principle of self-determination must be reconciled with a respect for the rights of all the people, all the minorities who live in the individual republics, starting with the Albanians in Kosovo” (European Parliament 1991d).

One of the reasons why Kosovo was ignored, even though human rights abuses continued to plague day-to-day life, could have to do with European officials themselves, for whom Slovenia and Croatia, often labelled as the only two truly pro-Western (in cultural and religious terms) Yugoslav republics, deserved priority treatment. In addition, as Doris Pack complained, there was an obvious lack of understanding of the relevance of human rights concerns and thus urgency to develop a common approach amongst the EU’s institutions, a postponement capable of questioning the moral credibility of the European Community. In her view, “[i]f the Commission and the Council had taken the resolutions of Parliament seriously last year, they would have blocked the transfer of funds to Yugoslavia because of human rights violations in Kosovo – who knows whether the Serbian Government would then have felt so strong” (European Parliament 1991e).

As the 1990s progressed, the European Parliament continued to report on violations of human rights, calling for “recognition and restoration of the rights of the people of Kosovo, including the universal right of self-determination, followed by the granting ... of an appropriate degree of autonomy within the Serbian state, as this is the only way – apart from self-determination in the form of a secession – to satisfy the rightful demands of the people” (European Parliament 1992). In this period, the United Nations also commenced to pay greater attention to the issue of human rights in Kosovo. For example, in December 1994, the General Assembly condemned “the measures and practices of discrimination and the violations of human rights of ethnic Albanians in Kosovo committed by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro),” calling them to “[t]ake all necessary measures to bring to an immediate end all human rights violations,” and, very importantly for the later events, encouraging “the Secretary-General to pursue his humanitarian efforts in the former Yugoslavia, ... to tackle the critical needs of the people in

Kosovo” (United Nations 1994). The four resolutions that followed, adopted in annual sessions of the General Assembly (United Nations 1995; United Nations 1996; United Nations 1997; United Nations 1998) altogether pointed out the continuation of grave violations and abuses of human rights by the Yugoslav leadership. For example, the last of them, talked about violations “including summary executions, indiscriminate and widespread attacks on civilians, indiscriminate and widespread destruction of property, mass forced displacement of civilians, the taking of civilian hostages, torture and other cruel, inhuman or degrading treatment, in breach of international humanitarian law,” and, very importantly for the international community, “the denial of appropriate access to Kosovo of non-governmental organizations, the manipulation and denial of relief and basic foodstuffs, and the denial of medical care to wounded civilians” (United Nations 1998). Still, Serb civilians were also victims; as documented by the Organization for Security and Cooperation in Europe (OSCE), “[t]hroughout June and July 1998 there were many physical attacks on the Serb minority living in Kosovo. Killing, abduction, attacks and looting of houses occurred in villages in predominantly Kosovo Albanian-populated areas. Some of the Serbs were warned by their Kosovo Albanian neighbours about planned assaults and requested the assistance of the local police” (OSCE 1999, 230).

Looking back, the fact that the international community and, in particular, European Union representatives – although pretty aware of human rights violations performed by the authorities of the Federal Republic of Yugoslavia – did not use the 1995 Dayton Peace Accords to also address the autonomous status of Kosovo was a serious matter of concern amongst the Kosovo Albanians, often interpreted as European disinterest in addressing their needs (Laakso 2006, 152; Sell 2002, 274; Toje 2008, 52). Thus, leaving the Kosovo question unaddressed represented an opportunity for the militarist Kosovo Liberation Army (KLA) to criticize and ignore a pacifist doctrine of the Democratic League of Kosovo – an approach that generated a number of confrontations between local Albanians and Serbian forces.

Still, for various Western officials, independence seemed the only way forward; for example, Willem van Eekelen, a Dutch senator, while criticizing the West for “making the mistake of saying it prefers to keep the remainder of Yugoslavia together,” observed that “the proliferation of small, perhaps unviable states is not an attractive prospect,” but then questioned “why make a difference in principle between, say, Slovenia and Kosovo when fundamental human rights are being crushed” (van Eekelen 1998)? Apart from officials,

some non-profit organizations also favoured independence. In late 1998, the pro bono Public International Law and Policy Group suggested to begin with an intermediate sovereignty, characterized by a phased reduction of Serbian control over the province of Kosovo that would in turn allow the local people to acquire sovereign authority, capable of protecting legitimate interests of the Serbian minority, and finish with a referendum on independence and pursuit of international recognition. However, the frequent disputes and confrontations between the Serbian troops and the KLA culminated in January 1999 when Serbian military forces committed a crime against humanity by killing more than forty civilians in the village of Račak, in central Kosovo. At this point, there was a clear transatlantic ambition to prevent the Serbian President Slobodan Milošević from completing a strategy of ethnic cleansing and achieving full control of the territory. According to Joschka Fischer, the then German Foreign Minister, acting politely with Belgrade officials would lead only to more mass graves, so he stated that the use of force should be taken into consideration: “I am not a friend of using force, but sometimes it is a necessary means of last resort. So I am ready to use it if there is no other way. If people are being massacred, you cannot mutter about having no mandate. You must act” (Fischer cited in Daalder and O’Hanlon 2000, 75). Similarly, Tony Blair, the British Prime Minister, tried to justify the approach adopted: “We need to enter a new millennium where dictators know that they cannot get away with ethnic cleansing or repress their peoples with impunity. We are fighting not for territory but for values. For a new internationalism where the brutal repression of ethnic groups will not be tolerated – for a world where those responsible for such crimes have nowhere to hide” (Blair cited in Dunér 2001, 59).

Once the 1999 NATO-led humanitarian intervention had terminated, the European Union saw the region impoverished and in need of aid. It persuaded the international community to collaborate in the Stability Pact for South Eastern Europe, which was adopted in Cologne in June 1999. At the same time, the United Nations Security Council Resolution 1244 established the UN Interim Administration Mission (UNMIK), exercising full executive, legislative and judicial role. The resolution declared the “establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration was to provide transitional administration while establishing and overseeing

the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo” (United Nations 1999a). Soon after, the General Assembly adopted one further resolution on the situation of human rights in Kosovo, adding to its previously mentioned worries, something new; it “express[ed] its concern about the forced division of any part of Kosovo into ethnic cantons or ethnically based divisions of any type, ... and stress[ed] the need for all parties in Kosovo to take all necessary measures to stop or reverse any action that *de facto* or *de jure* permits such ethnic cantonization” (United Nations 1999b).

As it happened to be the case, the post-1999 Kosovo has witnessed the establishment of Serbian enclaves that are fully politically and economically integrated with Serbia. As one scholar observed, “Serbs live in fortified enclaves, their access roads often guarded by NATO patrols. Before the war, two of Kosovo’s largest cities, Priština and Prizren, were home to tens of thousands of Serbs. They are now virtually Serb-free ... In many Serbian enclaves, no one holds a steady job; the communities rely on handouts from aid organizations and from Belgrade” (Kupchan 2005). Thus, in contrast to the period before the intervention, when the Serbs abused human rights of the Kosovo Albanian population, the post-interventionist period faced an immediate change of roles, this time with the local Albanians ready to abuse their dominant position and thus mistreat the remaining Serbs. Looking at this period, Clive Baldwin argues that “the international community failed on the critical issue of minority security. Human rights experts, although documenting the situation and attacks at length, were rarely able to go beyond this to offer solutions. Recommendations coming from OSCE, usually those requested by minorities, namely increased KFOR [the NATO-led Kosovo Force] protection, which was not viable in the long term. KFOR was rarely willing to listen to the OSCE, which it regarded as unqualified to comment on military matters. At the same time, KFOR was unable to offer any solution beyond the temporary posting of armed guards” (Baldwin 2006, 494). Aware of the problems and continuing confusion, the international community welcomed the “standards before status” approach, inaugurated by the third UN Mission in Kosovo chief, Michael Steiner of Germany, in 2003, suggesting that in order to have its status resolved, Kosovo would need to satisfy certain standards. Although the “standards before status” policy covered a variety of issues, ranging from the establishment of democratic institutions and rule of law to the development of market economy and dialogue with Belgrade authorities, its essence “was that it required Kosovo’s institutions of

self-government to demonstrate that they were willing and able to protect the rights of all of Kosovo's ethnic communities, and had the capacity to act in a civilized way" (Ante 2010, 150).

The advocacy of "standards before status" was fully eroded and, in fact, abandoned after the riots in mid-March 2004, involving more than 50,000 ethnic Albanian extremists that gathered to attack Serbs and Roma (Human Rights Watch 2004). In the newly established grey zone, the Standards Implementation Plan was introduced, placing a particular focus on the economy, rule of law and dialogue between Belgrade and Priština. Thus, the international community, while positioned between the two opposing sides, understood that any substantial progress with regard to human rights could not be made any time soon, but also that lack of status and Kosovo's security were affecting the entire Balkan region. As one author correctly put it, "[s]ince the end of the Kosovo conflict in summer 1999, the international community has wrestled with a dilemma. There is no prospect for genuinely sustainable stability in the region as long as the status of Kosovo has not been resolved. At the same time addressing this issue in itself presents considerable risks to stability. If the international community tackles the status issue without adequate preparation, deadlock at best and confrontation at worst might be the result. If it waited for too long the unstable elements on the ground, in particular the impatience of the Kosovar population, the persistent economic crisis and the still tense relations between the ethnic communities might well lead to a new crisis" (Lehne 2004, 116).

As pointed out elsewhere, the 2005 and 2006 Vienna talks, aimed at resolving the final status of the province of Kosovo, outlined how sensitive the question of human rights truly was and that the international community could not really exclude new attacks against the local minorities (Radeljić 2014, 436–437). Having witnessed that the Serbian and Kosovo Albanian sides were not ready to compromise – meaning that each of them approached the talks with a plan A only, which indirectly implied that one of them would exit the whole process as an absolute winner and the other as an absolute loser – the Brussels administration decided to explore a new set of options, including establishment of a new mission, under the EU's Common Foreign and Security Policy, to assist Kosovo in pursuing necessary reforms.

Kosovo's Second Proclamation of Independence

In February 2008, Kosovo adopted a resolution, proclaiming independence from Serbia. As the Council of the European Union understood it, “the resolution commits Kosovo to the principles of democracy and equality of all its citizens, the protection of the Serb and other minorities, the protection of the cultural and religious heritage and international supervision” (EU Council 2008b). In April, the Constitution of the Republic of Kosovo was fully enacted, which, in almost complete contrast to the declaration of independence, seems to over-emphasize the relevance of human rights. For example, its very beginning claims that “Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders” (The Republic of Kosovo 2008, Constitution, Chapter I, Article 1). Interestingly, this rather short constitution mentions the notion of human rights more than twenty times, in similar or less so contexts. Amongst others, it stipulates that “[t]he institutions shall operate in full transparency and in accordance with internationally recognized democratic standards and human rights” (Ibid., Chapter XI, Article 125) and “[o]rganizations or activities that infringe on the constitutional order, violate human rights and freedoms or encourage racial, national, ethnic or religious hatred may be prohibited by a decision of a competent court” (Ibid., Chapter II, Article 44).

Following the proclamation of independence, the Ombudsperson Institution in Kosovo (OIK) started producing reports in correlation with the constitution in terms of human rights. In its initial assessment, the OIK observed that “[e]ffective implementation of the standards for the protection of human rights, the consolidation of the judiciary and prosecutorial system, as well as fight against organized crime and corruption still remain amongst the biggest challenges for the new state of Kosovo” (OIK 2010, 6). Later reports kept insisting on the importance of human rights protection and relevance of OIK's cooperation with other institutions, both national (such as Anti-Corruption Agency, Central Election Commission, Independent Media Commission, Kosovo Judicial Institute, the Constitutional and Supreme Court of Kosovo) and international (such as OSCE, UNHCR, UNMIK, EULEX, SOROS, and the Council of Europe). However, they tried to communicate the message that the disappointing progress was due to the Serbian behavior: “Generally speaking, the security situation in the north of Kosovo has deteriorated in the second part of 2011 when the local Serbs opposed decision of Kosovo institutions to establish control in the

whole territory of Kosovo. As a result of barricades that were set up by local Serbs, the non-Serbian residents were forcefully isolated. Also, members of Serbian community established kind of self-isolation” (OIK 2012, 48). Most recently, the reports have reconfirmed the existence of Serbian opposition in the northern part of Kosovo: “Serbian extremist groups, disappointed, driven by government circles of the Republic of Serbia, led by illegal mayors of Serbian authorities have organized protests, in many cases accompanied with the use of firearms” (OIK 2014, 59). However, the analyses have been quite salient about abuses of human rights of the local Serbs and, equally relevant, what policies would be most appropriate so that the overall situation could improve.

When it comes to the European Commission annual reports about the overall performance of independent Kosovo, they seem to suggest that the situation concerning human rights is rather problematic, if not alarming. To begin with, the 2008 report, even though seeing the constitution as “in line with European standards, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” (European Commission 2008, 8), observed that “there is still a lack of capacity to implement and upgrade human rights standards in Kosovo” (Ibid., 17). A year later, the situation was assessed similarly to the previous one, but this time, the EU’s report offered two reasons as to why it could be very difficult for Kosovo to secure progress in human rights area: first, “Kosovo’s cooperation with human rights bodies is limited since Kosovo is not a member of the UN nor of the Council of Europe. Consequently, Kosovo’s citizens do not have the possibility to lodge a complaint with the European Court of Human Rights against Kosovo’s authorities” and, second, “[s]ome municipal human rights units are not operational, in particular in Kosovo Serb majority municipalities, which are reluctant to cooperate with the central authorities” (European Commission 2009, 11). Thus, what the Europeans tried to do here is to suggest how important international recognition of Kosovo’s independence was, putting it almost as a precondition for regulation and human rights improvements. In addition, they presented the lack of participation of the Kosovo Serbs as a general obstacle to progress – an assessment that surely requires a detailed consideration of the whole post-1999 dynamic and especially the 2004 riots.

In 2008 the European Union Rule of Law Mission in Kosovo (EULEX) was established and one of its tasks has been to ensure that, amongst others, cases of war crimes and inter-ethnic crimes “are properly investigated, prosecuted, adjudicated and enforced,

according to the applicable law” (EU Council 2008a). Still, the notion of human rights is not present in the main EULEX-related official documents. Even though the EU mission was instated and regardless of its performance, the subsequent European Commission reports continued to state that the actual problem in achieving progress with regard to human rights in Kosovo will be due to the state’s lack of seat in the UN and the Council of Europe and thus not being subject to their frameworks for reporting and cooperation on human rights matters – a major challenge which in the Commission’s view required the following adjustment: “The institutional set-up promoting and enforcing human rights needs to be simplified” (European Commission 2011, 14). However, the Commission’s optimism expressed in 2012 – assessing that “Kosovo has made considerable progress on its path towards the EU since the conflict of the late 1990s [and that it] has put in place a stable institutional and legal framework required for democratic governance and protection of human rights, of all minorities living in Kosovo as well as of rights of returning displaced persons” (European Commission 2012, 11) – did not seem so obvious a year later when the Commission outlined the existence of confusion with regard to responsibilities in dealing with the human rights-related issues, criticized “the unsatisfactory implementation of recommendations issued by the Ombudsperson” and the lack of capacity “to improve implementation of the existing legal framework and enforcement of decisions remedying human rights infringements” (European Commission 2013, 14). In 2014, Kosovo, although seen as having made some progress, was urged “to adopt the laws on anti-discrimination, Ombudsperson and gender equality as a package, so as to ensure coherence and complementarity in human rights legislation” and to update its human rights strategy, “including implementing mechanisms as set out in the human rights law package, to provide for a sustainable, long-term strategic approach. Human rights issues at all levels need to be put higher on the political agenda, in particular as concerns enforcement” (European Commission 2014, 16–17). Most recently, the Commission concluded that “some progress was made,” largely due to “the adoption of the package of human rights laws,” but still, “[i]mplementation of human rights is hindered by a lack of resources and political commitment, including at local level” (European Commission 2015, 20). Furthermore, the Commission noted “an increasing trend of incidents occurred targeting the Kosovo Serb community residing in western Kosovo, with frequent thefts from homes causing a heightened sense of insecurity within the affected community” (Ibid., 26).

While the above-examined official documents, including both Kosovo’s constitution

and subsequent EU-produced reports, clearly acknowledge the relevance of human rights, they do not seem to offer any substantial strategies in terms of how to address existing abuses and prevent future ones. Moreover, the General Assembly, although very much concerned about human rights before the 1999 international involvement, in the post-1999 period, seems to have ignored the question of human rights and to have focused more on the financing of UNMIK. The capacity to establish an adequate approach vis-à-vis such an important issue has been even more questionable since the publication of “Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo,” a report produced in 2010 by Dick Marty, on behalf of the Committee on Legal Affairs and Human Rights of the Council of Europe. The report is inspired by the revelations of Carla del Ponte, the former Prosecutor at the International Criminal Tribunal for the Former Yugoslavia, about serious crimes committed by members of the Kosovo Liberation Army against Serbian nationals who decided to stay in Kosovo after the 1999 conflict (Council of Europe 2010). Aware of the issue, EULEX started a preliminary investigation into the allegations outlined in the Marty report in January 2011. As suggested by Amnesty International (2012, 49), the time to prioritize war crimes has come and thus “measures must be taken by EULEX in 2012–2014 to develop the capacity and independence of both prosecutors and judges, to ensure that in the future, Kosovo will be able to prosecute crimes under international law and other grave human rights violations.” All of the above-outlined dilemmas inspired the EU and the Council of Europe to pursue a project that would propose mechanisms capable of enhancing human rights protection in Kosovo. As rightly outlined by a group of authors, although there are many activities taking place in the sphere of human rights, there are many shortcomings, including insufficient education and knowledge of human rights standards amongst policy makers, lack of political will, low prioritization for human rights issue in the government’s agenda, etc. As pointed out, the required improvements relate to capacity (to train competent staff), confidence (so that the public can trust the existing structures), and focus and simplicity (in order to avoid confusion as to who is responsible for policy development, who is entrusted with policy implementation, who deals with policy promotion, and who is in charge of redress, monitoring and reporting) (EU and Council of Europe 2014).

Conclusion

The study of human rights – although representing an important link between comparative politics and international relations (Landman, 2005), and thus apparently able to tell us much more about dynamics we could potentially face in Kosovo – seems to have often been of secondary relevance. The question of human rights is of utmost relevance for local political institutions and processes of democratization as well as international organizations and foreign policy analysis. With a problematic history, characterized by human rights abuses, it is rather difficult to predict when the situation within independent Kosovo will improve.

As I pointed out, Members of the European Parliament started discussing human rights violations in Kosovo in the early 1980s, trying to understand who was really to be blamed. It was only during the Yugoslav state crisis that a clearer picture was established. Still, EU representatives – even though they claimed to have taken the human rights aspect seriously when shaping their policy of recognition, insisting that “protection of human rights and rights of ethnic and national groups constitute universal, objective standards, which leave no room for compromise” (European Community 1991) – they did not include Kosovo in their list of priorities. They were primarily concerned with Yugoslav republics, not provinces. Later, the escalation of fighting between the Serbian forces and Kosovo Albanians resulted in the NATO-led 1999 intervention against the Federal Republic of Yugoslavia, aimed at preventing further atrocities against the latter. Unfortunately, neither this nor any later signal in the post-interventionist period (in which role-swapping has taken place, with the rights of the remaining Serbian minority being regularly abused by the dominant Albanian population), has managed to generate any major improvements and, more importantly, lasting solutions. Before Kosovo’s proclamation of independence, the policy of “standards before status” was introduced, but soon after abandoned. Then, the EU-Balkans Thessaloniki summit clearly stated that the future of the Balkans lies within the EU (EU Council 2003), but the local communities failed to interpret this as an opportunity. The subsequent riots and continuous incapacity to protect human rights of the local minorities continued, so that the Brussels administration, while confirming its interest in the stability of the region and thus playing the central role in the attempts determining the Kosovo’s future status, insisted that human rights should represent one of the key principles in the process: “Kosovo’s status must be based on multi-ethnicity, the protection of minorities, the protection of cultural and religious heritage” (EU Council 2005).

Since the proclamation of independence, Kosovo, in contrast to its constitutional stipulations, has struggled to make progress in the human rights area. However, what seems to dominate the existing EU and local Albanian explanations is the fact that Kosovo has not secured a seat in the UN and the Council of Europe yet. With regard to the EU, 23 out of its 28 Member States have so far recognized Kosovo as an independent state. Based on various debates, the ones who refuse to do so are heavily criticized; for example, Ulrike Lunacek, one of the MEPs, goes as far as to state that the five should be forced to recognize Kosovo, but then clearly outlines various problems they can use as a justification why not to do it, including the human rights-related issues: “The relative weakness of the Kosovo government, after fraudulent elections and a prolonged process for the voting and inauguration of the new President and the formation of government in the spring of 2011, as well as organized crime allegations by Dick Marty’s report in the Parliamentary Assembly of the Council of Europe, do not give Prime Minister Thaci the argumentative standing and power that he would need in order to show the necessary strength in the diplomatic arena and at home” (Lunacek 2012, 151). Still, even when the above seats and additional recognition are secured at some point, and hopefully some progress made in the human rights area rendering international presence and monitoring in the region come to an end, it will be up to Kosovo’s peoples, who are the main actors, to decide on future progress. According to some of the non-governmental organizations that have followed the developments in Kosovo since the first serious violations of human rights, the so-called normalization agreement signed between Serbia and Kosovo in April 2013 represents “a landmark opportunity to improve human rights protection in both countries” characterized by “serious human rights abuses” (Human Rights Watch, 2013) – an opportunity largely inspired by some previous assessments underlying that “[a]ny failure to prosecute human rights abuses is unacceptable” and calling “the former warring parties to see that the prosecution of ‘their own’ is in compliance with international obligations” (Amnesty International 2012, 55). More recently, the long document accompanying the signature of the Stabilization and Association Agreement between the EU and Kosovo, in April 2015, presented “[t]he development of regional cooperation and good neighbourly relations as well as respect for human rights, including the rights of persons belonging to minorities” as crucial for the overall success of the agreement (EU 2015).

With the above-outlined concerns and policy (re)considerations in mind, even if a key player such as the European Union has not managed to develop and stick to a single standard,

it is reasonable to argue that it is nevertheless a combination of international standards and incentives, on one hand, and local readiness to grapple with the question of human rights abuses (taking place before as well as now), on the other, that can provide a credible platform, so that the concerned parties can embark new and, more relevantly, shared beginnings. However, what remains problematic and surely capable of affecting the progress of the overall process is the question of one's own role and responsibility in order to prevent feelings of inferiority and predestined failure.

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