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OSCE AND ITS ROLE IN RESOLVING THE INTERETHNIC CONFLICT AND THE IMPLEMENTATION OF RULE OF LAW IN KOSOVO

Summary: The paper examines the role of the OSCE in the Kosovo conflict and in implementation of the rule of law, and is a comparative analysis of the results and expectations of international organisations and citizens. The paper focuses on the role and the future of the OSCE in cases similar to Kosovo and provides some guidance for future actions. The paper touches on the relationship with the EU and its EULEX mission, which has tacitly taken over many of OSCE competences and consequently, the leading role in the Implementation of the 1244 Resolution and the Brussels agreement. The role of the OSCE has become more technical and administrative in nature, and the Mission in Kosovo no longer deals with critical issues, as it used to before the 1999 NATO bombing of Serbia. Given that OSCE still constitutes one of the cornerstones of the rule of law in Kosovo, in the final part of the paper we tried to provide an academic and practical perspective for the future of the OSCE activity in Kosovo, and provide guidance for its successful presence and role in dealing with the present and future challenges in this community.

Keywords: Kosovo, Mitrovica, conflict prevention, OSCE.

INTRODUCTION

Considering the nature of human beings and their history, the phenomena of conflict is unfortunately unavoidable and could happen everywhere. The principle of self-determination has given rise to a number of problems in practice. Globally seen, today many conflicts have a connotation of interethnic, intercultural and interreligious misunderstandings. "Realism, then, expects to find conflict as the usual pattern of interaction in international politics".³ As Rourke points out, "The core problem is that

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³ H. J. Morgenthau, *Politics Among Nations 7/e*, McGraw-Hill/Irwin, New York 2006, p. 301.

there are thousands of ethnic groups worldwide. Each has the potential to develop a national consciousness and to seek independence or autonomy.”⁴

This observation has proven to be correct in the case of dissolution of the former Yugoslavia, which started in early 1990s, where the last state-building conflict on its territory so far is the Kosovo conflict. Interestingly, the inter-ethnic Kosovo war took place on the territory of Kosovo and Metohija, whilst the rest of ethnic Albanians on the territory of Serbia were not directly involved in the conflict at this time. Today, whilst Kosovo declared independence in 2008, the Preševo valley, with a considerable population of ethnic Albanians, remains a part of Serbia.

The conflict potential of the Balkan region remains high. Are there some lessons to be learned from the Kosovo conflict and of the role of the international community in preserving peace in this region? Using the divided city of Kosovska Mitrovica (Mitrovicë) as a case study, with particular focus on the so-called North Mitrovica, which is inhabited by the Serbian majority, which feels like living on island, since there are no Serbs in the neighboring settlements. Kosovska Mitrovica itself remains deeply divided, as Serbs, but also the other minorities, currently live and move within the boundaries of their neighbourhoods⁵, ghettos, in order to avoid violence which is likely to take place when they so much as cross the territory of a neighborhood inhabited by population of a different nationality. The paper explores the role of the OSCE field operations in Kosovo in maintaining peace on this territory, we will try to make some practical recommendations for the future role of the OSCE in Kosovo, and in preventing conflicts and maintaining peace in other territories.

OSCE MISSION IN KOSOVO – BACKGROUND AND NECESSARY FACTS

The OSCE helps its participating States build democratic institutions; hold free, fair and transparent elections; promote gender equality; ensure respect for human rights, media freedom, minority rights and the rule of law; and promote tolerance and non-discrimination.”⁶ In 1998, The OSCE mission got support from the UN Security Council to work on Kosovo and help in conflict resolution and war preven-

⁴ J. T. Rourke, *International politics on the world stage*, McGraw-Hill, New York, 2008, p. 123.

⁵ I. M. Milovanovic, "Daily Life of Women in Forced "Transition" of Social (Urban) Environment, *Society and Space*, p. 95.

⁶ Participating states, Factsheet what is the OSCE?, <http://www.osce.org/states>, 18 May 2015.

tion. "Acting under Chapter VII of the Charter of the United Nations, 1. Endorses and supports the agreements signed in Belgrade on 16 October 1998 between the Federal Republic of Yugoslavia and the OSCE, and on 15 October 1998 between the Federal Republic of Yugoslavia and NATO, concerning the verification of compliance by the Federal Republic of Yugoslavia and all others concerned in Kosovo with the requirements of its resolution 1199 (1998), and demands the full and prompt implementation of these agreements by the Federal Republic of Yugoslavia;"⁷ Unfortunately the efforts of all including OSCE were on the end not successful and the war broke out, Yugoslavia was bombed in 1999 by NATO aviation. Many civilian targets were hit, resulting in numerous deaths and considerable collateral damage. The overall aim of the bombing was obviously not just targeted at Kosovo, but to influence the well-being of all citizens. OSCE has closed its eyes before this fact and the fact that the main ideas from the Helsinki act were directly against such actions. OSCE has skipped these couple of war months of bombing to enforce its mission and was completely renewed after the war was ended by the "Kumanovo agreement".⁸ The absence of OSCE from Kosovo prior and during the bombing campaign was the time when most of war crimes happened. These crimes were committed against both Albanians and Serbs. OSCE had failed preventing a very extreme war, and, after the war, it did not take proper measures to prevent the exodus of Kosovo non-Albanian population. As a result, Kosovo today is not a multiethnic society today but a more and more divided society, where Serbs and other communities live in enclaves and in the Serbian territory on North Kosovo. However, criticism of the OSCE role in Kosovo has to take into account the fact that the OSCE was not the only organization whose mandate was to prevent the conflict from escalating. "Although the OSCE was probably not well equipped to serve this kind of function and the mission ultimately failed to prevent the outbreak of large-scale violence, the sequence of events that led to the onset of the violence was clearly beyond the capacity of the OSCE to control, especially given the unwillingness of the United States and its NATO allies to use the OSCE (or the United Nations) as a venue for seeking a political solution to the crisis before embarking upon military action. Kosovo perhaps represents the clearest example of the failure of the international community to pre-

⁷ UN, Security Council, Resolution 1203 (1998), <http://www.un.org/en/sc/documents/resolutions/1998.shtml>, 18 May 2015.

⁸ Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, <http://www.nato.int/kosovo/docu/a990609a.htm>, 18 May 2015.

vent a deadly conflict that all could foresee, but where no one was willing to take the steps necessary to prevent an impending tragedy from occurring.”⁹

After the 1999 NATO intervention and the signing of the Kumanovo agreement, the new OSCE started with a the following mission: “In a special session yesterday evening, the OSCE Permanent Council decided to establish a Transitional Task Force for Kosovo to focus on preparation for a new Mission in Kosovo. The Task Force will replace the Kosovo Verification Mission, which, since its evacuation from Kosovo on 20 March, has been playing a key role in the relief efforts in the Former Yugoslav Republic of Macedonia and in Albania.”¹⁰

This new OSCE mission to Kosovo initially helped create and develop a number of key Kosovo institutions, and today, Kosovo remains one of its largest field operations, which is focused on promoting human rights, good governance and rule of law through monitoring and supporting the work of local institutions.¹¹ The OSCE mandate and its focus in everyday work largely overlap with that of the EULEX (European Union rule of Law Mission in Kosovo) “EULEX Kosovo was established with the aim of supporting Kosovo institutions, judicial authorities, and law enforcement agencies in developing an effective judiciary based on the rule of law and free from political interference. The Mission is the largest civilian mission launched under the Common Security and Defense Policy (CSDP) of the European Union”¹² EULEX also has a very strong presence on the North Kosovo where it maintains its regular cruises around the city to help the Kosovo Police Service (KPS) maintain some level of public order.¹³ In one word, EULEX maintains the presence of EU standards in Kosovo communities”.

⁹ T. Hopmann, “Strengthening the OSCE Capacity for Conflict Prevention and Security-building”, *Die Friedens-Warte*, Vol. 75, No. 1, 2000, p. 39.

¹⁰ Permanent Council establishes OSCE Transitional Task Force for Kosovo, <http://www.osce.org/pc/52345>, 18 May 2015.

¹¹ OSCE Mission to Kosovo Factsheet, <http://www.osce.org/kosovo/143996?download=true>, 18 May 2015.

¹² The legal basis for the Mission’s functioning has been set by the Council in the European Union Joint Action 2008/124/CFSP on 4 February 2008. In accordance, EULEX operates within the general framework of the UN Security Council Resolution 1244 Short History of Eulex, <http://www.eulex-kosovo.eu/?page=2,44,197>, 18 May 2015.

¹³ Unfortunately, because of this evident support to the KPS, EULEX police officers are often targeted as enemies on the North and have clashes with citizens. Apart from this, EULEX is also not welcome by some Albanians on the South which call them “eulEXPERIMENT” invoking its artificial presence and influence on the new Kosovo state.

Again it is interesting to note that both EULEX and OSCE have a task to incorporate the most important, peace building document, since the International community stepped on the territory of Kosovo, The Brussels Agreement.¹⁴ In Kosovo, this agreement is incorporated into a law. "This law shall be implemented by the Republic of Kosovo with the assistance of the European Union, (EU), the North Atlantic Treaty Organization Forces in Kosovo, (KFOR), and the Organization for Security and Cooperation in Europe, (OSCE)." The most important task for OSCE in this respect was envisaged in point 11 of the agreement, the facilitation of Northern municipality elections. The elections results in North Mitrovica (Kosovska Mitrovica) are: one mayor candidate shot dead in front of his house, one in custody, one resigned shortly after elected. Politically nothing is unclear, OSCE fulfilled its mandate and the Brussels agreement new municipal governments were elected according to the Kosovo laws.

We can maybe conclude that OSCE has completed its task in the Kosovo legal system building by finishing this task, but this obvious artificial democracy can't provide lasting security. It is also clear from the provisions of the Brussels Agreement that the role of the OSCE is not envisaged as a crucial one – it is as if in the future we could expect the OSCE to have a technical or supportive role, as usually, now mainly to the EU High Representative for Foreign Affairs and Security Policy and the EULEX mission. But can the OSCE help in securing peace and ensuring that Helsinki principles are observed in Kosovo?

Division in the city of Kosovska Mitrovica/Mitrovicë and possible ways out

As explained above, Kosovo is not an integrated a multi-ethnic society, but rather a community that remains heavily divided. The Brussels agreement, which envisages the formation of a special Community of Serbian municipalities may give rise to claims that such a solution will not bridge the gap between the two ethnic communities but inevitably divide the present form of government and communication between Serbs and Albanians, and also strengthen the division of Serbian municipalities especially on North Kosovo. Clearly North Kosovo is a very specific entity in the new Kosovo state and is also treated in that manner. One of the key examples of why the existence of such a division would not work towards the establishment peace and stability in the region is the case of Kosovska Mitrovica. Namely, the once very successful city called Titova Mitrovica was a landmark city representing the all nations

¹⁴ The First Brussels agreement was an agreement on normalization of relations between Kosovo and Serbia, and was signed in Brussels in 2013 under the auspices of the EU.

and nationalities united in Yugoslavia for a common effort to build socialism together. The city was also the seat of the biggest Kosovo company "Trepča" which was active in mining and other connected industries for decades and employed many inhabitants of the city and wider; the mine is no longer operational. Today this city and Kosovo became the symbol of disintegration and the starting point of lost balance "The balance of power in the Balkans, no less than the balances in the Near and Far East, have shared the fate of the general European system"¹⁵

Regardless of the efforts OSCE and the rest of the international community have put in in pacifying the divide between the Serbian and Albanian inhabitants of Kosovska Mitrovica, the success is very limited. Over the past 15 years, the division between people on the two river banks grew stronger in more entrenched. In the words of Pascal: "Why do you kill me? What! Do you not live on the other side of the water? If you lived on this side, my friend, I should be an assassin, and it would be unjust to slay you in this manner. But since you live on the other side, I am a hero, and it is just[...] Three degrees of latitude reverse all jurisprudence; a meridian decides the truth[...] A strange justice that is bounded by a river!"¹⁶. Helpless people of divided societies are lost in time and between two poor countries which try to get some political leverage from this city. Many citizens are left and forgot without basic human and political rights, but nevertheless, their national aspirations persist. "The very unfortunate situation of the divided city which prior to Brussels agreement had parallel Kosovo and Serbian institutions did not provide much hope for legal enforcement in the eyes of citizens." The currently relocated courts and prosecution offices cannot effectively handle the cases and claims brought before them, leaving the residents of the Mitrovicë/Mitrovica region with very limited access to justice." The Kosovo court for the inhabitants of North Kosovo is temporarily in Vučitrn/Vushtrri what makes justice a bit far South. Another important issue is the Kosovo Police (KPS) which is probably one of the biggest institutional successes so far on North Kosovo. If we exclude the fact that it is not 100% functional as every normal police, many cars in North Kosovo still run without car plates and in fact no traffic offenses are being enforced.

In order to enable this city, and the remainder of Kosovo, to continue with normal everyday activities and start living outside the ghettos that have become the limits in

¹⁵ H. J. Morgenthau, *Politics Among Nations 7/e*, McGraw-Hill/Irwin, New York, 2006, p. 212.

¹⁶ B. Pascal, W. F. Trotter, T. S. Eliot, *Pensees*, Philosophical Classics, Dover, 2003, p. 83.

which people of different nationality function, it is important to build a system that will facilitate co-existence and preserve the fragile peace.

OSCE could play an important role in enabling such functioning, given its mandate to focus on human rights and rule of law and their implementation on the local level, in and employ the expertise of its mission to quickly react and facilitate constructive dialogue, in line with the recently formulated recommendations for the future course of OSCE operations.¹⁷

The recommended strengthening of the Conflict Prevention Centre¹⁸ could, for instance, help mitigate situations such as the one in March 2004, when the media reporting had triggered a new conflict and another Serbian exodus. The negative credit for this Serbian exodus and the Mitrovica division could be given to OSCE and its partners since they did not foresee the possibility of such an organized event and left the international community to be helpless observers.

For the case of Kosovska Mitrovica and the broader region some good comparative examples can be used, changed and aligned with specific needs of citizens, all the time respecting human rights of all parties involved. "The goal of the exercise is to gain distance from the zero-sum dynamic that characterizes many territorial conflicts and to introduce forms of sharing, often present in riparian treaties that can allow the needs of multiple parties to be met within the context of a negotiated agreement." This is a water-sharing model but can be widely used for territory, streets and even buildings as some following cases show. "Jews and Muslims in Hebron/al-Khalil share the same structure, which hosts a mosque and synagogue, on space considered sacred by both religions." This is an ultimate success which shows how two religions can pacify, what is very important in Kosovo where many Orthodox churches and monasteries got plundered. Another great example which can be used in the city of Mitrovica main bridge is the regulated circulation of citizens to another side. At this moment the bridge is used as a "Peace park" from Serbian side, but in the future it will hopefully be used by peaceful citizens in their everyday activities. Another solution applicable for reaching sacred places on the other side is: "The accommodations allow Protestants to flow into Catholic-dominated parts of the city that hold significance for both sides in the conflict. The terms of this "flow" are negotiated, and time

¹⁷ OSCE Network of Think Tanks and Academic Institutions, *The Future of OSCE Field Operations (Options)*, available at http://osce-network.net/file-OSCE-Network/documents/The_Future_of_OSCE_Field_Operations__Options_.pdf, 18 May 2015.

¹⁸ *Ibid.* 25.

is a critical factor, in as much as the parade occurs on specific days, in specific times, and in specific places.” This example from Northern Ireland could also be applied to broader Kosovo area where access to holy places became limited. Citizens of Mitrovica could serve as a role-model for other cities. However, at this point, without making freedom of movement in Mitrovica possible, we cannot assure any positive step forward anywhere in Kosovo.

FUTURE OF OSCE IN THE KOSOVO CONFLICT AND BROADER

The Brussels Agreement in its 15 points, apart from the responsibility for elections on North Kosovo in its 11th point, does not envisage any additional activity for the OSCE. It is therefore apparent, as pointed out before, that from the standpoint of the EU, elections are and will stay one of OSCE main responsibilities. Related to OSCE engagement in other points and especially to KPS and the future Community of Serbian Municipalities, it will most likely have a supportive role, like organizing trainings and advising. The main role and word in implementing this agreement will stay with EU policy makers and especially with its EULEX mission.

The Kosovo conflict was frozen for years and the multiethnic Kosovo as once existed can't be imagined today. The capital Priština has no Serb inhabitants left, and apart from North, Serbs live only in enclaves on South. Enclaves as ghettos are not the most perfect place for young people to live, so they leave Kosovo together with their Albanian compatriots. Kosovo conflict and its outcomes are not a bright example, and it is reasonable to expect that the Brussels agreement will not solve the most important living problems, namely the scarcity of economic activities. The situation in Kosovo is not unlike that in Ukraine, and if the aspirations of the Macedonian Albanians and the support that terrorist have from the poor and unfortunate citizens are taken into consideration, it is clear that, in order for true and lasting peace to be secured in Kosovo and neighboring territories, additional and continuous efforts will have to be put in building institutions and building understanding among peoples.

This will have to be achieved through joint efforts on the international community, where the United Nations, the EU and the OSCE as the key players need to ensure mutual support and complement each other in terms of their roles, expertise and activity. The comparative advantage of the OSCE is certainly its field expertise and permanent presence; in addition the OSCE is recognized as a status-neutral organization, which has, in the past, helped bridge many gaps not only between various nations inhabiting Kosovo, but also between the government and the civil so-

ciety in Kosovo (and in other countries). The current attempts of various political leaders to bypass the OSCE should be seen not as a threat, but as an opportunity to reform and restructure.”¹⁹

The “think globally, act locally” principle may well apply to the future of the OSCE field operation in Kosovo – focus on the implementation of minority rights and crisis prevention on the local level, placing additional focus on the practical implications of the implementation of the Brussels Agreement. The OSCE will thus have to move forward from being perceived as a very technical and mostly administrative organization towards being recognized as a fast-acting organization that can provide expert assistance and support. For this, its internal capacities need to be further strengthened, and its mandate carefully negotiated for the territory of Kosovo. OSCE should also be more open to citizens and introduce more transparency in its work such as EULEX does by explaining its situation and accepting failures.

Neither the Albanians nor the Serbs are happy with Kosovo as it is today. “Statehood rests on both a claim to that status and its recognition by existing states. How many countries must grant recognition before statehood is achieved is a more difficult matter.”²⁰ The war which was so aggravated by both has done an irreparable destruction to the Kosovo economy and the international community doesn’t care much for that situation, as much as they did to destroy Kosovo infrastructure during the war. “In addition, the just-war tradition does not adequately address *jus post bellum*, or justice after war.”²¹ The political agreement reached in Brussels will have little impact on what drives everyday life – the economy and the life in the local community. However, the Brussels agreement has to be seen as the first in many steps aimed at ensuring some kind of a normal life for citizens of Kosovo, where the final solution if any, is still miles away.

On the other hand, people can’t make this step alone and maybe here is the chance for OSCE to facilitate such activities through its support to local rule of law endeavors.

¹⁹ D. MacShane, “Organization for Security and Co-Operation in Europe: End of a Vision”, *The World Today*, vol. 66, no. 7, 2010, p. 18.

²⁰ J. T. Rourke, *International Politics on the World Stage*, McGraw-Hill, New York, 2008, p. 169.

²¹ J. A. Boss, *Analyzing Moral Issues*, McGraw-Hill, New York, 2010, p. 578.

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ULOGA OEBS-a U REŠAVANJU MEĐUETNIČKOG KONFLIKTA I PRIMENI VLADAVINE PRAVA NA KOSOVU

Rezime: Rad na temu uloge Organizacije za evropsku bezbednost i saradnju u konfliktu na Kosovu i ulozi u sprovođenju vladavine prava predstavlja uporedni pregled rezultata i očekivanja od strane međunarodnih organizacija i građana. Posebno mesto u radu je dato ulozi i budućnosti Organizacije za evropsku bezbednost i saradnju u sličnim situacijama kao što je Kosovo sa preko potrebnom smernicama i savetima za buduće delovanje. Takođe smo se osvrnuli na odnos Evropske unije i njene EULEX misije koja je prećutno preuzela mnoge nadležnosti od Organizacije za evropsku bezbednost i saradnju i tako preuzela vodeću ulogu u primeni Rezolucije 1244 i Briselskog sporazuma. Uloga Organizacije za evropsku bezbednost i saradnju je postala tehničko-administrativna te se misija više ne bavi sa najvažnijim pitanjima kao što je to činila pre bombardovanja Srbije 1999 godine i godinama nakon toga. S obzirom da Organizacija za evropsku bezbednost i saradnju i dalje predstavlja jedan od stubova vladavine prava na Kosovu u završnom delu rada smo pokušali sa naučnog i praktičnog stanovišta da pomognemo i usmerimo Organizaciju za evropsku bezbednost i saradnju kako bi što uspešnije rešavala svakodnevne i dugoročne izazove sa kojima se suočava i u budućnosti bude, sve više, suočavala.

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