



The Impact of Intervention on Local Human Rights Culture: A Kosovo Case Study

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Introduction

When and how are military and civil peacebuilding positive nurturers of human rights norms? And when do these efforts have unintended negative consequences? This article explores these questions using a case study of Albanian efforts to imagine and build a better society in Kosovo.² Other scholars concerned with societies emerging from conflict have examined the role of human rights in peace agreements³ and, in particular, the mechanisms designed to deal with past human rights abuses, such as truth commissions and international tribunals.⁴ Here, I am concerned less with human rights institutions and more with human rights culture. I am interested in exploring the ways in which the flood of peacebuilding and democratization brigades⁵ into places like Kosovo impacts local human rights culture.⁶

This article is divided into two parts. The first part introduces the terms 'culture' and 'human rights culture' and specifically identifies the nature of the human rights culture extant in Kosovar society⁷ prior to the NATO bombing. I explain that while human rights norms were inculcated into Kosovar culture, Albanians' operational understanding of human rights was perilously incomplete. Second, the paper explores the impact of military and civil intervention on the existing human rights culture in Kosovo. In this section, I am interested in both the 'side effects' of military intervention both on human rights norms and in the post-agreement attempts to influence Kosovars' shared understanding of human rights norms. Given the paucity of research on the subject, I focus my discussion on the relationship between non-military, post-agreement democratization efforts. My main finding is 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.

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² I leave to a later date a discussion of Serbian attempts to build a better society and the influence of human rights norms in their efforts. For particularly insightful analysis of this question, see Biserko (2001).

³ For an excellent study of the human rights elements of the peace processes in Northern Ireland, South Africa, Bosnia and Israel/ Palestine, see Bell (2000).

⁴ Among the plethora of new books on truth commissions, one of the most compelling accounts is Hayner (2001).

⁵ One element of the building of a human rights culture involves democratization. Legal scholars such as Henry Steiner and Thomas Franck have argued that the chance to participate in one's own government is a human right, or, in Franck's analysis, 'on its way to being a global entitlement...' See e.g., Steiner (1988) and Franck (1992).

⁶ My research was conducted in two distinct time periods. Prior to the NATO bombing in Kosovo and Serbia proper, in 1993-1995 and 1998, I conducted extensive interviews throughout Kosovo on the nature of local understandings of human rights and the extent to which these understandings saturated political and social discourse. Also during this time period I engaged in 'participatory' research, learning about the local human rights culture while conducting human rights education workshops in Kosovo and Serbia proper. Moreover, in 1999 and 2001, I conducted additional interviews with Kosovars on their self-understanding of human rights, on the impact of the NATO bombing on human rights culture, and on local experiences with internationals engaged in peace-building. During this period, in Kosovo, Washington DC and New York, I met with international governmental and nongovernmental employees working on peacebuilding in Kosovo. In addition, in the summer of 2001 I engaged in further participatory research when I taught a class on human rights and international law at the University of Pristina.

⁷ By 'Kosovar' society, I refer to Albanian society in Kosovo.



Examining the Human Rights Culture in Kosovo

Elements and Importance of 'Human Rights Culture'

Culture is 'the shared beliefs and understandings, mediated by and constituted by symbols and language, of a group or society.' (Zaid 1996: 262) As Renato Rosaldo (1993: 26) succinctly explains, '[culture] refers broadly to the forms through which people make sense of their lives.' Two dimensions of culture are particularly relevant for our discussion here. First, cultures are not uni-dimensional and static; they are multi-dimensional and dynamic. Accordingly, this study examines Kosovar culture over two periods, the pre-NATO bombing period of 1989-early 1999, and the post-NATO bombing period of 2001 and, in so doing, recognizes that culture is 'interactive and process-like (rather than static and essence-like).' (Lapid 1997: 8) Second, cultures are not primordially given. Rather, they are socially constructed according to an ideological and/or political purpose (Handlet 1994: 29). This study attempts to explore the process by which culture develops in Kosovo and, in particular, the political strategy motivating the development of and adherence to beliefs. This study contends that it is culture that makes human rights norms effective.⁸

A human rights culture is the vehicle through which human rights norms take root in and influence a population. At the outset, human rights ideology stresses equality between human beings, asserting that each human being should be treated with dignity solely because he or she is human (Forsythe 2000: 3). This supports the importance of individualism, but also the centrality of community and communal responsibility. Jean Bethke Elshtain notes that '[rights] are woven into a concept of community' and 'are intelligible only in terms of the obligations of individuals to other persons.' (Elshtain 1999-2000: 14) The Kosovar human rights movement illustrates this insight. While Kosovars viewed themselves as being entitled to rights as individuals, they continually emphasized the communal nature of rights and of individual obligations to community.⁹

Human rights ideology also sets limits on the power of the state *vis-à-vis* its citizens.¹⁰ In practice, human rights norms have both 'vertical' and 'horizontal' significance. Marie-Benedicte Dembour (1996) observes that 'although human rights standards are primarily set to govern the relationship between the individual and the state ("vertical" significance), they also necessarily govern relations among individuals ("horizontal" significance) and in some cases this may well be their main significance.' This was indeed the case in Kosovar society where Albanians identified themselves as being victims of human rights violations perpetuated by the state of Yugoslavia (or Serbia), by individual Serbians, and by collectives (of Serbians and their supporters) alike (Mertus 1999 and Independent International Commission on Kosovo 2000).

Human rights talk is prevalent and persuasive in cases like Kosovo, because it so 'successfully manages to articulate (evolving) political claims.' (Dembour 1996: 35) Ultimately, human rights are 'claims for powers by competing social groups' that are 'continually transformed as the result of struggles over political, symbolic, or economic resources within a state and transnational context.' (Wilson 1997) In the post-Cold War period, virtually no state leader will claim being a human rights outlaw but, instead, will

⁸ Witte (2001: 42) states that human rights norms 'need a human rights culture to be effective.'

⁹ For example, when interviewed about being beaten by police, one man stated directly that the violation was against his people. Another man giving similar testimony also stressed his duty to his people to be strong in the face of human rights violations and to remain nonviolent. Interviews conducted in Kosovo in March 1994.

¹⁰ For the evolution of the statist focus in human rights discourse, see Falk (2000).

cling to the identity of human rights supporter (Forsythe 2000). Thus, state leaders seek legitimacy by claiming that human rights norms support their actions, whatever they may be.¹¹ In this sense, human rights norms serve an enabling function for state actors (Finnemore 1996: 159, also Finnemore and Sikkink 1998). Similarly, any collective or individual wishing to promote change in existing institutions, practices, or norms is more likely to gain an audience by framing their claims in human rights terms (Risse 1999).

The adoption of human rights language is an essential step in building a human rights culture, but this alone is insufficient. Human rights concepts enter culture slowly as a population develops its own shared (yet contested) understanding of the prominence and importance of the norms. Incrementally, they become part of the “frame” in which people derive a sense of who they are and where they are going.’ (Fitzgerald 1993: 186)

Central to this process is a population’s own experiences of rights deprivation and rights affirmation, which often occurs through storytelling (Mertus 1999). Human rights storytelling serves several functions. As Richard Rorty has suggested in his pragmatic argument for human rights, storytelling provides a ‘sentimental education’ (Rorty 1993: 114) that generates the kind of sympathy necessary for the acceptance of human rights norms. This is particularly important when the goal is to motivate a majority to accept the human rights of a minority. Human rights activists in Belgrade, for example, exposed stories about abuses against Albanians in order to garner the sympathy of the Serbs.¹² Kosovars strongly believe that if not for the human rights storytelling, NATO intervention would have never occurred.¹³

Human rights storytelling also facilitates a common understanding of experience (Senehi 1996, also Narayan 1989) and in so doing promotes group cohesion. In Kosovo, the informal telling of stories in Kosovar family living rooms and the more formalized collection of stories by human rights groups served to strengthen Albanian solidarity as a united, oppressed people.¹⁴ Similarly, Serbian telling of stories about Albanians solidified their identity as victim at the hands of Albanians (Mertus 1999f). In this way, within one society, human rights storytelling was both unifying and fragmenting. In neither the Serbian nor Albanian population did the storytelling promote the central value of human rights: respect for the Other.

The Human Rights Culture in Kosovar Society, pre-1999

To a great extent, the Kosovar parallel society of the 1990s stands as a paradigmatic example of the internalization of human rights norms by a people. It was through human rights claims that Albanians expressed their political aspirations for a more egalitarian society – that is, one in which ethnic Serbs could not abuse and discriminate against ethnic Albanians.¹⁵ The primary goal of Kosovar human rights activists was to influence

¹¹ Wheeler (2000) asserts that the international community is now more open to ‘solidarist themes’.

¹² Author’s interview with Sonja Biserko, Helsinki Committee of Belgrade and Senior Fellow at the United States Institute of Peace, Washington D.C., August 2001. Biserko stated that they were unsuccessful in persuading Serbs to be sympathetic to Albanians. ‘They [Serbs in Belgrade] never thought much about human rights until the economic situation in Serbia got oppressive and they started to think about deprivation of their own economic rights.’

¹³ Author’s interviews conducted in July and August 2001 in Pristina and Prizren, Kosovo.

¹⁴ Interview with Sevdie Ahmeti, Kosovar human rights activist, co-head of the Center for the Protection of Women and Children, Pristina, August 2001.

¹⁵ The majority movement of Kosovars was less keen on other equality issues, such as the rights of women. ‘When we Albanians have our freedom, we [women] will have our freedom’, women members of the League for Democratic Kosovo (LDK – the primary Albanian party in the 1990s) used to say. See Mertus (2000) and Mertus (1999a).



how the 'international community'¹⁶ understood their own behaviour and the behaviour of the Other according to some measure of justice. A secondary goal was to create a local sensibility to human rights norms that would shape Kosovar collective life (Wapner 1998: 118, 121). Just as the environmental movement in the West sought to get people to 'think green', human rights activists in Kosovo sought to have their people 'think human rights'.

The degree to which local human rights groups influenced the cultural perception of norms is reflected in analysis of the media, press statements of Kosovar politicians, NGO publications, the school curriculum and the lived practice of family traditions. Attitudinal surveys and interviews with the same subjects over a period of time also provide evidence of changes in cultural perception.¹⁷ According to these measures, human rights activists in Kosovo achieved some degree of success. Nearly every Kosovar had either personally or through a close relative experienced some form of state-sanctioned abuse that could be framed in human rights terms. This frame was adapted throughout the 1990s by the independent Kosovar media, LDK press statements, and NGO press publications, which continually characterized the Kosovars' struggle in human rights terms. Moreover, human rights terminology was popularized through the Kosovar 'parallel' school curriculum and through everyday family life which put a premium on honouring victims of human rights deprivations. Kosovars decried the legitimacy of the constitution of Serbia and instead looked to the Universal Declaration of Human Rights (UDHR) as a source of guiding principles for their lives.

The Kosovar human rights 'sensibility'¹⁸ was tied to the Albanian political strategy of nonviolence. Just as the Kosovar identity as nonviolent victim of human rights abuses was constructed against a violent, human rights abusing Other (Maliqi 1998: 101-4), human rights were framed in oppositional terms. Human rights were not really viewed as something individuals had simply by virtue of their humanity. Rather, Kosovars perceived their own human rights in opposition to the human rights of other groups – that is, Albanians versus Serbs.¹⁹ Given that Albanians no longer recognized the legitimacy of the state of Yugoslavia's rule over Kosovo, they looked not to their state for protection but to the international community; this community, they had no hesitancy in qualifying, meant the United States and to a lesser extent NATO.²⁰

The practice of nonviolence and the emergence of a culture of human rights in Kosovo in the early 1990s served several useful purposes. By casting their struggle in human rights terms, Kosovars gained legitimacy before many governments and nongovernmental organizations concerned about human rights. Their strategy of using the language of human rights helped them to gain entry into important international fora where political concerns are discussed. In addition, the language of human rights 'served to validate the self-worth of Kosovars at a time when they were being vilified.' (Clark 2000) In this way, the language of human rights supported the nonviolent

¹⁶ Kosovar Albanians usually imagined 'international community' in an instrumental manner that is being composed of the most influential Western nations who could respond to their plight.

¹⁷ For an example as to how these techniques can be employed see Mertus (1999f).

¹⁸ Paul Wapner (1995) helpfully describes a growing 'environmental sensibility'. I am indebted to him for his insight on the ways in which changes initiated by transnational (and local) activists occur independently of state policies.

¹⁹ Sometimes the oppositional view of human rights was stated bluntly. For example, when asked in 2001 whether human rights mattered, an Albanian working with a women's humanitarian assistance project asked, 'by which group against which group?' Author's interview in Prizren, Kosovo, August 2001.

²⁰ In interviews in Kosovo in 1994 and 1995, Albanians continually stated that it would be up to America to protect their human rights and, some also said, NATO with America in command.

strategy by popularizing 'patience in the face aggression'²¹ and claiming the moral high ground.

The nonviolent strategy, however, was built on a tenuous human rights foundation. While Kosovars did have a strong human rights culture, it was incomplete. Howard Clark has observed that 'the danger of deriving one's identity from a matrix of antagonisms is evident – a lack of flexibility, an inability to appreciate what is held in common... [and the acceptance of a] worldview where one is always the victim or martyr, the Other always the villain.'²² The notion of respect for the rights and positions of the Other was 'underdeveloped in Albanian self-understanding...' John Paul Lederach reminds us that international mechanisms such as human rights are most useful for peacebuilding if they 'cut across lines of identity that mark the central divisions in society.' (Lederach 1997: 142) In Kosovar society, instead of cutting across lines of identity, the language of human rights served to cement lines of identity.

The challenge for the international community in responding to human rights violations in Kosovo was to support the positive aspects of the nascent Kosovar human rights culture: Kosovars were to abandon their adversarial identity and incorporate into their self-understanding respect for the Other. As explained more fully below, the international community offered no effective incentives for the development of a more inclusive discourse. Nor did the international community actively discourage Kosovar Albanians from tempering their hostile view of Serbs. Albanian leaders and not leaders of the international community invoked the instrumentalisation and selective interpretation of human rights. The international community cannot be blamed for the shortcomings in the human rights culture of Kosovar society. Moreover, mutual hostility can be viewed as both a cause and consequence of the incomplete human rights culture in Kosovo that existed prior to the NATO bombing.

Impact of Military and Civil Intervention in Kosovo

Impact of NATO Bombing

The NATO bombing failed to vindicate the Kosovar struggle for human rights. Instead, the timing and method of intervention greatly compromised human rights interests in Kosovo. When Albanians returned to Kosovo after the bombing, few were thinking in human rights terms as they had in the past.²³ Even the narrow view of human rights and nonviolence was missing from the discourse of returning refugees who spoke in pragmatic and instrumentalist terms about starting anew. While some still framed the struggle for Albanian self-determination as a human rights concern, they acknowledged that the underlying decision on Albanian independence would be a political one, determined by the interests of the world powers, not by human rights norms. The notion that one should recognize the dignity of the Other – a precept that was never very strong – reached a nadir. While the vast majority of Kosovars did not condone revenge killings, as a community they were unable to prevent them or to punish perpetrators.

There are several reasons why the international intervention in Kosovo, billed as a 'human rights intervention' (Roberts 1999), served to undercut human rights norms. Above all, the intervention came too late. The international community could have supported human rights groups in Kosovo and Serbia at a much earlier date. While the Soros Foundation and other private organizations aided Albanian and Serbian media and

²¹ This is how Ibrahim Rugova described his nonviolent strategy to me in March 1994.

²² Ibid.

²³ Interviews with returning refugees in Albania, June 1999.



other aspects of civil society throughout the former Yugoslavia beginning in the early 1990s, the United States and other major powers did not do all they could have to support civil society actors. They could have offered financial and technical support to independent Serbian and Albanian journalists, opposition political parties, and civic organizations of all stripes, from women's health groups to farmers' organizations (Clark 2000). While foreign governments have not traditionally engaged in such activities, they are beginning to do so as part of larger 'peacebuilding' efforts, realizing the cost-effectiveness of such endeavors as compared to alternatives, which may include expensive military commitments. Most important, they could have fostered feelings of economic security by bolstering private businesses and by using potential funding of government projects as inducements for concrete change on pressing human rights issues. Instead, the United States imposed economic sanctions against Belgrade, a move that serve to stoke Serbian feelings of victimization and which ultimately enhanced Milosevic's power.²⁴

The failure of the international community to respond to Kosovars' nonviolent human rights struggle sent a clear message to Kosovars that world powers will respond only to guns, not to rights claims. Human rights reports on violations in Kosovo during the Albanian period of nonviolence – the early to mid 1990s – had little impact on decision-making. Tim Judah observes: 'Because there was no apparent urgency then, and no all-important dead bodies on television to galvanize Western opinion, the very few diplomats who ventured down to Kosovo and who were beginning to realize that things were in fact changing found that their reports were having little impact.' (Judah 2000:119) In the face of international inaction, the human rights abuses in Kosovo continued and, indeed, worsened. Finally, it was the collapse of the Albanian nonviolent movement and the rise of the Kosovo Liberation Army that prompted the international community to pay heightened attention to the crisis.

The failure of the international community to respond early and consistently to human rights violations also fostered the belief that human rights are only another bargaining chip of politically powerful countries to be used at their own discretion and when their own interests are at stake. For years, NATO allies turned a blind eye to systemic human rights abuses in Kosovo, issuing only an occasional empty threat to the Milosevic regime. The US and other NATO countries decided to take up the human rights flag only after the emergence of the Albanian paramilitary organization, the Kosovo Liberation Army (KLA).²⁵ Only at that point did it appear as if the conflagration in Kosovo could result in a massive population displacement that would spill across country borders, disrupting trade and social relations among NATO countries. The resulting NATO bombing campaign expelled Yugoslav army and irregular Serb forces from Kosovo, but did nothing to protect civilians from mass displacement, killing and other abuses (Chomsky 2000: 42). Realizing the self-serving nature of diplomatic human rights talk, Serbians and Albanians alike grew bitter towards the international community and cynical about the notion of universal human rights.

Although in part motivated by human rights considerations,²⁶ the Clinton Administration refused to base its actions in Kosovo solely on human rights grounds. The Administration

²⁴ For an argument that sanctions more closely targeting Milosevic and his supporters would be more effective at promoting democratic change in Serbia, see Independent International Commission on Kosovo (2000: 234f.).

²⁵ For general agreement with this proposition, see Independent International Commission on Kosovo (2000).

²⁶ Walt (2000) identifies one of Clinton's four goals to be 'build[ing] a world order compatible with basic American values by encouraging the growth of democracy and by using military force against major human rights abuses' (p. 67). See also, Editors (2000). They argue that the so-called Clinton Doctrine included a strong human rights component, although it was inconsistently and opportunistically applied.

mixed human rights talk with the need for regional stabilization, national security concerns over a long war and a large refugee flow, the need to protect NATO's reputation, and America's interest in preserving prosperous and secure trade with Europe. Even though many of the interests identified were relevant to human rights, the Clinton Administration chose instead to emphasize other justifications for the campaign. A case could be made for the legality of the air strikes under the UN Charter – specifically, by arguing that by committing gross human rights violations Serbia had waived its claim to sovereignty and that intervention was therefore needed under articles 55 and 56 of the UN Charter to address human rights violations and restore the sovereignty of the people.²⁷ Yet, no one in the US administration was willing to articulate a legal basis for intervention on human rights grounds.²⁸ The *ad hoc* and extra-legal justifications for the use of force appeared illegitimate, undermining the status of NATO and the legitimacy of the international human rights system (Ali 2000).

Equally troubling the intervention itself was not conducted in line with human rights norms and, thus, it established poor precedent for Kosovar society. To be legitimate, the means of intervention must be consistent with international humanitarian law.²⁹ In sum, the means employed should be necessary for a legitimate objective, they should be proportionate to a legitimate military outcome,³⁰ they should discriminate between civilian and noncivilian targets, and the efficacy of the means should be appropriately related to the probability of success. At all stages of their operations, those who intervene should consider whether their actions place noncombatants at increased risk (Burkhalter 2000: 25).

The NATO bombing was designed to avoid any allied casualties and, thus, prohibited at the outset the use of ground troops. The resulting dependence on air power entailed a greater risk that civilians would be injured.³¹ The Geneva Conventions IV and Protocol I provide that civilians shall be protected against 'indiscriminate attacks' – that is, attacks that 'employ a method or means of combat which cannot be directed at a specific military objective' or 'employ a method or means of combat the effects of which cannot be limited as required.' In addition, Protocol I requires military planners to 'take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.' It is not within the spirit of these provisions to greatly increase the risk to civilians in order to avoid casualties to one's own military.

Throughout the bombing campaign, the principle of 'proportionality' required NATO to undertake action designed to achieve some legitimate military objective (Gardam 1993). To the extent that the bombing campaign was necessary for ending human rights abuses and returning deported civilians, the action was within the scope of international law. Unavoidable and unplanned damage to civilian targets incurred while attacking legitimate military targets would also have been within the law. Yet the action's proportionality became questionable when it became apparent that the bombing was not

²⁷ I develop both of these theories in Mertus (2000). See also Reisman (1990).

²⁸ Author's interview with Mike Matheson, July 2001, Washington DC. I interviewed seven additional legal advisors on Balkan issues in the Clinton Administration and all of them said that the Administration had been unwilling to come up with a clear legal definition.

²⁹ The main sources of law for the law of war include The Law of The Hague (1907); the Geneva Conventions of 1949; the 1977 Geneva Protocols; and customary international law. See Roberts and Guelff (1989). See also Levie (1990).

³⁰ The concept of proportionality requires an ends-oriented comparative assessment: 'The anticipated loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.' (United States Army 2000; emphasis in original). See also Article 57 of Protocol I additional to the 1949 Geneva Conventions (Protocol I).

³¹ See Ignatieff (2000: 62) who states, 'The alliance's moral preferences were clear: preserving the lives of their all-volunteer service professionals was a higher priority than saving innocent foreign civilians.'



effectively advancing military objectives, the bombing of purely military targets was not yielding the anticipated results and the impact of the bombing was felt mainly by civilians. This result served only to further the belief now held by both Serbs and Albanians that claims to human rights could not be expected to be universally enforced but, rather, were another tool of powerful countries to wield as they saw fit.

Impact of Post-Agreement Efforts

Following the Serbian acceptance of the Kosovo peace agreement,³² the UN Security Council, acting under the authority of its Chapter VII powers, adopted a resolution setting forth the mandate of the international mission that would attempt to rebuild peace in Kosovo.³³ UN Security Council Resolution 1244 directed the UN Secretary-General, in consultation with the Security Council, to appoint a Special Representative 'to control the implementation of the international civil presence.'³⁴ On 2 July 1999, the UN Secretary General appointed Bernard Kouchner as his Special Representative in Kosovo.³⁵ Kouchner moved quickly to solidify his power in Kosovo. Pursuant to the authority granted by Resolution 1244, Kouchner issued a regulation on 25 July vesting in UNMIK all legislative and executive authority in Kosovo. Under UNMIK Regulation 1, this authority was 'to be exercised by the Special Representative of the Secretary-General.'³⁶ UNMIK Regulation 1 provides that the 'Special Representative of the Secretary-General may appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such person.'³⁷ Moreover, '[i]n the performance of the duties entrusted to the interim administration under United Nations Security Council Resolution 1244 (1999), UNMIK will, as necessary, issue legislative acts in the form of regulations.'³⁸ In this manner, the authority of the Special Representative is virtually unlimited.³⁹

UNMIK is unusual in that it encompasses the activities of three non-UN organizations under the UN's overall jurisdiction. UNMIK is comprised of five 'pillars': (1) interim civil administration (UN-led); (2) humanitarian affairs (UNHCR-led); (3) democratization and institution-building (OSCE-led); and (4) reconstruction (EU-led).⁴⁰ The fifth pillar was security, provided by the Kosovo Force (KFOR), comprising 45,000 NATO-led troops. All five of these pillars have an interest in human rights. The interim administration, for example, has specific officers charged with overseeing human rights issues and the OSCE offers training on democratization and human rights as part of its democratic institution building. The rush of activities focusing on human rights seemed destined to support a culture of human rights.

³² General principles on a political solution to the Kosovo crisis were adopted on 6 May 1999 (S/1999/516, Annex 1 to UN Security Council Resolution 1244). The Federal Republic of Yugoslavia indicated its acceptance in a paper presented in Belgrade on 2 June 1999 (S/1999/649, Annex 2 to UN Security Council Resolution 1244).

³³ S/RES/1244 (1999), available at <<http://www.un.org/Docs/scres/1999/99sc1244.htm>>.

³⁴ S/RES/1244 (1999), para. 6.

³⁵ Chronology, UN Interim Administration in Kosovo (UNMIK), available at <http://www.un.org/peace/kosovo/news/kos30day.htm>

³⁶ UNMIK/REG/1999/1 (Section 1(1)) 'On the authority of the interim administration in Kosovo', 25 July 1999, available at <<http://www.un.org/peace/kosovo/pages/regulations/reg1.html>>.

³⁷ UNMIK/REG/1999/1 (Section 1(2)).

³⁸ UNMIK/REG/1999/1 (Section 4). Section 4 further provides that '[s]uch regulations will remain in force until repealed by UNMIK or superseded by such rules as are subsequently issued by the institutions established under a political settlement, as provided in United Nations Security Council Resolution 1244.'

³⁹ In examining similarly expansive powers granted to UN administrators in Bosnia, Bell (2000: 180) astutely remarks: 'It appears that the price of democracy is democracy.'

⁴⁰ Chronology, UN Interim Administration in Kosovo (UNMIK), available at <http://www.un.org/peace/kosovo/news/kos30day.htm>

Despite early promise, the post-agreement intervention did not fare much better than the NATO intervention in supporting a human rights culture in Kosovo. In place of a principled human rights culture, life in Kosovo is now defined by cynical instrumentalism – a ‘whatever it takes’ attitude, leaving principles behind – and individual self-help – ‘everyone for oneself and one’s own family’ instead for the greater good. Local human rights activists still persevere in Kosovo, but the new instrumentalist attitude hampers their ability to organize. Activists face great difficulty in garnering popular support for any project that entails long-term thinking and brings little tangible rewards in the short term. A human rights approach, which by its nature requires patience and principles, today is a hard sell in Kosovo.

The relationship between internationals and locals on human rights issues is fraught with difficulties. In Kosovo as in many post-agreement societies, international human rights workers tend to conduct their operations in a messianic fashion, believing that they are coming in and delivering human rights to the local people.⁴¹ However, locals have their own understandings of human rights. In fact, much of what is viewed by internationals as ‘local culture’ in opposition to ‘outside ideas’ is in fact already a reflection of the international human rights movement.⁴² As explained above, the problem in Kosovo was not the complete absence of a human rights culture, but the underdevelopment of human rights ideas. The internationals working in Kosovo did not understand that in Kosovar society, human rights are adversarial and oppositional concepts and they do not form a common ground where different sides can agree on a shared set of values.

One of the greatest mistakes the international community made with respect to human rights was to place early prominence on the rights of Serbian residents from Kosovo to be protected. Serbs were being subjected to revenge killings and something had to be done to stop them, but this was the wrong tactic. ‘[The international community] came in saying, “the Serbs, the Serbs, you must protect Serbs’ human rights”, but all the time I wondered, “what about our human rights?”’, one Albanian student told me, reflecting the sentiments of many Kosovars.⁴³ Albanians and Serbs both saw themselves as victims. The internationals wanting to protect the human rights of all people in Kosovo could have taken a more mediated approach, building on each group’s sense of having been human rights victims and carefully expanding that sensitivity so as to rid it of its adversarial nature.

Some internationals argue that they did in fact stress ‘the human rights of all people – Albanians, Serbs and everyone else.’⁴⁴ But this is not what Albanians heard. They understood only that Serbs were the new victims and that Albanians were the new perpetrators. ‘It was like nothing every happened to *us*,’ one former KLA fighter complained, ‘and as if we were suddenly the bad guys.’⁴⁵ Not only did the international approach erase any acknowledgment of human rights abuses against Albanians. By emphasizing only the rights of Serbs, the international community also perpetuated the already prevalent notion in Kosovar society that human rights are ‘all about one group versus another – who abuses and who is abused.’⁴⁶ Unwittingly then, the international community perpetuated an incomplete, adversarial understanding of human rights.

Additional factors impeding the internationally-assisted efforts to build a human rights culture in Kosovo are endemic to any kind of colonialist/dependency relationship. The

⁴¹ Barnett and Finnemore (1999) have called international organizations the modern missionaries of our time.

⁴² Conversely, the ‘local’ influences and is reflected in the global. Roland Robertson calls this phenomenon ‘glocalization.’ See Robertson (1995), also Sassen (1988).

⁴³ Author’s interview with a student in Pristina, Kosovo, August 2001.

⁴⁴ Author’s interview with an OSCE staff member in Pristina, Kosovo, August 2001.

⁴⁵ Author’s interview with former KLA fighter in Pristina, Kosovo, August 2001.

⁴⁶ Statement of a Kosovar law student, Pristina, August 2001.



enormous power imbalance between internationals and locals skews decision making in favor of the internationals. UN administrators herald the benefits of 'localism' – that is, involvement of local experts and even utilization of direct grants to local NGOs (Carothers 1999: 335) – even as they attempt to tokenize locals. Vjosa Dobruna, a long-time human rights activist in Kosovo and former member of the joint interim administration in Kosovo, resigned from her post in the internationally sanctioned Kosovo government because of internationals repeatedly disregarding the concerns of locals. The last straw for Dobruna was when UN administrators in Kosovo failed to hear and account for the concerns local experts had over the new Kosovo constitution. The UN administration wanted to work with locals, but only insofar as they did not rock the boat on preordained UN plans.⁴⁷

Failure to listen to local leaders and to learn about the history of the Kosovar parallel society has led internationals to overlook its potential as an efficient network for coordination of volunteer efforts, distribution of public goods, and development of human rights values.⁴⁸ Instead of drawing from the pre-existing structures of civil society, internationals came into Kosovo with a template that did not fit the problem. 'The main problem,' said Dobruna, 'is that [the internationals] came and tried to do what they did in Bosnia here. But in Bosnia there was no alternative movement. In Kosovo, people were prepared for war. Maybe it wasn't a perfect 'civil society,' but there was a structure, a network of nongovernmental services, NGOs. Instead of making the old structure better, they went backward – as if nothing had ever been here.' Whenever locals attempted to point out already existing structures and mechanisms, they were pushed aside. 'That parallel government wasn't really a good model for democracy', one OSCE staff member explained.⁴⁹

On one hand, good arguments exist for ignoring the parallel government and starting anew.⁵⁰ The refusal by the international community to use pre-existing structures of civil society seems understandable if one considers that these were strongly divisive and contributed to an entrenchment of the communal divide. It might seem that replacing rather than transforming the earlier structure might lead to quicker and more desirable results. On the other hand, the parallel government was a rich resource of human resources and ideas that democracy builders could not afford to ignore. The parallel government did reflect a participatory ethos and efforts to build on it would have lent legitimacy and effectiveness to the international effort.

Failure to learn about the history of Kosovar society has had another drawback. It has continually led the international community to favor the development of local advocacy NGOs even when other mechanisms may better promote a human rights culture. The transplant of American-style advocacy NGOs to other countries is often unsuccessful, since advocacy NGOs are a product of the American experience and are completely alien to many socio-political cultures (Mertus 1999e and 1999c). As Thomas Carothers has observed, American NGOs 'have grown out of particular aspects of America's social makeup and history – whether the immigrant character of society, the 'frontier' mindset, the legacy of suspicion of central government authority, or the high degree of individualism.' (Carothers 1999: 98) The political culture in Kosovo arose out of a different historic and social context.

Advocacy NGOs are not always the best mechanism for the general concerns of a population to be heard. Advocacy NGOs are said to work when they promote civic

⁴⁷ Author's interview with Shkelzen Maliqi, Pristina, Kosovo, August 2001.

⁴⁸ I discuss the importance of such networks further in Mertus (1999b).

⁴⁹ Author's interview with OSCE staff member, Pristina, Kosovo, August 2001.

⁵⁰ I am grateful to Stefan Wolff for encouraging me to address this argument.

participation and general human rights norms, as well as more specific expressions of public interest. However, advocacy NGOs often promote only the most popular (that is, monied) causes, often at the expense of the real public interest. The problem is particularly acute in cases like Kosovo where totally new NGOs sprung up almost overnight, propped up by foreign dollars. While some of these NGOs perform admirable functions, many of them are seen by their local public as reflecting the values and interests of foreign governments and foreign NGOs, and not representative of the most pressing local concerns (Carothers 1999: 212). As a result, many of the newly created entities cease to exist when the internationals pull out their support. Thus, they in fact have little impact on the development of local culture.

The structure of aid in Kosovo has encouraged people to create and operate through an NGO structure even when it would make more sense to work in some other manner, such as through an existing community network. Thus, donor dollars have unwittingly eroded and in some cases destroyed capable community structures and in doing so created new tensions between the new 'haves' and 'have nots.' To complicate matters, local Kosovars who succeed in the new NGO world often are not the ones with the greatest experience, relevant skills or legitimacy among their constituents. To be sure, some of the Kosovar NGOs are extremely capable and experienced, but many of the newly minted ones reflect an ability to respond to international demand more than local needs. Internationals award the local NGOs that are willing to be cheap service providers for international programs and that are staffed with people willing to attend (often useless and duplicative) trainings and interface with donors in a language and style deemed acceptable.⁵¹

Much of the post-war donor attention on women's issues, for example, has been to newly created local NGOs and with women's sections of political parties, instead of the local women's projects that had existed throughout the 1990s. 'They find us difficult to deal with', one long-time Kosovar women's rights activist explains, 'because they want to *train us* and we don't want their training.'⁵² 'Look', another Kosovar women's rights activist explains, 'I've been in Vienna [UN 1993 World Conference on Human Rights] and Beijing [UN 1995 World Conference on Women] and I *do* gender trainings and they [the internationals] try to tell me what gender is and why we need a gender focal point.'⁵³ When women activists argued in favor of gender mainstreaming in the transitional Kosovo government, instead of the creation of a gender focal point, the internationals 'acted like [the local women] didn't understand.'⁵⁴ After several disputes with the UN-appointed gender experts, the core group of local women's projects – the Kosovo Women's Network – refused to meet with the UN Office of Gender Affairs (OGA) and eventually also closed the doors of their own meetings to OGA representatives. The large amount of funding for gender related projects, although well-intentioned and in some cases well-conceived, created conflict between locals and internationals as well as between various local representatives.

Internationals are seemingly unaware that the flow of money to local advocacy groups impacts local power structures which, in turn, often creates new cleavages and conflictual relationships. 'Aid providers treat political change in a pseudoscientific manner as a clinical process to be guided by manuals, technical seminars, and flowcharts specifying the intended outputs and timeframes.' (Carothers 1999: 98) They ignore the fact that political change involves people, relationships and power. Whenever foreign

⁵¹ See Julie Mertus, *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo and Afghanistan* (Kumarian, 2000).

⁵² Author's interview, August 2001, Pristina, Kosovo.

⁵³ Author's interview, August 2001, Pristina, Kosovo.

⁵⁴ Ibid.



governments and NGOs offer support to local leaders they effectively choose some people over others and thus alter existing relationships and power structures. The 'newly anointed ones'⁵⁵ may not in fact represent their purported constituency and may not be viewed as deserving and legitimate by their own people. Attention to NGOs thus may diminish other voices in society, including those of official representatives and of other community leaders who either have failed in attracting international support or who have not chosen to operate through an NGO.

Very few donors are cognizant of the potential and actual impact of aid on local conflict. The US Agency for International Development (USAID), the principle vehicle through which the US directs democracy assistance, does not routinely undertake conflict assessments before embarking on a new project. While Andrew Natzios, the new head of USAID, has announced that conflict prevention will become one of the four pillars of USAID's work, the decision has not yet been fully implemented.⁵⁶ Many of the internationals attempting to build peace in Kosovo have been chosen by their governments and organizations precisely because of their ignorance about Kosovar history and local power dynamics. 'I don't understand it', said one British woman who had been working in Kosovo since 1993 and who found herself turned down for consultancy positions due to 'bias' toward locals. 'If I were to team up with a career UN person, we would balance each other out: He would bring sensitivity about the international bureaucracy and I about the local. But no one sees his potential bias, only mine...'⁵⁷

To the extent that the internationals have had an impact on local culture, it has been largely negative. The flood of donor dollars into Kosovo has created an imbalance in the labor market and altered social values that promote community responsibility. With the promise of making ten times the amount of their parents, young, English-speaking students have abandoned their studies and accepted dead-end, short-term jobs with international agencies. With local government positions paying one-tenth the salary of parallel international positions, one-half the amount of a UN driver and one-third the amount of a translator, talented local professionals have little incentive to work in government.⁵⁸ The entry of international agencies into the service providing sector and the rise in the cost of living has killed any sense of volunteerism and reduced the Albanians' sense of group solidarity.⁵⁹

The attempts to democratize Kosovo have ironically had a particularly negative impact on human rights norms. In implementing democracy programs, internationals are seen as being dictatorial and, in many cases, arbitrary, thereby raising concerns about elite representation. Through their projects, international donors attempt to reach out to and strengthen local leaders. But are they reaching the right leaders? Who speaks for a society? In Kosovo, the UN administration guessed that the leaders who spoke for the people of Kosovo at the Rambouillet and Kumanovo peace negotiations were the ones who still spoke for society in the post-conflict period. 'When it became clear that the UN needed to have some power sharing with local elites in running the place', UNMIK civil administrator Thomas Koenig explained, 'we decided that these were the ones most likely to have legitimacy.'⁶⁰ Out of a set of bad choices, Koenig said, the UN attempted to make the best one. When it became clear that reliance on the Kosovar peace negotiators would eliminate women and members of civil society from the transitional leadership,

⁵⁵ Quotation from member of Kosovar NGO group, in interview with author, August 2001, Pristina, Kosovo.

⁵⁶ Author's interview with Dayton Maxwell, USAID, July 2001, and Dick McCall USAID, August 2001.

⁵⁷ Author's interview in Pristina, August 2001.

⁵⁸ Author's interview with Vetton Surroi in Pristina, August 2001.

⁵⁹ Author's interview with Urim Ahmeti in Pristina, August 2001.

⁶⁰ Author's interview in Pristina, August 2001.

Koenig said 'an effort was made to include more representatives of civil society.' Nonetheless, despite their active participation in civil society prior to the NATO bombing, women remained disproportionately underrepresented in the Kosovar Transitional Council and UNMIK joint civil administration. Did the local men adequately represent the concerns of their people? Did the women?

Despite the values of participation, transparency and openness preached by internationals, locals learn from the example set by the international effort in Kosovo that democracy is about gaining power. Kosovars tend to understand their struggle for democracy as a struggle for 'the right to rule'.⁶¹ Indeed, the language of democracy in the US perpetuates this notion of a 'ruling party' and much USAID and OSCE democracy assistance is designed to develop the skills of political parties to participate in elections and compete for the right to rule.⁶² However, democracy should not be about 'ruling', in the sense that that word refers to the absolute power to rule *over* the population and to distribute political patronage to the victorious party.⁶³ Rather, democracy should be about the right to govern. Good governance entails power-sharing among majority and minority voices, with ample protections for the human rights of ethnic, national, gender and other minorities. Somehow the message on governance has been muted in the rush to fabricate other elements of popular democracy, stressing the formation of political parties and their operation in electoral politics.

Internationals do not only mis-transmit notions about ruling, they send the wrong signals about the nature of institution building and norm formation. Somehow Kosovars have received the message that the international community will leave them with a democratic government that will resolve their conflict with Serbs.⁶⁴ But no democracy can claim that its institutions settle all public grievances. On the contrary, democratic institutions seek to create processes that will permit public debates and conflict to be heard in a civil fashion, even as they are not finally resolved. To be sure, some norms are foundational for democracies, including fundamental human rights such as the right to life, freedom from torture, and freedom from discrimination on the bases of race, ethnicity or gender. But the acknowledgment of such rights does not determine the outcome of all cases in which they are alleged. Instead, and importantly, democratic institutions shape the context for resolution. The notion of process-enhancing democratic institutions and leaders who govern instead of rule is alien to the political culture of Kosovo, but these are precisely the concepts that must be understood and embraced if a more complete human rights culture is to take root in Kosovo.

Conclusion

In the summer of 2001, the civil administrator for Kosovo, Thomas Koenig, made a bold statement. He asserted that the success of the international administration in choosing and training future leaders and in planting the seeds for democracy will be evaluated when, after the fall general elections of 2001 in Kosovo, locals begin to govern themselves with far more limited government assistance. (An estimated 80% of control will be given to locals while 20% will remain in the hands of the UN administration).⁶⁵ To some extent he is correct. If a future Albanian-led (with Serbian proportional representation) government in Kosovo promotes stability and respect for human rights,

⁶¹ Author's interview with a Kosovar university student, August 2001.

⁶² USAID and OSCE may not speak of 'the right to rule' but this is how election assistance is understood by locals.

⁶³ I am grateful to Thomas Koenig for this point. Author's interview in Kosovo, August 2001.

⁶⁴ For the vast majority of Albanians this means independence from Serbia and integration into Europe.

⁶⁵ Author's interview in Kosovo, August 2001.



this will to some extent vindicate the military and civil interventions in Kosovo. But such a positive result may also reflect the re-emergence of local human rights values and skills that existed *prior to* the international intervention and that survived *despite* international meddling. A human rights culture did exist in Kosovar society prior to the NATO bombing, although it was incomplete. The final verdict on the impact of international intervention on that culture will, in time, emerge.

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