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Developments as regards the future status of Kosovo

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Pieter OMTZIGT, Netherlands

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights welcomes the report presented by the Political Affairs Committee and supports the draft resolution and draft recommendation proposed by the rapporteur Lord Russell-Johnston.

2. In addition, it wishes to underline the pressing need to ensure the full implementation of standards in the field of democracy, rule of law and human rights for all people in Kosovo, regardless of their ethnic origin. Indeed, in the current climate of political tension, putting a renewed and resolute focus on standards is even more necessary to foster justice and trust. In this respect, the committee insists that all human rights violations in Kosovo – committed before and after the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) – should be thoroughly, impartially and independently investigated and prosecuted.

3. As regards the status itself, the committee considers that any future settlement should aim at ensuring the full implementation of the "standards for Kosovo",[2] strengthening human rights protection mechanisms in Kosovo and enhancing ownership of reforms by Kosovo institutions as well as accountability of all parties concerned.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In the draft resolution, in paragraph 1, after the words "is a highly sensitive political issue", add: "which includes legal and human rights aspects,".

Amendment B (to the draft resolution)

In the draft resolution, in paragraph 1, after the words "is a challenge for the international community." add the following sentence:

> *"The Assembly also underlines the pressing need to ensure the full implementation of standards in the field of democracy, rule of law and human rights for all people in Kosovo, regardless of their ethnic origin."*

1. See Doc. 11472 and addendum, presented by the Political Affairs Committee.
2. The "standards for Kosovo" are a set of targets that Kosovo must meet. They appear in a policy document approved by the United Nations Security Council and launched on 10 December 2003. The standards describe a multiethnic society where there is democracy, tolerance, freedom of movement and equal access to justice for all people in Kosovo, regardless of their ethnic background. See http://www.unmikonline.org/standards/.

Amendment C (to the draft resolution)

In the draft resolution, in paragraph 5, replace the words "attainment of the standards of Kosovo" by: "implementation of the 'standards for Kosovo', as well as individual access to the European Court of Human Rights".

Amendment D (to the draft resolution)

In the draft resolution, after paragraph 7, add the following new paragraph:

> *"In this context, the Assembly is increasingly concerned by the situation of Serbs and other minority communities in Kosovo, in particular the Roma, Ashkali and Egyptian (RAE) community. It is also concerned by the situation of refugees, displaced and stateless persons from Kosovo – whose number might increase in the light of future developments related to the definition of the status – and by forced returns to Kosovo. It reiterates that durable solutions should be secured for those returning voluntarily, in safety and dignity, as well as for those who do not wish to return."*

Amendment E (to the draft resolution)

In the draft resolution, at the end of paragraph 8, add the following words: "and fully comply with Council of Europe standards with respect to the rule of law, human rights and rights of national minorities."

Amendment F (to the draft resolution)

In the draft resolution, after paragraph 8, add the following new paragraph:

> *"In addition, the Assembly urges the parties concerned, including the international community, to:*
>
> *1. fully respect and, if and where necessary, protect the rights of Serbs and other persons in a minority situation in Kosovo, irrespective of their ethnicity;*
>
> *2. put a renewed and resolute focus on 'standards for Kosovo' and, in any case, increase co-ordination between all actors involved in the implementation of the standards;*
>
> *3. define a clear rule of law and human rights strategy and implement it without delay;*
>
> *4. address the well-known deficiencies of the judiciary in Kosovo, as well as the issue of the Serbian parallel institutions in Kosovo, which are deeply undermining the rule of law in the region;*
>
> *5. increase accountability for human rights violations, including by 'internationals', in Kosovo; and*
>
> *6. strengthen human rights protection mechanisms in Kosovo, in particular the institution of the ombudsperson, which enjoys a high degree of confidence among Kosovo's population and whose independence should be preserved."*

Amendment G (to the draft resolution)

In the draft resolution, after paragraph 8, add the following new paragraph:

> *"Finally, the Assembly reiterates its appeal to the parties concerned to fully co-operate with the International Criminal Tribunal for the former Yugoslavia (ICTY), to ensure protection of witnesses and to ensure that all human rights violations in Kosovo – committed before and after the establishment of UNMIK in Kosovo – are thoroughly, impartially and independently investigated and prosecuted, in order to foster truth and justice and to pave the way for reconciliation."*

Amendment H (to the draft resolution)

In the draft resolution, after paragraph 9, add the following new paragraph:

> *"The Assembly also calls on its member states who are also members of the EU to maintain their position of principle by insisting on Serbia's full co-operation with the ICTY as a necessary condition in the EU pre-accession and accession process."*

C. Proposed amendments to the draft recommendation

Amendment I (to the draft recommendation)

In the draft recommendation, in paragraph 1, replace the words “keeping a focus on standards” by: “putting a renewed and resolute focus on standards”.

Amendment J (to the draft recommendation)

In the draft recommendation, in paragraph 2, replace the words “where the recourse offered by the European Convention on Human Rights is available to everyone” by: “where the most important international and European instruments in these fields, in particular the European Convention on Human Rights, the European Convention for the Prevention of Torture and the Framework Convention for the Protection of National Minorities are fully applicable and their respective control mechanisms fully in force”.

Amendment K (to the draft recommendation)

In the draft recommendation, after paragraph 2, add the following new paragraph:

> *“As regards the status itself, the Assembly considers that it should allow the full implementation of the ‘standards for Kosovo’, the strengthening of human rights protection mechanisms in Kosovo, ownership of reforms by Kosovo institutions, as well as an increased accountability of all parties concerned, including of the international community, in Kosovo.”*

Amendment L (to the draft recommendation)

In the draft recommendation, after paragraph 2, add the following new paragraph:

> *“The Assembly also welcomes the possible deployment of an EU rule of law mission to Kosovo and, in this context, reaffirms that the Council of Europe, as the leading human rights watchdog in Europe, should be closely associated with any such mission.”*

Amendment M (to the draft recommendation)

In the draft recommendation, replace paragraph 3 by the following paragraph:

> *“3. Being convinced that the Council of Europe should continue to play a major role to ensure that this aspiration becomes a reality, the Assembly asks the Committee of Ministers:*
>
> *3.1. to reinforce the current Council of Europe field office in Kosovo;*
>
> *3.2. to make every effort to ensure that the most important Council of Europe international instruments in the field of human rights and rights of minorities are fully implemented, including their respective control mechanisms;*
>
> *3.3. to provide its support and expertise to the relevant authorities in Kosovo in the following areas:*
>
> *3.3.1. constitutional and legal issues;*
>
> *3.3.2. protection of human rights and strengthening of human rights protection mechanisms, including the Ombudsperson Institution and other mechanisms aimed, inter alia, at ensuring accountability of the international community in Kosovo;*
>
> *3.3.3. durable solutions for all asylum seekers, refugees and IDPs;*
>
> *3.3.4. protection of minority rights, including those of the Roma, Ashkali and Egyptian (RAE) community, and the use of minority languages;*
>
> *3.3.5. protection of the Serbian community and its cultural heritage in Kosovo;*
>
> *3.3.6. independence and efficiency of the judiciary, including the fight against impunity;*
>
> *3.3.7. fight against corruption, organised crime, money laundering and trafficking in human beings;*
>
> *3.3.8. democratisation, financing of political parties and good governance;*
>
> *3.3.9. decentralisation and effective local government;*
>
> *3.3.10. protection of cultural and religious heritage;*

3.3.11. intercultural dialogue;

3.3.12. education;

3.3.13. support for civil society and measures to foster reconciliation."

D. Explanatory memorandum, by Mr Pieter Omtzigt

1. Introduction

1. As Rapporteur for opinion of the Committee on Legal Affairs and Human Rights on the report on developments as regards the future status of Kosovo (by the Political Affairs Committee), I visited Pristina, Mitrovica and Belgrade from 22 to 25 October 2007. I would like to express my gratitude to the authorities in Belgrade and in Pristina, as well as to the Council of Europe field offices in Belgrade and Pristina, for their valuable co-operation.

2. In addition, together with Lord Russell-Johnston, the Rapporteur of the Political Affairs Committee, I had a meeting in Strasbourg on 2 October 2007 with Mr Kostunica, Prime Minister of Serbia, and a discussion with the (now former) General Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), Mrs Carla del Ponte, on 17 October 2007 in The Hague.

3. During my visit to the region, a number of interlocutors regretted the strong "instrumentalisation", by all parties concerned, of legal and human rights issues in Kosovo. I fully share their concern.

4. Both in Pristina and Belgrade, I stressed on several occasions that irrespective of Kosovo's future status, the main concern should be the full implementation of Council of Europe standards in the field of democracy, rule of law and human rights. I further stressed that all parties concerned should guarantee the rights of all citizens of Kosovo, without discrimination and regardless of their ethnic origin. In addition, any settlement should establish mechanisms to ensure that any alleged human rights violation in Kosovo is thoroughly, impartially and independently investigated.

5. From the outset, I was also faced with the so-called status versus standards dilemma. It refers to the "standards for Kosovo",[3]a policy document approved by the United Nations Security Council and launched on 10 December 2003, which provides a set of targets that Kosovo must meet. The standards describe a multi-ethnic society where there is democracy, tolerance, freedom of movement and equal access to justice for all people in Kosovo, regardless of their ethnic background. In 2005, recognising that the undecided status of Kosovo was hampering the full implementation of the standards, the international community changed its initial approach of "standards before status" and launched the process to determine Kosovo's status. Progressively, expectations surrounding the status process distracted attention from the standards. However, during my visit, a number of interlocutors stressed the need for a renewed and resolute focus on the standards in the current tense political context of the definition of the status, in order to foster trust. Indeed, in some areas standards have not been implemented. If this situation does not improve substantially rapidly, the future of Kosovo society will remain bleak.

6. The present opinion is based on information gathered prior to, during and after my above-mentioned visit. It provides an overview of the main rule of law and human rights issues of concerns in Kosovo, and examines the mechanisms or institutions for human rights protection and accountability in Kosovo.[4]

2. Overview of the main rule of law issues in Kosovo

7. Any forthcoming settlement should establish mechanisms ensuring that any human rights violations by any person in authority in Kosovo are thoroughly, impartially and independently investigated. There should be an independent judiciary in both civil and criminal matters and victims of human rights violations must be guaranteed access to redress and reparation. At present, despite the ongoing progressive steps to strengthen the judiciary, the justice system is still a particularly weak element in the current institutional framework.

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3. See http://www.unmikonline.org/standards/.

4. The Committee on Legal Affairs and Human Rights has already prepared a report on the protection of human rights in Kosovo in January 2005 on the basis of Tony Lloyd's report (see Resolution 1417 (2005) and Doc. 10393).

2.1. The judiciary

8. In 1999, the United Nations Interim Administration Mission in Kosovo (UNMIK) was mandated to re-establish the rule of law in Kosovo. One special aspect of the Kosovo judicial system is the existence of international judges, appointed by the Special Representative of the UN Secretary General (SRSG). In addition, the SRSG still has authority over the Ministry of Justice and the Kosovo Judicial Council.

9. Despite some progress in a number of areas, the Kosovo judicial system still suffers from major shortcomings, in particular the lack of independence, the length of procedures, the failure to enforce court judgments, the inadequacy of resources and the backlog of cases. Intimidation of witnesses and the lack of proper witness protection measures is also a high concern in criminal cases (see also chapter on co-operation with ICTY below).

10. In addition, the lack of legal certainty resulting from the existence of parallel Serbian courts and administrative structures in certain parts of Kosovo under the de facto authority of the Serbian Government was often raised by my interlocutors during my visit at the end of October 2007. Indeed, in Kosovo-Serb-inhabited areas, structures such as courts, schools and hospitals continue to answer directly to Serbian authorities, thus operating in parallel to the UNMIK administration. Sometimes, they can be complementary to the system, covering gaps and subsequently ensuring access to certain services for members of minority communities. In this respect, I should also add that the idea that a community can only be served by members of its own community is embedded in the perceptions of both Kosovo Serbs and Kosovo Albanians. These parallel structures hamper a common future for the inhabitants of Kosovo. For instance, parallel school systems, in which only the language of one's own community is used, lead to a generation of children who do not know people of other communities and do not speak their language.

11. Obviously, parallel structures are a highly politicised issue. But it is also equally obvious that the existence of parallel Serbian courts seriously hampers the establishment of the rule of law. In this respect, it is important to note that the Kosovo Standards Implementation Plan (KSIP), although not legally binding, required that parallel structures be dismantled or integrated into the Provisional Institutions of Self-Government (PISG).[5]

12. Concerning parallel security structures, in Mitrovica, I could observe the presence of the Serb "Bridge-watchers" at the Ibar River. Reportedly, the Bridge-watchers consider themselves to be a security structure aimed, *inter alia*, at preventing Kosovo Albanians from entering northern Mitrovica and gathering information on Kosovo Albanians living in the north. The Bridge-watchers continue to monitor the bridge and are said to play a vital role in maintaining the balance of power in northern Kosovo.

13. As stressed by the Organization for Security and Cooperation in Europe, a system in which all peoples' rights (in particular, the right to equal access to education and health care, the right to freedom of movement, property rights and the right to an effective remedy) are protected and ensured must prevail when resolving the issue of parallel structures in Kosovo.

14. On a positive note, a new special prosecutor's office for organised crime, trafficking, inter-ethnic crimes, terrorism and corruption, including both international and local judges is being set up. In addition, the transfer of responsibilities/ownership of reform by Kosovo institutions is on-going and local institutions continue to assume additional responsibilities in the judicial field.

2.2. The need to eradicate impunity and to foster truth and justice

15. Prior to UNMIK mandate (1999), ethnic Albanians were subjected to widespread violations of human rights by the Serbian authorities in Kosovo. After the UNMIK mandate, a number of ethnically motivated crimes have been reported against members of minority communities, mostly Serbs of Kosovo.

16. During my visit, a number of interlocutors denounced the continuing impunity or lack of accountability enjoyed by some perpetrators of war crimes and crimes against humanity committed prior to the UNMIK mandate, as well as impunity for ethnically motivated crimes perpetrated since June 1999, including those committed in March 2004.[6](For examples of non-accountability of international institutions in Kosovo, see Part VI below.)

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5. OSCE report, parallel structures in Kosovo, 2006-2007.

6. Inter-ethnic violence took place from 17 to 19 March 2004. Nineteen people were killed, over 900 seriously injured and over 4 100 people were forcibly displaced.

17. I stressed that all human rights violations in Kosovo – committed before and after the establishment of UNMIK in Kosovo – should be thoroughly investigated and prosecuted.

2.2.1. Co-operation with ICTY – fair and effective domestic war crimes trials

18. As already stressed on several occasions by the Assembly[7] and by the (now former) General Prosecutor of the ICTY, Mrs Carla del Ponte, the authorities of the region must fully co-operate with the ICTY in order to hand over alleged war criminals, irrespective of their ethnic origin.

19. In December 2007,[8] Mrs del Ponte asked in particular the European Union member states and the European Union's Commission to maintain their position of principle by insisting on Serbia's full co-operation with the International Tribunal as a condition in the EU preaccession and accession process.

20. During my meeting with her in The Hague, Mrs del Ponte raised the case of Mr Ramush Haradinaj, as did also a number of NGOs both in Pristina and Belgrade during my visit to the region. They pointed out that Mr Ramush Haradinaj was a candidate to the elections to the Kosovo Assembly although he was indicted by the ICTY for war crimes and held in pre-trial detention.[9] In my discussions with ICTY representatives, the alleged intimidation of witnesses by a minister in Kosovo in the Haradinaj case and witness intimidation or obstruction of justice in the Seselj case were given as worrying examples of the lack of co-operation.

21. It is disturbing that people who are suspects of the ICTY continue to play important political roles in political life. The authorities, governments and politicians in both Kosovo and Belgrade should commit themselves to full co-operation with the ICTY. Those who are convicted or sought for war crimes, witness intimidation or obstruction of justice should be asked by their respective parties not to play any political role.

22. The importance of domestic efforts to prosecute war crimes should be emphasised. Fair and effective trials of the remaining suspects at the domestic level are essential to further combat impunity and build respect for the rule of law.

23. Implementation of the legislation on witness protection as well as concrete measures to ensure adequate witness protection and relocation are necessary.

2.2.2. Ethnically motivated abuses

24. In 2006, the Council of Europe Committee of Ministers noted that "the perceived impunity of actors of violent crimes against Serbs, as well as against Roma and others, is a particularly serious problem that needs to be addressed as a high priority".[10] I reiterated during my visit that all minority communities in Kosovo should have access to effective remedies against discrimination, that ethnically motivated crimes should be properly investigated and their alleged perpetrators prosecuted and, if found guilty, effectively punished.

25. Finally, during my visit I had the impression that much remains to be done to pave the way for reconciliation.

3. Overview of the main human rights issues in Kosovo

3.1. Minority communities in Kosovo: general concerns

26. According to most sources, within the general population in Kosovo, ethnic Albanians represent around 90% of the whole population and the remaining 10% are made up of Serbs, Roma, Turks, Bosniaks, Gorani, Ashkali, Egyptians and Croats. While these make up the minority of the overall population in Kosovo, there are some areas in Kosovo where ethnic Albanians are in the minority. Serbs and Roma tend to live in mixed or singleethnic villages and enclaves scattered all over Kosovo.

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7. See Resolution 1564 (2007) on the prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY) and Resolution 1533 (2007) on the current situation in Kosovo. See also the ruling of the International Court of Justice (ICJ) in February 2007.
8. http://www.un.org/icty/pressreal/2007/pr1202e-annex.htm.
9. NB: he was elected.
10. Council of Europe Committee of Ministers Resolution ResCMN(2006)9 on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo (Republic of Serbia).

27. According to the Ombudsperson Institution in Kosovo, general problems faced by all minority communities throughout Kosovo are education, unemployment and the inability to use their respective languages, should they not be Albanian or Serbian, in an official context. In addition, malicious damage to the property of members of minority communities is still reported and freedom of movement of members of minority communities is still limited in a number of areas.

28. The prospect of a new political status has highlighted the uncertainty over the future protection of minority communities. Greater efforts are needed to improve the security situation in Kosovo, which is increasingly reported to be volatile. Systematic monitoring of the human rights situation of returnees and populations in a minority situation who are at risk of displacement is also essential.

3.1.1. Kosovo Serbs

29. Most, if not all, issues concerning the life of Kosovo Serbs remain highly politicised. Most of them live in enclaves in various parts of Kosovo. Despite improvements in the general security situation in Kosovo, freedom of movement remains problematic in a number of places. In addition, Kosovo Serbs continue to rely for the most part on parallel structures supported by the authorities in Belgrade for the provision of basic services (in this respect, see Part II above). Various representatives of the PISG criticise the inhabitants of the enclaves for this, while the latter complain that the PISG does not support them.[11]

30. During my visit to the region, a number of Serbian interlocutors raised the issue of the Serbian cultural heritage. Although this issue belongs to the highly politicised ones, one has to recognise that the protection of the rich cultural heritage of Kosovo is crucial for the achievement of inter-communal reconciliation and that both sides should learn to respect each other's heritage. Regardless of the future status of Kosovo, protection of Serbian Orthodox churches is of the utmost importance. Without it, intercultural dialogue would not be possible.

31. The sensitivity of the cultural sector was demonstrated by the events in March 2004 which led to attacks on cultural property belonging to the two ethnic communities (Orthodox churches in Kosovo and Islamic mosques in Belgrade and Niš).

32. The Council of Europe, together with other international organisations, should continue to provide its support and expertise in the field of cultural heritage in Kosovo.[12]

3.1.2. Roma, Ashkali and Egyptians (RAE)

33. According to estimations, around 35 000 to 40 000 Roma, Ashkali and Egyptians (RAE) still live in Kosovo.[13]All my interlocutors recognised that the RAE constitute the poorest and most vulnerable community in Kosovo. It would appear that the problems of RAE have recently received increased attention from international circles and local authorities. It is imperative that the undue politicisation of this essentially humanitarian and human rights problem is avoided and that the well-being and health of the Roma remains the primary consideration of all concerned.[14]

34. Some observers predict that if Kosovo gains independence, the minority population structure in Kosovo might change in such a way that the number of Kosovo Serbs might slightly decrease while the number of RAE might increase. Taking into account the current situation, the neglect of their needs and concerns in the plans for the future Kosovo, the anticipated return of RAE could lead to a severe deterioration of the situation.[15]

35. The Council of Europe co-ordinator of activities on Roma issues, as well as the European Roma and Travellers Forum, have expressed concerns about the lack of involvement of the Roma in the Kosovo status process.

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11. See 2006-2007 report of the Ombudsperson Institution in Kosovo.
12. See Parliamentary Assembly works on this issue, in particular Docs. 10127 and 10170 (Committee on Culture, Science and Education).
13. See Kosovo Roma and Ashkali Forum, Position paper 1/2006. The shadow report on the implementation of the FCNM speaks of 35 000 while UNMIK, reportedly, operates with the number of 39 000.
14. See also the opinion of the Advisory Committee on the Council of Europe Framework Convention for the Protection of National Minorities adopted on 25 November 2005, ACFC/OP/I(2005)004.
15. See RA Forum – our position 2006.

3.2. Refugees and internally displaced persons (IDPs): concerns about forced returns and conditions for voluntary return

36. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), the overall situation in Kosovo, lack of freedom of movement and inadequate conditions for sustainable reintegration (limited access to employment and public services, housing, land and property issues) continue to affect the prospect for the sustainable and safe return of IDPs from Kosovo. In addition, the IDP population is waiting for the outcome of the status and no substantial movements should be expected before then. Reportedly, many RAE, but mostly Serbs, face hostilities and harassment upon their return to Kosovo.

37. During my visit, a number of interlocutors also expressed concerns about the situation of IDPs from Kosovo in Serbia. They pointed out that social conditions in a number of IDP collective centres and informal settlements are very poor and that many IDPs are not able to obtain official papers and thus lack access to public services. More efforts are needed to take care of these people. The authorities have a duty to make public services available to these people.

38. Representatives of the UNHCR in Kosovo and in Belgrade insisted that IDPs should not be held hostage to future political settlements.[16]

39. They also stressed that the number of refugees, IDPs and stateless persons might increase in the light of future developments related to the definition of the status and expressed concern that, even before a resolution on the future status of Kosovo, some countries are making preparations to forcibly return to Kosovo persons who, apparently, remain in need of temporary protection as well as others whose claim for refugee status should be considered. Many of these people are members of minority communities.[17]

40. My interlocutors considered that a mass influx of returnees (forced or voluntary) would not be sustainable and could destabilise the already fragile security situation and increase ethnic tensions.

3.3. Other issues

41. During my visit, a number of other issues of concern were mentioned, in particular corruption, organised crime, trafficking in human beings and domestic violence, as well as violence and discrimination against sexual minorities.

4. Enhancing human rights protection and accountability in Kosovo

4.1. Applicability of Council of Europe instruments in Kosovo and functioning of their respective control mechanism[18]

42. According to the Constitutional Framework for Provisional Self-Government in Kosovo, the European Convention on Human Rights (ECHR), the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities are, *inter alia*, directly applicable in Kosovo.

4.1.1. European Convention on Human Rights and its control mechanism, the European Court of Human Rights (the Court)

43. Under the Constitutional Framework for Provisional Self-Government, the ECHR rights are legally implemented in Kosovo, at least in substantive terms, but there is no legal basis for the exercise of jurisdiction by the Court. In other words, inhabitants of Kosovo do not enjoy the right of individual access to the Court. For this reason, Kosovo has been considered on several occasions as a “black hole” in Europe.[19]

44. In February 2006, the Court decided that it did not have competence to rule on a petition submitted on behalf of Roma, Ashkali and Egyptians living in lead-contaminated camps in Mitrovica in relation to violations of their rights under the ECHR, on the ground that UNMIK was not a party to the Convention.[20]

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16. See also Parliamentary Assembly Recommendation 1802 (2007) on the situation of longstanding refugees and displaced persons in South-Eastern Europe.
17. For details see also Amnesty International, Kosovo (Serbia), “No forcible return of minorities to Kosovo”, May 2007.
18. Given the current uncertainty about the status of Kosovo, this section can only reflect the present situation.
19. See in particular Parliamentary Assembly Docs. 10037 and 11202.
20. Letter from the European Court of Human Rights to the European Roma Centre, 27 February 2006.

45. The question of the applicability of the Convention in Kosovo, and the obligations – if any – of the states participating in Kfor in alleged human rights violations have been examined by the Court in two recent cases (Behrami and Saramati) which were declared inadmissible/struck out.[21]

46. Any status agreement should ensure that the ECHR is fully applicable and its control mechanism fully in force in Kosovo.

4.1.2. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Council of Europe Anti-Torture Committee (CPT)'s access to detention facilities in Kosovo

47. On the basis of an agreement concluded in August 2004 between the Council of Europe and UNMIK and an exchange of letters in 2006 between the Secretaries General of the Council of Europe and NATO, the CPT was granted access to UNMIK and Kfor detention facilities and carried out its first visit to Kosovo in March 2007. During my visit, I called on UNMIK to authorise the publication of the CPT report as soon as possible.

4.1.3. Framework Convention for the Protection of National Minorities (Framework Convention)

48. The monitoring of the Framework Convention has been made possible by an Agreement concluded between the Council of Europe and UNMIK on "technical arrangements related to the Framework Convention for the Protection of National Minorities", signed on 23 August 2004.

49. In June 2006,[22]the Council of Europe Committee of Ministers concluded that "protection of national minorities is an area of paramount importance for human rights as well as for peace and stability in Kosovo, and the agreement concluded between the Council of Europe and UNMIK related to the monitoring of the Framework Convention is an important step in improving the international accountability of the authorities in Kosovo in this area".

50. It further concluded that "the present complex and ambiguous institutional arrangements, coupled with uncertainty as regards the future status of Kosovo, have at times obscured the respective authorities' responsibilities and accountability for the implementation of the Framework Convention, to the detriment of persons belonging to minority communities. Therefore, whatever the outcome of the status talks, it is essential that the authorities that are effectively in charge in Kosovo, be they international and/or local, clearly assume their responsibilities for the implementation of this treaty. At the same time, it is clear that, regardless of the institutional arrangements, the implementation of the principles of the Framework Convention remains difficult in Kosovo, where interethnic violence has seriously eroded trust between communities."

51. In June 2006, the Council of Europe Committee of Ministers also addressed a number of recommendations in this respect to the authorities in Kosovo, both international and local.[23]However, it would appear that little has been done to implement them.

4.1.4. Future settlement

52. Any future settlement should ensure that the main international and European human rights instruments are fully applicable throughout Kosovo and their respective mechanisms fully in force. In particular, I consider it of the utmost importance to ensure that Kosovo inhabitants enjoy individual access to the Court after having exhausted all possible domestic remedies.

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21. *A. Behrami and B. Behrami v. France* (No. 71412/01) and *R. Saramati v. France, Germany and Norway* (No. 78166/01), Grand Chamber decision, May 2007. The Court struck out the Saramati application concerning Germany; and declared inadmissible the remainder of the Saramati application and the case *Behrami and Behrami v. France*. The Court concluded that the applicants' complaints were incompatible *ratione personae* with the provisions of the ECHR. It held that the Convention could not be interpreted in a manner which would subject to the scrutiny of the Court the acts and omissions of contracting parties covered by UNSC resolutions and which occurred prior to or in the course of such missions.

Another case concerning *Kfor – Kasumaj v. Greece*, No. 6974/05 – was communicated in 2006. The issues here are respect for property rights, access to a court and the availability of a remedy.

22. See Resolution resCMN(2006)9 on the implementation of the Framework Convention for the Protection of National Minorities (FCPNM) in Kosovo (Republic of Serbia). See also the opinion of the Advisory Committee and the NGO's Shadow report.

23. For details, see Resolution resCMN(2006)9 on the implementation of the Framework Convention for the Protection of National Minorities (FCPNM) in Kosovo (Republic of Serbia).

53. In addition, the future possible EU Rule of Law Mission in Kosovo should define a clear rule of law and human rights strategy and, together with all parties concerned, implement it without delay. The Council of Europe, as the leading human rights watchdog in Europe, should be closely associated with this EU mission.

4.2. Domestic human rights protection mechanisms: the crucial role of the Ombudsperson Institution

54. It would appear that human rights concerns are not sufficiently present in the programmes of UNMIK and PISG, although human rights units have been created within each ministry in order to implement the human rights strategy. Also, the problem of Kosovo legislation is not so much its quality but the lack of its proper implementation.

55. The Ombudsperson Institution in Kosovo was established in 2000 by UNMIK Regulation No. 2000/38 as an independent institution with a mandate to address issues dealing with alleged human rights violations or abuses of authority by both international and local public authorities in Kosovo. It had an international ombudsperson, Polish lawyer Marek Antoni Nowicki. In 2006, the UN Special Representative of the Secretary General (SRSG) promulgated UNMIK Regulation No. 2006/06, according to which the Ombudsperson Institution can only deal with cases in which human rights violations occur as a result of actions of Kosovo institutions. In addition, the institution has become a local Kosovan one.

56. Reportedly, with its multi-ethnic character and field presence, it enjoys a high degree of confidence among Kosovo's population, including minority communities, and has – at least before the curtailment of its jurisdiction – been among the most effective mechanisms of accountability for international institutions in Kosovo. In addition, it is, according to the acting ombudsperson, the only independent human rights protection mechanism in Kosovo that holds the PISG accountable by law.

57. So far, the Kosovo Assembly has failed to appoint a permanent national ombudsperson. In addition, concerns were expressed in October 2007 about the process by which candidates for the post of ombudsperson in Kosovo have been selected. Allegations of political interference in the appointment are of extreme concern. The ombudsperson is required to perform his or her duty thoroughly, independently and impartially in full compliance with the Paris Principles.[24]Moreover, following my visit, concerns have also been expressed about proposed budget cuts which could undermine the sustainability of the institution.

58. This institution, whose independence should be preserved, should play a crucial role in the establishment of the rule of law and address the human rights concerns, including those of minority communities and other vulnerable groups. It should be strengthened instead of being undermined.

4.3. The accountability "gap" of international institutions in Kosovo

59. The legacy of impunity in Kosovo described by a number of NGOs has been compounded by the general problem of accountability[25]relating to the status of Kosovo. The staff of international organisations enjoy immunity and their acts are not controlled as to their compatibility with human rights standards. In this respect, it should again be stressed that the Ombudsperson Institution was stripped of its mandate to investigate UNMIK and Kfor in 2006 (see above).

60. I was presented with the following concrete examples of non-accountability:

4.3.1. Criminal responsibility

– Impunity of UNMIK Romanian police contingent for its alleged role in killing two protesters on 10 February 2007.

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24. The six key criteria in the Paris Principles relating to the status of national institutions for the promotion and protection of human rights, approved by the UN General Assembly in December 1993, include independence guaranteed by statute or constitution, autonomy from government, pluralism, including in membership, a broad mandate based on universal human rights standards, adequate powers of investigation, and adequate resources.

25. See Human Rights Watch report "Better late than never: Enhancing the accountability of international institutions in Kosovo", June 2007 which states that "Accountability – the extent to which an institution, and the officials within it, are held responsible for their actions – is a key element of good governance and essential to the enjoyment of human rights." See also Amnesty International 2006-2007 reports.

– Lack of remedies and compensation for the Behrami family who lost one son and whose other one was deformed by an unexploded ordinance (UXO) in a territory declared as safe by Kfor. The Court declared this case inadmissible (see above).

– Lack of remedies and compensation for Mr Saramati, who alleged that he has been extrajudicially detained for a prolonged period of time by Kfor (same decision of the Court (application inadmissible/ struck out).

4.3.2. Administrative responsibility

The cases may range from property rights cases, overreactions by the international police and NATO-led peacekeepers Kfor (car accidents, sexual misconduct, etc.) where there is no standing mechanism for looking at public complaints so that they could be addressed. Human Rights Watch has suggested a number of ways to overcome the current vacuum.[26]

61. For UNMIK, the general problem of accountability has been alleviated to an extent by the establishment of a Human Rights Advisory Panel providing an independent opinion to the SRSG in the case of alleged human rights violations by "internationals". However, the panel has yet to start its work (it finally convened for the first time in November 2007) and it would appear that this advisory mechanism's authority remains contingent on UNMIK readiness to abide by its findings. Over the last few years there has been no place to turn to for people who felt their basic human rights had been violated by the United Nations.

4.4. Enhancing accountability

62. While an international civilian administration and military presence remains in Kosovo, irrespective of whether it is led by the UN, NATO or the EU, its acts and omissions should continue to be subject to independent scrutiny, investigation and oversight. Individuals who make complaints against such authorities should be guaranteed access to remedies.

63. NGOs have stressed that despite the number of analyses on the international accountability gap in Kosovo, there has been little progress towards closing the gap. Defining a new status should offer new opportunities to do so. The Ombudsperson Institution should have a key role in this respect and its mandate should be modified accordingly.

5. Kosovo status and international law

64. During my visit, the authorities in Serbia argued that the definition of the status of Kosovo was a legal issue and stressed that depriving Serbia of its territorial integrity would mean undermining the international legal order. I replied that the definition of the status of Kosovo was a very sensitive political issue with important legal and human rights aspects. As to the argument of international law, I fully share Lord Russell-Johnston's view according to which Kosovo is a unique situation in Europe and "the tension between the principle of self-determination and the respect of territorial integrity need not in each and every case be resolved in favour of the latter". In fact, "the case of Timor-Leste shows very well that, in very special circumstances, the United Nations can also decide in favour of the establishment of an independent state, regardless of the principle of territorial integrity".[27]Kosovo is indeed a unique situation in Europe. Two key elements should be recalled in this respect: first, violence was committed by the authorities against its own population (namely the Kosovo Albanian population) and prompted a reaction by the international community in 1999; second, Kosovo has now been under UN administration for eight years.

6. Concluding remarks: status and standards

65. In a nutshell, it is clear that the undecided status of Kosovo hampers the full implementation of the "standards for Kosovo". However, it is equally obvious that a renewed focus on the "standards for Kosovo" is now necessary, in order to address the serious issues of concern and to enhance human rights protection and accountability. I should add that my visit has highlighted the shared responsibility of all parties concerned – be they in Pristina, in Belgrade or among the international community in Kosovo – in the current situation.

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26. Ibid.

27. See Doc. 11472, paragraph 52, footnote No. 8, "Following severe human rights violations in East Timor by the Indonesian Government, in 1989 the UN established a United Nations Transitional Administration in East Timor (UNTAET) and encouraged the independence process (see UNSC Resolutions 1272 (1999), 1338 (2002), 1392 (2002) and 1410 (2002)."

66. I consider that the Kosovo status should allow the full implementation of the "standards for Kosovo", the strengthening of human rights protection mechanisms in Kosovo, that of ownership of reforms by Kosovo institutions, as well as an increased accountability of all parties concerned, including of the international community in Kosovo.

67. Kosovo should be a place where the most important international and European instruments in the fields of human rights and rights of minorities, in particular the European Convention on Human Rights (ETS No. 5), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the Framework Convention for the Protection of National Minorities (ETS No. 157) are fully applicable and their respective control mechanisms fully in force and where the values of democracy, tolerance and multiculturalism are shared by its people and institutions.

68. Consequently, all parties concerned, including the international community, should:

– fully respect and, if and where necessary, protect the rights of Serbs and other persons in a minority situation in Kosovo, irrespective of their ethnicity;

– put a renewed and resolute focus on "standards for Kosovo" and, in any case, increase co-ordination between all actors involved in the implementation of the standards;

– define a clear rule of law and human rights strategy and to implement it without delay;

– address the well-known deficiencies of the judiciary in Kosovo, as well as the issue of the Serbian parallel institutions in Kosovo, which are deeply undermining the rule of law in the region;

– increase accountability for human rights violations, including by "internationals", in Kosovo; and

– strengthen human rights protection mechanisms in Kosovo, in particular the institution of the ombudsperson, which enjoys a high degree of confidence among Kosovo's population and whose independence should be preserved.

69. Any possible future EU Rule of Law Mission in Kosovo, as well as the other parties concerned, should define a clear rule of law and human rights strategy and implement it without delay.

70. In addition, the parties concerned should fully co-operate with the ICTY and ensure that all human rights violations in Kosovo – committed before and after the establishment of UNMIK in Kosovo – are thoroughly investigated and prosecuted, in order to foster truth and justice and to pave the way for reconciliation.

71. The people of Kosovo have suffered long enough and merit a brighter future. The economic situation is bleak, with mass unemployment. Full focus on status and standards (which include human rights and the fight against corruption and impunity) is the only way forward for a better future for all people of Kosovo.

Reporting committee: Political Affairs Committee.

Committee for opinion: Committee on Legal Affairs and Human Rights.

Reference to committee: Reference No. 3324 of 16 March 2007.

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