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RESEARCH ARTICLES

The Inter-American Human Rights System's Digital Communication: presence, performance and legacy

Isabela Gerbelli Garbin Ramanzini and Warley Gian da Silva Matos**

Latin America has been regarded by its long entrepreneurial role in promoting human rights internationally. A less noticed achievement – albeit equally relevant – is that the Inter-American Human Rights System also pioneered digital communication among existing regional human rights systems. This article assesses digital presence and performance at the Inter-American Human Rights System to understand by which means digital communication can be strategic to advance human rights in the region. More than twenty years of digital experimentation at the Inter-American Human Rights System has left a worthy digital legacy, whose assessment offers empirical subsets for theoretical propositions in International Relations, practical contribution to international organizations, and social benefits beyond academic and international bureaucracy realms.

Keywords: Human Rights, International Organizations, Inter-American Human Rights System, Digital Communication.

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Introduction

Latin America has been regarded by its long entrepreneurial role in promoting human rights and values internationally. The region anticipated to the world significant norms, tools and procedures, such as the American Declaration of the Rights and Duties of Man, the idea of international duties, the right to justice enclosed in the Universal Declaration of Human Rights, the strategy of a mobile international human rights tribunal, to name just a few innovations with the Latin American imprint. A less noticed achievement – albeit equally relevant – is the fact that the Inter-American Human Rights System also pioneered digital communication among existing regional human rights systems.

Digital communication comprises the set of practices of communication by digital means planned and organized by an international bureaucracy, whereby it represents itself, claims authority and establishes dialogue with external actors. The Internet Revolution has launched debates over international organization's reactions and even a 'migration' to new communicative environments: the virtual spheres or digital realms. With the enlarging of the notion of public spheres to virtual ones, actors are increasingly pushed to publicly explain and justify their behaviour, especially in the human rights issue-area, where international political bureaucracy often merges with some sense of *advocacy*. Given the stakes of human rights in international politics, communication has always been essential for international organizations to advance more altruistic preferences and inform public action. However, communication per se is not a sufficient condition to promote the desired impacts, even when the most up-to-date digital tools are employed. How can international human rights organizations maximize their potential at digital communication, then?

The Inter-American Human Rights System stands as an interesting case to investigate this question due to its avant-garde when it comes to digital communication among other existing regional human rights systems. Within its recently completed 60 years of activity, the Inter-American Commission and the Inter-American Court have gone the last third on digital mode as well, holding the oldest websites among all international human rights bodies and keeping highly active profiles at social media. Despite the vast digital legacy, it remains practically unassessed.

Our aim is to discuss digital communication for international human rights organizations in the light of literature-related concepts and theoretical propositions. For that, we take the Inter-American Human Rights System as a case to (1) make a historic recovery of the digital presence at the Inter-American Human Rights System and (2) evaluate this regional system's

digital performance in comparison with other existing systems. We mapped the digital presence in websites and on social media of three regional human rights systems and later we assessed digital performance through Twitter, when we monitored the most followed institutional account of each regional human rights body during four months. We arrived at a sample of 2.273 tweets, collected from November, 1st, 2018 to February, 28th, 2019 and examined it through content analysis.

The article unfolds in three sections. First, it discusses the main theoretical marks regarding public and digital communications in the literature. Second, we move on to circumvent this literature to the human rights issue-area. Turning to the empirical part, the third section displays the results of our analysis of digital communication by regional human rights system, with particular emphasis on the Inter-American Human Rights System. Finally, the article concludes with the main achievements, limitations and prospects for future research venues.

1. Digital Communication and International Organizations

International organizations are going public and there is no other way around. The application of digital technologies in communicative processes transformed the way actors get involved in international relations. The Internet Revolution introduced the notions of immediacy and interactivity that now dictate the pace of world affairs (Deibert 1998; Kingston and Stam 2013). As a result, actors are increasingly pushed and rushed to publicly explain, justify their behaviours, and react to transformations taking place in a click-time.

The literature displays an array of terms and concepts in reference to the arrival of actors to the online world, which include: 'net diplomacy', 'virtual diplomacy', 'cyber diplomacy', 'public diplomacy 2.0', and 'digital diplomacy' (Wehrenfennig 2012; Potter 2002; Hallams 2010; Kampf et al. 2015). The choice of the term 'diplomacy' for denoting public digital communication recalls a strong tradition in International Relations, which concerns the prominent role of diplomacy by states at relating to each other through official and pacific means. Whichever denomination, today, states, international organizations and other non-state actors routinely use digital means to understand cultures, attitudes and behaviours; to build and manage relationships; and, to mobilize actions that advance one's interest (Gregory 2011). In this sense, diplomacy, public relations and communications share common features, such as the idea of representation, dialogue, counselling and influence (L'Etang 2007; Dimitrov 2014).

In this paper, we define digital communication as the set of practices of communication by digital means planned, organized and strategized by an international bureaucracy, whereby it represents itself, claims authority and establishes dialogue with external actors. We arrived at this concept by adapting a definition from Squatrito (2021), which analyses a tangential - albeit similar - issue: the judicial diplomacy practised by international courts. The idea that international courts engage in judicial diplomacy to address other actors beyond adjudicative cases suits well to communicative processes in other contexts, since international courts are, in essence, specific kinds or derivations of international organizations.

Finally, as a concept, digital communication complements rather than opposes 'regular' or 'traditional' communication in international organizations. As much of the communicative processes in international organizations deal with public information, regular communication presented in annual or thematic reports, press releases, newsletters and public statements are shaped to assume other formats more suitable to the new digital language and environment. Contrasting concepts for digital communication in international organizations would be internal or organizational communication, that is, all kinds of in-bound, private or secretive communication. However, given the more recent democratic governance stand at international organizations and the ubiquity of digital technologies in the near future, digital communication tends to become commonplace, almost unnoticeable, and no longer noteworthy part of communication dynamics distinguishing within and outside bureaucratic settings (Young and Åkerström 2016).

Relevant studies on the latest inclination of international actors towards digital communication tried to understand the processes and reasons for such endeavour. In general, the role of world leaders, ministries of foreign affairs, diplomats, activists and NGOs has received more attention than the role of international organizations in digital communicative processes. Nonetheless, existing literature tackling the case of international organizations advanced on the motivations for these actors to foster public communication. For some, international organizations get involved with public communication to raise institutional transparency (Altides 2009); provide information and lower the world informational asymmetry (Buchanan and Keohane 2006); convey normative ideas and induce change (Lehmann 1999; Keck and Sikkink 1998; Alleyne 2008); to legitimise themselves (Zaum 2013) and gain public support (Squatrito 2021), given the increasing levels of contestation of the multilateralism (O'Brien et al. 2000). Critical studies, on the other hand, raised the question that more proactive public communication by international organizations can turn out problematic, in the sense that the prioritization of official narratives and particular voices might marginalize

criticism and facilitate biased perceptions of the democratic credentials and the depoliticization of inequalities in international organizations (Ecker-Ehrhardt 2018a; 2018b).

Another strand of studies builds on the processes by which actors engage in practices of public communication and, more specifically, of digital communication. This literature seeks to follow the institutional evolution from more traditional forms of communication to the new communication environments, highlighting how transformation takes place and which challenges might arise. Again, the role of some actors has received more attention than the role of international organizations in digital communicative processes (BCW 2017; Thrall et al. 2014; Golbeck, Grimes and Rogers 2010; Manor 2016). However, existing empirical studies demonstrate that the assimilation of technological transformations required international organizations to adapt themselves to deepened institutionalization (Dimitrov 2014) and more complex forms of relations (Karns and Mingst 2013). This article contributes to this body of research by assessing the empirical case of the Inter-American Human Rights System. Also, understanding how the Inter-American human rights bodies made the transition to the online world represents an opportunity to test some of the hypotheses brought up in the theoretical studies.

Less than twenty years ago, international organizations started to migrate to virtual environments, each at its own pace. While some started owning websites, others took further steps in social media additionally. Among the existing practices of digital communications, the engagement on social media stands out for facilitating social interaction or 'two-way communication', which characterizes the gradual process of communication, whereby actors progressively recognize each other as equals, moving from rhetorical behaviour toward dialogue (Risse 2000). As such, social media can be transformed into policy arenas where issues are debated and defined (Park and Reber 2008). Either way, hosting a website or a social media account guarantees presence, but does not tell anything specific about digital performance of international organizations. While digital presence captures the static notion of a structure of information at various virtual environments; digital performance rests on the willingness to virtual interaction, made possible through engaging with a virtual environment and listening to the online audience (Manor 2016). It is precisely the digital performance that enables international organizations to transition from mere broadcasters of public information to effective digital communicators (McNutt 2014). This process, by which international organizations start conducting activities that transmit information and convey meaning via digital channels, represents the essence of the so-called digital communication (Kostić and Šarenac 2020).

Hence, the use of digital tools on communicative processes can be more than a means to modernize international organizations. By assisting them to overcome major limitations (power boundaries, financial dependency and geographical scope), digital communication can be strategic in the pursuit of the multiple mandates entrenched into their constitutive Charters. Earlier studies have found that groups and institutions can still be efficient, even lacking finances and infrastructure, when they know how to communicate strategically (Dimitrov 2008a; 2008b). The question, then, is about learning what are the potentials and challenges of digital communications and how international organizations can explore them.

We organized six categories to accommodate the potential of digital communication for international organizations, as shown on Table 1. International organizations can build up their institutional image and narrative (Branding); share information, raise awareness and inform public opinion (Diffusion); communicate with other actors (Network); and reframe existing issues (Framing). Also, digital communication is useful at listening and responding to the online audiences (Dialogue) and finding out about their own performance and upcoming events (Gather Information).

TABLE 1. Potential of Digital Communication for International Organizations

| | | |
|------------|--------------------|--|
| ENGAGEMENT | Branding | Manage image and reputation; Author institutional narrative. |
| | Framing | React to events framing them accordingly; Circumvent local press. |
| | Diffusion | Communicate norms and information; Target mass and niche audience. |
| | Network | Draw information from a range of actors; Take part in transnational networks. |
| LISTENING | Dialogue | Engage with online audiences; Channel citizen participation. |
| | Gather Information | Collect information; Assess performance. |

Elaborated by the authors based on Manor 2016.

On the other hand, digital communication often provokes defiance to international organizations. Exposure to new virtual environments and communication to online audiences figure novel tasks in which international organizations lack background. In the same way as before, we organized five

categories to set the challenges of digital communications by international organizations on Table 2.

TABLE 2. Challenges of Digital Communications for International Organizations.

| | | |
|------------|----------------------|---|
| ENGAGEMENT | Training & Resources | Specialized communications staff; Intensive training of senior staff. |
| | Coordination | Coordination of efforts and content among peer IOs. |
| | Coherence | Between Affiliated International Organizations; Within the International Organization. |
| LISTENING | Assimilation | Control over criticism; Accommodation of feedback. |
| | Transparency | Openness to request and pressure for private/secret information and archives. |

Elaborated by the authors based on Manor 2016.

Migration to the online world requires international organizations to invest in specialized communication teams, skilled not only in digital literacy and languages, but also attuned to the institution’s mission. In some cases, this challenge unfolds in an additional financial dare (Training and Resources). Also, as the number of international organizations in world affairs keeps expanding the demand for coordination of work and content between international bodies and mother- or peer-organizations operating online is crucial (Coordination) Likewise, since coherence plays a significant role on the credibility of international organizations, international bodies and agencies must guard against contradiction, a tough task to hyper-structured and multi-purposed international organizations. In the light of this, guidelines of policy recommendations for the web can align practices within international organizations (Coherence). While these three challenges refer to the willingness of engaging with the virtual environment; listening to the online audience adds greater challenges to international organizations. Virtual interactions might lead to unexpected criticism, flood of information and greater pressure for transparency (Assimilation Transparency). Managing to control over criticism during the communication process and accommodating feedback are important measures for international organizations in order to realize full potential at digital communication. The unpredictability of online

audiences remains a decisive factor inhibiting international organizations to deepen virtual interactions with online audiences.

Whether general international organizations face challenges at experimenting with digital communication, in the human-rights niche, digital communication assumes more daunting features. International politics on human rights - either on regular or digital mode - is not for the simple-minded. Let us demonstrate why the topic of human rights adds yet more nuance to the processes of digital communication in international organizations.

2. Advancing International Human Rights Through Digital Communication

Many decades before the urge of digital communication, the efforts to move human rights up in the international agenda started with the delicate arrangement between states, newly-established international organizations and few other actors. In 1948, in light of the adoption of the Universal Declaration of Human Rights at the United Nations, the process of building international consensus involved an intense flow of ideas, information and people (Castillo and Valverde 2019). It also depended heavily on the coalition of Latin American democracies and newly independent countries, which joined active negotiation, despite being far from the circles of high politics at the time (Glendon 2003; Humphrey 1984). For two years, keeping the momentum for policy change (the sense of urgency) on human rights represented a major challenge once international politics back then depended on traditional diplomacy in a realm of low available technology. Even so, the development of the international human rights project turned out successful (Pinker 2018; Sikkink 2017). Until the mid-40s, human rights were deemed almost completely domestic affairs; a few decades later, an ‘industry of human rights’ was set forth (Engstrom 2010). Today, more than hundreds of international human-rights treaties, international organizations and human rights bodies, a dozen major human-rights NGOs and uncountable activists work to define human rights norms and, ultimately, protect individuals and groups around the globe.

In today’s world, it has become harder for states to simply avoid human rights, not least because of the body of overlapping human rights institutions or due to the increasing connection of human-rights issues with other spheres of state’s interest, like trade, environment, international aid or participation in elite clubs (Hillebrecht 2019). It is precisely the advancement of communications technology that restricts choice and time of decision-making for governments that plays an important part in international human

rights policy. A state's foreign policy is always the result of mixed motives, even if the state is bonded to a stronger or lesser extent to international human-rights treaties. Sometimes states engage in human rights diplomacy for genuine and valid moral reasons, like in the case of Latin American states and the approval of the Universal Declaration on Human Rights in the late 40s. But most of the time, this move is driven primarily by strategic interests, meaning that non-human rights matters can affect states' diplomacy on human rights. Differently, international organizations' approach in the pursuit of human rights is generally single-minded: the focus is previously set on a rule-guided behaviour towards the realization of human rights norms. Such mismatching puzzles over multiple- *v.* single-minded interests between states and international organizations is rarely solved in the traditional diplomacy field. Rather, digital communication turns out to be strategic to reconcile these diverse logics of social interaction among states and international organizations, by facilitating dialogue towards the recognition of norms and legitimate behaviour.

By posing that, we do not disregard the need of traditional diplomacy to create new human rights norms and policies, to refine existing ones, and mostly, to bring actors to fulfil their responsibilities. However, when international organizations frame events as human rights claims through digital communication and target specific actors (repressive governments, violent groups, or corrupt companies) they can be more effective at limiting states' response. In this case, digital communication - like tweeting, for instance - can potentialize the effect of private reprimands because, more than sounding public, it works at mobilizing online audiences to real-time pressure. In this sense, digital communication instils an updated version of the old naming-and-shaming, with the virtuosity of closing the time gap. Within this logic, digital tools can be used as a political weapon to try to delegitimize target governments as well as advance the cause of human dignity in a more balanced and even-handed process (Forsythe 2017).

Another reason why digital communication works in the advancement of human rights relates to the nature of influencing through non-violent ways. International human rights regimes must guide states (and other actors) towards desired behaviour without resorting to violence. Accordingly, digital communication rests on the idea of influence, which refers to the ability of affecting others without appeal to force. In this sense, international human rights regimes and digital communication can be both linked to the concepts of social power, soft power or smart power (Van Ham 2010; Nye 2009). As such, digital communication suits international human rights bodies in many ways, like collecting and analysing information, monitoring trends and

performance, delivering services, providing forums for debate, negotiation and decision-making, as discussed in the previous session.

However, besides low-cost and potentially high-effective, digital communication comes at a political cost for international human-rights organizations, especially when employed by secretariat office and agency heads. Along with international human rights bodies, these bureaucrats are expected to undertake appropriate action, either by engaging with traditional diplomacy and publicly speaking out through digital communication. At the same time, these personnel are hoped to directly maintain the support of the member states to the international organization. As such, while communicating through digital means, they must calculate when, how and who to engage so as not to push key members too far. The risk of backlashes is real: after public reprimands, the United States quit the United Nations Human Rights Council in 2018; Brazil cancelled its financial subsidies to the OAS in 2012; and, the Brexit proceedings are projected to affect human-rights issues throughout Europe. History has shown that withdrawals - albeit manifest - were insufficient to deter movements pushing human rights forward (Pinker 2018; Sikkink 2017). Criticism and praise among international actors can be expected as part of the dynamics involving human rights in world affairs. Let us move on now to understand how the Inter-American Human Rights System pioneered and evolved through the dynamics of digital communication.

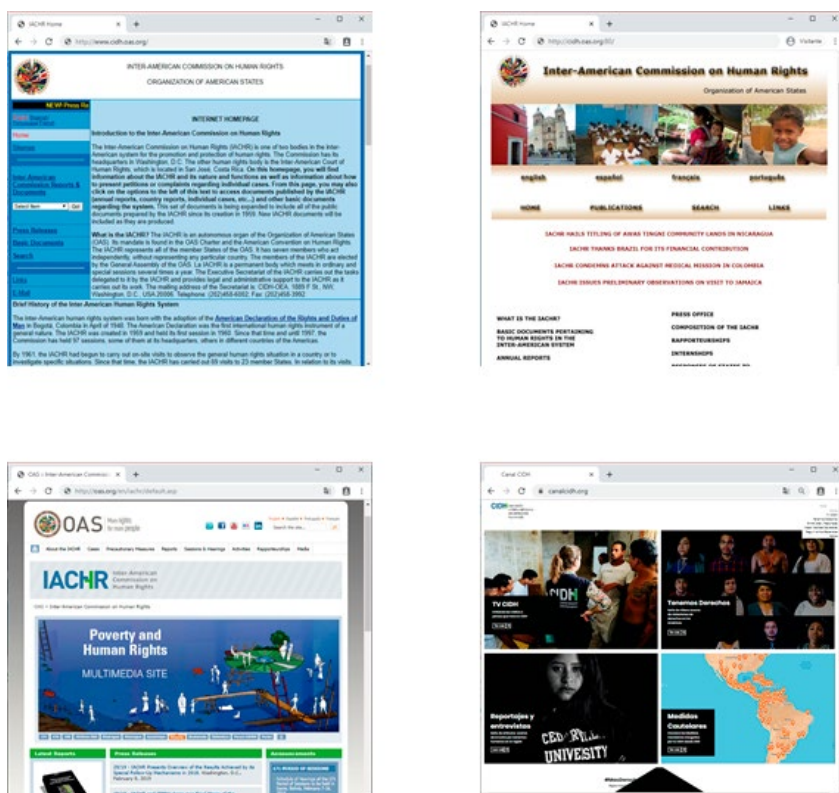
3. Digital Communication at The Inter-American Human Rights System

The Inter-American Human Rights System is not a digital born. Besides that, it aged well. This regional system - which oversees the human rights situation in 35 countries in the Americas - was created in 1948, with the adoption of the American Declaration of the Rights and Duties of the Man, under the umbrella of the Organization of the American States (OAS). It comprises two main bodies: the Inter-American Commission (1959, based in Washington, D.C.) and the Inter-American Court (1979, based in Costa Rica). Functioning since 1959, when its first body was created, it was not until the end of the 1990s that the Inter-American Human Rights System set its first endeavours in the digital scene. The Figure 1 gives a visual notion of the pathway traced by the Inter-American Human Rights System at establishing its digital presence over the years.

But before assessing the evolution of digital communication in this regional system, we must recall some earlier definitions. Digital communication encompasses two ideas: (1) building digital presence and (2) managing

digital performance. As stated in section 1, digital presence captures the static notion of a structure of information at various virtual environments, like a set of websites and social media accounts owned and operated by an international organization. Digital performance, on the other hand, refers to the dynamic notion of managing virtual environments and interacting with online audiences through digital tools. As such, it brings up the actions of engagement and listening. Digital presence and performance vary among regional human rights systems according to the historical background, institutional design and political contexts. In the light of the Inter-American Human Rights System’s experience with digital communication, we turn, therefore, to examine how such variations occur.

FIGURE 1. The evolution of websites at the Inter-American Commission on Human Rights



Top Row, left to right: IACHR homepage in 1999; IACHR homepage in 2009 (The WayBack Machine 2019). Bottom Row, left to right: IACHR homepage in 2019; Canal CIDH Homepage in 2019 (IACHR 2019).

3.1. Digital Presence of the Inter-American Human Rights System

Despite pioneering digital presence by migrating to the web as early as 1998, the Inter-American Human Rights System today - along with other regional human rights systems - own a range of websites and social media accounts. Table 3 gives a sense of digital presence at social media by regional human rights systems. The mapping of digital presence at regional human rights bodies indicates that the Inter-American System's digital presence is the oldest and broadest among the three regional systems, in terms of audience reach and variety of digital tools.

Regarding audience reach, the Inter-American Human Rights System counts with a substantive number of followers and subscribers, 20.8 times larger than the European Human Rights System's audience and 118 times larger than the African Human Rights System's audience. This number is particularly outstanding, considering the problems of internet quality and unequal access in the region (ECLAC, 2018). As to the range of digital tools, both the Inter-American Commission and Court secured equivalent digital presence through official websites and a variety of social media as well.

In the early years, websites and social media accounts served the purpose of presenting the institutional framework, mainly through texts and hyper-texts. This initial move helped the Inter-American Human Rights System not only to overcome spatial limitations, but also to become perceived and acknowledged as an institutional channel throughout the region. However, like many governments and corporations' websites, the first website versions at the Inter-American Human Rights System were organized around their bureaucratic structure, rather than the kinds of information users seek, like the number of state condemnations, the percentage of compliance with the system's decisions or the average of financial reparation at the regional system. Over time, the Inter-American bodies started to expand the depth and breadth of their posts through the incorporation of images and videos. More recently, interactive websites and the innovative IACHR Channel, a novel website on the activities of the Inter-American Commission, display a variety of multimedia contents: on-site photographs, short testimonies, interactive maps and interviews contribute to the promotion of human rights in the region.

TABLE 3. Digital presence on Social Media - Regional Human Rights Systems

| Regional Human Rights System | Regional Human Rights Body | Social media Platform | Followers and subscribers | Audience per human rights body |
|------------------------------------|---|-----------------------|---------------------------|--------------------------------|
| Inter-American Human Rights System | Inter-American Commission on Human Rights | Twitter (3 acc) | 519.212 | 1.072.587 |
| | | Facebook | 540.916 | |
| | | YouTube | 9.530 | |
| | | Instagram | 808 | |
| | | LinkedIn | 1.616 | |
| | | Flicker | 505 | |
| | Inter-American Court of Human Rights | Twitter (2 acc) | 328.205 | 867.189 |
| | | Facebook | 534.349 | |
| | | Vimeo | 763 | |
| | | Instagram | 3.576 | |
| | | Flicker | 54 | |
| | | SoundCloud | 242 | |
| European Human Rights System | Commissioner on Human Rights | Twitter | 36.300 | 46.838 |
| | | Facebook | 10.538 | |
| | European Court of Human Rights | Twitter (2 acc) | 41.700 | 46.440 |
| | | Youtube | 4.740 | |
| African Human Rights System | African Commission on Human and Peoples' Rights | Twitter | 841 | 841 |
| | African Court on Human and Peoples' Rights | Twitter | 6.119 | 15.565 |
| | | Facebook | 8.196 | |
| | | Youtube | 1.250 | |

Compiled by the authors on Sept. 9th, 2019.

Beyond making the Inter-American Human Rights System known in the region, it is important to highlight that these new communication strategies stress on the system's ability to build empathy, vicinity and inclusiveness with online audiences. Such a move potentially leverages the Inter-American Human Rights Commission to the reach of ordinary citizens, which traditionally alleged multiple obstacles to formally access the system. The enhancement of digital communication - through compelling content in multiple formats for easy media and public consumption - helps to convince, persuade and capture screen-time from followers, an important asset for less privileged actors to take a first step, acknowledge the regional system, engage in frequent contact and potentially dialogue with it.

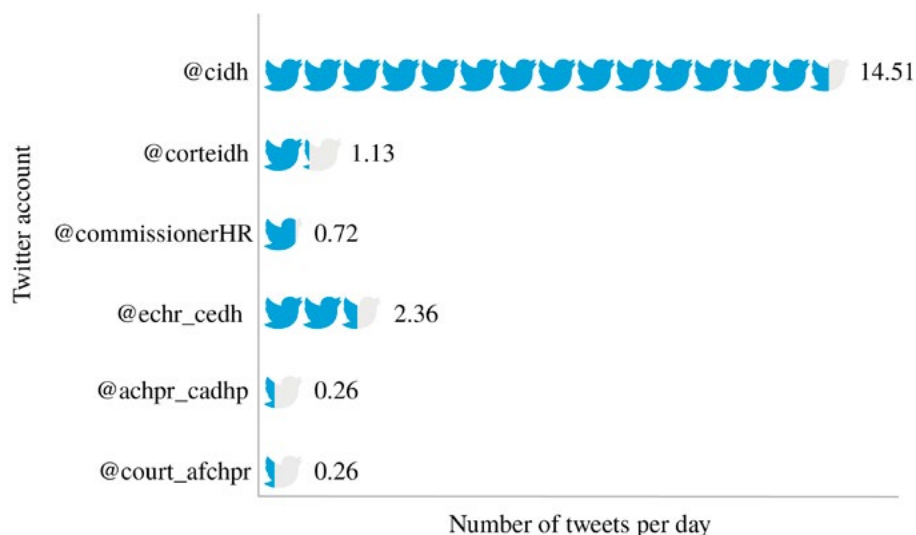
3.2. Digital Performance of the Inter-American Human Rights System

Such robust digital presence assumes an intense activity for the Inter-American bodies. But how do the Inter-American Commission and Court make use of digital tools? How does that differ from other regional systems? We assessed digital performance through Twitter, which is the single common social media used by all three existing regional human rights systems, serving as a comparative parameter for digital performance.

We monitored the most followed institutional account of each regional human rights body during four months, during 118 days between November, 1st, 2018 to February, 28th, 2019, arriving at a sample of 2.273 tweets, which comprises 1713 tweets from the Inter-American Commission on Human Rights account (@cidh); 134 tweets from the Inter-American Court of Humans Rights account (@corteidh); 85 tweets from the Council of Europe Commissioner of Human Rights account (@commissionerHR); 279 tweets from the European Court of Human Rights selected account (@ECHR_cedh); 31 tweets from the African Commission on Human and Peoples' Rights account (@achpr_cadhp); and 31 tweets from the African Court on Human and Peoples' Rights account (@court_afchpr). Here are some important methodological notes. First, regarding different language usage, the Inter-American system accounts tweet mostly in Spanish, although having other accounts dedicated to informing audiences in other languages, like Portuguese and English. Regarding the European human rights bodies, tweets are mostly written in English, although frequently translated into other languages, notably Polish, Russian and German. As for the African human rights bodies, tweets are tweeted exclusively in English. Second, with reference to institutional functions, selected bodies

from each regional system do not necessarily perform the same functions of a correlated body in other regional systems, whilst in some cases (courts), functions can coincide. These differences do not prevent significant comparisons relating to digital communication between regional human rights bodies.

FIGURE 2. Tweeting Frequency at the Regional Human Rights Bodies

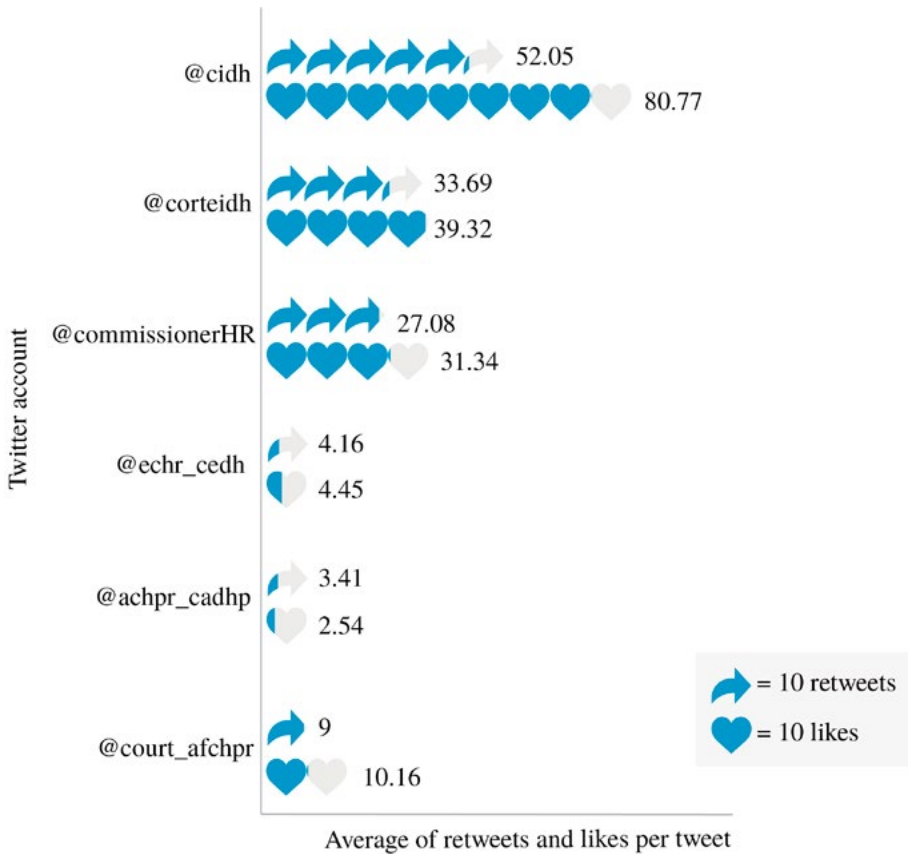


First question to assess digital communication, then, was: how many tweets can regional human rights bodies tweet a day? We found that the Inter-American Commission tweets approximately 15 times a day, way more than other regional human rights bodies, as displayed on Figure 2. However, it is hard to evaluate if almost 15 tweets a day are overly, ideal or below expected. Once there are no manuals of good practices for tweeting for international organizations, the parameters of the most active international organization in general help to fill this gap. The World Economic Forum tweets an average of 106.64 times per day, tending to repeat the best performing tweets up to 10 times over different days and in different time zones to reach the largest possible audience (BCW 2017). Notwithstanding, this industrial-style does not necessarily guarantee the public's attachment to the cause. When hyperactivity translates into automatism and impersonality, the expected result is low interaction and scarce attention, both undesired effects for human rights promotion.

The Twitter accounts that we monitored are far from hyperactivity examples. But automatism and impersonality produce perverse effects

on them as well. Let’s take the case of the European Court of Human Rights’ account for a moment to examine the relation between frequency and efficiency in digital communication. When comparing the European Court to the Inter-American and African Human Rights Courts’ accounts, the first tweets twice as many as the others. Still, the European Court of Human Rights has one of the lowest amounts of likes and retweets per tweet among regional human rights bodies, as seen on Figure 3.

FIGURE 3. Retweets and Likes at the Regional Human Rights Bodies



A possible explanation relates to the use of the RSS broadcaster tool, which converts the European Court of Human Rights website’s content (usually the title of press releases) into automatic tweets. In our sample, the majority (80,4%) of the tweets from the European Court of Human Rights were created through this tool, while in the other courts, no automated

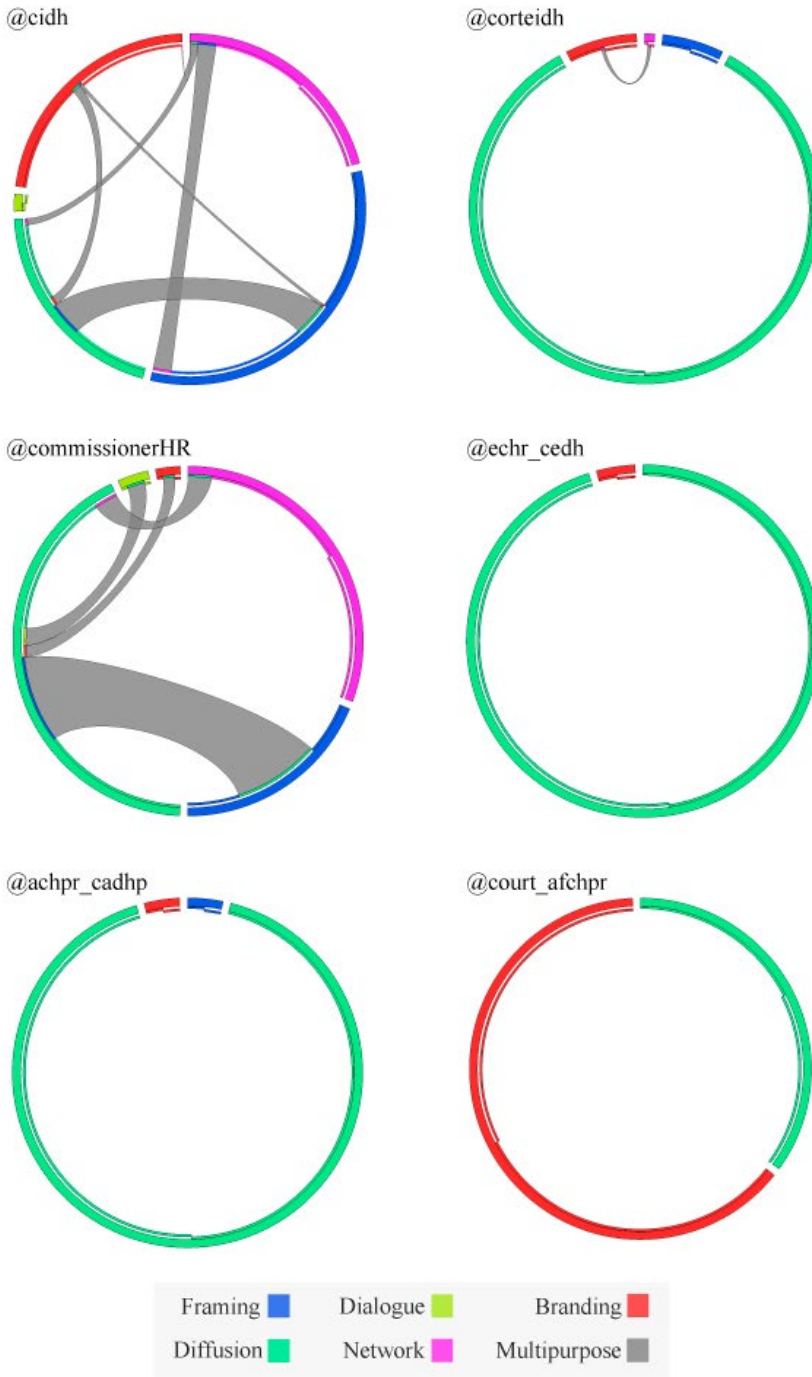
tools were used. As a result, the automatization of digital communication by the European Court of Human Rights leaves this body with the lower interactions in the sample.

The following question concerns efficiency: how efficient are regional human rights bodies at getting their message across? On Twitter, efficiency can be readily measured by the number of average retweets and likes per tweet. From our sample, we learn that Inter-American Commission is more effective than other regional human rights bodies, as displayed on Figure 3. Again, it is tough to evaluate what the average number of 52 retweets and 81 likes per tweet represents in terms of the Inter-American Commission's efficiency. Comparatively though, tweeting almost at the same speed (12.13 tweets/day), UNICEF (@UNICEF) was considered the most effective international organization in 2017 with an average of 222 retweets per tweet (BCW 2017). However, putting in perspective, while UNICEF has a potential reach of over seven million followers, the Inter-American Commission restricts to half a million. Then, proportionally, the Inter-American Commission is more efficient than UNICEF when it comes to the attachment of its online audience to the organizations' cause.

Now that we know about tweeting frequency and interaction, how about digital communication in practice? To answer this question, we organized the content of tweets according to the potentials of digital communication for international organizations, displayed on Table 1. Each potential represents a kind of usage of digital tools. We excluded the potential of Gathering Information (Table 1), since internal data on how international human rights' staff collect information and/or assess performance was not publicly available. The 280-characters policy on Twitter may sound limiting at delivering the most content to diverse online audiences. However, brevity seems ingrained into Twitter's practice. When skilfully tailored, one tweet can serve multiple purposes and target various addressees. Whenever this happened, we counted more than one use in a single tweet.

From the organization of the tweets' contents according to the potentials of digital communication in Table 1, the content analysis returned the following results, as displayed in Figure 4. Each circle represents a regional human rights body assessed through its most followed institutional account on Twitter. The visualisation of colours in each circle aims at demonstrating the uses of digital communication by regional human rights bodies on Twitter. As such, the more colours present in one circle; the more different uses of digital communication by a human rights body. Similarly, the grey arches, whenever present, represent most frequent combinations of multi-purposed tweets by a regional human rights body.

FIGURE 4. Tweeting at the Regional Human Rights Bodies



The results from our sample suggest that the Inter-American Commission tweets for multiple purposes, but mostly for Framing (666 tweets). This strategy is an expressive finding, demonstrating the Inter-American Commission readiness to construct a human-rights narrative to important events taking place in the region. Branding, Network and Diffusion are also common and fairly distributed uses (417; 410; and 405 tweets respectively) at the Inter-American Commission. Through these uses, the Inter-American body turns important information available and connects with its online audiences. These data validate the original and distinguished bond set between the Inter-American Commission and civil society. The Inter-American Human Rights System originated in one-of-a-kind scenery, when most of the countries in the region were authoritarian governments. The adverse political context resulted in the rapprochement of the Inter-American Commission to the civil society, since many governments were unsupportive for the regional system at the time. Civil society provided crucial services for the incipient Inter-American Human Rights system, including documenting violations, initiating litigation, lobbying and monitoring (Haddad 2012; Hillebrecht 2012; Goldman 2009; Farer 1997) and this dynamic goes on until today (Ramanzini and Yildiz 2020).

On the other hand, data on the Inter-American Court's performance on Twitter shows that tweeting is almost always single-purposed and for Diffusion (133 tweets) mainly. This result was expected for international courts once their utmost interest would be spreading international jurisprudence. Besides tweeting for Branding (11 tweets), Framing (9 tweets) and Networking (2 tweets) to a lesser extent, these uses differentiate the Inter-American Court from other regional human rights courts. The European Court follows a strict policy for digital practice informed by its institutional guideline for Twitter (European Court of Human Rights 2019). Hence, in this system, data shows an even pattern of diffusion predominantly (Diffusion: 269 tweets; Branding: 10), meaning that tweets simply promote the latest posts on the European Human Rights Court's website. For the African Court, Branding stands out even before Diffusion (20 tweets), possibly due to the need for consolidating the tribunal as a legitimate authority in the region. Since the Inter-American Court acts more liberated on Twitter than its judicial counterparts, exploring the Networking potential could be an interesting strategy to enhance the tribunal's monitoring performance. Once this task coincides with the Inter-American Courts' mandate, the tribunal could use tweets for networking with key-actors at domestic levels, in order to push states towards compliance.

In common, both Inter-American bodies tweet in a non-automatic way, which means that a single tweet depends on the creation of a content (craft

of information specifically designed for Twitter) and on the timely decision of when to post it. This suggests that the Inter-American Human Rights System acknowledges the importance of performing digitally in strategic ways, acting and reacting near real-time to events. Although increasing the demand for a consolidated working routine (personal resources and training in digital skills), this investment provides the Inter-American Human Rights System to take part in the 'battle of ideas' on the web. It also represents a best practice, since automatically generated tweets tend to lose the opportunity to close the time gap for framing, convincing and influencing in a competitive process of norm definition and implementation.

Another general trend of digital performance at the Inter-American Human Rights System regards tweeting for engagement with the virtual environment (Framing, Diffusion, Network and Branding) more than for listening (Dialogue and Information Gathering). In our sample, the use of Twitter for Dialogue appears in the Inter-American Commission and European Commissioner's accounts only. The explanation here relates to the fact that the European Commissioner and the Inter-American Commission, as promotional bodies, can be more vocal when it comes to human rights violations. Even though this empirical assessment has found that the digital communicative processes offer human rights systems means for listening to the online audiences, data has left clear that they still do it minimally.

The empirical data on the digital communication of the regional human rights systems confirms most of the hypothesis brought up by the literature about the motives that lead international organizations to engage in communicative processes. The organization of categories of potential uses of digital communication in our study demonstrates that when regional human rights bodies communicate through digital means they seek to raise institutional transparency (Altides 2009) by providing critical information (Buchanan and Keohane 2006); to convey normative ideas and induce change (Lehmann 1999; Keck and Sikkink 1998; Alleyne 2008); to legitimise themselves (Zaum 2013), gain public support (Squatrito 2021), and react to contestation (O'Brien et al. 2000). Adding to this literature, our research reveals that international organizations might have mixed motives for doing so. The assessment of digital communication at Twitter reveals that even short digital communicative pieces can convey more than one reason for going public at a time.

The finding that regional human rights bodies engage minimally into listening to online audiences confirms the strand of literature affirming that public communication can turn out problematic. However, as long as some argue that problems occur due to the prioritization of official narratives and particular voices (Ecker-Ehrhardt 2018a; 2018b), our study slightly diverges

from this part of the literature, in the sense that the logics of international human-rights bodies differs substantially from general international organizations. In the human rights niche, generally, international organizations leverage minority narratives against state's official narratives, giving voice to the marginalized. Then, the challenge for international human rights bodies in public communication regards guaranteeing the already existing vocalization of multiple voices. Indeed, the empirical exam of the Inter-American Human Rights System digital communication offers many examples of strategies for building empathy, vicinity and inclusiveness with the online audiences.

Conclusions

The Inter-American Human Rights System's broad digital presence and timely performance brought modernization and means to overcome limitations on the promotion and protections of human rights in the region. More than adapting to the complexities of the new world affairs, the evaluation of the Inter-American Human Rights System's case suggests that this regional system recognizes the importance of effective digital communication as a game-changing opportunity. While securing an indispensable and increasingly authentic digital presence on the web, the Inter-American Human Rights bodies morphed their pure institutional website into up-to-date digital communication. The visually rich layouts, interactive contents and more human faces are important strategies at creating empathy, vicinity and inclusiveness with online audiences. Despite that, improvements on the listening of online audiences could enlarge the system's digital impact. As long as communication remains one-way, any digital move resembles traditional top-down communiqué. The path to stay ahead indicates full interactivity, and by reacting to this unavoidable challenge, the Inter-American Human Rights System can continue to set its course towards a deep-digital and an increasingly humane future.

More than twenty years of digital experimentation at the Inter-American Human Rights System has left a worthy digital legacy. Our research provided an organization of the available empirical data regarding digital communication at the Inter-American Human Rights System. Such a subset of data offers a testing case for important theoretical propositions in International Relations, like the ideas of constituency mobilization, norm diffusion, social reconstruction, the power of discursive narratives and the uttering of democratic global governance. More specifically, it also represented an opportunity to test some of the hypotheses brought

up in the more theoretical studies of why international organizations engage with digital communication. Likewise, this analysis offers practical contribution to international organizations, especially in the human rights issue-area, as the main findings can provide means for internal assessments of communication's policy from within and best practices or trends can transcend from one regional system to another. Finally, our study displays social benefits beyond academic and international bureaucracy realms. As we tracked the digital presence and main uses of digital communication by regional human rights bodies, our research presents a roadmap for citizens and activists to strategize their actions towards the available channels of access in the existing regional human rights systems.

One of the main limitations of this study is the impracticability of collecting specific data on the audience and its interactions with the Inter-American Human Rights System. By the proposed methodological design, we could not track information about who are the followers of the Inter-American bodies. As a result, it was impossible to track challenges faced by users at the digital realm of the Inter-American Human Rights System, like availability of internet in the region or language competences (official idioms and native languages). Interviews and surveys could help understand those features.

Future research can adapt our approach to explore ways in which specific strategies can enhance digital communications by international human-rights organizations. The use of hashtags remains an unexplored venue. Hashtags are known for helping to call attention to last-minute clashes and also to grow the audience, leading tweets to the most talked about international topics. As a fast sorting mechanism, hashtags might favour or bloc serendipitous encounters. International human-rights organizations generally circumscribe themselves into echo chambers, rarely succeeding at reaching people with different points of view to engage with human-rights conversation. Mastering the craft of hashtag might be a helpful strategy for international organizations to overcome online polarization, improve human rights norms diffusion and give an extra stimulus to human rights realization.

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Local Media and the Long-term Conflict Transformation: Eastern Slavonia 25 Years since UNTAES¹

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Abstract: 1996-1998 United Nation's UNTAES transitional administration, deployed for 2 years in Eastern Slavonia (Croatia), is often described as one of the most successful UN peace efforts. Now, 25 years since it was deployed, we are revisiting the region to investigate the long-term developments as they are evident in the writing of local media. This empirical research focuses on the long-term post-conflict cooperative or divisive narratives in local Croat and Serb media in the town of Vukovar, the centre of the region. While some progress was achieved in the media's commitment to *peace journalism*, we were still able to observe deeply entrenched long-lasting inter-communal mistrust, accusations and readiness of political elites to abuse delicate divisions. This discovery raises the important question of just how far does the successful and exemplary peacekeeping mission or administration goes in the context of developed local institutions, and to what extent previous patterns nevertheless remain in place.

Keywords: transitional administration, long-term post-conflict, Vukovar, UNTAES, media and peacebuilding, local institutions

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This paper is Dedicated to my late grandmother Rosa. Once she lost her Yugoslav citizenship, she lived and died in Eastern Slavonia as an undocumented and stateless individual unable to ever again see her beloved Bosnia.

Introduction

Despite the noticeable academic acknowledgment of the need to research long-term effects of peacebuilding, there is simultaneously a recognizable lack of it. Original empirical research dealing with the local outcomes in the long post-mission perspective is absent. Important obstacle remains the fact that as time progress it is exponentially more challenging to distinguish to what extent certain historical peacebuilding efforts are to be considered the main determinant of either positive or negative local developments. This is particularly challenging in the context of developed pre-mission local institutions, many of which exist and change before, during and after the mission, with media being one of them. It is also unclear where to draw a universally applicable line between immediate fragile post-conflict contexts and the long-term success or acute failure. We can hardly objectively determine the universally applicable number of years in determining at what point to draw the line. Diverse local circumstances would make such an effort hopeless if not even ludicrous. However, the inability to draw a clear line arguably prevented much-needed research.

This research represents a limited effort to address those concerns by empirically analysing a case study of Eastern Slavonia in which local and international context allow the relatively easy and sound determination of the long-term context line. It analyses to what extent expected peacebuilding outcomes and values are present in narratives of local media production in the region which was historically successfully governed by the United Nations. Christoph Spurr notes how media played a destructive role in many conflicts yet he at the same time recognizes how media can also play a crucial constructive role in peacebuilding (2002). The research, therefore, uses media change (or rather lack of it) as a starting point for critical reflection on peacebuilding outcomes expectations strongly based on intrinsic characteristics of any given mission. By selection of representative case study of Eastern Slavonia (a region in eastern Croatia) research argues that obstacles to successful liberal peacebuilding efforts may go beyond material concerns of limited resources, staff or inadequate planning intrinsic to the peacebuilding effort itself. It seems that the existence of developed local institutions may undermine in part or potentially even in full even the most exemplary planned, supported and implemented missions. The UNTAES which is widely regarded as an exemplary case was in this line unable to overcome existing local media structures and to initiate the development of *Peace Journalism* in Eastern Slavonia.

Research focuses on the long-term local effects of the United Nations transitional administrations. In a transitional administration mission, the

UN undertakes administrative, governmental and legal functions over a certain territory turned into an effective protectorate. Research selects the case study of Eastern Slavonia, first and understudied among the three UN transitional administrations initiated in the second half of the 1990's. Eastern Slavonia is a predominantly semi-rural multicultural borderland region along the Danube River in eastern Croatia where the Croatian War of Independence started and where it ultimately ended in a peaceful transition. This region enjoyed developed local institutions in the period prior to the beginning of the War and many of them remained in place throughout it. In addition, the 1996-1998 UNTAES administration over the region is regularly described in the literature as one of the most successful missions in the UN's history. After the initial literature review and conflict background we will begin with a methodological presentation, research results and its analysis followed in the end by reflective discussion.

1. Theoretical Framework

The end of the Cold War and the proliferation of the UN's involvement in peacekeeping and peacebuilding brought about a similar rise in interest in academia for the topic of peace operations in post-conflict societies. Barma (2017, 12) underlines the fact that in the period from 1987 to 1994 the annual peacekeeping budget of the UN increased from 230 million to 3.6 billion US-\$. During that period, a niche of academic interest developed around the topic of transitional administrations. Those are missions with executive governing powers which are due to their all-encompassing nature called the '*Rolls Royce of conflict management strategies*' (Caplan 2005, as cited in Bellamy; Williams 2010, 255). Chesterman divides transitional administrations into five categories: 1) facilitating independence at the end of colonization, 2) temporary administration facilitating transition, 3) temporary administration prior to elections, 4) interim administration without an explicit end date and 5) de facto administration of the ungoverned territory (2005, 57).

The UNTAES mission in Eastern Slavonia is the exemplary case of the second category of transitional authorities facilitating the transition. UNTAES does not enjoy similar academic attention like subsequent missions in East Timor and Kosovo. The fact that the UNTAES was immediately followed by more complex, politically more complicated and longer missions in both East Timor and Kosovo partially explains this gap in attention span. Still awareness of Eastern Slavonia's legitimizing function in the aftermath of Bosnia and Rwanda may make it more interesting and an effort worth pursuing. Boothby argues that due to the fact that the UNTAES was a small

mission both temporally and geographically, while at the same time well equipped and with NATO eye behind it, UNTAES become something of a 'proving ground for ideas, methods, and procedures' (2004, 37).

Despite all of it, research notices that the UNTAES mission in Eastern Slavonia is a neglected case in general and comparative literature on transitional authorities compared to other cases. Barma explained her decision not to include the mission with the fact that societies exposed to the intervention were already used to developed public institutions prior to the conflict (2017, 34). This may potentially limit the long-term effects of the mission on governed territory and population and as such is of central interest to this research. At the same time, Barma recognizes the need for analysis of local perspectives after the end of the mission '*as long into the aftermath of intervention as possible*' (Barma 2017, 62). She also states that despite relatively advanced institutions in excluded cases governance strategy was comparable thus opening a way for building upon her work (Barma 2017, 34).

2. Conflict Background

Conflict in Eastern Slavonia was an integral part of the Yugoslav Wars. Inter-ethnic tensions within Croatia were influenced by the surprising victory of the Croatian Democratic Union (HDZ) at the 1990 elections (which in turn reacted to federal level Serbian nationalism). Compared to Krajina, the early stages of the conflict in Eastern Slavonia came relatively late. The first road barricades appeared in Eastern Slavonia about seven months after Krajina just to be removed once the local leader was released from Croatian prison (Hayball 2015, 341). Demographically, it was the only region under rebellion without a Serb ethnic majority yet it was the only one directly bordering Serbia. The entire population of the region at the time of the 1991 Census was 193,513 (Živić 2003, 67). Serbs were not even the relative majority of the total population in Eastern Slavonia with Croats constituting 44.5% and Serbs 34.9% of the total population (Hayball 2015, 333). Other smaller communities are Hungarians, Slovaks, Ukrainians, Pannonian Rysins, and historically Germans, Jews, Turks, Vlachs, Yugoslavs and others...

Before the war, Eastern Slavonia was perceived as the stronghold of the ruling League of Communists of Croatia (SKH) (Hayball 2015, 333). The town of Vukovar, centre of the region, was the host of the Second Congress of the Communist Party of Yugoslavia in 1920 just before its work was forbidden by the government of the inter-war Kingdom (Atlagić 1985, 71). As such, the town enjoyed the privileged status of an industrialized centre in socialist

years. Town's demographic characteristics mirrored the diversity present in the region.

Serbian community was opposed to the idea of the breakup of multi-ethnic Yugoslavia due to security dilemma arising from not that distant World War II. The total number of ethnic Serbs systematically murdered by the Croatian fascist Ustashe regime during World War II remains unknown, but estimates suggest that it was between 320,000 and 340,000 (United States Holocaust Memorial Museum). Events in Eastern Slavonia were primarily fuelled by the abuse of perceived insecurity among local communities by Belgrade and Zagreb political elites. Local clashes, forced disappearances and geographic separation of communities culminated in what is known as the Battle of Vukovar. What can be described as indigenous or grassroots conflict prevention efforts (symbolized by heroic efforts of the assassinated police chief Josip Reihl-Kir) were ultimately ineffective.

In February 1992, the United Nations Protection Force (UNPROFOR) was established as an interim arrangement for Croatia preventing the further escalation of the war (Peacekeeping.un.org 1996). 13,000 UNPROFOR peacekeeping troops were sent to the country after the early stages of the conflict left 10,000 victims (Cohen; Moens 2011, 87). UNPROFOR mandate in Croatia was separated into four operational zones or sectors with Eastern Slavonia being the Sector East (Vuković 2018, 484). In March of 1993 forces on the ground in Eastern Slavonia were 873 strong Russian Battalion (RUSBAT), 687 Belgian and Luxemburg Battalion (BELBAT), 13 military observers and 73 other members of staff (Vuković 2018, 489).

In the summer of 1994, rapture between Belgrade and Pale lead to internal division in the self-proclaimed Republic of Serbian Krajina in which Krajina proper aligned itself with Pale and Eastern Slavonia with Belgrade (Barić 2011, 394). In May 1995, Croatian forces recaptured geographically separated Western Slavonia in Operation Flash pushing Krajina and Republika Srpska to announce unification (Barić 2011, 395). Eastern Slavonia refused this idea claiming that it will deepen the crisis and undermine Belgrade's efforts to end the War in Bosnia (Barić 2011, 395).

In March 1995, a new UN mission was established under the name United Nations Confidence Restoration Operation in Croatia (UNCRO), once again as the traditional peacekeeping mission without robust character (Miškulin 2015, 8). This was the period that witnessed the last effort to resolve conflict among communities in Croatia diplomatically. This effort revolved around what was called the *Z-4 Plan* drafted by the representatives of the UN, USA, Russia and EU. Group, which gave its name to the plan, was known as the Zagreb Four talks and the US ambassador Peter Galbraith played a decisive role in its drafting (Bing 2015, 489). Plan implied deep constitutional changes

in the territorial organization of Croatia giving Serbs in Krajina substantial autonomy (Bing 2015, 490-491). Even this plan was rejected by hardliners in Knin (Bing 2015, 494). The role of Serbian president Milošević is subject of debate up to the present day with some analysts claiming that Milošević was fearful of the Z-4 precedence for Kosovo (Arbutina 2010; Bing 2007, 393). The Z-4 plan did not envisage special status for Eastern Slavonia except for 2 years transitional period.

This refusal led Croatia to undertake *Operation Storm* against Krajina in August of 1995, the biggest military operation in Europe since the end of World War II in which Croatian troops had the asymmetric advantage (McLaughlin 2015). Through Operation Storm Croatia's government established control over the Sectors North and South. Sector East, i.e. Eastern Slavonia, remained the only part outside of its control. Croatian military victory was spoiled by serious human rights violations, war crimes and expulsion of the civilian population which immediately led to the cancelation of trade talks with the EU and postponed the country's membership in the Council of Europe (Bing 2007, 396).

Americans, who up to that point supported the military operation, were themselves disappointed by its humanitarian consequences. While the US supported the reintegration of territory by force, they opposed what they perceived as ethnic cleansing. This policy of expulsion and prevention of return led to a deep diplomatic crisis between Zagreb and Washington (Bing 2008, 345). US Secretary of State Madeleine Albright strongly insisted on the right of return, on the future multi-ethnic character of Eastern Slavonia, while the United States called upon the Council of Europe to suspend Croatian membership until the country start to respect human rights (Bing 2008, 351-353).

After Operation Storm, the international community wanted to prevent the spread of similar conflict to Eastern Slavonia (Barić 2011, 397). Their effort was motivated by fear of wider escalation and repetition of previous human rights violations seen in Bosnia and the rest of Croatia. On 22 August 1995, the leader of the European Community Monitor Mission (ECMM) Fernando Sanchez Rau visited Eastern Slavonia to investigate the possibility of negotiations with the Croatian Government (Barić 2011, 397). It was important to establish contact with local representatives from the region which may then engage in negotiations. US President Bill Clinton urged Croatia not to attack Eastern Slavonia at least as long as peace talks on Bosnia are being held in Dayton which opened some space for diplomacy (Bellamy 1995).

Three international representatives were directly involved in efforts to reach the *Erdut Agreement* (Basic Agreement 1995). Those were once again

the US Ambassador to Croatia Peter Galbraith, UN representative Thorvald Stoltenberg, and the president of the Organization for Security and Co-operation in Europe (OSCE) Geert Ahrens (Holjevac Tuković 2015, 620). The *Erdut Agreement*, which called upon the UN to establish its transitional administration in Eastern Slavonia, was signed in the village of Erdut on 12 November 1995 (Basic Agreement). Compared to *Z-4 Plan Erdut Agreement* was a short document with 14 points and it was signed by Milan Milanović, Head of Serb Negotiating Delegation and Hrvoje Šarinić, Head of Croatian Government Delegation, and witnessed by Peter Galbraith and Thorvald Stoltenberg (Basic Agreement). The *Erdut Agreement* was reached on the margins of international efforts to ensure peace in Bosnia at the Dayton Peace Conference. Croatian good will in Dayton was conditioned on the successful reintegration of Eastern Slavonia.

Declassified Department of State Paper on the UNTAES provides an insight into how the mission was modelled on the UNTAC experience in Cambodia where the UN's administration while comprehensive was not expected to administer every specific aspect of daily life (Department of State Paper re Eastern Slavonia Transitional Administration 1995). The Transitional Administrator was still expected to hold a position of ultimate arbiter and authority yet it acknowledged the existence of relatively developed local institutions.

Once established on the ground in 1996, UNTAES started with its first activities on the organization of governance in the region. Transitional Administration established 20 inter-ethnic Joint Implementation Committees (JICs) in which two sides worked together on issues of public services, administration, police, human rights, education etc. and were answering directly to UNTAES (Large 1999, 571). Those implementation committees ensured that the local population may contribute to the decision-making process while at the same time it was easier for the UN to inform the population of its decisions. Mission's Administrator Jacques-Paul Klein was of opinion that the mission has received the necessary resources and personnel to accomplish its mandate (Klein 2003, p. 205). The robust nature of the mission was made clear both to the local Serb population and authorities and to the Croatian Government and population to the extent that it was in itself preventing any direct resistance (Boothby 2004, 39). Complimentary simple statistical analysis done for this research shows that the crisis in Eastern Slavonia received highly disproportional per-capita resources compared to the other two comprehensive missions in Kosovo and East Timor. In terms of territory area of Eastern Slavonia is approximately 2,600 km², Kosovo is 10,887 km² and East Timor 14,870 km² (Živić 2003; The World Bank Data. (n.d.)). At the time of maximum monthly deployment,

there were 5,378 soldiers in Eastern Slavonia which means that there were 2.07 soldiers per square kilometre or 1 soldier per 36 inhabitants of the region. This number is calculated based on the 1991 Census which put the entire population of the region at 193,513 individuals while the UN's estimate for 1995 was that there are between 120,000 and 150,000 inhabitants (Bing 2008, 342). If we are to imagine a mission of similar characteristics in for example Trentino-Alto Adige it would have 28,597 mission's staff deployed based on the 2011 population or 28,189 based on territory (The Editors of Encyclopaedia Britannica 2015). In comparison to the UNTAES, in the case of Kosovo maximum per capita deployment was 1 per 369 inhabitants or 0.44 per square kilometre and in East Timor it was 1 per 88 inhabitants or 0.67 per square kilometre (Global Policy Forum 1. (n.d.); Global Policy Forum 2. (n.d.)). Small area, clearly defined political outcomes and proximity to global centre facilitated the deployment of the UNTAES mission and made it relatively straightforward while commitment to preserving the model after Rwanda and Bosnia motivated contributing states.

Following this general overview of the conflict and the UNTAES mission, we will now *travel through time* to reach the point distant enough from the conflict to be called the long-term context. This research was faced with the conceptual challenge of how to define a long-term post-conflict context in which to analyse the consequences of the UN's transitional administration. Need to understand the long-term evolution of the local narratives related to various conflicts is regularly stated in the discipline's literature yet efforts to analyse them are less common. Part of the problem certainly is in the short attention span given to each crisis leading to what Roland Paris calls a 'cult of relevance' (2001, as cited in Barma, 2017, 20). Definition of the long-term context is for our purposes relevant to the point at which we can research it in the Eastern Slavonian context. We, therefore, use a bit of interdisciplinary help from the area studies of post-Cold-War East Europe. Inductively, a future researcher may analyse case-specific characteristics and develop a generalizable definition applicable more broadly.

At the end of the Cold War countries of East Bloc and Non-aligned Yugoslavia entered into what is known as the Transition. Characteristics of transitional societies are the transformation of a centrally planned or market socialist economy into a market one. The conclusion of the process of the enlargement of the European Union may be considered as the endpoint of transition at which countries are exiting the phase of intensive economic and institutional changes and direct asymmetric external involvement. In the case of Southeast Europe, this process was initiated with what is called the Stabilisation and Association Process (SAP). This leads to the conclusion that the formal exceptional stage at which local political elites in Eastern Slavonia

were exposed to open and institutionalized external governing, monitoring and coercion was finished at the time of the Croatian EU membership in 2013. At that point in time, Croatia as a country was deemed compliant with all of the so-called Copenhagen Criteria and ready to become a full-fledged member of the EU. From this point on, research conceptualize local *long-term effects* as those that are tractable in the post-2013 period. Local narratives and interpretations of what in Foucaultian terms may be called 'history of the present' are analysed to the extent that they are referential to UNTAES experience in the period after 2013.

3. Methods

In this research, we completed content analysis of the digitally available Post-EU membership issues of the local newspapers from the town of Vukovar. We identified the two local publications most closely associated with both majority Croat (*Vukovarske novine*) and minority Serb (*Izvor*) communities. Other local publications which may be published occasionally or by certain special interest groups were not analysed. This selection may lead us to some bias on the judgment of how prominent place topics of our interest may have in all of the local publications on average. Two selected publications differ in their penetration of the local market with *Izvor* being limited mostly to free distribution within the community and minority institutions.

Digitally available issues of *Vukovarske novine* and *Izvor* were analysed in this research to understand how experiences of UNTAES transitional administration shaped perceptions among the political actors in the region. The first notable finding was that there was a surprising and near-complete absence of any significant coverage of the UNTAES experience. Media play a prominent role in the creation of public discourse, as they are the cornerstone of popular culture capable of deep influence on social institutions (Altheide, Schneider 2013, 75). Korson argues that decision-making elites use domestic media to present their own opinions, therefore, turning media into *de facto* mediators of both their constructive and disruptive peacekeeping policies (2015, 355-357). Ross Howard underlines the fact that media have an innate potential to contribute to conflict resolution by contributing to changing disputants' perceptions of each other (Howard et al. 2015). Norwegian sociologist Johan Galtung develops the concept of *Peace Journalism* (opposed to *violence journalism*) primarily focused on conflict transformation via 'journalism of attachment' to all (not only 'our') actual and potential victims (Galtung 2003).

This research is conducted via qualitative content analysis of local newspapers in the period since 2013 Croatia's EU membership. The working hypothesis was that local newspapers will provide insight into perceptions, attitudes and forms of communication among local political actors in the region. The category of 'political actors' was deliberately defined in a partially ambiguous and open way to enable inclusion not only of institutional decision-makers, but of notable civil society pressure and interest groups such as war veterans and non-governmental organizations. Limited space of public life (Vukovar is a rather small town) enabled us to keep track of all the collected data. The same fact removed the need for the usage of any highly complex software data analysis tools.

Qualitatively, media in Eastern Slavonia are often dependent on public or politically aligned private funding for their operational costs that potentially makes them an attractive mouthpiece for local political elites and their wishes. Two media sources were analysed in a systematic fashion and those are Croatian language newspaper *Vukovarske novine* and Serbian language *Izvor*. Both Croatian and Serbian languages are simply standardized varieties of pluricentric Serbo-Croatian language and both varieties are mutually intelligible (often locally undistinguishable) in their spoken form. An ordinary native speaker cannot easily differentiate the nationality of a resident of Eastern Slavonia based only on their autochthonous accent. *Vukovarske novine* are published in shared Gaj's Latin alphabet making them fully intelligible to both communities. While Serbian standard language uses both Gaj's Latin and Serbian Cyrillic alphabet (two alphabets have perfect one-to-one congruence), *Izvor* magazine is published in Cyrillic alphabet making it challenging or inaccessible to Croat readership. While this insistence on Cyrillic is not present in Serb media at the national level in Croatia, this fact in itself provided interesting evidence on the insistence on cultural difference or specificity. Both analysed newspapers are published in the town of Vukovar. Vukovar is the largest settlement in Eastern Slavonia and a characteristically multi-ethnic town. Many other settlements in Eastern Slavonia are predominantly ethnically homogenous with Croat, Serb, and Hungarian or Pannonian Rusyn majority. More importantly, most of them do not have independent local media production. Audio-visual production of local radio stations and TV studios from Eastern Slavonia was not analysed due to the inaccessibility of their digital archives for the purposes of this research.

Croatian language *Vukovarske novine* is a biweekly publication published since 1992, after the Serbian forces took control over the town. The biweekly was initially published in exile on the territory under the control of the Croatian Government. *Vukovarske novine* is the official newspaper of the

City of Vukovar and as such, they are nominally targeted at the entire population, yet in this case, they are analysed as representative of narratives of Croat political elites. Serbian language newspaper *Izvor* is published by the Joint Council of Municipalities (ZVO), an elected consultative *sui generis* body representing Serbs in Eastern Slavonia. Its incomplete archive is not digitally available for the entire period of Croatian EU membership.

Vukovarske novine was initially analysed from the beginning of the Croatian EU membership up to issue number 677 on 25 January 2019. The archive of the newspaper is published on the Croatian language website of the radio station *Hrvatski radio Vukovar*. *Izvor*, published by the Joint Council of Municipalities, was initially analysed from its issue 158 on 4 January 2017 up to issue 217 on 8 May 2019 making it in total 59 of more recent issues or 27.17% of all issues of the newspaper up to that date. There was a certain disparity on periods initially analysed in this research dependent on the availability of the resources in digital form. Therefore, additional analysis was focused on the period of newspaper overlap. Explicitly on the period starting on 4 January 2017 and ending on 25 January 2019.

In that period, 51 issues (158-209) of *Izvor* and 51 issues (626-677) of *Vukovarske novine* were published. In the period analysed, there was in total 205 articles in *Vukovarske novine* dealing with war commemoration or war veterans 21 of which ended up on the front page. As such, this was the most prominent topic in the newspaper. The interpretation of the war presented a clear black and white image without space for peace journalism oriented to the Serb community. Additional 14 articles addressed post-war reconstruction, 4 of which were published on the front page. Only 3 articles primarily dealt with the UNTAES reintegration period none of which was published on the cover page. Serbia or the Serb community were directly criticized (as a primary topic) in 9 articles, one of which was published on the front page. In 10 articles members of a Serb community, mostly official representative were the primary conversation counterpart. Only 7 articles addressed directly or indirectly the World War II period 3 of which were clearly revisionist in nature with one in 642 issue going as far as to provide space for a claim that World War II *Za dom spremni*, Ustaša equivalent of the Nazi salute *Sieg heil*, is legitimate.

In the period analysed, there were in total 29 articles in *Izvor* dealing with war commemoration or war veterans 4 of which ended up on the front page. Many of them challenged the dominant narrative in *Vukovarske novine* and insisted that Serbs were victims as well. Additional 20 articles addressed post-war reconstruction or return, 4 of which were published on the front page. Only 2 articles primarily dealt with the UNTAES reintegration period with one published on the cover page. Other articles came close to addressing the

topic as they dealt with the history of Serb minority institutions established in 1997. Croatian state authorities or leaders were directly criticized (as a primary topic) in 22 articles, 4 of which were published on the front page. There was not a single interview with local Croat representatives published in the newspaper. Our interpretation is that local Croat stakeholders do not see *Izvor* as one attractive media source or audience which they want to address. 58 articles in *Izvor* addressed directly or indirectly the World War II period 11 of which were published on the front page. As such, it was the most prominent topic analysed and it was often focused on the World War II commemorations and criticism of right-wing historical revisionism.

Statistical tables of the primary topics in newspapers' articles

| VUKOVARSKÉ NOVINE | Number of articles | Articles on the front page |
|--------------------------------|---------------------------|-----------------------------------|
| Croatian War of Independence | 205 | 21 |
| Post-war reconstruction/return | 14 | 4 |
| UNTAES | 3 | 0 |
| Criticism of the other side | 9 | 1 |
| Voice by another side | 10 | 0 |
| World War II | 7 | 0 |

| IZVOR | Number of articles | Articles on the front page |
|--------------------------------|---------------------------|-----------------------------------|
| Croatian War of Independence | 29 | 4 |
| Post-war reconstruction/return | 20 | 4 |
| UNTAES | 2 | 1 |
| Criticism of the other side | 22 | 4 |
| Voice by another side | 0 | 0 |
| World War II | 58 | 11 |

The initial analysis provided an insight that most of the topics of interest are reoccurring and cantered around annual anniversary dates. This

anniversary-centred approach led us to a conclusion that despite tension and disagreements on interpretations, the War is narratively positioned in the past. Past which requires commemoration and commitment if it is to remain relevant in the present. That is why local media insisted on topics that they wanted to regularly remind their readers about. Arguably, excessive reference to the war today is primarily the result of the intended achievement of political advantages which political elites can gain from antagonistically instrumentalizing it. In addition, antagonistic style and animosity seen in newspaper articles may in part be of a theatrical nature where it is perceived as an adequate style for a certain commemorative special occasion of increased emotional tension.

There are some shared topics that are interpreted quite differently in Croatian and Serbian sources. The newspaper provides narratives with direct but not primary reference to UNTAES, challenge to international actors and divisive narratives on minority rights and history, especially on the War in Croatia and World War II. Those historical topics are not directly referential to UNTAES yet they are representative of inter-communal divisions some of which led to the original conflict and which UNTAES failed to overcome via trust-building.

The extent to which the UN was successful in the creation of conditions in which perceptions, attitudes and forms of communication were transformed is a measurement of the success of the mission itself. More precisely, in the long-term post-conflict context it is the major measurement of the achievement of liberal peace in Eastern Slavonia. To this respect, direct references, inclusive liberal narratives and narratives on divisive topics were selected and analysed.

Potential evidence of hostile coexistence without open clashes would be perceived as a partial failure to achieve liberal peace goals. Deeply divisive rhetoric and narratives are therefore a form of a challenge to the fulfilment of the long-term UNTAES goals. While there is no physical separation of communities, the central town of Vukovar is still functioning as a socially divided city. The argument is that continued conflict potential is still present despite the fact that at first sight system is functioning peacefully on a daily basis. If there is no continual effort to build functional multicultural coexistence in Eastern Slavonia any future instability in the wider regional or global systems may lead to its resurfacing in the local context.

We, therefore, followed how local political actors initiate, use or answer to any escalation of antagonism and confrontation among communities. We analysed how those tensions and verbal outbursts may be tools in the hands of local or international political actors enabling them to increase their power by sacrificing peaceful coexistence. There may be political leaders

who may benefit from negative developments in Eastern Slavonia. The best insight into their activities is provided in the local media.

4. Findings

In this research, we identified major narratives around which both majority and minority community media in the town of Vukovar deal with their shared conflictual and UNTAES transitional past. The research concluded that two media sources approach the conflict and UNTAES experience by primarily focussing on different aspects of the story. At the same time, both media sources represent their stories as a form of fictional inter-communal dialogue. This is a dialogue in which resignation is implied or expressed over the predominant views in the other community. In this, they easily miss the point that two communities do not share an interest in the same topics. Therefore, their focus is in practice more often than not a one-sided story in which two media sources are focused on issues that are understudied in their counterpart. On the positive note, it may imply that there may be more agreement on topics of interest than it may seem from fictionalized dialogue style in media. At least, there may be wider space for common understanding if there is additional effort to listen to the other side. This in practice means that if actually asked, many Serbs may agree with Croats on issues of missing individuals and war crimes, while many Croats may have much more sympathetic views on minority rights and equal access than one may assume by reading *Vukovarske novine* or *Izvor*. This opens space for various state and non-state actors to do more on the promotion of direct inter-communal dialogue and cooperation.

On a negative note, the fact that there is no common interest and space for dialogue for issues that are of primary importance for another community reaffirms earlier conclusions about Vukovar as a divided and communitarian town. In this respect, nationalist policies were successful in undermining other forms of societal diversity and distinctions and today ethnicity is the primary identifier in social interactions.

While ethnic diversity is one of the primary elements of Vukovar's and Eastern Slavonia's multiculturalism, there is also intra-communal multiculturalism and cross-ethnic intersections. They include class status, regional origin, gender and personal characteristics or worldviews. There is no additional need to elaborate on self-evident cross-ethnic intersections based on class status or gender equality concerns. Regional origin refers here to intersections between the so-called autochthonous Croat, Serb and other communities who live in the region for generations and numerous 20th and

21st century Serb and Croat communities from Bosnia, Dalmatia or elsewhere. Personal characteristics include shared concerns of people with disabilities, people with disabilities from war, LGBT individuals, young or old citizens etc. while shared worldviews distinguish citizens based on their political, art and professional preferences. Recognition and emancipation of each one of these would contribute to multiculturalism in Vukovar and in the rest of the region. Insistence on ethnicity prevents these developments. Disproportional space which local media provide for ethnic identity and concerns further exacerbates the issue and removes space for peace journalism. To some extent, this research makes the same intentional mistake by focusing on ethnic concerns. While confrontational inter-communal relations are of primary concern, this research recognizes the need for future research of intercommunal cooperation.

One of the topics shared by both the *Vukovarske novine* and *Izvor* is the attitude towards the full implementation of minority rights in Vukovar and the rest of Eastern Slavonia. Respect for the highest internationally recognized minority rights was one of the major provisions of the Erdut Agreement, which provided the foundation for the UNTAES administration of the region. Yet again local media focus is different in which for *Izvor* this is the primary topic of concern, while for *Vukovarske novine* it is a clearly secondary one. While *Vukovarske novine* insists that preconditions for the full implementation of all legally guaranteed collective minority rights still do not exist, *Izvor* accuses both local and national authorities of dishonest unwillingness to respect their earlier commitments. In *Vukovarske novine* we do not see direct principal opposition to minority rights (many of them already implemented in Vukovar) yet we regularly can read calls for additional flexibility and calls to postpone implementation of still unconsumed rights (notably official bilingualism) for some unspecified date in the future. *Vukovarske novine*, therefore, imply that minority rights should be conditioned by the dominant group and that they do not automatically belong to a minority community. The postponement narrative condition respect of minority rights with significant improvement of intercommunal relations and understanding which can hardly be achieved if the minority does not feel recognized and protected. In *Vukovarske novine* narrative, this imagined improvement would happen once the local Serb community accepts its collective responsibility and collectively proves its loyalty to the state in a way that is not required from other citizens. There is failure or unwillingness to understand that respect of minority rights is one of preconditions for improved inter-communal relations and not something which will come after the relations are already improved.

Vukovarske novine link the issue of minority rights to the unresolved destiny of Croat victims of the war. In this, they claim that it cannot be just to grant minority community full enjoyment of its cultural rights as long as there are still unresolved issues from the war. In this, they assume that it is up to the majority to grant rights to minorities and that those rights do not simply belong to the minority community. In this line, perceived failure to punish supposed criminals is seen as an obstacle to accepting the achievements of peaceful reintegration. One representative example of this is a statement by the Vukovar's Deputy Mayor who said that truth on missing persons is 'a precondition of the normal coexistence' (author's translation) alleging that local Serbs do know the truth on missing individuals but are unwilling to tell it (Vuleta 24 November 2017,14). At the same time, it is improbable that those two communities will ever have the same interpretation of the war or that every single issue from that period will be resolved even if everyone accepts the painful facts from the past.

In their texts, *Vukovarske novine* tries narratively to link minority policies of public recognition and visibility with experiences of war. This is particularly present in issues from 2013 with titles such as 'The smell of Beirut: 1991 Cyrillic on Tanks, 2013 Cyrillic by Law' (*Vukovarske novine* 6 September 2013). Unfortunately, corresponding *Izvor's* articles were not available in digital format in this period.

In the period of overlapping availability, *Vukovarske novine* provided a platform for explicit challenges to the outcomes of the UNTAES mission with the publication of the following statement by Tomislav Josić, prominent war veteran and one of the leaders of anti-Cyrillic demonstrations sad to the newspaper:

'I wish Vukovar was liberated through the military action, yet others decided to peacefully reintegrate it guided by their own reasons. Vukovar would be a happier and more peaceful town if it was liberated by military...' (Paun 27 January 2017, 2).

One is to keep in mind the context in which earlier military operations against Serb separatists in 1995 (operations Flash and Storm) led to a humanitarian crisis and massive expulsion of the local Serb population in Krajina. While Croatian intervention was widely perceived as legitimate, its humanitarian consequences led Zagreb to estrangement with the United States and European partners. They also motivated Washington to insist on a peaceful resolution of the situation in Eastern Slavonia. Earlier mentioned comment, therefore, is necessarily interpreted as a rejection of inter-ethnic diversity and inter-communal bargaining and power-sharing in Eastern Slavonia. On the other hand, the Serb community's *Izvor* newspaper is more

positive towards the UNTAES experience. Local Serb political leader from the nearby Erdut Municipality gave the following statement:

‘It was here where the agreement that stopped the war was signed. Killing and everything that was ugly was turned into something much better. The UNTAES mission was completed in 1998 and since then the municipality of Erdut lives a life that is completely different’ (Jaćimović-Ivan 21 November 2018, 2-3).

While there was initial unwillingness and suspicion in the Serb community in the region over the UNTAES, it seems that today it is much more positive about the UNTAES experiences. Regrets are expressed only about incomplete implementation or perceived dishonest implementation of what was agreed in the post-UNTAES period.

At the same time, *Izvor* challenges *Vukovarske novine* narrative by the claim that local Serbs are also victims of war and by calls to internationalization and international commitments to minority rights in Eastern Slavonia. In this respect, *Izvor* shows a willingness to engage in dialogue over the deeply emotional issue which is of focal interest for the Croatian community. It tries to subvert the narrative in which Croats are the only victims in the town and Serbs can be nothing else but aggressors. Yet, *Izvor* does not deal extensively with the war crimes which Serbian paramilitaries actually committed in Vukovar. While *Vukovarske novine* extensively dealt with those crimes, *Izvor* missed the opportunity to help the local Serb community to clearly condemn the crimes from a certain liberal and humanistic point. This omission leaves the space entirely for *Vukovarske novine* to provide nationalist or strongly patriotic interpretation of the events.

5. Limitations

As we already mentioned, the fact that there was no organized and structured dialogue between the two communities leaves the space for further investigation and practical work with ordinary citizens. It may be relevant for future sociological researchers of peacebuilding practice to investigate directly what are the attitudes of ordinary citizens in Eastern Slavonia towards both illiberal and liberal elite’s narratives. Our assumption is that citizens may have certain reservations towards both, but that each community may clearly prefer liberal ones. This potentially makes liberal narratives not just better for peace, but actually more legitimate. Yet, at this point, this is no more than a hypothesis that may be tested in the future.

Another point to keep in mind is that the experience of EU membership was often combined with the re-emergence of populist and nationalist

politics. This dynamic may have played important role in Eastern Slavonia as well so future research may find that some of the challenges to UNTAES liberal peace may not exist anymore. Yet, the nationalist revival at the level of Croatia mostly was retracted after the failure of the Cabinet of Tihomir Orešković and the more recent re-election failure of the ex-president Kolinda Grabar Kitarović. National level political elites are now well integrated and socialized in European structures and institutions and they are not anymore a part of the populist Central European challenge to Brussels. This however did not lead to similar changes in Vukovar where both communities elected local representatives more nationalist and less willing to compromise than those at the national level.

6. Conclusion

In this empirical research of the local media in the town of Vukovar in Eastern Slavonia, we discovered that even in the long-term aftermath of the conflict and successful UN transitional administration we can still observe long-lasting inter-communal mistrust, accusations and readiness of political elites to abuse delicate divisions. This discovery raises the important question of just how far does the successful and exemplary peacekeeping administration goes if administered society already has developed a set of formal institutions which exist prior, during and after the mission. It seems that in the context of developed local societal (*Gesellschaft*) institutions even the most successfully planned, run and completed mission may achieve only some of its objectives. If the peacebuilding efforts are more successful in the context of underdeveloped institutions one may read our findings as an argument for critical scholarship thesis on neo-colonial tendencies of peacebuilding. In this sense, peacebuilding is close to state-building and societal construction based on the hegemonic models. If society is already complex and familiar with many of those models, even some exemplary mission may paradoxically be unsuccessful in the transmission of its ideology.

If a society with a developed set of institutions may easily reject (some) liberal peacebuilding proposals, we may ask ourselves for which kind of society the model is developed and best suited? One may argue that the model will work better if there is a clear lack of societal institutions and if the intervening peacebuilders can start from scratch as close as possible. After all, despite all insistence on the local ownership, if this local ownership is not limited to traditional communal (*Gemeinschaft*) institutions seems to create troubles in the implementation of successful missions and in the achievement of their long-term objectives.

This is once again visible in our findings from Eastern Slavonia. It seems that there is widespread agreement in the literature that everything was done right in Eastern Slavonia. The UNTAES' mandate was clear, timeframe defined, outcomes determined, resources and commitment provided, yet beyond the clear success of the avoidance of the direct conflict renewal, the intercommunal rapprochement and trust seem not to be in sight. Local media in Eastern Slavonia are quite deliberately ignorant of the UNTAES experience and to a significant extent stuck in the logic of mistrust and latent confrontation. Instead, to help in the achievement of UNTAES' goals, comparatively developed local institutions and media limited the outcomes of the mission. Some of the major points of division which led to the original war in 1990' are still present in daily discourse and arguably increasingly important and volatile. Unresolved traumas from World War II capable of triggering security dilemma are still one of the central points of disagreement and mutual accusations between communities. Unresolved issues from the last war at the same time represent a huge obstacle in genuine reconciliation leading to what Boothby calls and we can second as an 'uncomfortable multi-ethnic society' (2004, 50).

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Safeguarding Religious Freedom in transitional democracies: the privileges of the Serbian Orthodox Church in Kosovo as supra-constitutional rights

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The article analyses the peculiar position of the privileges and rights granted to the Serbian Orthodox Church by the Constitution of the Republic of Kosovo. Those privileges and rights, within the legislative framework applicable in the said territory and based on the principle of effectiveness after the 2008 Unilateral Declaration of Independence are – or should be - the legal foundation of all activities of Kosovo Institutions *vis á vis* the Serbian Orthodox Church. They are to be considered supra-constitutional rights which cannot be derogated unilaterally by Kosovo authorities which, rather, recognized their relevance also within their planning documents concerning the protection of cultural heritage. There is an intrinsic link between the privileges of the Serbian Orthodox Church in Kosovo and the safeguard of religious freedom of certain communities in numerical minorities in that area. Respect for religious freedom and cultural heritage is also a precondition for lasting peace and conflict prevention; this is the reason why the protection of relevant communities' rights in Kosovo and the effective enjoyment of the religious freedom are strictly interlinked with the protection of the privileges granted to the Serbian Orthodox Church. This perspective inevitably links human rights and communities' rights to the concept of rule of law which, in the Republic of Kosovo, will always be tested in consideration of the protection acknowledged to - and effectively enjoyed by - the Serbian Orthodox Church. The article scrutinizes the nature of supra-constitutional rights and privileges granted to the SOC and how they should be recognized, or have already been recognized, by the relevant Kosovo authorities. The interconnection between religious freedom and protection of the Serbian-built religious heritage in the form of SOC's privileges is explored and it is the main assumption lying behind the possibility of a durable peace in the area.

Keywords: Kosovo, Serbian Orthodox Church, Cultural Heritage, Religious Freedom, Peace, minority rights

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Introduction

Transitional democracies normally include democratic transitions to consolidated democracies, through structural reforms of States that would make them unlikely to revert to authoritarianism. Those reforms should inevitably cover legislative, judicial and administrative areas to enhance the rule of law, defined

‘as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency’.¹

This article will analyse the peculiar position of the privileges and rights granted to the Serbian Orthodox Church (SOC) by the Constitution of the Republic of Kosovo. Those privileges and rights, within the legislative framework applicable in the said territory and based on the principle of effectiveness after the 2008 Unilateral Declaration of Independence are – or should be – the legal foundation of all activities of Kosovo Institutions *vis á vis* the SOC, other than the backbone of the current constitutional and political setting of – and support to – the new State. They are to be considered supra-constitutional rights which cannot be derogated unilaterally by Kosovo authorities which, rather, recognized their relevance also within their planning documents concerning the protection of cultural heritage.

There is an intrinsic link between the SOC’s privileges and the safeguard of religious freedom of those communities in numerical minorities in certain areas of Kosovo which identify themselves in the belief represented by the SOC. Respect for religious freedom and cultural heritage is also a precondition for lasting peace and conflict prevention: this is the reason why the protection of relevant communities’ rights in Kosovo and the effective enjoyment of the religious freedom are strictly interlinked with the protection of the privileges granted to the SOC. This perspective inevitably links human rights and communities’ rights to the concept of rule of law

¹ United Nations (23 August 2004, 5) *Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616, retrieved from https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616 (accessed 22/04/2021).

which, in the Republic of Kosovo, will always be tested in consideration of the protection acknowledged to - and effectively enjoyed by - the SOC.

This article analyses the nature of supra-constitutional rights and privileges granted to the SOC and how they should be recognized, or have been already recognized, by the relevant Kosovo authorities. The interconnection between religious freedom and protection of the Serbian-built religious heritage in the form of SOC's privileges is explored and it is the main assumption lying behind the possibility of a durable peace in the area. We will provide an overview of those SOC's rights and privileges in the current legislative setting, in the attempt to understand whether they are absolute and untouchable or, rather, if they can be regulated – and by whom - and according to which principles.

It is obvious that the modalities of their compression can potentially affect the religious freedom of particular communities in numerical minorities located in the territory of the Republic of Kosovo and that's why a cautious analysis is more than needed.

1. The Constitutional Framework

The end of the XX century has been marked by the breakout of Yugoslavia, the 1999 NATO intervention in Kosovo and the creation of the United Nations Mission in Kosovo (UNMIK) through UN Security Council Resolution 1244 adopted on 10 June 1999,² according to the provisions of Chapter VII of the UN Charter.

An international civil and security presence was deployed in Kosovo under the UN auspices, thus allowing the creation of an international interim administration with executive authorities in the legislative, executive and judicial areas until a final settlement on the status of Kosovo would be reached.

However, Kosovo was not spared from violence during the years in the immediate aftermath of the war, and the riots of March 2004 are well documented in the international chronicles and reports of international organizations³ as well as in the minds of those living and working in the

² United Nations Security Council (10 June 1999), *Resolution 1244 (1999)*, S/RES/1244 (1999), retrieved from https://peacemaker.un.org/sites/peacemaker.un.org/files/990610_SCR1244%281999%29.pdf (accessed 22/04/2021).

³ Organization for Security and Cooperation in Europe Mission in Kosovo (25 May 2004), *Human Rights challenges – following the March riots*, retrieved from <https://www.osce.org/files/f/documents/2/f/32379.pdf> (accessed 22/04/2021); also, Organization for Security and Cooperation in Europe Mission in Kosovo (December 2005), *Kosovo – The response of the Justice System to the March 2004 Riots*, retrieved from <https://www.osce.org/files/f/documents/d/0/17181.pdf> (accessed on 22/04/2021).

area at the time. Besides the outrageous number of victims, the nature of the violence had as a consequence the damaging and destruction of several religious sites, mostly belonging to the Serbian Orthodox Church. The destruction of cultural property, which is an inherent component of any armed conflict⁴, was also an inherent component of the riots that occurred in Kosovo in March 2004, and – since then - the international community started advocating more and more the need for international protection of the Serbian-built religious heritage in Kosovo. Such a protection, as well the protection of the Serbian cultural property in Kosovo, was considered as co-essential to protect the religious freedom of those belonging to the faith of the Serbian Orthodox Church in Kosovo and, therefore, as an inherent value to preserve the rights of a specific community in non-numerical majority in the various areas of the territory.

The Comprehensive Proposal for the Kosovo Status Settlement⁵ which was offered by the international community to Kosovo and Serbia in the attempt to resolve the issue of the status of Kosovo, acknowledged that approach. It envisaged, in its ANNEX V titled as ‘Religious and Cultural Heritage’ several provisions aimed at protecting the name, the internal organization and the property of the Serbian Orthodox Church, with provisions establishing Special Protective Zones (SPZ) for a select number of Serbian Orthodox Church Monasteries, churches, other religious sites and for a certain number of historical and cultural sites of special significance for the Kosovo Serb Community.

The absence of a reached agreement between Kosovo and Serbia had, as a consequence, the impossibility to resolve, bilaterally, the issue of the Kosovo status and, as an effect, the Unilateral Declaration of Independence of Kosovo of 17 February 2008.

In simple legal terms, every declaration of independence of the authorities ruling – de facto – over a territory based on the well-known – under international law - principle of effectiveness, has the potential consequence

⁴ ‘The former Yugoslavia conflicts brought the destruction of Sarajevo’s numerous churches, mosques, and libraries – many of which were built in the 14th and 15th centuries – and the destruction of sixty-three percent of Croatia’s Dubrovnik, the most outstanding historic town of Europe with 460 monuments (1992-1193), are some of the examples of cultural destruction. Because of the nature of the conflict in the former Yugoslavia, religious symbols constituted the main target of attack on cultural property. Countless churches, mosques, monasteries, and even cemeteries have been levelled to the ground.’ (Serbenco 2005, 92).

⁵ United Nations (26 March 2007), *Letter dated 26 March 2007 from the Secretary General addressed to the President of the Security Council – Addendum – Comprehensive Proposal for the Kosovo Status Settlement*, S/2007/168/Add.1, retrieved from https://reliefweb.int/sites/reliefweb.int/files/resources/1DC6B184D02567D1852572AA00716AF7-Full_Report.pdf (accessed on 22/04/2021).

of breaking the continuum of the legal order in place in that said territory from the constitutional framework existing before the declaration and belonging to the State of origin. In the majority of cases, central authorities would use all their means (including the force) to reaffirm their effectiveness over a territory which would declare unilateral independence, but this was not the case for Kosovo.

Kosovo was under a UN interim administration established through UN Security Council 1244, and the powers and responsibilities laid out in the said Resolution were set out in more detail in UNMIK-based legal provisions, amongst which UNMIK Regulation 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Institutions of Self-Government (Constitutional Framework), which defined the responsibilities of the administration in Kosovo between the UN Special Representative of the Secretary General and the Provisional Institutions of Self-Government in Kosovo (PISG). The PISG⁶ acquired, over time, more and more responsibilities and they were soon ready to take over all functions had a settlement been reached on the status of Kosovo. The negotiations with Serbia failed and, then, a Unilateral Declaration of Independence followed in 2008.

The International Court of Justice (ICJ), in its 22 July 2010 Advisory Opinion on 'Accordance with International Law of the Unilateral Declaration of Independence in Respect to Kosovo'⁷ acknowledged that the authors of the declaration did not seek to act within the framework of the interim self-administration of Kosovo but, rather, outside the framework of the interim administration in their capacity as representative of the people of Kosovo⁸. The consequence, according to the ICJ, was that since the Declaration of Independence was not issued by the PISG, it did not violate the Constitutional Framework (established by UNMIK) and, hence, it did not violate any applicable rule of international law.

Hence, at local – not international - level, the effects of the aforementioned theory of succession of constitutional legal systems got realized and the UN based constitutional framework was breached and then abandoned by the locally ruling institutions that, from that moment, didn't act anymore as PISG. A new Constitution, the Constitution of the Republic of Kosovo, was

⁶ The term Provisional institutions of Self Government included, for Kosovo, all those public institutions (ministries, municipalities, etc.) typical of a State except of the fact that, for Kosovo, they were provisional as subordinated to a final settlement.

⁷ International Court of Justice (22 July 2010), *Advisory Opinion on Accordance with International Law of the Unilateral Declaration of Independence in Respect to Kosovo*, retrieved from <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> (accessed on 22/04/2021).

⁸ *Ibid.*, paras. 102-ff.

adopted and entered into force on 15 June 2008⁹, thus giving birth to a new constitutional framework which was effectively in force on the ground and affecting, from that moment, the lives of the inhabitants of the Republic of Kosovo according to the principle of effectiveness.

The Unilateral Declaration of Independence tried to position itself, from Kosovo's perspective, in a continuum with the past, insofar as it contains the authors' will to fulfil the international obligations of Kosovo. Amongst these obligations, the need to protect to the largest possible extent the privileges of the Serbian Orthodox Church in Kosovo according to the ANNEX V of the 'Comprehensive Proposal', as an inherent guarantee to safeguard the religious rights of the Kosovo Serb community and, more broadly, of those believers belonging to the Serbian Orthodox Church.

It has to be borne in mind that the Comprehensive Proposal contains other principles and provisions concerning the rights of communities and their members (ANNEX II), and the privileges afforded to the Serbian Orthodox Church must be seen as a specification of the same ANNEX II where it envisages that it is the duty of the authorities of Kosovo to '[...] promote the preservation of the cultural and religious heritage of all Communities as an integral part of the heritage of Kosovo [...]' and to '[...] have a special duty to ensure an effective protection of the sites and monuments of cultural and religious significance to the Communities'¹⁰.

The entering into force of the Constitution of the Republic of Kosovo must be seen, as the entry into force of any new Constitution, as the milestone of a new legal order and, in our case, as the milestone of the internal legal order of Kosovo in which the Republic of Kosovo positions itself in the post UNMIK era. The Constitution of the Republic of Kosovo had the same features which are common to all the Constitutions in the world: it established the innate characteristics of the country and its sovereignty, outlined the rights and responsibilities of its citizens, it guarantees the human rights of the people, defines the system of governance, the legislative, executive and judicial

⁹ '[t]his followed 17 rounds of negotiations between Serbian and Kosovar officials, led by United Nations Special Envoy Martti Ahtisaari, who proposed a plan that included the adoption of a new constitution within 120 days after a declaration of independence. A Constitutional Commission was established, composed of 21 Kosovo members, 15 appointed by the President of Kosovo, three by the Assembly holding seats reserved for minorities especially Serbs, and three members of other minority communities also appointed by the Assembly. By the end of 2007, the Commission produced a draft constitution, directly derived from the Ahtisaari plan. Sections of the constitution were published for input, while a mix of national and international experts helped with review. After the Declaration of Independence, the constitution was published for public comment, garnering more than 1,000 comments from the public. The Commission also held public hearings on the draft. The final draft was completed in April 2008 and was adopted in June 2008' (Clegg et al. 2016, 4).

¹⁰ Art. 2.5 of the ANNEX II of the Comprehensive Proposal.

branches, it establishes that all other laws must adhere to it and the fact that it adheres to the country's international obligations, where possible¹¹.

The Constitution of the Republic of Kosovo is very modern and deserves particular attention to human rights, which are seen as directly applicable in the internal legal order and that take priority – in case of conflicts – over provisions of laws and other acts of public institutions¹². Leaving aside the problem deriving from the self-applicability of human rights norms, particular relevance is also formally recognised, at constitutional level, to the jurisprudence of the European Court of Human Rights and Fundamental Freedoms¹³.

Human Rights can be enjoyed if they are enforced by relevant authorities and, as such, relevance should be given to the principle of effectiveness, in consideration of the authorities that – de facto – exercise their sovereignty over a certain territory. That is why it is of fundamental importance to recognize the authority of the Republic of Kosovo, as this is the only way to effectively protect the rights of communities in numerical minorities in the areas of Kosovo.

However, the Constitution of the Republic of Kosovo, as the foundational pact of the people living in the territory of the former Socialist Autonomous Province of Kosovo - then UN administered region of Kosovo - that unilaterally declared independence in February 2008, declared also their adherence to the Comprehensive Proposal for the Kosovo Status Settlement. More specifically, the Comprehensive Proposal was considered by the Constituents – in line with their will to fulfil the international obligations of

¹¹ The Republic of Kosovo is not recognized by all states of the world and, as such, there might be problems in Kosovo being a party of multilateral agreements or treaties to which these non-recognizing states are a party.

¹² Art. 22 of the Constitution of the Republic of Kosovo states that:

‘Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (3) International Covenant on Civil and Political Rights and its Protocols;
- (4) Council of Europe Framework Convention for the Protection of National Minorities;
- (5) Convention on the Elimination of All Forms of Racial Discrimination;
- (6) Convention on the Elimination of All Forms of Discrimination Against Women;
- (7) Convention on the Rights of the Child;
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.’

¹³ Art. 53 of the Constitution of the Republic of Kosovo states that:

‘Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.’

Kosovo - at a higher level than the Constitution, thus creating a unique form of supra-constitutional provisions.

Article 143 of the Constitution of the Republic of Kosovo (titled 'Comprehensive Proposal for the Kosovo Status Settlement') reads as follows:

'Notwithstanding any provision of this Constitution:

1. All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. They shall take all necessary actions for their implementation.
2. The provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo.
3. The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail.'

It must be borne in mind that Article 143 is placed, in the constitutional framework, in its Chapter XIII titled as 'Final Provisions'. Article 143 is not meant to be a temporary provision as the ones placed in Chapter XIV (titled 'Transitional Provisions')¹⁴.

¹⁴ Chapter XIV of the Constitution of the Republic of Kosovo included provisions regulating the so-called 'supervised independence', which formally ended on 10 September 2012 with the closure of the International Civilian Office of Kosovo. What remained was, then, only certain residual responsibilities carried out by UNMIK. Below, an excerpt of the provisions of Chapter XIV, in force during the period of the so-called 'supervised independence':

'Article 146 [*International Civilian Representative*]

Notwithstanding any provision of this Constitution:

1. The International Civilian Representative and other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 have the mandate and powers set forth under the said Comprehensive Proposal, including the legal capacity and privileges and immunities set forth therein.
2. All authorities in the Republic of Kosovo shall cooperate fully with the International Civilian Representative, other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 and shall, *inter alia*, give effect to their decisions or acts.

Article 147 [*Final Authority of the International Civilian Representative*]

Notwithstanding any provision of this Constitution, the International Civilian Representative shall, in accordance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007, be the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations referred to in Article 146 and this Article.'

The wording of Article 143 of the Constitution of the Republic of Kosovo, together with the content of the Unilateral Declaration of Independence and the express Constituents' will to fulfil the international obligations of Kosovo, makes the provisions of the Comprehensive Proposal for the Kosovo Status Settlement the backbone of the same Constitution. It is the key, politically accepted by relevant part of the international community, to justify – at local level, thus leaving intact the UN international order - the fracture with the constitutional framework established by UNMIK, towards an exercise of the sovereignty based on the principle of effectiveness by local authorities, guided by the principles of rule of law and respect of human rights and communities' rights.

At legal level, the *renvoi* or referral made by Article 143 of the Constitution of the Republic of Kosovo creates a category of norms that have the potentiality to be at a higher level than the same Constitution, even higher than the minimum protection afforded by international human rights norms directly applicable in the territory of the Republic of Kosovo. This situation, in the case of the ANNEX V of the Comprehensive Proposal recognizes privileges to the Serbian Orthodox Church which were meant to protect the religious freedom of certain communities in numerical minority - directly and indirectly - in Kosovo.

Without them - at least those provisions of the Comprehensive Proposal that can be applied by Kosovo authorities autonomously¹⁵ - the Constitution of the Republic of Kosovo could not exist and the same political support to the Unilateral Declaration of Independence – leaving aside legal considerations as analysed by the International Court of Justice and having in mind the theory of the succession of the juridical systems - would vanish¹⁶.

In the case of the Serbian Orthodox Church, a system of non-derogable supra-constitutional rights have entered the legal system of the Republic of Kosovo. As a result, all Kosovo authorities should strive for their protection, as that system is not only connatural and inherent to the safeguard of the religious freedom of certain communities in numerical minority in the territory of the Republic, but it will always be the platform where adherence to the principle of the rule of law is going to be – and will be – measured by the members of the international community.

¹⁵ As the Comprehensive Proposal for the Kosovo Status Settlement was meant to be applied after the possibility of reaching an agreement with the Serbian authorities and, practically, some of its provisions cannot be applied or could not be applied as originally planned (see, e.g., the provisions of ANNEX VI on the external debts).

¹⁶ Art. 143 of the Constitution of Kosovo has been formally repealed through a constitutional amendment published in the Official Gazette of the Republic of Kosovo on 7 September 2012 (retrieved from <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, accessed on 22/04/2021). This did not affect the privileges entrusted to the Serbian Orthodox Church which, due to their supra-constitutional nature, should be considered *ultra vires* that amendment.

2. SOC Privileges as Safeguards to Religious Freedom

International human rights norms, which are an integral part of the legal system created by the Constitution of the Republic of Kosovo, provides evidence that the protection of human rights extends to culture and cultural heritage of peoples¹⁷.

As it has been correctly affirmed,

‘[...] It goes without saying that these provisions create not only a negative obligation not to interfere with cultural freedoms, but also a positive obligation to take steps to protect cultural groups and communities in their exercise of such freedoms and, in particular, to protect cultural and religious property which provide the indispensable situs for the practice of such freedoms. Destruction of mosques and libraries in Bosnia, and subsequent destruction of Orthodox churches in Kosovo after NATO “liberation,” stand as dramatic evidence of the linkage between human rights and cultural heritage. This linkage was well identified and stressed by the Special Rapporteur of the Commission on Human Rights in his report on the situation of human rights in Yugoslavia’. (Francioni 2004, 1213)

The link between the safeguard of the religious freedom and the specific privileges recognised to the SOC can be determined by acknowledging – and reading in conjunction to each other - the provisions of the Comprehensive Proposal, stating, in its Art. 3.1 that ‘[...] Kosovo shall guarantee the protection of the national or ethnic, cultural, linguistic and religious identity of all Communities and their members’, whereas Art.7 (titled as ‘Religious and Cultural Heritage’) specifically affirms that

‘[...] 7.2 The Serbian Orthodox Church in Kosovo (SOC), including its clergy and their affiliates, activities and property shall be afforded additional security and other protections for the full enjoyment of

¹⁷ ‘First, the concept of human dignity, which informs the human rights provisions of the Charter and of the Universal Declaration (“[...] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [...]”) includes peoples entitlement to the respect of the cultural heritage that forms an integral part of their identity, history and civilization. Destruction or desecration of symbolic objects and sites that are essential to the enactment of a people’s culture (be it a library, a place of worship, a sacred site for indigenous peoples) is a violation of their collective dignity no less than a violation of their personal dignity. Second, Article 22 of the Universal Declaration states that “everyone [...] is entitled to realization [...], of [...] cultural rights indispensable for his dignity”. Article 18 guarantees the right to freedom of conscience and religion which is an integral part of one’s culture. Article 27 proclaims the “[...] right freely to participate in the cultural life of the community [...] “ and “[...] to enjoy the arts and to share in scientific advancement and its benefits.” These rights have been confirmed by Article 15 of the International Covenant on Economic, Social and Cultural Rights.’ (Francioni 2004, 1212).

its rights, privileges and immunities, as set forth in Annex V of this Settlement.

7.3 The SOC shall be the sole owner of its property in Kosovo, with exclusive discretion over the management of its property and access to its premises, as set forth in Annex V of this Settlement.’

It is clear that the ‘additional security and other protection’ is meant for the ‘full enjoyment of [...] rights, privileges and immunities’ of the SOC, which must be seen as instrumental to the enjoyment of the rights of the communities as foreseen in ANNEX 2 of the Comprehensive Proposal, which envisions that

‘ 1.3 Members of Communities shall have the right to freely express, foster and develop their identity and community attributes [...] 2.5 Kosovo shall promote the preservation of the cultural and religious heritage of all Communities as an integral part of the heritage of Kosovo. Kosovo shall have a special duty to ensure an effective protection of the sites and monuments of cultural and religious significance to the Communities. [...] 3.1 Members of communities shall have the right, individually or in Community, to: a. Express, maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and culture [...]’

Within this context, the provisions of ANNEX V must be considered as the necessary positive steps taken by Kosovo authorities to protect the religious freedom of those communities in numerical minorities in certain areas that recognize themselves in the faith expressed by the SOC, through the establishment of certain privileges benefitting the same SOC, aimed at raising – inter alia - the level of protection of the Serbian-built religious heritage in Kosovo which is an essential precondition for a lasting peace and conflict prevention in the area.

The relevance of the provisions of the Comprehensive Proposal has been acknowledged by the 2017-2027 ‘National Strategy for Cultural Heritage of the Ministry of Culture, Youth and Sport of the Republic of Kosovo’¹⁸ (National Strategy 2016) insofar as it stated that:

‘The Constitution and other relevant documents, including the 7 October 2015 Letter of the Kosovo Institutions addressed to UNESCO National Delegations outlining Kosovo’s commitments with regard to the protection of religious and cultural heritage on the basis of the

¹⁸ Ministry of Culture, Youth and Sport, Republic of Kosovo (2016), *National Strategy for Cultural Heritage 2017-2027*, retrieved from https://mkrs-ks.org/repository/docs/eng_strategy_for_heritage.pdf (accessed on 22/04/2021).

CSP Annex V provisions, form the institutional base on drafting of this National Cultural Heritage Strategy 2017-2027 [...]’¹⁹. (National Strategy 2016, 15)

Six (6) articles included in Annex V provides provisions for the rights, privileges, and immunities for the well-functioning of the SOC in Kosovo, with the conditions that ‘1.1 [...] [t]he exercise of such rights, privileges and immunities shall carry with it duties and responsibilities to act in accordance with Kosovo law, and shall not violate the rights of others’.

The same Article 1 of ANNEX V specifies that

‘1.2 [...] the Serbian Orthodox Church in Kosovo, including monasteries, churches and other sites used for religious purposes, [is] and integral part of the Serbian Orthodox Church seated in Belgrade [...] 1.3 Kosovo shall respect the name and the internal organization of the Serbian Orthodox Church, including the hierarchy and activities. 1.4 [...] movable and immovable property and other assets of the Serbian Orthodox Church shall be inviolable and shall not be subject to expropriation [...] 1.5 The Serbian Orthodox Church [...] shall exercise full discretion in the management of its property, property reconstruction, and access to its premises [...] 1.5.1 Kosovo authorities shall have access to sites which constitute the property of the Serbian Orthodox Church only with consent from the Church, or in the event of a judicial order issued relating illegal activities or in the event of imminent danger to life or health [...] 1.6 Kosovo shall not arbitrarily prohibit the entry into, or residence within, Kosovo of priests, candidate for priesthood, monks, nuns, laymen or other invitees and members of the Serbian Orthodox Church. 1.7 Kosovo shall consult with the Serbian Orthodox Church in the promotion of

¹⁹ The Comprehensive Proposal for the Kosovo Status Settlement has also been used, explicitly, as one of the References (National Strategy 2016, 65). Among the renewed commitments made in the 2015 Letter of the Kosovo Institutions addressed to UNESCO, it is pertinent here to mention that the Government of Kosovo stated, that it ‘[would] continue to abide by the Annex 5 obligations of the Ahtisaari Plan [...] that provide the Serbian Orthodox Church constitutional protection of its identity, property and special relations with Serbia’; also that it ‘[would] consult with [...] the Serbian Orthodox Church [...] before amending the Law on Cultural Heritage or related regulations’; furthermore that ‘[t]he Serbian Orthodox Church [would] remain the sole Christian Orthodox organization in the territory of Kosovo, enjoying full legal persona, granted by the new Draft Law on Religion.’ (Kosovo Institutions 7 October 2015), *Letter of the Institutions of Kosovo*, retrieved from http://kryeministri-ks.net/repository/docs/Letter_to_UNESCO_National_Delegations.pdf (accessed on 22/04/2021). As of March 2021, a new Law on Cultural Heritage (in the form of amendments to the 2006 Law on Cultural Heritage of Kosovo) is still at draft level within the relevant bodies of the Republic of Kosovo in charge of the legislative process; hopefully, it will (and it should) recognize and implement – one day - the rights and privileges bestowed to the Serbian Orthodox Church by Annex V.

the Serbian Orthodox heritage for touristic, scientific, educational or other public purposes [...]

Provisions on economic related matters and tax exemptions are foreseen by Article 2, whereas the security for Religious and Cultural Sites are regulated in Article 3. Particularly important is Article 4 (titled 'Protective Zones'), as the implementation of Annex V started with the adoption of a specific law in 2008, the Law No. 03/L-039 on Special Protective Zones (SPZ) deriving from this specific article.

The Law on SPZ requires the establishment of protective zones as spatial planning tools for controlled development in the surrounding areas of 44 cultural heritage sites, mainly orthodox churches and monasteries, including the historic centre of Prizren and the Village of Velika Hoča/Hoçë e Madhe.

As stated in Article 4 of Annex V, the 'Protective Zones' are meant to

[...] provide for the peaceful existence and functioning of the sites to be protected; preserve their historical, cultural and natural environment, including the monastic way of life of the clergy; and prevent adverse development around them, while ensuring the best possible conditions for harmonious and sustainable development of the communities inhabiting the areas surrounding such sites [...]

As it was explained by some scholars:

[...] the compromise agreed to, at a high political level, faced hesitation and rejection for the implementation of (special) protective zones at the local level that reflected with little effort to understand it with the complexity it entailed. The word "special", which is not explicitly described in the CSP Annex V, triggered a debate among civil and local institutional circles in Kosovo, as it differentiated these sites from 'other' cultural heritage sites in the country. The ICO Progress Report on Implementation of Special Protective Zones (2011), however, states that "*the special character of these (special) protective zones is to ensure that the local representatives of the Serbian Orthodox Church and other actors are linked to the municipalities to decide to what extent constructions and activities should be allowed to develop*". Paradoxically, a separate Law on Cultural Heritage (2006), that generally covers the cultural heritage of Kosovo, also requires the establishment of protective zones around architectural and archaeological sites with the same purpose as of the CSP Annex V protective zones, that is, a controlled and harmonious development around the heritage sites.

Technically speaking, all prohibited and restricted activities attributed to (special) protective zones of CSP Annex V that reasonably could present a threat to a heritage site and affect its sustainable preservation,

could also apply to all other protective zones, as implied in the 2006 Law.

What differentiates the two laws is the consultation procedure. In the case of Annex V, an agreement needs to be sought, first, from SOC and, if no agreement is reached, refer the case to an international body, the International Monitoring Council. On the other hand, the protective zones derived from the Law on Cultural Heritage can also apply the principle of communication and agreement among all stakeholders for developments in the surrounding areas of the heritage sites following the spirit of an all-inclusive participatory planning.

Interestingly, the protective zones deriving from the Law on Cultural Heritage have not yet been set in place [...]’ (Hisari and Fouseki 2020, 102)

Kosovo authorities have also enacted the law ‘On the Historic Center of Prizren’ (Law No. 04/L-066) and the law ‘On the Village of Hoce e Madhe/ Velika Hoca’ (Law No. 04/L-062). However, it must be borne in mind that, as correctly stated by other authors, ‘The term “special protective zone” applies only to the Serbian Religious Cultural Heritage monuments, whereas “protective zone” is used in the case of other cultural monuments in Kosovo’²⁰.

The following Art. 5 of ANNEX V established an Implementation and Monitoring Council (IMC), a body mandated ‘[...] to monitor and facilitate the implementation of the provisions of [the Comprehensive Proposal] relating to the protection of the Serbian religious and cultural heritage in Kosovo’²¹

²⁰ Research Institute of Development and European Affairs (October 2019, 4), See Background Note/Study on *The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual ‘grand finale’ between Kosovo and Serbia*, retrieved from <http://www.ridea-ks.org/uploads/BACKGROUND%20NOTE%20-%20STUDY%20ON%20SRCH%20IN%20KOSOVO.pdf> (accessed on 22/04/2021)

²¹ Due to the Unilateral Declaration of Independence and the lack of agreement on the status with the Serbian Authorities, the IMC composition could not reflect the composition as envisioned in the ANNEX V (which foresaw the presence of the ‘Ministry of Culture of Kosovo, Institute for Protection of Monuments in Prishtinë/Priština, Serbian Orthodox Church, Institute for Protection of Monuments in Leposaviq/Leposavić, OSCE, Council of EUROPE, and UNESCO’ – see Art. 5.3 of the ANNEX V). Under the post independent Kosovo, the IMC was established – under the internal legal framework of the Republic of Kosovo - by the Law on SPZ (Law Nr. 03/L-039) of 2008 and its most recent format was set up in a way that comprised members, namely: the Minister of Environment and Spatial Planning, the Minister of Culture Youth and Sport, the SOC in Kosovo, the EU Special Representative in Kosovo, and the head of the OSCE Mission in Kosovo, and it is cochaired by the MESP and the EUSR. As it has been correctly stated, ‘[...] the IMC has naturally developed into a forum dealing with all issues relating to the SOC, not only with those prescribed in its original mandate, and the idea has been gaining ground that its mandate should be expanded turning

whereas Art. 6 (titled as ‘Return of Archaeological and Ethnological Exhibits’) is not enforceable as it foresees that

‘The Republic of Serbia shall return archaeological and ethnological exhibits, which were taken on loan from the museums of Kosovo for temporary exhibitions in Belgrade in 1998-1999 within 120 days from the date of entry into force of this Settlement’

and the Republic of Serbia did not agree to the Comprehensive Proposal unlike the Republic of Kosovo, which rather elevated the Comprehensive Proposal to the level of supra-constitutional rights.

3. The Management of the Serbian-Built Religious Heritage in Kosovo

The legitimate question could now arise and, namely, about the nature of the management and maintenance of the Serbian-built religious heritage in the Republic of Kosovo. It has to be borne in mind that, in this regard, not only the ANNEX V is crystal clear as to the privileges of the SOC, but the same 2017-2027 National Strategy for Cultural Heritage of the Ministry of Culture, Youth and Sport of the Republic of Kosovo establishes that:

‘Regarding the management and maintenance of sites which constitute the ownership of the Serbian Orthodox Church, the latter shall exercise full discretion in the management of and access to its cultural properties, including the conservation and restoration of monuments in line with international standards, acting in accordance with Kosovo laws’. (National Strategy 2016, 31-32)

To the positions advocating the need to overcome the provisions of the ANNEX V with a stronger role of the authorities of the Republic of Kosovo, we can only say that, as correctly stated:

‘under appropriate circumstances, cultural heritage in the territory of any State may be considered an element of the general interest of the international community, and, as such, it must be protected even against the wishes of the territorial State’²². (Francioni 2004, 1220)

it de jure to what it is already de facto, a kind of a “one-stop-shop” dealing with all matters involving the SOC.’ Research Institute of Development and European Affairs (October 2019, 15), *Background Note/Study on The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual ‘grand finale’ between Kosovo and Serbia, supra* 19.

²² ‘[...] the concept of human dignity, which informs the human rights provisions of the [UN] Charter and of the Universal Declaration (“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”) includes peoples entitlement to the respect of the cultural heritage that forms an integral part of their

That was precisely the purpose of creating non-derogable norms (by the authorities of the Republic of Kosovo in compliance with the international commitments taken at the moment of the Unilateral Declaration of Independence) of supra-constitutional character establishing the rights and privileges of the SOC.

Hence, we can concur with the conclusion, which can be applied in the present case, that

‘This new form of protection entails that, today, States are bound to tolerate scrutiny and intervention, especially by competent international organizations, when they wilfully engage in, or intentionally fail to prevent, the destruction of, or serious damage to, cultural heritage of significant value for humanity. While this

identity, history and civilization. Destruction or desecration of symbolic objects and sites that are essential to the enactment of a people’s culture (be it a library, a place of worship, a sacred site for indigenous peoples) is a violation of their collective dignity no less than a violation of their personal dignity [...] the exponential growth of international cultural property law in the past fifty years bears witness to the emergence of a new principle according to which parts of cultural heritage of international relevance are to be protected as the common heritage of humanity. This principle is valid both in the event of armed conflict and in peacetime [...] In peacetime, the 1972 World Heritage Convention, whose parties are now numbering 172, confirms the same principle with respect to cultural and natural heritage as an outstanding universal value and requires that the ‘State Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.’ [...] the relevance of this treaty practice for the present discussion is further proven by the fact that cultural rights of individuals, groups and of humanity as a whole are guaranteed not only in inter-state relations, as in the case of international conflicts, but also in relation to purely domestic situations where the issue of the protection of cultural heritage arises within the territory of the State [...] International standards on the protection of cultural heritage of any people may attract State responsibility [...]’ (Francioni 2004, 1212 – 1215). The author mentions that : ‘The principle of State responsibility for intentional destruction of cultural heritage of importance to humanity is included in paragraph VI of the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, *supra* note 20, which reads: “[a] State that intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization, bears the responsibility for such destruction, to the extent provided for by international law.” International responsibility for violations of the rules on the protection of cultural heritage has also been spelled out in Article 38 of the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event Of Armed Conflict, Mar. 26, 1999, available at <http://www.unesco.org/culture/laws/hague/htmljeng/protocol2.shtml> (hereinafter Second Protocol) which includes “the duty to provide reparation.” Article 31 of the Second Protocol provides also that the Parties undertake to act, jointly through the Committee (the treaty body established to oversee the implementation of the Protocol), or individually, in cooperation with UNESCO and the United Nations, and in conformity with the Charter of the United Nations. See *id.* at art. 31. Thus, Article 31 implies the possibility of enforcing State responsibility through sanctions.’ (Francioni 2004, 1215).

conclusion leaves open the question of what is the threshold of the “value” of the item of cultural heritage in order for it to reach the level of common concern for humanity, it is clear that the increasing number of lists, registers and inventories established and maintained by competent international organizations, notably UNESCO, are capable of providing objective parameters of evaluation and a prima facie certification of the international significance of a given item of cultural heritage. In this sense, culture as the common patrimony of humankind becomes an important tool to counterbalance sovereignty, understood as the complete and undisturbed dominion over a territorial space, and to foreclose the objection of “domestic jurisdiction” so often invoked to preserve the power monopoly of the sovereign State’. (Francioni 2004, 1220)

However, the Republic of Kosovo is not part of UNESCO and of several other international mechanisms for the protection of human rights, due to its non-recognition by a number of countries in the world and, hence, its impossibility to participate in several multilateral treaties which are entered by non-recognizing states.

The Republic of Serbia, conversely, does not have such limitations, and it indeed participates to UNESCO and to the works of the World Heritage Committee which keeps requesting updated reports on the state of conservation of the Serbian built-heritage sites in the territory of Kosovo²³, but for which the Republic of Serbia keeps maintaining its international responsibility before UNESCO.

Considering the above, it is logical and natural to presume an exclusive role of Serbian authorities in the preservation of the Serbian religious built heritage in Kosovo, with regards to issues linked to the international responsibility and accountability before UN sponsored bodies and before the international community as traditionally understood.

The supra-constitutional natures of the rights and privileges of the SOC in the internal legal order of the Republic of Kosovo confirms this position, although the relevant authorities of the Republic of Kosovo have a still long

²³ See, e.g., *United Nations Scientific, Cultural and Organization Convention Concerning the Protection of the World Cultural and World Heritage*, World Heritage Committee, Forty-third session, Baku, Republic of Azerbaijan (30 June - 10 July 2019), Item 7A of the Provisional Agenda: State of conservation of the properties inscribed on the List of World Heritage in Danger WCH/19/43.COM/7A.Add, 7 June 2019, p. 87, where the World Heritage Committee: ‘[...] Requests the submission, in cooperation with UNMIK, to the World Heritage Centre, by 1 February 2020, of an updated report on the state of conservation of the property, for examination by the World Heritage Committee at its 44th session in 2020; [and] Decides to retain the Medieval Monuments in Kosovo on the List of World Heritage in Danger, and to continue applying the Reinforced monitoring mechanism until the 44th session of the World Heritage Committee in 2020.’

way ahead before the full implementation of those rights and privileges. It is well-known to the international community the non-compliance of Kosovo authorities with a decision taken on 20 May 2016 by the Constitutional Court of Kosovo which considered, as a finally adjudicated, a land issue in favor of the SOC in the Decani area²⁴. Their non-compliance with a finally adjudicated decision not only undermines adherence to the rule of law, but are a chance that the authorities of the Republic of Kosovo have missed to see recognized their sovereignty by the authorities of the Republic of Serbia. The fact that the Serbian authorities keep mentioning the decision taken by the Constitutional Court of the Republic of Kosovo – as not complied with by Kosovo institutions - in their international reports to UNESCO is nothing but an acknowledgment of the authority of the highest judicial body of the

²⁴ The case was correctly described as follows:

‘[...] Probably the most pressing (and most depressing) issue related to the SOC is the Decani land case, a matter which, by the fact that it concerns the “territorial” integrity and sustainability of the most essential cultural-heritage monument in Kosovo, the Visoki Decani monastery.

38. The case concerns two land parcels of a total of 23 hectares of the land. According to the SOC, they are part of the larger area owned by the monastery in the past and confiscated by Communist authorities in 1946. In 1997, as part of a broader restitution effort, the Government of Serbia (GoS) returned those two parcels to the monastery. One of them is adjacent to land that had remained in the ownership of the monastery in Communist times and is part of the arable land used by the monastery for its sustenance. The other is on top of a small hill across the road passing in front of the monastery. The parcels in question had been used during the Communist times by two socially owned enterprises (SOE), which at the time of restitution, in 1997, were defunct.

39. Following the Kosovo war, the situation changed and the two defunct SOEs (*Socially Owned Enterprises – n.o.a.*), were also revitalized on paper to regain legitimacy over the ownership of the land. After the intervention by UNMIK, the case sent to court.

40. After more than ten years of litigation, the Special Chamber of the Supreme Court (SCSC) of Kosovo, which took over the case in 2008, finally decided in favor of the monastery on 27.12.2012. Following appeals by entities which the Court had already determined were not legally parties to the dispute, the Appellate Panel of the SCSC, on 09.07.2015, that the appeals were grounded, and the judgment in favor of the monastery set aside; it furthermore decided that the SCSC had no jurisdiction to adjudicate the claim, and the claim was sent back for retrial with the Basic Court in Peja.’

41. The SOC turned to the Constitutional Court of Kosovo, under art. 113.7 of the Constitution and the Court decided that the 12.07.2015 decisions of the Appellate Panel constituted ‘a violation of Applicant’s right to a fair and impartial hearing as protected by Article 31, paragraph 2, of the Constitution in conjunction with Article 6, paragraph 1, of the ECHR’ and were therefore “null and void”, and the decisions of 27.12.2012 (the ones in favor of the monastery) were “final and binding, and as such [...] *res judicata*” (note that throughout the 15-year litigation the courts issued double decisions, one for each of the two parcels in dispute). This decision, issued on 20 May 2016, under Ref. No.: AGJ943/16.’ Research Institute of Development and European Affairs (October 2019, 15-16) *The issue of Serbian Cultural Heritage in Kosovo in the context of an eventual ‘grand finale’ between Kosovo and Serbia.*

Republic of Kosovo in a crucial matter that relates to the SOC's privileges and rights in Kosovo²⁵.

It is true that that the exercise of rights, privileges and immunities by the SOC should be carried out according to '[...] duties and responsibilities to act in accordance with Kosovo law [...]'²⁶; nevertheless, Kosovo law should preserve those SOC's prerogatives that are the core for the protection of the Serbian-built heritage in Kosovo and that are needed as an inevitable tool for conflict prevention in the entire area, besides being the instrument to measure the adherence of the Republic of Kosovo to rule of law principles.

Conclusions

The rights and privileges recognized by the Constitution of the Republic of Kosovo through its referral to the provisions of the ANNEX V of the so-called Comprehensive Proposal for the Kosovo Status Settlement create a supra-constitutional system of protection in the legal system of the Republic. The beneficiary of this system is the Serbian Orthodox Church in Kosovo, as the representative of the faith of the largest numerical minority in the territory.

Under this perspective, the system created by the ANNEX V and acknowledged by the Constitution is of fundamental importance for the protection of the minority rights in the territory of the Republic of Kosovo; it is the paradigm to which all local authorities should comply with for a necessary adherence to the principle of rule of law – established at constitutional level – and for the successful implementation of any initiative in the field of the dialogue and conflict prevention.

Although there already exist documents emanating by Kosovo authorities at central level which embody this perspective, there are nevertheless situations – at local level – far from being optimal. Despite of the rather complicate Kosovo legal framework in the post-independence era - with international

²⁵ '[...] A telling example of the mistreatment of Serbian cultural and religious heritage in the Province is the rejection of the Dečani mayor to fulfil the decision of Constitutional Court from 2016 and return more than 24 hectares (59 acres) of land in the possession of the Dečani monastery [...]' (Republic of Serbia Institute for the Protection of Cultural Monuments 2020, 11), *Report on the state of conservation of Medieval Monuments in Kosovo (Serbia) Inscribed on the world heritage list in danger - Medieval monuments in Kosovo, Serbia – The Dečani Monastery, The Patriarchate of Peć Monastery, The Church of the Holy Virgin of Ljeviša, The Gračanica Monastery – Belgrade, January 2020*, retrieved from <https://whc.unesco.org/document/180875> (accessed on 22/04/2021). Despite of the political tone, the truth remains about the need to comply with a decision taken by the highest judicial court of the Republic of Kosovo as a mean to protect the SOC's privileges and rights.

²⁶ ANNEX V of the Comprehensive Status Proposal, Art. 1.1.

law principles entrenched, intertwined and sometimes conflicting with the reality on the grounds which is based on the principle of effective exercise of sovereignty - the commitments grounding the 2008 Declaration of Independence and reproduced by the content of the Constitution draw an indelible line which can only push the Republic of Kosovo towards the future; a future which can be bright only if all authorities in the territory of the Republic and all international stakeholders understand the strict link between SOC's rights and privileges, protection of minority rights and of religious freedom, preservation of Serbian-built cultural heritage, and conflict prevention.

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