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**The Birth of States in International Law,
Case Study: The Dissolution of Yugoslavia –Kosovo**

Master's Dissertation in International Affairs and Diplomacy

By

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Under the supervision of

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To

My Family,

My Friends,

My Nation,

And all those that believe that freedom is the true end

“Sleeping Nations either die or wake up as slaves” – Atatürk

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Outline

Abstract:

This dissertation analyzes the circumstances and the fate of Kosovo's unilateral declaration of independence on the 17th of February 2008, which was backed by the U.S.A and the majority of the EU member states, against the will of both Serbia (Parent State), Russia and China, looking at the problem of state's secession in international relations. It will be an experimental case for the assertion of the relationship between Politics (International Affairs and Diplomatic Relations) versus International Law in the birth of a new state.

The first part shall define states in International Law, exposing all aspects of this issue taking into consideration both the declaratory and constitutive theories, thus making a case for the unique significance of the issue in the case of Kosovo. Next, we shall emphasize on the succession of states in both International Law and International Affairs, whether it being a legal or a political aspect, trying to answer the questions of states secession and birth, asking the related questions on the right to secession in International Law, and the right of self-determination. In the second part we will emphasize more on the dissolution of Yugoslavia and the birth of Kosovo as a state. In the concluding chapter, we try to answer the ultimatum question of whether Kosovo is a state by virtue of International Law, and what precedence does it provide for similar cases worldwide.

List of Abbreviations

Anti-Fascist Council for the National Liberation of Yugoslavia (AVNOJ)

Democratic Federative Yugoslavia (DFY)

Democratic League of Kosovo (LDK)

Democratic Party of Kosovo (PDK)

European Commission (EC)

European Economic Community (EEC)

European Union (EU)

Federal Republic of Yugoslavia (FRY)

International Civilian Representative for Kosovo (ICR)

Kosovo Liberation Army (KLA), known as Ushtria Çlirimtare e Kosovës(UCK) in Albanian.

Kosovo Verification Mission (KVM)

General Assembly (GA)

League of Communists of Yugoslavia (LCY)

Organization for Security and Co-operation in Europe (OSCE)

Provisional Institutions of Self-Government in Kosovo (PISG)

Security Council (SC)

Self-determination Movement (LVV)

Socialist Former Republic of Yugoslavia (SFRY)

SR (Soviet Republic)

The European Union Rule of Law Mission in Kosovo (EULEX)

The International Criminal Tribunal for the Former Yugoslavia (ICTY)

The Kingdom of Serbs, Croats and Slovenes (The Kingdom of Yugoslavia)

The Republic of Kosovo (Kosovo)

The Republic of Serbia (Serbia)

The United Nations Interim Administration Mission in Kosovo (UNMIK)

The Socialist Federal Republic of Yugoslavia (SFRY), or simply Yugoslavia

Unilateral Declaration of Independence (UDI)

Union of Soviet Socialist Republics (USSR)

United Nations (UN)

Latin names and abbreviations:

amicus curiae: friend of the court who assists the court by furnishing information or advice regarding questions of law or fact

de facto: practices that exist in reality

de jure: practices that are legally recognized, regardless of whether the practice exists in reality

erga omnes: towards all/everyone

ex injuria: from illegal acts

ex injuria jus non oritur: illegal acts do not create law

in statu nascendi: in a state of being born

inter alia: among other things

jus cogens: peremptory norm

prima facie: at first face

quid pro quo: a favor for a favor

sui generis: of its own kind

suprema potestas: supreme power or authority

uti possidetis juris: a principle of customary international law that serves to preserve the boundaries of colonies emerging as States

uti possidetis: may you continue to possess such as you do possess, a principle in international law that territory and other property remains with its possessor at the end of a conflict, unless otherwise provided for by treaty.

Introduction

The Kosovo problem represents a formidable occasion to examine some basic tenets of contemporary and modern International Law - whether they are based on written texts or are customary - such as: the right to humanitarian intervention, the right to self-determination (both internal and external), and the right of recognition.

The issues that arose in the Balkans after the collapse of the Soviet Union were not unique to the Balkans, as states were being born in the 1990s. When not settled in advance, territorial partitioning, especially when attached to ethnicity and/or other identities (as religion), usually leads to conflict. The Balkans is a great example of this matter, and a place to learn lessons that could explain much in regions such as the Middle East. It is undeniable that ethnic nationalism still plagues many Balkan countries even in 2021, as well as other places. Leaders of several states in the Balkans still restrict the press and abuse or even capture the state for personal gain.

Things have changed a lot after the removal of Milošević¹ from power in Serbia, as the situation is more peaceful in the Balkans now compared to the period of his rule. In the early 1990s it was dangerous to drive from one village to another in Bosnia, a country with three different ethnicities, two religions, and three sects. Today you can drive safely, from Zagreb (Croatia) through Sarajevo (Bosnia) to Podgorica (Montenegro), Pristina (Kosovo), and Skopje (Macedonia), then back through Belgrade (Serbia), a matter which was last possible during the rule of Tito².

¹ Slobodan Milošević (1941-2006), was born on August 29th, 1941, in Požarevac - Serbia. He was found dead on March 11th, 2006, in The Hague, Netherlands. He was a politician and an administrator, who served as Serbia's party leader and President (1989-97), pursuing Serbian nationalist policies that contributed to the breakup of the socialist Yugoslav federation. From 1997 to 2000 he served as President of the Federal Republic of Yugoslavia, in 2000 Milošević lost the presidential elections and was later arrested in 2001 by the Yugoslav authorities, to be turned over to the ICTY (The International Criminal Tribunal for the former Yugoslavia) on charges of genocide, crimes against humanity, and war crimes.

² Josip Broz Tito (1892-1980), whose original name was Josip Broz, was born on May 7th, 1892, in

Upon the death of Tito on May 4th 1980, Yugoslavia became a weak state, lacking legitimacy by its own people, having an incompetent economic system based on socialism, and home to leaders of its multiple ethnic and religious groups that were developing identities, that had separate “national” cultural and historical narratives that competed with the “Yugoslav identity”.

The fall of the Berlin Wall, which signaled the end of the Soviet Union, subverted the highly centralized authority of the Communist Party that was still holding Yugoslavia together. The regnant “Socialist” ideology in Yugoslavia was both cosmopolitan and multiethnic, yet it was still autocratic. Internal antagonism to that “ideology” was largely organized along ethnic lines, since the late 1960s. Each of what Yugoslavs called the “national” (ethnic) narratives included oppression by “the others”: Serbs by Albanians in Kosovo; Croats, Slovenes, and both Albanian and Bosnian Muslims, by the Serbian political, linguistic, and cultural hegemony throughout Yugoslavia; and Albanians being excluded and marginalized both politically (both in representation and public service) and culturally in what was known then as the autonomous province of Kosovo, Republic of Serbia, and Republic of Macedonia.

Trying to go through all the crimes committed against either ethnic Albanians in Yugoslavia is not our goal in this dissertation, nor those committed on other ethnicities in Yugoslavia. This doesn’t exclude the reality that the Balkans was a region where war crimes were committed, and the sufferings continue till our present time.

Kumrovec, -Croatia. He was a Yugoslav revolutionary and statesman, serving as a secretary-general (later President) of the Communist Party (League of Communists) of Yugoslavia (1939–80), supreme commander of the Yugoslav Partisans (1941–45) and the Yugoslav People’s Army (1945–80), and marshal (1943–80), premier (1945–53), and President (1953–80) of Yugoslavia. He was the chief architect of the “second Yugoslavia,” a socialist federation that lasted from World War II until its dissolution in 1991. He was known to be the first Communist leader in power to defy Soviet hegemony, after which he promoted the policy of nonalignment between the two hostile blocs in the Cold War.

The International Criminal Tribunal for the former Yugoslavia (ICTY)³ prosecution alleged in its indictment against Milošević, the former President of the Federal Republic of Yugoslavia (FRY), that he engineered a “ferocious campaign of terror and violence in which about 800,000 Albanians from Kosovo were forcibly expelled from their homes between mid-March and June 1999. According to the Prosecution, within the process of those expulsions, forces under Milošević’s command murdered many Kosovo Albanians, tortured, physically and psychologically abused hundreds more, and sexually assaulted many Albanian women. In addition, the Prosecution alleged that these forces deliberately destroyed cultural and religious sites, as well as destroyed and looted Kosovo Albanian property.”⁴

Yet, a court and a prosecutor’s office were established following a 2011 report by the Council of Europe⁵, which is a human rights body. It included proclaims that Kosovo

³United Nations | International Residual Mechanism for Criminal Tribunals, “*The Tribunal – Establishment*”, <https://www.icty.org/en/about/tribunal/establishment#:~:text=On%2025%20May%201993%2C%20the,Yugoslavia%2C%20known%20as%20the%20ICTY.,> (Accessed on 25/5/2021).

On May 25th, 1993, the UN Security Council passed the resolution 827 formally establishing the International Criminal Tribunal for the former Yugoslavia, known as the ICTY. This resolution contained the Statute of the ICTY which determined the Tribunal’s jurisdiction and organizational structure, as well as the criminal procedure in general terms. This was the first war crimes court established by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. This date marked the beginning of the end of impunity for war crimes in the former Yugoslavia.

⁴ United Nations | International Residual Mechanism for Criminal Tribunals, “*Prosecution Case – Kosovo*”, <https://www.icty.org/en/content/prosecution-case-kosovo>, (Accessed on 25/5/2021).

⁵ Council of Europe - Parliamentary Assembly, “Inhuman treatment of people and illicit trafficking in human organs in Kosovo”, dated 07/January /2011, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12608&lang=en>, (Accessed on 25/5/2021).

Liberation Army (KLA) fighters trafficked human organs taken from prisoners and killed Serbs and fellow ethnic Albanians. The special court is based in The Hague, and it is investigating war crimes and crimes against humanity linked to Kosovo's 1998-1999 war for independence. Former Kosovar president Hashim Thaçi⁶ was the highest ranking official in Kosovo to be arrested and is still awaiting trial.

The importance of this dissertation topic is found in the non-ending negotiations between Serbia and Kosovo which are still happening as this very sentence is being written. As the path to normalization between the two sides seems to be far-fetched, although several steps have been taken, as Pristina, will always aim in its negotiation at winning the Serbs' acceptance of the Ahtisaari plan⁷ that determines Kosovo's internal structure and statehood. While for Belgrade, the concerns include the revision or improvement of agreements that it considers 'flawed' or 'unacceptable' as the Ahtisaari plan. The gulf between the two expanded and narrowed on several occasions during the past years, which had minimal direct contact ample mistrust and fractious domestic politics until a deal was signed between both sides, known as 'Kosovo and Serbia economic normalization agreements (2020)' or the Washington Agreement.⁸

The quest for normalization between both sides is becoming a must, as they both seek to enter the EU as full members, with the gap between them still so wide, as Brussels still demands full normalization for their membership. For Kosovo the final goal is quite

⁶ Hashim Thaçi (1968-), born on April 24th, 1968, in Burojë, Kosovo, was Kosovar rebel leader (mainly in the KLA) and politician who served several formal positions in Kosovo, that included him serving as the prime minister (2008–14) and president (2016–20) of Kosovo. Just weeks after assuming the premiership, he oversaw Kosovo's declaration of independence from Serbia.

⁷ In April 2007, UN Special Envoy Martti Ahtisaari submitted to the UN Security Council his Comprehensive Proposal for the Kosovo Status Settlement (the "Ahtisaari Plan"). The Ahtisaari Plan includes a main text with 15 articles that set forth its general principles, as well as 12 annexes that elaborate upon them. The Ahtisaari Plan is primarily focused on protecting the rights, identity and culture of Kosovo's non-Albanian communities, including establishing a framework for their active participation in public life. Special Envoy Ahtisaari also proposed that Kosovo becomes independent and subject to a period of international supervision.

⁸ Signed on September 4th, 2020, in the White House (Washington, USA), they are a pair of documents in which Kosovo and Serbia agreed to facilitate economic normalization among themselves.

clear – it is the recognition by Serbia of its statehood – while for Serbia, normalization of relations is interpreted in ‘economic terms’ as an ‘economic normalization’ and there is only limited space to go beyond those terms. Furthermore, Serbia stresses that the process must remain within the framework defined by the Serbian Constitution- considering Kosovo to be an integral part of the Serbian territory, and United Nations Security Council Resolution 1244.

Statehood in international affairs is both political and legal, as political interest plays a major role in a state obtaining statehood in the 21st century, especially when International Law is not conclusive on the issue, as is the case of Kosovo, where the ICJ advisory opinion was so narrowed to conclude that the second declaration of independence by Kosovo (2008) did not violate International Law. The court refused to declare whether Kosovo was a state, or if declaring independence was allowed by International Law, which gave space for interpretations by statesmen, and academics alike. Is Kosovo a State? What is the basis to consider Kosovo as state? Is it based on International Law or political (recognition by other states)? Kosovo declared its independence in 2008, yet never managed to be a UN member state due to Russia opposing that in the Security Council, with over 100 UN states recognizing it, is Kosovo considered as a state in International Law?

Taking into consideration the Montevideo Convention, this thesis plans to prove whether Kosovo is a state according to International Law, using Inductive reasoning as a methodology, going through different kinds of resources. Inductive reasoning takes us to consider similar cases in international affairs, where several territories sought independence, as Bangladesh or Eritrea or Quebec, some gained independence while others remained within their parent state (as Quebec). With arguments in International Law about both internal and external self-determination, cases in which it is allowed. Furthermore, the criterion for statehood have changed since the Montevideo convention, which is the basis of

the declaratory theory, as exists in International Law those that believe in another theory which is the constitutive theory. Both theories are considered a method to achieve statehood in International Law, yet anti-statehood criterion also came into existence which was clear in the case of the Unilateral Declaration of Independence (UDI) by Southern Rhodesia⁹ which was deemed illegal due to the UN Security Council Resolution 216, that condemned the UDI as it was “made by a racist minority”¹⁰ and “to call upon all States not to recognize this illegal racist minority régime in Southern Rhodesia and to refrain from rendering any assistance to this illegal régime”¹¹.

This helped furthermore clarify that states do not exist if they just fulfil the Montevideo convention criteria, as several exceptions also exist if this is the only method to be recognized as a state, as is the case of the Holy See (Vatican, as a city state), or is the case of The Order of Malta¹² which has bilateral relations with 110 states whether they consider it as a state or an entity (including Lebanon), yet has no territory or people of its own.¹³ This furthermore more proves that the constitutive theory is still valid till this day, as ‘Taiwan’ fulfils the criterion of the declaratory theory yet is not a state.

While becoming a state is simple if the parent state agrees on the declaration of independence of the newly born state, as was the case of Bangladesh in 1971 -which was previously known as ‘East Pakistan’- after Pakistan recognized Bangladesh as a state in 1974. Serbia, until August 2021 still refuses to recognize Kosovo as a state, although over a hundred states recognize Kosovo as a state, and have diplomatic ties with Pristina, including

⁹ The UDI was adopted by the Cabinet of Rhodesia on 11/11/1965, announcing that Rhodesia, which was a British territory in southern Africa after having governed itself since 1923, regarded itself as an independent sovereign state.

¹⁰ Security Council resolution 216 (1965), “Calling on all States not to recognize the minority régime in Southern Rhodesia”, para 1.

¹¹ *Ibid*, para 2.

¹² The Order of Malta is an entity which established its own states on Rhodes (1310–1522) and Malta (1530–1798). Since 1834, it has been located in Rome. Today, the Order is universally regarded as a subject of international law. The Order exercises right of legation and *ius contrahendi* (by contracts/treaties with other states that recognize it).

¹³ “Bilateral Relations”, *Sovereign Military Hospitaller Order Of Saint John Of Jerusalem of Rhodes*, <https://www.orderofmalta.int/diplomatic-activities/bilateral-relations/>, (Accessed on 25/5/2021).

the United States. Furthermore, the EU demands normalization between both states in the Western Balkans, before being admitted into the EU or even having a chance.

Between March and June 1999, a war erupted in Kosovo as a result of Yugoslavia's disintegration. However, this war was different: for the first time in her history, NATO waged a war against a sovereign state, the Federal Republic of Yugoslavia, in order to stop the ethnic cleansing that was taking place in the autonomous province of Kosovo. The war did not resolve the conflict: a UN interim administration was put in place, and NATO deployed a security force (KFOR). The interim administration was to be followed by a final agreement between the parties (Kosovo-Albanians and Kosovo-Serbs) regarding the political status of the territory: independence or autonomy inside Yugoslavia (today's Republic of Serbia). However, such an agreement was not achieved and the International Community is divided upon the unilateral declaration of independence by the Kosovar Albanians.

Systema Internationale, as we know it today, was born after the Peace of Westphalia in 1648. This system is composed of states; whose main characteristic is their exclusive 'sovereignty' on a territory. No one sole theory exists for Statehood in International Law, as both theories remain valid in the 21st century, as no international legislative body exists, stating what makes a territory a state and what makes it not, that is why in this dissertation we shall explain whether Kosovo is a state in International Law, by examining the United Nations General Assembly or Security Council resolutions, and/or Court/Tribunals judgements whether domestic or international, with our emphasis on the ICJ Advisory opinion on Kosovo's declaration of independence. Being a dissertation in International Affairs and Diplomacy, the 'normalization' between both sides will be included as well as domestic politics in Kosovo, which still seeks to be part of both the EU and UN.

The importance of this dissertation exists in helping to provide a solid case for newly born states and occupied states whether they are states in International Law, not just politically in the 21st century, with the shift in global powers and the uprising of populism that might lead to what is being defined as a post globalization world, in which several new entities might come into existence in the global political arena, thus uprising the question of statehood, which we aim to give an answer in this dissertation.

This dissertation shall be divided into two parts, each of them includes two chapters, trying to find an answer to Kosovo's unilateral declared independence in 2008, yet never managed to be a UN member state due to Russia opposing that in the Security Council, with over 100 UN states recognizing it, is Kosovo considered as a state in International Law? Using inductive reasoning, in order to help provide what a state is in the 21st century with several entities trying to achieve statehood.

PART I: States Under International Law

Chapter I: Statehood according to International Law

States have existed throughout known human history, as old as Empires in Asia (Mesopotamia, almost 3000 B.C) or Africa (Pharaohs). Yet, the definition of a State has changed from ancient to contemporary times, as sovereignty has shifted from the Monarch to the State. There exist two theories in contemporary International Law that define how statehood is achieved, because if not for these criterion, then the number of states would be almost indefinite.

1. Statehood in International Law

Being the most acceptable theory of state recognition, and according to the 1933 Montevideo Convention¹⁴, an entity can achieve statehood if it fulfills four criteria: it has a defined territory, a permanent population, a government, and therefore the capacity to enter into international relations. Furthermore, with time scholars have added additional criteria for statehood, such as: independence, sovereignty, permanence, willingness and ability to observe International Law, a certain degree/level of civilization, and even recognition. Later on, we shall discuss the negative criteria that prevent an entity from achieving statehood, if it any of those criteria existed (as was the cases of Sothern Rhodesia, Turkish Republic of Northern Cyprus, Abkhazia, Southern Ossetia, and others).

Discussing subjective statehood cannot be done within the context of the international legal system without also addressing one of the principal reasons why *de jure* statehood is usually refused: *ex injuria non jus oritur*, the principle that a legal right cannot arise from an unlawful act. The reasons why an entity might not mature on the international plane are varied. Some decisions are clearly political, and there's a well-entrenched political

¹⁴ “*Treaties and international Engagements registered with the Secretariat of the League of Nations*”, <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20165/v165.pdf>. (Accessed on 7/1/2021).

resistance to new states already, but other refusals are necessitated by the obligations of non-interference in domestic affairs or *ex injuria*. When a state claims territory, or its personality on the international plane, as a result of the unlawful use of force or other violation of international law, especially *jus cogens* norms such as self-determination and apartheid, other states have an obligation not to recognize the new state or situation. This conclusion is compulsory because under the principle of *ex injuria jus non oritur* the entity's claim cannot exist in law.

This conclusion is usually operationalized as a UN decision, though such a decision is not required since it derives not from the UN Charter but from general international law. The representative examples of *ex injuria* are the Turkish Republic of Northern Cyprus (TRNC), regarding the unlawful use of force, and the apartheid "Bantustans," regarding the principle of self-determination. 29 In both cases, one is left with a de facto entity that may be operating effectively as a state with nationals and a coherent legal system, yet is excluded by law from the international legal system. Still, *ex injuria* is not itself a *jus cogens* rule and exceptions exist.

1.1 Constitutive Theory

The 'society of nations' back then could be traced to 1859, when the British Law Officers indicated that International Law "as it has been hitherto recognized and now subsists by the common consent of the Christian nations"¹⁵, this society included European States between whom the International Law evolved from the fifteenth century onwards, and other states that were accepted explicitly or indirectly by the original members into the society of nations as was the case of the United States of America and the Ottoman Empire.

¹⁵ John R. Crawford, *The creation of states in international law*, 2nd edition, Oxford: University of Oxford Press, 2007, p.47.

The constitutive theory is based on the fact that the recognition of a new entity as a State creates or constitutes the State.¹⁶ Therefore, recognition becomes an additional requirement of statehood with others included in the declaratory theory, but with it being the limiting step for a state to come into life. One main objection exists to the constitutive theory, is that if a claimant State is recognized by State A and not by State B, this makes it both a State and a non-State in the same time effectively. North Korea was for many years recognized by some fifty states including the Soviet Union and China, yet it remained unrecognized by the U.S.A, the U.K and many others. A question arises here according to the constitutive theory, was North Korea a State? Or was it only a State for those that recognized it? This leaves so much uncertainty and vagueness, which is undesirable.

Advocates of the constitutive theory contend that objective knowledge cannot exist without a subject to know it, even adding that treating statehood as a factual question is inappropriate because statehood is a legal, not a natural, phenomenon. By adding recognition to the factual requirements for statehood, constitutive theory attempts to remedy this 'flaw' in the declaratory theory. Placing considerable significance on the satisfaction of the factual criteria for statehood, this is done by the recognition of the new state by existing states, as recognition can only happen after the entity possess a permanent population, a defined territory, a government, and therefore the capacity to enter into international relation with other states.

The constitutive theory grows out of legal positivism, which emphasizes the consensual nature of international law, and places great importance on the consent of sovereign states to their legal obligations. Thus, the consent of other states is expressed

¹⁶ Hans Kelsen, "Recognition in International Law", *American Journal of International Law*, 35(4), 1941, p.605.

through their recognition of the new state, which must be obtained as a prerequisite to statehood in this theory.

1.2 Declaratory Theory

The declaratory theory which is based on the Montevideo convention, is based on an entity meeting the requirements of statehood to become a State, and that recognition by other States is merely acknowledging “as a fact something that has hitherto been uncertain”.¹⁷ Article I of the Montevideo Convention on the Rights and Duties of States Stipulates: ‘The State as a person of International Law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States.’

This brief enumeration is frequently cited that evolved to become a rule of customary International Law, yet it is no more than a basis for further investigation, as not all the conditions are a must and further criteria must be employed to produce a working definition. To explain this furthermore, both Croatia and Bosnia-Herzegovina were recognized as independent states by European Community member states and admitted to membership of the United Nations, and this happened during a period of time when both states were having civil wars due to the dissolution of Yugoslavia, as their governments were facing non-governmental forces controlling substantial areas of the territories in question.

(a) A permanent population

The Convention of Montevideo refers to 'a permanent population', this criterion can only be used in parallel with that of the territory, and connotes a stable community. Evidentially this is important, as it will be difficult to determine the existence of a state in the absence of the physical basis for an organized community.

¹⁷ James L. Brierly & Humphrey M. Waldock, *The law of nations: An introduction to the international law*, 1st edition, New York: Oxford University Press, 1974, p.139.

This case is not applicable in the case of the Holy See¹⁸, which is a recognized state, thus questioning this criterion being a must.

(b) A defined territory

A reasonably stable political community must exist, and it must be in control of a certain area. It is clear that the existence of fully defined borders is not essential and that the effective establishment of a political community is what counts. In 1913, despite a lack of settled borders, Albania was recognized by a number of states (explained further on), and Israel¹⁹ was admitted to the UN despite disputes over its borders, while Palestine is a non-member observer state²⁰ in the UN, thus leading to further questioning of this criterion. The Sovereign Military Order of Malta has an observer status²¹ in the UN as an Intergovernmental and Other organizations, while not having any defined territory and having diplomatic relations with 110 countries.

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There is no fixed lower limit of either population or territory, and some recognized states have minimal amounts of both, as the Holy See which is a permanent observer state in the UN. The admission of 'micro-states' by the United Nations in the 1990s, in particular the European microstates of Liechtenstein, San Marino, Monaco and Andorra, proves that there is no lower limit to be a state, and the principle of universality of membership of the United Nations prevailed. In the

¹⁸ *General Assembly Resolution, A/RES/58/314*, “Participation of the Holy See in the work of the United Nations”, (16 July 2004).

¹⁹ *General Assembly Resolution, A/RES/273 (III)*, “Admission of Israel to membership in the United Nations”, (11 May 1949).

²⁰ *General Assembly Resolution, A/RES/67/19*, “Status of Palestine in the United Nations”, (29 November 2012).

²¹ *General Assembly Resolution, A/RES/48/265*, “Observer status for the Sovereign Military Order of Malta in the General Assembly.”, (30 August 1994).

²² Bilateral Relations of Sovereign Order of Malta, <https://www.orderofmalta.int/diplomatic-activities/bilateral-relations/>. (Accessed on 10/1/2021).

case of Andorra, this was done after major reforms that abolished doubts about its independence from both France and Spain.

(c) Government

In today's world a state definition can be hypothesized as a stable political community supporting a legal order in a given area. The best proof of a stable political community is the presence of functional government with centralized administrative and legislative organs. Yet effective government has been either unnecessary or insufficient in some cases to support statehood, as some states existed even before their governments were well organized, such as Poland in 1919, and both Burundi and Rwanda, which were admitted to the UN in 1962.

Several International Law academics distinguish states from other legal orders through two conditions which they consider to be rather quantitative than qualitative. First, the state has a degree of centralization of its organs not found elsewhere. Second, the state is the sole executive and legislative authority in a certain geographic area, which necessitates independence from other state legal orders, and any interference by such legal orders, or by an international agency, must be based on a title of International Law. Thus, the emphasis has been on whether the foreign control over the decision-making of the entity concerned on a wide range of issues and on a continuous and systematic basis.

A question aroused as in whose interest and for what legal purpose is a government considered 'effective?' As opposed to weak or failed governments, after a state has been founded, severe civil strife or breakdown of order due to foreign invasion or natural calamities is not seen to be a threat to its personality.²³ Nor is

²³ Richard Haass, *The world: A brief introduction*, New York: Penguin Press, 2020, p.232.

effective government sufficient, as this leaves other states open to questions of independence and representation. In the enumeration of the Montevideo Convention, the concept of independence is identified as a requirement of capacity to establish relations with other States. Therefore, the decisive criterion of statehood is independence.

(d) Capacity to enter into relations with the other States

This criterion is the most controversial one and is said to be a corollary of a sovereign and independent government, which exercises jurisdiction on the territory of the state. As such, it is a consequence of statehood, not a criterion for it. This criterion is self-fulfilling as non-state entities can not enter into relations with foreign states on the same level as do states. They have the capacity to do so once they become states

Contemporary International Law has additional statehood criteria, which have emerged later on after the Montevideo convention and became part of the declaratory theory criterion. ‘Negative terms’ criteria are defined as follow:

- A state must not emerge as a result of the ‘illegal’ use of force,
- In violation of the right of self-determination and/or in pursuance of racist policies.

1.3 Hybrid Theory

Adherents of the constitutive theory have almost declined to extinction in the 21st century. Some approaches espoused today that are labelled ‘constitutivist’ in truth take elements from both the constitutive and declarative theories. These approaches often begin with an analysis of the evidence – including state practice that conflicts with one or other

traditional theory – rather than with a priori assumptions about international law, such as an assumption that it must be ‘objective’ or must be contractual.

In accordance with an inductive approach generally, they take a less doctrinaire approach to recognition, in that they reject a dichotomy in which recognition yields either everything or else nothing at all. These approaches can be classified into two broad families: those in which recognition and the criteria for statehood both play necessary roles in constituting statehood, and those in which the criteria suffice on their own but, in particular circumstances, recognition may also suffice.

The new approaches which take into consideration elements of both theories, are known as the Hybrid theory, yet no clear criteria exist for it until now. This was due to the fact that neither constitutive nor declaratory theory are widely accepted by states anymore, and a new theory for statehood is being advocated, that merges between the two existing ones.

According to the hybrid theory, a state can exist in fact as a subject of international law as soon as it satisfies the conditions of statehood, but it can only realize its full potential (as a state) only after it has been recognized.

To summarize this chapter, both ‘older’ theories, constitutive and declarative are opposing theories of state recognition. The main difference between them could be summarized into the fact that according to constitutive theory, the existence of a state begins with recognition by at least one other state, while in the declarative theory, recognition by other states is not necessary. While in the hybrid theory, criteria of both theories must be met in order for the entity to become a state and thus a subject of international law.

Comparison in Statehood Theories		
Constitutive Theory	Declaratory Theory	Hybrid Theory
Constitutive theory is a theory that declares that the existence of a state begins with the recognition by at least one other state.	Declarative theory states that a state becomes a 'person' in international law if it has a defined territory, a government, a permanent population, and the capacity to enter into relations with other states.	A state becomes a subject of international law as soon as it satisfies the conditions of statehood, and after it has been recognized.
An entity must gain formal or implied recognition by other states to become a state.	Recognition by other states is not necessary.	Both constitutive and declaratory criteria should be met.
It is a nineteenth-century model of statehood based on the Congress of Vienna in 1815 and the Berlin Congress of 1878.	It is developed in the twentieth century based on the Montevideo Convention of 1933.	It is currently being developed in the 21 st century.
A state becomes an international person through recognition only and exclusively.	States are subject to rights and duties under international law once they meet criteria for statehood.	A state can exist as a subject of international law as soon as it satisfies the conditions of statehood (based on the declaratory theory), but it can only realize its full

		<p>potential (as a state) only after it has been recognized (the constitutive theory.</p>
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2. Recognition of States in International Law

Recognition of states advanced throughout history, yet it should be noted that before the eighteenth century it had no distinct place in the law of nations, this could be attributed to the fact that sovereignty in its origin was within the supreme power (Emperor/King/Prince...) in its own territorial unit, thus it came from within and required no recognition, it was known as *suprema potestas*. Recognition in the middle of the eighteenth century was in the context of recognition of monarchs solely, especially in the case of elective monarchs, in the context of recognizing a government. During the nineteenth century, it was not a matter of importance to International Law how an entity became a State, the focus was on it being recognized by the 'civil society', as *in statu nascendi* (nascent states) were not international persons back then, their rights and duties before they were recognized were not relevant to International Law, as they were a mere matter of fact and not law.

In contemporary customary International Law exists two theories for entities to be recognized as states, they are the declaratory and the constitutive theories, in which "The recognition of a new state has been described as the assurance given to it that it will be permitted to hold its place and rank in the character of an independent political organism in the society of nations."²⁴ The declaratory theory being the most acceptable one, is based on

²⁴ Herbert W. Briggs, "Recognition of States: Some Reflections on Doctrine and Practice", 43(1), *American*

the Montevideo Convention, yet the problem exists in the fact that both theories had exceptions when considering that an entity is a state, which shall be discussed furthermore in each theory.

Thus, this differs between the constructive theory and the declaratory theory, as states in the constructive theory could recognize another entity to be a state or deem otherwise, as that is both a sovereign right and national interest, which was the case in the era of the Sacred Alliance (1815 until about 1830) during which the effects of a declaration of recognition were obviously constitutive²⁵, while the declaratory theory which is based on the Montevideo convention requires an entity to fulfil the above mentioned four criterions, and came into existence almost a hundred years later.

A problem arises, as recent practices demonstrate that entities can meet both sets of statehood criteria (the Montevideo as well as the additional criterion), yet are nevertheless not states. In the case of Southern Rhodesia, it was not a state although it met the Montevideo Convention criteria, yet it was not a state because it would have emerged in breach of the right of self-determination (an additional statehood criterion).²⁶

Another example could be made of Somaliland, as a strong argument could be made that Somaliland meets all the Montevideo criterions, yet it is not a state as a result of the use of force, in accordance with Article 2(4) of the UN Charter, in denial of the right of self-determination or in pursuance of racist policies.

Both statehood criterions, traditional and additional, are not enough to answer whether or not an entity is a state. Even if the criterions are met, the entity in question will not necessarily become a state. The hurdle which the entity needs to overcome is the territorial integrity of its parent state, as in the case of Kosovo. Independence claims made outside of

Journal of International Law, 1949, p.113

²⁵ Peter Hilpold, "The Kosovo Case and International Law: Looking for Applicable Theories", 8(1), *Chinese Journal of International Law*, 2009, p.58

²⁶ Crawford, 2007, *Op. cit.*, p.62.

colonialism are *prima facie* faced with the principle of territorial integrity, which protects their parent states.

Although International Law does not prohibit recognizing an entity which declares its independence unilaterally. Despite the overall perception in contemporary International Law of recognition being a declaratory instead of a constitutive act, it is doctrinally accepted that a state could also be constituted by recognition and collective recognition could have the effect of a collective state creation. It is necessary to refer again to the underlying conflict over the character of recognition.

Recognition in customary International Law could either be unilateral or collective recognition or even collective non-recognition. Unilateral recognition is dominated by two schools of thought: the constitutive and the declaratory.²⁷

2.1 Collective recognition

It was practiced in the 1990's by the European Community (European Union now), as they recognized states as a team, this was the case in the Balkans after the dissolution of Yugoslavia. This was, European State have exercised their individual right of recognition collectively in a manner which doesn't deviate from the traditional practice of recognition. Another form of collective recognition is the admission to the United Nations, as membership to the U.N is limited to state only according to Articles 3 and 4 of the Charter. Article 3 of the Charter states: "The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110."

²⁷ Marcelo G. Kohen, *Secession international law perspectives*, Cambridge University Press, 2012, p.97.

Furthermore, Article 4 of the Charter states:

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations stipulated in the present Charter and, in the judgment of the Organization, and are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will come to effect by a decision of the General Assembly upon the recommendation of the Security Council.²⁸

Once a State is admitted to the United Nations, its membership confirms its existence as a recognized State. All members of the United Nations are believed to be States in International Law and International Affairs, despite the fact that several of them might not receive widespread recognition by individual States, under which they may fail to be recognized as States in accordance with traditional criteria. Thus, many States have achieved statehood by admission to the United Nations, as was the case of Slovenia, Croatia, and Bosnia-Herzegovina in 1992, which confirmed their separation from Yugoslavia, even before finalizing their own status as independent states. This method of recognition co-exists together with the traditional method of unilateral recognition.

2.2 Collective non-recognition

This doctrine of non-recognition was first practiced in the case of the puppet State of Manchukuo, after Japan invaded the Chinese province of Manchuria in 1932. The Secretary of State of the U.S.A Mr. Henry Stimson declared that the U.S would not recognize Manchukuo on the grounds that it had been created in violation of the Pact of Paris 1928, in which States renounced war.²⁹ Later on, the League of Nations called upon

²⁸ United Nations, *Chapter II: Membership (Articles 3-6)*, <https://www.un.org/en/about-us/un-charter/chapter-2>, (Accessed on 24/1/2021).

²⁹ Kohen, 2012, *Op. cit*, p.100

its members not to recognize Manchukuo, after it adopted a resolution “SINO-JAPANESE DISPUTE REPORT ADOPTED ON FEBRUARY 24, 1933, BY THE ASSEMBLY OF THE LEAGUE OF NATIONS”³⁰. Thus, the doctrine of non-recognition, jurisprudentially, was founded on the principle of *ex injuria jus non oritur*. This was in a time where peremptory norms (*jus cogens*) were undeveloped. A violation to the norms of *jus cogens* is illegal, and therefore is considered null and void. This has been the case also in the creation of States, and was confirmed by the International Law Commission in its Draft Articles on the Responsibility of States for Internationally Wrongful Acts of 2001.³¹ The United Nations has prohibited States from recognizing claimant States that were created on the basis of aggression (e.g., the Turkish Republic of Northern Cyprus), systematic racial discrimination and the denial of human rights (e.g., South Africa’s Bantustan States) and the denial of self-determination (e.g., Katanga and Rhodesia), all of which will be explained furthermore later on.

2.3 Theories justifying Kosovo’s Independence

Several theories exist that could be used to justify the Independence of Kosovo as a state, we shall discuss them throughout this part, all of which prove that Kosovo has moved on to be a state, due to its right to secede and that it is a sovereign state, as it built institutions and is engaged in international affairs, theories that justify Kosovo’s independence are built on the right of self-determination.

In the International Covenant on Civil and Political Rights³² and the International

³⁰ “League of Nations Assembly Report on the Sino-Japanese Dispute”, *The American Journal of International Law*, 27(3), 1933, p.4

³¹ “Report of the International Law Commission on the work of its fifty-third session, 23 April - 1 June and 2 July - 10 August 2001”, *Official Records of the General Assembly*, Fifty-sixth session, Supplement No.10, United Nations DOCUMENT A/56/10, (2001), https://legal.un.org/ilc/documentation/english/reports/a_56_10.pdf, (Accessed on 24/1/2021).

³² *General Assembly resolution*, A/RES/2200A (XXI), “International Covenant on Civil and Political Rights”, (1966, December 16).

Covenant on Economic, Social and Cultural Rights³³, Article 1 in both of them starts with “All peoples have the right of self-determination”. The Court in the case of Kosovo, in paragraph 79 stated: “During the second half of the twentieth century, the International Law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation”. The right to self-determination did not exhaust its effects with the completion of the decolonization process, nor can it be claimed that it has a purely domestic implication limiting it with a right to a democratic system and/or to the right of minorities to exist within the state.³⁴ Being entitled to benefit from internal self-determination doesn’t imply that people are deprived from the right of external self-determination. Thus, consequently if a people is deprived of their fundamental ‘internal right’ to self-determination (Which is a jus cogens), that the creation of an independent state may become the only mean of ensuring that their right is achieved.

In UN Resolution 1514 (XV) of December 1960³⁵ stated in Article 1 “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.” Also, in Article 2 “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” *Mutatis mutandis*, applied to this resolution, the same reasoning could be applied to non-colonial peoples whose existence and identity are denied by the state into which they are

³³ “International Covenant on Economic, Social and Cultural Rights”, *OHCHR*. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, (Accessed on 14/12/2020).

³⁴ Alain Pellet, Kosovo - the questions not asked: self-determination, secession, and recognition. In: Milanovic M, Wood M, The law and politics of the Kosovo advisory opinion. Oxford University Press, Oxford, 2015, p.271

³⁵ *General Assembly Resolution, A/Res/1514(XV)*, “Declaration of the granting of independence to colonial countries and peoples”, (1960, December 14).

homogenized.

Earned Sovereignty Theory:

The first of them would be “earned sovereignty”³⁶, which encompasses six elements: three core elements and three optional elements. The core elements are:

- Shared sovereignty, in which both the state and the sub-state entity may both exercise sovereign authority and function over an outlined territory. Even international institutions could in some cases, also exercise sovereign authority and function with or rather than the parent state. In even rarer cases, the international community may exercise shared sovereignty with an internationally recognized state.
- Institutions building, which is applied during the period of shared sovereignty that comes prior to the determination of final status. This element is characterized by the establishment by the sub-state of institutions for self-governing and institutions capable of exercising the increasing sovereign authority and functions, which is done frequently with the assistance of the international community.
- Eventual determination of the final status of the sub-state entity and its relationship to the state, which could be determined by a referendum, or through a negotiated settlement between the state and sub-state entity which is often accompanied with international mediation. The final status of the sub-state is defined by whether it get international recognition as a state, invariable of how the final status is determined.

³⁶ Paul R. Williams & James R. Hooper, “Earned Sovereignty: The Political Dimension”, *Denver Journal of International Law and Policy*, 31(3), 2003, p.355

The optional elements, include:

- Phased sovereignty, which necessitates the accumulation of increasing levels of sovereign authority and functions by the sub-state, over a specified period of time prior to the determination of final status.
- Conditional sovereignty, in which the sub-state is required to meet certain benchmarks before it could gain increased sovereignty. These benchmarks may include conditions such as protecting human and minority rights, developing democratic institutions, instituting the rule of law, and promoting regional stability.
- Constrained sovereignty, which involves continued limitations on the sovereign authority and functions of the new state, like continued international administrative and/or military presence, and limits on the right of the state to undertake territorial association with other states.

The main concept of the earned sovereignty approach is that the sub-state entity should prove to the world that it is capable of functioning as an independent state after the break-up, and it shall be a reliable sovereign partner, that is worthy of recognition. In the process of achieving its independence, the sub-state entity will have to go through a transitional stage, during which it is administered by an international agency, as was the case of Kosovo under the administration of the UN, which serves as a buffering stage between full dependence and full independence.³⁷

This intermediary step of international administration is often needed because sub-state entities tend to be poor, underdeveloped, and dependent on aid for economic survival.³⁸

³⁷ Zeinullah Gruda, "Some Key Principles for a Lasting Solution of the Status of Kosova: *Uti Possidetis*, the Ethnic Principle, and Self-Determination", *Chicago-Kent Law Review*, 2004, p.355

³⁸ *Ibid*, p.357

Accordingly, the international administrator assists the sub-state entity in developing proper industries, economy, and infrastructure in order to function as a viable state once the international administration comes to an end.³⁹ Kosovo, under this theory, may have earned its sovereignty because it was administered by the UN, and because during this time, it demonstrated to the outside world that it was ready and capable of functioning as an independent state.

Applying the above theory on Kosovo could be stipulated as following: The UN Security Council Resolution 1244, which referenced the final status of Kosovo to be according to the Rambouillet Agreement, provides for the interim UN administration of Kosovo with security provided by a NATO-led force.⁴⁰ The UNMIK⁴¹ exercised near absolute executive and legislative authority within Kosovo during the interim period, as it seeks to build institutions of self-government, leaving only a few to be exercised by the Federal Republic of Yugoslavia, with time leaving Yugoslavia none at all. Later on, as these institutions become functional, the UN starts to devolve certain sovereign authorities and functions to the Kosovo government.

The UNMIK representative, according to the UN security council 1244 and the Rambouillet agreement, worked to create a Kosovo Constitutional Framework providing for a parliament and presidency. Then embarking on a process of devolving specified powers to the Kosovo institutions and excluding the exercise of any authority by FRY institutions. Moreover, internal and external security for Kosovo is provided by a NATO-led force, and elections were conducted by the Organization for Security and Cooperation in Europe

³⁹ Bartram S. Brown, "Human Rights, Sovereignty, and the Final Status of Kosovo", *Chicago-Kent Law Review*, 2005, p.355

⁴⁰The Rambouillet agreement, Chapter 2, https://peacemaker.un.org/sites/peacemaker.un.org/files/990123_RambouilletAccord.pdf, (Accessed on 6/1/2021)

⁴¹ The United Nations Interim Administration Mission in Kosovo is the officially mandated mission of the United Nations in Kosovo, founded by the Security Council Resolution 1244 of 10 June 1999.

(OSCE). The full devolution of authority from the UN administration and the determination of final status will be based on Kosovo's compliance with democratic and other standards, and subject to internationally mediated negotiations with the republic of Serbia, which is still ongoing even after Kosovo declared its independence and gained recognition by almost half the members of the UN.

Qualified State Sovereignty Theory:

The second theory would be “qualified state sovereignty”⁴², which could be formulated in the fact that state sovereignty has eroded due to globalization, thus it does not enjoy absolute protection in International Law, because of the interconnectivity across the planet.⁴³ Thus, what a state does within its borders affects several other states, so that it can no longer be asserted that a state may internally do whatever it wishes, as such actions necessarily impact other states.⁴⁴

In the case of Kosovo, this implied that once Serbia decided to start its repressive campaign of ethnic cleansing in Kosovo, this decision ultimately impacted outside actors, who then earned the right to intervene in Serbia on humanitarian grounds and to decide the future fate of Kosovo.⁴⁵ Furthermore, the outside actors were legally justified in encouraging and providing for the Kosovar independence because Serbia's claim to territorial sovereignty was not absolute and remained subject to external influences, it can also be asserted that Serbia no longer had any valid legal basis to hold onto Kosovo, as its reign of this province became purely symbolic.⁴⁶ The Serbian sovereignty over Kosovo, *videlicet*, had almost

⁴² Milena Sterio, “The Kosovar Declaration of Independence: 'Botching the Balkans' or Respecting International Law?”, *Georgia Journal of International and Comparative Law*, 2009, p.295

⁴³ Milena Sterio, “The Evolution of International Law”, *Boston College International and Comparative Law Review*, 2008, p.240

⁴⁴ *Ibid*, p.231-232

⁴⁵ *General Assembly Resolution*, A/RES/60/1, “2005 World Summit Outcome”, (24 November 2005), para 138-140

⁴⁶ Antonio Cassese, “*Ex iniuria ius oritur*: Are we moving towards international legitimation of forcible humanitarian countermeasures in the world community?”, *European Journal of International Law*, 1999, p.24-25

diminished that even the notion of territorial sovereignty became surpassed by the necessity of humanitarian intervention or other kinds of outside interference.

Sui Generis Theory

The third theory would be that Kosovo is a *sui generis*⁴⁷ and thus no legal precedent has been created by its independence as advocated by the U.S State Department.⁴⁸ The unique combination of circumstances in Kosovo justified its independence, yet this independence creates no new precedent and does not foreshadow the evolution of any new theories of independence for the future.

The above theories missed to discuss three important issues regarding Kosovo, which include its right to secession, the statehood of Kosovo, and the international recognition of Kosovo, which we shall discuss, as secession is a highly debatable issue in International Law and Affairs.

- Remedial secession

The doctrine of ‘remedial secession’ has been put forward in a large segment of legal teaching, mostly coming from German and American academics, for those special circumstances in which the exercise of an internal right to self-determination within a given State might become a right to independent statehood. According to these scholars, remedial secession might be invoked when all attempts to achieve internal self-determination had been frustrated by the State administration, this being clear from the lack of representation and infringements of human rights.⁴⁹ These would be exceptional circumstances in which

⁴⁷ Zeinullah Gruda, 2005, *Op. cit.*, p.353

⁴⁸ Sterio, 2009, *Op. cit.*, p.296

⁴⁹ Allen Buchanan, *Justice, Legitimacy and Self-Determination. Moral Foundations for International Law*, Oxford University Press, 2004, p.355

self-determination would also constitute an exceptional remedy going beyond legitimate humanitarian intervention, which in many case may be an undertaking hard to perform.⁵⁰

- **Humanitarian Secession**

Two precedents exist in contemporary history of states gaining their independence due to humanitarian secession, as huge breach of human rights existed, as was the case in Bangladesh and Kosovo. These precedents aren't seen by many scholars and states as a manifestation of international practice of any supposed right to remedial secession, yet in the case of Kosovo it was clear that a large part of the international community is prepared to accept the legitimacy of nations striving for secession in situations with grave violations of human rights related to a specific group. This can be seen clearly when the Foreign Minister of Austria, Ursula Plassnik, declared the recognition of the Republic of Kosovo by its country, she stressed on the tensions between the ideal solution and realism: "It is not a hasty recognition. We have carefully considered this decision. Unilateral independence is not an ideal solution, but the only realistic and possible path. We must not forget the history of the conflict. Nor can we close our eyes to reality. The status quo could no longer be maintained and was a constant source of instability."⁵¹

Some states' view on secession was that it was a consistent option when all other means have failed, this was adopted in various statements in the case of Kosovo's independence, which could be seen clearly in the statement of Switzerland: "A right to secession based on the right of peoples to self-determination can exist, but may only be

⁵⁰ William W. Burke-White, "Crimea and the International Legal Order", *University of Pennsylvania Carey Law School*, 2014, p.77

⁵¹ "Plassnik: "Letter on Kosovo's recognition signed", Foreign Minister at the Integration and Foreign Policy Council - stabilisation and EU integration", *Federal Ministry – Republic of Austria - for European and International Affairs*, Press Department, <https://www.bmeia.gv.at/en/the-ministry/press/announcements/2008/plassnik-letter-on-kosovos-recognition-signed/>, (Accessed on 28/2/2021)

exercised in exceptional circumstances, when all other means of exercising the right to self-determination have failed or have to be regarded as futile due to grave and systematic violation of human rights”.⁵²

In the case of Germany, this could be shown clearly in their statement: “It is therefore submitted that the right to self-determination prevails, and turns into a right of external self-determination, under two conditions, which must be met cumulatively. The first condition is an exceptionally severe and long-lasting refusal of internal self-determination by the State in which a group is living. This is not identical, but will often coincide with severe violation of human right, such as the right to life and freedom, but also the rights of association and assembly. While this will usually –as in the case of Kosovo- go hand in hand with severe human rights violations, such as suppression of demonstrations of political opposition, arbitrary arrests and imprisonments, torture and maltreatment, it is really the denial of internal self-determination which counts for this argument. The facts preceding the Kosovo Declaration of Independence have been set out above. They reveal a clear case of prolonged and severe repression and denial of all internal self-determination. The second condition is that no other avenue exists for resolving the resulting conflict. Only when all other possible routes to internal self-determination can be shown to be blocked, the route to external self-determination opens. In the case of Kosovo, this condition, too, is met.”⁵³

This can also be seen in the written statement of Netherland: “The response of members of the international community to the disintegration of States in the 1990s has provided new information on the practice and legal opinions of States. If the Court is unable to conclude that a rule of customary International Law on the right to exercise external self-

⁵² Written Statement Addressed to the ICJ by the Swiss Confederation in accordance with the order of the Court of 17 October 2008, <https://www.icj-cij.org/public/files/case-related/141/15614.pdf>, (Accessed on 28/2/2021)

⁵³ Statement of the Federal Republic of Germany, Accordance with the International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (Request for an Advisory Opinion), <https://www.icj-cij.org/public/files/case-related/141/15624.pdf>, (Accessed on 28/2/2021)

determination outside the context of non-self-governing territories, foreign occupation and consensual agreement has emerged, it is submitted that International Law does not prohibit the exercise of external self-determination in exceptional circumstances, i.e. in unique cases or cases *sui generis*. This emanates from the practice and legal opinions of several States, including those of the Kingdom of the Netherlands”.⁵⁴ Furthermore, this was stressed by Judge Antonio Augusto Cançado Trindade separate opinion, in which he linked situations described as ‘grave humanitarian crisis’, ‘humanitarian catastrophe’ or ‘humanitarian tragedy’ with secession.⁵⁵

Theories discussed in this chapter concerned the recognition of states within the internal framework of international law. One reason for the profusion of theories and literature is that recognition is intertwined with basic or philosophical questions about international law, of what states are and how they come into being, whether international law is an ‘objective’ system, and whose will or values it is designed to serve. So long as those larger questions continue to excite interest and divide opinion, international lawyers and academics are likely to continue to disagree about the legal significance of recognition.

CHAPTER II: The Succession of States

States came into existence and ceased to exist due to different reasons throughout human history, while the definition of “state” altered in different historical eras. In International Law ‘A succession of international persons occurs when one or more

⁵⁴ Statement of the Kingdom of the Netherlands, Accordance with the International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (Request for an Advisory Opinion), <https://www.icj-cij.org/public/files/case-related/141/15652.pdf>, (Accessed on 28/2/2021)

⁵⁵ Separate Opinion of Judge CANÇADO TRINDADE, *International Court of Justice*, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-08-EN.pdf>, (Accessed 28/2/2021).

international persons takes the place of another international person, in consequence of certain changes in the latter's condition...When a succession of states has occurred, the extent to which the rights and duties of the predecessor devolve on the successor is uncertain and controversial'.⁵⁶After the end of World War II, with the dawn of liberty to the nations that suffered from colonialism ages, states were born due to the principle of *uti possidetis*. By the end of the 1980s, the communist block of Eastern Europe started to fall apart gradually, it could be compared to what was known to be almost a decade later as the "positive or reverse domino theory"⁵⁷ which is a form of domino effect that is hypothesized in a way that democracy spreads into socialist/communist states leading to the change of the political ideologies in these countries to become democratic, which is the total opposite of the domino effect theory⁵⁸ that president Dwight D. Eisenhower articulated as the "falling domino" effect in his news conference on the 7th of April 1954⁵⁹.

The principle of *uti possidetis* which was applied to both the collapsing Soviet Union and the SFRY in an unprecedented form in International Law, as such the new states would be created due to the dissolution of the parent state to form new states with boundaries based on the internal borders. The Badinter Commission⁶⁰ applied the *uti possidetis* principle, thus 'upgrading' the former internal boundaries to become international borders between the newly formed states.⁶¹

⁵⁶ Robert Jennings, Arthur Watts, *Oppenheim's International Law*, 9th edition, Longman,1996, Volume 1, p.208-209.

⁵⁷ Sam Tanenhaus, "The World: From Vietnam to Iraq; The Rise and Fall and Rise of the Domino Theory", *The New York Times*, (23/3/2003) <https://www.nytimes.com/2003/03/23/weekinreview/the-world-from-vietnam-to-iraq-the-rise-and-fall-and-rise-of-the-domino-theory.html>, (Accessed on 3/11/2020). It envisions democracy as the great insurgent movement

⁵⁸ The domino theory was a Cold War policy that suggested a communist government in one nation would quickly lead to communist takeovers in neighboring states, each falling like a perfectly aligned row of dominos.

⁵⁹ "Foreign Relations of the United States, 1952–1954, Indochina", *United States - Department of State - Office of The Historian*, VOLUME XIII, PART 1, <https://history.state.gov/historicaldocuments/frus1952-54v13p1/d716>, (Accessed on 4/11/2020).

⁶⁰ The Arbitration Commission of the Conference on Yugoslavia was an arbitration body set up by the Council of Ministers of the European Economic Community on 27 August 1991 to provide the Conference on Yugoslavia with legal advice.

⁶¹ The Badinter Commission, Opinion 2 (11 January 1992)

The Badinter Commission's interpretation that the events in the SFRY in 1991 are indicative of dissolution⁶². As a result of dissolution of the SFRY, new states were born with none of them having the right and duties of the successor state, Oppenheim expresses that "When a succession of states has occurred, the extent to which the rights and duties of the predecessor devolve on the successor is uncertain and controversial."⁶³ The SFRY ceased to exist after 4 states sought independence, with two former republics remaining, Serbia and Montenegro, unified in the FRY and claimed continuity of the SFRY's international personality. This was expressed in the Constitution of the FRY, which was promulgated on the 27th of April 1992. Article 2 of the new constitution defined the FRY as a state of Serbia and Montenegro, while the preamble provided that the republics had unified on the grounds of the 'uninterrupted international personality of Yugoslavia'.⁶⁴ Their claim to the SFRY's international personality is evident from the submissions of both Serbia and Montenegro to the EC in response to the wavered invitation for them to apply for recognition, as expressed by the EC Declaration.⁶⁵

Serbia's Foreign Minister recalled in his reply on the 23rd of December 1991, that Serbia acquired 'internationally recognized statehood at the Berlin Congress of 1878⁶⁶ and on that basis had participated in the establishment of the Kingdom of Serbs in 1918, Croats

⁶² Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*, Hart Publishing, 2013, p.239

⁶³ Jennings, Watts, *Op. cit.*, p.209.

⁶⁴ Vidmar, *Op. cit.*, p.100

⁶⁵ *Ibid.*, p.101

⁶⁶ The Treaty of Berlin was signed July 13th, 1878 following the Congress of Berlin in 1878, convened by Britain and Austria-Hungary to revise the Treaty of San Stefano that ended the Russian-Turkish war of 1877-1878. International Congress in Berlin took place from June 13th to July 13th, 1878. It was attended by delegations from Russia, England, Austria-Hungary, Germany, France, Italy and Turkey. Under the new agreement, Bulgaria was divided along the Balkan mountain range into two parts: the northern one which was declared an autonomous principality, paying tribute to Turkey; and the southern (Eastern Rumelia) – it remained under Turkish rule on the conditions of administrative autonomy. Macedonia, which under the Treaty of San Stefano was making part of Bulgaria, was also given to Turkey. The territories of Serbia, Montenegro and Romania, which remained independent, were reduced. Bosnia and Herzegovina found themselves in the zone of occupation by Austria-Hungary. Russia retained the mouth of the Danube, in the Caucasus - Kars and Ardahan; Batum became a free port for trade. As to Alashkertskaya valley and the city of Bajazet, Russia returned them to Turkey.

and Slovenes which became Yugoslavia [and concluded that Serbia] is not interested in secession'. Furthermore, on the 24th of December 1991, Montenegro's Foreign Minister, responded by declining the EC's invitation to apply for recognition and recalled the international personality that Montenegro had prior to joining the Yugoslav state formations.⁶⁷ However, the Badinter Commission, stated in its Opinion 1 'that the Socialist Federal Republic of Yugoslavia is in the process of dissolution'.⁶⁸

Later on, the UN Security Council in its Resolution 757 stated that 'the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to automatically pursue the membership of the former Socialist Federal Republic of Yugoslavia (in the United Nations) has not been generally accepted'.⁶⁹ Then it further stated in Resolution 777: The Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically pursue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore recommends the General Assembly to decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly.⁷⁰ This was adopted by the General Assembly in its Resolution 47/1.⁷¹

The Badinter Commission referred to Resolution 757 when it found that "the process of dissolution of the SFRY referred to in Opinion 1, from 29 November 1991, is now complete and that the SFRY no longer exists".⁷² The Commission also concluded in its Opinion 9 that "new states have been created on the territory of the former SFRY and

⁶⁷ Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union", *European Journal of International Law*, 1993, p.12

⁶⁸ The Badinter Commission, Opinion 1 (29 November 1991), para 3

⁶⁹ *Security Council Resolution*, S/RES/757 (1992), "Bosnia and Herzegovina", (30 May 1992), preamble

⁷⁰ *Security Council Resolution*, S/RES/777 (1992), "Federal Republic of Yugoslavia", (19 September 1992), para 1.

⁷¹ *General Assembly Resolution*, A/RES/47/1 (1992), "Recommendation of the Security Council of 19 September 1992", (19 September 1992).

⁷² The Arbitration Commission of the Conference on Yugoslavia (The Badinter Commission), Council of Ministers of the European Economic Community, Opinion 8 (4 July 1992), para 4

replaced it. All are successor states to the former SFRY⁷³ and that it based its opinion on the Security Council resolutions that the “Federal Republic of Yugoslavia (Serbia and Montenegro) has no right to consider itself the SFRY’s sole successor”.⁷⁴ Hence, “the SFRY’s membership of international organizations must be terminated according to their statutes and none of the successor states may thereupon claim for themselves alone the membership rights previously enjoyed by the former SFRY”.⁷⁵ Concluding the Badinter Commission stated in its Opinion 10 that: “The FRY (Serbia and Montenegro) is a new state which cannot be considered the sole successor to the SFRY, its recognition by the Member States of the European Community would be subject to its compliance with the conditions laid down by general International Law for such an act and the joint statement and [EC] Guidelines”.⁷⁶

Nonetheless, the FRY continued to claim continuity with the international personality of the FRY and did not apply for membership to the UN before the end of the Milošević regime, and was later admitted to the UN on 1 November 2000.⁷⁷ Some statements made by officials of the Republic of Serbia imply that Serbia still holds that it inherited the international personality of the former SFRY. When addressing the Security Council after Kosovo’s declaration of independence, the President of Serbia, Boris Tadić, inter alia, made the following statement: ‘Serbia, let me recall, is a founding State Member of the United Nations.’⁷⁸ Although non-admission to the UN can be referred to the absence of an application for its membership, the FRY’s non-recognition remains controversial in International Law. The unrecognition of the FRY can be traced to its refusal to abide with

⁷³ Ibid, Opinion 9, (4 July 1992), para 1

⁷⁴ Ibid, Opinion 9, para 3

⁷⁵ Ibid, Opinion 9, para 4

⁷⁶ Ibid, Opinion 10 (4 July 1992), para 5

⁷⁷ *General Assembly Resolution, A/RES/55/12* (2000), “The General Assembly admitted the Federal Republic of Yugoslavia as a member of the UN”, (1 November 2000).

⁷⁸ UN Verbatim records, “The open meeting following Kosovo’s independence declaration with Prime Minister Boris Tadić of Serbia participating”, UN Doc S/PV.5839, (18 February 2008)

the EC Declaration, thus it remained universally unrecognized. Thus, the EC recognition policy was universalized.

1. Secession of states

Secession under International Law refers to separation of a portion of an existing state, whereby the separating entity either seeks to become a new state or to join another state, either peacefully or as a result of armed conflict. Thus, the original state remains in existence without the separating territory.⁷⁹

Probably the first case of secession in Post-Westphalia could have been in the summer of 1776, when fifty-six Britons signed a letter to King George III of Great Britain. They announced their political, economic, and military independence and new status as a sovereign nation (later to form the United States of America). Being the first declaration of separation, it was unprecedented, it helped develop the modern understanding of a right to sovereignty.

Until 1914, secession was the most conspicuous and probably the most common method of the creation of new States. The period 1776 to 1900 saw, amongst other cases, the American War of Independence, the revolution of the former Spanish colonies of South and Central America, the secession of Greece from the Ottoman Empire and of Belgium from the Netherlands. While the American Declaration of Independence is mostly spent on cataloging the injustices done by the British Crown against the colonists, their foundational and more universal argument can be summarized down into: “To secure these [universal, God-given] rights, governments are instituted among men, deriving their just powers from the consent of the governed [and] whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government...”. To conclude just before the end of the document with: “We, therefore, ...

⁷⁹ Jeffrey L. Dunoff, Monica Hakimi, Steven R. Ratner, & David Wippman, *International law: Norms, actors, process: A problem-oriented approach*, New York: Wolter Kluwer, 2015, p.107

by authority of the good people of these colonies, solemnly publish and declare that these United Colonies are, and of right ought to be free and independent states.”⁸⁰

Since 1919, new States were being more often created with the consent of the previous sovereign, especially in course of decolonization. But attempts at secession have been frequent and some of these have succeeded, in particular Indonesia, North Korea, North Vietnam, Bangladesh, Guinea-Bissau, Eritrea, and South Sudan. Many more attempts at secession have failed for example: Katanga (DR Congo) and Biafra (Nigeria); or are still contested for example: Somaliland, Abkhazia, South Ossetia, the Turkish Republic of Northern Cyprus and others.

Since 1945, the sole new States emerging from situations which weren't formally recognized as colonial, i.e. as covered by Chapters XI or XII of the Charter, have been:

- Senegal (1960);
- Singapore (1965);
- Bangladesh (1971);
- The three Baltic States: Latvia, Lithuania, Estonia (1991);
- The eleven successor States of the former Soviet Union: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kirgizstan, Moldova, Tajikistan, Turkmenistan, Ukraine, Uzbekistan (1991);
- The five successor States of the former Yugoslavia: Slovenia, Macedonia, Croatia, Bosnia-Herzegovina, Federal Republic of Yugoslavia (Serbia and Montenegro, which later became two separated states) (1991–2);
- Czech Republic and Slovakia (1993, through dissolution);
- Eritrea (1993);
- East Timor (2002);
- South Sudan (2011);

⁸⁰ “Declaration of Independence: A Transcription”, *National Archives and Records Administration*, <https://www.archives.gov/founding-docs/declaration-transcript>, (Accessed on 15/10/2020).

It is worth re-mentioning that the distinction between devolution and secession may be artificial in some circumstances. Both the elements of forcible seizure and free grant of independence could be combined (as with Indonesia and Eritrea). Other elements include:

- The process of consolidation (as in Vietnam and Korea)
- The intervention of a group of Great Powers (as in Greece and Belgium)
- The dissolution of the predecessor State (as with the former Yugoslavia)

Nonetheless certain questions arise specifically in relation to secession. In particular, the application of the criteria for statehood to situations where statehood is disputed by the previous sovereign; the relation between third State recognition and status; the legality of secession in modern International Law, and the legal incidents of the process by which a seceding unit attains international status - these questions require consideration here. In the first place, the application of the criteria for statehood - and in particular the criterion of independence - to cases of secession must be dealt with.

In the case of the dissolution of Yugoslavia, 'The Badinter Committee' stated that "in its present state of development, International Law does not make clear all the consequences which flow from this principle"⁸¹. Nevertheless, it is significant that the Court appeared to link the rights of minorities to the rights of peoples. This conveyed that the notion of 'people' does not imply homogeneity and thus the term does not encompass the whole population of any State. Therefore, within one State, various ethnic, religious or linguistic communities could exist. These communities similarly would have, according to Opinion No. 2, the right to see their identity recognized and to benefit from "all the human rights and fundamental freedoms recognized in International Law, including, where appropriate, the right to choose their national identity"⁸².

According to the aforementioned, states are knowledgeable of that fact that these are

⁸¹ Alain Pellet, "The Opinions of the Badinter Arbitration Committee-A Second Breath for the Self Determination of Peoples", *European Journal of International Law*, 3(1), 1992, p.179.

⁸² *Ibid*, p.180

'imperative norms', that are binding to all subjects of International Law, thus it could be applied later on to protect, for example, the rights of Chechens in Russia or Azeri in Iran without entailing their break-up. More importantly, the Committee noted that Article 1 of the two 1966 International Covenants on human rights establishes that “the principle of the right to self-determination serves to safeguard human rights”.⁸³ This signifies that “by virtue of this right, each human entity might indicate his or her belonging to the community (...) of his or her choice”⁸⁴. This might seem as a surplus, but is in fact pivotal: it means that each and every man or woman who calls upon this right might choose the group to which they belong.⁸⁵

In relation to the Committee’s jurisdictional functions, it did not fully develop the consequences that could happen due to its analysis. On the other hand, it opened up an interesting direction of thought, which suggests that the concerned states might grant the Serbs in Bosnia-Herzegovina and Croatia, if they desired so, the nationality of their choice (which in this case would be the Serbian nationality). It might be suggested that there is a distinction between 'nationality' and 'citizenship', which is similar to what is provided in the Treaty on European Union signed in Maastricht.

In the case of Kosovo, it is certainly true that Kosovar Albanians are a “people”; they share a common ethnicity, culture, language, religion, and social values that distinguish them clearly from the Serbs.⁸⁶

1.1 The Dissolution of Yugoslavia

The dissolution of Yugoslavia, caught the attention of several scholars and journalist, including: Susan Woodward, which identified that state weakness was the main cause, also partially induced by economic failure, the end of the role Yugoslavia had back in the bipolar

⁸³ The Badinter Commission, Opinion 2 (4 July 1992), para 3

⁸⁴ Ibid, para 3

⁸⁵ Pellet, 1992, *Op. cit.*, p.179

⁸⁶ Sterio Milena, “The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law”, *Proceedings of the ASIL Annual Meeting*, 2010, p.363

world, and the international community's pressure insisting on liberal economic and political reform, yet she didn't deny neither the Serbian aggression nor ethnic nationalism, but she found them to be more as consequences than causes.⁸⁷

Misha Glenny, also identified a weak Yugoslavia which led to what he called the "Third Balkan War", emphasizing more on ethnic differences, demonstrating how nationalist leaders managed to mobilize popular fears in favor of their respective causes.⁸⁸

Journalists Allan Little and Laura Silber wove a captivating narrative captured also in film, with more emphasis on Serbian nationalism and aggression.⁸⁹

Catherine Baker, identified what happened during the 1990s wars in Yugoslavia, as being a result of the interaction between opportunistic nationalist leaders who mobilized ethnic differences to compete for power within the context of a weak state, leading to its destruction in the process.⁹⁰

Josip Glaurdić, on the other hand emphasizes that the hesitancy to intervene by the Europeans and American "realists" enabled the Balkan leadership's worst inclinations.⁹¹

Eric Gordy hypothesized that scholarship has focused excessively on a top-down view of states and political elites, without paying enough attention to the societies and people, as well as their interaction in the newly emerging states.⁹²

Daniel Sewer, gave a different understanding that corresponds to the canonical levels of analysis: individuals, domestic factors, and international factors. He stated that Milošević's ambitions and capabilities, combined with the ideological and practical implications of territorial ethnic nationalism that he provoked within each of the Yugoslav

⁸⁷ Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War*, Brookings Institution, 1997, p.35

⁸⁸ Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War*, Penguin Books, 1996, p.25-26

⁸⁹ Laura Silber & Allan Little, *The Death of Yugoslavia*, Penguin Books, 2010, p.68

Vittorio Vida, "The Death of Yugoslavia." BBC Complete Documentary, YouTube Video, 4:54:30, posted September 2012, <https://www.youtube.com/watch?v=oODjSdLoSYo>, (Accessed on 8/10/2020).

⁹⁰ Catherine Baker, *The Yugoslav Wars of the 1990s*, Palgrave Macmillan, 2015, p.23

⁹¹ Josip Glaurdić, *The Hour of Europe: Western Powers and the Breakup of Yugoslavia*, Yale University Press, 2011, p.45-47

⁹² Eric Gordy, "On the Current and Future Research Agenda for Southeast Europe", *Debating the End of Yugoslavia*, 1st Edition, Routledge, 2014, p.14-15

successor states, and the breakup of former Yugoslavia combined to produce an array of interlinked interstate and intrastate conflicts. He hypothesized that with the collapsing of the Yugoslav state and its Marxist foundations in the aftermath of the Cold War, ethnic nationalists, by promising to protect their respective ethnic groups, gained and maintained power, of which each ethnicity felt threatened. Most nationalists were unable to do much harm on their own, except one Balkan leader, Slobodan Milošević, he had the political will and the military means to do so, in a manner more than the others. Adopting “The Greater Serbia” project⁹³ he became the main imminent cause of the Balkan wars of the 1990s, due to the fact that other ethnic national leaders reacted to the threat he posed, as they didn’t have the military capacity as him.

That was a security dilemma, in an ethnic version of it: what the Serbs did to protect themselves made others feel less secure, creating a vicious spiral that resulted in civil wars in Slovenia, Croatia, Bosnia, and Kosovo. It could be called a post–Cold War domino theory. The United States and Europe may have failed initially to invest the necessary resources to prevent the wars, but eventually they intervened with both military and civilian means to end the conflicts and build peace in the Balkans.

The newly born states, resulted in part from international pressures, sometimes military and sometimes diplomatic and political, with economic relief and benefits thrown in for good measure. While Slovenia won its war, the other wars that took place in former Yugoslav, ended in negotiated agreements:

- Croatia (the Erdut Agreement in 1995)
- Bosnia (the Washington Agreement of 1994, and the Dayton Accords of 1995)
- Kosovo (UN Security Council Resolution 1244 in 1999)

⁹³ Daniel Serwer, *From War to Peace in the Balkans, the Middle East and Ukraine*, Palgrave, 2019, p.5.

- Macedonia (the Ohrid Agreement of 2001)

Ethnic identity in the Balkans is defined today along both religious and linguistic lines. Apart from the atheists in the region, some of whom still identify themselves as Yugoslavs (South Slavs), Serbs usually identify as Orthodox Christians, Croats as Catholic Christians, and Bosniacs as Muslims (mainly Sunni). Albanians are mostly Muslim in religious affiliation, if they have any, although there is an Orthodox and Catholic minority, both in Albania and Kosovo. Albanians define themselves linguistically: An Albanian is someone who speaks Albanian (or whose parents spoke Albanian), an Indo-European language with little in common with the Slavic languages today identified as Bosnian, Croatian, Serbian, Montenegrin, Slovenian, and Macedonian. Balkan Muslims, both Bosnian and Albanian, owe their existence to the Ottoman Empire, which dominated the southern part of the Balkans for more than 450 years, from the conquest of Constantinople in 1453 until World War I. The Ottomans governed their empire without homogenizing its population, which could explain the ethnic diversity in the Balkan states today.

The idea that ethnic groups have rights to govern themselves and not to be forced to do things that other ethnic groups want them to do, including decisions that are taken by numerical majority, could be ruled back to the millet practice from the Ottoman ruling over the Balkans. This idea survived after the end of the Ottoman Empire, surviving both the ruling of the monarchy and Yugoslavia, which led it to become a foundational idea that remains an issue in the Balkans.

The American military intervention in the Balkans came after four years of European and United Nations failure to manage the Balkan conflicts successfully. For the Europeans, the dissolution of former Yugoslavia was both unwanted yet unavoidable: The Balkan wars resulted in refugees that threatened to destabilize the immediate neighborhood (European

Countries). The European Community (EC), deployed unarmed monitors to former Yugoslavia in the summer of 1991. UN peacekeepers entered Croatia in 1992 in order to protect the Serb-populated areas, and deployed to Bosnia in 1993 to protect the mostly Muslim and Croat populated areas. The UN and the EC sponsored International Conferences on the former Yugoslavia, meeting repeatedly from 1992 onwards. It failed to produce the peace settlement it sought, but it spawned useful criteria for recognition of the former Yugoslav republics and resolved some succession issues.

Yugoslavia's Cold War had a strategic significance, as it was a buffer between East and West which quickly diminished after the fall of the Berlin Wall in 1989, thus there was no longer any geopolitical sense for Yugoslavia's policy of non-alignment between the USSR and the USA. The fears of ethnic wars did not materialize in the former Soviet Union, whose breakup was for the most part peaceful, but they emerged in Yugoslavia, where the opposition to Communism took an ethnical "nationalist" form.

Most of the early leaders of what are now independent countries: Franjo Tuđman (Croat), Slobodan Milošević (Serb), Alija Izetbegović (Bosnian), and Ibrahim Rugova (Kosovar), differing in their intolerance toward other groups and their capacity to inflict harm, all were ethnic nationalists. Concerned mainly in asserting their Croat, Serb, Bosnian, and Albanian identity, each felt that "his people" was aggrieved, mistreated, and discriminated against. Even the Serbs felt ill-served, although others regarded them as demographically and politically dominant in Yugoslavia.

Yugoslavia was unsuccessful at convincing any of its ethnic groups that they were getting a fair share, ethnic groups believed they were victims.⁹⁴ Victimhood can be a precursor to violence, both for purposes of punishment and protection from real or imagined threats. The last prime minister of Yugoslavia Ante Marković, failed in his efforts to

⁹⁴ Serwer, 2019, *Op. cit*, p.16.

renegotiate the Yugoslav government's economic and financial relations with its six republics.

This debacle developed later into the dissolution of Yugoslavia, as Slovenia's "ten-day" war for independence in 1991 gave way to Croatia to regain control of its entire territory, parts of which were out of Zagreb's control and ruled by separatist Serbs under UN protection for more than three years. A Croatian blitzkrieg in 1995 and the later negotiations returned them to Croatian sovereignty. Bosnia slogged through three and a half years of war (1992–1995), with Bosnians and Croats fighting each other part of the time, even while some of them fought together against Serbs. One hundred thousand of Bosnia's citizens died and half its population displaced. Kosovo lost around 10,000 citizens, but saw more than a third of its population temporarily made refugees. Macedonia, on the other hand suffered a short Albanian rebellion in 2001. Montenegro escaped war due to international assistance.

Serbia, which lost wars in Slovenia, Croatia, Bosnia, and Kosovo, eventually ended up absorbing hundreds of thousands of Serb refugees. Thus was the nationalist goal partly realized, with an ironic twist in the case of Serbia, as Serbs were inflowing into Serbia without the lands they had once called home in neighboring countries, the dream of a Greater Serbia ended in becoming a nightmare.

There have been episodes of inter-ethnic violence in the Balkans prior to the 1990s, but there have also been long periods of coexistence, co-operation, intermarriage, assimilation, and mutual assistance. Balkan ethnic nationalism is an example of Freud's "narcissism of small differences"⁹⁵, which was magnified by the political needs of the protagonists. Slobodan Milošević, encouraged Serbs to view the 1389 Battle of Kosovo – Polje - as the origin of their state and its antagonism with Albanians, helping him stay in

⁹⁵ Sigmund Freud, *Civilization, Society, and Religion*, Penguin Freud Library, p.131 &305

power once the Soviet Union was gone. Though, Albanians who were not yet predominantly Muslims, fought on both sides of that battle with the advancing Ottomans, as did Serbs. Vuk Karadžić, a Serb poet, in the nineteenth century provided the narrative that made the battle the foundation of Serbian nationalism.⁹⁶

Kosovar aspirations for freedom before the breakup of former Yugoslavia had been limited. Communist Kosovars wanted to gain full status as a republic in former Yugoslavia, rather than continuing as an autonomous province nominally inside Serbia, despite the fact they had their own parliament, police force, courts, and a representative on the rotating collective presidency, like the other six Yugoslav republics.

1.2 Succession Agreement Signed in 2001

The UN security council in its decision 1022 (1995), which was voted by 14 in favor with the abstaining of Russia only, stated clearly that there is no one successor of the SFRY, but successor states, encouraging them to find an agreement to distribute the funds and assets of the SFRY.⁹⁷ This was made possible in the Yugoslav Agreement on Succession Issues (2001)⁹⁸, which was signed by the five countries (Bosnia and Herzegovina, the Republic of Croatia, the Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia), all being in sovereign equality to the former SFRY. The treaty signed in the summer of 2001, includes several ‘treaties’ and annexes to it, with the final agreement done on 29/6/2001, and the UN is a depositary of it.

⁹⁶ Aleksander Pavlovic & Srdan Atanasovski, “From Myth to Territory: Vuk Karadzic, Kosovo Epics and the Role of Nineteenth Century Intellectuals in Establishing National Narratives”, *JSTOR*, p.3.

⁹⁷ *Security Council Resolution, S/RES/1022* (1995), “On suspension of measures related to the situation in the former Yugoslavia”, (22 November 1995).

⁹⁸ Agreement on Succession Issues, https://treaties.un.org/doc/Treaties/2001/06/20010629%2001-33%20PM/Ch_XXIX_01p.pdf, (Accessed on 14/8/2021)

The treaty was signed in Vienna on 29 June 2001 in seven originals in the English language, with one original copy to be retained by each successor State, one by the Office of the High Representative, and one to be deposited with the Depositary (The UN). The treaty included 13 articles, and the Annexes (signed on later dates), included topics as:

- Movable and immovable property;
- Diplomatic and consular properties;
- Financial assets and liabilities
- Archives;
- Pensions;
- Other rights, interests, and liabilities;
- Private property and acquired rights.

Kosovo, declared its independence unilaterally in 2008, not being part of the treaty nor mentioned in the Security Council Resolution 1022(1995), caused further new ‘conflicts’ within the Balkans, as it is currently perusing what it believes is its owned properties in the other states that were part of Yugoslavia. It claims to be the owner of 163 properties, of what is mainly businesses and offices, that were assets of what was called ‘socially-owned enterprises’, which was a hybrid ownership model introduced under socialist Yugoslavia. Kosovo, declared that it is the rightful owner of 99 properties in Serbia, 35 in Montenegro, 15 in Bosnia, 8 in North Macedonia, 5 in Croatia, and 1 in Slovenia.⁹⁹

2. Right of Self-Determination

Three International Law theories are relevant to the issue of the Kosovo: secession (*inter alia* self-determination), statehood, and recognition. The UN Charter (Chapter1,

⁹⁹ Xhorxhina Bami, “Kosovo Faces Uphill Fight in Claiming Yugoslav-Era Property”, *Balkan Insight*, 29/7/2021, <https://balkaninsight.com/2021/07/29/kosovo-faces-uphill-fight-in-claiming-yugoslav-era-property/>, (Accessed on 14/8/2021)

Article 1) extends the right of self-determination to all peoples, this right is considered as a *jus cogens* rule in contemporary International Law. However, it neither defines what does the word 'peoples' define, nor does it lay down rules as to how could this right be exercised; a right which so far has been successfully invoked by colonial peoples only until now if both Bangladesh and Kosovo are exempted.

The principle of self-determination of peoples was proclaimed in the Atlantic Charter during the Second World War as a principle of respect for the forms of regime chosen by different peoples.¹⁰⁰ At the end of the Second World War, the emergence of the UN provided an occasion to achieve what the U.S President Woodrow Wilson had been unsuccessful in attaining through his proposals in the 'Fourteen Points', which involved a commitment to guarantee the political independence and territorial integrity of nations.¹⁰¹ The international community embraced then the principle of self-determination as one of the fundamental rules on which the new world order would be based after the war. Nonetheless, this principle was not seen as being a legal binding obligation by those drawing up the UN Charter, as it wasn't ratified by practice.¹⁰² The UN Charter established the first document with legal force to proclaim the principle of the self-determination of peoples, although the formulation adopted saw the principle as something to be aimed at, not a definite obligation.¹⁰³ The wording used in the Charter was a result of compromises between both the anti-colonialists

¹⁰⁰ President Roosevelt and Prime Minister Churchill, on August 14 the two leaders issued a joint declaration known as the Atlantic Charter. "Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them;" 1946-47 Yearbook of the United Nations - <https://www.unmultimedia.org/searchers/yearbook/page.jsp?volume=1946-47&bookpage=2>, (Accessed on 16/11/2020).

¹⁰¹ The program presented to the United States Congress on 8 January 1918 envisaged a need to create a 'League of Nations', which would provide mutual guarantees of political independence and territorial integrity.

¹⁰² Gunter Lauwers, & Stefaan Smis, "New Dimensions of the Right to Self-Determination: A Study of the International Response to the Kosovo Crisis", *Europe-Asia Studies*, 2000, p.44

¹⁰³ Antonio Cassese, *Political Self-Determination – Old Concepts and New Development*, UN Law Fundamental Rights – Two Topics in International Law, Sijthoff & Noordhoff: Alphen aan den Rijn, 1979, p.138

and the colonial powers, yet it was far from recognizing a real right to choose one's own government.

The expression 'self-determination' appears twice in the UN Charter: in Art. 1(2), in relation to the purposes listed in Chap. I 'Purposes and Principles', and in Art. 55 of Chap. IX 'International Economic and Social Co-operation', considered as a sort of 'second preamble'.¹⁰⁴ In the first one it could be described as a mean to develop friendly relations among nations in order to strengthen universal peace¹⁰⁵, while in the second there is a list of actions that should be promoted by the UN, in order to ensure 'peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'.¹⁰⁶ It should be mentioned that it is not listed among the 'principles' in Art. 2, which were aimed to govern the actions of the UN. Thus, the right of self-determination was not originally perceived as an operative principle of the Charter, in contrast to the principle of sovereignty and all that flows from it; it was one of the desiderata of the Charter rather than a legal right that could be invoked as such.¹⁰⁷

During the 1950s and 1960s a striking increase in the number of new independent States resulting from decolonization processes were admitted to the UN. Until 1955, only 9 States were admitted, which was a consequence of the attitude of the Soviet Union within the Security Council. The circumspet *détente* between the two superpowers led to the incorporation of 16 new States, 9 of them European, during the tenth period of sessions of the General Assembly. In 1960, 18 further States were integrated to the assembly, of which 16 were African. Thus, over that period the original 51 member States became 100 in 1960, and increased to 127 by 1970.

¹⁰⁴ Alain Pellet, Mathias Forteau, & Jean-Pierre Cot, *La charte des nations unies ; commentaire article par article*, 3rd Edition, Economica, 2005, p.841

¹⁰⁵ UN Charter, Article 1(2)

¹⁰⁶ UN Charter, Article 55

¹⁰⁷ Juan Francisco Escudero Espinosa, *Self-Determination and Humanitarian Secession in International Law of a Globalized World - Kosovo v. Crimea*, Springer, 2017, p.14

The most important step in the development of Art. 1(2) and 55 of the Charter was the adoption of Resolution 1514 (XV) of the General Assembly of the UN, the ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ of 14 December 1960.¹⁰⁸ In its content there was a re-emphasization on the right of all colonial peoples to self-determination, measures were taken to make this effective, what it consisted of was made explicit ‘by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.¹⁰⁹ In 1966, the ‘International Covenant on Civil and Political Rights’ and the ‘International Covenant on Economic, Social and Cultural Rights’, similarly proclaimed the right to self-determination in a more general and binding way, that was apparent in their identical first Article, “By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.¹¹⁰

The General Assembly approved Resolution 2625 (XXV) ‘Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations on the 24th of October 1970, which represented a real landmark in the United Nations’ commitment to the right of self-determination. In its section regarding ‘The Principle of Equal Rights and Self Determination of Peoples’, it is stated that: “By virtue of the principle of equal rights and self-determination of peoples enshrined in the UN Charter, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right

¹⁰⁸ Resolution 1514 (XV) was adopted by 89 votes to 0, with 9 abstentions (Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, United Kingdom and US).

¹⁰⁹ *General Assembly Resolution*, A/RES/1514(XV), ‘Declaration on the granting of independence to colonial countries and peoples’ (14 December 1960), para. 2.

¹¹⁰ ‘International Covenant on Civil and Political Rights’ and ‘International Covenant on Economic, Social and Cultural Rights’, of 16 December 1966, at Art. 1(1). The two International Covenants were adopted by General Assembly Resolution A/RES/2200 (XXI), of 16 December 1966. The ‘International Covenant on Civil and Political Rights’ came into force from 23 March 1976, in accordance with Art. 49, except for Art. 41, which applied from 28 March 1979. The ‘International Covenant on Economic, Social and Cultural Rights’ entered into force from 3 January 1976, in accordance with its Art. 27(1).

in accordance with the provisions of the Charter”.¹¹¹ Yet It must be pinpointed that Resolution 2625 (XXV) contained a ‘safeguard clause’ in which it is stressed that exercise of the right to self-determination is limited so as to prevent threats to the territorial integrity of States, which is: “Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”¹¹² The result was that the right to self-determination gained a legal status, although the agreement was a consensus text between both the Western States and the Socialist Bloc, thus it became a right conferred on all peoples. Its application was extended later to a much broader range of cases.

After the end of the decolonization era, a new scope of the principle was incorporated in other soft law instruments such as:

- The ‘Helsinki Final Act’ of 1975¹¹³, in Principle VIII of the act it was declared that the right to self-determination was recognized for the peoples of European States and consequently was no longer bonded exclusively to occupied or colonized territories, yet, it must be pinpointed that it had a ‘safeguard clause’, with the right to self-determination limited by any threat it might pose to the territorial integrity of States.
- The ‘Charter of Paris for a New Europe’ of 1990¹¹⁴, in the framework for the Conference on Security and Co-operation in Europe.
- The ‘Vienna Declaration and Program of Action’, approved by the United Nations

¹¹¹ General Assembly Resolution, A/RES/2625 (XXV), ‘The Principle of Equal Rights and Self-Determination of Peoples’, (24 October 1970), Annex para 1.

¹¹² Ibid, para. 7

¹¹³ Conference on Security and Co-operation in Europe Final Act’, Helsinki, 1 August 1975, 1(a) – VIII, <https://www.osce.org/files/f/documents/5/c/39501.pdf>, (Accessed on 17/11/2020).

¹¹⁴ Conference on Security and Co-operation in Europe, ‘Charter of Paris for a New Europe’, Paris, 21 November 1990, at ‘Friendly Relations among Participating States’, para. 7, <https://www.osce.org/files/f/documents/0/6/39516.pdf>, (Accessed on 17/11/2020).

World Conference on Human Rights of 1993¹¹⁵.

- The ‘African Charter on Human and People’s Rights’¹¹⁶ also stated in Article 20(1) that there was an inalienable right of all peoples to self-determination. Thus, it meant that they should be free to determine their political status and pursue their economic and social statuses in compliance with freely chosen policies.
- The Supreme Court of Canada in the case of “Reference re Secession of Quebec” in 1998, it stated: “The existence of the right of a people to self-determination is now so widely recognized in international conventions that the principle has acquired a status beyond ‘convention’ and is considered a general principle of International Law.”¹¹⁷
- The existence of a right to self-determination in International Law has been recognized by the ICJ¹¹⁸: “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)”, “Advisory Opinion, I.C.J. Reports 1971, 16-66. Western Sahara, Advisory Opinion”, and “I.C.J. Reports 1975, 12-176. East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, 90–277”.

Thus, it can be concluded that there is a right to self-determination which is equal to other rights enshrined in covenants on human rights within the field of International Law, as it became considered a fundamental and guiding principle of International Law, and an integral part of *jus cogens*. The principle of self-determination therefore evolved from being a philosophical concept into a political one in international relations and later on into

¹¹⁵ UN World Conference on Human Rights, A/CONF.157/24, ‘Vienna Declaration and Program of Action’, (25 June 1993), p. 20, Part I, para. 2.

¹¹⁶ The ‘African Charter on Human and People’s Rights’ was adopted on 27 June 1981 and entered into force on 21 October 1981, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf, (Accessed on 17/11/2020).

¹¹⁷ Supreme Court of Canada, Reference re Secession of Quebec [1998] 2 SCR 217, p. 62, para. 114 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/1643/1/document.do>, (Accessed on 30/10/2020).

¹¹⁸ Anatoly Kapustin, “Crimea’s Self-Determination in the Light of Contemporary International Law”, *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht*, 2015, p.104

becoming a fundamental principle of positive International Law. Even though, it has to be clarified that external self-determination outside any decolonization process doesn't have a broad consensus unlike internal self-determination. On these lines, it would be possible to hold that the practice of the UN sees the principle of self-determination as fundamentally a 'vehicle for decolonization', and not a route to secession.¹¹⁹ It would be therefore restricted to the processes of decolonization.

External self-determination outside any decolonization process has been a matter of controversy for a number of decades as international practice shows that from 1945 down to the declaration of independence by Kosovo in 2008 there were several attempts for unilateral secessions by either groups or territories in independent States outside the scope of colonialism. Nevertheless, the few new born states have successfully managed to rise up from a process of unilateral secession, and later on to receive broad recognition from the international community was Bangladesh after it broke free from Pakistan in 1971, after the parent state (Pakistan) recognized Bangladesh in 1974, and so was the case of Eritrea after it gained its independence from Ethiopia after a 30-year-war that ended in 1991, for both to be later on admitted to the UN and recognized by the parent state. Thus, practice shows that States may be said to show resistance to recognizing any right to self-determination other than in a colonial context.¹²⁰

In the postcolonial period only two questions regarding this topic were referred to the ICJ. These were the decisions on the Legal Consequences of the "Construction of a Wall in the Occupied Palestinian Territory" of 2004, and on the "Accordance with the International Law of the Unilateral Declaration of Independence in Respect of Kosovo" of 2010, which

¹¹⁹ Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination*, New Haven: Yale University Press, 1978, p.87

¹²⁰ Gary Wilson, "Self-Determination, Recognition and the Problem of Kosovo", *Netherlands International Law Review*, 2009, p.465

were not enough to provide a precise determination of its scope.¹²¹

The UN Charter, in referring to the principle of self-determination as the self-determination of peoples, defines it as a legal reality with different nuances from the right to self-determination in the strict sense.¹²² Just like other principles of International Law, the principle of self-determination sets rights and obligations, but in this particular case these affect not just State, but also peoples.¹²³ The Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Héctor Gros Espiell, summed it up as being a “fundamental principle of an imperative nature in International Law that constitutes a right of individuals and of peoples subject to colonial domination”.¹²⁴

The main problems relating to the interpretation of the right of peoples to self-determination in the post-colonial era centers on the problem of delimiting the scope and content of external self-determination. In particular, crucial aspects are the definition of a ‘people’ and the question whether the right to self-determination implies a right to secede from a state.¹²⁵ Although the principle of self-determination has been recognized as a central principle in International Law, there are obstacles that aroused due to the setting of limits to its scope. This could be summed up as its intertwined with other principles that are the basis for the idea of a State in the international community, such as the principle of equal sovereignty and the principle of territorial integrity. Thus, it is not surprising that a supposed right to secession has been seen by many as illegitimate, non-existent or, in brief, as incompatible to the principles, also acknowledged within the UN Charter, of sovereignty

¹²¹ Anne Peters, *Does Kosovo Lie in the Lotus-Land of Freedom?*, Cambridge University, 2011, p.108

¹²² Volker Röben, “The ICJ Advisory Opinion on the Unilateral Declaration of Independence in Respect of Kosovo: Rules or Principles?”, *Goettingen Journal of International Law*, 2010, p.1074

¹²³ Kapustin, 2015, *Op. cit.*, p.102-103

¹²⁴ *UN Economic and Social Council Commission*, E/CN.4/Sub.2/377, “Study on Implementation of United Nations Resolutions Relating to the Right of Peoples under Colonial and Alien Domination to Self Determination”, 1976, p.55

¹²⁵ Joakim Berndtsson, & Peter Johansson, “Principles on a Collision Course? State Sovereignty Meets Peoples Right of Self-Determination in the Case of Kosovo”, *Cambridge Review of International Affairs*, 2015, p.450

and territorial integrity.¹²⁶

In the current state of International Law the right to self-determination, in conformity with the UN Charter, is not circumscribed exclusively to non-self-governing territories, but constitutes a right *erga omnes*.¹²⁷ It is a right characterized by some authors as a universal right that needs to be defined as broadly as possible in both its internal and external features.¹²⁸ Nonetheless, it must in turn not be understood as an absolute right, but one that normally does not give rise to changes in international frontiers, even if this is not absolutely prohibited by International Law.¹²⁹

2.1 Kosovo's Self-Determination

The ownership of the right to self-determination is generally accepted as lying with 'peoples'.¹³⁰ In practice, the beneficiaries of an external right to self-determination are identified as a 'people', understood as 'the entire population living in the territory subject to illegal domination'.¹³¹ This attribution of the ownership of the right to self-determination finds support in various resolutions of the General Assembly and a number of legal decisions.¹³² This view implies that the idea of a people is based on geographical considerations, and only the entirety of the population residing within the frontiers of an internationally recognized territory can be the owner of a right to self-determination in

¹²⁶ Berndtsson & Johansson, 2015, *Op. cit.*, p.451

¹²⁷ "East Timor (Portugal v. Australia)", *ICJ Judgment*, p. 102, para. 29, & "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", *ICJ Advisory Opinion*, p. 81, para. 88

¹²⁸ Cedric Ryngaert, & Christine Griffioen, The Relevance of the Right to Self-determination in the Kosovo Matter: In Partial Response to the Agora Papers, *Chinese Journal of International Law*, vol. 8, no.3, 2009, p.575

¹²⁹ Jure Vidmar, "The Annexation of Crimea and the Boundaries of the Will of the People", *German Law Journal*, vol.16, no.3, 2015, p.366

¹³⁰ Supreme Court of Canada, 1998, *Op. cit.*, p. 281, para. 123.

¹³¹ Antonello Tancredi, Chapter 4: Some Remarks on the Relationship Between Secession and General International Law in the Light of the ICJs Kosovo Advisory Opinion, p.91. In Peter Hilpold, *Kosovo and International Law: The ICJ Advisory Opinion of 22 July 2010*, Leiden, Boston: Martinus Nijhoff Publishers, 2012

¹³² Tamara Jaber, "A Case for Kosovo? Self-determination and Secession in the 21st Century", *The International Journal of Human Rights*, 2011, p.930

accordance with the *uti possidetis* principle.¹³³

Determining the notion of a people has generated an extensive literature, as it has been one of the main debates on which the interpretation of the right to self-determination has centered in the post-colonial era.¹³⁴ In 1981, the Special Rapporteur of the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Aureliu Cristescu, presented a study which concluded with a proposal for a synthesis of the features defining what constitutes a people fit to enjoy and exercise the right of self-determination¹³⁵:

- a) The term ‘people’ represents a social entity possessing a clear identity, and its own characteristics;
- b) It suggests a ‘relationship with a territory’, even if the people in question has been wrongfully expelled from it and artificially replaced by another population;
- c) A ‘people’ should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognized in article 27 of the International Covenant on Civil and Political Rights.

Most authors have agreed that the idea of a people involves at least two elements¹³⁶, which are:

- Sociological, it can be defined as a ‘social entity possessing a clear identity’, thus implying the existence of an objective and of a subjective aspect. The objective aspect centers on the existence of joint features such as race, ethnicity, nationality, culture,

¹³³ Yuval Shany, “Does International Law Grant the People of Crimea and Donetsk a Right to Secede? Revisiting Self-Determination in Light of the 2014 Events in Ukraine”, *The Brown Journal of World Affairs*, volume XXI, issue 1, 2014, p.236

¹³⁴ Ryngaert & Griffioen, 2009, *Op. cit.*, p.576

¹³⁵ Aureliu Cristescu, “The Right of Self-Determination: Historic and Current Development on the Basis of United Nations Instruments”, *UN*, p. 41

¹³⁶ “The Events in East Pakistan, 1971 - A Legal Study by the Secretariat of the International Commission of Jurists”, *International Commission of Jurists*, Geneva, 1972, p. 70, <https://www.icj.org/wp-content/uploads/1972/06/Bangladesh-events-East-Pakistan-1971-thematic-report-1972-eng.pdf>, (Accessed on 20/11/2020).

history, religion, language, or a common economic base, with a sufficiently large number of members. While the subjective aspect refers to the existence of an idea of shared identity held by the group, thus individuals feel themselves to be members of the group and express a desire to preserve the group's 'signs of identity'.

- Geographical, it is oriented towards the relationship with a territory, and is a determining factor in demands for self-determination.¹³⁷ It lies in the existence of a link of an ethnic, cultural, historical or some other kind between a group and a territory in respect of which the right to self-determination is invoked.¹³⁸

Therefore, the idea of a people could be understood as a social entity with a clear relationship with a territory, but that should not to be confused with ethnic, religious or linguistic minorities. This belief corresponds to the conception of a State that is in conformity with the model adopted after the Peace of Westphalia of spheres comprising one territory, one population or community, and one authority. This conception has long since become outdated because of the superposition of populations and authorities, and the interdependence present in the present-day international community.¹³⁹

Thus, the international community is made up of a complex visible intertwining of categories of statehood in which the exercise of the human right to self-determination, understood as external self-determination, has become diluted in a world less and less centered on individual States.¹⁴⁰

In the process of decolonization, the principle of self-determination preceded the principle of territorial integrity.¹⁴¹ In the postcolonial era a debate arose, as States declared

¹³⁷ Cristescu, 1972, *Op. cit.*, p. 40-41

¹³⁸ *Ibid*

¹³⁹ Stephen James Anaya, "A Contemporary Definition of the International Norm of Self-Determination", *Transnational Law & Contemporary Problems*, Berkeley Law, 1993, p.140

¹⁴⁰ Cristescu, 1972, *Op. cit.*, p. 40-41

¹⁴¹ Samuel Kwaw Nyameke Blay, "Self-Determination versus Territorial Integrity in Decolonization", *New York Journal of International Law*, 1986, p.443

that the right to self-determination was subordinate to the principle of territorial integrity.

In the case of Kosovo, most historians assert that Kosovar Albanians as all Albanians, they descend from the Illyrians who inhabited that region as early as the second century BC, with the Illyrian tribe known as Dardan, living in the present territory know as Kosovo.¹⁴² The geographical zone of historical Macedonia (which included Kosovo and parts of Albania and Serbia) was under Byzantine rule between 395 AD until the 9th century, then it became under the rule of the First Bulgarian Empire until 1014, to revert to the Byzantines between 1014 and 1230, to be ruled again by the Bulgarians (2nd Bulgarian Empire) until 1250. After that period and until 1371 it was divided by the regional powers of that era (Serbs ‘Stefan Dušan’s Empire’, Epirote Byzantines, and the Byzantines of Nicaea), to be under total Ottoman control of the region in 1389 after the battle of Kosovo, until 1912.¹⁴³ During the Ottoman control of the Balkans, the Vilayet of Kosovo served as a political administrative unit in the Empire, with its center in Shkup (Skopje – Capital of Northern Macedonia). In 1918 Kosovo was incorporated with the Kingdom of Yugoslavia and was recognized as a distinct geographical region with defined borders within the Kingdom. In the SFRY, Kosovo was granted autonomy at first being regarded as a distinct region, to be upgraded later to a province in the 1974 SFRY constitution. Although it was not granted the status of a republic, its borders were demarcated along its historical lines. The 1974 SFRY constitution, Article 5 specified that borders of republics and autonomous provinces can’t be changed without the approval of the authorities of those involved, which was in the case the parliament of Kosovo. This provides the fact the Kosovar Albanians constitute a group that is entitled to the right of self-determination.

To further explore the idea of why Kosovo became part of the Kingdom of the Serbs and

¹⁴² Noel Malcolm, *Kosovo: A short history*, Macmillan, 1998, p.31

¹⁴³ Alexis Heraclides, *The Macedonian Question and the Macedonians: A history*, Routledge, 2020, p.2

the later Serb dominated states, could be rooted to the father of Serbian nationalism/Pan-Serbism/Pan-Slavism/Greater Serbia Ilija Garašanin, a Serbian statesman (served as an interior minister and later on as a Prime minister). This became apparent in a secret text titled Načertanije¹⁴⁴, which translates into outline/plan, it was a program of foreign policy written in 1844 by Garašanin, who dominated the Serbian political scene from the 1840s until the 1860s. Načertanije - came into life the same year as Greece's Megali Idea (the goal was to revive the Byzantine Empire, by establishing a greater Greek state), yet unlike the Megali Idea it remained a secret until 1906, and was known only to a handful of Serbian insiders¹⁴⁵ – it envisioned the independence of the lands regarded as Serbian, to be later on unified, being referenced to the medieval empire of Stefan Dušan. The plan proposed a union between: Montenegro, Bosnia, Herzegovina Kosovo, Vojvodina, and Northern Albania. Garašanin, regarded the Muslim Bosniacs and Catholic Croats as Catholic and Muslim Serbs respectively.¹⁴⁶

The Ibar river in the Balkans is a clear example of how geography plays a vital role in determining the division between ethnic and political components. Over the centuries that followed the Ottoman rule over the Balkans, the Serbs began to withdraw behind the Ibar river with Muslim Albanians inflowing from the Malësia region (Highlands region in North Albania and Eastern Central Macedonia) into Kosovo, where they eventually became the majority by mid-eighteenth century. The Ibar river still plays in several parts of the Republic of Kosovo, the role of a *de facto* border between it and Serbia.¹⁴⁷

The language of self-determination has been used by several international organizations in the case of Kosovo, as was the case of the UN Human Rights Committee in December

¹⁴⁴ Siniša Malešević, "'Small' and 'greater' nations: empires and nationalist movements in Ireland and the Balkans", *Irish Political Studies*, 2021, p.8

¹⁴⁵ Heraclides, 2020, *Op. cit*, p. 12

¹⁴⁶ *Ibid*, p.11

¹⁴⁷ Tim Marshall, *Prisoners of Geography: Ten Maps That Tell You Everything You Need To Know About Global Politics*, Elliot & Thompson, 2015, p.3

1992 when it urged the government of Yugoslavia “to put an end to the repression of the Albanian population in the province of Kosovo and adopt all necessary measures to restore the former local self-government in the province”¹⁴⁸ In March 1997 the UN General Assembly called upon Yugoslavia “to allow the establishment of genuine democratic institutions in Kosovo, including the parliament and the judiciary, and respect the will of its inhabitants”¹⁴⁹ This clearly shows that the General Assembly demanded Yugoslavia to give back Kosovo its autonomous rights, which could be as a step towards an internal self-determination.

A year later the Security Council issued a demand calling for a “meaningful dialogue on political status issue”, and its “support for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-determination”¹⁵⁰, which was restated in the Security Council Resolution 1199.

In 1999 the Security Council Resolution 1244 established UNMIK which was assigning it *inter alia* with the task to bring Kosovo towards autonomy and self-governance within the framework of Yugoslavia. The Kosovar Albanians have sought full independence since their referendum in 1991 with an overwhelming participation that led to the Declaration of Independence for Kosovo. Their declaration of independence wasn't recognized except by Albania, thus abolishing their dream of being a state within an internal self-determination process. Before the NATO intervened in Kosovo, the light should be shed on the oppression of the Serbian authorities against the Kosovars and depriving them from their right to internal self-determination under relevant provisions of International Laws.

The policy pursued by the Serbian government in Kosovo was featured by:

¹⁴⁸ *UN - The Centre for Civil and Political Rights, CCPR/C/79/Add.16, “Comments of the Human Rights Committee: Federal Republic of Yugoslavia (Serbia and Montenegro)”*, (28/12/1992), para.8.

¹⁴⁹ *General Assembly Resolution, A/RES/51/111(1997)*, ‘Situation of Human Rights in Kosovo’, para. 2(c).

¹⁵⁰ *Security Council Resolution, S/RES/1160 (1998)*, ‘The letters from the United Kingdom (S/1998/223) and the United States (S/1998/272), (31 March 1998), para. 4 & 5.

- Total blockage of the Kosovar Albanians from political, economic, social, and cultural development.
- Systemic discrimination and the violation of human rights
- War crimes that were committed after the Serbian forces' crackdowns in Kosovo since early spring 1998

To reflect this furtherly, 36 laws and 470 decisions entered into force by the Serbian parliament during the period between 1990 and 1992, the legal acts were attempts undertaken by the Serbian authorities is an indicative of their attempts to affect all the aspects of life of the Kosovar Albanians. These legal acts came after the 'Program for Kosovo'¹⁵¹, which was aimed at forcing the Kosovar Albanians to leave Kosovo and on the other hand to encourage both Montenegrins and Serbs to settle in Kosovo. Some of these legal acts include the following:

- 26 July 1990, the Law on Job Relations in Special Circumstance was adopted, this lead to the expulsion of 150,000 Kosovar Albanians from their jobs (almost 80% of the employed Kosovar Albanians)
- 29 March 1991, the Law on Transmission of Financial Funds was adopted, which led to the undermining of the banking system of Kosovo, the financial funds of the National Bank of Kosovo and the other commercial banks, furthermore all the budget funds of Kosovo and municipalities were seized.
- 20 July 1991, the Law on Conditions, Manner and Procedure of Distribution of Farming Land was adopted, which was attempted to provide farming land free of charge or favorable long-term loans for Serbs and non-Albanians.

¹⁵¹ Dajena Kumbaro, "The Kosovo crisis in an international law perspective: Self-determination, territorial integrity and the NATO intervention", *North Atlantic Treaty Organisation - Office of Information and Press*, Brussels, 2001, p.45

- 27 July 1991, the Law on the Official Use of Language and Scripts was adopted, which led to an official ban of the Albanian language, although the Kosovar Albanians constituted 90% of the total demographic.
- 18 April 1998, the Law on Special Conditions for the Real Estate Transfer was adopted, which led to the prohibition of the selling and possession of property by Albanians in Kosovo.
- Other measures led to renaming of streets, squares, schools and cultural centers in Kosovo into Serbian names written in Serbian and Cyrillic alphabet. The Public Prosecutor of Kosovo, the Supreme and municipal courts, Legal Office, and Provincial Secretariat of Internal Affairs were all suspended, this was accompanied by the discharging of all ethnic Kosovar Albanian judges, public prosecutors, lawyers and police, to be replaced by Montenegrins and Serbs. Mass media in Kosovo was destroyed after placing it under the total control of Serbia, this included the Pristina Radio and Television, newspapers, magazines, and six local radio stations.¹⁵²

2.2 From Terrorism to a legitimate resistance movement – KLA

Prior to the September 11th, 2001 attacks on the USA, terrorism was tool to self-determination. This became clear when President Bush declared on the 4th of December 2001 “The message is this: Those who do business with terror will do no business with the United States or anywhere else the United States can reach”.¹⁵³ Even before the attacks of 2001, international actors were skeptical about intervening in ethno-nationalist conflict zones, that could be attributed to them balancing between the principles of the right to self-

¹⁵² Kumbaro, 2001, *Op. cit*, p.46

¹⁵³ Glen Duerr, *Secessionism and Terrorism: Bombs, Blood, and Independence in Europe and Eurasia*, 1st edition, Routledge, 2018, p.87

determination and the right to territorial integrity. Kosovo is a unique case, not only because it was an ethno-nationalist separatist self-determination battle, or due to the fact it happened before the 11th of September attacks, but because it also led to strikes on Serbia by the NATO, and later on the deployment of the Kosovo Force (KFOR) and the United Nations Mission in Kosovo (UNMIK).

After Serbia suspended the Assembly and the Executive Council of Kosovo in July 1990, which ended in the Serbian Parliament and Executive Council to assume both legislative and administrative powers over Kosovo. This was countered by the Kosovo Parliament in July 1990, when it adopted a declaration of sovereignty that meant Kosovo would be an independent and equal unit within the Yugoslav federation with the same constitutional status as the other republics, becoming the 7th republic of the federation. While the Kosovar Albanians boycotted the Serbian constitutional reforms, not giving it any legitimacy in their areas, the government in Belgrade disbanded the Kosovo Legislature, this led the Kosovars to respond with their declaration of Independence on the 22nd of September 1991 by the dissolved Assembly of Kosovo, this was accompanied with them proceeding in building a parallel government.

This boycott and institutions building was led by the Democratic League of Kosovo (LDK), which was founded in 1989 and headed by Ibrahim Rugova, who stated “To participate in these elections would mean that we accept the conditions the Serbians have imposed upon us”, adding “By calling this boycott, we are telling the Serbs to stop this repression. We are saying we want our autonomy back. We want to be equal partners in the future of Yugoslavia”.¹⁵⁴ The declaration of independence was held through a referendum managed by the LDK, a year later Rugova was elected President of the back then self-

¹⁵⁴ Blaine Harden, “Ethnic Albanian Boycott Key Election in Yugoslav Province”, The Washington Post, 10/12/1990, <https://www.washingtonpost.com/archive/politics/1990/12/10/ethnic-albanians-boycott-key-election-in-yugoslav-province/a92f9ca3-ff7d-440d-9ee5-f753b76110bf/>, (Accessed on 7/3/2021).

proclaimed, Republic of Kosovo and headed then the parallel government that Belgrade declared as illegal.

Rugova and the LDK political agenda was based on peaceful resistance, opposing violence as a legitimate route to gain independence, he explained this approach by claiming that violence is an illegitimate route to political independence. As he explained, “We can only offer peaceful resistance because any other tactic would give Serbia an excuse to attack”¹⁵⁵, the basis of his belief was that the power of “political means and dialogue, despite the fact that the Serbian government and the federal government won’t talk”.¹⁵⁶ In his peaceful diplomatic approach, Rugova signed an agreement with Milošević in September 1996, which promised to restore education in the Albanian language and put an end to a 6 year of Kosovar Albanians boycott to the Serbian school system in Kosovo. The failure of the agreement highlighted the empty promises that diplomatic approach offered, this failure provoked more student riots in 1997 in Pristina that Belgrade faced with the usage of riot police force against them.

This failure of Rugova’s approach led to the increase in Kosovars impatience, this surfaced when Rugova’s Prime Minister Bujar Bukoshi and other political figures inside and outside the LDK, openly expressed their frustration and critics of Rugova’s inaction.¹⁵⁷ This was deepened furthermore after the signing of the Dayton agreements on Bosnia in 1995, which lifted the sanctions against the Federal Republic of Yugoslavia (FRY) and the failure to mention the existing situation in Kosovo. The Vice President of the LDK, Fehmi Agani stated his disappointment with the Dayton agreement, saying “We put a lot of hope into the Dayton peace negotiations. The feeling is growing among Albanians that we have to struggle

¹⁵⁵ Duerr, 2018, *Op. cit.*, p.90

¹⁵⁶ *Ibid.*, p.90

¹⁵⁷ Adam Roberts & Timothy Garton Ash, *Civil resistance and power politics: The experience of non-violent action from Gandhi to the present*, Oxford University Press, 2012, p.45-47

with the most aggressive means”.¹⁵⁸

With the passage of time, it became apparent to the Kosovars that the peaceful separatist movement was impeded, which weakened Rugova’s camp as more and more LDK supporters left the party and started taking up arms. This led to the formation of sporadic defense units across Kosovo, which gave rise to political violence as an alternative to peaceful resistance, it was coronated with the birth of the Kosovo Liberation Army (KLA) – Ushtria Çlirimtare e Kosovës (UCK) in Albanian – the first public armed Kosovar group to fight against the Serbs.

Although the first armed response against Serbia was in 1989, as a response to the removal of Kosovo’s autonomy, bombs were thrown at a troop truck and a newspaper office.¹⁵⁹ The KLA, like similar insurgencies around the globe, developed when peaceful separatist advocating fail, as the KLA leader Hashim Thaçi explained it: “The Kosovo Liberation Army was created in accordance with the already existing organizational structures of that time. Later, the resistance only got more powerful, so that it could transform from the peaceful “active” resistance into an armed resistance.”¹⁶⁰ On the 22nd of April 1996, the KLA was involved in the assassination of several Serbs, this was followed by an attack on the 16th and 17th of June 1996 that led to the wounding and killing of policemen, with the attack scale growing larger on the 2nd of August with series of attacks on police stations in several places in Kosovo.¹⁶¹

The KLA made itself public when it sent a letter to the BBC, claiming their responsibility for the attack on the Serb police, describing the attack as an “assault against Serbian aggressors” and warning that the armed struggle in the name of Kosovo liberation

¹⁵⁸ Ana Uselac, ‘Some Unfinished Business in the Shadow State of Kosovo’, *The Guardian*, 10 July 1996.

¹⁵⁹ Peter Humphrey, “Bomb Attacks Fuel Fears of Albanian Terrorist Campaign”, *The Independent*, 3/4/1989.

¹⁶⁰ Hashim Thaci, Interviews, *Public Broadcasting Service*. <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/thaci.html>, (Accessed 7/3/2021).

¹⁶¹ Under Orders: War Crimes in Kosovo, *Human Rights Watch*. <https://www.hrw.org/reports/2001/kosovo/>, (Accessed on 7/3/2021).

“would continue until complete victory”.¹⁶² The KLA staged its first public appearance in 1997, at the funeral of an Albanian teacher which was shot by the Serbian police, the speakers of the KLA at the funeral stated: “Serbia is massacring Albanians. The Kosovo Liberation army is the only force fighting for the freedom of Kosovo”.¹⁶³ With time more followers joined the KLA, as the Kosovars started losing faith in the peaceful process, as a KLA recruit explained:¹⁶⁴

The KLA forces reached anywhere between 10,000 and 30,000 in the course of the conflict,¹⁶⁵ yet the KLA leaderships was keen to reject the models of the ETA (Euskadi Ta Askatasuna, in the Basque), IRA (Irish Republican Army), and the PLO (Palestinian Liberation Organization). The objectives of the KLA were to resist the Serbs while defending civilians and fostering international sympathy. KLA member wore uniforms, avoided armed attacks outside Kosovo (although Albanians exist in South Serbia till this day), and they drew a hard line between combatants and noncombatants. One of the KLA documents mandated to “commit liberation acts with a just character, and not attack socio-cultural monuments, civilian population and subjects of importance for the life of the people”.¹⁶⁶ The KLA was suspected of carrying out 58 attacks that claimed 45 lives and injuring 104 individuals between 1996 and 1999, that were due to attacks against military installations or gunfire aimed at police stations.¹⁶⁷ Although most of the attacks were against the Serb armed forces, yet several attacks were against non-militants, as the case was on the

¹⁶² Miranda Vickers, *Between Serb and Albanian: A History of Kosovo*, Columbia University Press, 1998, p.293

¹⁶³ Aleksandar Pavcovic, *The Fragmentation of Yugoslavia: Nationalism and War in the Balkans*, St. Martin's Press, LLC, 2000, p.190

¹⁶⁴ Keiichi Kubo, “Why Kosovar Albanians Took up Arms against Serbian Regime: The Genesis and Expansion of the UCK in Kosovo.”, *Europe-Asia Studies*, 62(7), 2010, p.1145

“When I heard of the news about the UCK in November 1996, I thought that only they can solve the situation in Kosova. I tried to contact them and, when I succeeded in doing so, I went into the mountains in early 1997 without saying anything to my parents and friends”

¹⁶⁵ Armend R. Bekaj, “The KLA and the Kosovo War: From Intra-State Conflict to Independent Country”, *Berghof Conflict Research*, 2010, p.16

¹⁶⁶ *Ibid*, p.17

¹⁶⁷ Kosovo Liberation Army (KLA), *SEARCH RESULTS: 58 INCIDENTS*. GTD Search Results. https://start.umd.edu/gtd/search/Results.aspx?expanded=no&casualties_type=&casualties_max=&success=yes&perpetrator=720&ob=GTDID&od=desc&page=1&count=100, (Accessed on 6/3/2021).

29th of January 1999, when a hand grenade was thrown at a Serb owned café in Pristina, which was popular among the Serb minority. The KLA claimed the responsibility for the bombing,¹⁶⁸ and justified such attacks that left Albanian and Serb non-combatants wounded and dead, as being attacks against Serbian collaborators.¹⁶⁹

These attacks gave the Serbian government and other governments, the justification to call the KLA a terrorist organization. The Serbian press made reference to Albanians as “Heavily armed terrorists”.¹⁷⁰ The chief of information for the Serbs in Kosovo, Bosko Drobnjak, stated that: “They claim to be some national liberation army, but they are a classical terrorist group”¹⁷¹, adding later on: “These terrorists [KLA] used to target state bodies and their representatives, first of all the police. They then started to kill prominent Serbs and ethnic Albanians who remained loyal to the state. Now they are killing ordinary Serb civilians”.¹⁷² The Serb military and paramilitary forces that harassed and killed Albanians without justification between the KLA and nonmilitant Albanians, was defended by the Serb Commander General Nebojsa Pavkovic stating: “There was only the fight against the terrorists”.¹⁷³ The Contact Group for the former Yugoslavia, on the 9th of March 1998, condemned “all acts of terrorism by the Kosovo Liberation Army or any other group or individual and all external support for terrorist activity in Kosovo, including finance, arms and training.”¹⁷⁴

The Serb government saw these statements as a green light to continue its onslaught on Kosovo, and it escalated its actions in the spring-summer of 1998. Stepping up its crackdowns and repression, this led to an open confrontation between the Serbs armed forces

¹⁶⁸ Hamilton Spectator, “Kosovo Given Ultimatum to End Strife or Face Force.”,30/1/1999.

¹⁶⁹ Chris Hedges, “Resistance to Serbia Turns Violent in Kosovo.” *New York Times*, 17/2/1997.

¹⁷⁰ Harden, 1990, *Op. cit.*

¹⁷¹ Karen Coleman, “Rebel Insurgency Looms in Kosovo.” *Guardian*, 27/12/1997.

¹⁷² Chris Hedges, “Gun Battles in Serbia Raise Fear of ‘Another Bosnia.’”, *New York Times*, 6/3/1998.

¹⁷³ General Nebojsa Pavkovic, Interview, *Frontline*, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/pavkovic.html>, (Accessed on 6/3/2021).

¹⁷⁴ “Repression and Violence in Kosovo And Kosovo, the Humanitarian Perspective”, *Two Hearings Before the Commission on Security and Cooperation in Europe: One Hundred Fifth Congress, Second Session, Volume 4, March 18, 1998 & June 25, 1998*, p.67

and the KLA. What followed up resembled, to a huge extent, the ethnic cleansings that happened in Bosnia¹⁷⁵, which included: forced expulsions, massacres, retaliation killings, and overall excessive use of force.

It was inevitable after the international involvement in Bosnia, that the Serb government should have contemplated that repeating any kind of ethnic or religious cleansing was going to lead to a tightened up scrutiny. In 1993, the UN Security Council issued the Resolution 855 (9, August, 1993) warning Belgrade that it was “determined to avoid any extension of the conflict in Yugoslavia”. As Milošević stepped up his actions in Kosovo, the international community started viewing the KLA actions as proportionate to what the Kosovars were facing under the oppression of the Serb forces. The U.S. Secretary of State Madeleine Albright warned that the USA was not “going to stand by and watch the Serbian authorities do in Kosovo what they can no longer get away with doing in Bosnia.”¹⁷⁶, she even stated that “We were concerned by some of the activities of the KLA. We did know that they were involved in some provocative activity. However, it was also evident that what the Serbs were doing to the Kosovars was enough to provoke anything.”, which was a way of justifying the actions of the KLA.¹⁷⁷

As time passed the LDK and Rugova started to lose legitimacy as the sole representatives of the Kosovar Albanians, as the popularity of the KLA and Thaçi started to increase inside Kosovo and internationally. Rugova continued to play his role as the elected of the self-proclaimed state of Kosovo, traveling abroad to Tirana, Washington to meet with President Clinton, and New York meeting with the UN Secretary General Kofi Annan. Yet, he was no longer seen as the only legitimate representative of the separatist movement in

¹⁷⁵ ‘Prosecution Case – Kosovo’, United Nations International Criminal Tribunal for the former Yugoslavia, <https://www.icty.org/en/content/prosecution-case-kosovo>, (Accessed on 25/2/2021).

¹⁷⁶ Steven Erlanger, “Albright Warns Serbs on Kosovo Violence.”, *New York Times*, 8/3/1998.

¹⁷⁷ Interviews - Madeleine Albright’, *FRONTLINE*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/albright.html>, (Accessed on 4/3/2021).

Kosovo, this can be viewed clearly in the statement of Ivo Daalder, director for European Affairs at the U.S. National Security Council, that explained that “What happens in the summer of 1998 is an interesting change in the dynamics. The KLA moves out and becomes stronger and stronger militarily. In fact, they gain territory from the Serbs. By July, they claim control of about 40% of all of Kosovo and the KLA becomes the political leadership of Kosovo. It displaces Rugova, and demonstrates to the Kosovars that a policy of non-violent resistance is not working—that violence, and threats, and force are what would get Kosovo what it wants—autonomy and independence.”¹⁷⁸ In February 1998, Robert Gelbard publicly called the KLA “without any questions, a terrorist group”¹⁷⁹, and later on changed his approach in May 1998 by meeting with KLA officials in Switzerland.

Furthermore, the U.S. Dayton Accords negotiator Richard Holbrooke, was dispatched to directly talk with the KLA, to hold their first public meeting in June 1998. He explained this transfer from secret to public meetings, and to change the U.S. view of the KLA, stating: “Well, it was obvious to me from early on. I had already met with senior KLA representatives in secret, with no publicity, weeks and weeks earlier. And I had been in steady contact with them, because they were a legitimate part of the process. Whether they espoused a violent solution or not, you couldn’t ignore them, because they were imposing their presence on the relationship.”¹⁸⁰

Another change of rapprochement was within the UN Security Council Resolutions, as its resolution 1160 referred to terrorist actions committed by the KLA, yet subsequent resolutions don’t specifically reference “the terrorist activities” to the KLA (resolutions

¹⁷⁸ Interviews - Ivo Daalder’, FRONTLINE, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/daalder.html>, (Accessed on 4/3/2021).

¹⁷⁹, Philip Shenon, “U.S. Says It Might Consider Attacking Serbs. ”, *New York Times*, 13/3/1998

¹⁸⁰ Interviews - Richard Holbrooke’, | FRONTLINE, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/holbrooke.html>, (Accessed on 4/3/2021).

1199, 1203, and 1244). Furthermore, the legitimization of the KLA culminated when the Albanian Kosovar delegation to the Rambouillet held in February 1999, was headed by Thaçi and not Rugova, which Ivo Daalder recalls: “They [Kosovo Albanians] pick a 29-year-old nobody called Hashim Thaçi, who is a political leader in the KLA, rather than their own elected president, Ibrahim Rugova. The surprise here even for the United States, which had put together this whole delegation, is that Thaçi becomes the leader of the game. It signals that the Albanians in Rambouillet will not be as easy to maneuver into the situation that we want as we had thought. Thaçi was close to the hard-liners in the KLA. He’d talk over the mobile phones that they all carried with those hard-liners day in and day out, to make sure that Kosovo was not going to be sold down the tubes for a success of American diplomacy at Rambouillet.”¹⁸¹

Thus, the KLA was not only included in the peace talks, but became the official leader of the Kosovar Albanians and this forced the international community supporting the Rambouillet initiative, to recognize the KLA.

¹⁸¹“Interviews - Ivo Daalder”, *War In Europe*, FRONTLINE. PBS. <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/daalder.html>, (Accessed on 4/3/2021).

Part II: The Birth of States After the Dissolution of the Former Yugoslavia

The U.N Charter states that each state's territorial integrity is inviolable and that all peoples have a right to self-determination, both are bedrock principles of International Law enshrined in the U.N. Charter.¹⁸² Yet these two principles conflict when an oppressed minority (as was the case of the Kosovar Albanians in Serbia) seeks to achieve self-determination by seceding from an existing state. Such a conflict emerged when Kosovo declared independence from Serbia on February 17th, 2008.¹⁸³

The International Court of Justice (ICJ) issued an advisory opinion, “Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo”¹⁸⁴, concluding that Kosovo's declaration of independence did not violate International Law.¹⁸⁵

However, the ICJ refused to address the consequences of that declaration, particularly the question of whether Kosovo is entitled to statehood.¹⁸⁶ This ‘unnecessarily’ narrow opinion did not clarify the boundaries of the ‘right to self-determination’, while also weakening the principle of territorial integrity by giving separatist movements around the globe a ‘legal license’ to declare independence.

Chapter I: Kosovo’s Independence case

1. History of Kosovo before the breakup of Yugoslavia

The geographical entity called Albania, historically was comprised of the Ottoman vilayets of: Scutari (part of modern Albania and Montenegro), Janina (part of modern Albania and Greece), Kosovo (part of modern Kosovo, Serbia, Montenegro, and

¹⁸² U.N. Charter : Article I, paragraph 2; &. Article 2, paragraph 4

¹⁸³ *General Assembly Resolution, A/RES/63/3*, “Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law”, (8 October 2008), paragraph 3.

¹⁸⁴ Advisory Opinion of the ICJ, 2010, *Op. cit.*, <http://www.icj-cij.org/docket/files/141/15987.pdf>, (Accessed on 3/8/2020)

¹⁸⁵ *Ibid*, paragraph 123

¹⁸⁶ *Ibid*, paragraph 51

Northern Macedonia), and Monastir (part of modern Albania, North Macedonia, and Montenegro); was never a separate political entity and had been under Ottoman sovereignty since 1571.

After frequent revolts, the Sultan granted it local autonomy by 1912, but the future status of the territory was a central issue of the First Balkan War (17 October 1912– 30 May 1913). The British mediation resulted in the referral of the problem of Albania to the six Powers by Article III of the Treaty of London¹⁸⁷, which later on lead to the delimitation of the borders of Albania due to the Protocol of Florence of 17 December 1913 and the new state was *de jure* recognized. This left several Albanians out of the newly formed Albanian state, as is the case of Albanians in former Yugoslavia (Kosovo, North Macedonia, Montenegro, Croatia, Bosnia, and Serbia) and Greece.

Under the Yugoslav constitution of 1974, Kosovo was an autonomous province of Serbia, with approximately 90% of the inhabitants being ethnic Albanians, while most of the 10% were ethnic Serbs. The autonomous status in Kosovo was curtailed in 1989 by action of the Serbian Government, leading to local unrest. A small OSCE¹⁸⁸ mission had functioned in Kosovo under a Memorandum of Understanding with the FRY on 28th October 1992, but the FRY declined to renew it in 1993. The Kosovo Liberation Army (KLA) began attacking the federal security forces in 1997 due to the persecutions against ethnic Albanians in Kosovo. In February 1998, the FRY began a military campaign to reaffirm control in the province causing further atrocities and war crimes. Violence in Kosovo continued throughout 1998 until it was ended by a NATO intervention.

¹⁸⁷ Crawford, 2007, *Op. cit*, p.511

¹⁸⁸ The Organization for Security and Co-operation in Europe is the world's largest security-oriented intergovernmental organization. Its mandate includes issues such as arms control, promotion of human rights, freedom of the press, and fair elections. It was founded on 1/8/1975 in Helsinki, Finland.

1.1 Historical Overview of the Balkans before the formation of Yugoslavia

The Great Powers got involved in the Balkan wars in the beginning of the 20th century. The first time was between 1912 and 1913, and the second time was in the 1913 Balkan wars, that led to the division of the former Ottoman Empire territories in Europe. Soon thereafter, the assassination of Austrian Archduke Franz Ferdinand in Sarajevo (Bosnia) triggered World War I. During World War II, the Balkans fell quickly to the Axis powers by June 1941. The Socialist Federal Republic of Yugoslavia emerged at the end of the war, after its leader Josip Broz “Tito” triumphed in a civil war over anti-Communist rivals. Throughout the Cold War, Tito defied the Soviet Union and achieved a measure of independence as a leader of the Non-Aligned Movement¹⁸⁹, thus making Yugoslavia a focus for the United States and NATO.

According to a census done by the German scholar Gustav Weigand, the demographics in Kosovo in 1912, prior to the war, was as following¹⁹⁰:

- The town of **Prizren** (South of modern Kosovo), the census numbered 6,874 Albanian-Mohammedans and 388 Albanian Catholics, 2035 Serbs, 489 Gypsies, over 300 Romans. Near of it there was 164 Albanian villages with 10,898 houses, 8 Serbian villages with 370 houses and 26 mixed-lingual (Serbian-Albanian) with 1496 house. The Albanian element is therefore prevalent.
- To the east there is **Ferizaj** city, where there was 24,250 Albanians, 9,600 Serbs, 1,200 others living. Albanians were prevalent at 70%.
- In **Gjilan** (further east) there were 124 Albanian villages with 6,451 houses, 58

¹⁸⁹ The Non-Aligned Movement (NAM) is a forum of 120 developing world states that are not formally aligned with or against any major power bloc. It was founded in Belgrade in 1961.

¹⁹⁰ Gustav Weigand, Leipzig, & Friedrich Brandstetter, *Ethnography of Macedonia: Historical-National, Linguistic-Statistical part*, Translated by Elena Pipileva, 1924, Online book, http://macedonia.kroraina.com/gw/gw_3_4.html, (Accessed 19/2/2021).

Serbian with 2,137 houses, mixed language are 9 villages with 430 houses. The city itself numbered 2,340 inhabitants, including 1,080 Albanians, 880 Serbs, 373 Gypsies. Albanians make up 75% of the population.

- In **Pristina**, the city had 12,400 inhabitants, of which 8,400 were Albanians, 1,900 Gypsies, 1,800 Serbs, 300 Jews. The number of Albanian villages amounts to 198 with 6022 houses, the Serbian 25 with 912 houses, in 9 villages with 340 houses where the speech is mixed. The numerical superiority of Albanians is great – 67%.
 - The field of **Vitimirica** (west of Kosovo), had 171 Albanian villages with 7,229 houses, 14 Serbian villages with 610 houses and three villages with 1,05 houses. The city itself has 550 Albanian and 100 Serbian houses. The Albanian element is significantly over 90%.
 - **Mitrovicë** (Northern Kosovo), was mostly Serbian. There were Serbian villages with 1394 houses, Albanian 42 with 858 houses, mixed 11 villages with 300 houses; i.e. about 60% Serb, 40% Albanians.
- The numerical superiority of Albanians was prevalent in 1912, versus the Serbs in Kosovo.

1.2 Socialist Federal Republic of Yugoslavia (1945-1992) and its Dissolution

The former Socialist Federal Republic of Yugoslavia, which was known previously as the Democratic Federative Yugoslavia (DFY) (1943-1945), was a political reconfiguration of the Kingdom of Yugoslavia (1929-1941) after King Alexander renamed his kingdom, which was known before that as the Kingdom of Serbs, Croats and Slovenes (1918-1929). Military operations during World War II started in Yugoslavia on the 6th of April 1941, when the Axis forces conquered it swiftly, dividing its land between the Axis

(Germany, Hungary, Italy, and Bulgaria), with its government in exile after fleeing the Axis attack on Belgrade. Puppet states under the control of the axis forces existed, known as the fascist Independent State of Croatia (under both Nazi and Fascist control) and the Government of National Salvation in occupied Serbian lands (Under Nazi control).

A guerrilla war was led by both the Chetnik Detachments of the Yugoslav Army (backed up by the Yugoslav government in exile, and the Allied forces) and the Yugoslav Partisans (backed by the Soviet Union). In 1943 the Anti-Fascist Council for the National Liberation of Yugoslavia (AVNOJ) was formed, backed up by the allies with the aim to unite the resistance against the Axis forces, and not stating whether Yugoslavia was going to be a monarchy or a republic. Josip Broz Tito became a Marshal of Yugoslavia, and president of the government (acting as a Prime Minister), with King Peter II still head of the state. Later the monarchy was abolished on 29 November 1945, by the ruling communist party, on the second anniversary of AVNOJ. This was a result of Tito's victory (Communists) over Draza Mihailovic (royalist and Serb nationalist, his guerilla fighters were known as Chetniks).

Yugoslavia thus was formed as a federation of six sovereign republics: Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. Corresponding to the five "nations" who formed the majority in their onymous "republics": Croats, Macedonians, Montenegrins, Serbs, and Slovenes, with one exception which was Bosnia-Herzegovina that had a Muslim majority, later becoming a "republic" in 1971. The "nations" had the right of self-determination, and their "republics" had the right to secede from Yugoslavia, both rights existed theoretically and constitutionally at least, even if it wasn't possible during the Tito ruling. Tito being a Croat (son of a Croat father and a Slovene mother)¹⁹¹, restructured Yugoslavia as a multinational socialist state, with the intent to limit Serbian domination

¹⁹¹ Fitzroy Maclean, *The heretic: The life and times of Josip Broz-Tito*, Harper, 1957, p.7-8

within the federation. *De facto*, the federal state was a unitary state ruled by the communist party. Serbia had two autonomous regions within it, a northern autonomous region known as Voivodina, that had large Croat and Hungarian minorities, and the other was the southern autonomous region of Kosovo-Metohija with a majority of Albanians.

The status of the autonomous region of Kosovo-Metohija varied over the history of Yugoslavia. The 1946 constitution of Yugoslavia, established the autonomous region of Kosovo-Metohija within Serbia, yet it didn't allow for local independent decision-making, unlike the status of the "Autonomous Province" of Voivodina that had its own legislative body and a supreme court.¹⁹²

In 1963, Kosovo-Metohija was upgraded to an "Autonomous Province". Later in 1968, the Serb appointed name "Metohija" was dropped from its name, and gaining its own constitution, authorities (legislative, and judiciary)¹⁹³, and representation in the federal parliament. In 1969, Kosovo established a supreme court of its own, and an independent university in its later capital city of Pristina, former to that date the university of Pristina was a branch of Belgrade.

The constitution of 1974 provided less distinction between the autonomous provinces and republics, with Kosovo having its own bank, government, and police. Kosovo had a veto over legislations proposed from Serbia, having a broad form of self-governing, furthermore it had representatives in the federal judicial and legislative organs similar to other republics.¹⁹⁴

According to the constitution of 1974, the "Presidency of the Socialist Federal Republic of Yugoslavia", which was also known as Presidium, was formed of 9 members, with one member from each of the six republics and one from each of the autonomous

192 Ivo Lapenna, "Main features of the Yugoslav constitution 1946–1971", *International and Comparative Law Quarterly*, 21(2), 1972, p211-212

193 Ibid, p.219.

194 Adam Roberts, "Yugoslavia: The Constitution and the Succession", *The World Today*, 34(4), 1978, p.139.

provinces. The eight members were elected by their own parliaments, and proclaimed by the Federal Assembly of the SFRY, the ninth member was president of the Presidium of the League of Communists of Yugoslavia. The Presidency mandate lasted five years, its members were elected four times in total (1974, 1979, 1984 and 1989). The constitutional changes in autumn 1988, abolished the *ex officio* membership of the LCY leader as the head of the Presidium. The President of the Presidium of the Central Committee of the League of Communists of Yugoslavia, was the head of the Central Committee of the League of Communists of Yugoslavia, becoming the *de facto* leader of Yugoslavia.

Until his death in May 1980, Josip Broz Tito *de facto* exercised most of the powers of the Presidency, as he was “president of the republic for life”. After his death, the Presidency began to function according to the constitution. Ali Shukrija, representing Kosovo, served briefly as the 7th president of the presidium, between 26/6/1984 and 25/6/1985. Sinan Hasani, served as the 8th chairman of the collective head of state, between 15/5/1986 and 15/5/1987. Sejdo Bajramović, was acting chairman of the collective head of state of Yugoslavia, between 16/5/1991 and 30/6/1991, until the 13th chairman was elected. Two Kosovars were vice-presidents, serving as the 8th vice-president was Fadil Hoxha between 15/5/1978 and 15/5/197, and serving as the 14th vice-president was Sinan Hasani between 15/5/1985 and 15/5/1986.

Albanians in Yugoslavia were classified as a “national minority” initially, and then got reclassified in 1963 as a “nationality” along with Hungarians. “Nationalities” are not equal to “nations”, as they didn’t have the right of self-determination or have their own republic. In the 1974 constitution, the difference became blurred, as it gave both “nationalities” and “nations” equal rights. The reason for classifying both Albanians and Hungarians as “nationalities” not “nations”, in theory lies in the fact that both had their own state outside Yugoslavia.

The ties between Eastern Europe's states and Yugoslavia grew after the Soviet Union invaded Czechoslovakia in 1968, this allowed a greater contact between Kosovo's Albanians and Albania. This led to the adoption of the Tosk dialect used in Albania to become standardized by Kosovo's Albanians. Several factors led to the influx of Albanians from other parts of Yugoslavia into Kosovo, including the changing demographics in Kosovo due to the high Albanian birth rate.

Student riots that took place in 1968 in both Kosovo and Macedonia, with demands of unifying the Albanians to form a unified republic within Yugoslavia, these protests were faced by brutality from Tito's regime. The 1974 constitution which gave more powers for the republics and autonomies, helped in the "Albanization" of Kosovo's administration, leading to the efflux of minorities from the province.

Economically, Kosovo had significant natural resources (coal, chrome, lead, and zinc), yet it was the poorest region in Yugoslavia, as these resources were extracted and sent to other republics, which helped industries to grow in them and not within the province. Socially, the province had a high birth rate, which led the economic growth in it to be consumed, accompanied by the fact that the unemployment rate in Kosovo was the highest in Yugoslavia. This led in March 1981, for the protest of students at Pristina University, which escalated into riots that targeted Serbs. Demonstrations in Kosovo's main towns demanded a republic and Albanian unification. The Yugoslav army was sent in response, which left hundreds of Albanians dead, leading for a heavy security presence in the province and the up rise of Albanian nationalism.

Serbian Communist Party leader Slobodan Milošević seized the uprising of Serbian nationalism. During his visit to Kosovo in 1987, Milošević told the Serbian crowds rallying to see him, after the clashes between them and the police: "No one should dare to beat

you”.¹⁹⁵ His words came after a meeting with the Serbs of Kosovo, after which the Serb demonstrators were beaten by the Kosovar police, although it was orchestrated to look as so according to Nationalist Serb leader in Kosovo.¹⁹⁶This political move, seizing his opportunity with the uprising of Serbian nationalism, Milošević secured his leadership of the Serbian Communist Party in 1988. Later, he went on to seize control of Yugoslavia, by creating a Serb led federation. His goal was based on a 1986 academic “Memorandum”, that called for Serbian hegemony of Yugoslavia, with the federation recentralized around Serbs, or creating a greater Serbia by redrawing its borders, adding territories from other states within the federation.

Serbia took full control of both its autonomous provinces in March 1989. After a coup in Montenegro in January 1989, purging the Communist party in Kosovo and forcing its assembly to endorse ending its government under siege by police and tanks in 1989, and the removal of the Communist Party leadership in Voivodina in October 1988, Yugoslavia had four out of the eight seats in the collective presidency, thus gaining what is a “*de facto*” veto power. Milošević attempt to create a Serb controlled state was on its way, faced with resistance from other republics in the federation, he focused on rising Serb nationalism. Addressing his crowd in Kosovo, on the 28th of June 1989, Milošević warned of possible battles coming ahead, which could be armed ones.

The new Serb centralized state, accompanied by the threats of armed conflicts by Milošević, was met with resistance from other republics within Yugoslavia. Slovenia and Croatia sought to reconstruct Yugoslavia as a loser, more flexible federation, pressing for it to become a confederal Yugoslavia. Macedonia and Bosnia-Herzegovina supported maintaining the federation, as Bosnia-Herzegovina with the risk of being torn apart if a

¹⁹⁵The Death of Yugoslavia 1/6 Enter Nationalism – BBC Documentary, 13:10-13:13, <https://youtube.be/vDaDy9b2IBM>, (Accessed on 6/7/2020)

¹⁹⁶ Ibid, 11:17-12:11

conflict occurred between Croatia and Serbia, having a large Serb community. Milošević threatened that if the nature of the federation was to be changed, Serbia's border with the other republics would be an "open question", later on the Serbian authority supported the Serb minority in Croatia causing unrest in it. Kosovar's goals were to maintain autonomy and achieve the status of a republic within the federation.

The assembly of Kosovo declared it an independent republic outside Serbia, after a vote on the 2nd of July 1990. In response, Serbia dissolved Kosovo's assembly and executive authorities on the 5th of July 1990. The instability within the federation kept rising, as political unrest was fueled by Milošević rhetoric and actions, international support for Yugoslavia's integrity failed as negotiations between its republics failed in May 1991. Croatia and Slovenia declared their independence on 25 and 26 of June 1991. Bosnia-Herzegovina and Macedonia faced staying in a Serb dominated state, led to them declaring their independence with Macedonia declaring its independence on 25 September 1991 and Bosnia-Herzegovina on 3 March 1992. Kosovo, declared its independence on 21 September 1991, following an unofficial referendum held by its dissolved assembly, only Albania recognized the independence of Kosovo on October 22nd.

Turmoil was rising in Yugoslavia, with its dissolution and wars between Serbia and other newly formed states, and within the formed states themselves (as in the case of Bosnia-Herzegovina, between the Catholic Croats and the Sunni Bosniacs and Orthodox Serbs all against each other, and later between the united Catholic Croats and the Sunni Bosniacs against the Orthodox Serbs). This led the EEC (later renamed EC, before forming the EU) to organize a Peace Conference on Yugoslavia on the 27th of August 1991, the conference included representatives of the EEC and its member states with the presidents of the six republics (excluding the autonomies) and the Yugoslav Federal Presidency and government. The EEC additionally established what was unofficially known as the "Badinter

Commission” (named after its president Robert Badinter), as an arbitration commission composed of the presidents of constitutional courts in France, Germany, Italy, Spain, and Belgium.

The objective of the commission was to deliver a non-binding opinion on aspects of the Yugoslavian crisis. The six republics of the federation were invited to submit requests of recognition, which they did with the exception of the FRY, as the new union of Serbia and Montenegro considered itself to be the successor of the SFRY. Kosovo’s leader Ibrahim Rugova (served as president of Kosovo between 1992 and 2000, then from 2002 until his death in 2006), wrote to the chairman of the Peace Conference lord Carrington, on the 22nd of December 1991, requesting the recognition for Kosovo as an independent state, but that was refused.

The accords of Belovezha were signed on the 8th of December 1991, leading to the Soviet Union to be formally dissolved on the 26th of December 1991, the EEC states on 16th December produced a Declaration on Guidelines on the Recognition on New States, which was based on the basic principles for the recognition of states based on the Helsinki Final Act 1975 and the Paris Charter 1990. These guidelines recognized self-determination, but with emphasis on the inviolability of the existing borders, and shifting from a policy that is based on finding a political solution that maintains the territorial integrity to managing the dissolution of Yugoslavia peacefully.

The Badinter Commission characterized the break-up of Yugoslavia as a federal dissolution in Opinion number 1, thus the state dissolved into its federal units (states)¹⁹⁷. This could have been accurate in the case of the Soviet Union, in which its federal units agreed to terminate their federation, which is not the case in Yugoslavia where its units

¹⁹⁷ Alain Pellet, “The Opinions of the Badinter Arbitration Committee, A Second Breath for the Self-Determination of Peoples”, *European Journal of International Law*, Vol. 3, 1992, p.183

unilaterally declared independence, and they were resisted forcibly by the federal institutions, which is more of a secession than a dissolution.

The dissolution of Yugoslavia had two important outcomes: the first was that there was not a successor for SFRY, meaning that all the new states needed to apply for their recognition, including the newly formed FRY. The second was that the political fragmentation of Yugoslavia involved only republics within the federation. This approach of independence based on republics only, and borders between them being those of the federation, was strengthened by the application of *uti possidetis*, being used previously in the decolonization of Latin America and Africa, this principle validated the formerly established administrative borders upon gaining independence by the republics.

The application of *uti possidetis*, being related to colonial frontiers, was a novel application of it in the case of a federal state, extending it to be applied on the dissolution of it. The justification of the commission was built on the findings of the ICJ in the case of Burkina Faso/Mali Frontier Dispute, in which *uti possidetis* was considered: “a general principle, which is logically connected with the phenomenon of obtaining independence, wherever it occurs”¹⁹⁸, although the ICJ referred to the *uti possidetis* principle in the context of colonization.

The Commission also had other instruments for which it justified its approach, which included “a well-established principle of International Law [that] the alteration of existing frontiers or boundaries is incapable of producing any legal effect”¹⁹⁹, citing in this regard the Helsinki Final Act 1975 and the Declaration on Friendly Relations (GA Res.2625 (XXV) 1970), although both of these instruments didn’t specifically refer to *uti possidetis*, yet they contained the principle of territorial integrity of states in them, with the Final Act

¹⁹⁸ “Frontier Dispute (Burkina Faso/Republic of Mali)”, ICJ, (14 October 1983).

¹⁹⁹ Pellet, 1992, *Op. cit.*, p.185

emphasizing on the inviolability of frontiers.

The Declaration which provided seven principles, includes “the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations” and “the principle of equal rights and self-determination of peoples”.²⁰⁰ The Helsinki Final Act, which includes the Declaration on Principles Guiding Relations between Participating States (Helsinki Decalogue), includes several principles that include: “Sovereign equality, respect for the rights inherent in sovereignty”, “Inviolability of frontiers”, “Territorial integrity of States”, “Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief”, as well as “Equal rights and self-determination of peoples”.²⁰¹

These principles in International Law were aimed to preserve existing states within their borders. In the case of Yugoslavia, territorial integrity was meant to both preserve the territorial integrity of the republics of Yugoslavia and those surrounding it. The Commission, in Opinion number 3 used the Yugoslav constitution of 1974 as reference, as Paragraph 2 of Article 5 stated: “A republic’s territory cannot be altered without the consent of that republic, and the territory of an autonomous province without the consent of that autonomous province”; while also Paragraph 4 provided that: “A border between republics can only be altered on the basis of their agreement, and in the case of a border of an autonomous province on the basis of its concurrence.”

The right of self-determination, another principle in International Law, clashed with the borders of the republics, as the republics had a mixture of different “people” within their

²⁰⁰ *General Assembly Resolution, A/RES/26/25 (XXV)*, “Declaration on Principles of International Law Friendly Relations and Co-Operation Among States In Accordance With The Charter of The United Nations”, (24 October 1970).

²⁰¹ “Conference On Security and Co-Operation In Europe Final Act”, *OSCE: Organization for Security and Co-operation in Europe*, 1975, <https://www.osce.org/files/f/documents/5/c/39501.pdf>, (Accessed on 11/12/2020).

borders. The Yugoslav constitution gave this right to the “nations”, although the republics were meant to be nation-states, yet in reality they weren’t. The Badtiner Committee emphasized greatly on the fundamental importance of the principle of respecting the existing frontiers at the moment of independence (*uti possidetis juris*), considering that the frontiers could change if the states concerned agreed to it: “it is well established that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise”²⁰². ‘Minority rights’ were found to have a *jus cogens* character even within the autonomies of the states, which is the case of Albanians in Kosovo and Croats and Serbs in Bosnia-Herzegovina and the Serbs in Croatia, in the regard Croatia was found not to meet the requirements for recognition by not including a provision for the “special status” of minorities. This point was not only made in its Opinion No. 3 but was also evoked in Opinion No. 2 when it recalled that, whatever the circumstances, “the right to self-determination must not involve changes to existing frontiers”²⁰³.

In the written statement of Albania to the ICJ, it stated “The position is that secession is neither legal nor illegal in International Law, but a legally neutral act the consequences of which are regulated internationally.”²⁰⁴ Adding in an *amicus curiae* brief to the Canadian Supreme Court “in a non-colonial context, the attainment of sovereignty by a territory is merely a question of fact in the eyes of International Law: the new State is considered as such if its existence is effective. The recognition by third-party States (and by the State from which the territory concerned was severed) is a test of this effectiveness.”²⁰⁵

In its Opinion in the case concerning *Certain Questions relating to the Secession of*

²⁰² Pellet, 1992, *Op. cit.*, p.184

²⁰³ Pellet, 1992, *Op. cit.*, p.180

²⁰⁴ “Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo - (2009, April) - Written Statement of the Government of the Republic of Albania”, *INTERNATIONAL COURT OF JUSTICE*, para. 73, p.38-39

²⁰⁵ *Ibid.*, para. 74, p.39

Quebec from Canada, the Supreme Court of Canada²⁰⁶, in paragraph 138, concluded that, under International Law, the exceptional circumstances in which a people is entitled to a right to external self-determination were:

- Former colonies;
- A people is oppressed (as for example under foreign military occupation);
- A definable group is denied meaningful access to government to pursue their political, economic, social and cultural development.

If the same reasoning is applied to the case of Kosovo, keeping in mind the following:

- On 23 March 1989, Serbia forced the Kosovo Assembly to accept the removal of Kosovo's autonomy status²⁰⁷;
- On 5 July 1990, Serbia suspended the Kosovo Assembly²⁰⁸;
- In late 1990, the Kosovo Constitutional Court was abolished by Serbia²⁰⁹;
- From the early 1990s onwards, Kosovo Albanians were subject to systematic state-sanctioned discrimination, dismissed from position in both the private and public sector and replaced by Serbs, and tortured and mistreated²¹⁰;
- Up until the late 1990s the situation exacerbated and the Albanian Kosovars became victims of “the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which has resulted in numerous civilian casualties”²¹¹.

Thus, it could be pinpointed that Kosovars were ‘denied the ability to exert internally its right to self-determination’ and that Serbia did not behave in respect to Kosovo’s population as a democratic state protecting on an equal basis all its citizens. Thus, the conditions for a

²⁰⁶ Reference re Secession of Quebec, 1998, *Op. cit.*, para.138

²⁰⁷ ICTY, Trial Chamber, Judgment, “Prosecutor v. Milan Milutinović et al.”, IT-05-87-T, (26 February 2009), para 219, p.85

²⁰⁸ *Ibid.*, para 223, p.87

²⁰⁹ *Ibid.*, para 220, p.86

²¹⁰ *Ibid.*, para 224, p.87-88

²¹¹ *Security Council Resolution*, S/RES/1199 (1998), “The situation in Kosovo”, (23 September 1998), para 5, p.1

right to self-determination, including a right to secede, were met.²¹²

2. The Aftermath of the Breakup of Yugoslavia

With the breaking up of Yugoslavia, Kosovars no longer felt restrained to remain in a Serbian dominated federation once Slovenia and Croatia left. Their aspirations shifted to gain independence. The secessionist movement in Kosovo avoided in its beginning the violence that occurred in other parts of Yugoslavia as Croatia and Bosnia-Herzegovina, that was due to the *de facto* republic established by the Albanians in Kosovo, having their own parallel institutions (health, education, media, etc.), that were funded by both the Kosovar and the Albanian diaspora voluntarily.

2.1 The ‘Milošević’ Era

In December 1989, the Democratic League of Kosova (LDK) was founded, it was the principal organization behind these *de facto* state institutions. The LDK was a moderate nationalist movement, led by Ibrahim Rugova who became later on the President of the Republic of Kosovo, it started as a literature association that drew in members of the Communist Party. These institutions which aimed in forwarding the independence of Kosovo, was responded to by discriminatory policies and actions by the Serbian government in Belgrade.²¹³

Kosovar Albanians were unpermitted public serving in most positions, including healthcare and education, that was also accompanied by restrictions on private ownership of property, Kosovar Albanians were also subjected to arbitrary arrests. Serbianisation was forced into Kosovo, with Albanian media suppression, libraries emptied of their books,

²¹² Alain Pellet, “Kosovo - the questions not asked: self-determination, secession, and recognition”, In: *The law and Politics of the Kosovo Advisory Opinion*, Oxford University Press, 2015, p. 273.

²¹³ Independent International Commission on Kosovo, *The Kosovo report: Conflict, international response, lessons learned: A report from the Independent International Commission on Kosovo*, Oxford University Press, 2000, p.45

museums were shut down, streets renamed to have Serbian names, the teaching language became in Serbian, the identity of Albanians was being eliminated as their history and language was being fought fiercely. This was also accompanied by the Serbian authority trying to change the demographics in Kosovo, by settling Serb refugees that ran away from wars in Yugoslavia (Croatia, Bosnia-Herzegovina), yet most Serbs weren't interested in this were so few due to the overall impoverished economic and infrastructure of Kosovo.

The Kosovars sought a peaceful secession strategy for their republic, intended at preventing any form of conflict with the Serbs that would lead to ethnic cleansing or war crimes against the Albanians, establishing a *de facto* republic with functional institutions delegitimizing the Serbian authority, and getting international attention hoping for their involvement in protecting their rights. The LDK and Rugova's plans were successful initially, but they seemed to lack international support for the secession of Kosovo and the right of its people to have a state of their own, as their struggle to gain independence was peaceful and lacked foreign attention.

Lacking any political rival within Serbia helped keep Milošević in power, with him having a blocking vote power in Yugoslavia as he controlled 4 out of the 8 votes in its presidency council. Albanian politicians started to question their approach to gain independence, their agenda was focused on achieving their own republic, but the "how" changed to the deadlock it was in, and facing the oppressor became inevitable. Resistance got on the rise in Kosovo, as Albanians found their own fighting groups, the most known one was the Kosovo Liberation Army (KLA) "Ushtria Çlirimtare e Kosovës – UÇK", which was founded in early 1990s with no exact date, it was formed mainly of descendants of rightist resistance fighters in World War II and left-wing Pristina University graduates, both united by the Albanian nationalism. The group carried out its first attack in May 1993 leaving two Serb police officers dead, and acting as the resistance against the Serbs in the

following years.

The Albanian Kosovars saw the Dayton Accords 1995 as a lost chance for gaining their freedom, as the accords provided a settlement for the conflict in Bosnia-Herzegovina, creating a federal state that united its three fighting forces (Bosniacs, Croats, and Serbs), and formally recognizing Yugoslavia (FRY) as a state having Kosovo within its borders.

Albanian Kosovars learned a valuable lesson from the Dayton Accords, which was that a non-violent approach to their cause wasn't helpful in gaining their freedom, that was concluded from the fact that Republika Srpska gained its highly autonomous status within Bosnia-Herzegovina due to war with the Bosniacs and Croats. Kosovars also lacked the right of being autonomous within Yugoslavia, which helped the uprising of nationalism furthermore.

The west focused in the Dayton Accords in finding a solution for the war in Bosnia-Herzegovina, as Milošević needed to be pressured into agreeing on the agreement, which led to the exclusion of the Kosovars from the negotiations, due to the complexity of the situation in Bosnia-Herzegovina. With the Balkans becoming more stable after ending the war in Bosnia-Herzegovina, a shift happened in Kosovo towards more radicalization with a window of opportunity opened to pick up arms after the Albanian government collapsed in the spring of 1997 due to a financial crisis. Albania's armories were looted during that period of instability, which led to the influx of weapons into Kosovo, helping the uprising of its resistance against the Serbs in Kosovo.

Only Serbs, who likely represented no more than 10% of the total population, would henceforth govern Kosovo, with "Kosovo is Serbia" becoming a battle cry for them. Ethnic repression fed ethnic rebellion. As Milošević expelled the Albanians from Kosovo's institutions, Albanian literary scholar Ibrahim Rugova led a mainly nonviolent Albanian

rebellion, without, any real sense of how it could achieve the goal of independence.²¹⁴

Inspired by the independence of both Slovenia and Croatia, a “parallel” assembly declared Kosovo a sovereign and independent republic in 1991 and held elections in 1992. The Kosovars also created separate parastatal institutions, including an education system that met in homes and basements, a health system administered by the ‘Mother Teresa Society’, and a government funded by the contributions coming mainly from the diaspora and ran by ordinary people who contributed labor, real estate, and expertise.²¹⁵

In the 1990s Kosovo’s sovereignty was only recognized by Albania, which remained a dead letter. The Yugoslav police and army were still very much in charge, even if the parallel state provided education and health services to the Albanian population. The international community, back then, was not ready for an independent Kosovo. It was preoccupied with the Bosnian War and with protecting Macedonia, thus Kosovo got short shrift. There were unofficial attempts to mediate the conflict between Belgrade and Pristina, especially an effort by the Italian Catholic charity ‘Sant’Egidio’ to reopen the public schools to Albanians, with that and other initiatives to manage or resolve the conflict coming to naught.²¹⁶

The failure of the Kosovars to get a hearing at the Dayton talks in late 1995 pushed them in a direction some were already headed: toward a violent insurrection. They took up arms, many obtained from Albania. State authority there evaporated in 1996, after the collapse of Ponzi schemes in which a large portion of the population lost hard-earned money. Weapons circulated widely, eventually finding their way over the mountains into Kosovo to a small guerrilla force that dubbed itself as the Kosovo Liberation Army (KLA). As with many other guerrilla insurgencies, the KLA’s role was not entirely military in its objectives.

²¹⁴ Serwer, 2019, *Op. cit.*, p.72-73

²¹⁵ Paul Hockenos, *Homeland Calling: Exile Patriotism and the Balkan Wars*, Cornell University Press, 2003, p.228

²¹⁶ Serwer, 2019, *Op. cit.*, p.75

While it focused mainly on killing Serbian police, it could not defeat them or the JNA, but it could attract international attention by precipitating Serbian crackdowns and atrocities.

Milošević coerced even more Kosovars to arms and largely vaporizing the nonviolent street demonstrations Rugova promoted. Photo coverage of a massacre in Drenica in February 1998 aroused condemnation in international public opinion.²¹⁷ The Serbs value Kosovo, sometimes called the “Serb Jerusalem,” far more than Bosnia. The first Serbian kingdom was founded there. Kosovo still hosts many important Serb monasteries, cemeteries, and other religious sites. This made it more important to Milošević’s image as a defender of Serbs than Bosnia, where he had competition for Serb leadership from Republika Srpska President Karadžić. In Kosovo, he was the man. Serb paramilitary leaders “Arkan” (Željko Ražnatović) and Vojislav Šešelj, responsible for a good deal of havoc in Kosovo, were more agents than competitors.

Milošević sought to subjugate the province, cleansing the border area with Albania of Albanians and continued a draconian crackdown against the KLA, which was largely ‘successful militarily’, leading to around 100,000 to 200,000 people being chased from their homes during the final months of 1998. Furthermore, Milošević also tried to impose the Serbian language, this made the Albanians uncomfortable with remaining in Kosovo, and his import of Serb settlers from among the refugees who had left Croatia in 1995. Milošević’s efforts precipitated international civilian intervention, first with the deployment of the Kosovo Diplomatic Observer Mission and then the still civilian Kosovo Verification Mission (KVM) of the Organization for Security and Co-operation in Europe (OSCE). These worthy diplomatic efforts were too little, too late.²¹⁸ In January 1999 the Račak massacre of

²¹⁷“Kosovo War Crimes Chronology”, *Human Rights Watch*, <https://www.hrw.org/legacy/campaigns/kosovo98/timeline.shtml>, (Accessed on 5/5/2020)

²¹⁸ Daniel Serwer & Lauren Van Metre, *Kosovo Dialogue: Too Little, Too Late*, United States Institute of Peace, (30/6/1998), <https://www.usip.org/publications/1998/06/kosovo-dialogue-too-little-too-late>, (Accessed on 5/5/2020).

forty-five civilians attracted wide international attention, when American diplomat and KVM leader Bill Walker labeled it a crime against humanity, perpetrated, he said, by Serbian security forces.²¹⁹ That consolidated international willingness to stop not only what Milošević was already doing to the Kosovo Albanians but also his anticipated plans for expelling Albanians from Kosovo en masse, which were known to Western intelligence.²²⁰ The French-hosted talks at Rambouillet in early 1999 were a last ditch effort to prevent that from happening and avoid military intervention. They failed because the effort was poorly conceived.

Many in the State Department believed the NATO bombing had forced Milošević to end the war in Bosnia. They repeated *ad infinitum* that he would only respond to the credible threat of force, that was a misconception of what made him yield at Dayton. Milošević was not concerned with the threat of force *per se*, coming to Dayton suing for peace not because force was used but because he feared the NATO bombing would precipitate an ‘exodus’ of Serbs from Bosnia that would endanger his hold on power in Serbia. Serbian nationalist sentiment was far stronger about Kosovo than about the Serb-inhabited portions of Croatia or Bosnia.

Failing to keep Kosovo within Serbia, Milošević anticipated a serious threat to his hold on power. By the same token, he would consolidate his position, “The Albanian question”, which is: Will Albanians live in several countries, or in just one? While never asked loudly, the Albanian question remains open today, at least for some in the Balkans, which could still cause instability if not war with ethnic nationalists if he could rid Kosovo of a good part of its Albanian population. The Serbian forces came close to achieving this objective, with the expulsion of 600,000–700,000 Albanians from their homes after NATO

²¹⁹ “William Walker, Interview, War in Europe”, *Public Broadcasting Service*, <https://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/walker.html>, (Accessed on 4/3/2020)

²²⁰ Louis Sell, *Slobodan Milosevic and the Destruction of Yugoslavia*, Duke University Press, 2003, p.304–5.

started bombing in March 1999. There was far less killing than in Bosnia (about 10,000 Albanians were killed), and no concentration camps, which had attracted unwanted international attention in Bosnia. The Serbian security forces had learned how to get large numbers of people to move without rounding them up or killing them. The main mode of operation was to kill a prominent citizen in the main square, leave his body there, and then order everyone else to leave.

This method moved a huge amount of people, without much need for logistics to support the operation. Many Kosovars hopped on whatever means of transportation they found and left. In the end, NATO bombing succeeded when Milošević found himself unexpectedly indicted by the International Criminal Tribunal for the former Yugoslavia, concerned about fading Russian support, and advised that damage done to Serbia's infrastructure could be irreversible and make recovery impossible. That would really threaten Milošević's hold on power.²²¹

However, neither he nor his successors acknowledged responsibility for the atrocities that had been committed, the "historical truth" that is required for accountability.²²² Here the narrative splits. In June 1999 Serbia went one way, while Kosovo went another. Serbia's state and civil society emerged from the war intact, except for the amputation of most of Kosovo. Serbia retreated but did not surrender, Milošević remained in power, with his security forces barely scathed. Kosovo north of the Ibar River, which contained three municipalities with pre-war Serb majorities, remained under Belgrade's surreptitious control, in addition to the northern half of Mitrovica/Mitrovičë, which remain vastly predominant by Serbs in Kosovo, with the French NATO troops protected the mostly Serb population in these three and a half northern municipalities. Except for a relatively few

²²¹ James Gow, *The Serbian Project and Its Adversaries: A Strategy of War Crimes*, McGill-Queen's University Press, 2003, p.34-35

²²² Veton Surroi, *The Gorillas We Didn't See (How They're Destroying the State ... and Other Heretical Notes)*, Koha, 2017, p.54

individuals, Serbian civil society had opposed the NATO bombing, even if many of its supporters opposed Milošević.

This made international support for nongovernmental organizations in Serbia fade during and immediately after the war, but it preserved the credibility of Serbia's extensive network of civil society organizations with at least a portion of the general population, as soon it was needed post the war. Belgrade had already faced previously a nonviolent rebellion against Milošević's rule in the winter of 1996–1997. The opposition group Zajedno (Together) protested against Milošević's falsification of municipal election results. The demonstrations fizzled once Milošević gave into a part of the street's demands and the Americans renewed contacts with him, which had been suspended.

2.2 Post 'Milošević' Era

U.S. policy, which had relied on Milošević at Dayton and would do so again at Rambouillet, was ill-conceived to many by the spring of 1998. Milošević became a part of the problem and not part of the solution, especially for Kosovo.²²³ This implied getting rid of him for international actors and Serbs. A small group, including people with intimate knowledge of the Polish Solidarity movement that had brought down Communism in Warsaw as well as others involved in the collapse of Communism in Eastern Europe, convened at the 'U.S. Institute of Peace', offering two suggestions: The first, was unlikely anything could be done, as Milošević had been elected in more or less 'free' if not 'fair elections'; and the second, was that the best bet would be to support a broad spectrum of democratically minded organizations, a "coalition of coalitions," rather than any particular political grouping or leader.²²⁴ This made a good deal of sense, as civil society in Serbia was robust, partly due to support from George Soros, while the opposition political parties and

²²³ Lauren Van Metre, Albert Cevallos, & Kristine Herrmann, "Kosovo: Escaping the Cul-de-Sac", *United States Institute of Peace*, 1998, p.222

²²⁴ *Ibid*, p.224

their leaders were neither unified nor capable. They were also more inclined toward Serbian nationalism, which they found necessary to compete politically, and readier to cooperate with Milošević.

Two major things had happened by January: First, three deputy prime ministers of Serbia appeared on the primetime newscast in Belgrade waving a document they claimed was a top-secret CIA plot to overthrow Milošević; the second was more important but less visible, the Helsinki Commission Chair Congressman Chris Smith began to prepare legislation proposing support to change things in Serbia. The State Department asked USAID to preempt the effort, and money started flowing to the student movement Otpor! (Resistance!), the voting-rights organization CeSID (Center for Free Elections and Democracy), and other Serbian civil society organizations committed to democracy. By the summer of 1999 the war was over, with Milošević looking shaky, even though assistance to his democratic opponents, suspended during the war, had not yet resumed. The war damage was much in evidence. ²²⁵

There were spontaneous anti-Milošević demonstrations, even in the stronghold of Serbian nationalism, the central province of Šumadija. By failing to turn on the taps of assistance to Serbian civil society, the West missed an early opportunity to unseat Milošević. A year later, feeling confident again, he decided to call early elections for the presidency and parliament of Yugoslavia, which then consisted only of Serbia and Montenegro. That was a big mistake, as was allowing domestic observers and posting results at the polling places. Otpor! pressed the opposition politicians to unify (which, except for firebrand Vuk Draskovic, they did) and helped get out the vote, along with the trade unions and other civil society organizations. CeSID knew the results before the Milošević regime could falsify them. They also blocked him from stuffing the Kosovo ballot boxes. The opposition chose

²²⁵ Serwer, 2019, *Op. cit.*, p.88-89

nationalist Vojislav Koštunica to run against Milošević, because American polling showed he had broader appeal and fewer “negatives” than the more liberal, less nationalist, and more prominent opposition leader Zoran Đinđić. Koštunica sneaked over the 50% threshold by a narrow margin, one significantly smaller than the number of non-Serb, minority voters who opted for him. The opposition also won a majority in parliament. People often remember Milošević as falling to street demonstrators led by Otpor! and chanting “Gotov je!” (He’s finished!). They were demonstrations in favor of recognizing known election results. This was not revolution. It was a successful nonviolent campaign in favor of known election results. Serbian institutions remained in place.

By December, the opposition had also won Serbian parliamentary and presidential elections, which made Đinđić prime minister of Serbia. Milošević really was finished. Đinđić had him arrested in March 2001 and transferred to The Hague on June 28, Vidovdan. There he faced multiple charges of war crimes and crimes against humanity brought by the prosecutor of the International Criminal Tribunal for the former Yugoslavia, created in the early 1990s when Washington was unwilling to contemplate military intervention but wanted some visible response to the horrors of the Bosnian War. He was on trial there for crimes committed in Bosnia and Croatia as well as Kosovo when he died in 2006, of causes later determined to have been natural.²²⁶

Đinđić was assassinated in March 2003 by people associated with both Milošević’s security forces and organized crime gangs, which by then were virtually indistinguishable. The smuggling required to get around sanctions made them natural allies. People have been tried and convicted for the murder of Đinđić, but who gave the orders or tacitly approved has not been clarified.²²⁷ Boris Tadić was elected to succeed Đinđić as president of Serbia

²²⁶ Judge Kevin Parker, “Report to the President: Death of Slobodan Milošević”, *ICTY*, May 2006, https://www.icty.org/x/cases/slobodan_milosevic/custom2/en/parkerreport.pdf

²²⁷ Dejan Djokic, “The Assassination of Zoran Đinđić,” *Open Democracy*, (13/3/2003), https://www.opendemocracy.net/en/article_1042jsp/, (Accessed on 3/7/2020)

in 2004. Tadić apologized to both Bosnia and Croatia for crimes committed in the name of the Serbian people, but not to Kosovo, whose territory he, Koštunica, and later Serbian President Tomislav Nikolić continued to claim as an integral part of Serbia. Tadić presided over the formal dissolution of what had become the State Union of Serbia and Montenegro, following a 2006 referendum in Montenegro that made it over an EU-required 55% threshold by a hair. Again, the margin was smaller than the number of ethnic minority citizens (mainly Albanians and Bosniaks), who voted for Montenegro's independence.

Inclusion, like exclusion, has political consequences. Deprived of Montenegro, Serbia replaced its Communist-era constitution in late 2006 with one that defines "Kosovo and Metohija" ("Metohija" refers to "church lands," which before Communism were extensive in Kosovo) as an integral part of Serbia with ill-defined substantial autonomy.²²⁸

Kosovar Albanians, who had been boycotting Serbian elections for many years, were not counted on the voter rolls in the referendum that approved the new constitution. Had they been, the referendum could not have met the legal requirement that 50% of those registered needed to vote. No one, however, challenged the referendum on the obvious grounds that Albanians had been denied their right to block the referendum by not voting. The international community welcomed the new constitution, the referendum for which had essentially treated the Kosovo Albanians as non-citizens. If the Kosovo Albanians were not counted as citizens of Serbia, they had to be citizens of somewhere else. It is hard to imagine what that might be other than an independent Kosovo.

Serbia even without Milošević did nothing to make it attractive for Kosovo Albanians to remain inside the Serbian state. A timid politician who feared being outflanked in the nationalist direction, Tadić accomplished little in his second term (2008–2012). The

²²⁸ Serbia's Constitution of 2006, https://www.constituteproject.org/constitution/Serbia_2006.pdf?lang=en, (Accessed on 4/7/2020).

election of the far more nationalist opposition leader Tomislav Nikolić to the presidency of Serbia in 2012 was the first real alternation in power since the fall of Milošević. Nikolić delegated handling of both the EU and Kosovo to his political partner, Aleksandar Vučić, deputy prime minister from 2012 to 2014, subsequently prime minister, and now president. Vučić had also been a Milošević loyalist but decided to throw in his lot with the West, at least insofar as EU membership was concerned. While President Nikolić was busy giving medals to Belarusian strongman Lukashenko, Vučić was busy getting Serbia candidacy for the EU and resolving lots of issues with Kosovo, apart from its political status. He won early parliamentary elections in April 2016 and then the presidency in April 2017.

Serbia still faces serious issues in its own democratization: corruption, government control over the media, and a less than fully independent court system that takes its own good time in resolving cases. There has been little progress during the last few years in prosecuting the war crimes of the 1990s.²²⁹

However, the big question is: How will Serbia handle Kosovo? Before answering that question, we need to turn back to 2001 to catch up with what had been going on in Pristina.²³⁰ The NATO/Yugoslavia war ended not with a peace treaty but rather with a “military-technical agreement,” which provided for JNA withdrawal from Kosovo, and UN Security Council Resolution 1244, which acknowledged Yugoslav sovereignty in the nonbinding preamble but also foresaw a political resolution of Kosovo’s status consistent with the will of its people, which had been obvious and irreversible for more than a decade.²³¹ Resolution 1244 essentially imposed an interim United Nations administration

²²⁹“Transitional Justice in Serbia in the Period from 2013 to 2015,” Humanitarian Law Center <http://www.hlc-rdc.org/?p=32161&lang=de>, (Accessed on 4/7/2020)

²³⁰ Jon B. Alterman & Will Todman, “Kosovo: An Unlikely Success Still in the Making,” Chapter 5 in *Independence Movements and Their Aftermath: Self Determination and the Struggle for Success*, Rowman & Littlefield, 2018, p.68

²³¹ *Security Council Resolution, S/RES/1244*, “Deployment of international civil and security presences in Kosovo”, (10, June, 1999); and Military Technical Agreement between the International Security Force (“KFOR”) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, <https://www.nato.int/kosovo/docu/a990609a.htm>, (Accessed on 24/4/2020)

(UNMIK) and made the question of the legality of the NATO/Yugoslavia war irrelevant, while postponing a “final status” decision to a process not clearly defined. Welcome again to the world of international compromises.

As in Bosnia, Milošević was good at snatching ambiguity from the jaws of certain defeat. The international community was looking for an elite political process. No grassroots reconciliation effort was contemplated, and little occurred. Some mistakes from the Bosnia experience were avoided. Firstly, the UN Special Representative of the Secretary-General was given powers to hire and fire as well as impose legislation, which amounted to the equivalent of the “Bonn powers.” He was also given a coordinating role with other intergovernmental organizations working in Kosovo. He and the NATO-led Kosovo Force (KFOR) military commander were instructed to cooperate closely. While NATO was preoccupied with the negotiations that ended the NATO/Yugoslavia war, Russia moved a contingent of its troops from Bosnia, where they had served for years under American command, to the Pristina airport. This quick maneuver was intended to be prelude to the arrival of more Russian troops by air, to seize and “protect” Serb areas of Kosovo, especially the three and a half municipalities north of the Ibar River.

NATO members and aspirants refused overflight clearances for the Russian aircraft, prevented them from arriving in Pristina, and eventually offered the Russians a face-saving role in KFOR. Russian President Yeltsin yielded, but his maneuver foreshadowed future Russian resistance under Vladimir Putin to NATO’s role in the Balkans.²³² The Kosovo Albanians returned home fast, en masse, defying UN expectations of a slower, planned, and orderly return. Farmers wanted to get back to their homes and plant their crops. Urbanites feared waiting would allow squatters. Once the JNA and Serbian police forces were withdrawn under the watchful eye of KFOR, Albanians felt safe and went home as quickly

²³² Serwer, 2019, *Op. cit.*, p.75-76

as they could to the 85% or so of the territory south of the Ibar River. There the French peacekeepers drew the line the Russians had intended to draw, fearing that the Albanian return north of the Ibar would lead to expulsion of Serbs from northern Kosovo. The KLA, feeling triumphant, appointed mayors to replace those named by “President” Rugova before the war. Violence between Albanians increased sharply, as frictions between the KLA and Rugova’s party, and the Democratic League of Kosovo (LDK), heightened.

The Serbian state that had governed Kosovo before the war was gone. The Albanian civil society organizations that had done so much to provide education and health after the expulsion of Albanians from the Serbian administration were struggling. International nongovernmental organizations and the newly installed UN administration of the province were hiring away all their English-speakers and beginning to compete in service provision. All politics are local, but too often in postwar situations the impulse to skimp on local politics and hold national elections as quickly as possible is irresistible. In Bosnia the Americans had compelled the OSCE to hold national elections within a year after the Dayton agreements, to satisfy a presidential desire for demonstrable progress. The polls predictably installed ethnic nationalists.²³³

In Kosovo, the UN avoided that mistake. Municipal elections that swept away many of the KLA appointed mayors in favor of LDK competitors were held in October 2000, underlining that politics, including local service delivery, rather than force would be dominant in the postwar period. Hashim Thaçi, then a KLA political leader often regarded as an American favorite, would remain important but not rise to power in Pristina until years later. Meanwhile, the UN successfully stood up first the Kosovo Administrative Council and later the Provisional Institutions of Self-government. The first Kosovo-wide elections (not, however, held in the Serb-controlled north) chose a legislative assembly in 2001. The newly

²³³ Serwer, 2019, *Op. cit.*, p.91-92

installed assembly elected Rugova president in 2002.

While still under UN administration, Kosovo was already beginning to grow democratic institutions but remained without a fully developed administrative apparatus. Recognizing the anomaly, the UN administrators were anxious to devolve responsibility to Kosovans, as the citizens (Serb, Albanian, and others) of the province are properly denominated. The basic idea was “standards before status”: Kosovo would need to earn a decision on political status by ensuring the international community that it could govern a multiethnic and democratic society in accordance with international human rights standards.²³⁴ International tutelage was intense. The police force began to be known for its good training and professionalism, instilled by the OSCE, although the courts remained unimpressive.²³⁵

In addition to police training, the OSCE played a significant role in building democratic institutions, especially the parliament and the electoral process. Many other intergovernmental and nongovernmental international organizations were also involved, including WHO, UNESCO, the International Organization for Migration, and the UN High Commissioner for Refugees.²³⁶ The World Health Organization, for example, drove the reestablishment of the health care system, which proved difficult because of the lack of capacity to implement its well-designed scheme.²³⁷ UNESCO played a similar role in the reestablishment of the education system.²³⁸

²³⁴ “Implementing ‘Standard Before Status,’ Policy Core Political Project for UN Kosovo Mission,” *United Nations*, press release, February 2004, <https://www.un.org/press/en/2004/sc7999.doc.htm>, (Accessed on 24/7/2020).

²³⁵ “Commission Staff Working Document, Kosovo*, 2015 Report”, *European Commission*, Brussels, 2015, p.59–60.

²³⁶ “International Organizations: Kosovo”, *Balkan Analysis*, <http://www.balkananalysis.com/kosovo/international-organizations/>, (Accessed on 19/8/2021)

²³⁷ Valerie Percival & Egbert Sondorp, “A Case Study of Health Sector Reform in Kosovo”, *Conflict and Health*, no. 7, 2010, p.4

²³⁸ Marc Sommers & Peter Buckland, “Parallel Worlds: Rebuilding the Education System in Kosovo”, *International Institute for Education Planning*, 2004, p.64-66

Positive momentum came to an abrupt halt with ethnic riots in March 2004. The rioting was the result of a series of inventions, misunderstandings, exaggerations, and overreactions of a sort that had happened repeatedly in Kosovo before the war.²³⁹ The Albanian-language radio and TV contributed substantially to inciting the violence.²⁴⁰ The consequences were serious, leading to the death of eight Serbs and eleven Albanians. The damage to Serb churches and communities was substantial, as thousands of Serbs were forced from their homes. The international community feared that worse might be in the horizon coming up. The UN secretary-general commissioned the Norwegian diplomat Kai Eide, in order to have a look at the situation, after which Eide concluded that the political status quo was unsustainable.²⁴¹

Albanian aspirations were frustrated, as reintegration with Serbia, which had done nothing to make it attractive, was impossible. The UN therefore embarked on the final status negotiations foreseen in Resolution 1244, presided over by UN Special Envoy Martti Ahtisaari, a former president of Finland, with support from professional diplomats Frank Wisner for the United States and Wolfgang Ischinger for the EU.²⁴² Their effort resulted in a plan intended to make Kosovo's independence palatable to Belgrade.²⁴³ It essentially incorporated everything Belgrade asked for.

Ahtisaari's recommendation to the UN secretary-general that Kosovo should become independent was separate from the plan, but part of his overall approach.²⁴⁴ Serbia declined to sign on despite the extensive provisions for protection of Serbs. The Americans

²³⁹ James Ker-Lindsay, *Kosovo: The Path to Contested Statehood in the Balkans*, I.B.Tauris, 2009, p.20–22.

²⁴⁰ "Report on the Role of the Media in the March 2004 Events in Kosovo by the OSCE Representative on Freedom of the Media," *Organization for Security and Co-operation in Europe*, April 2004, <https://www.osce.org/fom/30265>, (Accessed on 19/8/2021)

²⁴¹ Kai Eide, "A Comprehensive Review of the Situation in Kosovo," *Official Documents System of the United Nations*, (October 7, 2005), <https://undocs.org/S/2005/635>, (Accessed on 19/8/2021)

²⁴² Ker-Lindsay, 2009, *Op. cit.*, p.24

²⁴³ Marc Weller, "The Vienna Negotiations on the Final Status of Kosovo," *International Affairs*, issue 84, 2008, p.673

²⁴⁴ Martti Ahtisaari, "Report of the Special Envoy of the Secretary-General on Kosovo's Future Status", *OSCE*, 2007.

and Europeans nevertheless insisted that the Kosovo government adopt and implement the Ahtisaari Plan, as a condition for support of independence, and accept a huge EU rule-of-law mission (EULEX) to nurture the judicial sector. Once again, as in Bosnia, the Americans and Europeans found it easier to twist the arm of their friends rather their adversaries in Belgrade.

The plan included the idea that Kosovo would not—and would not be permitted—to unify with any neighboring state or part of any neighboring state. This constitutional provision was intended to protect Macedonia as well as Serbia, both of which have Albanian-majority areas that border Kosovo. It was also intended to prevent the formation of a “Greater Albania”. The answer to the Albanian question was no: Albanians will not live in one state but in several. Essentially what we have here is a deal, in the absence of one between Serbia and Kosovo, between the West, including the United States and most of the EU, and the Kosovo Albanians: Kosovo got independence, but that ruled out “Greater Kosovo” (Kosovo plus the Albanian portions of Macedonia) and “Greater Albania”.

Pristina was obliged to provide what Belgrade failed to provide to Albanians: a high degree of protection and positive discrimination to Serbs. Status would come with standards, not everyone in Kosovo accepted this deal. The Lëvizja Vetëvendosje (LVV) -Self-determination Movement in English- movement disliked it and still wants a referendum on union with Albania. It attracted less than 15% of the vote in the 2014 parliamentary election but in 2017 rose to 27.5% to become the second largest bloc in parliament before splitting in 2018, yet staying as a major power in the 2019 elections with 26.27%, and to win the majority by getting 50.28% of the votes in the 2021 parliament elections, leading to Vjosa Osmani (Member of the Guxo party, a close ally to the LVV) to be president of Kosovo and Albin Kurti as prime minister.

The Serb contingent in the Kosovo parliament also rejects the constitution and

regards Kosovo as still an autonomous province of Serbia. Serbia often describes Kosovo's independence declaration in February 2008 as unilateral, which it was and still from Serbia's perspective, and thus Belgrade disapproved it. It lined up, and still maintains, support from Moscow in the UN Security Council that blocks Kosovo membership in the UN General Assembly and in other international organizations, with the support of China (which fears of the Taiwan issue).

However, Kosovo's independence was well coordinated with European countries amenable to it and with the United States. It is now recognized by more than one hundred sovereign states, not, however, including five members of the EU and four members of NATO. Kosovo substantially completed its obligations to implement the Ahtisaari Plan in 2012, ending supervision by an International Civilian Office (ICO), but a rump UN mission remains in Kosovo under Resolution 1244.²⁴⁵ The record of state-building in Kosovo is, however, far from pristine.

Pristina benefited before and after its independence declaration from three major international missions: UNMIK, EULEX, and the ICO. They have been roundly criticized as ineffectual in improving the country's governance, which has arguably stagnated or even deteriorated since independence according to World Bank statistics.²⁴⁶ Kosovo's governance remains on most dimensions at the lower end of the regional scale, along with Albania's. This mediocre performance is due at least in part to the continuing preoccupation of Kosovo's politicians and electorate with the country's still incomplete sovereignty, including the contest between those who want Kosovo to remain an independent state and those who prefer union with Albania.

So, as long as sovereignty issues remain open, Kosovar politicians will find that

²⁴⁵“State Building and Exit: The International Civilian Office and Kosovo's Supervised Independence, 2008–2012”, *International Civilian Office*, Pristina, 2012, p.17.

²⁴⁶ Andrea Lorenzo Capussela, *State-Building in Kosovo: Democracy, Corruption and the EU in the Balkans*, I. B. Tauris, 2015, p.53-54

they can gain more votes by waving nationalist flags than by delivering jobs and economic growth. The Europeans and Americans have also hesitated to upset the applecart by allowing those who favor union with Albania to come to power, which limits the possibilities for alternation. The ‘Serbia and Kosovo’ stories re-converged with German Chancellor Angela Merkel’s visit to Belgrade in August 2011. Angered by Serb attacks in northern Kosovo (including on German peacekeepers), she read Serbia the riot act, insisting on the reintegration of the northern -Serb controlled Kosovo municipalities- with Kosovo south of the Ibar.

Since then, under EU tutelage, Pristina and Belgrade have managed to reach agreements with on half a dozen “technical” issues as well as political reintegration of the Serb-dominated north into Kosovo, in accordance with the Ahtisaari Plan, as well as creation of an association of Serb municipalities, not yet implemented.²⁴⁷ Belgrade was rewarded for this April 2013 Brussels Agreement with Pristina, its much-coveted candidacy for the EU, which makes available money and technical assistance needed to help prepare for EU accession. Complete normalization of relations with Kosovo is a requirement for Serbian EU accession. Precisely what that means remains is unspecified, but in practice there are many EU members that will refuse to approve accession without Serbian recognition of Kosovo’s sovereignty and territorial integrity.

Pristina received a less rich but still appetizing Stabilization and Association Agreement, as well as the promise of a visa waiver program once it met all the technical requirements, that it did by mid-2018. It remains to be seen whether the politics of an increasingly xenophobic EU will permit implementation, though the merits of Kosovans being able to travel freely in Europe and witness its economics firsthand are compelling.

²⁴⁷ Dušan Janjić, “Normalization Challenges: Analysis of the Negotiation Process and the Implementation of the Brussels Agreement”, *Belgrade: Forum for Ethnic Relations Policy Paper*, 2015, p.7-8

While far from resolving everything, the 2013 Brussels Agreement substantially reduced passions, and uncertainties, on both sides. Twenty years ago, Kosovo was a province inside Serbia, while today it is ‘independent’ in the sense that it governs itself, but it is not entirely sovereign. At each stage of its evolution during these nearly two decades it got less than what Albanian Kosovars wanted, but it never slid backwards. At the end of the war, it became a UN protectorate offered status if it met standards. Kai Eide’s report proposed ending the protectorate and offered status with standards. The Ahtisaari Plan implemented that idea. Independence came only with supervision and constraints on sovereignty that are gradually loosening. EULEX international judges and prosecutors, for example, ended their “executive” role in 2018. There are still big issues that Kosovo has failed to meet, even minimal goals for the environment, education, and women.²⁴⁸ The EU still maintains monitoring and police missions in Kosovo, an internationally staffed but nominally “Kosovo” court is operating in The Hague to prosecute war crimes and crimes against humanity that occurred between 1998 and 2000, the UN still maintains a symbolic presence consistent with Resolution 1244, and NATO is still responsible for Kosovo’s territorial defense.

NATO will want to draw down as Kosovo builds up its own security forces, provided they perform professionally. The current lightly armed security forces will need to be converted into a small army, which Belgrade hopes to prevent by blocking a constitutional amendment some think required, but Albanians believe it can be done through legislation.²⁴⁹ Sovereignty issues arouse fierce domestic political tensions.

²⁴⁸ Surroi, 2017, *Op. cit.*, p.39-40

²⁴⁹ Robert Muharremi, “Kosovo Security Force Is an Army: Legal Arguments,” (Kosovar Centre for Security Studies Policy Brief), March 2016, <http://www.qkss.org/en/Policy-Papers/Kosovo-Security-Force-is-an-Army-Legal-Arguments-649>, (Accessed on 4/3/2020)

Chapter II: Kosovo's international status since 2008

On the 17th of February 2008, Kosovo declared its independence unilaterally, from that date forward, the newly born “state” has faced multiple challenges being integrated into the international political arena. Russia and China refused giving it a seat in the UN in a Security Council vote, Serbia played a major role in it not being recognized as a state by almost half the countries of the UN or even gaining any seat in International Organizations. Yet, Kosovo has managed to gain the recognition of almost half the countries that are part of the UN, and managed to enter several international organizations.

The turning point for Kosovo was the ICJ advisory opinion given on the 22nd of July 2010 that concluded “the declaration of independence of Kosovo adopted on 17 February 2008 did not violate International Law”. Discussing previously the facts regarding the secession of states, and particularly the case of Kosovo and other similar cases in the previous parts, will only help us further answer whether Kosovo is a state in the international affairs arena or not. This will lead us to discuss Kosovo's international presence in both bilateral and multilateral relations that Kosovo is engaged in. After all the legality of Kosovo's independence is only a prerequisite to the next step, which is the recognition of states of which remains political and is part of the foreign affairs policy adopted by each state, with it being a sovereign right. This said, it can be hypothesized that secession is accepted in extreme situations, as it has been showed until now.

The UN general assembly adopted the resolution 63/3 on the 8th of October 2008, in which the assembly asked the ICJ for an advisory opinion: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with International Law?” Which is in accordance with Article 96 of the Charter and pursuant to Article 65 of the Statute of the Court. The court concluded that “the declaration of independence of Kosovo adopted on 17 February 2008 did not violate International Law”.

The General assembly of the UN adopted its resolution 64/298 on the 9th of September 2010, acknowledging the content of the advisory opinion of the Court rendered in response to its request.

1 International Legal Stance on Kosovo

No doubt that the ICJ advisory opinion regarding Kosovo and the Security Council resolutions, have paved the road for Kosovo not to look back to Serbia. Kosovar Albanians after the end of war with Serbia, seeking to build their institutions as Albanians, yet the question will always remember, are they Kosovar Albanians or part of a greater Albania.

1.1 ICJ Advisory Opinion

The International Court of Justice (ICJ) issued its advisory opinion titled “Accordance with International Law of the unilateral declaration of independence in respect of Kosovo”, through which the court concluded that Kosovo’s declaration of independence did not violate International Law. However, the court refused to address the outcome of this declaration of independence, especially the question of whether Kosovo is entitled to statehood. The court by narrowing its opinion to one specific point, had failed to clarify the boundaries of the right of self-determination while also not taking into consideration the principle of territorial integrity, which could be used later on around the world by separatist movements, considering that Kosovo’s independence is a worldwide legal license to declare independence.

In 1999, NATO intervened in the war going on between Yugoslavia (Serbia in particular) and the Albanian Kosovars, the NATO bombing resulted in the Serb government to withdraw its forces from Kosovo and later on the Security Council Resolution 1244 which brought Kosovo under U.N and NATO administration.

The resolution ended the violence in Kosovo and gave the U.N Secretary General the power to establish “an interim administration for Kosovo” that would “promote the establishment ... of substantial autonomy and self-government in Kosovo”²⁵⁰, furthermore the resolution reaffirmed the United Nations’ commitment to “the sovereignty and territorial integrity of the Federal Republic of Yugoslavia”.

U.N envoy Martti Ahtisaari led the final status negotiations between Kosovo and Serbia in 2006, he recommended the independence of Kosovo after the failure of the negotiations. Serbia rejected the Ahtisaari’s plan, and further negotiations with Kosovo failed, which led to Kosovo’s declaration of independence. The General Assembly of the U.N requested the ICJ for an advisory opinion regarding Kosovo’s independence, this resolution was sponsored and backed by Serbia in its attempt to prove that Kosovo’s independence was a breach of International Law.

In relation to general International Law, The ICJ in its advisory opinion paragraph 123 stated that, the ICJ unanimously found that it had jurisdiction to give an advisory opinion in this case, decided to comply with the request by a nine-to-five vote, and concluded by a ten-to-four vote that Kosovo’s declaration of independence “did not violate International Law”, furthermore the Court concluded that “general International Law contains no applicable prohibitions of declarations of independence”.²⁵¹ The Court only addressed – in a few lines – whether the principle of territorial integrity could be applicable to the authors, and it concluded that it could not, since it considered that the principle only applies to inter-state relations.²⁵²

The Court did not address whether the UDI was prohibited because it violated guarantees of respect for the territorial integrity of Serbia contained in UNSCR 1244.

²⁵⁰ *Security Council Resolution, S/RES/1244 (1999)*, “On the deployment of international civil and security presences in Kosovo”, 10 June 1999.

²⁵¹ ICJ Advisory Opinion regarding Kosovo, *Op. cit.*, para 84

²⁵² *Ibid*, para. 80.

Instead, it determined that the authors of the UDI were not acting in their ‘capacity’ as the Provisional Institutions of Self-Government in Kosovo (PISG) when they issued the UDI. This concretely meant that although UNSCR 1244 applied to Kosovo at the critical date, the Court reasoned that it was not applicable to the authors of the UDI at the moment that they issued the UDI “because the two instruments operate on a different level”.²⁵³

The Court simply concluded that “Security Council resolution 1244 (1999) did not bar the authors of the declaration of 17 February 2008 from issuing a declaration of independence from the Republic of Serbia. Hence, the [UDI] did not violate Security Council resolution 1244 (1999)”.²⁵⁴

The Court correctly noted that the question before it “does not ask about the legal consequences of that declaration”,²⁵⁵ unlike the questions the Court was asked to address in the advisory opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*²⁵⁶, and the *Wall Advisory Opinion*²⁵⁷. Therefore, the Court was not called upon to address “the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State”.²⁵⁸

Nine judges submitted separate opinions, declarations, or dissenting opinions. Four judges (Judge Simma of Germany, Judge Sepúlveda-Amor of Mexico, Judge Yusuf of Somalia, and Judge Cançado Trindade of Brazil) agreed with the result, even though each of them wrote separately to argue that the court’s approach was too narrow. Three judges (Judge Simma of Germany, Judge Sepúlveda-Amor of Mexico, and Judge Yusuf of Somalia) stated that the court should have addressed Kosovo’s claim to secession and elucidated the

²⁵³ ICJ Advisory Opinion on Kosovo, *Op. cit.*, para. 114.

²⁵⁴ *Ibid*, para. 119.

²⁵⁵ *Ibid*, para. 51.

²⁵⁶ *Security Council Resolution*, S/RES/284 (1970), “The situation in Namibia”, (29 July 1970).

²⁵⁷ *General Assembly Resolution*, A/RES/ES-10/14, “Illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian territory”, (12 December 2003).

²⁵⁸ ICJ Advisory Opinion on Kosovo, *Op. cit.*, para. 51.

scope of Kosovo's right to self-determination. Judge Cançado Trindade of Brazil clearly affirmed Kosovo's right to "supervised independence", which was recommended in Ahitsaari's report. Five judges (Vice President Judge Tomka of Slovakia, Judge Koroma of Sierra Leone, Judge Skotnikov of Russia, Judge Keith of New Zealand, and Judge Bennouna of Morocco) dissented from the court's decision to issue an advisory opinion; with the exception of Judge Keith, the other four judges also dissented from the conclusion that the declaration did not violate International Law. Furthermore, Judge Simma of Germany noted that the decision undermined the territorial integrity of states by embracing the positivist principle of the case of the *S.S. Lotus*, that whatever the International Law does not prohibit thus is permitted. The court adopted this principle implicitly by refashioning the question of whether the declaration of independence was "in accordance with International Law" to become "whether or not the applicable International Law prohibited the declaration of independence".²⁵⁹

The question asked by the General Assembly in its Resolution 63/3, left aside three principal issues related to Kosovo's declared independence. The first was the right to secede, to which the Kosovars are permitted to as a consequence of Serbia's denial of its right to self-determination. The second issue is the relationship between their right to secede and the principle of territorial integrity, which was stated previously. The third issue is the increasing recognition by third states which tends to confirm that Kosovo has achieved statehood, due to the constitutive theory.²⁶⁰

1.2 Kosovo's special case as an "Internationalized Territory"

The existence of several international organizations working in Kosovo, due to both international and regional organizations resolutions/decisions, would cast uncertainty

²⁵⁹ ICJ Advisory Opinion, *Op. cit.*, para.56.

²⁶⁰ Pellet, 2015, *Op. cit.*, p.268.

regarding its extent of independence. Shedding the light on the fact that the criteria for statehood are flexible to certain extent, that they would allow a variety of entities to be classified as states.

A similar case to Kosovo in history would be the Free City of Danzig, which was established in 1919 as a solution to ensure that on one side Poland gets access to the sea, and on the other that the German-speaking majority in the area would have their interests safeguarded. The treaty of Versailles, laid down how things will work in the Free City of Danzig in Section XI. In Article 100 of the Treaty, the Germans renounced their territorial rights over that territory to be under the control of the Principal Allied and Associated Powers, this territory will be under the protection of the League of Nations according to Article 102. According to Article 103, the Constitution of the Free City was drawn up by its representatives in agreement with a High Commissioner appointed by the League, and was also placed under League guarantee. Article 104 of the treaty of Versailles also included that a treaty will be negotiated between Danzig and Poland, pursuant to it, Poland will undertake Danzig's foreign relations, which was done in November 1920.²⁶¹

Questions regarding whether Danzig constituted a state and if so, was it independent. Although Poland had several rights in Danzig's territory, yet Danzig's local administration was independent in respect to all other matters. Poland was in charge of Danzig's foreign affairs, yet this was carried out through arrangements between both sides, with a right of veto given to Danzig. The Permanent Court of International Justice Advisory Opinion regarding the "Free City of Danzig and International Labour Organization"²⁶², stated in Article 36 "...The Polish Government is not entitled to impose a policy on the Free City nor

²⁶¹ James Crawford, *Kosovo and the Criteria for Statehood in International Law*, in: *The law and politics of the Kosovo advisory opinion*, Oxford University Press, 2017, p. 289

²⁶² "Free City of Danzig and International Labour Organization", Advisory Opinion, 26 August 1930, *Permanent Court of International Justice (PCIJ)*, World Courts, http://www.worldcourts.com/pcij/eng/decisions/1930.08.26_danzig.htm, (Accessed on 15/12/2020).

to take any steps in connection with the foreign relations of the Free City, against its will.” Furthermore, Article 106 clarifies that Danzig would have in full independence in its foreign affairs if the Treaty of Versailles didn’t state otherwise in Article 104(6). The overall independence and control of Danzig over its internal affairs, was confirmed by the *jurisprudence constante* of the Permanent Court, which signaled its statehood despite the special characteristics of its status given its connections with Poland and the League.²⁶³

- The 2008 declaration of independence by Kosovo, followed by the devolution of public power to Kosovar institutions effectively operating under an autonomous legal framework and the confirmation by the International Court that this process does not contravene resolution 1244 all lead to the conclusion that Kosovo is now a state, notwithstanding its special characteristics as a territory under UN administration. If anything, Kosovo’s claim to statehood is stronger than Danzig’s ever was.

1.3 Kosovo’s independence in correlation with the UN administration

The UNSC resolution 1244 was adopted on 10th of June 1999 after NATO’s intervention, it authorized the Secretary-General “to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia”²⁶⁴. Its objective was to “provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo”²⁶⁵. The resolution 1244 remains in force, as it can only be revoked by a further decision of the Security Council, due to “... international civil and security presences are established for an initial period of 12 months,

²⁶³ Crawford, 2017, *Op. cit.*, p.289

²⁶⁴ UNSC Res 1244 (1999), *Op. cit.*, operative clause 10.

²⁶⁵ *Ibid.*, operative clause 10.

to continue thereafter unless the Security Council decides otherwise”²⁶⁶.

In ICJ advisory opinion the 2010 suggested that the institutions of Kosovo can exercise public authority independently from the Special Representative of the Secretary-General.²⁶⁷ Over the years UNMIK has transferred competences to the Kosovar authorities, further intensifying the process after Kosovo’s declaration of independence.²⁶⁸ This process culminated on 12 December 2010, when the first elections of representatives of the Assembly of Kosovo outside the framework of resolution 1244 were held.²⁶⁹

Up until the Secretary-General report in 2012 to the Security Council on the interim administration mission in Kosovo, the reports contained a section on ‘external representation’ that reported on UNMIK’s efforts to assist Kosovo’s engagement in international and regional initiatives. Until the report in 2012, the Secretary-General reported on Pristina being skeptic to UNMIK fulfilling this role.²⁷⁰

The authorities in Kosovo with the International Steering Group of States²⁷¹ on the 10th of September 2012, which was established and composed of States that recognize Kosovo in order to oversee the independence of Kosovo in the aftermath of its declaration of independence, together they proclaimed ‘the end of the “supervised” independence’ of Kosovo and affirmed the Constitution of Kosovo as the “sole” legal framework.²⁷² Later on constitutional amendments were approved, leading to the revocation of provisions that

²⁶⁶ Ibid, operative clause 19.

²⁶⁷ Crawford, 2017, *Op. cit*, p.286

²⁶⁸ “UNMIK after Kosovo Independence: Exit Strategy or ‘Exist’ Strategy?”, *Kosovo Institute of Peace*, 2013, p.6.

²⁶⁹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2011/43, 28 January 2011, para 4.

²⁷⁰ *Security Council Session*, S/2011/281, “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo”, 3 May 2011, para 55.

²⁷¹ An organization formed pursuant to the Ahtisaari Plan concerning the Kosovo status process. It was set up to guide Kosovo’s democratic development and promote good governance, multi-ethnicity and the rule of law. The group was responsible for appointing and overseeing the International Civilian Representative for Kosovo (ICR).

²⁷² *Security Council Session*, S/2012/818, “Secretary-General on the United Nations Interim Administration Mission in Kosovo”, 8 November 2012, para 6.

concerned the international supervision of Kosovo by the Steering Group.²⁷³ The United Nations didn't attempt to reverse these developments, and subsequently the reports of the Secretary-General to the Security Council didn't have the 'external representation' section, which implies that Pristina is in full control of Kosovo's external affairs. UNMIK's participation in the administration of Kosovo has been diminished drastically, yet the mission retains its mandate under resolution 1244 to exercise public power as appropriate.

The international presence in Kosovo remains considerable. The Kosovo Force (KFOR) which was formed under the auspices of the North Atlantic Treaty Organization in accordance with resolution 1244 continues to discharge its peace-building mandate, with almost 3600 troops.²⁷⁴

The European Union Rule of Law Mission (EULEX), was established after Kosovo's declaration of independence, is still actively providing assistance to the Kosovar institutions in the rule-of-law field. Alongside its advisory and capacity-building competences, EULEX comprises an Executive Division with the mandate to investigate, prosecute, and adjudicate cases relating *inter alia* to war crimes, terrorism, and organized crime.²⁷⁵

Finally, none of these institutions have prevented the institutions of Kosovo from exercising legislative, executive, and judicial authority, with respect to the territory and population of Kosovo. Although they maintained a neutral position in relation to the status of Kosovo, they did engage on the other side in capacity-building and the progressive devolution of public authority to elected representatives of the Kosovar people.

²⁷³ Ibid, para 7

²⁷⁴ "NATO Mission in Kosovo (KFOR)", *NATO*, <https://shape.nato.int/ongoingoperations/nato-mission-in-kosovo-kfor->, (Accessed on 17/12/2020).

²⁷⁵ "European Union Rule of Law Mission in Kosovo", *European Union*, Council Joint Action E 2008/124/CFSP, 4 February 2008, art 3(d).

2 Kosovo's Political System

After its declaration of independence in 2008, Kosovo amended its constitution on several occasions. With the main amendments in 2015, its constitution follows modern democratic constitutions in its form. After its preamble, “basic provisions” are set in Chapter I, followed by the “Fundamental Rights and Freedoms” in Chapter II, “Rights of Communities and Their Members” in Chapter III, “Assembly of The Republic of Kosovo” in Chapter IV, “President of The Republic of Kosovo” in Chapter V, “Government of The Republic of Kosovo” in Chapter VI, the judicial system is embedded in Chapter VII “Justice System” and Chapter VIII “Constitutional Court”. The economic system was determined in Chapter IX “Economic Relations”, local authorities were determined in Chapter X “Local Government and Territorial Organizations”, “Security Sector” institutions were regulated in Chapter XI, the “Independent Institutions” in Chapter XII include institutions such as the Ombudsperson, Auditor-General, the Central Election Commission, the Central Bank and an Independent Media Commission. Regulations regarding the complex relationship of the Ahtisaari Proposal and the new Constitution as well as Kosovo’s statehood and international supervision, which has been labeled in political discourse as “conditional independence” were included in the “Final Provisions” in Chapter XIII and the “Transitional Provisions” in Chapter XIV.²⁷⁶

A closer look into the preamble provisions and the basic provisions reveals that the language used to characterize the Republic of Kosovo is almost completely free of any remnants of ethno-national ideology. Both the preamble and Article 1, para. 2 refer to citizens as the basic unit of the state combined with the respect for human rights and individual equality before the law. Only in Article 3 – when defining the “Republic of

²⁷⁶ Constitution of the Republic of Kosovo, <https://kryeministri-ks.net/en/documents/constitution-of-the-republic-of-kosovo/>, (Accessed on 31/1/2021).

Kosovo”, i.e. the state, as a “multi-ethnic society”—the text refers to “Albanian and other communities”, a phrase which was inserted only in the final stage of the drafting process.²⁷⁷

Differing again between the Albanian and “other” communities which are not enumerated conveys, however on the symbolic level the “identity fiction” of the majority population and “the” state, which is a characteristic element of the ethno-national ideology.²⁷⁸

The provision of Article 1, paragraph 3 finally entrenches one of the political fiats of the international community also laid down in the Ahtisaari Proposal, namely that Kosovo “shall seek no union with any State or part of any State”, thereby prohibiting an *Anschluss* to Albania.

The following observations could be made regarding the institutional structures of the legislative, executive and judicial powers created by the Constitution of Kosovo:

- Firstly, the new Constitution establishes a parliamentary system of government. According to Article 65, para. 7 and Article 86 the “Assembly”—being the legislative institution—elects the President of the Republic and “may” dismiss him with a two-thirds majority for constitutionally specified purposes outlined under Article 91. Articles 65, para.8, and articles 95 and 100 prescribe that the government shall be elected by the Assembly through procedure similar to a vote of confidence after the President of the Republic has designated the leader of the strongest party or party coalition as the Prime Minister in order to form the cabinet. Article 100 regulates the motion of no confidence as an instrument of political control by the parliament which is constitutive for a parliamentary system. In a unique way uncommon method, the designation and number of ministers is not regulated by law, but “by an internal act of

²⁷⁷ Joseph Marko, “The New Kosovo Constitution in a Regional Comparative Perspective”, *Review of Central and East European Law*, 33(4), 437-450, 2008, p.443.

²⁷⁸ Mitja Žagar, The Bolzano/Bozen Recommendations On National Minorities In Inter-State Relations, Minority Rights And Trends In Minority Protection, in *National Minorities in Inter-State Relations*, Brill | Nijhoff, 2011, p. 133.

the Government” according to Article 96, para.2. Taken over from a presidential form of government are the competences of the President for a suspensive veto of legislation according to Article 80 and to start a procedure for “abstract” judicial review of laws or normative regulations by the administration through the Constitutional Court according to Article 113, paras. 2 and 3. Additionally, the President “may” dissolve the Assembly after a successful vote of no confidence against the Government. Finally, the President appoints all judges and prosecutors, however, this happens only after being nominated by the respective Judicial or Prosecutorial Councils, or in the case of judges of the Constitutional Court after being nominated by the Assembly.

- Secondly, Kosovo was born as a unitary state, there are two territorial levels of executive power, the central and local levels. However, it was referred to as local government and territorial organization, and it was drafted in an inconsistent way in Chapter X, according to Article 124, para 1 “the basic unit of local government ... is the municipality”. The following sentence of this provision establishes that municipalities “enjoy a high degree of local self-government”, which created a level of confusion between the possibility and functional necessity of decentralization of the state administration on the one hand, and the constitutionally guaranteed right of municipalities to self-government on the other insofar as they have the right to contest the constitutionality of laws or acts of Government that interfere with their competences before the Constitutional Court, according to Article 113, para.4. Furthermore, Chapter X lacks a determination of the bodies of local administration or self-government. In an uncommon way reference to the institutions of a municipal assembly, executive bodies and even the existence of mayors, and even “local offices of central authorities”, can only be found in the chapter on the rights of (ethnic) Communities.

- Thirdly, the provision on the judicial system contains several serious flaws.²⁷⁹ Article 103 refers to the organization of courts: paragraph 1 refers to the existence of a Supreme Court and “other courts” to be regulated by law, while, paragraph 7 allows the creation of “specialized courts”. Paragraph 1, thus obviously refers to the civil and criminal courts at municipal and district level with the Supreme Court as the court of last instance. Additionally, Article 102 guarantees the right to appeal a “judicial decision”, while the Constitution doesn’t refer to any legal remedies against administrative decisions. The only implied reference can be found under Article 54 in the chapter on human rights, which guarantees “Judicial Protection of Rights”. This provision not only guarantees judicial protection against any violation of the constitutionally guaranteed human rights listed in that chapter, but also “if any right guaranteed ... by law has been violated ...”. A systematic interpretation of the constitutional provisions quoted previously could lead to the conclusion that any administrative decision either on the local or central level can immediately be contested before a court without the necessity of exhausting all the possible remedies in the administrative procedure. This led to a hybrid system of judicial review, different from the American and the Central European system of monopolized judicial review of the legality or constitutionality of both administrative and judicial decisions by specialized courts. The reference to “specialized courts” according to Article 103 might be seen as a hint that administrative adjudication by specialized courts was taken into account in the last minute while writing the Constitution.²⁸⁰
- Fourthly, the relationship between the government institutions of Kosovo and the supervision by International Civilian Representative must be taken into account. It is “essential” for a constitution and the “sovereignty” of a state that the Constitution enjoys

²⁷⁹ Marko, 2008, *Op. cit.*, p.445.

²⁸⁰ *Ibid.*, p.446.

a rank of “Supreme law of the land”²⁸¹ in a legal hierarchy. Articles 2 and 16 follow this constitutional doctrine, also Article 112, para.1 declares the Constitutional Court being the “final authority for the interpretation of the Constitution”. Article 143 obliges all Kosovo institutions to “abide by all of the Republic of Kosovo’s obligations under the Comprehensive Proposal for the Kosovo Status Settlement”, furthermore according to paragraph 2 of the same Article, “the provisions of the Comprehensive Proposal for the Kosovo Status Settlement ... shall take precedence over all other legal provisions in Kosovo”, in such a way that according to paragraph 3 “the Constitution, laws and other legal acts ... shall be interpreted in compliance with the Comprehensive Proposal ...”. Finally, the International Civilian Representative(ICR) is declared “the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal” and that “no Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations” of the ICR, the “supremacy” of the Constitution to be upheld by the Constitutional Court is preempted on behalf the Comprehensive Proposal which is the “superior paramount law”.²⁸² However, it was obvious from the Comprehensive Proposal and the “transitional provisions” that the constitutional drafters followed the example of the High Representative in Bosnia and Herzegovina which was given “Bonn Powers” not only to supervise, but also to intervene in the political process by replacing the Parliament as the law-making authority and to dismiss all public officials obstructing the implementation of Dayton.²⁸³

2.1 Foreign Affairs of Kosovo

The day after the unilateral declaration of independence, on the 18th of February

²⁸¹ U.S Constitution, Article VI Section 2, *Library of Congress*, <https://constitution.congress.gov/browse/article-6/clause-2/>, (Accessed on 1/2/2021)

²⁸² Marbury v. Madison, *U.S Judicial Review*, <https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/marbury-v-madison>, (Accessed on 1/2/2021)

²⁸³ Marko, 2008, *Op. cit*, p.446.

2008, Kosovo was recognized by Afghanistan, Albania, Costa Rica, France, Senegal, Turkey, the United Kingdom, and the United States. Three of these are permanent members of the Security Council. In the following 2 days, recognition was also recognized by Australia (19 February), Latvia and Germany (20 February), until 21 recognitions had been made during the month of February. By the end of 2010, this figure had reached 53 recognitions. At the present day, the independence of Kosovo has been recognized by the majority of Western countries, but remains opposed mainly by the Russian Federation, China, Spain and India. By 16/8/2021, the Republic of Kosovo is recognized by 117 countries.²⁸⁴ 98 out of the 193 member states of the UN recognize Kosovo, 22 of the 27 EU States and 26 of the 30 members of NATO, while 15 countries have withdrawn their recognition until the same date, they include by ascending order of withdrawal: Suriname, Burundi, Papua New Guinea, Lesotho, Comoros, Dominica, Grenada, Solomon Islands, Madagascar, Palau, Togo, Central African Republic, Ghana, Nauru, and Sierra Leone. The Republic of China (Taiwan), the Cook Islands, and Niue also recognize the Republic of Kosovo.

Kosovo has 33 embassies worldwide with 31 consular missions worldwide, with 33 non-resident accredited embassies, and 59 foreign missions in Kosovo.²⁸⁵

Relations with the Balkan Countries:

The Balkan region is defined geographically as the Balkan peninsula, which is the area bordered by the Black Sea to the east, the Mediterranean Sea (which includes the Adriatic, Aegean, Ionian, and Marmara seas) to the west and south, and with the Danube, Kupa, and Sava rivers to the north. The countries located within this area include the former

²⁸⁴ *International recognitions of the Republic of Kosovo*, Politika e jashtme - Ministry of Foreign Affairs - Republic of Kosovo, <https://www.mfa-ks.net/en/politika/483/njohjet-ndrkombtare-t-republiks-s-kosovs/483>, (Accessed on 18/8/2021).

²⁸⁵ *Misionet Diplomatike*, Ministry of Foreign Affairs - Republic of Kosovo, <http://www.mfa-ks.net/en/misionet/493/ambasadat-e-republiks-s-kosovs/493>, (Accessed 16/8/2021).

Yugoslavia (Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, and Slovenia), Bulgaria, Italy, Turkey (European part), Greece, Romania and Albania.

Albania and Turkey recognized Kosovo's on the 18th of February 2008, Italy on the 21st of February 2008, Slovenia on the 5th of March 2008, Croatia on the 19th of March 2008, Bulgaria on the 20th of March 2008, Montenegro and North Macedonia on the 9th of October 2008. Thus 8 out 12 countries (excluding Kosovo) in the Balkans have already recognized its independence, and with all former states of Yugoslavia except Serbia and Bosnia and Herzegovina (due to "Serbian" Republika Srpska refusal), even Montenegro which former the FRY with Serbia and contested the NATO presence in Kosovo did recognize its independence after it became a state of its own.

North Macedonia faces a threat to its existence as a state which could be due to the fact that it has a large minority of ethnic Albanians, as 1 in every 4 Macedonians is an Albanian, with Mother Teresa being the most famous North Macedonian that is an ethnic Albanian. Albanians of Macedonia would prefer to rather be part of either Albania or Kosovo, than being a minority in another country. The Albanian population is concentrated in the northwest and in the capital, Skopje (Shkup in Albanian). The referendum held in 1991 by Macedonia to gain its independence from Yugoslavia was boycotted by the Albanians and Serbs.

Albanians of Kosovo and Macedonia had no boundaries separating them and were living as one community, as Pristina and its university were cultural, historical, and intellectual centers of Albanian nationalism in Yugoslavia. After its independence UNPREDEP was sent, which was established on the 31st of March 1995 replacing the former UNPROFOR²⁸⁶, its role was to monitor and report any developments in the border areas

²⁸⁶ Security Council Resolution, S/RES/983(1995), "Establishment of the UN Preventive Deployment Force

which could undermine confidence and stability in the country and threaten its territory. It was shut down on the 28th of February to the veto of China on its renewal, that was due to the diplomatic recognition of Taiwan by Macedonia. In 2001 an Albania rebellion took place in Macedonia by the NLA militant group, which lasted from February to August of the same year, only to end by the signing of the Ohrid Framework Agreement on the 13th of August 2001²⁸⁷, by giving the Albanians more political and cultural rights in Macedonia.

The issues of the Albanians in the Balkans surfaced again after a non-paper was sent by Slovenia to Brussels, to the European Council President Charles Michel, although this news was denied, but news reports ensure that such a paper exists, and was even leaked with a map²⁸⁸.

Romania didn't recognize Kosovo, due to a statement of non-recognition was adopted by the Parliament with 357 votes in favor and 27 against on the 19th of February 2008.²⁸⁹

Greece didn't recognize Kosovo's independence, although it has a Liaison Office in Pristina at ambassadorial level.²⁹⁰ The Albanian (including both Albania and Kosovo) and Greek governments didn't settle the long-standing issue of the Chams displaced from Greece in 1945, as there is a non-stopping pressure from all sectors of the Albanian world for a solution to the Cham issue in Greece.²⁹¹ The Cham Albanians are indigenous to Epirus in

(UNPREDEP) within the former Yugoslav Republic of Macedonia”, (31 March 1995), para 2.

²⁸⁷ “Ohrid Framework Agreement”, OSCE, (2001, August 13), <https://www.osce.org/skopje/100622>, (Accessed on 28/11/2020).

²⁸⁸ “Objavljamo dokument o razdelitvi BiH, ki ga išče ves Balkan”, *Necenzurirano.si - Ker si upamo!*, (15/4/2021), unofficial translation by Internet Explorer, <https://necenzurirano.si/clanek/aktualno/objavljamo-slovenski-dokument-o-razdelitvi-bih-ki-ga-isce-ves-balkan-865692>, (Accessed on 16/8/2021)

²⁸⁹ “Romanian Parliament does not recognize Kosovo independence”, *HotNewsRo*, (19/2/2008). https://english.hotnews.ro/stiri-top_news-2394118-romanian-parliament-does-not-recognize-kosovo-independence.htm, (Accessed on 28/11/2020).

²⁹⁰ Greece's Bilateral Relations, *Hellenic Republic Ministry of Foreign Affairs*, <https://www.mfa.gr/en/blog/greece-bilateral-relations/pristina/>, (Accessed on 28/11/2020).

²⁹¹ Miranda Vickers, “Albania: Pan Albanianism: Myth or Threat to Balkan Stability?”, *Crisis Group*, (25/2/2004), <https://www.crisisgroup.org/europe-central-asia/balkans/albania/albania-pan-albanianism-myth-or-threat-balkan-stability>, (Accessed 28/11/2020).

northwestern Greece, during World War II the Muslim Chams were expelled by the Greek authorities due to accusations of collaborating with the Axis occupation forces, while the Greek Orthodox Chams remained in Greece and were forced to be assimilated into the Greek nation.²⁹²

Bosnia and Herzegovina didn't recognize Kosovo's independence, due to its political system which is a federal parliamentary constitutional republic, with its 3 major constituents having veto powers over major issues, due to the Dayton Accords. Bosniacs (Muslims), Croats (Catholic), and Serbs (Orthodox) have a joint share of power of the all branches of state, including the executive branch of both the Cabinet and the Presidency (it has a joint presidency constituted of three members one of each of its constituents). Republika Srpska, which is one of the two entities constituting Bosnia and Herzegovina passed a law that prohibits the recognition of Kosovo's Independence, thus making it illegal for the federal state.²⁹³

Serbia, after the declaration of Independence of Kosovo, strongly opposed this declaration of Independence, which is due mainly for it being the parent state, and this would affect its territorial integrity and sovereignty. The Serb government declared on the 14th of February 2008 that "Such a (move) would represent a flagrant and unilateral act of secession of a part of the territory of the Republic of Serbia, and is therefore invalid and void," and that "all Serbs living in Kosovo remain citizens of Serbia and have the full right not to recognize any illegal declaration of unilateral independence by Kosovo's Albanians"²⁹⁴ the Serb Prime Minister Vojislav Kostunica told reporters that "Kosovo remains an inalienable

²⁹² "Albanians of Greece", *My Albanian Studies*, <https://albanianstudies.weebly.com/albanians-of-greece.html>, (Accessed on 28/11/2020)

²⁹³ "Priznanje Kosova i referendum u RS", *B92.net*, (22/2/2008), unofficial translation using Internet Explorer, https://www.b92.net/info/vesti/index.php?yyyy=2008&mm=02&dd=22&nav_id=285932, (Accessed on 28/11/2020).

²⁹⁴ "Serbia plans action to stop Kosovo independence", *Newspaper - DAWN.COM*, (15/2/2008), <https://www.dawn.com/news/289499/serbia-plans-action-to-stop-kosovo-independence>, (Accessed on 3/12/2020).

part of Serbia”, adding that Serbian authorities will “expand, strengthen and beef up” their presence in Kosovo.²⁹⁵ The Serb action plan included two aspects, the first being diplomatic by recalling its ambassadors from countries that recognize Kosovo which proved its ineffectiveness as major key players in the UN and regional politics of the Balkans recognized Kosovo’s independence, which lead the Serb’s to change their diplomatic game into pressuring states not to recognize Kosovo or withdraw their recognition (15 states withdrew their recognition to date) and prohibit Kosovo from entering into International Organizations, the second aspect of their plan was that of national ethnicity which was based on the Serb minority in Kosovo, mainly in its northern parts, by threatening their secession and them joining Serbia.

On the 18th of February 2008, the day after Kosovo’s Independence declaration, Serbia charged Kosovo’s Albanian leadership with treason, charging Kosovo’s Prime Minister Hashim Thaçi, President Fatmir Sejdiu and speaker of parliament Jakup Krasniqi with organizing a proclamation of a “false state” on Serbian territory.²⁹⁶ On March 11th the Serbian President Boris Tadic’s decided to dissolve the parliament and call for new elections on May 11th. The decision came after Serbia’s ruling democratic coalition split irreconcilably over the Kosovo issue and the lack of an agreement for Serbia’s integration in the EU.²⁹⁷

On the 24th of March 2008, Serbia proposed dividing Kosovo along ethnic lines, which would lead to the separation of the northern district of Mitrovica and several southern municipalities, this proposal was immediately refused by Kosovo. Kosovo's deputy prime minister, Hajredin Kuqi stated that "This proposal is a provocation from Belgrade, and we reject it 100 percent" adding "We want to help create cooperation between Serbs and

²⁹⁵ Ibid.

²⁹⁶ “Serbia charges Kosovo leaders with treason”, *Reuters*, 18/2/2008, <https://www.reuters.com/article/idUSHAM84253620080218>, (Accessed on 3/12/2020).

²⁹⁷ Dimitar Dilhoff, “Serbia’s future: in Europe or back to Milosevic?”, *Foreign Policy*, 13/3/2008, <https://foreignpolicy.com/2008/03/13/serbias-future-in-europe-or-back-to-milosevic/>, (Accessed on 3/12/2020).

Albanians in Kosovo - not divisions".²⁹⁸

The initiative to request an advisory opinion in the General Assembly came from Serbia which drew up that the Opinion to be given by the Court, would end up supporting its fight against the secession of Kosovo. Presenting the text to the General Assembly, the Serbian Minister of Foreign Affairs, Mr. Vuk Jeremić, declared that sending the question to the Court 'would prevent the Kosovo crisis from serving as a deeply problematic precedent in any part of the globe where secessionist ambitions are harboured'.²⁹⁹

Although Serbia claims to have sovereign rights over Kosovo's territory, it has not exercised any real public authority there since the United Nations interim administration was established in 1999, except negligibly, all of which were with the consent of the Kosovar authorities.

Kosovo's independence got consolidated due to several developments, the first was on the 19th of April 2013, when Kosovo and Serbia negotiated the "First Agreement of Principles Governing the Normalization of Relations" between them, which was part of the political process supervised under the auspices of the European Union. The agreement was comprised of 15 principles³⁰⁰ and envisages an implementation plan³⁰¹ which both parties agreed on and later on applied. The agreement didn't tackle Kosovo's political status and didn't imply in any way that Serbia recognizes Kosovo's statehood, although it did indicate that Serbia acknowledges the factual independence of Kosovo. The Agreement which is also known as the 'Brussels Agreement', sets out a series of steps to facilitate normalization of the relationship between Kosovo and Serbia. The first six points establish an

²⁹⁸ Dan Bilfesky, "Serbia proposes dividing Kosovo along ethnic lines", *The New York Times*, 24/3/2008, <https://www.nytimes.com/2008/03/24/world/europe/24iht-kosovo.4.11380269.html>, (Accessed on 3/12/2020).

²⁹⁹ Pellet, 2015, *Op. cit.*, p.268

³⁰⁰ "First Agreement of Principles Governing the Normalization of Relations", Peace Agreement Access Tool PA-X, (19/4/2013), <https://www.peaceagreements.org/generateAgreementPDF/2022>, (Accessed on 16/12/2020).

³⁰¹ "Implementation Plan", *Amazonaws*, (13/4/2013), <https://s3.eu-central-1.amazonaws.com/euobs-media/0807580ad8281aefa2a89e38c49689f9.pdf>, (Accessed on 16/12/2020).

Association/Community of Serb majority municipalities in Kosovo, whilst other provisions in the agreement address integrating parallel structures in northern municipalities into the Kosovo Police force, the Kosovo legal framework, holding municipal elections, and implementation details. Which could be divided into:

I. Governance

1) Political Institutions:

- Article 1. There will be an Association/Community of Serb majority municipalities in Kosovo Membership will be open to any other municipality provided that the members are in agreement.
- Article 2. The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).
- Article 3. The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.
- Article 4. In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.
- Article 5. The Association/Community will exercise other additional competences as may be delegated by the central authorities.
- Article 6. The Community/Association shall have a representative role to the central authorities and will have a seat in the community's consultative council for this

purpose. In the pursuit of this role a monitoring function is envisaged.

2) Elections:

Article 11. Municipal elections shall be organized in the northern municipalities in 2013 with the facilitation of the OSCE in accordance with Kosovo law and international standards.

II. Power Sharing:

I. Political Power Sharing at Sub-State Level:

- Article 2. The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).

This could be interpreted as a form of 'veto' or communal majority.

II. Territorial Power sharing in Local Governance:

- Article 1. There will be an Association/Community of Serb majority municipalities in Kosovo Membership will be open to any other municipality provided the members are in agreement.
- Article 2. The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).
- Article 3. The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.
- Article 4. In accordance with the competences given by the European Charter of

Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.

- Article 5. The Association/Community will exercise other additional competences as may be delegated by the central authorities.
- Article 6. The Community/Association shall have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.

III. Juridical Sector:

- Article 10. The Judicial authorities will be integrated and operate within the Kosovo legal framework. The Appellate Court in Pristina will establish a panel composed of a majority of K/S Judges to deal with all Kosovo Serb majority municipalities. A division of this Appellate Court, composed both by administrative staff and judges, will sit permanently in northern Mitrovica (Mitrovica District Court). Each panel of the above division will be composed by a majority of K/S judges. Appropriate judges will sit dependent on the nature of the case involved.

IV. Socio-Economic Development:

- Article 4. In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.

V. Security Arrangements on the Police Level:

- Article 7. There shall be one police force in Kosovo called the Kosovo Police. All police in northern Kosovo shall be integrated in the Kosovo Police framework. Salaries will be only from the KP.
- Article 8. Members of other Serbian security structures will be offered a place in equivalent Kosovo structures.
- Article 9. There shall be a Police Regional Commander for the four northern Serb majority municipalities (Northern Mitrovica, Zvecan, Zubin Potok and Leposavic). The Commander of this region shall be a Kosovo Serb nominated by the Ministry of Internal Affairs from a list provided by the four mayors on behalf of the Community/Association. The composition of the KP in the north will reflect the ethnic composition of the population of the four municipalities. (There will be another Regional Commander for the municipalities of Mitrovica South, Skenderaj and Vushtrri). The regional commander of the four northern municipalities will cooperate with other regional commanders.

Thus, this agreement dismantled Serbia's attempts to exercise public power in northern Kosovo through parallel organizations established by the majority of ethnic Serbs inhabiting that region. Moreover, both parties agreed in Article 15 not to "block, or encourage others to block, the other side's progress in their respective EU paths", a pledge by which Serbia for the first time, seems to admit that the government of Kosovo enjoys external capacity. Kosovo has been exercising the functions of a state over all its territory and population with the exclusion of any Serbian involvement, it has been doing so on what would appear as a viable and irreversible basis.

Furthermore, on the 4th of September 2020, Kosovo and Serbia separately signed an "economic normalization" deal in the White House. The deal included:

- 1) Infrastructure: Implementing the Belgrade-Pristina highway that was signed on the 14th of February 2020, in addition they will implement the Belgrade-Pristina rail agreement signed on the 14th of February 2020, furthermore they both will commit to a joint feasibility study in options for linking the rail infrastructure to a deep sea port in the Adriatic.
- 2) Borders: The Merdare Common Crossing Point facility will be opened and operationalized by both parties.
- 3) Education: Diplomas and professional certificates will be mutually recognized.
- 4) “Mini-Schengen Zone”: Both parties will join the “Mini-Schengen zone”³⁰² that was announced by Albania, North Macedonia and Serbia in October 2019, allowing citizens of these countries to move freely using their ID, and to fully utilize the benefits of it.
- 5) Energy and Natural Resources: Both parties will work the U.S. Department of Energy, and other appropriate U.S. Government entities, on a feasibility study for the purposes of sharing Gazivode/Ujmani Lake, as a reliable water and energy Supply. Additionally, they will both diversify their energy supplies.
- 6) Telecommunications: The use of 5G equipment supplied by untrusted vendors in their communications networks will be prohibited by both parties. Where such equipment is already present, both parties commit to removal and other mediation efforts in a timely fashion.
- 7) Religion: Both parties pledge to protect and promote freedom of religion, including renewed interfaith communication, protection of religious sites and implementation of judicial decisions pertaining to the Serbian Orthodox Church, and continued restitution of Holocaust-era heirless and unclaimed Jewish property.
- 8) Humanitarian issues related to the war between both sides: Both parties are committed

³⁰² Renamed as “Open Balkan”, after the leaders of the three countries signed in Skopje (North Macedonia) on 29/7/2021 the agreement, which will come into effect starting the beginning of 2023.

to identify and implement long-term, durable solutions for refugees and internally displaced persons. Both parties pledge to expedite efforts to locate and identify the remains of missing persons. Furthermore, both parties are committed to identify a point of contact to lead these efforts with their respective government ministries and coordinate between Belgrade and Pristina, and shall provide an annual update on the number of cases resolved and pending.

- 9) Air flights: Both parties will increase airline passenger screening, information-sharing between each other, and within the framework of broader U.S. cooperation in the Balkans, and commit to technology upgrades to combat illicit activities by implementing and operationalizing U.S.-provided screening and information systems, including PISCES, APIS, ATS-G, and SRTP.
- 10) Homosexuality decriminalization: Both parties will work with the 69 countries that criminalize homosexuality to push for decriminalization.
- 11) Counter-terrorism: Both parties pledge to designate Hizballah in its entirety as a terrorist organization, and fully implement measures to restrict Hizballah's operations and financial activities in their jurisdictions.
- 12) Recognition: Kosovo and Israel agree to mutually recognize each other.
- 13) Kosovo's status quo: Kosovo will agree to implement a one-year moratorium seeking new membership into International Organizations. Also, Serbia will agree to a one-year moratorium of its de-recognition campaign, and will refrain from formally or informally requesting any nation or International Organization not to recognize Kosovo as an independent state, with both agreements to desist will take effect immediately (4/9/2020).³⁰³

³⁰³ Adriatik Kelmendi, "Exclusive: The White House agreement", Twitter, (4/9/2020), <https://twitter.com/adriatikk/status/1301921349934428162>, (Accessed on 28/12/2020).

Relations between Serbia and Kosovo currently could be compared to the “German” way of relations between the German Democratic Republic and the Federal Republic of Germany, as a contract between two states without formal recognition.³⁰⁴ The Basic Treaty³⁰⁵ between them which constituted a *modus vivendi*, paving the way for them to be integrated in the international community and international relations between the two states. Although the exchange of territories between Serbia and Kosovo offers a solution to the *status quo* of their relationship and the status of Kosovo internationally. The partition of North Kosovo and its integration into Serbia with the partitioning of the Preševo Valley in Southern Serbia into Kosovo, as both territories have ethnic minorities that are homogenous to the other country. The main challenges to this solution are the right wing political parties and politicians in both countries, the second is that this shall lead to the drawing of new borders with challenges to public administrations’ integration, the third is the security challenges due to ethnic conflicts, the fourth is the regional repercussions that could lead to the redrawing of the borders in the Balkans based on ethnicity. The primacy of the success of diplomacy in this case is almost undeniable, as one state cannot be coerced into changing positions and attitudes through economic sanctions/benefits, as without diplomacy, negotiations cannot be carried out in a way conducive to an agreement.³⁰⁶

Relations with the EU

In 2016, Kosovo entered into a Stabilization and Association Agreement (SAA) with the EU³⁰⁷, the first step toward EU membership. Compliance with the SAA enhances trade

³⁰⁴ Hilpold, 2012, *Op. cit*, p.275.

³⁰⁵ Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic and Supplementary Documents, Signed at Berlin, December 21, 1972.

³⁰⁶ Michelle M. Al-Asmar, *Public Diplomacy and the Development of International Cooperation*, (Unpublished master's dissertation), Lebanese University; 2020, p.70

³⁰⁷ “European Neighbourhood Policy And Enlargement Negotiations current status”, *European Commission*, (30/7/2020), https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status_en#pc, (Accessed on 24/11/2020). It was signed on 27/10/2015 in Strasbourg *Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part *This*

between the EU and Kosovo, it obligates Kosovo to align its legislation with EU standards, and furthers the ongoing political dialogue between the EU and Kosovo. This process helped Kosovo become an EU potential candidate³⁰⁸. Unlike previous SAAs, Kosovo's is exclusively between it and the EU and Euratom, and the member states are not parties independently as 5 member states of the EU don't recognize Kosovo yet, as the EU keeps its distance between parties which gives it more legitimacy and present it as a reliable interlocutor, increasing the potential of the EU in influencing the region and pushing towards resilience in the region.³⁰⁹

Relations with the International Organizations (including international sports Organizations):

Kosovo's contested sovereignty and its inability to join organizations like the EU, UN, and NATO, has complicated its ability to join International Organizations and participate in international sports.

Kosovo is a member of the World Bank³¹⁰, the International Monetary Fund³¹¹, the Council of Europe's Development Bank³¹² and Venice Commission³¹³, the European Bank for

designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence. European Council-Council of the European Union. (9/11/2017), <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2015046#>, (Accessed 27/11/2020).

Entering into force on 1/4/2020.

³⁰⁸ "Kosovo", *European Neighbourhood Policy And Enlargement Negotiations - European Commission*, (28/5/2019), https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/kosovo_en, (Accessed 27/11/2020).

³⁰⁹ Tony S. Antoury, *The European Union and fostering resilience in the Euro-Mediterranean region: A regional dialogue to overcome the crisis and the breakdown of the region*, (Unpublished master's dissertation), Holy Spirit University of Kaslik, 2019, p.82.

³¹⁰ "Kosovo Joins World Bank Group Institutions", Press release, *World Bank* (29/6/2009), <http://go.worldbank.org/7JV00GA8P0>, (Accessed 4/5/2020).
Kosovo was admitted on 29/6/2009

³¹¹ "Press Release: Kosovo Becomes the International Monetary Fund's 186th Member", *IMF*, (29/6/2009), <https://www.imf.org/en/News/Articles/2015/09/14/01/49/pr09240>, (Accessed on 26/11/2020).
Kosovo was admitted on the 29/6/2009.

³¹² "Accession of Kosovo. Accession of Kosovo", *CEB*, (8/11/2013). <https://coebank.org/en/news-and-publications/news/accession-kosovo/>, (Accessed on 26/11/2020).
Kosovo was admitted on 4/11/2013.

³¹³ "Kosovo becomes 60th member of Venice Commission", *Venice Commission: Council of Europe*, (11/6/2014), <https://www.venice.coe.int/webforms/events/?country=243>, (Accessed on 4/5/2020). Kosovo was admitted on 13/6/2014

Reconstruction and Development³¹⁴, the Permanent Court of Arbitration³¹⁵, the Apostille Convention³¹⁶, the Egmont Group of Financial Intelligence Units³¹⁷, the World Customs Organization³¹⁸, the International Olympic Committee³¹⁹, the International Federation of Association Football (FIFA)³²⁰, the Union of European Football Associations (UEFA)³²¹, and the International Basketball Federation (FIBA)³²².

In contemporary International Law, practice reveals that the creation of states is the result of the exercise of the right to self-determination and – outside the cases of dissolution and unification – the separation of part of an existing state with its consent.³²³

The ICJ opinion which was issued in response to a single question put to it by the General Assembly of the United Nations in October 2008: “Is the Provisional Self-Government Institutions of Kosovo's unilateral declaration of independence in accordance with International Law?” Serbia, which initiated the proceedings, was confident that the ICJ

³¹⁴ European Bank for Reconstruction and Development Shareholders and Board of Governors, <https://www.ebrd.com/shareholders-and-board-of-governors.html>, (Accessed on, 4/5/2020).

Kosovo was admitted on 17/12/2012

³¹⁵ “New PCA Member State: Kosovo”, *PCA*, (14/6/2016), <https://pca-cpa.org/en/news/new-pca-member-state-kosovo/>, (Accessed on 26/11/2020).

Kosovo was admitted on 5/1/2016

³¹⁶ “Kosovo joins The Hague Apostille Convention – HCCH”, *Hague Conference on Private International Law*, (26/11/2020), <https://www.hcch.net/en/news-archive/details/?varevent=438>, (Accessed 26/11/2020).

Kosovo was admitted on 6/11/2015.

³¹⁷ KOSOVO - Financial Intelligence Unit of Kosovo (NJIF-K), <https://egmontgroup.org/en/content/kosovo-financial-intelligence-unit-kosovo>, (Accessed on 27/11/2020).

Kosovo was admitted on 1/2/2017

³¹⁸ “Membership”, *WORLD CUSTOMS ORGANIZATION*, <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/wco-members/list-of-members-with-membership-date.pdf?db=web>, (Accessed on 27/11/2020).

Kosovo was admitted on 25/1/2017.

³¹⁹ “Kosovo - National Olympic Committee (NOC)”, *International Olympic Committee*, (27/11/2020). <https://www.olympic.org/kosovo>, (Accessed 27/11/2020).

Kosovo was admitted on 1/1/2014

³²⁰ “Who We Are - News - 66th FIFA Congress, Mexico City 2016”, *FIFA*, (30/3/2017). <https://www.fifa.com/who-we-are/news/66th-fifa-congress-zurich-2016-2878197>, (Accessed on 27/11/2020).

Kosovo was admitted on 13/5/2016.

³²¹ “Kosovo relishing the future: Inside UEFA”, *UEFA*, (3/9/2018), <https://www.uefa.com/insideuefa/member-associations/kos/>, (Accessed on 27/11/2020).

The FFK became UEFA's 55th member association at the UEFA Congress in Budapest on 3/5/2016.

³²² “Kosovo becomes 215th National Member Federation of FIBA”, *FIBA basketball*, (13/3/2015). <http://www.fiba.basketball/news/kosovo-becomes-215th-national-member-federation-of-fiba>, (Accessed on 27/11/2020).

Kosovo was admitted on 13/3/2015.

³²³ Crawford, 2006, *Op. cit.*, p.392-395 & 402-403, The case for: Singapore, Bangladesh, the Baltic States and Eritrea.

would rule in its favor for three reasons: firstly, Kosovo, although under international administration from June 1999, was a province of Serbia, and the United Nations Security Council affirmed in its Resolution 1244 (1999) assuring the "sovereignty and territorial integrity" of the then Federal Republic of Yugoslavia by establishing the international administration; Secondly, the inherent conservatism of International Law and diplomacy opposing acts of unilateral secession which was widely interpreted in Kosovo's declaration of independence; thirdly, the ICJ's own conservatism which means that its members are generally reluctant to intervene in matters which could divide the international community and where the relevant legal principles are to some extent uncertain or in flux. Still, it would have been difficult for the ICJ to ignore the fact that 69 states, including 22 of the 27 Member States of the European Union (EU), had already recognized Kosovo's independence by the time of its ruling.

Historically, questions submitted to the ICJ are considered quite broad, but in this case, it was a very narrow one that the Court had been asked to consider. The ICJ was not asked what were the legal consequences of the declaration of independence, or whether the Kosovar people had a right to self-determination, or whether Kosovo had met the statehood requirements. Self-assured that its advantage lays within its specific focus, Serbia contested the declare independence by the legal authority of the U.N.-supervised Provisional Self-Government Institutions of Kosovo (PISG). The ICJ has shifted its focus away from the PISG, as it deduced that the authors of the declaration of independence were not the PISG, but rather "persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration."

This was an important distinction as if the declaration had been taken as an act of the PISG, it could've been perceived as surpassing the PISG's remit — as the Secretary-General's Special Representative of the United Nations (SRSG) had regarded other PISG acts to

have previously done. Thus, the Court was able to argue that the authors of the declaration of independence were functioning outside the U.N. interim administration legal framework, their declaration did not infringe that framework and since there is no legal prohibition toward declarations of independence, the declaration did not infringe general International Law. Consequently, the advisory opinion paves the way for more states to extend recognition to Kosovo, but the wave of new recognitions which Pristina had hoped for has not materialized so far. Even if there are more recognitions to come, they are unlikely to fundamentally alter the political landscape. Serbia has affirmed its opposition to Kosovo's unilateral declaration of independence and as long as Serbia continues to withhold its recognition of Kosovo, other countries will follow suit, including China and Russia. These two permanent members of the Security Council, are in a position as to block Kosovo's admission to the U.N., hence keeping Kosovo in a somewhat diplomatic limbo. The EU is keen to break the logjam, but it will be challenging for the EU to act effectively on this issue as long as some of its member states actively oppose recognition.

2.2 The new dawn of politics in Kosovo

Albin Kurti, the Kosovar Prime Minister (Head of Government), leader of the Levizia Vetevendosje (LVV) party, a left-wing nationalist party, that grew out of a protest movement. Being one of the rare politicians and parties that weren't part of the Kosovo Liberation Army (KLA), that fought for independence from Yugoslavia. This was possible, when in 2020, and after 12 years of Kosovo's declaration of independence, Hashim Thaçi and Kadri Veseli (leader of the Democratic Party of Kosovo –PDK) were indicted for war crimes and put in detention in The Hague while they await trial.³²⁴

³²⁴ Clare Nuttall, "Kosovo's new generation of politics", *Bne IntelliNews*, March 2021, p. 42–43.

LVV takes a stronger stance on Kosovo's status than other parties, as they conceded with time to the need of a compromise with Serbia in order to gain recognition. Furthermore, the decline of the parties that had their leaders extradited to The Hague as was the case of the Social Democratic Initiative (Nisma) and PDK, which acted as vehicles for former Kosovar president Hashim Thaçi and Fatmir Limaj. The LVV has a strong stand against corruption and stresses on other social programs that include: poverty eradication, raising the minimum wage, social housing, economic revival, and the availability of jobs to the young generation which is highly is unemployed.³²⁵

This isn't the first government for Prime Minister Kurti, as the LVV was the winner in the October 2019 elections in Kosovo, when the party took 26.27%, forming a coalition government with the Democratic League of Kosovo (LDK) – the party of the first president of Kosovo Ibrahim Rugova – their government was voted in on February 3rd, 2020. The LDK party filed a no-confidence vote motion, after Kurti sacked his Interior Minister Agim Veliu (LDK member), the tensions got so high as the coalition parties had other differences which included the 100% tariffs on imports from Serbia and Bosnia (LVV supported the tariffs, unlike the LDK which opposed them as did the USA), the pivotal point was the handling of the coronavirus pandemic, where minister Veliu supported declaring a state of emergency, which would have given power to the Kosovo Security Council chaired by the president (which was then Hashim Thaçi). On March 25th 2020, 82/120 members of the Kosovo Assembly voted in favor of the motion, to be the first government in the history of Kosovo to be voted out of power.³²⁶

Kosovo's parliament elected Vjosa Osmani as president on April 4th, 2021, ending the chances of any political crisis in the country. Osmani's election was made possible due

³²⁵ Nuttall, 2021, *Op. cit*, p.43

³²⁶ Shaun Walker, "Kosovans look on aghast as government falls while coronavirus bites", *The Guardian*, (26/3/2020), <https://www.theguardian.com/world/2020/mar/26/kosovo-government-falls-in-vote-of-no-confidence>, (Accessed on 15/5 2021).

to the change of leadership in her former party the Democratic League of Kosovo (LDK), as the new party leader Lumir Abdixhiku assured that the LDK MPs would attend the session on her election, ensuring the required quorum was reached. According to the constitution, the president of Kosovo is elected by a two thirds majority in the 120-seat assembly, which requires support from opposition parties, at least for a quorum. She ran in the February general election alongside Vetevendosje leader Albin Kurti. Vetevendosje ended up winning 50.3% of the votes and 58 seats in the February 14th snap elections, eventually forming a new government led by Kurti with the support of smaller parties.

After the formation of the new Kosovar government on March 22nd, Kurti's proposal for Osmani as a president was faced with failure as opposition parties initially refused the ex-parliament speaker and ex-acting president, to be appointed head of state with a full five-year mandate. The turning point was when on March 30th, the LDK leader Abdixhiku announced that his party will attend the session when MPs vote for the president. Osmani was a senior member of the LDK until 2020, after which she was dismissed from all party structures due to her disagreements with then party leader, Isa Mustafa.

The voting parliamentary session was attended by 82/120 MPs, after which Osmani was elected with 71 votes in favor while 11 votes were invalid, after the third round of voting.³²⁷ Two opposition parties, Democratic Party of Kosovo (PDK) and NISMA as well as the Serb List, a party of ethnic Serbs in Kosovo did not participate in the vote. After the vote, Osmani was sworn in as president of Kosovo.

EU envoy for Kosovo-Serbia dialogue Miroslav Lajcak congratulated Osmani on her election as President, tweeting: "I wish you a lot of success in your important position and I'm looking forward to working together,".³²⁸

³²⁷ Orlando Crowcroft, "Kosovo's parliament votes in Vjosa Osmani as president", *Euronews*, (5/4/2021), <https://www.euronews.com/2021/04/05/kosovo-s-parliament-votes-in-vjosa-osmani-as-president>, (Accessed on 5/6/2021)

³²⁸ Miroslav Lajčák, @Miroslavlajcak, Twitter, 4/4/2021,

Osmi served as speaker of the parliament from February 2020 until March 2021 when the new government was elected. Until the date of her election, Osmi was also serving as acting president, a position she assumed in November 2020, following the resignation of Hashim Thaçi, who was indicted for war crimes during the independence war with Serbia in 1998-99 and detained in The Hague-based Kosovo war time court. Thus, 38-year-old newly elected president Osmi is the second female president in Kosovo following Atifete Jahjaga, who held the position in 2011-2016.

Conclusion

Kosovo's campaign for independence was an open-ended and multidirectional pursuit undertaken by different actors through different methods, shifting between non-violent and violent methods for realizing independent statehood. Kosovo's contemporary struggle for independent statehood can be comprehended in three distinct phases: the campaign for internationalization of Kosovo's struggle for freedom and independence (1990–1998); the period of UN transitional administration and state building (1999–2008); and, finally, the transition from supervised to full independence (since 2008).

The first phase of crafting Kosovo's statehood occurred between 1990 to 1999, it involved a gradual detachment from the fractured remains of Serbian-dominated Yugoslavia, which -in Kosovo- began with peaceful resistance, continued as a quest for democratic separation through a referendum and ended with a violent conflict and international intervention. Kosovo's distinctly identifiable ethnic community with a clearly demarked geographical space and the perseverance of serious discontents expressed through political confrontation as well as indiscriminate use of violence by central government provided strong grounds for the mobilization of political leadership with wide popular legitimacy in support of independence.

During this phase, Serbia's violent reaction to the claims for independence solidified Kosovo's case for independence, including: the substantive abolition of Kosovo's autonomy; subjecting Kosovo-Albanians to a systematic denial of their basic human rights, including general discrimination and the mass dismissal of ethnic Albanians from public office and commercial enterprises; interference with the judiciary, arbitrary arrests and imprisonment; use of torture and the disproportionate use of force . While the 1974 Constitution of Yugoslavia granted Kosovo most features of statehood, during the 1990s struggle to become a sovereign state, Kosovo ultimately formed the necessary social,

political, and institutional awareness for becoming and acting like a sovereign state. During this phase, every act of seeking independence on the grounds that Kosovo satisfies the core criteria of statehood performed the function of consolidating the further the very criteria that it claimed to possess.

During the first phase, Kosovo's struggle for self-determination was initially undertaken through peaceful methods, which involved boycotting Serbia's harsh regime through the creation of parallel state institutions and the establishment of a government-in-exile. Although the quest for Kosovo's independence was inevitably an elite-driven process, its legitimacy was underscored by the overwhelming political will and commitment among Albanians in Kosovo for realizing independent statehood: this served as the foundation for Kosovo's independence.

The rationale for seeking statehood was not embedded in the calculation of potential risks and uncertain futures. Rather, it was driven by values, hope, and the belief that independence is indispensable as the only path for Kosovar Albanians to realize their historical aspiration for collective freedom and self-determination. Under the conditions of denied statehood, the focus of the campaign for independence was to continue local resistance and ensure the survival of the Kosovar-Albanian population while proactively seeking external support for independence by internationalizing the self-determination crisis, drawing international attention to Serbia's systematic and state-sponsored human rights abuses and political prosecution, and ultimately triggering international intervention to achieve liberation.

The initial process of state-becoming involved created a cohesive social and political structure which was enabled by peaceful resistance and state-alike parallel institutions. Yet, as Serbian regime did not respect the majoritarian quest for independence in Kosovo, the pro-independence political leadership engaged in a complex campaign for

internationalization of the problem of Kosovo through a government-in-exile and broad network of diaspora community. However, the struggle for independence through domestic boycotts and attempts to internationalization Kosovo's case for independence produced only limited results, largely since the international community was unwilling to address Kosovo issue at the same time as the Dayton peace process, which aimed to end the conflict in Bosnia and Herzegovina and Croatia.

The initial failure of preventive diplomacy to address the situation in Kosovo led to the escalation of the conflict, which then demanded the urgent attention of the international community. This political stalemate coupled with the state's violence transformed the resistance from peaceful protest to an armed struggle between the Kosovo Liberation Army (KLA) and Serbian police and armed forces. This in turn exacerbated a dynamic of violence that created a humanitarian emergency by 1998 as Serbian state-sponsored violence took on the form of ethnic cleansing. The armed resistance and the escalation of the crisis finally caught the attention of the international community, which tried to resolve the dispute through diplomatic means. The response of the international diplomacy only after the crisis reached its tipping point reflects the frequent failure of the international community to prioritize conflict prevention and the subsequent phase of crisis management.

Ultimately, the fully fledged violent conflict lasted over two years and cost over 13,000 people their lives, including the occurrence of widespread war crimes and crimes against humanity with genocidal intents. Subsequently, NATO's military intervention tried to stop Serbia's state-sponsored violence against Kosovo-Albanians, which consisted of ethnic policing to maintain control over the territory, ethnic cleansing in regions where local insurgency was challenging the judicial authority, and then full-scale depopulation of Kosovo by driving Kosovo-Albanians out of the territory in response to NATO's humanitarian intervention.

The second phase of crafting Kosovo's independent statehood took place between 1999 and 2008, it began with NATO's military intervention and the subsequent UN transitional administration. This critical phase involved consolidating internal sovereignty, strengthening state capacities, earning the support of major powers and democracies, and preparing the ground for independent statehood. It was NATO's intervention and the decision, articulated in UN Security Council Resolution 1244 (1999), to place Kosovo under international administration, which effectively removed Serbia's sovereignty over Kosovo. This period reveals how Serbia's actions and efforts to prevent state formation unintentionally enhanced Kosovo's international support along with its chances for independent statehood. The main impetus for utilizing the UN administration as a pathway to independence came from the Kosovo-Albanian political elite, who were relentless in shaping the political, legal, and institutional processes to create for Kosovo the attributes of an independent state.

The quest for statehood provides almost unquestionable legitimacy to political and military leaders, which raises questions about the true motivations and hidden intentions behind the campaigns for independence. During this phase, everyday diplomacy focused on steering the state building process in the direction of state formation, thereby generating support within the UN civilian presence and among the diplomatic representatives of foreign countries that were committed to resolving Kosovo's status. Although the UN and NATO never formally supported Kosovo's independence, the peacebuilding and state building processes they facilitated ultimately created the conditions that led to full independence in 2008. Nonetheless, the UN administration of Kosovo between 1999 and 2008 tried to counterbalance the Kosovo-Albanians' focus on independence with normative conditions related to minority protection, good governance, and democratization. In many regards, the UN has channeled state building efforts to respond to the Kosovo-Albanians' desire for

independent statehood while directing peacebuilding activities to accommodate and appease the Serb minority in Kosovo and their objection to independent statehood. At least in retrospect, the period of UN administration played a significant role in resolving the “recognition dilemma” experienced in the aftermath of the Kosovo’s declaration of independence.

The UN transitional administration of Kosovo provided an externally designed pathway to full sovereign statehood by creating the political, economic, and social infrastructure whereby the entity consolidates its statehood capacities with functioning democratic institutions, a self-reliant market economy, and the capacity to make and implement law and contribute to regional stability. The UN mediated talks on the final status represented the final attempt to resolve the dispute through peaceful negotiations and compromise. After two years of unsuccessful talks, the UN mediator Martti Ahtisaari concluded that “independence is the only option for a politically stable and economically viable Kosovo”. Serbia rejected the independence proposal, which mobilized Russia to oppose the UN Security Council endorsement plan for supervised independence. As this crucial development narrowed down the prospects for a mutually consensual settlement, Kosovo and the Western powers endorsed the pathway for a declaration of independence without Serbia’s and UN affirmative endorsement.

The third phase of crafting Kosovo’s statehood began with Kosovo’s declaration of independence in February 2008, which represented a remedial solution and a historical change in Kosovo’s struggle for becoming a sovereign state. Although Kosovo proclaimed independence in close coordination with the international democratic community, it lacked the blessing of the former host state and did not receive endorsement by the UN Security Council. This set the country into a complex trajectory pursuing bilateral recognition and membership of second-order international organizations in the hope that it would eventually

achieve a critical point and gain full international acceptance. Other issues which preoccupied Kosovo after independence was the struggle to reduce international missions and expand its own domestic sovereignty, a process which was intimately linked with the international support for international recognition.

While UNMIK, the EU Rule of Law Mission in Kosovo (EULEX), the NATO peacekeepers, and the OSCE were status-neutral, only the International Civilian Office (ICO) actively supported Kosovo's independence. Kosovo was obliged to endure another period of international supervision in exchange for diplomatic recognition while gradually expanding domestic authority in exchange for providing strong safeguards for minorities, and demonstrating capabilities of a functioning a normal state. Most importantly, this period was marked with the most complex task of obtaining international recognition and membership of international bodies under the conditions of partial external contestation and inhospitable global environment for new states. Parallel to consolidating domestic sovereignty, after independence Kosovo prioritized foreign policy consolidation. To facilitate this, Kosovo began establishing the legal and institutional infrastructure to govern and execute its foreign policy and external relations.

The three phases underpinning Kosovo's struggle for statehood performed three different legitimization functions. The first phase added moral legitimacy to the case for statehood, whereby independence became the remedial choice after the abolishment of Kosovo's autonomy, political violence and systematic human rights abuses, and international involvement. Subsequently, the 1990s events formed the historical, normative, and political justificatory discourse for international recognition, and bonded Kosovo's special relationship with the US and the majority of European powers. The second phase of state becoming added procedural and deliberative legitimacy to Kosovo's struggle for independence by demonstrating that the territory prior to the proclamation of independence

satisfied core attributes of modern statehood and was ready to function as sovereign and self-sufficient state. After almost a decade of international administration and *de facto* abrogation of Serbia's sovereignty and authority over Kosovo, it was practically and politically impossible for Kosovo to return to the pre-war political status or another autonomous arrangement within Serbia. This marked the phase which for many was significant for Kosovo to earn its sovereignty. Finally, the third phase of state-becoming added functional and political legitimacy to the case of independence, whereby Kosovo demonstrated that it was ready to act like a state, to take international obligations, to implement the UN's proposal which led to supervised independence, and to integrate into the regional and international political and socio-economic organizations.

Kosovo is a state by all means in international law criterions, yet its recognition is a political aspect and part of each nation's sovereignty, thus whether states recognize Kosovo or not, is just a question of International Affairs, the ICJ may have not stated that Kosovo is a state in its advisory opinion, but since 2008, Kosovo has only gained more and more recognition by states, and non-recognition could only be a reason for a future war in the Balkans.

Albanian nationalism could still put stability in the Balkans at risk if Kosovo is unable to complete its sovereignty. The big question mark is whether, or when, Serbia will recognize Kosovo as a sovereign state. Belgrade politicians are fond of saying that Serbia will never recognize Kosovo's "unilateral declaration of independence." But it does not have to, because no one does. A declaration of independence is a political document, not a legal one. What sovereign states recognize is the sovereignty of another state, which entails its control over territory, the legitimacy of its government, and its monopoly on the use of force. Today this is often done not bilaterally, but through admission of a state to the United Nations.

Belgrade has already recognized Kosovo's sovereignty implicitly, as the 2013 Brussels Agreement acknowledges the validity of Pristina's constitution and judicial system on the whole territory of Kosovo, without reference to Serbia. It also contains a provision that acknowledges Serbia and Kosovo will each qualify for and enter the EU separately, without trying to block the other. Since only sovereign states can become EU members, this was an implicit recognition of Kosovo's inevitable sovereignty.

It is now generally accepted even in Belgrade that Serbia will in due course have to amend its constitution to accommodate the facts of life, though how it will do so is still unclear. The harder-nosed negotiators in Belgrade will want to hold out until the last minute, figuring that the EU will be prepared to pay a higher price for Kosovo recognition later rather than sooner. Or, some hope, Serbia will be able to enter the EU first and use its veto to block Kosovo's accession, though the EU's experience with Cyprus will make many members wary of that scenario. The simple fact is that Serbia will not be able to enter the EU without resolving all its issues with Kosovo, because one or more of the twenty-three EU members (twenty-two after Brexit) that have recognized Kosovo will not allow it.

Pristina has worked hard to convince the five "non-recognizing" EU members (Spain, Romania, Slovakia, Greece, and Cyprus) to change their minds, but without success. Decisions to recognize by one or two of them would bring a lot of pressure on Belgrade to settle the matter sooner rather than later. The 2010 International Court of Justice advisory opinion that found Kosovo independence breached no International Law opens the door to recognition but does not require it. Even Serbian recognition, however, will not necessarily get Kosovo into the UN. Russia has its own reasons to continue to block the UN Security Council recommendation required before the General Assembly can vote on UN membership. At the very least, Moscow will seek as a *quid pro quo* Washington's acceptance of the independence of South Ossetia and Abkhazia, its two "independent"

clients in Georgia, as well as acceptance of the annexation of Crimea. One possible outcome that Moscow would like, because it would legitimize the precedent of changing borders to accommodate ethnic differences, involves an exchange of territory and population between Kosovo and Serbia.

The “divide and govern” strategy that has prevailed in Kosovo and Serbia so far is not strictly an ethnic one. Many of the Serbs of Kosovo north of the Ibar would like their municipalities to be given back to Serbia. Albanians in the Preševo valley area of southern Serbia would like to join Kosovo. In the summer of 2018, Kosovo President Thaçi took up the cudgels for this idea, which Belgrade has long favored, calling it “border correction.” The Americans and Europeans, who in the past had always ruled it out, pronounced themselves ready to consider any proposition Belgrade and Pristina could agree on. Only Chancellor Merkel has opposed the idea vigorously. Adjusting the lines to accommodate ethnic differences in this way would precipitate, likely sooner but certainly later, the movement of all Serbs out of Kosovo, including the majority who live south of the Ibar, and all the Albanians out of Serbia, including those who do not live in the Albanian-majority municipalities in southern Serbia. Such mass population movements involving more than one hundred thousand people would be particularly unwelcome to the majority of Kosovo Serbs, who live south of the Ibar, and to the Serb Orthodox Church, whose major religious sites would be lost.

“Border correction” would also raise questions about the territorial integrity of Macedonia, Bosnia, Montenegro, and Serbia, whose Bosnian population might prefer to join whatever portion of Bosnia the Bosnians would still control. The result would destabilize the entire region, while keeping the lines where they happen to lie, while encouraging correct treatment of minorities in both Kosovo and Serbia, has proven a viable and judicious approach, if the “Non-paper” presented by the Slovenians isn’t real and states refuse the

change of borders in the Balkans based on ethnicity.

If the wars and politics of the Balkans seem complicated and confusing, that is because they are, but there is nothing unintelligible or mysterious about the driving factors, which exist elsewhere as well. War in the Balkans, as in many other parts of the world, is politics by other means, as Clausewitz once stated "War is the continuation of politics by other means". Distribution of power among ethnic nationalists was the main disagreement wherever we look in the region. Each group sought the means to protect itself from one or more of the others, whether the threats were real or imagined for political purposes.

Kosovo, is a story of a people that faced atrocities and crimes from oppressors since even before the fall of the Ottoman Empire. Kosovar Albanians have been fighting for their existence for almost 200 years now, and those that seek freedom shall always gain it. As Mr. Ahtisaari said Kosovo is "a unique case that demands a unique solution" adding that "A return of Serbian rule over Kosovo would not be acceptance to the overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition. Autonomy of Kosovo within the borders of Serbia – however notional such autonomy may be – is simply not tenable.". Kosovo has 2 viable options these days, either to exist as a sovereign state or be part of a greater Albania. As Fatos Nano (former prime minister of Albania) stated: "Albanians are a nation of freedom fighters who know something about living under oppression"

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Annex

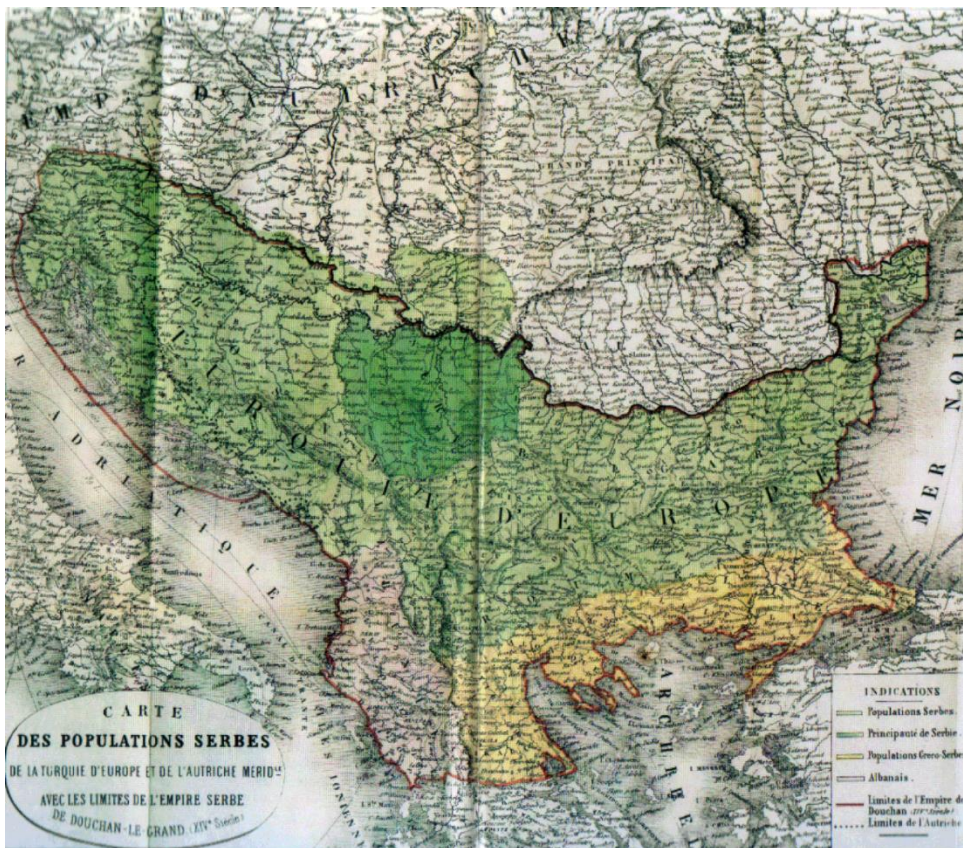
Boundaries of Yugoslavia



Administrative divisions map of the six constituent republics that made up the SFRY, (SR Bosnia and Herzegovina - 1, SR Croatia - 2, SR Macedonia - 3, SR Montenegro - 4, SR Serbia - 5, and SR Slovenia - 6) with 2 autonomous regions within Serbia (Vojvodina – 5b, and Kosovo – 5a):



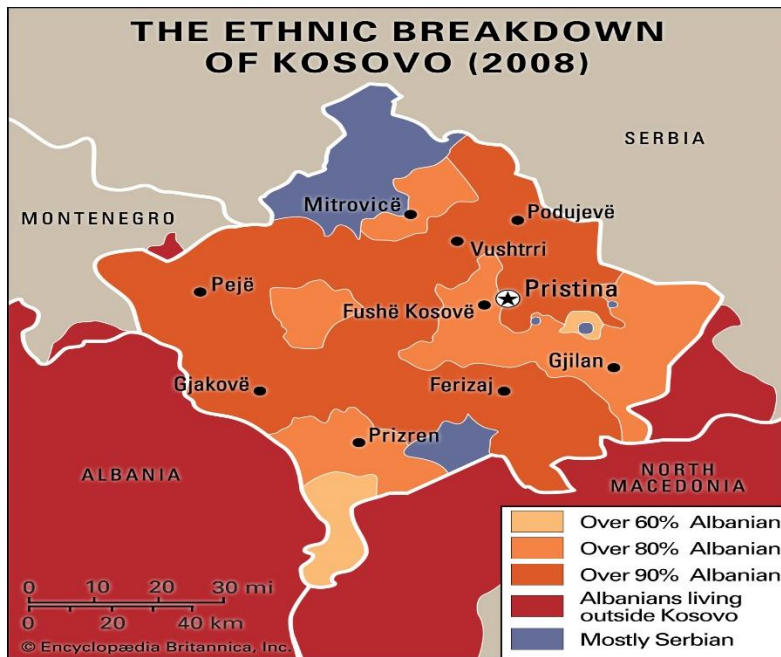
La Serbie: son passé et son avenir - By Henri Thiers (1862, p.169)



Map of current Kosovo:



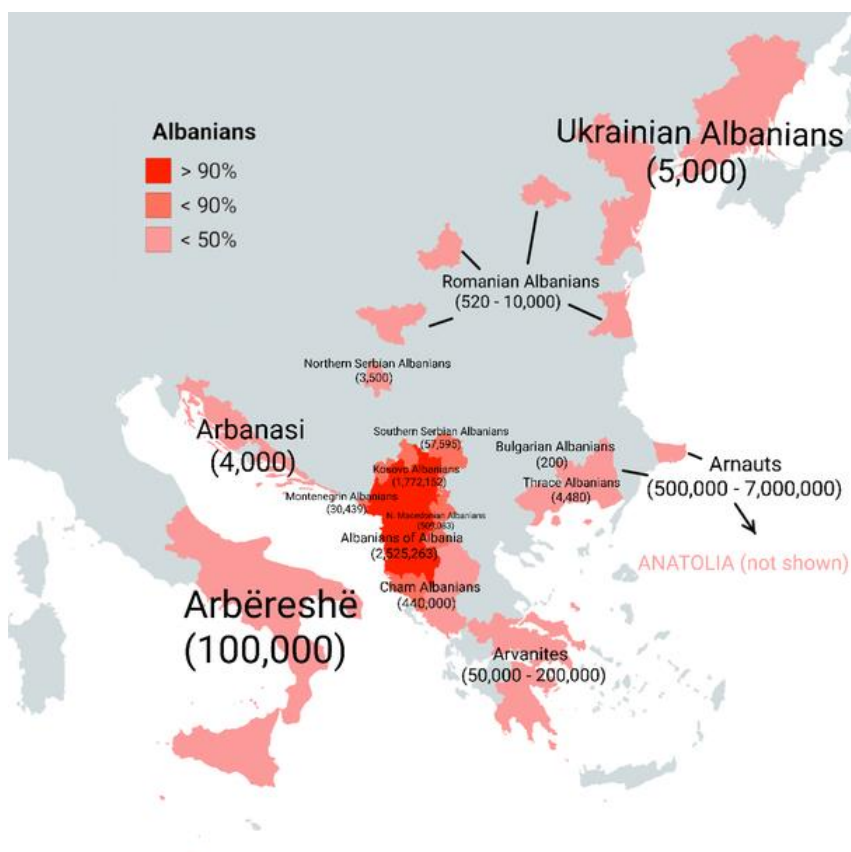
2008 ethnic map of Kosovo and nearby areas:



Non paper proposed by Slovenians, new map of the Balkans:



Albanians presence in the Balkans and East Europe:



Timeline of Kosovo until the birth of the Republic of Kosovo	
Year	Event
1389	First battle of Kosovo ended with the victory of Sultan Murad I over the Prince Lazar Hrebeljanović, that became a “Martyr” after his death in the battle
1912-1913	First Balkan War
May 1913	Treaty of London divided modern Kosovo between Albania, Montenegro, and Serbia
1913	Second Balkan War
1918	Kosovo became part of the Kingdom of Serbia, after the collapse of the Ottoman Empire
1941	Most of modern Kosovo becomes part of Italian controlled Albania

1946	Yugoslavia absorbs Kosovo
1974	Kosovo was granted autonomy in the new constitution of Yugoslavia
1980	Tito dies
1981	Violence starts between Albanians and Serbs
1987	Milošević rises to power
1989	Milošević starts his process to eliminate the autonomy of Kosovo
July 1990	Kosovar Albanians declare their independence for the first time, Milošević ends dissolving the Assembly of Kosovo
September 1990	Albanians are fired from state jobs due to orders by Milošević
1991-1992	War breaks out in S.F.R.Y, leading to the independence of 3 republics from it (Croatia, Slovenia, Bosnia and Herzegovina)
1992	Ibrahim Rugova is elected as the president of the “Republic of Kosovo”, Albanians begin their nonviolent resistance against Belgrade.
1997	Violent resistance starts against F.R.Y by the Kosovo Liberation Army (KLA)
October 1997	Serbian police crushed Kosovar Albanian student demonstrations, KLA responded by increasing it resistance attacks
March – September 1998	Milošević conducts series of attacks against Kosovar Albanians, leading to the burning of their houses, villages being emptied, and many murdered.
September 1998	UN and NATO give an ultimatum to Milošević to end his offensive campaign against Kosovars
February – March 1999	Rambouillet meetings take place, in hope of achieving a political accord. Serbia refused to agree on the terms.
20/3/ 1999	Yugoslav army launches it offensive on Kosovar Albanians, murdering and driving thousands of them from their homes.
24/3/1999	NATO airstrikes begin

10 th of June 1999	UN Security Council adopts Resolution 1244, NATO suspends its bombings
May 2001	UNMIK creates a Constitutional Framework for Provisional Self-Government in Kosovo
December 2003	UN sets forth conditions for the final status talks in 2005
March 2004	19 people were killed, worst incidence of violence after the events of 1999
November 2005	UN Secretary General Kofi Annan appoints Martti Ahtisaari to lead the Kosovo status process.
July 2006	First direct talks between the Kosovar and Serb leaderships since 1999
2/2/2007	Ahtisaari reveals Kosovo's final status plan which advised independence of Kosovo
March 2007	Kosovo's Constitutional drafting process begins
December 2007	A draft Constitution was produced by the Constitutional Commission
17/2/2008	Independence was declared by the Assembly of Kosovo
April 2008	Kosovo Assembly approves the new constitution
15/6/2008	The Constitution takes effect