KOSOVO: *SUI GENERIS* OR PRECEDENT IN INTERNATIONAL RELATIONS

Edited by
Dušan Proroković

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Introduction

The Kosovo question has attracted the widespread attention of researchers, politicians, diplomats and analysts of international relations for more than three decades. As the Kosovo crisis developed in the direction of escalation or de-escalation, thus the issue of Kosovo and Metohija occupied a higher or a lower place on the "ranking list" of the priorities of the international community. Nevertheless, it remained on that list permanently.

During the observed period, the crisis reached its zenith twice. The first time, in the period 1998-1999, after the escalation of the war in Kosovo and the subsequent NATO aggression on the Federal Republic of Yugoslavia. And the second time, in February 2008, when Kosovo Albanians unilaterally declared independence and their decision was soon recognized by dozens of states. On both occasions, numerous questions have been raised in the academic community. However, even today we are still searching for answers.

Did NATO violate international law by intervening against a sovereign country without the UN's approval? Should the internal crisis be used for the brutal internationalization of a particular problem that will then be directed towards secession? What is the position of the UN in international politics and do the great powers as the key actors of international relations deliberately violate this position with their unilateral moves? The most frequent and probably the most important question since 2008 can be formulated as: Is the Kosovo case *sui generis* or a precedent? This issue was further actualized after the unilateral declaration of the independence of South Ossetia and Abkhazia in 2008, the referendum in Crimea 2014, as well as after those held in Catalonia and Iraqi Kurdistan in 2017.

In the collection of papers published by the Office for Kosovo and Metohija of the Government of the Republic of Serbia and the Institute of International Politics and Economics, participated 20 researchers from 12 countries (Brazil, the United Kingdom, Russia, France, the USA, Slovakia, Austria, Turkey, Romania, Croatia, Bosnia and Herzegovina, Bulgaria and Serbia). They analysed the Kosovo case in 16 authorial and co-authorial

papers 10 years after the unilateral proclamation of the so-called Republic of Kosovo and 19 years after the adoption of the UN Security Council Resolution 1244, which marked the end of the war in Kosovo and Metohija.

The collection of papers is divided into three thematic units. The first chapter is *The consequences of Kosovo's unilateral proclamation of independence: a view from the perspective of international security*. It contains five papers in which are considered following topics: the issues of international interventionism of the great powers and (mis)use of the Kosovo crisis for this purpose; the impact of this crisis on the major changes in Russia's and China's relations to Western countries, which led to the establishing of a more dynamic balance of powers at the global level; the comparison of the examples of Kosovo and Metohija and Crimea; and the consequences of the unilaterally declared independence of the Kosovo Albanians on regional security and international relations as a whole are explained in detail. In the second chapter, *Sui generis or a precedent: legal and political aspects*, the authors in four papers (of which two co-authorial) characterise the Kosovo case through a comparative analysis of the political and legal dimensions of the unilateral decision of the institutions in Pristina, investigate it through the prism of the right to self-determination of peoples and sovereign rights of the state and analyse the particular role that the United Nations played (and still plays) in it.

Where is the so-called Republic of Kosovo today, what is its position in international relations and what reasons abetted different countries to establish or decide not to establish diplomatic relations with Pristina, is analysed in the third chapter of the collection of papers: *Ten years after the unilateral proclamation of independence: Where is Kosovo today?*

In seven papers, of which two co-authorial, there are presented as many as five case studies: Turkey's attitude towards the Kosovo case and how it reflects on bilateral arrangements with Serbia; Romania's attitude to the Kosovo case, which is significant since Romania is one of the EU and NATO members that did not establish diplomatic relations with Pristina; the similarities and differences between Kosovo and Catalonia are considered, but also between Kosovo and the Republic of Srpska as the two entities originated from the breakup of communist Yugoslavia; the attitude of the countries of Latin America to the Kosovo case, which is especially interesting since it is a world's macro-region where the least number of recognition of the so-called Republic of Kosovo was recorded, and also the first case of withdrawal of recognition in 2017 (Surinam).

Also in this chapter of the collection, there are two papers describing the gloomy reality in Kosovo ten years after the proclamation of independence: the first paper presents the economic unsustainability of the "Kosovo system" that generates numerous political and social tensions, while the second explains the demographic trends among the Kosovo Albanians, quite different from the 1990s, which indicates that the number of inhabitants of Kosovo and Metohija will decline in the coming years.

Given the relatively large number of discussed topics, the quality of the published papers and the actuality of the topics, we do not doubt that this collection will attract attention in the academic community, both in Serbia and abroad, and would be used for a further research not only in the case of Kosovo and Metohija but also in a number of comparative analyses.

However, we want to underline that besides the scientific importance, this collection of papers has a wider social significance and that it can be useful for the decision-makers not only in Belgrade and Pristina but in other decision-making centres of the great and regional powers that have expressed immense interest in the Balkans over the past decades.

The case of Kosovo and Metohija, as we have already mentioned, has been one of the priority issues of world politics twice in the past three decades. Thus, by gathering researchers from 12 countries and publishing this collection of papers, our two institutions want to further clarify this case and examine what impact it has had on the development of international relations since 2008 to date.

Prof. Dr. Branislav ĐORĐEVIĆ
Director of the Institute of International Politics and Economics

CHAPTER I

THE CONSEQUENCES OF KOSOVO'S UNILATERAL PROCLAMATION OF INDEPENDENCE: A VIEW FROM THE PERSPECTIVE OF INTERNATIONAL SECURITY

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KOSOVO AS A PILOT EXPERIENCE OF INTERNATIONAL INTERVENTIONISM

Beatriz BISSIO[1]

Abstract: The inviolability of sovereignty is the most important principle of international law. The principle of respect for the territorial integrity of Nation States is stated in Article 2 of the U.N. Charter. This expressly forbids the threat or use of military force against other states or interference in their internal affairs.

However, in the last decades, there have been several examples – most of them bloody examples – of the interventions that have been launched and justified in the name of humanitarian reasons. One of the examples of a so-called humanitarian intervention was the one of NATO in Kosovo in 1999, which, although without a previous United Nations' authorization was considered a legitimate one.

Being one of the first examples of such an intervention and having been accepted as legitimate, the Kosovo intervention in some way acted as a pilot experience for the ensuing ones, which took place mainly in Africa and the Middle East.

The communication discusses the implications and risks of these violations and disregard for international law present in the global security.

Key words: Kosovo, United Nations, sovereignty, self-determination, non-intervention, International Law.

Kosovo as a pilot experience of international interventionism

The Kosovo issue returned to the international political centre stage and to the media agenda recently, in the context of the debate on the plebiscite in Catalonia over independence. In late October, Serbian President Aleksandar Vucic criticized the European Union for "hypocrisy'', saying that the bloc was

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using a "double standard" regarding Kosovo and Catalonia after the Union declared the Catalan referendum on independence illegal. Without any kind of popular consultation, the Kosovo authorities unilaterally declared the secession from Serbia in 2008 and the decision was recognized by most European states belonging to the bloc.

Professor William Mallinson, a former member of the British Diplomatic Service, a lecturer at the Department of Foreign Languages, at the Ionian University, considered the situation in Catalonia and the one in Kosovo very similar. Therefore, he asked: "Why isn't NATO bombing Madrid for 78 days?"[2] In an article analysing the Catalonia situation, published by the Washington Post, the Berlin-based reporter Rick Noack wrote that Europe has plenty of secessionist movements like Catalonia, but most of them do not want full independence.[3]

The fact is that the unilaterally declared independence of Kosovo remains an object of dissent in international politics. And the NATO military intervention that preceded the independence declaration – an intervention justified for "humanitarian reasons" - also arouses controversy until today.

There are important reasons for the controversy, all of them related to the global implications of both episodes and to the dangerous precedents they have created.

The NATO military intervention contradicts various important concepts of international jurisprudence:

- the concept of state sovereignty,
- the norm of non-intervention that is considered by the International Court of Justice (1969) as one of the most foundational norms in international relations, and
- Article 2 of the United Nations Charter.[4]

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[2] Article: "Why isn't NATO bombing Madrid for 78 days? – former British diplomat October 4, 2017. RT NEWS. Available at: https://www.rt.com/news/405659-catalonia-referendum-spain-serbia/

[3] Noack, Rick: Europe has plenty of secessionist movements like Catalonia. Most don't want full independence. Washington Post, October 11, 2017. Available at: https://www.washingtonpost.com/news/worldviews/wp/2017/10/11/europe-has-many-independence-movements-apart-from-catalonia-few-of-them-want-full-self-determination/?utm_term=.f1a544d04f75

[4] Article 2 (4) of the United Nations Charter: "All members – of the UN – 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 matter inconsistent with the purposes of the United Nations".

Later on, the debate originated from the Kosovo issue led to the definition of a new concept, the *Responsibility to Protect*, whose antecedents were cited in documents that paved the way and gave rise to the "updating" of international law in the close aftermath of the Second World War, under the impact of multiple violent acts against civilians, especially the holocaust implemented by Nazism.

These documents are the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on 9 December 1948[5] and the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly on 10 December 1948. These Conventions served as a support base for new concepts, for example, the Responsibility to Protect, R2P. In the first decade of the 21st century the concept of the Responsibility to Protect was formally defined in the report of the International Commission on Intervention and State Sovereignty – ICISS, created by the Canadian Government. The motives that led to its creation and its aims are explained in a document elaborated by the Commission itself.

> "External military intervention for human protection purposes has been controversial both when it has happened – as in Somalia, Bosnia and Kosovo – and when it has failed to happen, as in Rwanda. For some the new activism has been a long overdue internationalization of the human conscience; for others it has been an alarming breach of an international state order dependent on the sovereignty of states and the inviolability of their territory. For some, again, the only real issue is ensuring that coercive interventions are effective; for others, questions about legality, process and the possible misuse of precedent loom much larger. NATO's intervention in Kosovo in 1999 brought the controversy to its most intense head. Security Council members were divided; the legal justification for military action without new Security Council authority was asserted but largely unargued; the moral or humanitarian justification for the action, which on the face of it was much stronger, was clouded by allegations that the intervention generated more carnage than it averted; and there were many criticisms of the way in which the NATO allies conducted the operation. At the United Nations General Assembly in 1999, and again in 2000, Secretary-General Kofi Annan made compelling pleas to the international community to try to find, once and for all, a new consensus on how to approach these issues (…) It was in response to this challenge that the Government of Canada, together with

[5] The Convention entered into force on 12 January 1951

> a group of major foundations, announced at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS). Our Commission was asked to wrestle with the whole range of questions – legal, moral, operational and political – rolled up in this debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground."[6]

At the 2005 high-level United Nations World Summit meeting, the member states included the principle of the Responsibility to Protect in the final document. This principle does not reject sovereignty, but simply presents a new view of it: sovereignty to be seen as the responsibility of the state to guarantee the well-being of its people, with the support of the international community - in extreme cases – to help in this task. Therefore, the basic principles that originated from the Responsibility to Protect concept are the following:

> A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.[7]

The same Commission states that the Foundations of the Responsibility to Protect, as a guiding principle for the international community of states, lie in:

> A. obligations inherent in the concept of sovereignty; B. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security; C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law; D. the developing practice of states, regional organizations and the Security Council itself.[8]

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[6] The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty, Published by the International Development Research Centre, Ottawa, ON, Canada (http://www.idrc.ca)

[7] The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty, Published by the International Development Research Centre, Ottawa, ON, Canada (http://www.idrc.ca), p XI

[8] The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty, Published by the International Development Research Centre, Ottawa, ON, Canada (http://www.idrc.ca)

The Commission established some pre-conditions for any new approach to an intervention on human protection grounds, declaring the need to establish clear rules, procedures and criteria for determining whether, when and how to intervene; to approve the option for a military intervention when clearly all other means of achieving peace, principally diplomatic initiatives, have failed; to ensure that a military intervention, when it occurs, does not go beyond the original purpose, and is undertaken with a proper planning and knowledge of the social and cultural background of the region involved, and foremost a determination to reduce the loss of human lives to the minimum and to avoid property destruction as much as possible.[9]

The scenario in the last years

In recent years we have been following on the news the tragedy of thousands of human beings who set off from different places on the African coast and the Levant into the waters of the Mediterranean Sea to reach the European shore. The Mediterranean Sea was called *Mare Nostrum*, "our sea," by the ancient Romans, and according to Pope Francis' warning in his speech at the European Parliament in Strasbourg two years ago, it is becoming "the graveyard of immigrants". In desperation, families pay as much as two thousand to fifteen thousand *Euros* in order to board boats that carry sixty to eighty passengers, even though they are designed to carry only thirty to forty people. However, Europe cannot and does not wish to assimilate a large number of refugees. Having left everything behind, those who survive the journey promptly find that they will not have a minimally decent life in Europe where all their hopes are placed. But seeking asylum is a human right, a right that is included in the international agreements on refugees signed after World War II.

The refugee phenomenon is not a new one, but the extraordinary proportions, it has reached, are.

Let us review the episode that marked the beginning of the 21st century: the attacks of September 11, 2001. There are still many obscure elements in these attacks, but for the purposes of this analysis, we shall take the most widely accepted version of events. According to this version, members of *Al-Qaeda* ("the base")— the terrorist group founded and directed by Osama bin Laden, a *protégé* of Washington during the struggle against the Soviet troops in

[9] The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty, Published by the International Development Research Centre, Ottawa, ON, Canada (http://www.idrc.ca), p XI.

Afghanistan, and later seen as the enemy number one of the Western world—were (wholly) responsible for the most important attack ever perpetrated on the US territory.

This attack served as a justification for US President George W. Bush to defend the thesis of the *pre-emptive strike*; that is, in view of the threats that the country was facing, the United States should anticipate and surprise the potential enemy, even without being certain of when or where this enemy might act. In this way, a security strategy[10] was formulated, which, in order to adapt the concept of imminent threat to the size of the alleged threat posed by the new opponents, gave to the superpower the green light to seize the initiative and undertake military actions around the world. On October 7th, 2001, less than a month after the attacks, claiming that Afghanistan had been giving shelter to Al-Qaeda, the United States began its invasion of that country. Little did those responsible for this initiative know that they were starting the longest war in US history: even after seventeen years the total withdrawal of troops has not yet occurred. Official US sources indicate that up to 2015, more than three thousand US soldiers had lost their lives in Afghanistan; the British troops had suffered, at the time, 460 casualties.

Regarding the casualties suffered by the civilian population of Afghanistan, as a direct result of acts of war – bombings, crossfire, illegal night raids on alleged suspects' homes, etc. – or indirectly, from the destruction of the public health infrastructure, for example – no serious institution will venture to cite reliable figures. However, it is estimated that the figure has already surpassed one hundred thousand dead and a much greater number of injured civilians. In 2009, the Ministry of Public Health reported that two-thirds of the Afghan population suffered from mental problems as a result of the war.[11] In 2017, the number of civilian deaths in the Afghan war reached a record high, continuing an almost unbroken trend of nearly a decade of rising casualties.[12]

In 2003, President Bush, with Britain's support and without the approval of the UN Security Council, began the invasion of Iraq, thus violating once more all the norms of international law. In the words of the US Head of State, Iraq

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[10] Available at: co.uk/history/worldwars/wwtwo/refugees_01.shtml.

[11] Data from the Watson Institute of International and Public Affairs. The same source points to the indirect effects of the war as regards malnutrition, poverty and environmental degradation, all of which are very difficult to account for. (http://watson.brown.edu/costsofwar/costs/human/civilians/afghan).

[12] Sune Engel Rasmussen. Afghanistan: Civilian deaths at record high in 16 year-war, says UN. *The Guardian,* July 17, 2017.

was one of the "axes of evil" countries, along with North Korea and Iran, and Saddam Hussein's regime was hiding the fact that it had large amounts of weapons of mass destruction (WMD) as well as links to Al-Qaeda. Because of all this, it had become an "imminent danger to humanity." The thesis of the *pre-emptive strike* was applied once again. But these justifications were just for public use. Today, many scholars and much public opinion advocate an alternative interpretation of the reasons for the invasion. Neoconservative representatives in the Bush administration targeted Saddam Hussein's Iraq owing to its use of significant oil reserves—the second greatest in the world, after the Saudi reserves—to achieve its independence from US hegemony. In spite of a circumstantial alliance with Washington in the war against Iran in the 1980s, Iraq and its bold proposal to build a Middle East free from US hegemony should become an example of the way that those who dared to challenge the US would be treated from then on. Indeed, the aim to overthrow Saddam Hussein was not new and over the years there had been different attempts (especially by the CIA) to remove him from power.

The result is well known: hundreds of thousands of deaths (190,000 in conservative estimates), millions of refugees, Iraqi civilians arrested without trial and subjected to barbaric torture. As noted by Noam Chomsky, the aftermath of the US invasion is so dreadful that Iraqis have compared the destruction to the Mongol invasion of the thirteenth century - leaving Iraq the unhappiest country in the world according to WIN/Gallup polls. Meanwhile, sectarian conflict was ignited, tearing the region to shreds and laying the basis for the creation of the monstrosity that is ISIS.[13]

At no time did the Iraqi army use anything resembling a weapon of mass destruction to defend the country from the invasion; on the contrary, its lack of preparation to face a military force such as that being deployed by the coalition led by Washington -by air, sea and land - quickly became evident.

Pakistan is another country which has been directly affected by the troubled regional situation, particularly by the US invasion of Afghanistan. In 2015 it was estimated that about 57,000 civilians, 6,000 members of the security forces in the country and 30,000 activists from different organizations died as a direct or indirect result of violence. In addition, totals for the injured are an estimated 60,000.[14] Civilian casualties have increased considerably since the United States began using drones to kill suspected terrorists. Refugee figures in the case of

[13] Noam Chomsky, "Iran Is Not the Greatest Threat to World Peace," *The Nation*, August 21, 2015.

[14] Data from the Watson Institute of International and Public Affairs.

Pakistan amount to one million four hundred thousand displaced people - inside and outside the country. All of this reveals a scenario involving serious violations of international law, including the laws governing the conduct of war, such as those defined by the Geneva Conventions and their Additional Protocols. And it is important to point out that there has been no formal declaration of war by the US against Pakistan or Iraq, nor against Afghanistan.... The consequences of the war are also felt within the US, where suicide rates among the military—although exact figures are inaccessible to researchers—have increased exponentially since 2004, and so has the number of injuries and deaths among their support staff.

Let us have a look at other interventions, such as the case of Libya, for example. Resolution 1973 adopted on the 17 March 2011 by the United Nations Security Council authorised a military intervention in Libya. That was the first time that without the consent of the state governing authorities the use of force by a coalition of nations under the direction of the North Atlantic Treaty Organization was authorized against a sovereign country by the United Nations. The resolution was justified "to protect civilians" and "civilian populated areas under threat of attack". The Responsibility to Protect norm was invoked. However, Resolution 1973 created significant divisions among the Security Council members and was adopted with the abstentions of two of the permanent members – China and Russia – and other non-permanent members, as Germany, India and Brazil. There were multiple and severe critics of the resolution, and in particular disagreements in relation to the quality and reliability of available information about what was happening on the ground.

Let us remember that Libya was responsible for supplying oil and gas to several European countries, with a production of two million barrels per day. Eighty percent of the Libyan oil reserves are in the basin of the Eastern Gulf of Sidra, where it was proved that the foreign forces had provided confidential military and logistic support to the so-called rebels.

The NATO intervention was led by the US, Britain and France. In spite of having invoked the Responsibility to Protect norm, they made no effort to hide their ultimate goal of changing the country's regime. All three countries argued that in order to ensure the human rights of civilians, conditions should be established to guarantee the resignation or the removal of Muammar Gaddafi. What we now know about this "humanitarian intervention" is that the country was brought into a state of complete chaos: life never went back to normal for the Libyan civilian population. Who rules Libya today? No one knows; the best description is that the country has become a patchwork quilt, a collection of feudal domains. The true cost of this war will never really be known.

"Libya is on the verge of economic and financial collapse", said Bernardino Leon Gross, the UN special envoy on matters relating to Libya, two years ago. The situation has not improved since.

And Syria? That undeclared war – like others whose results had led to their nations' destruction, this so-called "hybrid war" was initially presented to the world and particularly to US people, as a "humanitarian intervention". The country was practically destroyed, like others, with the justification of saving the population from the alleged misdeeds of the government of Bashar al-Assad. Thus, an important role was played by media outlets, which largely share the same interests and ideological positions with, and mostly form part of the US and the European political, financial and military elite. However, as the length, breadth and nature of the conflict were becoming very apparent, President Barack Obama was obliged to declare the real intention of the intervention – namely the "regime change" – with the removal of Assad as the real target.

To have an idea of the social cost and the impact of the war in Syria, let us cite the study by Save the Children, CfBT Education Trust (CfBT) and the American Institutes for Research (AIR), which notes that after the first four years of conflict, nearly three million children were out of school, which is a "slow and quiet robbery" of their right to education. Taking into account solely school building destruction and damage, the study evaluates losses at US$3 billion. "Owing to the impact of war on the economy, some 2.8 million Syrian children will never go back to school."

Nothing new in all this, simply a repetition of events in Iraq, then in Libya and earlier in Afghanistan, which, contrary to the promised democracy today are countries in complete chaos, with the destruction and misery prevailing and which harbor all types of terrorists. Making a chess analogy, Syria is not a simple pawn in the Middle East complexity. Like Ukraine, it is a key element in Washington and NATO's strategy to frustrate Russia's growing economic (energy pipelines/Syria/Europe) and military power (Tartus navy facilities).[15]

When Russia decided to intervene in the Syrian war in support of Bashar al-Assad, the scenario changed. Before deciding to intervene, Moscow had surely thought deeply about the consequences and risks of this initiative. The importance of Syria geopolitically and economically for Russia (gas exportation)

[15] See the article: William Engdahl. The Syrian Pipeline War: How Russia Trumped USA Energy War in the Middle East (21/09/2016). Site New Eastern Outlook (http://russia-insider.com/en/russia-trumps-usa-energy-war-mideast-httpjournal-neoorg20160917russia-trumps-usa-energy-war-mideast)

must have been decisive. One must keep in mind that in Russia itself, there is a Muslim population estimated at twenty million people and the proximity of Syria to Central Asia must have been a determining factor in the Russian decision. If Syria fell into the hands of Muslim fundamentalists, of ISIS or the "rebels" as they are called in Western outlets, the Syrian territory would serve as a springboard for the advance of these groups in the direction of Russia.

The intervention of Moscow in the Syrian war was presented in the West as an aggression, totally ignoring the fact that Damascus, an important Russian ally had requested this. The surprise visit of Bashar-al-Assad to Moscow in October 2015 to give thanks for the Russian support was notable because it was the first and only occasion that the Syrian president had been abroad since the beginning of the war, thus denying the possibility of considering the Russian intervention as an act of aggression. In December 2017 Bashar-al-Asad visited Russia again, this time to discuss the future of the country after the end of the war and to discuss the future political direction.

We all know that the use of information (or disinformation) as a weapon of war has been employed since the early days of civilization. Through the ongoing technological revolution that began in the 20th century the globally wide-ranging communication capabilities and the persuasive power of the media outlets are becoming increasingly sophisticated. The battle for the "hearts and minds" has become as important as the military battles, and this dangerous phenomenon is now beautifully referred to as "soft power" (Joseph Nye). To reach their objectives this power utilizes cinema and TV celebrities, films, shows and series, and nowadays social media. It is impossible today to study the different kinds of domination and hegemonic power without analyzing the role of the media.

The fact is that the Russian intervention in Syria seems to have partially frustrated the US and its allies (Israel, Britain) project to redefine the Middle Eastern frontiers in what has been called the "new Sykes-Picot"[16], that is the *balkanization* (fragmentation) of countries potentially hostile and who retain natural resources whose control is desired by Washington. From this project would emerge a New Middle East, a concept first suggested in 2006 by the US Secretary of State Condoleezza Rice, in Tel Aviv, in a statement coinciding with the inauguration of the Baku-Tbilisi-Ceyhan Oil Terminal in the Eastern Mediterranean. The conceptualization of a "New Middle East" aimed to create

[16] The "Sykes-Picot"agreement, carrying the name of the two negotiators, representing the UK and France, was a secret agreement, signed in 1916, during WWW I defining which Middle East territories – at the time Ottoman provinces – would belong to each one of them at the end of the war, should the Ottoman Empire be dismembered.

an arc of instability and chaos from Lebanon to the Persian Gulf, including the Palestine territories, Syria, Iraq, Iran and Afghanistan. The Anglo-American occupation of Iraq, the Iraqi Kurdistan in particular, was the preparatory ground for the division of the Middle East, as is clearer now, several years after the invasion. The partition of Iraq into three separate territories is ongoing. But that was not the only target. The "New Middle East military Road Map" aims to enter into Central Asia, extending the US influence in that region.

Another Washington target in the Syrian war relates to the Chinese New Silk Road project. Throughout history, Chinese long distance trade has used the Syrian territory, passing through the cities of Damascus and Palmyra. Until the beginning of the war, Syrian trade people used to buy wholesale in the Southern region of Shanghai to resell retail in the Middle East. This Chinese region is the world's biggest wholesale consumer centre and Arabian merchants have always been important players in this market. The New Silk Road already harmed by the war in its Middle Eastern sector could have become partially inviable if the outcome of the conflict had led to a breakup of the country and the predominance of elements hostile to China.

We could go on listing the human and material costs of the wars waged in recent years, mainly by the US in alliance with NATO members, in the Middle East and North Africa in particular, always using the "humanitarian justification" argument. We have not referred to the events that are taking place in Mali, Sudan, and again Somalia—this last country having been used as a test target for the military, political and media strategies that were later employed in the Middle East.

But the examples cited so far are enough to illustrate the central theme of this analysis: the fact that US-led military interventions – in spite of having the protection of human lives as a priority and justification – have only resulted in the destabilization of the countries involved and, indirectly, have led the whole region into chaos. (Not to mention the increasingly negative image global public opinion is having of the US foreign policy in view of the hugely disastrous consequences of these unjustifiable military interventions.) As a consequence, millions of nationals were forced to flee, creating the world's worst-ever humanitarian crisis, destroying national infrastructure, with side-effects throughout and beyond the region and untold suffering to civilian populations. Viewing this scenario, it is difficult not to conclude that rise of terrorism is directly related to this dramatic social disaggregation of previously sovereign nations.

Lessons from the past

Returning to the issue of the refugees, it is interesting to note that history repeats itself, even if it is with different characteristics. As a consequence of the end of World War II, Europe was the stage for the largest population movements in its history! Millions of German citizens and people of German ancestry were expelled from Eastern Europe and sent to the remaining territory of Germany and Austria; hundreds of thousands of Jewish survivors of the Nazi concentration camps sought new lives far away from their native lands; other refugees, coming from every country in Eastern Europe, fled from the newly installed regimes allied to the Soviet Union.

The UN Charter, signed in 1945, incorporates the dramatic lessons of World War II and reveals that the objective of its member States is to prevent future clashes. For this reason, already in the Preamble, it is stated that to "save succeeding generations from the scourge of war (…) armed force shall not be used, save in the common interest." That is, in the event of a threat of attack to a state, the challenge should be solved collectively and peacefully. Recalling the ideas of Immanuel Kant, the first article of the Charter states that the United Nations' purpose is "To maintain international peace and security." And Article 39, which deals with "Action with respect to threats to the peace, breaches of the peace, and acts of aggression," points out that it is up to the Security Council to "determine the existence of any threat to the peace, breach of the peace or act of aggression" and that it is up to this body to "make recommendations, or decide what measures shall be taken in accordance with articles 41 and 42 to maintain or restore international peace and security."

Undoubtedly, the landscape has changed since the end of World War II, particularly since the end of the Cold War, with the disintegration of the former Soviet Union. Further changes have occurred since the beginning of the 21st century, with all of the ramifications of the attacks on the Twin Towers on September 11, 2001. So-called "new threats"-terrorism first- have given rise to new interpretations of the preventive use of force and legitimate preventive defence. In this context, the Responsibility to Protect norm and George W. Bush National Security Strategy continue to be used. But in the light of the events that started in Kosovo and have had such dramatic consequences in the Middle East and North Africa, ensuing global tragedies, the questions arise: Who should decide who, where and what poses a threat? And how should the global society act in defence of endangered populations?

"Political change cannot be imposed from the outside by an outside power, much less by means of gunfire." These are not the words of a pacifist leader,

but of Paul R. Pillar, an expert CIA veteran, now a professor of security studies at Georgetown University.

The "Bandung Spirit"

To be able to answer those questions, let us remind ourselves of the legacy of the Bandung Conference (April 18 to 24, 1955), which brought together leaders from some thirty Asian and African nations, representing 1.5 billion human beings, more than 50% of the total population at the time! Today, many of the same problems that were analysed and debated at the pioneering conference continue to challenge a huge part of humanity, in particular, the lack of peace and the ongoing suffering of most human beings.

This observation invites us to think about the today's relevance of some of the assessments and proposals made regarding that event, which constituted a landmark in the history of twentieth-century international relations.

By consecrating the emergence of the Non-Aligned Movement and the concept of the Third World, the Bandung meeting symbolically represented the moment in which a significant sector of humanity became aware of its role and made its voice heard. Richard Wright, a journalist who became well-known after his novel *Native Son* (1940), the first book by an African-American writer to be selected by the Book-of-the-Month Club, wrote *The Color Curtain*. *A Report on the Bandung Conference*, after attending the event.

In it, he wrote:

> The despised, the insulted, the hurt, the dispossessed—in short, the underdogs of the human race were meeting. Here were class and racial and religious consciousness on a global scale. Who had thought of organizing such a meeting? And what had these nations in common? Nothing, it seemed to me, but what their past relationship to the Western world had made them feel. This meeting of the rejected was in itself a kind of judgement upon the Western world![17]

To be sure, there were differences among the participants. However, guided by the ideal of creating a space of their own (an imagined community?) in the bipolar world of the period, this group of nations identified ten principles which guided their action in favour of the promotion of peaceful coexistence. And through these principles the "Spirit of Bandung" marked the process of liberation from the colonial world and determined the path for the international

[17] Richard Wright. *The Color Curtain: A Report on the Bandung Conference*. Cleveland and New York: The World Publishing Company, 1956, p. 12.

insertion of the countries that formed the Non-Aligned Movement, with an explicit condemnation of racism, colonialism and imperialism.

The "Ten Principles for Peace" were based on the "Five Principles of Peaceful Coexistence" as defined in the declaration signed by India and China, with the presence of Myanmar, in 1954, in order to overcome their differences and focus on the defence of sovereignty and peace, non-aggression and non-interference in the internal affairs of other countries.

These are the *Ten Principles* of Bandung:

1. Respect for fundamental human rights and for the purpose and principles of the Charter of the United Nations.
2. Respect for the sovereignty and territorial integrity of all nations.
3. Recognition of equality among all races and of equality among all nations, both large and small.
4. Non-intervention and non-interference in the internal affairs of other countries.
5. Respect for the right of every nation to defend itself, singly or collectively, in conformity with the Charter of the United Nations.
6. A. Non-use of collective defence pacts to benefit the specific interests of any of the great powers.

   B. Non-use of pressures by any country against other countries.
7. Refraining from acts or threats of aggression, or the use of force against the territorial integrity or political independence of any country.
8. Settlement of all international disputes by peaceful means, such as negotiation, conciliation, arbitration or judicial settlement as well as other peaceful means of the parties' own choice, in conformity with the Charter of the United Nations.
9. Promotion of mutual interests and of cooperation.
10. Respect for justice and international obligations.

These *ten principles* and the general content of the Final Communiqué not only outlined a plan of diplomatic action, but also left no doubt as to the determination of African and Asian countries to make their voices heard, declaring themselves clearly in favour of negotiation and diplomatic solutions to conflict, and condemning, *a priori*, the use of force by the powers still adhering to the interventionist tradition.

In the explosive scenario of the Cold War, the ten principles of Bandung laid out the rejection of participation in any kind of military pact and the defence of

non-intervention and non-interference in the internal affairs of other countries, based on respect for the sovereignty and territorial integrity of all nations, and with respect for fundamental human rights at the top of the list. They recognized the equality of all races and the right of any nation to defend itself individually or collectively, in the framework of the provisions of the United Nations Charter. They rejected any agreements for collective defence destined "to benefit the specific interests of any of the great powers," and they defended the solution of all conflicts by pacific means, with respect for justice and international obligations.[18]

Do we need anything further, at present, to create alternatives to the present chaos?

Non-intervention, respect for international law, seeking peaceful and negotiated solutions to conflict ... such a scenario seems so very remote! However, with political will and with a good mobilization of public opinion, it would be far more accessible.

The issue of public opinion leads to other proposals made by the non-aligned countries, which should be re-visited, adapting them to the current situation: in the 1970s, when the level of intervention was rising, the non-aligned countries adopted two new priority areas for their demands: the implementation of a New International Economic Order (NIEO) and a New World Information and Communications Order (NWICO). The latter was incorporated by UNESCO, which in 1977 set up an international commission to study the problems of information flow. Three years later, the commission released a paper "Many Voices, One World", known as the MacBride Report (after Sean MacBride, who chaired the Commission) with concrete proposals seeking a balance between the developed countries and the Third World regarding the production and access to information, together with a condemnation of the huge international information monopolies.[19] The reaction of the United States and the United Kingdom was drastic: both countries abandoned UNESCO and cut off their funding for this UN agency, which faced years of crisis and was finally forced to set aside any discussion of the issue.

Directly related to the proposal for a profound change in the rules of the game in the economic system, and in the production and distribution of information at world level, the non-aligned group questioned the division of

[18] The principle of collective defence is at the heart of NATO's founding treaty

[19] "Report by the International Commission for the Study of Communication Problems". "Many Voices, One World". http://www.un-documents.net/macbride-report.pdf (11/06/2017)

the world according to the Cold War rationale, based on ideological options, and identified the real division as being based on the unequal capacity of nations to dispose of their own natural resources. For the non-aligned countries, the economy and communications were strategic areas through which to achieve their central goal: the full development of every country. Ambitious development goals were seen as the only way to eliminate exploitation and domination of all kinds.

Although much of the analysis made by the Non-Aligned Movement was correct – and the former Yugoslavia was a key actor in this Movement – the power balance at that historical moment did not allow for the implementation of this alternative. The movement itself lost momentum in the face of the economic and political impasse and took on a lower profile on the international scene.

Conclusions

The Kosovo experience – both the NATO intervention outside international law as well as its unilateral declaration of independence violating international jurisprudence (but which skilfully used as justification criteria defined by the United Nations mission sent there as a mediator) - opened the door for a series of military interventions violating the sovereignty of affected states and ignoring and disregarding the concepts of non-intervention.

Both kinds of military interventions, the ones justified for "humanitarian reasons" or simply those by the Bush Doctrine of preventive action have resulted in creating a level of world tension not seen since the outbreak of the Second World War or the darkest days of the Cold War.

Nevertheless, in the interests of global peace, we must not give up on focussing on humanitarian solutions, when needed. But experience showed that the future use of the Responsibility to Protect norm must be fully supported by indisputable evidence – provided by adequate and trustworthy information sources - and not through the use of biased media channels, suspect social media or "fake news". The huge negative consequences of these interventions will be causing suffering for years to come.

Professor Richard Falk, who worked on the Independent International Commission on Kosovo (1999-2000) considers that

> … humanitarian intervention is a kind of cosmetic treatment of military intervention in post-colonial world where it is not acceptable to intervene for the sake of material interests or to conquer another territory. So, you have to look at the specific facts. In some situations there is a potential

> humanitarian catastrophe that can be averted by military intervention. Many people feel that was true for Kosovo in 1999 when NATO intervened to prevent a feared repetition of the ethnic cleansing that has occurred in Bosnia. (...) But in general humanitarian intervention is a form of regime change from above and even though it always is accompanied by humanitarian claims as the American intervention in Iraq in 2003 was justified. But the end result is at best chaos and at worst the return of a new authoritarian regime that is worse than what preceded it.[20]

The implementation of military initiatives without UN authority has proved to be totally disastrous, and even when taking place with the Security Council authorization, interventions have extrapolated the original mandate and objectives, bringing to mind the worst aspects of the imposition of colonization.

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CRIMEA AND KOSOVO: THE BREAKDOWN OF THE POST-COLD WAR EUROPEAN NOMOS

Richard Sakwa[1]

Abstract: The transfer of Crimea from Ukrainian to Russian jurisdiction in March 2014 has been justified by the antecedent breakdown of authority in Kiev and a popular referendum. Opponents argue that the Crimean referendum was illegal without the sanction of the host state, and the annexation of the territory of another state represents the repudiation of the foundations of the post-war internal order. Kosovo has been used as a precedent in all the discussions. In both the Kosovo and Crimean cases, law and politics combine and collide. For Crimea, the context is the breakdown of the post-Soviet *nomos* (spatial order) and the broader post-Cold War European security system. Today, all of Europe can be considered to be locked in a protracted ('frozen') conflict. In response, Russia became a neo-revisionist power, criticising the practices of the Atlantic powers, but not the normative framework of the international system. The repatriation of the territory was a symptom and not the cause of the breakdown of an international legal order. Russia's actions were not part of a long-term revisionist strategy but represented a revisionist act reflecting anger over events in Kiev and the impasse in European international affairs. The Crimean events are best seen not as a rights-based remedial case, but as part of a geopolitical conjuncture – the continuing failure to achieve a viable and inclusive security order in post-Cold War Europe.

Key words: Crimea, Kosovo, *nomos*, revisionism, neo-revisionism, Russia.

Introduction

The debate continues to rage over the character of the separation of Crimea from Ukraine. The legitimacy of the referendum of 16 March 2014 is questioned, although the vote demonstrated widespread popular support for reunification with Russia – a finding confirmed by several independent opinion polls ever since. On this basis, there is a case to be made that this was a case of a democratic (although not necessarily remedial) secession. On

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the other side, opponents argue that the referendum was illegal, and the annexation of the territory of another state represents the repudiation of the foundations of the post-war international order. There are only two other cases in this period in which a territory was forcibly seized from another state and incorporated into the attacking state: the transfer of Goa from Portuguese to Indian jurisdiction in December 1961; and the seizure of East Jerusalem in June 1967. Goa can be considered part of the decolonisation process, and thus possibly legitimate. Every case of territorial transfer or the creation of new states is unique, but they belong to a certain class (*genus*) of political behaviour, and it is in that framework that this study will proceed.

The road to Sevastopol

The Crimean case has numerous specific features. Catherine the Great incorporated the territory into the Russian Empire in 1783, but in 1954 it had been transferred (in circumstances that did not conform to Soviet legislation at the time) from the RSFSR to the Ukrainian Soviet Socialist Republic. The military base of Sevastopol had always been considered a city of all-union significance, which means that when the USSR disintegrated in 1991, it should have automatically reverted into the jurisdiction of the internationally-recognised continuer state, namely the Russian Federation. It did not happen at that time because Boris Yeltsin, the first Russian president elected with an overwhelming mandate on 12 June 1991, believed that the Commonwealth of Independent States (CIS), created as the successor body to the Soviet Union in December 1991, would maintain an integrated military command, and therefore Sevastopol would remain an object of the Commonwealth jurisdiction. In the event, Ukraine never ratified the CIS Charter, and thus remained an associate rather than a full member.

Both Yeltsin and his successor from 2000, Vladimir Putin, recognised the existing post-Soviet borders with the intent of avoiding the Yugoslav scenario of the violent break-up of the former federal states. Sergei Prozorov puts it well: 'Post-communist Russian foreign policy may thus be summed up in terms of the task of the maintenance of the post-Soviet *nomos* [spatial order] as the condition of the possibility of the sovereign statehood of both Russia itself and the new independent states'.[2] It was the breakdown of that *nomos*

[2] Sergei Prozorov, 'From *Katechon* to *Intrigant*: The Breakdown of the Post-Soviet Nomos', in Alexander Astrov, *The Great Power (Mis)Management: The Russian-Georgian War and its Implications for Global Political Order* (Farnham, Ashgate, 2001), pp. 27-42, at p. 31.

which precipitated the war in Georgia in 2008, and then the transfer of Crimea in 2014. The latter was a conjunctural rather than a strategic event, although it reflected the structural breakdown not only of the post-Soviet *nomos* but also that of Europe as a whole. For Carl Schmitt, the great theorist of the Westphalian European spatial order (what he called the *Jus Publicum Europaeum*), *nomos* represented a specific spatial order arising from organic historical development.[3] In his view, this *nomos* was ruptured by claims to universalism, undermining the pluralism of competing *Grossraume*. The post-communist Russian attempts to reconcile the competing visions of world order, in the end, failed to precipitate the confrontation that some call a new cold war.[4]

For most of the post-Communist years, there was an active movement in Crimea to return to Russian jurisdiction.[5] Russian nationalists also advocated such an outcome, although the official Russian line – which was affirmed in numerous bilateral treaties and other documents – was that Crimea was part of Ukraine. After 2008 Moscow certainly had contingency plans, including military ones, concerning Crimea, but such an event was not part of Russia's foreign policy or security strategy. It was the contingent circumstance of the Maidan revolution and the overthrow of what the Kremlin considered the legitimate president of Ukraine, Viktor Yanukovych, on 22 February 2014 that provoked action. Thus, the transfer of Crimea represents the intersection of three processes: the long-term degradation of the European and post-Soviet *nomoi*; enduring resentment over what many considered to be Crimea's inappropriate jurisdiction; and the response to a contingent event.

This means that Russian positions justifying its action reflect these three levels, leading to confused and even contradictory argumentation. The confusion is reinforced by the fourth level, the question of international precedents. This is where the Kosovo case comes in. For post-communist Russia, Kosovo represents western bad faith at its most egregious. In 1999 Russia had supported the Rambouillet Accords, hammered out at the conference in France between 6 February and 22 March 1999, which would have granted Kosovo extensive rights of self-government although remaining part of what was then known as the Federal Republic of Yugoslavia. The onerous terms of the agreement led

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[3] Carl Schmitt, *The* Nomos *of the Earth in the International Law of the* Jus Publicum Europaeum, Translated and annotated by G. L. Ulmen (New York, Telos Press Publishing, 2006).

[4] Robert Legvold, *Return to Cold War* (Cambridge, Polity, 2016).

[5] Gwendolyn Sasse, *The Crimea Question: Identity, Transition, and Conflict* (Cambridge, Harvard UP, 2007).

commentators from the first to argue that the Accord was a declaration of war disguised as a peace agreement.[6] When the NATO bombing began on 24 March, the Russian Prime Minister, Yevgeny Primakov, ordered that his plane, instead of continuing for a meeting in Washington, DC, be turned round in mid-Atlantic. The Kosovo crisis fed the conflicts in post-communist Yugoslavia into the post-Soviet *nomos*, the spatial order of the former union republics becomes states within their existing borders. If the status of Kosovo could be changed by force with the approval of the 'liberal international order', then the whole post-Cold War *nomos* was threatened.

Primakov's reversal became symbolic of the change of course in Russia itself. The bombing campaign against Serbia, which lasted until 10 June, in Russian public discourse is taken to be the moment when Russian hopes of joining the historical West finally ended. If this was the way that the historic West behaved, then Russia had second thoughts on whether it wanted to join such a community. In addition, the Kosovo war was taken as a warning about what could happen to Russia if it remained a recalcitrant member of the international community. The bombs falling on Belgrade and other sites were taken as a warning of the possible consequences if a state resists the power of the expanding West. The road to Sevastopol began in Belgrade in 1999.

Kosovo's unilateral declaration of independence on 17 February 2008 further hastened the process. The new country's immediate recognition by some leading western states prompted Putin to warn that this would have consequences. Two issues were in play. The behavioural issue focuses on how the recognition of a unilateral declaration of independence, even if it came after nearly a decade of *de facto* independence, revealed the predominance of opportunism over principle in the Atlantic power system. Realists like William Wohlforth have long argued that it is the privilege of hegemonic powers to trump international law when it is to their advantage – that is the nature of the anarchic international system, and lesser states should accept that this is how things are. This is something that Russia would not accept because its foreign policy retains much of the original idealism with which it was charged in the late 1980s by Mikhail Gorbachev's vision of a transformed international order at the end of the Cold War.[7]

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[6] The view, for example, of Richard Becker, the Western Regional Co-Director of the International Action Centre, 5 June 1999, http://www-personal.umich.edu/~lormand/agenda/9905/16.pdf.

[7] Analysed by Richard Sakwa, *Russia against the Rest: The Post-Cold War Crisis of World Order* (Cambridge, Cambridge University Press, 2017), pp. 11-37.

The second is the problem of consequentialism. Kosovo has been used as a precedent in all discussions on Crimea. Kosovo's action and the majority western response was one of the factors that ultimately generated Russia's policy of neo-revisionism, which became the conceptual framework for Russian foreign policy when Putin returned to the presidency for a third term in 2012. Neo-revisionism represents a classic Putinite gambit: it rejects the practices of the dominant Atlantic powers, but does not repudiate the norms and governance mechanisms of the international system. Drawing on English School thinking, I argue that Putinite Russia defends the 'secondary institutions' of global governance as represented by the United Nations and the ramified system of international legal, economic and other forms of global governance that have developed since the Second World War. Russia argues that they do not belong to the 'US-led liberal international order' (however much that order may have contributed to their development), but represent the patrimony of all of humanity. In the Kremlin's view, there can be order without hegemony. This is affirmed through the development of an anti-hegemonic alternative world order led by Russia and China.[8] This will give rise to what has been called a 'multi-order world'.[9] Others have called this a 'multiplex world'.[10]

From a consequentialist perspective, two issues arise. The first is that while the transfer of Crimean may have represented a revisionist act, it was not part of any sustained Russian neo-revisionist strategy. It was considered a forced move (more on this below), although it was defended through a broad repertoire of justifications. Second, and arising from the first, Russia argues that the transfer is in conformity with international political precedent. This is why Moscow has repeatedly cited the Advisory Opinion of the International Court of Justice of 22 July 2010, which asserted that Kosovo's act of independence did not violate international law. At the Valdai Discussion Club meeting in Sochi on 19 October 2017, in response to a question on Catalonia, Putin happened to have detailed documentation on the Opinion in his pocket, which he proceeded to recount in detail, warning that it opened up a Pandora's Box.[11]

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[8] Sakwa, *Russia against the Rest*, pp. 38-68..

[9] Trine Flockhart, 'The Coming Multi-Order World', *Contemporary Security Policy*, Vol. 37, No. 1, 2016, pp. 3-30.

[10] Amitav Acharya, 'After Liberal Hegemony: The Advent of a Multiplex World Order', *Ethics and International Affairs*, 8 September 2017, https://www.ethicsandinternationalaffairs.org/2017/multiplex-world-order/.

[11] He quoted the following passages from the Advisory Opinion, which are of relevance for the Crimean case: 'Paragraph 79: "The practice of States in these latter cases does not

He noted that earlier some European Union (EU) and other states 'actually welcomed the disintegration of a number of states in Europe without hiding their joy. Why were they so unthinking, driven by fleeting political considerations and their desire to please – I will put it bluntly – their big brother in Washington, in providing their unconditional support to the secession of Kosovo, thus provoking similar processes in other regions of Europe and the world?'. He observed that when 'Crimea also declared its independence, and then – following the referendum – its decision to become part of Russia, this was not welcomed for some reason'. This was another 'vivid example of double standards', and posed a 'serious danger to the stable development of Europe and other continents'.[12]

All cases of secession are unique, but they are part of a larger family (*genus*) of cases of separation and association with another state in which law and politics combine and collide. In the Crimean case, the context is the breakdown of the post-Cold War European security order and with it the post-communist *nomos*. The repatriation of Crimea was a symptom and not the cause of the breakdown of international legal and spatial order. Russia's actions were not part of a long-term revisionist strategy but an isolated revisionist act reflecting frustration at the failure of the hegemonic security order to incorporate Russian concerns into that order. The Kosovo case is taken as the most extreme symptom of the predominance of politics over law. The breakdown was then manifested in the overthrow of what Moscow considered to be the legitimate government of Ukraine. It is this anterior perceived failure to create an inclusive and equitable security order accompanied by the high-handed overthrow of a government that created the political and security crisis of the first order to which Moscow responded by taking over Crimea. In the context of what could be called an extended 'frozen conflict' in Europe, the view that the transfer of Crimea was a democratic secession becomes more plausible. This is credible not as a rights-based argument but as part of a geopolitical conjuncture – the continuing

point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases." Paragraph 81: "No general prohibition against unilateral declarations of independence may be inferred from the practice of the [UN] Security Council." Paragraph 84: "the Court considers that general international law contains no applicable prohibition of declarations of independence. Accordingly, it concludes that the declaration of independence of 17 February 2008 did not violate general international law." Here it is, in black and white'.

[12] 'Meeting of the Valdai International Discussion Club', 19 October 2017, http://en.kremlin.ru/events/president/news/55882.

failure to achieve a viable and inclusive security and spatial order in post-Cold War Europe.

Europe as a frozen conflict

In 2014, the 25-year period of the cold peace came to a close. Since the end of the Cold War in 1989, none of the fundamental problems of European security had been resolved. The enlargement of the Atlantic system (NATO and the EU) represented a desired achievement for the new members, but only exacerbated tensions with Russia while creating a 'fracture zone' along what Jozef Piłsudski called the *intermarium*, from the Baltic to the Black Sea. Already in 2008 in Georgia the tensions exploded into war, changing the status of the two frozen conflicts in Abkhazia and South Ossetia. With the Kosovo precedent in mind, Russia recognised their independence on 26 August. In Ukraine, the violence was deeper and more enduring. The conflict was in part provoked by the West's failure to understand, let alone appreciate, Moscow's worldview and, to use Gerard Toal's term, its 'geopolitical culture'. On the other side, Toal argues that Washington's 'geopolitical culture' when it came to the post-Soviet space saw the 'Kissingerian framing of geopolitics as great-power realpolitik' conflicting with an ideological one driven by values, missions and ideals.[13] In fact, the two complemented each other, occupying the entirety of the geopolitical and normative terrain, and thus precluding a coherent response by Russia to the enlargement agenda.

In the end, the advance of a radicalised monist system – one which could not envisage a legitimate alternative to itself – provoked defensive reactions that struggled to articulate a coherent alternative narrative. As the security dilemma intensified, this was accompanied by the 'ideational dilemma' – what language could justify or legitimate the neo-revisionist resistance to western hegemonic practices. In the end, Moscow was taken by surprise by the rapid power transfer in Kiev and proceeded to achieve a hurried territorial transfer in response. Crimea was incorporated into Russia, while in the Donbass a new and far greater frozen conflict emerged. Like all such protracted conflicts, this one has the potential to become a hot conflict at any time. The Donbass conflict is the starkest indication that the European *nomos* has become a giant frozen conflict, with the potential to turn into a

[13] Gerard Toal, *Near Abroad: Putin, the West and the Contest over Ukraine and the Caucasus* (Oxford, Oxford University Press, 2017), p. 12.

great war. The Ukrainian crisis is a symptom of the broader impasse in European international relations.

This is not the place to go into detail of how the continent has once again 'sleepwalked' into a new cold war. However, in the context of the Kosovo and Crimean cases, a few points can be made. First, at the end of the Cold War Gorbachev advanced an international politics based on *transformation*, in which a dialogical relationship would be established in which both the Soviet Union and the West would change. From Gorbachev to Putin, the goal was to turn the historical West into a greater West through Russian membership. While welcomed by much of western public opinion, from the first there was a geopolitical and ideational reaction. As a famous analysis in *Time Magazine* put it, Gorbachev's initiatives could entice 'Western Europe into neutered neutralism', The article went on to note that there was a danger that the Soviets would gain the moral initiative, and that Gorbachev's new world order would make security alliances such as NATO and the Warsaw Pact redundant, would shift resources from the military to domestic needs, and accelerate moves towards European integration. On that basis, the article argued that Gorbachev's 'common home' rhetoric should be countered by the idea of 'common ideals', rendering the alliance of necessity into one of the shared values.[14] This was a remarkably prescient analysis, and underlay the strategy that underlay the countering of Gorbachev's idealism with a very differently-motivated *Realpolitik*. Concerns about the loss of US leadership were reflected by President H. W. Bush and the national security advisor, Brent Scowcroft, in their joint analysis. They argued that America needed to counter Gorbachev's initiatives, otherwise the Europeans would lose their orientation to the US.[15] Instead of transformation, the US advanced a programme of *enlargement*, a very different dynamic. In the post-communist era, the institutions of the western alliance system steadily advanced, provoking an intensifying response from Moscow and a new division of the continent.

The second aspect of Europe as a frozen conflict is the involution of the EU itself. The EU had begun as an American Cold War project, although of course, it was far more than this. In later years, Britain sought to Atlanticise the EU, rather than Europeanising itself. The UK had for a long time positioned itself as an America's interlocutor in the EU, rather than the EU's champion

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[14] 'The Gorbachev Challenge', *Time Magazine*, Vol. 132, No. 5, 19 December 1988. The cover of that issue stated 'Gorbachev's newest peace offensive challenges the U.S. to respond'.

[15] George H. W. Bush and Brent Snowcroft, *A World Transformed* (New York, Vintage Books, 1999), pp. 42-43.

in global affairs. This strategy caused major damage to the EU as a peace and reconciliation project and instead, it became more deeply embedded in the Atlantic security system, as formalised in the Treaty of Lisbon in 2009. In other words, EU enlargement became part of the broader expansion of the Atlantic system. As John Mearsheimer put it so memorably, 'in the eyes of Russian leaders, EU expansion is a stalking horse for NATO expansion'.[16] This is accompanied by the rhetoric of the 'liberal international order'; but is precisely the expansion of this order which has provoked conflict along the borderlands and threatens to blowback onto the Atlantic system itself. The conflicts generated by the enlargement of the Atlantic system erode the values justifying that enlargement. For the defence of pluralism, a monist order is imposed on Europe.[17]

The third aspect is 'over-balancing' against a potential and then perceived security threat from Russia. This, in the end, precipitated precisely the sort of crisis that NATO enlargement was designed to avert. Ukraine became the battleground of a semi-declared war between Russia and the West. A Chatham House report in 2017 recommended the strengthening of economic sanctions against Russia even if it causes pain to the West itself: 'some sacrifices, as well as increased political resolve, are required for longer terms gains in stability and security':[18]

Ukraine's failure would also pose a threat to the wider international order. To compromise on supporting and protecting Ukraine's sovereignty would be a humiliating admission of impotence and constitute a surrender of Western values. It would mean accepting the existence, in effect, of a two-tier world divided between a privileged set of fully sovereign states and a group with lesser rights. And it would create a situation that Russia or other states would be quick to exploit, further weakening the international system. The abandonment of Ukraine to a resurgent Russian 'sphere of influence' of any kind would thus surely return to haunt Europe, just as other geopolitical bargains did in the last century.[19]

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[16] John J. Mearsheimer, 'Why the Ukraine Crisis is the West's Fault: The Liberal Delusions that Provoked Putin', *Foreign Affairs*, Vol. 93, No. 5, September/October 2014, p. 79.

[17] Richard Sakwa, 'The Ukraine Syndrome and Europe: Between Norms and Space', *The Soviet and Post-Soviet Review*, No. 44, 2017, pp. 9-31.

[18] Timothy Ash, Janet Gunn, John Lough, Orysia Lutsevich, James Nixey, James Sherr and Kataryna Wolczuk, *The Struggle for Ukraine* (London, Chatham House Report, October 2017), 'Introduction', p. 5.

[19] Ash *et al*, *The Struggle for Ukraine*, p. 1.

This Manichean representation portrayed the conflict as a battle of good and evil, and thus incorporated the view of the Ukrainian leadership into western thinking; while the western representation of post-Cold War Europe as the sphere of enlargement for a 'wider international order' and 'Western values' bolstered the intransigence of Kiev. This is a vicious circle that reinforces each entrenched view in an escalating spiral of monism and violence. Like Poland in the nineteenth century, Ukraine in the twenty-first will poison relations between Russia and the West for generations. Russia and the West have become locked into a prolonged proxy war, turning the whole of Europe into a protracted conflict. The original Cold War lasted some three decades up to 1989, and the cold peace 25 years up to 2014. How long this proxy war and new confrontation will last is impossible to tell, but most likely we are talking about decades rather than years. It is in the framework of a European protracted conflict that we examine the dynamics of the 'Crimean spring'.

Democratic secession or illegal annexation?

The Ukraine crisis is a microcosm of the larger failure to establish an effective and inclusive post-Cold War order in Europe, and instead, the monistic enlargement of the historical West projected conflict and division to the East. Andrei Kortunov argues that the 'resolution of the Ukrainian crisis is impossible without the formation of a new security and cooperation architecture in the Euro-Atlantic space in which Russia and Ukraine will have equal status as full, legitimate and respected participants'. There is not a hint of a 'sphere of influence' here, and it is absent from all Russian official documents. However, Kortunov continues: 'At the end of the day, Russia's main problem is not so much the expansion of NATO or the European Union as it is the progressive ousting of Moscow to the margins of the development of the European security system and the regimes of European economic interdependence. Until this fundamental problem is resolved, Russia will continue to be a major complicating factor for European security'.[20] The problem is not restricted to the security sphere, but the struggle is now waged in the fields of governance, legitimacy and institutional capacity. In other

[20] Andrey Kortunov, 'The Price of Peace: The Parameters of a Possible Compromise in Donbass', Russian International Affairs Council, 2 October 2017, http://russiancouncil.ru/en/analytics-and-comments/analytics/the-price-of-peace-the-parameters-of-a-possible-compromise-in-donbass/.

words, the EU's involution in the Atlantic system entails a type of institutional blowback within the system itself, with the EU losing its initial drive as a peace and reconciliation project and instead has become 'securitised' to the extent that it has become the ideational and economic flank of the historical West's conflict with Russia.[21]

All of this played out in Ukraine over many years, and with particular intensity after Yanukovych announced on 21 November that he would postpone signing the planned Association Agreement (AA) with the EU.[22] Activists flooded the central square in Kiev, the Maidan, and occupied the central part of the city until, finally, Yanukovych fled on 22 February 2014. This is not the place to go into detail, but the character of these events are as controversial as the transfer of Crimea itself. For most western powers, the overthrow of Yanukovych represented a 'democratic revolution'; but for Moscow these events constituted an 'illegal coup'. These two positions are homologous with views over Crimea.

On 27 February the region's parliament voted to hold a referendum on 'sovereignty'. From the very first days of independence Ukraine had a Crimean 'problem', and in response the region had been granted a degree of autonomy, defusing the independence and irredentist movements. Polls between 2011 and 2014 found that support for joining Russia ranged between 23 and 41 per cent. On 28 February unidentified soldiers took control of Simferopol airport, allegedly to counter the threat to Russians in Crimea. This was more pre-emptive than responsive, although Right Sector, one of the militant para-military bodies spawned by the Maidan revolution, did threaten to send a 'friendship train' to Crimea. Armed personnel in uniforms without insignia, later identified as members of the Russian armed forces, seized control of strategic objectives in a remarkably well-organised operation. Russia was allowed to have 25,000 personnel in the region in accordance with the Sevastopol basing agreement, and thus technically Russia was not violating the letter of the law, although they were deployed in ways that contravened

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[21] With Brexit, the 'strategic autonomy' and 'principled pragmatism' outlined in the EU's Global Strategy of June 2016 may be strengthened, thus providing a possible route out of the present crisis. European Union, *Shared Vision: Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, June 2016, http://europa.eu/globalstrategy/en.

[22] The account below draws on Richard Sakwa, *Frontline Ukraine: Crisis in the Borderlands* (London and New York, I. B. Tauris, 2015), pp. 100-119.

the basing agreement. They were highly-trained Russian special troops who achieved the bloodless takeover of the peninsula.[23]

In a press conference on 4 March, Putin declared that Russia had no intention of annexing Crimea, although he insisted that the residents had the right to determine the region's status in a referendum.[24] The idea initially was to enlarge the sphere of Crimea's autonomy, but when the Kiev authorities launched criminal investigations on Crimea's new leaders a new factor was introduced. Timely concessions over the Russian language, federalisation and other core long-term demands may have been enough to avert the region's secession, and indeed the subsequent conflict in the Donbas. The referendum was brought forward to 16 March, and after much debate over the wording, the ballot in the end consisted of two simple questions (printed in the Russian, Ukrainian and Tatar languages): 'Are you in favour of the reunification of Crimea with Russia as part of the Russian Federation?; or 'Are you in favour of restoring the 1992 constitution and the status of Crimea as part of Ukraine?'. The official result was overwhelming: 83 per cent of Crimea's eligible voters cast their ballot (1,274,096), of whom 96.7 per cent backed reunification with Russia (1,233,002). Thus, 82 per cent of the total Crimean population voted in favour. There were no independent Western observers, and thus the vote inevitably attracted widespread criticism. A report of the Russian Presidential Council for Civil Society and Human Rights later estimated that turnout was in fact only between 30 and 50 per cent, of whom 50-60 per cent voted for unification with Russia, with a higher turnout of 50-80 per cent in Sevastopol, the overwhelming majority of whom voted in favour. Thus in the peninsula as a whole, only between 15 and 30 per cent of the total population voted to join Russia.[25] Kiev and the Tatar Mejlis urged voters to boycott the referendum, and the majority of Tatars apparently abstained. My interviews with leading pollsters, tasked by the Kremlin over the winter of 2014 to assess public opinion in the Republic, suggest a high turnout with about 66 per cent voting for union with Russia. It can be assumed

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[23] For an analysis of the military aspect of the Crimea crisis, see Colby Howard and Ruslan Pukhov (eds), *Brothers Armed: Military Aspects of the Crisis in Ukraine* (Minneapolis, East View Press, 2014).

[24] 'Vladimir Putin Answered Journalists' Questions on the Situation in Ukraine', 4 March 2014, http://en.kremlin.ru/events/president/news/20366.

[25] Paul Roderick Gregory, 'Putin's "Human Rights Council" accidentally posts real Crimean election results', Forbes, 5 May 2014, http://www.forbes.com/sites/paulroderickgregory/2014/05/05/putins-human-rights-council-accidentally-posts-real-crimean-election-results-only-15-voted-for-annexation/.

that even in perfect conditions a majority in Crimea would have voted for reunification, and in Sevastopol the vote would have been overwhelming.[26] Subsequent independent polling and survey data confirm this view.[27]

On 18 March Crimea formally became part of the Russian Federation. Before the signing ceremony, Putin delivered an impassioned speech in the Kremlin. He justified Crimea's escape from Kiev's threatened repression, and outlined Russia's response:

First, we had to help create conditions so that the residents of Crimea for the first time in history were able peacefully to express their free will regarding their own future. However, what do we hear from our colleagues in Western Europe and North America? They say that we are violating norms of international law. First, it's a good thing that they at least remember that there exists such a thing as international law – better late than never.

He lambasted the West, reprising the grievances outlined in his Munich speech in February 2007, and added some more: the high-handed and insulting treatment of Russia as a defeated power, the bombing of Belgrade in 1999, Iraq, Afghanistan, Kosovo, Libya, Syria, missile defence, NATO enlargement to Russia's borders, and the attempt to impose an either/or logic on to EU enlargement, forcing countries to choose between Brussels and Moscow. Without beating about the bush, he noted 'We have been lied to many times'.[28] The Russian parliament (State Duma) enthusiastically endorsed the re-unification on 20 March, with only one vote cast against, a move endorsed by the Federation Council the next day. The federal constitutional law of 21 March stipulated that the peninsula would join Russia as two separate regions – the Republic of Crimea became Russia's 22nd republic, while Sevastopol joined Moscow and St Petersburg as a 'city of federal significance' (Article 65 of the RF constitution).[29]

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[26] For a detailed account of the '30 days that shook the world', see Anatoly Belyakov and Oleg Matveichev, *Krymskaya vesna: 30 dnei, kotorye potryasli mir* (Moscow, Knizhnyi mir, 2014).

[27] For example, a study in spring 2017 conducted through face-to-face interviews found that 79 per cent would vote 'yes' in a repeat referendum. Gwendolyn Sasse, *Terra Incognita: The Public Mood in Crimea* (Berlin, ZOiS Report No. 3, November 2017), p. 17.

[28] 'Address by the president of the Russian Federation', 18 March 2014; http:/eng.kremlin.ru/news/6889.

[29] Federal'nyi konstitutsionnyi zakon RF ot 21 marta No. 6-FKZ 'O prinyatii v RF Respubliki Krym i obrazovanii v sostave RF novykh sub"ektov Respubliki Krym i goroda federal'nogo znacheniya Sevastopolya', 21 March 2014, *Rossiiskaya gazeta*, 24 March 2014.

Critics argue that the referendum violated the Ukrainian constitution, which bans referendums without the sanction of Kiev.[30] Moreover, international law does not endorse the view that the Ukrainian constitution had been rendered null and void by the 'putsch' of 22 February. Although there is a body of law in favour of self-determination, this does not automatically endorse the right to secession.[31] Equally, the Kosovo precedent cannot be used in law as a justification, even though in political terms it makes sense to do so.[32]

The re-unification was defended by Moscow on a number of grounds. First, there is the procedural point, arguing that the transfer of the peninsula following the decision of the Presidium of the CPSU Central Committee of 25 January 1954 had not even followed the correct Soviet formalities. The decision was ratified by the Presidium of the RSFSR Supreme Soviet on 5 February, and then by the Presidium of the USSR Supreme Soviet on 19 February. The adoption of the law on the transfer by the USSR Supreme Soviet on 26 April 1954 simply rubber-stamped decisions taken earlier. At no point were the full assemblies involved in taking the decision to transfer territory, as should have been the case according to the RSFSR constitution of the time.[33] In addition, Sevastopol had since 29 October 1948 been an 'object of all-union significance', so even when the peninsula changed jurisdictions, Sevastopol remained under the direct control of Moscow. When the Soviet Union broke up, Russia as the 'continuer state' automatically retained sovereignty over the city. This was pointed out to Yeltsin when Ukraine declared independence on 24 August 1991 and provoked an enormous debate among the Russian leadership. Appeals were made to the Russo-Ukrainian treaty of 19 November 1990 about the inviolability of borders, but Russian critics insisted that its terms only applied to administrative divisions within a single Soviet state, not to independent countries. In the end, Yeltsin insisted that with the formation of the CIS on 8 December 1991, accompanied by plans for a single CIS military command, the formal status of Sevastopol did not matter.

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[30] *Constitution of Ukraine*, 1996, Arts. 181 and 133.

[31] Thomas D. Grant, *Aggression against Ukraine: Territory, Responsibility, and International Law* (New York, Palgrave Macmillan, 2015), pp. 3, 38.

[32] James Hughes, 'Russia and the Secession of Kosovo: Power, Norms and the Failure of Multilateralism', *Europe-Asia Studies*, Vol. 65, No. 5, July 2013, pp. 992-1016.

[33] For a detailed discussion, see Sergei Baburin, *Krym naveki s rossiei* (Moscow, Knizhnyi mir, 2014), pp. 52-56.

Second, there is the preventative argument, couched in terms of averting the attacks against the Russian-speaking population of the peninsula. There had been some threatening political actions, notably the attempt to abolish the 2012 language law, but no direct threats by that time. Later events, notably the Odessa massacre of 2 May 2014 in which 42 people died and the disproportionate violence with which the war was pursued in Donbass, suggests that fears were not entirely misplaced; yet the separatism of Crimea no doubt intensified the violence of the response elsewhere. The anticipatory 'responsibility to protect' argument, in this case, is not enough to justify the abrogation of international law unless it is considered in the context of long-term dissatisfaction in Crimea with the attempts to impose the monist vision of Ukrainian statehood. Crimea had its own constitution, but this was a much-diluted rendition of the 1992 version and did not meet the aspirations of a solid portion of the Crimean population. If the opportunity presented by the February revolution had been used to begin a genuine debate about the constitutional foundations of a more pluralist state system, then the later divisions could have been averted. Instead, it appeared that the revolution represented the intensification of the monism that had already provoked the dissatisfaction of Russophone and minority populations.

The third argument would stress the right of people to self-determination, a cardinal principle of modern international law (*jus cogens*). However, no procedure is articulated whereby this declared right can be actualised, and the presumption is against secession unless a clear and transparent popular mandate has been achieved, usually through a referendum or as a remedial response to persecution, as in East Timor (Timor-Leste). The two referendums in Quebec in 1980 and 1995 and the one in Scotland in September 2014 are a model of how this should be done, irrespective of the outcomes. The referendum in Crimea certainly did not meet these standards. Not only were armed troops on the ground, but the vote was arranged in a hurry, there were no independent international observers, and the counting was held in far from transparent circumstances. In addition, the vote breached the stipulations of the Ukrainian constitution and was opposed by the incumbent government. The partisans of Crimean secession argue that it is precisely the latter point that vitiates the other doubtful features of the referendum. The forcible seizure of power by radical nationalists represented the breakdown of the constitutional order in Kiev; and if the constitution had been repudiated in the centre, then on what basis could it be defended in the regions? For the defenders of Crimea's choice, this would be the worst form of selective justice. It is clear that the majority of the Crimean population

favoured the unification with Russia, and the opportunity presented by constitutional breakdown was seized. However, the lack of a clear and transparent ballot undermines the legitimacy, quite apart from the issue of the legality of the process.

The fourth argument draws on the Kosovo precedent, whereby the secession can be justified by facts on the ground and the realities of international power politics. Russia had earlier condemned Kosovo's unilateral declaration of independence from Serbia on 17 February 2008, without staging a referendum. Putin had threatened that there would be consequences, and these were soon apparent. Following the five-day Russo-Georgian war of August 2008, as we have seen, on 26 August Russia recognised the independence of Abkhazia and South Ossetia. By then many leading Western countries, with America in the lead, had recognised Kosovo's independence, despite repeated UN resolutions upholding the territorial integrity of Yugoslavia (notably Resolution 1244 of 10 June 1999). In addition, also as noted, the infamous advisory opinion of the International Court of Justice (ICJ) of 22 July 2010 argued that Kosovo's declaration of independence 'did not violate general international law', a finding immediately endorsed by the US and its allies (although they stressed that the situation in Kosovo was 'unique'). The judgment was quoted by Putin in his speech of 18 March 2014 as we have seen again at the Valdai meeting in 2017. Reference to the ICJ judgment suggested that Russia was doing no more than following the Kosovo precedent. It may be politic for the UN General Assembly once again to ask the ICJ for an advisory opinion on the Crimea case, to allow the matter to be tested in court.

Considerations

On 21 April 2014 a presidential decree formally rehabilitated the Crimean Tatar people, a demand that had first been advanced when Crimean Tatars demonstrated on Red Square in 1986. Tatar, alongside Russian and Ukrainian, was accorded the status of a state language, and there was a raft of initiatives to resolve the long-running problem of land ownership. This did not bring the Tatars over to the side of the new authorities. The resistance was led by Mustafa Dzhemilev, a Soviet-era dissident and latterly head of the Mejlis, the presidium of the traditional Crimean Tatar parliament, the Qurultay, which he had revived in 1991. He warned that the annexation of Crimea was 'damaging to the basic interests of Russia and the Russian people', and 'a path

to catastrophe, isolation and loss of respect' for the country.[34] Tensions with the Tatar community continued, leading to the dissolution of the Mejlis.

There are many reasons for the Russian action, but ultimately it is clear that the transfer was a spontaneous action and not something long planned in advance.[35] The notion of a Russian 'land grab' is misleading if understood as a long-term plan to seize Crimea and annex it to Russia, and even more that Putin was bent on re-building the Russian or Soviet empire. Even after the fall of Yanukovych, Russian policy was hesitant, initially contemplating the creation of another 'frozen' conflict through the secession of Crimea or just the takeover of Sevastopol. The idea of separating the naval base and its hinterland was quickly understood to be unworkable for technical reasons, hence the shift from secession to annexation. While resolving one problem, this did not resolve the larger problem of Ukraine's geopolitical status. Russia was sucked into the Donbass conflict and relations with Kiev and the West were further poisoned. As Mankoff puts it, 'Far from dissuading Ukrainians from seeking a future in Europe, Moscow's moves will only foster a greater sense of nationalism in all parts of the country and turn Ukrainian elites against Russia, probably for a generation'.[36] It also alarmed Russia's partners in the Eurasian Economic Union, who now insisted that Eurasian integration would be no deeper than a free trade area, and plans for deeper political integration were rebuffed. The reunification of Crimea and actions in Donbass provoked a wave of sanctions, which remain in place to this day. An American-sponsored vote in the UN General Assembly on 27 March 2014 supported 'the territorial integrity of Ukraine' and condemned the annexation. One hundred voted in favour, while eleven voted against, including Cuba, North Korea, Venezuela and other 'leftist' Latin American states Bolivia and Nicaragua. The 58 who abstained included some major states, notably China and the other BRICS countries with Brazil joined by the other Latin American states of Argentina, Uruguay and Ecuador. The BRICS countries refused to criticise Russia for its actions in Ukraine, but neither did they endorse its behaviour. China adopted a position of benevolent neutrality, concerned about its own separatist challenges in Tibet and Xinjiang. For China, the

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[34] 'Crimean Tatar leaders say Kremlin relying on "old Soviet policy"', RFE/RL, *Russia Report*, 11 June 2014.

[35] This is the fundamental argument of Daniel Treisman, 'Why Putin Took Crimea: The Gambler in the Kremlin', *Foreign Affairs*, Vol. 95, No. 3, May-June 2016, pp. 47-54.

[36] Jeffrey Mankoff, 'Russia's Latest Land Grab: How Putin Won Crimea and Lost Ukraine', *Foreign Affairs*, Vol. 93, No. 3, May/June 2004, p. 68.

Western-supported overthrow of a democratically-elected leader raised real fears about what these powers could do against opponents.

Crimea, like Kosovo, is unique and does not confirm the view that Russia seeks to destroy the liberal world order. For supporters of this view, the only response is sanctions and a long-term neo-containment policy. This is countered by those who seek to understand the dynamics that provoked this act of revisionism, by a state that had hitherto been a conservative *status quo* power. The zero-sum logic of the Cold War, and indeed of classic great power politics, was firmly reinserted into European international affairs, in the most brutal manner possible.[37] Putin had come to power stressing the primacy of economic development in Russian foreign policy, yet he now reverted to a position where geopolitics shaped decision-making. The impasse in European affairs stimulated Russia's policy of neo-revisionism. The Ukraine crisis and the overthrow of a legitimate president turned Russia into a genuinely revisionist state when it came to Crimea. The seizure of Crimea reflected the failure to create a 'Greater Europe' and the tensions generated by the asymmetrical end of the Cold War and the subsequent policy of western enlargement. Russia under Putin was a profoundly conservative power and its actions were designed to maintain the *status quo*, hence the effort Moscow put in to ratify its existing borders. It was the West that was perceived to be the revisionist power, in Kosovo and beyond; and in Crimea Russia responded in kind.

Conclusion

Both the Kosovo and Crimean crises are symptoms of the broader failure to establish a transformative dynamic in post-Cold War Europe. Rein Mullerson notes that 'The case of Kosovo … was one of the first, if not the very first, significant steps on the path leading to the triumph of geopolitics over international law'.[38] According to Ted Galen Carpenter, the history of the West's alleged duplicity *vis-à-vis* Russia is a long one, beginning with the events in 1999 when 'Moscow had reluctantly accepted a UN mandate to cover NATO's military intervention against Serbia' leading to 'alliance airstrikes

[37] Sam Charap and Timothy Colton, *Everyone Loses: The Ukraine Crisis and the Ruinous Contest for Post-Soviet Eurasia* (London, Routledge/Adelphi, 2016).

[38] Rein Mullerson, 'Thoughts of Self-Determination and Secession in the Aftermath of the Kurdish and Catalan Referenda', Valdai Discussion Club, 2 October 2017, http://valdaiclub.com/a/highlights/thoughts-of-self-determination-and-secession/.

and subsequent moves to detach and occupy Serbia's restless province of Kosovo for the ostensible reason of protecting innocent civilians from atrocities', which 'was the same "humanitarian" justification that the West would use subsequently in Libya'. Then, nine years later, the US 'adopted an evasive policy move, showing utter contempt for Russia's wishes and interests in the process', whereby 'Washington and an *ad hoc* coalition of European countries brazenly by-passed the [UN Security] Council and approved Pristina's independence declaration'.[39]

In his address on 18 March 2014, Putin complained that America and its allies had 'cheated us again and again, made decisions behind our back, presenting us with completed facts, with the expansion of NATO in the East, with the deployment of military infrastructure at our borders. They always told us the same thing: "Well, this doesn't concern you"'. Putin's annexation of Crimea represented a statement that these issues did in fact concern Russia and that it was no longer prepared to retreat. It refused to accept the logic that if the US was indeed the 'indispensable' country, then by definition other countries were dispensable. As Putin argued in his condemnation of American exceptionalism in September 2013, 'There are big countries and small countries, rich and poor. … We are all different, but when we ask for the Lord's blessings, we must not forget that God created us equal'.[40] This may well be the case, but there is an obvious discrepancy between Russia's loud protestations against the NATO intervention in Serbia in 1999 and then its objections to Kosovo's independence in 2008, and its actions in Georgia in 2008, and even more so in Ukraine in 2015, including above all the separation of Crimea. This leads to the suggestion that its advocacy of Serbian integrity 'was merely a strategic instrument to be deployed in European official debates'.[41]

When considered in the broader post-Cold War context, matters are not so simple. Russia has been consistent in defending its model of international politics, but faced by the impasse in global affairs and the breakdown of the European *nomos*, it has acted according to the practices that it condemns in

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[39] Ted Galen Carpenter, 'The Duplicitous Superpower', *The American Conservative*, 28 November 2017, http://www.theamericanconservative.com/articles/the-duplicitous-superpower/.

[40] Vladimir V. Putin, 'A plea for caution from Russia', *New York Times*, 12 September 2013.

[41] As argued by Branislav Radeljic, 'Russia's Involvement in the Kosovo Case: Defending Serbian Interests or Securing its Own Influence in Europe', *Region*, Vol. 6, No. 2, 2017, pp. 273-300, at p. 273.

its protagonists. When it came to Ukraine, the timing of the confrontation was not of Russia's choice, but developments represented a challenge that could not be avoided. The overthrow of a legitimate government and the prospect of American forces bathing in Sevastopol forced Putin to act. For the first time in the post-Cold War era, a major power threw down the gauntlet to challenge the Atlantic community's definition of world order. The motivation was not the establishment of a 'greater Russia' let alone the re-establishment of the Soviet empire. Instead, Putin questioned America's right to define red lines, while challenging the hegemony of the Atlantic system in its entirety. The conflict in Ukraine further cooled the post-Cold War frozen conflict in Europe. The road to Sevastopol runs through Belgrade and Pristina, but no one knows where it ends.

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KOSOVO AS A FACTOR OF THE WORLD ORDER CHANGE

Leonid N. Dobrokhotov[1]

Abstract: This article examines the role of the USSR and the USA in Yugoslavia collapse and its consequences, compares Kosovo precedent with the ensuing conflicts and investigates the changes and problems Kosovo separation caused. The author explores the effects of different conflicts of recent years, including the USSR collapse, Abkhazia and South Ossetia separation from Georgia, world community's refusal to recognise Transnistria, the reunion of Crimea with Russia, Ukrainian civil war in Donbass. The findings from the research illustrate how changes in one state's foreign policy could influence the world order. They also show how serious the consequences of the violation of international law could be and what kind of double standards are used by the USA and its NATO allies. The results of the findings support the prediction that Serbia territorial integrity could be restored afterwards. A critical open question is whether Russia, China, India and their strategic partners have a will to cooperate in ceasing NATO's regular intervention to one country's internal affairs.

Key words: Kosovo, separation, world order, Russian-Serbian relations, double standards, territorial integrity, the USSR collapse consequences, right to independence, referendums on independence, the Helsinki Final Act.

To our opinion the primary cause of Kosovo and Serbian people tragedy was a principal crime of the last century and millennium – a destruction of the Soviet Union, the world socialist system with its system of economic and military-political alliances and Non-Aligned Movement headed by Belgrade. This became the prime cause of the bloody breakdown of socialist Yugoslavia as well.

It is well known that the USA declared the USSR collapse as their unilateral victory in the Cold War. This helped to end up with the Yalta-Potsdam bipolar political system that was formed as a result of World War II and guaranteed international law, independence and territorial integrity of the European states codified in the UN Statute and the Helsinki Final Act of 1975. It is necessary to

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emphasize that the West's victory followed by the bloody separation of Yugoslavian and Soviet republics would have never happened without degeneration and betrayal of the Soviet political party's leaders. George Kennan, a theorist and architect of the Cold War, in his Long Telegram in 1946 and the ensuing articles remarkably predicted this[2].

The Soviet Union was criminally destroyed and the allied East European States were betrayed by Gorbachev and Yeltsin. As a result, the USA and their NATO allies proclaimed their hegemonic power and right to judge destinies of states and peoples. It was a violation of all the rules of international law starting from the 1648 Peace of Westphalia and other key international acts proclaiming the right of states for national sovereignty.

I would like to remind about NATO's New Strategic Concept adopted at its anniversary Washington Summit on 22-25 April 1999[3] where the Alliance headed by the USA took the role of the Global Policeman violating the recognised rules of international law. NATO became to interpret at its discretion real and potential threats to its security and "opportunities for human rights violation" in different countries as a pretext for military intervention. In fact, it repealed the role of the UN Security Council as an only institute who had the right to it. At Washington Summit NATO proclaimed itself as a self-appointed guardian of the new world order established after the USSR's elimination. The Alliance did not care the viewpoints of other international community members. Moreover, it publicly neglected and suppressed their rights and interests. In fact, the UNO was deprived of its functions to control world's destinies and international security. Nobody was going to consider it or take its advice as it happened during NATO's military intervention first on Yugoslavia and on Iraq, Livia and Syria afterwards.

In fact, in 1999, NATO equated itself to the UNO and OSCE in terms of its status and rights. It was a violation of both the North Atlantic Treaty and the UN Statute, according to which regional institutes like NATO have a right to use force in case of self-defense only.

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[2] Dobrokhotov L.N., *George Kennan: sad prophet of the tragic era*, Russian Academy of Sciences, Institute of social-political research, Moscow, 2014.

[3] "The Alliance's Strategic Concept", approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C., *Press Release NAC-S(99) 65*, 24 April 1999, https://www.nato.int/cps/en/natohq/official_texts_27433.htm?selectedLocale=en, 29/01/2018.

The Alliance's "Strategic Concept" was approved unanimously though it insolently proclaimed NATO's "right" to fulfil military operations outside both the territories of the states-Alliance's members and Alliance's geopolitical competency as its field of interest according to the North Atlantic Treaty of 1949. NATO's New Strategic Concept directly highlighted such pretexts for aggression against the independent countries outside the Alliance's geopolitical competency as ethnic and religious conflicts, territorial disputes, ethnic minorities' rights violation and states' collapses in particular. Moreover, the Alliance fulfilled the functions of prosecutor, judge and executioner at the same time to solve these problems.

On 24 March, NATO carried out the military aggression against Yugoslavia. Thus, it legitimised its strategy a month before it was adopted[4]. Herewith the USA proclaimed these gangster actions as "preemptive strike tactics" to protect unspecified "Western values" that could be justified even in case of the indirect threat to its interests[5]. The bombardment of Belgrade and other Yugoslavian cities and villages without a declaration of war, the occupation of Kosovo, its forced separation from historic Serbia, the suffering of the local Serbian population, and the subsequent transformation of Kosovo to the principal US air force base in Europe and the world centre of terrorism, drug trafficking and human organ trade became the direct result of this aggression.

These events would certainly be impossible if pre-Gorbachev USSR or current Putin Russia existed. It is enough to recall an incident of 1956 – England and France's attempt of aggression against Egypt due to the Suez Canal problem. The resolute warning of the Soviet Union to intervene ceased an aggression the next day. Another example is modern Russia's activity in Syria that helped prevent imminent elimination of Asad legitimate government.

To our opinion Yeltsin, Chernomyrdin and their pro-American regime created in 1991, along with the USA and NATO have the direct responsibility for the crime against the Serbian people. In 1998 Russia tried to change this shameful policy thanks to Evgeny Primakov and his notorious decision to turn the plane around over the Atlantic. Unfortunately, as Yeltsin was the Russian president, Primakov had little freedom to act. Besides, he was dismissed shortly thereafter.

Serbia and Kosovo tragedy has also become possible due to a number of strategic errors of the former Yugoslavian government starting from 1945, and in particular in the eighties, crucial for your country.

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[4] Kotliar V.S., *Evolution of NATO's Strategic Concept*, Modern Europe, Moscow, 2004, No. 2, p. 113.

[5] Troyan Y., *The strategy of preemptive strike*, News of the capital, Moscow, 2006, No. 14.

However, Kosovo's conflict and post-war situation draw the most of our attention here in Russia. As you know, in 1991 the Kosovans declared their separation from Serbia in the referendum on independence. They declared "Kosovo a republic", elected Ibrahim Rugova as its president, created so-called Kosovo Liberation Army (KLA). On 9 September 1998, the NATO Council adopted the plan for military intervention in Kosovo conflict. On 24 March 1999, NATO's Allied Force Operation started. Since then hundreds of thousands of ethnic Serbians had to leave their historic Motherland Kosovo due to the conflict with Albanians.

Serbian government was obliged to give its consent for the entry in Kosovo of NATO's Kosovo Force (KFOR). Just then the West recalled about the UNO. The territory was declared to be managed by the UNO, the UN civil mission (UNMIK) was deployed. On 2 November 2005, the intention to bring back pre-1999 territory integrity and political situation was declared in Washington during the session of the contact group.

However, on 17 February 2008 "Assembly" of Kosovo voted for the Declaration of Independence from Serbia. On 9 April the same "Assembly" approved the appropriate "constitution" of the territory. Russia declared before the International Court of Justice that decision as illegitimate and violating the rules of international law. Nevertheless, on 22 June 2010, the International Court of Justice in Hague gave the Advisory Opinion that the declaration of independence did not contradict the rules of international law[6].

This decision has a paradoxical nature. It is well known that the UN Security Council resolution 1244 of 10 June 1999[7] declaring the sovereignty and territorial integrity of Serbia remains in force and all parties are obliged to comply with it. The resolution 1244 prohibits unilateral activity prescribing a consensus on the decision in Kosovo's *status quo*. The UN Security Council is the only authority that could change this statement. By now, it is unlikely the Security Council is going to change it due to the attitudes of Russia and China.

On 20 November 2017, the Chairwoman of the upper house of the Russian parliament – The Federation Council – Valentina Matviyenko declared that Russia was not going to recognise the independence of Kosovo. She observed that "throughout our history we (Russia and Serbia) had always been supporting

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[6] Aleksandrov Arthur, "Russia has supported the attitude of Serbia on Kosovo before the International Court of Justice", *RIA New*s, 8 December 2009, https://ria.ru/international_justice/20091208/197915491.html, 29/01/2018.

[7] "Resolution 1244 (1999)", adopted by the Security Council at its 4011th meeting on 10 June 1999, http://www.un.org/ru/documents/ods.asp?m=S/RES/1244(1999), 29/01/2018.

each other. It was in the past and it is now. We did not recognise and will not recognise the independence of Kosovo", mentioning that Russia and Serbia "have fraternal relations"[8].

Kosovo had been recognised by more than 144 states[9] by now. It is known that it happened besides other factors due to the pressure the USA and NATO put on other countries. We have to remember that 53 states continue refusing this recognition[10].

Besides, Kosovo has no prospects to be accepted into the UNO as a rightful member. Refusal of Russia and China will not permit the self-proclaimed Republic of Kosovo to become the rightful member of the United Nations Organisation. The UN General Assembly could vote for it only after the approval of all 5 UN Security Council members.

As it is known, there are about 10 thousand NATO militaries in Kosovo Force (KFOR)[11]. In June 1999 when NATO deployed them in Kosovo, Russian military observers tried to counteract to NATO preparation for the war. Our observers referred to the violation of Treaty on Conventional Armed Forces in Europe. I would like to recall the famous breakthrough of Russian paratroopers as part of the International control group in Kosovo. They achieved to take a strategic position in Slatina airport. Herein we have to remember again who was in charge in Kremlin. I have no doubt that Yeltsin was under the NATO pressure when he commanded to withdraw our troops from Slatina and Kosovo afterwards.

I remember very well multi-thousand demonstrations next to the American embassy in Moscow where I participated as well. In spite Russian people's opinion, Yeltsin government did not permit to protect the territorial integrity of Serbia. India and China condemned NATO's aggression, but this did not help either. If they joined their forces with Russia Serbia's integrity could be protected.

I reckon that the actual genocide of Serbian people in Kosovo and other territories has become the result of many factors. Besides the internal political struggle in your country and NATO's aggression, Yeltsin government has actually

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[8] "Matviyenko: Russia does not recognise the independence of Kosovo", *Rosbal*t, 20 November 2017, http://www.rosbalt.ru/russia/2017/11/20/1662226.html, 29/01/2018.

[9] "114 states have recognised the independence of Kosovo", *Rosbalt*, 3 November 2017, http://www.rosbalt.ru/world/2017/11/03/1658428.html, 29/01/2018.

[10] "Lists of the countries which have and have not recognised Kosovo", http://wikiredia.ru/wiki/Список_стран,_признавших_Республику_Косово, 29/01/2018.

[11] "NATO: Potential and Intentions", *Centre of Political Information*, Moscow, 2016, http://nic-pnb.ru/wp-content/uploads/2017/03/ITOG.pdf, 29/01/2018.

betrayed Russian and Serbian strategic interests. Here in Russia, we remember very well that loss of Kosovo as the historic and spiritual centre of Serbia and loss of lives and sufferings of Serbian people caused loss of huge cultural and religious values of Serbian people and the Slavic world as a result of destruction and robbery of orthodox cathedrals. Kosovo has become a black hole for drug circulation from Afghanistan to Europe, including Russia. By the end of her career, even such a contradictory person as a Swiss prosecutor Carla del Ponte has admitted that Kosovo became a lab for human organ trade[12].

Author of this article holds the opinion that Russian foreign policy has hugely changed. At present time, our country strictly protects its geopolitical and national security interests. We are willing to protect the interests of our friendly countries, including fraternal Serbia.

The Americans established a new world order in 1991. Before our eyes, it is crucially changing. The European Union and the USA are in a crisis. Russia has steadily become one of the military superpowers again. Socialist China plays an enormous independent role. The unipolar "American" world is walking irrevocably away. A multipolar one takes its place.

I reckon these changes have influenced the content and spirit of negotiations between Belgrade and Pristina held in 2017 in Brussels under the aegis of the European Union[13]. Its participants had to take into account the systemic political crisis in the EU. Besides, in January 2017 the leader of Kosovo Serbians Oliver Ivanovich was dishonourably murdered. This has also influenced the situation. However, the West continues keeping an anti-Serbian and Russophobic point of view (for instance, the head of the EU foreign policy Federica Mogherini has recently expressed an anti-Russian opinion about the Kosovo problem[14]), it has become evident that Kosovo will have difficulties to achieve the final world recognition of its separation from Serbia. The controversial European policy of the US President Trump favours it.

Due to the new world order, Serbia has a real opportunity to recover its territorial integrity and take Kosovo back if it firmly continues keeping its interests for independence, strengthens its friendship and cooperation with Russia, China, India and other supporters of its territorial integrity and stops playing with the EU and NATO.

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[12] Sylvie Arsever, "Carla del Ponte calls to judge Kosovo leader for human organ trade", *INOSMI*, 20/12/2010, http://inosmi.ru/europe/20101220/165072628.html, 29/01/2018.

[13] "Escalation in Kosovo 2017", 8 June 2017, http://voprosik.net/obostrenie-v-kosovo-2017/, 29/01/2018.

[14] Ibid.

I would also like to draw the attention to the problem of other states' sovereignty and peoples' right to self-determination caused by Kosovo precedent. The former USSR and Yugoslavia know better than any other states about this dilemma of international law.

I am confident that herein the notorious double standard of the West *Quod licet Jovi, non licet bovi* ("What is permissible for Jove is not permissible for a bull") is in all its glory. One of the last examples is a referendum for independence in Catalonia. The EU has not recognized its results unlike the same ones of the referendum in Kosovo.

I have other huger examples. I would like to remind that on 17 March 1991, 76,4% of the Soviet citizens participating in the All-union referendum voted to save the updated USSR[15]. Earlier, on 3 April 1990, the law "About the procedure to resolve the issues related to the turnout of the soviet republics from the USSR"[16] had been adopted in the USSR.

At last, the Helsinki Final Act of the Conference on Security and Co-operation in Europe, unanimously approved on 1 August 1975 by all the European states (except Albania), including the USSR, Yugoslavia, the USA and Canada, contained such rules as sovereign equality and identity of each other, right of each state for territorial integrity, freedom and political independence. These rules were obligatory for all the sides who signed the Helsinki Final Act.

The participating states of the Conference have decided that "their frontiers can be changed, in accordance with international law, by peaceful means and by agreement". At the same time, the Helsinki Final Act has a special chapter "Refraining from the threat or use of force" where it is stated that "The participating States will refrain in their mutual relations, as well as in their international relations in general, 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 with the present Declaration. No consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle.

Accordingly, the participating States will refrain from any acts constituting a threat of force or direct or indirect use of force against another participating State.

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[15] "Formula of the collapse: 25 years ago the soviet citizens decided the destiny of the USSR in the referendum", *TASS Special Project*, http://tass.ru/spec/ussr-referendum, 29/01/2018.

[16] The USSR law "About the procedure to resolve the issues related to the turn out of the soviet republics from the USSR" No. 1409-1 dated 3 April 1990, http://sevkrimrus.narod.ru/ZAKON/1990.htm, 29/01/2018.

Likewise, they will refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. Likewise, they will also refrain in their mutual relations from any act of reprisal by force.

No such threat or use of force will be employed as a means of settling disputes, or questions likely to give rise to disputes, between them"[17].

Another important chapter of the Helsinki Final Act is a statement about "inviolability of frontiers". It is pointed out that "the participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.

Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State".

According to the charter "Territorial integrity of States," the participating states have committed themselves to "respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force".

The Declaration has the statement that "the participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal".

The charter "Peaceful settlement of disputes" contains the statement that "the participating States will settle disputes among them by peaceful means in such a manner as not to endanger international peace and security, and justice.

They will endeavour in good faith and spirit of cooperation to reach a rapid and equitable solution on the basis of international law.

For this purpose they will use such means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice including any settlement procedure agreed to in advance of disputes to which they are parties.

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[17] "Conference on Security and Co-operation in Europe Final Act", 1995, Helsinki, http://www.osce.org/helsinki-final-act?download=true, 29/01/2018.

In the event of failure to reach a solution by any of the above peaceful means, the parties to a dispute will continue to seek a mutually agreed way to settle the dispute peacefully.

Participating States, parties to a dispute among them, as well as other participating States, will refrain from any action which might aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the dispute more difficult".

At last according to the charter "Non-intervention in internal affairs," the participating states have committed themselves to "refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations".

It is pointed out that they are willing to "refrain from any form of armed intervention or threat of such intervention against another participating State.

They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

Accordingly, they will, inter alia, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating State"[18].

I would like to emphasize that all the participating states of the Helsinki Final Act including the USA have signed it. The document has become a part of international law, as well as the duties it contains. Herein we have to recall the reaction of the West to the illegitimate decision to destroy the USSR. The decision has been made by the leaders of three states - Russia, Ukraine and Belorussia, without the knowledge of the president, parliament, leaders of other 12 Soviet republics, and the Soviet people. It has violated the decisions of the 1991 All-union referendum and the 1990 Law, I mentioned earlier. Besides, in 1922 the Treaty on the Creation of the USSR was signed by 4 sides – Russia, Belorussia, Ukraine and Transcaucasian Federation (including Georgia, Armenia and Azerbaijan).

To cancel the Treaty of 1922 all 4 sides had to sign the Belavezha Accords in December 1991, but Georgia, Armenia and Azerbaijan did not take part in it. It

[18] "Conference on Security and Co-operation in Europe Final Act", op.cit.

means that the Accords were invalid. By the way, on 18 March 1996, the State Duma of the Russian Federation denounced the Belavezha Accords as illegal[19].

What about the USA and the West? It is well known that they declared the USSR collapse as their triumph and victory in the Cold War. None of them remembered about the Helsinki Final Act of 1975 they had signed.

Neither NATO remembered about the Final Act when organising the military aggression against Yugoslavia and approving the illegal separation of its historic centre Kosovo. The crucial argument to support its politics has become the Kosovo referendum and the decisions of Kosovo parliament.

NATO members have reacted differently with regard to the conflicts in the post-Soviet space. In Russia, we all know very well that Abkhazia and South Ossetia have never been the territories of Georgia, being the parts of Russian Empire. After 1922, Stalin forced them to become the parts of Georgian SSR. After the USSR collapse and the creation of independent Georgia, these 2 republics naturally declared their will to become independent. Georgia responded with the bloody aggression. Nowadays both republics are independent states. What about the West? Despite the absolute refusal of South Ossetian and Abkhazian peoples to remain in one state with Georgia, the West emphatically refuses to recognise their independence, insisting on the forcible incorporation into Georgia they hate.

Transnistria has the same problem. People of this unrecognised state have regularly refused to be a part of Moldova, which government publicly aims to unite with NATO member Romania. Nevertheless, the will of Transnistrian people for independence is constantly neglected.

The situation around Crimea is even more peculiar. There is no opportunity and necessity to describe the attitude of our country and the vast majority of our people to the reunion of Russia with this peninsula. I would like only to notice that Crimea for Russians is as precious, historic and spiritual value and has the same geopolitical role as Kosovo for Serbians. The long-awaited reunion of Crimea with Russia surprisingly took place in March. Many tragic events in Serbian history happened in March. It makes the glory of Serbians they showed in March 2014 with slogans "Kosovo is Serbia! Crimea is Russia!" invaluable for us. For our country, the reunion with Crimea has become the repair of justice after two mad decisions made by Khrushchev in 1954 and Yelstin in 1991.

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[19] "18 years ago the State Duma denounced the criminal Belavezha Accords thanks to the efforts of the delegates of KPRF fraction", https://kprf.ru/history/date/129339.html, 29/01/2018.

Finally a few words about the destiny of Donbass that many Russian and Serbian people empathise. In February 2014, NATO coordinated the coup d'etat in Ukraine. As a result, Russophobic nationalists came to power. It seems obvious to me that Russian-speaking citizens of Donbass (and other peoples who live there) lost any desire to live in a country like this. They have found a solution in declaring Donetsk and Luhansk People's Republics and voting for independence in the referendum.

The results of this referendum have roots in Donbass history. As it happened in Kosovo, Donbass has been an integrated economic and cultural part of Russia for a long time. The change of administrative dependence on Ukrainian SSR instead of RSFSR did not seem to have serious consequences within the united soviet state. As modern Ukraine openly declares this period of its history as the period of "Soviet occupation", those decisions on Donbass (and by the way, many western Ukrainian regions) status could not be estimated as legitimate.

This attitude of Donbass people seems comprehensible taking into account the regular bombardment of their territories by militaries and nationalist Ukrainian bands. Besides, this January Verkhovna Rada has adopted the law on reintegration of Donbass. In fact, this law puts an end to the Minsk Protocol as a way of peaceful resolution of the conflict.

As many of my colleagues, I am confident that Russia has to recognise the independence of Donetsk and Luhansk People's Republics. This will help to save Donbass people and infrastructure.

In the end, I would like to repeat and support the wonderful Serbian slogan of 2014: "Kosovo is Serbia! Crimea is Russia!"

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KOSOVO: A FAILED STATE IN THE HEARTH OF EUROPE

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Abstract: Le Kosovo-Métochie, province méridionale de la république de Serbie, est devenu un Etat né d'une sécession. En effet, le 17 février 2008, les autorités provinciales siégeant à Pristina, ont proclamé de façon unilatérale la séparation vis-à-vis de Belgrade. Or dix ans plus tard, force est de constater que le «Kosovo», nom donné par la communauté internationale à ce territoire, est devenu un Etat-failli où les règles les plus élémentaires du droit international ne sont pas respectées. La liberté de circulation, pourtant fondement des droits de l'homme, n'y est pas assurée. C'est aussi le territoire le moins développé et le plus pauvre sur le sol européen. Enfin, les droits des minorités serbe, turque ou gorani n'y sont que partiellement respectés. Pire encore, le «Kosovo» est une région où le crime organisé a pignon sur rue. Plaque tournante en Europe du trafic de drogue, le «Kosovo» est aussi le lieu de départ des marchands d'armes et des proxénètes. Les réseaux mafieux ont gangrené les principales institutions du pays, mettant en danger une population ayant été poussée à l'exil ces dernières années. C'est aussi là où le ratio terroristes/population est le plus important concernant l'Etat islamique. Plusieurs camps d'entraînement, issus des guerres de 1999, sont utilisés par EI. On peut dès lors se demander, à l'heure où l'UE désire s'élargir aux Balkans occidentaux, quels sont les facteurs de déstabilisation engendrés par cet Etat-manqué. Comment l'ordre international va-il pouvoir lutter contre la mafia kosovare? Quels moyens envisager au niveau européen pour résorber le terreau terroriste du Kosovo?

Key words: sécession, droits de l'homme, minorités, déstabilisation, mafias, terrorisme.

Introduction

On February 17th, 2008, the Parliament of Pristina proclaimed unilaterally the secession from Serbia. Almost a year after this self-declaration of independence,

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much more inconveniences than advantages appeared. Kosovo is in 2009 a failed-state, i.e. an economic and politically bankrupted state where the most elementary rights, as the freedom of movement or the security of individuals, are not still applied to all its territory. It is managed by corrupt authorities and involved in diverse criminal acts, and its certain members are accused of war crimes. Finally, the Kosovo secession presents the increasing risk of destabilization of the Balkans, in a region where every country has several nationalities, who often occupy the cross-border space (Albanians, Serbs, Hungarians).

While the United States, the main supporter of the government in Pristina, bet on a fast process of recognition by hundred nations of the independence self-proclaimed by Kosovo, this was accepted only by 115 States from 193. We can approach the question of the exemplary nature of a secession in peacetime, so numerous are the federal nations having to adjust numerous irredentisms, which consider the independence of Kosovo as a dangerous precedent (Russia, China, Indonesia, Brazil). Besides, the sorcerer's apprentice of the EU and the NATO are fleeing in front of this continuous division, which is inevitably going to provoke other irredentist clashes everywhere in Europe (Bosnia, Abkhazia, Flanders).

Kosovo in the crossing of the strategic corridors USA/EU/RUSSIA

Kosovo is one of the richest regions in Europe today: this is a major reason for the interest carried by the major powers for this Serbian province. The reserve of the pond of Kopiliq is estimated at more than 10 million tons, and it is the fifth world reserve of brown coal: it allowed Serbia to be the major exporter of electricity in the nearby countries of Kosovo since 2004. The mine of Trepca, with its 7,5 million tons of ore reserves, also abounds in lead, zinc and in copper in exceptional contents (20% for the lead against 0,9% on average in the world). We also find in Kosovo a certain amount of silver, gold, nickel, bauxite and manganese. According to a report of the World Bank from November 2007, the value of the resources of the Kosovare basin is estimated at 13 billion dollars. This concentration of resources on a so small territory thus necessarily attracts the greed of the European powers.

Nineteen years after the NATO bombarding of Serbia and Kosovo, we are now able to understand the major strategic interest of these tops-trays of Kosovo, enclosed between the mountains of Albania, Montenegro and Macedonia. In the East, along the basin of the river Morava, the corridor X already drains between Budapest and Salonika the vital commercial flows for the Macedonia and Serbia. On the West, the corridor IV Trieste-Constanta

sharpens the appetites of the Russians. We understand why the projects of gas and oil pipes, supported by Moscow ("South Stream"), thwarts in Kosovo the American AMBO project to channel through by the Balkans sources of supply in hydrocarbons from Central Asia. The stake in Kosovo is very high: who will seize this big territory because two French departments can ensure the control of the transport of hydrocarbons from the Caspian Sea to Europe.

Since 1997, the European Union invested eight billion Euros in the corridor VIII (oil pipeline, railroad and highway). At the moment, only two sections of highway are finished on this axis, the one connecting Sofia with Plovdiv in Bulgaria (150 km), and the other between Skopje and Tetovo in Macedonia (40 km). However, it is planned that in 2018 Bulgaria will be directly connected with Albania by a highway from Sofia. The corridor X is already efficient because it is the passage of 2/3 of the exchanges between Greece and Macedonia and 3/4 between Macedonia and Serbia.

However, the EU is competing with the Americans on this East-west axis. The oil pipeline Trans-Balkans AMBO had been the object of a feasibility study at the end of the 1990s by the company "Brown and Root", based in Houston in Texas. Now "Brown and Root" is a subsidiary of "Halliburton", the director of which Dick Cheney was being elected a vice-president of the United States. This project is also the work of the Trade and Development Agency (TDA), a federal Agency for trade[2].

Kosovo, a center of the drug trafficking in Europe

The geostrategic interest of Kosovo explains the important place which it holds in the drug trafficking and the prostitution. According to a report of the European Monitoring center of Drugs and Drug addiction (Europol), from 125 tons of heroin consumed in Europe, 80% would pass in transit through Kosovo. The amount of heroin traffic of 2-3 tons in 1999, increased to 8-10 tons between 2000 and 2005, which represents 123 million $ of monthly profit, or 1,4 billion per year. From Afghanistan and through Turkey, the circuit of the heroin feeds the Western Europe via Albania and Italy. These figures are to be moved closer to those of the foreign trade of Kosovo: with 968 million Euros of imports for 36 million Euros of exports in 2003, the trade deficit represented 125 % of the GDP, completely covered by the international assistance and the deprived

[2] Alexis Troue, «Le Kosovo: un quasi-Etat dans la nouvelle guerre froide», *Diplomatie* n° 32, mal-jugé 2008, pp. 57-59.

transfers. However, the drug trafficking was equal to 95% of the amount of the foreign trade[3].

As for the prostitution, Kosovo is, according to a report of the International Organization of the migrations (OIM), the center of women trafficking; the young girls are native of Moldavia (53 %), of Romania (23 %) and of Ukraine (13 %). Through this territory enclosed in the Balkans have passed in transit, before being distributed on the western market, more than 80 000 girls in 10 years. The prostitution is connected to drug trafficking and would take the same circuits. The profits obtained by the drug dealers is being reinvested in the purchase "of sexual slaves "[4].

A «Rogue state» covering the ethnic cleansing

The unilateral declaration of independence on February 17th, 2008 guarantees a «Rogue state». Agim Çeku, an ex-commander of the Yugoslav army, who became Prime Minister of Kosovo in 2004, committed war crimes when he fought in Croatia in the 1990s. He is pursued by Serbian courts for war crimes during the conflict between Serbian police and UCK in 1998 in Kosovo. The second Prime Minister, *Ramush Haradinaj* (2006-2007), had a trial in the TPIY, in which the prosecutor demanded 25 years of prison for the massacre of many Serbian villagers, during the Kosovo War in 1998. Haradinaj was acquitted in April 2008, for the absence of proofs; indeed, nine witnesses died accidentally during his trial. Considering that there had been no sufficient protection of witnesses, the TPIY ordered on July 21st, 2010, a new detention of Ramush Haradinaj and the opening of a new trial. He has been re-trialed for six counts of the indictment of war crimes of whom several for murder, cruel treatment and torture; but Haradinaj has been acquitted in November 2012, despite the protest of the Serbian government[5].

The last example, the current President of Kosovo *Hashim Taçhi*, who was the leader of the terrorist group UCK in 1998, has been accused by Belgrade of having directly massacred 60 Serbian villagers in Kosovo, during summer 1998. Besides, a recent report of the German secret services (BND) demonstrates the implication of Thaçi in the racket and the trafficking of cigarettes developed by the Albanian mafia. Finally, Hashim Thaçi is accused by Carla Del Ponte, the

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[3] Xavier Rafer, *La Mafia albanaise*, Editions Favre, Lausanne, 2000, et «Instabilité et problèmes sécuritaires», in: Kosovo*, danger!,* Institut de Sécurité des Balkans, Bruxelles, 2006, pp. 41-52.

[4] OIM's inquiry about 300 women victims of sexual harassment between 2000 and 2002, in: Xavier Reefer, *op. cit*., pp. 42-43.

[5] In: *Rapport 2006 de l'OSCE*, Vienne, 2006.

former prosecutor of the TPIY and by Dick Marty, a reporter of the Assembly of the Council of Europe, to have been involved in a terrible affair of organs trafficking taken from Serbian prisoners during the Kosovo War of 1998.

Since Kosovo was put under international control in 1999, neither the Mission of the interposition of the United Nations for Kosovo (UNMIK) nor Kosovo Forces (KFOR) were able to prevent a process of ethnic cleansing impulsed by the Albanian extremists. Between 1999 and 2008, from 235 000 Serbs, Gypsies, Goranis and Turks repudiate from Kosovo after the agreements of Kumanovo, only 18 000 were able to return to their homes. Even worse, between 1999 and 2004, 1197 non-Albanians were murdered, and 2300 kidnapped. There are no Serbs in Gnjilane, while in 1999 there was 8000; there is hardly around 40 in Pristina, instead of 40 000 in 1999. From the Roma population estimated at 140 000 in 1999, two-thirds had to run away. More than 150 churches and orthodox monasteries were destroyed, and 40 000 houses were burned or were destroyed by the extremists. Finally, about the anti-Serbian riots in March 2004, when there had been no less than 19 deaths, a Report of the French National Assembly underlined "the balance assessment swamping with the judicial treatment of the riots of spring 2004. While 50 000 people participated in this violence, only 454 accusations were issued and 211 people were condemned guilty"[6].

In this distressing situation, the main obstacle for the return of the refugees is the slowness of the returns of houses by the Albanian justice to the non-Albanian peasants. On 18 000 complaints registered by Serbs whose houses were seized or destroyed since 1999, only 2855 had been handled by the Agency for the Property of Kosovo in 2009. The inquiries of the judges appointed by the UNMIK are hindered by the pressure of the local mafias on the citizens, who use the threat to prevent them from testifying; still it ended only in a small number of the cases of families returning to their residence before 1999. According to the last report of "Human Rights Watch", in the first eight months of 2008, only 229 refugees returned to live in Kosovo.

Besides, the government in Pristina is improving a politics of cultural Albanisation, leading to a mono-ethnic exclusivism. In a province, where for more than fifty years every community had the right to education in its national language, the Ministry of Education of Pristina has imposed since 2006 the Albanization of the lessons in all primary schools. In the high and secondary education, a politics of cultural nationalism is practiced by the authorities of Pristina. At the University of Pristina, no more teaching is made in Serbian or in

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[6] Jean-Pierre Dufaud, Jean-Marie Ferrand, *«Quel avenir pour le Kosovo?»*, Rapport d'information n° 448 de l'Assemblée nationale, Paris, décembre 2007, p. 26.

Turkish: Serbian students have fled to Mitrovica, while the Turks continue their studying in central Serbia, in Bosnia or in Turkey. The multi-ethnicism promised by Bernard Kouchner, the UN's High representative in Kosovo in 1999-2000, has made way for an exclusivist cultural policy.

On all the territory of Kosovo, we move towards a « soft apartheid», like for example in transport policies. The coaches of the UNMIK were used until January 2005; since then, it is the administration of the Ministry of Transport of the government in Pristina that takes care of it. Kosovar coaches cross the Serbian enclaves, but it is risky to take them because there is no mixing between Albanian and non-Albanian people. The municipality of Pristina has developed bus lines between the city center and Gracanica for the Albanians, but not for the Serbs or for the ethnic minorities. This situation has led to scenes, sending us back to the torments of the Second World War: coaches between the enclaves of Strpce and Gracanica stop in the surroundings of Gnjilane and, such as the Jews of the ghettos, old Serbian women rush into old coaches having verified that no Albanian neighbor denounced them[7].

Organ trafficking in the heart of Europe

The biggest ignominy is the organ trafficking for which we suspect the Kosovo mafia connected to certain fringes of the power in Pristina. In April 2008, Carla del Ponte published in Italian "The hunt: Me and the war criminals", a book in which she evoked the organ trafficking led in Kosovo at the end of the 1990s, involving some political senior officials of Pristina. Approximately 300 Serbian prisoners were transported during summer 1999, from Kosovo to Albania, in the town of Burrel 91 km north of Tirana, where they were locked in some kind of prison. A room in a "yellow house" outside the city was used as a theater of operation. In 2004, during a mission of the Council of Europe, investigators discovered the tracks of blood in the house, which had been repainted in the white meanwhile, as well as residues of used medical equipment. The taken organs would have then been "sent towards private hospitals abroad to be implanted in patients who paid for that", while the victims stayed "locked until they were killed for other organs"[8].

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[7] *Rapport du Secrétariat général de l'ONU sur la MINUK* (24 novembre 2008), points 36, 37 et 38, p. 18.

[8] Vespa Peril, «Serbs 'Organs sold from Albania», www.ipsenews.net; Paul LEWIS, "At family farm, grim claims of organ culling from captured Serb soldiers", *The Guardian*, 25 November 2008. http://www.guardian.co.uk/world/2008/nov/25/kosovan-albanian-guerrillas-war-crime.

Serbia reacted in spring 2008, by asking the international justice to reopen the investigation on this presumed trafficking. On the other side, the Kosovar Minister of Justice had qualified that as "manufacturing" the facts reported by Carla del Ponte. Yet on November 5th, 2008, an investigation of "Spiegel" reactivated the suspicions. The journalists are particularly interested now in the house of the Katuci family where, according to Carla del Ponte, would have passed the main part of the operations. Even if the family denies almost everything, strong assumptions still exist. The second interesting point is that Carla del Ponte asserts that in this trafficking were involved, at the end of the 1990s, leaders of independent Kosovo, of which the current President Hashim Thaçi. The investigation of the Council of Europe had not succeeded because the possible witnesses had not dared to speak, for fear of implicating the old UCK's members still in the power. According to one of the investigators at that time, "they were afraid that each of their declarations was equal to a death sentence"[9].

After all these revelations, the Council of Europe appointed in November 2008 the special investigator Dick Marty. He considered that these crimes were committed in the farm of the Katuci's family, but also somewhere else in Albania, where at the end of the NATO bombings in 1999, the members of the UCK had killed dozens of Serbian prisoners. Also, Fred Abrahams from the NGO "Human Rights Watch", who had in his hands some documents relating to it, seemed to substantiate this theory by declaring that there was no more doubt in the fact that Albanian extremists were involved in those atrocities.

In January 2010, an official Report drafted by Dick Marty is adopted by the European Parliament with astonishing conclusions. This report gives evidence at first that the "Group of Drenica", a mafia group whose godfather would be Hashim Thaçi, organized in death camps the slaughter of Serbs but also of Albanian opponents, to take their organs; it reminds us of the tragic medical experiments of Doctor Mengele. Then, under the aegis of politicians as Hashim Thaçi, a real black market for taking organs was organized, with centers in Albania and Kosovo, destinated to private hospitals in Europe and in Israel. Besides, and it is the crucial point which explains the prevarications of the international community, the report is severe to the UN and the EU organizations which "did not consider necessary to proceed to a deeper investigation" of these facts, "in spite of the concrete indications about such traffics"[10]. Dick Marty's revelations

[9] Klaus Kinkel, «La maison de la fin du monde: révélations sur un trafic d'organes de jeunes Serbes du Kosovo», *Der Spiegel,* 5 novembre 2008.

[10] Ana Luchino, *Komsomolsk Pravda*, Moscou, 14 mai 2008.

indeed strongly embarrass the western governments, supposed to control the human rights' situation, while they were aware of the actions of the organ traffickers. American Gérald Galucci, responsible for the UN's mission in Kosovo-North until 2008, recently asserted that the leaders of the "Quintet" (the USA, Great Britain, Germany, France and Italy) knew perfectly well about the organ trafficking. The former chancellor of the TPIY prosecutor, Carla del Ponte, also points the different views between TPIY and UNMIK about the question of inquiries on the post-1999 murders. Carla del Ponte clearly indicated that "NATO did not cooperate with us" in the search for the Albanian war criminals. Playing with stability rather than to enforce the right and lead investigations, KFOR and UNMIK played with the devil[11].

The war of a pseudo- "liberation" of an ethnic group, led by the NATO in Kosovo in 1999, thus ended in a disguise of the notion of humanitarian work even by those who were in charge for twelve years of the construction of a democratic Kosovo. Unprecedented crimes since the Second World War, with methods inherited from the worst totalitarian regimes in the history of XX century, thus were carried out on the territory of Kosovo on behalf of morality rights – the human rights.

The failure of the UN's «State-building» concept

In 2007, this bad situation prompted these lucid remarks of an official representative of the French Liaison office in Pristina: "The economy of Kosovo has bankrupted: no factory was really built since 1999, and except the multiple hotel complexes and the gas stations which sprout up along roads, Kosovo knew a very slow economic development last years. Yet everybody knows that these thin realizations are due in fact to money laundering".

A senior official of the UNMIK between 2000 and 2004 explained this situation, specifying the three main reasons. When the UNMIK began in 2004 to transfer the administration to the Albanian authorities, municipalities controlled by the mafias diverted the international assistance. Another reason of this opposition by the international administrators is bound to the fact that the tops-state employees of Chapter IV of the UNMIK in charge of the "Economic development" always refused to name representatives in municipalities. Sent directly by Brussels, these tops-state employees, mainly

[11] Frédéric Saillit, "Trafic d'organes: adoption du rapport Marty", *Balkans Infos* n° 164, avril 2011, p. 14.

Anglo-Saxon, had no knowledge of the local context; they stuck automatically pre-established economic plans on Kosovo. Finally, the European Agency for the Reconstruction was in permanent rivalry with the UNMIK[12].

Before this economic slump and the situation of chronic insecurity, the local population began to show its dissatisfaction towards the international forces. In February 2007, two young Albanian members of the movement "Self-determination", who protested against the presence of the NATO forces, died under shootings. On November 14th, 2008, a bomb exploded in front of the office of the EU's special representative in Pristina, claimed by a mysterious "Army of the Republic of Kosovo" (ARK), who threatened in its communiqué to blow up the EULEX headquarters: their action is clearly turning against the international presence.

Inter-ethnic riots also started again in Kosovo. On August 27th, 2008, 100 Serbs and 70 Albanians engaged in a confrontation in the district of «Three towers» in North- Mitrovica. In July 2010, during Serbs' demonstrations in Mitrovica, grenades were thrown into the Serbian crowd, causing the death of one man and 11 wounded persons. Mesud Dzekovic, Bosnian pediatrician seriously wounded in the heart, died at the hospital from the consequences of the attack; one of the rare Serbian members of parliament who has agreed to sit in the Parliament of Kosovo, received a bullet in the knee. This persistent violence demonstrates that all the non-Albanian communities are aimed by the terrorism; secondly, Kosovo has been for many years a ground of the chronic instability[13].

The status of Kosovo: an independence controlled by the international community

Three years after the self-proclaimed independence on February 17th, 2008, we have to admit that Kosovo remains a laboratory of the UN's concept of "state-building", that is the construction of a State, without historic past, according to compulsory standards from the outside. In 2018, the security is assured with around 4 000 soldiers of the «Strength of the NATO for Kosovo» (KFOR); it remains an important military contingent for a territory as big as two French departments. Besides, the EU has sent in 2008 the Mission "Rule of law" of the

[12] Interview realized in Paris 13 February 2009 with an UNMIK's high official MINUK (2000-2004).

[13] Interview realized in Paris 13 February 2009 with an UNMIK's high official MINUK (2000-2004).

EU (EULEX): 1900 judges, policemen and customs officers who replaced the state employees of the UN, with the goal to promote the rule of law in Kosovo. The first balance assessment of the action of the EULEX, dating May 31st, 2009, is rather symptomatic of the difficulties to impose legal rules: while 420 complaints had been deposited, only 120 cases had been treated and 16 verdicts pronounced on June 1st, 2009, with a single judgment for the war crimes.

Furthermore, the action of the EULEX is resolutely turned to the control of 120 000 Serbs staying in Kosovo. While the writer of the report admits that "the reinstatement of the Serbian policemen who had refused to work under the orders of the Albanians, takes time", we have to admit that the presence and the action of the EULEX are concentrated mainly on the North of Kosovo, in strong Serbian ethnic zones. On the other hand, the EULEX seems little bothered by the «off standards» practices of the Albanian leaders. Hashim Rexhepi, the governor of the central Bank accused of corruption, was released by the EULEX after four months in prison[14].

Since January 21st, 2009, the nucleus of the future army of Kosovo was set up by the Albanian government in Pristina. It is named « Kosovo Security Forces» (KSF) and should later consist of 2500 active men and 800 reservists. Endowed only with light weapons, the KSF will be used for the emergency services and the interventions in crisis situations (interethnic violence). However, Belgrade and the Serbs of Kosovo are firmly set against it because its acceptance would amount to recognize a foreign sovereignty on their own ground. Furthermore, the Serbs consider that this nucleus of army represents a factor of instability in the region because it could help the Albanian armed movements in Sandjak or in Macedonia. We can understand them because the KSF was considered by the former president of Kosovo Fatmir Sejdiu as the "foundation of a future Army of Kosovo". Unfortunately, this «Army of Kosovo» was born in 2016, under the protection of the United States and in front of the inaction of the European Union[15].

Kosovo between the USA and Russia

The United States has from the beginning gave a solid support to Pristina. Indeed, Daniel Fried, the USA's Delegate Secretary of State, has declared in

[14] UN's report on Emulex mission. http://bruxelles2.over-blog.com/article-32645867.html

[15] Andrea Cypsela, "EULEX in Kosovo: a brilliant symbol of incompetence", *The Guardian,* 11 April 2011.

December 2nd, 2008 that for Washington, "the Mission EULEX is not neutral: it aims at defending the sovereignty and the integrity of Kosovo". Brussels also presses Pristina, because the future of its EULEX mission is at stake, but its procrastinations shows one more time its weakness in this case. Thus, the German Member of the European Parliament Doris Pack asserted in the same week that the European Mission would operate on the basis of the UN's resolution 1244, which reaffirmed the Serbian sovereignty on Kosovo! The EU appears to have no common strategy and is blocked by the internal divisions on the question: Spain, Bulgaria, Romania and Cyprus declared EULEX illegitimate as long as the UN will not rule on a new resolution[16].

Nowadays, the Russian diplomacy is considering with sadness the birth of what she calls a "NATO-state" in the heart of the Balkans. According to Natalia Narotchinskaïa, vice-president of the Duma's Commission of the Foreign Affairs: "Kosovo is an integral part of the Eurasian military and political strategy of the United States, and the operation to remove provinces of Serbia serves their will of atlantisation of all the European processes; their objective is to make of Europe a bridgehead of the American interests". The director of the Center for political studies of the Academy of Science of Moscow, an expert recognized for the Balkan questions, is more precise and glimpses the consequences of a recognition of Kosovo's self-proclaimed independence in these terms: "To recognize the independence of Kosovo is going to break the democratic development of Serbia, to influence the Basque separatists, those of the Rumanian Transylvania and the post-Soviet space. It will still accentuate the gap between Russia and the West and will force Moscow to political choices towards several not recognized republics. The Tartars of Crimea are moreover very attentive to the way the situation is progressing in Kosovo".

CONCLUSION: towards a political earthquake in Kosovo in 2018?

In November 2015, members of the Parliament in Pristina clashed and some tear gas was thrown in the assembly. In the street, the leader of the "Self-determination" party, Alban Kurti, organized at the same moment massive demonstrations that have continued during all winter of 2015. Indeed, as the EU threw in spring 2015 the negotiations with the aim to rich the agreement of relations normalization between Serbia and Kosovo, some Albanians of Kosovo saw it as a denial of the independence. Besides, the decision of the

[16] Xénia Fokine, «Moscou contre un futur «Etat-OTAN», *Courrier International* n° 890, 22-28 novembre 2007, p. 37.

Constitutional court of Kosovo in autumn 2015 to give a special status to the zone of 5 Serbian municipalities of North-Kosovo caused the anger of the Albanian nationalists. This political crisis is stressed by the fact that on November 9th, 2015, two-thirds of the member countries of the UNESCO from the majority required refused Kosovo to become a part of this institution bound to the UN.

Regarding Kosovo, it seems that we are heading towards a political crisis, bound to the challenge of the European integration. The important part of the Albanian population increasingly refuses the conditions considered favorable to the Serbian minority. This crisis is going to increase with the impoverishment of the Kosovars, which already causes their massive exodus towards the European Union, in particular, Germany and Austria. This deep crisis is already in benefit of traditional guardianship authorities on the region, as Turkey. This one develops in Kosovo a neo-Ottoman politics, which has been attested by the resounding declaration of Prime Minister Erdogan who asserted during a visit to Pristina: "Turkey, it is Kosovo and Kosovo, it is Turkey". In a region marked by more than four centuries of Ottoman domination, it seems to be the end of any idea of sovereign Kosovo. This assertion shows us also the real ambitions of the leaders of Ankara towards the European continent.

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KOSOVO: 'UNIQUE' CASES, UNILATERAL ACTIONS AND UNINTENDED CONSEQUENCES

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Abstract: The above analysis has several important implications. Perhaps the most important is the illumination of the fallacy that the position of Washington, London, or Moscow on the Kosovo issue can be reduced to a dispute over abstract points of international law. As most parties involved know but will not openly admit, the Kosovo case is about much, much more than Kosovo independence. Thus, in order to understand what international law can and cannot teach us about this particular problem, and what international and regional organizations can and cannot do about such problems, it is first necessary to understand the motivation and behavior of great powers in such conflicts. Viewed through this lens, many of the arguments in favor of Kosovo independence sustained by the claim that it is a "unique case" become significantly weaker. In the contemporary world there is of course nothing unique about a region or territory aspiring to gain independence from a larger entity or state; Catalonia, Chechnya, the Kurds in Turkey and Iraq, the Palestinians and Israel, Scotland and South Sudan provide just a few examples. Nor is there anything unique about a government using repressive or violent measures to suppress such struggles, as many of the aforementioned cases reveal. As Sumantra Bose has argued, Kosovo is not a unique case, it is a unique solution.

Keywords: Kosovo, Great powers, Balkans, Unique case, sui generis, international law, international relations.

Introduction

For decades, the "Kosovo problem" has perplexed politicians and diplomats in the Balkans and around the world, far in excess of what its relatively small size or lack of resources would suggest.[2] Indeed, in 1999, this small, poor,

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[1] President, SEERECON Llc, New York, U.S.A.

[2] For a socialist-Yugoslav era analysis of the Kosovo problem, see Branko Horvat, *Kosovsko Pitanje,* Zagreb: Plava Biblioteka/Globus, 1989; for analyses by international scholars, see

backward part of Europe became the epicenter of global politics when the North Atlantic Treaty Organization (NATO) embarked on its first-ever full-scale military conflict.

There are several reasons why Kosovo assumed so much importance in world affairs. First, as part of the breakup of Yugoslavia, it became an important test-case in the debate over *who* would shape the post-Cold War European order, and, consequently, *how* that order would be shaped. The Washington foreign policy establishment at this time—including both liberal internationalists on the left and neocons on the right—was intent on showing that Euro-Atlantic institutions would (by themselves if necessary) define the European order. In Moscow, on the other hand, despite Russia's decline in the 1990s, foreign policy elites continued to insist on a European order in which Russian interests and concerns were respected.

Second, the Balkan conflicts of the 1990s quickly became a useful justification for extending the life and purpose of the NATO alliance itself. With the fall of the Berlin Wall and the end of communism, the institutions created to wage cold war between East and West had lost their *raison d'etre*. In the eyes of many people at this time, the Balkans wars in the 1990s provided a new justification for their existence; thus, henceforth NATO's mission would morph from preventing a Soviet invasion of central Europe to policing ethnic conflicts on Europe's southeastern periphery.

Third, in many quarters how the western response to the Bosnian and Kosovo conflicts quickly came to be viewed as an opportunity to refute Samuel Huntington's claim that the world was facing a "clash of civilizations."[3] Indeed, such views were frequently voiced by senior Clinton Administration officials during the 1990s.[4]

Kosovo: Contending Voices on Balkan Interventions, William Joseph Buckley, ed., Grand Rapids, MI: William Erdmans Publishing, 2000; Noel Malcolm, *Kosovo: A Short History,* New York: New York University Press, 1998; and Thanos Veremis and Evangelos Kofos, eds. *Kosovo: Avoiding Another Balkan War,* Athens: Eliamep/Univerity of Athens, 1998.

[3] Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order,* New York: Simon and Schuster, 1996.

[4] On this note, Bill Clinton would note that for the United States, support for the Bosnian Muslims "would demonstrate to Muslims the world over that the United States cared about them, respected Islam, and would support them if they rejected terror and embraced the possibilities of peace and reconciliation." See President Bill Clinton, "Ending the Bosnian War: The Personal Story of the President of the United States," in *Bosnia, Intelligence, and the Clinton Presidency*, Little Rock, AK.: William J. Clinton Presidential Library, 2003, p. 9.

Fourth and finally, the Kosovo conflict has come to assume so much importance in global affairs because it epitomizes a fundamental contradiction between two of the most fundamental tenets of international relations and international law—respect for the territorial integrity of existing states, and respect for the principle of self-determination. It is here that in many ways the Kosovo problem has become a perfect example of Hegel's concept of tragedy, which he described not as a moral conflict between right and wrong but as a conflict between equally valid truths.

The order in which these examples illustrating why the Kosovo issue has become so important is not accidental. Viewed from these perspectives, the Kosovo dispute has been about far more than the finer points of international law. For the great-power protagonists in this dispute, for the past two decades what happens in Kosovo has been about more than who can legally claim sovereignty over a relatively small piece of land. It has been about determining the shape of Europe's post-Cold War order, about who has the right to determine that shape, and about whether different "civilizations" can cooperate.

Kosovo and the "Sui Generis" Argument in Comparative Perspective

The above analysis has several important implications. Perhaps the most important is the illumination of the fallacy that the position of Washington, London, or Moscow on the Kosovo issue can be reduced to a dispute over abstract points of international law. As most parties involved know but will not openly admit, the Kosovo case is about much, much more than Kosovo independence. Thus, in order to understand what international law can and cannot teach us about this particular problem, and what international and regional organizations can and cannot do about such problems, it is first necessary to understand the motivation and behavior of great powers in such conflicts.

Viewed through this lens, many of the arguments in favor of Kosovo independence sustained by the claim that it is a "unique case" become significantly weaker. In the contemporary world there is of course nothing unique about a region or territory aspiring to gain independence from a larger entity or state; Catalonia, Chechnya, the Kurds in Turkey and Iraq, the Palestinians and Israel, Scotland and South Sudan provide just a few examples. Nor is there anything unique about a government using repressive or violent measures to suppress such struggles, as many of the aforementioned cases reveal. As Sumantra Bose has argued, Kosovo is not a unique case, it is a unique solution.

Indeed, the double standards used to construct the argument about Kosovo being a "unique case" are best seen in Washington's contrasting approaches to three contemporaneous problems in the 1980s and 1990s—that between Yugoslavia and Kosovo, between Turkey and its Kurdish population, and between Iraq and its Kurdish population. In each of these cases, at exactly the same time, the former Federal Republic of Yugoslavia, Turkey and Iraq were all confronting secessionist movements, yet Washington adopted fundamentally different policies in response to the violence taking place in the three cases.

Consider, for instance, the position of the Kurds in Turkey during this time in comparison to that of the Albanian population in Kosovo. In the 1980s, the Turkish government prohibited the use of the Kurdish language in both public and private life, and Kurdish was not allowed to be taught in schools. The anti-Kurdish campaign went so far as to even deny the existence of the Kurdish people, who were officially labeled "Mountain Turks." Nor was the repression suffered by the Kurds in Turkey merely bureaucratic. In the 1990s, it is estimated that Turkish government forces had forcibly expelled 1,500,000 Kurds from their homes.[5]

Such Turkish government-perpetrated violence persists even to this day. A UN report released in March 2017 noted that among the human rights abuses committed by Turkey against its Kurdish population were "summary killings, torture, rape and widespread destruction of property among an array of human rights abuses."[6] Unfortunately, such violence is perpetrated at least in part with the help of U.S. government military assistance. As one report noted,

Using U.S.-supplied combat planes, helicopters, armored personnel carriers and rifles, the Turkish armed forces have waged a 15-year long civil war against the Kurdistan Workers' Party (PKK) that has resulted in over 37,000 deaths (mostly Kurds). Turkey's principal strategy in its war against the PKK has been a "scorched earth" policy in the southeastern portion of the country that has

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[5] See "Displaced and Disregarded: Turkey's Failing Village Return Program." Washington, DC: Human Rights Watch 14 (October 2002), 6.

[6] See Nick Cumming Bruce, "U.N. Accuses Turkey of Killing Hundreds of Kurds," *The New York Times*, 10 March 2017, at https://www.nytimes.com/2017/03/10/world/europe/un-turkey-kurds-human-rights-abuses.html. According to the report, in just one battle in the town of Cizre "at least 189 people were trapped for weeks in basements without food, water, medical aid or electricity before dying in fires started by artillery shelling by security forces. Ambulances were prevented from entering the area, causing deaths that could have been avoided. Many of the victims simply disappeared in the wholesale destruction of large residential areas carried out by the military, which attacked systematically with heavy weapons, including bombing strikes . . . the authorities refused to investigate civilian deaths, accusing residents of supporting terrorism."

involved bombing, burning, and depopulating over 3,000 Kurdish villages and creating between 500,000 and 2.5 million internal refugees.[7]

An even more disturbing case can be seen in how Saddam Hussein dealt with the Kurds in Iraq during this time. Thus, during the Iran-Iraq war in the 1980s, the U.S. shared intelligence with the Hussein regime in the full knowledge that Saddam would use this information to launch chemical weapons attacks against the Iranians—and, on at least one occasion, against his own Kurdish population.[8]

By way of comparison, during this same decade that NATO member Turkey was ethnically cleansing its Kurdish population and Washington was turning a blind eye as Saddam Hussein gassed his own Kurdish population, Kosovo was a practically self-governing province within the then-Yugoslav federation. As Hugh Poulton has noted , in the 1980s "the Kosovo Albanians were not repressed culturally. Kosovo was in effect an Albanian polity with the Albanian language in official use, Albanian television, radio and press, and with an ethnic Albanian government. Even the courts which were used to persecute those calling for a republic for Kosovo were staffed by ethnic Albanian judges."[9] During this decade, Kosovo Albanians were represented at the highest levels of the Yugoslav state and party; in 1984-85, the president of the presidium of the League of Yugoslav Communists was Ali Shukrija, and in 1986-87, the president of Yugoslavia was Sinan Hasani.

Dejan Jović has further pointed out the scale of the Yugoslav government's efforts to promote develop in Kosovo and integrate the province into the Yugoslav state. In 1948, for instance, 62.2% of Kosovo's population was illiterate. In 1981, Kosovo had the third largest university in Yugoslavia, with some 50,000

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[7] See Tamar Gabelnick, William D. Hartung, Jennifer Washburn, and Michelle Ciarrocca, *Arming Repression: U.S. Arms Sales to Turkey During the Clinton Administration.* Washington, DC: World Policy Institute/Federation of American Scientists, October 1999.

[8] On the US-Saddam Hussein relationship, see Shane Harris and Matthew M. Aid, "Exclusive: CIA Files Prove America Helped Saddam as He Gassed Iran," *Foreign Policy*, 26 February 2013, at http://foreignpolicy.com/2013/08/26/exclusive-cia-files-prove-america-helped-saddam-as-he-gassed-iran/. As the authors note, "the declassified CIA documents are tantamount to an official American admission of complicity in some of the most gruesome chemical weapons attacks ever launched." See also "U.S. Links to Saddam During the Iran-Iraq War," *National Public Radio*, 22 September 2005, at https://www.npr.org/templates/story/story.php?storyId=4859238.

[9] See Hugh Poulton, "Macedonians and Albanians as Yugoslavs," in *Yugoslavism: Histories of a Failed Idea*, Dejan Djokić, ed., London: Hurst, 2003, p. 131.

students. Kosovo had some 30 students per 1000 in the population, giving it the highest concentration of students in Yugoslavia. As a federal unit within Yugoslavia, Kosovo received the following shares in the distribution of the Fund for the Development of the Under-Developed Regions: 1971-75—33.3%; 1976-1980—37%; 1981-85—42.8%. For the period from 1981-1986, of the 136 billion dinars invested in Kosovo from 1981-86, only 8.7 billion came from Kosovo, the rest coming from other Yugoslav republics.[10]

Thus, comparing the three historically contemporaneous cases of how Turkey and Iraq dealt with the Kurdish problem and how Yugoslavia/Serbia handled the Kosovo issue, two things become clear. The first is that Washington obviously does not provide a blanket recognition of claims to self-determination; instead, it supports claims to self-determination that are believed to advance U.S. national interests as they are interpreted by certain groups. Second, that the level of violence a government perpetrates against its own population does not determine Washington's policy either.

Viewed outside the prism of how Washington responds to claims to self-determination, and the violence that often emerges from such claims, one also has to bear in mind that whether or not Kosovo is a *sui generis* case is largely in the eyes of the beholder. Multiethnic, multinational states such as Spain, Georgia, Ukraine, Nigeria, India, or Indonesia clearly do not view the Kosovo case as being sui generis, hence their refusal to recognize it. On the other hand, countries that have the ability to simply disregard claims of precedence when they impact upon their interests risk little in making the argument.[11]

Finally, one can also note a bit of irony (or duplicity) in the Kosovo as a "unique case" argument. In Washington today, for instance, the very same circles that have argued that recognizing Kosovo's independence was a "unique" event that would have no consequences now claim that partitioning Kosovo would be a horrible precedent for the region.

The Real Kosovo Precedent

Instead of seeing Kosovo as a *sui generis* or unique case in international law that sets no precedents, a more convincing argument can be made that the

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[10] See Dejan Jović, *Jugoslavija, država koja je odumrla*, Beograd: Samizdat B92, pp. 265-67.

[11] One also needs to note the visible hypocrisy of many people engaging in the debate. For instance, the Bosnian Muslim member of Bosnia's collective state presidency, Bakir Izetbegović, is simultaneously a supporter of Kosovo's right to secede from Serbia, but at the same time insists on the territorial integrity of Bosnia & Herzegovina.

campaign and tactics used to promote Kosovo's independence have themselves become the new precedent in international affairs.

Indeed, the day after Kosovo unilaterally declared independence, Timothy William Waters warned that this would lead Russia "to give even more open support to the regions of Abkhazia and South Ossetia which have broken with Georgia."[12]

Waters' prediction of course proved true within months. During the August 2008 Georgian conflict, Moscow followed a playbook quite similar to that used by Washington and NATO towards Kosovo: using military force against a sovereign country, without the approval of the United Nations but allegedly on "humanitarian grounds," followed by military occupation of the restive areas, and, ultimately, recognition of their unilateral declarations of independence.

More broadly, the Kosovo conflict (specifically, the NATO attack on Yugoslavia in 1999) also set a precedent for the post-Cold War era insofar as it showed that when a local or regional crisis challenges the agenda or interests of great powers, they will willingly act unilaterally and bypass official international legal institutions (such as the U.N. Security Council) specifically intended to deal with such "threats to international peace and security."[13] This was subsequently seen even more blatantly in Washington's attack on Iraq in 2003. Moscow, of course would again follow suit with its response to the Ukrainian crisis in 2014.

The Future of the Kosovo Precedent

As we move from the relatively unique unipolar moment of the 1990s when the United States was able to impose its will on most other countries to the more multi-polar world of the 21st century, the Kosovo precedent, as outlined above, is likely to become even more prevalent. The breakdown of international norms and procedures in the Kosovo case probably presages an era in which various rising great powers will become more willing to impose their own preferred solutions on areas they deem to be in their vital sphere-of-interests. In East Asia, for example, we can expect China to become much more aggressive in dealing with Taiwan or other international disputes in the South China Sea.

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[12] Timothy William Waters, "Kosovo: The Day After," *OpenDemocracy*, 18 February 2008.

[13] An important point to note here is that NATO's attack on Yugoslavia also violated its own charter, i.e., NATO was only supposed to go to war as an act of self-defense. It was not supposed to wage unprovoked war.

Moscow, clearly, is becoming more assertive in defending its interests in East Central Europe and the Caucasus, as is Saudi Arabia vis-à-vis the conflict in Yemen, and it is not difficult to foresee Iran playing a similar game in Iraq (and perhaps Syria) in the ensuing years.

Paradoxically, however, such a multi-polar world in which the power relationships between great powers becomes more balanced also provides an (admittedly slim) possibility that great powers will recognize the benefits of accepting global norms for regulating the status of self-proclaimed states. Theoretically, at least, in a more balanced global system international actors would be forced to recognize that the unrestrained and unregulated pursuit of unilateral self-interest would lead to too much anarchy in world politics. Moreover, a more balanced global system might also promote more moderation by state actors. Such an evolution of the international system does admittedly seem quixotic at this time, but it is nevertheless one possible way international organizations such as the UN might play a more constructive role in regulating disputes over self-determination in the future.

Kosovo and Lessons Learned

Perhaps the primary lesson of the Kosovo case, as pertains to the future role international organizations may play in resolving such problems, is that international organizations are only as influential as the great powers allow them to be. Thus, as argued above (and much to the dismay of liberal internationalists), where a great power is intent on producing a specific policy outcome, the Kosovo case shows that *realpolitik* and traditional power politics trump the global norms of state behavior regulated by legally-authorized institutions. Great powers will of course try to provide a fig leaf of legitimacy for their actions by acting through the regional organizations which they dominate, or by creating ad hoc "coalitions of the willing," but such efforts will never have the legitimacy granted by an action that obtains the unanimous support of the UN Security Council.

Ideally, of course, regional organizations can and should play a more important role in this context, but such organizations usually only have the power or status that the great powers are willing to grant them. Moreover, as the Balkan historical experience has often shown, smaller regional organizations are often just as divided by individual member's own parochial divergent interests and rivalries, and by the relative ease with which great powers can play the game of *divide et impera*.

In theory, international law should be able to square these circles and help find solutions for Kosovo and similar cases, but as argued throughout this paper, when confronted with problems that have such geopolitical implications, great powers tend to give precedence to promoting their own interests rather than to abiding by international law. Moreover, the very ambiguities in international law regarding principles such as support for the territorial integrity of existing states versus the right to self-determination virtually assures that the great powers will always exploit such ambiguities and loopholes to advance their own particular interests from case to cas

The atmosphere surrounding the present historical moment also unfortunately provides little hope that international law can help find a solution to the Kosovo problem and similar cases around the world. Hence, in the current period of heightened tensions between great powers—which are sure to increase as China demand revisions to the current global order—it is doubtful that international legal institutions will come to a consensus on how to deal with these problems. Unfortunately, international legal bodies do not operate in a vacuum devoid ordinary politics. Evidence of this was seen in the International Court of Justice Advisory Opinion on Kosovo's Declaration of Independence, in which the voting by judges was clearly influenced by where states stood in global power blocs.[14]

As the great powers strive to create spheres-of-influence and areas like the Balkans, the Caucasus or the Middle-East again become fronts in what scholars such as Stephen F. Cohen and Robert Legvold have dubbed "the new Cold War," there will be little room left to engage in the moderate politics that lead to positive-sum diplomatic or international-legal solutions.[15] Thus, what we are most likely to see in the coming years is many more "Kosovo cases," in which, as Thucydides noted some two millennia ago, "the strong do what they can and the weak suffer what they must."

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[14] See Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403. With the exception of Sierra Leone, judges from countries that had recognized Kosovo ruled that Kosovo's declaration of independence did not violate international law, while judges from countries that did not recognize Kosovo ruled that Kosovo's declaration of independence was not consistent with international law.

[15] See Stephen F. Cohen, *Soviet Fates and Lost Alternatives: From Stalinism to the New Cold War,* New York: Columbia University Press, 2011; and Robert Legvold, *Return to Cold War,* Malden, MA: Polity Press, 2016.

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CHAPTER II

SUI GENERIS OR A PRECEDENT: LEGAL AND POLITICAL ASPECTS

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LEGAL AND POLITICAL ASPECTS OF THE KOSOVO'S UNILATERAL DECLARATION OF INDEPENDENCE*

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Abstract: Kosovo declared independence ten years ago. Theorists and representatives of the states still react inconsistently to this act. This is not only proved by Kosovo's international recognition but also mostly by the fact that Kosovo was not included into the family of nations in form of full membership in international organizations. During these ten years, there were some serious efforts to gain independence, at least in Catalonia, Kurdistan and Scotland. Despite the fact that in these parts of the world Kosovo's case is well-known, it is not used as an argument in attempts of their statehood. Situations where we may find parallels with Kosovo are two secessions from Georgia. The international community condemned and criticised all these unilateral actions with the aim to create a new state without the consent of territorial sovereignty. Provided that the prevailing position of states towards these cases corresponds to international law, is Kosovo really a precedent? In other words, why is Kosovo's statehood relative widely accepted, if similar cases are convicted as illegitimate and unlawful? Is this because Kosovo is a *sui generis*? Strictly speaking, every case in international relations is unique. Subsequently, isn't it correct to consistently apply the same international legal framework to all cases around the world?

Key words: Declaration of Independence, Statehood, International Law, Precedent, *Sui generis.*

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Introduction

In a few weeks, it will be ten years after Kosovo unilaterally declared independence and gradually started to gain recognition as an independent state from well-established members of international society. There is no doubt that process of its creation was violating Serbian Republic's domestic law. This circumstance is, however, irrelevant from international law's point of view. According to international law, for the origin of a state, there is no demand of the compliance of regulations of national law orders, which, logically, seldom presumes the origin of a new state from some part of the mother state. A lot more important is a fact, that there is no general opinion on Kosovo's declaration of independence dated 17 February 2008 and on the sequential subsequent internal development of events in this part of Europe from point of view of international law. Two clear and opposite positions were shaped in the diplomatic praxis of states and theoretical works of experts from the sphere of internationalists and scientists in international relationships.

This dichotomy is represented in the political sphere by recognition or non-recognition of Kosovo by existing members of international community and by accepting or not accepting Kosovo as a member of international governmental organizations.

With respect to the bilateral dimension of Kosovo's political and diplomatic relations, it is possible to gather statistical data about Kosovo's bilateral relationships with states of the world directly from Kosovo's institutions. According to actual information published by the Ministry of Foreign Affairs of the Republic of Kosovo, it is recognised by 114 countries in the world.[3] From the above-mentioned Kosovo's records, it results that Kosovo is not recognised by 79 member states of the United Nations Organization, which is approximately 41% of the membership of this organization. According to official press announcement of the Ministry of Foreign Affairs of the Republic of Kosovo reacting to report that the Republic of Surinam has rescinded the recognition of the Republic of Kosovo, Kosovo has established diplomatic relations with 88 states.[4] Pursuant to following information, on 31 December 2017 Kosovo has

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[3] "International recognitions of the Republic of Kosovo", Statement presented by the Ministry of Foreign Affairs of the Republic of Kosovo, 31 December 2017, Prishtina, http://www.mfa-ks.net/?page=2,224, 31/12/2017.

[4] "Press Release. Prishtina, 31 October 2017", Statement presented by the Ministry of Foreign Affairs of the Republic of Kosovo with respect to the recognition of the Republic of Kosovo by the Republic of Suriname, 31 October 2017, Prishtina, http://www.mfa-ks.net/?page=2,217,4552, 31/12/2017.

established twenty-four diplomatic missions and nine consular posts, whilst twenty-one diplomatic missions and four consular posts of foreign states were established in Kosovo; and besides, some other states that do not recognise Kosovo have their foreign bodies in Kosovo, such as the People's Republic of China, the Russian Federation, Romania, Greece and the Slovak Republic.[5] In comparison with above-mentioned facts, the acceptance of Kosovo is less presentof a little amount of universal and regional international governmental organizations, only nine of them: the International Monetary Fund, five organizations creating the World Bank Group (IBRD, IDA, IFC, MIGA, ICSID), the European Bank of Reconstruction and Development, the Council of Europe Development Bank and the Bureau International des Expositions (for controversial status of Kosovo we did not include the World Customs Organization to this summary). In a case of international non-governmental sports federations including the significant ones, such as the International Olympic Committee /IOC/ or the Féderation Internationale de Football Association /FIFA/, Kosovo's position is eminently better because Kosovo is represented in many of them on European and worldwide level. From our point of view, this matter is often overestimated because entities without international recognition (for instance Chinese Taipei, Hong-Kong or Palestine in case of the IOC) are participating in their activities as well as their members often are sub-state entities (for instance Scotland, Wales, England, Northern Ireland or Gibraltar in case of UEFA and FIFA).

Reflection of this dichotomic attitude to Kosovo in theoretical plane, above all from the legal aspect, usually presents two opposite answers to the questions, whether Kosovo has fulfilled all criteria of statehood already on a day of its declaration of independence or whether in a process of its origin such a circumstance did not occur, which would result in impossibility to recognise Kosovo as an independent state. Lot of these considerations were presented at the UN International Court of Justice in the case "*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*"[6] and we are able to squeeze these considerations into the two terms (precedent and *sui generis*), which have become the central theme of this international conference.

To antagonists of Kosovo's independence, Kosovo is a dangerous and unacceptable precedent, acceptance of which will expose the world to the

[5] "Diplomatic Missions of the Republic of Kosovo", List of embassies and consular missions of the Republic of Kosovo presented by the Ministry of Foreign Affairs of the Republic of Kosovo, 31 December 2017, Prishtina, http://www.mfa-ks.net/?page=2,171, 31/12/2017.

[6] ICJ Reports 2010, p. 403-453.

unpredictable fragmentation of states. On the other side, to protagonists of Kosovo's statehood, Kosovo is unrepeatable *sui generis* case, the very essence of which lies in belief that in the process of Kosovo's origin such particular historical, social and political circumstances were fulfilled that they justify to consider Kosovo as a state in international law sense in a full range.

In the further text of our contribution we will focus on an analysis of both above-mentioned attitudes, their mutual linkage and their implications in wider international political developments since the question of a statehood has not solely statical, but also dynamical dimension (in the sense of origin, changes and downfall of states).

Kosovo as a precedent

The word "precedent" has two meanings, in legal language as well, even in international public law. In the first sense, we perceive precedent as a previous judgement of particular court institution, which could be applied as an established law to a subsequent situation, which is identical or similar to a situation inspiring a creation of the previous judgement. In the second sense, the term precedent has a more general meaning, indicating the previous similar case, used as an example or justification of the subsequent case. In the textbooks of international law, the first sense is commonly used to define courts' decisions as one of the sources of international public law[7] and the second sense is used in order to explain various situations having particularly significant legal consequences for further development of a particular branch of law, based on a parallel or comparison with a similar former situation (for instance acceptance of the Russian Federation by the UN member states as the continuation of the Union of Soviet Socialist Republics without no Russian application for the UN membership following the precedent of India[8]).

Kosovo as a precedent from legal point of view

In a science of international law, there is a fixed unambiguous opinion that in international law, including the International Court of Justice's decision-making practice, the system of precedents is not used even though the uniformity of

[7] See Anthony Aust, *Handbook of International Law,* Cambridge University Press, Cambridge, 2005, p. 476.

[8] Ibid., p. 403.

judicature in sense of coherent application is preserved[9]. In this plane, the question is what Kosovo case means as a precedent in a relationship to the International Court of Justice's advisory opinion "*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*".

In the quoted case, the International Court of Justice considered solely the accordance of the declaration of independence from 17 February 2008 with international law. Other questions regarding Kosovo as a state (for instance (a) legal consequences of that declaration; (b) whether or not Kosovo has achieved statehood right by that declaration; (c) validity or legal effects of the recognition of Kosovo by existing states; (d) whether or not the declaration has led to the creation of the state[10]) were not solved at all by the International Court of Justice. From that reasoning, important is only the final court's opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law. The reason for such an opinion is that general international law contains no rule prohibiting the making of the declaration of independence. Although it is necessary to add that court has not examined whether Kosovo was really, formally and factually independent, which means that the court was not assessing whether the declaration in question was rightful and whether that declaration was a statement of fact or rather only an expression of a political wish.

According to the above-mentioned content of the quoted advisory opinion, we are able to state that a declaration of independence from anything or anybody, made whenever by anyone is not violating international law. This is a fundamental implication coming from Kosovo case in the International Courts of Justice's advisory opinion as a precedent. There is need to agree with the stated opinion because a norm prohibiting declaring independence does really not exist in international law. On the other hand, it is necessary to add that every declaration of independence does not automatically have a consequence of originating a new state. Nonetheless, after all, accurate examples are the declaration of independence of Kosovo from 2 July 1990[11] and from 22 September 1991[12]. However, this aspect gets us beyond the scope of the quoted

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[9] See Ian Brownlie, *Principles of Public International Law*, Oxford University Press, Oxford, 1999, p. 19.

[10] ICJ Reports 2010, p. 423-424.

[11] Howard Clark, *Civil Resistance in Kosovo*, Pluto Press, London, Sterling, 2000, p. 73.

[12] Heike Krieger (ed.), *The Kosovo Conflict and International Law. An Analytical Documentation 1974-1999*, Cambridge University Press, Cambridge, 2001, p. 2.

advisory opinion, which would preclude us to search for possible future homogenous application of conclusion included in it.

Therefore, practical meaning of this advisory opinion for current course of events in the world is that any declaration of independence is not violating international law, not even the declaration of independence of the Autonomous Republic of Crimea and the City of Sevastopol adopted on 11 March 2014[13], nor the declaration of independence of Catalonia from 10 (27) October 2017[14]. However, in these cases, it is also impossible to state firmly that both of the above-mentioned declarations have alone created new sovereign states - the Crimean Republic and the Catalan Republic. Simultaneously, we subjoin those prospective future declarations of independence from the side of Kurds or Scots will also not violate international law for the same reason as in the case of Kosovo. We also should consider the fact that the International Court of Justice and its decisions are not means of political legitimisation.[15]

Kosovo as a precedent from political point of view

The second meaning of the term "precedent" is rather political than legal and with respect to Kosovo it has far-reaching impacts on international relationships. Provided that precedent means the previous similar case used as an example or justification of the subsequent similar case, then there is, in the future, a real probability of pointing to Kosovo's case and its path to statehood based on the declaration of independence from 17 February 2008. Actually, this has already happened three times: in summer 2008 in connection with the recognition of South Ossetia and Abkhazia by the Russian Federation and in 2014 in connection with the territorial changes in Ukraine. In the second case, the declaration of independence of the Autonomous Republic of Crimea and the City of Sevastopol from 11 March 2014 in its first sentence made an explicit reference to the International Court of Justice's legal opinion with a direct link to the advisory opinion in the case of Kosovo that declaration of independence

[13] "Декларация о независимости Автономной Республики Крым и города", Ссылка на акт: 1727-6/14, 11 марта 2014 года, https://web.archive.org/web/20140312060543/http://www.rada.crimea.ua/app/2988.

[14] "Declaration of the Legitimate Representatives of Catalonia", Barcelona, 10th October 2017, non official translation, http://www.cataloniavotes.eu/wp-content/uploads/2017/10/27-Declaration-of-Independence.pdf.

[15] Jaroslav Ušiak, Lubica Saktorova, "The International Court of Justice and the Legality of UN Security Council Resolutions", *DANUBE: Law and Economics Review*, Vol. 5, No. 3, 2014, pp. 201-212.

by part of a state does not violate any norm of international law. It is obvious, that for an origin of a new sovereign state a sole declaration of independence is not sufficient. The threat of Kosovo's precedent for development in other states is based on a concern that it may be a possible inspiration or encouragement for various entities or groups of the population. It is not essential whether this way of creation of a new state is legal from the international legal point of view. Finally, the International Court of Justice was not assessing this issue. It is more important that in real life it is possible to proceed in such a unilateral way and against the will of the corresponding territorial sovereign. Even if Kosovo's case would not be a direct inspiration for new secession motions in other parts of the world, the risk of its misuse as a justification of similar behaviour or precisely the same demands on a mother state by some states or other entities will remain in the international relations. Logically, situations of the consensual way of origin of a new state with the previous consent of a territorial sovereign (attitudes of Spain towards independent Catalonia or attitudes of Iraq, Iran and Turkey towards independent Kurdistan are more than obvious) are, in principle, not the matter of discussion. This will increase the future probability of aggravation of conflicts regarding self-determination or sovereignty. Thereafter it is possible that some situation may arise in which nuances of events in Serbia and Kosovo will lose their meaning and one will be able to refer to Kosovo's precedent as a possible alternative with a simple message: if Kosovo could originate unilaterally and by secession not long ago, state X can originate as well by the same way.

The point is that this meaning of precedent lacks legal accuracy, scientific objectivity and neutrality and is easy to become misinterpreted, distorted and populistically misused. Eventually, even though, it will not be so relevant whether the use of Kosovo's precedent will be successful or not. Its potential to worsen the situation and defer the consensual solution of a conflict is obviously enormous.

Kosovo as a *sui generis* case

While studying specialized bibliography from the fields of international law and international relationships, documents of particular states and international organizations and opinions of various statements we commonly meet the attitude that Kosovo's question (or Kosovo's statehood or Kosovo's independence) is a *sui generis* case. The ones who do so provide some arguments explaining reasons why Kosovo with its origin is *sui generis*. Our objective is not to make an exhaustive list of these reasons, nor to analyse them. We would like to think of whether

Kosovo actually is an extraordinary and specific case and why it is commonly highlighted as unique and what does it indeed mean.

Kosovo as a sui generis case with respect to statehood

The term sui generis means that something is of its own kind[16], that something is forming a class of its own[17]. Just as every individual represents unrepeatable and unique being, although we are all humans, so every state represents the unrepeatable and unique entity. Every state distinguishes from other states by quantity (territory, population, power potential, natural resources, economic capacities and so on) and quality (political system, social order, age, educational or ethnic structure of population, prestige of states and so on), although they are all states, which means independent and so far most important group of subject of international law and most relevant international actors. States can be classified according to a variety of criteria into corresponding subcategories (monarchies and republics, unitary states and composed states and so on), but not a single state can be *sui generis* state. From this point of view, *sui generis* entities in international community are only the Holy See and the Sovereign Military Order of Malta – these are not states, not nations, not insurgents and not even international governmental organizations, but despite this fact, they are well-established subjects in international politics and in international law. If we think about Kosovo in this way, there is available only a single solution – putting Kosovo into a corresponding category of subjects of international law. Inasmuch as Kosovo is undoubtedly not a nation, not an insurgent and not even an international governmental organization, there is only one possibility left – Kosovo is either a state or it is not. Kosovo cannot be somewhat of a state or a *sui generis* state or an entity similar to a state. Generally, this is impossible. Therefore, considerations on Kosovo as some kind of a peculiar type of sovereign state or some kind of *sui generis* state are inappropriate.

Kosovo as a sui generis state with respect to models of formations of a new state

The question whether Kosovo is a *sui generis* state may be examined by process of its origin. Has the Kosovo case brought to state's praxis or to

[16] Merike Ritikivi, "Latin: The Common Legal Language of Europe?", *Juridica International*, Vol. X, 2005, pp. 199–202, http://www.juridicainternational.eu/public/pdf/ji_2005_1_199.pdf.

[17] "Glosary of Legal Latin", The University of Kent, https://www.kent.ac.uk/library/subjects/lawlinks/skills-hub/docs/GlossaryofLegalLatin.pdf.

international law any new and before unknown model of a states formation? Among the nowadays known ways of the states origin belong dismembering, division, union, separation, secession, decolonisation and from the ancient past primary the occupancy and founding of sovereign governmental power[18].

Kosovo's statehood is based on the unilateral declaration of independence from 17 February 2008 adopted against a will of Serbia as the territorial sovereign at that time, so from point of view of classifying of ways of state origins, this is without any doubts a clear example of secession. Before 1945, international society accepted this form of state formation but after the Second World War, there is only a single one case of successful secession (herewith we understand achieving wide international recognition for a new state and its admission into the UN) which is the creation of Bangladesh. Besides, there were many unsuccessful attempts of secession, for example in the case of Tibet (China), Katanga (Kongo), Biafra (Nigeria), Somaliland (Somalia) or Pridnestrovie (Moldova). From this point of view, Kosovo's origin is nothing new.

The above-mentioned is relevant from the aspect of states' formations classification. Naturally, the existence of every state is a result of a unique historical process. Just as every state is different from other states, so processes of their creation are different, too. In a case of every state, there is a unique sequence of many events and various political, economic, social, military, cultural and other processes. Even in a situation that at the same time two or more states originate, like during the dismembering, circumstances of the origin of each separate state are not completely equal in respect of every successor. An accurate example is the Czech Republic and the Slovak Republic after the division of Czechoslovakia in 1992 or an example of 15 states originated after dismembering (dissolution) of the Union of Soviet Socialist Republics in 1991. Is anyone mentioning *sui generis* states in these cases?

Some other ideas with respect to alleged sui generis nature of Kosovo

What could we find in the process of Kosovo's creation as an outstanding specificity is the fact that its declaration of independence was, in a certain extent, achieved as a result of violent events in previous two decades. It is very probable that without consecutive events initiated by the abolished autonomous statute of Kosovo, prioritizing repressive measures instead of

[18] As a peculiar fact we can mention the attempt to refresh this way of a state creation by founding of so-called Liberland in vicinity of the state border between Serbia and Croatia in April of 2015.

constructive attitudes by Milosevic´s regime in resolving the disputing events in the 90's, escalating tension and radicalization of requests of both parties to the dispute, outcome of which was NATO intervention in Yugoslavia in 1999 and following events, particularly Kosovo's temporary international territorial administration, thereby Kosovo would not originate as an independent entity by unilateral way, or it would probably not happened in 2008. Neither this historical context makes Kosovo a unique and the only case in the world. We have learned not only (a) an example of Bangladesh, which origin was firmly supported by India's military intervention; but also (b) the Turkish Republic of Northern Cyprus declared on 15 November 1983 after the illegal use of force by Turkey.

If Kosovo is not a special type of state and if Kosovo was not originating by some new special way, what is the reason for using the term *sui generis* in relation to it? What is the reason for attention on exceptionality and unrepeatability of the situation in the case of Kosovo? If we study the case more deeply and take into account the idea that for an origin of a state the fundamental criteria are the three general defining characteristics of a state, and not a declaration of independence, we will see *sui generis* context of Kosovo's origin in a different light. International law prescribes neither narrow nor approximate process of an origin of a state. The traditional doctrine of international law considers a creation of a new state as a non-legal historical, social or political process, which results in the origin of a new subject of rights and duties. International law, according to this point of view, did not have any influence on origin and disappearance of states and was only the witness of its "birthday" and "death"[19], likewise, for example, a birth of a physical person in a domestic law. International law specifies basic pre-requisites of statehood which define territory, permanent population and sovereign government. We do not want to polemize here, whether Kosovo had its own state territory and its own population on 17 February 2008 or it created a part of territory and population of the other state (i. e. Serbia). However, we will give some thought to the problem of Kosovo's independent and sovereign government in the time of the adoption of declaration of independence from 17 February 2008 and immediately after this act, when first recognitions of Kosovo as an independent state from a side of already existing states were made. This third criterion of sovereign state has two impacts: the first one is internal, namely capability of government to create and retain the legal order in the sense of domestic

[19] Jan Białocerkiewicz, *Prawo miedzynarodowe publiczne. Zarys Wykladu*", Wydawnictwo Universitetu Warmińsko-Mazurskiego, Olstyn, 2003, p. 108.

autonomy; and the second one is external, namely government's ability to conduct on international level autonomously without any legal dependence on another subject of international law[20], which is an expression of sovereignty and independence of state power from other public authority. In the time of the adoption of Kosovo's unilateral declaration of independence, the Constitutional Framework for Provisional Self-Government in Kosovo signed by the head of the United Nations Interim Mission in Kosovo (UNMIK) on 15 May 2001 with its later amendments was still in force. This law did not ascribe the execution of all competencies ordinarily performed by governments of sovereign states exclusively to the Provisional Institutions of Kosovo's Self-Government, but it reserved some substantial powers in the hands of the Special Representative of the Secretary-General as the head of UNMIK, for example dissolving of the assembly, conduct of monetary policy, appointment and dismissal of judges and prosecutors, conclusion of agreements with states and international organizations in all matters within the scope of the UN Security Council Resolution 1244 (1999)[21] or conduct of external relations. Based on the content of the Constitutional Framework for Provisional Self-Government in Kosovo and taking into account the practical operation of public power on Kosovo's territory, it is undoubted, that the Provisional Institutions of Kosovo's Self-Government were not independent and sovereign authorities on 17 February 2008 and not even long after and they were not exercising the supreme, exclusive and independent public power on the territory "governed" by them and were not able nor capable to independently enter into relations with subjects of international law. A doubtless confirmation of this was the decision of International Steering Group for Kosovo from 10 September 2012 on the end of international supervision for Kosovo's independence. The paradox is that each and every individual state out of 25 members of the International Steering Group for Kosovo recognised Kosovo as an independent state, even though they were together conducting international supervision of Kosovo's "independence".

To summarise, international community through several international organizations, especially by the UN, NATO and EU, and through different

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[20] Josef Mrázek, "Suverenita státu a mezinárodní právo". *Právník*, Vol. 146, No. 7, July 2007, pp. 729-767.

[21] This resolution was interpreted in two different ways – Yugoslavian and later Serbian authorities emphasized the principles of its sovereignty and teitorial integrity and Kosovians referred to complete withdrawal of all military, police and paramilitary forces from Kosovo as an evidence of the limitation or probably ending of Yugoslavian sovereignty over Kosovo.

international platforms, particularly by the International Steering Group for Kosovo, exercised the administration of Kosovo's territory long before and long after the 17 February 2008. Many of well-established members of the international community were actively participating in this administration, what was *de facto* implicit confirmation of a fact that Kosovo is neither independent nor autonomous entity. Despite this fact, they recognised Kosovo as an independent state and even entered into diverse political, economic, diplomatic and legal relations with it. In this regard, Kosovo indeed represents a very unique example of governing some territory and its population and an unrepeatable or only heavily repeatable *sui generis* case when an entity, which did not fulfill characteristics of a state, was recognised as a state by the tens of states.

Next possible view on the supposed specific character of Kosovo is connected with the development of rules of international law regarding formation and disappearance of states which arose in general international law after 1945. This development noticeably affected international legal assessment of lawfulness of a states' creation process. It came to departure from so-called effective theory perceiving the state as a territorial unit exercising effective and independent power above its own territory and individuals located in there, i.e. deflection from perceiving statehood as a factual *status quo* towards to perceiving statehood as a legal question, too. Best evidence of this attitude are situations: (a) where the question of legality and legitimacy of considering certain entity as a state was crucial and (b) in which these entities were not recognised globally as states on the grounds that their origin was in a certain sense illegal, even though they have fulfilled characteristics of a state. This happened, for instance, in case of Rhodesia, Bantustans and the Turkish Republic of Northern Cyprus. In other words, important and legally relevant question is nowadays not only "Does a particular territorial and political formation possess all material criteria of statehood?", but also "What was the process of gaining its autonomous existence from the international public law view?" As a consequence from the aforementioned examples, it should be claimed that a new rule of non-recognition of those states, which originated as a result of a violation of international law, was developed in the states' praxis in the reaction on above situations[22]. Thus, for instance, Rhodesia was not recognised due to the fact that its declaration of independence was accomplished only by the white minority without the support and consent of most citizens (it means, that the fundamental precondition for realization of nation's self-determination right was not fullfiled), whereas the UN Security

[22] Jan Białocerkiewicz, *Prawo miedzynarodowe publiczne. Zarys Wykladu*", op. cit., pp. 108-109.

Council called upon all states not to recognise this illegal act[23]. Another example is non-recognition of the Bantustans, so-called homelands or the Black States established by the Republic of South Africa within its apartheid policy, which was pronounced a violation of the right of self-determination by the UN General Assembly and on this basis the UN General Assembly demanded states not to recognise the Bantustans[24], which was followed by all states except the Republic of South Africa. Eventually, there is an example of the Turkish Republic of Northern Cyprus which was not recognised by any state except Turkey, based on a decision of the UN Security Council on the incompatibility of its declaration of independence with corresponding international treaties and from this following invalidity of above declaration[25]. Pursuant to some authors' opinion, entities, which would be otherwise qualified as states, cannot be considered as states provided that their origin was illegal in some substantial extent[26], or more precisely, states established in a violation of international law can be considered as null and void in the eyes of international law[27].

Taking into account recent development in Georgia (with respect to Abkhazia and South Ossetia), in Ukraine (with respect to Crimea) and in Spain (with respect to Catalonia), we observe that attitudes of international community or its substantial part are unchanging and there was no wider recognition of any from above entities proclaiming independence. Legal argumentation in all these cases is identical or very similar to that we have met and we are continuously meeting in connection with Kosovo. Particularly in case of events in Georgia and Ukraine, which resulted in the unilateral creation of entities claiming the statehood, it is often mentioned the violation of the international public law. In comparison with Kosovo, there is a huge distinction in the outcome of those developments: Georgia, Ukraine and Spain do possess the right to preserve their territorial integrity and none of the parts of their territories can achieve independence and own state against their will. This opinion is correct and in a full scope corresponds with the developments in predominant international political and legal practice after the Second World

[23] "Resolution 216 (1965)", Security Council of the United Nations, 12 November 1965.

[24] "Resolution 31/6 (1976)", General Assembly of the United Nations, 26 October 1976.

[25] "Resolution 541 (1983)", Security Council of the United Nations, 18 November 1983.

[26] James Crawford, "State Practice and International Law in Relation to Unilateral Secession", *Report to the Government of Canada concerning unilateral secession by Quebec*, 19 February 1997, p. 2.

[27] Peter Malanczuk, *Akehurst's Introduction to International Law*, Routledge, London and New York, 1999, p. 334.

War with regard to the creation of new states and their subsequent recognition. Kosovo's case surpasses this stable practice and indeed presents *sui generis* case, no matter if it is compared to Bangladesh on the one side or Rhodesia, Bantustans or the Turkish Republic of Northern Cyprus on the other side. In the first case, there was early recognition from the mother state (Pakistan), which resulted in the admission of Bangladesh to the United Nations. In the second group of examples no entity gained such a number of international recognitions like Kosovo, but conversely international community introduced a politics of collective non-recognition towards them. If Kosovo is a *sui generis* case, then it is such a *sui generis* case which does not have substantiation in generally accepted rules of life of the international community and it is unacceptable from the aspect of peaceful coexistence of states and nations and whole world political system' stability. The problem is that there is no reason for the existence of such a *sui generis* case. Also, in the recent events in Crimea and Catalonia, we are able to find significant particularities which could become a basis for consideration of those situations as *sui generis*. However, the basic elements of all these cases are the same. International law does not constitute a unilateral right of a nation or a part of a state on secession, with exception of so-called remedial secession within the process of national liberation movements in cases of massive violation of human rights on territory in question. We only add that the right to secession is not the same as the right of a nation to self-determination. The right of self-determination can be exercised not only by the creation of an independent state but also by other ways within the state borders of a mother state.[28] So there is a need to perceive all situations of secession of some territory with its population from a mother state or attempted secessions equally and always react to them with a refusal of acceptance of such a conduct and by not recognising of entity in question as a state (i. e. for instance in case of Kosovo on the one hand and cases of Abkhazia, South Ossetia and Catalonia on the other hand) regardless the fact whether the entity in question is under any form of international administration or not. As the last resort, we could imagine a really *sui generis* case lying in a situation of international administration of some territory upon preceding resolution of the UN Security Council and its following decision with regard to the independence of that territory. As we know, this was not exactly the case of Kosovo.

[29] See Matúš Štulajter, "Subjects of International Law", in: Matúš Štulajter and Peter Rosputinský (eds), *Introduction to International and Law*, Belianum, Banská Bystrica, 2013, p. 28-29.

Conclusion

The period of ten years is not a long time from the aspect of state's or nation's existence, particularly in case of Serbia, Serbs and their state tradition reaching into the second half of the first millennium AD. On the other side, ten years is very long time if the state and its nation feel injustice and unfairness, which happened to them before the eyes of the whole world, even with "blessing" and participation of its sizeable part. Moreover, the injustice which is not only in the moral and human sphere but has international legal and international political contexts and involves one of the most important questions in the life of states and nations. This feeling is enhanced by a fact that Serbia and Serbs can compare their fate with similar situations, paradoxically, not in the far America or exotic Africa, but right in their own neighbourhood in various parts of Europe. Until now, these other situations have developed to exactly opposite endings.

Moreover, the case of Kosovo is not important only for Serbia. It is a lesson for all states, particularly for the small ones. Kosovo can be whenever used as a model for the realisation of certain national interests of superpowers or their particular intentions. It is well illustrated by the action of the Russian Federation (a) in summer 2008 when Russia decided to recognise the South Ossetia and Abkhazia, although these entities declared independence from Georgia at the beginning of the nineties of the twentieth century and (b) at the beginning of 2014 in the relationship to Crimea. In the context of the Russian foreign policy development priorities, it is pointless to speculate whether Russia would have proceeded in a different way if Kosovo would not declared independence on 17 February 2008 and would not subsequently be recognised by the USA and many European and other states.

On the other side, what may appear surprising in the relationship to entities attempting independence, there are no references to Kosovo – neither in Catalonia, Scotland or in Kurdistan which all are, as it currently seems, actual candidates for new states. The reason is probably that the model of Kosovo creates a controversial case of the origin of a state dividing international society to two still approximately equal parts, and not the fact that Kosovo was a *sui generis* case completely different from their own situations.

Finally, the essential problem still remains the demand of a certain part of the state's population to establish their own state independent from the mother state. As there is no system of precedents in international public law, is it politically and legally appropriate always to seek for some particularities in every single case in order to justify the necessity of special solution, like it was frequently mentioned with respect to the future status of Kosovo after 1999? If

we admit this, it could lead to destabilisation and probably also to disintegration of many states of the world. In that situation, it would be easy to find a single particularity, proclaim the given situation as a new *sui generis* case and demand a right to secede from a mother state following Kosovo's example. This attitude would be very irresponsible and would involve immense risk of abuse.

International public law is one integrated legal system governing relations around the world. It should be equally effective for everyone in every situation in which all corresponding preconditions of application of its particular rule are fulfilled. Selective application of rules on the same or similar situations in the world is inappropriate and unacceptable, too. So far, we can only state that this selective application happened in the case of Serbia and Kosovo. It is impossible to predict the further development of Kosovo's position within the international community. For example, it is sufficient to remind the number of international recognitions of the Republic of China (Taiwan) in the sixties of the twentieth century and their present-day status, when this entity is recognised only by 19 members of the United Nations Organization. Although Suriname rescinded its recognition of Kosovo at the end of 2017, it is too early to talk about a tendency in reconsideration of attitudes of states towards Kosovo. However, we cannot absolutely preclude that future development will take this course. Today, it seems to be more realistic that the *status quo* in Kosovo will freeze in the similar way like in the case of the Palestinian statehood. And this is neither a good precedent nor a good *sui generis* case.

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NORMATIVE INCONSISTENCIES IN THE STATE SYSTEM WITH SPECIAL EMPHASIS ON INTERNATIONAL LAW

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Abstract: In order to be perceived as legitimate by those subject to it, a system of legal norms should be free of contradictions. The very idea of justice is incompatible with an erratic interpretation and, subsequently, arbitrary application of norms. Systemic contradictions make actions by state authorities unpredictable. However, at the domestic as well as at the international level, considerations of power and interest have often made of the respective body of norms a "hermeneutical minefield." The international legal order, in particular, contains contradictions even between the most basic principles such as state sovereignty, self-determination and the rules of international humanitarian law. While at the national level the authority of constitutional courts may help to eliminate contradictions and inconsistencies, there exists, apart from limited regional arrangements, no such separation of powers at the international level. The paper analyzes, *inter alia*, the systemic, destabilizing impact of normative contradictions in exemplary cases related to the interpretation of the United Nations Charter and the system of international humanitarian and international criminal law.

Keywords: international law, international humanitarian law, international criminal law, self-determination, United Nations Charter, Kosovo case.

I. The precarious nature of the rule of law

The stability of any state system, whether national or international, depends on the rule of law. This essentially means *general acceptance* and *consistent enforcement* of norms that govern interaction among *citizens*, at the domestic, or *states*, at the inter-governmental level. The very rationale of a state, indeed the main justification of its existence, is the capacity to enable its citizens to live free from fear and guarantee their physical integrity. The essence of it is a kind

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of "social contract" on the basis of mutuality and without "metaphysical" or ideological implications that would privilege only certain groups of society. The major challenge, however, and in the international context, in particular, is that it has proven to be virtually impossible to avoid, or eliminate, certain normative contradictions from the respective corpus of norms.

Consistency (A) in the *enforcement* of norms, i. e. avoidance of double standards, presupposes consistency (B) of the respective *system* of norms. Domestically, this relates to the Constitution and the body of laws created under it; internationally, the "system" means the corpus of norms regulating relations between states (general as well as customary international law), including those of *jus cogens*, and the ever-increasing set of specific norms contained in intergovernmental treaties, particularly the United Nations Charter. If (A) is not guaranteed, we are faced with an erosion of confidence in the system, indeed a loss of legitimacy. If (B) cannot be ensured, the system as such *collapses* since the very validity of norms is at stake if a Constitution – more generally: a system of norms – contains (logical) contradictions. Although the validity of norms (values) as such cannot be proven in the *material* sense, i.e. in terms of their content (a normative statement is neither true nor false), logic applies at the *formal* level, i.e. to the *relations* between norms, namely questions as to the compatibility of their content.[2]

Strictly speaking, the *rule of law* remains an abstract ideal if (A) or (B) cannot be ensured. While the requirements under (A) can – in principle at least – be fulfilled on the basis of sincerity and good will of state authorities, and under the watchful eye of an active citizenry, those under (B), pertaining to the very integrity of the respective system of norms and doctrinaire issues, are an entirely different matter. In fact, contradictions between norms are often overlooked or covered up, whether for reasons of "legistic" convenience or political expediency – the latter often as a result of power interests or, more precisely, power politics, described as "realpolitik" at the global level.

We shall concentrate here on the latter, namely contradictions between norms in the political context, with a special focus on the norms that govern relations between states. Unavoidably, we can only elaborate on some of the most striking and potentially destabilizing cases of normative conflicts.

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[2] For details see the author's considerations: "Zum Verhältnis von logischen Prinzipien und Rechtsnormen," in: Hans Köchler, *Philosophie – Recht – Politik: Abhandlungen zur politischen Philosophie und zur Rechtsphilosophie*. (Veröffentlichungen der Arbeitsgemeinschaft für Wissenschaft und Politik an der Universität Innsbruck, Vol. IV.) Vienna, New York: Springer, 1985, pp. 9ff.

II. Contradictions between norms in the domestic and international context

(A) At the **domestic level**, there are basically three categories of normative contradictions whereby, in a democratic system, the first one puts in jeopardy the rule of law as such:

1) Inconsistency, in the constitution, between the basic norm according to which the law emanates from the "people" on the one hand and the norms regulating the very creation of norms (laws) on the other:

With the exception of systems of *direct* democracy, laws are adopted by way of parliamentary decisions, i.e. by way of "representation." This means that a group of individuals decides *on behalf* of the totality of the people. According to this doctrine,[3] each of those individuals (deputies) exercises his/her mandate *freely* – in the service of the common good, only bound by the dictates of conscience. According to the respective constitution, the freedom of the "free mandate" relates to the individual deputy, *not* to the people represented by him/her. (In fact, however, it is mostly exercised as "imperative mandate" on behalf of the party or political interest group the deputy belongs to.) What are the implications of such an *intra-constitutional conflict* between the general maxim of any democratic system – that the citizens are the source of the law – and the norms for the creation of laws? How can the legitimacy of a democratic system be upheld if it is based on a contradiction to its basic norm? What, first and foremost, is the meaning of the "rule of law" if the creation of laws is based on contradicting constitutional norms? Basically, there are two contradictions/ inconsistencies in the domestic framework of norm-creation: (a) The incompatibility of the rules of law-making with the constitution's basic maxim (a problem faced by any parliamentary system that is labeled "democratic");[4] (b) the contradiction, resulting from the unwritten practice of law-making according to which the deputy is bound by instructions of his party (and not by his/her conscience). This regulation is in open conflict with the norm of the free mandate.[5] In both

[3] For details see, *inter alia*, the author's analysis, "La théorie de la représentation: La question de l'idéalisme dans la théorie politique," in: Hans Köchler (ed.), *The Crisis of Representative Democracy*. Frankfurt a. M., Bern, New York: Peter Lang, 1987, pp. 39-61.

[4] See also Hans Kelsen, *Essence and Value of Democracy* [*Vom Wesen und Wert der Demokratie*, 1920]. Lanham: Rowman & Littlefield Publishers, 2013.

[5] For details, including the Austrian practice, see the author's analysis: "A Theoretical Examination of the Dichotomy between Democratic Constitutions and Political Reality," in:

instances, the idea of the "rule of law" is in jeopardy because its practice contains a *self-contradiction*, albeit of different degrees.

2) The second category of normative contradictions at the domestic level relates to inconsistencies (a) between constitutional norms and those of positive law or (b) between positive norms. Cases under (a) also include contradictions between domestic laws and international (e. g. human rights) norms insofar as they are incorporated into the respective constitutional system. It is essential for the rule of law that those contradictions are eliminated in a context of a strict separation of powers, i.e. by an independently acting constitutional court at the domestic or an international court where such arrangements exist (such as the European Court of Human Rights) at the intergovernmental level. As this is the daily business of the judiciary in any functioning polity, we shall not go into details.

3) There is indeed a third category of normative contradictions, which is mostly ignored in our thinking about the state and the rule of law. It relates to the *coercive powers of the state*, namely the state's authority to violate the basic norms of human rights (such as the right to life, personal freedoms, etc.) (a) as part of the system of penal law and (b) under the provisions of a state of emergency.[6] In both instances, the overriding goal regulating these *exceptions* is the enforcement of those very norms on a

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Jean-Paul Harpes and Lukas K. Sosoe (eds.), *Demokratie im Focus / La Démocratie en Discussion / Democracy Reconsidered. Dokumentation des Kolloquiums NEUE WEGE DER DEMOKRATIE (Luxemburg, 14.-17.12. 1995)*. (Series "Neue Wege der Demokratie / Nouvelles Voies de la Démocratie," Vol. 1.) Münster, Hamburg. Berlin, London: LIT-Verlag, 2001, pp. 48-57. – N. B.: The Austrian term for this patently unconstitutional practice is "Klubzwang" ("club coercion").

[6] Article 4(1) of the *International Covenant on Civil and Political Rights* provides that: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." However, under this Covenant, no derogation may be made from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18, including provisions concerning the right to life (Article 6), the prohibition of torture, et cetera. As regards the right to life, the prohibition of derogation is virtually meaningless since the Covenant (a) only protects a person from the "arbitrary" deprivation of his life, and (b) anyway accepts, under certain conditions, the death penalty in countries that have not yet abolished it.

permanent – or sustainable – basis and within a clearly defined constitutional framework. It goes without saying that, in order not to slide into despotism, this de facto *absolute* power of the state over the individual (citizen) has to be tamed through elaborate mechanisms of a *separation of powers* and with the vigilance of an educated civil society.

With normative contradictions at the international level in mind, we shall only highlight the one "normative apory" (for most: contradiction) that haunts those systems, which practice the *death penalty* as *ultima ratio* of the coercive power of the state. It is open to question how the fundamental human right, the right to life – that is the basis of all other rights of the citizen as a human being, can be violated by the state in the name of those very citizens the protection of whose rights is the only source of legitimacy of the state. The International Covenant on Civil and Political Rights is ambiguous, in fact *inconsistent*, in that regard. What is called, in the Covenant, the "inherent right to life" is effectively invalidated by the subsequent statement: "No one shall be *arbitrarily* deprived of his life."[7] (Emphasis by the author) This implies that someone may be deprived of his life on the basis of a law (e.g. the regulations for the imposition of the death penalty), which renders "inherent" without meaning.

(B) At the *international level*, apories of this nature, resulting from irreconcilable normative conflicts (as referred to under sections A[2] and A[3] above), abound. Not only is the body of norms subsumed under the term "international law" *law* only in very *rudimentary* form – as there exists no universal and consistent mechanism of enforcement; there effectively exists no separation of powers either to adjudicate such conflicts. The International Court of Justice, part of the edifice of the United Nations Organization, is not the "constitutional court" of the international community. The sheer number of contradictions risks to undermine the very legitimacy of the United Nations and may make the "international rule of law" an elusive goal.

There are essentially *two types* of normative inconsistencies of which we shall highlight some of the most striking ones, with far-reaching consequences for the stability and reliability of the system of inter-state relations. We are dealing (a) with strictly logical contradictions, i.e. incompatibilities of normative content, as in the case of "sovereign *equality*" vs. *inequality* derived from a special privilege as embodied in the *veto power* of certain member states of

[7] Article 6(1): "Every human being has the inherent right to life. This right shall be protected by law."

the UN Security Council.[8] (In this context, both "equality" and "inequality," are to be understood in the normative, not factual sense.)

The second type of inconsistencies (b) result from ambiguity in regard to the *hierarchy of norms* in the international system. This particularly relates to the status of *jus cogens* of the general international law. One of the most obvious examples is the conflict between the norm of non-interference, derived from national sovereignty, and fundamental norms of human rights. Do norms of a higher category effectively abrogate those of a less basic nature? (The question is similar to the normative conflict in a domestic system where the individual's right to property may, in certain cases, be subordinated to considerations of the common good. In such cases, however, there are elaborate judicial procedures to resolve the conflict on the basis of the respective constitution.) The dilemmata resulting from and controversies surrounding the practices of "humanitarian intervention"[9] – or actions under the "Responsibility to Protect" doctrine, to use the more recent term – have made drastically obvious that, in actual state practice, there exists no consensus on the hierarchy of norms that would allow resolving those normative conflicts. To the contrary, disagreement on these doctrinaire issues has further fueled international tensions as in the cases of the use of force against Iraq (2003), Libya (2011), and, more recently, Syria. Can norms, enshrined in the United Nations Charter, such as that of "sovereign equality," be defined as *relative*, i. e. subordinated to the validity of other norms such as human rights, understood as *jus cogens* of the general international law? Can one, in fact, argue in favor a general "human rights caveat" that would be tantamount to the "measuring" of every other norm of international law against standards on which there is, as of yet, no agreement as to their specific meaning? The question of "who adjudicates?" in cases of disagreements cannot be answered under the present conditions. In the absence of legal mechanisms, i. e. without a separation of powers with an International Court of Justice with compulsory jurisdiction as an integral part,[10] the

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[8] On the implications of this contradiction for collective security and the international rule of law see the author's analysis: *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction and its Consequences on International Relations*. (Studies in International Relations, Vol. XVII) Vienna: International Progress Organization, 1991.

[9] For normative contradictions and moral dilemmata see the author's analysis: *The Concept of Humanitarian Intervention in the Context of Modern Power Politics: Is the Revival of the Doctrine of "Just War" Compatible with the International Rule of Law?* (Studies in International Relations, Vol. XXVI.) Vienna: International Progress Organization, 2001.

[10] According to Article 94(2) of the UN Charter, enforcement of judgments of the ICJ by the Security Council is at the discretion of the Council, which is not compatible with the idea of compulsory jurisdiction in a context of a separation of powers.

risk is that these normative conflicts and disagreements are resolved by resort to the arsenal of power politics, not the instruments of law.

We shall exemplify the above types of contradictions in different areas and respects, relating to: (a) the normative consistency of the Charter of the United Nations Organization and of the body of norms of international criminal law; (b) the overall compatibility between different bodies of international law and specific treaties ("systemic consistency" of contemporary international law); and (c), on an exemplary basis, contradictions between specific *maxims* of international law. The issues will be demonstrated, in particular, in regard to the legal status and doctrinaire evaluation of the international use of force, of national sovereignty and of human rights. The enumeration of 10 exemplary cases – most of which, most of the time, are hidden from public scrutiny – will be followed by questions as to the reasons behind these contradictions and inconsistencies and by a reevaluation of the meaning of "rule of law" in the international context.

Contradictions within the United Nations Charter

1. The Principle of **sovereign equality** (Article 2[1] of the UN Charter) versus the norm underlying the **veto privilege** of the Security Council's permanent members (Article 27[3] of the UN Charter):

   The rule that all decisions of the Council other than procedural ones require the consent of the five permanent members[11] makes the notion of **equality** of all member states, derived from the principle of sovereignty,[12] void of any legal meaning. If one of the basic principles of the world organization is effectively invalidated by a norm on decision-making in the body vested with supreme executive power, the entire edifice of the UN Charter is – due to this normative inconsistency – on shaky ground. In actual fact, this means that the norm of *equality* strangely "coexists" in the UN Charter with its very antithesis, namely the (unspoken) norm of *inequality.* It goes without saying that a logical contradiction between the contents of norms, in fact, a conflict with one of the system's *basic* principles, makes it impossible to characterize such a system as in conformity with the rule of law. It may more appropriately be characterized as a system of *political*, not legal, rules and regulations.

[11] Article 27(3).

[12] Article 2(1): "The Organization is based on the principle of the sovereign equality of all its Members."

2. **Ban on the use of force** (Article 2[4] of the UN Charter) versus the effective **reintroduction of *jus ad bellum*** because of the non-abstention clause of Art. 27(3) of the Charter:

   The principle that all member states "shall refrain in their international relations from the threat or use of force" becomes virtually meaningless as regards the permanent members' "accumulated privilege" of (a) preventing any resolution of the Council on matters under Chapter VII (collective security) by withholding their consent, and (b) being free from the obligation to abstain in a case where a permanent member is itself "party to a dispute," as in the very case mentioned in Article 2(4), namely an act of aggression "against the territorial integrity or political independence" of another state. As the veto rule itself, circumscribed as the requirement of the "concurring votes of the permanent members" (Article 27[3]), this additional decision-making rule is introduced only *obliquely*, namely by implication, insofar as the Article stipulates that the indicated voting procedure (including the veto privilege) is to be understood under the condition ("provided that") that in decisions under Chapter VI (which deals with *non-binding* measures on the peaceful settlement of disputes) a party to a dispute "shall abstain from voting." Ergo, the obligation to abstain does not apply to decisions under Chapter VII. This provision applies to *all* members of the Security Council, permanent and non-permanent, but in combination with the veto right it becomes a *tool of power politics* by which a permanent member can prevent the Council from taking coercive measures against its own acts of aggression. The Council will, thus, always be paralyzed when it comes to the most serious transgressions of international law by its permanent members. There is a special irony in the fact that for non-enforceable decisions (under Chapter VI) a higher standard, namely the obligation to abstain in case of involvement in a dispute, applies than for binding, enforceable resolutions (by use of armed force) under Chapter VII (in cases of "threats to the peace, breaches of the peace, and acts of aggression"). Again, as under (1) above, it goes without saying that such an outright contradiction between the general rule of justice *nemo judex in causa sua* (heeded by the Charter in regard to less important, i.e. non-binding decisions) and a decision-making rule (privilege) in the field of collective security (i.e. coercive measures) makes the idea of the rule of law in relations between states void of any meaning.
3. **Non-interference in the internal affairs of states** (a norm generally derived from the *principles* in Articles 2[1] and 2[4], and affirmed as binding upon the world organization in its own actions in Article 2[7]) versus the **right to intervene** according to the doctrines of "humanitarian intervention" or

"Responsibility to Protect" (R2P), both of which are based on the interpretation of human rights as *jus cogens* of the general international law:

As explained in the introductory remarks of the chapter (B) above, this normative conflict may only be resolved if consensus can be reached in the international community on the *hierarchy* of norms and if there is an independent, impartial body to decide on the use of force and its scope. The UN Security Council's coercive powers are tied to its role in the preservation of peace and security and may only *indirectly* be activated for a collective use of force with humanitarian purpose, namely if the Council, under Article 39 of the Charter, determines that a situation of human rights violations or a humanitarian emergency in a member state constitutes a "threat to the peace." However, the crux of the matter is that the Council, for reasons partly explained under (1) and (2) above, cannot act as arbiter in cases of fundamental rights. Because of the voting procedure of Article 27(3), the Council effectively operates as a *political* organ. Notwithstanding the solemn collective commitments to the Principles of Article 2, its decisions are dictated by considerations of power politics, not by a fundamental concern for the preservation of human rights.[13] Furthermore, the Council's vast coercive powers, in tandem with its de facto *legislative* authority and quasi-judicial competence it has arrogated in recent years,[14] making it prone to arbitrary action. Furthermore, a *practice of double standards* is the inevitable result of the veto privilege of the permanent members. If the basic norm of state sovereignty can indeed be "temporarily" abrogated for the defense of human rights (i.e. in cases of humanitarian emergencies deemed by the Council as threats to international peace and security), *arbitrariness* resulting from the ever-changing constellation of power and interests among the permanent members defeats the very idea of humanitarian action and negates the legality of such action. The case of Libya, just to mention one of the most recent examples, speaks for itself.[15]

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[13] For details see the author's earlier analysis: "The Politics of Global Powers," in: *The Global Community. Yearbook of International Law and Jurisprudence*, 2009, Vol. I, pp. 173-201.

[14] On the implications of the change of the role of the Security Council for international legality see the author's analysis: *The Security Council as Administrator of Justice?* (Studies in International Relations, Vol. XXXII.) Vienna: International Progress Organization, 2011.

[15] See, *inter alia*, *MEMORANDUM by the President of the International Progress Organization on Security Council Resolution 1973 (2011) and its Implementation by a "Coalition of the Willing" under the Leadership of the United States and the North Atlantic Treaty Organization*. International Progress Organization, Doc. P/22680c, Vienna, 26 March 2011, http://i-p-o.org/IPO-Memorandum-UN-Libya-26Mar11.pdf.

4. **Self-determination of <u>peoples</u>** (Article 1[2]) as *purpose* versus **<u>state</u> sovereignty** (according to Article 2[1]) as a *principle* of the United Nations:

   An irreconcilable normative conflict exists between a state's right to preserve its territorial integrity, derived from the principle of sovereignty (to be respected by all states on the basis of *mutuality*), and the right of peoples to determine themselves their form of political organization, including the decision to which sovereign entity they eventually want to belong. In the contemporary system of international law, self-determination has the status of a fundamental human right.[16] The United Nations Charter, nonetheless, leaves the question of that right's status in relation to national sovereignty in limbo, and the numerous solemn declarations in favor of "self-determination" by the General Assembly have only added to the legal ambiguity. If the right of self-determination as the *collective* human right is indeed the foundation of the legitimacy of a state,[17] if it is invoked as legal (not only moral) justification for *state creation*, it can hardly be argued that its exercise is ultimately at the discretion of an existing state. The very notion of "self-determination" makes no normative sense if its exercise in a given case depends upon the consent of the state that sees in that very act a threat to its territorial integrity, i.e. a challenge to its *sovereign* status within the international community, guaranteed by the UN Charter.[18] This unresolved conflict between two foundational norms of international law has profoundly destabilized the international system and has been the source of political disputes with the threat of extra-legal settlement by resort to armed force. Again, this contradiction exemplifies the precariousness of the international rule of law as guiding principle of a global system of peace.

Contradictions related to international criminal justice

5. **National sovereignty** versus **universal jurisdiction**:

   The norm of "national sovereignty," enshrined in the UN Charter as "sovereign equality" of all member states, implies strict adherence to the

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[16] Article 1(1) of the International Covenant on Civil and Political Rights: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

[17] See also Allen Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. Oxford: Oxford University Press, 2004.

[18] For an overview of the legal and political issues see Y. N. Kly and D. Kly (eds.), *In Pursuit of the Right to Self-determination: Collected Papers & Proceedings of the First International Conference on the Right to Self-determination & the United Nations, Geneva 2000*. Atlanta: Clarity Press, 2001.

rule of non-interference into the internal affairs of states (of which criminal jurisdiction is one of the main areas). There are basically two instances where an irreconcilable normative contradiction exists in terms of the exercise of criminal jurisdiction. (a) The doctrine of "universal jurisdiction," recently incorporated into the legal systems of certain states,[19] implies the authority of any *domestic* judiciary to exercise jurisdiction over international crimes irrespective of the nationality of the suspect and the territory on which the alleged crimes may have been committed.[20] This has led to numerous controversies and disputes among UN member states such as those between Belgium and the United States or Israel over the application of Belgium's war crimes law of 1993. Because of its repercussions on the country's foreign policy, Belgium has eventually modified the law, conditioning its application to a direct connection of a case to the Kingdom of Belgium, thus trying to avoid a conflict over the sovereignty issue.[21] As such, the doctrine of universal jurisdiction constitutes one of the most serious and far-reaching challenges to the norm of national sovereignty in contemporary international law.[22] (b) The "creation" of international criminal jurisdiction by fiat of the UN Security Council has often been qualified as a violation of the sovereignty of member states. It is an open question whether *ad hoc* courts such as the Yugoslavia or Rwanda tribunals, established by way of Chapter VII resolutions of the Security Council, are in conformity with international law.[23] If the creation of courts can indeed be construed as a measure to maintain or restore

[19] This step has in most cases been connected to those states' decision to join the International Criminal Court – in view of the Rome Statute's principle of complementary jurisdiction.

[20] For the development of this doctrine see the author's *Global Justice or Global Revenge? International Criminal Justice at the Crossroads*. Vienna/New York: Springer, 2004, pp. 79ff.

[21] For details see op. cit., pp. 93ff.

[22] As regards the "sovereign immunity" of state officials, this is also reflected in the judgment of the International Court of Justice (ICJ) in the case of the arrest warrant by a Belgian investigating judge, dated 11 April 2000, against the then Foreign Minister of the Democratic Republic of the Congo: International Court of Justice, Year 2002, 14 February 2002, General List No. 121: [Judgment] *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*.

[23] Concerning the Yugoslavia Tribunal see *MEMORANDUM on the Indictment of the President of the Federal Republic of Yugoslavia, the President of the Republic of Serbia and Other Officials of Yugoslavia by the "International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991"*. International Progress Organization, Caracas, 27 May 1999, at http://i-p-o.org/yu-tribunal.htm.

international peace and security according to Article 41 of the Charter, Article 2(7) of the Charter would apply, which provides an exception from the rule of non-interference for all Chapter VII measures. If this were not the case (i.e. if judicial measures cannot be construed as part of the UN system of collective security), the jurisdiction of *ad hoc* courts would be in strict violation of the norm of national sovereignty.[24]

6. **International humanitarian law** versus an interpretation of international law that considers the use of **arms of mass destruction** as a legally neutral act of warfare:

   According to the norms of international humanitarian law, the indiscriminate targeting of civilians constitutes a war crime. "War crimes" are defined as "international crimes" which concern the community of states as such and over which – since the Nuremberg and Tokyo tribunals in particular – international criminal courts (such as the International Criminal Court) have jurisdiction. The use of arms of mass destruction, in particular nuclear arms, makes the distinction between civilian and military targets effectively impossible. It has thus been argued that the use of such arms is *per se* incompatible with international law. As regards nuclear arms, this was clearly stated, *inter alia*, by the General Assembly of the United Nations. In a resolution adopted on 15 December 1983, the member states declared: The General Assembly "*Resolutely, unconditionally and for all time condemns* nuclear war as being contrary to human conscience and reason, as the most monstrous crime against peoples and as a violation of the foremost human right – the right to life."[25] In an Advisory Opinion, requested by the UN General Assembly,[26] the International Court of Justice determined, *inter alia*, and with a caveat "in an extreme circumstance of self-defence," "that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law."[27] The

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[24] See the author's analysis: "The Security Council and ad hoc international tribunals," in: Hans Köchler, *The Security Council as Administrator of Justice? Reflections on the Antagonistic Relationship between Power and Law*. Studies in International Relations, Vol. XXXII. Vienna: International Progress Organization, 2011, pp. 17-47.

[25] 97th Plenary Meeting, A/RES/38/75 ("Condemnation of nuclear war"), Paragraph 1.

[26] Resolution 49/75, 15 December 1994 ("Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons").

[27] International Court of Justice: *Legality of the Use by a State of Nuclear Weapons in Armed Conflict. Advisory Opinion*, Year 1996, General List No. 93, 8 July 1996.

International humanitarian law would thus be rendered obsolete, indeed void of any normative content, if it were perceived as not applicable in cases of the most extreme violations, namely the use of arms of mass destruction. The inherent normative contradiction would also totally undermine the meaning and statutory position of human rights in the international system.

7. The prohibition of the indiscriminate targeting of civilians under **international humanitarian law** versus a restriction of the jurisdiction of the International Criminal Court in cases of the use of nuclear arms, i.e. in a matter of **international criminal law**:

   Related to the above-described contradiction (paragraph 6) is a normative conflict implied in the position of France concerning the *jurisdiction* of the International Criminal Court. In an "interpretive declaration" made upon ratification of the Rome Statute, France has stated that the Court's jurisdiction over *war crimes* solely relates to cases where conventional weapons are used. It specifically excluded the use of nuclear arms from the jurisdiction of the Court, stating that Article 8(2)(b) – that deals with intentional attacks on civilians – only covers conventional warfare.[28] Although the declaration further stated that this exclusion from jurisdiction will only prevail as long as there exists no comprehensive ban on the use of nuclear arms – which would have to be specified in an annex to the Rome Statute by way of an amendment, the declaration effectively amounts to a "reservation," something which is explicitly excluded in the Rome Statute (Article 120). Should this unilateral declaration by France (that effectively undermines the Court's jurisdiction) be accepted, the International Criminal Court's jurisdiction over war crimes would become totally meaningless since this reading of the Statute would only allow the investigation and prosecution of "minor" crimes while the potentially gravest violations would be beyond the reach of the law. For a legal critique, the interpretive declaration of France should also be validated in the context of the ICJ's Advisory Opinion on the use of nuclear weapons.[29]

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[28] "The provisions of article 8 of the Statute, in particular paragraph 2(b) thereof, relate solely to conventional weapons and can neither regulate or prohibit the possible use of nuclear weapons …" United Nations, *Multilateral treaties deposited with the Secretary-General – Treaty I-XVIII – 10.* "Rome Statute of the International Criminal Court, Rome, 17 July 1998."

[29] Fn. 26 above.

Contradictions related to issues of jurisdiction of the International Criminal Court

8. **International treaty law** versus **international criminal law**:

Article 34 of the Vienna Convention on the Law of Treaties[30] states that "[a] treaty does not create either obligations or rights for a third State without its consent." This norm is contradicted by the provision of Article 13(b) of the Rome Statute of the International Criminal Court. According to this rule, the United Nations Security Council is given the right to "refer" – by way of a Chapter VII resolution – a situation in which one or more crimes referred to in Article 5 of the Court's Statute[31] "appears to have been committed." This applies irrespective of whether the State on the territory of which the crime may have been committed, or whose citizen may have committed the crime, is party to the Rome Statute or not. The Security Council has made use of this "privilege" – to "create" jurisdiction where it would otherwise not exist – in the cases of Sudan[32] and Libya[33] against whose state leaders and other officials the ICC subsequently issued indictments. That this provision is prone to political abuse has also become obvious in the fact that permanent member states of the Security Council not a party to the Rome Statute (i.e. who *reject* the jurisdiction of the Court in principle)[34] have enabled the Council to adopt those resolutions.[35] Apart from the *normative contradiction*, this has introduced an element of *political inconsistency* and *arbitrariness* in so far as states, for political motives, may make use, in a particular case, of a norm, which they reject in all other cases, and especially as far as their nationals are concerned. This means that the Rome Statute of the

[30] Concluded on 23 May 1969, entered into force on 27 January 1980.

[31] Crime of genocide; crimes against humanity; war crimes; crime of aggression.

[32] Resolution 1593 (2005) adopted by the Security Council at its 158th meeting, on 31 March 2005. For details see the Statement of the International Progress Organization: *Double Standards in International Criminal Justice: The Case of Sudan*. Vienna, 2 April 2005, http://www.i-p-o.org/Koechler-Sudan-ICC.pdf.

[33] Resolution 1970 (2011) adopted by the Security Council at its 6491st meeting, on 26 February 2011.

[34] As regards the United States, cf. the letter, dated 6 May 2002, from John R. Bolton, Under Secretary of State for Arms Control and International Security, to the Secretary-General of the United Nations*: Multilateral treaties deposited with the Secretary-General – Treaty I-XVIII – 10*. "Rome Statute of the International Criminal Court, Rome, 17 July 1998," Note 6.

[35] In the case of the Sudan resolution, the United States and China, both not parties to the Rome Statute, abstained. In the case of Libya, the resolution was adopted unanimously.

International Criminal Court not only contradicts international treaty law and, subsequently, the principle of sovereign equality of States, but also subordinates the Court's jurisdiction to a body that operates outside, and above, the Court's jurisdiction, giving the Council higher rights than the States Parties of the ICC themselves.[36] The matter could only be redressed if the referral right of the Council were defined in the same way as that of the State Parties, namely linking it to crimes "within the jurisdiction of the Court."[37]

9. **International criminal law** versus **United Nations Charter**:

Indirectly related to the above contradiction between the international treaty law and the international criminal law is a contradiction between the Rome Statute of the ICC and the voting privilege in the Security Council. Article 27 of the Rome Statute ("Irrelevance of official capacity") unequivocally states that "[t]his Statute shall apply equally to all persons without any distinction based on official capacity."[38] This means that no official can claim impunity for acts in the exercise of national sovereignty. The notion of "sovereign immunity" is alien to the international criminal law. This is also evident in the statutes of international *ad hoc* courts established by the Security Council such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).[39] Similarly, the doctrine of universal jurisdiction, applied by the domestic judiciary in a number of states, excludes impunity for action in the official capacity.[40]

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[36] For details see also *The Security Council as Administrator of Justice?*, pp. 49ff.

[37] Article 14(1) of the Rome Statute.

[38] The Article further states: "In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence."

[39] See articles 7(2) and 6(2) respectively of the statutes of the ICTY and the ICTR: "The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment."

[40] Following the affirmation by the UN General Assembly of "the principles of international law recognized by the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal" (resolution 177[II] of 21 November 1947), the International Law Commission of the United Nations has drafted this norm in the following way: "Principle III. The fact that a person who committed an act which constitutes a crime under international law acted as a Head of State or responsible Government official does not relieve him from responsibility under international law." For details see also Christopher C. Joyner, "Arresting

However, as regards the (in itself legally problematic) jurisdiction of the ICC on the basis of Article 13(b) of the Rome Statute,[41] officials from permanent member states of the United Nations Security Council enjoy *de facto* impunity, i.e. immunity from prosecution, due to those states' voting privilege under Article 27(3) of the UN Charter. Whenever officials from a permanent member state, or a state allied with the former, might be subjected to the prosecution of the ICC, the concerned state may veto the respective Chapter VII resolution on a referral of a situation. Ironically, in a twist of power politics, this provision "neutralizes" the effects of Article 13(b) of the Rome Statute, which would allow the ICC to exercise jurisdiction even in cases where officials of states not party to the Rome Statute are suspected to have committed crimes referred to in Article 5 of that Statute. Although this relates to all nationals of the respective permanent member states, the potential implications of Article 13(b) for the heads of state and other high officials from non-state parties of the ICC make the veto provision a particularly powerful tool according to the maxim "might makes right," effectively allowing those states to instrumentalize a statute of international criminal law in the interest of power politics.

In general terms, however, the contradiction exists between a norm regulating the jurisdiction of the ICC, namely Article 13(b) of its Statute, and a norm regulating the voting procedure in the Security Council, namely Article 27(3) of the Charter, potentially "immunizing" all nationals from non-states parties of the Rome Statute insofar as those states are permanent members of the Council. Again, this is a case of *judicial inequality* of the highest order, effectively linking legal privileges (immunity from prosecution) to a privilege of power politics (the veto provision in tandem with the non-obligation of parties involved in a dispute to abstain from voting on Chapter VII resolutions).[42]

Contradictions related to the status of human rights

10. **Human rights** norms versus the rules of the **United Nations Charter** regarding the coercive powers of the Security Council:

Impunity: "The Case for Universal Jurisdiction in Bringing War Criminals to Accountability," in: *Law and Contemporary Problems*, Vol. 59, No. 4, Autumn 1996, pp. 153-172.

[41] See paragraph 8 above.

[42] See also paragraph 2 above.

Since the collapse of the global power balance upon the end of the Cold War, the United Nations Security Council has increasingly resorted to the use of economic sanctions as coercive measures under Article 41 of the UN Charter. The most comprehensive sanctions régime to date were the measures imposed on Iraq in the period 1990-2003, mainly victimizing the civilian population. In the pursuit of its mandate under Chapter VII of the Charter, the Council enforced conditions that caused suffering and death to hundreds of thousands of people.[43] In a deposition before the United Nations Commission on Human Rights, the International Progress Organization, on 13 August 1991, deplored the violation of the most basic human right, the right to life, "by an intergovernmental body [namely the UN Security Council / H.K.] against the population of a member state of the UN."[44]

Although the Council, under Article 41, enjoys full discretion in the use of coercive measures – not involving the use of armed force – "to maintain or restore international peace and security" (Article 39), including the "complete or partial interruption of economic relations," it must not be overlooked that the consequences of those measures have often meant the denial of the most basic human rights to the affected civilian population, indeed a form of *collective punishment*.[45] In these cases, a basic normative contradiction cannot be denied between the validity of human rights, as codified in international covenants, if not as peremptory norms (*jus cogens*) of general international law,[46] and the norms regulating the United Nations' mandate for the maintenance or restoration of international peace and

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[43] See the report *The Human Costs of War in Iraq*. New York: Center for Economic and Social Rights (CESR), 2003.

[44] "Statement by the delegate of the International Progress Organization, Warren A. J. Hamerman, before the United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, on UN sanctions against Iraq and human rights, 13 August 1991." UN Document E/CN.4/Sub.2/1991/SR.10, 20 August 1991.

[45] On the legal aspects see also: "The Adverse Consequences of Economic Sanctions." United Nations, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-second session, item 12 of the provisional agenda, Economic and Social Council, E/CN.4/Sub.2/2000/33, June 21, 2000: *Working paper prepared by Mr. Marc Bossuyt.*

[46] On the status of human rights norms see, *inter alia*, Menno T. Kamminga and Martin Scheinin, *The Impact of Human Rights Law on General International Law*. Oxford, New York: Oxford University Press, 2009. – Predrag Zenović, *Human rights enforcement via peremptory norms – a challenge to state sovereignty*. RGSL Research Papers, No. 6, Riga Graduate School of Law, 2012.

security.[47] In the ultimate consequence, the "normative dilemma" consists in the Council's need to reconcile the pursuit of two basic "Purposes" stated in Article 1 of the UN Charter, namely the "maintenance of peace" (Par. 1) on the one hand and the "promotion" of respect for human rights (Par. 3) on the other. In spite of the Council's almost absolute powers under Chapter VII, enabling it to interfere into the sovereign domain of member states, the Council, according to Article 24(2), is still required to act "in accordance with the Purposes and Principles of the United Nations," which means that it is also bound by human rights constraints. However, in the absence of a separation of powers within the UN system,[48] there exists nobody with the authority to review coercive (Chapter VII) resolutions of the Security Council in regard to their compatibility with human rights. In the words of a former Secretary of State of the United States: "The Security Council is not a body that merely enforces agreed law. It is a law unto itself."[49]

III. Normative contradictions and power politics: the dilemma of the international rule of law

Most of the normative contradictions and systemic inconsistencies listed above result from issues related to the *international status of the state* – in terms of the preservation of (state) power in a global competition over the assertion of "sovereignty" and the "national interest," and in a context that is still only marginally determined by law.[50] (In view of what was explained in paragraphs 1 and 2 above, there is simply no way to legally restrain the exercise of power by the Security Council's permanent members.)

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[47] On the question of the authority of the Security Council see also Mary Ellen O'Connell, "Debating the Law of Sanctions," in: *European Journal of International Law*, Vol. 13 (2002), pp. 63–79. – On the compatibility issue see also the author's analysis: *The United Nations Sanctions Policy & International Law*. Just World Trust: Penang, 1995.

[48] The Charter of the United Nations Organization provides for a predominant role of its supreme executive organ, the Security Council, completely marginalizing the role of the General Assembly and the International Court of Justice. As regards the latter, see also Attila Tanzi, "Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations," in: *European Journal of International Law*, Vol. 6 (1995), pp. 539-572.

[49] John Foster Dulles, *War or Peace.* New York: Macmillan, 1950, p. 194.

[50] See also the author's earlier analysis: "The United Nations Organization and Global Power Politics: The Antagonism between Power and Law and the Future of World Order," in: *Chinese Journal of International Law*, Vol. 5, No. 2 (2006), pp. 323-340.

The predominance of considerations of power politics over the commitment to norms related to individual rights, in particular, has been the reason why normative conflicts are often "resolved" with a *casuistic* approach. Which norm is given priority depends on the fluctuation of political interests, defined as the respective "national interest,"[51] in an ever-changing global power constellation. This is particularly obvious when and where the norm of national sovereignty is concerned (referred to as "Principle" of "sovereign equality" in Article 2[1] of the UN Charter). When, i.e. under what circumstances, does it trump human rights or the norms of international humanitarian and international criminal law, and when does it not?

The American Servicemembers' Protection Act of 2002,[52] ironically labeled the "Hague Invasion Act,"[53] is an especially drastic illustration of what may be at stake in terms of establishing a *hierarchy* of norms when legal principles are in direct contradiction. This law constitutes a direct challenge to the *territorial* jurisdiction of the International Criminal Court on the basis of Article 12(2)(a) of the Rome Statute.[54] In the hypothetical case that a US citizen would be prosecuted for the commission of an international crime, and would be extradited to the Court under Article 89 of the Statute ("Surrender of persons to the Court"), the law provides that "The President [of the United States / H.K.] is authorized to use all means necessary and appropriate to bring about the release of any person described in subsection (b)[55] who is being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court."[56] While, under the Rome Statute, the investigation and eventual prosecution of international crimes committed by nationals of non-States Parties on the territory of a State Party to the Rome Statute is a clear-cut case of jurisdiction of the ICC, for the United States this is an equally clear-cut case

[51] On the notion of national interest in the global context see also Hans Morgenthau, *In Defense of the National Interest: A Critical Examination of American Foreign Policy*. New York: Knopf, 1951.

[52] United States Congress, *American Servicemembers' Protection Act of 2002*, H.R. 4775, Public Law 107-206, Sec. 2001-2015, Aug. 2, 2002.

[53] "U.S.: 'Hague Invasion Act' Becomes Law." Human Rights Watch, 3 August 2002, at https://www.hrw.org/news/2002/08/03/us-hague-invasion-act-becomes-law.

[54] The Court may exercise jurisdiction if "[t]he State on the territory of which the conduct in question occurred" is a Party to the Rome Statute.

[55] This relates in particular to United States military and allied personnel and for persons acting in official capacity.

[56] Sec. 2008(a).

of violation of the norm of national sovereignty against which – as a last resort – the use of force, by the United States, on the territory of the Netherlands, the seat of the ICC, would be justified.[57] In addition to this, Article 34 of the Vienna Convention on the Law of Treaties is also quoted according to which "A treaty does not create either obligations or rights for a third State without its consent."[58] Apart from the legal arguments, this appears to be a matter of the interpretation and exercise of the "national interest" by a permanent member state of the Security Council that is not prepared to accept any judicial restrictions, resulting from treaties concluded by third parties, on the conduct of its foreign and security policies – for which it anyway enjoys de facto "immunity" due to Article 27(3) of the UN Charter.[59]

As of today, there exists no overarching system of norms, agreed upon among all states that would make it possible to resolve this conflict (between the exercise of sovereignty and the requirements of international criminal justice) *within the normative realm*. In spite of its labeling as "the principal judicial organ of the United Nations,"[60] the ICJ is not the constitutional court of the international community. In its own interpretation, for instance, it cannot rule on any complaints of member states when the Security Council of the United Nations has acted on the basis of Chapter VII of the Charter.[61] The inbuilt

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[57] Also in current Security Council terminology, the phrase "all necessary means" includes the use of armed force.

[58] Concerning the U.S. position see, *inter alia*, Bartram S. Brown, "U.S. Objections to the Statute of the International Criminal Court: A Brief Response," in: *NYU Journal of International Law and Politics*, Vol. 31 (1999), pp. 855-891; esp. pp. 868ff ("Does the Statute Violate the Law of Treaties?").

[59] See ch. B(9) above.

[60] Statute of the International Court of Justice, Article 1.

[61] This follows, by implication, from the Judgment of the ICJ of 27 February 1998 in the case Libya vs. United States (Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), esp. paras. 39-44. The Court ruled: "As to Security Council resolution 731 (1992), adopted before the filing of the Application, it could not form a legal impediment to the admissibility of the latter because it was a mere recommendation without binding effect (…). Consequently, Libya's Application cannot be held inadmissible on these grounds." N.B.: Security Council resolution 731 (1992) was not based on Chapter VII of the Charter, while all later resolutions (adopted after Libya filed its Application) were based on the Council's coercive powers under Chapter VII, which meant – in the interpretation of the Court – that the matters dealt with in those resolutions were excluded from scrutiny by the ICJ. In their Joint Declaration, annexed to the Judgment, Judges Bedjaoui, Ranjeva and Koroma however stated "that it is not sufficient to invoke the

systemic contradictions in contemporary international law, and in particular within the United Nations system, resulting from an unrestrained exercise of the national interest under the auspices of state sovereignty, have not only made the global order ever more precarious, and even more so in the absence of a balance of power,[62] but threaten to undermine the very idea of the "international rule of law," embodied by the United Nations Organization.

As a kind of guiding principle of a polity, whether domestic or international, the notion of the "rule of law" makes no sense unless normative contradictions are eliminated – or avenues are seriously pursued to resolve systemic inconsistencies. If not, norms may be declared valid simply on the basis of a *priority of interests* – which will nurture a legal culture of "anything goes" where arbitrariness replaces reliability and accountability of state behavior. What would be important, in that regard, is that consensus is reached on a precise *hierarchy of norms* whereby norms of higher order derogate those of a lower order.[63] So far, however, a basic precondition of such a normative syllogism in the inter-state context is not in place: In spite of the vast compendium of definitions produced by the International Law Commission of the United Nations, a "normative hermeneutics" that would assist states to agree on a clear and unambiguous definition of legal terms (even as basic as "self-determination," "sovereignty," "use of force," "self-defense," or "equality") is not in sight – as there exists no general agreement either on what, for instance, constitutes norms of *jus cogens*.[64] There is also the obstacle of realpolitik: a more precise definition of those terms will remain a desideratum simply because vagueness is often a requirement of consensus – especially when interests are to be camouflaged in legal terminology.

Apart from the *philosophical caveat* that makes us aware of the fragile nature of law in the power-centered framework of inter-state relations, there is also a twofold *caveat of realpolitik* (or, more euphemistically, diplomacy): (a)

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provisions of Chapter VII of the Charter so as to bring to an end ipso facto and with immediate effect all argument on the Security Council's decisions."

[62] See also the author's analysis: "The Precarious Nature of International Law in the Absence of a Balance of Power," in: Hans Köchler (ed.), The Use of Force in International Relations: Challenges to Collective Security. (Studies in International Relations, Vol. XXIX.) Vienna: International Progress Organization, 2006, pp. 11-19.

[63] On an earlier effort of the author to establish criteria for such a procedure see: "Die Prinzipien des Völkerrechts und die Menschenrechte: Zur Frage der Vereinbarkeit zweier Normensysteme," in: Zeitschrift für öffentliches Recht und Völkerrecht, Vol. 32 (1981), pp. 5-28.

[64] For a critical assessment see Ulf Linderfalk, "The Effect of Jus Cogens Norms: Whoever Opened Pandora's Box, Did You Ever Think About the Consequences?," in: European Journal of International Law, Vol. 18 (5), pp. 853-871.

Contradictions between norms often result from conflicts of interests, and, (b) as far as the United Nations Charter is concerned, inconsistencies that are the legacy of a compromise with power politics cannot be eliminated because of the veto.[65] Due to Article 108 of the Charter, linking amendments to the consent of the permanent members, the world organization is indeed caught in a vicious circle. The *predominance of interests over norms* leaves the international community – or, more precisely, the system of inter-state relations – in a state of limbo that makes the "international rule of law" ever more elusive.

Annex:
Self-determination and the Law of Force: The Case of Kosovo

In contemporary international law, the relationship between the norms of national sovereignty and self-determination is not yet consistently defined.[66] Which norm is given priority depends on the prevalent constellation of power and interests in each specific case.[67] The practice of double standards is the rule rather than the exception. This has made it impossible to rationally define conditions under which the invocation of the right of self-determination, and the subsequent secession of a territory from an internationally recognized state, constitutes a precedent in *legal* terms. It cannot be denied, however, that *politically* such acts may be seized upon as "precedent" as has become evident in debates of self-determination in the years after the Kosovo "Declaration of Independence"[68] in 2008.[69]

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[65] See paragraph 1 of chapter (B) above.

[66] See chapter II/B/4 above. – For details see also Hans Köchler, "Obstacles to the realization of self-determination in the state-centered framework of the United Nations Charter," in: Hans Köchler, *World Order: Vision and Reality*. Ed. David Armstrong. Manak: New Delhi, 2009, pp. 138ff.

[67] In regard to Kosovo, see "Introduction," in: Christopher J. Borgen, "Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition, " in: American Society of International Law / *ASIL Insights*, Volume 12, Issue 2, 29 February 2008, at https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and.

[68] Issued in the name of "We, the democratically elected leaders of our people," by a group of politicians "convened in an extraordinary meeting on February 17, 2008, in Pristina." Full English text released by British Broadcasting Corporation at http://news.bbc.co.uk/2/hi/europe/7249677.stm.

[69] See, e.g., James Summers (ed.), *Kosovo: A Precedent? The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-Determination and Minority Rights*. Leiden/Boston: Martinus Nijhoff Publishers, 2011.

In this particular case, the sequence of events that led to the secession of Kosovo from the Republic of Serbia was triggered by an illegal international use of force in violation of Article 4(2) of the United Nations Charter.[70] (In the course of these events international crimes may have been committed that were never properly investigated by a duly constituted international tribunal.)[71] The attack was preceded by an ultimatum no responsible government could have accepted. The proposed *Interim Agreement for Peace and Self-Government in Kosovo* ("Rambouillet Accords"), drafted by the North Atlantic Treaty Organization (February 1999),[72] amounted to a colonial diktat that would have resulted in the subordination of sovereignty of the then Federal Republic of Yugoslavia (FRY) to a hostile military alliance. It indeed served as a pretext for war. The subsequent attack, on 24 March 1999, by a NATO alliance led to an effective régime change on the territory of the Autonomous Province of Kosovo and Metohija.

The Security Council resolution 1244 (1999), adopted on the basis of Chapter VII of the UN Charter,[73] was used by interested parties to "legalize," *post festum*, the results of an intrinsically illegal act, namely an aggressive war against a sovereign member state of the United Nations. Similar to the Chapter VII resolution adopted after the illegal use of force against Iraq in 2003,[74] the Council arrogated to itself the right to effectively create a new constitutional order – putting itself above the law and overstretching its coercive powers under the collective security provisions of Chapter VII. The setting up of a *United*

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[70] On the use of force under conditions of global power politics see also Hans Köchler (ed.), *The Use of Force in International Relations: Challenges to Collective Security*. Vienna: International Progress Organization, 2006.

[71] For details see e.g. "Yugoslavia – NATO – United Nations." *News Release*, P/AM/16451c-is, International Progress Organization, Vienna, 23 April 1999.

[72] *Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo*. United Nations, Security Council, Doc. S/1999/648: Letter dated 4 June 1999 from the Permanent Representative of France addressed (on behalf of the two co-chairmen of the Rambouillet Conference, France and the United Kingdom) to the Secretary-General, Annex.

[73] Security Council, 4011th meeting, 10 June 1999.

[74] Resolution 1483 (2003), adopted by the Security Council at its 4761st meeting, on 22 May 2003. – On the legal implications see also "Memorandum by the President of the International Progress Organization on the legal implications of the 2003 war against and subsequent occupation of Iraq and requirements for the establishment of a legitimate constitutional system in Iraq, including measures of criminal justice (12 August 2003)," in: Hans Köchler (ed.), *The Iraq Crisis and the United Nations: Power Politics vs. the International Rule of Law*. Vienna: International Progress Organization, 2004, pp. 65-71.

Nations Interim Administration in Kosovo (UNMIK), provided for in this resolution, meant a kind of trusteeship régime by the UN that was intended to facilitate a domestic "political process designed to determine Kosovo's future status" (Art. 11[e]).[75] It is to be recalled that both, the so-called "Rambouillet Accords" (never signed by the FRY) and resolution 1244 (1999), repeatedly affirmed a commitment to the "sovereignty and territorial integrity of the Federal Republic of Yugoslavia,"[76] and that the "interim administration," established by the Security Council,[77] was meant to assist the people of Kosovo so that it "can enjoy substantial *autonomy* [sic!] within the Federal Republic of Yugoslavia."[78] However, the Special Envoy of the Secretary-General of the UN, acting on the basis of this resolution, did – *proprio motu*, so to speak – "recommend" for Kosovo the status of "independence, supervised by the international community" (26 March 2007).[79] The subsequent "Declaration of Independence" of 17 February 2008 did not stem from a decision by the people of Kosovo, as a result of a general referendum, but was, in fact, proclaimed by members of the "Assembly of Kosovo," the parliamentary body established as part of the United Nations Interim Administration[80] that came into being after NATO had succeeded in forcefully removing the existing governmental authority in Kosovo.

The Advisory Opinion of the International Court of Justice (ICJ) of 22 July 2010[81] does nothing to clarify the situation in legal terms. In essential points, it is

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[75] See also Blerim Reka, "UNMIK as an International Governance within Post-Conflict Society," in: *New Balkan Politics*, No. 7/8, 2004, at http://newbalkanpolitics.org.mk/item/UNMIK-as-an-International-Governance-within-Post-Conflict-Society.

[76] Rambouillet Accords, Preamble, and: Framework / Article I: Principles, Para. 2 (UN Doc. S/1999/648, p. 4); Security Council resolution 1244 (1999), Annex 1: Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999.

[77] Resolution 1244 (1999), operative Para. 10.

[78] *Ibid*.

[79] *Report of the Special Envoy of the Secretary-General on Kosovo's future status*, attached to the letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, UN Doc. S72007/168.

[80] "Constitutional Framework for Provisional Self-government," promulgated on the basis of Regulation No. 1999/1 of 25 July 1999 concerning the United Nations Interim Administration in Kosovo (UNMIK) by Hans Haekkerup, Special Representative of the Secretary-General, on 15 May 2001, Chapter 9, Section 1: The Assembly.

[81] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403.

evasive, and in some basic issues it borders on mere sophistry: Stating that the question whether the declaration of independence of Kosovo violates international law does not require it to take a position on whether international law "generally confers an entitlement on entities situated within a State unilaterally to break away from it,"[82] the Court avoids to address the basic legal issue. It further declares that the "authors" of the declaration were not the members of the "Assembly of Kosovo" as part of the UN-established "Constitutional Framework," but those very members acting in some other, undefined capacity, not bound by the constitutional provisions promulgated on the basis of the mandate of UNMIK.[83] For that reason, so the ICJ argues, they could not, with their Declaration, violate the Constitutional Framework established by resolution 1244 – which included the principle of sovereignty and territorial integrity of the FRY/Serbia.[84] This argument makes the Advisory Opinion *irrelevant* (in terms of the material question of international law) and amounts to plain sophistry – as, in fact, those "authors" were the members of that very "Assembly" (Parliament), acting within the framework established by and under the control of the United Nations. This is also evident in the fact that the Declaration was signed by the Speaker of the "Assembly," Jakup Krasniqi, as well as by Prime Minister Hashim Thaci.[85]

In conclusion, the secession of Kosovo from Serbia is a textbook case of how countries, through an illegal use of force, aim to create a new legal reality, according to the maxim *ex injuria jus oritur*. However, in the era of the United Nations Organization, a sequence of illegal acts must never constitute a legal precedent. The right of self-determination – as the collective human right under Article 1 of the International Covenant on Civil and Political Rights, and as the Purpose of the United Nations – must be exercised in conformity with other basic norms of international law, and by direct vote (referendum) of the people of the respective territory *in full freedom*, not by "representatives" who – as "authors" of a declaration – have been empowered by an entity that has been set up after an illegal military intervention.

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[82] *Op. cit*., Para. 56.

[83] See, *inter alia*, *op. cit*., Paras. 107 and 109: "The Court thus arrives at the conclusion that, taking all factors together, the authors of the declaration of independence of 17 February 2008 did not act as one of the Provisional Institutions of Self-Government within the Constitutional Framework, but rather as persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration."

[84] *Op. cit*., Para. 119.

[85] Only one signatory, President Fatmit Sejdiu, was not a member of the Assembly.

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THE RIGHT TO SELF-DETERMINATION AND SOVEREIGNTY OVER NATURAL RESOURCES IN INTERNATIONAL LAW: RANGES AND LIMITATIONS

Dragoljub Todić[1]

Abstract: The paper considers international legal aspects of the right to self-determination and sovereignty over natural resources. The author starts from the standpoint that the general legal framework for the interpretation and further development of the rules in this sphere can be traced back to the concept of human rights, but that number of new questions have been opened in the so-called postcolonial period. It is pointed to the broader context of the discussion denoting the international legal framework of human rights which are significant for the right to self-determination and sovereignty over natural resources. In the conclusion, the author recognises numerous open issues that make impossible drawing firm conclusions on the nature and ranges of the right to self-determination and sovereignty over natural resources. The conflict of the right to self-determination and territorial integrity of the states, i.e. the question of the right to the secessionist self-determination, remain at the centre of the argument. Apart from this, under the contemporary circumstances, various conditions have contributed to the specific development of the meaning of these legal categories. New circumstances (in comparison to the period of decolonization) conditioned the need for upgrading the existing system of norms of the significance for the right to self-determination. The strengthening of the human rights is one of the possible paths in this area. Nevertheless, the right to self-determination and sovereignty over natural resources remain in the shadow of the political relations in the international community.

Key words: international law, right to self-determination, human rights, sovereignty, natural resources, sovereignty over natural resources, decolonisation.

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1. Introductory remarks

Although one can search for the discussions on the right to self-determination deep in the past of the development of civilisation and history of international law (and law in general), the positions which prevail are those that associate the question of self-determination (in a textbook manner) with the end of World War I. Nonetheless, Rodrigues-Santiago associates "one of the oldest modern demands for self-determination" with the European colonisation of America.[2] The defence of rights of indigenous peoples had been the subject treated by a number of philosophers and lawyers of that time.[3]Later, the concept of self-determination found its expression in the objectives of the French revolution. "... [G]overnment should be based on the will of the people".[4] But, it was as late as after World War I that self-determination gained special significance in international relations.[5] Within the development of the right to self-determination of peoples, its "anti-feudal and national-constitutional" or actually "anti-imperial" and "national liberation" nature is pointed out.[6] The discussion on sovereignty over natural resources implies the consideration of several remarks on "sovereignty". If some determinations of this notion, which had emerged in ancient philosophy, are ignored, the most complete elaborations were made by Bodin, Hobbes, Grotius, Pufendorf, Vattel, etc. "The most significant diplomatic and juridical event for the idea of sovereignty emerged from the Peace of Westphalia of 1648".[7] However, the significance and

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[2] See: Elizabeth Rodriguez-Santiago, "The Evolution of Self-Determination of Peoples in International Law", in: Fernando R. Teson (ed), *The Theory of Self-Determination*, Cambridge University Press, Cambridge, 2016, p. 202. The author also points to the similarities and differences between the Lenin's and Wilson's conception of self-determination relating them with what is today called "internal" and "external" aspects of self-determination. She also reminds on the methodological difficulties in following the development of these issues in the period before XX century, since the events and notions which in the previous period had some different meaning are subjected to an analysis by using the criteria of the present classification.

[3] Ibid., 203, etc.

[4] A. RigoSuredo, *The evolution of the right of self-determination*, A.W. Sijthoff – Leiden, 1973, p. 17.

[5] See: Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society*, Cambridge University Press, Cambridge, 2003, p. 127.

[6] Momčilo Subotić, *Pravo na samoopredeljenje i "jugoslovenski eksperiment": prva, druga i treća Jugoslavija* (The right to self-determination and "Yugoslav experiment": the first, second and third Yugoslavia), Institut za političke studije, Beograd, 2004, p. 3, etc.

[7] Winston P. Nagan, Aitza M. Haddad, Sovereignty in Theory and Practice, *San Diego International Law Journal*, Vol. 13, 2011-2012, p. 446. For more on the historical aspects of

meaning of sovereignty (and sovereignty over natural resources) changed throughout history.[8] The so-called internal and external sovereignty has always been closely connected with independence as its significant feature or actually with international autonomy and independence of sovereign power as well as its limitlessness within the state territory.[9] The verdict taken in the "Palmas" case has this same meaning and it says that sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.[10] Shaw also considers "independence and sovereignty" as equal, regarding them as the main characteristics of the state.[11]

The importance of these issues (the right to self-determination and sovereignty over natural resources) in the conditions of globalization and changed international relations adopts new dimensions. This deserves much more detailed analysis. This paper examines the international legal aspect of the right to self-determination and sovereignty over natural resources in the context of wider circumstances in international law and international relations. An overview of the basic sources of international law of the importance for discussing the right to self-determination and sovereignty over natural resources is provided. The author points to the limitations and open questions in the existing rules of international law. Particularly emphasized is the fact that the basic rules regarding the right to self-determination have been developed within the framework of the decolonization process and that their upgrading is

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state sovereignty and international law, see: Senad F. Ganić, *Državni suverenitet u svetlu savremenog međunarodnog prava* (State Sovereignty in the Light of Contemporary International Law), Ph.D. thesis, University of Belgrade, Belgrade, 2012, p. 19, etc. See, also: Dragoljub Todić, Gordana Petković, "Suverenitet nad prirodnim resursima – fikcija ili stvarnost" (Sovereignty over natural resources - fiction or reality), in: Vlastimir Matejić (ed), Proceedings „*Tehnologija, kultura, razvoj*",Institute „Mihajlo Pupin", Beograd, 1998. pp. 109–122.

[8] For a detailed overview of historical developments, see: Winston P. Nagan, Aitza M. Haddad, "Sovereignty in Theory and Practice", *San Diego International Law Journal*, Vol. 13, No. 2, 2012, pp. 429–520.

[9] PredragVukasović, *Evolucija pojma suvereniteta i problem intervencije* (Evolution of the concept of sovereignty and the problem of intervention), magistarski rad, Pravni fakultet, Beograd, 1983. p. 26.

[10] Stevan Đorđević, Milenko Kreća, Rodoljub Etinski, Ivan Čukalović, Momčilo Ristić (urs), *Građa međunarodnog javnog prava* (Structure of International Public Law), Knjiga I, Dnevnik, Novi Sad, 1988, p. 145.

[11] For more details see: Malcolm N. Shaw, *International Law*, Cambridge University Press, Cambridge, 2014, p. 153.

needed. There are several arguments for development in the direction of strengthening human rights, but this does not deny the possibility of developing specific forms of convergence of the right to self-determination and sovereignty over natural resources.

2. The general context of the debate

The meaning of the right to self-determination (and/or principle) should be interpreted in the light of the broader political environment or challenges in a particular historical context, characteristics of economic development, international relations, etc. "Since 1960, seventy-six states have faced challenges for greater self-determination."[12] Today, the process of decolonisation is usually taken as the common element in the development of the right of the peoples to self-determination and sovereignty over natural wealth.[13] "Thus, the right to self-determination was generally interpreted to be limited to emancipation from European imperial rule, and the right not to be subject to racist domination (as in South Africa) or alien occupation (e.g., the situation of the Palestinians)."[14] Shany notes that the right to self-determination, which was recognized in the relevant international instruments, is still narrow in scope and confined to four particular political contexts: colonialism, foreign occupation, racist regimes, and the disintegration of existing states.[15] However, it should be taken into consideration that "unilateral non-colonial secession" is also mentioned.[16] In

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[12] See: Kathleen Gallagher Cunningham, Katherine Sawyer, "Is Self-determination Contagious? A Spatial Analysis of the Spread of Self-Determination Claims", International Organization 71, Summer 2017, p. 587.

[13] Nicolaas Schrijver, "Self-determination of peoples and sovereignty over natural wealth and resources", in: *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, UN, New York, 2013, pp. 95–102. In the process of decolonization, the links between the right to self-determination and sovereignty became considerably stronger. Pierre-Marie Dupuy, Jorge E. Viñuales, *International Environmental Law*, Cambridge University Press, 2016, p. 6.

[14] Michael Freeman, "The right to self-determination in international politics: six theories in search of a policy", *Review of International Studies,* Vol. 25, No. 3, 1999, p. 356.

[15] 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,* Vol. XXI, No. 1,Fall/Winter 2014, p. 235.

[16] In that sense, Anderson takes the former Yugoslav republics as an example. Glen Anderson, "Unilateral Non-Colonial Secession and Internal Self-Determination: A Right of Newly Seceded Peoples to Democracy", *Arizona Journal of International and Comparative Law*, Vol. 34, No. 1, 2017, p. 2.

that way, the right of the peoples to self-determination has always entailed a sort of political compromise between various interests of parties concerned in international relations. Its organic relatedness to secession,[17] secessionist movements and the creation of new states has made more complicated (and still does) relations in the international community. Numerous titles concern these issues.[18] Some authors especially emphasise the significance of territorial integrity,[19] and the principles of *uti possidetis juris*.[20] The purpose of this principle at the time of the so-called colonial self-determination was completely clear. The right to self-determination of peoples and granting of independence to colonial countries "was strengthened by agreement among the UN states that the principle of *uti possidetis juris* applied to the new, independent states. This consensus was justified by the perceived need to empower the new states and to stabilise the new states-system".[21] For this reason, within the context of the right to self-determination, territorial disputes are also discussed in international law.[22] The right to self-determination, autonomy and in some cases to secession

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[17] "…[I]ts Siamese twin at birth..." Jan Klabbers, "The Right to Be Taken Seriously: Self-Determination in International Law," *Human Rights Quarterly,* Vol. 28, No. 1, 2006, p. 205.

[18] For example, see Johan D. van der Vyver, "The Right to Self-Determination and Its Enforcement", *ILSA Journal of International & Comparative Law*, Vol. 10, No. 2, Spring 2004, p. 427. Susanna Mancini, "Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism, and the Right of Minorities to Self-Determination", *International Journal of Constitutional Law*, Vol. 6, No. 3 and 4, July/October 2008, pp. 553–584. Ved P. Nanda, "Self-Determination and Succession under International Law", *Denver Journal of International Law and Policy*, Vol. 29, No. 3 and 4, Summer/Fall 2001, pp. 305–326. Ernest Duga Titanji, "The Right of Indigenous Peoples to Self-Determination versus Secession: One Coin, Two Faces", *African Human Rights Law Journal*, Vol. 9, No. 1, 2009, pp. 52–75. Alfred P. Rubin, "Secession and Self-Determination: A Legal, Moral, and Political Analysis", *Stanford Journal of International Law*, Vol. 36, No. 2, Summer 2000, pp. 253–270. Zoilo A. Velasco, "Self-Determination and Secession: Human Rights-Based Conflict Resolution", *International Community Law Review*, Vol. 16, No. 1, 2014, pp. 75–105.

[19] Khazar Shirmammadov, "How Does the International Community Reconcile the Principles of Territorial Integrity and Self-Determination: The Case of Crimea", *Russian Law Journal*, Vol. 4, No. 1, 2016, pp. 61–97. Fernando R. Teson, "The Conundrum of Self-Determination", In: Fernando R. Teson (Ed). *The Theory of Self-Determination*, Cambridge University Press, Cambridge, 2016, p. 10.

[20] See: Malcolm N. Shaw, op. cit., pp. 211, 377.

[21] Michael Freeman, The right to self-determination in international politics: six theories in search of a policy, op. cit., 357.

[22] See: Bojan N. Tubić, "Rešavanje teritorijalnih sporova u međunarodnom pravu" (Resolution of Territorial Disputes in International Law), *Zbornik radova Pravnog fakulteta u Novom Sadu*, No. 4, 2015, p. 1870, etc.

conflicts with sovereignty and territorial integrity of motherlands. This shows, *inter alia*, that in promoting the rights of individuals and groups, contemporary international law can come into conflict "with older visions that emphasise the role of the sovereign state for the protection stability and peace."[23] Some authors point to the need to understand the notion of sovereignty as the context within which one should interpret the nature of the conflict between "the territorial integrity of the internationally recognised state, on the one hand, and collective human right to self-determination and secession, on the other."[24] "International law, in the post-colonial period, does not provide legitimacy to the secession based on the right to self-determination."[25] Vyver has the explanations as to why the right of peoples to self-determination does not include a right to secession.[26] Berndtsson and Johansson made an interesting analysis of the 36 states' positions in respect to relations between sovereignty and self-determination.[27] The issue regarding the nature of the right to secession remains open, this particularly including political assessments and the political context.[28] In this context, some authors examine the significance of the

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[23] Christian Walter, Antje von Ungern-Sternberg, "Introduction: Self-Determination and Secession in International Law—Perspectives and Trends with Particular Focus on the Commonwealth of Independent States", in: Christian Walter, Antje von Ungern-Sternberg, KavusAbushov (eds), *Self-Determination and Secession in International Law*, Oxford University Press, 2014, p. 1. The author further recognises that after the advisory opinion was issued by the International Court of Justice concerning the 2010 Declaration on Independence of Kosovo, many issues regarding self-determination and secession have remained open. Speaking more specifically, the author focuses the discussion on how the right to self-determination, which had predominantly been formed in the period of decolonisation after World War II, developed in the post-colonial period.

[24] Božidar Veljković, Milan Ambrož, "Pravo na samoopredelenje i otcepljenje", *Svarog*, No. 1, 2010, pp. 11–26.

[25] Gnanapala Welhengama, Nirmala Pillay, **"**Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", *Nordic Journal of International Law,* Vol.82, 2013, p. 252.

[26] Johan D. van der Vyver, "The Right to Self-Determination and Its Enforcement", *ILSA Journal of International & Comparative Law*, Vol. 10, 2004, p. 427.

[27] See: 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*, Vol. 28, No. 3, 2015, 445–461. These questions deserve more thorough analysis.

[28] Neera Chandhoke, "What Sort of a Right Is the Right of Secession", *Global Jurist*, Vol. 10, No. 1, 2010, pp. [i]-14. James J. Summers, "The Rhetoric and Practice of Self-Determination: A Right of All Peoples or Political Institutions", *Nordic Journal of International Law*, Vol. 73, No. 3, 2004, pp. 325–364.

Declaration on Friendship Relationships and Cooperation between States (1970).[29] In this way, the path from such discussions to discussions on terrorism, international peace and security seem to be comparatively well established.[30] After the end of World War II, terrorism again became linked with the violent methods used by various anti-colonialist groups seeking self-determination.[31] The debate on armed conflicts is also related to the right of the peoples to self-determination,[32] since the self-determination conflicts are among the most persistent and destructive forms of warfare.[33] To this there should be added the problems of refugees which are the consequence of the conflict, as well as the state of the international legal regulation in this field, which could be said to deserve significant improvements. Dilemmas on the right to humanitarian intervention, as always, incite various discussions on the sovereignty of the states.[34] In relation to this, the questions of recognition of states are being opened, this later including succession in international law, too, etc.[35] Referring to the "practical approach" as the practice of some in the recognition of the states, Almqvist points to possible problems in relation to the rules of international law.[36]

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[29] A/RES/25/2625, 24 October 1970. Subrata is of the view that, "it would be difficult to deny the legal status of self-determination after 24 October 1970 when the General Assembly passed its celebrated Resolution 2625 (XXV)," … and "adopted the Declaration on Principles on International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations …"Subrata Roy Chowdhury, "The Status and Norms of Self-determination in Contemporary International Law", *Netherlands International Law Review*, Vol. 24, 1-2, May 1977, pp. 72–84.

[30] Andrew Coffin, "Self-Determination and Terrorism: Creating a New Paradigm of Differentiation", *Naval Law Review*, Vol. 63, 2014, pp. 31–66. Yasmine Nahlawi, "Self-Determination and the Right to Revolution: Syria", *Human Rights & International Legal Discourse*, Vol. 8, No. 1, 2014, pp. 84–108. Lawrence M. Frankel, "International Law of Secession: New Rules for a New Era", *Houston Journal of International Law,* Vol. 14, No. 3, Spring 1992, pp. 521–564.

[31] Alan Greene, "Defining terrorism: one size fits all?", *International and Comparative Law Quarterly*, Vol. 66, No. 2, p. 413.

[32] Vladan Jončić, "Pravni smisao oružanih sukoba u procesu evropskih integracija", *Srpska politička misao*, No. 1/2015, p. 198.

[33] Marc Weller, *Escaping the Self-Determination Trap,* MartinusNijhoff Publishers, Leiden, 2008, p. 13.

[34] See, for example, Sarah Williams, Humanitarian Assistance and Changing Notions of State Sovereignty, *Netherland International Law Review*, Vol. 64, No. 1, 2017, pp. 183–187

[35] Glen Anderson, "Unilateral Non-Colonial Secession and the Criteria for Statehood in International Law", *Brooklyn Journal of International Law*, Vol. 41, No. 1, 2015, pp. 1–98.

[36] Jessica Almqvist, *EU and the Recognition of New States*, Euborders Working Paper 12, September 2017. http://www.euborders.com/download/WorkingPaper_12_Almqvist.pdf (15.2.2018).

Thus, international legal aspects of the discussions on the right to self-determination and sovereignty over natural resources can be put in various contexts. They have several levels and contents of a possible debate. Cassese used the "contextual approach" in which history, politics and jurisprudence are fed into the service of explaining legal phenomena.[37] However, a reservation regarding the legal aspects of the self-determination debate, Cassese formulates through a question. The author inquires whether the discussion on self-determination can contribute to the resolution of the eternal question: to what extent international law really restricts the behaviour of the state, and to what extent does it simply provide the structure for justification for this behaviour.[38] The contemporary notion of human rights is most often taken as a general framework. Maguire and McGee, also emphasised human rights as the most appropriate framework for discussion (in the anticipation of further development of the right to self-determination).[39] In a part of debates, special attention is devoted to the norms of international law regulating the position of minorities.[40] The problems of overlapping the term "minority" and the term "peoples", are pointed out by Ryngaert and Griffioen.[41] Saul emphasises the following four normative levels of discussion: human rights, sovereignty, the scope of implementation of rules (*erga omnes*) and nature of *jus cogens* rules.[42]

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[37] Antonio Kaseze (Antonio Cassese), *Samoodređenje naroda* (Self-Determination of Peoples), Službeni glasnik, Beograd, 2011, p. 23.

[38] Ibid, p. 28.

[39] Amy Maguire, Jeffrey McGee, "A Universal Human Right to Shape Responses to a Global Problem? The Role of Self-Determination in Guiding the International Legal Response to Climate Change", *Review of European Community & International Environmental Law*, Vol. 26, No. 1, 2017, p. 58, etc.

[40] Frances Raday, "Self-Determination and Minority Rights", *Fordham International Law Journal*, Vol. 26, No. 3, March 2003, pp. 453–499. Jerome Wilson, "Ethinic Groups and the Right to Self-Determination", *Connecticut Journal of International Law*, Vol. 11, No. 3, Spring 1996, pp. 433–486. See also, Dragoljub Todić, Marko Nikolić, "Status nacionalnih i drugih manjina i proces evropskih integracija Srbije", *Evropsko zakonodavstvo*, No. 3-4, 2014, pp. 445–464.

[41] Interestingly, the authors (without detailed elaboration) conclude the following: "Considering the fact that Kosovo Albanians do have an identity by which they can be distinguished from Albanian Albanians, it is submitted here that the former are, in fact, a minority and a people at the same time and that, therefore, they have the right of self-determination." 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. 578.

[42] Matthew Saul, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right", *Human Rights Law Review*, Vol. 11, No. 4, 2011, pp. 609–644.

However, the issue concerning the right of the peoples to self-determination is not the one belonging to international law only. Its primary and strong base lies in the norms of domestic law, while it is gaining international significance through the norms of international law which make some states obliged to respect them. In this way, one usually and most often discusses the nature and characteristics of the political system, respect and guarantees of human rights and freedoms within the domestic legal order, constitutional-legal aspects of this right, etc.[43]

3. United Nations (UN) Charter and other sources of law

Even though UN was of the key importance for the process of decolonization, the role of UN in the development of the right to self-determination can be assessed in a number of ways.[44] According to the Article 1 of the UN Charter, the purposes of the UN are, inter alia, "to develop friendly relations among nations *based on respect for the principle of equal rights and self-determination of peoples*, and to take other appropriate measures to strengthen universal peace".[45] The expression "based on respect for the principle of equal rights and self-determination of peoples" was added for the

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[43] Diana Draganova, "Chechnya's Right of Secession under Russian Constitution Law", *Chinese Journal of International Law*, Vol. 3, No. 2, 2004, pp. 571-590. Roya M. Hanna, "Right to Self-Determination in In Re Secession of Quebec", *Maryland Journal of International Law and Trade*, Vol. 23, 1999, pp. 213–246. Ben Bagwell, "Yugoslavian Constitutional Questions: Self-Determination and Secession of Member Republics", *Georgia Journal of International and Comparative Law*, Vol. 21, No. 3, 1991, pp. 489–524. Elysa L. Teric, "The Legality of Croatia's Right to Self-Determination", *Temple International and Comparative Law Journal*, Vol. 6, No. 2, Fall 1992, pp. 403–428.

[44] For more on this issue see, for example: Helen Quane, "The United Nations and the Evolving Right to Self-Determination", *International and Comparative Law Quarterly*, Vol. 47, July 1998, pp. 537–572. Glen Anderson, "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession", *Vanderbilt Journal of Transnational Law,* Vol. 49, No. 4, November 2016, pp. 1183–1254. Erica-Irene A Daes, "An overview of the history of indigenous peoples: self-determination and the United Nations", Cambridge *Review of International Affairs*, Vol. 21, No. 1, March 2008, pp. 7-26. The contribution of the international judicial institutions deserved special analysis.

[45] Besides that, the meaning of the principle should be interpreted in the light of objectives, and the objectives are prescribed in Article 55 and include, inter alia: c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.On that way, the link with human rights is founded on the broadest international-legal basis.

first time at the San Francisco Conference by the four sponsoring powers (China, the United Kingdom, the United States, and the Soviet Union).[46]

In Article 73 of the Charter, members of the UN recognize the principle that the interests of the inhabitants of non-self-governing territories "are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories …"[47]

As formulated by the UN Charter the ranges of principles of state sovereignty should be interpreted within the context of the principles and purposes of this organisation. The purposes presented in Article 1 include, among other things, to maintain international peace and security, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, to achieve international co-operation in solving international problems…and respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 74 of the Charter mentions the obligation of member states to ensure that their policy is based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters. This is based on the Latin legal maxim "*sic uteretuout alienum non laedas.*[48]

Since the 1960s up to the present days, several documents which are important for the understanding of international legal aspects of the right of the peoples to self-determination and sovereignty over natural resources have

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[46] M. K. Nawaz, "The meaning and range of the principle of self-determination", *Duke Law Journal*, Vol. 82, 1965, p. 89. However, these countries did not define what they meant by self-determination. The committee which discussed the concept said: "Concerning the principle of self-determination, it was strongly emphasized on the one side that this principle corresponded closely to the will and desires of peoples everywhere and should be dearly enunciated in the Chapter; on the other side, it was stated that the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession", Ibid.

[47] An international trusteeship system has been established for the administration and supervision of trust territories (Article 75). Chapter XII of the United Nations Charter deals with the international trusteeship system.

[48] Hassan considers territorial sovereignty and state responsibility within the context of the following three cases: The Trail Smelter dispute, Lake Lanoux Arbitration and the Case Concerning the Gabcikovo-Nagymaros Project. Daud Hassan, "Territorial sovereignty and state responsibility - an environmental perspective", *Environmental Policy and Law*, Vol. 45, No. 3, 2015, pp. 139–145.

been adopted. Within the UN,[49] a few documents could be considered the most appropriate for the interpretation of the scope of the philosophical bases of the right of the peoples to self-determination and sovereignty over natural resources. These are, for example, the UN General Assembly Resolution (UNGAR) No. 1803(XVII) of 14 December 1962 (Permanent Sovereignty over Natural Resources), UNGAR No. 2625(XXV) of 24 October 1970 (Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations), and the UNGAR No. 61/295 of 2 October 2007 (Declaration on the Rights of Indigenous Peoples).[50]

4. The right to self-determination and sovereignty over natural resources as a human right – elements and framework

The whole corpus of documents on human rights (universal and regional) includes the norms which are significant for the right to self-determination and sovereignty over natural resources.[51] McCorquodale thinks that the "only appropriate legal framework to consider the right of self-determination which meets these demanding requirements ("*in order to resolve the potentially competing claims and obligations concerning the right of self-determination*") is one based on the legal rules developed in international human rights law" (emphasis added).[52] The absence of clear criteria is the basic problem.[53] On the other hand, Anderson is of the opinion that "unilateral non-colonial secession"

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[49] The role of the UN General Assembly can be specifically considered.

[50] A/RES/1803(XVII), 14 December 1962, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1803(XVII) (18.12.2017); A/RES/25/2625,24 October 1970, http://www.un-documents.net/a25r2625.htm (19.1.2018); A/RES/61/295, 2 October 2007, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/295&Lang=E (18.12.2017).

[51] African Charter on Human and Peoples' Rights (1981) in Article 20 states that "all peoples ... shall have *the unquestionable and inalienable right to self-determination*. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen." (emphasis added). For the text of Charter see: https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf (12.1.2018). Among the regional documents, significance of the Final Act of the Conference on Security and Co-operation in Europe ('Helsinki Final Act'), Helsinki, 1975, Principle VIII: Equal Rights and Self-Determination of Peoples, can be discussed. See: http://www.osce.org/helsinki-final-act?download=true (4.1.2018)

[52] Robert McCorquodale, "Self-Determination: A Human Rights Approach", *International and Comparative Law Quarterly,* Vol, 43, No. 4, October 1994, p. 857.

[53] "As Sterio notes, whether a people will ultimately have a meaningful right to (external) self-determination depends on whether it has garnered the support of the most powerful states,

is "a primary method by which new states are created."[54]If the concept of human rights is taken as a general normative basis of the right to self-determination and management of natural resources, the clearest provisions can be found in the key international human rights documents. Although the Universal Declaration of Human Rights (1948) did not mention self-determination, several provisions contain elements of self-determination (preamble, Article 21 (3).[55] Provisions of Article 1 of the International Covenant on Civil and Political Rights adopted by the Resolution of the UN General Assembly No. 2200A(XXI) of 16 December 1966 (it entered into force on 23 March 1976).[56] The document states the following: "All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.[57] Besides, "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." Paragraph 3 of Article 1refers to the UN Charter that includes the responsibility of the States Parties to the Covenant

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more than whether its situation meets certain objective requirements". Merijn Chamon, Guillaume Van der Loo, "The Temporal Paradox of Regions in the EU Seeking Independence: Contraction and Fragmentation versus Widening and Deepening?", *European Law Journal,* Vol. 20, No. 5, September 2014, p. 616. See, also: Milena Sterio, "On the Right to External Self-Determination: Selfistans, Secession, and the Great Powers' Rule", *Minnesota Journal of International Law,* Vol. 19, No. 1, 2010, p. 140.

[54] Glen Anderson, A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?, op. cit., p. 1185.

[55] "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law" (Preamble); "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures" (Article 21, para 3). Universal Declaration of Human Rights. http://www.un.org/en/universal-declaration-human-rights/ (10.1.2018).

[56] A/RES/21/2200,16 December 1966. United Nations Declaration on the Rights of Indigenous Peoples. http://www.un-documents.net/a21r2200.htm (1.12.2017). Frank Przetacznik, "The Basic Collective Human Right to Self-Determination of Peoples and Nations as a Prerequisite for Peace", *New York Law School Journal of Human Rights*, Vol. 8, No. 1, Fall 1990, pp. 49–110.

[57] Article 1. paragraph 1 of the International Covenant on Civil and Political Rights. The same is stated by the International Covenant on Economic, Social and Cultural Rights (OJ of SFRJ – International treaties, No. 7/1971). However, it should be borne in mind that, as already indicated, the nature of the right to self-determination exceeds the legal dimension prescribed by the human rights instruments.

to "promote the realization of the right of self-determination".[58] The fact that Article 1 of both Covenants has the same contents additionally emphasises their significance.[59]

Today, the opinion prevails that the right of states and peoples to freely dispose of their natural resources is firmly based upon the principle of permanent sovereignty over natural resources, which is incorporated in this right.[60] However, one should also bear in mind the difference between the sovereignty over natural resources that is based on the "people" and the one whose bearer is "the state".[61] Besides, the International Court of Justice has also recognised the significance of this principle considering it the one belonging to customary international law.[62]

Based on the provisions on human rights formulated in such a way one could recognise the following: 1. Although there were different proposals for the definition of the term "peoples", there are no generally accepted definitions.[63] However, "…the element of self-identification by a group as a

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[58] The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations (paragraph 3).

[59] Dorothée Cambou, Stefaan Smis, "Permanent sovereignty over natural resources from a human rights perspective: natural resources exploitation and indigenous peoples' rights in the Arctic", *Michigan State International Law Review*, Vol. 22, No.1, 2013, p. 357, 358.

[60] Daniella Dam – De Jong, *International Law and Governance of Natural Resources in Conflict and Post – Conflict Situations*, Cambridge University Press, Cambridge, 2015, p. 34.

[61] "State sovereignty emphasizes the supremacy of states in the hierarchy of land and natural resources ownership. On the other hand, peoples-based sovereignty acknowledges citizens as the original owners of land and natural resources even where they assign management rights to the government." See: Temitope Tunbi Onifade, "Peoples-Based Permanent Sovereignty over Natural Resources: Toward Functional Distributive Justice?", *Human Rights Review*, Vol. 16, Vol. 4. 2015, pp. 343–368, p. 355. Cambou and Smis also emphasize this difference in the approachbetween international law and the "human rights corpus". Dorothée Cambou, Stefaan Smis, "Permanent sovereignty over natural resources from a human right perspective: natural resources exploitation and indigenous peoples' rights in the Arctic", op. cit., p. 357.

[62] See: International Court of Justice, Case Concerning Armed Activities in the Territory of the Congo (*Democratic Republic of the Congo* v. *Uganda*), Judgment of 19 December 2005, *I.C.J. Reports 2005*, para. 244.

[63] For more details on proposals, see: Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*, Cambridge University Press, 2002, 193–98. The author summarizes the meaning of this term in the following way:

'people' was recognised as a 'fundamental criterion' of the definition of 'peoples' in the ILO Convention concerning Indigenous and Tribal People in Independent Countries 1989."[64]

Interpretation of the meaning of this notion causes various dilemmas with implications on the position of individual groups. The question of the position of the indigenous people is especially actualized in the literature.[65] McVay questioned whether groups of forced migrants can be included in the notion of "people" in the context of the right to self-determination.[66] The common meaning of the expression "all peoples" suggests that this is a principle which is implemented universally. Regardless of the fact how the ranges of these provisions are specifically interpreted it is hard to imagine that these provisions are implemented to some peoples only.[67] Also, it is clear that this is a collective right.[68] However, as

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"peoples" means the inhabitants of all countries and territories, whether sovereign and independent or non-self-governing. The term probably includes indigenous peoples as well as ethnic, religious and linguistic minorities within such countries and territories, oppressed majorities, and displaced peoples." Ibid., 197.

[64] Robert McCorquodale, Self-Determination: A Human Rights Approach, op. cit., p. 867.

[65] Musafiri examines if indigenous people and minority groups are eligible to the right to self-determination. See: Prosper Nobirabo Musafiri, "Right to Self-Determination in International Law: Towards Theorisation of the Concept of Indigenous Peoples/National Minority?", *International Journal on Minority and Group Rights,* Vol.19, 2012, pp. 481–532. Those rights were later reaffirmed by the UN Declaration on the Rights of Indigenous Peoples. See: United Nations Declaration on the Rights of Indigenous Peoples, OR GA, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (20.12.2017). This includes the right to control and use their own natural resources while states are obliged to respect, protect and promote the interests of indigenous peoples concerning the exploitation of natural resources. Dorothée Cambou, Stefaan Smis, "Permanent sovereignty over natural resources from a human rights perspective: natural resources exploitation and indigenous peoples' rights in the Arctic", op. cit., p. 361. See, also: Boris Krivokapić, "Domorodački narodi i osnovni elementi njihove međunarodno-pravne zaštite" (Indigenous people and the basic elements of their international protection), in: Zoran Radivojević (ur), *Ustavne i međunarodno pravne garancije ljudskih prava* (Constitutional and International Legal Guarantees of Human Rights), Pravni fakultet, Niš, 2008, pp. 19–43.

[66] Kathelen McVay, "Self-Determination in New Contexts: The Self-Determination of Refugees and Forced Migration in International Law", *Merkourios: Utrecht Journal of International and European Law*, Vol. 28, No. 75, 2012, p. 38.

[67] Helen Quane, "The United Nations and the Evolving Right to Self-Determination", op. cit., p. 559.

[68] Hans Morten Haugen, "Peoples' right to self-determination and self-governance over natural resources: Possible and desirable? *Etikk i praksis–Nordic Journal of Applied Ethics*, Vol. 8, No. 1, 2014, p. s 4. The positions of the UN Committee for Human Rights confirm this.

provided for by the Optional Protocol, written communications can be submitted only by individuals and not by representatives of the peoples.[69] 2. The provision suggests that the right to self-determination contains "free determination of their political status" 3. This also includes "free pursuing of economic, social and cultural development". 4. The right to development consists of three components (economic, social and cultural). 5. The right of the peoples to self-determination also implies the right of the peoples to "free disposal of their own natural wealth and resources". 6. However, the right of "free disposal of their own natural wealth and resources" is limited by obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law". 7. "The people's own means of subsistence" must be at disposal to the people, or actually "in no case may a people be deprived of its own means of subsistence".[70] All this points to the need of taking into consideration other guaranteed human rights in the assessment of the elements and content of the right to self-determination. Only in the context of the wholeness of the system that it could be possible to assess the state and needs of further advancements in the field.

However, a more specific interpretation of the provisions formulated in such a way brings about controversial approaches of various factors in international relations. In the literature, as already mentioned, authors usually first discuss some open issues related to the holder of the right to self-determination (the notion of "people"),[71] then the limits to freedom in determining the "political

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[69] Vojin Dimitrijević, "Prava pripadnika manjina prema Međunarodnom paktu o građanskim i političkim pravima" (Rights of Members of Minorities Provided by the International Covenant on Civil and Political Rights), in: Zoran Radivojević (ed.), op. cit, p. 12.

[70] According to the *Article 47 of the* International Covenant on Civil and Political Rights **"n**othing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources."

[71] "The traditional test is allegedly two-pronged where in the first part an objective assessment of the group is made, and in the second part the supposedly more subjective question whether the members of the group perceive themselves as a people is explored." Merijn Chamon, Guillaume Van der Loo, "The Temporal Paradox of Regions in the EU Seeking Independence: Contraction and Fragmentation versus Widening and Deepening?", *European Law Journal,* Vol. 20, No. 5, September 2014, p. 615. Nevertheless, there are a number of issues that can be considered in more detail. According to Shany, "the right to self-determination of peoples and its realization in accordance with the *uti possidetis* principle suggests that 'people' has been defined in international law, in effect, based upon considerations of geography, not demography." 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,* Vol. XXI, No. 1,Fall/Winter 2014, p. 236. For more on the interpretation of the notion of "peoples", in the case of Kosovo

status", the nature of "economic, social and cultural development" which is being "pursued", etc. If one of the achievements of the right to self-determination is "free determination of the political status" and "free pursuing of....development", then it is hard to avoid the question who, in what way and by what measures determines that there are no possibilities to attain these objectives within the existing state. Another key point is that there must be an opportunity to exercise free choice. Several authors emphasizes the importance of the referendum.[72] It is interesting that Cassese, when explaining the crisis in the former Yugoslavia, emphasizes the role of the referendum. At the same time, when explaining the role of the referendum in the recognizing Bosnia and Herzegovina's independence, the author interprets this question without the reservation.[73]

Albanians, see: Helen Quane, "A Right to Self-determination for the Kosovo Albanians?", *Leiden Journal of International Law*, Vol. 13, No. 1, 2000, p. 222. However, Cassese believes that the notion of "people" is sufficiently clear and that it includes: colonial peoples, peoples (populations) living under foreign military occupation, and racial groups living in sovereign states. Also, according to the same author, self-determination rules are applicable to "the entire population of each state party" (Article 1 of both Human Rights Pacts). Antonio Kaseze, op. cit. p. 377. If it is so, in which of these groups, and on the basis of which arguments, could we, according to this author, be able to classify the Albanians from Kosovo and Metohija?

[72] Andrew Coleman, "The Right to Self-Determination: Can It Lapse", *Journal of the Philosophy of International Law*, Vol. 5, No. 1, 2014, p. 30. "Many referenda have been held to determine the free will of a people seeking self-determination. They can be problematic because they can be held quickly, and organised so that the outcome is controlled or is part of a political strategy, particularly when the choice is integration with another State." Ibid., p. 33. "The most up-to-date current lists have identified roughly 230 sovereignty referendums, starting with the oft-discussed 'first' sovereignty referendum of the modern era in Avignon and Comtat Venaissin held in 1791 …" Fernando Mendez, Micha Germann, "Contested Sovereignty: Mapping Referendums on Sovereignty over Time and Space", *British Journal of Political Science*, Vol. 48, No. 1, 2018, p. 143.

[73] The specificity of Bosnia and Herzegovina (as a country with the three peoples having constituent status) and the circumstances of the crisis and war are ignored. The author (who justifies the opinion of the Badinter Commission), finds it completely irrelevant that the Serbian people in Bosnia and Herzegovina in November and December 1991 declared themselves for the "common Yugoslav state". The fact that the Serbs were not participating in the referendum of February 29 and March 1, 1992 (organized by the central government) author minimizes through the formulation that many Serbs boycotted the vote. Antonio Kaseze, op. cit. p. 311, etc. Applying uti possidetis, ("initially applied in settling decolonisation issues in America and Africa, … today recognized as a general principle, as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between Burkina Fase and Hali") the members of one nation (Serbs) are proclaimed as members of minority and ethnic groups with rights as minority and ethnic groups. Serbs become "minority" on the territory where they have never been a "minority" in modern history, and thanks to whose victims (mostly), Yugoslavia was

Jagica states that "in its essence, the right to self-determination suffers from at least two deficiencies: the first is embodied in the impossibility to determine in a coherent and scientifically consistent way its nature, while the other is embodied in the unclear subject of the holder of this right."[74] Moore mentions three questions that can be raised and they concern "the principle of national self-determination". These are as follows: who are the peoples, what is the relevant territorial unit within which self-determination should be carried out and what is the nature of secession in relation to self-determination.[75] Pomerance, commenting on the opinion of Badinter's Commission, raises similar questions.[76] Harris points out to two types of controversies of the principle of self-determination (status in international law and its meaning).[77] Teson points

created as a common state. For more information on the Opinions of the Badinter Arbitration Committee, see: Opinion of the Badinter Arbitration Committee, No. 2, point 4. In Alain Pellet, The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples, *EJIL*, 3, 1992, p. 184. Thus, Commission glorifying "referendum" and applying decolonisation rules starts from the assumption that the term "peoples" refers to the territory (not to the peoples). Thus, Commission opens many questions with the possible confusing consequences regarding interpretations of the right to self-determination as the right to the territory (not right to the peoples).

[74] Ferenc F. Jagica, *Međunarodno-pravni aspekti jugoslovenske krize* (International Legal Aspects of the Yugoslav Crisis), Ph.D. thesis, Pravni fakultet, Univerzitet u Beogradu, Beograd, 2016, p. 182.

[75] Margaret Moore, "Introduction: The Self-Determination Principle and the Ethics of Secession", in: *National Self-Determination and Secession*, Published to Oxford Scholarship Online: November 2003, p. 3.

[76] "What was the unit of self-determination? How was the 'self' of self-determination to be defined, by whom, and on what grounds? Whose territorial integrity was deserving of preservation, and why? If the secession of the republics from the SFRY was permissible because the Federation was disintegrating, on what legal grounds could further secession from those republics be legitimately opposed? Why was one unit's self-determination more sacrosanct than that of another? Why was the territorial integrity of the whole federation less holy than that of the sub-units? … And if the rationale behind insistence on the universal application of *uti possidetis* was the belief that greater chaos and fragmentation would thereby be averted, that assumption would seem to have been disproven by the evolution of the conflict in Yugoslavia." Michla Pomerance, "The Badinter Commission: The Use and Misuse of the International Court of Justice's Jurisprudence", *Michigan Journal of International Law*, Vol. 20, No. 1, 1998, p. 55, 56. However, it is not quite clear whether the principle *uti possidetis* applies also in cases of secession, in addition to cases of dissolution of a state, and is it actually a rule of international law or not. See: Peter Radan, "Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission", *Melbourne University Law Review*, Vol.24, No. 1, 2000, pp. 54–57.

[77] David John Harris, *Cases and Materials on International Law*, Thomson, Sweet & Maxwell, London, 2004, p. 112.

out at least three deficiencies and weaknesses of the existing concept of the right to self-determination. First, for the principle of efficiency, it is not possible to *ex ante* determine if a certain group has the right to self-determination. Taking as an example Estonia and the USSR the author recognises that this could be determined only on the battlefield or in the sphere of politics.[78] Second, in spite of the amazing rhetoric of its supporters, the right to self-determination is in its essence the right to state. Supporters of the right to self-determination are often not interested in legal and ethical rights of individuals but they induce new spheres of political power – which is more oppressive from what has been left. These debates often disguise the ambitions of the political entrepreneurs who claim that they represent the people no matter whether they have been elected regularly or not. They also disregard the positions of minorities and individuals who do not want to secede from the state or become independent. The third problem is that supporters of self-determination often conceal the fact that their true goal is related to territorial claims. The rhetoric of self-determination points out religion, races, common history, past injustices and similar factors which support their claims. In reality, the claim to self-determination is permeated by the objectives related to control of a territory and means by which that goal could be attained.[79] Making a difference between internal and external self-determination draws special attention. Referring to the opinion of the Supreme Court of Canada (in the Quebec case), Shaw points to the significance of making a difference between internal and external self-determination. By all this, the right to internal self-determination is related to a whole corpus of human rights whose respect should be the basis of "democratic governance" of the state, while the right to external self-determination (the claim for unilateral secession, "remedial" right to secession) is related to extreme cases only and in that case under "carefully defined conditions" only.[80] Ryngaert, and Griffioen "do not defend an absolute right to secession".[81] However, they "argue that despite the lack of extensive and virtually uniform State practice, there is a strong *opinio juris* in the international community to support the existence of a customary right of

[78] Fernando R. Teson (ed), *The Theory of Self-Determination*, Cambridge University Press, Cambridge, 2016, p. 8, etc.

[79] Ibid., p. 10.

[80] Shaw, op. cit., p. 212. The author points to the case of Kosovo. Ibid., p. 187.

[81] 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. 580.

unilateral secession based on the right of self-determination, although this right is subject to very strict conditions and may only be used for remedial purposes."[82]

The interpretation of the contents and elements of the right to self-determination is also the subject of various criticisms which are also present in the analyses dealing with the case of former Yugoslavia. Generally speaking, directly or implicitly, the position on arbitrariness in the interpretation of some elements, domination of the criteria of political opportunity and interests of global factors in international relations, etc. are pointed out.[83]

The case of the ex-Yugoslavia has been analysed by a number of foreign authors as well. The conflict of the secessionary self-determination and principle of territorial integrity remains unsolved.[84] Craven emphasizes the circumstances of violating human rights as a reason that justifies the secession. At the same time, the author points to some open questions in the opinions of the Badinter Commission."What the Commission signally refused to say was that the 'nationalities' within Federation had a right of secessionary self-determination. They could plausibly have linked such a claim to the provision of Constitution

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[82] Ibid., pp. 580–585. Authors analyze the following: the Aaland Islands dispute, the Friendly Relations Declaration, the Katangese Peoples' Congress v. Zaire decision of the African Commission on Human and Peoples' Rights, the Reference re Secession of Quebec of the Supreme Court of Canada, and negative practice in relation to secession.

[83] See, for example, Momčilo Subotić, "Srbija i srpske zemlje sto godina posle velikog rata" (Serbia and Serbian Lands a Hundred Years after the Great War), *Političkarevija*, No. 4, 2014, p. 4. Ljubiša Despotović, Živojin Đurić, "Razgradnja nacionalne države, nacionalna država u procesima denacionalizacije, deteritorijalizacije i desuverenizacije" (Dissolution of the National State, National State in the Processes of Denationalisation, Deterritorialization, and Desovereignization), *Srpska politička misao*, No. 2, 2012, p. 45. etc. Mirjana Radojčić, "Srbija i Evropskaunija – etika jednog međunarodno-političkogodnosa" (Serbia and European Union – The Ethics of an International Political Relationship), *Srpska politička misao*, No. 4, 2011, p. 156, etc.

[84] On this issue see also: Stefan Wolff, Annemarie Peen Rodt, "Self-Determination After Kosovo", *Europe-Asia Studies*, Vol. 65, No. 5, July 2013, pp. 799–822. 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*, Vol. 28, No. 3, 2015, 445–461. Helen Quane, "A Right to Self-determination for the Kosovo Albanians?", *Leiden Journal of International Law*, Vol. 13, No. 1, 2000, pp. 219–227. 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, pp. 573–587. Gnanapala Welhengama, Nirmala Pillay, "Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", *Nordic Joumal of International Law,* Vol. 82, No. 2, 2013, 249–282.

that spoke of self-determination ..."[85] The assessment that the state (Yugoslavia) is in the process of dissolution was taken as a fact by itself sufficient to avoid answering the core question. In this sense, the author states the following: "The Commission's determination that the Federation was in the process of dissolution was an extraordinarily dextrous act. Its effect was to provide a necessary analytical space for the recognition of emerging Republics (whether or not on the basis of the principle of self-determination) ... without running the risk of undermining respect for the principle of territorial integrity."[86] However, in its second opinion, the Commission tried to base its positions on the principle of territorial integrity (principle *uti possidetis*), albeit territorial integrities of the republics, members of the ex-Yugoslavia. Administrative boundaries of the Republics (within the ex-Yugoslavia) have been proclaimed as state boundaries of the newly formed states. The question of the right of people to self-determination (Serbian people in Croatia and Bosnia and Herzegovina) was ignored and proclaimed as the question of the position of the minorities. According to Freeman the first Western reaction (in the Yugoslavia case) "was to reaffirm the territorial integrity of the Yugoslav state, which implied that the relevant people with the right to self-determination were the Yugoslav people as such. Then Germany led the European Union into the recognition of Slovenia, Croatia and Bosnia-Hercegovina."[87] "The principle of the territorial integrity of states, the restrictive interpretation of the right to self-determination, and extreme caution in recognising new self-determination claims were all normally justified by appeal to the values of peace and the stability of the international order."[88] International Court of Justice Advisory Opinion on Kosovo's Declaration of Independence (2010) additionally complicates the discussion. "...[T]he International Court came to the surprising conclusion that there was nothing in international law that prohibited the declaration of independence of this kind."[89]

The role of the international community (different organizations and bodies) is subject to specific analysis. It may be interesting to note that the role of

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[85] Matthew Craven, Statehood, Self-Determination and Recognition, in: Malcolm D. Evans (Ed). *International Law*, Oxford University Press, 2010, p. 231.

[86] Ibid., p. 231, 232.

[87] Michael Freeman, The right to self-determination in international politics: six theories in search of a policy, op. cit., p. 356.

[88] Ibid. p. 357. "The disintegration of Yugoslavia showed that the self-determination policy of the international community could not achieve its own objectives."

[89] Matthew Craven, Statehood, Self-Determination and Recognition, op. cit., p. 232. "It did so, however, by carefully avoiding the issues of real contention."

international bodies in the case of the ex Yugoslavia (Peace Conference, Arbitration Committee) Cassese interprets as the one that acted as a "powerful" filter that ensured that separatist aspirations were recognized only if the strict requirements were met.[90]

In the case of freedom of disposal of natural wealth and resources, limits are determined by the obligation to restrain from "endangering obligations arising from international economic co-operation" whatever it, speaking more specifically, means.[91] The principle of "mutual benefit" is also mentioned as well as international laws upon which international co-operation should be based, while the lower limit of law is determined by the prohibition to "deprivation (of the people) of its own means of subsidence". In any case, the relationship between the right to self-determination and sovereignty over natural resources may be regarded as the one that is explicitly established. However, the question related to a detailed elaboration of these relationships within the context of human rights and especially of elements of rights to sovereignty over natural resources remains open.[92] One may also put a question of the limit of survival of the people to which "its own means" are related. In the contemporary circumstances, this discussion should be put in the context of the possibilities and limits of the right to development[93] and other similar rights of the so-called

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[90] Antonio Kaseze, op. cit. p. 404. However, on the "strictness" of the requirements set by the European Community (December 16, 1991) it can be judged in different ways. For the text of the European Community document with these requirements see (s/23293 17 December 1991). https://digitallibrary.un.org/record/135135/files/S_23293-EN.pdf (Anex 1. Declaration on Yugoslavia).

[91] It should be borne in mind that the sovereignty over natural resources is a matter that has been raised and formulated in the context of decolonization as well, i.e. protection of interests of foreign investors from the measures of nationalization. General Assembly Resolution 1803 (XVII) on the Permanent Sovereignty of States over their Natural Resources "has been regarded as a good compromise between developed and developing countries, stating the law acceptable to both sides." Surya P. Subedi, International Investment Law, in: Malcolm D. Evans (ed), *International Law*, Oxford University Press, 2010, p. 735. See, also Edward Guntrip, "Self-Determination and foreign direct investment: reimaging sovereignty in international investment law", *International and Comparative Law Quarterly*, Vol. 65, No. 4, 2016, pp. 829–657.

[92] Hans Morten Haugen, "Peoples' right to self-determination and self-governance over natural resources: Possible and desirable?", *Etikk i praksis–Nordic Journal of Applied Ethics*, Vol. 8, No. 1, 2014, pp. 3–21.

[93] For overview, see Karin Arts, Atabongawung Tamo, The Right to Development in International Law: New Momentum Thirty Years Down the Line?, *Netherlands International Law Reviw*, Vol. 63, No. 3, 2016, pp. 221–249.

rights of the third generation.[94] The concept of sustainable resource management (and sustainable development as a whole) raises specific issues regarding the theory of sovereignty of states and the debate on self-determination, too. Certain restrictions on the sovereignty of states over natural resources are also based on the international law of the environment.[95]

Conclusion

Within the framework of the international law, there have been developed certain rules relating to the right to self-determination and sovereignty over natural resources. These rules, for its major part, have been developed as a consequence of decolonization. As a collective human right, the right of the peoples to self-determination includes in itself the right to disposal of natural resources. However, the sovereignty of the states presupposes also their sovereignty over natural resources. The circumstances in the international relations in the post-colonial period affected the actualization of the self-determination issue in a new manner. Several open issues could be the subject of separate and detailed discussions. The literature usually and with many justifiable reasons points to the problems in defining the holder of the right to self-determination. The representativeness of the people and ways of expressing its will can be disputable. The contents and ranges of the right to self-determination are also indirectly relativized through the attempt to define criteria for distinguishing the so-called internal from external self-determination. By all this, internal self-determination is related to the development of democratic institutions in an individual state as well as to the respect for human rights, etc., while the so-called external self-determination is related to some rather specific circumstances. The fact that the establishment of conditions and circumstances for self-determination can be submitted to various

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[94] Management of transboundary resources and global resources as well as specificities of the regulation in this field deserve specific attention. There are number of open questions in relation to this. In addition, the literature points to the position and number of problems of the developing countries in achieving the sustainable development goals.

[95] For basic information, see: Dragoljub Todić, "Načela međunarodnog prava životne sredine i EU integracije Republike Srbije" (Principles of the International Environmental Law and the EU Integration of the Republic of Serbia), *Evropsko zakonodavstvo,* Vol. 61-62, 2017, pp. 285-300. Dupuy and Viñuales emphasise tha the limitation of the "sovereign rights" has two dimensions: the obligation to be in accordance with the national environmental policy and the prohibition to cause damage to other states or territories beyond the national jurisdiction. See: Dupuy and Viñuales also emphasize restrictions arising from foreign investment agreements. Pierre-Marie Dupuy, Jorge E. Viñuales, op. cit., p. 7.

criteria of evaluation on the part of various factors, makes the relativisation of the discussion on these issues inevitable. Boundaries between the so-called internal and external self-determination contain very delicate elements. The arguments in favour of the so-called postcolonial remedial secession have been mostly tied (in the literature) to the existence of the circumstances for the serious violations of human rights, as well as the absence of the conditions for the realization of the so-called internal self-determination. However, more precisely defining the existence of these circumstances and conditions opens up a number of different dilemmas. It seems that the content of some other human rights has been neglected, whereas securing the mechanisms and conditions for their respect became a serious problem.[96]

Besides, the literature points to deficiencies and weaknesses of the existing concept of the right of the peoples to self-determination, whose nature can be somewhat broader. McCorquodale summarised that in applying the human rights framework to self-determination following limitations appear: limitations on its exercise, limitations to protect other rights, limitations to protect the general interests of society (territorial integrity, *uti possidetis juris*, and international peace and security).[97] The general context of international relations and interests of parties concerned strongly determine the approach in interpreting the conditions for the achievement and limits of the right to self-determination. In the conflict between the right of the peoples to self-determination and the principle of territorial integrity of states, the reasons for the political opportunity as well as the conditions in international relations can acquire a specific weight. The circumstances of globalization allow the reconceptualization of the principle of sovereignty over natural resources to develop in completely new directions with a number of open questions. The law is far from giving a response to this kind of challenge and can become means of manipulation.

So," [t]he concept of self-determination has outlived the particular historical period where it had most meaning."[98] The question of validity and

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[96] See, for example, John Morijn, "Reforming United Nations Human Rights Treaty monitoring reform", *Netherlands International Law Review*, LVIII: 2011, pp. 295-333. Carol M. Glen, Richard C. Murgo, "United Nations Human Rights Conventions: Obligations and Compliance", *Politics & Policy*, Vol. 31, No. 4, December 2003, pp. 596-619.

[97] McCorquodale, Robert, Self-Determination: A Human Rights Approach, op. cit., pp. 875-883.

[98] See: Gnanapala Welhengama, Nirmala Pillay, "Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", op. cit., p. 282. "To avoid the violence and destruction that continues for years until one side or the other wins out, it might be time to recognize that a conceptual dead-end has been reached."

the interpretation of rules on self-determination and/or debate on a "unique case" cause numerous discussions.[99] It is obvious that there is a need to look at the direction of future development of the rights in this area. The question is if one could agree with Anderson. However, it should not be controversial that there is a need for constructing systemic rules in this field. The evolution of the law of self-determination will "almost certainly" bear upon unilateral non-colonial secession.[100] "Two developments appear ineluctable in the post-millennial era." First, the existing customary law right of oppressed peoples to unilateral non-colonial secession "will be legally strengthened". Second, in the much longer term, unilateral non-colonial secession "will likely become less qualified and thus justified on more liberal philosophical bases." The need to redefine the concept of self-determination from the point of view of the challenges due to climate change is emphasised by Maguire and McGee.[101] Cassese considers the activities aimed at resolving open issues regarding the right to self-determination through advocating for the so-called four-pronged strategy, which includes the following: 1) harmonization of existing international legislation with some long-standing issues, 2) promotion of the crystallization of the rules that are *in statu nascendi* and which relate to the internal self-determination of the peoples of sovereign states, 3) development of new rules for internal self-determination of ethnic groups and minorities; and 4) the approval of external self-determination for ethnic groups and minorities (in exceptional circumstances) that would be subject to international consent and control.[102] At the same time, strengthening of the human rights at the expense of limiting the rights of states has a potential to become the common denominator for both the right to self-determination and sovereignty over natural resources. This certainly, involves building stronger mechanisms for the internal democratization of society, including the protection of

[99] "The argument by those countries that recognize that Kosovo was a unique case may not persuade everyone, nor is the argument strong enough to prevent the spread of secessionist movements." Ibid.

[100] Glen Anderson, "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?", op. cit., p. 1254. Unilateral non-colonial secession "is likely to become a possibility not just in response to human rights abuses in extremis (ethnic cleansing, mass killings, or genocide), but also in moderato (political, cultural, or racial discrimination)."

[101] Amy Maguire, Jeffrey McGee, A Universal Human Right to Shape Responses to a Global Problem? The Role of Self-Determination in Guiding the International Legal Response to Climate Change, op. cit., p. 68.

[102] Antonio Kaseze, op. cit. p. 393–420.

minorities.[103] Nevertheless, in the absence of clearer rules, nothing will prevent the emergence of new "unique cases" of the self-determination of the peoples, as a consequence of the changes in the international relations in the international community.[104] This, in the present circumstances, resembles Freeman's attitude "that the right to national self-determination requires a complex analysis, and that each particular claim to the right should be judged on its particular merits."[105]

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[103] Klabbers recalls that courts and quasi-judicial tribunals have already reconfigured self-determination in principle, rather than rights related to secession. Instead, self-determination has been transformed into a procedural norm. "… a working theory of self-determination ought to focus not on the norm as one creative of judicially enforceable substantive rights but rather as a bundle of procedural rights: a right to be heard and be taken seriously." Jan Klabbers, "The Right to Be Taken Seriously: Self-Determination in International Law," op. cit., p. 202.

[104] For one of the well-founded and balanced attempts to advocate the so-called *sui generis* case, see: Stefan Wolff, Annemarie Peen Rodt, "Self-Determination After Kosovo", *Europe-Asia Studies*, Vol. 65, No. 5, July 2013, pp. 799–822.

[105] Michael Freeman, "The right to self-determination in international politics: six theories in search of a policy", op. cit.*,* p. 368.

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KOSOVO CASE AND THE ROLE OF THE UNITED NATIONS[1]

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Abstract: Kosovo's unilaterally proclaimed independence in 2008 became one of the most important issues of the international relations. On the one hand, the United States and the key European countries - the United Kingdom, Germany and France – are strongly lobbying other UN members to establish diplomatic relations with the "Republic of Kosovo", insisting on the thesis that this case is a *sui generis* case, while, on the other hand, BRIC countries remain the stance that this is a dangerous precedent, setting up its position on the provisions of UNSC Resolution 1244. Considering the role the UN played and is still playing in the course of the development of the Kosovo crisis, this is a specific example. Namely, although the UN was involved in all stages of the Kosovo crisis, they were twice bypassed and harshly ignored. For the first time that happened in 1998, when the US could not get the consent to launch a military action against the FR of Yugoslavia, while the second time it was in 2008 when the United States, Great Britain and France could not provide a change to Resolution 1244 (1999) SC. For this reason, the Kosovo case is more complex than the others, it is deeply internationalized and it is more difficult to solve than some other crises of similar character.

Key words: Kosovo, UN, UNMIK, USA, EU, international relations.

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Introduction: the Kosovo war and the bombing of the Federal Republic of Yugoslavia

The war in Kosovo began with the terrorist acts of the so-called Kosovo Liberation Army (KLA) in 1996, culminated in NATO's aggression against Yugoslavia in 1999 and ended with the adoption of UN Resolution 1244 on June 10th, 1999[4]. Formally, on February 28th, 1998, the KLA declared the beginning of an armed struggle for the independence of Kosovo, although its units have been active since the end of 1996.[5] It is interesting that one of CIA report states that in 1996-97 the KLA continues to be a relatively small formation, but it is projected that, due to its actions and lack of compromise, it can mobilize tens of thousands of supporters in a temporal perspective of only two years[6]. In early March, Serbian police forces in the village of Drenica organized an action against a group led by the (self-proclaimed) leader of the KLA Adem Jashari. During the operation Yashari was eliminated, as well as 81 inhabitants of Drenica. This event served to internationalize the Kosovo crisis and since then NATO began continually to push Belgrade.[7] Using the channels within the UN Security Council, the United States was trying to get SC's other members approve the use of military force to intervene against the FR of Yugoslavia. Resolution 1199 (1998)

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[4] The so called KLA was founded in 1994, and for the first time took over responsibility for the action taken a year later. In its work, so called KLA used classical terrorist methods. By the end of 1998, 1,845 armed assaults were carried out, of which there were 1,075 assaults on police officers of the Republic of Serbia, and 745 attacks on individuals - bearers of political functions or people from influences in certain local communities (in particular, attacks on Albanians who were loyal citizens of the Republic of Serbia). Also, another 25 assaults were carried out on settlements inhabited by refugees from other Yugoslav republics, settled in Kosovo in the period 1992-1994. In these attacks 364 people were killed, 122 of them police officers and 242 civilians (97 civilians were identified by the KLA as "collaborators"). At the same time, 605 persons were seriously or lightly injured, of which 426 were police officers and 179 civilians. It is interesting that the CIA report states that 1996-97. the so called KLA continues to be a relatively small formation, but it is projected that due to its actions and uncompromising, it can mobilize tens of thousands of supporters in a temporal perspective of only two years. See more in: Pavlos Ioannis Koktsidis, Caspar Ten Dam, „A success story? Analysing Albanian ethno-nationalist extremism in the Balkans", *East European Quarterly*, 42 (2), 2008, pp. 166–167.(161-190)

[5] Елена Ю. Гуськова, *История Югославского кризиса (1990-2000)*, Русское право / Русский национальный фонд, Москва, 2001, p. 660.

[6] See more in: Pavlos Ioannis Koktsidis, Caspar Ten Dam, „A success story? Analysing Albanian ethno-nationalist extremism in the Balkans", *East European Quarterly*, 42 (2), 2008, pp. 166–167.(161-190)

[7] М. С. Барабанов, И. П. Коновалов, В. В. Куделев, В. А. Целуйко, *Чужие войны*, Центр анализа стратегий и технологий, Москва, 2012, p. 115.

inviting the parties to end the conflict, was adopted on September 23rd, 1998. However, Russia and China were resolutely against the use of force, therefore, it was impossible to organize an intervention under the umbrella of the UN[8]. As a way out, planning of NATO military operation against the FR of Yugoslavia began in June 1998. By the autumn of the same year, there were developed two basic variants of the attack. The former variant meant a synchronized attack on the entire Yugoslav territory, divided into three zones - Kosovo, part of Central Serbia south of the 44 parallel and a section north of the 44 parallel. The second variant meant starting with intense attacks on the Yugoslav army and the Serbian police in Kosovo, and then gradually expanding the zone of combat activities towards the north. The second option was selected.[9] As a trigger for a new round of pressure that will ultimately lead to the commencement of the military action, the so-called "Racak massacre" was served.[10] Although the US could not legalize its decision to attack the Federal Republic of Yugoslavia through the SC, since January 1999 they fully took over the diplomatic initiative and managed the entire crisis. In this context, the Contact Group organized the Rambouillet

[8] Гуськова, op.cit., pp. 661-665.

[9] Benjamin S. Lambeth, *Nato's Air War for Kosovo: A Strategic and Operational Assessment*, Rand Corporation, Santa Monica (CA), 2001, p. 11.

[10] The head of the Kosovo Verification Mission, "William Walker, independently, without accompanying the representatives of the state organs of the FR of Yugoslavia and the Republic of Serbia on January 16, 1999, together with a group of foreign journalists, entered the village of Racak in Kosovo, on the periphery of the day before the fighting between members of the KLA and the Serbian police. There were 40 bodies of killed Albanians in the ditch, in civilian, different ages, which were immediately confirmed by the local people that they were shot by members of the MUP of Serbia. The same day, representatives of the FR of Yugoslavia denied that there was any crime, and in order to investigate what happened, the EU decides to urgently send a group of Finnish pathologists to Kosovo to perform autopsy findings and be able to reconstruct with great precision what actually happened. Four years later, more precisely in 2003, Dr. Helena Ranta, the head of the pathologist team sent by the EU, said that according to their findings at the time, there could be no crime. A joint investigation by Finnish, Belarusian and Serbian pathologists confirmed that traces of burst particles were found on the hands of 39 people, which means that they also shot, that not all of them had the appearance of death in the same time period and that they were killed by firing guns from far away, but It was too late. Most likely, in agreement with William Walker, members of the KLA picked up their members, who died in clashes with Serb forces in various parts of Kosovo and Metohija in the past days, brought their corpses to Racak on January 15, and then on the following day invited journalists. Photos from Racak and William Walker's statements quickly went around the world. With them, NATO has opened another round of campaigns in the media of the member states to convince public opinion about the necessity of bombing and in that it succeeded." Prorokovič, op. cit., p. 128.

conference in early February, at which Serbs and Albanians discussed resolving the Kosovo crisis[11]. The negotiations ended with no results, and the United States and the United Kingdom on February 18th presented a plan to resolve the Kosovo crisis, which included a full political autonomy for Kosovo (i.e. Kosovo Albanians), guaranteed by NATO forces after the withdrawal of the Yugoslav army from Kosovo, with a provision that after three years a referendum on the legal status would be organized to check the "will of the people".[12] As expected, the Albanian negotiators accepted this proposal as a whole, while the Yugoslav delegation "accepted the political part" of the proposal on March 23rd, but did not agree with the entry of NATO forces into the territory of Kosovo or the proposal of holding a referendum after three years, which was served by the US and Great Britain to declare the failure of the whole process[13]. The bombing of the FR of Yugoslavia began the following day[14] and NATO soon became the undisputed "master" of Kosovo and Metohija.[15]

The work of the UN and the establishment of the UNMIK mission

At the suggestion of China and Russia, on March 26th, 1999, the UN Security Council voted in favor of a resolution calling for an immediate end to the bombing of the FR of Yugoslavia with the condemnation of the use of force without the approval of the Security Council, but in addition to the nominees, only Namibia voted for, while the remaining 12 were against (Argentina, Bahrain, Brazil, Great Britain, Gabon, Gambia, Canada, Malaysia, USA, Slovenia, France, the Netherlands). Nevertheless, the fact that the UN Security Council was outlawed when the bombing began was not meant to be circumvented even when a solution was sought to end the bombing. The UN Security Council has long dealt with the Kosovo crisis.

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[11] Stephen T. Hosmer*, The Conflict Over Kosovo. Why Milosevic Decided to Settle When He Did*, Rand Corporation, Santa Monica (CA), 2003, pp. 13-15.

[12] Lambeth, op. cit, p. 8.

[13] Барабанов et al., op. cit., p. 116.

[14] The most controversial issue regarding this action of air strikes on the territory of the FRY is the question of the nature of these attacks known as "interventions". In accordance with international law and a system of international relations founded and generally accepted in the XX century, the intervention of this kind had to be approved by the Security Council after the violation of Chapter VII of the UN Charter was noted. Authors remarks.

[15] See more in: Бранислав Ђорђевић, НАТО на Косову и Метохији, Школа националне одбране, Београд, 2001.

Eventually, the UN Security Council got its role because it turned out that such crises are difficult to solve by a unilateral action. Therefore, Resolution 1244 (1999) was adopted.

In fact, this document has suspended the legal order of the Republic of Serbia in Kosovo, and the entire responsibility was taken over by the UNMIK mission, which was also responsible for the establishment of the provisional self-government institutions in Pristina. "It was set up very ambitiously, the mission of UNMIK was entitled to, after the withdrawal of the Serb forces, completely took over all civilian functions while, with the leadership of the Special Representative of the Secretary-General, the UNMIK chief was entitled to manage all civilian functions. From the provisions of the resolution, but also the spirit in which the text is written, it can be concluded that the UN Security Council had the intention to transfer gradually the competences of the provisional institutions that will be formed in Kosovo and, at that time, priority should be given to returning of refugees and displaced persons, ensuring public security, freedom of movement, the establishment of a basic order and order in the territory of Kosovo, and to support the demilitarization process."[16]

The UNMIK mission had the mandate to: perform basic civil and administrative functions where and when needed (Article 11b); organization and supervision of the development of temporary institutions for democratic and autonomous self-government, to the *final political solution*, including the holding of elections (11c); support reconstruction of key infrastructure facilities and other economic reconstruction (11g); maintenance of civil law and law (11i); protection and promotion of human rights (11j); ensuring the safe and undisturbed return of all refugees and displaced persons to their homes in Kosovo (11k).

The UN Secretary-General was authorized to "appoint, after consultation with the Security Council, a special representative to oversee the implementation of the civil presence"[17].

The term "until the final political solution" is underlined because "the issue of the final status of Kosovo and Metohija has been left open"[18] and impacted

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[16] Dušan Prorokovič, Kosovo: medzietnicke a politicke vztachy, Spolok Sr. na Slovensku, Bratislava, 2013, p. 139.

[17] Resolution 1244 (1999), Paragraph 10. Documents on Kosovo and Metohija, Liber Press, Beograd 2004, p. 199.

[18] Ивона Лађевац, Светлана Ђурђевић-Лукић, Ана Јовић-Лазић, „Међународно присуство на Косову и Метохији 1999-2009", Институт за међународну политику и привреду, Београд, 2010., p. 10.

the later developments. Namely, in Resolution 1244 of the UN Security Council and its two annexes, six times is referred to the "*territorial integrity and sovereignty*" of the FR of Yugoslavia and the "*essential autonomy*" that Kosovo should enjoy in the FR of Yugoslavia. Also, Article 4 "confirms that after the withdrawal, the agreed number of Yugoslav and Serbian military and police personnel will be allowed to return to Kosovo in order to perform their duties". At the same time, three times is stated that the aim of implementing the Resolution is "defining the future status of Kosovo", leaving the door open for further manipulation of this issue. However, no matter how the above-mentioned lines of the UN Security Council Resolution 1244 was interpreted, it was undoubtedly that the decisions and status were planned to be determined in the future by some new activity and decision of the UN Security Council, which again required the necessity of multilateral formats and new talks between directly involved Belgrade and Pristina, as well as between the permanent members of the Security Council.

That is why, during the following years, two rounds of negotiations on the future status of Kosovo have been organized with the support of the UN Security Council. Both times the Secretary-General appointed his special envoys to be mediators in the dialogue between Belgrade and Pristina. Both processes ended in failure, as official representatives of Serbia did not agree with the proposed formulation of adherence to the "supervised independence of Kosovo".

With the mediation of the former President of Finland, Martti Ahtisaari, who was appointed to that position in November 2005, between February 2006 and March 2007, the negotiations were organized between the official representatives of the Serbian authorities and the provisional Kosovo institutions. The agreement was practically impossible from the very beginning because the Albanian side asked for the status of Kosovo to be established first, and then to discuss decentralization, forms of autonomy for non-Albanian communities and the new territorial organization of Kosovo on which the Serbian side insisted.

It is noticeable that it was precisely by the appointment of Ahtisaari, in the process of resolving the status of Kosovo and Metohija, that "the focus was completely transferred to status issues"[19] and caused the consequences of enormous proportions since "many international actors began to act on the assumption that this process will give Kosovo some type of independence"[20].

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[19] Ивона Лађевац, Светлана Ђурђевић-Лукић, Ана Јовић-Лазић, „Међународно присуство на Косову и Метохији 1999-2009", op. cit., p. 131.

[20] Ibidem.

In order to direct negotiations, the Contact Group defined in January 2006 the principles for determining the future status of Kosovo: 1) no return to status before 1999; 2) there is no merger of Kosovo with another state (a clear allusion to the possible unification of Kosovo and Albania); 3) no division of Kosovo.[21]

Such a deliberate negotiation process was absolutely in the "context of Kosovo's anticipated independence"[22].

"Certain lack of interest in bringing closer attitudes between the two sides was shown by mediator Martti Ahtisaari. First, Ahtisaari was more concentrated on writing a proposal for a solution that would be imposed on both sides. Secondly, the negotiations served him to examine the position of both negotiating parties, above all the Serbian, on possible compensations for the adoption of a proposal for a final solution, which is already largely prepared far from the eyes of the public."[23] At the end, in April 2007, Ahtisaari proposed a *Comprehensive Proposal for the Kosovo Status Settlement* that practically defines what is meant by the term "supervised independence".

Kosovo Albanians could declare independence (which they did a year later), but at the same time, as stated in Article 1.11. of the Comprehensive Proposal, "the international community can monitor, follow and take all necessary measures to ensure the effective implementation of the proposed solutions." In Article 12.1. it is described that an International Steering Group will be set up, which will be made up of "key international actors" and will at the same time appoint an "international civilian representative," but "the international civilian representative and the EU Special Representative, appointed by the EU Council, will be the same person". Point 12.6. explains that "the mandate of an international civilian representative will continue until the International Steering Group decides that Kosovo fulfills the conditions set by the Comprehensive Proposal", and in point 12.3. is given that an international civilian representative is "the supreme authority in the implementation of the Comprehensive Proposal". Annex XI of the Comprehensive Proposal explains the position of the International Military Presence for which NATO is competent. Thus, in Article

[21] The Contact Group was established under the auspices of the UN in 1992 in order to better coordinate key actors to resolve the Yugoslav crisis. It includes representatives of the United States, Russia, Great Britain, France and Germany. The contact group gets important after the termination of the work of the International Conference on the Former Yugoslavia in 1994. The Contact Group played a major role in seeking a peace solution for Bosnia and Herzegovina.

[22] Ивона Лађевац, Светлана Ђурђевић-Лукић, Ана Јовић-Лазић, „Међународно присуство на Косову и Метохији 1999-2009", op. cit., p. 136.

[23] Prorokovič, op. cit., p. 150.

1.8. specifies that "an international military presence will operate under the authority and political control of the North Atlantic Council and the NATO Command", and in Article 2.1. explains that "the chief of the international military presence is the supreme authority with regard to the interpretation of the aspect of the Comprehensive Proposal concerning the International Military Presence."

Since the Head of the International Military Presence is under the authority and political control of NATO, it can be concluded that the International Military Forces in Kosovo should "fulfill their responsibilities, including the use of the necessary force"[24], have the "right to free movement in Kosovo in every respect"[25], to "re-establish immediate and complete air control of the airspace"[26], "undertake inspection activities in accordance with established goals and tasks"[27] and the right to "undertake actions to support the fulfillment of their own mandate in accordance with the Comprehensive Proposal"[28]. In all this, and according to Article 2.3. institutions and bodies in Pristina must guarantee the international military presence "status, privileges and immunities" previously provided to KFOR members. Bearing all this in mind, therefore, NATO is completely exempt from any civil, institutional or political control in the territory of Kosovo and Metohija. According to the established legal order under the "supervised independence" defined by the Comprehensive Proposal, the highest possible forms of influence on the NATO structure, either by the International Civilian Presence or by the institutions in Pristina, are "consultations" and "coordination", and the head of the international military presence does not even have a formal obligation to submit a report on its work to any civilian official[29].

The responsibilities of an international civilian representative are defined in such a way that they are excluded from all of the aspects of the functioning of the international military presence, so that representatives of the international civilian mission do not even have a formal right to pose questions that affect the scope of the work of military structures in Kosovo.

The authorities in Belgrade rejected such a proposal, and Russia supported this position of Serbia, clearly indicating that in case of any attempt to amend

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[24] *Comperhesive Proposal For the Kosovo Status Settlement*, Article 2, Paragraph 2.2 (a), at: www.unosek.org или www.assembly-kosova.org.

[25] *Ibidem*, Paragraph 2.2 (b)

[26] *Ibidem*, Paragraph 2.2 (c)

[27] *Ibidem*, Paragraph 2.2 (d)

[28] *Ibidem*, Paragraph 2.2 (e)

[29] *Ibidem*, Anex XI, Article 1, Paragraph 1.4.

Resolution 1244, Russia would put a veto on the UN Security Council. In order to try to "legalize" the Ahtisaari's proposal through the UN system, the UK and France, during consultations in June and July 2007, tried to put this proposal on the agenda even six times, but Russia resolutely opposed it.

That led to organizing the second round of negotiations, from September to December 2007, which coordinated the so-called "Troika" (representatives of the United States, Russia and the EU - Frank Wiesner, Alexander Bocan - Harchenko and Wolfgang Ischinger). Belgrade and Pristina remained in their positions: Belgrade offered "substantial autonomy", and representatives of Kosovo Albanians solely demanded independence. However, this was not the only disagreement. At the Security Council session, at which the Troika report was presented on December 19th, 2007, there was not even a presidential conviction, as the differences between the member states were enormous. While, on the one hand, the Russian Ambassador Vitaly Churkin advocated continuation of negotiation by emphasizing that "any move towards unilateral independence would clearly be beyond the limits of international law" and that the unilateral proclamation of independence represents "a shockwave to the international system and to international law", so far, on the other hand, the ambassadors of the United States and the United Kingdom had diametrically opposite views[30]. US Ambassador Zalmay Khalilzad has called on other members of the Security Council, and first of all Russia, to consider once again the adoption of the Ahtisaari Plan, and if that is not "the United States, Europeans, others are determined to move forward with the implementation of that plan". His colleague from the British Foreign Office, John Sawers, pointed out that "the principle of territorial integrity is qualified by the principle of self-determination," and added that legal advisers engaging British diplomacy were convinced that "Resolution 1244 provided the legal basis to implement a plan for *supervised independence* drawn up by the UN envoy Martti Ahtisaari without any further council decision".[31] Russia's position was also supported by representatives of China, Indonesia and the South African Republic, while France, Belgium, Italy and Peru were standing with the United States and the United Kingdom. Slovakia was then reserved according to the possibility of unilaterally declaring independence, while the representatives of Ghana, Congo, Panama and Qatar did not declare themselves. Therefore, the Kosovo case split the Security Council, while observing the international level, it is noticeable that

[30] Claudia Parsons, „UN Security Council Fails to Bridge Gaps on Kosovo", *Global Policy Forum*, 19.12.2007, https://www.globalpolicy.org/component/content/article/192/38739.html

[31] Ibidem.

different countries have taken a stand on this issue, guided by different principles. Since there was no consensus, the leading Western countries again relocated the entire process from the UN Security Council, the same as in 1999. At that time, they were unable to get the consent of other members to launch a military action, and in 2008 to change Resolution 1244. Kosovo Albanians unilaterally declared independence.

The self-proclaimed country of Kosovo and its international position

As the SC remained divided, the United States decided that Kosovo Albanians should unilaterally declare independence. In fact, this was announced by President George W. Bush, who during an official visit to Albania, at a press conference in Tirana on June 10th, 2007, sent a message: "Kosovo will be independent"[32]. All the negotiations that were then led (under the leadership of the Troika) should have resulted in this outcome. The Kosovo Assembly declared independence on February 18th, 2008. Thus, the crisis was removed from the UN, and soon, following the leading Western countries, many other UN members established diplomatic relations with official Pristina. According to the information of the Ministry of Foreign Affairs of the Republic of Kosovo to date, their unilateral declaration of independence was recognized by 110 UN members. However, this information should be taken with reserve because it is virtually impossible to verify. Namely, it turned out that in some cases there was no official recognition or that it was done beyond the legal procedures in many countries.

Thus, for example, in 2013, President São Tomé and Principe "annulled the recognition of Kosovo," but later it turned out that there was actually no such thing. The decision to recognize Kosovo was made by the previous government in 2011, but it has never been confirmed in the assembly. So it was not valid. Therefore, President of Guinea-Bissau sent a letter of "acknowledging" to the then "President of Kosovo" Bevdet Pacolli, but he could not find out on what basis that decision was made or whether any competent authority confirmed it. Similarly, we learned that Haiti has recognized Kosovo at a joint press conference of two foreign ministers in 2012, but the official decision cannot be found. An oral statement by the head of the diplomacy does not mean

[32] See more in: „Bush insists Kosovo must be independent and receives hero's welcome in Albania", The Guardian, 10.06.2017, at: https://www.theguardian.com/world/2007/jun/11/balkans.usa; „Bush greeted as hero in Albania", BBC, 10.06.2017, at: http://news.bbc.co.uk/2/hi/europe/6738055.stm

recognition. Also, the vote on the reception of the "Republic of Kosovo" on November 9th, 2015 in UNESCO was also symptomatic. At that time, 92 UNESCO member states voted for the admission (50 of them were against, 29 abstained, and 15 did not vote, so Kosovo was not received since 2/3 majority is needed for such a decision). In any case, Kosovo was recognized by more than 90 countries, which means that the process of status legitimizing in the international relations is progressing. However, two things should be noted here. Even though the unilaterally proclaimed independence of Kosovo has been recognized by more than 90 countries, analyzing the internal structure of Kosovo, it is difficult to actually define what Kosovo is today. Perhaps the best description could be used by Brezhnev's "*limited sovereignty*" formulation. The supreme legal act does not represent the "*Constitution of the Republic of Kosovo*" but the *Comprehensive Proposal for the Status of Kosovo Status*.

Therefore, although it establishes bilateral relations with other countries, it accedes to international organizations and has its own bodies, Kosovo remains in the regime of "supervised independence" by the international military (KFOR, NATO) and civilian presence (EU mission - EULEX). Simply, the power of the president, the government and the assembly of Kosovo is of a limited character. This leads to the conclusion that the foreign policy appearance of the so-called Republic of Kosovo is of a limited character and will formally be able to play exclusively within the framework that will be approved by NATO and EU institutions that are in charge of overseeing Kosovo's statehood. The modest diplomatic network of the so-called Republic of Kosovo is oriented almost entirely to the member states of NATO and the EU, as well as to several neighboring Balkan states that have clearly expressed ambitions to become members of NATO and the EU.

Secondly, it turns out that the process of "rounding up the statehood of the so-called Republic of Kosovo" cannot be completed until Pristina receives a chair in the UN. This problem was first recognized by Wolfgang Ischinger, one of the members of the Troika, who in 2007 proposed a "compromise solution". According to his proposal, Serbia would not have to formally recognize Kosovo, but would not oppose its membership in the UN. This again means that Serbia would not ask Russia and China to veto an attempt of Kosovo to join the UN. Why is the UN important? Despite the fact that the entire process was obviously coordinated by the US and the EU, so-called Republic of Kosovo has not yet been recognized by five EU members (Spain, Romania, Greece, Slovakia and Cyprus) and four NATO members (excluding Cyprus, the aforementioned countries). This in every way jeopardizes the possible integration of Kosovo into these international organizations, which is a priority for the authorities in

Pristina, as well as for the EU and NATO. In addition, Kosovo has been recognized by 36 out of 56 OSCE members and 36 out of 57 members of the Organization of the Islamic Conference. Kosovo is not integrated into important political and security organizations, nor will it be until it secures a place in the UN. In this context, the status issue has become indisputable since many international organizations, in their founding acts, as a precondition for membership, claim membership in this organization of a universal character. All of this led to a re-orientation of the process towards the UN, which should this time result in the accession of the so-called Republic of Kosovo to the most important international organization.

Concluding remarks

The fact is that Western countries led by the United States in the last two and a half decades have had no consistent policy in the Balkans and have created a huge conflict potential for the future. One of the examples where this is best seen is Kosovo. The decision to recognize the right to self-determination of Kosovo Albanians, led to the opening of a question, first in the regional context, and then much broader, to the European one, whether this right must be recognized also if some other people declare themselves in such a way. For if it is widely accepted that the Kosovo Albanians have the right to self-determination, why is not the same right recognized, for example, for Serbs in Bosnia or Albanians in FYR Macedonia?

Secondly, if changing internationally recognized borders, in the way that has been done in the case of Serbia, is legitimate, why is this not the case with other countries in the region? This issue is very up-to-date and "looted" across the European continent: in Crimea, in Kurdistan, Catalonia, and only a few months after the decision of the Kosovo Albanians was set up, in South Ossetia and Abkhazia.

The inconsistency of Western countries, led by the United States, in relation to the application of international law norms, as well as their inconsistency reflected in the periodic relying on the UN in the "attempts" to resolve the Kosovo problem, confirm the intentions of the destabilization of this international organization.

Notwithstanding the fact that the UN as a multi-decade key factor in global security and, at the same time, a global player of great experience both in conflict and post-conflict situations, and despite the fact that from the very beginning they have been involved in seeking solutions to the problems identified in

Kosovo, in this issue was, obviously, left aside. This only confirms the theses of some authors that "Kosovo represents only one episode in the long process of the so-called domestication and marginalization of the United Nations by the United States"[33], as well as the understanding that the United States can build its relations on the dichotomy of good and evil as prone to "constructing an enemy "[34]. In order to attack the FR of Yugoslavia, the United States first roughly circumvented the UN, stood on the side of the Albanian population, meaning it as a victim and as an ally of NATO[35], and then, by inconsistent implementation of the existing standards and Resolution 1244, aimed at building a new state. When it became clear that it was not possible to "do so" through the Security Council and through the change of Resolution 1244, the United States instigated Pristina in a unilateral move, that is, on the unilateral proclamation of Kosovo's independence on February 17th, 2008. The United States and a number of EU member states immediately recognized this self-proclaimed state, and the RS government responded immediately by withdrawing ambassadors from these countries and starting a vivid diplomatic activity to prove that it was an act contrary to international law. By the act of unilateral declaration of independence, assisted by unhidden US support, the possibility of continuously seeking a solution through the definition of clear standards and rules has been lost. The US now has a new goal: to make the so-called Kosovo a member of the UN, and after almost a quarter of a century, to close this chapter.

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[34] Ibidem.

[35] „Observers concluded that, with military intervention, NATO became actually de facto ally of the so called Kosovo Liberation Army in its request for independence. Once the intervention began, the return to earlier autonomy was never an option. The war made NATO a biased in conflict, harming the originally proclaimed intentions to restore autonomy within Serbia." Andreas Heinemann-Grüder and Wolf-Christian Paes, *Wag the Dog: The Mobilization and Demobilization of the Kosovo Liberation Army*, BICC Brief No. 20, October 2001, p. 18.

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CHAPTER III

TEN YEARS AFTER UNILATERAL PROCLAMATION OF INDEPENDENCY: WHERE IS KOSOVO TODAY?

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TURKEY'S RECOGNITION OF KOSOVO INDEPENDENCE AND ITS RELATIONS WITH SERBIA

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Abstract: This paper has two basic aims: First, it seeks to analyse Turkey's policies toward the Kosovo issue since the early 1990's. Second, it tries to understand how Turkey's relations with Kosovo affected its ties with Belgrade, especially after the declaration of independence by Kosovo. While Turkey had pursued a rather cautious policy concerning the independence of Kosovo during the Albanian-Serbian conflict, it extended diplomatic recognition only one day after Kosovo declared independence. Turkish recognition took place at a time when countries like Russia and Serbia were objecting to it and a heavy debate was going on regarding whether the Kosovo independence was in line with the international law. One of the main research questions of this study is why Turkey decided to extend its diplomatic recognition on 18 February 2008. The main argument of the paper is that change in Turkish foreign policy towards Kosovo occurred step by step and did not represent a radical transformation in its foreign policy orientation. The decision-makers in Turkey continued to follow the line of the Western countries in the first decade of the 21st century as it had been the case during the Cold War and in the 1990s. The article makes it clear that Ankara prepared the necessary background for the recognition of Kosovo in the previous years slowly. The main thesis of the paper is that although Ankara's recognition created a tension in Turkish-Serbian ties, it did not last long. As a result of compartmentalisation of their foreign policies, they learned to cooperate in other fields despite disagreement on the Kosovo issue.

Keywords: Turkey, Kosovo, Serbia, Bosnia-Herzegovina, Balkan

Introduction

For the first time in their contemporary history, in the 21st century, Turkey and Serbia have been sharing similar foreign policy goals and aspiring to become

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full members of the same regional organizations. They are located in the same regional governance structures and share similar regional concerns.

Considering the historical background of bilateral relations, one should note important differences as well as similarities. During the First World War, the two were allied with different countries. During the Second World War, Yugoslavia was occupied by the Axis countries, whereas Turkey was able to keep successfully itself out of the war. On the other hand, they were members in different blocs leading to different foreign policy orientations within the bipolar international system. Turkey chose to be part of the Western bloc by being a member of NATO, however, Yugoslavia under Joseph Broz Tito became one of the leading countries of the Non-Aligned Movement. This basic difference, however, did not prevent them from coming together in various forms of regional cooperation schemes. The governments in Ankara and Belgrade cooperated in the framework of the Balkan Entente in 1934 and the Balkan Pact in 1954.[2] Hence, even under different regimes and with different foreign policy orientations, both countries were able to cooperate in the regional context, especially when they perceived similar challenges in the neighborhood and global scene. In sum, in their history, both countries had the experience of cooperating in different international systems.

However, since the changes in Serbia's political structure in October 2000, Belgrade has made important adjustments in its foreign policy. Since that time, Ankara and Belgrade have started sharing more commonalities in their perception of the international and regional systems. The start of the Europeanization process in Belgrade and the speeding up of that process in Ankara in the first half of the 2000s led to closer ties between the two countries at different levels. Similarly, their approaches toward other Balkan countries started carrying more similarities, though certain differences, like those on Kosovo—persisted without substantially harming the state of bilateral affairs.

I argue that in our contemporary world, there are again some regional and global challenges that are encouraging both countries to act together, ranging from their mutual disappointment with a slow EU integration process, and Russian foreign policy in the neighborhood, to failing states in the Middle East and the repercussions of the threat of global terrorism in regional countries, as we have already witnessed in Zvornik in Bosnia and Herzegovina and Kumanovo in Macedonia.

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[2] For a historical background of Turkish-Serbian ties see Didem Ekinci, "A Chronicle Evolving Turkish-Serbian Relations A Century After the Balkan Wars", *Uluslararası Suçlar ve Tarih*, No. 14 (2013), pp. 7-36.

This study aims to focus on Serbian and Turkish ties by analysing the issue at different levels of analysis. It will shed light on the two countries' general approach towards regional politics. It will start by concentrating on Turkey's policies towards the Kosovo issue. Then, it will examine identity perceptions in both countries. The hypothesis of the study is that in order to understand any country's international relations, we first need to grasp its identity perceptions. Second, it will look at how the global system affects both countries' foreign policies. Then, it will analyze the general state of affairs at the regional level and its impact on both countries. Lastly, it will focus on their foreign policy approaches at the national level. The study will conclude by explaining its main findings.

Turkey's Recognition of Kosovo

An important Turkish policy in the Balkans under the AKP rule was the diplomatic recognition of Kosovo just one day after the declaration of its independence by the Kosovar authorities. This issue is interesting to explore in terms of minority rights in various contexts that directly or indirectly concern Turkey. To start, there is yet to be resolved the Kurdish issue. Second, it is also related to the non-recognition policy of those EU members which suffer from separatist demands in the case of Spain, Romania, and Slovakia. Likewise, it can be related to the Cyprus issue in the case of Greece and South Cyprus. Why then did Turkey prefer to recognize Kosovo, though there was no international consensus on the issue at the time?[i]

First of all, it should be stated that the Turkish recognition of Kosovo did not represent a radical change in Turkish foreign policy, but rather a continuity. Turgut Özal's reception of İbrahim Rugova, leader of the Kosovo Albanians, in 1992, as well as the parliamentary debates in the 1990s, indicate that Turkey sympathized with the Kosovar Albanians' cause from the very beginning. Second, Turkey was aware of the fact that Kosovo's independence process was irreversible and that there was no prospect for Kosovo returning to Serbian sovereignty. A stylistic change is that the Turkish Foreign Ministry ceased to emphasize Yugoslav territorial integrity by the 2000s. Turkey even took steps to promote the acceptance of the Ahtisaari Plan favoring independence of Kosovo by the UN Security Council in 2007.

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[i] For a comprehensive discussion see B. Demirtaş-Coşkun. (2010). Kosova'nın Bağımsızlığı ve Türk Dış Politikası (1990-2008), *Uluslararası İlişkiler, 7 (27)*, p. 51-85. This part is based on the article mentioned above. The author would like to thank the editors of the *Uluslararası İlişkiler* Journal for their permission.

This has been in line with the changing position of the Western countries on the Kosovo issue, led by the US change of policies from supporting the territorial integrity of Serbia to supporting independence demands of the Albanians. Prior to Kosovo's declaration of independence, it was reported by the international press that US was encouraging its allies, including Turkey, to recognize Kosovo (*RFE/RL Newsline*, 2008). The AKP government likely did not want to remain indifferent to the newest state of Europe, as the recognition of Kosovo and the establishment of friendly relations between the two countries would increase the regional role of Ankara. Kosovo would be a new partner for Turkey with regard to the security of both the Balkans and Europe. Besides, Kosovo has been the second country in the Balkans with a Muslim majority of more than 90 percent. Davutoğlu stated that Kosovo is a sister country to Turkey due to its specific geopolitical position, historical ties, and importance of its stability for the region ("Sayın Bakanımızın Kosova Dışişleri Bakanı İskender Hüseyni İle Ortak Basın Toplantısı", August 28, 2009). Furthermore, this can be shown as an example of the impact of neo-Ottomanism on Davutoğlu's approach to the region.

As mentioned above, the AKP's foreign policy understanding clearly played a role in the recognition process, as it considers Turkey a central country and favors its active participation in regional developments[3]. According to Davutoğlu, Bosniaks and Albanians are the most important people in the Balkans with regard to Turkish foreign policy. Therefore, if Turkey wants to establish a "sphere of influence" in the Balkans, it should first of all cooperate with these two groups, with which Turkey has "historical and cordial closeness"[4]. Within this framework, it might be supposed that the increasing regional role of Turkey would increase its position in global politics.

The interesting point here is that Turkey did not concentrate much on the problems of the Turkish minority in Kosovo when the matter of recognition was discussed in Ankara. The most significant of these problems stems from the fact that Turkish is no longer one of the official languages of Kosovo. This dates back to the beginning of the UN Mission in Kosovo (UNMIK) administration, though

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[3] Ahmet Davutoğlu, Speech at the Turkish Grand National Assembly, Presentation of the Foreign Ministry's Budget to the Turkish Grand National Assembly, Proceedings of the Turkish Grand National Assembly, 18 December 2009, http://www.tbmm.gov.tr/develop/owa/Tutanak_B_SD.birlesim_baslangic_yazici?P4=20525&P5=H&page1=100&page2=100 (last visited 4 April 2014).

[4] Ahmet Davutoğlu, Stratejik Derinlik, Türkiye'nin Uluslararası Konumu, İstanbul, Küre, 2001, pp. 316-317.

it was one of the three official languages (in addition to Albanian and Serbian) in Yugoslavia. In effect, Turkish decision makers were careful to take care of the whole of Kosovo, not only the problems of Turks. According to Türkeş, the case of the Turkish minority in Kosovo is a good example for understanding the increasing influence of global actors in the Balkans.

Multiple Identity Perceptions

Historically speaking, Turkey and Serbia both have multiple identities ranging from West to East. Belonging to multiple identities has been evident both at the governmental and public levels. Even when they have strategic alliances with a certain bloc or country, both have chosen to improve their relations with other actors as well. Although the reasons for having multiple identities cannot be dealt with here at length, it should be noted that their historical experiences and geographical positioning have encouraged the leaders and the public of these two countries not to stick to just one regional identity.

An important sign of their multiple identities is the metaphor of a "bridge" that is used by decision-makers in both countries. A bridge between East and West has been a classical concept defining both countries' foreign policy orientations. This metaphor has been used by politicians belonging to different political spectrums. Former Serbian President Tomislav Nikolić stated that "Serbia is and should be a bridge between the East and West" because of its "favorable geographical position", since it is located "between east and west."[5] Similarly, former Prime Minister Mirko Cvetković stated that Serbia is "a geostrategic bridge between East and West."[6]

In addition, Serbia's balanced foreign policy between the EU and Russia is also quite important. Despite being a negotiating country with the EU, Belgrade did not join the sanctions regime of the West after the Crimean crisis. Also, the fact that the Serbian Parliament ratified the Stabilisation and Accession Agreement with the EU on the same day as it ratified an energy treaty with Russia is another proof of this balanced foreign policy.[7]

The same discourse is evident in Turkish decision-makers as well. For example, Süleyman Demirel stated that "Turkey… is a bridge to West Asia, to

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[5] Bojan Savić, "Where is Serbia? Traditions of Spatial Identity and State Positioning in Serbian Geopolitical Culture", *Geopolitics*, Vol. 19, No. 3, 2014, p. 704.

[6] Ibid., p. 706.

[7] Dušan Reljić, *Russlands Rückkehr auf den Westbalkan*, Stiftung Wissenschaft und Politik, July 2009, Berlin.

the Middle East." He also stated that "After the collapse of the Soviet Union, … Turkey has turned into a bridge."[8] A similar discourse on multiple identity is seen in the discourse of İsmail Cem, Foreign Minister between 1997-2002, who stated that Turkey was both European and Asian.[9] Therefore, the bridge metaphor has repeatedly been used by Turkish decision-makers irrespective of their ideological positioning.

Former Foreign Minister and former Prime Minister, Ahmet Davutoğlu, also emphasises Turkey's multiple identities in his publications and speeches.[10] Davutoğlu stated that Turkey's most important characteristic is its possession of a multidimensional geography. He stated his belief that Turkish foreign policy can never be unidimensional and that Turkey cannot ignore Europe, the Black Sea, the Mediterranean, the Caspian, the Gulf, Africa, Latin America, the Atlantic Alliance as well as Asia.[11]

In a similar way, both countries emphasize their role as a logistical connection point between East and West in terms of pipelines. The concept of "energy hub" has emerged in the post-Cold War Turkish foreign policy as Turkey has become the meeting point of oil and gas pipelines. A similar discourse is evident in Serbia, as seen in the discourse of former Prime Minister Cvetković, when he stated that Serbia is "crisscrossed by modern transport routes, by oil and gas pipelines, a hub of contemporary connections."[12] Very similar discourse can be seen in Turkish foreign policy. Turkey aims to become a reliable transit country between the producer and consumer countries and is launching initiatives to become a dynamic energy terminal.[13]

In sum, in the current global system, both countries have similar multiple identity perceptions that allow them to shape their international relations

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[8] Both statements quoted in Lerna K. Yanık, "The Metamorphosis of Metaphors of Vision: "Bridging" Turkey's Location, Role and Identity After the End of the Cold War", *Geopolitics*, Vol. 14, No. 3, 2009, pp. 537-538.

[9] Ibid., p. 537.

[10] For a comprehensive discussion on the identity of Turkish foreign policy see Ahmet Davutoğlu, *Stratejik Derinlik, Türkiye'nin Uluslararası Konumu*, İstanbul, Küre, 2001.

[11] Prime Minister Ahmet Davutoğlu's speech at the Azerbaijan Diplomatic Academy on "Turkey-Azerbaijan Strategic Partnership in a Period of Global Challenges", 4 December 2015, https://www.akparti.org.tr/site/haberler/butun-insanliga-kardes-nazariyla-bakariz/80967#1 (last visited 5 December 2015)

[12] Quoted in Savić, "Where is Serbia?...", p. 706.

[13] "Türkiye'nin Enerji Stratejisi", Turkish Foreign Ministry web page, http://www.mfa.gov.tr/turkiye_nin-enerji-stratejisi.tr.mfa (last visited 5 December 2015)

accordingly. In a similar way, both countries perceive themselves as having a central place in energy issues between the producer and consumer countries. After analysing both countries' identity perceptions, the following sections will dwell on how the international system affects their international relations.

Impact on the Global Level: The Balkan Political BRICS

We can argue that after long years, the composition of the international system now allows both countries to cooperate in different realms. After the decades of the Cold War, in which Ankara and Belgrade chose to take part in different international political constellations, at least since 2000, both countries have similar foreign policy aspirations, such as membership in the European Union.

During the bipolar world era, states had to act within the boundaries of an international system that constrained their abilities to have independent initiatives. Only within the limitations of the international system, regional actors like Turkey and Yugoslavia could develop their global and regional policies. At that time of ideological rivalries and subsequent perceived threats, both countries had to formulate their regional policies in a restrained manner.

However, after the dissolution of the Soviet Union, with radical changes taking place in the global system, Turkey's and Serbia's roles in the global and regional system changed considerably. In our contemporary world, they now have the necessary maneuvering space to formulate their foreign policies independently in accordance with their perceived national interests.

The concepts of emerging powers, pivotal states, rising states, and near-BRICS states are all used to describe those states that aspire to play a greater role in the international system and have the necessary hard and soft power to do it.[14] I argue that both Turkey and Serbia have been playing that role in the Balkans. In other words, they can be called the "Balkan BRICS". Their policies in the region are so crucial that without their contribution no outside actor can argue to be able to shape its Balkans policies. A regional organization, if it wants

[14] For an evaluation of the issue of emerging powers and rising powers see Trine Flockhart et al., *Liberal Order in a Post-Western World*, Transatlantic Academy, Washington D.C. 2014; Ziya Öniş and Mustafa Kutlay, "Rising Powers in a Changing Global Order: The Political Economy of Turkey in the Age of BRICs", *The Third World Quarterly*, Vol. 34, No. 8, 2013, pp. 1409-1426; Şaban Kardaş, "Turkey: A Regional Power Facing a Changing International System", *Turkish Studies*, Vol. 14, No. 4, 2013, pp. 637-660; Pınar Tank, *The Concept of Rising Powers*, NOREF Policy Brief, June 2012.

to make any positive change in regional affairs, must first gain the whole-hearted support of these two countries.

In terms of power parameters like geography and population, both countries are greater than their regional neighbors. Turkey has the biggest geographic size and is the most populous country in the region. In addition, Turkey has the 17th biggest economy in the world and hence has the biggest GDP in the Balkans. Meanwhile, Serbia has the biggest population and geographic size of all the West Balkan countries.

In the current global system, whether we call it a unipolar system or an emerging multipolar one depending on interpretation, we can argue that regional powers, like Turkey and Serbia, have more opportunities to establish regional cooperation initiatives and create solutions for the current problems. In other words, the existing global conjuncture allows both countries more maneuvering place to determine their Balkan policies. Whether they will be able to achieve to help solve the regional problems or not will depend not only upon the ability of the political leaders, but also on the peoples of those countries and on the way their policies are perceived by the regional countries.

After elaborating on why these two states can be called the regional BRICS, we can now focus on the impact of the regional level on both countries' Balkan policies.

Impact on the Regional Level: Current Challenges and the Ambivalence of Europeanisation

The *Zeitgeist* at the regional level has an impact on the foreign policies of both countries. We can analyse the impact on the regional level by looking at two important factors: regional security issues and the Europeanisation process. In this section, first regional security problems will be considered and then the impact of Europeanisation on both countries' regional policies will be examined. In addition, the section will shed light on the controversial state of affairs with the EU.

Although the wars in the Balkan peninsula came to an end in the late 1990s, a durable peace has still not been achieved.[15] Due to the existence of a variety of critical security problems we can only discuss about a fragile regional peace. The most pressing problems can be summarised as follows: First of all, ethnic nationalism is still a fact of life in many regional countries, as seen in their legal

[15] For an analysis of the security issues in the Balkans see Şaban Çalış and Birgül Demirtaş (eds.), Balkanlar'da Siyaset, Anadolu Üniversitesi, Eskişehir, 2012, pp. 213-218.

and political structures. The Dayton Peace Accord has created an ethnicity-oriented political system in Bosnia and Herzegovina in which each ethnic community votes for the political parties representing their ethnicity. Similar voting preferences are valid in Macedonia as well, where Macedonians and ethnic Albanians vote for their own political parties.

The second problem relates to the economic problems and the existence of organized crime in the region. Still affected by all problems related to transition economies, the Balkan countries were also affected by the European economic crisis. Many of the regional countries suffer from high levels of unemployment, ranging from 15-35 per cent. In Macedonia, the unemployment rate is 27 per cent, whereas in Bosnia and Herzegovina it is about 27.5 per cent. Youth unemployment is even higher in every country, in the case of Bosnia and Herzegovina reaching to 57 per cent.

Under such challenging political and economic conditions, the European Union perspective is not crystal clear. Considering the Euro-zone economic crisis, the issue of Brexit, refugee crisis and the difficulty of absorbing recent members, the European Union leaders are not in a hurry to speed up the accession process of the Western Balkan states or Turkey. The European Union's current policy preference is to offer intermediate rewards, like visa liberalisation policies, rather than full membership perspectives.[16] Therefore, although the Union has been seen as the greatest example of inspiration, it does not offer a clear perspective to the regional countries.

One can, in fact, argue that both countries have a love-and-hate relationship with the EU. On the one hand, they share the ultimate aim of full-membership, on the other hand, they also share a similar type of frustration with Brussels. After the coup attempt of July 2016, Turkey has been experiencing crises with some EU member states, like Germany and the Netherlands. Although these crises do have the potential to affect Turkey's ties with Brussels, currently a full EU membership is officially still one of the important targets of Turkish foreign policy.

In the Turkish case, after many reforms were carried out between 1999-2005 following the granting of candidate status, the process of Europeanisation then stalled. Still, there has already been an important impact of the Europeanisation process on Turkish foreign policy towards the Balkan countries.

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[16] Denisa Kostovicova, "When Enlargement Meets Common Foreign and Security Policy: Serbia's Europeanisation, Visa Liberalisation and Kosovo Policy", *Europe-Asia Studies*, Vol. 66, No. 1, 2014, pp. 67-87.

Turkish-Greek rapprochement since 1999, Turkey's use of different instruments as well as Turkish mediation initiatives, all bear the influence of the EUisation process. This has been evident in the discourses of Turkish politicians. For example, in the early 2000s the then Prime Minister Erdogan referred to the importance of the EU in improving the ties between Ankara and Athens:

If Turco-Greek rapprochement is possible today, it is because we have a common ground through which mutual perceptions are formed most accurately. That common ground is the EU… I would like to draw your attention to the fact that Turkey's own policies and suggestions to the Turkish Republic of Northern Cyprus based on the Annan Plan have been in parallel with the EU.[17]

An important indicator of how the EU policies were emulated is the initiative that Turkey launched to establish a visa-free area in the neighbouring regions, including the Western Balkans, essentially to create a Turkish-style Schengen area. As Davutoğlu stated, Turkey started to employ a European Neighbourhood Policy (ENP) in the neighbourhood[18] and tried to achieve maximum cooperation with all regional countries.[19]

The fact that Serbia was accepted as a candidate state by the EU in 2012 and started the negotiations in 2014 has had an enormous impact on Serbian foreign policy. The most important effect can be seen in its relations with Kosovo. Since 2011, Serbia and Kosovo have been continuing to negotiate with each other under the EU mediation. So far, the dialogue has resulted in important agreements on recognition of university diplomas, customs stamps,

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[17] Speech by Prime Minister Recep Tayyip Erdoğan, 'Why the EU Needs Turkey', University of Oxford, 28 May 2004, http://www.sant.ox.ac.uk/esc/docs/Erdogan1.pdf (last visited 15 May 2014).

[18] The ENP was initiated by the EU to improve its relations with the countries in the neighbouring regions that do not have any chance of being full members in the foreseeable future. For a comprehensive evaluation of the ENP, see Bezen Balamir-Coşkun and Birgül Demirtaş-Coşkun (eds), *Neighborhood Challenge: The European Union and Its Neighbors,* Bota Raton Florida: Universal Publishers, 2009. Also see Sevilay Kahraman, 'Turkey and the European Union in the Middle East: Reconciling or Competing with Each Other?', *Turkish Studies*, Vol. 12, No. 4, 2011, p. 708; Senem Aydın Düzgit and Nathalie Tocci, 'Transforming Turkish Foreign Policy, The Quest for Regional Leadership and Europeanisation', CEPS Commentary, 12 November 2009.

[19] Ahmet Davutoğlu, Speech at the Turkish Grand National Assembly, Presentation of the Foreign Ministry's Budget to the Turkish Grand National Assembly, Proceedings of the Turkish Grand National Assembly, 18 December 2009, http://www.tbmm.gov.tr/develop/owa/Tutanak_B_SD.birlesim_baslangic_yazici?P4=20525&P5=H&page1=100&page2=100 (last visited 4 April 2014). For a comprehensive analysis of the impact of Europeanisation on Turkey's relations with the Balkan countries see Birgül Demirtaş, "Turkish Foreign Policy toward the Balkan Neighborhood: A Europeanized Foreign Policy in a De-europeanized National Context?", *Journal of Balkan and Near Eastern Studies*, Vol. 17, No. 2, 2015, pp. 123-140.

border management, and the establishment of an association of Serbian majority municipalities in the northern part of Kosovo.[20] Catherine Ashton, the then EU High Representative for Foreign Affairs and Security Policy stated that the first agreement signed between Belgrade and Prishtina on 19 April 2013, on principles governing the normalisation of relations, marked "a step away from the past, and for both of them, a step closer to Europe."[21] Inspired by the neo-functionalist theory Brussels tries to create a dialogue between Serbia and Kosovo in order to encourage them to take steps to normalise their relationship, although there is no prospect of recognition by the Serbian side. So far, the positive steps are worthy of praise, but still, the relationship between the parties remains fragile, as seen in the events occurring in Kosovo's internal politics, as some opposition parties are protesting the negotiations with Serbia.

However, this is only one part of the coin. Both countries suffer a love-hate type of relationship with the European Union. One can find many examples of it from the speeches of politicians in both countries.

In June 2015, Serbian Prime Minister Aleksandar Vučić stated "Still, Serbia is being blackmailed with Kosovo… [the] screening process is done, but still, none of the chapters is open [in Serbia's EU accession talks] because some countries in Europe are waiting for finalization of some issues regarding Kosovo."[22] This rhetoric is a demonstration of Serbia's frustration with the EU policies. Since Serbia and the EU have different priorities with regard to the ties between Belgrade and Prishtina, the result may be at least partially disappointing for some parties.

In fact, this rhetoric of frustration with the EU resembles Turkey's disappointments along the long road of the Turkish accession process, which has its roots back in the 1963 Ankara Association Agreement. Turkish leaders have long been criticising the EU's policies towards Turkey for several reasons: First of all, the EU's reluctance to give Turkey a clear full membership perspective has become an important thorny issue.[23] Second, the Cyprus dispute has led to

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[20] Serbia and Kosovo: European Perspectives and Practicalities, European Movement Serbia and Institute for Development Policy, Belgrade, 2014, p. 145.

[21] Quoted in Ibid., p. 146.

[22] Quoted in "Belgrade 'Blackmailed over Kosovo' Says Serbian PM", 15 June 2015, http://www.balkaninsight.com/en/article/belgrade-blackmailed-over-kosovo-says-serbian-pm (last visited 6 December 2015). For an analysis of the conceptualisation of West in Serbia see Zala Volčič, "The Notion of 'the West' in the Serbian National Imaginary", *European Journal of Cultural Studies*, Vol. 8, No. 2, 2005, pp. 155-175.

[23] "Erdoğan AB'ye Rest Çekti", 28 Şubat 2011, http://www.ntv.com.tr/turkiye/erdogan-abye-rest-cekti,aESmbBodS0CfOCXZ27pLUg?_ref=infinite (last visited 6 December 2015)

further deterioration of bilateral ties. In 2004 there was a referendum in Cyprus. The Turkish Cypriots approved the so-called Annan Plan for the solution of the Cyprus dispute with a great majority, whereas the majority of the Greek Cypriot side rejected it. However, at the end of the day, the Greek Cypriot side became a full member of the European Union, with Turkish Cypriots left aside. The EU did not fulfill its promises with regard to Turkish Cyprus after the referendum. Recep Tayyip Erdoğan, then Turkish Prime Minister, in a speech in 2013, questioned whether the Union acts in accordance with the principle of *pacta sund servanda* and criticized the EU for its pursuit of ideological policies. Turkish foreign policy makers also have the impression that whatever Turkey does, the Union will always find an excuse not to take Turkey into the Club. This is just an example how Turkey and Serbia have been sharing similar concerns and experiencing similar problems in their relations with Brussels. They share the same feelings of injustice and disappointment.

Although the Kosovo issue and the Cyprus dispute are totally different matters, how Belgrade and Ankara interpret the EU policies do have some similarities.

Although the EU's relationship with both countries has been controversial for different reasons, one cannot disregard the fact that Turkey and Serbia are both important regional countries in the Balkans. First, both countries have proved able in the past to create systems of governance in an important part of the region, namely the Ottoman Empire and the Kingdom of Serbians, Croatians and Slovenes, later Yugoslavia. They were the ones that formed the type of power constellations in order to create systems of governance. The Ottoman Empire and Yugoslavia established different types of governance systems. Second, they still have the capability to be influential in those areas that they once ruled. Without the contribution of Turkey and Serbia, it is not possible to reach durable peace and stability in the region. As the former Turkish Ambassador to Serbia Süha Umar stated: "If we are after peace and stability, without Serbia truly seeking peace and stability, it won't happen."[24] Third, the fact that they have kin groups in the neighbouring states make their regional roles even more important. There are Turkish minorities in different Balkan countries, from Bulgaria to Greece and from Macedonia to Kosovo. Similarly, there are Serbian populations from Bosnia and Herzegovina to Kosovo, from Montenegro to Croatia. The existence of these groups makes the roles of both homelands, Turkey and Serbia, crucial in the creation of regional peace and stability. In addition, their role in the management

[24] Quoted in Aleksandra Stankovic, "Balkan Stability Impossible Without Serbia", http://www.balkaninsight.com/en/article/balkans-stability-impossible-without-serbia (last visited 25 August 2017)

of the refugee crisis stemming from Syria should also be noted. In sum because of their governance roles in the past, their continuing influence and the existence of kin groups, Turkey and Serbia are both extraordinary actors in the region.

As was the case in the interwar era and during the Cold War, in order to be able to create any regional system of governance, their will, acceptance and cooperation are thus vitally needed. In other words, whatever the *Zeitgeist* is, Ankara and Belgrade maintain their key position in the regional politics.

In other words, as the region has been witnessing all the impact of the global and European economic crises, struggling to pass from the stage of procedural democracy towards substantial democracy, and as long as the EU does not offer a clear membership perspective for the Balkan countries, Serbia and Turkey do have a substantial potential to contribute to the solution of the problems.

In recent years, both countries have succeeded in making positive contributions to the solution of various issues, especially when they have acted together. The trilateral mechanism with regard to Bosnia and Herzegovina is an important step ahead. The fact that the leaders of both countries have been coming together at different levels in order to create solutions for the problems in Bosnia should be considered a major breakthrough. At a time when external actors have lost their interest in the Balkans and are largely focused on other regions, these two regional countries have come together and worked on finding their own solutions. That is an important example of regional ownership and inclusiveness. Although there are still serious problems in Bosnia and Herzegovina, this trilateral consultation mechanism has had some concrete results. The next section will concentrate on the impact of the national level on both countries' ties with their Balkan neighbours.

Impact on the National Level: New Initiatives

The Turkish initiation of two trilateral mechanisms has been an important sign of the re-launch of an active foreign policy.[25] Within that framework, there have been regular gatherings of the foreign ministers and presidents of Turkey, Bosnia and Herzegovina and Serbia, as well as the foreign ministers of Turkey, Bosnia and Herzegovina and Croatia. As a result of that initiative, the foreign ministers of Turkey, Bosnia and Herzegovina and Serbia have come together

[25] The author benefited from the following article in writing this section: Birgül Demirtaş, "Turkey and the Balkans: Overcoming Prejudices, Building Bridges and Constructing a Common Future", *Perceptions*, Vol. 18, No. 2 (2013), pp. 163-184.

nine times and the foreign ministers of Turkey, Bosnia and Herzegovina and Croatia have gathered four times since 2009. In addition, the leaders of Turkey, Bosnia and Herzegovina and Serbia have come together three times. The summit in İstanbul produced the İstanbul Declaration on 24 June 2010, which is considered a historical document since it guaranteed the territorial integrity of Bosnia and Herzegovina.[26] This summit has a broader historical importance because for the first time Serbian President Boris Tadic and Bosnia and Herzegovina President Haris Silajdzic came together.[27]

Considering the failure of the Butmir process organised by the EU and the USA, that Turkey's initiatives have borne some early fruits is noteworthy and can be considered a success, though limited. First, as noted above, the recognition of Bosnian territorial integrity by Belgrade at the İstanbul summit is of historical importance. Second, as a result of Turkey's active engagement, Bosnia and Herzegovina sent an ambassador to Belgrade following a three-year interruption. Third, in 2010 the Serbian parliament adopted a declaration condemning the crimes in Srebrenica.[28] Furthermore, Turkey also tried its best to facilitate Bosnia and Herzegovina's membership into NATO in order for Sarajevo to be accepted into the Membership Action Plan.[29] Arguably, the main reason for the Turkish initiative's relative success over the Butmir process was its efforts at encouraging the trust-building measures between the parties."[30]

In recent years, there has been a rather astonishing improvement in relations between Turkey and Serbia. In fact, although the Ankara-Belgrade relationship witnessed tough times in the 1990s, following the end of conflicts in the Yugoslav territories both sides did try to mend relations. However, it never reached the current level. It has been emphasised by the leaders that the Turkish-Serbian relationship has been enjoying a golden period and is in the best shape ever. The rhetoric used by the decision-makers that although Turkey

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[26] 24 April İstanbul Triletaral Summit Declaration, İstanbul, 24 April 2010, at http://www.seecp-turkey.org/icerik.php?no=60 (last visited 22 February 2012).

[27] Sami Kohen, "Balkanlar'da Yeni Bir Başlangıç", *Milliyet*, 27 April 2010.

[28] The text of the declaration is at http://srebrenica-genocide.blogspot.com/2010/04/text-of-declaration-on-srebrenica.html [last visited 18 December 2012].

[29] İnan Rüma, "Turkish Foreign Policy towards the Balkans: Overestimated Change within Underestimated Continuity", in Özden Zeynep Oktav, *Turkey in the 21st Century: Quest for a New Foreign Policy*, Aldershot, Ashgate, 2011, p. 135-157.

[30] Reina Zenelaj, Nimet Beriker and Emre Hatipoğlu, "Determinants of Mediation Success in Post-Conflict Bosnia: A Focused Comparison", *Australian Journal of International Affairs*, Vol. 69, No. 4, 2015, pp. 414-437.

and Serbia do not have common borders, they are still neighbours is an important indication of the degree of the rapprochement.[31] The fact that good ties have continued following the 2012 Serbian elections, despite the election of a more nationalist group, has shown that the bourgeoning ties are not dependent on a particular party or government.

An important feature of Turkey's Balkan policy in the last decade has been its emphasis on soft power.[32] In a continuation of the foreign policy approach of the Turgut Özal years, economics is important in Turkey's foreign relations. Emphasising the liberal view that increasing economic relations will lead to an improvement in political relations and economic interdependence, Ankara has been advocating better economic ties with regional countries. However, as it is not the state but the private sector that is expected to increase trade and investment, the basic aim is to facilitate and encourage an increase in bilateral trade relations. The practice of taking businesspeople on the foreign trips of key decision-makers started during the Özal era; however, it was suspended during the coalition governments that followed. This practice was resumed by the Justice and Development Party (JDP) after it came to power in 2002. It can be considered as an indication of the impact of a "trading state" approach in Turkish foreign policy.[33] There are also some indications that Turkish companies are being affected by the dynamism of Turkish foreign policy and have started to use similar rhetoric. For example, the General Director of Ziraat Bank, Turkey's largest public bank, Can Akın Çağlar, stated that they aim to transform the "local power" of the bank into a "regional power," and they want to be a "big player".[34] Hence, the multi-dimensionalisation of Turkey's foreign relations is visible in the sphere of economics as well.

It is also important that in recent years, this trilateral cooperation mechanism has started focusing on technical issues as well. For example, there are attempts to open the horizon for establishing a trilateral trade committee and trilateral trade mechanism. It should also be emphasized that at the Ankara Summit in 2013, the presidents of Turkey, Serbia and Bosnia and Herzegovina stated the

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[31] "Minister Dincer Views Serbia as Turkey's Important Partner in the Balkans", Anatolian News Agency, via World News Connection, 24 September 2010.

[32] "Turkey in the Balkans. The Good Old Days", *Economist*, 5 November 2011.

[33] Kemal Kirişci, "The transformation of Turkish foreign policy: The rise of the trading state", *New Perspectives on Turkey,* No. 40, 2009, pp. 29-56.

[34] "Ziraat Bankası: Kapımızı Çalan Yunanistan ve Balkanlar'daki Bankalarla 2011'de El Sıkışırız", *Vatan*, 5 June 2010.

importance of energy as well as "a functioning institutional framework of regional cooperation." Energy dependence is another issue for all the regional countries. Turkey and Serbia do have the potential to act as bridges in order to bring together energy supplying and energy demanding countries.

Hence, we can argue that the concept of functionalism started playing a key role in regional ties since the trilateral consultation mechanism has emphasized not only political but also economic and technical cooperation. The fact that Bosnia and Serbia jointly established a trade office in İstanbul in 2016 is a good example of how multidimensional trilateral relations have become throughout the years.[35]

There are, of course, also some disagreements in the bilateral relations, as we have seen in their Kosovo policies. However, one should admit that both countries proved that even if they have different priorities and even contested stances in different areas, they can agree to disagree. They do not allow these issues to cast a doubt on their cooperative relationship in many other fields. As the former Turkish Ambassador to Belgrade Mehmet Kemal Bozay stated: "In international politics, there are no countries with 100 per cent overlapping views in all fields."[36]

Although state-to-state relations still dominate the agenda, we can argue that non-state or non-central state actors have been gaining importance as well. This is mainly because of the current international climate. The contemporary global system and the trend of globalization have also created possibilities for agencies other than central states, to be able to have their voices heard. From the Turkish case, I can give several examples. For instance, we have the case of municipalities in different parts of Turkey developing their own foreign relations. Different municipalities have been establishing cultural centers, children's playgrounds, and Ramadan activities in different parts of the Balkans, as well as providing different services for different Balkan countries ranging from vocational courses for young people to different sports events. However, local

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[35] Eleanor Rose and Milivoje Pantovic, "Serbia, Bosnia Open Joint Trade Office in Turkey", 27 October 2016, http://www.balkaninsight.com/en/article/serbia-and-bosnia-open-trade-office-in-turkey-10-26-2016 (last visited 30 August 2017). For a comprehensive review of the impact of trilateral mechanism on economic relations see Dorde Pavlovic, "The Future of the Trilateral Cooperation among Bosnia and Herzegovina, Turkey and Serbia", *Current Turkey-Serbia Relations*, Center for Strategic Research, Ankara, 2016, pp. 19-38.

[36] Interview with Mehmet Kemal Bozay, Ambassador of Turkey to Serbia, "Always Room for Better Relations", https://cordmagazine.com/interviews/interview-h-e-mehmet-kemal-bozay-ambassador-of-turkey-to-serbia-always-room-for-better-relations/ (last visited 20 August 2017)

diplomacy between Serbian and Turkish cities have room for improvement. Several Turkish municipalities have already established sister city relationship with Novi Pazar from the Sandzak region. However, still, there is no sister city relationship of any Turkish city with Belgrade.

Businesspeople have also contributed to foreign policy in different ways. Turkey has been in the process of becoming a trading state since the early 1980s, and as such, businesspeople and organizations have more influence in the foreign policy-making process, and have started taking initiatives in the foreign policy field. As one recent example, in late 2015, the Turkish Union of Chambers and Commodity Exchanges brought together representatives of the Kosovo and Serbian Chambers of Trade and Industry in Ankara. The Turkish Union argued that it would try to perform the role of facilitator and expressed its belief that trade can play a role in the solution of disputes. Such an example is important in showing how non-state actors can come together, take initiative and help generate solutions to disputes.

Serbia has also been improving relations with its Balkan neighbours. The common aim of EU membership has been the main driving force in setting up a base from which to construct a new type of relations. Serbia-Kosovo relations have already been discussed, but relations with Albania have also witnessed important positive changes.[37] Despite the crisis that erupted during the football match between the Albanian and Serbian national football teams, relations have continued to develop with the help of historical mutual visits. Albanian Prime Minister Edi Rama visited Belgrade in November 2014, the first such visit in 68 years. Serbian Prime Minister Vučić paid an official visit to Tirana in May 2015, representing the first visit ever by a Serbian Prime Minister to Albania.

Serbia has friendly relations with Macedonia except for the remaining dispute between the Serbian and Macedonian churches. The ties have been increasing between Serbia and Bosnia and Herzegovina as exemplified above. Serbian-Croatian ties have experienced several problems, mainly due to refugee issues, missing persons, and prosecution of war crimes,[38] though they continue

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[37] For an analysis of Serbian-Albanian relations see *Serbia and Albania. Preparing for a New Start,* ISAC Fond and Friedrich Ebert Stiftung, Belgrade, 2011.

[38] Bodo Weber and Kurt Bassuener, Serbia-Croatia. What Awaits Us After Croatia's Entry into the EU. Proceedings of a Roundtable, Heinrich Böll Foundation Serbia, The European Movement Serbia, The Democratization Policy Council, Belgrade, 19 June 2013; Mladen Mladenov, "An Orpheus Syndrome? Serbian Foreign Policy after the Dissolution of Yugoslavia", in Soeren Keil and Bernhard Stahl (eds.), The Foreign Policies of Post-Yugoslav States from Yugoslavia to Europe, Hampshire, Palgrave, 2014, p. 162.

to cooperate in the EU accession process. In general, Serbia has friendly relations with its Balkanic neighbours.

Concluding Remarks

This study argues that Turkey and Serbia have been sharing a similar foreign policy identity since the early 2000s. This shared multiple-identity characteristics of different civilizations have been affecting their foreign policy as well as the broader new international system. In the current global political system, regional actors, like Serbia and Turkey, have maneuvering space in their foreign policies. Their recent history of foreign relations has proved that when they recognize their common interests and act accordingly, they can have concrete results which then bring advantages to both countries.

This study argues that despite all their existing differences on several issues, Serbian-Turkish friendly relations will be the key to bringing about durable peace in the region. The words of the founder of the Republic of Turkey, Mustafa Kemal Atatürk, voiced during his speech at the Balkan Conference in Ankara on 25 October 1931, are worth remembering: "The basis and target of Balkan cooperation is to work together in the economic, cultural and civilizational realms based on the respect for political independence. If we achieve this, it will be praised by the whole civilized world."[39]

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[39] The original statement in Turkish is as follows: "Balkan birliğinin temeli ve amacı, karşılıklı siyasal bağımsız varlığa saygı ile dikkat ederek 265 iktisadî alanda, kültür ve uygarlık yolunda işbirliği yapmak olunca, böyle bir eserin bütün uygar insanlık tarafından övgüyle karşılanacağına şüphe edilemez." Quoted in *Atatürk'ün Söylev ve Demeçlerinden Seçmeler*, http://www.ata.tsk.tr/content/media/01/soylev_ve_demecleri.pdf

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BETWEEN DOMESTIC POLITICS AND INTERNATIONAL LAW ASSESSING ROMANIA'S NON-RECOGNITION POLICY OF KOSOVO'S DECLARATION OF INDEPENDENCE

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Abstract: The reasons that fundament the non-recognition policy combine elements of domestic politics in specific for each particular state, with a strict interpretation of international law. It is our main aim to test this assumption in the case of Romania's official positions (as expressed by President, Prime-Minister or Minister of Foreign Affairs) and its evolution in the last 10 years. For this purpose, we use discourse analytical tools to map the main types of arguments used by Romanian political actors in order to justify their firm position, despite external pressure and the EU integration process that defined a set of tailor-made tools for Kosovo. The following chapter will analyse the case of Romania, a country that became a member of the European Union (EU) in 2007 and ever since 2008 has preserved its policy of non-recognition of Kosovo's independence by not aligning to the EU position on this matter. We tried to focus on the main arguments presented by Romanian political and diplomatic representatives in the last decade in the public space. As an illustration of the ways politics and law are deeply entwined in contemporary international relations, the main aim of the chapter is to identify the most important patterns in justifying Romania's position in parallel with Kosovo's process of the EU integration that has evolved significantly in the last 10 years.

Keywords: Romania, Kosovo, international law, international politics

Introduction

On February 17, 2008, Kosovo's Parliament declared Kosovo's independence from Serbia and this political act divided Europe. The majority of EU member

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states officially recognized the independence of Kosovo in the days after, while 5 EU member states adopted a non-recognition policy that remained unchanged for the last decade (Cyprus, Greece, Romania, Spain, and Slovakia). Kosovo's self-proclaimed independence remains a very intriguing topic of research for both political scientists and international lawyers. From a specific International Relations perspective (at the edge of studying international politics and international law), this political act is of great importance because it triggered contradictory narratives for both states and international organizations, and offered a space for various legitimacy claims to justify both recognition and non-recognition. States were forced to react and to take an official position towards Kosovo – either supporting the change of borders based on the self-determination principle or contesting it as an evident breach of international law. Each position required also a significant amount of legitimacy claims in order to make that position coherent with each country's strategic interests or, in some cases, even with challenges in domestic politics. Those complex narratives of both recognition and non-recognition have been used by politicians to influence the public opinion and to legitimize their decisions at the international level (mainly focused on supporting or blocking Kosovo's membership in the UN, which is the final goal of independence beyond individual recognition by other countries).

In the last 10 years after this event, many international events have brought the so-called "Kosovo issue" back on the international agenda: the self-proclaimed independence of Abkhazia and South Ossetia from Georgia later in 2008 (recognized only by Russia), the annexation of Crimea by Russia in March 2014 or the most recently the referendum for independence in Catalonia (Spain) in 2017. In the meantime, the European Union took the leadership from UNMIK in coordinating the post-conflict reconstruction in Kosovo, but focusing on its combined instruments of the EU integration process and CSDP missions. The EU enlargement perspective opened in 2003 in Thessaloniki, when the EU offered the prospect of EU membership to all ex-Yugoslav countries and Albania, and later on in 2008 it explicitly included also Kosovo, despite the non-recognition policy of 5 EU members. The EU also launched in 2008 a CSDP mission focused on rule of law, EULEX that preserved a status-neutral position. But the ambiguity in the EU's position became even more complicated in 2011 when it started to mediate the normalization process between Serbia and Kosovo, which culminated with the Brussels Agreements in April 2013 signed by Belgrade and Pristina under EEAS mediation. As a consequence of the EU using its conditionality instrument in this process, both Serbia and Kosovo's EU integration perspective have materialized in 2014, when Serbia received a

candidate status and later on when the EU signed the Stabilization and Association Agreement (SAA) with Kosovo. This process of rapprochement continues to this day, even if the above-mentioned five EU members did not officially recognize Kosovo. It is thus interesting to see how these political events that shed a new light on the EU entanglement between politics and law (in the case of how the self-determination principle is applied), together with the dynamics of EU foreign policy mixed with it enlargement agenda influenced the policy narratives in a case of a non-recognizing country like Romania.

The following chapter will present a review of how Romania has dealt with the Kosovo issue over the past 10 years. We tried to focus on the main arguments presented by Romanian political and diplomatic representatives in the last decade in the public space. As an illustration of the ways politics and law are deeply entwined in contemporary international relations, the main aim of the chapter is to identify the most important patterns in justifying Romania's position in parallel with Kosovo's process of the EU integration that has evolved significantly in the last 10 years.

Short theoretical discussion

'Why are states looking for legitimacy when they challenge international law, particularly in the case of the interpretations of the self-determination principle?' remains a focal question in the field of contemporary foreign policy analysis. The interplay between politics and law is a recurrent feature of international relations at the beginning of the twenty-first century. Many scholars have focused on the complex interplay between these aspects of international life[2]. The following study will take a constructivist approach to the topic, by using discourse analysis to describe the main claims used in the public debate to justify Romania's policy of non-recognition of Kosovo's independence. Following the definition of Reus-Smit, constructivists reconceive politics as a field of human action that stands at the intersection of issues of identity, purpose, ethics, and strategy, and define law as a historically contingent institutional expression of such politics[3]. As such, constructivists have devoted

[2] For a perspective in International Relations see Christian Reus-Smit, (ed) *The Politics of International Law* Cambridge University Press, Cambridge, 2004. For a perspective focused on international law, see Martti Koskenniemi, "The Politics of International Law", *European Journal of International Law* (1990) Vol. 4, http://ejil.org/pdfs/1/1/1144.pdf 26/02/2018 and also Martti Koskenniemi, "The Politics of International Law – 20 Years Later", *European Journal of International Law,* Vol.20, No. 1, 1 February 2009, pp. 7–19.

[3] Reus-Smit, *op cit*., p. 3.

most of their attention to the way in which rules and norms condition actors' self-understandings, preferences, and behaviour. Moreover, they argue that international politics takes place within a framework of rules and norms, and states and other actors define and redefine these understandings through their discursive practices. In foreign policy analysis, constructivist thinking has focused on the tendency of states to shape the malleable facts of history into self-justifying narrative discourses. This type of approach applied in the case of post-war Serbia showed how during a period of profound policy change, the discourse about the centrality of Kosovo to Serbia's state identity remained intact[4]. Following this approach, the current analysis will look at how national and international actors reveal their identity in the international arena in discursive interactions with other actors. In our case, the focus is placed on Romania's legitimacy claims for its non-recognition policy on Kosovo's independence in correlation with the EU policy on Kosovo.

In the literature, it was shown that a strict legalistic examination of the Security Council Resolution 1244, which set forth the international oversight of Kosovo following the 1999 NATO intervention, together with the international law of self-determination, secession, and recognition demonstrates that while Kosovo's declaration of independence and its recognition by various states can be justified under the existing international law, it is not a clear case[5]. The topic divided not only countries in the EU (between recognizers and non-recognizers) but also scholars, legal experts and historians that tried to legitimize or de-legitimize this political act. In stark contrast with most of the recognising States, the great majority of objecting States base their opposition on international law, in particular, the UN Charter (the principle of territorial integrity) as well as Security Council Resolution 1244 (1999). It was shown that "the exact number of states which, in fact, object to the Kosovo decision is difficult to establish (not least since there is no standard format for such objections, but also because it is not clear if some of the statements of non-recognizing states can be understood as 'objections' rather than as an expression of a wish to remain outside the politics of recognition). Even so, a reasonable estimation is that at

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[4] Filip Ejdus and Jelena Subotic. "Kosovo as Serbia's Sacred Space: Governmentality, Pastoral Power and Sacralization of Territories.", in Gorana Ognjenovic and Jasna Jozelic (eds), *Politicization of Religion, the Power of Symbolism: The Case of Former Yugoslavia and Its Successor States*, Basingstoke: Palgrave Macmillan, New York, 2014., pp 159-18?.

[5] Christopher J. Borgen , "Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition" *The American Society of International Law Insight*, Vol. 12, No. 2, February 2008, https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and, 26/02/2018.

least 45 States have put forth objections, of which some are formulated in terms of serious accusations that the Kosovo decision amounts to a manifest abridgement of international law"[6].

Kosovo's declaration of independence presents a quintessential "tough case" at various analytic levels. How and whether it will be considered a unique case in international law (the famous *sui generis* clause that is often mentioned by recognizers) or a precedent for other secessionist movements (that is mentioned by non-recognizers) depends on how various states interpret the law and facts that gave rise to the declaration. The division between the arguments brought by recognizers and non-recognizers demonstrates the ways in which states' political interests affect how the international law is given effect. Questions concerning Kosovo's status within international organizations and its succession to the rights and obligations of Serbia remain open. For most of the non-recognizers, the dilemma is to determine whether for them this is an issue of foreign policy or an issue of internal politics. Most of the states that give reasons for their decision have preferred to stress different political considerations without going into details about the international law regarding the general terms and conditions of secession, including possible exceptions. For example, it is often underlined in the literature on the topic that Spain, Slovakia or Romania fear that accepting the existence of independent Kosovo would bolster the claims of their minorities for independence (as in the case of Catalonia) or at least for much greater autonomy (as in the case of Romania)[7]. The current research would like to challenge this type of view, especially focusing on the particular case of Romania. While the international legal dimension of the objections is predominant, it is important to note that a closer examination of their statements reveals several different grounds for objection, not all of which are strictly related to the international legal concerns, but rather to political ones, including political stakes in how the conflict is to be resolved. Indeed, the second line of argument of objecting states, though not necessarily a legal one, is that Kosovo creates a 'dangerous precedent'. This would be the dominating type of the argument present in the Romania public discourse. Recent research focused on the consequences of the international controversy over Kosovo's unilateral declaration of independence (UDI) for the domestic

[6] Jessica Almqvist, "The Politics of Recognition, Kosovo and International Law" (WP), WP 14/2009 – 16/3/2009 available at http://www.realinstitutoelcano.org/wps/portal/web/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/Elcano_in/Zonas_in/DT14-2009, 27/02/2018.

[7] Ibidem

debates over sub-state territorial restructuring[8]. The main argument is that, in the absence of a clear distinction in international politics between secessionist and non-secessionist claims, state elites employ 'Kosovo' effectively for invoking the spectre of 'secessionist threats' even in the consistently non-secessionist and non-violent settings (such as the case of Hungarian majority counties in Transylvania), but at the same time delegitimising all culturally framed claims for territorial restructuring. The ethnic Hungarian party, UDMR, a member of the government, was the country's only political group that has hailed Kosovo's independence declaration. Likewise, there were claims that the "Hungarian party could not simultaneously support the position of Romania as a governmental party and support the independence of Kosovo."[9] This strategy leads to radicalised group claims and increased democratic fragility. Recent research showed that the Romanian case highlights the imperative to take seriously non-secessionist claims as a separate category of study and international norm-setting[10].

Most often, the reasons that fundament the non-recognition policy combine elements of domestic politics in specific for each particular state, with a strict interpretation of international law. It is our main aim to test this assumption in the case of Romania's official positions (as expressed by President, Prime-Minister or Minister of Foreign Affairs) and its evolution in the last 10 years. For this purpose, we use discourse analytical tools to map the main types of arguments used by Romanian political actors in order to justify their firm position, despite external pressure and the EU integration process that defined a set of tailor-made tools for Kosovo.

[8] Ibidem

[9] Pellumb Kallaba, "Europe an Presence in Kosovo's Post-independence : Between Contestation and Recognition", Kosovo Center of Security Studies, 2012, http://qkss.org/new/images/content/PDF/Kallaba%20Pellumb_Panorama%202012.pdf 29/02/2018.

[10] Zsuzsa Csergő, "Kosovo and the Framing of Non-Secessionist Self-Government Claims in Romania", in *Journal Europe-Asia Studies*, Volume 65, 2013 – Issue 5: Special Issue: Self-Determination After Kosovo, pp. 889-911.

A Decade of Denial and Controversy – The Various Interpretations behind Romania's Non-Recognition Policy of Kosovo's Declaration of Independence (2008-2018)

"Kosovo is little known, and known only through the lens of what Romania fears the most in its neighbourhood: instability."
Oana Popescu[11]

In the last 10 years, the omnipresent argument in all official discourses was that Romania considers that a unilateral declaration of independence is a breach of international law — and that upholding the supremacy of international law in a global context where violations and reinterpretations are multiplying, would not only be acceptable. Besides this one, there are also many other different types of reasons and suppositions that are thought to trigger Romania's enduring policy of non-recognition. We will try to analyse each of the most distinctive official narratives in a chronological manner, and placing them in the overall national, regional and the EU context.

The first official statement that formulates Romania's position about Kosovo's independence dates back to the year 2007 – one year before the official declaration in the Kosovo Parliament when the Romanian Defense Minister said that such a declaration "is not in keeping with international law."[12] In order to understand that, there is a need for more context of prior events connected to that position. In November 2005, UN Secretary-General appointed Martti Ahtisaari Special Envoy for Kosovo. After mediating negotiations between Serbia and Kosovo representatives for fifteen months, Ahtisaari submitted in March 2007 the Comprehensive Proposal for the Kosovo Status Settlement (what was known as "the Ahtisaari Plan"). The plan envisioned Kosovo becoming independent after a period of international supervision. Serbia rejected the Plan while the Kosovar Albanian leadership endorsed it. In an effort to revive the mediation process, the EU, Russia, and the U.S., (known as the "Troika") oversaw negotiations between the Government of Serbia and the Kosovar Albanians, from August to December

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[11] Oana Popescu, "Romania and Kosovo and Prospects For Evolution" in *Kosovo Calling. International Conference to Launch Position Papers on Kosovo's Relation with EU and Regional Non-recognising Countries*, Kosovo Foundation for Open Society and British Council, Pristina, 2012.

[12] "Romania not to recognize unilateral Kosovo independence, says minister", ChinaView.cn, http://news.xinhuanet.com/english/2007-12/12/content_7231934.htm, 27/02/2018.

2007. In the end, in a response to the Secretary-General, the Troika reported on December 10, 2007: "[T]he parties were unable to reach an agreement on the final status of Kosovo. Neither party was willing to cede its position on the fundamental question of sovereignty over Kosovo"[13]. In the aftermath of the Troika's announcement of the collapse of negotiations, Serbia, Russia, Romania, Moldova, and Cyprus argued that Kosovo's secession and/or recognizing that secession would be a breach of international law[14]. Similar concerns were expressed at the time by Greece, Slovakia, and Spain. Kosovar independence was supported by the U.S., the U.K., France, Italy, and Germany, and most of the other states of the EU. Almost one month after those statements, on February 17, the Parliament of Kosovo issued a statement declaring "Kosovo to be an independent and sovereign state."[15] The Parliament pledged compliance with the process envisioned in the Ahtisaari Plan, which became the Constitution of Kosovo.

The day after the declaration of independence was read in Kosovo's Assembly, former president of Romania, Traian Băsescu, stated that Romania will not recognize the entity's independence, as the declaration did not come as a result of negotiations between Belgrade and Pristina authorities. Among other reasons given by the official at that time were: "granting collective rights to minorities, failing to respect Serbia's territorial integrity, failing to comply with the principle of the inviolability of Serbia's borders and failing to respect Serbia's sovereignty. These are mainly the reasons why Romania does not recognize and will not recognize Kosovo's independence"[16]. Băsescu also claimed that Kosovo "can be a precedent, not only for Romania, but also in Europe. This is also stated in the EU Council statement given today"[17]. The statement was in contrast with the EU

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[13] Christopher J. Borgen , "Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition" *The American Society of International Law Insight*, Vol. 12, No. 2, February 2008, https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and, 26/02/2018.

[14] Ibidem.

[15] Ibidem.

[16] "Ziariștii orbi. Ce nu a văzut nici un ziar de azi din discursul lui Băsescu de ieri despre politica externă națională a României: românii de pretutindeni, Eminescu, Basarabia, Ucraina, Rusia, Serbia, Kosovo și nomazii Europei" (Blind journalists. What no newspaper has seen today in Basescu's speech from yesterday on Romania's national foreign policy: Romanians from all around, Eminescu, Bessarabia, Ukraine, Russia, Serbia, Kosovo and the nomads of Europe), 18 February 2008, *Victor Roncea Blog,* http://roncea.ro/2010/09/02/ziaristii-orbi-ce-nu-a-vazut-nici-un-ziar-de-azi-din-discursul-lui-basescu-despre-politica-externa-nationala-a-romaniei-eminescu-basarabia-ucraina-rusia-serbia-kosovo-si-nomazii-europei/, 25/02/2018.

[17] Ibidem.

Council's declaration that had come just hours before, in which it was clearly stated that "Kosovo constitutes a *sui generis* case", which does not jeopardize the principles of the UN Charter and UN Security Council Resolution 1244/1999[18]. Moreover, during the same month of 2008, the EU Council adopted the Joint Action on the EU Rule of Law Mission in Kosovo (EULEX Kosovo)[19]. The EULEX mission was first deployed in December 2008, reaching full operational capacity in April 2009. Since then, the mission's mandate was extended on four occasions (2010, 2012, 2014 and 2016), with the current mandate expiring in June 2018.

It is interesting to look at Romania's active involvement in Kosovo's police reform and its presence in international missions in Kosovo (before and after independence) in comparison with these harsh political statements of President Traian Băsescu against Kosovo's independence. Romania has widely participated in international missions in Kosovo, becoming one of Europe's main contributors. Part of the reason has always been the training of its own personnel and the development of interoperability with NATO and other international partners. This places Romania in a more paradoxical position than other non-recognizing countries because it is thought of actively participating in reforms on the ground, but at the same time, its official policy goes against Kosovo's statehood.

In addition, in a study conducted for the Kosovo Open Society Foundation, Oana Popescu presents a set of different other geopolitical arguments (also connected to the breach of international law) that are the basis of Romania's non-recognition policy. One is that Romania has always criticized the illegitimate separatist regime from Transnistria internationally, advocating for any resolution concerning this frozen conflict near its own border to respect Moldova's territorial integrity. This being considered, it can be understood why Băsescu, an outspoken supporter of Moldova's reintegration with Romania (with or without Transnistria), had mentioned the danger of a regional spread following Kosovo's unilateral secession[20]. The Băsescu's declaration also was intended to solve the

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[18] "Kosovo – Council conclusions", Press release – 2851st Council meeting, General Affairs and External Relations – External Relations, Council of The European Union, 18 February 2008, https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98818.pdf, 20/02/2018, p. 7.

[19] "Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO", Article 1 in Official Journal of the European Union L 42/92, 16 February 2008, http://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX_EN.pdf, 20/02/2018.

[20] Oana Popescu, "Romania and Kosovo and Prospects For Evolution" in *Kosovo Calling. International Conference to Launch Position Papers on Kosovo's Relation with EU and Regional Non-recognising Countries*, Kosovo Foundation for Open Society and British Council, Pristina, 2012, p. 62.

apparent situation which was developing among the Hungarian minority in Transylvania – the leaders of the Szeklers National Council, an ethnic Hungarian organization, held a rally to celebrate Kosovo's declaration, displaying banners proclaiming "Well done Kosovo!" "Rights for Minorities," and "Long Live National Autonomy" in the Transylvanian city of Cluj[21]. After those incidents, in order to strengthen its position against the Independence of Kosovo, the Parliament of Romania in a special session of 18 February 2008 voted not to recognize Kosovo by 357 to 27,46 while the current Romanian President Traian Băsescu explicitly requested to withdraw its diplomatic mission in Pristina. In contrast with these obstructive actions that were taking place in Romania, Kosovo's rapprochement to the EU intensified. In 2009, the European Commission published the communication "Kosovo – fulfilling its European perspective", in which the institution proposed the EU Council and the European Parliament to[22]:

- move forward with a structured approach to bring Kosovo's citizens closer to the EU through a visa dialogue with the perspective of eventual visa liberalisation when the necessary reforms will have been undertaken and the conditions met;
- extend the Autonomous Trade Measures and, once Kosovo meets the relevant requirements, propose negotiating directives for a trade agreement in due time;
- facilitate Kosovo's participation in the pan-euro-med cumulation of origin, once a trade agreement is in place;
- progressively integrate Kosovo into the economic and fiscal surveillance framework that has been established with the Western Balkans; Examine the opportunity of a framework agreement with Kosovo on the general principles of its participation in Community programmes, and on this basis prepare negotiating directives;
- strengthen and deepen Kosovo's participation in the Stabilisation and Association Process through establishing a regular 'SAP Dialogue';
- progressively activate the IPA cross-border co-operation component (component II) for Kosovo.

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[21] Eraldin Fazliu, "Recognition denied: Romania", *Kosovo 2.0*, 7 November 2016, http://kosovo twopointzero.com/en/recognition-denied-romania/, 26/02/2018.

[22] "Communication from The Commission to the European Parliament and The Council. Kosovo – Fulfilling its European Perspective", Conclusions and Recommendations, Commission of The European Communities, 14 October 2010, https://ec.europa.eu/neighbourhood-enlargement /sites/near/files/pdf/key_documents/2009/kosovo_study_en.pdf, 20/02/2018, pp. 13-14.

But in the same year, going against these trends, before the International Court of Justice, MFA State Secretary Bogdan Aurescu argued that while Serbia did indeed violate the human rights of the population in Kosovo during Milošević's time, this was no longer the case at the time of Kosovo's declaration of independence. Even after the ICJ delivered its opinion from 2010, Romania has maintained its view that Kosovo had no right to secede, on the grounds that it did not contradict Bucharest's initial stance, given that the question which Serbia had addressed to the court did not directly touch on the arguments described above. What we want to highlight at this point is that because of the ICJ opinion and its consequences, the year 2010 represented a hallmark moment in Romania's relation with Kosovo. The representative of the Romanian state pleaded in favour of Serbia's position, arguing that allowing the unilateral secession of Kosovo "would lead to extremely severe consequences for the international judicial law. This would mean that any province, district, county or even the smallest settlement from any border of any state would have the international law's permission to declare its independence and to obtain secession"[23]. Shortly after the ICJ ruled that Kosovo's declaration of independence did not violate international law[24], the Romanian Ministry of Foreign Affairs issued a position document which stated that "the way in which the UN General Assembly formulated the question did not allow the Court to address the issue on the merits. Thus, the Court examined only the legality of the act itself to make a declaration of independence, but not its legal consequences, that is, the question of the lawfulness of the constitution of an allegedly new State"[25]. Thus, Romania's diplomatic representatives considered that "The Court has therefore not examined whether the declaration led to the creation of a State or not, or whether international law confers Kosovo a right

[23] "Bogdan Aurescu pleaded at the ICJ against Kosovo's independence", *Hotnews*, 10 December 2009, https://english.hotnews.ro/stiri-top_news-6709371-bogdan-aurescu-pleaded-the-icj-against-kosovos-independence.htm, 26/02/2018.

[24] "Accordance With International Law of the Unilateral Declaration of Independence in Respect of Kosovo" – Section V: General Conclusion, International Court of Justice, 22 July 2010, http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf, 26/02/2018.

[25] "Poziţia MAE român faţă de Avizul consultativ privind 'Conformitatea cu dreptul internaţional a declaraţiei unilaterale de independenţă a instituţiilor provizorii de autoguvernare din Kosovo' al Curţii Internaţionale de Justiţie" (Romanian Foreign Ministry's Position on the Consultative Opinion on "Compliance with International Law of the Unilateral Declaration of Independence of Provisional Institutions of Self-Government in Kosovo" by the International Court of Justice), Romanian Ministry of Foreign Affairs, 23 July 2010, http://mae.ro/node/2730, 26/02/2018.

to declare its independence or a right to secession"[26], enabling authorities from Bucharest to reaffirm their position on the matter of non-recognition.

Several years after the original statement, the former president's position on Kosovo remained unchanged, as he mentioned both in 2010[27] and in 2011[28] that Romania will not recognize Kosovo, considering that it is Belgrade and Pristina who are responsible to negotiate Kosovo's status before any decision can be made. In fact, this type of argument would be a very diplomatic form of avoiding. As interpreted by Oana Popescu, it is also relevant to underline that "Romanians tend to be very sensitive about the subject of the Republic of Moldova — and this is precisely the chord that Romanian President Traian Băsescu sought to strike when he mentioned the danger of a regional spread following Kosovo's unilateral secession"[29]. In light of the president's first Kosovo-oriented declaration, the then-Prime Minister of Romania, Călin Popescu-Tăriceanu, confirmed that Bucharest authorities will not recognize the independence of Kosovo. But contrary to the position assumed earlier by the president, Tăriceanu clearly mentioned that Kosovo's declaration of independence "is not and will not be a precedent (...) any attempts to make parallels are worthless and away from the European identity"[30], thus highlighting the first discrepancy in Romania's foreign policy approach towards Kosovo, after the 1999 conflict.

It is important also to mention that the year 2010 opened a new phase in Serbia and Kosovo relations and brought a new type of EU instrument for post-conflict reconstruction – mediation under the leadership of the first High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton. In July 2010 the advisory opinion of the International Court of Justice (ICJ) was followed by a UN resolution that attributed the EU the responsibility to facilitate a process of dialogue between Pristina and Belgrade. This dialogue

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[26] Ibidem.

[27] "Nimic nou sub soare. România nu va recunoaște independența Kosovo" (Nothing new under the sun. Romania will not recognize Kosovo's independence), *ȘtirileProTv*, 2 September 2010, https://stirileprotv.ro/stiri/politic/nimic-nou-sub-soare-romania-nu-va-recunoaste-independenta-kosovo.html, 26/02/2018.

[28] "Băsescu, despre recunoaşterea Kosovo" (Băsescu, on the recognition of Kosovo), *Jurnalul Național*, 1 November 2011, http://jurnalul.ro/stiri/externe/basescu-despre-recunoasterea-kosovo-595432.html, 26/02/2018.

[29] Oana Popescu, op. cit, p 62.

[30] "Tăriceanu: Kosovo nu este si nu va fi un precedent" (Tăriceanu: Kosovo is not and will not be a precedent), *Romanian Tribune*, 22 February 2008, http://www.romaniantribune.net/a950_Tariceanu_Kosovo_nu_este_si_nu_va_fi_un_precedent.aspx, 26/02/2018.

process was targeted to promote cooperation, achieve progress on the path to Europe and improve the lives of the people. This particular UN resolution paved the way for a dialogue on technical and practical issues facilitated by the European Union between Belgrade/Pristina focused on telecommunication, trade, customs stamp, energy, cadastral issues, etc. which took place between 2011 and 2012. Although there was some progress related to discussions and agreements reached, the implementation of several agreements remained open. A game changer in the relations between Serbia and Kosovo took place on April 19, 2013, in Brussels, when representatives from Serbia and Kosovo signed an agreement to normalize relations between their two countries. The 15-point agreement affirms the primacy of Kosovo's legal and institutional framework throughout Kosovo's territory and provides the basis for substantial local self-governance in Kosovo's majority Serb north[31].

At the official level, in the first two years after the proclamation of independence, there has been almost no institutional communication between Romania and Kosovo. But for the moment, Bucharest maintains a liaison office in Pristina. Romanian KFOR troops are still present in Kosovo, as they operate under the NATO's mandate which upholds Resolution 1244 and does not conflict with Romania's non-recognition policy. With regards to the reaction and general discourse promoted by Romania's high-ranking diplomats, the situation is quite blurry, as none of the former Ministers of Foreign Affairs have expressed concrete opinions on the matter of nor-recognition. During the last ten years, almost all Foreign Ministers of Romania have expressed their conviction that Kosovo's status should be the result of political negotiations between Belgrade and Pristina authorities. In our view, this type of arguments refuses to give a detailed perspective on the concrete political consequences that the Romanian authorities fear and try to avoid further debate by stubbornly holding the non-recognition position. So this type of very ambivalent discourse ('constructive ambiguity as it is called in negotiations) leaves the door open for numerous speculations. As a first example of this type of language we can look at the year 2010, when the former minister of Foreign Affairs Teodor Baconschi stated: "We must return to the political arena so that the parties can talk directly, assume responsibilities so that regional security is guaranteed and each of the states in the region does not get out of the pace of future EU accession negotiations"[32].

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[31] More in Miruna Troncotă, *Post-conflict Europeanization and the War of Meanings. Challenges to EU Conditionality in Bosnia and Kosovo*, Tritonic Publishing House, Bucharest, 2016.

[32] "Press statement of Foreign Minister Teodor Baconschi, Minister of Foreign Affairs of Romania, after the meeting of the EU Council", Romanian Ministry of Foreign Affairs, 27 October 2010, http://mae.ro/node/2825, 26/02/2018.

His statement can be perceived as being generalistic and quite redundant, as Romania's politics tend to revolve around the president (Traian Băsescu at that time) and the parliament, when it comes to assuming a foreign policy direction. A more hands-on approach was that of Foreign Minister Titus Corlățean, who declared later on that "the Romanian decision-makers, the Romanian political class, must carefully follow the developments in the region. I say this because I know in detail the pace of contacts and the content of the discussions that take place at the level of Belgrade and Pristina officials"[33], this statement representing the first call of a Romanian official to include the Romanian side in the discussions regarding Kosovo's status. It came as Romania's active involvement in the Balkan has decreased, while the "genuine interest" in maintaining a relationship with Kosovo was practically non-existent[34]. Nevertheless, Corlățean continued to support the original motivation, stating that Romania's decision regarding Kosovo "has been a position based on considerations of public international law. And those considerations based on the law were correct"[35]. The former leader of the Romanian diplomacy also mentioned that at times international law principles and decision do not coincide with (regional or local) political views[36]. Just a few months later, Corlățean explained that a decision regarding Romania's future approach towards Kosovo will have to be the result of cooperation between "three actors in the Romanian state, which are the Presidency, the Government and the Parliament that have to harmonize towards a possible position"[37], pointing out the fact that, at that moment, there was no consensus among the main political institutions of the state. The political situation mentioned was maintained throughout the last years, leaving little hope of a new trilateral debate on Kosovo's status.

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[33] Statement of Foreign Minister Titus Corlățean, given as part of an interview for *Radio France International Romania*, Romanian Ministry of Foreign Affairs, 4 March 2013, http://mae.ro/node/18287, 26/02/2018.

[34] Oana Popescu, "Romania and Kosovo and Prospects For Evolution" in *Kosovo Calling. International Conference to Launch Position Papers on Kosovo's Relation with EU and Regional Non-recognising Countries*, Chapter III – Romania, Kosovo Foundation for Open Society and British Council, Pristina, 2012, p. 65.

[35] Statement of Foreign Minister Titus Corlățean, given as part of an interview for *Digi 24* news station, Romanian Ministry of Foreign Affairs, 19 April 2013, http://mae.ro/node/19262, 26/02/2018.

[36] Ibidem.

[37] Statement of Foreign Minister Titus Corlățean, given as part of an interview for Adevărul newspaper, Romanian Ministry of Foreign Affairs, 27 June 2013, http://mae.ro/node/20782, 26/02/2018.

Still, in the eyes of the Romanian diplomacy, Albanian Kosovars remain a minority within Serbia, thus not being granted the right to self-determination of peoples, as the same official mentioned – "international law says inter alia that the right to self-determination belongs to peoples rather than minorities within a country. Minorities have the right to support, the preservation of identity, to… (…) take part in the decisions that directly concern the fate of minorities, perhaps the autonomy of a certain type within the country, but not self-determination"[38]. This last statement comes to highlight Romania's approach towards minorities. As observed by the Kosovo Open Society Foundation's study, Romania does not allow secession on ethnic grounds, but rather working to ensure the inclusion of minorities in society, politics, administration, etc.[39].

Another turning point was the year 2011 for two incidents. One, when Traian Băsescu decided to boycott the May 2011 summit of Central and Eastern European heads of state in Warsaw because Kosovo had been invited. The decision was criticized in the media mainly because President Băsescu was thought to have placed his strict stance on Kosovo higher on the agenda than a meeting with President Obama, Romania's strategic partner. The second incident took place on September 26, 2011, when Romania's Supreme Defense Council (CSAT) agreed to the complete withdrawal of police and gendarme troops at the end of their Kosovar tour of duty. Likely the main reason (other than non-recognition more broadly) may have been a reaction to the EU discord regarding Romania's and Bulgaria's admission into the Schengen area. Popescu argued in this context that "it can be speculated that this decision is coupled with a need to redeploy some of these troops elsewhere, such as Libya, and, more importantly, due to rising tensions in the Serb-dominated northern Kosovo, where Romanian gendarmes are among the few European police"[40]. These events provoked resentments in the Kosovo Albanian population, and this explains why there have been protests in Pristina after the appointment of

[38] Statement of Foreign Minister Titus Corlățean, given as part of an interview for *Romanian National Television – TVR*, Romanian Ministry of Foreign Affairs, 12 October 2013, http://mae.ro/node/22451, 26/02/2018.

[39] George-Vadim Tiugea, "Romania's Attitude towards Kosovo: A Historical and Cultural View" in *Kosovo Calling. International Conference to Launch Position Papers on Kosovo's Relation with EU and Regional Non-recognising Countries*, Kosovo Foundation for Open Society and British Council, Pristina, 2012, p. 84.

[40] Oana Popescu, op. cit., p. 56.

Romanian Gendarmerie Colonel Marian Petre as head of the EULEX Special Police Department in the same controversial year 2011[41].

Concomitantly, the year 2012 bought new developments in the relationship between Kosovo and the EU, as the European Commission launched the Structured Dialogue on the Rule of Law, the aim of the process being to "provide a high-level forum to regularly assess Kosovo's progress on three issues in particular: the judiciary, the fight against organised crime and the fight against corruption"[42]. During the first meeting, Kosovo government representatives declared "that the rule of law remains a top priority and that Kosovo is strongly committed to achieving results"[43], while the Commission "emphasised the importance of Kosovo's long-term political commitment to delivering the much needed results and important reforms"[44]. In October 2012 the European Commission, through the Progress Report, issued its feasibility study for a Stabilisation and Association Agreement between the EU and Kosovo. The document stated that "Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement. It is also essential that Kosovo continues implementing in good faith all agreements reached between Belgrade and Pristina to date and that it engages constructively on the full range of issues with the facilitation of the EU (...) Kosovo needs to continue demonstrating its commitment to the overall EU reform agenda, including by increased alignment of legislation with the *acquis*"[45].

The next cornerstone was April 19, 2013, when the representatives of Serbia and Kosovo completed the Brussels Agreement, marking the official start of the process of normalisation of the relations between the two political entities, the political step allowing both sides to advance in their European integration. The

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[41] "Kosovo Population Rejects EULEX Special Police Commander", *News Kosovo*, 27 April 2011, https://kosnews.wordpress.com/2011/04/27/kosovo-population-rejects-eulex-special-police-commander-2/, 27/02/2018.

[42] "Structured Dialogue on the Rule of Law with Kosovo – Conclusions" point 2, European Commission, 30 May 2012, http://ec.europa.eu/archives/commission_2010-2014/fule/docs/news/20120530_rold_conclussions_30_may.pdf, 20/02/2018, p. 1.

[43] Ibidem, point 5, p. 1.

[44] Ibidem.

[45] "Communication from The Commission to The European Parliament and The Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo", Overall Conclusions and Recommendations, European Commission, 10 October 2012, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0602&from=en, 20/02/2018, pp. 12-13.

document is intended to allow the integration of the Serb-majority municipalities in Northern Kosovo into the Kosovo legal system while providing certain guarantees. These guarantees include: all judicial matters are under the law of Kosovo, but Kosovo Serbs must be a majority of certain judicial panels, and a panel (Mitrovica District Court) must be located in Northern Mitrovica; all policing will be done by the Kosovo Police, but the Police Regional Commander for the Serb-majority areas must be a Kosovo Serb, chosen from a list provided by Kosovo Serb municipalities[46]. The Brussels Agreement was ratified by Kosovo's Assembly on June 28 of the same year[47].

In the meantime in Romania, in November 2013, a first diplomatic statement regarding the possible recognition of Kosovo's independence was made by the same Titus Corlățean, who mentioned that "this decision becomes predictable day after day, as things happen and we overlook them, with all due respect, here in Bucharest, in the relationship between Belgrade and Pristina"[48]. The former head of the Romanian MFA also recognized that "The cooperative relationship between Belgrade and Pristina has become more than just functional and there are decisions that are being taken, decisions which matter"[49], finally wondering if Romania can overlook events like the Brussels Agreement that was under the implementation – "Can you ignore such developments? It means you stay out of the way"[50], concluded Corlățean at that time, thus hinting at the possibility of a new approach towards Kosovo, in the event of an evolution in the process of normalization between Belgrade and Pristina.

A quite opposite approach towards Kosovo's independence was that of former Prime Minister Victor Ponta, who declared after the European Parliament Resolution on Kosovo that he believes Romania has "to go along with the European family"[51], suggesting that Romania should follow in the steps

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[46] "First Agreement of Principles Governing the Normalisation of Relations", Office of Kosovo's Prime Minister, 19 April 2013, http://www.kryeministri-ks.net/repository/docs/FIRST_ AGREEMENT_OF_PRINCIPLES_GOVERNING_THE_NORMALIZATION_OF_RELATIONS,_APRIL_19,_2013_BRUSSELS_en.pdf, 20/02/2018.

[47] "Kosovo MPs Defy Protests to Ratify Serbia Deal", Balkan Insight, 26 April 2013, http://www.balkaninsight.com/en/article/kosovo-ratifies-eu-brokered-deal-with-serbia, 20/02/2018.

[48] Statement of Foreign Minister Titus Corlățean, given as part of an interview for *Realitatea TV* news station, Romanian Ministry of Foreign Affairs, 28 November 2013, http://mae.ro/node/23541, 26/02/2018.

[49] Ibidem.

[50] Ibidem.

[51] "Ponta, despre solicitarea PE privind Kosovo: Trebuie să mergem alături de familia europeană" (Ponta, about the EP's request for Kosovo: We have to go along with the European family),

of other 23 EU member states who already recognized Kosovo as an independent state. This should be highlighted as a turning point in the official narrative, which actually makes the whole picture of the decade-long policy of non-recognition even more intriguing. It is important to recall at this point also the evolution between the EU and Kosovo in this period. Several days after the Brussels agreement was reached under the mediation of HR Catherine Ashton, the European Commission recommended the authorization of the launch of negotiations on a SAA between Kosovo and the EU, the document stating that "The Stabilisation and Association Agreement with Kosovo would provide a wide-ranging cooperation" and that it would "also aim to promote regional integration"[52]. On June 28, 2013, the European Council decided to endorse the EU Council's decision to start the negotiation on the SAA with Kosovo[53]. The official negotiations were started on October 28 of that year[54] and concluded on May 2nd, 2014, as the representatives of the European Commission mentioned that "the negotiations on the SAA have been very intensive. During this process, Kosovo has demonstrated political maturity as well as good technical capacities to negotiate on complex matters. The agreement provides for a clear European perspective of Kosovo"[55]. The SAA was finally signed in October 2015[56] and entered into force on April 1st, 2016. On that occasion, High Representative Federica Mogherini, declared: "*This agreement opens a new phase in the EU-Kosovo relationship and represents an important contribution*

România TV, 18 April 2013, https://www.romaniatv.net/ponta-despre-solicitarea-pe-privind-kosovo-trebuie-sa-mergem-alaturi-de-familia-europeana_76329.html, 26/02/2018.

[52] "Recommendation for a Council Decision authorising the opening of negotiations on a Stabilisation and Association Agreement between the European Union and Kosovo" – Explanatory Memorandum, European Commission, 22 April 2013, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/ks_recommendation_2013_en.pdf, 20/02/2018, p. 3.

[53] "Cover Note", European Council, subject IV – Other Items, point 20, 28 June 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/137634.pdf, 20/02/2018, p. 13.

[54] "EU starts the Stabilisation and Association Agreement negotiations with Kosovo", European Commission, 28 October 2013, http://europa.eu/rapid/press-release_MEMO-13-938_en.htm?locale=en, 20/02/2018.

[55] "Stabilisation and Association Agreement negotiations successfully completed", European Commission, 2 February 2018, http://eeas.europa.eu/archives/delegations/kosovo/press_corner/all_news/news/2014/20140502_03_en.htm, 20/02/2018.

[56] "Stabilisation and Association Agreement (SAA) between the European Union and Kosovo signed", European Council, 27 October 2015, http://www.consilium.europa.eu/en/press/press-releases/2015/10/27/kosovo-eu-stabilisation-association-agreement/, 20/02/2018.

to peace, stability and prosperity in Kosovo and the region at large. I am looking forward to its implementation"[57].

These dynamics shed a different light on the apparent shift in Romania's policy towards Kosovo as voiced at that time by incumbent Prime Minister Ponta who was also engaged in a direct conflict with President Băsescu at that time. So this was a period when domestic politics overshadowed interpretations of international law (as in the first two years post-independence). Ponta, who since 2016 serves as President Aleksandar Vucic's honorary adviser[58], continued his rather cautious support for the recognition of Kosovo, declaring in June 2013 that "It is important that what we do will not in any way affect – and I am very much concerned about this – the exceptional traditional relationship Romania has had with Serbia"[59], the former head of the Romanian executive also mentioning that the subject of Kosovo "is not taboo, it is a subject that we need to discuss about (...) We need to be flexible and pragmatic"[60]. During the same speech, Ponta stated that Romania should have a "coordinated position with that of European and transatlantic partners"[61] Ponta also recognized that the positions of the Romanian authorities regarding the former Serbian province are rather uncoordinated: "I am rather in favour of a rapid recognition process, the president is more cautious than me, and the former foreign ministers have their views"[62].

Moreover, as a result of the policy to encourage political, economic and social reforms in the Balkans, the President of Romania Klaus Iohannis declared during an official visit to Belgrade in July 2015: "Romania considers Serbia a key partner in the region."[63] He added that "Serbia deserves to be rewarded for the

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[57] "Stabilisation and Association Agreement (SAA) between the European Union and Kosovo enters into force", European Commission, 1 April 2016, http://europa.eu/rapid/press-release_IP-16-1184_en.htm, 20/02/2018.

[58] "Ponta: Počasni sam savetnik Vučića od 2016. godine" (Ponta: I am the honorary adviser to Vucic since 2016), *Radio-Television of Serbia*, 12 January 2018, http://www.rts.rs/page/stories/sr/story/9/politika/3001352/ponta-pocasni-sam-savetnik-vucica-od-2016-godine.html, 26/02/2018.

[59] "Victor Ponta: În privința Kosovo trebuie să avem poziția coordonată cu partenerii europeni și transatlantici" (Victor Ponta: With regard to Kosovo, we need to have a coordinated position with European and transatlantic partners), *Hotnews*, 3 June 2016, https:// www.hotnews.ro/stiri-politic-14929350-victor-ponta-privinta-kosovo-trebuie-avem-pozitia-coordonata-partenerii-europeni-transatlantici.htm, 26/02/2018.

[60] Ibidem.

[61] Ibidem.

[62] Ibidem.

[63] "Aflat în vizită oficială în Serbia, preşedintele României, Klaus Iohannis, a avut convorbiri cu omologul său Tomislav Nikolić" (On an official visit to Serbia, Romanian President Klaus

significant reform efforts made so far. We hope that Serbia's effective EU accession negotiations will begin this year"[64] motivating Romania's involvement as follows: "We know from our own experience the difficulties and the efforts that the whole process of preparation and negotiation of the EU accession entails. That is why we have expressed Romania's readiness and full openness to offer Serbia assistance in areas relevant to the integration process, if Serbia, of course, desires."[65] Also in 2015, the European Parliament passed a resolution draft related to the process of Kosovo's European integration that encourages five EU member states, including Romania to recognize the independence of the former Serbian province in order to help normalization of the relations between Belgrade and Pristina. The resolution on Kosovo's European integration process was drafted by an Austrian Greens/EFA member Ulrike Lunacek[66].

In the same year, during a visit by the U.S. Vice-President Joe Biden, Ponta told Romanian television that 2015 might be the year that Romania would recognize Kosovo – "in 2015 I believe that Romania will be with the European states, it will have a coordinated position"[67]. This view was reiterated in 2015 when Ponta declared that "In 2008, Romania decided not to recognize Kosovo, but things have changed since then. Governments have changed and some new decisions on Kosovo's recognition could be taken"[68], fuelling the idea that Romania could soon take a decision regarding Kosovo. In our view, this seemed to be an evident position that would be in connection with what the Western Allies expected to hear and it was the result of Ponta's own political manoeuvring, but was not shared by the President or the public opinion. However, in an analysis conducted by Kosovo 2.0 media organization, Kosovo's

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Iohannis had talks with his counterpart Tomislav Nikolić), *RADOR news agency*, 16 July 2015, http://www.rador.ro/2015/07/16/aflat-in-vizita-oficiala-in-serbia-presedintele-romaniei-klaus-iohannis-a-avut-convorbiri-cu-omologul-sau-tomislav-nikolic/, 26/02/2018.

[64] Ibidem.

[65] Ibidem.

[66] "EP recommends Kosovo recognition to 5 EU states, Romania included", *The Romania Journal*, 11 March 2015, http://www.romaniajournal.ro/ep-recommends-kosovo-recognition-to-5-eu-states-romania-included/, 26/02/2018.

[67] "Premierul Ponta se pronunță înaintea președintelui Iohannis: România ar putea recunoaște statul Kosovo" (Prime Minister Ponta speaks before President Iohannis: Romania could recognize the state of Kosovo, *Gândul*, 23 October 2013, http://www.gandul.info/puterea-gandului/romania-ce-vrei-tu-sa-faci-pentru-kosovo-11552344, 26/02/2018.

[68] "Ponta: România ar putea recunoaște Kosovo" (Ponta: Romania could recognize Kosovo, *Ziare.com*, 27 May 2015, http://www.ziare.com/victor-ponta/premier/ponta-romania-ar-putea-recunoaste-kosovo-1365501, 27/02/2018.

hopes for a rapid recognition from Romania were shattered as the former Romanian Prime Minister was forced to step down after popular protests erupted in Bucharest as a consequence of a notorious nightclub fire. Now in disgrace, Ponta's speech on Kosovo does not weigh so much in the current political context[69].

A rather curious fact is that in the period between 2015 and 2017, no high-ranking official from Romania (be it the presidency, the government of or the legislative) mentioned anything about Kosovo's status. In the same note, current president Klaus Iohannis was absent from the discussion on that matter, except the messages of general support for the EU integration process in Serbia. The latest statement on Kosovo belongs to the current Foreign Minister Teodor Meleșcanu, who in October 2017 declared that "Our position on the situation in Kosovo, Metohia, which also applies to Catalonia and Kurdistan, is a position of principle (…) we think it is illegal to decide on the fragmentation of a country without negotiations with the government and the state that is practically the only organization that represents the structuring of a country. We, therefore, remain faithful to this position, whatever happens in other parts of Europe or the world, and we very much hope that the other EU and other partners will understand that it is a position of principle"[70]. This declaration came as the people from Catalonia voted in an illegally-deemed referendum on the province's independence. It can be understood that the representatives of the Romanian diplomacy still regard Kosovo as the source for a precedent in the International System, regardless of the positions assumed by the European Council or the ICJ. Nevertheless, during the same intervention, Meleșcanu stated that "things have evolved positively over the last month in the entire Western Balkans region"[71]. In Meleșcanu's vision, these developments included the dialogue between Serbia and Kosovo on the normalization of relations between the two political entities[72]. A rather anachronic statement regards Meleșcanu's views of the future for Serbia and Kosovo. The current head or Romania's diplomacy considers that "the best

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[69] Eraldin Fazliu, "Recognition denied: Romania", *Kosovo 2.0*, 7 November 2011, http://kosovo twopointzero.com/en/recognition-denied-romania/, 26/02/2018.

[70] "Melescanu: Poziția noastră cu privire la Kosovo sau Catalonia este una de principiu. Este ilegal să se decidă cu privire la fragmentarea unei țări fără negocieri cu guvernul" (Melescanu: Our position on Kosovo or Catalonia is one of principle. It is illegal to decide on the fragmentation of a country without negotiations with the government), *Hotnews*, 7 October 2017, http://m.hotnews.ro/stire/22042180, 26/02/2018.

[71] Ibidem.

[72] Ibidem.

solution, the best offer we can make with regard to the Western Balkans is to join the EU and if they want NATO"[73], although without explaining the status under which Kosovo would join the two international organizations – an independent state or part of Serbia. Ambiguity still dominates our diplomats' discourses on this sensitive subject, in which Romania tries to balance between the EU and the US pressure and its own policy of close ties with Serbia and condemning the situation in Moldova's own break-away region. With regard to Kosovo, the latest document, issued on February 6, 2018, shows that Kosovo *"*has an opportunity for sustainable progress through the implementation of the Stabilisation and Association Agreement and to advance on its European path once objective circumstances allow*"*[74]. The European Commission also states that Kosovo authorities should continue the dialogue on the normalisation agreement with Serbia, expressing the will for a "comprehensive, legally-binding normalisation agreement between Serbia and Kosovo so that they can advance on their respective European paths"[75].

As it can be seen, Romania's political arena is divided when it comes to the position that Bucharest should adopt regarding Kosovo's independence. Its former leaders of the government or the Ministry of Foreign affairs have recognized that progress is being made in the negotiations between Belgrade and Pristina (especially along the normalization process mediated by the EU), the incentive to start a political debate on what should Romania's official position regarding Kosovo is far from the beginning. Concentrating on internal matters in the fight for political power is still the main headline. As the above-mentioned discourses point out, no elaborate debate has taken place at the political level, an observation made in 2011 by Oana Popescu[76] which remains valid even in 2018. Although Bucharest is constantly claiming to be a defender of Balkans' interests in Europe, politicians at all levels or political groups tend to ignore the current developments in the region, Kosovo's situation being by far the most prominent in that matter. The analogy between the Kosovo case

[73] Ibidem.

[74] "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" – Introduction, European Commission, 6 February 2018, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf, 20/02/2018, p. 2.

[75] Ibidem.

[76] Oana Popescu, op. cit., 2011.

and a possible move by Hungarian radicals to replicate the unilateral declaration of independence has been made more frequently by external experts, but not by the Romanian authorities. Moreover, Popescu also showed that "this insistence on drawing a parallel between the Hungarian minority and Kosovar Albanians in Serbia actually creates a problem where it does not exist"[77].

All in all, there were only very few public figures who have discussed the issue using strictly historical and legal arguments, and also some others that added more emotional or symbolical elements. Popescu also pointed towards a fact that was confirmed in our own discourse analysis - no elaborate debate has ever taken place, either among elites or the general public, despite Romania's constant claims to a strong interest in the European evolution of its neighbours.[78]

Conclusions. The complex entanglement of politics and law in Romania's non-recognition policy for Kosovo

Ten years after Kosovo's declaration of independence and its final status is still contested by several countries inside and outside Europe. By now, Kosovo has been recognized in total by 115 countries, including 23 of the 28 EU members. On July 22, 2010, the International Court of Justice (ICJ) gave its Advisory Opinion on the question of the accordance with international law in respect of Kosovo's unilateral declaration of independence which was thought to be a game changer event. The ICJ advisory opinion on this question was requested by the General Assembly of the United Nations under the diplomatic

[77] "The Hungarian minority constitutes approximately 7% of the overall population and is concentrated in a few counties, where they are in the majority, and is also spread across Transylvania. The argument is often made that Hungarians will either use the Kosovo example to claim autonomy for the whole of Transylvania or — more frequently — that they will call for the secession of the Szekler Land, the group of counties (Harghita, Covasna, and parts of Mures) where they make up the overwhelming ethnic majority. The Hungarian minority has repeatedly put forward claims for autonomy, ranging from rather moderate requests of greater administrative power and more provisions for education in their native language, etc., to radical demands for recognition of the right to self-determination. Enormous progress has been made, from bloody incidents in the early 90's in Targu Mures and other places in Transylvania, to the current situation of the Hungarian minority: over 20 years of participation in government through the UDMR, local structures dominated by Hungarians at all levels in Harghita and Covasna counties, access to education and representation in court and public administration in their native language, etc. This is precisely why initially the argument against Kosovo's recognition based on the analogy of potential Hungarian separatism was not made or taken too seriously". Oana Popescu, Ibidem

[78] Oana Popescu, *op. cit.,* p. 65.

pressure of Serbia in the resolution No. 63/3 of October 8, 2008. But this proved not to influence in any way Romania's policy of non-recognition. As a follow up of the ICJ decision, the EU brokered a 'normalization process' between Belgrade and Pristina, which led to the Brussels Agreement signed in April 2013. Despite Kosovo's insistence that its circumstances have been singular and its unilateral action cannot serve as a precedent to other breakaway provinces, the close relations between Bucharest and Belgrade were a prevailing factor in determining Romania's decade-long non-recognition policy. In this interval, Romania seemed more keen to leverage its support of Serbia's territorial integrity to present itself as an honest broker with Belgrade, rather than look at evolution on the ground or Kosovo's progress in the EU integration process.

Our discourse analysis showed that ever since February 17, 2008, authorities from Bucharest have expressed legal concerns over Kosovo's declaration of independence. During the ICJ hearing on the legality of the independence of Kosovo, Romanian MFA argued that while Serbia did indeed violate the human rights of the population in Kosovo during Milošević's time, this was no longer the case at the time of Kosovo's declaration of independence. A realistic account on the matter must underline that, overall, in the last decade, the internal public debate on Kosovo's independence in Romania was scarce (compared to other topics). In fact, given Kosovo's proximity to Romania, the topic can hardly be separated from its subjective and emotional derivatives (most often used in connection with the fear of secession of Szekely Land (*Ţinutul Secuiesc* in Romanian) which is not based on solid arguments, but rather on exaggeration and over-statements connected to election cycles. Overall, we showed that Romania holds a rather legalistic view of Kosovo's independence, highlighting that it will only ever recognize if Serbia does. For Romania, there can be no internationally recognized imposition of special collective rights for a group; only individual human rights, as enshrined in the Declaration, carry legal weight. Romania denies international recognition of secession on the basis of collective rights and without the consent of the losing sovereign state. This legal view was often interpreted (but never phrased as such by the political representatives in Bucharest) in connection with the ethnic Hungarian minority located in two counties in the centre of Romania.

As reflected in official discourses, the reasons behind Romania's pervasive policy of non-recognition regarding Kosovo's independence are multiple. They are also a good illustration of the entanglement between politics and the interpretations of international law by various actors (and the tensions between big and small players on the international arena). Although the main arguments present in the public discourse were focused on the legal aspects of Kosovo's

independence, as shown previously, in time they diversified by focusing also on Romania's national interest in the broader regional context (such as its close ties to Serbia or its concern on Moldova's own "Kosovo" issues in Transnistria), whereas others were strongly related to Romania's domestic political situation. We observed in our analysis that after the Brussels Agreement was signed in 2013, in the Romanian public space, arguments related to international law and the foreign policy context have faded out. The public discourse on Kosovo has become more politicised over the years, more focused on internal political disputes, aided by an internal and external context conducive to heightened popular sensitivity on this topic (especially after Crimea's annexation, when Putin used the Kosovo precedent as a justification). The Hungarian problem is from time to time reignited by the Hungarian minority representatives and this influences Romania's strict position on Kosovo. All in all, the 'Kosovo issue' remains an intriguing aspect in international law and politics mainly because even 10 years after the proclamation of independence it is possible to argue that Kosovo is both unique and a source of precedent at the same time.

From a geostrategic point of view, one of the main features of Romania's relationship with Serbia was to support the process of European integration, which is one of the main pillars of the process of consolidating democracy. Through the diplomatic representatives of the MFA, an unambiguous message has been sent over the past 10 years - Romania firmly supports Serbia's EU membership. But this ambiguity regarding Kosovo's evolution on the EU integration path, connected with Serbia's closing of Chapter 35, becomes even more complicated in the light of the most recent EC Enlargement strategy from February 2018, which announces the year 2019 as the year when the normalization process is expected to end. The EU pressure on a possible policy shift in Romania's positions, together with other non-recognizing EU member states was also the recent statement of Germany's Foreign Minister that Serbia should recognize Kosovo[79]. It will be interesting to follow how Romania's position will relate to these views of the EU's strongest state, especially in the view of its first EU Council Presidency to be held in the first part of 2019, when a new turning point in the normalization process between Belgrade and Pristina is expected.

[79] "If Serbia wants to move toward the European Union, the building of the rule of law is a primary condition, but naturally also the acceptance of Kosovo's independence," Gabriel said at a joint news conference with Kosovo's Prime Minister Ramush Haradinaj in Pristina late on February 14. "That is a central condition to take the path toward Europe." Radio Free Europe, 15/12/2018 https://www.rferl.org/a/serbia-must-recognize-kosovo-to-join-eu-german-foreign -minister-gabriel-says/29040748.html, on 29.02.2018.

At a more theoretical level, coming back to our constructivist type of approach, this case study is illustrative of the ways in which a controversial issue is presented in public over 10 years' time. Romania's position on Kosovo shows that the public narratives are largely influenced by how politicians decide to respond to outside pressure. More generally, this case study analysis on Romania's own major arguments to be found in the public statements in the last 10 years shows that, in cases of secession, law and politics are especially tightly intertwined. This confirms the constructivist principle that "we see only what we are looking for", underlining that people prefer to selectively see only those aspects which reinforce their pre-existing perceptions, enjoying the comfort of certainty, rather than accept to have their preconceived ideas challenged.

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POSITION OF LATIN AMERICA TOWARDS KOSOVO

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Abstract: The paper problematizes relation between Latin American states' position on NATO intervention in Yugoslavia and the recognition of Kosovo's independence. It analyses the position of five major regional players: Brazil, Mexico, Argentina, Chile, Venezuela and Bolivia, as well as the particularity of Suriname, which recognized Kosovo and then overturned the recognition a year later. Particularly the concept of humanitarian intervention and the right of self-determination is problematized in relation to different policies of Latin American states and their bilateral relations with the United States.

Key words: humanitarian intervention, self-determination, recognition, Kosovo, Latin America.

Introduction

After the end of the Cold War, a new period of international relations began. In addition to the Soviet Union, the Socialist Federal Republic of Yugoslavia (SFRY) began to collapse. In 1991, Slovenia, Croatia and Macedonia declared independence and were recognized in 1992 by a large number of states. The referendum on the independence of Bosnia and Herzegovina in 1992 led to a three-year war, and the state was granted international recognition only in December 1995, by virtue of the Dayton Accords. In the spring of 1992, the two remaining former SFRY republics formed a union named the Federal Republic of Yugoslavia (FRY), renamed in 2003 into Serbia and Montenegro. Two former Serbian autonomous provinces – Vojvodina and Kosovo – were also part of the FRY, however, the latter soon expressed its intention to leave the newly-formed state. To prevent this secession, Serbia increased the pressure on Kosovo,

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leading to an armed conflict between Serbs and Kosovars (Albanians) in the period between 1996 and 1999. Both sides, the Yugoslav Army and the Kosovo Liberation Army (KLA), violated human rights. Mostly, the KLA attacked the Serbian police force or army, which then sharply retaliated, leading to civilian casualties. After the Serbian massacre in Račak, which was condemned by UN Security Council, NATO bombed Serbia with the aim of halting the escalation of the conflict. After the NATO intervention (March-June 1999) against Serbia, the Yugoslav Army withdrew from Kosovo, which fell under a UN protectorate. On 17 February 2008, the Kosovo parliament declared independence. Serbia has not recognized this proclamation of independence, unlike the United States and most EU members, including Croatia. By the end of 2017, Kosovo has been internationally recognized, depending on the source, by 110 or 114 states. Its recognition was withdrawn by Suriname and Guinea-Bissau. Kosovo's passport is recognized as a valid travel document by 8 states, which do not recognize Kosovo's independence.

The aim of this paper is to present the views of Latin American countries[3] regarding the NATO intervention in Serbia and the recognition of Kosovo's independence. We will analyze the positions of five major states that have competed in the past for the role of the region's leader – Brazil, Mexico, Argentina, Chile and Venezuela, as well as Bolivia. We will also see the case of the Caribbean state of Suriname, which recognized Kosovo as an independent state, overturning this recognition a year later.

The hypothesis of the paper is that, assuming the equivalence of the ruling president's[4] ideological orientation, a country's position will coincide, i.e. that a country that "supported" the NATO's action would support the creation of an independent state of Kosovo, and vice versa, that a country that condemned the NATO's action would not recognize Kosovo's independence. The support in both cases is, according to the theory of Realism, connected with the promotion of national interests and manifested through good bilateral relations with the US.

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[3] Latin America consists of Argentina, Bolivia, Brazil, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Haiti, Colombia, Costa Rica, Cuba, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. The term Latin America and the Caribbean is also used to label the region, which includes the *Commonwealth Caribbean Countries* (Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago) and Suriname.

[4] In Latin America, the presidential system of government is in effect, wherein the president of the state is both the head of state and the head of the government.

The paper consists of an introduction, three chapters (the first of which was dedicated to the concept of humanitarian intervention, the second to the position of the Latin American countries regarding the NATO intervention in 1999, while the third deals with the proclamation of Kosovo's independence) and the conclusion.

Humanitarian intervention theory

Among the different definitions of humanitarian intervention in IR literature, we decided to apply the one that defines it as „the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its citizens, without permission of the state within whose territory the force is applied" (Yoshida, 2013). However, there are always those claiming humanitarian intervention as an interest-driven. In the article, we argue that there is a correlation between Latin American states' support for the NATO intervention in Kosovo and their policy on its recognition. Therefore, in this case, their position on humanitarian intervention is not only explained by the Liberal theory but is also heavily influenced by Realism (Ibid).

According to Waltz (1979,117) "in a self-help international system states' foreign policy is determined based on its national interests with the aim of increasing their power in anarchical international relations". In this case, the interest of Latin American states in supporting or opposing the intervention was influenced by the role of the United States as the initiator of NATO action. Different strands of liberalism problematize mostly protection of human rights and the prevalence of international cooperation in the times of crisis. This position was particularly stressed by the former NATO Secretary-General Javier Solana (in: Dunoff, Ratner, Wippman 1996, 941) prior to the intervention: "Our objective is to prevent more human suffering and more repression and violence against the civilian population in Kosovo…We have a moral duty to do so". The humanitarian concerns were also emphasized by the Canadian representative at the UN Security Council: "We cannot simply stand by while innocents are murdered and the entire population is displaced, villages are burned and looted, and a population is denied its basic rights…."(UN.org, 1999).

Not questioning the humanitarian dimension of the intervention, we focus more on the vital interests of the US to intervene, as well as its bilateral relations with Latin American states, which supported or refused to support the intervention. According to the US President Bill Clinton, one of the purposes of the intervention was "to ensure the credibility of NATO in Europe," which

has been ”crucial for maintaining the US hegemony in Europe“ (Stegner 2008, 99). The US vital interest was also ”to prevent Russia from being influential in the area“.

Different responses of Latin American states to the NATO intervention reflect ”the wider tension between state sovereignty and human rights“. In this case, it is also a demonstration of support or lack of support for the US policy in general, as well as in the region. Therefore, the reactions varied from moderate support to open opposition to the intervention. On one side Argentina and Chile warned about the NATO's dismissal of the UN, however, Argentina did not refer to the NATO's actions as illegitimate. There is also a more moderate case of Brazil and its traditional emphasis on multilateralism. At the other end of the spectrum, Mexico fearful of autonomist threats at home strongly opposed NATO's use of military force (Serrano in: Schnabel and Thakur 2000, 223-244).

This shows Latin America as the region with ”a healthy foreign policy position taken by their governments” and with ”geopolitical tensions translating into ideological frontiers“ (Arredondo 2014, 353). According to Petrella (in Ibid 2014, 354), during the 19th and early 20th century Latin American foreign policy was based upon following principles: sovereign equality of states, no intervention, territorial integrity, self-determination, peaceful settlement of disputes and respect for international law. However, a significant difference among Latin American states in responding to the Kosovo crisis had to do ”with the nature of their regimes, their democratization processes, their exposure to human rights pressures, and we may add to their bilateral relations with the US (Thakur in: Bellamy and Dunne 2016, 94-114). For example, in the case of Mexico ”the fact it lost half of its territory to the United States has informed its standing to non-intervention“ (Ibid).

The position of Latin American countries regarding the NATO's intervention in Serbia

The non-intervention principle was established in the Western Hemisphere, to be later taken over by the League of Nations and the United Nations, making it one of the essential principles of international law. “In Latin America, absolute interpretations of the principle of non-intervention were a traditionally the norm until recent decades, when important changes took place in the legal context underlying this principle” (Serrano, 2000: 224). During the 1990s, the views of Latin American states regarding the principle of non-intervention in the affairs of other sovereign states became more flexible. We

find the reasons in the democratization of the region, the acceptance of the role of the Organization of American States (OAS)[5] in pacifying and supporting democratically elected governments of certain states in the region, the processes of globalization and economic integration. Concerning the Kosovo crisis, some countries in the region have demonstrated a tendency to accept the "exception" from the generally accepted Latin-American principle of non-intervention, while other states have insisted on it. Serrano and Murillo (2001) indicate in their article "La crisis de Kosovo y America Latina: el dilema da la intervencion" that some states of the region considered the NATO intervention to be a cold and calculated manipulation of international standards, with the aim of justifying military intervention, while others considered the NATO intervention to be a justified action to protect international law. Although Latin American states demonstrated a willingness to volunteer part of their sovereignty to protect human rights in the nineties of the last century, their response to the Kosovo crisis maintained the attitudes of each country on aligning the right to sovereignty with human rights protection.

At the end of the 20th century, democracy in Latin America became the fundamental political value and fundamental principle of regionalism. Although the OAS was supposed to promote and defend democracy during the Cold War, due to two-faced American criteria and the intervention in sovereign states' affairs, activity was delayed. The OAS was revived in 1990 with the joining of Canada and the signing of the 1991 Santiago Settlement Agreement, as well as by adopting Resolution 1080, which gave the organization the task of defending and promoting democracy and human rights protection in the Western Hemisphere. Therefore, today, the OAS has the task and the right to collective intervention in cases of a "collapse" of democratic institutions and the constitutional order of member states.[6] The 1992 Washington Protocol authorized the OAS to suspend the membership of a state in which the government was overturned in a non-democratic manner. Similar provisions

[5] The Organization of American States (OAS) was created in March 1948 through the adoption of the Bogota Charter. OAS members committed themselves to continental solidarity and to complete abstinence from intervening in the affairs of other sovereign states, all based on the principles of democracy, economic cooperation, social justice and human rights protection. Members are all Western Hemisphere States (Kos-Stanišić 2010: 55).

[6] OAS intervened in: Haiti in 1991, Peru in 1992 and 2000, Guatemala in 1993, Paraguay in 1996, etc.

have been adopted by other regional organizations such as Mercosur[7], the Rio Group[8] and the Central American Democratic Security Treaty.[9]

Although the region adopted a more flexible version of the principle of non-intervention in the affairs of other sovereign states, the American tendency to employ double standards of intervention and the historical memory of US intervention, affected the countries of the region adopting a defensive stance. Thus, the states of the region accepted the necessity of defending democracy, but not by force (Serrano and Murillo 2001: 21). The vast majority of countries in the region accept "limited sovereignty", but in their actions related to the non-intervention principle, there are significant differences, influenced once again by internal politics. Hence, in Latin America, we differentiate between three types of attitudes. First, there are states that have moved away from the principle of non-intervention and advocate the international protection of democracy. Among them are Argentina and Chile, countries whose democratization process has influenced their foreign policy. Second, countries in which, thanks to international mediation, a civil war had come to an end, which therefore voluntarily accept limited sovereignty. Among them, the Central American states stand out. And the third, states like Mexico, and partly Brazil, who are vigorously opposed to any type of intervention in their internal affairs. The foreign affairs policies of the great powers of South America – Argentina, Brazil and Chile – regard the consolidation and defense of democracy as their foreign policy priority. However, unlike Argentina and Chile, Brazil has accepted the principle of conditionality but insists on the strict interpretation of the principle of non-intervention. It also opposes the creation of military capacities of the OAS (Serrano and Murillo, 2001: 22-23).

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[7] MERCOSUR (Esp. Mercado Comun del Sur, Port. MERCOSUL) represents the common market of Brazil, Argentina, Uruguay and Paraguay. It was founded in 1991 by signing of the Asuncion Agreement, with the aim of creating a common market and customs union and came into force in 1995. Venezuela became a member of Mercosur 2012, and its membership was was permanently suspended in 2017.

[8] The Rio Group represents the organization of 23 countries of Latin America and the Caribbean with the aim of aligning the foreign policies of the member states. It consists of Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica (representing the 15 CARICOM member states), Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela (http://www.nti.org/learn/treaties-and-regimes/rio-group/).

[9] The Central American Democratic Security Treaty was signed in 1995 by Honduras, Costa Rica, El Salvador, Guatemala, Nicaragua and Panama. The aim is to consolidate democracy, the rule of law, and development in the region (http://www.oas.org/csh/spanish/c&ttratadocentro america.asp).

Ever since the 1930s, Mexican foreign policy was based on Estrada's doctrine, advocating the principle of non-intervention in sovereign states' affairs, the peaceful resolution of disputes and the self-determination of nations (Treviño, 2011). The main determinants of Mexico's foreign policy are respect for international law and equality between states, respect for the sovereignty and independence of states, non-intervention in the domestic affairs of other states, peaceful resolution of conflicts, and promotion of collective security. Insisting on the principle of non-intervention was also maintained for periods of liberalization of the political and economic system at the end of the last century. The reasons for such insistence are found in the US's geographical vicinity and the fear of any US interventions, which were not lacking in the past. In that vein, Mexico accepted the Santiago agreement, with the reservation that democratically elected governments can find themselves in "dangerous waters," but can only be established and consolidated from the inside. During the 1990s, when Mexico negotiated and entered NAFTA, there was a rebellion of the indigenous population in Chiapas, asking for greater autonomy, and Mexico feared that international actors, especially the United States, might try to exploit the situation and intervene in order to protect human rights. They, therefore, insisted on adhering to the policy of non-intervention both in others' and their own "affairs". Serrano and Murillo (2001) conclude that there is no consensus in Latin America on the principle of non-intervention, which is also corroborated by the positions of the countries of the region regarding the Kosovo crisis.

The Rio Group Declaration issued the day after the bombing of Serbia which began on 25 March 1999, demonstrated the attempt to express different positions by the members of the Group. The declaration expressed regret over the inability to find a peaceful solution to the crisis, the concern of the group members regarding the NATO bombing but did not condemn the action. The Rio Group called on the parties in conflict to urgently begin with negotiations and expressed the view that a peaceful solution to the conflict depends both on respect for human rights and the territorial integrity of the states involved in the conflict. They also expressed concern that NATO action was taken without the UN Security Council's consent. Serrano and Murillo (2001: 25) conclude that the region used the Declaration to make it clear that it does not consider the territorial integrity of Yugoslavia more important than the protection of human rights and considers them equally important.

The complexity of the Kosovo crisis and the NATO intervention can be demonstrated in the arguments of Argentina and Chile, and to a lesser extent Brazil. Despite expressing concern over the use of the NATO force, they did not

harshly condemn the intervention. They attempted to reconcile the principles of sovereignty and respect for human rights, emphasized also by numerous declarations of the aforementioned states. Argentina not only endorsed the UN Security Council Resolution 1199 (http://unscr.com/en/resolutions/1199), which condemned the use of force by Serbian forces over Kosovo civilians, but also, alongside Brazil, rejected a resolution proposed to the Security Council by Russia, Belarus and India, which condemned the NATO's action by proclaiming a threat to international peace and security. Argentina's full support of the intervention can be explained by its legacy of democratic transition, its experience in participating in peace operations in the Balkans, and its desire to demonstrate that it belongs to liberal western states. Brazil, however, publicly expressed its unwillingness towards interventions done with double standards leading to their selective application, especially those that were taken without the blessing of the Security Council. For Brazil, it is important that the actions being undertaken are carried out under the UN umbrella, which is the reason it participates in peacekeeping operations. Chile's position was cautious, especially because of the arrest of General Pinochet. It expressed regret over the inability to find a peaceful solution to the conflict and over the NATO's intervention without the approval of the UN Security Council but did not object to the international community trying to reconcile Kosovo's desire for greater autonomy with Yugoslavia's territorial integrity. Later, in a UN session, Chile expressed the stand that the human rights protection issue has become a task of the international community, which cannot be ignored by the government of any state. Chile has demonstrated its readiness to send its forces to Kosovo on a peacekeeping mission, as it had done in Bosnia.

Contrary to the aforementioned states of South America, Mexico has strongly condemned the NATO's intervention and its pursuit without the UN Security Council approval. However, it signed the resolution of the UN Human Rights Commission, which condemned Serbian crimes in Kosovo, but expressed disapproval because the text of the resolution did not equally emphasize the importance of the territorial integrity of states. Also, at an extraordinary session of the UN Security Council, Mexico reiterated its regret that the NATO action was taken without the blessing of the Security Council and that no peaceful solution to the conflict was found that would ensure the respect of the human rights of all minorities, as well as the territorial integrity of the states. Mexico insisted on the necessity of finding solutions within the UN, with a view to preserving the credibility of the international security system and stressed that the use of force even for humanitarian reasons carries with it more violence and does not contribute to solving the problem. Despite the emphasis on the

importance of the UN, Mexico's constitution forbids the participation in peacekeeping operations, hence it does not take part in them (Serrano and Murillo, 2001).

Venezuela's newly elected President Hugo Chavez, a person whose coming to power was followed by the region's turnaround towards left-wing political options and opposition to the US actions, condemned the NATO operation against Serbia (https://planken.org/archive/1999/01).

According to Morales (2003: 228-240) Bolivian foreign policy in the 20th century was "highly dependent and externally penetrated", especially by the United States. The desire to meet the wishes of the US led to "bilateralizing the foreign policy agenda", meaning the US actions were largely supported, as was the case with the NATO intervention in 1999.

The position of Latin American and Caribbean countries regarding Kosovo's declaration of independence

The Assembly of Kosovo declared its independence from Serbia in February 2008 by the second declaration of independence, with the first one being proclaimed in September 1990. Serbia disputed the legality of the declaration and sought an advisory opinion from the International Court of Justice, which ruled that the declaration does not represent a violation of the international law. The ruling held that "the authors were acting in their capacity as representatives of the people of Kosovo outside the framework of the interim administration and therefore are not bound by the Constitutional Framework or by UNSCR 1224"[10] Wikipedia.org, 2008). In international law a new state may result from part of the territory of an existing state, and its creation will be lawful if it has a consent of the partner host state. If this does not occur, the new entity has to find some "special legal entitlement to be independent". Some of the options recognized by the international law are: external self-determination based on a historical situation (the case of colonial territories), when a people is a subject of "alien domination ", or when an existing state disappears and the situation of an extreme violation of internal self-determination involving gross human rights violation occurs (Chatamhouse.org, 2008).

Kosovo's independence could be assessed under the international law of secession, which "provides a framework under which certain secessions are

[10] United Nations Security Council resolution 1244 was adopted in June 1999 establishing the United Nations Interim Administration Mission i Kosovo (UNMIK).

favoured or disfavoured.“ ”The legal concept of self-determination is comprised two distinct subsidiary parts“: internal self-determination (presenting the protection of minority rights within a state) and secession or „external self-determination“ (Borgen 2008).

However, it is difficult to “identify a legal basis for the declaration of independence rooted in the right of external self-determination on behalf of the people of Kosovo“. This is proven by the fact that “the term self-determination“ has not played a significant role in official statements of recognition by states“. Most states which recognized Kosovo, including those from Latin America, held the position that status quo was untenable (Chatamhouse.org, 2008).

Until now 110 members of the United Nations recognized Kosovo. Latin American states belong to the group of silent states, in contrast to groups of recognizing and opposing states. Recognizing states mostly expressed concerns for the peace and security in the Balkan region, as well as “the unsustainable nature of the *status quo*“ (Almqvist 2009, 8), the argument about failed negotiations between Pristina and Serbia, the fact that Kosovo constitutes a sui generis case and that there is “no settled international law governing the case“ (Ibid, 9). The objecting states asserted that Kosovo decision “amounts to a manifest abridgment of international law“ (Ibid, 10) while there are several different grounds for objecting, mostly political one in terms that Kosovo presents “a dangerous precedent“ that can “result with problems in their own or neighbouring countries“ (Ibid, 11). The silent or passive group of states which encompasses several Latin American countries pursue silence which can be explained, according to Almqvist (2009, 11), in several different ways. Firstly, some of them do not have any stakes in the outcome, some have to prioritize more urgent problems at home, while some are concerned about the “legality of Kosovo decision“ (Ibid, 12).

Latin American states mostly extend the recognition to states outside the hemisphere based on “geopolitical sense of national interests “trying to extend ties to areas of previously little interest (Venezuela and Nicaragua recognized breakaway South Ossetia and Abkhazia) (Coha.org, 2010). The reason behind the recognition could be found in their “attempt to court Moscow as a possible source of weapons sales and client for their commodity exports (Ibid). This reflects some of the basic premises of realism according to which states are driven by their own self-interest in the international arena. Namely, Latin American countries have developed a strong economic relationship with the Caucasus states.

Furthermore, Argentina, Brazil and Uruguay have recognized Palestine as an independent state which shows "Latin America countries to ease out of Washington's sphere of influence and the fact that Latin America has a growing commercial and political link with the Muslim world" (Ibid). For example, Brazil and Venezuela tend to build a relationship with Libya and Iran, with growing partnership between Argentina and Algeria as well as between Bolivia an Iran.

Kosovo is recognized by two of Washington's major allies, Columbia and Peru as well as Panama, Costa Rica, the Dominican Republic, Belize and Honduras. This shows that the partnership with the US is one of the dominant reasons for this kind of foreign policy move. Ironically Argentina, Brazil and Venezuela, Latin American countries that oppose Kosovo's declaration of independence, "have raised their voices the loudest when it comes to supporting an independent state of Palestine"(Luxner, 2010).

States recognizing the independence of Kosovo

Newly appointed Foreign Minister Skender Hyseni met with several representatives of the countries of the region at the UN Office in Vienna. There were representatives of Costa Rica and Peru who first recognized Kosovo, as well as Panama, Paraguay and Ecuador, states that the minister was to visit shortly thereafter (http://www.balkaninsight.com/en/article/kosovo-pushes-for-latin-america-recognition/1615/18).

The Council on Hemispheric Affairs (COHA)[11] states that the recognition of the independence of countries outside the Western Hemisphere by Latin American countries was influenced by two factors – the national geopolitical interests of those states and the processes of globalization that connect Latin America with the remote regions of the world. They consider that the Latin American states that have recognized Kosovo's independence have not done so for economic reasons, not because of the abstract concept of goodwill and friendship (Coha.org, 2010).

Of course, one of the reasons is the alliance with the United States, which was demonstrated by the fact that Peru (22 February 2008) and Colombia (4 August 2008), who negotiated the signing of free trade agreements with the United States and received significant US aid in the fight against drugs, acknowledged the independence of Kosovo in 2008.[12]

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[11] COHA is a left-wing CSO with headquarters in Washington DC.

[12] https://ustr.gov/trade-agreements/free-trade-agreements/

Costa Rica was the first country in the region to recognize Kosovo's independence (18 February 2008), although at first in its capacity as a non-permanent member of the Security Council, it "expressed doubts, saying such a move would weaken the UN". Afterwards, the Government of Costa Rica "declares itself in favor of the independence of the Republic of Kosovo" (http://www.ticotimes.net/2008/02/22/costa-rica-high-fives-kosovo-on-independence). Kosovo's lobbying came to fruition in the case of Panama, which recognized its independence the following year, and Panama has the only Kosovo embassy in the region. The independence of Kosovo has been recognized by the small states of the Circum-Caribbean region where the presidents in power were inclined towards the United States. The Dominican Republic admitted Kosovo in 2009, Honduras in 2010, Haiti in 2012, and El Salvador in 2013.[13] Following a military coup in 2009, the government of the Honduras President Zelaya was replaced by the right-wing government of Porfiria Lobe, hence a possible explanation for the recognition is its desire to approach the United States and demonstrate the elimination of the foreign policy influence of Hugo Chavez and Venezuela.

a) Positions of states not recognizing the independence of Kosovo

None of the major and significant states of the region have recognized the independence of Kosovo – Brazil, Argentina, Chile, Mexico or Venezuela. We will explain the reasons for the denial.

Brazil stresses that in the case of a unilateral declaration of Kosovo's independence, a solution should be found peacefully and under the auspices of the UN and its Security Council Resolution 1244, which holds that Kosovo is a part of Serbia, and emphasizes that the principle of self-determination is not above the international law. We have asked Brazil's Ambassador Paulo Roberto Campos Tarrisse da Fontoura, accredited in the Republic of Croatia, to explain the position of his state, which he did: "Brazil does not recognize the independence of Kosovo and believes that any solution to the issue should be based on UN Security Council Resolution 1244 (1999) and dialogue between the parties".

Argentina did not recognize the independence of Kosovo by arguing with respect for the principles of territorial integrity of states, non-intervention in

[13] CAFTA-DR is a trade agreement between the United States and the Central American States – Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta

the domestic affairs of other sovereign states, and the obligation of peaceful settlement of disputes. The principle of self-determination and Kosovo's unilateral declaration of independence without an agreement with Serbia opens a dangerous precedent. Argentine daily newspaper Clarin argues that the government has made a decision not to recognize Kosovo in fear that it could endanger negotiations with the United Kingdom and the resolution of the dispute over the Falkland Islands (https://www.clarin.com/ediciones-anteriores/malvinas-gobierno-decidio-reconocer-kosovo_0_r14ZlZC0pFx.html). Argentina insists on compliance with UN Security Council Resolution 1244[14] calling on the parties to the conflict in Kosovo to jointly resolve the dispute.

The Chilean Foreign Ministry emphasized in its media statement that it is closely monitoring the developments. They called on the parties in conflict to peacefully resolve the dispute and to respect the international law and principles of the UN Charter (http://www.minrel.gov.cl/prontus_minrel/site/artic/20080714/pags/20080714160249.php).

In the case of Mexico, political elites and scientists agree that its foreign policy is guided by the principles laid down in its 1988 constitution. These are non-intervention, self-determination, peaceful resolution of disputes, international cooperation, juridical equality of states, proscription of the use of the threat of the use of force and the struggle for international peace and security (Covarrubias, 2011: 212-230). That is why Mexico's position was expected because it called the parties in conflict to a peaceful resolution of the dispute, which would respect the rights of minorities and contribute to the peace and stability in the Balkans. Mexico repeatedly stated that it has no intention of recognizing Kosovo's independence.

Venezuelan President Hugo Chavez, then leading leftist and leader of the pink tide of Latin America and a major opponent of the US politics, claimed that Venezuela would not recognize Kosovo from the very moment it declared independence, and that the states that did so should revoke it as that recognition creates a dangerous precedent. He stressed that the states that recognized Kosovo had done so under the pressure exerted by the United States (https://lta.reuters.com/article/domesticNews/idLTAN2122467220080221).

The fear that events in the distant Balkans could open Pandora's box and that the Latin American secessionists could invoke the "Kosovo case" and, with the support of the US, achieved secession, proved justified in the case of Bolivia. Due to opposition to the US politics, the affiliation to the leftist pink tide, as well

[14] https://undocs.org/S/RES/1244(1999)

as the internal political situation regarding the attempts to secede by four provinces of Medio Luna, Bolivia, headed by President Evo Morales, did not recognize Kosovo's independence. Unsatisfied with Morales' rule that went in the direction of socialism, friendship and alliance with Chavez, the four wealthy Eastern provinces of Medio Luna have declared autonomy in the spring 2008 referendum. The referendum was declared null and void by Morales, after which the movement faded.

Most Latin American countries share the views of their former parent state of Spain, which does not wish to recognize the independence of Kosovo. The Spanish government believes that Kosovo has violated the UN Resolution 1224 and is in violation of the international law, and that Kosovo's recognition goes in favor of all separatist movements in their aspirations for independence. Of course, Spain anticipated the consequences of an eventual recognition of Kosovo and the creation of a precedent that could be invoked by its own autonomous regions of Catalonia, Galicia and Basque (https://elpais.com/internacional/2013/04/25/actualidad/ 1366904782_018605.html).

After gaining independence from Spain and Portugal, there have only been a few unsuccessful attempts of secession on the territory of Latin America. Separatism is not common in Latin America, therefore, with regard to recent events, most Latin Americans believe that Catalonia is an integral part of Spain and do not support their wish for separation (The Economist 25 November 2017, p. 43, Why no Catalonias? Explaining the absence of separatism in Latin America).

b) The case of Suriname – recognition (8 July 2016) and revocation (27 October 2017) of Kosovo's recognition

Surinam is a country in South America, a former Dutch colony that gained independence in 1975, with a former dictator and leftist Desiré Delano "Dési" Bouterse in power since 2010. Suriname was the only country in the world, along with Guinea-Bissau, to recognize the independence of Kosovo (8 July 2016) only to recall the recognition the very next year. Although there was no official statement made by the Surinam government, the daily newspaper Star News published a letter by former Foreign Minister Niermal Badsiring who wrote, "Suriname has decided to recognize the Republic of Kosovo as an independent and sovereign state. I look forward to engaging in further diplomatic relations between Suriname and Kosovo." The recognition followed years of strong pro-Kosovo lobbying in organizations Surinam is a member of – the UN, the Non-Aligned Movement and the Organization of Islamic Cooperation (OIC)

(http://wp.caribbeannewsnow.com/2017/10/29/commentary-suriname-flip-flops-kosovo -western-sahara-recognition/). The revocation took place on 27 October 2017 via an official note from the Ministry of Foreign Affairs of Suriname to the Ministry of Foreign Affairs of Kosovo, which states that "after careful consideration" the Government of Suriname has decided to revoke the recognition of Kosovo as an independent and sovereign state (see annex). The media claimed that it was done to ingratiate Surinam to President Putin ahead of the first visit by Foreign Minister of Surinam Pollack-Beigh to Russia. According to media coverage, the revocation might be a response to Russia's Foreign Minister Lavrov's suggestion that Surinam could be one of the important Russian allies in the struggle against the rising US interference in the internal affairs of other states. The Russian media state that no bilateral agreements were signed during the visit, but that Russian investments in Suriname and a foreign policy coordination of the two countries were discussed. The decision provoked enthusiasm in Serbia (http://wp.caribbeannewsnow.com/ 2017/11/02/suriname -revokes-kosovo-recognition-heels-russia-visit/), while Kosovo claimed that recognition cannot be withdrawn. According to Balkan Insight, the Kosovo government has made the statement that "in the international law there is no concept of withdrawing a recognition" (http://www.balkaninsight.com/en/article/kosovo-claims-suriname-cannot-revoke-independence-recognition-10-31-2017). Therefore, the website of Kosovo's Ministry of Foreign Affairs still lists Suriname as one of the 114 states that have recognized its statehood (http://www.mfa-ks.net/?page=2,224).

Conclusion

In Latin America, which consists of 20 states, Kosovo's independence was recognized by only seven, mostly for pragmatic reasons, using the recognition as a demonstration of their adherence to the US policy. The most significant countries in the region (Brazil, Chile and Mexico) whose positions on the matter were portrayed in this paper have not done so, due in part to their strict adherence to international law and the respect for the principles of territorial integrity and non-intervention in sovereign states. The second group of states consists of Venezuela, which was because of its ideology, i.e. the left-wing government of Hugo Chavez and its opposition to the international actions of the United States, guided by foreign policy in accordance with the motto – all America's friends are my enemies. The third group includes Argentina and Bolivia whose non-recognition of Kosovo is a combination of ideology – President Evo Morales is a radical leftist and opponent of the US politics – and

pragmatic reasons – the desire of part of the country's territory to secede. Argentina has been emphasizing the importance of adhering to international law and the Estrada doctrine and used the existence of an international dispute with the United Kingdom over the Malvina/Falkland Islands as the reason for not recognizing Kosovo's independence.

The thesis of the paper, assuming the equivalence of the ideological orientation of the ruling president, that countries that supported the NATO's US-led bombardment of Serbia would equally endorse the recognition of Kosovo advocated by the United States, and that countries who did not support the NATO intervention would not recognize Kosovo's independence, has not been proven.

If we analyze Table 1 we can conclude that:

– in the case of Venezuela, there has been no change in the ideological orientation of the ruling president and that intervention and independence are NOT accepted
– that in the case of Mexico there has been a change in the ideological orientation of the president in power, but that intervention and independence are NOT accepted;
– that in the case of Argentina, Bolivia, Brazil and Chile there was a change in the ideological orientation of the ruling president and that they accepted the intervention (YES) but NOT the independence.

Kosovo continues to lobby among Latin American countries that have not yet recognized it (http://www.mfa-ks.net/?page=2,217,1888), but there is currently no significant chance such lobbying would be fruitful.

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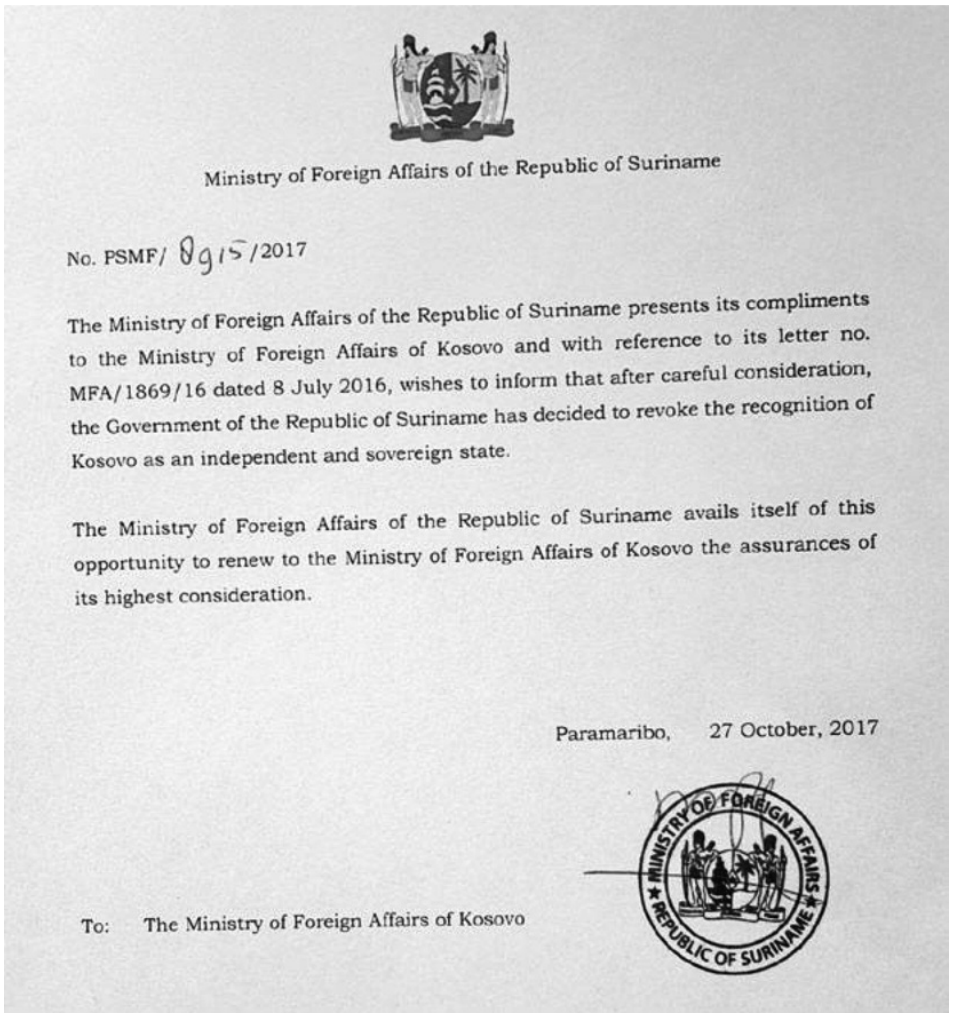
Table 1. *A comparison of positions of Latin American countries regarding NATO's intervention against Serbia in 1999 and recognition of Kosovo in 2008*

Country	Acceptance of NATO's operation against Serbia in 1999	Government left/center/ right	Recognition of Kosovo independence in 2008	Government left/center/ right	Special conditions
Argentina	YES – Unconditionally	Carlos Menem Right	NO	Nestor Kircher Left	Dispute over the Malvina/ Falkland Islands with GB
Bolivia	YES	Hugo Banzer Right	NO	Evo Morales Radical left	
Brazil	YES – Conditionally	Fernando Henrique Cardoso Center	NO Recognizes passport	Lula da Silva, Left	
Chile	YES – Conditionally	Eduardo Frei Center?	NO	Michelle Bachelet Left	
Mexico	NO	Ernesto Zedillo, Left	NO	Felipe Calderon, Right	
Venezuela	NO – Condemning	Hugo Chavez, Left	NO	Hugo Chavez Radical left	Declaration of Independence of the Medio Luna Province



Ministry of Foreign Affairs of the Republic of Suriname

No. PSMF/ 815/2017

The Ministry of Foreign Affairs of the Republic of Suriname presents its compliments to the Ministry of Foreign Affairs of Kosovo and with reference to its letter no. MFA/1869/16 dated 8 July 2016, wishes to inform that after careful consideration, the Government of the Republic of Suriname has decided to revoke the recognition of Kosovo as an independent and sovereign state.

The Ministry of Foreign Affairs of the Republic of Suriname avails itself of this opportunity to renew to the Ministry of Foreign Affairs of Kosovo the assurances of its highest consideration.

Paramaribo, 27 October, 2017

MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF SURINAME

To: The Ministry of Foreign Affairs of Kosovo

UDC 327.82(497.6)(497.115)

KOSOVO VS REPUBLIC OF SRPSKA – AN INTERNATIONAL DOUBLE STANDARDS GAME

Miloš Šolaja[1]

Abstract: A self-declaration of independence of Kosovo adopted by its Assembly on February 17th, 2008, directed the attention of the international community to the Republic of Srpska, the semi-independent state-shaped 'entity' in Bosnia and Herzegovina. Due to often openly expressed possibilities to declare either independence or unification with Serbia, political activities of the Republic of Srpska became the subject of careful observation of the Western countries and international organizations. All powerful and influential international actors unequivocally rejected any thoughts of the Republic of Srpska's independence while explaining the unilateral declaration of Kosovo independence as a '*sui generis*' case. International stakeholders relations with both political entities maintained the stance that both entities have some similarities but also differences. This work will compare both considerations - political and international approach, as well as the intentions of actors. The analysis will show the opposite state-building processes and radically diverse international relations towards each of them, which may be dubbed as "double standards". The Western group of countries which represented the mainstream of International Community approach did not support the Republic of Srpska at the time of its establishment and later on. Relations to Kosovo were different from the very beginning of the Yugoslav crisis. Even while it was still part of Yugoslavia, Kosovo had the support from the Western countries. That support had been present not only when the act of independence was adopted but also continued after it. The Western countries did not support the establishment of the Republic of Srpska. Kosovo, however, was a different case.

Key words: Republic of Srpska, Kosovo, independence, differences, polity.

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Introduction

The Republic of Srpska, an autonomous region, has been called to secede by the 'Bosnian Serb Leader' Milorad Dodik. Even though he cancelled the plans for 2018 referendum, he said he would follow "the path to independence", wrote the "Time" magazine.[2] In the short article, the Republic of Srpska found itself among Catalonia, Spain, Biafra and Nigeria – the regions that recently have renewed independence intentions. Additionally, this independence case is enhanced with a request for a wider autonomy of Corsica, raised strongly through the elections held on December 10th, 2017. The issue of independence of the Republic of Srpska was revived since it happened after the referendum on independence of Montenegro in 2006, but even more after Kosovo declared independence on February 17th, 2008. Since the Dayton Peace Accord (DPA) on November 21st, 1995, and the General Framework Agreement for Peace (GFAP) were signed, there were many speculations on its independence. A major part of speculations was founded on the initial political idea of launching the RS independence on the ruins of former federal Yugoslavia. Prior to the Dayton peace negotiations, it was an official standing point of the Republic of Srpska, which at the time existed as the unrecognized state. During the multi-phased peace talks, it was internationally accepted as the "negotiations side" representing the general interests of the pejoratively called "Bosnian Serbs" side. The Republic of Srpska and "Bosnian Serbs" are not synonyms – there are Serbs who live in Federation BiH and not only in the RS, but on the other hand, there is a certain number of Bosniaks and Croats who live in the Republic of Srpska too. Another issue is the issue of polity – the RS political system since its founding on January 9, 1992, when the actual Constitution of the Republic of Srpska (at the time the Serb Republic of Bosnia and Herzegovina) was adopted has passed through fifty changes. The Constitution of the Republic of Srpska was integrally incorporated as the part of Bosnia and Herzegovina's political structure due to the Dayton Peace Accord as it had been done with the Washington Constitution of Federation of BiH adopted in Washington on March 18, 1994. In comparison, Kosovo did not have any consequent constitution. Within former federal Yugoslavia, it had a constitution as an "autonomous region" which politically defined ethnically founded position of the national majority. After the fall of Yugoslavia, Kosovar politicians passed so-called "Kačanik Constitution" as the expression of political views of one national movement and not of a consequent and firmed polity. After 1999, Kosovo was

[2] „Time", December 25, 2017, p. 7.

established and treated as the territory under international governing regulated by the UNSC Resolution 1244 as the ruled territory. For the first time in its history, Kosovo passed a Constitution at the moment of self-declaration of independence on February 17th, 2008.

Both entities originated on the ruins and discontinuity of previous political units they belonged to. The RS, as an entity of BiH, has been recognized in the Dayton Peace Accord with a discontinuity of the previous Republic of BiH. Kosovo built its polity without a direct continuity of the former institutions of the Autonomous Region of Kosovo as the part of the Republic of Serbia. The main question should be examining a possible comparison of two cases not only as the act of declaration of the founding of the state, but similarities and differences in later processes of state-building and developing the statehood. Regardless of a degree of statehood and state-building, both 'state-shaped' entities established themselves using the Convention from Montevideo[3] as the basic tools to analyze the accomplished level of corresponding development. Besides four main criteria, we will compare other characteristics which fit the aforementioned features. A previous standing point relates to a recognition. Regardless of the fact, the Serb representatives insist on drawing the parallels between the Republic of Srpska and Kosovo, which the "West decisively rejected"[4]

Testing through the Montevideo Criteria

In terms of territoriality, we can use it as a "spatial strategy, which is based on affecting or influencing people and resources by controlling territory".[5] Another aspect of the statehood is sovereignty as a basic aspect of political life and polity including political system. Using a territory as the first test, one can claim that Kosovo has undefined borders and areas where they achieved efficient control particularly in areas dominantly settled by Serb communities. It is questionable which line of division is relevant to the Serbs – the line that separates 'northern Kosovo' from the rest of the area or the line that separates the 'Republic of Kosovo' from Serbia, which is not recognized either by Serbia or certain 'great powers' like Russia and China and many other countries including five members of the European Union[6]. The fact is that this border does

[3] https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf (Jan 24, 2018)

[4] Dragan Štavaljanin, *Hladni mir – Kavkaz i Kosovo*, Čigoja štampa, Beograd, 2007, p. 321.

[5] Robert Sack, *Human Territoriality: Its Theory and History*, Cambridne University Press, Cambridge, 1986, p. 83.

[6] Cyprus, Greece, Romania, Slovakia, Spain has not recognized Kosovo as an independent state

not have a quality of the border between former Yugoslav republics and must not be treated in accordance with the 'Badinter Commission rules', which approved former inter-republic borders. At the same time in BiH, the "DPA produced a complex state structure that fundamentally transformed the urban network and the spatial division of labor. Interentity (IEBL) boundaries were based on the areas' ethnic composition in 1995. This implies that the international community, at least indirectly, accepted ethnic homogenization/ cleansing way of gaining control over territory."[7] "Boston Globe" claimed that in the Kosovo case, the West gave up the principle of inviolability of borders.[8] Both boundaries were accepted in the international community but differently – while the Kosovo border is assumed as international, the RS – Federation BiH border is internal. The Republic of Srpska in literature is usually characterized as a 'semi-independent' entity in BiH and no one is ready to delegate a question to the international agenda.

The population, as the second characteristic of state independence, differs between two geopolitical entities. It is hard to claim that the North Kosovo Serb population as well as the Serbs 'Southern of the Ibar River' voluntarily accept Kosovo citizenship. The area controlled by them have control over the economy and political processes by providing leverage with Serbia authorities and following their regulations. Kosovo executive power is not able, better to say not allowed, to exercise its own decisions in Serb populated areas which proves lack of its controlling authorities. On the contrary, the Republic of Srpska absolutely clearly defined its population, which was approved at the last census in 2013 regardless the disputes of the census methodology. Anyway, the RS has a defined population and the foundation of 'entity citizenship' from which is withdrawn the BiH citizenship. On the other hand, all ethnic Serbs and many ethnic Albanians and others used to register personally as Serbia's citizens predominantly in order to take passports of the Republic of Serbia.

IEBL in BiH separate two entities that consequently provide two separate political systems, local tax systems, economies, legality, the judiciary and security function, at all more than three-quarter of regulations of life. Same is in Federation BiH which is composed of ten regions – cantons which are *de facto* the main carriers of executive responsibilities. The Republic of Srpska has

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[7] Peter Remeny, *An Emerging Border of an Emerging State? The Case of the IEBL and the Republika Srpska of Bosnia and Herzegovina,* Institute of Geography, Faculty of Scineces, University of Pec, 2010, p. 135.

[8] A shrunken Empire Strikes Back, Boston Globe, August 31, 2008. https://www.highbeam.com /doc/1P2-17103772.html (Jan 25, 2018)

capacities to be the centralized and concentrated legal, executive and judiciary system which enables a sense of the state in the majority of the RS population "… while the plans of the RS is treated almost as a state border, standing in the way of spatial structures… Banja Luka, the centre of the RS and a possible capital of a potential sovereign state, had made more progress in the settlement of hierarchy."[9] On the other hand, the Kosovo authorities are unable to impose control over the northern region of Kosovska Mitrovica and not fully to the Serb enclaves on the South side of the Ibar River. Coordination of legislative, executive and the judiciary is the content of the 'Brussels Negotiations Process' which mutually should incorporate the Serb - controlled regions as a 'sort of a sub-state', an entity similar to the Republic of Srpska in BiH with the main aim to provide legality and avoid authority vacuum. Due to the third Montevideo – an authority - criteria advantage is on the side of the RS, although some countries recognize Kosovo as a state even though it has not proved to possess enough capabilities and capacities of a full-fledged state.

Finally, an ability to step into the international relations is narrowly connected with the previous three criteria. It is not sufficient to have institutions that can organize and maintain foreign affairs. If Kosovo suffers from a lack of authority to represent the entire population, their international relations are seriously short of implementation. The RS case is different – it has limited possibilities due to the BiH Constitution, but in the scope of international affairs it is allowed to be organized and is legalized. However, approving this ability does not mean that a fully implemented RS also fits into Montevideo criteria of recognition of the state.

Testing Kosovo and the Republic of Srpska through four criteria defined by the Montevideo Convention clearly reflects that constitutional Serbia's autonomous region of Kosovo does have less sufficient characteristics to indicate the statehood than the entities in Bosnia and Herzegovina, particularly the Republic of Srpska as a centrally regulated state-shaped 'entity' with actually limited but potentially high level of the statehood. Based on that argument the part of international community recognizes Kosovo as a '*sui generis*' case which means avoiding any comparison with other cases that incline towards independence. The Kosovo case opens "re-examining seceding motivations and birth-giving process in Northern Cyprus, Transdnistria and the Republika Srpska, all above-mentioned which could be described or even defined as self-

[9] Peter Remeny, *An Emerging Border of an Emerging State? The Case of the IEBL and the Republika Srpska of Bosnia and Herzegovina,* Institute of Geography, Faculty of Scineces, University of Pec, 2010. p. 136.

proclaimed post-conflict entities deemed to gain international recognition".[10] There are also additional three self-declared states such as the Republic of Abkhazia and the Republic of South Ossetia within the borders of Soviet Georgia, and the Republic of Nagorno-Karabakh in Soviet Azerbaijan. Their intention to gain international recognition is affected by the Kosovo case. Later on, the Crimea case joined to these few 'frozen' conflicts and even more two separate regions in Ukraine – Donyeck and Lugansk. List of cases not only increase in the East and former socialist block, but also in the west with the cases of Scotland's intention for secession and Catalonian attempt to declare independence.

Comparisons in State-Building

We need to examine the question is the post-conflict process of state-building a way of firming the statehood and providing independence that includes an approach of the international community. At the beginning of the process of implementation of the DPA international settlement was "soft" approach in terms of state-building and democracy development in BiH due to Annex 10 of the DPA. It was expected that the role of the High Representative should be more of a moderator than an executive. Although the United Nations Security Council "covered" international presence in BiH through the UNSC Resolution 1031, international ruling in BiH was *de facto* legalized through the Peace Implementation Council (PIC), the institution formed on the initiative of British diplomacy on the ruins on the unsuccessful International Conference on Former Yugoslavia (ICFY) chaired by Lord Peter Carrington, but not legalized by any other international organization, for example such as the UN. After two years of implementation of the peace agreement in BiH, the PIC conference in Bonn, Germany, imposed so-called 'Bonn Powers' which authorized the High Representative individually to become 'three in one' imposing laws and legal solution, serving as the executive and in some cases replacing the judiciary. It was *de facto* suspension of democracy and positioning BiH as a semi-protectorate that was later on criticized by the Helsinki Citizens Action, the Parliamentary Assembly of Council of Europe and the Venice Commission. The main opposition to these solutions was the Republic of Srpska, raising permanent complaints on centralization tendencies imposed and backed by the High Representative. The RS Parliament estimation is that more than sixty 'entity

[10] Eiki Berg, „Re-Examinig Sovereignty Claims in Changiog Territorialities: Reflection from 'Kosovo Syndrome", *Geopolitics*, Routlage, London, 2009, p. 219.

responsibilities' were transferred to 'common institution level' that means the increase of centralization and increasing influence of central institutions. The number of ministries in the Council of Ministers grew from three to ten and also additionally founded numerous 'independent agencies' which fired many officials, vastly the dominant Serbs. The 'Bonn Powers' are still in force, although they have been minimally applied in the last seven years because of the evident discrepancy between the given possibilities and the real power of the international High Representative in political life. Dissatisfaction was clearly expressed on the side of the RS by all institutions and political parties, which clearly stated that such violation of intentions minimizes the possibilities for achieving a consensus among the BiH constituents. The Western international community did not seriously take care of the main DPA solutions based on high decentralization. Instead, it was pushing forward the interests of centralization, but at the same time changing the approach in a daily realization of that basically defined concept. David Chandler warned in the first stage of the peacemaking process that "international institutions and Western countries involved in democratization are wary of presenting their policy enforcement as a new form of international protectorate, stressing that the Dayton mandates have not been changed and at the end of the day the success of the Dayton depends on Bosnian leaders and their constituents."[11]

International institutions and some western countries in Bosnia and Herzegovina intensively conveyed policies and passed decisions against the opinion of the Republic of Srpska on implementation of the Dayton Peace Accord through the Office of the High Representative (OHR), which somehow was transformed to a specific *ad hoc* international organization complemented with the activities of other missions in BiH. In a later phase in dismantling the compact RS, joined the Constitutional Court of BiH which has three international judges who mostly vote in line with Bosniak members and opposite from the will of Serb and Croat judges. Summary results of the impact of international actors in Bosnia and Herzegovina have revealed a substantial demolition of the initial RS position with a level of autonomy equal to that from the initial Dayton Peace Accord in highly decentralized BiH with significantly minimized authorities. In the framework of the DPA as an international settlement, any constitutional changes provoked the loss of trust and raising nationalist politics on all sides with absolutely uncertain effects.

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[11] David Chandler, *Bosnia: Faking Democracy After Dayton*, Pluto Press, London – Sterling, Virginia 1999, p. 168.

Conversely, the RS Kosovo polity has been based on the principles of 'Ahtisaari Plan' and established pursuant to the UNSC Resolution 1244. Even before the 'Ahtisaari plan' was launched, the main idea of a solution for Kosovo mutated from "Standards before status" over "Standards with status" to "Standards after status", which introduced the possibility to unilaterally declare independence. Regarding the 'Ahtisaari plan', Serbia has never accepted the voluntary implementation of its solution significantly based on improvised measures which enabled declining of the original ideas created on the occasion of the Rambouillet negotiations. Formally, nothing obliged Kosovo institutions to follow the main goal of the plan thus they were free to find out their own way of functioning which automatically meant self-promotion and pressing of others. "As the Security Council has neither endorsed a substance of Ahtisaari plan nor the implementation missions foreseen in association with it, the 'new', post-status of the international presence on Kosovo's territory depends on the consent of Kosovo."[12] Following international standing points and non-accepted rules that are even boycotted by Serbia and Russia, Kosovo institutions were internationally supported to create a 'new constitutional framework' as a foundation for further declination of genuine Ahtisaari solutions. "True, the implementation system of the new institution of the International Community Representative (ICR) and EULEX foreseen by Ahtisaari package would have enjoyed nominally UN mandate. But its implementation was not to be subjected to a specific Security Council guidance. Like the international governance operation of the High Representative in Bosnia and Herzegovina, the mission was meant to be accountable principally to a self-selected group of states represented in a Steering Committee outside of the Security Council."[13] The main consequence is a 'new Kosovo polity'

The common characteristic of the RS and Kosovo is the intention to gain independence and consequently the statehood of an independent country. They originated based on discontinuity with a previous polity – the Dayton Peace agreement created an absolutely new political system and internal organization of Bosnia and Herzegovina maintained only its international subjectivity. The Republic of Srpska had to break up with the existing non-recognized sovereignty accepting the position of a semi-independent state-shaped entity as a supreme authority for the regulation of almost 'three-quarters' of life. Contrary to the RS, Kosovo had absolutely broken up with institutions of former Yugoslavia, Serbia

[12] Max Weller, *Negotiationg Final Status of Kosovo,* Chailotte Papers, Institute for Security Studies, Europena Unioon, Paris, No 114, 2008, p. 95

[13] *Ibidem*

and the Autonomous region. In the both cases are closely reviewed the issues of sovereignty and territorial integrity. The second similarity that featured both 'state-shaped' entities is international presence with the active role of international representatives in political system developing. The two cases differ in the opposite stream in polity building. While the focus of international representatives in Bosnia and Herzegovina in terms of the Republic of Srpska is the tendency to centralization and diminishing of authorities defined by the genuine constitution of 1992, the processes in Kosovo have been going in the direction of building not foreseen institutions or radical changing of already existing ones. The majority of changes in the Republic of Srpska were assumed by institutional representatives and population as dismantling entity and national structures. Polity building in Kosovo has been lasting diametrically opposite through the genuine creation of institutions and their strengthening in a direction of absolutely independent state.

In order to overview differently directed polity changes, there are some comparisons in the following table based on **internationally supported processes**:

Process	Republic of Srpska	Kosovo
Sovereignty and independency	fully genuinely constitutional 1992, cancelled by imposed changes in 2002	Not-existing, vastly recognized, self-declared, Ahtissari Plan foreseen 'supervised independency'
International recognition	Limited on the entity level as the part of internal structure of the BiH with limited possibilities in international relations	Fast transferred to international community and huge insisting of Western countries on full recognition and membership in international organizations
Institutional framework	Defined consequent political system from the very beginning	Not-defined, created and build with assistance of international community
Foreign Affairs	Ministry of Foreign Affairs existed since founding 1992 until 1998, and formally reduced on the international pressure existing until 2002, since then cancelled	Not-existing, incrementally built with assistance of international community from the zero ground
International settlement	DPA negotiated and signed in Paris, Dec 14th, 1995.	Not-finished, Ahtisaari plan without consensus, self-declared Constitution

Process	Republic of Srpska	Kosovo
Security	Army of the RS (VRS) recognized as single separated Army, by forming Defense Reform Commission melted in single defense system and single Army of BiH	Not allowed army - only Kosovo Protection Corp without army level, but strong pressure to form the Army on Kosovo only halted by international intervention led by USA
Boundary and territory	Inter Entity Boundary Line negotiated and adopted by consensus in Dayton negotiations, not existing before but vastly accepted – does not have characteristics for implementation of 'Badinter Rules'	Not defined separation line with Serbia (officially used term 'administrative line'), not defined were is a separation line – either to Serbia or to Northern Kosovo (Serb majority)
Territorial control during the conflict	Full	Not-known, there were not existing institutions,
Control of territory after peace settlement	Full	not-known considering Northern part of Kosovo controlled by Serbs and Serb enclaves in South Kosovo
Status during the conflict and international recognition	Non recognized state and international legal subjectivity with full internal sovereignty; internationally 'side in negotiations'	Diffused organization founded as improvised 'rebellion movement' (even later on proclaimed by the USA as the terrorist organization')
Foreign Affairs	Ministry of Foreign Affairs existed since founding 1992 until 1998, and formally reduced on the international pressure existing until 2002, since then cancelled	Not-existing, incrementally built with assistance of international community from the zero ground
Taxing Policy and Customs	Existing separate entity taxing system, with introduction of VAT, tax system was centralized	Not-existing, incrementally introduced form the zero ground
Border Control	Entity border police control melted in central BiH State Border Service	Introduced form the zero-ground

Process	Republic of Srpska	Kosovo
Police	Absolutely separated due to the Dayton Peace Accord but later on three police agencies were unified; attempt for unification of 'uniform' police resisted by the RS	
Judiciary	Independent in the beginning, partly centralized some court level and independent High Judiciary and Prosecutor Council	Building from the bottom

Conclusion

Two state-shaped entities that emerged in the space of former Yugoslavia, the Republic of Srpska and Kosovo, may be compared based on certain similarities and differences.

Having roots and being derived out from the same predecessor, both political entities share a common tradition of a socialist political system based on the founding idea of Yugoslav experiment of self-management. Regardless of the fact that both indicate some limited elements of market economy and formally set up political openness and freedoms, they were plunged into a deeply authoritarian system based on the Yugoslav practice of communist ideology, but remained a vertically designed hierarchy as the main feature. The ethnic principle was used as the main feature for the foundation through creating ethnic majorities – Serbs in the Republic of Srpska and ethnic-Albanians in Kosovo. The ethnic principle was one of the key factors to ignite the Yugoslavia break-up and founding of the new independent countries which were expressed through sovereignty and territorial question.

The establishing path of forming both entities has also shown some similarities as well as certain differences. Kosovo existed as the 'Autonomous Region' in the Republic of Serbia, which as the republic was the constitutional unit of Federal Yugoslavia inhabited by Albanians as the national majority. The Republic of Srpska declared itself as the territorially determined non-recognized state in 1992 in the area where it has never existed before. It was founded on the principles of right to 'self-determination of nations until secession' (preamble of SFRY Constitution) and results of the first election of 1990 which brought the three-national division of internal policy. The Serbs, Bosniaks

(Muslims) and Croats were constituent nations in Bosnia and Herzegovina. The characteristic of inherited processes is that both entities tended to become internationally recognized as sovereign independent states but got stuck on that way. The Republic of Srpska is recognized as the semi-independent entity within the frame of Bosnia and Herzegovina, as the state that pursuant to the international law represents a recognized subject of international relations. On the other hand, Kosovo did not manage to gain a collective recognition and turned to the principle of consecutive recognition that obtained with the limited level of participation in the international community. The consequence is that Kosovo is still not recognized as the United Nations member, although it became a member of some international organizations. It also has vast bilateral recognition but not enough to be fully included in the international order. Both entities have the essential break with a previous system starting to build polity from the 'zero-ground' on the ruins of Yugoslav self-management political system, processes of post-social liberal transition, ethnically and nationally oriented policies. Since both ethno-national crises ended by the NATO military interventions and introduced numerous 'NATO-led' peacemaking and peacekeeping forces an influence of international factor was of decisive importance. Both entities had a special international envoy appointed to serve as some kind of governor in a form of 'international protector' as the responsible authority for the entire territory. The international mission to Kosovo was preceded by the United Nations representative and imposed by the UNSC 1244. In the case of the Republic of Srpska, the responsibility was granted to the High Representative, which was nominated in charge of the Republic of Srpska and introduced in accordance with the Dayton Peace Accord in entire Bosnia and Herzegovina. In both cases, international representatives have the supreme authority without exception. It was not possible to make any political move without their consent. It was obvious that nevertheless their personal approach they had to follow a will of their 'patrons' on the Western side of the international community. Comparing few policies in Kosovo and the Republic of Srpska, it is possible to assume that same characteristic of the state such as foreign affairs, defense and military or similar state functions are performed by differently explained standards. While institutions that incline to became 'state institutions' in the Republic of Srpska were systematically diminished and their functions transferred to 'common institutions' in Bosnia and Herzegovina, approach to Kosovo institutions is quite opposite. Even though some institutions were actively built in order to complete missing state functions, for instance, foreign affairs and defense. The double standards – approach has not been finalized with the creation of some institutions. There

is also a huge pressure by some great powers for recognition of Kosovo. On the other hand, there are some great powers that are not willing to accept such recognition. Except the five EU members, Russia and China strongly opposed to any idea of recognition as well. Although being the EU member, Spain faced with highly institutionalized Catalonian separatist policies and organized political process rejects to recognize Kosovo as an EU aspirant.

The reasons for not recognizing Kosovo by some countries was founded on their internal and geopolitical reasons, but also on the assumption that it does not fit the criteria of the Montevideo Convention of the rights and Duties of State from 1933 and also the UNSC Declaration of Friendly Relations of Countries of 1970 as the highest standards of international recognition.

A different approach towards the two newly-emerged and internationally ruled entities in a polity building has a huge potential to raise regional insecurity and instability and thus become an initiation of further disputes in the region. However, in both cases, Serbia is in the focus, on one hand as an entity which supports the Republic of Srpska and on the other hand as an entity which has many disputes and misunderstanding with Kosovo and even more because the internationally mediated 'Brussels Agreement' has still not been implemented by Kosovo authorities.

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CATALONIA AND KOSOVO CASES (COMPARATIVE ANALYSIS)

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Abstract: The aim of this text is to compare the cases of Catalonia and Kosovo in terms of their separatism. The paper is organized according to the model of point-by-point comparison. The time span of the research extends from the end of the Second World War until the end of 2017. The main working argument is that the two cases have some similarities, but also a lot of crucial differences. The comparison between Kosovo and Catalonia cases shows that there are a lot of similarities but the differences prevail. The aims of both pro-independence movements are the same, but the used methods, economic and social potential, main political actors who are involved (regionally and globally), international realities are quite opposite.

Key words: Kosovo, Catalonia, Catalonian crisis, separatism, independence.

Introduction

In the early autumn of 2017, the Spanish province of Catalonia became a center of global media attention. The reason was a successful referendum and proclaimed independence, which led to clashes with official Spanish authorities. The process became known as the Catalonia independence crisis. During that period, a lot of publications, public speeches, comments and analysis appeared about the European and global separatism. One of the most frequently mentioned names was that of Kosovo, which somehow became an example, warning or inspiration in accordance with different points of view towards the crisis.

The aim of this text is to compare the cases of Catalonia and Kosovo in terms of their separatism. The attempt of achieving such a goal should be made on condition that the so-called Catalonian crisis is still in development and the required historical distance for an in-depth analysis is missing. Therefore, such a text should be used for future research because there is much to be added

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and upgraded. The paper is organized according to the model of point-by-point comparison. The time span of the research extends from the end of the Second World War, when the separatism gradually evolved, until the end of 2017 when the regional elections in Catalonia marked a new phase in the crisis there.

The main working argument is that the two cases have some similarities, but also a lot of crucial differences. The cases will be compared in the context of several dimensions – history, geography, states, geopolitics, leadership, social and economic development, and methods of the independence movement, international relations and global actors.

Geographical and demographical characteristics

Catalonia and Kosovo are historical provinces within the huge South European peninsulas – Iberian and Balkan. Catalonia is situated in the Northeastern corner of Spain and Kosovo in the center of the Balkans. Both regional centers - Barcelona and Pristina are slightly remote from the main capital – Madrid and Belgrade. In geographical terms the two provinces are different. Kosovo is landlocked whereas Catalonia has a huge Mediterranean coastline (580 km.). Catalonian proximity to a big, wealthy country such as France as well as its coastline gives a lot of economic opportunities. Kosovo's topography is difficult for development of infrastructure (a lot of mountains, valleys) but is quite suitable for guerrilla fights. It has a profoundly military landscape.[2] As an opposite of this, the Catalonian landscape has perfect trade characteristics. Not only the size of both territories is different (Kosovo - 10,908 km2; Catalonia - 32,108 km2), but also the possibilities which they provide in terms of development, economy, transport, tourism, trade.

The demographical composition of Kosovo and Catalonia is quite different. Definitely, the Kosovo Albanians and the Catalans are the majority ethnic groups after the Second World War in both provinces. They are almost constantly growing compared to the rest of the country as it is seen from the graphics. Both have huge emigrant groups in other countries. The Kosovo Albanians in Switzerland, Germany, Italy. The Catalans in Argentina, France, Mexico, Germany.

[2] James Pettifer, *The Kosovo Liberation Army. Underground war to Balkan insurgency*, Hurst & Company, London, 2013, p. 15.

KOSOVO	1953	1961	1971	1981	1991	2011[3]
Albanians	524 559 64.9%	646 605 67.2%	917 167 73.7%	1 226 736 77.4%	1 596 072 81.6%	1 616 869 92.93%
Serbs	189 869 23.5%	227 016 23.6%	228.261 18.4%	209 497 13.2%	194 190 9.9%	25 532 1.46%

CATALONIA	1950	1960	1970	1981	1991	2011[4]
Population	3,240,313	3,925,779	5,122,567	5,949,829	6,080,751	7,501,853 *Catalans*: 4,751,310 (63%)[5]
Spain %	11.5%	12.8%	15.1%	15.8%	15.6%	16.1%

Nowadays the Albanians and the Serbs in Kosovo live in clearly separated enclaves, so interaction between them is quite difficult. The dialog is hard and most of the time missing. In Catalonia, there is a minority group in Aran Valley (administrative entity) in the Northwest of Catalonia which has its own language and the officially recognized right of self-determination. Although they are not a big community (around 10 000 people), they loudly expressed their wish to stay in Spain and secede from Catalonia if it leaves the country.[6] The number of Catalans in the province is close to 5 million which makes them around 63% of the population. It is important to note that 18.6% of the Catalonian population are immigrants who were born abroad and came to the province mainly at the

[3] Hivzi Islami, *Studime demografike*, Prishtinë, 2008, p. 202; Data from the *2011 Population Census*: http://pop-stat.mashke.org/kosovo-ethnic2011.htm; The actual number of Serbs in 2011 is much larger. This discrepancy is due to the massive refusal of the Serbs from the four northern municipalities to participate in the census, as well as the partial refusal in the other Serbian municipalities. It is estimated by various Albanian researchers that 60,000 Serbs live in northern municipalities, and 40,000 in other parts of Kosovo. This means that around 100,000 Serbs live in Kosovo in total.

[4] *Statistical Yearbook of Catalonia*, https://www.idescat.cat/pub/?id=aec&n=245&lang=en

[5] *Statistical Yearbook of Catalonia*, http://www.idescat.cat/pub/?id=aec&n=257&lang=en&t=2011

[6] Angus Berwick, *Catalan valley wants its own independence*, Irish Independent, 10.10.2017, p. 28.

beginning of the 21st century and another 18% are born in other parts of Spain (1.1.2012).[7]

Pro-independence pressure for more rights and self-ruling was coming mainly from the youth in both regions. University students have been most active in such efforts and activities. That is a common feature in all separatist movements – the energy of the youth is the fuel of changes, no matter of the used – methods. For example, the main support for Catalonia independence comes from young Catalans, and the lowest - among the region's older voters.[8] The leading age group in Kosovo during the clashes with the authorities were the young people. Majority of the members of Kosovo Liberation Army are also young people. In both cases, the youth is a vanguard of the pro-independence movement. This is actually a universal principle of big social and political changes, especially separatism.

Culture, religion, language and demographics

Kosovo is equally influenced by Central Europe and Orient (the Middle East).[9] Catalonia is part of the Mediterranean north with Roman culture and distinct French influence. Comparison of the languages of the two ethnic groups and their linguistic relation to the official language of the state is attempting to show the level of integrity and communication between the majority and minority within the country. An official language in Spain is Castilian Spanish and in Yugoslavia it was Serbo-Croatian and then Serbian.

Language is a crucial feature of national and personal identity.[10] The Albanian language was the only language in former Yugoslavia (except Hungarian, spoken in Vojvodina) which did not belong to the South Slavic language group. Unlike Catalan, which has a lot of similarities with official Castilian, Albanian is not understandable for Serbian and Slavic language speakers without relevant training. That is a huge difference in understanding

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[7] Andreu Domingo, *Catalonia, land of immigration*, p. 40, in: *What's up with Catalonia?,* edited by Liz Castro and prologue by Artur Mas (president of Catalonia), Catalonia Press, Ashfield, USA, 2013

[8] Tobias Buck, *Demographic shift, not politics, will settle the Catalan debate*, Financial Times, 1.10.2015, https://www.ft.com/content/076144d0-6824-11e5-97d0-1456a776a4f5

[9] Robert D. Kaplan, *The Revenge of geography*, Random House, New York, 2012, p. 7

[10] Henry Miller & Kate Miller, *Language Policy and Identity: the case of Catalonia*, International Studies in Sociology of Education, 6:1, 1996, p. 113, https://doi.org/10.1080/0962021960060106

and communication between the dominant culture and people in the province. The Catalans are bilingual (majority speak Catalonian and Castilian) while only the Albanians in Kosovo born in or before the 1980-s speak Serbo-Croatian.

Language is a central part of the pro-independence movements in both cases. After the 1980s both ethnic groups place a great emphasis on the use of their own language. The Albanians even made parallel educational structures outside the official system in former Yugoslavia. In Catalonia, the local authorities have given a significant priority to the use of Catalan over Spanish.[11]

Catalan culture is very similar to the Spanish one, whereas the Serbian and Albanian are quite different in terms of language, religion and history.[12] Both communities (Catalans and Albanians) are very keen to preserve their own traditions and culture. We could say that they have a very strong national identity and sense of "self" which they try to express in politics and everyday life (events, ceremonies, clothing, music, cuisine). Family bonds are very strong, especially in Albanian case. All mentioned is a solid base for development of nationalism.

Both communities are very protective in self-guarding their own culture and identity. For example, Catalonia although it is one of the most liberal provinces in Spain has the most municipalities compared to the rest of the country, which issued a moratorium on the opening of new places of worship (there is no mosque in the province) and restricts the wearing of the niqab.[13] During the migrant crisis in 2015 Albanian communities in Kosovo were not welcoming to Syrian immigrants although they were the only country on the Balkan route that was from the same religion.[14] Both of them are fond of their own history and put a lot of efforts to research and keep it, including the elements of heroisation of figures of their history.

Religion composition of the regions is also quite different. The Catalans are Catholics as the rest of the country. The two main ethnic groups in Kosovo belong to different denominations. The Albanians are mainly Sunni Muslims

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[11] Tobias Buck, *Demographic shift, not politics, will settle the Catalan debate*, Financial Times, 1.10.2015, https://www.ft.com/content/076144d0-6824-11e5-97d0-1456a776a4f5

[12] Josep R. Llobera, *Aspects of Catalan kinship, identity, and nationalism*, Journal of the Anthropological Society of Oxford, 28(3), 1997, p. 299.

[13] *International Religious Freedom Report for 2015*, United States Department of State • Bureau of Democracy, Human Rights, and Labor, p. 4,7.

[14] Neli Esipova and Julie Ray, *Syrian Refugees Not Welcome in Eastern Europe*, Gallup world poll 2016, http://news.gallup.com/poll/209828/syrian-refugees-not-welcome-eastern-europe.aspx

with a small percentage of Catholics while the Serbians are predominantly Orthodox Christians. However, in both cases, we do not have a devoted or an extremely religious population and independence movement which is religiously determined.

Historical dimensions

Both ruling regimes in Spain and Yugoslavia had authoritarian and totalitarian characteristics. Franco's Spain (1939–1975) was an authoritarian state with deep conservative and religious roots. The motto of the regime was "*Spain: **one**, great and free*". Tito's Yugoslavia (1944–1980) was a unique state creation which could be described as semi-totalitarian socialism. Its motto was "*Brotherhood and **Unity***". The first one relied on nationalism, whereas the second one – on multiculturalism in the handling of the ethnic problems. Both regimes counted on political centralism and suppressed the national question.

The Kosovo Albanians gained significant rights of self-determination, had independent structures and even a status of autonomy according to the Yugoslav constitution adopted in 1974.[15] Actually, Kosovo became an autonomous region within the Serbian republic. Before the death of Josip Broz Tito (1980), the tensions between the different republics and ethnic groups were suppressed by the state and its supreme leader. The power of the federal government started to weaken and the nationalist feelings and movements in different republics started to grow. The Yugoslav disintegration was a constant process which continued for more than two decades. In 1980 tensions between the Kosovo Albanians and the Serbians in Kosovo became more and more intensive, often with violence. The rise of Slobodan Milosevic as a leading Serbian politician resulted from that conflict. His famous saying in Kosovo: "*No one should dare to beat you*" with which he addressed the Serbians there, became his entrance ticket to the top of Serbian politics.[16] The special rights of the province were abolished in 1989 after the first changes of the Yugoslavian constitution. Paramilitary "*Kosovo Liberation Army*" was established in the begging of the 1990s, but similar groups already operated in the province. Clashes between the paramilitary forces of Kosovo Albanians and Yugoslavian army at the end of the 1990s led to the NATO intervention and heavy

[15] Душан Пророковић, *Геополитика Србије. Положај и перспективе на почетку 21. века*, друго измењено и скраћено издање, Службени гласник, Београд, 2015, с. 381

[16] Visit of Milosevic to Kosovo (24.04.1987); Laura Silber and Allan Little, *Yugoslavia. Death of a nation*, Penguin Books, USA, 1997, p. 37.

bombardment of Serbia. Following a peace agreement, Yugoslav army withdrew from the province and the United Nations took control over it. Kosovo became an independent country and proclaimed independence in 2008.

During the Franco's era, Catalan identity was severely oppressed. The Catalans were an object of cultural assimilation mainly by banning of their language to be officially learned.[17] Any form of regionalism was prohibited and prosecuted by the authorities. After the death of Franco (1975), a transition to democracy began and the first free elections were held in 1977. Limited Catalonian autonomy was established in the Constitution of 1979. The fast-track towards the membership in the European communities (former name of European Union) was open and Spain became a full member in 1985. Despite all these changes, the Catalans' desire for full autonomy and creation of their own state did not decline. During the following decades, they have tried step by step all legal forms of creation of an independent Catalonian state.

After the negotiations between Spanish and Catalonian authorities in 2006, Catalonia gained significant rights of self-government in the finances, health care and education. The most important is that the Catalans were granted the status of a "nation".[18] In 2010 Spanish Constitutional court struck down the key parts of the document and most importantly for the Catalans that they are not a "nation" but "nationality". The decision sparked a new wave of protests in Barcelona and gave more power to the separatist movement. More than 1 million Catalans marched under the slogan "*We are the nation*". In the following years, the separatist movement used the instruments of referendums and elections in achieving its main goal – an independent state. It should be emphasized that Catalonia and Basque country are the only regions in Spain that have their own fully deployed police forces.

The tension between Madrid and Barcelona escalated in 2017 after the referendum (1.10) in Catalonia which was declared illegal by Spain's Constitutional Court. After the positive results of the plebiscite, Catalonian Parliament voted in favor of independence (27.10). The Spanish Government and Parliament, backed strongly by the king, imposed a direct rule over the province by invoking Article 155 of the constitution which was never been used before. The Catalan Government was sacked, the Parliament dissolved and

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[17] Jean Grugel and Tim Rees, *Franco's Spain*, Arnold Publishing, London, 1997, p. 25

[18] Organic Act 6/2006 of the 19th July, on the Reform of the Statute of Autonomy of Catalonia, Consolidated; Full text of the Statute of Autonomy of Catalonia approved on 19 July 2006, Preliminary Title Article 1. Catalonia, Government of Catalonia, https://web.gencat.cat/en/generalitat/estatut/estatut2006/;

major separatist leaders arrested. Catalan President Carles Puigdemont and some senior figures fled to Belgium. Snap elections were called (21.12) but the pro-independence parties won a majority again.

The situation developed into the worst political crisis in Spain since the failed coup attempt in 1981. It is a result of bad politics altogether – in the region, in metropolitan Spain and in the EU.[19] The warnings about the possible bloody conflict in Spain similar to Balkan ones became very popular.[20] It should be counted that such prognosis was made in the most emotional moments of the crisis.

The growth of the Catalan pro-independence emerged from several directions – the abolished Statute of autonomy ruled by the Spanish Constitutional court, the language interference, the debt crisis in the Eurozone and Spain, money transfers to central budget as well as smaller cases but with big impact over separatist feelings, such as sports events, etc. The last, but one of the most serious detonators of separatist feelings, were the arrests of Catalan leaders and used force by the Spanish police.

Spanish and Serbian (Yugoslavian) authorities made one and the same mistake. They violated the rule that it is very hard to take away given rights or privileges. Belgrade did it in 1989 and Madrid in 2010. It should be mentioned that the Serbian problem was inherited by the Yugoslav Constitution of 1974. Nevertheless, taking back of given rights is possible only at a high political price.

During the whole researched period, protests and rallies are held also by supporters of staying within the current states – Serbs in Kosovo want to be part of Serbia, Spaniards and others – to remain part of Spain.

Kosovo Albanian and Catalan nationalism

Separatism and nationalism almost everywhere and every time in history are very closely connected. Catalan and Kosovo Albanian nationalism revived gradually in the 1950's and 1960's. The Catalans used only peaceful methods of protest. Since the 1950s onwards, there were student strikes and street demonstrations, but they never turned into an organized violent resistant movement. Their nationalism was expressed mainly through the cultural models – music, literature, events or some forms of protest like priest's preaching, hanging of the Catalonian flag, inscriptions on the walls, etc.[21]

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[19] Robert Fox, *In the Catalan crisis all sides see a hole and keep digging*, Evening Standard, 26.10.2017.

[20] Mark Almond*, Spain could turn into next bloody Balkans*, Daily Mail, 28.10.2017, p. 6-7.

[21] Jean Grugel and Tim Rees, *Franco's Spain*, Arnold Publishing, London, 1997, p. 68.

Albanian (as Croatian, Slovenian, Serbian and Bosniak) nationalism was a cause and not a consequence of the disintegration of Yugoslavia. In the 1980s the Kosovo Albanians had been divided in their struggle for independence. One stream was for the peaceful achievement of their goals while the other went on the path of military resistance. The first underground organizations were established in that period. Some violent attacks started – for example the shooting of Yugoslav consular official in Brussels by a Kosovo Albanian nationalist.[22] It should be underlined that majority underground Albanian organizations in Kosovo, West Europe and Turkey in the 1970s and 1980s had the Marxist-Leninist ideology.[23] The biggest and most influential among all of them was paramilitary Kosovo Liberation Army (KLA). It emerged in 1994-96 from the framework of League for Socialist republic of Albanians in Yugoslavia, which had changed its name several times since its creation in 1982 in Turkey.[24] The leading figures of the organization began with sabotages, killings of officials and armed actions against the state authorities at the end of the 1980s. The KLA played a significant role in the so-called Kosovo war (1998-1999). It even had its own intelligence. The leaders of KLA became part of the political establishment of Kosovo after the end of NATO intervention.

Catalan independentism and nationalism is mainly pro-EU orientated while Kosovo Albanian's is mainly pro-USA. The statue of former American President Bill Clinton was erected in Pristina and his birthday is officially celebrated in Kosovo. The huge majority of Kosovo's citizens declared positive attitudes toward the United States.[25] Catalans are deeply involved in the European integration process. Their parties declared themselves as very pro-European. The MP's from the region are among the left-wing and liberal groups in the European Parliament. The majority of Catalan nationalists consider themselves not nationalists but followers of independentism in the framework of United Europe.[26]

Majority of political organisations which struggle for independence have left-wing political roots (Marxist, socialist, left-wing liberalism). The Catalans and Kosovo

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[22] His name is Musa Hoti, member of the leftist *groupshule*. See: James Pettifer, *The Kosovo Liberation Army. Underground war to Balkan insurgency*, Hurst & Company, London, 2013, p. 49.

[23] James Pettifer, *The Kosovo Liberation Army.*, p. 37, 42-43, 45, 47

[24] James Pettifer, *The Kosovo Liberation Army.*, p. 261-264

[25] Kosova, vendi më mbështetës në botë ndaj SHBA-ve, 28.05.2016, https://www.evropaelire.org/a/27759314.html

[26] Laura Borras, *Non-nationalist independentism*, in: *What's up with Catalonia?,* p. 143-146

Albanians political parties have unusual ideological combinations which however are subordinate to the main idea of independence. Main political organizations which struggle for independent Catalonia are situated in the left part of the political spectrum. They declare themselves as social-democratic, liberal-left, progressive, socialist, republican.[27] This is also a legacy from the Civil war, the Franco era and political principles of the conservative People's Party (Partido Popular), which the Catalans see as the central enemies of their independence.

The problem of Kosovo's political parties is their ideological definiteness and lack of stable political ideas. They often follow main European trends according to the current situation and sometimes it is more a matter of fashion and contact with the leading political families in the EU than common ideas. The Democratic League of Kosovo (*Partia Demokratike e Kosovës*) declares itself as right-wing. The Democratic Party of Kosovo (*Partia Demokratike e Kosovës*) was originally social-democratic but in 2013 repositioned itself in the center-right. Self-determination (Vetëvendosje) is positioned in the center-left and its main struggle is for uniting Kosovo and Albania. The only common feature among them is Albanian nationalism.

They accused Spaniards and Serbians of nationalism and even chauvinism. Both prefer to be seen as people who struggle for human rights, democracy and in Catalan case with emphasize on open and liberal society. The Catalans and Kosovo Albanians have their martyrs and developed their own mythology of resistance against the oppressors. Every clash between their supporters and "the others" fuels such narratives and is a source of the additional motivation for separatism.

The crucial difference between both cases is that Catalan's resistance has not had violent or paramilitary forms of unrest while the Kosovo Albanians used them during the researched period. The former have more in common with the Northern Ireland and Basque provinces where paramilitary groups fought for independence – IRA and ETA. Catalonia has never been a *violent* troublemaker for the central government.

Economic situation and separatism

The Kosovo economic situation was very complicated during the researched period – the most underdeveloped part of former Yugoslavia and one of the

[27] Junts per Catalunya (Together for Catalonia), Esquerra Republicana de Catalunya (Republican Left of Catalonia) Catalunya Sí (Catalonia Yes), Candidatura d'Unitat Popular (Popular Unity Candidacy).

poorest countries in Europe almost 10 years after the declared independence.[28] Although it has huge reserves of lignite and mineral resources (coal, zinc, lead, silver chromium, bauxite, magnesium, semi-precious stones) they are not properly managed.[29] Pristina has a problem to sustain its own fiscal system so it uses the euro as an official currency of the state after the agreement with the European Central Bank. Considering the economic reasons of separatism, parallels could be made between Kosovo and Scotland, where both states are poorer than the rest of the country (Kosovo-Serbia, Scotland than England).

Catalonia is among the richest Spanish and EU regions with its own economic model. Its economy is the second biggest in Spain with its total GDP for 2016 just after the Madrid community. The GDP per capita is in fourth place after the capital, Navara and the Basque country.[30] Catalonia has developed from an industrial power to a modern center of finance, tourism, culture, services, hi-tech businesses.[31] A huge part of that process played Barcelona's seaport, which is number one for cruise liners in Europe and fifth in the world.[32]

Economic perceptions of injustice give substance to secessionist movements (Slovenia, Singapore, Slovakia).[33] For decades the Catalans are resentful of Madrid because so much of their taxes have gone to the central budget of the country. Their argument is that Madrid drains their budget, produces fiscal deficit by domination and treachery.[34] They also accuse Spanish authorities that they follow political and not economic priorities in the building of infrastructure.[35]

During the Eurozone debt crisis and Spanish financial crisis (2010-2012), many Catalans were not satisfied by the way the central government of Spain

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[28] *After the war. Kosovo*. The Economist, vol. 426, N 9074, January 13th-19th 2018, p. 29.

[29] Душан Пророковић, *Геополитика Србије. Положај и перспективе на почетку 21. века*, друго измењено и скраћено издање, Службени гласник, Београд, 2015, p. 379.

[30] *Catalonia's economy, How the Catalan territory compares to other Spanish regions*, Irish Independent, 10.10.2017, p. 28.

[31] Harriet Alexander, James Badcock, *Why does Catalonia want independence from Spain?*, 10.10.2017, http://www.telegraph.co.uk/news/0/does-catalonia-want-independence-spain/

[32] Joan Canadell, *The Catalan business model*, in : *What's up with Catalonia?,* p. 199.

[33] Milica Z. Bookman, *The Economics of Secession*, In: *Separatism*, Rowman & Littlefield Publishers, USA, 1998, p. 70.

[34] Nuria Bosch, *The viability of Catalonia as a state*, in : *What's up with Catalonia,* p. 190.

[35] Elisenda Paluzie, *Premeditated asphyxia*, p. 30; Germa Bel, *Strangers in our own land*, p. 131, in: *What's up with Catalonia?*

handled the situation. The voices for more fiscal independence and self-government of financial resources became louder at that time. One of the reasons for the increase of separatism comes from that period.

Preparing for independence the Catalans considered different options for setting up their own currency. In financial aspects they are very smart, modern and adaptive. The Catalan Government sent representatives in Estonia to learn more about the digital currency achievements there.[36] They even discussed the transitional introduction of cryptocurrency after leaving Spain.

The Catalonian case is very similar to Slovenian in Yugoslavia where Slovenians did not want to transfer money which should be distributed to poorer republics and regions (Macedonia, Kosovo, Bosnia).

External factors and diaspora

One of the differences between the Kosovo and Catalonian cases is the external centers, which are involved in the life of the province. Albania has always been presented in one way or another in Kosovo. Tirana played the role of logistic center and territorial base in the struggle of the Kosovo Albanians for independence, especially in the 1980s when Ramiz Alia became the leader of the country.[37] After the separation of the province from Serbia (Yugoslavia) the role of a center for the Serbian population played Belgrade, which continued to support its enclaves financially, economically, politically, culturally. It is interesting that Alia saw the Irish Republican Army (IRA) as a possible model for Albanian insurgent army in Kosovo and obtained information and details from Belfast in that direction.[38] He also tried to make an informal coalition that included several countries from the region in order to put the Kosovo question in bilateral relations between them (Bulgaria, Hungary).[39] During the 1990s Albanian leader Sali Berisha was trying to be involved in Kosovo affairs, but serious internal, mainly socioeconomic problems, in Albania at that time did not allow him a full devotion to that matter.

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[36] Isabelle Fraser, *Cryptocurrency could help Catalans go it alone if they want to realise their dream*, Irish Independent, 31.10.2017, p. 21 (published originally in Daily Telegraph, 31.10.2017)

[37] Калоян Методиев, *Западните Балкани и България*, Българско геополитическо дружество, София, 2016, с. 52.

[38] James Pettifer, *The Kosovo Liberation Army*, p.55.

[39] Калоян Методиев, *Западните Балкани и България*, с. 52.

The Catalans have a big diaspora which is mainly in Argentina, France, Mexico, and Germany. The separatist movement receives its support in different ways – money, public speakers. The Kosovo Albanians have huge and influential emigrant communities which took a crucial part in their separatist movement. Especially influential in the Kosovo Albanians struggle for independence were the groups in Switzerland and Germany.[40] There is also lots of political, economic, cultural and geopolitical influences in different parts of Kosovo. It comes mainly from Albania, the USA, Turkey, Saudi Arabia, and Serbia. In comparison with the Albanians and Serbians in Kosovo, the Catalans are pretty much on their own. That is also a difference between the two cases.

The separatists tend to exaggerate the real situation in their countries in order to get more international attention and support. They often talk about severe oppression, even genocide, freedom fighting, sacrifices, democracy.

Political leadership of independence movement

Political leadership is a key part of any separatist movement. Leaders give their impact, emotional coloring and direction of the processes. They influence society, implement different ideas and represent the movement before the world. The most prominent public figures in the Kosovo independence movement are those of Ibrahim Rugova (1944-2006) and Hashim Thaci (1968). In the moment of the proclamation of independence during the Catalonian crisis, the undoubted leader of the Catalan separatists was their President Carles Puigdemont (1962). The Vice President Oriol Junqueras (1969) was the other central figure in that historical context.[41]

They have a lot in common in their biographies and political development. First, they were involved in separatist activities since their youth. They could be described as hardcore separatists with long political careers. Rugova was involved in students' demonstrations in Pristina in 1968.[42] Catalan leaders became active in their teenage years. Thachi was part of the Kosovar emigration circles in Switzerland.[43] Second, they studied humanitarian majors with emphasis on history and language. Rugova graduated in the Albanian language

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[40] James Pettifer, *The Kosovo Liberation Army,* p. 50.

[41] "MEPs: Oriol Junqueras Vies", European Parliament official website, http://www.europarl.europa.eu/meps/en/96708/ORIOL_JUNQUERAS+VIES_home.html

[42] Зорица Вулић, *Ко је овај човек?*, Глас Јавности, Београд, 2000, с. 204-205

[43] Milan Andrejevich, *Hashim Thaçi*, https://www.britannica.com/biography/Hashim-Thaci

(Pristina), literary theory (Paris) and has a doctorate from the University of Paris. Thaçi studied philosophy and history (Pristina) and Balkan history and international relations (Zurich) without graduating from the latter. Puigdemont studied Catalan philology (Girona), but later dropped and devoted himself to a career in journalism. Junqueras graduated in modern and contemporary history (Barcelona), has history doctorate and worked as a university professor. Fourth, all of them speak several languages: Rugova (Serbo-Croatian, French), Thaci (Serbo-Croatian, German, and English), Puigdemont (Spanish, French, English, Romanian), Junqueras (Spanish, Italian). Fifth, most of them were influenced by external secessionist leaders, cases and organizations. Rugova had the nickname the Balkan Gandhi and accepted the ideas of the Indian politician for peaceful resistance. There is an opinion that he lacked strategy, was rigid and uncertain as a politician.[44] Puigdemont had visited Slovenia just after it seceded in the early 1990's and was impressed by the referendum, independence victory and support of international community.[45] In his youth, Hashim Tachi was interested in the Cuban revolution as a guerilla fighting model.[46] He is the only one of the researched leaders that rely on violent methods of separatism. As a leader of the paramilitary Kosovo Liberation Army (KLA), he had a crucial and controversial role during the Kosovo war. Until the crisis, the Catalans counted on institutions and democratic process to achieve their goal.

Tangled: Belgrade – Pristina – Barcelona – Madrid

The Serbian authorities have never recognized Kosovo as a sovereign state and claimed that its territory is an integral part of Serbia, which is also clearly stressed in the Serbian Constitution.[47] After years of severe clashes, thousands of killed from both sides, quarrels on numerous issues, it is very hard to have normal relations between Belgrade and Pristina. There is a negotiation process facilitated by the EU authorities known as the Brussels Agreement but not much has been achieved for the change of the status quo. It was stopped after the assassination of the Serbian Kosovo leader Oliver Ivanovic in January 2018.[48]

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[44] Ivor Roberts, *Conversations with Milošević*, University of Georgia Press, Athens, USA, 2016, p.123; Laura Silber, Allan Little, *Yugoslavia. Death of a nation*. p. 73.

[45] Michael Stothard, *Catalonia's breakaway leader*, Financial Times, 14-15.10.2017, p. 11.

[46] James Pettifer, *The Kosovo Liberation Army*, p. 53.

[47] *Constitution of The Republic of Serbia* (2006), Articles 114 and 182.

[48] Ivanovic was killed in front of the office of his party in Kosovska Mitrovica (16.1.2018)

This is an example of how volatile is still the situation and how ethnically divided are both communities.

The Spanish Government is one of the five EU member states that still does not recognize Kosovo's independence. The official authorities in Madrid denied any possible comparison between the cases of Kosovo and Catalonia. Hundreds of thousands of supporters of Spanish unity gathered in Barcelona for a big rally after the referendum. The ex-president of the European Parliament and Catalan socialist Josep Borrel said before the crowd: "*Catalonia is not a colony; it is not under occupation. It is not a state like Kosovo*"[49]

Catalonian pro-independence parties make a lot of parallels between their case and the one of Kosovo. They claim that they have the same right to self-determination as the Balkan province. The biggest party in the Catalonian ruling coalition in 2010 asked the Spanish Government to recognize Kosovo's independence and the right of self-determination of the people in accordance with the United Nations decisions.[50] Catalonian member of European Parliament Josep Maria Terricabras expects Kosovo to be among the first countries to recognize Catalonia as a sovereign state.[51] Generally, separatist movements or countries with such kind of problems sympathize, and in some ways, support each other. For example, the councilors in Dublin city hall voted to fly the Catalan flag in solidarity with separatists and against the repressions of Spanish Government during the turmoil between the authorities in Barcelona and Madrid.[52] There were clashes between Sinn Fein (leader Gerry Adams calling for recognition) and Irish Taoiseach Leo Varadkar who said the Catalonian referendum was unconstitutional and his government would not recognize it.[53]

Public opinion in Kosovo during the Catalonian independence crisis is predominantly on the side of Catalans. The only obstacle for this to be expressed

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[49] James Badcock, *We will never be silenced again*, Irish Independent, 9.10.2017, p. 10.

[50] Gaspar Pericay Coll, *Catalan nationalist parties react to the international recognition of Kosovo's independence*, Catalan News, 24.07.2010, http://www.catalannews.com/politics/item/catalan-nationalist-parties-react-to-the-international-recognition-of-kosovos-independence

[51] Interview of Albatrit Matoshi, *Katalonja shpall pavarësinë, presin njohje nga Kosova*, 4.10.2017, http://zeri.info/aktuale/165215/katalonja-shpall-pavaresine-presin-njohje-nga-kosova

[52] Rayan Nugent, *Dublin councilors vote to fly Catalan flag at City Hall*, Irish Independent, 3.11.2017, p. 20.

[53] Roy Foster, *Catalonia and Spain can learn so much from Irish history*, Evening Standard, 9.10.2017, p. 17.

more loudly or officially is the stance of the EU and the USA which is different and Pristina could not afford to contradict with it. The official position of Kosovo is that it supports the territorial integrity of Spain.[54] Kosovo experts and public figures claim that both cases are different because the Catalans have all democratic rights while the Albanians did not have any civil rights, including self-government, in Serbia.[55]

According to the Spanish constitution (1978), there are unnamed "nationalities" and not "nations" in Spain. It states the indissoluble unity of the Spanish Nation.[56] During the Catalonian crisis in 2017, the central Government in Madrid for the first time after the Franco era sent troops there and triggered article 155 of the Constitution for direct rule over the province. The mistake of the Government in Madrid was that it used police force against separatists during the elections and in some other cases after that. This definitely made them more determined and radicalized. Leaders of the separatist movement were jailed and some of them fled the country. The Catalan Prime-Minister Carles Puigdemont is in exile in Brussels. They have not given up and continue their struggle for an independent state. All of that shows that relations between the Spaniards and the Catalans have worsened for years to come.

There are intense relations and disagreement about the cultural heritage in both provinces. The situation is more problematic between Belgrade and Pristina mainly about the Serbian Orthodox churches and monasteries. An additional problem is that some churches and Christian cemeteries were vandalized by extremists. For 20 years there has been an ownership dispute between Spanish provinces of Catalonia and Aragon about the medieval treasures of Sijena convent. The order of the Spanish Minister of culture the convent to be returned to Aragon led to clashes between protesters and police in front of the Lleida museum in Barcelona.[57]

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[54] Interview with the president Hashim Thaci for Kosovo National TV, *Thaçi: Kosova nuk krahasohet me Kataloninë*, 2.10.2017, http://zeri.info/aktuale/165005/thaci-katalonia-nuk-eshte-kosove/

[55] Erjon Muharremaj, *ANALIZË/ Kosova, Katalonja, fantazma jugosllave dhe e drejta ndërkombëtare*, 4.10.2017, http://www.albeu.com/kosove/analize-kosova-katalonja-fantazma-jugosllave-dhe-e-drejta-nderkombetare/337908/

[56] Spanish constitution (1978), Preliminary Part, Section 2

[57] Ian Mount, *Fight over medieval artworks reopens Catalonian rift with Spain*, Financial Times, 6.01.2017, https://www.ft.com/content/1d8880e4-d1a9-11e6-b06b-680c49b4b4c0; Hannah Strange, *Catalonia is braced for violence over treasures*, Irish Independant 12.12.2017; Berna González Harbour, *One example of how Catalan separatists manipulate history*, El Pais, 12.12. 2017, https://elpais.com/elpais/2017/12/12/inenglish/1513089302_396064.html

The Spanish and Serbian (Yugoslavian) Governments have the law on their side, but it has different relevance in terms of *realpolitik*. One of the reasons for the successful Albanian separatism in Kosovo is the influence and place of Serbia in international architecture. The Catalan drama and Spain's strength are just the opposite. Spain is a full member of NATO (1982), it is the fifth largest EU member state (since 1986) and a global cultural and economic powerhouse.

Global powers and Kosovo and Catalonia

One of the main goals of the pro-independence movements is the maximum attraction of international attention. The Kosovo Albanians and the Catalans try hard to internationalize their cases. Both groups use their own media channels and social media in the 21st century in order to achieve that goal. In every crucial moment of their actions, they have tried to gain sympathies for their cause. Currently, there are 115 states that recognize Kosovo as an independent state but there was no single country in the world that recognized Catalonia's independence after it was proclaimed by the Catalonian parliament. Until 2008 Kosovo was administered by the United Nation. Nowadays it functions as some kind of international protectorate – there are NATO peacekeeping mission (KFOR) with around 5000 soldiers and the EU rule-of-law monitoring (EULEX) which is presented in the key institutions of the country with their own judges, prosecutors, police officers which supervise the judiciary and police.

European Union

The attitude of the EU structures toward the European separatism and the nationalism connected to it could be described as ambivalent. A short review of the contemporary nationalistic parties and movements throughout Europe shows that. The EU is extremely critical towards organizations which are Eurosceptic and work for more national sovereignty (France – National Front, Austria – Austrian Freedom Party, Hungary – Fidez, Poland – Law and Order etc.). At the same time, it is very favorable towards openly nationalistic parties whose core value is self-determination, but which are pro-EU – Scottish National Party, Catalonian pro-independence organizations. So we could conclude that the European Union and its establishment have a basic problem with the definition and assessment of nationalism from a value point of view.

The European Union has always encouraged the regionalism, all forms of diversity, cultural expressions and all kinds of minorities. It has preferred to

weaken national states and to reduce their sovereignty. During the Catalan crisis, Brussels found itself between one of the biggest member states (Spain) and its own principals. It chose Madrid instead of its principals and actually betrayed the Catalans who expected full support from the European institutions for their independence.

One of the main questions which appeared in public during the Catalan crisis was whether it could repeat for the EU what was Slovenia's unilateral declaration of independence for Yugoslavia and its future as a Union.[58] The big fear of the EU is that Catalonian independence would "open the door" for the rest of the advanced separatist movements to claim the same for themselves (Flanders, Lombardy, Corsica, the Basque country, South Tyrol).

The question about the secession of a region of an EU member state is whether it ceases to be a member of the Union if it could become a member automatically or it should apply from the beginning and fulfill all the procedures for membership (economic and political criteria).

The other question that arose around the Catalonian crises is: could a small region become a functional independent state. For the Kosovo case it is difficult to give a simple answer. The Catalans and their supporters claim they are ready, their economy will be among the richest in the world and their size will be comparable to Denmark, Finland, and Switzerland.[59]

The European position toward the Kosovo pro-independence movement could be described as not favorable during the 1980s and changing from the begging of the 1990s. In that period there were attempts to draw Yugoslavia into the EU negotiation process and eventually to become a member of the Union. The circumstances were in favor of such a development – the country was closer economically to the West than the states of the so-called East Block which were trapped behind the Iron curtain. The fast disintegration of the once biggest country and the wars between the republics changed the attitude. Major EU states (mainly Germany, France and the UK) were in favor of Kosovo independence and its recognition as an independent state. The late 1990s and early 2000s were the years of the culmination of liberal interventionism. The Kosovo independence movement coincided with that prevailing paradigm and used it in the maximum degree. It should be underlined that Spain is the leading

[58] Dan O'Brien, *Similarities with Spain abound, but their wounds go far deeper*, Irish Independent, 5.10.2017, p. 27.

[59] Roger Bootle, *If Catalonia left Spain, it would be like London leaving the UK*, Daily Telegraph, 8.10.2017; Robert Hardman, *Is Spain heading for a new civil war*?, Daily Mail, 7.10.2017, p. 18-19.

anti-separatist country in the EU with very harsh position towards Kosovo, which does not recognize it in any form, and also Catalonian independence.

Catalonian independence culminated in different political context of global changes and series of crisis within and around the EU (recent Eurozone Debt crisis, continuing migrant crisis, the rise of the Euroscepticism, the Ukrainian crisis, Brexit, difficult relations with Russia, Turkey and the USA). No single EU member state or government supported the declared Catalonian's independence. European countries took the side of the Government of Spain in its conflict with the Catalan separatist Government. There were not favorable circumstances for Catalan's independence in that historical moment. The Catalonian crisis was also a big test for the vitality of the EU. There are persistent doubts in Washington, Moscow and Beijing that the Union has enough capacity to cope with such difficulties.[60]

USA

The role of the United States in Kosovo independence was crucial. Without the American military intervention in 1999 and its continued support, the independence of Kosovo would have hardly become a reality. There is still serious American presence in the province with the military base (Camp Bondsteel). There is not any significant military presence in Catalonia. Kosovo independence process is part of the historical moment with the almost full global dominance of America. It coincides with the rise of the American messianism and the apogee of liberal interventionism. Last, but not least, the war aimed to divert public attention from the "Monica Lewinsky" scandal that threatened US President Bill Clinton and was destroying his moral image.

Catalonia is a different case in terms of global share of power and leadership. President Donald Trump had to take into account a number of factors – cold relations with the EU and London, Putin's Russia, China's new role in the world. Washington could not afford to confront with Madrid not at least because the fast-growing majority of Spanish speaking voters in the United State became a decisive power for winning the presidential election or any seats in the Southern states. During the common press conference with the Spanish Prime Minister Mariano Rajoj, Trump announced that he opposes the Catalan secession and called it "foolish".[61] After the referendum and declared independence the official

[60] Toni Barber, *Catalonia risks opening a European Pandora's box*, Financial Times, 7-8.10.2017

[61] Anne Gearan, *Trump says U.S. opposes independence bid in Spain's Catalonia region*, 26.09.2017, https://www.washingtonpost.com/news/post-politics/wp/2017/09/26/trump-says-u-s-opposes-independence-bid-in-spains-catalonia-region/?utm_term=.ee12a08 57f3b

position of the State Department was that Catalonia is an integral part of Spain and the United States support the Spanish Government's constitutional measures to keep Spain strong and united.[62]

Russia

The Russian Federation did not recognize Kosovo as an independent country. Kremlin has a clear position against the NATO humanitarian intervention in 1999 when it stood against the operation and supported the territorial integrity of Serbia. Russia considered the war in Kosovo an aggressive war against a sovereign state which was not a NATO member or a threatened one.[63] Kosovo war was a serious blow to Russia and its idea that it is a global power. It could not help its ally at that moment. Moscow strongly disagreed with the West (USA, EU) to grant Kosovo de jure sovereignty under the Ahtisaari plan. Russia insisted that the Kosovo issue will set a precedent with long-term consequences for the world.[64] When Kosovo announced its independence, the Russian Government proclaimed it as a unilateral violation of major international rules, agreements and organizations principals, mainly of UN's.[65]

During the Catalonian crisis, the Russian Federation had a consistent position that everything that happens is an internal Spanish matter and it supports the dialogue in the framework of Spanish constitution.[66] There was a scandal between Madrid and Moscow after the referendum. Spanish ministers of foreign affairs and defense accused the Russian side of interfering by hackers in the process through Twitter, Facebook and other Internet sites to influence public opinion in favor of separatist cause.[67] Russian authorities denied the

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[62] *On U.S. Support for Spanish Unity*, Press Statement by Heather Nauert Department Spokesperson, Washington, DC, 27.10.2017, https://www.state.gov/r/pa/prs/ps/2017/10/275136.htm

[63] Yoshiaki Sakaguchi and Katsuhiko Mayama, *Significance of the War in Kosovo for China and Russia*, NIDS Security Reports, No. 3 (March 2002), p. 1

[64] Oksana Antonenko, *Russia and the Deadlock over Kosovo*, N 21, Russia/NIS Center, Paris, 2007

[65] *Заявление МИД России по Косово*, 17.02.2008, http://www.mid.ru/web/guest/foreign_policy/international_safety/conflicts/-/asset_publisher/xIEMTQ3OvzcA/content/id/348618

[66] *Заявление МИД России по ситуации в Автономном сообществе Каталония (Испания*), 11.10.2017, http://www.mid.ru/web/guest/maps/es/-/asset_publisher/qqAftQ2HgNEM/content/id/2895398

[67] Robin Emmott, *Spain sees Russian interference in Catalonia separatist vote*, 13.11.2017, Reuters, https://www.reuters.com/article/us-spain-politics-catalonia-russia/spain-sees-russian-interference-in-catalonia-separatist-vote-idUSKBN1DD20Y

accusations and said they had no interest in weakening Spain.[68] Catalonia's separatist leaders also have denied that any foreign interference helped them in the vote.

China

Chinese attitude to both cases is very similar to the Russian one. Their argument is that every country has a sovereign right to decide alone its internal matters. During the Kosovo war, the Chinese embassy in Belgrade was directly hit by a bomb and senior diplomats died. Beijing saw the war as an act of aggression without the approval of the Security Council of UN. China kept a close eye on the situation and learned that information and technology with the advanced weapons would be the warfare of the future.[69] China did not recognize Kosovo as an independent country and expressed concern about declared independence in Pristina.[70]

Chinese authorities supported the Spanish Government during the Catalonian crisis.[71] They made parallels between Catalonian and Tibetan cases and did not want anybody to interfere in their domestic affairs. Beijing tends to oppose secessionist movements around the world since the country itself has problems with different minority and pro-independence groups in different regions. Last but not least, Chinese investments in Spain increased considerably in 2017.[72]

Conclusion

The comparison between Kosovo and Catalonia cases in terms of their pro-independence movements shows that there are a lot of similarities but the

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[68] *Брифинг официального представителя МИД России М.В.Захаровой*, Москва, 16.11.2017, http://www.mid.ru/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2952891#9

[69] Yoshiaki Sakaguchi and Katsuhiko Mayama, *Significance of the War in Kosovo for China and Russia*, NIDS Security Reports, No. 3 (March 2002), p. 6.

[70] Lindsay Beck, *China "deeply concerned" over Kosovo independence*, 18.02.2008, https://www.reuters.com/article/us-kosovo-serbia-china/china-deeply-concerned-over-kosovo-independence-idUSTP34030820080218

[71] Lu Hui, *China supports Spanish unity amid Catalan independence declaration*, Xinhua, 30.10.2017, http://www.xinhuanet.com/english/2017-10/30/c_136715310.htm

[72] Charlotte Gao, *China Backs Spanish Government Amid Catalonia Crisis*, 31.10.2017, https://thediplomat.com/2017/10/china-backs-spanish-government-amid-catalonia-crisis/

differences prevail. The aim is the same, but the used methods, economic and social potential, main political actors who are involved (regionally and globally), international realities are quite opposite. The Catalans have never used force, underground methods and organized violence in their struggle for independence. The economy is a vital part of the Catalan separatism while in Kosovo it was not. The big difference is the contrasting historic international and regional context, including the influence of the affected countries (Spain and Serbia). It is not insignificant that in Catalonia all people live mixed together while the Albanians and Serbians are even physically separated. Kosovo remains potentially explosive and ethnically divided. The assassination of one of the leaders of Kosovo Serbs Oliver Ivanovic showed how fragile is the balance in the province almost twenty years after the war and ten years after the declared independence. The big question for Spain and the EU is whether the Catalan crisis has an inflammatory potential to repeat the brutal Yugoslav wars of the 1990s and how the independence process is going to continue in the forthcoming years. Although a lot of authors make parallels between what is going on in Catalonia and the Balkans, the prevailing opinion is that Catalonia would not go in that direction. Nevertheless, Kosovo is a living example and warning for a dangerous independence scenario with a lot of violence and unsolved problems.

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THE END OF DEMOGRAPHIC TRANSITION IN KOSOVO: DOES THE MEANING OF THE POPULATION FACTOR CHANGE?*

Vladimir Nikitović[1]

Abstract: Political issues in Kosovo were strongly related to its population dynamics during the twentieth century, above all due to the "demographic explosion" induced by the huge lag in fertility transition if compared to the rest of Europe. However, soon after the turn of the century, the total fertility rate in Kosovo has dropped to about the replacement level (2.1 children per woman), which, along with permanent migration outflows since the 1990s, indicates a new demographic era in sight. Using the recent evidence on demographic and migration trends supported by the updated theoretical considerations in the framework of demographic transition and the migration cycle concept, we examine the key demographic implications that could be expected in light of assumed population dynamics in Kosovo over the next decades. The effects of the demographic momentum (population increase purely on account of the young age structure) reduced by the negative impact of emigration could expire up to 2035-40. As a result, the decreasing and ageing population could become a highly probable future of Kosovo in just 20-25 years, indicating the tremendous reversal could happen in the perception of the population factor in this territory from the viewpoint of political and security issues in the region.

Keywords: fertility transition, migration cycle concept, population projection, Kosovo, demographic change

Introduction

Countries throughout the world nowadays face the total fertility rate (TFR) that is below the theoretical level needed for replacement of generations.

* The views presented in the article express author's own opinion and not necessarily the one of the Institute of Social Sciences.

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Furthermore, the subreplacement fertility is not only a phenomenon of developed countries or exclusively of western civilization, as, according to the United Nations estimates, 83 countries or around 46 percent of the world population are experiencing the TFR lower than 2.1 children per woman, including the entire European continent, but also some of the most populous countries - China, the USA, Brazil, Russia, Japan, Vietnam, Germany, Iran, Thailand and Great Britain. Until recently, some of these countries were synonymous of very high fertility. The subreplacement fertility is the most obvious consequence of major changes in demographic tendencies that started to develop after the post-World War II baby boom first in Northern and Western Europe (in the 1960s and 1970s), then in Southern Europe (in the 1980s), and finally in Central and Eastern Europe (after 1990). These changes are most often regarded as the Second Demographic Transition (SDT), which should be conceived as a framework for understanding the profound cultural change that will sooner or later induce demographic changes, certainly not only in the fertility regime.[2]

However, while changes associated with the SDT were spreading from Northwest to Southeast Europe, the substantial lags in a sub-regional diffusion of the first demographic transition – reducing of very high fertility levels typical for a backward and dominantly agrarian phase in the development of societies – were taking part in Serbia. Since the 1960s, Serbia represented a European phenomenon in terms of regional divergence of demographic trends primarily caused by the differential TFR. In Kosovo, the TFR was at least twice as high as in the rest of the country, and by far the highest in Europe at the end of the 1980s. Therefore, the population doubling time in Kosovo (17.5 years) in 1991 was two times faster than the world's peak (35 years) in the 1960s, while the rest of the country began to face depopulation.[3]

Albeit unreliable fertility statistics since the dissolution of former Yugoslavia, available data suggest that Kosovo has experienced a marked decline in the TFR in this century, reaching the replacement level around

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[2] Ron Lesthaeghe, "The second demographic transition: A concise overview of its development", *Proceedings of the National Academy of Sciences*, Vol. 111, No. 51, December 2014, pp. 18112-18115.

[3] Mirjana Rašević, "Fertility trends in Serbia during the 1990s", *Stanovništvo*, Vol. 42, No. 1-4, 2004, pp. 7-27; Vladimir Nikitović, Branislav Bajat and Dragan Blagojević, "Spatial patterns of recent demographic trends in Serbia (1961-2010)", *Geografie*, Vol. 121, no. 4, December 2016, p. 526.

2010.[4] Compared to most of the European population, the knowledge on the population development of Kosovo suffers from a lot of empty fields, which are paradoxically bigger in recent decades than before the 1980s. There are various reasons for such a situation – political (boycotts of population censuses and official institutions for collecting data on vital statistics during the period of Yugoslavia), socio-cultural, institutional (slow capacity building of new institutions), economic, etc. However, despite unclear picture on current population development in Kosovo, particularly at lower spatial levels, there is no doubt that the two components of demographic change strongly determined recent trends of population change in this territory – fertility and international migration. Due to the long history of extremely high fertility rates, typical for pre-transitional societies, it is reasonable to expect that demographic momentum will provide population rise for at least several decades ahead, contrary to most countries in the region, but the opposite impact of migration component has proven to be significantly important for the population trends since the 1990s, thus resembling the trends observed in Albania after the fall of the Iron curtain. On the other hand, most of the population in the region of Southeast Europe is expected to decline in the next decades, which is recognized as the widening depopulation zone at the east rim of the EU.[5] Furthermore, the most recent sudden influx of asylum seekers from West Asia and North Africa, whose final asylum destination represents primarily the EU founding member countries, has its transition route through the region, which quite directly opened an issue of future migration in the region in terms of both the subreplacement fertility of autochthonous population and the demographic surpluses in politically unstable origin societies of immigrants.

Therefore, one could pose a quite meaningful question: How the population trend in Kosovo will evolve in the following decades – will it converge to the general trend of the region at a faster pace due to both expected continuation of emigration (caused by slow economic development and demographic surpluses of young and low educated persons) and accelerated tempo of socio-cultural changes associated with the SDT (similarly to the trends in diffusion of the first demographic transition in

[4] Ibid., p. 526.

[5] Vladimir Nikitović, "Long-term effects of low fertility in the region of former Yugoslavia", *Stanovništvo*, Vol. 54, No. 2, July-December 2016, pp. 27-58; United Nations, *World Population Prospects 2017 – Data Booklet*, United Nations – Department of Economic and Social Affairs, Population Division, New York, 2017.

regions that were the last to experience it), or will it lag in demographic change as it was the case during the period of Yugoslavia? The reasoning behind this aim is closely connected to quite different political and societal conditions in which Kosovo's population had been experiencing its fast growing during the period of Yugoslavia in comparison to what could be expected in possible EU future of the region. This could be concluded when analysing previous findings of studies on fertility behaviour of women in Kosovo, which indicate that specific anthropological, cultural and political factors might be those that decisively influenced the population dynamics in this sub-region during the socialism period, since the levels of economic development and education in comparison with other sub-regions of Serbia at the time, despite their limitations, could hardly be those that made women have the ideal and desirable number of children smaller than the actual.[6] Therefore, it is easier to understand that during the period of former Yugoslavia, the TFR of the ethnic Albanian population in Serbia was much higher in Kosovo than in other regions of the country, but also in relation to Albania (on average one child).[7] Recent studies substantially grounded on the diffusion theory as an explanation for spatial patterns of demographic change suggest that sociocultural heterogeneity prevent the equal diffusion of attitudes and information that support modern reproductive ideas and behaviour, thus confirming that in Kosovo, unlike the rest of the country, "the effect of the socio-economic development on changes in fertility had been conditional on the perceptions and customs of individual ethnic groups and their susceptibility to change".[8] In other words, cultural and ideational changes as assumed by the SDT could be more relevant for women's birth decisions in Kosovo in this century than it was the case until very recently.

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[6] Mirjana Rašević and Mina Petrović, "Is there a basis for implementing a family planning programme in Kosovo and Metohija?, Balkan Demographic Papers, Vol. 4, 2001, Laboratory of demographic and social analyses, Department of Planning and Regional Development, University of Thessaly, http://www.demobalk.org/Publications/papers/docs/Demobalk_Papers_Doc_00013.pdf; Mimosa Dushi, "Number of children among generations: The case of Kosova", *Procedia Social and Behavioral Sciences*, Vol. 19, 2011, pp. 37-40.

[7] Mirjana Rašević, "Fertility trends in Serbia during the 1990s", op. cit., p. 12; Jane Falkingham and Arjan Gjonca, "Fertility transition in Communist Albania, 1950–90", Population Studies, Vol. 55, No. 3, pp. 309–318; KAS, "Statistical Yearbook of the Republic of Kosovo 2014", November 2014, Kosovo Agency of Statistics, Pristina, http://ask.rks-gov.net/ENG/publikimet/doc_download/1192-statistical-yearbookof-the-republic-of-kosovo-2014.

[8] Murat M. Yücesahin and Murat E. Özgür, "Regional Fertility Differences in Turkey: Persistent High Fertility in the Southeast", *Population Space and Place*, Vol. 14, No. 2, March/April 2008, pp. 137; Mirjana Rašević, "Fertility trends in Serbia during the 1990s", op. cit., p. 21.

Therefore, we aim to examine the long-term effects of the changes in the two arguably crucial components of the demographic future of Kosovo in this century – fertility and international migration. In that sense, we try to achieve two goals at the same time: to assess realistic population projection outcomes and to warn decision-makers on future implications of demographic and migration trends in Kosovo in the context of the region of former Yugoslavia. Recent improvements in the methodology of population estimates and projections by the UN Population Division, particularly for populations with incomplete and rather shorter data series, helped us in producing methodologically and regionally consistent set of population projections for Kosovo, as a basis for answering the opening questions of the paper.

Hypothesis on components of population change – the theoretical and methodological framework

We framed our hypothesis about components of future population dynamics in Kosovo inside the projection model that is used by the Population Division of the UN (hereafter the UN model) for its latest releases of the *World Population Prospects* (2012-17). Also, the hypothesis on future fertility and mortality of the population in Kosovo are completely derived from the UN model, which we consider to be a very reasonable decision since the model is based on the recent theoretical achievements in terms of modelling the demographic transition, whereby it draws its strength from the data on fertility and mortality for all countries of the world. The model also has the technical benefits – it is well documented, fully transparent, probabilistically consistent, and implemented in the open-source R software, thus, allowing for easy adjustments and modifications of input parameters where needed.[9] This was particularly beneficial for the purpose of the paper since the UN does not produce projections for territories whose borders are under dispute as is the case with Kosovo.[10] Besides, as the UN migration hypotheses are not

[9] Adrian E. Raftery, Leontine Alkema and Patrick Gerland, "Bayesian Population Projections for the United Nations", *Statistical Science*, Vol. 29, No. 1, February 2014, pp. 58-68; United Nations, "World Population Prospects: The 2017 Revision, Methodology of the United Nations Population Estimates and Projections", Working Paper No. ESA/P/WP.250, 2017, United Nations – Department of Economic and Social Affairs, Population Division, New York, http://esa.un.org/unpd/wpp/Publications/Files/WPP2017_Methodology.pdf

[10] UN dataset recognizes only Serbia including disputed territory of Kosovo (it unilaterally proclaimed independence from Serbia in 2008) in accordance with the UNSCR No. 1244/1999.

theoretically grounded (apart from a lack of data for Kosovo), as is usually the case with migration projections, we instead included our hypothesis (based on the "migration cycle concept") in the UN projection model.[11]

Fertility hypothesis: the century of the transition to subreplacement fertility in Kosovo?

According to the onset of the first demographic transition, the two sub-regions in former Yugoslavia can be differentiated: "Early starters" (Slovenia, Croatia, Vojvodina, and Central Serbia) and "Late starters" (Bosnia & Herzegovina, Montenegro, Kosovo, and Macedonia). The latter sub-region, except Kosovo, experienced the decline to the subreplacement fertility two-three decades later than the former.[12] Currently, the whole region of former Yugoslavia is characterized by the subreplacement TFR (below 2.1), with the longest duration in Vojvodina, Central Serbia and Croatia, and the shortest in Kosovo.[13] Although the fertility transition in Kosovo may have begun in the 1920s and 1930s, according to some indications, it was surely discontinued and brought back to the pre-transitional period by the late 1960s, as the TFR was above five even in the 1970s.[14] A slow decline in the TFR in the next two decades resulted in its still high level, even before the breakup of Yugoslavia (3.9 in 1990); the TFR was high even after the 1990s Yugoslav wars (3.0 in 2000), and only recently fell just below 2.1.[15]

From a long-term perspective, changes in fertility behaviour are decisive for the size and age structure of a given population in the absence of sudden catastrophic events. The UN model, in accordance with the recent evidence of recovery of the post-transitional fertility, predicts convergence of the total

[11] Details on the specific adjustments of input parameters (initial population, fertility, mortality, and migration rates) and the projection procedure for the region of former Yugoslavia, which were used for the forecast simulations presented and interpreted in this paper, are fully described in: Vladimir Nikitović, "Long-term effects of low fertility in the region of former Yugoslavia", op. cit.

[12] Ibid., p. 35.

[13] Damir Josipovič, "The Post-Yugoslav Space on a Demographic Crossway: 25 Years after the Collapse of Yugoslavia", *Stanovništvo*, Vol. 54, No. 1, January-July 2016, pp. 15-40; Vladimir Nikitović, Branislav Bajat and Dragan Blagojević, "Spatial patterns of recent demographic trends in Serbia (1961-2010)", op. cit.

[14] Mirjana Rašević, "Fertility trends in Serbia during the 1990s", op. cit., p. 7.

[15] Damir Josipovič, "The Post-Yugoslav Space on a Demographic Crossway: 25 Years after the Collapse of Yugoslavia", op. cit., p. 16.

fertility rates in the region towards the level of 1.8 by the end of the century.[16] The total fertility rate across the region will most probably experience a mild increase by 2055, ranging between 1.55 (Bosnia & Herzegovina and Vojvodina) and 1.84 (Slovenia). Due to the lag in the onset of the transition to low fertility, the model predicts that the transition in Kosovo would last until 2070 (the lowest TFR of 1.71), with a target value of 1.75 in 2100.[17]

For the sake of an insight in "theoretical" limits of future demographic change, we also calculated the UN traditional high and low variants, which differ from the medium variant (forecast) in the total fertility rate by +/-0.5 children per woman, respectively. The UN model suggests that there are even 10% chance that the TFR in Kosovo could fall by 0.5 (low variant) until 2100, thus, reaching the "lowest-low" fertility, the same as the post-communist CEE countries had experienced at the beginning of the century. The official projections of the population of Kosovo also assume a further decline in fertility in the coming decades, but are more pessimistic than the UN model. Namely, the TFR is expected to fall to 1.7 by 2031, and then to the current level of Serbia excluding Kosovo (1.45) by 2061 according to the "medium" variant, usually regarded as to the most probable, while the range between high and low variant of the TFR is predicted to be 1.9-1.1 in 2061, which is narrower than the 80% prediction interval of 1.22-2.05 resulted from the UN model for the same year.[18]

International migration assumption: the century of emigration from Kosovo?

The whole region of former Yugoslavia (excluding Slovenia) is recognized as an emigrational at the beginning of this century, whereas Kosovo represents a specifically pronounced emigration area since the 1990s.[19] A recently developed "model of the migration cycle", based on evidence from

[16] Joshua. R. Goldstein, Tomas Sobotka and Aiva Jasilioniene, "The end of lowest-low fertility?", *Population and Development Review*, Vol. 35, No. 4, December 2009, pp. 663-699.

[17] Vladimir Nikitović, "Long-term effects of low fertility in the region of former Yugoslavia", op. cit., p. 39.

[18] KAS, "Kosovo Population Projection 2011–2061", December 2013, Kosovo Agency of Statistics, Pristina, http://ask.rks-gov.net/ENG/publikimet/doc_download/1126-kosovo-population-projection-2011-2061, p. 27-28.

[19] Heinz Fassmann, Elisabete Musil, Roman Bauer, Atila Melegh and Kathrin Gruber, "Longer-Term Demographic Dynamics in South-East Europe: Convergent, Divergent and Delayed Development Paths", *Central and Eastern European Migration Review*, Vol. 3, no. 2, December 2014, pp. 150–172; Besim Gollopeni, "Kosovar emigration: Causes, Losses and Benefits". *Sociologija i prostor*, Vol. 54, No. 3, Prosinac 2016, pp. 295-314.

the 'old' immigration countries in Europe, which experienced a gradual long-term transition from predominantly emigration to typical immigration countries in conditions of the subreplacement fertility, provided the theoretical framework for formulating migration assumption in the paper, as it seems that the successor states of former Yugoslavia could experience common migration trends in the future due to both officially proclaimed strategic goals of their governments with respect to the EU accession and expected position of the region itself as to the global migration directions.[20]

According to this heuristic concept, the region of former Yugoslavia, excluding Slovenia, could be considered as stuck in the initial, pre-transition stage. We assumed 2035 as a symbolic milestone between net emigration and net immigration according to the current prospects of further EU enlargement to the Western Balkans, which implies that the whole region of the former Yugoslavia would certainly be a part of the EU by the time. We considered the membership in the EU as an indicator that the population of a member state has reached the level of living standard and quality of life that can affect the reduction of outflows and the increase of inflows to the country in the long run. Prior to 2035, we account for the intensified post-accession emigration from the whole region due to increased labour mobility associated with slow economic growth in new EU members by analogy to the evidence from the Eastern enlargement and based on the expectations from the future in the EU.[21]

If we focus on the first 40-year period (2015-2055) of the projection horizon considered in this paper, the sub-region of "Early starters" excluding Slovenia is supposed to exit the initial or pre-transition stage by 2035, and to experience the intermediate or transition stage (immigration typically outweighs emigration) thereafter, while the "Late starters" sub-region would follow the

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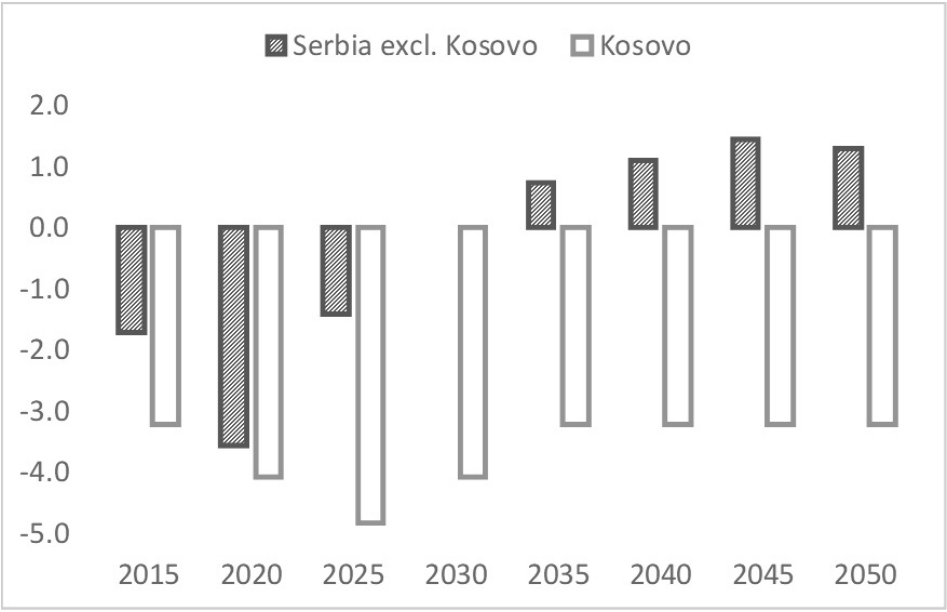
[20] Heinz Fassmann and Ursula Reeger, "'Old' immigration countries in Europe. The concept and empirical examples", in: Marek Okólski (ed.), *European Immigrations: Trends, structures and policy implications,* IMISCOE Research Series, Amsterdam University Press, Amsterdam, 2012, p. 67-68.

[21] Marek Kupiszewski, "Migration in Poland in the Period of Transition - the Adjustment to the Labour Market Change", in: Masaaki Kuboniwa and Yoshiaki Nishimura (eds.) *Economics of Intergenerational Equity in Transnational Economies*, Maruzen Co. Ltd, Tokyo, 2006; Marek Kupiszewski, Dorota Kupiszewska and Vladimir Nikitović, *Impact of demographic and migration flows on Serbia*, International Organization for Migration - Mission to Serbia, Belgrade, 2012; Vladimir Nikitović, "Migraciona tranzicija u Srbiji: Demografska perspektiva", *Sociologija*, God. 55, br. 2, 2013, str. 187-208; Mirjana Rašević, Vladimir Nikitović, Dragana Lukić-Bošnjak, "How to motivate policy makers to face demographic challenges?" *Zbornik Matice Srpske za društvene nauke*, Vol. 148, No. 3, 2014, pp. 607-617.

same course with a delay of 5-10 years.[22] However, Kosovo seems to be the only exception in the region of former Yugoslavia since we could not find convincing evidence that this population is likely to undergo fundamental societal changes needed to enter the intermediate transition stage during the projection period (Figure 1). This is acknowledged by the official population projection for Kosovo, which does not assume cessation of net emigration until 2061 given pronounced emigration potential and generally unfavourable economic conditions in that territory. Yet, after 2035, the projection assumes a certain reduction in net emigration by the "medium" (most probable) variant, or even a turn into a mild net immigration according to the high variant.[23]

Figure 1: Assumed average annual net migration rate (per thousand of the 2015 population), 2015-2055 (five-year periods)



Source: Author's calculation based on the "migration cycle model" considerations and the literature review

[22] We found reasonable to consider and interpret possible changes in migration trends no longer than the mid-century given general volatility of this component and consequently a high long-term uncertainty; therefore, no specific migration assumption was made after 2055, but only further linear decrease in net migration rate towards zero by 2100.

[23] KAS, "Kosovo Population Projection 2011–2061", op. cit., p. 31-33.

Demographic future of Kosovo

The most important indicators of future demographic change in Kosovo, which resulted from the long-term population projection simulations as described in the introduction of the previous section, are presented and interpreted in the context of contextually and comparatively relevant region of former Yugoslavia. This might help readers to more easily perceive magnitude and tempo of the projected demographic changes in Kosovo. For the sake of an insight in "theoretical" limits of future demographic change, we also calculated the UN traditional high and low variants, which differ from the median (most probable) total fertility rate by +/-0.5 children per woman, respectively.

Changes in population size and age structure until 2100

According to the most likely future of the forecast simulation (median of the distribution), only Kosovo will not experience a decline in the total population in the region of former Yugoslavia by the mid-century (Table 1).[24] Although this result might not be a surprise, the population dynamics over the projection period and changes in crucial demographic indicators reveal that the meaning of the population factor in Kosovo will certainly experience substantial changes in relation to the period of former Yugoslavia, particularly in the context of political implications.

Table 1: Total population forecast (median and 80% prediction interval), 2015-2100, including the UN traditional high-low bounds of the forecast (median TFR +/- 0.5)

Country/ Territory	Year	80% prediction interval			The UN traditional low-high variants	
		Lower limit	**Median**	Upper limit	Low fert.	High fert.
Former Yugoslavia	2015		**21,200,300**			
	2035	19,155,960	**19,436,430**	19,708,720	18,473,454	20,458,210
	2055	16,900,560	**17,586,480**	18,179,220	15,429,237	20,068,480
	2100	12,318,762	**14,037,020**	15,551,010	8,535,989	22,054,810

[24] Vladimir Nikitović, "Long-term effects of low fertility in the region of former Yugoslavia", op. cit., p. 48.

Country/ Territory	Year	80% prediction interval			The UN traditional low-high variants	
		Lower limit	**Median**	Upper limit	Low fert.	High fert.
Vojvodina	2015		**1,855,571**			
	2035	1,461,097	**1,500,021**	1,539,506	1,425,636	1,572,327
	2055	1,187,610	**1,268,060**	1,350,326	1,104,714	1,447,986
	2100	763,686	**947,372**	1,144,705	570,818	1,505,964
Central Serbia	2015		**5,140,644**			
	2035	4,153,445	**4,279,935**	4,389,473	4,070,693	4,487,032
	2055	3,478,100	**3,741,154**	3,976,102	3,272,474	4,260,945
	2100	2,413,114	**3,053,492**	3,580,905	1,846,681	4,735,175
Kosovo	2015		**1,855,853**			
	2035	1,980,099	**2,067,377**	2,155,741	1,942,859	2,195,571
	2055	1,829,773	**2,028,908**	2,244,909	1,753,505	2,353,193
	2100	947,567	**1,428,016**	1,971,471	773,441	2,442,654
Serbia excluding Kosovo	2015		**6,996,215**			
	2035	5,640,035	**5,774,646**	5,900,948	5,496,328	6,059,359
	2055	4,728,966	**5,000,839**	5,247,676	4,377,188	5,708,931
	2100	3,322,863	**4,003,528**	4,573,074	2,417,500	6,241,139
Serbia including Kosovo	2015		**8,852,068**			
	2035	7,682,827	**7,838,320**	7,996,070	7,439,188	8,254,929
	2055	6,689,436	**7,032,649**	7,371,740	6,130,693	8,062,124
	2100	4,566,661	**5,435,412**	6,235,772	3,190,941	8,683,793

Source: Author's calculation based on the population forecast simulations

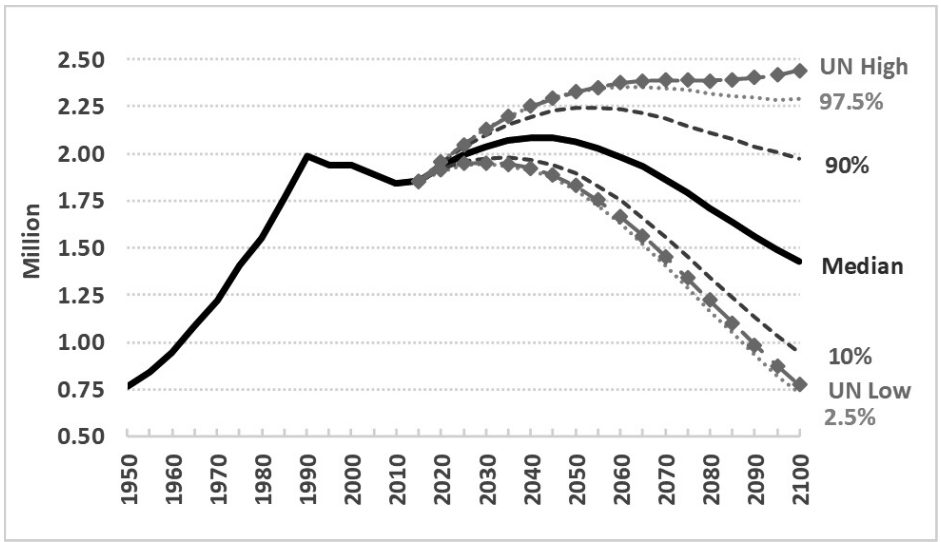
Note: The results for Serbia (80% prediction interval including median) are not simply the summation of its constituent parts but present aggregations across the probabilistic distributions of simulated outcomes.

While the total population in the region would most probably decrease by 16.9 percent, the population in Kosovo is expected to rise by 9.3 percent between 2015 and 2055. This rise could have been much higher due to the

projected positive natural change of even 564 thousand people, resulting from positive demographic momentum. Yet, its counterbalance is represented by the overall impact of negative net migration, which summed over the period should account for the population loss of 391 thousand persons (of which 267 thousand due to the direct effect). Furthermore, the population increase in Kosovo by 2055 practically results from the increase during the first 20-year period of the projection (Table 1). Indeed, the majority of the positive effect of demographic momentum (362 thousand more live births than deaths) is expected to be realized up to 2035, which is also the period of stronger emigration due to the higher volatility of socio-economic conditions.

It should be noted that the maximum population size of Kosovo will most probably be reached by 2040 (2.08 million), followed by a period when the demographic momentum will be insufficient to cancel the impact of the negative migration balance (Figure 2). If we want to estimate the power of the demographic momentum to drive the population increase despite the subreplacement fertility, a hypothetical "closed" population (zero-migration balance) scenario has to be considered. In that scenario, the maximum population size of Kosovo would be most probably reached by 2065 (2,43 million), which means that the fertility rates by previous generations provided population growth for about 60 years ahead in relation to the first decade of this century when the fertility transition to below replacement level has begun. However, apart from the pure theoretical character of a "closed" population concept, no realistic empirical evidence could be found to support a scenario which would neglect the significant impact of net emigration on demographic change in Kosovo at least in the next two decades when the demographic momentum should reach its peak. This is illustrated by the distribution of future outcomes as to the UN model (assumes a low probability of return to replacement fertility level during the whole century) presented in Figure 2, according to which the maximum size of the "closed" population would be beyond the upper limit of the 95% prediction interval. Furthermore, Figure 2 suggests that the range between traditional high and low variant in regular world population prospects by the UN Population Division, representing bounds of +/- 0.5 in relation to the TFR of the medium variant, are much wider than the 80% prediction interval of the forecast. It indicates that the role of migration balance could be of greater importance if compared to the previous periods.

Figure 2: Observed and forecasted population size of Kosovo, 1950-2100



Source: Author's calculation based on the population forecast simulations.

Note: Solid line represents the past trend and the most probable future, while the dashed and dotted lines show the bounds of the prediction intervals which should contain the future value with probabilities of 80% and 95%, respectively. The lines with markers show the bounds in accordance with the traditional high and low variant in the UN projections (median TFR +/- 0.5 children per woman).

Although the power of demographic momentum is undoubtedly strong and important for the future demographic change of Kosovo, its capacity is certainly limited in the long run in terms of the expected fertility transition associated with the SDT. Namely, according to the model simulations, the chances that the total population in Kosovo and Slovenia (the only part of former Yugoslavia that has entered the migration transition) by 2100 would be the same as the current is about 5 and 35 percent, respectively – this clearly indicates that the subreplacement fertility will strongly reduce population size of Kosovo if a transition to positive net migration is missing in the long run.[25]

[25] Vladimir Nikitović, "Long-term effects of low fertility in the region of former Yugoslavia", op. cit., p. 42.

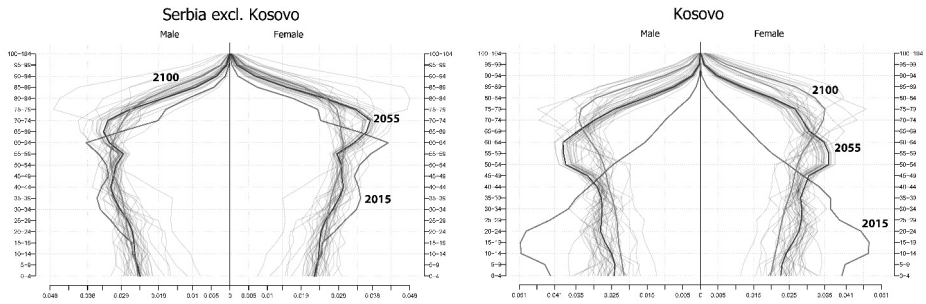
It is evident that the large lag in the fertility transition onset in Kosovo induced lags in relevant demographic processes in that territory if compared to populations in its neighbourhood. Consequently, the demographically very young population in Kosovo is currently contrasted with the surrounding old populations. However, significant structural changes in terms of rapid population ageing in Kosovo should be expected in this century. Although the share of persons aged 65 years and above in the total population will most probably increase by 75% (from 16.37% to 28.64%) between 2015 and 2055 in the region of former Yugoslavia, this indicator will more than triple in Kosovo in the same period (from 7.30% to 23.82%), with the abrupt increase experienced already by 2035 (13.94%).[26] The same stands for the old age dependency ratio (number of persons older than 65 in relation to those aged 20-64 years) as one of the crucial indicators in the context of the modern conception of sustainable demographic development.[27] Concurrently, both the current share of young persons (below 15 years of age) and the share of those in education age (5-24 years) is expected to be almost halved by 2055 in Kosovo (from 26.44% to 14.27% and from 37.47% to 20.42%, respectively).

These immense disturbances in the age composition of the population can be more easily comprehended if we compare the population pyramids of Serbia excl. Kosovo and Kosovo in the three cross sections of time (Figure 3). In just a 40 year from now, the demographic pressure of the older population in Kosovo could be much more pronounced than it is currently the case in Serbia excluding Kosovo, where the demographic situation is most commonly regarded as the very unfavourable. This upside-down change of the population pyramid in Kosovo between 2015 and 2055 in comparison with the gradual ageing of the pyramid of Serbia excl. Kosovo, suggests that Kosovo will have to face demographic challenges that are quite different from those it has faced so far. In that sense, one can comprehend current and expected huge emigration from Kosovo as intrinsically similar to the emigration trends between the mid-1960s and the 1980s observed in former Yugoslavia, which were fuelled by surpluses of low qualified labour force born during the post-war baby-boom.

[26] Ibid., p. 43.

[27] Wolfgang Lutz, "A Population Policy Rationale for the Twenty-First Century", *Population and Development Review*, Vol. 40, No. 3, September 2014, p. 528.

Figure 3: Population pyramid of Serbia excl. Kosovo and Kosovo, 2015, 2055, 2100



Source: Author's calculation based on the population forecast simulations

Note: Solid lines represent observed pyramid in 2015 and its most probable future in 2055 and 2100 (median of the distribution)

Impact of migration on demographic change by the mid-century

Given the expected transition to the subreplacement fertility and highly negative trends in terms of international migration in Kosovo, we have specifically assessed the migration impact from the aspect of the assumed stages of the migration transition on population dynamics in this sub-region by the mid-century. For that purpose, apart from the *Forecast* simulation, as discussed in the previous paragraphs, we prepared the *Zero migration* simulation based on the assumptions that all the age-specific fertility and mortality rates are as per the *Forecast*, while the net migration is set to zero. The comparison between the medians of the two simulations in terms of the total population size of Kosovo and comparatively relevant sub-regions of former Yugoslavia is presented in Table 2.

This impact of migration may be decomposed into a direct and an indirect component. The former consists of the total net migration flows summed over the forecast period, while the latter refers to the births and deaths which the migration either prevented or caused to happen, depending on the overall direction of migration flows, also summed over the forecast period. It should be noted that, in terms of indirect migration impact, no reference is made to the hypothetical demographic events which might have happened to the emigrants had they not emigrated. Table 2 shows the migration-related components of the forecasted population dynamics. As to the assumptions of the model, we review its results in relation to 2035 when it is assumed

that large post-accession emigration waves, induced by the EU enlargement towards the Western Balkans, will disappear throughout the region while the net migration rate in Kosovo will return to its current level (Figure 1).

Table 2: Impact of migration on population change – difference between Forecast and Zero migration simulation (median), 2015-2035-2055

Country/ Territory	Migration impact (thousand), 2015-2035					Migration impact (thousand), 2035-2055				
	Total	Direct	Indirect			Total	Direct	Indirect		
			Total	Births	Deaths			Total	Births	Deaths
Former Yugoslavia	-515.0	-384.1	-130.9	-114.0	16.9	115.9	258.8	-142.9	-98.2	44.7
Vojvodina	-99.5	-75.4	-24.1	-21.7	2.3	36.6	50.4	-13.8	-14.4	-0.6
Central Serbia	-212.3	-160.3	-52.0	-48.5	3.5	70.6	107.1	-36.5	-33.9	2.5
Kosovo	-184.2	-148.3	-35.9	-32.2	3.7	-206.5	-118.6	-87.8	-79.3	8.5
Serbia excl. Kosovo	-312.9	-235.8	-77.1	-70.0	7.1	107.7	157.5	-49.8	-48.0	1.8
Serbia incl. Kosovo	-496.2	-384.1	-112.1	-102.3	9.8	-101.2	38.8	-140.1	-126.3	13.7

Source: Author's calculation based on the population forecast simulations

According to the *Forecast*, the population in Kosovo in 2035 will be smaller by 184 thousand than it would be if there were no migration. The direct impact of migration on the population in the *forecast* equals -148 thousand. This is the net migration, aggregated over the period from 2015 to 2035. In the case of negative net migration, the indirect impact of migration consists of both the loss of births owing to the emigration of potential mothers and the loss of the emigrants' deaths. As Table 2 suggests, the effect of the latter is small. The number of births which female emigrants would have delivered had they not emigrated accounts for 32 and even 79 thousand in the first and the second 20-year period, respectively. Likewise, the number of deaths was reduced by less than 4 and 9 thousand by migration during the two periods, respectively; these people might have died anyway, but their death occurred

after they emigrated, so it cannot be counted in the figures for Kosovo, as they did not number among the population of the region at the time of death. The overall indirect impact of migration is -36 thousand by 2035, and even 88 thousand between 2035 and 2055.

In relative terms, the expected population increase in Kosovo (21% of the initial population) on account of strong demographic momentum would be almost halved by 2035 due to the direct or indirect impact of migration. Thus, net emigration represents a strong counterweight to the very high positive natural change. Almost 20% of the migration induced (direct and indirect) decline of the population in Kosovo by 2035 is due to migration-related, potential, but not 'consumed', natural change (Table 2).

The ruinous synergetic effect of long-term emigration could be best perceived when the period after the assumed accession to the EU is analysed. In case of Kosovo, the overall migration-induced population decrease between 2035 and 2055 would be higher than in the first 20-year period of the projection (207 vs. 184 thousand) despite smaller direct migration loss (119 vs. 148 thousand) – the indirect migration impact (natural change) would present even 43% percent of the overall migration-induced population decline.

Finally, we quantified the impact of migration on selected demographic indicators by calculating the percentage difference between the value of the indicator for both cross-sections 2035 and 2055 in the *Forecast* and the *Zero migration* simulation, scaled to the latter (Table 3). In the *Forecast*, the total population of Kosovo is smaller by 8.2% and 16.2% in 2035 and 2055, respectively as a result of migration. Migration also has a significant impact on the age structure of the population. As assumed in the *Forecast*, it would decrease the share of the population aged 0-14 in Kosovo by 6.5% and increase both the share of the population older than 65 years and old-age dependency ratio by even 13.4% and 13.6%, respectively until 2035. The negative migration impact on the share of the older population in Kosovo would further increase by 2055, while the transition to net immigration in Serbia excluding Kosovo after 2035 would even induce positive migration impact in terms of the share of the young population (Table 3), thus highlighting importance of migration transition for the region in this century.

Table 3: Migration induced changes for selected demographic indicators: percentage difference between Forecast and Zero migration simulation (median), 2035 and 2055

Country/ Territory **Time cross section**	Total population	Share of young/old age groups in total				Old-age dependency ratio (65+/20-64)
		Below 15 years	School age (5-24)	Above 65 years	Above 85 years	
2035						
Former Yugoslavia	-2.59	-2.82	-1.72	3.92	3.24	4.69
Vojvodina	-6.22	-5.46	-2.70	8.02	8.11	10.21
Central Serbia	-4.73	-4.07	-1.99	6.07	5.62	7.69
Kosovo	-8.18	-6.49	-5.01	13.43	11.34	13.57
Serbia excluding Kosovo	-5.14	-4.43	-2.20	6.63	6.20	8.36
Serbia including Kosovo	-5.95	-5.33	-3.32	8.06	7.39	9.40
2055						
Former Yugoslavia	-2.23	0.00	-0.36	2.73	4.15	4.12
Vojvodina	-4.72	2.62	0.90	3.40	7.28	5.82
Central Serbia	-3.65	1.92	0.41	2.62	5.63	4.51
Kosovo	-16.15	-8.70	-7.22	20.49	24.43	25.85
Serbia excluding Kosovo	-3.94	2.01	0.56	2.81	6.00	4.81
Serbia including Kosovo	-7.83	-1.73	-2.22	7.77	11.29	10.96

Source: Author's calculation based on the population forecast simulations

Conclusions

During the period of former Yugoslavia, political crises in Kosovo were usually interpreted in the context of demographic factors, which was not surprising since the population in that territory had been growing at rates typical for Africa at the time while much of the country had started to experience the subreplacement fertility. Paradoxically, the knowledge on population development in Kosovo was limited even then, but particularly after the dissolution of Yugoslavia since there was a gap of 30 years (1981-2011) without the population census data on Albanian majority, who was the driving force of the "demographic explosion". Coincidence or not, the 30-year period was politically the most turbulent in the recent history of Kosovo – it started with protests on the constitutional status of the province in 1981 and culminated with a unilateral declaration of its independence in 2008. Available statistics on the actual demographic change in Kosovo usually offers contradictory data particularly as to the fertility and migration, which, therefore, makes it difficult to understand current population dynamics and processes in that territory. Furthermore, a lack of comprehensive interpretation of a tremendous delay in the onset of the first demographic transition in Kosovo in relation to the surrounding populations, which should explain the failure of cultural and economic drivers of the fertility transition, suggests that a political factor might have had an important impact on demographic change in that territory until recently.

However, at the beginning of this century, apart from the crisis on the political status of Kosovo, two important factors inducing population dynamics have changed – high increase in emigration since the 1990s and beginning of the transition to the subreplacement fertility. Therefore, in this paper, we aimed to see whether the meaning of demographic factors in Kosovo would be changed in this century, particularly from the aspect of the expected EU future, as it would imply a substantial change in the factors driving demographic development. Thus, we based our analysis on recent improvements in theoretical and empirical evidence, particularly regarding the change in fertility and migration to consider the long-term implications of population dynamics in Kosovo. The probabilistic model on future fertility and mortality used for the current UN World Population Prospects and "migration cycle concept" served us as the methodological tools.

Although it seems certain that only Kosovo will not experience a decline in the total population in the region of former Yugoslavia by the mid-century, the meaning of demographic factors in Kosovo will undoubtedly experience

substantial changes. Namely, demographic momentum fuelled by fertility rates of previous generations could provide the population growth for about 60 years ahead, but it will most probably be considerably weakened by the negative migration balance. Therefore, the population increase in Kosovo by the mid-century would practically result from the increase during the next 20 years, which would also be the period of stronger emigration due to the higher volatility of socio-economic conditions, particularly in case of intensified post-accession emigration. Kosovo will most probably reach its maximum population size by 2040 (2.08 million), when a period of almost depleted demographic momentum should follow. The power of demographic momentum is certainly limited in the long run in terms of expected fertility reduction associated with the second demographic transition, which implies a strong decline in population size of Kosovo if a transition to positive net migration is missing by the end of the century.

From the viewpoint of modern sustainable demographic development, reduction in the population size of Kosovo would be a minor issue in comparison with changes in its age structure. Much faster population ageing in Kosovo should be expected in relation to surrounding populations – while the share of persons older than 65 years would increase by 75% in the region of former Yugoslavia by 2055, it would more than triple in Kosovo. The projection of age structure, also, suggests that the expected emigration from Kosovo might be intrinsically similar to the emigration trends between the mid-1960s and the 1980s in the former Yugoslavia, which were fuelled by surpluses of low skilled labour force born during the post-war baby-boom. Thus, given the maximum effects of demographic momentum in the next 20-30 years, along with expected slow economic development, it is reasonable to expect a continuation of current emigration trends. A specific findings refer to strong indirect effects of emigration – although the projected population increase in Kosovo on account of strong demographic momentum could be almost halved by 2035 due to the overall impact of migration, the indirect migration loss on account of prevented natural change could reach more than 40% of the overall migration-related population decline between 2035 and 2055.

The theoretical framework that we used in the paper to interpret possible demographic future of Kosovo is closely related to the cultural and ideational change behind the second demographic transition. Such a transition implies adopting modern family norms, which in turn should help in the development of modern political and economic systems. If we accept that the population of Kosovo is on the course of substantial change of demographic regime, it seems that the tempo of further diffusion of the ideational changes could be strongly dependent on the process of the EU enlargement to the Western Balkans.

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ECONOMIC (UN)SUSTAINABILITY OF THE KOSOVO AND METOHIJA ECONOMY

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Abstract: While thinking about the region at the crossroads of the East and the West, which has experienced wars, hyperinflation during the last twenty-five years, facing the economic problems under neoliberal and transitional conditions, unsuccessful attempts and failed privatizations, incompetent institutions, one wonders what the present generations will leave to the future ones. Southeast Europe or the Western Balkans is the region of small markets with unstable economies. The economic sustainability of each individual country in Southeast Europe is fragile. The best example of an unsustainable economy is a self-proclaimed state of Kosovo. After the independence proclamation euphoria, which has lasted for almost ten years, Kosovo is currently facing the unsustainability of the whole economic system.

Key words: Kosovo and Metohija, sustainable development, privatization, employment, corruption, direct foreign investment, trade deficit.

Introductory considerations

Considering the global market, the economic growth is reflected in creating a gap between rich and poor economies, where, due to lack of "profitable projects", the rich economies create/dominate the new markets aimed at increasing the profit, reaching the resources and the geopolitical interests having no concern if such "projects" will result in any benefit for future generations. For the above said, no wonder the Province of Kosovo and Metohija (hereinafter: KiM), the region with less than 2 million population, but with the largest lignite deposits in Europe (also mines and other natural resources should not be neglected), is an interesting "project".

Supporting the above fact, the lignite reserves in the Kosovo's lignite basement are estimated at 9.8 billion tons, whereas only 0.13 billion tons has been exploited so far. It is also estimated that by the implementation of modern

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technology and conversion to gas and other sources of energy its value could reach even $500 billion.[2]

In terms of geopolitical sphere of influence, both microeconomic and macroeconomic processes are created and dictated by the USA, NATO, the EU and the UN in the first place, where the Kosovo Albanians are presented as objects but not subjects of the geo-economic processes and relations.[3]

According to the United Nation Security Council Resolution 1244, the Autonomous Province of Kosovo and Metohija is now under the interim administration of the United Nations, whereas communication and interaction of the spheres of interest are performed through UNMIK and KFOR. Nowadays, the Autonomous Province of Kosovo and Metohija, under the international protectorate of the UN, but within the constitutional legal system of the Republic of Serbia,[4] is under threats which are reflected in limited legal security and unlawfulness, as well as high risks (business, banking, financial and corporate)[5] in geopolitical terms.

Besides UNMIK and KFOR in Kosovo and Metohija there is also EULEX mission which, in full co-operation with the European Commission Assistance Programs, implements its mandate through monitoring, mentoring and advising thus assisting the Kosovo local authorities, including judicial authorities and other authorities, in implementation of the law in order to provide their acting in accordance with the Rule of Law. EULEX judges and prosecutors conduct the prosecution and adjudication of constitutional and civil justice-related cases (property disputes and privatization cases), as well as the prosecution and

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[2] Milenko Dzeletovic, "Geopolitical Position and Natural Resources of Kosovo and Metohija - International Aspect", *Economic Review*, year IV, no. 1 and 2, Volume II, Faculty of Economics, Pristina, Zubin Potok, June 2004, p. 142.

[3] Nenad Vasic, "Geoeconomic Position of Kosovo and Metohija in the Beginning of the 21st Century – Challenges and Prospects", year IV, no. 1 and 2, Volume I, Faculty of Economics, Priština, Zubin Potok, June 2004, p. 40.

[4] The Constitution of the Republic of Serbia, Official Gazette of RS no. 98/2006. The Preamble of the Constitution of the Republic of Serbia reads: "Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia, considering also that Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations."

[5] Nenad Vasic, "Geo-economic Position of Kosovo and Metohija in the Beginning of the 21st Century – Challenges and Prospects", Idem. pp. 34-35.

adjudication of selected highly sensitive criminal cases (war crimes, acts of terrorism, inter-ethnic crimes, organized crimes and corruption), both on their own and with Kosovo authorities.[6]

It is interesting to view Kosovo and Metohija in terms of economically sustainable development nowadays when the whole world and most of all the creators of the geo-economic relations are oriented to the implementation the 2030 Agenda of Sustainable Development of the United Nations adopted in New York in 2015. Three major dimensions of sustainable development promoted in the Agenda are the economy, society and the environment through 17 basic targets and 169 integrated and inseparable sub-targets/tasks, which represent the comprehensive practice framework for the states. The Agenda refers both to developed countries and to developing countries.[7] This article will be mostly focused on the economic sustainability of Kosovo and Metohija (KiM).

Transformation and privatization of KiM economy

Transformation, restructuring and privatization are reasonable solutions for each market economy where the civilization principle of "unparalleled ownership" is respected. UNMIK is conducting privatization through the Kosovo Trust Agency (KTA). The economy of Kosovo should be restructured, but UNMIK's spin-off model of privatization is a wrong way that has not been checked anywhere in the world. This restructuring model is aimed at the allocation and sale of the old enterprise's assets to establish the new enterprise, whereas the factual owners are eliminated from the whole process.[8]

Also from the legal point of view, this privatization procedure could be considered problematic, especially concerning the UNMIK's competence – a mandate for privatization, the UNMIK's competence for re-examining the transformation of enterprises in Kosovo and Metohija in the 90s and also for decision making referring to those procedures. This illegal privatization is illustrated by cases where the ownership has been indisputably determined,

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[6] European Union Rule of Law Mission in Kosovo – EULEX, "Executive Division", http://www.eulex-kosovo.eu/?page=3,2

[7] United Nations (UN), "Transforming our world: The 2030 agenda for sustainable development", A/RES/70/1, http://www.ciljeviodrzivograzvoja.net/wp-content/uploads/2016/01/Agenda-for-Sustainable-Development.pdf, pp. 6-9

[8] Milena Vasic, "Economic (un)sustainability of Kosovo and Metohija: Euroregion Model – Way to Overcome Development Limitations", *Economic Review*, year IV, no. 1 and 2, Volume II, Faculty of Economics, Pristina, Zubin Potok, June 2004, p. 160-161.

but the owners have not been entitled to retain their possession. Moreover, they are also deprived of the right to complain about the decision of the Special Court (Kosovo Specialist Chambers) for resolving disputable issues – complaints about privatization procedure.[9]

Introducing a discriminatory legal basis of privatization is primarily aimed at full discontinuation of any relations between enterprises in Kosovo and Metohija and enterprises or other legal entities in the Republic of Serbia and at the enforced expropriation of the whole property of legal entities (land, factories, space, and equipment) to be sold to the third parties.

As for neglecting the basic human rights, UNMIK is conducting privatization when over 280,000 people have been displaced and forced to leave their homes and workplaces (the process of displacement still continues due to the violation of the basic human right to live and work.)

The UNMIK's decrees have enabled the privatization of the state-owned enterprises without any participation of displaced persons who, in most cases, were employed in those enterprises, so they have been deprived of their right to subsist and consequently to return there.

The Republic of Serbia's statement about the ownership right is based upon *legal and economic arguments*.

In legal terms, the property which was not privately-owned in Kosovo was transformed into the ownership of the state of Serbia or of state-owned enterprises in the territory of the Republic of Serbia according to the Law on Assets Owned by the Republic of Serbia from the year 1995.

The economic arguments are based on investments directed to Kosovo by the Socialist Republic of Yugoslavia, the Union of Serbia and Montenegro, the Republic of Serbia and Serbia's enterprises.

According to available data, the Kosovo and Metohija land register includes 2,575,448 cadastral lots totalling 1,090,410 hectares, the Serbian – state-owned and public property, the Serbian – private property, whereas the Serbian Orthodox Church has documents for 641.071 hectares, which is 57.79 per cent of the Kosovo and Metohija territory.[10]

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[9] Nikola Radosavovic, "Legal Assessment of Privatization in Kosovo and Metohija", *Economic Review*, year IV, no. 1 and 2, Volume II, Faculty of Economics, Pristina, Zubin Potok, June 2004, pp. 31-32.

[10] The Republic of Serbia Government, "Strategy of Sustainable Subsistence and Return to Kosovo and Metohija", Official Gazette of RS no. 32/10.

Those are the only real estate records kept in Kosovo and Metohija, therefore they are the records of ownership. The ownership changes could be entered only in the original records and the owners from the Republic of Serbia have not entered any changes since 1999, accordingly, Serbia has irrefutable evidence of property in possession.

Until 1999 there were 837 enterprises registered in Kosovo and Metohija, whereof 39 were state-owned, 309 joint-stock companies or limited liability companies and 489 public enterprises or corporations with major public capital stock (the capital structure of the said type of corporation is 30% state-owned, 15% the Republic of Serbia Development Fund, 10% enterprises with the seat in the Central Serbia or Vojvodina, 5% owners from former SFRY republics).[11] According to the Capital and Ownership Transfer Agreement, the Republic of Serbia Development Fund is the holder of capital and ownership in 163 enterprises in Kosovo pursuant to then applicable Company Law (1992-1993). The debt against unsettled loans of the companies (*Agrokosovo, Elektrokosmet, Trepca*…) towards the Republic of Serbia Development fund amounts to nearly €250 million.[12]

According to data submitted to the Belgrade Chamber of Commerce, the Central Serbia's enterprises have 1218 facilities in Kosovo and Metohija, whereas the enterprises from Vojvodina have 140 (totaling 1358), only PTT has 130, Railways 55, Electrical Industry 18 and Srbijašume 45 facilities,[13] which value amounts to approximately $ 1.5 billion. The value of the state-owned property that is not owned by the public enterprises is huge; it includes 24,500 hectares of agricultural land, forests and construction land, 1,240,000 m^2 office space, 145,000 m^2 commercial buildings, 25,000 m^2 apartment buildings, 4,000 m^2 special purpose buildings, 750,000 m^2 of other civil buildings, restaurants, resorts, sport facilities.[14] Hereinafter are only some examples:

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[11] Nenad Popovic, *Openly about Kosovo and Metohija Economy*, ABS Fund, Belgrade, 2008, p. 221.

[12] Ivica Stojanovic, "Actual state of "transition" of the Kosovo and Metohija Economy within the Serbia's Economy", in: Stevan Karamata and Časlav Ocić (editorial work), *Serbs in Kosovo and in Metohija,* Volume 26, Serbian Academy of Science and Arts, Belgrade, 2006, p. 424.

[13] Zvezdan Djuric, "Wealth and Economic Potential of Kosovo Yesterday, Today and Tomorrow", *Economic Review*, year IV, no. 1 and 2, Volume II, Faculty of Economics, Pristina, Zubin Potok, June 2004, p. 130.

[14] The Republic of Serbia Government, "Strategy of Sustainable Subsistence and Return to Kosovo and Metohija", Official Gazette of RS no. 32/10.

- NIS (Oil Industry of Serbia) disposed of 25 petrol stations and 5 warehouses, and the facility of 1,000m^2 was destroyed during the bombing. NIS Petrol-Jugopetrol was transformed into Kosovo Petrol Enterprise, whereas NIS is the majority shareholder of the enterprise Plastika (Plastic).[15]
- PE PTT of Serbia has 130 facilities in Kosovo and Metohija, most of them are post offices.
- PE Srbijašume (Serbia's Forest Industry) in Kosovo and Metohija owns 335,050 hectares of land.[16]
- The book value of the PE Railways of Serbia's property in Kosovo amounts to about €211.8 million thus taking 7.6 per cent of total assets of the Serbia's railways.[17] Of course, the market value is much higher. The Serbian railways has 330 km of rails in Kosovo and Metohija, 33 railway stations, 19 diesel locomotives, 15 diesel vehicles, 570 cargo and 45 passenger wagons. The Railways settle the liabilities against the loan amounting to about $33.2 million, which was granted to the railway-transport organization of Pristina in the 1980s by the World Bank and against other loan granted by the *Paris Club* amounting to CAD 4.2 million.[18]
- The facilities of the Public Enterprise *Electric* Power *Industry* (EPS) in Kosovo and Metohija are worth more than $ 3,000,000,000. The *Electric* Power *Industry* Enterprise and the Republic of Serbia largely invested in maintenance and in equipment for the power supply system in Kosovo and Metohija, but the system was usurped by the Kosovo Energy Corporation. Besides, the *Electric* Power *Industry* Enterprise has allocated between €20 million and €22 million p.a. since 1999 for compensations to 8,000 employees who were forced to leave their workplaces in 1999.[19] Within the Electric Power Industry system, there are still three public enterprises *Kopovi Kosovo (Mines Kosovo)*, *Termoelektrane (Thermal Plants)* and *Kosovo Distribucija (Kosovo Distribution)*; however, they have also been usurped. It should be noted that the Public Enterprise *Electric* Power *Industry* produces

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[15] E-Kapija, "All things considered, Serbia will be deprived of the public enterprises' property in Kosovo having no compensation thereof", https://www.ekapija.com/news/154995/srbija-ce-po-svemu-sudeci-ostati-bez-imovine-javnih-preduzeca-na-kosovu

[16] Ibid.

[17] The Republic of Serbia Government, "Strategy of a Long-term Economic Development of the Serb Community in Kosovo and Metohija", Official Gazette of RS no. 21/07.

[18] Nenad Popovic, *Openly about Kosovo and Metohija Economy*, op. cit. p. 223.

[19] Ibid.

averagely 4.2 billion kWh p.a. in Kosovo and Metohija, and considering that the price of one kWh is 3.93 US cents in the lowest electricity tariff, the enterprise has lost at least $165million annual income.

- PE Roads of Serbia (*Putevi Srbije*) has seven highways and 48 regional roads in Kosovo and Metohija, that is a total of 1,800 kilometers, but at present the enterprise is maintaining only 422 km. It is the state-owned property. This public enterprise has also the headquarters building in Kosovska Mitrovica.[20]
- The Telecommunications Company of Serbia (*Telekom Srbije*) has undergone huge material losses due to demolition of equipment and illegal disconnection although the license was duly paid (then amounting to DEM 125 million)[21]. According to the assessment, the value of fixed telephony of the Telecommunications Company of Serbia amounted to more than €77million in 1999.[22] The Telecommunications Company of Serbia's property in Kosovo and Metohija takes 7.5 per cent of its total property, and 13 percent of the profit has been lost. In the period 2000 - 2007 the total loss incurred to the Telecommunications Company of Serbia amounted to $ 1.4 billion.[23]
- The Serbian Army disposes of considerable property. Only the military airport *Slatina* is about € 95 million worth. The airport area covers about 4.5 million square meters of land with 568 facilities, whereof 156 buildings cover 47,024 square meters.[24]
- The Republic of Serbia Development Fund granted the loan for the Kosovo and Metohija economy. The Republic of Serbia Development Fund is the majority shareholder (over 51%) in 88 enterprises of 193 important Kosovo's enterprises; 76 enterprises are owned by them related enterprises from Serbia, whereas 29 enterprises have been taken over from the Fund and from some other Serbian enterprises.[25]

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[20] E-Kapija, "All things considered, Serbia will be deprived of the public enterprises' property in Kosovo having no compensation thereof " op. cit.

[21] Nenad Popovic, *Openly about Kosovo and Metohija Economy*, op. cit. pp. 223-224.

[22] E-Kapija, "All things considered, Serbia will be deprived of the public enterprises' property in Kosovo having no compensation thereof " op. cit.

[23] Nenad Popovic, *Openly about Kosovo and Metohija Economy*, op. cit., p. 224.

[24] Ibid., p. 225.

[25] Zvezdan Djuric, "Wealth and Economic Potential of Kosovo Yesterday, Today and Tomorrow", op. cit., p. 130.

According to data of the Privatization Agency of Kosovo (AKP), which is a successor of the Trust Agency (KTA), the Agency has mainly established the new enterprises from the state-owned ones and offered the current property and liabilities of those state-owned enterprises for sale (as determined for unpaid outstanding invoices in the last three months and unpaid VAT in the last year). According to available data the Privatization Agency of Kosovo has generated an income exceeding €542,887,929 by privatization of the enterprises applying the s*pin-off* model (59 privatization rounds), then by selling the property of the state-owned enterprises under liquidation (26 waves) generated an income of €87,103,895, and by direct negotiations the Agency generated an income amounting to €30,440,000. The total income generated by selling the state-owned enterprises and their property amounts to €660,431,824.[26] Only by the end of 2007 there were sold around 300 state-owned enterprises mainly to the Albanians from Kosovo and Metohija (over 90%) or to the foreign buyers.

Throughout the post-World War II era, the region of Kosovo and Metohija has undergone a special treatment in economic and development policy of Serbia and of former Yugoslavia. Kosovo and Metohija was considered as an insufficiently developed region in the period 1957–1966 according to planning documents, whereas since 1966 it has been considered as an extremely insufficiently developed region, therefore large financial aid has been granted for its economic and social development. In accordance with planning and other law-based solutions, an enormous capital was invested in the Southern Serbia Province through the established Federation Fund for Initiating Development of Insufficiently Developed Republics and Provinces. As well, other funds were provided through banks, foreign loans (the International Bank for Reconstruction and Development, the World Bank…), and the Federation's funds that were invested in fixed and permanent current assets to fasten development.[27]

During the period 1981- 1988 Central Serbia had the largest outflows of funds (dinar 211,811 million at 1980-rates), whereas Kosovo and Metohija had the largest inflows (dinar 112,501 million) so that Kosovo and Metohija participated by 12.14 times more in gaining funds than in granting those funds.[28]

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[26] Privatization Agency of Kosovo "Report on sold state-owned enterprises and their property", http://www.pak-ks.org/desk/inc/media/597B677B-DF41-4CB3-9520-55FA6E021CF7.pdf

[27] Rajko Bukvic, "Institutional Frameworks of Kosovo and Metohija Economic Development, 1945–1990", in Stevan Karamata and Časlav Ocić (editorial work), *Serbs in Kosovo and in Metohija,* Volume 26, Serbian Academy of Science and Arts, Belgrade, 2006, pp. 412-417

[28] Časlav Ocić ,"Collapse of Positive Discrimination Model": Economic Development of Kosovo and Metohija in the post-World War II Era" in: Kosta Mihailovic (editorial work) *Kosovo and Metohija: Past, Present and Future,* Book 28, Serbian Academy of Science and Arts, Belgrade, 2007, p. 342.

Table 1 Share of former Yugoslav republics and provinces in total gains and grants according to federal regulations, 1981–1988, in %

Total grants, gains = 100

Republics and Provinces (R and P)	Grants	Gains	2:1
Bosnia and Herzegovina	11.22	19.00	1.69
Montenegro	2.02	5.76	2.84
Croatia	25.01	13.86	0.55
Macedonia	5.53	9.14	1.65
Slovenia	19.48	10.51	0.54
Serbia	35.14	35.87	1.02
Central Serbia	23.98	11.95	0.50
Kosovo and Metohija	**1.68**	**20.42**	**12.14**
Vojvodina	9.48	3.49	0.37

Source: Časlav Ocić ,"Collapse of Positive Discrimination Model": Economic Development of Kosovo and Metohija in the post-World War II Era" in: Kosta Mihailovic (editorial work), *Kosovo and Metohija: Past, Present and Future,* Book 28, Serbian Academy of Science and Arts, Belgrade, 2007, p. 342.

In the period 1966–1970 the Province of Kosovo and Metohija received 30% of the total funds from the Fund for Development of Insufficiently Developed Republics and Provinces, 33.3% in the period 1971–1975[29], in the period 1976–1980 the Province received 37.1%, and 43.5% in the period 1981–1985, 48.1% in the period 1986–1990.[30] Besides, it takes a share of 41.3% in loans granted by the World Bank for Development.[31]

[29] Milan Bursac, Nenad Ilic, "The dynamics of expel and return of the Serbs and other non-Albaninas in Kosovo and Metohija after 1999 ", in: Stevan Karamata and Časlav Ocić (editorial work), *Serbs in Kosovo and in Metohija,* Volume 26, Serbian Academy of Science and Arts, Belgrade, 2006, p. 464

[30] Nenad Popovic, *Openly about Kosovo and Metohija Economy*, op. cit., pp. 224.

[31] Milan Bursac, Nenad Ilic, "The dynamics of expel and return of the Serbs and other non-Albanians in Kosovo and Metohija after 1999", op. cit., p. 464.

Table 2 Share of insufficiently developed regions in distribution of the funds granted by the Fund for Development of Insufficiently Developed Republics and Provinces, in %

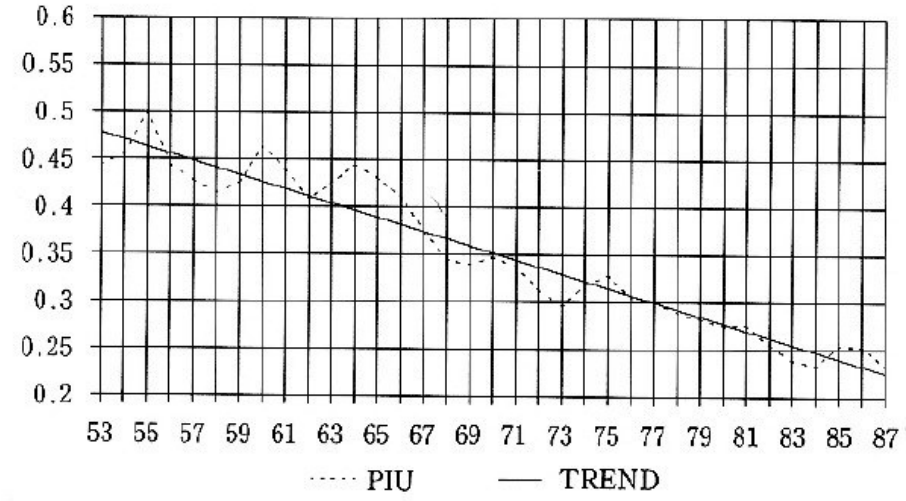
Insufficiently Developed Regions	1966–1970	1971–1975	1976–1980	1981–1985	1986–1990
Bosnia and Herzegovina	30.7	32.4	30.5	27.4	25.2
Montenegro	13.1	11.4	10.8	9.7	7.8
Macedonia	26.2	22.9	21.8	19.4	18.9
Kosovo and Metohija	**30.0**	**33.3**	**37.1**	**43.5**	**48.1**

Source: Nenad Popovic, *Openly about Kosovo and Metohija Economy*, op. cit., p. 95.

- Although huge amounts of funds have come into the Province of Kosovo and Metohija, it continues to be still at the bottom of the economic development scale according to indicators, which means that those funds were spent inefficiently for unintended purposes and directed to social but not to economic development:[32]
- The value of investments exceeded the social product value (any investment higher than 1/3 of the social product is considered as unreasonable). In 1953, for example, the effectiveness of investing in Kosovo and Metohija equaled to Serbia's average, thereafter the falling trend continued, and in 1987 it was only 63% of the average. (Figure 1);
- The number of bankruptcies and liquidations of enterprises could be neglected (in the period 1986-1988 there was neither one bankruptcy or liquidation of the companies, which indicates that the funds granted by various Funds were spent for covering the losses and for salaries);
- 1/4 of employees were in the state-owned enterprises and administration (24.8%, whereas Yugoslavia's average was 16.8%);
- 1/5 of employees,"experts and artists", in Kosovo and Metohija was in that category and 50% were teachers and education staff, which exceeded Yugoslavia's average 7 times;
- It was ranked the first according to the number of students per 1,000 inhabitants.

[32] Časlav Ocić, "Collapse of Positive Discrimination Model": Economic Development of Kosovo and Metohija in the post-World War II Era" pp. 343-347.

Figure 1. Kosovo and Metohija: average production coefficient



Source: Časlav Ocić, "Collapse of positive discrimination model": Economic Development of Kosovo and Metohija in the post-World War II Era" op. cit., p. 345.

It is estimated that in the period 1960 - 1990 about $17 billion was invested in this Province on various grounds (direct investments, write-offs, relieves, subsidies).[33] Accordingly, during the 80s and the 90s of the last century a million dollars was daily invested in Kosovo and Metohija. It should be emphasized that those were not only the funds of the Federation Fund (which share was about 70 per cent in the structure of the investment sources) and general and additional funds for non-repayable funds for financing the social services, but also the additional measures and benefits in the field of economic relations with foreign countries (customs duty exemption and tax relief), financial consolidation of economy and banks, assumed liabilities against foreign loans, budget relieves.[34]

Within the whole scope of financing the Kosovo and Metohija economic development Serbia's share has reached almost 50 per cent since all solutions within the Federation were focused as constant proportions of the social

[33] Milena Vasic, "Economic (Un)sustainability of Kosovo and Metohija: Euroregion Model – Way to Overcome Development Limitations", op. cit., p. 157.

[34] Milenko Dzeletovic, "Geopolitical Position and Natural Resources of Kosovo and Metohija – International Aspect ", op. cit., p. 145.

product distribution, and after the Federation Fund ceased to exist the Republic of Serbia was charged with financing the development of Kosovo. There should also be mentioned direct investments of the companies from other parts of Serbia that were used for the construction of many facilities.

UNMIK and the Privatization Agency of Kosovo that conduct the process of privatization do not recognize a fact that a large number of Serbia state-owned and socially-owned entities were built using the loans granted by the World Bank. By June 30, 1991, Yugoslavia was granted 90 loans totaling $6,114 million. Most of those loans were intended for the development of traffic, structural adjustment and development of insufficiently developed regions. That is why, according to the international standards, Serbia and Montenegro are considered as heavily indebted countries with median national income. The total foreign debt of the SR of Yugoslavia amounted to over $11 billion by the end of 1998, whereof the highest level of debt (47%) was towards the governments of the Western countries (the Paris Club), then about 30% to the international commercial banks (the London Club), and to the IMF and the World Bank.[35]

In 1990 Serbia introduced a special development contribution charging the salaries of the employees in the public and private sectors. In the period 1990 – 1992 Serbia allocated 10 billion dinars for Kosovo. Payment of pensions and other social grants to employed Albanians was a substantial financial burden for Serbia. The Albanians did not recognize the state of Serbia, but, of course, they did not refuse the social grants or pensions. During the past 10 years Serbia allocated DM 1,568,000,000.[36]

Accordingly, although in most cases the state of Serbia is the founder and majority shareholder in the above-mentioned enterprises, the privatization is conducted without its participation. At the same time, Serbia owes $ 1.5 billion to foreign creditors for financing the economic development of the Province, whereas privatization and other income go to the Kosovo's budget. For illustration purposes, even after the international mission came to Kosovo and Metohija, our government gave the International Bank for Reconstruction and Development the guarantees for $411 million, which the Bank forwarded as a loan to enterprises that were the most important ones in the earlier period in

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[35] Nebojsa Stosic, "Validity of the Coase Theorem in the Process of UNMIK Privatization in Kosovo and Metohija", *Economic Review*, year IV, no. 1 и 2, Volume II, Faculty of Economics, Priština, Zubin Potok, June 2004, p. 212.

[36] Milenko Dzeletovic, "Geopolitical Position and Natural Resources of Kosovo and Metohija – International aspect ", op. cit., p. 146.

Kosovo and Metohija. It means that those loans were mainly used by the power supply industry, railways, water supply industry and traffic infrastructure.[37]

The above said indicates that the economic potential of Kosovo and Metohija is huge, but the Kosovo-Albanian society supported by the international community is not in the phase of transition and restructuring, but it is in the phase of organized criminal activity and economic deterioration. Exclusive of public enterprises such as the Postal Service, Telecommunications Company, Kosovo Power Supply Corporation and Kosovo Railways (now UNMIK Railways) and public utility companies, 90% of former state-owned enterprises are not working in Kosovo and Metohija.[38]

It is not clear who is going to compensate the owners and creditors for their rights: UNMIK or Interim Government of Kosovo, i.e. citizens of Kosovo and Metohija. What is going to happen after the UN Interim Mission leaves Kosovo and Metohija?

Development limitations and (UN) sustainable economic growth

According to the assessment of the Kosovo Agency of Statistics, the population of Kosovo and Metohija has reached 1,783,531. According to a census in 2011 the population of KiM was 1,780,021. In the period 2012 – 2013 the population growth could be noticed, but followed by a certain decline, so that in 2016 the population almost equalled to 2011 statistics.[39]

The main results of the Labor Force Survey conducted by the Kosovo Agency of Statistics for the second quarter of 2017 are the following[40]:

- Almost two-thirds of KiM population is of working age (aged 15-64). Kosovo and Metohija is among the regions with the youngest population in Europe, so that the population working capacity will increase in the coming period;
- Of the work-capable population, 57.0% is not economically active population; it means they are neither employed nor have been actively searching for a job;

[37] Ibid. p. 147

[38] Branislav Gulan, "Privatization in Kosovo and Metohija", *Macroeconomy*, 09 May 2013 https://www.makroekonomija.org/unmik-kosovo/privatizacija-na-kosovu-i-metohiji/

[39] Kosovo Agency of Statistics, "Statistical Year Book of the Republic of Kosovo 2017", Priština, 2017, p. 28 http://ask.rks-gov.net/media/3637/statistical-yearbook-of-the-republic-of-kosovo-2017.pdf

[40] Kosovo Agency of Statistics, "Work Force Survey – K2- 2017", Priština, 2017, pp. 10-11, http://ask.rks-gov.net/media/3613/anketa-o-radnoj-snazi-k2-2017.pdf

- Of 43.0% of the economically active population, 30.6% is unemployed. It means that 69.4% of the economically active population is employed which resulted in the employment rate of 29.9%;
- 57.0 % of the work-capable population is inactive;
- The unemployment rate of young population is rather high (50.9% of work-capable population aged 15-24 is unemployed);
- Almost one-third (27.1%) of the unemployed population aged 15 - 24 does not go to school or attends any training;
- Only 29.0% of employed population entered into permanent labor contracts, whereas 71.0% entered into temporary labor contracts;
- Concerning the types of contracts which the surveyed employees entered into, most of them (76.4%) entered into individual contracts, whereas others worked without having any contract. As for young population (aged 15–24), the per cent of those that worked without having any contract is 49.4%.

Hence, unsurprisingly Kosovo and Metohija has faced the outflow of the human capital (as the whole region); under conditions of high unemployment and absence of economic-social development the young population does not trust the institutions and wants to shape the future somewhere in the EU countries. According to estimations, only in the last two years over 200,000 people left Kosovo, whereof more than 50,000 illegally left in 2015, when the whole region faced the migrant crisis. The "Kosovo Government" has been struck with said situation, whereas the EU countries overflowed with large Kosovo Albanian migrants have requested such migration to be stopped and announced that their applications for asylum will be refused and they returned to Kosovo.[41]

According to *United Nations Development Program* (UNDP) research, since April 2016 the satisfaction of the KiM population with key executive, legislative and judicial institutions has generally declined. At the moment only 21% of the population is satisfied.[42] More than 76% of the KiM population considers that unemployment (48%), poverty (21%) and corruption (7%) are three major problems affecting their social welfare. Since the Kosovo and Metohija public sector is the biggest employer, the largest part of the population (77 %)

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[41] Bashkim Hisari, "Life in Kosovo–Political Crises and Mass Migrations: Signs of Kosovo Spring", *Vreme*, no. 1260, 26 February 2015.

[42] United Nations Development Programme (UNDP) Kosova/USAID, "Public Pulse XII", Priština, May 2016, http://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-12.html, p. 2.

considers that nepotism, bribe, political coalition and the other factors which are not based on the merits are very useful for getting employment in the public sector.[43]

Regarding the KiM population perception as the most corrupted institutions the first are ranked medical staff, Kosovo courts, central administration/ institutions, the Privatization Agency of Kosovo, police, but interestingly, in addition to the mentioned ones, the citizens think that the international organizations have a hard time dealing with a large-scale corruption.[44]

According to *Transparency International* Kosovo is ranked the 95th of 176 countries by the public sector level of corruption with a score of 36; the scale of 0 (highly corrupt) to 100 (very clean).[45]

In further analysis of the economic sustainability of the Province of Kosovo and Metohija, there should be stated that KiM has traditionally been non-autonomous region both in the past and nowadays oriented to external financing sources. The economy is built based on foreign and government loans which have never been repaid and now charging the Republic of Serbia taxpayers. Although the economy has been permanently "infused" with foreign donations (now having a declining trend) and with funds of the Kosovo Albanian diaspora, all funds are directed to expenditures but not to economic development. Both the economy and population depend on remittances and salaries of people working in the Western European countries.

The economic development depends on donations, loans of international institutions and investments from abroad. The foreign direct investments (FDI) that were made in Kosovo and Metohija in 2016 declined by 24% compared to 2015. Investments made until September 2016 amounted to €182,3 million, which is less than in the same period in 2015 (€268,5 million). The foreign investments are considerably lower than in 2006 when they reached almost €300 million or in 2007 when they reached €440 million, or compared to the period 1999 – 2005 when more than € 2,5 billion was invested, but those funds were not invested in creating the economic potential for faster economic growth.[46] The foreign direct investments are also expected to decline in 2017.

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[43] United Nations Development Programme (UNDP) Kosova/USAID, " Public Pulse XII", op. cit. pp. 10-11.

[44] Ibid. p. 12.

[45] Transparency International, "Corruption perceptions index 2016", Berlin, 2017, https://www.transparency.org/news/feature/corruption_perceptions_index_2016, p. 9.

[46] KPMG in Kosovo, "Investment in Kosovo 2017", Priština, 2017. https://assets.kpmg.com/content/dam/kpmg/bg/pdf/Investment-in-Kosovo-2017.pdf, pp. 12-13.

Table 3 Foreign Direct Investments by Countries

	2011	**2012**	**2013**	**2014**	**2015**	**2016**
						EUR million
First five countries						
Switzerland	31	44	42	38	73	62
Turkey	35	66	89	20	55	35
Great Britain	80	14	11	(40)	27	33
Germany	67	50	22	29	45	29
Albania	11	5	19	20	40	29
First five countries total	224	178	182	69	240	187
Other countries	161	51	98	83	69	48
TOTAL	**384**	**229**	**280**	**151**	**309**	**235**

Source: KPMG in Kosovo, "Investment in Kosovo 2017", Pristina, 2017, p. 13.

The funds were not invested in raising the level of employment or development of the production and services to generate value added, but, as a rule, they were invested in the most profitable sectors (fixed and mobile telephony, power supply/mining, construction, trade and import of oil, cigarettes, and food), which the Republic of Serbia has been illegally deprived of, and now owned by the companies which owners are the initiators of "the Republic of Kosovo Project".

The unresolved status of Kosovo and Metohija, absence of the rule of law, but also disrespect of the basic international principles, standards and norms, political instability, high level of corruption, discriminatory behavior in institutions, structural economic inefficiency, uneducated and inactive population are the factors that determine the real foreign investments.

Although according to the *Doing Business 2018* report Kosovo and Metohija is ranked the 40th[47], the investors still consider KiM as a highly risky region.

Due to inefficient institutions and the tax system, developed illegal economy and grey economy, not a large amount of funds enters the budget thus disturbing the income distribution and reaching the economic goals. Therefore

[47] International Bank for Reconstruction and Development (IBRD), "Doing Business 2018: Reforming to Create Jobs", World Bank, Washington, 2018, p. 4.

the KiM institutions are becoming more and more heavily indebted while borrowing from the international institutions.

Since 2012 the general government debt has been heavily growing in the international debt segment and at the end of 2014, it reached €582,87 million due to increased internal debt. Also, in 2015 the total debt increased by 28% compared to the previous year reached an amount of €748,95million. At the end of 2016 debt reached €852,74 million, which is an increase of 14% if compared to 2015 nominal value.[48] At the Q3-end 2017 both international debt and the internal debt recorded growth and the total debt amounted to €965,36 million.

Table 4 Total Debt

Year	2009	2010	2011	2012	2013	2014	2015	2016	TM3 2017
									In € million
International debt	249.01	260.42	253.60	336.60	323.76	326.35	371.17	373.77	425.96
Internal debt	0.00	0.00	0.00	73.31	152.51	256.52	377.78	478.97	539.40
Total debt	249.01	260.42	253.60	409.92	476.27	582.87	748.95	852.74	965.36
Government guarantees	0.00	0.00	0.00	0.00	0.00	10.00	10.00	20.00	44.00
Total debt (% GDP)	6.12	5.92	5.27	8.10	8.94	10.65	13.07	14.58	15.75

Source: Ministry of Finance/Treasury Department of Kosovo, 3-month data for total debt/ Q3 2017, Pristina, October 2017, p. 5.

The Kosovo and Metohija economy is facing a serious problem with a trade deficit, which keeps growing from year to year and tends to have a constant growth. For example, in 2001 the export reached €10,559,000, whereas import amounted to €684,500,000. In 2010 Kosovo and Metohija exported products and services valued €295,957,000, whereas import valued €2,157,725,000. Up to now, the largest trade deficit was recorded in 2016 amounting to almost €2.5 billion (-€2.479.864.000); according to December 2017 data the 2016 deficit will be exceeded. According to available data a trade deficit will amount to approximately €2.7 billion in 2017.

[48] Ministry of Finance/Treasury Department of Kosovo, "2016 Annual Public Debt Bulletin" Priština, June 2017 https://mf.rks-gov.net/page.aspx?id=3,44 pp. 5-6.

Table 5. Foreign Trade Turnover in Goods

Period	Export	Import	Trade Balance
			(000€)
2001	10.559	684.500	-673.941
2002	27.599	854.758	-827.159
2003	35.621	973.265	-937.644
2004	56.567	1.063.347	-1.006.780
2005	56.283	1.157.492	-1.101.209
2006	110.774	1.305.879	-1.195.105
2007	165.112	1.576.186	-1.411.074
2008	198.463	1.928.236	-1.729.773
2009	165.328	1.937.539	-1.772.211
2010	295.957	2.157.725	-1.861.769
2011	319.165	2.492.348	-2.173.184
2012	276.100	2.507.609	-2.231.509
2013	293.842	2.449.064	-2.155.221
2014	324.543	2.538.337	-2.213.794
2015	325.294	2.634.693	-2.309.399
2016	309.627	2.789.491	-2.479.864
12-2017	378.010	3.047.207	-2.669.196

Source: Statistics Agency of Kosovo, "External Trade Statistics - December 2017", Pristina, 2017, p. 10

It is obvious that in 2017 the trade deficit will be higher than in 2016 because in December 2017 it was recorded a higher deficit by 8.5% compared to the same period in 2016. In December 2017 import reached €297,3 million, which is an increase by 9.5% compared to the same period in 2016 (€271,4 million).[49]

[49] Statistics Agency of Kosovo, "External Trade Statistics - December 2017", Priština, 2017, http://ask.rks-gov.net/media/3826/external-trade-december-2017.pdf, p. 8.

Table 6. Export and Import per Countries, December 2016 and 2017

	December 2016	%	December 2017	%
	EXPORT			
Total	24.520	100.0	29.481	100.0
28 EU countries	5.077	20.7	6.869	23.3
CEFTA	11.991	48.9	11.932	40.5
EFTA	1.145	4.7	1.607	5.5
Other European Countries	665	2.7	1.092	3.7
Other non-European Countries	93	0.4	203	0.7
Asian Countries	4.792	19.5	7.275	24.7
Other	758	3.1	503	1.7
	IMPORT			
Total	271.473	100.0	297.316	100.0
28 EU countries	121.739	44.8	137.637	46.3
CEFTA	70.399	25.9	79.686	26.8
EFTA	2.441	0.9	2.440	0.8
Other European Countries	30.751	11.3	26.516	8.9
Other non-European Countries	9.519	3.5	7.155	2.4
Asian Countries	26.565	9.8	32.082	10.8
Other	10.060	3.7	11.801	4.0

Source: Statistics Agency of Kosovo, "External Trade Statistics - December 2017", Pristina, 2017, pp. 13-14.

According to the Statistics Agency of Kosovo, the export of the Province of Kosovo and Metohija is mostly oriented to CEFTA parties amounting to 40.5% and to the EU member countries in the amount of 23.3% of the total export, whereas export to other countries reaches only 36.2%. The major export parties are the following: India (24.4%), Albania (17.7%), Macedonia (9.6%), Germany (6.2%). The Southern Province of Kosovo and Metohija mostly imported from the EU member countries 46.3%, 26.8% from CEFTA parties, whereas from

other countries the export reached only 26.9%. The major import parties are Serbia (15.7%), Germany (14.6%), China (9.6%), Turkey (8.5%), Italy (5.7%), and Macedonia (4.2%).[50]

Conclusion

Based on the above-mentioned it might be concluded that Kosovo and Metohija has traditionally been non-autonomous region only oriented to external financing sources both in the past and at present. The economy has developed based on the foreign and government loans that have never been repaid, but now predominantly charging the Republic of Serbia's taxpayers. Although huge amounts of funds were invested in the Province of Kosovo and Metohija, it is still ranked at the bottom of the economic development scale which indicates that those funds were ineffectively used to no purpose, directed to social but not economic development.

Discrimination-based privatization is basically aimed at breaking the relations between the enterprises in Kosovo and Metohija and enterprises or other legal entities in the Republic of Serbia and at the unlawful alienation of all property (expropriation) of legal entities (land, factories, space, equipment) to be sold to the third parties.

If privatization is conducted in the absence of legal, economic or democratic potentials and state-owned, social and private property sold to interest groups, thus establishing new privileged enterprises, surely such privatization will not result in creating a healthy market and the future generations will suffer its consequences.

High natural population growth, inefficient government and other authorities in ensuring the basic human rights to movement and work under the umbrella of the international community will result in negative migration of people in this province, and finally produce an impact on the effects of the social product growth.

The crucial condition for Kosovo and Metohija to become a place where people want to live is a sustainable economic development. In other words, disrespect of the concept of sustainable development will result in ineffective economic development that cannot bring increased welfare benefits and living standard of people in the Province of Kosovo and Metohija.

[50] Statistics Agency of Kosovo, "External Trade Statistics – December 2017", op. cit., pp. 14-15.

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