Divided states and “frozen conflicts” in Europe: the case of Kosovo

The structure of international community has experienced over centuries countless changes resulting from the processes of state amalgamation and integration and, on the other hand, of disintegration and dissolution. Global politics of the XXth century had been marked significantly by the breakdown and/or disappearance of colonial empires with capitals in Europe, although their partial contraction in Northern and Southern America started already in the XVIIIth and XIXth centuries. The process of decolonization in Africa, Asia, Oceania and the Caribbean attained its acme in the second half of the XXth century. It brought to well over a hundred the number of former colonies which became new independent states and members of the United Nations.

In the XXth century Europe the breakdown of multinational Ottoman, Austro-Hungarian and Russian Empires and partial decomposition of the British Empire prior, during and following the First World War produced about two dozens smaller states, some of them short-lived. The next wave in the 1940s followed the destruction of the Third Reich and the defeat of Fascist Italy during and after the Second World War. During the Second World War Iceland separated itself from Denmark. Similarly as in Eastern Asia the political-ideological polarization during the “Cold War” caused the division of amputated Germany (and Austria) into several occupation zones followed by the much-longer division of Germany into two separate states (FRG, DDR). Two former British colonies in the Mediterranean Cyprus and Malta became independent. Since 1990 several states vanished altogether from the political map of Europe. On the other hand, the breakdown of the Soviet Union, two Yugoslavias and Czechoslovakia greatly increased the number of de facto existing European states.

Since mid-1970s more than a dozen successful secessions have occurred in Europe.¹ In all these cases the fracture lines in the affected larger states reflected the divisions among national, cultural and religious communities. Among the newly-born states a group of former Soviet and former Yugoslav republics have within a year achieved wide international recognition and was admitted to UN and subsequently to other international organizations. There is still however another group of five new de facto existing European states which were far less successful. Northern Cyprus, Transdnistria, Abhazia, Southern Ossetia and Nagorno-Karabah have gained
in this respect more successful has been Kosovo which falls somewhere between the two groups. Together i.a. with the older “Republic of China” (Taiwan) in Eastern Asia, “Palestine Authority” in Near East and “Sahrawi Arab Democratic Republic” in Western Africa Kosovo remains to-day less than universally recognized as an independent state.

Several pertinent questions have been raised in connection with the process of state fragmentation and successful secessions in Europe:

- what conditions are necessary and sufficient for a successful secession?
- in what respect(s) the Kosovo case differs from other similar recent cases in Europe?

Kosovo’s historic background

When, about a hundred years ago appeared as an international problem Kosovo was part of an Ottoman vilayet (province) in the Balkans bearing a similar name. The province included then not only today’s Kosovo but also Sandžak (later partitioned between Serbia and Montenegro) and most of Vardar Macedonia (today’s Republic of Macedonia).

Located in the center of the Balkans, with at present about 2.2 million inhabitants the land-locked and very densely populated Kosovo has had in the past no tradition of indigenous statehood. Many times dismembered, carved out and joined with parts of neighboring lands, divided into several occupation zones, partly or totally annexed by foreign conquerors Kosovo became a single administrative unit only in 1945. It was given then a double official name Kosovo & Metohia (K&M). As the Albanian Kosovars reject its second half as colonial-smacking, a single word designation was adopted 1963 together with an enhanced autonomy status. When in 1989 Kosovo’s autonomy was de facto abolished by Slobodan Milošević’s regime the double-word name was correspondingly reinstated by Belgrade and has since remained the official Serbian designation. The double name is being used today inter alia by the Serbia’s Ministry for K&M, by the transplanted K&M municipal administrations on the territory of “Serbia proper” and by defiant members and organizations of the Serbian minority in Kosovo who still refuse to recognize Kosovo’s independence from Serbia.

For most of its known history Kosovo’s territory has been ruled by alien masters from distant capitals. The wider area had had under the Romans, Byzantine Greeks and Bulgarians several older designations (including Dardania), but the Slavic name Kosovo stuck, meaning the Land of Blackbirds. It was given to the area by the Slavs, probably the ancestors of today’s Serbs. Prior to the gradual Slavic implantation in the Balkans from the VIth century on this land had not been an empty space but rather sparsely populated by the partly romanized Illyrians, the probable ancestors of the today’s Albanians. Kosovo’s territory belonged to the Bulgarian Khanat and later the Bulgarian Tsardom from the 850s to the early XI century when it was re-conquered by Byzantine emperors. The proto-Serbs were certainly not the oldest indigenous population in Kosovo. Moreover it is doubtful that they were even the oldest Slavic settlers in the land, although these points remain a contentious issue among medieval historians of the Balkans. The oldest known Slavic kingdom on the territory of today’s Serbia and Montenegro was not established in Kosovo but in Zeta (Duklja) on the territory of today’s Montenegro. This distinction has been claimed today as “theirs” by
both Montenegrin and Serbian historians. The first Banovina on the territory of today’s Serbia was proclaimed and the oldest churches and monasteries were built in the XI-XII centuries by Serbian Bans in Raška, which is part of today’s Sandžak. Serbian feudal lords conquered Kosovo more than a century later. By 1216, profiting from the treacherous capture of Constantinople by the Christian Crusaders the Serbian rulers pushed the greatly weakened Byzantine officialdom out of the province. The popular Serbian claim that Kosovo was “the cradle” of the medieval Serbian state is thus at variance with known historical facts.

There is no doubt however that Kosovo had remained a crown land of the medieval multiethnic kingdom ruled by Serbian feudal lords for roughly 250 years. At the acme of its prominence and power the mightiest among the Serbian monarchs “Tsar” Dušan was crowned in 1347 as ‘Emperor of the Serbs, Greeks, Bulgarians and Albanians’. Notably, his capital was not in Kosovo but in Skopje, in today’s Republic of Macedonia.

The most traumatic event in Serbia’s medieval history did however take place in Kosovo. The historic defeat at Kosovo Polje (in Turkish Gazimegdan) in 1389 ushered the destruction of the Serbian state by the Ottomans and cemented their rule in the Balkans for more than 450 years. The painful memory of the Kosovo battle became a central piece of the Serbian national mythology. It has been nurtured for centuries by the Serbian Orthodox Church who persistently and quite successfully enticed its believers for revenge against the Moslems (Turks, Islamized Slavs and Albanians). As late as in 1992-1995 the notorious military commander of the Bosnian Serbs Ratko Mladić (indicted for the crime of genocide and at present on trial in the Hague) publicly called the Slavic Bosniaks the “Turks” and presented his troops’ deadly exploits as revenge and historic redemption. The mass murders of the Muslims in 1990’s in Srebrenica and in many other places in Bosnia, Kosovo and Serbia could not be explained without the previous generations-long indoctrination of hatred, magnified by modern mass media. For many decades the Kosovo myth has been widely used by Serbian nationalists of all ideological colors as a convenient political tool and by the Serbian elites as a useful cover for their hegemonial ambitions in the Balkans.

From 1459 until 1912 the territory of today’s Kosovo had been ruled by the Ottomans who left a strong Oriental imprint on its culture, social and religious life. It impacted also on the ethnic composition of Kosovo’s population having created, i.a., a notable Turkish ethnic minority. The predominately Orthodox Serbs ceased to be a majority in Kosovo probably already in the first half of the XIX century, due to the harsh Ottoman repression after each of numerous Serbian uprisings, to the gradual colonization of Kosovo’s fertile plains from what is today Northern Albania and to a much higher birth rate among the Albanian Kosovars. The biggest single loss of the Serbian population in Kosovo occurred around 1690 when about a hundred thousand “souls” followed the Orthodox Patriarch Arsenie Charnoievich on an exodus to the lands which were then part of the Hungarian Kingdom, including today’s Voivodina. As the Serbs massively migrated to north- and westward Kosovo’s role in their religious, cultural and political life has become correspondingly marginalized while the reverse was true of the Albanian Kosovars who became massively converted to Islam. One of the most important all- Albanian political organizations (League of Prizren) was
established in Kosovo in 1878 and the Kosovars became later very prominent among the founders of independent Albania in November 1912iv.

At the turn of the XXth century Kosovo constituted only a minor subchapter in the wider Albanian national question within the decaying Ottoman Empire. As a separate and volatile issue it was created in 1912 by the Kingdom of Serbiav whose expansionist ambitions were formatted in the 1840s by the Serbian Minister Ilia Garashanin. According to him his state’s main geostrategic objective was to obtain a permanent territorial access to the Mediterranean Sea through the sea port Durresvi. With this mission accomplished Serbia would become a maritime nation.

Serbia’s design of territorial expansion into the neighboring Ottoman possessions, also to those without Serbian population had been for decades actively encouraged and supported, for its own geopolitical reasons by the Russian Empirevii. Aware of and hostile to the Albanians’ striving for national emancipation the governments of Serbia, Greece, Bulgaria and Montenegro secretly plotted to occupy and partition the Ottoman possessions, including those with a predominantly or entirely Albanian and Muslim population. The clear intention of the conspirators was i.a. to preempt the birth of an independent Albanian state on the ruins of the “Sublime Porte”. In October 1912, according to synchronized war plans the Serbian army invaded Kosovo on its way to conquer entire Northern Albania. The occupation of Kosovo was then only as a collateral objective and the ‘liberation’ of its medieval Christian monuments and of its Serbian minority served as a convenient propaganda tool to dupe the Serbian and international public.viii

The attainment of the Serbian strategic objective was however foiled by Austro-Hungary who resisted Russia’s and its Serbian proxy’s penetration into the Adriatic. In 1913 Serbia bowed to an Austro-Hungarian war ultimatum and the Serbian Army withdrew from Northern Albania. Other European powers (Great Britain, Austro-Hungary, Germany, France and Italy) contributed then to creating the Kosovo problem. At a conference in London the great European powers, at Russia’s insistence, allowed Serbia to keep as war booty the occupied Kosovo (and also Sandzhak and Vardar Macedonia). They did so knowingly against the wishes of Kosovo’s majority population. The host of the conference, British Foreign Secretary Sir Edward Grey frankly admitted this fact during a debate in the House of Commons. Like several Arab lands and Cyprus Kosovo was amputated from the Ottoman Empire by external force and immediately subjected to another foreign rule. In the Near East and North Africa these Ottoman possessions were formally or de facto recolonized by France, Great Britain and Italyix, while Kosovo was by small Serbia. The Kingdom of Serbia, itself a product of decolonization in the European part of the Ottoman Empire, thus partly realized its expansionist plans and was allowed to create its own mini colonial state in the middle of the Balkans.

Between 1918 and 1999 Kosovo remained part of three multinational Yugoslavias, for most of the time as a non-self-governing province subordinate to the Serbian officialdom in Belgrade. As a constant source of political and security troubles Kosovo contributed in 1941, 1991 and 2003 to ruining all three Yugoslavias - the Kingdom (KY), the Socialist Federal Republic of Yugoslavia (SFRY) and the Federal Republic of Yugoslavia (FRY). The collective memory of the two brutal Serbian conquests in 1912 and 1918 and of the subsequent arbitrary and oppressive and
oppressive Yugo-Serbian rule under the Karadjordjević dynasty was so painful that in April 1941 the Albanian Kosovars massively greeted the Italian and German troops as liberators. During the Second World War the largest part of Kosovo was occupied by Italian troops and incorporated into the satellite ‘Kingdom of Albania’ which had the Italian king as head of state. The rest of Kosovo was divided between the “Third Reich” and Bulgaria, the latter having annexed its occupation zone. Prior to the Italian capitulation in September 1943 only very few Albanian Kosovars joined the Communist-led resistance. The Kosovo National Liberation Council which met at its first session in January 1944 adopted a motion according to which Kosovo would be reunited with Albania after the war. This solution could have been achieved within a Balkan Federation – a project which had been on a number of occasions discussed behind the closed doors by Soviet, Bulgarian, Yugoslav and Albanian communist leaders. In 1947-48 this proposal became one of the controversies which led to the Soviet-Yugoslav quarrel and was subsequently dropped. The Yugoslav communists under the leadership of Marshall J.-B. Tito never had the courage to radically resolve the Kosovo problem by allowing its population to decide freely on its own future.

In the XXth century Kosovo remained under the Belgrade rule for less than 80 years, interrupted by two world wars. Inspite all Serbian efforts, including initial terror, outright discrimination, police repression, intentional impoverishment of the Kosovar Albanians, pressures on them to emigrate to Turkey and the state-financed transplantation of about 40 thousand Slavic ‘colonists’ the ethnic Serbs remained a distinct minority in Kosovo. Their share in Kosovo’s population has progressively declined from over twenty in the 1920s to about ten percent by 1999 and five percent today. On the other hand, the share and the absolute size of the Kosovar Albanian population grew inspite their very considerable emigration, for economic and political reasons to Turkey and to Western Europe.

The political discrimination of non-Slavic national groups was built into the very foundation of Yugoslavia since its inception in 1918. Its first official name “The Kingdom of Serbs, Croats and Slovenians” and all subsequent names clearly expressed this fact. By the late 1980’s the Albanian Kosovars became the third largest national group in Yugoslavia (after the Serbs and Croats). This demographic change and the liberalizing evolution in Yugoslav politics made politically untenable the Kosovars’ obvious inequality in rights with an even several times smaller Slavic nation (the Montenegrins). The Albanian Kosovars full equality in collective rights with Yugoslavia’s Slavic nations, if granted and implemented, would have put into question the privileged legal status of the Slavs, Yugoslavia’s very name (“The Land of the Southern Slavs”), its state anthem (“Hey, Slavs”), the power relations among its main components, Serbia’s and the Belgrade bureaucracy’s pivotal position in the federal state etc. All these conceivable consequences were in those days utterly unacceptable, particularly to the federal Yugoslav authorities (including the Yugoslav Army), to the Serbian communist establishment and to the Serbian Orthodox Church.

The Kosovo problem has contained at its kernel a political conflict between the Albanian Kosovars desire for national emancipation and self-determination and, on the other hand, Serbia’s endeavors to continue ruling Kosovo from Belgrade. For Serbian cultural and political elites and for a considerable part of the Serbian public Kosovo has remained till today a cherished symbol of Serbia’s past glory and of Serbhood. Since
1945 several models of Serbian-Kosovo relations were tried, ranging from military occupation and brutal police repression to rather benign and extensive autonomy (1974-1987). They all failed to bring lasting peaceful coexistence between the two communities in Kosovo itself and between the Albanian Kosovars and Serbia. The last SFRY constitution of 1974 introduced an unusual and incoherent compromise solution of the problem. Kosovo was granted extensive self-governance with a dual status simultaneously as an autonomous part of Serbia and as constituent part of the Yugoslav federation. This solution, on one hand, fell short of the Albanian Kosovar's desire for full equality with the Yugo-Slavs and, on the other, had been virulently attacked by Serbian nationalists. The historic compromise of 1974 was annulled fifteen years later by Belgrade. The adoption of Serbia's constitutional amendments in 1989 was accompanied by brutal police intimidation of the Kosovar deputies in the Provincial Assembly, buttressed symbolically by the presence of JNA tanks in the streets of Pristina. By its unilateral action Serbia gravely undermined the Yugoslav constitutional order and badly spoiled its relations with Croatia and Slovenia.

These sinister events in and related to Kosovo had taken place in the already shaky federal state while outside Yugoslavia's borders a wave of democratization swept Eastern Europe. This wave brought about the collapse of the Soviet empire in Eastern Europe, the dissolution of its supreme expression the Warsaw Pact and to the breakdown of the Soviet Union itself. Although the communist rule in Yugoslavia did not rely or depend on Soviet support the East European upheaval had a very considerable psychological impact also on Yugoslavia speeding up its disintegration. The looming prospect of SFRY's probable breakdown attracted exceptional international attention and raised serious worries among the Western powers about its possible domino effect on the ex-Soviet space. Due to this fear (which turned out to be highly exaggerated) the Yugoslav drama was catapulted to the top rank of acute international problems.

The Kosovo crisis, followed soon by violence in Croatia's Serbian Kraina had unleashed a chain of events which by 1991-92 brought down the second Yugoslavia. Unlike in other Eastern European states the implosion of the Yugoslav communist regime had ignited several armed conflicts and outright wars which caused about 130 thousand deaths and, at least, two million refugees and displaced persons. Several unique international developments followed these explosions of violence, inter alia, the first and by far the largest UN peace-keeping operation in Europe (UNPROFOR) and the first NATO 'out-of-area' peace-enforcement action (in Bosnia and Herzegovina).

Preoccupied for several years with the wars in Bosnia and Herzegovina and Croatia the international community almost totally overlooked the appalling situation in Kosovo. The continuous Serbian repression reappeared as highly contentious international issue when it became clear to the Western powers that the pacification in the ex-Yugoslav space would be incomplete without resolving also the Kosovo problem. In the spring of 1997 this issue was finally raised in several international fora, including UN and OSCE. However all Western efforts to reach a solution through negotiations with the Federal Republic of Yugoslavia, by diplomatic pressures and by military threats brought no results. The failure of these efforts was followed in March 1999 by the first NATO armed attack against a UN member state.

This state - Serbia lost its right to legitimately rule Kosovo when in violation of the still valid Yugoslav federal constitution it rescinded ten years earlier the application of
fundamental freedoms in Kosovo, subjugated its majority population to arbitrary police oppression and excluded the Albanian Kosovars from all Kosovo’s public institutions. Already prior to the NATO intervention the Milosevic regime set out to uproot a good part of Kosovo’s Muslim population. The massive relocation of about 350,000 Albanian Kosovars and Turks started in summer 1998. The International Criminal Tribunal for the former Yugoslavia in its verdict on Colonel-General Vlastimir Djordjević, former Assistant Minister of Internal Affairs of Serbia, described the methods used by the Army of Yugoslavia (VJ), Special Serbian Police Units (PJP) and Special Anti-Terrorist Unit (SAJ) in spring 1999 while carrying out these operations of ethnic cleansing: “In early morning hours VJ and PJP forces would approach a village, town or other location. The VJ using tanks, armored vehicles and other heavy weapons, would shell the residential area causing the Kosovo Albanian population to flee from their homes. Serbian forces, in most cases police, would then enter the area on foot, typically setting houses on fire and looting valuables. In many of these locations….the Serbian forces…typically separated the men from the women and young children, ordered women and children to leave to go to Albania and then killed all the men, usually having first divided them into smaller groups and taken each group to an isolated location…Not less than 724 Kosovo Albanians, including many women and children, were murdered by the Serbian forces. The deliberate destruction of mosques, cultural monuments and of Muslim sacred sites…has been established… The Kosovo Albanian people left Kosovo because they were specifically ordered to do so by the Serbian forces. In most cases identification documents and vehicle license plates were seized from the Kosovo Albanians before they crossed the border out of Kosovo.”

As a result of these operations in Kosovo by the Army of Yugoslavia and the Serbian militarized police about 50,000 homes were burned or severely damaged and about 1000 public buildings, mostly schools destroyed, damaged or mined. Out of a total 6,005 cases of missing persons opened by the International Committee of the Red Cross (ICRC) it has been possible to discover and identify 2,500 persons. Most of the deceased victims were identified as Albanian Kosovars, half of whom were exhumed from mass graves discovered in Serbia proper and the other half in Kosovo. In addition there are 1,869 missing persons which still remain unaccounted for, about two thirds of whom were Albanian Kosovars. There have been, no doubt, also other regrettable criminal acts of opportunity perpetrated in Kosovo. Most of them took place during the power vacuum after the departure of Serbian forces and during the first weeks after the arrival of the NATO stabilization force (KFOR). According to ICRC 470 missing persons disappeared after June 12, 1999, 95 of whom were Albanian Kosovars and 375 non-Albanians. It is reasonable to assume that unlike the state-organized terror prior to June 12, 1999 most of these missing persons were victims of individual acts of vengeance against the Kosovo Serbs, Roma and also against those Albanian Kosovars who were considered as “traitors” by the returning majority population.

Serbia’s attempted act of genocide provided legitimacy to NATO’s ‘humanitarian intervention’ in 1999 as an expression of the “responsibility to protect” Kosovo’s civilian population. During the second half of 1999 about 1.3 million refugees and displaced Albanian Kosovars and Turks returned to Kosovo, mostly to ruined and burnt-out homesteads without roofs. Serbia never apologized and no high Serbian official was ever brought to a trial in Serbia for committing crimes in Kosovo. The change of the
regime in 2001 did not absolve the Republic of Serbia as state of its responsibility and obligations as member of the Council of Europe and of the Organization of United Nations, as some Serbian post-Milosevic officials argued.

Like earlier in Bosnia & Herzegovina the Kosovo problem would not have been even half-resolved without a determined military action by USA and NATO. This intervention in spring – summer 1999, undertaken without a UN Security Council’s authorization, resulted in NATO’s second occupation, after Bosnia & Herzegovina, of a part of ex-SFRY’s territory. The NATO peace- enforcing “Operation Allied Force” detached Kosovo from Serbia and placed the province under temporary UN administration (UNMIK). Since then various security, surveillance, control, assistance and other roles in Kosovo have been since played by several international organizations (NATO, OSCE, EU, Council of Europe, World Bank etc.). A complicated and awkward system of cris-crossing international protectorate has thus developed. It has been combined with limited governance by Pristina authorities, extensive informal rule by male elders among the moral Albanian Kosovars and with the half-concealed rule by Belgrade and by its local proxies in Northern Kosovo and in Serbian enclaves to the South of the Ibar river.

This complicated situation produced a legal limbo in most of Kosovo as all Serbian and former Yugoslav laws became invalid, most legal archives and other administrative documentation have been missing (evacuated to Serbia proper) and the new UNMIK legislation widely incomplete. By 2007 the continuation of Kosovo’s dubious legal status became politically and security-wise untenable due to the Albanian Kosovars’ growing impatience and to the deadlock negotiations of Kosovo with Serbia. Upon the request of the UN Secretary General the former President of Finland Martti Ahtisaari recommended that the only viable solution for the problem would be Kosovo’s limited independence combined with decentralization, strong protection of minorities and supervised closely by the international community. Martti Ahtisaari stated in his report: “Kosovo is a unique case that demands a unique solution. It does not create a precedent for other unresolved conflicts.” The text of his “Comprehensive proposal for the Kosovo status settlement” was submitted to the UN Security Council in March 2007. Its adoption was however blocked by the Russian Federation and the People’s Republic of China.

After considerable vacillation the Western members of the Contact group (USA, Great Britain, France, Germany and Italy) concluded by 2007 that Kosovo’s extensive autonomy even under only formal Serbian sovereignty would be totally politically unacceptable to and would be violently resisted by its majority Albanian population. Hence Kosovo’s limited independence would be the least bad among all available alternatives. The acute political problem was only formally resolved in February 2008 by allowing the proclamation of Kosovo’s declaration of independence. Although the action was carried out without an appropriate resolution of the UN Security Council, this high institution did not subsequently annul Kosovo’s independence, as Serbia demanded.

The Belgrade government responded to the declaration by an angry refusal to accept Kosovo’s independence and by closing Serbia’s borders to direct trade with Kosovo. It more than tolerated the mob violence against several foreign embassies during demonstrations in Belgrade, accompanied by looting and arson. Serbia also temporarily recalled its ambassadors from most states which recognized Kosovo as an
independent state. The latter action was a Serbian variation of the Hallstein doctrine which was used in the past by the Federal Republic of Germany to punish selectively some states which recognized and established diplomatic relations with the German Democratic Republic.

The almost two decades’ long dissolution of SFR Yugoslavia has been presumably completed in Kosovo. Like the neighboring Albania in 1912-1913 Kosovo was emancipated with the explicit support of Western powers and against the stiff opposition by Serbia, supported on both occasions by Russia. All other former Yugoslav republics but Serbia and one former autonomous province abandoned SFRY and FRY, some of them with huge losses of life and property. Serbia had resisted, with arms four out of these six separations. It gradually and grudgingly recognized the independence of and eventually established diplomatic relations with all other former parts of SFRY, except Kosovo. Serbia was the last and the only ex-Yugoslav republic which became sovereign (again) contrary to its will. Having lost four wars between 1991 and 1999, Serbia in February 2008 did not dare to use its armed force again.

**Kosovo’s case at the International Court of Justice (ICJ)**

Following Kosovo’s proclamation of independence the government of Serbia started a diplomatic action which looked as a shrewd maneuver. The immediate political objective was to mollify Serbian public opinion, to gain time and slow down the process of Kosovo’s international recognition. In early October 2008 the Serbian delegation succeeded in obtaining an UN General Assembly’s resolution demanding ICJ’s advisory opinion on the accordance of Kosovo’s ‘unilateral declaration of independence’ with international lawxx. The Serbian diplomacy however unwisely formulated the request. Namely, declarations of independence are facts which concern the internal constitutional and political orders of states. International law, on the other hand, is mute on this subject, neither permitting nor prohibiting such declarations. In addition, the cited declaration was not really an unilateral act by Kosovo as its substance, wording and very timing were coordinated beforehand with the five Western members of the Contact group, including three permanent members of the UN Security Council. By adopting this document Kosovo only declared the intention to gain full independence in the future, voluntarily accepted numerous limitations of its sovereignty and did not in fact become an independent state.

According to the submitted Serbian statementxxi the illegality of the Kosovo declaration resulted from:

1. its violation of the principle of the respect for the territorial integrity of states;
2. the inapplicability of the principle of self-determination to Kosovo; and
3. its violation of the UN Security Council Resolution 1244 (which presumably affirmed Serbia’s continuous sovereignty over Kosovo).

Concerning these assertions several observations are relevant.

Firstly, Serbia itself grossly violated the principle of territorial integrity of a neighboring state when in 1912 its armed forces attacked and occupied Kosovo. The Subleme Porte and its legal successor the Republic of Turkey never recognized the cession of Kosovo and no corresponding international treaty was concluded. Thus Serbia’s possession of Kosovo was in itself illegal. It was also illegitimate since Serbia
carried out the aggression against the will of its majority Albanian population. The Serbian military conquest was accompanied by grave violations of international humanitarian law and caused about 25,000 deaths among Albanian Kosovars and Turks. The atrocities against Kosovo’s civilian Muslim population were vividly described by Leon Trotsky (then a Russian correspondent in the Balkans) and were thoroughly documented by the Carnegie Endowment\textsuperscript{xiii}.

The Serbian government officially claimed then that its right to occupy Kosovo was justified (1) by the Serbs’ superior level of civilization compared with that of the Albanians’, (2) by the Serbian state’s historic possession of the province in the XIII-XV centuries and (3) by the numerical majority enjoyed then by the Serbs’ Slavic ancestors. The first argument has been used in the past by European powers to legitimize their colonial conquests. By modern standards however all three arguments have become, for already some time totally unacceptable as justification for an aggression against a neighboring state.

Moreover in 1912-1913 Kosovo was not even properly legally annexed to Serbia, according to the valid Serbian constitution of 1903 and later to the Kingdom of Serbs, Croats and Slovenes according to its ‘Vidovdan’ constitution. The third conquest (‘liberation’) of Kosovo in 1944 was again accompanied by armed violence against the Albanian Kosovars. The act of annexation to Yugoslavia was passed in April 1945 under the conditions of martial law, by an appointed ‘Kosmet Regional People’s Assembly’. The composition of the Assembly was utterly unrepresentative (consisting of 142 appointed members, among them with only 33 Albanian Kosovars). All appointed deputies were Communists and mostly Serbs, representing then only about 20% of Kosovo’s population. The act was adopted by acclamation, without a vote and without a single speech, let alone a debate. There was no preceding election or a referendum in Kosovo\textsuperscript{xxiii} This Stalinist parody of legality thus totally lacked democratic legitimacy.

Secondly, the Autonomous Province of Kosovo had been, according to the last SFRY constitution of 1974 an integral part of the Yugoslav federation. It was represented in its collective Presidency and other federal institutions on an equal footing and in many respects enjoyed equal rights with the six republics, including Serbia. The Badinter Arbitration Commission made a (very questionable) distinction between the six republics and two autonomous provinces as subjects to which the right of external self-determination could be applied. The Serbian statement addressed to ICJ used this distinction to make the point that Kosovo was not entitled to enjoying the right of external self-determination, including secession, due to its somewhat lower federal status in ex-Yugoslavia\textsuperscript{xxiv}. Its authors have conveniently forgotten that the FRY and Serbian governments previously, for many years denied this rights (also) to the ex-Yugoslav republics. The Serbian statement furthermore contended that there was ‘no evidence…that Kosovo ever constituted a self-determination unit recognized as a non-self-governing territory’ (p.588). This assertion stood in a glaring contradiction with well-known facts. For most of the XXth century and particularly in 1989 -1999 Kosovo had been a non-self governing territory, with its Provincial Assembly suspended, its Kosovar deputies locked out and many of them arrested. Kosovo’s subjugated majority population had been exposed, in some respects to worse discrimination and harsher treatment by the Serbian police and Serbian courts than those used by European powers in some of their colonies in Africa and Asia.
Thirdly, the real and gross violation of Serbia’s territorial integrity did not in fact occur in February 2008 but almost nine years earlier when in March 1999 NATO started its armed intervention. FRY filed then an application against the NATO members’ ‘illegal use of force’. The Court rejected the motion and declined to examine the legality of NATO’s ‘humanitarian-intervention’. Under the terms of the Kumanovo protocol signed with NATO in June 1999 FRY/Serbia removed from Kosovo its army, police and civilian administration. Thus in summer 1999 FRY/Serbia lost the three key elements of sovereignty: the control over Kosovo’s territory, its population and borders. The declaration of February 18, 2008 only ex-post facto legalized, by an internal act, Kosovo’s previous de facto detachment from Serbia.

Fourthly, reflecting the process of decolonialization modern international law has relativized the principle of territorial integrity of states. When in collision with this principle the right to self-determination of peoples has been accorded primacy. This evolution has been expressed in a number of international legal documents including the International Covenant on Civil and Political Rights and in the UN General Assembly Declaration on granting independence to colonial peoples. In its VIII principle the Helsinki Final Act also allowed for a peaceful change of state borders on the basis of democratically expressed self-determination. The Kosovo proclamation had been indeed preceded by several referenda and was carried out in a peaceful, orderly and civilized manner. The only acts of violence were committed then by the protesting Serbs, mostly in Serbia proper.

It took ICJ about a year and a half to decide on the UN General Assembly’s request. The ICJ opinion was expected to fall somewhere between the two opposite sets of arguments satisfying fully neither of the two sides. Having examined the statements submitted by 32 states the International Court of Justice delivered its non-binding advisory opinion on July 22, 2010xxv. The Court surprised many observers by its conclusion. The strong majority of ten to four votes by which the opinion was adopted became possible by ICJ’s previous procedural decision to limit its task to strict consideration of the submitted request. The Court intentionally avoided dealing with wider issues of external self-determination raised in Serbia’s submission, in the comments by Kosovo and by other states. Within this narrow legal framework ICJ straightforwardly determined that the declaration of Kosovo’s independence did not violate the norms of general international law, the UNSC Resolution 1244 and the Constitutional Framework enacted by the UN Interim Administration. ICJ intentionally avoided to pronounce on or imply the legality and legitimacy of all declarations of independence. Very importantly ICJ did not base its opinion on the right to self-determination and did not at all deal with the question of Kosovo’s international recognition. The Court has been criticized for having missed the opportunity to clarify a contentious issue in international law.xxvi The political effects of the ICJ decision were however immediately and abundantly clear - a painful defeat for Serbian diplomacy and a vindication of Kosovo’s position.

Kosovo, Serbia and the International Community

Since 1216 the Serbian rulers have conquered Kosovo five times and five times their troops and officials vacated the country under foreign military pressure (Ottoman,
Austro-Hungarian, Bulgarian, German, Italian, again Bulgarian and NATO). In his rise to power the Serbian leader Slobodan Milošević skillfully exploited the national obsession with Serbia’s historic glory, with possessing Kosovo and with the idea of having all ethnic Serbs living in one state. This platform had indeed for many years enjoyed very wide public support among all Serbs, also those living outside Serbia proper. Under Milošević’s rule Serbia however, due to a large extent to his policy in Kosovo, destroyed its greatest national achievement (most Serbs living in Yugoslavia) and suffered huge economic, human and intellectual losses. Serbian rule over entire Kosovo was terminated for good in July 1999. If Serbia were to regain Kosovo were possible in it would have, in several decades endangered of the Serbs’ majority within the in its pre-1999 borders and undermined its unitary political system.

According to the still valid UN Security Council Resolution 1244 Kosovo has been since summer 1999 placed under the authority of an UN interim administration (UNMIK). It is being guarded today by about six thousand US, German, French, Italian, Turkish, Hungarian, Slovenian et.al. soldiers in the NATO-led peace-keeping force KFOR. The international protectorate over Kosovo has been supervised and assisted by about 2500 UN and EU international civilian personal.

Since summer 1999 Kosovo has been in fact fully separate from and independent of Serbia. It has developed a separate parliamentary political system, free market economy and adopted a different currency (the Euro). The economic, social and political situation in Kosovo has since significantly improved. The progress has been largely due to international assistance (around 21% GNP) and to the Kosovars' remittances sent from abroad (roughly 15% of GNP). Statistically the gross national product in Kosovo has increased by more than six times to around € 2200 p.c. It is still however much lower than in the neighboring Balkans states. The international community has helped Kosovo greatly, spending on it about € 2 billion annually. Only a fraction of international funds however has flown directly into Kosovo’s economy as most of it have been spent on providing external and internal security and on maintaining international personnel. The effectiveness of international assistance could be considerably improved through streamlining the system, drawing clearer mandates of international actors and achieving their better coordination region-wide.

By July 2012 Kosovo has been recognized by over 85 states, including three permanent members of UN Security Council, more than two thirds of the Council of Europe’ membership and by all Kosovo’s immediate neighbors and all former Yugoslav republics, with the exceptions of Serbia and Bosnia and Herzegovina. Following the ICJ decision this number only slightly increased moving slowly toward a half of the UN membership. This evolution allowed for Kosovo’s membership in some international organizations, such as the International Monetary Fund and the World Bank. However as long as Serbia maintains its rejectionist stance and the Russian Federation (firmly) and the People’s Republic of China (more flexibly) support Serbia’s position Kosovo will not be able to gain a seat in the Organization of United Nations. It will be also barred for quite some time from joining the Organization for Security and Cooperation in Europe, Council of Europe etc.

Although Kosovo’s existence has been protected by international forces and its political survival secured this newcomer in the family of the European nations remains an
incomplete structure and an "unfinished state". xxvii The Pristina government lacks control over Kosovo’s entire territory, borders and population, has deficient economic viability, suffers from excessive external financial dependence and has been burdened by the region-wide problems of corruption, illegal trafficking and organized crime. A number of Kosovo’s burning political and social problems have remained unresolved. Poverty (about 50% of the population) and very high unemployment (about 45% generally and about 75% among the females and the young) xxviii, poor governance, malfunctioning rule of law and the obstacles to free travel pose daunting problems to Kosovo’s majority population. The “loss” of Kosovo caused also a painful psychological, political and existential trauma to its Serbian minority and continues to produce difficult problems to many Serbian and Roma refugees in Serbia proper.

For Serbia Kosovo represents today a problem of psychological and political readjustment, a financial “black hole” and a considerable source of illegal smuggling in many goods (including fuel) and of organized crime dealing mostly with drugs. Belgrade’s obstructionist policy has done a disservice to Serbia’s real economic and political interests, to the Serbian minority in Kosovo and to the Albanian minority in Serbia. It is in the Serbian people’s and the Serbian minority’s in Kosovo objective interest to acknowledge and to come to terms with the irreversible reality. The UN General Assembly’s resolution of September 2010, sponsored jointly by Serbia and the 27 EU members paved the way to a dialogue between Belgrade and Pristina on practical matters, under the auspices of the European Union. xxx While introducing the resolution’s compromise text the Serbian Foreign Minister Vuk Jeremić used, primarily for internal political consumption, the familiar sermon: “The Republic of Serbia does not and shall not recognize the unilateral declaration of independence of Kosovo”.

The present Serbian government’s real objective however seems to be not to regain its sovereignty, even if only formal, over entire Kosovo, but to redraw the present border between the two states. This change would allow to incorporate into Serbia three Northern municipalities (Leposavic, Zubin Potok and Zvečan) and of the town Kosovska Mitrovica with around 70,000, mostly Serbian inhabitants. The idea of a territorial and population exchange between Serbia and Albanian Kosovars has been advocated in the past by a number of prominent Serbs. In 2011 Serbia’s President B. Tadić and Vice Prime Minister I. Dačić added two ideas proposing (a) a division of Kosovo between Serbia and Albania bypassing the Kosovo government and (b) arranging for a condominium in Northern Kosovo similar to the Irish-British Good Friday agreement on Northern Ireland. xxx Concerning (a) no variation of territorial or population exchange is acceptable to Kosovo’s authorities. xxxi The Western powers also firmly stand by the principle of maintaining the internal borders between the former federal units of ex-Yugoslavia. The proposal (b) on a condominium in Northern Kosovo opens the question of a reciprocal condominium in the adjacent area in Southern Serbia inhabited almost exclusively by ethnic Albanians (who would certainly prefer living under Pristina rule). Secondly an agreement on condominium could only be negotiated and concluded between two states who recognize one another. The highest Serbian officials and leaders of Serbian parliamentary parties but one have wowed many times to never recognize Kosovo.

The opening of the Belgrade/Pristina talks under EU’s and USA’s active prodding, has been delayed by an extraordinary political crisis in Kosovo in autumn
Two Kosovo Presidents in succession resigned after the rulings of the Kosovo Constitutional Court. Following the first resignation, by President B. Fehmiu his LDK party’s ministers left the coalition government which then lost a majority in Kosovo’s parliament and resigned. At the ensuing extraordinary election the outgoing Prime Minister Hashim Thaci’s Democratic Party of Kosovo (PDK) came out victorious with about 33 percent of the votes while LDK took the second place. At this junction Hashim Thaci himself became a target of strong political pressure. The Council of Europe’s Swiss rapporteur Dick Marty published on December 12, 2010 a draft report on alleged criminal activities by members of the “Kosovo Liberation Army” (KLA) during and immediately following NATO’s intervention in 1999. The report directly accused Hashim Thaci of being a “criminal boss” engaged in assassinations, illegal detention, trafficking in narcotics and human organs etc. The report also accused the Republic of Albania’s government of harboring criminals, allowing on its territory illegal prisons, trafficking and even murders. The Parliamentary Assembly of the Council of Europe adopted Dick Marty’s report in January 2011, without the presence of Kosovo’s parliamentarians. The Assembly decided to call for a thorough international investigation of the alleged crimes. Hashim Thaci, PDK and other Kosovar parties rejected these accusations as a baseless anti-Albanian slander and as pro-Serbian propaganda. The government of Albania also flatly rejected allegation in the report. The EU mission in Kosovo (EULEX) expressed its willingness to carry out the proposed investigation and asked Dick Marty to produce proves for his accusations (which are totally absent in the report).

The Belgrade-Prishtina talks at the level of political directors and initially only on non-political and technical matters have begun in March 2011. The two sides entered them from very different positions and with conflicting expectations. Limited improvement in the circulation of Kosovars in and through Serbia has been however agreed upon. The overcoming of obstacles on the thorny road of reconciliation and accommodation between the two states has been eased mainly by Serbia’s desire to eventually join the European Union. In 2012 Serbia obtained the status of a candidate country but no date of opening the negotiations has been set so far.

At least de facto normalized coexistence of Serbia and Kosovo, even without Kosovo’s formal recognition by Serbia would have positive effects on the political climate in the region and also internally in the neighboring Macedonia, Bosnia and Herzegovina and in Montenegro. By its reasonable and constructive behavior the Republic of Serbia would facilitate its progress towards membership in the European Union and tangibly contribute to the stability, security and prosperity in the Western Balkans. There is a constructive proposal according to which Serbia and Kosovo would regulate their bilateral relations similarly as used to be done in the past between the Federal Republic of Germany and the German Democratic Republic. The sooner the normalization between Serbia and Kosovo happens the better it would be for the entire region and for Europe.

Since 1998-1999 the Kosovo issue has split the international community, cutting across the former East-West divide. It has posed a serious challenge to NATO’s inner political cohesion and badly worsened the Alliance’s relations with the Russian Federation. The Alliance was able then to soften the differences among its members and to reach a consensus concerning the pending military action against FRY and the
KFOR’s subsequent deployment since 1999. Eight years after the establishment of international protectorate the problem of Kosovo has again divided the EU and NATO members. In 2008 twenty-two EU and NATO Member States recognized Kosovo’s independence. A minority, notably Greece, Cyprus, Spain, Slovakia and Romania, have however followed, mostly for their own political reasons, Serbia’s rejectionist position. In the cases of recognizing independence of Kosovo, Abkhazia and Southern Ossetia most EU and NATO member states applied double standards when they honored the right to self-determination in one case and disregarded in the others.

Conclusions

All secessions on the territories of SRF Yugoslavia and USSR between 1991 and 2008, including that of Kosovo, were collateral byproducts of the wave of liberal democratization which swept Eastern Europe since the late 1980s. The dismantling of the communist regimes in states members of the Warsaw pact and the liberal-democratic transformation in the region, could only happen when the Soviet communist grip greatly weakened the economy of the Superpower could not any more support the Soviet leadership’s global ambitions, military competition with the opposite superpower USA and the maintenance of Moscow’s costly control over most of Eastern Europe. This geopolitical change, which affected also the Balkans, had accelerated the demise of the authoritarian communist regime in SFR Yugoslavia and in 17 years resulted in Yugoslavia’s disintegration into seven states.

The basic tools of colonialism as practiced during several centuries by European powers on other continents had been initially developed and applied in Europe. These included military conquests transferring new settlers to areas without or with only spare indigenous population, partially displacing the indigenous population, subjugating and often enforcing religious conversion of the remaining indigenous population, introducing loyal settlers from the metropolis or elsewhere, imposing direct rule from the metropolis, gradually assimilating the indigenous population, creating new local elites etc. Most of these methods of colonization were used from XV. century e. g. in Eastern Prussia, following the “Reconquista” in Spain, Portugal and on Sicily, in the Balkans, Southern and Eastern Russia, in Northern Caucasus etc. They were practiced also by Serbia (and Montenegro) in the course of their rapid territorial expansion from 1878 on. Moreover, the Yugo-Serbian authorities themselves used the term “colonist” to the out-of-area Slavs who were brought to and settled by them in Kosovo on lands expropriated from the Albanian Kosovars and Turkish landowners. Hence it is appropriate to apply the concept of colonialism and decolonization to the cases of Ireland, Iceland, Malta, Cyprus and also Kosovo. The efforts by the Yugo-Serbian authorities to recolonize Kosovo had been facilitated by the presence of the older indigenous Serbian minority. This circumstance makes Kosovo somewhat different from other cases of European colonization. These efforts by the Yugo-Serbian authorities did not however suffice to culturally and politically absorb Kosovo into Serbia proper.

Having analyzed the history of European colonization on other continents D. Abernethy came to the conclusion that colonialism did not pay off.xxxiii The Kosovo experience in the XXth century confirms this thesis. Today, a hundred years since the conquest of 1912 it is clear that the military adventure in Northern Albania and Kosovo
did not pay off to Serbia. Without the Kosovo burden Serbia would be today, no doubt, a more developed, prosperous and stronger country. However D. Abernethy’s thesis does not hold in some of other cases.

Although the Albanian Kosovars (supported by the Kosovo Turks, Boshniaks and several other smaller ethnic groups) achieved, with the West’s direct support, their historic goal of getting rid of Belgrade’s rule Kosovo remains a controversial regional and wider international problem. The young and very weak state will for many years require attention and external assistance in order to assure that the international community’s considerable pacifying efforts in the Western Balkans since 1992 will have contributed to the cause of free, democratic and prosperous Europe to which all Balkan countries, including Kosovo and Serbia rightfully belong.

Taking into account the relevant European experience since 1970s it could be concluded that a secession is more likely to succeed when the minority population is relatively numerous, spacially concentrated and culturally and religiously substantially different from the majority nation and hence cannot be easily culturally and politically absorbed. If actively opposed by the central government secessions in all outstanding cases in Europe (Northern Cyprus, Transdnistria, Abhazia, Souther Ossetia, Nagorno-Karabah and Kosovo) could not be carried out successfully without an overt or covert external military intervention by a militarily stronger state(s). The case of Chechnia in the Russian Federation also confirms this proposition. There have been, of course, considerable differences among the above-mentioned cases. Kosovo had prior to the secession defined borders and in the past the status of enhanced autonomy. In this respects it differed from Northern Cyprus and Transdnistria. Unlike in Northern Cyprus there have been in Kosovo no (involuntary) exchange of population, and unlike in Abhazia, Southern Ossetia and Nagorno-Karabah no forced expulsion and almost complete ethnic cleansing of the majority (Georgean and Azeri) population. Kosovo is the only case where (1) the central government tried to prevent a secession by expelling in large numbers the (mostly Muslim) minority population and (2) an armed intervention by an international organization resulted in de facto separation from the larger state. In the group of secessionist states Kosovo remains the only international protectorate, legally under a UN SC mandate. In all cases a high degree of social cohesion and of public support enjoyed by the secessionist political and military leadership among the minority population was very essential for a successful separation from a larger state. The record of successful secessions in Europe shows that the political support of the Western powers is indispensable but insufficient for gaining universal diplomatic recognition. The survival of a secessionist state depends primarily on external protection, overt or covert political and economic support and not on its own economic viability.

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Endnotes:

\[i\] On the territory of the former SFR of Yugoslavia in the 1990s two secessionist parastates (Republic of Serbian Kraina in Croatia and Republic of Herzeg-Bosna in Bosnia & Herzegovina) disappeared and one (Republika Srpska) survived but as a federal “entity” in Bosnia & Herzegovina and not as an independent state.


\[ix\] Sur, S. “*Relations Internationales*”. (Montchrestien, Paris, 2000), pp. 71-76


\[xii\] JNA (Yugoslav People's Army)- the federal armed forces in the second Yugoslavia, which disintegrated in 1991-92. In 1992 JNA's remnants were legally reorganized into the Army of Yugoslavia (VJ) and the armies of the Serbian secessionist parastates in Bosnia and Hercegovina and Croatia.

\[xiii\] Judgement Summary, International Criminal Court for the former Yugoslavia. (The Hague, February 23, 2011), pp.2-4


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The chief Kosovo negotiator Edita Tahiri stated recently: »Ideas about possible division of Kosovo… will be never part of… negotiations… These ideas belong to Serbia’s old hegemonistic policy«, NIN. (Belgrade, June 2, 2011), p.33.
