The Legal and Political Foundations of Kosovo's Independence

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THE LEGAL AND POLITICAL FOUNDATIONS OF KOSOVO’S INDEPENDENCE

MENSUR DEVÄ

MAY 2011

MASTER THESIS

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ADVISOR: DR. JEAN KRASNO
DEDICATION

I dedicate this thesis to my wife, Rejhan, who did a role of a mother and a father for our children, as I was writing this thesis, and to my two kids Bena and Venis, who were always thoughtful and kind to me for the time that I did my researches and my thesis.
ACKNOWLEDGMENT

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My deepest gratitude goes to my family for their unconditional love and support throughout my life. I am indebted to my parents, my father, Musa Deva, who although is no longer with us, I am sure he shares our joy and happiness in the haven.

New York, Mensur Deva

May, 2011
A B S T R A C T

The case of Kosovo’s independence raised concern regarding setting a precedence for other pro self-determination movements in the world. The critical question is if the Kosovo case actually sets a precedent for these movements or if it is a unique case due to its sui generis situation. This paper is an attempt to analyze the legality and the legitimate right of Kosovo to become an independent state. The study examines the phenomenon of the creation of new states in the world, looking at historical events such as decolonization and the dissolution of communist countries in Eastern Europe. In addition, I have included facts describing the continuous acts of genocide perpetrated by Serbs over the years and the ethnic cleansing and expulsion of Albanian populations through the centuries. Equally important is the analysis of Kosovo’s status within the 1974 Constitution and its abolition, which in one way started the dissolution of the SFRY. This paper concludes that Kosovo has a historical and legal right to be independent due to its uniqueness in suffering a long history of genocide, ethnic cleansing, the dissolution of the former Yugoslavia, the extended period of the United Nations administration, and the United Nations negotiations toward independence with international support.
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INTRODUCTION

It is for people to determine the destiny of the territory and not the territory the destiny of the people.

Judge Hardy Dillard, October 16, 1975, ICJ, Western Sahara’s case

After Kosovo declared its independence on February 17, 2008, the debate surrounding the legal and political foundations for establishing sovereignty has become a hot topic among international law scholars and international lawyers. This is the second time that Kosovo is putting international lawyers in the quandary about this complicated and unique case. Initially, it happened when member states of NATO decided to carry out humanitarian intervention by trying to end genocide in this country. At that time many international lawyers were debating between prohibitions on the use of force and respect of state sovereignty of the former Federal Republic of Yugoslavia (Federation of Serbia and Montenegro), and the imperative to prevent a humanitarian catastrophe due to a massive human right violations and genocide. Therefore, this conflict at that time qualified as a hard case under international law that stimulated the development of new legal rules.¹

Almost a year after Kosovo’s declaration of independence, on December 1, 2009 Kosovo once again grabbed headlines after the public hearings at the International Court of Justice [hereinafter the ICJ] in The Hague. The ICJ was asked to provide an advisory opinion by the UN general assembly on *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (Request for*

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Many countries contributed by writing statements and comments to the ICJ regarding this case, in addition to participating with oral statements in front of ICJ judges. Finally, on July 22, 2010, the ICJ found that it has jurisdiction to give the advisory opinion requested by General Assembly of the United Nations and decided to act in accordance with that request, by a nine to five majority. Furthermore, the ICJ voted by a ten to four majority as follows “[The ICJ] is of the opinion that the declaration of independence of Kosovo adopted on February 17, 2008, did not violate international law. The Republic of Serbia, being incapable of using the military, paramilitary, and police forces that it previously used against Kosovo’s attempts at independence, turned to the UN with hopes that through the UN and the ICJ it could prevent and make Kosovo’s case for independence illegal.

As a state, Serbia had two options to submit a case to the ICJ. The first option was a “contentious case” that involves disputes between two state entities and is regulated by Article 34 of the Statute of the ICJ. The reason that the Republic of Serbia avoided this alternative is that for states to be eligible parties in ICJ contentious case proceedings, these states must consent to the jurisdiction of the ICJ. The Republic of Serbia was also deterred by the fact that ICJ recognition of jurisdiction over Kosovo would automatically legalize Kosovo’s sovereignty. That is primarily the reason that the Republic of Serbia wished for a second option, which was to go through the General Assembly or other organs of the United Nations to initiate the procedure for an advisory opinion. Obviously, the Republic of Serbia was not pleased with this ICJ verdict,

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therefore it continued toward the UN GA for the last time with the new resolution although this
time with Serbian and EU sponsorship.\(^5\)

The UN welcomed the readiness of the EU to assist a process of dialogue
between the parties; the process of dialogue in itself would be a factor for peace,
security and stability in the region, and that dialogue would be to promote
cooperation, achieve progress on the path to the European Union and improve the
lives of the people.\(^6\)

This paper will analyze the legal and political foundations of Kosovo’s declaration of
independence, and thus examine a number of aspects that are linked to my topic and related to
international relations. My thesis will provoke many questions such as; what is the problem with
the legality of the declaration of independence, why is it so complicated for some states to
understand or to accept Kosovo’s independence, and why is Kosovo’s case \textit{sui generis}\(^7\)? To
tackle these questions, I will provide a literature review to search for arguments that will address
my thesis by examining current sources from the ICJ, International Law literature, International
Relations literature, the UN Charter, and other important documents and conventions. In
addition, I will further the study by finding similar cases that are comparable to Kosovo’s case.

I will argue that the Kosovo’s case is unique due to many factors such as an act of
genocide, the presence and administration by UNMIK\(^8\) since 1999, and the UN-led negotiations
process toward final status through UNOSEK\(^9\). This paper will also analyze the ICJ decision
about the Kosovo case and the UN GA consensus resolution GA/10980 where the GA

\(^5\) GA/10980, Sixty-fourth General Assembly, Plenary 120 Meeting (PM), September 9, 2010.
\(^7\) \textit{Sui generis}-[lat.] of its own kind, unique, [http://oxforddictionaries.com/view/entry/m_en_us1295563#m_en_us1295563](http://oxforddictionaries.com/view/entry/m_en_us1295563#m_en_us1295563)
\(^8\) \textit{UNMIK}- is United Nations Interim Administration Mission in Kosovo.
\(^9\) \textit{UNOSEK}- is United Nations Office of the Special Envoy for Kosovo,
acknowledges the world court opinion on Kosovo and welcomes EU readiness to facilitate the process of dialogue.  

With that said, this thesis will attempt to persuade those states who are skeptical about Kosovo’s case. By skeptical I mean all those states that are not convinced of Kosovo’s right to be an independent state. This thesis will combine two methods of research. In the historical part, there will be quantitative studies of demographic and economic figures from the former Yugoslavia and for the other chapters, there will be qualitative studies used, relying on descriptive or case information and analysis. Consequently, following chapters will discuss Kosovo’s case and prove legality of the declaration of independence by not undermining the political and factual situation.

This thesis contends that Kosovo’s declaration of independence has a historical, legal and political foundation, and it is incontrovertible. Kosovo had its various forms of independence during history and the Kosovo people expressed their will and the right to self-determination many times throughout history. Hence, as Kumbaro states:

The Kosovo Albanians as a group are entitled to the right to self-determination for the reason that they traditionally lived and continue to do so in a distinct territory with clearly defined borders. They have persistently cultivated and preserved their own ethnic identity through the development of their language, customs and traditions, and by practicing their religion, in defiance of the systematic repression consistently exerted by the Serbian authorities.

This is supported by a group of rights which relied upon the principle of equal rights and self-determination interpreted by: the Geneva Declaration on Friendly Relations (1970), the

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10 GA/10980, September, 2010.
Helsinki Conference on Security and Cooperation in Europe or Helsinki Final Act (1975), the
International Covenant on Civil and Political Rights (1976), the Montevideo Convention on the
Rights and Duties of States (1934), and the Vienna Declaration and Programme of Action
(1993). Therefore, Kosovo’s case of declaration of independence will be elaborated throughout
the following chapters in this paper in order to ascertain its legal and political foundation to
prove, as the only feasible verdict that can bring justice for Kosovo Albanians and peace in the
region.

The first chapter will broadly discuss the creation of new states in the world as an
ongoing process throughout history and into the future. To illustrate this chapter more
adequately, I will use some cases that contributed to the creation of new states such as through
decolonization, dissolution of former Union of Soviet Socialist Republics (USSR), former
Yugoslavia, and the breakup of Czechoslovakia; as well as some contra cases where states have
unified to create a new state.

The following chapter will then contain historical facts that prove Kosovo never belonged
to Serbia, except when it was occupied by force. It will point out injustices and decisions made
by great powers that were disadvantageous for the Albanian population such as; Serbian
annexations of Albanian populated territories before and after the Berlin Congress (1878), and
Serbian national programs for \textit{en masse} expulsion of non-Serbian populations, particularly
Albanians, drafted by Ilija Garasanin in 1844 called \textit{Nacetranije} (Outline) who was the foreign
minister of Serbia for several terms until 1867. Academic Vasa Cubrilovic wrote “Expulsion of
Albanians” memorandum in 1937” that was a blueprint for ethnic cleansing, “Minority Problems
in New Yugoslavia” also memorandum in 1944. Another academic Ivo Andric wrote “Draft on
Albania” in 1939 as one more nationalistic draft against Albania and Albanians. Moreover,
Serbia circulated a *Blue Book* as a reaction to the 1974 Constitution followed by a more sophisticated plan carried out by the Serbian Academy of Arts and Sciences (1986) known as *Memorandum SANU*, the last of which was drafted and executed based on the Greater Serbian project by the regime of Slobodan Milosevic in 1999 called ‘shoe horse’ operation.

Finally, the third chapter contains some facts regarding Kosovo’s status within the 1974 Yugoslav and Kosovo constitution. This illustrates important articles and explanations of the constitution that clarifies the self-governing role that Kosovo had; these articles were crucial for Milosevic’s actions on the abolition of Kosovo’s constitution in 1989 and following events thereafter. This chapter also summarizes Kosovo’s case as a continuation of Yugoslav dissolution while including ICJ developments. Some scholars say that everything started and ended in Kosovo. In fact, it started in Serbia and continued there as a result of changes in the constitutional juridical status of Kosovo and Vojvodina that abolished their autonomy which was defined and guaranteed by the Constitution of former Yugoslavia of 1974. Then again, based on the current activities within the Republic of Serbia the story of Yugoslav dissolution is not yet completed. In fact, the Northern Province of Vojvodina who won greater self-governance recently and the southern region of Sandzak that is asking for autonomy will be a potential problem for this part of the world. An additional change that can occur with regards to this entire situation will be the modification of the current name of the process, from the dissolution of

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13 Blue Book-a top secret document on the malfunction of relations between Serbia in one side and Kosovo and Vojvodina on the other side. Circulated among Serbian communists and it showed future steps on abolishing autonomy of Kosovo and Vojvodina.


Yugoslavia to the dissolution of Serbia in the future. Similarly, Wilson quotes Higgins comments on this subject matter related to the former Yugoslavia “[t]here is, quite simply, no end to the disintegrative process that are encouraged,” or I would say provoked. It is evident that all former Yugoslavia cases are connected directly or indirectly with name of the Republic of Serbia.

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LITERATURE REVIEW

The international literature regarding Kosovo’s declaration of independence and the humanitarian intervention undertaken by NATO is quite controversial given that there are two groups with different points of view. There are geopolitical interests involved, as well as varying institutions, experts and scholars on this subject. However, there is another group that is more moderate and flexible who believes on more reasonable considerations toward an international law perspective. The most distinguished and most recent source of information concerning this subject matter was undertaken during the proceedings at the ICJ for Kosovo’s case, in which many experts of international law were involved as well as representatives of the Republic of Kosovo, the Republic of Serbia and other participating countries.

Unsurprisingly, there were states involved that were more concerned than others were about Kosovo’s or Serbia’s fate and the legality of the declaration of independence. The reason that led to such concern stemmed more from the problems within their own countries, such as minority and succession movements within their own borders. Fearing that Kosovo’s case would give precedent to their internal minority problems, causing secession and truncating their territory. Examples are Spain’s Basque and Catalonia regions, Romania with a Hungarian minority of 6.6 % (1,431,207) of total population\(^{18}\), Slovakia with a Hungarian minority of 9.7 % of the total population,\(^ {19}\) Cyprus and Greece relationship with north Turkish Cyprus, Russia’s problems with Chechnya and Russian solidarity with the Orthodox Serbs,\(^ {20}\) among others.

Equally important is the fact that Russian (along with China and India) have stated their belief in

the principle of territorial integrity yet Russia recognized the two secessionist regions of Georgia (South Ossetia and Abkhazia).\(^{21}\) (See Table 1.)

Although, Greece did not recognize Kosovo as a state it does however recognize Kosovo’s passports, which are released by the Kosovo government\(^{22}\); which could be called tacit recognition. Similarly, Shaw (2003) mentions this kind of recognition\(^{23}\) by referring to Article 7 of the Montevideo Convention on the Rights and Duties of States\(^{24}\) stating: “The recognition of a state may be express or tacit; the latter results from any act which implies the intention of recognizing the new state.” Shaw refers to this situation by comparing the Arab countries with regard to Israel and the UK in regards to North Vietnam.

Furthermore, Article 6 of this Montevideo Convention states that “Recognition is unconditional and irrevocable.” Since the declaration of independence, the Republic of Serbia requested those states that recognized Kosovo’s independence to withdraw their acknowledgment. In fact, as Shaw (2003) explains, recognition can be withdrawn in certain circumstances, however, if the state was \textit{de facto} recognized then it is easier to withdraw recognition, on the other hand, once the state is \textit{de jure} recognized then it is more difficult to withdraw the recognition, yet it is not impossible. Specifically this happened when the UK recognized the Italian occupation of Ethiopia \textit{de facto} in 1936 and then \textit{de jure} after two years, thus resulting in the withdrawal of recognition in 1940. Although, Shaw emphasizes that

\(^{21}\) Ibid, pp. 39-40.
\(^{24}\) Montevideo Convention on the Rights and Duties of States, Published December 26, 1933. This treaty was signed at the International Conference of American States in Montevideo, Uruguay on December 26, 1933. It entered into force on December 26, 1934. The treaty discusses the definition and rights of statehood.
withdrawal of recognition cannot be mistaken with the ending of diplomatic relations.\textsuperscript{25}

Meanwhile, the Serbian request for withdrawing Kosovo’s recognition seems to be ridiculous when the facts and figures regarding Kosovo’s recognition are shown in a list of countries that have signed documents thus proving their recognition. Therefore, the Republic of Serbia was rather trying to win time by creating confusion among those states that did not recognize Kosovo as a new state, then expecting the withdrawal of recognition from those states that did in fact recognize Kosovo. As a result, the attempt to gain time pressed the Republic of Serbia to bring this matter to ICJ.

Furthermore, Professor Malcolm Shaw also represented the Republic of Serbia at the ICJ on December 1, 2009, where he declared that the Republic of Serbia agrees that the principle of territorial integrity does not freeze the territorial configuration of a state at any given moment. Consensual change is always possible. In addition, he states that the relevant parties may agree to alter the territorial delineation of state.\textsuperscript{26}

Conversely, Professor Esat Stavileci in his recent comments regarding the ICJ opinion (July 23\textsuperscript{rd} 2010) points out that the principle of territorial integrity is valid only in relationships between two states and it is not applicable for ethnic groups that want to build their own state. Furthermore, Stavileci (2010) stresses another fact regarding territory, Kosovo is a territory that came out of a federation that has dissolved, and it has been under UN interim administration (UNMIK).\textsuperscript{27} Moreover, to support the matter of territorial integrity, Professor Koskenniemi (2010) at the ICJ also stated:

\textsuperscript{25} Shaw, 2003, pp. 388-390.
\textsuperscript{26} ICJ, CR 2009/24, Public Sitting, The Hague, December 1 2009, Verbatim Record, p. 65.
\textsuperscript{27} http://www.esat.stavileci.com/index.php?option=com_content&task=view&id=177&Itemid=1
[t]erritorial integrity only governs relations between and not inside states, its power is limited to that of general value of protecting existing States that must be weighed against countervailing consideration.\textsuperscript{28}

In addition to such thoughts, he notes self-determination as the most important countervailing consideration that has always implied the possibility of secession in cases when the parent State is not capable or is unwilling to give assurance of internal protection.\textsuperscript{29} Likewise, in the case of the Aaland Islands the Commission of Rapporteurs mentioned “the State lack either the will or the power to enact and apply just and effective guarantees.”\textsuperscript{30} Crawford (2006) describes this case as “territories that are so badly misgoverned” and as \textit{carence de souveraineté}.\textsuperscript{31} Likewise, the argument that the State is responsible for internal protection is raised by former UN Secretary-General Mr. Kofi Annan (1999) as well at the opening of the general debate of the General Assembly when he declared:

\begin{quote}
State sovereignty is being redefined by the forces of globalization and international cooperation. The state is now widely understood to be the servant of its people, not vice versa.\textsuperscript{32}
\end{quote}

Equally important, the ICJ (2010/25) considers “the scope of the principle of territorial integrity is confined to the sphere of relations between States.” This consideration is predetermined on the Final Act of the Helsinki Conference on Security and Co-operation in Europe of August 1, 1975 “[t]he participating States will respect the territorial integrity of each of the participating States” (Article IV Territorial integrity of States).\textsuperscript{33}

\textsuperscript{28} ICJ, CR 2009/30, Public Sitting, The Hague, December 8\textsuperscript{th} 2009, p. 63-64.
\textsuperscript{29} Ibid, p. 64.
\textsuperscript{30} Ibid, p. 61.
At the ICJ presentation, Professor Shaw (2010)\textsuperscript{34} fails to remember an important fact when he mentions consensual changes among two parties, in this case between Kosovo and Serbia. In the past, there were attempts to acquire a consensus such as the internationally sponsored Rambouillet Conference (held from February 6-23, 1999 and signed by Kosovar leaders on March 19, 1999) where Serbia refused to sign this Peace Accords.\textsuperscript{35} Another effort was made under the United Nations Office of the Special Envoy for the Future Status Process for Kosovo (UNOSEK) (2006-2007) led by former Finnish President Martti Ahtisari as a UNSG Special Envoy (SE) and Mr. Albert Rohan (Austria) as Deputy to the Special Envoy (DSE) for the future status process for Kosovo. UNOSEK followed after a previous Secretary-General appointee, Ambassador Kai Eide (May 2005) carried out a thorough review of Kosovo which instigated the UN Secretary-General to write a letter to the UN Security Council where he concluded that the time had come to move into the next phase of the political process in Kosovo.

Therefore, the Contact Group (CG), which included France, Germany, Italy, the Russian Federation, the United Kingdom, and the United States issued “Guiding Principles” for a settlement of the status of Kosovo as a support for SE in his efforts. These ten principles stated among other things, any settlement should ensure Kosovo’s multi-ethnicity, the protection of cultural and religious heritage, strengthen regional security and stability, and make certain that Kosovo can cooperate effectively with international organizations and international financial institutions. This group, also called the Troika, accentuated that any agreement needs to be acceptable by the people of Kosovo.\textsuperscript{36} In contrast with the CG principle regarding multi-ethnicity Professor Stavileci (2005) argues that even during the highest increase of the Slavic

\textsuperscript{34} ICJ, CR 2009/29, Public Sitting, The Hague, December 8\textsuperscript{th} 2009, p. 65.
\textsuperscript{35} Hasani, Enver., 2003, p. 245. (Mr. Hasani served as a legal adviser of Kosovar Albanian Delegationin Rambouillet.)
\textsuperscript{36} www.unosek.org/pressrelease/2005-10-07_-_Contact_Group_-_Ten_Guiding_principles_for_Ahtisari_-_eng.doc
population in Albanian territories between the two World Wars as compulsory colonization, their percentage could not reach more than 10% in total population.\textsuperscript{37}

Weller (2009)\textsuperscript{38} lays down more than a detailed illustration of the application of, as he calls it, the entire arsenal of diplomatic tools available. By these diplomatic tools he means: crisis management, good offices, negotiation and mediation through proximity talks and shuttle diplomacy, high-level conference diplomacy, action at the UN Security Council, and even the use of force in the twenty years of the Kosovo crisis that his book covers (1988-2008).

In relation to the ethnic population, in his book \textit{International Law} (2003) Professor Shaw refers to Gottman’s \textit{Significance} that “most nations indeed developed through a close relationship with the land they inhabited.”\textsuperscript{39} Malcolm (2003) brings forth the fact that Albanians were living in this land for centuries as a native population of Illyrian descendants. The first Slav invasion occurred during Justinian’s rule from 547 to 548, into the territory of Modern Kosovo and continuing Via Macedonia or Via Egnatia across central Albania.\textsuperscript{40} This was done in an effort to dislocate native populations and slavicize newcomers.

Professor Shaw elaborates on the recognition of Kosovo at the ICJ proceedings. He argues that the creation of new states is a combination of effectiveness and legality, and that recognition cannot legitimate an illegal act. Furthermore, he emphasizes UNMIK as a body that

\textsuperscript{37} Stavileci, 2005. p. 488.
\textsuperscript{39} Shaw, 2003, p. 410.
represents Kosovo’s territory in the external relations and to international organizations as
necessitated by the required criteria of statehood.\textsuperscript{41}

If Professor Shaw believes that recognition is not so important for the creation of new
states, then the question arises based on Crawford’s (2006)\textsuperscript{42} writings: why did the UN General
Assembly immediately condemned Southern Rhodesia’s Unilateral Declaration of
Independence?\textsuperscript{43} In addition, the UN Security Council called upon all states not to recognize this
illegal racist minority regime and refrain from rendering any assistance to this illegal regime.\textsuperscript{44}
Equally important, the ICJ, in detail explains that some states who participated in Kosovo’s case
called upon the UN Security Council to pass resolutions that condemned a number of previous
declarations of independence regarding other states. Resolutions that were mentioned were the
UN Security Council resolution 216 and 217 (both from 1965) regarding Southern Rhodesia, the
UN Security Council resolution 541 (1983) regarding northern Cyprus, and the UN Security
Council resolution 787 (1992) regarding Republika Srpska. Moreover, the Court explains that the
UN Security Council was taking into account the existing circumstances at the time that those
declarations of independence were made, and that any illegality of these declarations of
independence specified above by the UN Security Council is not embedded in the unilateral
character of these declarations as such, but it is based in connection with the risk of use and use
of force itself or other related violations of general international law norms; especially those of
peremptory character (\textit{jus cogens}). Obviously, the UN Security Council never positioned itself
against Kosovo’s declaration of independence. Vidmar (2009) states that in Kosovo’s case “a

\textsuperscript{41} ICJ, CR 2009/24, December 1, 2009, Public Sitting, The Hague, p. 73 and 75.
\textsuperscript{42} Crawford, 2006, p. 129.
\textsuperscript{43} GA resolution 2024 (XX), November 11, 1965 (107-2:1 (Fr)). 1675\textsuperscript{th} Plenary meeting. Two States did not participate.
\textsuperscript{44} SC resolution 216 (1965) November 12, 1965 (10-0:1 (Fr)), paragraph 2.
specific SC resolution that would call for non-recognition is absent and cannot be expected” as a practice of collective non-recognition.\textsuperscript{45} Therefore, based on the special character of the resolutions specified above, the Court confirmed that no general prohibition against unilateral declarations of independence may be inferred from the practice of the Security Council.\textsuperscript{46}

At the time when Professor Shaw discussed the importance of recognition, Kosovo became recognized by 69 (currently 75) states around the world, 22 out of 27 European Union (EU) members, and had been admitted into both: the International Monetary Fund (IMF)\textsuperscript{47} and the World Bank (WB)\textsuperscript{48} with the support of more than a hundred states.

On the matter of UNMIK, as Kosovo’s representative in external relations and international organizations, Professor Shaw should be aware that Kosovo is a member of the IMF and WB (since June 29, 2009), and international sport organizations. Kosovo already has diplomatic relations with some of the countries that recognize it. In a six month period, Kosovo had ten Diplomatic Missions at the embassy level throughout the world: The United States of America, the United Kingdom, the Kingdom of Belgium, the Republic of France, the Federal Republic of Germany, the Republic of Italy, the Republic of Austria, the Confederation of Switzerland, the Republic of Albania, and the Republic of Turkey.\textsuperscript{49} Currently there are twenty Kosovo Diplomatic Missions abroad, twelve Consular Missions, and twenty-eight Foreign Missions in Kosovo as embassies and offices of foreign countries, as well as twenty different

\textsuperscript{46} http://www.icj-cij.org/docket/files/141/16012.pdf
\textsuperscript{47} http://www.imf.org/external/np/sec/pr/2009/pr09240.htm
\textsuperscript{49} http://www.rks-gov.net/en-US/Republika/Pages/MarredhenietMeJashte.aspx
international organizations, economic chambers, military, and other missions. What’s more, countries that formally recognize Kosovo make up 72.18% of the World’s total nominal GDP.

Kosovo is participating in the UN Security Council meetings together with UNMIK whenever the Security Council is conversing regarding Kosovo. In addition, at the sixty-fourth UN General Assembly Plenary Meeting Kosovo had a status of an observer based on credentials that Kosovo had received as a guests of Britain, Germany, France, Italy, and the United States.

Albeit, it is a mistake and an anomaly to attempt to compare Kosovo’s case to the Republika Srpska given their history of status and establishment. While Kosovo has a long history and status, the Republika Srpska was established through a policy of ethnic cleansing and possible genocide. This fact was brought up by the former Croatian President (2000-2010) Stjepan Mesic as well; he called the Republika Srpska a genocidal creation while Kosovo was part of the union that does not exist. He was the last president of the former SFRY (June 30, 1991- December 6, 1991) and he will be remembered by a quote that he made in the Croatian parliament on December 6, 1991. The day after having left the Yugoslav presidency, he declared, “My job is done—there is no more Yugoslavia.” Furthermore, during his visit to Kosovo on January 8, 2010 he stated that Kosovo’s constitutional legal status as an autonomous province in former Yugoslavia was so unique that it cannot be found anywhere else in the world, thus emphasizing and making it reasonable when it is said that Kosovo’s case is sui generis. Hasani (2003) describes the paradoxical situation when Kosovo was equated with the illegal Serb...

50 http://www.mfa-ks.net/?page=2
51 Data collected from CIA factbook and World Bank, 2007.
52 GA/10980, Sixty-fourth General Assembly, Plenary 120 Meeting (PM), September 9 2010, p. 2.
54 Bostel Television, 09/27/2010, Sarajevo, Bosnia and Herzegovina.
55 Graicevci, Bekim., An Old Friend, [Miku i vjetër], EXPRESS, #1745, year III, www.gazetaexpress.com
entities in Bosnia and Herzegovina and Croatia during the ‘90s.\textsuperscript{56} He describes an additional abnormality when another region called Republika Srpska Krajina in Croatia, which was destroyed by Croat forces in 1995, was recognized by Transdiensbir, which itself is part of the Russian Federation.\textsuperscript{57} Hasani (2003) points out the injustice that was made by awarding Republika Srpska and punishing Kosovo with the continuation of the project of Greater Serbia (See Map 7.) by being part of FRY (Union of Serbia and Montenegro) until 1999, when NATO’s military action halted ethnic cleansing.\textsuperscript{58} Hasani (2005) once more highlights the position of the Republika Srpska and Kosovo by comparing their path to creation and existence thus stating:

“Republika Srpska” was the beneficiary of a policy of ethnic cleansing and genocide against an entire nation, while Kosovo possessed a clear territorial base and an ethnically dominant population despite being the victim of the Serbian policy of ethnic cleansing.\textsuperscript{59}

In the case of the Republika Srpska, all three former top leaders of Republika Srpska (Biljana Plavsic, Radovan Karadjic, and Ratko Mladic) are characterized as war criminals indicted by International Criminal Tribunal for the Former Yugoslavia (ICTY). In the same way the ICTY is prosecuting war criminals for genocide and ethnic cleansing in Kosovo as well. It was the same government headed by Slobodan Milosevic that led the genocide and ethnic cleansing in the territories of Croatia, Bosnia and Herzegovina, and Kosovo. However, it was not only Milosevic’s government that carried out all these atrocities against non-Serb populations within territories of the above mentioned states that Serb nationalist consider as a part of “Greater Serbia.” (See Map 7.)

\textsuperscript{56} Hasani, 2003, p. 281
\textsuperscript{57} Ibid, p. 227.
\textsuperscript{58} Ibid, p. 234.
Vishesella (2004), presents in his book detailed information and statistics collected within an organization that gathers Albanians to ancestors used to live in the former Albanian territory which now belongs to Serbia, called the Association of Kosovo Muhaxhers [Shoqata e Muhaxhereve te Kosoves]. This data contains information about the Serbian genocide from 1878-1912 in the territory of Sandzak of Nish. Based on some Turkish statistics during these years there were 714 villages populated with Albanians that were conquered by Serbian forces who confiscated 48,000 houses and the occupants’ wealth. All these Serbian crimes were “legalized” by the Berlin Congress (1878). These facts were supported by some English, Serb, and Turkish documents that also emphasized that during that period of time (1878-1912) 350,000 Albanians were expelled from their territories. Vishesella highlights other information based on the Serbian newspaper “Samouprava” (1892-1894) which states that there were 24,000 Albanians massacred, mostly women, children, and elderly only in the Toplice region. During that time Serbia was trying hard to expand its territories by applying enormous military force against non-Serb civilians, forcing out non-Serb populations from these territories, governing by force and colonizing these same territories with Serb populations. This was done with assistance from the Russian alliance that, among other actions helped “legalize” these territories together with other Great Powers. Crawford (2006) highlights four basic elements for the classical criteria for statehood: *ex factis jus oritur* and those that are mentioned in Article I of the Montevideo Convention on the rights and Duties of States. There are four qualifications for the State as a subject of international law to possess: a) a permanent population; b) a defined territory; c) a

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60 *Kosovo Muhaxher*- (Muhacir-Turkish name for refugee or immigrant.) Kosovo Muhaxhers refers to Albanian population expelled from their territory that was once Sandzak of Nish (Sandzak- Turkish name for subdivision of the Ottoman Empire; one of the administrative districts into which vilayet is divided, for example there were four Albanian vilayets during the Ottoman rule: Kosovo, Shkoder, Manastir, and Janina vilayets). **Map number 2.**

government; and d) a capacity to enter into relations with other States. In other words, Serbia was making legal territorial expansion out of criminal invasions based on military supremacy and by exercising genocide and ethnic cleansing, taking advantage of the power vacuum that occurred as a result of the decline of Ottoman Empire. (See Map 1)

Therefore, the Serbian army and paramilitary are well known for the massacres they orchestrated in these territories, especially during the eighteenth, nineteenth and twentieth-centuries. Elsie (2001) brings a collection of documents that support this stand and Cohen (1996) gives examples of Serbian state terror against all non-Serbs. All these crimes were happening in Europe’s backyard and Europe was not doing anything to stop it. Similarly, Freundlich (1913) records: “A whole people is perishing on Calvary cross, and Europe remains silent!” It remained silent in the 1990s as well when the Badinter Commission (1991-1993) did not consider Kosovo’s recognition as an independent republic within the former Yugoslavia even though it had all characteristics of it. The Commission thus legitimized the status quo for Kosovo when the Republic of Serbia unilaterally abolished it autonomous status in 1989. In addition, the Assembly of Kosovo, a legitimate organ according to the 1974 Yugoslav constitution, on July 2, 1990, declared Kosovo as an equal and independent unit within the Yugoslav federation that still existed. Radan (2002) clarifies that this declaration was not one

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66 Badinter Commission—was a commission set up by the Council of Ministers of the European Economic Community on August 27, 1991 to provide the Conference on Yugoslavia with legal advice.
68 Hasani, 2003, p. 236 and 237.
of secession from Yugoslavia, but rather from the Republic of Serbia. Moreover, Rich (1993) explains the December 22, 1991 letter from the Prime Minister of the Republic of Kosovo to Lord Carrington. Kosovo’s PM in exile, Bujar Bukoshi informed Lord Carrington about the referendum held in Kosovo from September 26-30, 1991 with a 87% participation rate in which 99.87% voted in favor of independence. The Kosovo elected leaders met the entire obligations that were set out in the EC Guidelines on Recognition of New States in Eastern Europe and in the Soviet Union (December 16, 1991) but the Badinter Commission’s interpretation left Kosovo recognized only by Albania. Even if Kosovo were to be recognized at that time by most European countries, as it was in 2008 after it declared independence, it was unlikely that Serbia would let it go without a war. The attention of the international community to the problem at the time was postponed especially by Europe, since many states, then and now, considers Kosovo a European problem. This leads to another question, could Serbia handle another war in Kosovo, aside from the war in Croatia and Bosnia and Herzegovina? Apparently, after most of the former Yugoslavia’s armament had accumulated in the territory of Serbia, and the Republika Srpska Krajina during the war in Croatia, and the Republika Srpska during the war in Bosnia and Herzegovina, Serbia was able to cope with another battle against the barehanded Albanian population in Kosovo as long as the international community did not get involved. In the past, Serbia was not concerned about this but in the 1990s some states were fed up with Serbian atrocities in Croatia, Bosnia and Herzegovina, and Kosovo and utilized NATO’s humanitarian intervention. Did the NATO humanitarian intervention, followed by UN administration, help

70 Lord Carrington-Peter Alexander Rupert Carrington, a British politician. In 1991, he presided over diplomatic talks about the breakup of the Former Yugoslavia and attempted to pass a plan that would end the wars and result in each republic becoming an independent nation.
Kosovo toward independence? Yes, it did without a doubt, but Kosovo did pay a price as well. Finally, does Kosovo’s case send the wrong message for other secessionist movements around the world? Kumbaro (2001) considers:

The international community can and should reject unilateral secessionist demands in those cases where democratic mechanisms – such as the presence of an independent and effective judiciary and a representative government – are available to ethnic groups to preserve and develop their distinct identity, commensurate with international norms.72

Kumbaro (2001) brings to light facts that are unique characteristics of Kosovo such as the fact that Kosovo Albanians were subject to systematic Serbian discrimination, revoking all rights of Kosovo Albanians recognized by the 1974 SFRY Constitution. Furthermore, since 1989, Serbian authorities had denied the political, economic, social, and cultural development of Kosovo Albanians, actions that were accompanied by flagrant and massive human right violations that endangered their physical existence.73

Wilson (2009) brings up the risk that offering the right of secession to Kosovo might spur newly created states to secede.74 On the contrary, Kosovo Albanians within the Kosovo territory belonged to the state of Albania except when they were invaded by Serbs, and then Albanians had been considered as a minority after WWII, with a higher population than other republics within the federation. Kosovo Albanians’ rights were protected under the 1974 constitution of Yugoslavia, even though unfairly considered as a minority, with status of an Autonomous Province. However, minorities in the new state of Kosovo are protected by the Kosovo constitution, which includes extensive guarantees for their rights while stressing the values of equality and anti-discrimination, with both the Albanian and Serb languages as official

74 Wilson, 2009, p. 475.
languages, and Turkish, Bosnian, and Roma languages as official languages at the municipal level.\textsuperscript{75} Chapter III of this constitution includes Articles 57-62 that is about the rights of all communities and their members.\textsuperscript{76} This is a modern constitution that took the most democratic countries’ constitutions as models, and in regards to minorities it is the most advanced model in the region. To illustrate, Albanians who live in the Republic of Serbia do not have the same rights that Serbs have in the Republic of Kosovo. For example, for Kosovo’s 91% mostly Albanians citizens, there are 80% parliamentary seats reserved, while for rest of the citizens which include Serbs, Muslims or Bosniaks, Turks, Roma, etc. for a total of 9% of there population, there are 20% parliamentary seats reserved.

However, throughout history, Albanians in Kosovo were counted as either a different nation or some other new invented nation or handicapped on real numbers during official censuses. Mertus (1999) writes that some demographic data and early population counts collected by Serbian sources in the region known today as Kosovo were based on Catholic confession attendance. Data from 1838 based on the notes of Dr. Joseph Miller, a German traveler, shows population numbers of three districts: Peja, Gjakova, and Prizren (towns in Kosovo) as 114,000 Muslims (including Albanians) and 81,000 Christians (including Serbs but also Albanians who attended Catholic confession). An additional abnormality shows that the census of districts in 1905 shows a variety names for the population. For example: Orthodox Serbs, Catholic Serbs, Muslim Serbs from Bosnia (this is a non existing ethnicity, but probably referred Bosniaks), Protestant Serbs (data shows 0 houses and only one person), Turks, Jews, Albanians, Catholic Albanians, and then it comes the abnormality of “Albanized Muslim

\textsuperscript{75} \url{http://www.internationallegalpartnership.org/2009/07/minority-rights-in-kosovo.html}
\textsuperscript{76} \url{http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf}
Serbs.” Based on this kind of classification, there are 3 types of Albanians, albeit there is one Albanian nation that embraces 3 religions (Muslim, Catholic, and Orthodox), but there is absolutely no such entity as Albanized Muslim Serbs. Subsequently, Malcolm (1999) introduces another well-known fact, Yugoslav State Security action to “convert” Albanians from Kosovo and Macedonia by the end of the 1940s and beginning of the 1950s to Turks. For instance, in the 1948 census, the number of people registered as “Turks” was 1,315. Five years later in 1953, this number reached 34,583, and the total number of Turks in Yugoslavia jumped from 97,954 in 1948 into 259,535 in 1953. This number climbed because of pressure from Belgrade authorities to deport Yugoslav “Turks” to Turkey after a “Gentleman's” Agreement between Yugoslavia and Turkey. (See Table 2.)

Therefore, the idea of Greater Serbia was to colonize Kosovo with Serbian and Montenegrin populations while the expulsion of mostly Albanian and other non-Serb populations was occurring. Meanwhile, Serbian propaganda was trumpeting in its defense that Albanians were a nation that wanted to create a Greater Albania. Gvosdev (2010) discussed this topic as well who still believes the Serbian propaganda of uniting Albania, Kosovo, and parts of Macedonia. Similarly, Buchanan (2000) thought that by helping Kosovo with NATO and humanitarian intervention, the United States is facilitating the process of carving out a Greater

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80 Gentleman’s Agreement-Yugoslav-Turkish agreement (1953) to expatriate Albanians from Kosovo to Anadol in Turkey, and activate old Convention (1938) between these two states for the same above mentioned reason.
81 Pushkoli, Dr, Fehmi., March 1994, *Expatriation of Albanians to Turkey and Yugoslav-Turkish Conventions*, [Shpenjulje e shqiptareve ne Turqi dhe Mareveshjet jugosllave-turke], Fjala, Prishtina, Kosovo.
Albania. All these assumptions proved to be wrong. Kosovo continues to get recognition as a sovereign democratic state, while Albania joined NATO and it is continuing toward EU membership.

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THE CREATION OF NEW STATES IN THE WORLD

Many politicians of our time are in the habit of laying it down as a self-evident proposition that no people ought to be free till they are fit to use their freedom. The maxim is worthy of the fool in the old story who resolved not to go into the water until he had learnt to swim. If men are to wait for liberty till they become wise and good in slavery, they may indeed wait forever.

Thomas Babington Macaulay, a British poet, historian and Whig politician

The world has witnessed the creation of new states continuously. The Peace of Westphalia (1648), besides ending the Thirty Years War, has often been seen as the ancestor of modern nation-state sovereignty as well. The Peace of Westphalia led to the modern system of states because it established the existence of equality among territorial units. In short, the states were said to be sovereign. Therefore, the process of creation of new states is an ongoing process, based on history, and it is an unstoppable practice. In fact, the best illustration for this phenomenon is the expansion of UN member states over the years since the UN was established in the 1945 with 51 original member states. In June 2006, membership totaled 192 states. Based on statistics illustrated in Table 3, process of creation of new states is a continuing phenomenon. In the sixty year time period from when the UN was established until 2005, 140 new states were created and became members of the UN. There is an average of almost twelve states created in every five-year period, as it is described in Table 3, or in other words, two states per year. The biggest contribution in the process of creation of new states was decolonization, as it was one of

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the main causes for state creation particularly after the 1960s. Later the dissolution of states such as the USSR, Yugoslavia, and Czechoslovakia in the 1990s added to the number of new states.

Decolonization created the biggest number of new states, followed by the end of the Cold War that resulted in the extinction of the Soviet Union, which resulted in the formation of fifteen new states. Similarly, some new states were created as a result of the dissolution of a bigger state, as was the case of Yugoslavia. It went through a very painful and violent period, and after several wars in the 1990s, a total of five new states were created. More than a decade after the dissolution of SFRY, an additional state was formed within the territory of the former Yugoslavia, Kosovo. Kosovo declared independence in 2008, for a total, with Montenegro, of seven new states built out of the former SFRY. Another example is seen in Czechoslovakia, which ceased to exist on January 1, 1993 by dividing into two new states; the Czech Republic and the Republic of Slovakia. An additional case is Eritrea, which seceded from Ethiopia and was admitted into the UN in May 1993 after a plebiscite was held under UN patronage in April 1993, even though none of the UN resolutions related to Eritrea since 1952 referred to self-determination.

The creation of new states continues to this day. Recently, a referendum was passed by the southern territory of Sudan to separate from northern part of Sudan. Most likely, this will create Africa’s 54th state, and 193rd for the UN. The case of Sudan proves that state creation plays an ongoing role in global politics. Despite the fact that the decolonization period was over,

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85 UN SC resolution 828 (May 26, 1993) and UN GA resolution 47/230 (May 28, 1993).
and communist countries fell apart decades ago, there are still new states created, even in those parts of the world where this process was thought to be over.

New states were not created only by dissolution, unions have created them as well. Some unions existed only for a specific period of time before breaking up again. For example, the unions between England and Scotland from 1606 to 1707, Great Britain and Hanover from 1714 to 1837, and Denmark and Iceland from 1918 to 1944, Austro-Hungary from 1867 to 1918, also described as a real union, the Swedish-Norway union that ended in 1905, and the Polish-Lithuanian Commonwealth that existed from 1569 to 1791 and was the result of a marriage between the Grand Duke of Lithuania and the Polish Queen in 1386.\(^88\) Similarly, the United Arab Republic (UAR) formed in February 1958 by the fusion of Egypt and Syria but ceased to exist in September 1961, after Syria seceded from the union, even though Egypt continued to use the name for it until September 1971.\(^89\) There are also examples throughout the world of ongoing unifications. On May 22, 1990, North and South Yemen united and created the Republic of Yemen.\(^90\) And in 1992, Serbia and Montenegro unified but split again only a few years later. Germany is an example of reunification. After WWII, Germany was divided into the Federal Republic of Germany and the German Democratic Republic,\(^91\) or East Germany. In 1990,\(^92\) reunification occurred and the country once again become the Federal Republic of Germany. These are just some of the example of unions throughout history, which takes a variety of different models, such as a union of states, federations, confederations, and other forms of state establishment.

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\(^88\) Crawford, 2006, p. 482-483.
\(^90\) Shaw, 2003, p. 187.
\(^92\) Shaw, 2003, p. 870.
DECOLONIZATION AS A NEW STATE CREATOR

The process of decolonization can be seen through different points of view based on time, location, and performers in this process. Early examples are Spain and Portugal’s decolonization of Latin America and Britain and France’s of North America. Subsequently, decolonization occurred in the continents of Asia and Africa whose new states became important cases as the United Nations became institutionally involved in their process of decolonization. As European control over overseas territories and peoples ended, it ignited independence movements throughout the decolonized regions. This period of decolonization led to a substantial increase in the number of states.\(^93\) In fact, decolonization has been the most productive method of state creation. However, it is important to note that not all of the new states that emerged after 1945, which began the post WWII decolonization process, were formed as a result of self-determination or independence movements. On the contrary, the majority of the new states were merely a product of the sweeping decolonization process.\(^94\)

While decolonization can be considered as a mostly finished act, there are cases that if requirements of geographic remoteness were removed they would be prospects for decolonization, or neo-decolonization.\(^95\)

The new states that did not emerged from situations that are formally recognized as former colonies and are covered by Chapters XI and XII of the Charter, have been: Senegal (1960), Singapore (1965), Bangladesh (1971), three Baltic States; Latvia, Lithuania, and Estonia all in 1991, the eleven successor states of the former Soviet Union except Russia and the three

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\(^95\) Ibid, p. 12.
Baltic States, the five successor states of the former Yugoslavia; Slovenia, Croatia, Bosnia and Herzegovina, Macedonia, Montenegro (2006), and FYR (Serbia) (1991-2), the Czech Republic and Slovakia (1993), and Eritrea (1993).\textsuperscript{96} After decolonization ended, the process of creation of the new states has been achieved as a result of diminution or disappearance of existing states.\textsuperscript{97}

The UN GA resolution 1514 stated that, “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”\textsuperscript{98} The UN GA passed a complementary resolution the following day. Resolution 1541\textsuperscript{99} brought something that becomes identified as the \textit{salt water} test or \textit{salt water thesis} that specifies the colonial situation in Principle IV as a “territory geographically separate and is distinct ethnically and/or culturally from the country administering it.” This geographical territorial separation referred to the sea or ocean separating the two territories that are colonies or any subjugated entity and states that colonized another state.\textsuperscript{100} If that \textit{salt water} precondition would be excluded, than what would happened with cases that do not have a sea or ocean between them? After all, there is a connection between the UN Charter and GA Resolution 1514 because the Charter refers to self-determination “peoples,” and the Resolution 1514 declares that “all peoples” have the right to self-determination.

\begin{itemize}
\item \textsuperscript{97} Shaw, 2003, p. 178.
\item \textsuperscript{100} Gutman, Jesse., 2010, \textit{http://www.legalfrontiers.ca/2010/11/winds-of-change-or-hot-air-decolonization-and-the-salt-water-test/}
\end{itemize}
Thus, are the cases of Kosovo, South Sudan, Eritrea, and East Timor a continuation of late decolonization? In all these cases, the UN was involved either through monitoring referendums or establishing missions in order to govern in the transitional periods. To illustrate, the UN SC resolution 1272 established the UN administration in East Timor after conflict was ignited by East Timor’s rejection in the referendum to accept autonomy within Indonesia. During this period of almost three years, there was a shared sovereignty between the UN and East Timor. During this time, East Timor was able to build the basic institutions for self-governing. East Timor was recognized as an independent state and was admitted to the UN at midnight on May 20, 2002. Similarly, Kosovo was under a UN mission (UNMIK) since 1999, regulated by UNSC Resolution 1244\textsuperscript{101} that was based on previous resolutions: 1160, 1199, 1203, all in 1998, and 1239 in 1999. The purpose of this resolution was, among other things, to resolve the “grave humanitarian situation in Kosovo.” Resolution 1244 had a number of dubious legal issues, such as: first, referring to the FRY knowing that the UN SC Resolutions 757 and 777 did not accept the transfer of membership of the SFRY into the FRY, and that the SFRY has not existed since 1992, based on these resolutions, or since 1991 based on Badinter Commission. Second, 1244 mentions “Federal and Republic army” even though there were not two armies at the time, only what was referred to as the Yugoslav army and paramilitaries that were used to operate in wars in Bosnia and Croatia. These paramilitary units were connected to the secret police of the Serbian interior ministry and were operating as Crvene Beretke [Red Berets], Munja [Lightning], OPG (Operativna Grupa) [Operative Group], Frenkijevci [The Frenkies], Beli Orlovi [White Eagles], Arkanovi Tigrovi aka Arkanovci [Arkan’s Tigers]. Some members of these groups now fight as mercenaries or “dogs of war” for Colonel Gaddafi in

\textsuperscript{101}The UN SC Resolution 1244, 401\textsuperscript{th} meeting, June 10, 1999. \url{http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement}
Libya\textsuperscript{102} and other countries mostly working for African dictators. Third, the resolution 1244 mentions demilitarization KLA and “other armed Kosovo Albanian groups” even though Albanians only had KLA (Kosovo Liberation Army) as a military organized group.

Nevertheless, during the years under UNMIK Kosovo was not under international governance, on the contrary, it was under international administration. Based on international theory and practice, there is a distinct difference.\textsuperscript{103} The Resolution’s purpose was to preserve the sovereignty and territorial integrity of the SUSM, which included Kosovo. It also mentions the withdrawal of Serbian military, paramilitary, and police forces from Kosovo’s territory and the demilitarization of the KLA, and “Facilitating a political process designated to determine Kosovo’s future” and “In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under political settlement.”\textsuperscript{104} In other words, territorial integrity and sovereignty had been taken from Serbia by UNMIK. The role of UNMIK was to practice a custodian style mission, but as Hasani noted, UNMIK realized that it was not being effective in its mission and suggested that it should try to turn itself into a kind of “helping hand system,” similar with one in Bosnia and Herzegovina or into an “advise and help system,” which was later used in East Timor.\textsuperscript{105} Additionally UNMIK’s system of Regulations set a precedent for UN peacekeeping missions around the world. This system was mirrored during the case of East Timor with UN SC Resolution 1272\textsuperscript{106} establishing UNTET and later creating UNTAET Regulations, although there were differences from UNMIK. The main

\textsuperscript{102} http://www.guardian.co.uk/world/2011/mar/24/libyan-plane-tanks-destroyed-jets and http://www.alo.rs/vesti/35945/Srpski_psi_rata_cuvaju_Gadafija
\textsuperscript{103} Hasani, 2005, p. 327.
\textsuperscript{104} UN SC Resolution 1244 (9:a, b, e, and f) http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement
\textsuperscript{105} Hasani, 2005, p. 327.
differences were as follows: UNMIK did not revoke Serbian discriminatory laws as UNTAED did with Indonesian laws. The UNMIK Regulations had interventionist character by excluding any reference to any Kosovar bodies while in East Timor’s case, UNTAET Regulations Preamble noted “after consultations in the National Consultative Council.”¹⁰⁷ The UNTAED was established four months after UNMIK but it did establish independence for East Timor until 2002, when the country’s UN membership followed that same year. Conversely, Kosovo declared its own independence in 2008 but is still not a UN member, three years after its declaration of independence. The preamble of the UN SC Resolution 1272 regarding East Timor reaffirmed “respect for the sovereignty and territorial integrity of Indonesia.”¹⁰⁸ This was identically to the UN SC Resolution 1244 regarding Kosovo “reaffirming commitment to sovereignty and territorial integrity of the Federal Republic of Yugoslavia.” The illogical aspect of this is that FRY was not a member state of the UN at that time. Resolution 1244 conflicted with resolutions 757 and 777 regarding sovereignty and territorial integrity of FRY. It was incongruous to compare the status of FRY with Indonesia. Later, when the FRY disintegrated into two states, Serbia and Montenegro, the EU handled the transition process and sponsored the referendum for the secession from the Republic of Serbia, which was not considered the parent state in this case. The EU worked at postponing Montenegro’s independence because it sensed that could have a spreading effect (similar with domino effect) but by June 28, 2006, Montenegro was a UN member.¹⁰⁹ While no country challenged Montenegro’s independence, it was not recognized by about 70 states at the time of its membership¹¹⁰ (51 at the present). The states that did not recognize Montenegro are mostly states that would not recognize Kosovo as

well and those that are the states that belong to the Non-Aligned Movement. These states are nostalgically connected to the former SFRY, and the Republic of Serbia is still trying diplomatically to convince those states that it is the only valid successor of the former SFRY, and that all other SFRY former republics and Kosovo betrayed SFRY. However, these states should ask themselves why none of the former SFRY republics and Kosovo wanted to remain a part of the Republic of Serbia? One more question comes up, if Montenegrins that share many things with Serbian people such as the Slavic language, religion, and history, etc. did not want to stay in a union with Serbia, why would Kosovar Albanians remain with Serbia when they do not share these points in common? But on the contrary they experienced repression, genocide, expulsion, terror, and colonization under Serbian rule.

Thomas D. Grant argues for the extension of decolonization in his 1999 article *Extending Decolonization: How United Nations Might Have Addressed Kosovo*? What are the differences and similarities between the definition of a colony and a province? A colony is a body of people living in a new territory retaining ties with the parent state or country. A province is a country, region, or territory brought under the control of another government.\(^{111}\) Should granting the independence to peoples who live in both kinds of territories be the same? Or should the principles of decolonization be strict to the saltwater principle? Was Kosovo colonized by Serbia during its history, even though it was institutionally organized colonization? For example, in western Kosovo alone during the years, 1928-9 it was invested by colonization programs around 10 million dinars ($180,000 at that time)\(^{112}\), not to mention the 1990s during the war between FRY against Croatia and Bosnia and Herzegovina, settling their refugees in Kosovo.

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\(^{111}\) From Merriam Webster’s Dictionary.
Important questions arise from this, could the UN have better addressed the cases in the decolonization process and was the decolonization and recognition process perfect? Was the criterion for recognizing those states as strict as it appears to be now? To answer this question Gary Wilson\textsuperscript{113} (2009) quotes author John Dugard \textsuperscript{114}(1987) who makes the observation that:

\[\text{Increasingly the need for an entity to be endowed with an effective government and independence to qualify for statehood appear to have been less strictly insisted upon in the recognition process, particularly where the principle of self-determination arises. Referring to the decolonization process, he comments that although the viability of many of the new states to emerge from that process was arguably questionable, few questions were asked in respect of their ability to satisfy the criteria of statehood.}\]

Similarly, Hasani mentions the institution of the so-called premature recognition throughout the period of the decolonization process in Africa. This maneuver was taken as a measure to prevent the colonial states from maintaining control of their colonies.\textsuperscript{115}

**DISSOLUTION OF THE USSR, YUGOSLAVIA, AND CZECHOSLOVAKIA**

The common characteristics of the USSR, Yugoslavia, and Czechoslovakia were that they were communist countries whose national, religious, and democratic rights were suppressed by their regimes, while at the same time poisoned with communistic ideology. Another common element between the USSR and the Former Yugoslavia (SFRY) is that their constitutions allowed secession but it did not regulate how, and for that reason during the process of dissolution both former countries experienced difficulties. For instance, the first Basic Principle in the 1974 SFRY Constitution starts with formation: “the nations of Yugoslavia, proceeding

\textsuperscript{113} Wilson, 2009, pp. 455-481.
\textsuperscript{115} Hasani, 2003, p. 264.
from the right of every nation to self-determination, including right of secession…” except that this principle was obstructed by lack of or no mechanism stated in the Constitution to allow for secession. 116 To illustrate, the Badinter Commission that was set up to arbitrate and provide legal advices on behalf of “the European Peace Conference” (EPC), “the Conference on Yugoslavia” or “the Hague Conference,” apart from principles of international law, tried to validate the significance of the Badinter Borders Principle by relying on article 5 of the 1974 Constitution of the SFRY. Particularly, on the second and fourth paragraphs of the same article as it applied all the more readily to the Republics’ and stipulated that the Republics’ territories and boundaries could not be altered without their consent. Conversely, the Badinter Commission disregarded the provisions of paragraphs 1 and 3. By doing so, the Commission justified the separation of the SFRY and the change of its international borders even though was in breach of paragraphs 1 and 3 of article 5. 117

The Badinter Commission was blameworthy of selective quoting of article 5, which specifies:

(1) The territory of the [SFRY] is indivisible [jedinstvena] and consists of the territories of its socialist republics.
(2) A republic’s territory cannot be altered without the consent of that republic, and the territory of an autonomous province without the consent of that autonomous province.
(3) A border of the SFRY cannot be altered without the concurrence of all republics and autonomous provinces.
(4) A border between republics can only be altered on the basis of their agreement, and in the case of a border of an autonomous province on the basis of its concurrence.

Therefore, interpretations of the Badinter Commission in Opinion No. 3 does not provide any justification for the Badinter Borders Principle, neither the international law principles of

respect for the territorial status quo and uti possidetis or the provisions of article 5 of the 1974 Constitution of the SFRY.\textsuperscript{118} It can be concluded that Yugoslavia was unique and that no lessons can be learned from its tragedy, and the creation of new states within the former Yugoslav territory was no simple matter.\textsuperscript{119} This is owing to its constitution for the reason that this constitutional system contained a mixture of principles and overlapping rights and jurisdiction to accommodate the Yugoslav reality.\textsuperscript{120}

Article 72 of the Soviet Union Constitution of October 7, 1977, specifies, “each Union Republic shall retain the right freely to secede from the USSR.”\textsuperscript{121} This stipulation was itself tied to article 70, first paragraph, which emphasized that:

The Union of Soviet Socialist Republics is an integral, federal, multinational state formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics.

Based on the above-mentioned articles, the republics could achieve secession similarly to Yugoslav republics as was written in the SFRY Constitution of 1974, however, there was no procedure provided.\textsuperscript{122} Moreover, article 73 substantiates that republics are not states, particularly the second and twelfth paragraph, which emphasizes that determination of state boundaries of the USSR and approval of their changes is a matter of agreement between Union

\textsuperscript{118} Ibid. p. 50-76.
\textsuperscript{120} Ibid. p. 209-210.
\textsuperscript{121} \url{http://www.departments.bucknell.edu/russian/const/77cons03.html}
Republics, and that the issue is of “All-Union importance.” Even so, the Baltic States, Estonia, Latvia, and Lithuania did rely on article 72 when they announced their independence in 1990.  

The Soviet Union consisted of more variants of units in the government configuration, when compared to the former Yugoslavia, which had only two variants of federal units in the government structure (six Socialist Republics and two Autonomous Provinces). According to article 71 of the 1977 Soviet Constitution (valid when the state dissolved in 1991) there were 15 Union Republics: Estonia, Latvia, Ukraine, Belorussia, Moldavia, Kirgizia, Uzbekistan, Azerbaijan, Lithuania, Georgia, Tajikistan, Armenia, Turkmenistan, Kazakhstan, and Russia. Furthermore, there was a system referred to as the Autonomous Socialist Soviet Republics (Article 85). The constitution mentions eight Autonomous Regions and some Autonomous Areas (Article 87 and 88). In Yugoslavia there were no frequent modifications of internal borders or in the status of its administrative federal units, unlike the Soviet Union. For instance, in 1920, Kazakhstan was given autonomous socialist republic status in approximately the same area as the country’s present day borders. By the end of 1922, Bolsheviks had established the USSR and Kazakhstan was integrated into the USSR as the Kirgiz Autonomous Soviet Socialist Republic (ASSR). It changed this name in 1925 to Kazakh ASSR, and then by 1936 Kazakh ASSR’s status was upgraded as a constituent republic, known as a Soviet Socialist Republic (SSR). In 1991 Kazakhstan became independent and by March 2, 1992 was admitted into the United Nations.

124 Bayefsky, 2000, p. 402.
125 Hasani, 2003, p. 75.
The wording of Yugoslavia’s constitution led to an additional roadblock during the dissolution process. One critical problem with the constitution lies in the disconnect between ethnic groups and their traditional territories. The constitution recognizes the “nations” of Yugoslavia, such as the Croats, Macedonians, Serbs, and Slovenes but does not recognize any connection these groups may have to a particular geographic area. Conversely, the six geographically areas defined as federal units were drawn with no ethnic consideration. A second problem lies in how “nations” and “nationalities” are defined with the latter defined as “members of nations whose native countries border on Yugoslavia…” especially Albanians and Hungarians as an ethnicity that lives out of their motherland.

In other words, Hungarians turn out to be the biggest “nationalities” in Vojvodina. In the past, their population in Vojvodina’s was very high. In 1945, there were 148,000 (76.1%) Hungarians, 39,000 (20%) Serbs, and 7,500 (3.9%) Croats. There was eventually a drop in the Hungarian population and then again an increase during the Austro-Hungarian Empire. During this time period other ethnic groups joined the region such as: Romanians, Slovaks, Rusyns (Carpatho-Russians or Rusnaks, a diaspora ethnic group who speak an Eastern Slavic language or Ukrainian dialect), Bulgarians, Germans, and Albanians. After the 1850s, these groups disappeared from the census under “others.” An important moment in Vojvodina’s history occurs in the period before and after World War II, when the ethnic structure transformed. In 1941, there were 577,067 (35.3%) Serbs and 465,920 (28.5%) Hungarians, by 1953 there were 865,538 (50.9%) Serbs which is approximately 65% more than in 1921, while there were only 435,179 (25.6%) Hungarians that is increase of only 1.2% compared to 1921. Indeed these changes are as result of natural reproduction and mobility in migration because of the war. However, the biggest

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127 In the context of former Soviet Union and former Yugoslavia nationalities is used for ethnic groups as minority.
impact in Vojvodina’s demography was the colonization that took place after World War II. In short period of time, new ethnic groups appeared on Vojvodina’s census, as well as elevated numbers of Serbians as a result of colonists that came from Bosnia and Herzegovina, Croatia, and Serbia. Ethnic groups that had never previously lived in these territories, such as Montenegrins, Ruthenians, and Macedonians, among others, appeared in growing numbers while groups such as Yugoslavs, Romas, and other smaller groups, appeared in smaller percentages.\(^{129}\) (See Table 4.) The number of Serbs and Montenegrins plummeted in the Republic of Serbia and Montenegro from 1961 until 1991. According to the census in Vojvodina, there was a plunge of the Hungarian population from 23.8% in 1961 to 16.9% in 1991, and a rise of Serbian and Montenegrin populations.\(^{130}\) Therefore, it is not hard to envision the ethnic structure in Vojvodina if there was no Serbian colonization in this Autonomous Province after WWII.

Kosovo Albanians turned out to be the biggest “nationality” in the former Yugoslavia even bypassing some “nations” that were republic status holders. Kosovo Albanians held the largest population and the highest percentage of regional ethnic composition compared to all other federal units. In the 1991 census of the former SFRY, which was the final one held, Albanians were 9% of the population right behind Serbs (36%), Croats (20%), and Muslims (Bosniaks) (10%), and before Slovenes (8%), Macedonians (6%), Yugoslavs (3%),\(^{131}\) Montenegrins (2%), and others. Yugoslavs were highly committed and loyal to the Yugoslav idea and in most of the cases, these individuals were either staunch communist supporters or a product of mixed marriages. Their numbers were in fact lower than 2% of the total SFRY population. At their height, the population only reached 5.4% out of 22.4 million people of


\(^{130}\) Woodward, 1995pp.33-34.

\(^{131}\) Ibid, p. 32.
SFRY, according to the 1981 census. Their numbers plunged to 3% in the 1991 census, and in the following years, when the war started, many of them switched and joined their previous ethnic groups.

Regardless of different opinions about Albanians being a “nationality,” “national minority,” or “nation,” it is essential for the right of a national community to express itself as a politically independent subject within the geographic region where the majority of the population resides. When Yugoslavia was formed in 1918 it was originally called Kingdom of Serbs, Slovenes, and Croats. The status of nation was given to Macedonians and Slavic Muslims. Albanians were deprived of all rights for the mere reason that they were taken over from their “mother state,” despite the fact that they were living in their own ethnic land, where they comprised the majority of the population. Serbia had been colonizing Kosovo for a long time, and in many periods throughout history, by bringing poor Montenegrins into Kosovo while at the same time expelling Albanian population *en masse* toward Turkey during the first part of the 19th century. The Serbian state repeated these actions again in the last expulsion of Albanians toward Albania, Macedonia, and Montenegro, known as ethnic cleansing. (See Table 5.) Statistics from the Yugoslavian Kingdom show the Albanian population dropping down from 65.8% in 1921 to 54.4% in 1939 due to expulsion and “converting” them into Turks before relocating them to Turkey. The Serb and Montenegrins number in Kosovo, provided by the same source as above, shows that in 1921 it was 92,490, while in 1939 their number went up to

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133 Stavileci, 2005, p. 626.
213,746. Correspondingly, the number of Turks drops in the total Kosovo population during the same period from 6.3% in 1921 to 3.8% in 1939.\textsuperscript{134}

The Serbian explanation that Albanians in Kosovo are part of the mother nation, in this case Albania, and for that reason they cannot enjoy the status of nation in Yugoslavia does not have any strong historical or actual foundation. The best example to counter this argument is the case of Switzerland, where the status of nation is recognized for all three of its ethnic groups (Germans, French, and Italians). Until the beginning of the 1990s, there were two German states, and currently there are two Korean states. The population living in Taiwan represents a part of the Chinese people, even though many consider separate state from National Republic of China.\textsuperscript{135}

Further differences existed between the USSR, the SFRY, and Czechoslovakia during their break-up processes that led to the creation of new states. Two key differences in these cases were, first, internal agreements, or disagreements, concerning state successor status, such as inheritance of state owned capital and claim to the former state’s status on international treaties. The second difference lies in the process of international recognition and UN membership. Unfortunately, in some cases those disagreements fueled ethnic cleansing, massive population displacement, systematic rapes, and genocide, accompanied by wars between some republics. One of the smoothest, consensual, and blood-free dissolutions process among these three former states was the case of Czechoslovakia.

The Czechoslovak Federation ceased to exist at midnight on December 31, 1992, after both constituent republics agreed to separate into two new states. This process was executed on

\textsuperscript{134} Mertus, 1999, Appendix, Table 7, p. 315.
\textsuperscript{135} Stavileci, 2005, p. 628.
November 13, 1992, by Constitutional Act No. 541/1992, which addressed the Division of Property, and on November 25, 1992, by Constitutional Act No 542/1992. Both were acts of The Constitutional Law on the Dissolution of the Czech and Slovak Republic that supervised extinction by voluntary dissolution of the Czech and Slovak Federal Republic.\textsuperscript{136} All the assets and liabilities of the former Czech and Slovak Federal Republics were divided by agreement of the two republics in the ratio of two to one, which was the approximate population ratio as well. The only problem in sharing between these two republics was the immovable property located within each republic in conformity with the territorial principle.\textsuperscript{137} At that time, the Czech Republic held 66\% of population, 62\% of the territory, and 72\% of the economic resources of the former federation of Czechoslovakia.\textsuperscript{138} After dividing the state assets that included army equipment, rail, and airliner infrastructure, there were some disagreements about gold reserves stored in Prague. Other than that, the transition was smooth and the internal agreement between Czech and Slovak Republics was acceptable for international creditors as well.\textsuperscript{139} The amicable nature of this dissolution process has led it to be referred to as a “velvet divorce.” Clearly, the Czechoslovakian case differs from the other two cases being discussed for the reason that neither the Czech Republic nor Slovakia required recognition to be the sole successor state to Czechoslovakia; they both applied and were admitted to the UN as a two new states and they both informed the international community that they would comply with all international treaties to which the predecessor state (Czechoslovakia) had been a party. For example, the UK maintained all agreements and treaties with the Czech and Slovak Republics that had originated

\textsuperscript{136} Crawford, 2006, p. 402.
\textsuperscript{137} Shaw, 2003, p. 896.
\textsuperscript{138} Crawford, 2006, p. 707.
\textsuperscript{139} Hasani, Enver., \textit{The Evolution of the Succession Process in Former Yugoslavia}, 2006, Thomas Jefferson Law Review, Vol. 29:111, San Diego, CA, p. 120.
with their predecessor state. Unfortunately, this could not be repeated in the case of the FRY because of disagreements among former SFRY republics, which will be discussed below.\textsuperscript{140}

The Soviet Union experienced a different agreement among republics. The Russian Federation accepted the USSR’s total foreign debt along with all property, financial assets, and other succession features. This was referred to as the “zero option agreement” after three failed attempts to divide the former Soviet Union’s assets and liabilities.\textsuperscript{141} While in the case of Czechoslovakia’s dissolution the two republics agreed that there will not be a sole successor, the eleven republics of the former Soviet Union agreed that the Russian Federation would be the sole successor to the USSR, except three Baltic republics. In addition, the division of assets and liabilities of the USSR as a predecessor state was done in the ratio of 61.34\% for Russia and 16.37\% for Ukraine.\textsuperscript{142}

In the case of the former SFRY Republics, the issue of successor status was wrought with tension. The Republic of Serbia, jointly with the Republic of Montenegro, were trying extremely hard to win the SFRY’s successor status despite strong dissent from other republics. The Republic of Serbia and Montenegro were so determined to gain this status, that they started wars in the name of preserving the old Yugoslavia, even as it was already in the process of dissolution. Due to the violence, the main focus at this time was not dissolution ratios but rather the other republics desire to form independent states that was a result of SFRY’s dissolution process. While some other republics were declaring independence in the wake of the SFRY’s disintegration, the Republic of Serbia fought for the SFRY continued existence and its own role in being the sole successor state. Subsequently, the Badinter Commission’s first opinion

\textsuperscript{140} Shaw, 2003, p.884-885.
\textsuperscript{141} Hasani, 2006, p. 121.
\textsuperscript{142} Shaw, 2003, pp. 896-7.
declared that, “the Socialist Federal Republic of Yugoslavia is in the process of dissolution”\textsuperscript{143} given the fact that its federal organs had lost both representativity and effectiveness.\textsuperscript{144} The problem of the former Yugoslavia’s succession began in 1992 when that issue was for the first time officially discussed in the Working Group on Succession established by the UN and European Community, and it continued to be subject, among other issues, of the Conference on the Former Yugoslavia, held from 1992 to 1995 in Geneva and London.\textsuperscript{145} The former Yugoslavia’s ordeal of succession lasted until June 2001 when the Succession Agreement (SA) was signed between five former SFRY republics, which were already sovereign states at that time. The most important factor that led to the signing was that Slobodan Milosevic was no longer in power. It is important to note that the SA excluded Kosovo because the Badinter Commission choose to officially ignore Kosovo’s case in 1991 and did not consider Kosovo as an independent sovereign state as the Commission did with the other republics of the former SFRY.\textsuperscript{146} Kosovo was then left trapped under Serbia. The FRY, as the self-proclaimed successor of the former SFRY, which was technically nothing other than union of two former Yugoslav republics, Serbia and Montenegro, was holding most of the federal property. The federal property included all diplomatic and consular buildings together with residences and apartments of personnel with movable property, assets of the former NBJ [Narodna Banka Jugoslavije] (Peoples Bank of Yugoslavia), gold and hard currency reserves that had not been frozen in foreign banks, joint property of former enterprises, federal building infrastructure that was mostly concentrated in Belgrade as a capital town. Equally important, most of the arms and

\textsuperscript{145} Hasani, 2006, p. 112
\textsuperscript{146} Ibid, p. 114.
ammunition of the former JNA [Jugoslovenska Narodna Armija] (Yugoslav People’s Army) were used together with monetary gold and hard currency reserves for military support within the Serbian Republic in Bosnia and Herzegovina [Republika Srpska], and Serbian Republic of Kraina in Croatia [Republika Srpska Krajina]. These arms were financed from taxes for more than four decades from all republics and autonomous provinces of the former SFRY. These arms were then used against all non-Serbian populations, first in Slovenia on June 26, 1991, then in Croatia in August 1991, and in Bosnia and Herzegovina in April 1992. These enormous military assets, over 75% of the former SFRY’s assets, were concentrated in Serbian hands. They systematically withdraw them from Slovenia to Croatia first, then from Croatia to Bosnia and Herzegovina, and from Macedonia to Kosovo, eventually taking control of the vast majority of military assets. Later, in 1998-99, this military arsenal was used in Kosovo, once again against the non-Serbian populations, who in the past had contributed to financing those arms and ammunition. Problems continued to arise as the FRY considered itself not only the continuation of the SFRY, but also as the sole owner of all-federal property and claimed all rights as a successor state. These two republics did not even attempt to seek recognition from the international community because they felt completely entitled to the status of SFRY’s successor. On April 27, 1992, the Assembly of SFRY promulgated the new Constitution of FRY and maintained that SFRY had merely transformed into FRY and was essentially Serbia and Montenegro. Conversely, the Badinter Commission recognized in Opinion No. 1 on November 20, 1991, the other republics’ declarations of independence; Slovenia and Croatia on June 25, 1991, the referendum in Macedonia on September of 1991, and Bosnia and

Herzegovina’s sovereignty resolution adopted by Parliament on October 14, 1991. The Badinter Commission also concluded that SFRY was in the process of the dissolution.\textsuperscript{149} On May 30, 1992, the Security Council passed resolution 757 after reaffirming resolutions 713, 721, and 724 of 1991, and 727, 740, 743, 749, and 752 of 1992. The resolution noted that, “the claim by Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted.” Further, the UNSC 757 decided to apply sanctions against FRY that included economic, international sport activities, and an arms embargo enforcement. Previous UNSC resolutions 713 (1991) and 727 (1992) requested, all states to reduce their level of activity at diplomatic missions and consular posts in the FRY.\textsuperscript{150} In another UNSC resolution, resolution 777 passed in September 1992 the Security Council reaffirmed its previous resolution 713 (1991) and all subsequent relevant resolutions and stated that “the state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist.”\textsuperscript{151} Similarly, the European Council Declaration of June 27 1992, and Opinion No.8 of the Badinter Commission of July 4 1992, \textit{inter alia}, categorically pointed out that “the SFRY no longer exists”.\textsuperscript{152}

Nevertheless, during the period of 1992 to 2000, the status of the FRY’s UN membership and as a state in general, was an amalgam status. Only on November 1, 2000, was the FRY admitted into the UN\textsuperscript{153} after its official request for membership. This meant that the FRY would now be accepted as a new state. Obviously, this happened after the regime had been changed in Belgrade. On February 4, 2003, three years after its acceptance into the UN, the FRY officially

\begin{itemize}
  \item \textsuperscript{149} Pellet, 1992, p. 183.
  \item \textsuperscript{150} Adopted by the Security Council at its 3082\textsuperscript{nd} meeting by 13 votes to none, with 2 abstentions (China and Zimbabwe).
  \item \textsuperscript{151} Adopted by the Security Council at its 3116\textsuperscript{th} meeting on September 1992 by 12 votes for and 3 abstentions (China, India and Zimbabwe).
  \item \textsuperscript{152} Crawford, 2006, p. 710.
  \item \textsuperscript{153} UN General Assembly resolution 55/12.
\end{itemize}
changed its name from the FRY to Serbia and Montenegro. The FRY’s status and UN actions during this time period was *sui generis*. Judge Kreca called FRY’s status during the period between 1992 and 2000 a “hybrid and controversial personality.” Following the UN’s rejections of the FRY’s claim to automatically continue SFRY’s membership, the UN GA recommended that the FRY apply for new membership, or it would not be able to participate in the work of the GA. In addition, the UN SC excluded FRY from participation in the work of ECOSOC. Nevertheless, the outcome of Yugoslavia’s case in the UN at that time was a complete anomaly. For example, the nameplate and the seat in the GA assembly hall remained as before, the Yugoslav (SFRY) flag continued to fly in front of the UN headquarters building on 42\textsuperscript{nd} street in New York, and “Yugoslavia” in its entirety remained a UN member, but not Serbia and Montenegro. The flag that was hanging in front of the UN headquarters with the red star of the Communist era in the middle was representing a state that did not exist anymore and was not hanging anywhere else in the world, even the FRY (Serbia and Montenegro) flew a different flag. The UN’s financial charts revealed an extraordinary situation. The assessed country, listed as “Yugoslavia”, has paid $100,000 in 1992 of its $209,958 required payments. The legal irrationality of UN membership is obvious in this case. Slovenia, Bosnia and Herzegovina, and Croatia are not on the list of member states for purposes of financial assessment, even though all three were UN members at the same time as FRY (or Serbia and Montenegro) was not a UN member.

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156 UN General Assembly resolution 47/1, September 22, 1992, 127 votes for, 6 votes against (Kenya, Swaziland, Tanzania, Yugoslavia, Zambia, Zimbabwe), and 26 abstentions; UN Security Council resolution 821, April 28, 1993, 13 votes for and 2 against (Russian Federation, China) and no abstentions; UN General Assembly resolution 47/229, April 28, 1993, 107 votes for, 11 against and no abstentions.
The FRY was recognized by member states of the European Union (EU) in early 1996; however, numerous countries, including the United States, did not recognize the FRY until 2000, the same year that the FRY became a UN member.

There are numerous cases in which the UN handled a change in states’ membership status. For example, cases in which states were merged, and later divided again to previous borders, such as the United Arab Republic (UAR). Another example is seen in Indonesia’s withdrawal from the GA and the UN curtailing South Africa’s rights and participation within the GA. However, in no case were these states concerned required to apply for new membership. Hence, it is wrong to compare Yugoslavia’s case, as Ove E. Bring did, to other cases such as India and Pakistan. Pakistan broke away from India in 1947, India remained as a old UN member, and Pakistan, as a new seceded state, was not considered a member of the UN. Likewise, when Bangladesh seceded from Pakistan in 1971, Pakistan remained as a UN member while Bangladesh had to apply as a new state. Russia also continued its membership within the UN and SC but under the agreement that other former USSR republics were to be admitted as new members. In contrast, Degan concludes that the SFRY is the first clear case of a state’s dissolution and disappearance as a UN member. If the FRY managed to survive, and willingly wanted to be a UN member, then it had to comply with the requirements for membership under Article 4(1) of the Charter. In addition, those conditions for the new applicant are (1) must be a State; (2) be peace loving; (3) accept the obligations of the Charter; (4) be able to carry out these

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158 Crawford, 2006, p. 188.
obligations; (5) be willing to do so.\textsuperscript{159} The FRY at that time did not satisfy all these conditions. Obviously, recognition of Slovenia and Croatia by some European countries, first as individual then later as collective recognition, changed their status from domestic to international issue. For example, the Croatian matter emerged from an internal or civil war, in which the UN should not been involved, into an international war, given that the Yugoslav People’s Army [JNA] action in Croatia was an invasion in another state. Furthermore, Judge Higgins blames the UK and Germany for premature recognition.\textsuperscript{160} Germany was in support of the “unity and territorial integrity of Yugoslavia” and against a unilateral declaration. This was the same opinion as other Western European Countries on June 27, 1991. What made Germany change its mind within 48 hours was that its previous declaration contributed to the outbreak of hostilities. Indeed, it was the German Chancellor, Helmut Kohl, that declared on June 29th at the EC summit held in Luxemburg, “the unity of Yugoslavia cannot be maintained with the force of arms.” This statement was repeated the same day by the UK as well.\textsuperscript{161} The Badinter Commission in Opinion No. 1, regarding conditions on which an entity constitutes a state, stated that “the existence or disappearance of the state is a question of fact” and that “the effects of recognition by other states are purely declaratory.”\textsuperscript{162} Yet, is the recognition in international law a political matter or is it an act regulated by law? Although, the recognition issue is ambiguous, when it comes to non-recognition, international law becomes partially involved. For example, the cases mentioned in the introduction, Southern Rhodesia, northern Cyprus, and Republika Srpska, in which the UN


\textsuperscript{160} Higgins, 1993, p. 470.


\textsuperscript{162} Pellet, 1992, p. 182.
SC has been engaged. In Kosovo’s case, though, there is no specific collective non-recognition act through the UN or other international law venues.\(^{163}\)

Recognition itself, as Lauterpacht stated, is not a matter that is regulated by law but it is a question of policy. The best example that shows the extent of how much the issue of recognition involves politics is when Britain declared war on France because France recognized the independence of the American colonies in 1778. An additional illustration is when in 1816 Spain protested against recognition made to the independence of the former Spanish colonies in Latin America by Britain and others.\(^{164}\) Similar actions have been taken by the Republic of Serbia in 2008. As a form of protest after Kosovo declared independence, the Republic of Serbia withdrew all its ambassadors from countries that recognized Kosovo’s independence.

As has been noted, it is true that things are not as they used to be. New cases in the international arena are becoming more complicated, and there is a need for international law to evolve. The former conservative Prime Minister of the UK Harold MacMillan once said in an address to the South African Parliament on February 4, 1960, “The wind of change is blowing through the continent. Whether we like it or not, this growth of national consciousness is a political fact.”\(^{165}\) During the Cold War no one could have predicted that the Eastern European communist countries, which were considered as potential threats to the peace, would dissolve into regular normal and democratic states. On the other hand, the UN action of excommunicating Yugoslavia in 1992 for something that in the past would be considered a national or domestic matter, demonstrates these changes.\(^{166}\) A critical factor that led to the international attention was

\(^{163}\) Vidmar, 2009, pp. 850-851.
\(^{164}\) Rich, 1993, p. 56.
the genocide that was occurring in the 20th century in Europe, perpetuated by one republic, Serbia who claimed to be the sole successor of SFRY, and actively worked to suppress other republics and nations. Serbia or FRY pretended that they did not know that the same SFRY signed the Helsinki Final Act in 1975 that stated:

By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.167

Correspondingly, Serbia, or the Union of Serbia and Montenegro, or the FRY continued to misuse its own international sui generis status vis-à-vis the UN in the period from 1992 to 2000. Particularly, when it came to responsibility in the Bosnian Genocide Case (Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide; Bosnia and Herzegovina v Yugoslavia).168

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“Remember that all through history the way of truth and love has always won. There have been tyrants and murderers and for a time they seem invincible but in the end, they always fall -- think of it, ALWAYS.”

Mahatma Gandhi

Discussions of Kosovo’s political history usually focus on the period from the beginning of the 20th century through its independence in 2008. Although in nationalistic debates, the Serbian side goes back further in history to the 13th century, and customarily calls Kosovo the “cradle of the Serbian nation,” “Serbian Jerusalem,” and “Old Serbia.” This highlights their belief that Serbia holds the historical rights to Kosovo because they inhabited the area, while Albanians came much later from God-knows-where. This assessment would be correct if life in Kosovo began in the 13th century, however, the Albanians were indigenous to this area long before the Serbs arrived in the Balkans, and were related to the Illyrians through territory, history, language, culture and many more facts.

“Illyrian” is the name for the autochthonous population that, based on archeological evidence, has lived partly in modern Albanian territory since the Iron Age, or more specifically, from the second millennium B.C. While Slavs began to arrive and inhabit these Illyrian territories in the sixth and seventh century. Within Kosovo, the plains settlers withdrew into the mountains leading to a historical territorial dispute between the Serbs and the Albanians in Yugoslavia.169 The territory of Kosovo partially belongs to the tribal land of the Dardanians that belonged to the Illyrian grouping.170 Evidence, that Albanians are Illyrian descendants is seen in

the Albanian language, which has been developed from Illyrian, a fact supported by linguistics.

These language groups were spoken in Roman times across what later became the territory of the former Yugoslavia and Albania and in the Southeast of Italy. In fact, the existence of a large number of Latin loanwords in Albanian illustrates that Albanians, or their immediate predecessors, were living under Roman rule. This bolsters findings that they lived in the Balkans long before any Slav languages were spoken in that region.\textsuperscript{171} Even as Slavs began arriving in the area at around the sixth century, the population that spoke the Albanian language continued to thrive through the twelfth century without losing their language.\textsuperscript{172} In addition to linguistic affiliation, the Albanian language is the sole member of one branch of Indo-European languages\textsuperscript{173} and together with Greek is the only surviving ancient Balkan language.

Serbs migrated to the Balkans, an area that was largely unpopulated at that time in about 600 A.D. They moved south from the area neighboring the Carpathian Mountains as settlers with their flocks and herds,\textsuperscript{174} and were first described as Slavs by Byzantine writers as “a wild people, more pastoral than agricultural, with many chiefs but no supreme leader.” It is believed that their migration southward was due to pressure from an aggressive Turkic tribe known as the Avars in the northwestern parts of Balkans.\textsuperscript{175} The history, of Serb slogans that say “Kosovo is Serbia,” tells a different story. In the region, the longest lasting conquerors were the Romans, Byzantines, and Turks (the Ottoman Empire). The first established Slav state was not a Serbian state; it was the Bulgarian Kingdom, which lasted from the 850s to the early eleventh century.

Next, the Byzantine Emperors ruled the territory until the end of the twelfth century. The oldest

\begin{footnotes}
\footnotetext[172]{Malcolm, 1999, p. 40.}
\footnotetext[173]{Bennett, 1992, p. 3.}
\footnotetext[174]{Ibid, p. 230.}
\footnotetext[175]{Malcolm, 1999, pp. 23-24.}
\end{footnotes}
Serbian kingdom was the Serbian kingdom in the Balkans was settled in Rashka (Rascia) as a Rascian, or Serbian, state from by the Nemanjici family. The earliest Serbian monasteries were built in Rashka, that lies in what is today’s Sandzak region, which is north of Kosovo, but not in Kosovo.

This proves that Kosovo has never in fact been the Serbian state’s cradle or base as Serbian historians and politicians claim. On the contrary, Kosovo has been under Serbian control only when occupied by the Serbian rulers and their armies. During Kosovo’s history, this occurred four times (1216, 1912, 1918, and 1945). Each time though, Serbia’s rulers were forced to pull out from Kosovo (1459, 1914, 1941, and 1999). Throughout 20 centuries of Kosovo’s history, the longest period of Serbian rule was two and a half centuries (1216-1459). Even at that time, though, Kosovo was not the political center of the medieval Serbian state. Its center was Rashka, and then later in Shkupi (Skopje). This period of Serbian rule of Kosovo ended in 1459 when the medieval Serbian state ceased to exist. Kosovo then fell under Ottoman rule until the beginning of the 20th century, a period of nearly 450 years. Several historians see one event as an important changing point in the territory’s demographic structure during this time. The change caused a decrease in the Serbian population whose migration into Kosovo was mentioned earlier in 1690. After the fall of Belgrade, a major exodus occurred as 30,000 Serbs, estimated by Patriarch Arsenije III in his petition sent to Emperor Leopold I, traveled north toward Hungary. This action was undertaken because of an “invitation” from Emperor Leopold I and was led by the Serbian Patriarch Arsenije III, who 17 years after this migration, in 1706, noted a higher estimate. In a letter he wrote to Emperor Leopold’s successor, he stated that he came to Hungary

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with 40,000 souls. These estimates challenge the information that was written many years later by the Serbian monastic chronicle that stated that 37,000 families went to Hungary at that time. Clearly, there is a notable difference in numbers between souls and families. The validity of information written by the Serbian Patriarch Arsenije himself and a chronicle that was written many years later as exaggerated in numbers, contains other errors as well. It is important to mention that this exodus was because of the withdrawal of the Habsburg forces after an attempt by Austria to conquer the territory from the Ottoman Empire. Serbs were not the only group faced with migration at that time. Albanians migrated during the Ottoman Empire’s rule as well. They emigrated to Italy, Greece, Egypt, and Turkey. During a brief period of Ottoman rule, between 1788 and 1791, Serbia regained semi-autonomous principality and began increasing its nationalistic behavior in Kosovo. By the 19th century, though, the Ottoman Empire had begun its descent.

KOSOVO AND ALBANIA, A SEPARATION OF CHILD FROM MOTHER

On March 3, 1877, the Treaty of San Stefano was established between Russia and the Ottoman Empire, which granted Russia and its allies much of the former Ottoman Empire territory. For example, the Bulgarian state’s border increased greatly into central Albania. In this agreement, Serbia was to take over the whole region of Nish and north Kosovo. Other Great Powers at that time did not agree with these border tailorings and they called for a congress to meet in Berlin. At the Congress of Berlin that was held on July 13, 1878, the borders were once again modified, revising the Treaty of San Stefano. This time, Bulgaria was downsized and Macedonia restored to the Ottomans. Bosnia and Herzegovina went under Austrian administration, and the Austrian army was permitted to enter Sandzak and Novi Pazar. The main

change regarding Serbia was that the Nish area remained under Serbian control but not the
territory of Kosovo.\(^{178}\) (See Map 4.) Albanian nationalist movements were ignited when the area
north of the modern Albanian border, the town of Tivar [Bar], part of Shkodra vilayet [Skadar or
Scutari], Plave, and Gusinje region, which was Albanian populated and part of Kosovo vilayet,
was given to Montenegro (Article 28 and 29 of Treaty of Berlin)\(^{179}\) (See Map 2.) Serbia became
an independent country for the first time after the Congress of Berlin, but it was subject to certain
conditions (Articles 34-42), and later became a kingdom in 1882. The statistics showing the
expansions of Slavic state territories during the period before and after the Treaty of San Stefano
and Congress of Berlin\(^{180}\) are as follows:

<table>
<thead>
<tr>
<th></th>
<th>1877</th>
<th>San Stefano</th>
<th>Berlin Congress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Montenegro</td>
<td>4.7 km² (1.81sqm)</td>
<td>15.7 km² (6.06sqm)</td>
<td>9.1 km² (3.5sqm)</td>
</tr>
<tr>
<td>Serbia</td>
<td>37.7 km² (14.5sqm)</td>
<td>52.7 km² (20.35sqm)</td>
<td>48.3 km² (18.65sqm)</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>n/a</td>
<td>172.5 km² (66.6sqm)</td>
<td>63.7 km² (24.6sqm)</td>
</tr>
</tbody>
</table>

(Numbers are shown in thousands)

The Treaty of Berlin dealt with the “national principle” but in reality, it was nothing other
than carving up the territories of the Ottoman Empire, which harmed small nations such as the
Albanian nation and its territories. The Great Powers at that time partitioned Albanian territories
into countries that bordered Albania. Lande, rightly concludes that, “[t]he Congress of Berlin in

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\(^{179}\) Puto, Arben., *Diplomatic History of Albanian Issue 1878-1926*, [HISTORIA DIPLOMATIKE E CESHTJES

\(^{180}\) Ibid, 2003, p. 17.
1878 offers one of the most extreme cases of the concerted action of the Great Powers, talking and carrying out decisions affecting smaller nations without their consent.”

However, it was in the Great Powers interest to keep Russia out of the Balkans by weakening the Ottoman Empire.

Before and during this period the Albanian population was terrorized as Serbia, Bulgaria, and Montenegro committed genocide against the Albanian people and took over their lands. Albanians were driven out of the Morava region during the cold winter, where hundreds of their villages were once located. A large number of Albanians were also driven from towns such as Prokuplje, Leskovac, and Vranje. It is essential to note these atrocities, the expulsion, killings, massacres, when discussing Kosovo’s history as it was the Serbian policy at the time to create an ethnically “clean” territory. Unfortunately, this policy continued until 1999, when the NATO humanitarian intervention and the KLA ground troops stopped Serbia from continuing its persistent ethnic cleansing policy, which was occurring not only in Kosovo but in other parts of the former SFRY as well.

On June 10, 1878, the League of Prizren or The League for the Defense of the Rights of the Albanian Nation was held. It was established as a political organization that would coordinate defense and create an autonomous administration for the Albanians. The League of Prizren requested the Ottoman Empire to unify all four Albanian vilayets into a single province. The first set of vilayets were in Kosovo but had been invaded by Serbia, the second was in Skodra but were invaded by Montenegro, Manastir [Bitolj] vilayets that were invaded by Bulgaria, and Janina [Ioannina or Yanina] vilayets that were invaded by Greece. The League of

Prizren informed the British Prime Minister, Lord Beaconsfield, of their actions in hopes of garnering international support to help realize the goals of the Albanian national movement.\textsuperscript{182}

At this time, there was significant activity by Russian and Serbian diplomats in the region to promote Serbian control. Russia had a consulate in Kosovo in the town of Prizren and after Serbia established its independence, it was able to open diplomatic offices there as well. Serbia saw opening its consulate in Skopje, the current capital of Macedonia, as an achievement in the region. Two years later, Serbia acquired a second consulate in Kosovo vilayet, in Prishtina. The Serbian government was working hard on nationalistic propaganda campaigns in Kosovo and Macedonia. The population itself was not as nationalistic as the government policy was. Through their consuls and schoolmasters, the Serbian government continued to spread its message of Serbian nationalism. For example, the Serbian geographer Jovan Cvijic noted that Slavs in the southern Morava valley (eastern modern Kosovo) before 1878 had “a very vague national consciousness,” but after that, they were trained to think of themselves as Serbs only. Slavs of these regions would call their Serbian language \textit{naski} or \textit{nas jezik}. That in translation means “our language.” In fact, reports written by Milojevic for the Serbian administration in Belgrade, show that a number of Serbs from Mitrovica identified themselves not as Serbians, but as “Kosovci,” or Kosovovars, and used the motto “Kosovo for the Kosovans.”\textsuperscript{183} The Serbian policy to manipulate Kosovo’s population for propaganda efforts continued until 1999. The government in Belgrade continued to use Kosovo Serbs to accomplish certain political achievement during the former SFRY, particularly in 1980s and 1990s.

\textsuperscript{182} Puto, 2003, pp. 19-20.  
\textsuperscript{183} Malcolm, 1999, pp. 230-231.
On November 28, 1912, Albanians issued the Vlore Proclamation by declaring independence from the Ottoman Empire, after a series of revolts that occurred between 1909 and 1912. Serious problems developed as the territorial delimitation and the new administration of the territory was established. (See Map 5.) The Great Powers intervened and took action over Albania, as Sir Edward Grey noted, “as a symbol of the existence of the Concert of Europe.” A year later, at the Treaty of London held on July 29, 1913, the Conference of Ambassadors established the Organic Statute for the Albanian State. The statute provided several articles stating Albania was free from Turkish suzerainty (Art 2), neutralized (Art 3), and was to have its civil and fiscal administration under the control of an international commission for an initial period of ten years (Art 4-5). In addition, an international police force was launched in order to secure public order. Later that year, on December 17, the Protocol of Florence accorded de jure recognition of the Albanian state, after its boundaries were delimited. Moreover, the German prince was appointed as the Head of State. Albania was occupied by different forces at that time, and was forced to partition its territories among Serbia, Montenegro, and Greece. Article VII of the Secret Treaty of London was signed on April 26, 1915 by Italy and the Triple Entente (UK, France, and Russia).\footnote{Crawford, 2006, pp. 509-512.} However, the Florence Protocol left half of all Albanians outside the new country. The territory of Kosovo was split into two pieces, one part was assigned to Montenegro and the other part to Serbia.\footnote{Muenzel, 1999, \url{http://jurist.law.pitt.edu/simop.htm}} (See Map 6.)

The Treaty of Versailles nullified the pact that was signed in London. President Woodrow Wilson rejected the plans for an Italian mandate as an Administering Authority in Albania and a partition of the Albanian territories between Italy, Yugoslavia, and Greece.\footnote{Ibid, p. 511. also at \url{http://www.state.gov/r/pa/ei/bgn/3235.htm}}
Treaty of Versailles was signed on June 28, 1919, which is coincidently, exactly five years after the assassination of Archduke Franz Ferdinand and his wife Sophie. This assassin attack, which was considered as highly patriotic from the Serbian point of view, led to WWI. The objective of this assassination was to break off Bosnia and Herzegovina, which was a province of the Austro-Hungarian Empire and to unite it with Serbia in order to create a Greater Serbia (See Map 7.) This was always a dream of the Serbian nationalist movement. Following the Serbian rejection of the Austro-Hungarian request for a thorough investigation, Serbian provocation began on the Austro-Hungarian border, igniting WWI. The Serbian government secured Russian support, and under the Secret Treaty of 1892, Russia and France were obliged to mobilize their armies if the Triple Alliance (Germany, Austro-Hungary, and Italy) mobilized. Why is this important and what is the connection between this history and Yugoslavia and Kosovo?

First, it shows how old and strong the idea of Serbian nationalism was for Greater Serbia. Second, it underlines Serbian and Russian involvement in concealing and supporting assassination efforts. An important fact considering similar illegal actions were taken by the Serbian state when hiding war criminals who were indicted by the ICTY in 1995, such as Slobodan Milosevic, Radovan Karadzic, Ratko Mladic. Third, the group that organized the assassination of Archduke of Austria was called “The Black Hand” [Crna Ruka] led by the Chief of the Serbian Military Intelligence Dragutin Dimitrijevic. His alias was Apis or The Bull. He was a junior officer who organized and participated in the assassination of King Alexander of Serbia and his wife Queen Draga on June 11, 1903, and a failed attempt to assassinate the Austro-Hungarian Emperor Franz Josef in 1911. The connection between Black Hand, Dimitrijevic, the assassination of Archduke Franz Ferdinand, and the Albanians, lies in one of

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the six members of the Bosnian Serb assassination team. The group member that assassinated the Archduke was Vaso Cubrilovic. Even though he was sentenced to 16 years, he was released in 1918 when WWI ended. In 1937, he became a political adviser to the royal Yugoslav government where he wrote an official memorandum called “The Expulsion of Albanians” [Iseljavanje Arnauta] and later on November 3, 1944, he wrote another memorandum called “The Minority Problem in the New Yugoslavia.” Another Serbian nationalists at this time, who extolled scientific arguments for the partition of Albania and the expulsion of Albanians from their territory was Ivo Andric, who wrote an elaborate article regarding this subject in 1939, called “Draft on Albania.”

In Cubrilovic’s first memorandum “The Expulsion of Albanians,” he suggested making the lives of Albanians in Kosovo so excruciated and terror filled so that they would leave for Albania or Turkey. He states,

If Germans can evict hundreds of thousands of Jews, if Russia can transport millions of people from one part of the continent to another, a few hundred thousand evicted Albanians will not provoke a world war.

Cubrilovic, marked the triangle of three cities (Debar-Rogozna-Nish) as a territory for an en masse eviction of the Albanian population. He recommended the state execute his plan by fining, punishing, molesting their clergy, plowing their graveyards, giving arms to the Serbian colonists, and provoking massive clashes with the Albanians. Moreover, he proposes the secret burning of Albanian villages and town quarters. These actions were eerily mirrored during the

188 Arnaut is a Turkish name for Albanian. In this case Cubrilovic uses Turkish word as contemptuous name for Albanians.
Balkan Wars by the Serbian nationalist paramilitary group, Chetniks\textsuperscript{190} and secretly assisted by the government in order to slaughter Albanians, while the regular army maintained its distance.\textsuperscript{191} There are many eyewitnesses of these atrocities on Albanian territories throughout history. For example, Leon Trotsky describes the Serbian slaughter of Albanians while he was traveling to Skopje, where he witnessed burning villages and corpses along the road. He mentions a scene under the main bridge over the Vardar river, where he observed, “heaps of Albanian corpses with severed heads” and “what was clear was that these headless men had not been killed in battle.”\textsuperscript{192} Similarly, Edith Durham, a war correspondent and nurse who accompanied the Serbian and the Montenegrin soldiers, was an eyewitness to these forces mutilating Albanian, Turkish and Bosniaks civilians, particularly by “cutting off the noses and upper lips of their still-living victims.” She notes the confirmation of a Russian surgeon in the Kosovo district, that between Berani (Montenegro) and Peja (Kosovo) there was hardly a nose left on a corpse. She also heard a confirmation of a Serbian officer who states that they “annihilated the Ljuma tribe,” a statement that was confirmed by previous reports stated, “in the Kosovo region the ground in many places was simply strewn with the bodies of women and children.”\textsuperscript{193} The New York Times, reports similar stories about the slaughtering in Kosovo where the “executions are as daily sport” for Serbian forces as they push forward toward the Adriatic Sea throughout Albanian territories.\textsuperscript{194}

\textsuperscript{190} Chetnik - an irregular Slav soldier in the Balkans; \textbf{especially} : a member of various irregular Serbian military forces that in periods of disorder (as during World War II and following the breakup of Yugoslavia in 1991) pursued ultranationalist aims, (from Merriam Webster Dictionary)
\textsuperscript{191} Cohen, 1996, pp. 4-6.
\textsuperscript{192} Trotsky, Leon., \textit{The War Correspondence of Leon Trotsky: Balkan Wars 1912-1913}, 1980, Pathfinder Press, Sydney, Australia, pp. 268-269.
\textsuperscript{193} Cohen, 1996, p. 7.
Similarly, Albanians in south, in Prebeza and Janina, were killed and driven out from their territories in the time period between the two World Wars. The Albanian population from Chameria [Camerija] experienced the same atrocities as their brothers and sisters from the north and northeast. The Cham Albanians in Chameria also faced massive atrocities and forced deportation at the end of WWII at the hands of Greek general Napoleon Zervas and Plastiras. In the 1940s after WWII, Lester Hutchinson, a Labour M.P. for Manchester, Rusholme, declared in Belgrade after his visit to Albania that there were 2,500 Muslim Albanians killed and 25,000 driven across the border during the last two years “through organized massacres and terror at the hands of the Greek forces.”

**KOSOVO BEFORE AND AFTER WWII**

Unfortunately in Kosovo the expulsion of the Albanians, as well as the Turkish and Bosniak population, never actually stopped. The first official contact between the Kingdom of Yugoslavia and Turkey regarding the deportation of Albanians to Turkey occurred in 1926. On July 11, 1938, the Yugoslav-Turkish Convention was signed and was supposed to be ratified by their parliaments. In the period after WWII, there was another “Gentlemen’s Agreement” in Split in 1953 between president of the former Yugoslavia, Josip Broz Tito and Turkish Minister of Foreign Affairs, Fuat Koprulu. The agreement allowed for the forced migration of 250,000 Albanians to Turkey. They were declared Turks on the population census, an act that was meant to save both states from negative public reactions from this forced expatriation.

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When WWII began, Albania, including Kosovo, fell under Italian auspices. This lasted until 1943, when Italy capitulated. Subsequently, Germany replaced the Italian occupation, and many Kosovar Albanians in fact saw this occurrence as a sort of liberation from Serbian control. The Serbian communists always pointed to this fact to show Albanians as Nazi collaborators. This is not in fact true considering that statistics prove that every Albanian Jew and every Greek, Yugoslav, Austrian, and German Jew that was fortunate to flee to Albania survived. The explanation for this phenomenon is the Albanian cultural concept of besa – a moral pledge to keep one’s word and uphold one’s honor. Even for the Jews it was amazing that Muslim Albanians could save their lives, even though, there were also Albanian Catholic and Orthodox families participating in saving Jewish families. Conversely, there is another important fact that only less than 10% of Jews in Yugoslavia survived the Holocaust.

During this time period, some Albanians did in fact join the Yugoslav Communist Party and Tito’s partisans. The leaders of the YCP made a concession on the slogan of “self-determination” in some official statements of the Albanian Communist Party. The Albanian Communist Party was completely and totally controlled, and advised by two Yugoslav communist leaders (Miladin Popovic and Svetozar Vukmanovic Tempo). In a meeting that took place in the village of Bujan, called the Bujan’s Conference, from December 31, 1943, to January 2, 1944 a “Resolution” and “Proclamation” were issued by all forty-nine delegates, of whom forty-two were Albanians. The Resolution stated among other things that:

Kosovo-Metohija is an area with a majority Albanian population, which, now as always in the past, wishes to be united with Albania… The only way that the Albanians of Kosovo-Metohija can be united with Albania is through a common

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struggle with the other peoples of Yugoslavia against the occupiers and their lackeys. For the only way freedom can be achieved is if all peoples, including the Albanians, have the possibility of deciding on their own destiny, with the right to self-determination, up to and including secession.

Not long after, the CPY suggested that any changes in the borders would help occupying forces set people against one another. This was the expression of the right for self-determination of the Albanian people of Kosovo. The Resolution in the Conference of Bujan was, as Professor Stavileci noted, “an act with constitutional power and international guarantee… and the basic document of political self-determination of the Albanians of Kosova.” The Albanian people were promised “an independent and united Albania” after WWII, but that never happened, instead they remained as a part of Yugoslavia. The Resolution was at that time guaranteed by the two national liberation army’s of Yugoslavia and Albania, as well as by the Soviet Union, Great Britain, and the USA. Even the supreme commander at that time and later President of the SFRY, Tito wrote in March 1944,

[w]e can answer this question only like this; undoubtedly, Vojvodina and other provinces that want to have their broad autonomy, they will have, but the question of the autonomy and the matter which federal unit will respect provinces conjoin depends on the people themselves, on their representatives, when after the war the definitive arrangements will be decided.

Similarly, on February 8, 1946, a high ranking politician, Edvard Kardelj, who is considered Tito’s right hand, while in a meeting with other high ranking Yugoslav politicians noted that, after consultations that he had had with Tito, they decided to determine Kosovo’s status. Before WWII, Kosovo was divided into three banovinas: Banovina of Morava, Banovina of Zeta, and Banovina of Vardar (under numbers 6, 8, and 9 in the Map 8). One of the

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201 Banovina-Subdivision.
propositions was that, Kosovo could stay divided into these three parts and be spread between three Socialist Republics, but this solution was put down because, as Kardelj admitted that, Kosovo is populated with Albanians and it would be normal for it to join Albania. However, because of the situation of Serbian reactionary forces (Chetniks) of Serbia and Bosnia in cooperation with British government can be mobilized against Yugoslavia, a union between Kosovo and Albania would be impossible without threatening the existence of Yugoslavia. Another participant that was present at this meeting, Miladin Popovic said that if Kosovo joined Montenegro, they would have two problems; first was the communication between Kosovo and Montenegro because of geographical terrain, and second was that Kosovo had more than a double population than Montenegro and that it would not be known who is joining to whom. The final decision was made, after Macedonia failed as a proposition too, that since the second largest population after Albanians in Kosovo was Serbians, it was decided that Kosovo would join Serbia. In the end, Kardelj concluded that he agrees with Popovic’s proposition for now, even though it was a temporary solution. Unfortunately, for the Albanians that “temporary solution” lasted for fifty three years in a “forced marriage.” Within Kosovo, Albanians that were involved in liberation movements, had hopes and illusions about a “Balkan Federation” that would include Yugoslavia, Albania, and Bulgaria, with Kosovo being a part of an Albanian state or republic. Kosovo, together with Albania were on the table as an important issue for the relationship between the Soviet Union and Yugoslavia. Based on reliable sources, Tito’s biographer (Vladimir Dedijer), wrote that the split between the two states occurred mainly because of Albania. Dedijer presented documents that showed that on April 1948, Tito informed the CPY Central Committee that “the first conflict [between Moscow and Belgrade] broke out on

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account of Albania.” This information was originally hidden from Tito’s official biography by the order of the Edvard Kardelj, the Yugoslav Foreign Minister at that time (1953). During the war, Tito wanted to establish his hegemony in the Balkans and was unwilling to share the power by giving each member an equal voice. When leaders of the CPA (Communist Party of Albania) wanted to discuss Albania’s unification with Kosovo, Tito refused. Conversely, he wanted to solve the Kosovo issue by incorporating Albania into Yugoslavia.203

After WWII ended, Kosovo was placed under military administration until the fall of 1945. During this time, 50,000 Albanians in Kosovo were killed by the new military rule. Even though the killings stopped, police measures against “nationalists, separatists, and other enemies,” never stopped. In the 1950s, the interior minister at that time, Aleksandar Rankovic enforced a weapon collection for the Albanians in Kosovo. Police would search for weapons, and even if they did not find any, they would give the people who had been searched twenty-four hours to hand over any weapons. In most cases, Albanians were forced to buy weapons for the purpose of being handed over after the twenty-four hour period in order to meet the terms of the police. This type of state led harassment contributed to Albanians leaving their homes and immigrating, to other countries, mainly Turkey.204

Serbian brutality continued until the beginning of the 1970s, when Kosovo won a new constitution. This lasted until 1981, when the student demonstrations were crushed.

by special police forces that were brought into Kosovo from across Yugoslavia. In 1989, the President of Serbia, Milosevic, abolished Kosovo’s autonomy and from then until 1999, when NATO intervened, Kosovo’s situation appeared to be under an Apartheid. Today in the Balkans, there are approximately 7-8 million Albanians, except that only half of this population lives in Albania. The remaining population is divided between Kosovo, Macedonia, Montenegro, Greece, Serbia, Bosnia and Herzegovina, Croatia, Slovenia, Romania, and Bulgaria. (See Map 9 and 10.)
KOSOVO’S STATUS WITHIN THE 1974 CONSTITUTION, ITS ABOLITION, AND THE DISSOLUTION OF SFRY

Under cover of safeguarding regional stability, full independence of Kosovo may be postponed for a while, but it would be hard for the Kosovo question to be eliminated in this regard, as an essentially democratic and balanced solution in the Balkans. Its prolongation implies the continuation of conflict and inter-ethnic tensions in the Balkans.

Dr. Gazmend Zajmi,

Kosovo’s status during the period from 1974 until 1989 was as a Socialist Autonomous Province and it was identical to the status of Vojvodina. These two provinces, along with six republics, made up the former Yugoslavia. In order to clarify the two positions, one reflects the factual situation of Kosovo within the Yugoslav Federation, and the second is the Serbian position on Kosovo’s status. Serbia is right when it said that Kosovo was within the Republic of Serbia in the 1974 Constitution. However, Kosovo was part of SFRY as well, as seen in the SFRY 1974 Constitution. Every state’s constitution is the supreme law; therefore, SFRY’s Constitution was the supreme law of SFRY and its predecessor, the FDRY. The question that arises in this case is which constitution is more powerful and takes precedent in regulating the law within the state? Is it the Federal (SFRY) Constitution or the Republican (RS) Constitution? If it is Republican then that would be unfair to the other five republics that would have only one vote in comparison with Serbia who would have three votes. Even though the 1974 Constitution is clear that all republics and two provinces were equally represented in the federal organs, including the presidency.

205 Republic of Serbia was the only republic to have autonomous constitutive units (Kosovo and Vojvodina).
The Yugoslavs copied their constitution from the Russian practice of the institution of autonomous units, based on political-territorial autonomy. Its purpose was to plan for national minorities, pointing exactly at their status as a nation (federated republic within Yugoslavia), and without considering the population numbers as compared to other constituent nations (federated republics of Yugoslavia). However, one of the authors of the 1946 Constitution noted that, “sovereignty” here did not have the usual meaning in constitutional or international law like in the West. Terminology was used “not in confirmation of the scientific validity of definitions,” but in order to articulate “the voluntary character of the union, the sovereignty and equality of the people and the state character of their legal position within the union.” The only problem here was that Kosovo’s majority population did not join this union voluntarily, and its status and population was not equal with the other members of this union. At that time, Kosovo was under significant military pressure. If Kosovo’s case is to be categorized between two comparative international-legal models, then it is more logically to be understood as a case of the legitimacy of self-determination due to annexation, rather than a case of a Pact Model that could be applied to the former Yugoslav republics that entered willingly in this federation.

The Yugoslav constitution was first drafted after WWII and it was modified several times over the years. In total, there were four Constitutions during the time of Tito’s Yugoslavia (1945-1991). The first one was the Constitution of FPRY, adapted on January 31, 1946, the second was the Constitutional Law of the FPRY, adapted on January 13, 1953, third was the Constitution of SFRY, adapted on April 7, 1963, and the last one was the Constitution of SFRY, adopted on

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208 Reka, 2003, p. 50.
February 21, 1974. This constitution was in use until the SFRY ceased to exist and that was 1991.

Kosovo and Vojvodina’s status within Tito’s Yugoslavia starts in 1945 after they were integrated into the Republic of Serbia. This decision was supported by the third AVNOJ Conference in August 1945. Nevertheless, the Albanian representatives were not called to participate in this Conference. Serbia granted Vojvodina the status of an Autonomous Province that was a formally higher status than what Kosovo got, which was the Autonomous Authority or Region. Only the 1963 Constitution recognized Kosovo as an Autonomous Province, which was equal with the status of Vojvodina. The autonomous provinces of Kosovo and Vojvodina were de facto constitutive elements of the Federation of former Yugoslavia with prerogatives of the republic. 209 During Tito’s Yugoslavia, Kosovo was given a discriminatory status compared to all six republics and the province of Vojvodina until the 1974 SFRY and Kosovo Constitutions were adapted.

**IMPORTANT FACTS OF THE 1974 CONSTITUTION**

The early 1970s were the most prosperous period in Kosovo’s history. After the demands of student demonstrators were denied in 1968 in Prishtina, the early 1970s saw important constitutional changes. Beginning in 1971, constitutional amendments were first implemented and three years later in 1974, the new constitution was adapted. The student’s demands were to upgrade Kosovo’s status to republic and for their own Albanian-language university rather than

being a provincial branch of Belgrade University,\textsuperscript{210} which was located 360 kilometers (225 miles) away. When the University of Prishtina was established it was the first university to use the Albanian language in Yugoslavia. It attracted not only students from Kosovo but from other areas where Albanian was a native language such as Macedonia, Montenegro, and Serbia, which did not have universities that used the Albanian language. Despite these positive changes, the republic status was denied because of fears that it could provoke political bitterness within Serbia and with Kosovo’s Serbs.\textsuperscript{211} Instead of the status of republic, the 1974 Constitution granted Kosovo an equal republican status in all but name. Serbia became aware of the powerful effect student demonstrators could have though, and in 1981 when student demonstrations began again in Kosovo, Yugoslavian/Serbian special police forces were sent to intervene. Because of the status granted by the 1974 Constitution, Kosovo was able to initially stop the Serbian police forces at the border, they could not enter Kosovo’s territory without permission from its competent organs.\textsuperscript{212} Eventually, approximately 30,000 troops got in but after that, it was clear that the Kosovo’s counter-revolution had erupted. The main point is that with the 1974 Constitution they obtain to get Kosovo’s authorities approval to enter the territory.

All three of the 1974 Constitutions of Kosovo, Serbia, and SFYR consider the status of autonomous provinces a federal component, equivalent with to republics. According to the 1974 Constitution of the former SFYR, Kosovo was constitutionally and juridically positioned as follows: Kosovo was a constituting part of the SFYR (Art. 1 and 2). Kosovo had its defined territory and borders that cannot be altered without its consent. The frontiers of the SFYR may not be altered without consent of the Autonomous Province (Art. 5 of Constitution of the SFYR,

\textsuperscript{210} Judah, Tim, \textit{Kosovo: War and Revenge}, 2002, Yele Nota Bene, p.37.
\textsuperscript{211} Malcolm, 1999, pp. 328-329.
\textsuperscript{212} Stavileci, 2005, p.100.
art. 292 of Constitution of SR Serbia, and art. 3 of the Constitution of the SAP Kosovo). Article 206 (SFRY Constitution) notes that the Republican constitutions and the provincial constitutions may not be contrary to the SFRY Constitution, however, Serbia broke the SFRY Constitution when in 1989 it abolished Kosovo’s autonomy. Articles 245 and 246 explained the equal rights of nations and nationalities and their languages throughout the territory of the SFRY. Additional statehood attributes of Kosovo, according to these constitutional acts, are the right to autonomously organize their authority such as the Parliament, the Presidency, the Executive Council, the Constitutional Court, and the National Bank (art. 292, 300, 339, 372, and 390 of the Constitution of SAP Kosovo). Kosovo, based on the SFRY Constitution, was represented at the Republican, Provincial Assembly of the former SFRY (art. 284, par. 3), and at the Federal Assembly (art. 291, par. 3). It has been represented by its member at the eight-member Presidency of the former SFRY (art. 321), in the SFRY Executive Council (art. 348, par. 1), at the Federal Court (art. 370, par. 2), and at the Constitutional Court of the former SFRY (art. 381, par. 1) as well.  

Equally important, Kosovo and Croatia were the only two units of the former Yugoslav Federation that included in their constitutions articles outlining the criteria necessary to enter into independent legal international agreements. For example, the ability to ratify international contracts with other states and international organizations (art. 301, par. 1, point 6 of the Constitution of the SAP Kosovo of 1974 and art. 350, point 5, and art. 396, point 5 of the Constitution of SR Croatia). Article 301, paragraph 1, point 6 of Kosovo’s Constitution specifies that the Assembly shall directly and exclusively:

Discuss issues of the foreign policy and international relations; consent to the conclusion of international treaties in cases specified by the Constitution of the SFRY; ratify agreements concluded by the Province with agencies and organizations of foreign states and international agencies and organizations, within the framework of the specified foreign policy of the SFRY.\textsuperscript{214}

This process was performed by the Secretariat of the former SAP Kosovo for Relations with the World (similar to a Ministry of Foreign Affairs). This international and legal subjectivity allowed Kosovo to join international agreements that were ratified by the parliament of the former SAP Kosovo. During the period of 1975-1978 Kosovo had three agreements, two with IBRD (International Bank for Reconstruction and Development) and one with the former DDR (German Democratic Republic), which were published in Official Gazettes of SAP Kosovo, number 12/72; 18/75; 3/77; 24/77 and 34/78.\textsuperscript{215} Another example of what the status of Autonomous Province for Kosovo and Vojvodina entitled is seen that fact that provinces, same as the republics, had the right to veto the federal decisions that affected their interests.\textsuperscript{216}

**ABOLITION OF KOSOVO’S AUTONOMY**

Within less than a year of the 1974 Constitution being issued, on January 16, 1975, the Serbian Presidency insisted on its revision. After two years, a group of legal experts published their analysis in a “blue book.” The book itself was a top-secret document and was published only in 1990. The document described the economic problems facing Serbia as a result of the current relations between Serbia and the provinces, stating “Serbia’s economy has been subject to unfair terms of trade.”\textsuperscript{217} The document caused an internal conflict within the Serbian state and political leadership. As a result, Tito became involved. After meeting on July 27, 1977, with the representatives of the Regional Committee of Kosovo (M. Bakalli) and Vojvodina (D.

\textsuperscript{214} Krieger, 2001, pp. 2-8.
\textsuperscript{215} Reka, 2003, pp. 50-51.
\textsuperscript{216} Hasani, 2003, p.165.
Alimpic), as well as with Serbian Central Committee representative (T. Vlaskalic), Tito ended the dispute by deciding to not change the 1974 Constitution.\footnote{Pavlovic, Momcilo., \textit{Kosovo Under Autonomy1974-1990}, 2005, The Scholars Initiative: Research Team Reports, p. 22. \url{http://www.cla.purdue.edu/history/facstaff/Ingrao/si/Team1Reporte.pdf}}

Nevertheless, the blue book became a platform for Serbian nationalism and was seen as a “blueprint for war.”\footnote{Mertus, 1999, p. 294.} Following this situation, Serbian nationalistic forces began an anti-Albanian and anti-Kosovo propaganda campaign. Using media, they pushed stereotypes about the Albanian peoples, particularly after the demonstrations of 1981, which were brutally crushed. Kosovo, throughout the period between 1981 and 1989, endured a police enforced curfew, a state of emergency declared by Yugoslavia, and mass arrests by police and military units from across the former Yugoslavia. A Communist Party “cleansing” was also undertaken throughout the process of “differentiation.” The victims of this differentiation were mainly university professors and schoolteachers, thousand of whom were fired, leaving a massive shortage of Albanian professors and Albanian language textbooks.\footnote{Independent International Commission on Kosovo, \textit{Kosovo Report: Conflict, International Response, Lessons Learned}, 2000, Oxford University Press, UK, pp. 36-37.} Not long after this process began, Milosevic rose to power and under the banner of the “meeting of truth,” he mobilized the Serbian political and security apparatus against Kosovo’s and Vojvodina’s Autonomy. He proposed a number of measures and constitutional amendments in order to terminate the autonomy of two provinces. During this time, the Albanians’ secession requests intensified and ethnic miners from the Trepca mining complex in Mitrovica, marched fifty-five kilometers (34 mi) from their mine to Prishtina where they joined students to protest in front of the Communist Party headquarters.\footnote{Mertus, 1999, p. 295.}
The former President of Serbia, who was tried as a war criminal, will later call the move to strip Kosovo of its sovereignty, “historic Serb rights” to the authority over Kosovo.\textsuperscript{222} The Serbian assembly passed amendments to change its Constitution in a move towards centralization. After the “state of emergency” was declared, federal forces were deployed to Kosovo for the fourth time in its history (1945, 1968, 1981, and 1989). The process of abolishing the provinces’ autonomy was carried out at a constitutional level, which affected both Kosovo and Vojvodina. The legislative overhaul was meant to solely target Kosovo, though. Kosovo’s autonomy was abolished by the implementation of special laws and measures on March 23, 1989 (Amendments: IX-XLIX to the 1974 Constitution of the SR Serbia adopted in 1989, published on Official Gazettes of the SR Serbia, number. 11/89). Officially, Kosovo was de-federalized and was re-annexed by Belgrade. These special laws implemented with help of “special measures” were:

- The Law on the Action of republican Agencies under Special Circumstances” (Official Gazettes of the RS Serbia number. 30/90)
- The Law on the Termination of Work of the Assembly of the SAP Kosovo and the Executive Council of the Assembly of the SAP Kosovo (Off. Gaz. of the SR Serbia number. 33/90)
- The Law on Labor relations under Special Circumstances (Off. Gaz. of the SR Serbia number. 40/90)
- The University Law (Off. Gaz. of the SR Serbia number. 5/90)

The Elementary Education Law, The Secondary Education Law, The High School Law (Off. Gaz. of the SR Serbia nr. 50/90)\textsuperscript{223}

The 1990 law on Special Circumstances formalized the dominance of the republic of Serbia in Kosovo. The law allowed Serbian leaders to get involved in administering Kosovo affairs and at the same time to nullify all previous decisions taken by Kosovo’s leadership. The

\textsuperscript{222} Udovicki, Jasminka. and Ridgeway, James. *Yugoslavia’s Ethnic Nightmare: The Inside Story of Europe’s Unfolding Ordeal*, Lawrence Hill Books, Chicago, IL, p.89.
\textsuperscript{223} Reka, 2003, p. 51.
Republic of Serbia approved a new constitution on September 28, 1990, which included changes that specified that Serbia was a “democratic state of the Serbian people” (Constitution of SR Serbia, 1990, Preamble), rather than as a “state of the Serb nation and parts of other nations and nationalities, which live and exercise their sovereign right in it” (Constitution of SR Serbia, 1974, Art.1), as the previous Constitution stated. Therefore, Albanians in Kosovo were reduced to a “national minority” in their own territory where they were more than 90% of the population.\textsuperscript{224} Serbia’s amendments to the Constitution (1989-1990) changed the constitutional and juridical status of Kosovo and Vojvodina that had been guaranteed by the 1974 Constitution. In doing so, Serbia created a great conflict within the federal constitution in both the basic principles and the normative values.\textsuperscript{225}

**KOSOVO AS A CONTINUATION OF THE YUGOSLAV DISSOLUTION**

The name Yugoslavia is rooted in the geographical position of the south Slavs. As a state name, it appears for the first time in 1918 as the Kingdom of Yugoslavia known also as the Serb-Croat-Slovene Kingdom. After WWII, when Tito led a partisan takeover, it was renamed the Federal People’s Republic of Yugoslavia (FPRY) [FNRJ]. This name was changed again in 1963 to the Socialist Federal Republic of Yugoslavia (SFRY) [SFRJ] until 1991. Following the SFRY dissolution, the two former SFRY Republics of Serbia and Montenegro declared themselves the Federal Republic of Yugoslavia (FRY) [FRJ] in 1992. This Yugoslavia was established by Milosevic and it lasted until his fall from power in 2000 when it changed its name to the State Union of Serbia and Montenegro (SUSM) [DZSCG]. This union lasted until 2006 when Montenegro gained its independence through a referendum. Even though, both the FRY and the

\textsuperscript{224} Weller, 2009, p. 38.
\textsuperscript{225} Stavileci, 2005, p.649.
SUSM were comprised of the same two republics from 1992 until 2000, the name was not changed to SUSM until the fall of Milosevic because he thought that saving the old name of Yugoslavia was critical in representing the continuity with the former Yugoslavia.\footnote{226}{Hasani, 2006, p.124.}

When Kosovo declared its independence in 1991, SFRY was disintegrated. Based on \textit{uti posidetis}, Kosovo held a referendum to internationalize its borders. Kosovo’s case could not be considered as secession because the former state was not recognized as a state at that time.\footnote{227}{Stavileci, 2005, p. 500.}
CONCLUSION

The best way of learning to be an independent sovereign state is to be an independent sovereign state.

Kwame Nkrumah, Ghana’s 1st President

Today, Kosovo is not Serbian, a SFRY region, an autonomous province or a republic but it is a controlled independent state. Since Slavs moved to the Balkans, Kosovo’s long history has been full of bitterness leftover from different occupying forces, full of genocide and crimes committed against its own population, and a long history of having its human and ethnic rights denied. These atrocities widespread before and during the Serbian Kingdom, the communist regimes, and during the Milosevic dictatorship. It was bad luck for Kosovo to have the neighbor (Serbia) whose “tendency to dominate its neighbors is the main obstacle to progress of the countries of the region.”228 Serbia must understand that Kosovo is independent and that “the genie is, however, already out of the bottle of Serbia and it seems unlikely that this de facto secession can be reversed.”229 The Republic of Serbia cannot have illusions of turning back its history regarding Kosovo. The former President of Croatia had spoken about his idea that since the former federation of Yugoslavia is destroyed, and that everyone in the world knows who was most responsible for ruining this federation it was only a matter of time before Kosovo would become independent. Consequently, the Yugoslav Federation is not reversible just as well as Kosovo’s independent status is not reversible.230 The Republic of Serbia made huge mistakes in the past. This argument among others makes Kosovo’s case unique and therefore it cannot be

228 Biserko, Sonja., Helsinki Committee President Sonja Biserko: Serbia “obstacle to region’s progress, April 15-18, 2011, Illyria, #2042, p. 5.
230 Greicevci, pp. 4-5. www.gazetaexpress.com
considered a precedent for other cases such as the Basques in Spain simply because Spain never victimized the Basques \textit{en masse} as Serbia did with Albanians.\textsuperscript{231} Conversely, Kosovo’s case can be viewed as a good precedent for cases involving humanitarian intervention. The former Czechoslovakian president made a statement about the NATO humanitarian intervention, in which he highlighted this point, “I see this as an important precedent for the future. It has now been clearly stated that it is not permissible to slaughter people, to evict them from their homes, to maltreat them and to deprive them of their property. It has been demonstrated that human rights are indivisible and that if injustice is done to some, it is done to all.”\textsuperscript{232}

Economic analysis of the region has shown that Serbia and Kosovo, who have been separated since 1999, can reach two percent more yearly increase of their economies than if they were in the same state. It is also in Serbia’s ethnic homogeneous interest and in the interest of the stability of its own state, if Kosovo remains independent. The Republic of Serbia should take a lesson from its former sponsor, France, and former French President Charles de Gaulle, who after years of delay realized the hopelessness and harm of the French colonial policy in Algeria.\textsuperscript{233} Currently, all Balkan states are aiming for EU membership, where borders and barriers do not have the same significance as seen in the other parts of the world. A German representative (Dr. Susanne Wasum-Rainer) in the ICJ, who participated in Kosovo’s case, made a statement in which she first discussed celebrating the twentieth anniversary of the fall of the Berlin Wall, a symbol of German reunification, its citizens exercising their right to self-

\begin{flushright}
\textsuperscript{231} Tomuschat, Christian., \textit{The History Wheel Cannot be Return Back}, [\textit{Rrota e histories nuk mund te kthehet mb rapa}], April 16, 2009, 05:44:00, Deutche Welle (Radio).
\textsuperscript{232} Vaclav Havel President of the Czech Republic addressing to the Senate and the House of Commons of the Parliament of Canada Parliament Hill, Ottawa, 29 April 1999. \url{http://old.hrad.cz/president/Havel/speeches/1999/2904_uk.html}
\textsuperscript{233} Bebler, Anton., \textit{Lost Chance}, [\textit{Propustena prilika}], October 2008, Pescanik, \url{www.pescanik.net/content/view/2171/66/}
\end{flushright}
determination, and the foundation for eastern and western European integration process, she then declared, “my government is convinced there is room for both States, Kosovo and Serbia, in our common house of Europe.”

The world is changing and states have been continuously created in different ways as the world order itself changes. The Peace of Westphalia lasted for 150 years, and continued for a hundred years under the international system that was created by the Congress of Vienna. Later, the Cold War began, and dominated international relations for forty years. It is important to mention Henry Kissinger’s view on the world order that is congruent with the continuous creation of new states, “Never before have the components of world order, their capacity to interact, and their goals all changed so rapidly, so deeply, or so globally.” This further underlines that the case of Kosovo’s independence has many unique angles that are understood to be important. This view can be matched with the unusual combination of five factors; Yugoslavia’s disintegration, the long history of ethnic cleansing, crimes against humanity, the extended period of the UN administration, and the UN negotiations towards Kosovo’s independence. The independent Republic of Kosovo is a political fact on the ground that is supported by historical and legal background, and the principles of effectiveness in international law cannot be ignored. The independent state of Kosovo is important factor of stability in the Balkan region. (See Map 11.)

Kosovo’s case will end only “when Kosovo gets what it belongs to it.

Esat Stavileci

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http://www.rks-gov.net
http://www.state.gov
http://www.un.org
http://www.unosek.org
http://www.web.worldbank.org
http://www.wnd.com
## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASSR</td>
<td>Autonomous Soviet Socialist Republic</td>
</tr>
<tr>
<td>AVNOY</td>
<td>Anti-Fascist Council of National Liberation of Yugoslavia</td>
</tr>
<tr>
<td>CG</td>
<td>Contact Group</td>
</tr>
<tr>
<td>CPA</td>
<td>Communist Party of Albania [PKSH]</td>
</tr>
<tr>
<td>CPY</td>
<td>Communist Party of Yugoslavia [KPJ]</td>
</tr>
<tr>
<td>DoI</td>
<td>Declaration of Independence</td>
</tr>
<tr>
<td>GA</td>
<td>General Assembly</td>
</tr>
<tr>
<td>EC/EU</td>
<td>European Community/European Union</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal of the Former Yugoslavia</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>KLA</td>
<td>Kosovo Liberation Army</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>SANU</td>
<td>Serbian Academy of Science and Arts</td>
</tr>
<tr>
<td>SAP</td>
<td>Socialist Autonomous Province</td>
</tr>
<tr>
<td>SC</td>
<td>Security Council</td>
</tr>
<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia [SFRJ]</td>
</tr>
<tr>
<td>SR</td>
<td>Socialist Republic</td>
</tr>
<tr>
<td>SSR</td>
<td>Soviet Socialist Republic</td>
</tr>
<tr>
<td>SUSM</td>
<td>State Union of Serbia and Montenegro (2000-2006)</td>
</tr>
<tr>
<td>UDI</td>
<td>Unilateral Declaration of Independence (Republic of Serbia)</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNSG</td>
<td>United Nations Secretary-General</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<td>-----------</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
</tr>
<tr>
<td>UNOSEK</td>
<td>United Nations Office of the Special Envoy for the Future Status Process for Kosovo</td>
</tr>
<tr>
<td>UNTAET</td>
<td>United Nations Transitional Authority in East Timor</td>
</tr>
<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
</tr>
<tr>
<td>WB</td>
<td>World Bank</td>
</tr>
</tbody>
</table>
Table 1.

**Not convinced**<sup>236</sup> Selected countries that do not recognize Kosovo and their reasons for not doing so.

<table>
<thead>
<tr>
<th>Orthodoxy-Christian solidarity</th>
<th>Domestic secessionist issues</th>
<th>Non-aligned nostalgia</th>
<th>Geopolitical concerns</th>
<th>Territorial integrity true believers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russia</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>China</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td>✓</td>
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<tr>
<td>Egypt</td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cuba</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Indonesia</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Table 2.

Expatriation of the Albanians during the period 1952-1965.<sup>237</sup>

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of persons</th>
<th>Year</th>
<th>No. of persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952</td>
<td>37000</td>
<td>1959</td>
<td>32000</td>
</tr>
<tr>
<td>1953</td>
<td>17300</td>
<td>1960</td>
<td>27980</td>
</tr>
<tr>
<td>1954</td>
<td>17500</td>
<td>1961</td>
<td>31910</td>
</tr>
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<td>51000</td>
<td>1962</td>
<td>15910</td>
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<td>1956</td>
<td>54000</td>
<td>1963</td>
<td>25720</td>
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<tr>
<td>1957</td>
<td>57710</td>
<td>1964</td>
<td>21530</td>
</tr>
<tr>
<td>1958</td>
<td>41300</td>
<td>1965</td>
<td>19821</td>
</tr>
</tbody>
</table>

---


Table 3.

Creation of States and UN admission, 1945-2005

<table>
<thead>
<tr>
<th></th>
<th>Number of UN Member States</th>
<th>Approximate % of total number of States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Members (1945)</td>
<td>51</td>
<td>68.0%</td>
</tr>
<tr>
<td>December 1950</td>
<td>60</td>
<td>71.4%</td>
</tr>
<tr>
<td>December 1955</td>
<td>76</td>
<td>87.4%</td>
</tr>
<tr>
<td>December 1960</td>
<td>99</td>
<td>89.2%</td>
</tr>
<tr>
<td>December 1965</td>
<td>117</td>
<td>91.4%</td>
</tr>
<tr>
<td>December 1970</td>
<td>127</td>
<td>91.4%</td>
</tr>
<tr>
<td>December 1975</td>
<td>144</td>
<td>93.5%</td>
</tr>
<tr>
<td>December 1980</td>
<td>154</td>
<td>93.9%</td>
</tr>
<tr>
<td>December 1985</td>
<td>159</td>
<td>94.6%</td>
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<tr>
<td>December 1990</td>
<td>159</td>
<td>91.9%</td>
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<tr>
<td>December 1995</td>
<td>185</td>
<td>96.9%</td>
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<tr>
<td>December 2000</td>
<td>189</td>
<td>99.0%</td>
</tr>
<tr>
<td>December 2005</td>
<td>191</td>
<td>99.5%</td>
</tr>
</tbody>
</table>

In June 2006, Montenegro obtained independence from the former Federation with Serbia and officially became the 192\textsuperscript{nd} UN Member State. \textsuperscript{239}

Diagram of New States (based on data from Table 3.)

From 1945 until 2005 there were 140 new states created. Based on the table above, there was an average of almost 12 new states created in a five-year period. If it is calculated on a yearly basis, than it will be an average of 2 new states every year since the UN was established.
Table 4.

Changes in the Ethnic Structure of the Population in Vojvodina from 1910 to 1991

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>1,510,822</td>
<td>1,514,426</td>
<td>1,699,545</td>
<td>1,952,533</td>
<td>2,012,517</td>
</tr>
<tr>
<td>%</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Index</td>
<td>240</td>
<td>21.7</td>
<td>97.4</td>
<td>19.7</td>
<td>105.7</td>
</tr>
<tr>
<td>Serbs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Count</td>
<td>510,186</td>
<td>526,134</td>
<td>865,538</td>
<td>1,089,132</td>
<td>1,151,353</td>
</tr>
<tr>
<td>%</td>
<td>33.8</td>
<td>34.7</td>
<td>50.9</td>
<td>55.8</td>
<td>57.2</td>
</tr>
<tr>
<td>Index</td>
<td>146.4</td>
<td>164.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hungarians</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Count</td>
<td>424,555</td>
<td>370,040</td>
<td>435,179</td>
<td>423,866</td>
<td>340,946</td>
</tr>
<tr>
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### Table 5.

**Kosovo Census Data: 1921, 1931, 1939**

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241 Mertus, 1999, Appendix, Table 7, p. 315
Map 1.

Eastern Europe 1878

I. Russia received back what it had lost in 1856------Green
II. Austria got Bosnia and Herzegovina---------------Brown
III. Montenegro got Antivari-------------------------Dark Green
IV. Serbia got the Nissa district---------------------Yellow
V. Roumania got the Dobrujca------------------------Blue

---

For administrative purposes, the Turks had divided Albania into 4 provinces, or "vilayets" as they called them, of Shkodra, Kosova, Manastir, and Janina. When the European powers began to dismantle the Ottoman Empire after Russia defeated Turkey in a war that resulted in the 1878 San Stefano Treaty, they penalized Albania (because it was considered part of the Ottoman Empire) and divided it by ceding major portions of the Vilayet of Shkodra to Montenegro, the Vilayet of Kosova to Serbia, the Vilayet of Manastir to Macedonia, and the Vilayet of Janina to Greece. What remained after the division of the 4 Vilayets comprises the nation of Albania as it is known today.

243 Hamiti, Ilir., *The Four Albanian Vilayets During the Ottoman Empire (Circa 1878)*, Kosovo Information Centre, London.
Map 3.

Dissolution of USSR

USSR successor states in alphabetical order:

Map 4.

Borders Based on Treaty of San Stefano and Treaty of Berlin

Source: THE DEVELOPMENT OF THE EUROPEAN NATIONS 1870-1914, by J. HOLLAND ROSE LITT.D.

http://www.gutenberg.org/files/14644/14644-h/14644-h.htm#page222
Map 5.

Balkan Aspirations [showing boundaries of 1912]

Source: Map from "Report of the International Commission To Inquire into the Causes and Conduct of the Balkan Wars" 1914. "There was hardly any part of the territory of Turkey in Europe which was not claimed by at least two competitors."--Report of the International Commission To Inquire into the Causes and Conduct of the Balkan Wars, Carnegie Endowment for International Peace, 1914, p.38.
http://www.lib.utexas.edu/maps/historical/balkan_aspirations_1914.jpg
Map 6.

Lands Offered to Serbia by the Allies in 1915 in London.

The image has been scanned from a Serbian atlas called the "Historical atlas" by Milos Blagojevic [ISBN 86-17-05594-4], printed in Belgrade in 1997.
Map 7.

Greater Serbia\(^{244}\)

A 1941 Chetnik conception based on a Chetnik leaflet entitled "Our Way" from the archives of the Institute of Military History in Belgrade.

- **Red**: Greater Serbia;
- **Red with black lines**: Territories to be attached to Serbia;
- **White with black diagonal lines**: Croatia;
- **Blue with vertical black lines**: Slovenia;
- **Blue with black squares**: Territories to be attached to Slovenia.

\(^{244}\) Tomasevich, Jozo., *War and Revolution in Yugoslavia, 1941-1945: The Chetniks*, 1975, Stanford University Press, CA, p.168
Map 8.

Subdivisions in Banovinas of the Kingdom of Yugoslavia in 1929

Territory of Kosovo was split into three banovinas of Zeta (Cetinje) i.e. Montenegro, Nish i.e. Serbia, and Skopje.
Map 9 and 10.

Maps of Natural Albania

In yellow descriptions are territories with population of Albanian majority still remaining outside of Albania.

Source:
http://ajkashqiptare.beeplog.de/blog.pl?blogid=111805&from=11&categoryid=149895
Map 11.

Countries Recognizing Kosovo, http://www.kosovothanksyou.com/