

KOSOVO DIPLOMACY AND RECOGNITION OF KOSOVO

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Abstract

Kosovo as one of the newest countries in the world declared its independence on February 17, 2008. The Declaration of the Independence came after a long period of time and it happened in close cooperation with the International Community. Kosovo is the last unite of former Yugoslav federation that became an independent state. The process that led to the independence was a long and difficult one. It was difficult because it within itself had historical, constitutional, political, ethnical and some other components that were for many decades resources of conflict .The process of dissolution of former Yugoslavia was not a peaceful process. The armed conflict started in Slovenia and it ended with the war of Kosovo and the NATO intervention. But disagreements and the political will for split among the Yugoslav federal units existed all over the history of its existence. Other republics that became independent states got international recognition more easily compared to Kosovo for what it took a long of time and a lot of efforts. This because of the constitutional position Kosovo had with the Yugoslavia Constitution based on what Kosovo was the constitutional unite of the former federation and at the same time it was a part of Serbian constitutional system. Since its declaration of independence Kosovo is recognized by 108 states, but the needs for more recognition is crucial for the Kosovo future. There are two groups of states that hesitate to recognize Kosovo: those that have doubts on the right of Kosovo to become independent state and the other that are quite opposite of recognizing Kosovo. The paper will cover the process of independence and it will deal with the theories of recognition under the Kosovo context.

Key words: Kosovo, process, independence, recognition, Yugoslavia, republics

Introduction

On June 10, 1999 UN Security Council adopted the Resolution 1244 which created the legal basis for establishing international civil administration in Kosovo. And this happened immediately. It was UNMIK¹ administration that took the responsibility to fulfill its mission as defined and determined by the 1244 Resolution. All this came after the 78 days NATO air strikes against Serbia/SRJ² military targets. Whereas the NATO air strikes against SRJ/Serbia military forces were undertaken after many refusals of SRJ/Serbia state authorities to agree on a peaceful agreement regarding the Kosovo problem and crisis. The Rambouillet Conference³ was the last chance for peaceful solution of the Kosovo issue. SRJ/Serbia refusal to accept the Rambouillet proposal led directly to the NATO attacks against SR/Serbia military forces.

In first – ever operation of its kind UNMIK initially brought together four “pillars” under United Nations leadership:

- Pillar I: Humanitarian Assistance, led by the Office of the United Nations High Commissioner for Refugees (UNHCR);
- Pillar II: Civil Administration, under the United Nations;
- Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE), and

¹ UN Mission in Kosovo

² Savezna Republika Jugoslavija (Federal Republic of Yugoslavia) was a creature that remained from the process of dissolution of the former federation. This as consisted by two former federal units (Serbia and Monte Negro) and this creature doesn't exist any more, since Monte Negro became the independent state.

³ See more at: Marc Weller, The Rambouillet Conference on Kosovo,

<http://www.chathamhouse.org/sites/files/chathamhouse/public/International%20Affairs/Blanket%20File%20Import/inta069.pdf>

- Pillar IV: Reconstruction and Economic development, managed by the European Union (EU).⁴

According to the Resolution 1244 Kosovo was to be administered internationally with the aim of establishing a substantial autonomy and self government that would be after a determined period of time a basis of determining the final status of Kosovo. The international civil administration on the other side could be considered as a UN protectorate over Kosovo with the presence EU, OSCE, etc. Such an administration was crucial in a post war situation and in a society in transition. But it was obvious that the civil administration was going to be limited on time no matter how important and helpful it was. It had to open the doors for efforts on achieving the final status of Kosovo. This unique administration tried since the beginning to bring in within the administration the local people and thus mix structures at some point were created.

The aim of this paper is not to underline and to describe the successes and the weaknesses of the international civil administration. But it is important to stress out some main points and steps that led towards status determination and status talks that did not result with the agreement and therefore Kosovo declared its Declaration of Independence after which it became an independent state that is still requiring recognition.

It was clear that the international civil administration could not live forever in Kosovo. Moreover in some time and at some point it could hinder the entire process. Thus it was Special Representative of Secretary General, to introduce slogan “Standards before Status”. It was a document that among the others in the introductory part stated:..”These standards reinforce Kosovo’s parallel progress towards European standards in the framework of the EU’s Stabilisation and Association Process, based inter alia on the Copenhagen criteria. The standards describe a multi-ethnic society where there is democracy, tolerance, freedom of movement and equal access to justice for all people in Kosovo, regardless of their ethnic background.”⁵ The document had 8 points that had to be respected and fulfilled by Kosovo Provisional Institutions of Self Governance before the green line for the status talks was going to be on. The following were the eight points Kosovo had to fulfill:

- Functional democratic institutions;
- Rule of law;
- Freedom of movement;
- Free and sustainable return of refugees;
- Economy;
- Property rights;
- Dialogue and
- Kosovo Protection Corps.⁶

As it could be seen from the Document, Kosovo had to fulfill these standards until 2005 and after they measured and if judged that they are fulfilled, Kosovo would enter into the other phase---the phase for the status talks and status determination. It was Kai Eide in 2004 that asked for more transfer of power from UNMIK to PISG and even more: to start with the status talks. In this regard UN Secretary General nominated former Finish as a special envoy to conduct negotiations between Kosovo and Serbia on the future status of Kosovo. Thus Special Envoy (Marti Ahtisaari) and Deputy Special Envoy (Albert Rohan) “paid their first visit to the parties and the region in November 2005, visiting Prishtina and Belgrade, as well as the neighboring capitals of Tirana, Podgorica and Skopje”⁷. It was natural to go and directly meet the responsible authorities about the plans and activities that were going to be undertaken in the phases of the status talks. After this the region was very frequently visited by the Special Envoy and his Deputy as well as the other members of UNOSEK. “In the course of 2006, UNOSEK has held 15 rounds of direct talks between the Belgrade and Prishtina negotiating teams. Fourteen of these rounds of talks have focused on decentralization, the protection of cultural and religious heritage in Kosovo, economic issues, and the protection of community rights.”⁸ In addition there were also held meetings between presidents of Kosovo and Serbia. In the UNOSEK web page a listing of direct talks between the Belgrade and Prishtina Delegations and it is important to present them as posted which are as follows:

⁴ <http://www.un.org/en/peacekeeping/missions/unmik/background.shtml> (accessed on August 12, 2014)

⁵ <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf>-accessed on August 19, 2014

⁶ See more about standards on: Standards for Kosovo, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf>

⁷ See at www.unosek.org

⁸ See at www.unosek.org

- Meeting of the Serbian and Kosovo leadership in Vienna (24 July);
- Eight meetings related to decentralization: (20-21 February, 17 March, 3 April, 5 May, 19 July, 7 August, 7 September, and 15 September);
- Three meetings related to the protection of cultural and religious heritage in Kosovo (23 May, 18 July and 8 September);
- Two meetings related to community rights (8 August and 8 September);
- One meeting related to economic issues (31 May).⁹
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These were not the only meetings. There were meetings of Special Envoy and his deputy in many occasions with the key factors beginning the Security Council, with the Contact Group, with the EU, NATO, OSCE, etc. All these meetings had among the others an informing character. All these meetings had to bring to a result no matter of the difficulties met during the meetings and negotiations. And the result came in form of a draft proposal made by Ahtisaari and his team. "On 2 February, the Special Envoy travelled to Belgrade and Prishtina to present his draft Comprehensive Proposal for a Kosovo Status Settlement to both parties. In Belgrade, the proposal was handed over to President Boris Tadic of Serbia. In Prishtina, the Special Envoy presented his proposal to President Fatmir Sejdiu and the Team of Unity".¹⁰

Efforts made by President Ahtisaari did not ring to a concrete agreement between parties, whereas the proposal that came from Mr. Ahtisaari among the others offered Kosovo a supervised independence that would end after a determined period of time. The proposal could not achieve the total agreement within the UN Security Council and with the aim of bringing Russia in there were additional efforts made in order to convince Serbia accept the Ahtisaari document. Kosovo on the other side accepted the Ahtisaari proposal.¹¹ All additional efforts and activities were unsuccessful on convincing Serbia. The situation in the field (in Kosovo) didn't allow much time for commodity because the majority of population required final status to be solved. Under these circumstances Kosovo Parliament, on February 17, 2008 adopted The Kosovo Declaration of Independence. This was done despite the strong objections from Serbia which still considers Kosovo as part of its inalienable territory. Ever since the Declaration of Independence was adopted by Kosovo Parliament Kosovo has been recognized by around 110 states and it is waiting new recognitions, whereas this process was not an easy one, because there is a block of states that still refuse to recognize Kosovo as an Independent State even though even the International Court of Justice has stated "that Kosovo Declaration of Independence has not violated the International Law".¹²

Independence and Recognition of Kosovo

Right after the Declaration of Independence approved there were a series of recognitions of the Kosovo Independency. Within few days Kosovo was recognized by most powerful states from the West as: USA, Great Britain, France, Canada, Germany, etc. But there were states that claimed that Kosovo had no right to declare its independence, that Kosovo Declaration of Independence was against the International Law, that this right doesn't belong to Kosovo, etc. Between Kosovo right to independence and objections regarding recognition there may be a classification of states or groups of states. Both groups: opponents as well as proponents base their attitudes in the international law and doctrine.

Opponents of the recognition argue that Kosovo had no equal rights with those that had republics of former Yugoslavia because Kosovo position within the federation was different from those that were named as republics. According to them only republics (by name) had the right for self determination and secession whereas Kosovo was named as province. But, first of all there was almost no difference between eight units of the federation. And after this there are many factors that strengthen Kosovo right on self determination and independency as all other units did (exception is Vojvodina that remained to be part of Serbia). These factors could be divided and classified in various ways as judicial, constitutional, historical, political, etc. And it is very difficult to interpret any of them in disfavor of Kosovo independence.

⁹ See UNOSEK, www.unosek.org

¹⁰ See UNOSEK, www.unosek.org

¹¹ See Declaration of Kosovo Parliament adopted on April 05, 2007.

¹² See more at International Court of Justice Opinion, dated:

https://www.google.com/?gws_rd=ssl#q=international+court+of+justice+kosovo+22+july+2010

International law has no norms to prohibit the proclamation of independence. On the other side independence cannot be treated as something that belongs only to the process of decolonization. The International law at the end of the day cannot be taken only as a static group of norms that are not subject of changes. It is a dynamic order that changes anyway. It changes also in regard to creation of new states.

Without a need to going back in the history it is important for the needs of this paper to underline that Yugoslavia was consisted of 8 federal units (six republics and two autonomous provinces) that were quite equal in their position and with the same rights and duties.¹³ And all these federal units (except Vojvodina) became independent states due to the process of dissolution of the federation. Why to oppose and exclude Kosovo from this process.

Kosovo is the last to become independent state passing through a very difficult process and circumstances. It was international community (NATO led forces) that intervned to avoid a very big humanitarian catastrophe¹⁴ and to bring peace to Kosovo.

After the NATO attacks against Serbia military targets Kosovo became a territory administered by international mission and during the civil administration in Kosovo were gradually built institutions that at some point were responsible to act and declare independence. This was the will of the majority population in Kosovo. The territory had nothing to do with Serbia whereas Resolution 1244 has foreseen that the final solution of the Kosovo status would be reached after a determined period of time. Resolution dealt with Federal Republic of Yugoslavia¹⁵ and not at any point with Serbia. Federal Republic of Yugoslavia even if existed wouldn't had have sovereignty over Kosovo since that was lost in one side and it was not exercised for a long period of time, on the other side.

Serbia that pretended territories entered into a process of negotiations, intermediated internationally, were Kosovo was equal party. And it was Serbia that refused the Ahtisaari proposal that came as a result of a long process of negotiations.

Kosovo accepted international obligations form all efforts: it approved the Rambouillet agreement and it approved the Ahtisaari proposal. There were no more other ways except declaring independence. By declaring its independence Kosovo expressed its commitment to fulfill international obligations and it called the international community to be in Kosovo and assist institutions on building democracy and rule of law.

The request for recognitions was right since the first day of independence. Kosovo fulfilled Montevideo conditions for being a state. It has all four elements for being a state¹⁶ and even more it has shown the readiness for fulfilling all international obligations that belong to a state. It is a known fact that in the international law there are few theories for recognition of states. Whereas the creation of state is an act that is more of a factual nature rather than an act that requires some acts before the creature. And on the other side every state decides itself whether to recognize a new state. Recognition, says Ian Brownlie, is a public act of the state is a discretionary political act and there is no legal obligation for it.¹⁷ In addition to this there are two main theories on the recognition: the declarative theory and the constitutive theory.

¹³ See articles 2 of the Constitution of Socialist Federal Republic of Yugoslavia 1974

¹⁴ In 1999 NATO undertook air strikes against military forces of Federal Republic of Yugoslavia/Serbia in order to save lives of people who were put under the terror. NATO air strikes were undertaken after the failure of efforts for solving the issue with an agreement. Serbia refused the Rambouillet Conference proposal. NATO air strikes were exercised during 78 days after which Serbia accepted a peace solution and thus in June 10,1999 the 1244 UN Resolution was adopted which brought international civil administration in Kosovo.

¹⁵ This was a creature created between Serbia and Monte Negro with the intention of inheritance of the former federation. But this creature doesn't exist any more, since Monte Negro itself became an independent state.

¹⁶ See Montevideo Convention 1933 and the four conditions for being a state: Montevideo Convention on the Rights and duties of States, 1933, available at: <http://www.oas.org/juridico/english/treaties/a-40.html> Montevideo Convention on the Rights and duties of States, 1933, available at: <http://www.oas.org/juridico/english/treaties/a-40.html>

¹⁷ Ian Brownlie, *Principles of Public International Law*, 8 th edition, Oxford University Press in UK and certain other countries, 2012,pg.89

According to the declarative theory state doesn't have a need to get a formal recognition from the other state. This derives from the fact that the creation of a state is of a factual nature. Thus the state from the moment on which it was created if fulfilled certain criteria, it enters into the relations with the others and becomes a member of the community of states. If a state has a "permanent population, a defined territory, a government and sovereignty"¹⁸ than it should be considered as a state. This is in general the approach that declarative theory stands for. Based on this, Kosovo on the date of its Declaration of its Independence has fulfilled all these criteria. Based on this there was no need for any other condition to be fulfilled. But nonetheless, Kosovo needed and needs recognitions and it continues to act for more since anyway there are formal needs for recognitions. Kosovo couldn't live alone. It needed and needs membership in international organizations as UN and others. And without recognitions obviously this would not happen. This among the others shows that even though the theory of declarative recognition is more accepted, it is still constitutive theory that to certain extent is applied. Thus according to M.Shaw, the current practice leads towards something between these two perceptions.¹⁹ It is obvious that the declarative theory is more appropriate and more right theory, since state is a factual creature and it could not be dependant all the time on an expressed will of the other state. It becomes international subject from the moment of its appearance. But of course in the time of globalization and under circumstances of big interdependence none can live alone. Kosovo even less. It aspires EU integrations. It aspires UN membership. And to achieve this recognitions are more than needed. They are challenges Kosovo has to face for a determined period of time where there will be some duties also for the international community in making Kosovo equal to the others. Especially Europe. It is a part of Europe and EU institutions should assist Kosovo on convincing 5 states of EU that still have not recognized Kosovo. Non recognition doesn't help neither Kosovo nor stability in the region.

Conclusions

Kosovo Parliament adopted the Declaration of Independence and by this there was no violation of the international law. The right of Kosovo for independence is justified with historical arguments in one side and by other arguments that derive from the international law, on the other side. There are no rules that forbid proclamation of independence whereas a fear that Kosovo has created a precedent to be used in other parts of the world should not exist. Kosovo is a sui generis case - it is a state that derived from the dissolution of a federation and it had the right to independence in an equal way as others had. There are no strong arguments that could go more in favour to other federal units compared to Kosovo related to the independence. Kosovo is recognized by more than hundred states and there should not be hesitations on recognizing it any more. It is obvious that states that have recognized Kosovo will not reject the recognition. Thus by not recognizing Kosovo there is no contribution to development of Kosovo as a state but there is also no contribution to the dialogue and peace in the region. Kosovo has shown commitment to accept and respect all international obligations and indeed it is fulfilling those. Moreover it has included in its constitutional system all mechanisms for defending human right, minority rights, etc. It has shown its readiness to enter into all international bodies and give its contribution.

Kosovo with its institutions should be more "aggressive" with the activities for more recognitions. There should be far more coordination between inner institutions when lobbying. It has been seen that in some activities there was an overlapping in the activities. There are several institutions that deal with these activities and this is good. But these institutions (President, Orime Minister, Minister of Foreign Affairs, Minister for EU Integrations, etc.) should be more coordinated acting based on a much clear agenda and with much clear duties. The terrain for lobbying should be divided and where is a lack of recognition there should be more activities. The readiness of countries as USA that lobby and assist Kosovo institutions should be used more because potentially in this way much more can be done. And Kosovo always has to make sure to comply with the international standards in form of doing homework. This especially on fulfilling EU standards and other standards related to as: anticorruption, fight against organized crime, development of functional democracy, etc. By fulfilling duties and complying with the international standards, itself chances for more recognitions are higher.

¹⁸ See Montevideo Convention on the Rights and duties of States, 1933, available at: <http://www.oas.org/juridico/english/treaties/a-40.html> Montevideo Convention on the Rights and duties of States, 1933, available at: <http://www.oas.org/juridico/english/treaties/a-40.html>.

¹⁹ See more: Malcolm N.Shaw, International Law, fifth edition, Cambridge University Press, Cambridge, 2003, pg.369

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