
Declaration of Independence of the Republic of Kosovo and the Issue of Assessment in the International Court of Justice

Dr. FEJZULLA BERISHA

Assistant Professor

Faculty of Law

“HAXHI ZEKA” University, Pejë
Kosovo

Abstract:

Status of Kosovo's independence, stability factor: the Declaration of Independence of Serbia has turned to the International Court of Justice, but this court in this context does not have a mandate to deal with political issues, because the Declaration of Independence was -is a matter of exclusive political and not legal. In other words, the court normally does not deal with this category, and therefore gave respectively opposing opinion on this declaration Declaration of Independence of the Republic of Kosovo is in accordance with international law ... in one way or another, Peversisë statement was treated and acclaimed as the Kosovo case sui generis.

The case of Kosovo is sui generis, and the arguments of opponents of independence against the Declaration of Independence by the surface. If we refer exclusively to the declaration of independence, it entails anyway its harmony with international law as a natural right and positive right

As a rule, the Declaration of Independence has support in positive international law, ie in accordance with the UN Charter in 1945, the UN Universal Declaration of 1948, international covenants on Economic Social and Cultural Social and International Pact Economic and Political Rights, all of which were adopted by the General Assembly of the UN in 1966, Article 1 of these treaties, the Helsinki Document 1975 and the Charter of Paris Re 1990 for a New Europe and the UK, we have do with the New World Order.

Kosovo citizenship is not a gift for someone to give to someone, but something that comes from the people and that should serve him. It is natural flair!

International Court of Justice in the case of the evaluation of the Declaration of Independence was considered historical facts and current in which they have and are going through. Kosovo's independence is an imperative of historical and current issue to coincide with the new world order. In the current circumstances in which is it, the UN or the Security Council should take into account the new premises and be accepted as ma first ranks of members equal to the United Nations Organization

Kosovo's declaration of independence has proven to be necessary and politically stabilizing. Declaration of independence in 2008 and the subsequent recognition of Kosovo by many countries, brought much needed stability to the Balkans and closed the books on the protracted break what was once Yugoslavia. Declaration of independence sprang forth from a process supervised by the United Nations, through Resolution 1244 and the institutions it established, was deeply involved in the past and present of Kosovo. And the declaration has now made possible a future in which Kosovo is independent not only politically, but also economically and administratively. While Serbia, acting through the General Assembly, has asked this Court to give an advisory opinion to which she hopes will reopen status negotiations to re-define the future of Kosovo, it has not provided this Court no reason to upend what has become a stable equilibrium. Because Kosovo is now independent. Both Kosovo and Serbia are part of the future of Europe. At a time when Kosovo's independence has finally closed one of the most painful chapters of modern European history.

Key words: Declaration of Independence, the Republic of Kosovo, the Issue of Assessment, the International Court of Justice

In this project we have tried to treat and make analysis on the opinion of the International Court of justice, on the issue of Kosovo, so while for Kosovo this opinion once again reconfirm its position in the international law, at the same time paved the

way for recognition of States even without wanting to unwind, even more in the historical of the Europe and the owe that Europe has to Albanians (Albanian territories) in general. The case of Kosovo is sui generis, and the arguments of opponents of independence against the Declaration of Independence have superficial side. If we refer exclusively to the declaration of independence, it nevertheless entails its harmony with international law as a natural right and positive right. A considerable number of Countries which have recognized Kosovo's independence, while the opinion of the International Court of Justice has been very clear about this issue. Kosovo's statehood is not a gift given by someone, but something that comes from the people and it should serve them.

International Court of Justice, and the issue of the Kosovo's issue

On 26 March 2008, the Serbian government deposited (featured) its plan to the UN, respectively in the International Court of Justice to decide on Kosovo's declaration of secession. Serbia urged to take the opinion if the declaration had violated international law ¹.

The finding of the International Court of Justice becomes imperative of the time, that as an institution of international law should be established immediately after the First World War. Legal basis of the functioning of the court 's face in the preamble to the Covenant of the League of Nations , which aims to "respect the exact roles of the international law", to maintain mutual relations of organized peoples in the level of states. Permanent Court of International Justice has functioned from 1922 until 1940, when the Germany led by Third Reich occupied the Netherlands. It is characteristic to note that during this time distance this international institution has taken 31 decisions and provided 27 advisory

¹ See Sections 7 and 92 of the UN Charter

opinions, which refer to instructions on citizenship in Tunisia and Morocco (UK - France) on church of St. Naum former Yugoslavia and Albania, in 1924, the exchange of Greek and Turkish populations, between Greece and Turkey, on the border around Mosul etc². As a result of this court was continued its active presence at the conference in San Francisco in 1945 , where was adopted the Charter of the United Nations and with this decision is the final establishment of this court, as one of the main bodies of the Organization, where its status becomes an integral part of the UN Charter. This court consists of 15 judges, and who principally are chosen by the Security Council of the UN. In the decision making, which does not obligate the parties to the dispute, it always refers to International Law, and to support has relevant Statute, which establishes the criteria, acceptable, however, in the selection of judges. The statute explicitly requires that the person who is elected as a judge of this court should be of high moral character, i.e. that the place of the judge appointed to this institution should be expert, or possess knowledge of international law.

Types of decisions of the ICJ

If we refer to the International Court of Justice, Article 92 of the UN Charter, this Court is the main body of the UN's International for Justice interpretation. According to its statutes, takes two types of verdicts: a. decisions and b. opinions. From 1946 until 1995 the relevant court - approved-issued 60 verdicts (decisions) and over 20 advisory opinions. The first case the court has decided this court is after the Second World War, has been the Corfu Channel case, in other words the Anglo - Albanian case (1949). The court then has solved many cases. During this period the court has given many advisory opinions, the conditions for accession states in the United Nations, as a rule it can be stated by advising the UN

² See sections 2 and 9 of the Statute of the International Court of Justice

Assembly to accept Kosovo among UN (in this context we are dealing, in assessing the declaration of the independence of Kosovo as object examination in court) If we see this court referred to the case of the Declaration of Independence, adopted on 17 February 2008 , it has provided interpretation in a way or other, called advice or " Opinions", which, whatever, is not obliged to parties ³.

Request to the United Nations

On 26 March 2008, the Serbian government presented its plan to the General Assembly of the Organization of the United Nations exactly to the International Court of Justice to rule on Kosovo's declaration for secession. Serbia urged to take the opinion if statement for independence had violated international law. It was also taken an initiative to seek international assistance by the General Assembly of the United Nations, when met again in New York in September 2008 . On August 15, 2008, Serbian Foreign Minister Vuk Jeremic formally submitted an application to the United Nations seeking the opinion of the International Court of Justice . The resolution was formulated as follows : Given the goals and principles of the United Nations , Considering its functions and powers of the United Nations Charter , Recalling that in the 17 February 2008 , the Self -Government Provisional Institutions Kosovo declared its independence from Serbia. Aware of this act is accepted by Members of the United Nations with different reactions regarding its compliance with the international legal order, decides, in accordance with Article 96 of the United Nations Charter asking the International Court international

³ See sections 2 and 9 of the Statute of the International Court of Justice

Statement of U.S. Representative Horald Koch, on the occasion of the presentation of historical facts and current issue of the Declaration of Independence , presented at the International Court of Justice , based in The Hague , December 2009 .

Justice, in accordance with Article 65 of the Statute of the Court to give an advisory opinion on the following issue : "Is the unilateral declaration of independence by the Provisional Institutions of Self -Government of Kosovo in accordance with international law ? On 30 September 2008 , the Serbian initiative was first brought to a vote and was supported by 120 member states . General Assembly resolutions adopted that proposal 63/3 on the second ballot with 77 votes in favor of the applicant , 6 against and 74 abstentions⁴ .

Declaration of Independence has really thrown Serbia at the International Court of Justice , but in this context, this court has no mandate to deal with political issues , because the Declaration of Independence was a political issue and not exclusive remedies. In other words , the court order does not deal with this category.

a. Arguments from Kosovo

Kosovo's independence is irreversible . This will not change only for Kosovo but for the sake of peace and international for region security . After encroachment of human rights of Kosovo Albanians, Serbia lost all rights over this country . The will of the people of Kosovo goes back many years and it was clear to all participants in the Rambouillet Conference . "It was clear immediately after the conflict of 1999 , when the UN Resolution 1244 which clearly referred to the Rambouillet agreement . It was clear during the administration of UNMIK and is fully discussed and taken into consideration during the negotiations on the final status " negotiations on the final status of Kosovo were intended to persuade Serbia to recognize the independence of Kosovo .Serbia has never been sincere in its offerings to deliver on Kosovo's status . In the midst of the status talks , Serbia adopted a constitution confirming Kosovo as its integral part , thus clearly showed that the Albanians were not interested in finding a solution and showed what

⁴ Statement of the same representative

they thought for its offere for autonomy . In this way , Serbia showed that Kosovo is only a patch⁵.

b. Arguments from Albania

There is no rule in international law that prohibits secession , would be a serious violation of international law if intervention by third countries , either by force or other way, will be crucial for the declaration of independence . But in the case of Kosovo was not so . After completion of the public hearings , the judge Abdul Koroma , Mohamed Bennouna and Antonio Augusto Cançado Trindade gave time to all parties until 22 December 2009 to answer questions about allegations that international law does not prohibit secession , taking into account promises by the participants of the parliamentary elections in Kosovo in 2007 to declare independence and provisions of the Rambuje accords of 1999 .

c. Arguments from the United States of America

The United States appears today as a friend of Serbia and Kosovo . The people of the United States share a bond of friendship with the people of Serbia marked by cooperation in the two world wars and political and economic relations come back at least by the bilateral trade treaty of 1881 . Our relationship with the people of Kosovo, strengthened by the crisis of the past two decades , continues to grow . That said , our single task today is to address the narrow legal issue before this Court. To serve with the slogan and statement of the U.S. representative at the court , which , inter alia , has declared : " Let the quiet independence , because it is the will of the people and stabilizing factor in the Balkans " . In a speech that rightly regarded as the most powerful defense of the independence of Kosovo in Hague , but he said that the declaration of independence of Kosovo is in accordance with international law

⁵ Dr.Muhamet PIRRAKU "For Cause Albania 1997-1999" Pristine, 1999
Crisis Group interview, EU official, Brussels, August 6, 2010

, because it contains nothing contrary to this right⁶ . " International Law does not regulate the political declarations of independence and the independence of Kosovo is the last chapter in the disintegration of the former Yugoslavia ... There is no inconsistency between peaceful declaration of independence in international law and Resolution 1244 " . Coh in sequence before the ICJ judges spoke executed for crimes against Kosovo Albanians , then a million Kosovars expulsion out with violence and campaign for ethnic cleansing , adding that Kosovo 's declaration of independence was not a spontaneous development , but it was preceded by a political process . (Declaration of the same author - representative) . " The declaration of independence of Kosovo is an articulation of the will of the people , who can neither be authorized nor prohibited " . Coh reminded that Serbia had said that even in the case of Slovenia and Croatia had violated international law , but now it does not say. Kosovo 's declaration of independence has not violated either the principle of territorial integrity . According to the American representatives , this principle only regulates interstate relations . Coh is also referred to Rambouillet and the " will of the people " and added that documents of this meeting do not imply nor exclude any epilogue of Kosovo's political status . " If Resolution 1244 of the Security Council , adopted in 1999 , contains provisions for the territorial integrity of Serbia , why Belgrade has long complained that it opens the way to Kosovo independence " , asked Koh , in this court , representative indicated the most powerful state in the world , that 1244 refers to the territorial integrity of Yugoslavia , but Yugoslavia no longer exists . " Resolution 1244 refers only to the territorial integrity of the transitional stage , while supporters of Serbia have failed to find any row in the resolution that might prejudice that Kosovo declaring independence , violated it." " Serbia has offered

⁶ See Declaration of Independence [no. The registry 192] ; U.S. Statement , p . 33 , 56 - 57. Faq 5 of 13

Kosovo broad autonomy , but remember those tanks around the Parliament of Kosovo in 1989 , knows well what it is autonomy ," he reminded the American representative ⁷. Coh powerful strongly proved hundreds statements different countries sovereignties of which none has been rejected by international law and this does not happen with Kosovo , to warn that this court is required to decide if he wants to return situation back or allow Kosovo and neighbors to walk forward. " " Serbia has repeatedly said it will not recognize Kosovo even if this court expresses its opinion in favor of Kosovo and , therefore , the court does not need to give an opinion , which some countries have already completed that would not respect. If this will do , then you should consider : intensive care of the Security Council on Kosovo , the OSCE concern for the people of Kosovo , the history of Kosovo's autonomy and participation of Kosovo in international status , "said Representative the United States of America .

d. Contra arguments from Serbia, Russia, Spain etc. (decorative sterile arguments and declarative)

d.a. Proclaim the unilateral independence of Kosovo violates international law basis . It is a challenge to the authority of the United Nations and a challenge to the international legal order based on the principles of sovereignty and territorial integrity . The Declaration of Independence is an attempt to remove the UN administration in Kosovo to cancell Serbian sovreignty in Kosovo 's andto impose independence as unilateral solution for Kosovo , Kosovo was " the historical cradle of Serbia and constitutes one of the main pillars of its identity . " Declaration of independence was made by the government e provisional of Kosovo and was in breach of Resolution 1244 of the United Nations , which guarantees the territorial integrity of the FRY (now Serbia) , All proposals of Serbia offering wide autonomy for ethnic Albanians are refused , Serbs and non-Albanians in

⁷ ibidem

Kosovo were threatening the basic human rights and getting pressure on them to leave the region . All major cities in Kosovo , with the exception of Kosovaska Mitrovica , were ethnically cleansed . Serbian churches and monasteries in Kosovo are " landmarks in Europe only guaranteed by the armed forces because they face real threats of destruction " would be a dangerous precedent if other countries with the UN administration concluded that the arrival of th peacekeeping forces represented the first step to terminate the region . The declaration of independence was made by the provisional government of Kosovo and it was contrary to the United Nations in 1244 , which guarantees the territorial integrity FRY (now Serbia)⁸.

d.b. After that Russia's representative spoke , Kiril Gevorgian , who has announced that this court has jurisdiction to issue the declaration of independence , while continuing recalled that there have been many statements , other statements which are considered illegal by the Security Council , as an example Northern Cyprus , the 17 February 2008⁹ .

" Kosovo 's declaration of independence is illegal because it was made under an international administration ," said Gevorgian , according to which Kosovo's population is not included in the groups that qualify to have the right of self-determination . "In 2008 there was no threat to the people of Kosovo from Serbia and violation of human rights can not be taken as an argument for Kosovo 's declaration of independence . The people of Kosovo was never accepted as a nation with the right of self-determination , while the international community , in 1999 , did not recognize the right of self-determination of the people of Kosovo " . Russia has already reiterated know that international law prohibits the independence of Kosovo, " Kosovo under international law , is under UN administration

⁸ See Report of the Special Envoy of the Secretary- General on Kosovo's future status , S/2007/168 , 26 March 2007, para. 3-9 , 16 [no. File 203] .

⁹ Dr.sc.Fejzulla Berisha: Right-lae magazine for legal and social issues, Jurnal for juridical and social issues No. 2-4 - Pristina, 2006

and neither Albanians and nor Belgrade can not take unilateral action that defy UNMIK and other international mechanisms in Kosovo " .

Gevorgian has alluded to the continuation of talks between Kosovo and Serbia , adding that the talks have not brought results , does not mean that all possibilities are exhausted , " Serbia has offered Kosovo , not only high degree of internal autonomy , but also participation in international organizations . Under Resolution 1244 , Kosovo's status should be substantial autonomy within Serbia and the resolution remains fully in force " ¹⁰ .

D.C. In the hearing of the International Court of Justice has received word the representative of Spain , who reaffirmed that Kosovo 's declaration of independence is contrary to international law , because it is violated Resolution 1244 of the Security Council of the United Nations . Its representative , Escobar Hernandez , in other words showed prominent position that " Spain considers that Resolution 1244 is still in force , the political process of finding a solution is still ongoing , ever until the Security Council adopts a another decision " . Hernandez said that " Kosovo's unilateral secession is not in accordance with international law , as is allowed only in cases of colonies " thus concluding that the " Kosovo issue is resolved with the resolution of the UN Security Council , the Albanians has provided extensive self-administrating "¹¹ .

e. Arguments from Finland

In this session, the independence of Kosovo was defended by Finland, another country that has recognized this new reality . Paiva Koukuranta talked about violence and deportation to Kosovo, expressed regularly, emphasizing the violent removal

¹⁰ Statement of the representative of Spain , on the declaration of independence in 2009 Kosovës.Hagë.dhjetorë

¹¹ Statement of the representative of Russia in the International Court of Justice in The Hague , during the argument of the Declaration of Independence , December 2009

of autonomy and the referendum in 1991 for independence . She said that after the fall of the Berlin Wall , the circumstances have changed . " People determines the fate of the territory and not the territory determines the destiny of the people " . " Citizenship is not a gift that someone gives to someone , but it is something that comes from those who create their own state ," said Paiva Koukaranta , adding that her country's independence was made by the Parliament of Finland in the context of Russia .¹²

Statement of Burundi.

State of Burundi issued a balanced statement , did not supported or not contested by the act of 17 February 2008 (act of independence of the Republic of Kosovo) . In the context of international law , namely the ICJ , this neutrality can handle both positive assessment on the issue of the Declaration of Independence . But , looking at the U.S. diplomatic deportee , Croatia and Kosovo , Signs for Declaration of Independence were reasonable , from a historical and current moment . In this regard for a higher step or great differences in the views made by representatives of the U.S., France, Great Britain , then Finland , Croatia , Saudi Arabia , Austria , Bulgaria and Jordan . By all indications , the Russian representatives will not help either declaring that "the people of Kosovo was never, accepted as a people is in international law " .

International Court of Justice should not address the issues of political wills of states

1.Declaration of Independence is a high value for the rule of law because everyone is entitled to all the rights and freedoms set forth , without any distinction , so the last years from the history of mankind has not been privileged to carrying the

¹² Statement of Finnish representative at the International Court of Justice , based in The Hague , December 2009

burden of the mission and future of human expression and human rights , is the best gift of human thought and the classical era to contemporary times . The declaration and recognition of Kosovo's independence brings to historical retrospectives since 4 July 1776 calendar year , the U.S. Declaration of Independence, etc. As in the UN Charter , 1945, Article 55 . But since 1952 , the General Assembly of the UN approved a series of international documents, so pacts and then acts on the political will of the peoples , nations for their future . Based on these documents , peoples , nations, enjoy and realize their aspirations for independence , namely their future . According to article 1 of the International pact on Civil and Political Rights adopted by the UN General Assembly , in 1966, concluded that " all peoples have the right to self-determination " , these pacts that have their value and legal practical , in 1976 from 87 subjects of international law , namely the UN entities . The case of Kosovo is sui generis , and the arguments of opponents of independence against the Declaration of Independence have superficial side . If we refer exclusively to the declaration of independence , it nevertheless entails its harmony with international law as a natural right and positive right . Although in 1912 , 1914 , 1919 , 1936 , 1945 , 1966 , 1981-83 and in 1999 Kosovo was under military administration serbojugoslav , prevailed exerting an increasingly based antipathy cultural supremacy of one ethnic group against another and this is certainly reflected in the primitive anti-Serb bias . It is recalled that the characteristic of Kosovo Albanians in their historical periods , in terms of formal legal and factual, asked national plebiscite for self-determination , as the years 1943-1944 Boyana , Pristina July 2 , 1990, the Constitutional Declaration for Equality , Kaçanik of 7 September 1990 , the Constitution of the Republic of Kosovo , Pristina in October 1991 , Resolution and maintaining for its independence referendum , where 98 percent of its people declare independent for state of Kosovo , and in terms of the

actual 1968 , 1981 , 1988 , 1990 , 1997 , 1998 and 1999 ¹³. (See for mr . Sc . Blerim Reka : The right of self-determination in Kosovo and the End of the last colony in Europe Yearbook 2000 edition SHPJK , Pristina , 2000)¹⁴ . But although mainly legal doctrine and comparative politics reason the determination of peoples to justify the separation , the former Yugoslavia and Yugoslavia consisting of Serbia and Montenegro in confusing circumstances Albanian political denies this principle and right.

On the other hand , essential in the International Law is the fact of creation, the fact , that the existence of the state and its actual appearance as state power , with all prerogatives , although state and international recognition of the new state is of utmost importance¹⁵ .

2. As a principle, Declaration of Independence has support in positive international law , namely in accordance with the UN Charter in 1945 , the UN Universal Declaration 1948 , international pacts on Economic Social and Cultural Social and pact on Civil , and Political Rights , all were adopted by the General Assembly of the UN in 1966, Article 1 of these pacts , the Helsinki Document 1975 and the New Charter of Paris in 1990 for a New united Europe that we are dealing with the New World Order . The actual size of the state of Kosovo has entrenched itself within a historical and current factual presentation under the umbrellas of various legislations relevant countries , individually and collectively . However , very important and high value in the international recognition and confirmation mention now the democratic world from outside about the declaration of the will of the people of Kosovo with international recognition of Kosovo . This dimension of the actual functioning of the Kosovo state does not depends only by international recognition but also the operational capabilities of

¹³ Schiff for this Mr.sc.Blerim REKA : Right of self-determination in Kosovo and the End of the Last Colony in Evropë.Botoi : SHPJK , Pristina , 2000 ,

¹⁴ . Ibid , page 78

¹⁵ <http://www.mfa-ks.net/?page=1> , 33

its organs , where power should normally have functionality throughout its territory , i.e . implementation of sovereignty . As a rule, Declaration of Independence has support in positive international law , namely in accordance with the UN Charter , the 1945 Universal Declaration of UN of 1948 , international pact on Economic Social and Cultural Rights and the Pact Civil and Political Rights , all of which were adopted by the UN General Assembly 's 1966 article 1 of these pacts , the Helsinki Document 1975 and the New Charter of Paris in 1990 for a New and united Europe, which we are dealing with the New World Order , etc. It is characteristic to note that international law does not regulate the political declarations of independence of states , but legal issues of conflict between the various subjects of international law . In other words , the ICJ should not address political issues of political wills of states , and it should exclusively deal with legal issues . The independence of Kosovo is the last chapter in the process of dissolution of the former Yugoslavia . In the former Yugoslavia, Kosovo in 1981 has asked its equality within its fragile federalism , while institutionally July 2 respectively on 7 September 1990 , through the Declaration on equality of the Yugoslav Federation , declared the Constitution of the Republic of Kosovo¹⁶ . Kosovo , however , as unit of the Yugoslav federation, was among the first in political and legal terms that declared its independence from hegemonic Yugoslavia, and the last of those units that gained independence recognized internationally , compared to other federal entities .

3. Known from the late 80s and beginning of early 90s of the last century Serbia was generators and promotional its hegemony , producing violence , terror and genocide against Yugoslav federalism subjects , particularly against the Albanian people Kosovo and to everything that was Albanian . In these circumstances inevitably declared independence

¹⁶ Andreevska Elena, Aziz Abdulla, *Fundamentals of Public Law Ndërkombëtare Jugorelcam* , 2008 Shkup , page 33

Slovenia , Croatia , Bosnia and Herzegovina and Macedonia . The first two will be charged from Serbia in secessionist announced separation from Yugoslavia . Today are partners with all rights in NATO structures . Serbia now has diplomatic relations with these countries , hoping that one day not so far will be forced by the international community , and if gearing aimed at European structures and NATO will accept the new reality in Kosovo , coinciding reality and interlocks with the natural right to practice advanced democratic countries identified by positive law .

The Kosovo issue is solely a matter of self-determination , and from this , Serbia should have relations with Kosovo, and to recognize its independence and sovereignty . Kosovo has so far mainly been internationally recognized by a number of states of the UN , and after the declaration of the International Court of Justice , expected a new wave of international recognition of those states who still have not did it¹⁷ .

4. The Republic of Kosovo is already recognized in several international forums of different countries having the help of states with influential economic, political and diplomatic , etc. In this regard the very great weight is receiving newest country in the world, in the International Monetary Fund and the World Bank , 2009 etc. These major decisions make it powerful the final act of 17 February 2008 : firstly , this act is the will of the people that encompasses a natural gift , which coincides with the acts and international pacts . And , secondly , a declaration of independence strengthens the Rambujes document , namely Resolution 1244 of the Security Council in 1999 , this international acts are booked for domestic law . The word here is precisely related to Kosovo . If we refer to Resolution 1244 of the UN Security Council has been characteristic to emphasize that it explicitly refers to the territorial integrity of Yugoslavia (Serbia and Montenegro) ,

¹⁷ Written Statement of the United States of America (" U.S. Declaration ") , p . 50-55 .

namely that of Yugoslavia no longer exists¹⁸ . The resolution does not prohibits the declaration of independence , but on the other hand does not authorize . It is the right of the people of Kosovo to declare its independence , under monitoring , namely international supervision . Serbia with no international treaty act and the former Yugoslavia and the various international treaties can not contest the independence of Kosovo . Nay- nay and few international acts favor Kosovo issue . Article 55 of the UN Charter , adopted by the UN in 1945 characterizes the institution of self-determination as a high value on declaration of democracy and self-determination for the future of his people (the right of peoples and nations to self-determination is a prerequisite for the use of all basic human rights) . Self-determination as an institution and the legal- political category is one of the fundamental principles of international law and a crucial collective rights referring to the authority of certain people .

The will of the people is the supreme principle and crucial . Self-determination as the highest value of democracy should be ongoing process which people of all beliefs , race , color , national origin , etc . , Is respected by means and methods of ensuring dignity in all societies . Through this institution are harmonizing all freedoms and human rights , which are also declaration granting independence to colonial peoples and countries . Security policy to promote human rights , human security approaches commensurate international juridical practice . Collectivities - entities through the institution of self-determination as the high value of democracy really have this completed and crowned the subject of international law . Resolution 1244 of the UN Security Council - approved in 1999 , refers to the former Yugoslavia , which no longer exists . Since the adoption of the resolution are adopted by many other acts

¹⁸ David Armitage , Declaration of Independence : A Global Story 3 , 20 (2007) XVII Assembly Resolution 1803 of the UN sē.tē December 1962 , Permanent Sovereignty over Natural Resources .

form the international community for Kosovo . A range of other acts are also approved by the Assembly of Kosovo in conformity with international laws and treaties ¹⁹.

Bojan Conference - aspects of self-determination

Given the resource definitions that Albanians people was strongly recognized the right of self-determination with resolution of 31 December 1943 and 1 , 2 January 1944 in the Highlands of Gjakova, in Bujanit . And this very act in one way or another one, was the top category and legal- political higher institution of democracy. On the other hand , the right in the circumstances of Serbian military regime , the violent imposition on July 7 to 10 , 1945, in Prizren , Kosovo was denied this right . According to international laws and treaties , the Kosovo issue is solely a matter of self-determination , and as a case " sui generis " is a unique case and international non precedent as Russia treats . Perhaps its insistence on mentioning the slang precedent over the Kosovo issue has to do with Abkhazia and Ossetia , territories of the Republic of Georgia following which unilaterally declared independence from the former Soviet republic and which is recognized only by Russia . Under international law , the issue of Kosovo 's case is " sui generis " , and may not have the same treatment as the respective territories of Georgia . Very positive impression on the ICJ has left the Finland representative who submitted the arguments and defended youngest country in the world , Kosovo , serving the new reality in Kosovo . He claimed that after the fall of the Berlin Wall , the circumstances have changed . " People determines the fate of the territory and not the territory determines the destiny of the people " . Kosovo's statehood is not a gift to give someone one , but it is something

¹⁹ Prof.ass.Dr.Fejzulla Berisha: Right-lae, Magazine for legal and social issues, Jurnal for juridical and social issues No. 2-4, fq.77.Prishtinë, 2006

that comes from the people and that should serve them . It is natural flair²⁰ ! From the historical perspective , Kosovo is not being caressed by the international community, but it is returning a portion of the owe (Remember the Congress of Berlin in 1878 , when the Albanian lands crushed in order to reward favored Serbia with its international recognition at the expense of Albanians and then a bitter fate a stamping Conference took place in London , Paris to Versailles , the conference reaffirmed the partition point five areas with majority Albanian population) . Perhaps only in the International Conference in Rambouillet, France in 1999 , imposed by the internal factor , the KLA , will open a new page in the history of the settlement of the Kosovo's issue . It was this conference that opened the doors of major Dardania self-determining formerly politically on the principles of self-determination of people's rights . Surely constructive international community stands at the forefront of the United States of America were the product of earlier intervention for placement centers and around . The reactions of the international community about the permanent crisis in Europe from its territory from 90s were reasonable , different and varied in its form and action . They were ornamental and declarative character and were dealt as a problem of human rights as an issue and not a problem of political rights or political- territorial status, even though in the early 90s of the last century the international community increased the influence of the direct its findings that had to do with the drastic violations of human rights in Kosovo from hegemony of Serbia. Genocidal actions set out in this context , in terms of fields of freedoms and human rights , or violation of their collective size , occupier Serb power exercised in Kosovo , forced the international community to take measures aiming at

²⁰ Dr.sc.Fejzulla Berisha, Kosovo's Self-Determination ee seal the Rambouillet Conference, the criminal: Cause For Albania, paper read at the Library of the University, with the launch of PIRRAKUT Dr.Muhamet book, entitled: To Albanian Cause , Pristina, November 2000

preventing the liquidation first massive population. Actions which were taken in order to maintain peace and avoid war in the region and to saved in this way the highest values of democracy .

Kosovo's independence coincides with the new world order

International Court of Justice was considering current and historical facts in which Kosovo is going through. The independence of Kosovo is the historical imperative issue coincides with the new world order . In the current circumstances in which it is found , Security Council UN should take into account the new premises , and to recommend that the UN General Assembly that the Republic of Kosovo , primarily to accept amongst the states that are recognized by the United Nations.

1. Rambouillet Conference 1244 and 1999 , gave the green light to open a path to free and sovereign Kosovo . But , at the Rambouillet Conference recognized de facto an-half of Albania from the current Albania and internationally proved here that on a part of the Albanian nation subjected to systematic violence and terror . However in this castle near the center of France that the crime of the UN Charter in 1945 for the first time to be placed in Chapter VII of its Charter , were preserved and protected , through the mechanisms of senior NATO military , the highest values of freedom and human rights and international dimensions as exclusive international humanitarian issues . These factors giving up the international community or the Security Council to define and adopt Resolution 1244 of 1999 Mostly Rambouje Conference and the relevant resolution did not solve the issue of Kosovo , but on the other hand, a marked advance in the international arena , for its legal and political position (Constitutional) of Kosovo²¹.

²¹ Resolution of the Conference of Boyana, published in the popular book The provincial council of Kosovo and Dukagjini Autonoom

Seeing this issue in historical aspect , factual and legal issues of self-determination the problem seems to be a problem in itself , as current and historical categories for the Albanians itself . Considering Dr. Muhammad Pirrakut's book, titled : " For the Albanian cause 1997-1999 " I stopped reading at the highest institution of democracy , namely the institution of self-determination . Previously most deeply impressed when one of our analyst or journalist asks Mr. Pirrakut that , " According to you , the Kosovo's issue can not be solved without international intervention . What do you Ask from the West ? " . Dr. . Pirraku answers " The Kosovo issue is creating problem internationally , and therefore should be solved internationally " And , I would add to this case and issue that Kosovo is sui generis (special) , separate as a matter of self-determination and in terms ipso fact and ipso jure !

2. International Court of Justice in the case of giving opinion to judged Declaration ' of Independence had in mind actual historical facts and which Kosovo passing through . The independence of Kosovo is the historical imperative issue coincides with the new world order . In the current circumstances in which Kosovo is , the UN Security Council should take into account the new premises . In this respect Resolution 1244 of the UN Security Council 's 1999 delegitimize it would be appropriate , because this resolution is referred to the Federal Republic of Serbia and Montenegro , this creature of the state now dismantled. From this , it is known that the three countries have emerged with international legitimacy , ie Serbia irself , Montenegro and Kosovo .

The last one almost a whole century occupied by Serbia, declared independence on 17/02/2008 . And Kosovo emerged from behind an iron fence policy enforcement ethnic cleansing and genocide , while the KLA war and intervention of NATO forces led to the fall of the Milosevic regime , among the most ferocious in human history of the twentieth century . Democracy and the rule of law in Kosovo have already been

installed . The state of Kosovo has flag today and its symbols . There democratic constitution and western legislation , according to the Ahtishari package, market economy and social development are ready to take the next step . The youngest country in the world aims the integration in the EU , in the UN , and the Euro Atlantic Organization, etc. while there are notable achievements diplomacy .

Giving the Opinion - by the International Court of Justice

On 22 July 2010 the court ruled that Kosovo 's declaration of independence was not in violation of international law . ICJ opinion on Kosovo in The Hague took the decision, 15 judges , nine of whom come from countries that have recognized Kosovo , including its Chairman , Japan's Hisashi Oëada . Ten judges of the International Court of Justice estimated that over Kosovo's independence declaration did not violate international law , while four voted against . **In favor of Kosovo voted these judges:** Hisashi Oëada - Japan , president of the ICJ , Thomas Buergenthal of the United States , Christopher Greenëood from Great Britain , Ronny Abraham of France , Bruno Simma of Germany , Kenneth Keith of New Zealand , AEN Shaëkat by Al - Khasaëneh Jordan , Antônio A. Cançado Trindade from Brazil , Abdulqaëi Yusuf Ahmed from Somalia , Bernardo Sepúlveda - Amor from Mexico . **Voted against :** Peter Tomke - Vice President , representatives from Slovakia , the Russian Federation Leonid Skotnikov , Abdul G. Koroma of Sierra Leone , Mohamed Bennouna by Moroku . Oëada claimed that this court has jurisdiction to declare legal advisory opinion , upon request by resolution of the General Assembly of the UN on whether the unilateral declaration of independence of Kosovo in accordance with international law . President of the International Court of Justice , Judge Hisashi Oëada , said that international law contained no " no prohibition to declare

independence ." The Court also said that since the declaration of independence was not illegal , the issue was political recognition . The Court emphasized that the Declaration of Independence was not made by the Assembly , the Provisional Institutions of Self-Government , or any other public body , had not implemented the legislative procedure and was not properly published . Words of the Assembly variants in both English and French were made due to incorrect translation and were not present in the original text in Albanian , so the authors , who had called himself " the representative of the people of Kosovo " were not limited by the constitutional framework established by the United Nations had booked the international issues of Kosovo only in the representative conference, the authority of the UN . Advisory opinion of the court decision was seen as a possible precedent had established that will have huge implications for separatist movements around the world , as well as talks on Serbia 's EU membership . It was also seen as an opportunity that would lead to the recognition of Kosovo's independence by many countries .

The final paragraph of the advisory opinion (paragraph 123) , which is operative part of the decision (clause) contains three voting records : he declared that the Court unanimously found that it had jurisdiction to answer to the General Assembly request for an advisory opinion because in the present case the Court recognized that it had the right to decide on the request . The court ruled on nine votes in favor and five against to accept the application for issuance of the advisory opinion . Reactions to the verdict (decision) came from countries , international organizations and non-state actors . Kosovo welcomed the decision and that it can now continue with more recognition and possible membership in the EU and the UN . Serbia reactions were negative for decision , while politicians met in an emergency session to discuss the next steps to preserve Serbia's " territorial integrity " by sworn that

will never recognize Kosovo as an independent state , despite a call for Kosovo to do that.

The EU countries that have recognized Kosovo welcomed the decision and called for dialogue between Kosovo and Serbia , they also called for other countries to recognize Kosovo . All five EU states that have not recognized Kosovo declared that the decision was a close overview based solely on the text of declaration and that will not change the position of them . Other states said they would not change anything . All supranational bodies supported the verdict assessment (opposing - view) at least partly , while non-state actors welcomed the precedent that this opinion has created . The majority of opinion was subject to criticism by some legal commentators and judges unsatisfied . Strong reactions came from Karabakh and Bosnia . The first congratulated opinion as precedent created and gave an indication of the possibility of seeking an opinion from the ICJ same for Nagornji Karabakh conflict , while the second was divided between politicians from Srpska Republic on the one hand saying that the future will be able to declare independence legaly , and politicians from the Federation of Bosnia and Herzegovina on the other hand saying that the public should not jeopardize the status of their country . Among other reactions were also those who opposed verdict those of Russia , Abkhazia and South Ossetia as welcomed .

Although Serbia , acting through the General Assembly , has asked from this Court to give an advisory opinion which it hopes will reopen status negotiations to re - define the future of Kosovo , it has given this Court no reason to upend what has become a stable equilibrium . Because Kosovo is now independent . Both Kosovo and Serbia are part of Europe's future . At a time when Kosovo's independence was finally closed one of the most painful chapters of modern European history .

REFERENCES:

- Sergio Viera De Mello, Komisar i Lartë i Kombeve te Bashkuara për të Drejtat e Njeriut, 2003,
- Deklarata e Përgjithshme e OKB-së me Rezoluten e saj 217 III të datës 10 dhjetor 1948,
- Paktet Ndërkombëtar per të Drejtat Civile- Politike, Ekonomike Kulturore dhe Shoqërore te vitit 1966 e miratuara nga OKB,
- Deklarata per Dhenjën e Pavaresisë vendeve dhe Popujve Kolonial Rezoluta 1803 XVII-së e 14 dhjetorit 1962,Sovraniteti I Perhershëm mbi Burimet Natyrore,
- Shif.Dr.sc.Zejnullah GRUDA, "E Drejta ndërkombëtare publike", Libri I botoi Universiteti I Prishtinës, Prishtinë, 1988, fq 87.
- Karta e OKB-se e miratuar 1945 në San Fancisko
- Rezoluta 1244-1999 e Këshilli të Sigurimit të Organizatës së Kombeve të Bashkuara
- Deklarata për Pavarësin e Kosovës, 17 shkurt 2008
- Dr.sc.Fejzulla BERISHA: "Mohimi I Lirive dhe i të Drejtave te Njeriut në Kosovë 1990-1996" (me një veshtrim historik që nga viti 1912)
- Deklaratatë e Perfaqesuesëve të vendeve te ndryshme të parashtruara ne GJND-se me rastin e Deklaratës së Pavarësisë së Kosovës, Hagë, dhjetor 2009,
- Statuti I Lidhjës së Kombeve 1922.
- Statuti I GJND i bazuar në Kartën e OKB-se e miratuar ne San-Francisko, 1945
- Hans J Morgenthau Politika ndermjet Kombeve,Lufta për Pushtet dhe Paqë Instituti I Studimeve Ndërkombëtare Tiranë.2008
- Arben PUTO,E Drejta Ndërkombëtare Publike Tiranë,2008
- Revistë shkencore Nr.2.2010 Botues Universiteti Justiniani i Tiranë,2010