

The Principle of State Sovereignty and the Right to Self-determination: The Case of Kosovo¹

*Uroš Lipušček**

Abstract

Sovereignty and self-determination are two basic norms of international law which often appear in contradiction to each other. The main debate here is which principle limits the other and the answer depends on an evaluation of each case. The case of Kosovo is a classic example of this dilemma. Both sides, Kosovo Albanian and Serb, claim their own rights based mainly on historical arguments, the former the right to self-determination in the form of their own state and the latter the right to retain the province of Kosovo under the framework of Serbia. Historical arguments or historical rights are an outdated concept. The modern concept of self-determination, developed from Woodrow Wilson's theory which is linked to democracy, allows Kosovo Albanians the right to external self-determination. Sovereignty of the state does not exist as an absolute concept anymore, since it is directly linked to respect of basic human rights. Even that the self-determination can not derive to a consistent international legal order, Kosovo Albanians have the right to external self-determination and their own state, since they were severely oppressed by the Milosević regime. Self-determination remains a radical concept to this day, one which can only be applied on a case by case basis and by taking into account of various factors.

* *Uroš Lipušček, PhD, Rector of AAB University, Pristina, Republic of Kosova, uros.lipuscek@universitetiaab.com*

¹ This report has been presented by the author to the First International Conference-Freedom and Democracy: European Perceptions, European Perspectives, Department of Philosophy, Faculty of Humanities Koper (University of Primorska, Slovenia), Department of Politics and International Relations, School of Humanities (Swansea University, UK), Seminar für Philosophie, Philosophische Fakultät I (Martin-Luther-Universität Halle-Wittenberg, Germany), Faculty of Humanities, Koper (Slovenia), December 4-6, 2008.

Key Words: internal and external sovereignty, self-determination - internal (autonomy) and external (right to secession), natural law, basic human rights, democracy, Woodrow Wilson, Pact of London, Paris Peace Conference 1919, Yugoslav Constitution of 1974.

Introduction

It is not the first time that we are witness to a clash of the principle of the sovereignty of states, one of the highest principles of legal international order, and the right to self-determination, which includes the right to secession. The case of Kosovo which declared independence 17 February 2008 is a classic example of this dilemma, one which has haunted mankind for practically the entirety of the twentieth century. During this period sovereignty spread around the world in an unprecedented manner, at the same time the right to self-determination limited the concept of the supreme sovereignty of states.

At the Versailles Peace Conference in 1919, sovereignty was still considered a privilege of the civilized (with a purpose to "cultivate and educate" mostly the non-European nations). Under the direction of South African General Smuths, the four largest states which dictated events at Versailles (the USA, Great Britain, France and Italy) launched the so-called mandate system for undeveloped and (in their opinion) uncultivated nations outside Europe. This system essentially came to an end with the decolonization process in the 1960s when the General Assembly of the UN proclaimed their right to self-determination.

More than a hundred states were born between the end of the Second World War and the fall of the Berlin Wall in 1989, and more than twenty after the collapse of the Soviet Union and the dissolution of the former Yugoslavia. The doctrine of self-determination which limited the principle of sovereignty has been circling the world with a set of unsolved dilemmas, namely which principle is to reign supreme, sovereignty of the state or the right to self-determination; this dilemma becomes particularly marked after the end of the Cold War. Many nations which have been victims of strategic balancing between large powers or ideological oppression started to fight for self-determination and the right to

set up their own nation states after the fall of the Iron Curtain and the changed balance of power. This process has been a contradictory one. On one hand, self-determination meant the dissolution of one state and on the other hand, the creation of another. The Balkans which, according to Winston Churchill's dictum has produced more history than it has been able to consume, is a perfect example of this problem; the case of Kosovo is the best proof of it.

I. Basic historical arguments

To understand this problem we have to analyze the roots of this crisis. First from a historical point of view, the Serbs on one hand insist that Kosovo and Metohija were once integral parts of the medieval Serbian Kingdom. On the other hand, Albanian historians stress the fact that Albanians were not only the first settlers in this part of the world (they consider themselves to be descendants of the Illyrians) but also that during the Middle Ages, Albania had autonomous principalities of its own.

At the beginning of the twentieth century when it became evident that the Ottoman Empire would not survive, Albanians living in four vilayets of the Empire were fighting for the unification of all Albanians into one vilayet or political unit. Similarly for example, on the northern edges of the Balkans, the Slovenians had been calling for "Zedinjena Slovenija" (United Slovenian Land) since 1848, namely autonomy in the framework of the Habsburg Empire.

The Albanians living on the outskirts of the Ottoman Empire had been fighting for their unification since the adoption of the so-called Prizrenska liga program in 1878. Yet the strategic ambitions of the great powers at the beginning of the last century were not in favor of Albanian unification. This was also the case for the Serbians who were unsuccessful in their ambitions to unite with their kinsmen living in the framework of Habsburg and Ottoman Empires after victory in the Balkan Wars, especially with the Serbs living in Bosnia and Herzegovina, which has been annexed by Austria in 1908. In the year 1912 the Albanians asked the big powers of the time to grant them an independent state. The

Russian Empire was most against unification of the Albanians since this would weaken the Serbian state and their ambition to obtain access to the open sea via Albania. On the other hand, Austro-Hungarians were trying to prevent growing Russian influence on the Balkans. The result of this strategic competition by the big powers was the proclamation of the Albanian state in November 1912. The Albanian borders which were then decided are roughly identical to those today.

The well known Serbian historian at the time Jovan Cvijić insisted that "Serbia has its historical right to occupy Albania and part of Greece as these regions were occupied by Tsar Dušan in the Middle Ages and were in the framework of Serbia... due to economic independence, Serbia must have an exit to the Adriatic Sea on part of Albanian coast either by occupying the territory, or by gaining the right to economy and

traffic in these regions".² This claims were based on the program of Načertanije, proclaimed in 1844 and later on followed especially by the Serbian Prime minister Pašić who in the framework of so called eastern option (istočna opcija) called for Serbian exit to Aegis sea via Solun and to Adriatic via north Albania.

This question was at the forefront of the conference of ambassadors from six countries in London (Austria-Hungary, Germany, Great Britain, France, Italy and Russia) dealing with a solution to the Albanian question. After long private talks in which Italy and Austria-Hungary presented a more or less unified position, with the assistance of France and Great Britain, the conference concluded that Albania would be an independent neutralized state, whose existence would be guaranteed by six great powers. Serbia was not allowed to gain access to the open sea via Albania. Austria-Hungary took the position that the new country ought to include all the areas Albanians inhabited, but this was opposed by France and especially Serb ally, Russia.³ To assuage Serb, Montenegro and Greek interests, under the London

² Ali Jakupi: *Two Albanian States and National Unification*, MMEI, Prishtina: 2004, p.116-117.

³ Noel Malcolm: *Kosovo - A Short history*, Pan Books London 2002, p.256.

Treaty of 1913, Serbia was given Kosovo, Montenegrin Peja (Peć) and Gjakovo (Djakovica) and Greek Janina and Epirus.

The majority of Albanians would therefore be residing outside the borders of independent Albania.⁴

Serbia's strategic aim, besides the weakening of the Ottoman Empire was to obtain access to the Adriatic Sea. For that sake the Serbian army occupied the port Dürres (Drač) and committed crimes of such violent natures that even the Russian reporter at that time (the future Russian revolutionary leader) Leon Trotsky, reporting from the Balkans, described them as horrible. Very critical toward the "expansionist and colonial" policy of the Serbian government has been also leader of Serbian Social Democrats Dimitrije Tucović. The young Serbian officer Dragiša Vasić who participated in the offensive of the Serbian army in northern Albania stated in his memoirs that unfortunate Albania will remained for a very long time vaulted tomb in our infamy.

After the signing of the treaty in August 1913, British Foreign Minister Sir Edward Grey stated: "I am quite aware that when everything will be known, this given solution will be a trigger for many critics from everyone who knows the country and judges the situation from a local point of view. One thing should not be forgotten, that in an effort to find a solution the aim was to reach an agreement between the Great Powers and bring peace to Europe".⁵ Nevertheless, on 4 August, just one year later, the First World War broke out.

The Habsburg diplomacy played the most active role in an attempt to stop Serbia from obtaining access to the open sea via Albania. Austria-Hungary's goal was to economically weaken Serbia in this way and lay the pavement for its possible later annexation, which as they thought in Vienna, would "solve" the south-Slavic question in their favor. By hindering Serbia, Italy also wished to prevent Tsarist Russia from gaining access to the Adriatic Sea and by supporting independent Albania, the Italian government figured that a large part of Albania would remain in its sphere of interest. This aim was actualized in April 1915 when

⁴ Hajreddin Kuçi: *Independence of Kosovo*, Jalifat Group, Houston 2005, p.26.

⁵ *Ibid.* p. 27.

Italy signed the London Pact with the rest of the Entente powers. On the other hand, Great Britain wished to keep Austria-Hungary from gaining control over Salonika, with which it would be able to control all Balkan exits to the open sea and most likely weaken the Ottoman Empire beyond recovery.

The same countries (save for Germany and Austria-Hungary) which had vouched for Albania's independence at the Conference of Ambassadors in London in July 1913, signed a secret treaty (just 22 months later, more precisely on April 26, 1915), which came to be historically known as the Pact of London, a pact which sealed Albania's fate for a number of years. In order to satisfy the imperialistic hunger pangs of particularly Italy, they secretly divided Albania and allotted a part of the lands inhabited by Albanians to, among others, Serbia and Greece.

Even British Foreign Minister Balfour, the successor of Sir Edward Grey who was the principal author of this pact, admitted that "in the name of strategic urgency, a grave crime has been committed against the principle of nationality", during a visit to Washington in 1917.⁶ The Pact of London became a classic historical case of the great powers' policy of the subjugation of smaller states and nations in the name of strategic necessity.

Even after the First World War, at the Versailles Peace Conference, Albanians were to play the victims again despite the right to self-determination proclaimed by American president Woodrow Wilson. Their right for full unification had once again been denied in order to compensate their allies Italy and Serbia, and to some extent Greece also (for their participation on the side of the Allies and for their sacrifices during the so-called Great War).

Albania's fate was also complicated due to the fact that the Americans, by far the most influential at the Peace Conference, lacked a unified position regarding this question for quite some time. In one of their reports, American experts even opposed the existence of Albania as an independent state by proposing its division. "Northern territory with Shkodëra (Skadar) would

⁶ Uroš Lipušček: *Ave Wilson, ZDA in prekranje Slovenije v Versaillesu 1919-1920*, Založba Sophia: 2003, p.60.

belong to Montenegro, the middle territory including Dürres (Drač) would go to Serbia and its southern part with Vlorë (Vlora) to Greece. The author of this report justified these divisions by stating that the Albanians were a rowdy, mountainous nation lacking a well-organized society".⁷

Ultimately, President Wilson at the Paris Peace Conference rejected the division of Albania stipulated in the secret Pact of London of 1915, but on the other hand rejected Albanian pleas for an American mandate over Albania (the Armenians had also expressed similar wishes). He also rejected the idea that either Serbia or Greece rule over Albania, as they both had their particular interest in this region. Great Britain and France were uninterested in the role, and therefore the only country left was Italy. Despite the fact that besides Serbia and Greece, Italy was the only other nation with the largest appetite for Albania, Wilson chose it to preside over the country. He apparently wished to dull Italy's demands in the other regions of the Adriatic, particularly towards Rijeka and Dalmatia.

In April 1919, Wilson recommended that Italy have control over Vlorë (Vlora). Such a possibility had been anticipated by his confidante Colonel House in a letter already sent to him on October 29, 1918.⁸ When the members of the Albanian delegation discovered this proposal, they sent Wilson a letter in which they claimed that "his proposal is at odds with the principles of nationality and the right of every nation to self-determination...if Italy is to keep Vlorë (Vlora) for particular reasons, then it will be possible for Greece and Serbia to not only obtain the territories they have occupied, but demand even more, Greece Korça and Serbia Shkodër (Skadar)".⁹ Mainly in an attempt to stop Italy from gaining Albania, Serbia recommended that Albania stay independent within the borders of 1913. The American President at the time however stubbornly persisted with his original proposal.¹⁰

⁷ Haris Silajdžić: *Albanija i SAD kroz arhive Wašingtona*, Oslobođenje, Sarajevo: 1991, p.71.

⁸ Owen Pearson: *Albania and King Zog*, The Centre for Albanian Studies, London: 2004, p.114.

⁹ Haris Silajdžić, op. cit. p.127-128.

¹⁰ Slovene politicians who appealed to Wilson during the Paris Peace Conference fared

Wilson did ultimately evolve his position and halt the further division of Albania when on the 24th of February 1920, he rejected the proposals put forth without his knowledge by Great Britain and France in January 14th 1920¹¹ with the argument that “the American government harshly opposes injustices rendered to Albania by Yugoslavia, as it condemns similar actions taken by Italy towards Yugoslavia”.¹² In a diplomatic note to the Paris Peace Conference in March, State Department officials stated that “the President would never consent, nor would the American people consent, that the Albanian nation, who had struggled for two thousand years for their liberty, should be sacrificed to the political ambitions of their neighbors”.¹³

It is still not clear how and under whose influence he developed a more pro-Albanian position. In January 1918, Wilson announced in his peace program that he had not taken Albanian national interest into account at all. In point eleven, he completely ignored the existence of independent Albania, while on the other hand he requested the evacuation of Romania, Serbia and Montenegro. Albanian interest was in a very vague form included in the formulation that the relation of several Balkan states to one another should be determined by friendly counsel along historically established lines of allegiance and nationality. It remains a historical fact however, that it was Wilson who first recommended that Italy take mandate over Albania and sovereignty over the port of Vlorë (Vlora). “This proposal was against the essence of the principle of the right of self-

just as badly; they asked for a referendum or people's plebiscite to be carried out in the territories occupied by the Italian army in Primorska region in accordance with the Pact of London, but were rejected. Also, when the Slovene delegation at the Paris meeting in June 1919 pleaded with Wilson not to carry out a plebiscite in Carinthia, as the Slovenes would lose it due Austrian assimilation politics, Wilson remained completely immune to their requests.

¹¹ The Prime Ministers of Great Britain, France and Italy (in absence of American delegate Frank Polk) proposed to Yugoslav delegates that Italy was to retain possession of Vlorë as stipulated in the Pact of London, that the boundaries of northern Albania were to be readjusted; that the Albanian district, including Shkodër to be administered by Yugoslavia and Shëngjion on the Adriatic coast, were to constitute an autonomous province and the southern Greco-Albanian frontier was to be proposed by the French and British delegation.

¹² Pearson, *op.cit.* p.141.

¹³ *Ibid*, p.142

determination, he advocated at the end of the war. Wilson namely proposed the Italian mandate and occupation of Vlorë (Vlora) without the consent and even against the will of Albanian people. At the end he obviously realized great injustice toward Albanian people and prevented the radical split of the Albanian territory among its neighbors. His actions at the Paris Peace Conference are to this day seen as contradictory".¹⁴

During the Kingdom of Yugoslavia which came to existence after the First World War, the Albanians were the victims of the oppression and colonization. This politics has been advocated by Vasa Cubrilović (who was part of a plot to assassinate the Heir of Austria Crown Franc Ferdinand) in Srpski kulturni klub in 1937. In his famous speech he proposed the forceful deportation of all Albanian of " Turkish culture". Due to the beginning of the second World War only, the agreement between Yugoslav Royal government and Turkey signed in 1938, that several hundred thousand Albanians will emigrate to Turkey (because they were Muslims, they were considered to be the Turks), has not been fully executed.

Albanians from Kosovo were also deprived of their right to self-determination by the Serbian communist leadership in 1945 with the abolishment of the so-called Bujanska deklaracija adopted in 1944 in which the Yugoslav Communist Party explicitly accepted the right to self-determination of Kosovo Albanians and their unification.

Even after the war the new Yugoslav socialist Government did not stop the policy of deportations of Albanians to Turkey. Under the cover of so called Split agreement between Yugoslavia and Turkey in 1952 few hundred thousand of Kosovo Albanians (once again) emigrate to Turkey. This plan has also not been fully executed, because its principal author, minister for interior Aleksandar Ranković, has been in 1966 removed from the power. Nevertheless the emigration of Albanians from Kosovo continued in various waves since the dissolution of Yugoslavia.¹⁵

¹⁴ Urosh Lipusček: Çështja kombëtare Sllovene dhe Shqiptare në kuadrin e luftës së parë botërore-ngjashmëri dhe dallime« in *Pavarësia e Shqipërisë dhe sfidat e Shtetit Shqiptar gjate shek.XX*, Instituti Historisë, Universiteti i Tiranës, Tiranë: 2008, p.238.

¹⁵ The Serbian historians still argue that Albanians occupied the territory which has

Both sides of the dispute however still insist on their historical rights, especially the Serbs who cannot forget that Kosovo was the place where in the year 1389, after the epic battle of Kosovo polje the Serbs lost their independence and were for centuries resigned to existence as an unimportant vilayet of the Turkish Empire. The Serbian claims were

(are) based on historical rights and tradition of Serbian state in the middle ages (Istorijsko pravo zasnovano na tradiciji srpske srednjevekovne države). This concept is an outdated one, which was extinguished during the First World War with the dissolution of the former empires. The Austro-Hungarian Empire is a perfect example of arguments based on historical rights. For example, the Czechs, Poles and Croats demanded their national states in the framework of the Habsburg Empire on the basis of their historical rights, since all of them had in the past had their own independent kingdoms.¹⁶ This concept disappeared in history with the proclamation of the doctrine of self-determination at the end of First World War which had first been proclaimed by the leader of the Russian Socialist Revolution Vladimir Iljič Lenin and was further developed later on by American president Woodrow Wilson.

II. Basic Legal Arguments

Lenin's concept of self-determination gave the right of self-determination to all colonial people. Expanding this concept, the right to self-determination becomes a global one. On the other hand the American president Woodrow Wilson developed, especially after the First World War, the concept of self-determination which focused primarily on Europe, mainly on the

been vacated by some 300.000 Serbs who left Kosovo in 1690 in order to avoid Turkish massacres after Austrian and Serbian forces failed to push Turkish army out of Kosovo. They also make an assertion that the Serbians who left Kosovo as refugees during the second World War, were prohibited by the communist authorities to return to Kosovo after the war.

¹⁶ Slovenians which had not this tradition, based their claims to Zedinjena Slovenija (United Slovenia) for example under the rights of natural law and later on in the right to self determination, proclaimed by President Wilson.

solution to the problems of the former Habsburg and Ottoman Empires. He made a direct link between democracy and the principle of self-determination. On the other hand Lenin paid more attention to the self-determination of so-called colonial people.¹⁷ His principle of self-determination is in essence a concept which has been developed by Rousseau and it is known as *volonté générale* (general will or simply the people's will). In other words, all people, regardless of geographical location, have the right to live in a democracy. According to Woodrow's doctrine, which had been further developed after the Second World War with the establishment of the United Nations Organization, minorities or nationalities living in democracies possess only the right to self-government, excluding the right to secession. According to the ancient teachings of Thomas Aquinas, oppressed groups developed the right to rid themselves of dictatorships (in accordance with *natural law*). His moral theological teachings have also been included in Wilson's definition of self-determination. According to him, people living under dictatorships have the right to choose their own destinies, a concept developed during the First World War, namely the right of external self-determination. The right to self-government is known as internal self-determination and the right to secession then becomes known as external self-determination.

The modern concept of self-determination, developed particularly after 1960 when the General Assembly of the UN proclaimed the right to self-determination of all colonial peoples, is closely linked to democracy and especially to the concept of basic human rights. It has to be emphasized that in recent years, no international documents of high significance mention the right to self-determination. This for example was the case of the

¹⁷ Lenin's principle of self-determination has in practice, been limited only to nations: only whole nations have the right to self-determination. The concept developed by Wilson which is tied to the principle of democracy, also allows for the self-determination of parts of nations, i.e., potentially suppressed minorities within a country have the right to self-determination. In the case of Kosovo, the concept developed by Lenin would not allow part of the Albanian nation living in Serbia the right of self-determination, since Albanians had already established their own state. The concept developed by Woodrow Wilson would allow them the right to self-determination, because they were severely oppressed and stripped of their autonomy during the Milosević regime.

Helsinki Final Agreement on European Peace and Security which explicitly stipulates that borders in Europe can be changed only with the consent of all states involved. Declarations issued by the United Nations insist mainly on the territorial integrity of states. As is the case with self-determination, the concept of sovereignty also has two faces: external and internal. The external dimension of sovereignty is relatively easy to measure, since this is the concept of the "international legal system," meaning that a state acts as a recognized entity on the international scene, without being formally subjugated to any foreign state. Internal sovereignty is a more complex phenomenon. In essence, this signifies the existence of a single supreme state authority inside the borders of a state. The extent and limitations of internal sovereignty are much less clear. This process started with the adoption of the so-called Minority Treaties at the Versailles Peace Conference in 1919, which limited the powers of some states, and was further stipulated by the establishment of the League of Nations and in 1945 by the set-up of United Nations which in 1948 proclaimed the Universal Declaration of Human Rights. The concept of human rights has since been further upgraded and has become the center of international order, as well as the measurement of democracy and even legality of some governments. Absolute sovereignty¹⁸ has namely ceased to exist.

Despite this fact, international law has therefore developed more in the vein of a concept which guarantees the sovereignty of states rather than the right to self-determination. The introduction of a concept of human rights altered the notion of sovereignty, which is not considered to be absolute anymore. General understanding prevailed that sovereignty is seriously limited by safeguarding of basic human rights of the people living in a particular state. People and minorities which do not have basic human rights in the states in which they residing, or which are severally oppressed, possess the right to external self-determination.

¹⁸ The term sovereignty usually signifies supreme authority. In the classic view of international law, sovereignty is defined by the state as supreme arbiter.

This was precisely the argument used by the Kosovo Albanians in defense of their right to external self-determination and the right to independence. In the 1990s, the Milosević regime unilaterally changed the status which Kosovo had enjoyed in the framework of the former Yugoslavia in the last legal Yugoslav constitution adopted in the year 1974. The Milosević regime abolished the constitution which stipulated that Kosovo was an integral part of the Yugoslav federation, complete with its own representation in the federal parliament. "As a constitutional federal element (Article 1, 2 of the Federal Constitution) Kosovo was represented in all central federal bodies, including the Collective Presidency, the Parliament, the Executive, the Federal Court (Article 381). It enjoyed the right of territorial defence and the right to participate in international cooperation (Article 277). It had its own budget, which was adopted by the Federal Assembly and its own banking institution (Article 250)".¹⁹

Not only did the Milosević regime abolish the autonomous status of Kosovo within the Yugoslav federation, but it also implemented severe repression in Kosovo which culminated in the forceful expansion of around half of the Kosovo Albanian population from Kosovo in 1999. The basic human rights of Kosovo Albanians in the province were therefore flagrantly discriminated. This resulted in a direct NATO intervention and bombardment of Serbia, though without the direct approval of the Security Council. The leading Western countries defended the right to intervention against Serbia with the argument that the concept of human rights is the supreme concept of global legal order and that the sovereignty of states is subject to this principle. In other words, the international community could not tolerate flagrant violence and negligence of basic human rights in any country, even if this was in contradiction to the principle of the sovereignty of states.²⁰ With this principle, the international

¹⁹ Dr. Islam Lauka: *Kosovo a universal case or sui generis?* The Albanian Institute of political studies, The Institute of history of Kosovo, Kristalina-KH, Tirana 2007, p. 111.

²⁰ NATO intervention against Serbia without the explicit approval of the Security Council which is according to the Charter of the UN, the organ which is primarily responsible for the maintenance of international peace and security, has been criticized by some prominent international jurists as 'an unlawful action which can

community adopted the underlying principle of Woodrow Wilson's concept, that every nation and every peoples have the right to live in democracy and without any oppression.

The case of Kosovo is therefore very unique. It is completely different for example from the case of Republika Srpska in Bosnia and Herzegovina, even if we put aside the fact that this Republic was borne out of the mass expulsion of Bosnians from the areas of Bosnia and Herzegovina with Serb majorities. This entity does not possess the right to secession and independence since the Serbian community in Bosnia and Herzegovina is living (according to a genuine Wilsonian interpretation of self-determination) in democracy.

Serbian politicians in Belgrade continually defend the right of Serbia to prevent the secession of Kosovo from Serbia with the argument that Serbia is now a working democracy which is recognized by international community. This argument is deficient. Because of the severe oppression rendered in Kosovo under the Milosević regime, the international community (namely the Security Council) proclaimed Kosovo a UN supervised protectorate. With Resolution 1244 adopted in 1999, the Security Council de facto abolished Serbian sovereignty over Kosovo. This was the case until the day Kosovo's provisional institutions proclaimed independence in February of this year. Even after its proclaimed independence, Kosovo is still not officially a completely independent sovereign country since it is still under the supervision of the international community. The memories of severe Serbian repression in Kosovo still run deep in the minds of Kosovo Albanians. With its severe repression in the 1990s, Serbia has lost the legitimacy to govern Kosovo in the future. No state, including Serbia, cannot impose the former status of Kosovo as Serbian province, since the Kosovo Albanians are not willing

be described as a crime of aggression'. They were of the opinion that a crime cannot be answered with the violation of another preemptory norm, for that would constitute a new crime...In their opinion, human rights are no longer internal affairs, they are not solely within the domestic jurisdiction of any state. More is written on this in: Alain Pellet: »State sovereignty and the protection of fundamental human rights; an international law perspective«. Pugwash Occasional papers, Feb. 2000. www.pugwash.org/reports/re/pellet.htm. accessed 10/20-2008.

(under any circumstances) to accept such a situation from the authorities in Belgrade.

This is the reality which cannot be ignored. The only solution for the peaceful development of this part of the Balkans and the stability of this region is the acceptance of the right of the Kosovo Albanians to an independent state. This is also in the interest of Serbia. The Kosovo Albanians would, if they were to remain in the framework of Serbia for one more generation, consist of almost half of the population of Serbia, due to the high population growth in Kosovo which is the highest in Europe and the decreased population in Serbia proper. In other words, if Kosovo were to remain a constitutional part of Serbia, Serbia would no longer be the Serbian nation state, but should become a federal state. In this case, the Kosovo Albanians should also have gotten proper representation in the Serbian parliament and governmental institutions. Are Serbian politicians ready for this kind of scenario? The times in which Kosovo could be set up as some kind of Bantustan are most definitely over.

Conclusion

History is full of examples of the rise and fall of states. Serbs will retain their own nation state only if they are to recognize the new reality; on the other hand they have the possibility of becoming a minority nation in a few generations, because of declining population in Serbia.. As far as international law is concerned, the case of Kosovo is proof that sovereignty is not an absolute value anymore, that it cannot be misused in order to suppress the basic human rights of minorities (at least in Europe) and that self-determination even if it has not become a legal concept is applicable to all potential places and crises; this concept still has enormous potential. This right is not automatic, for it is decided on a case by case basis, depending on the geostrategic situation and the will of the particular people at hand. The Kosovo Albanians for example first proclaimed their independence in Kaçanik in 1991, a fact not then approved by the international community. Today, Kosovan independence is recognized by more than 50

countries, which is proof that an important part of the global community has granted Kosovo its external sovereignty.

The former Kosovo Albanian minority in the Republic of Serbia has now become the majority in a new Kosovo state and the Serbs are in a minority situation. It is the duty of the new majority to safeguard human rights in Kosovo society. In these regards, the security situation, the free movement of Serbs (and other minorities) and the return of displaced people and refugees remain the most pressing challenges facing the new Kosovo state. In the long run, this part of the Balkans only has one exit; that is integration into the European Union which should become a *spiritus agens* of intercultural and interethnic cooperation and the peaceful coexistence of all people.

Biography

- Jakupi, Ali. *Dy shtete shqiptare dhe bashkimi kombëtar*, MMEL, Prishtinë: 2004.
- Kuçi, Hajredin. *Pavarësia e Kosovës*, Jalifat Group, Housto: 2005.
- Lauka, Dr. Islam. *Kosova rast universal apo sui generis?*, Instituti shqiptar për studime politike, Instituti i Historisë i Kosovës, Kristalina-KH, Tiranë: 2007.
- Lipušček, Uroš, Ave Wilson, ZDA, in *Prekrajnje Slovenije v Versaillesu 1919-1920*, Založba Sophia, Ljubljana, 2003.
- Lipusček, Urosh. “Çështja kombëtare Sllovene dhe Shqiptare në kuadrin e Luftës së Parë Botërore - ngjashmëri dhe dallime”, in *Pavarësia e Shqipërisë dhe sfidat e shtetit Shqiptar gjatë shek. XX*, Instituti Historisë, Universiteti i Tiranës, Tiranë: 2008.
- Malcolm, Noel. *Kosova – Një histori e shkurtër*, Pan Books, London: 2002.
- Pearson, Owen. *Shqipëria dhe mbreti Zog*, Qendra e studimeve shqiptare, London: 2004.
- Pellet, Alain. *Sovraniteti shtetëror dhe mbrojtja e të drejtave themelore njerëzore, një këndvështrim i ligjit ndërkombëtar*. Pugwash Occasional Papers, Shkurt, 2000. [www.pugwash.org/re/pellet.htm](http://www.pugwash.org/reports/re/pellet.htm). Accessed 10/20-2008.
- Silajdžić, Haris. *Albanija i SAD kroz arhive Wašingtona*, Oslobodjenje, Sarajevo: 1991.