

THE ROLE OF INTERNATIONAL ACTORS IN STATE  
SECESSION AND RECOGNITION: THE CASE OF  
KOSOVO

By  
ARGYRO KARTSONAKI

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Department of Political Science and International Studies  
School of Government and Society  
College of Social Sciences  
University of Birmingham  
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## **ABSTRACT**

Although in recent years studies on secession and self-determination have increased, research on why secessions succeed remains limited. This thesis contributes to filling this gap by arguing that a secession can be regarded as successful when it results in the creation of a recognised and viable entity. In order to examine this assumption empirically, the thesis applied a process-tracing methodology to the case study of Kosovo, a case that had both an unsuccessful attempt to secede in 1991 and a far more successful one in 2008. It discovered that changes taking place at four different levels, local, state, regional and global, from 1991 to 2008, created the conditions for Kosovo to ensure international support from influential states that would promote its international recognition and would support its internal viability after it unilaterally declared independence for the second time. Finally, this thesis, recognising that Kosovo's statehood is still contested, has expanded the initial assumption of international recognition and internal viability and concluded that a unilateral secession is successful when the extent of international recognition and internal viability renders it irreversible.

## **ACKNOWLEDGEMENTS**

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## **LIST OF ABBREVIATIONS**

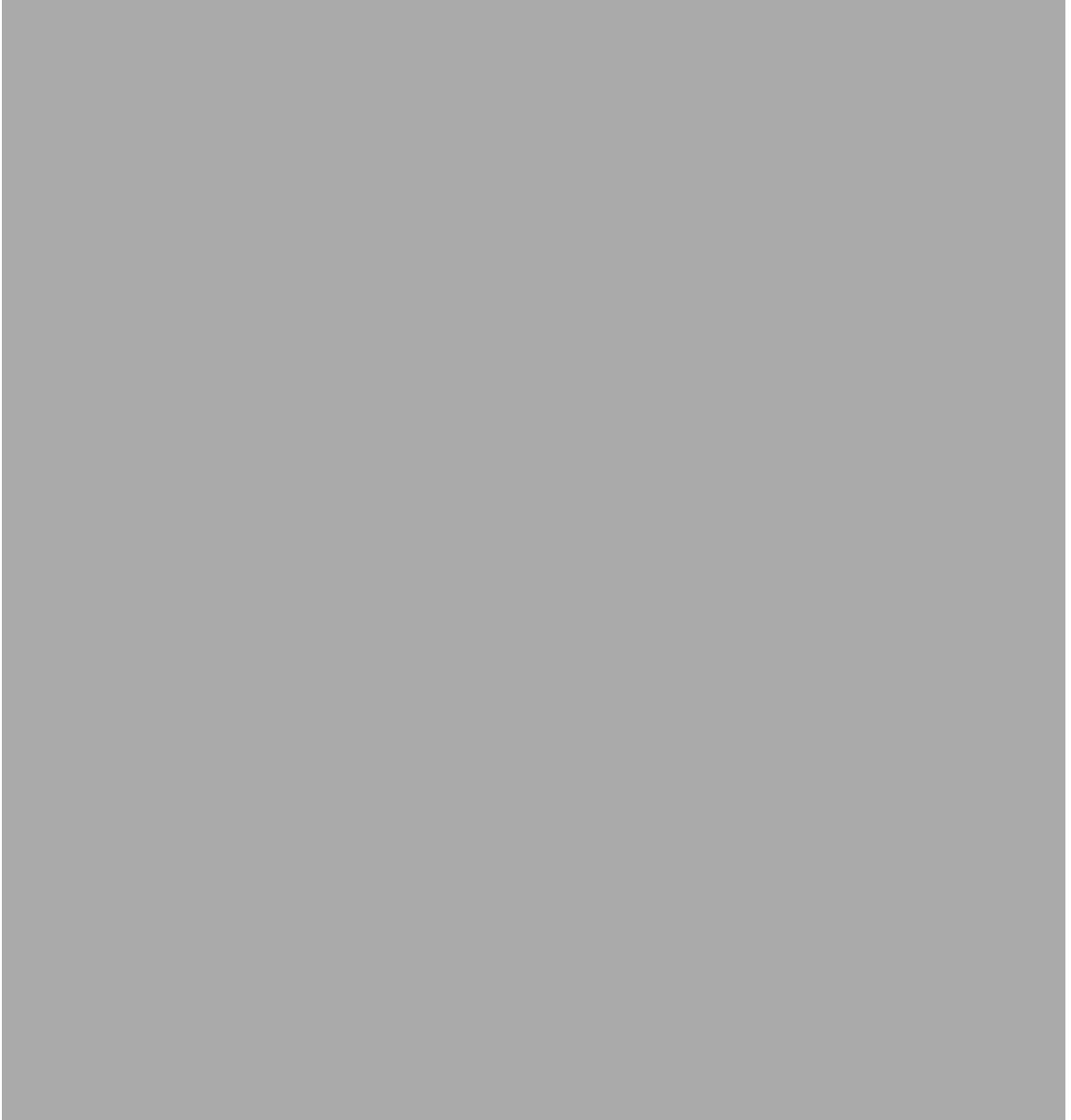
DRC- Democratic Republic of Congo  
EC- European Community  
EEAS- European Union External Action  
ETA- Euskadi Ta Askatasuna/Basque Country and Freedom  
EU- European Union  
EULEX- European Union Rule of Law Mission in Kosovo  
FFO- Federal Foreign Office  
FRY- Federal Republic of Yugoslavia  
GDP- Gross Domestic Product  
HRW- Human Rights Watch  
ICG- International Crisis Group  
ICJ- International Court of Justice  
ICTY- International Criminal Tribunal for the former Yugoslavia  
IFES- International Foundation for Election System  
I.I.C.K.- Independent International Commission on Kosovo  
IMF- International Monetary Fund  
IOC- International Olympic Committee  
IOM- International Organisation for Migration  
IPA- Instrument for Pre-Accession Assistance  
KCSF- Kosovo Civil Society Foundation  
KFOR- Kosovo Force  
KLA- Kosovo Liberation Army  
KPF- Kosovo Protection Corps  
KSF- Kosovo Security Force  
KVM- Kosovo Verification Mission  
LDK, Lidhja Demokratike e Kosovës/Democratic League of Kosovo  
LPK- Lëvizja Popullore e Kosovës/Popular Movement for Kosovo  
MFA- Ministry of Foreign Affairs  
MUP- Serbian Ministry of Foreign Affairs  
NATO- North Atlantic Treaty Organisation  
OAU- Organisation of African Unity  
OSCE- Organisation for Security and Cooperation in Europe  
PISG- Provisional Institutions of Self-Government  
PKK- Partiya Karkerên Kurdistanê/Kurdistan Workers' Party  
R2P- Responsibility to Protect  
RCC- Regional Cooperation Council  
RNEP- Royal Norwegian Embassy in Prishtina  
SAA- Stabilisation and Association Agreement  
SANU- Srpska Akademija Nauka i Umetnosti/Serbian Academy of Sciences and Arts  
SEECF- South-East Europe Cooperation Process



SFTF- State Failure Task Force  
SOK- Statistical Office of Kosovo  
SRSG- Special Representative of the Secretary-General  
STIKK- Kosovo Association of Information and Telecommunication Technology  
TRNC- Turkish Republic of Northern Cyprus  
UÇK- Ushtria Çlirimtare e Kosovës  
UN- United Nations  
UNGA- United Nations General Assembly  
UNHCR- United Nations High Commissioner for Refugees  
UNMIK- United Nations Mission in Kosovo  
UNSC- United Nations Security Council  
USA- United States of America  
USDS- United States Department of State  
USSR- Union of Soviet Socialist Republics  
YFOS- Yugoslav Federation Office of Statistics

## **MAP ONE**

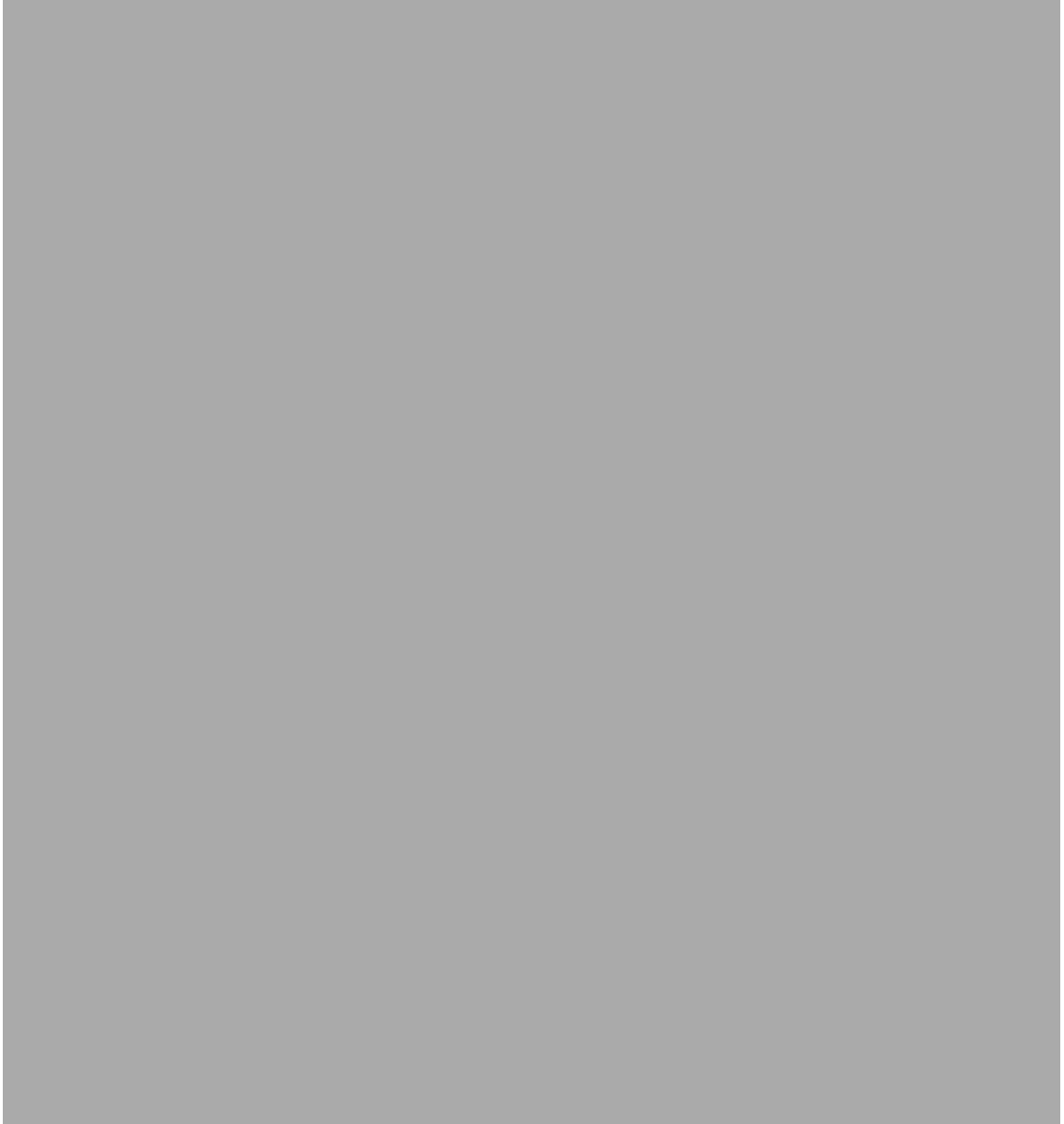
### **MAP OF THE FORMER YUGOSLAVIA, 1945-1991**



Source: The University of Texas at Austin, <http://www.lib.utexas.edu/maps/serbia.html>

## **MAP TWO**

### **MAP OF KOSOVO, 2015**



Source: Ezilon maps, <http://www.ezilon.com/maps/europe/kosovo-maps.html>

# **CHAPTER ONE**

## **INTRODUCTION**

### *The purpose of the thesis*

The phenomenon of globalisation, along with the creation of new regional and international organisations facilitating co-operation in multiple dimensions of international relations, has not diminished the frequency or the violence of struggles for self-determination and secession (Danspeckgruber, 2002). On the contrary, such demands continue to constitute a contemporary and world-wide phenomenon, encountered in several regions of the globe (Cordell, 2015). To name but a few examples, South Ossetia and Abkhazia seek to secede from Georgia, Chechnya from Russia, Somaliland from Somalia, Tibet from China, Bougainville from Papua New Guinea and Quebec from Canada. Even European Union (EU) countries are confronted by secessionist movements; Spain is concerned with Basque and Catalan demands, while the United Kingdom had only recently had (2014) a referendum on Scotland's independence. Notwithstanding the significant differences the aforementioned cases have, as a common characteristic they all present a desire for separation from the state to which they belong and the will to establish a new one. Notably, during the years 1956-2004, seventy-eight armed conflicts for self-determination had taken place (Khosla, 2005), while seventeen of the forty active conflicts world-wide in 2014 were fought over territorial secessionist demands (Pettersson and Wallensteen, 2015).

Despite the plethora of secessionist attempts and the serious implications they induce for the state involved and the security of the region in-question, secession studies are neither sufficiently extended nor well-known. This is not to imply that secession is completely neglected by the academic community. There is a considerable amount of work, regarding

issues closely related to secession, such as the creation of de facto states, the recognition of states in the international system and how and under which circumstances the right of self-determination is to be implemented, with the latter to be also closely related to the issue of territorial integrity and state sovereignty. However, more often than not, these studies are conducted under the prism of international law, and debates centre on the legality and validity of the actions under study. Although international law provides valuable and necessary tools for the settlement of conflicts deriving from secessionist demands, studies based on international law often lack explanatory ability for various questions arising from secessions, such as when and why desires for secession emerges or why some secessions succeed and others fail.

In the discipline of international relations there are few recent studies addressing secession directly and systematically. Again it would be inaccurate to claim that secession in general is neglected by international relations' scholars. Nonetheless, secession studies are often part of wider research projects on war and conflict, being case specific, with limited theoretical contribution (Zurcher, 2007, Liotta, 2001, Ganguly and Macduff, 2003). On the opposite side, studies that address secession from a theoretical perspective are frequently exclusively conceptual, focusing on the morality of secession and addressing issues such as whether and when a secession would be justified (Beran, 1984, Miller, 1997, Weinstock, 2000). These studies, however, addressing secession almost as a philosophical issue, have little practical applicability. Finally, there is also some notable academic research addressing secession in a systematic and comprehensive way, seeking to answer fundamental questions that would enhance and deepen the understanding of the causes and consequences of secession and how the phenomenon is to be practically and effectively managed. Even these studies, however, ignore, or fail to address, the question of when and why secessions succeed,

taking for granted that a secession is successful when the seceding entity has achieved international recognition (Pavković and Radan, 2007, Bahcheli et al., 2004).

This thesis contributes theoretically to secession studies by arguing that a secession, in order to be regarded as successful, needs to result in the creation of an internationally recognised and internally viable entity, and it examines the conditions that lead a secessionist movement to this outcome. International recognition is of critical importance as it offers the opportunity to the newly-created state to interact with other states, sign agreements, be admitted into international organisations, attract investments, and ask for loans and financial aid. Thus, formal recognition provides these states the opportunity to operate in the international system, enabling and facilitating their long-term survival. In contrast, unrecognised states have limited, if any, chances to participate in the above procedures. Due to a lack of legal personality, or internationally recognised official documents, they suffer from political and economic isolation. Consequently, their very survival is contested and dependent on patron states that provide for them.

Despite the significance of international recognition and the important role it plays for the welfare and sustainability of a state, it is not enough to ensure the success of a secession; it is also essential that the seceding entity creates a viable state. The most recent case of the creation of a new state was South Sudan, which seceded uncontested from Sudan in 2011. South Sudan, however, although recognised, is far from being viable or functional. Acknowledging that there is no concrete definition either of when a state is viable or when it is considered failed, the thesis examines this issue and adopts the view that a state can be considered as viable when it meets the minimum requirement for its government to be able to exert permanent control over its population and territory.

Having set the thesis' theoretical approach, the research continues by investigating the factors that facilitate the conditions for a secessionist movement to produce a recognised and viable entity. In order to conduct this study, it uses Kosovo as case study; a case that experienced both a failed attempt to secede in 1991 and a far more successful one in 2008. This study will investigate the changes that took place during the years 1991-2008 and that created the conditions for Kosovo to establish a viable and widely recognised entity after its unilateral declaration of independence in 2008.

Nonetheless, this thesis acknowledges that Kosovo does not fully meet the criteria of international recognition and internal viability, as its statehood remains contested by Serbia, as well as by two permanent members of the UN Security Council, Russia and China, and some eighty United Nations (UN) member states. In addition, Kosovo internally is still institutionally and economically weak.

Even with these conditions, Kosovo is the most suitable case for the purposes of this study for two main reasons: First, Kosovo is a case of unilateral secession, as it declared its independence without the consent of the parent state. This is the type of secession that is usually doomed to fail, with the secessionist entities to remain in the margins of the international community, being recognised by no or just a handful of other states. The international system does not lack examples of unilateral secession that had this fate; South Ossetia and Abkhazia are recognised only by four states, the Turkish Republic of Northern Cyprus (TRNC) only by Turkey, while Nagorno-Karabakh, Transnistria, Somaliland by none. Kosovo, however, has been recognised by one hundred and nine UN member states as of May 2015. Not only that, but it has managed to build a fairly viable and functional state, despite the challenges it confronts. Thus, this thesis seeks to answer the question of why did Kosovo's unilateral secession succeed to such an extent.

Second, by employing a case of unilateral secession and researching why it succeeded, this thesis seeks to enhance the applicability of the findings, as methodologically the selection of a “least-likely” case study is believed to strengthen the validity of an assumption or a theory. The “least-likely method selects cases in which the predictions of a theory are quite unlikely to be satisfied because few facilitating conditions are satisfied” (Levy, 2002: 442). However, if those or some of those assumptions are found to be valid under those unfavourable circumstances then it is quite possible that they will be also valid for other cases with more favourable conditions.

In the research of secession, the least-likely cases to be successful are the cases of unilateral secession, as in the vast majority of those cases the states of the international system refuse to provide formal recognition; therefore, by definition the criterion of international recognition is not fulfilled. By examining why Kosovo, although an outcome of unilateral secession, managed to achieve such an extent of international recognition and internal viability, this thesis seeks to produce findings that can be applied in cases that secede under more favourable circumstances.

Thus, this research focuses on Kosovo’s unilateral secession and examines the following questions:

1. *Why did Kosovo’s secession succeed in 2008?*
2. *What changes taking place from 1991-2008 created the conditions for Kosovo’s second secession to succeed?*

The thesis argues that Kosovo’s unilateral secession succeeded because it managed to secure qualitative international support in favour of its independence. Qualitative international support refers to the support of influential countries able to back Kosovo’s secession internationally and internally. Internationally, influential countries supporting Kosovo’s



secession promoted its international recognition after it unilaterally declared independence. This way Kosovo acquired a considerable quantity of international recognitions, necessary for its participation and eventual acceptance in the international system. Furthermore, international actors have financially and technically supported Kosovo's institution and state-building process. Thus, again through qualitative external support Kosovo has managed to build a viable state, fulfilling to a significant extent the second criterion of successful secession.

This thesis also demonstrates that events occurring during the years 1991-2008 have secured qualitative international support in favour of Kosovo's secession and have created the conditions for its international recognition and internal viability. It shows that changes taking place across four different levels prepared the ground for Kosovo's future successful secession, with these four levels being the local, the state, the regional and the global. At the local level, the thesis refers to the seceding entity, thus Kosovo; the state level is the parent state, in this case Serbia; the Balkans are considered to be the regional level of analysis; finally, the global level refers to all other relevant international actors involved. This thesis will show how events taking place at all levels changed the conditions in favour of Kosovo shaping the positive outcome of its secession.

### *Clarifications*

For the sake of clarity it is necessary to explain some of the terms and concepts used throughout this thesis.

To begin with, the changes at four different levels that this thesis identifies can easily be confused with the neo-realist approach Kenneth Waltz (1959) introduced when he used a level-of-analysis approach in his work "Man, the State and War" to explain when wars occur.

This thesis could not stress enough that the changes in four levels identified in this study do not imply any adherence to the Waltzian neo-realist approach to international relations. In the neo-realist approach the different levels would be regarded mostly as “black boxes” that interact with each other. However, in this study the levels of analysis do not constitute a structure in which the levels interact with each other as solid units. They are rather the events and the actors at each level that interact with one another, both inside the same level and across different levels and shape the outcome of secession. Thus, the levels of analysis are not used in this research as a rigid structure, but as a tool for the thorough analysis of the case study.

Another scholar who used levels of analysis was Singer (1961), who employed two levels of analysis, i.e., the national state and the international system. Brown (1993) employed both a three and a two level-of-analysis model to explain ethnic conflict, while Cordell and Wolff (2010) proposed a four levels-of-analysis approach, also in order to address ethnic conflict.

The thesis draws on the idea of the four levels of analysis proposed by Cordell and Wolff (2010). The reason for this is that the distinction between four levels instead of two or three enables the more detailed examination of factors affecting secession. In the case of Kosovo the division of the state level, into two levels, the local and the state, allows the analysis of events and actors both in the seceding entity and the parent state. This way, for example, the actions and reactions of the local secessionist movement, the Kosovo Liberation Army, and the central government of Milošević in Belgrade can be analysed, determining how they affected the final outcome of Kosovo’s secession. Similarly by dividing the international level into regional and global this thesis can investigate how particular events in the Balkans had an impact on Kosovo’s secession. Finally, the global level allows a broader

assessment of how events and actors in the international system affected the outcome of Kosovo's attempt to secede.

Furthermore, this thesis exclusively examines unilateral secession as a phenomenon of international relations. The scope of the thesis is neither to explore alternative ways of territorial settlement of a conflict nor to propose any alternative solutions to secessionist demands. Consequently, this research is limited to the examination of cases where the aim is separation from the central state and the creation of a new one. Thus, it also does not analyse cases demanding other forms of self-government, such as territorial autonomy or federation. Similarly it is beyond the purpose of this research to investigate annexations and irredentas, i.e. cases where a region secedes and joins a different -usually neighbouring- state.

Secession is different to the decolonisation process that reached its peak in the middle of the previous century. Decolonisation involves granting independence to areas under foreign rule, called also Trust and Non-Self-Governing Territories, usually separated by the metropolitan state not only ethnically but also geographically by sea or ocean (Harvey, 2010, UNGA, 1960, Pavković, 2012). In addition, in the decolonisation process the colonial power eventually voluntarily withdrew its authority from dependent territories following the relevant principles and decisions of the UN organs (UNGA, 1960, UNGA, 1952). In secessionist cases, however, it is the seceding territory that seeks to abolish the authority of the parent state and establish an independent state, with this territory to be an integral geographical part of the central state.

What is more, this thesis is deliberately limited to the research of the success of the unilateral secession of Kosovo. The intention of the research is neither to endorse nor condemn Kosovo's secession. Similarly, this research will take no position either in favour or against secession as a phenomenon in general. The purpose of the thesis is to gain a better

understanding of why Kosovo's second attempt to secede succeeded when the first one had failed. Any expression against or in favour of its action would, thus, undermine the impartiality of the research.

Moreover, it is emphasised that the thesis perceives Kosovo as the most successful contemporary case of unilateral secession, i.e. secession without the consent of the parent state. This thesis, therefore, recognises two things: first, there have been other recent successful cases of secession; however, they were not an outcome of unilateral act. On the contrary, they were a result of an agreement between the state and the seceding entity. An example of such a case is East Timor that gained its independence in 2002 with the consent of Indonesia. Nonetheless, this thesis seeks also to produce inclusive findings that can explain the success or failure of unilateral secessions. Thus, due to the lack of other cases of successful unilateral secessions, the thesis employs Kosovo as the most suitable case for this research. Second, this work acknowledges that historically the unilateral secession of East Pakistan –now Bangladesh- from (West) Pakistan in 1971 is considered to be the most successful case of unilateral secession. However, Bangladesh would be inadequate for a study of contemporary phenomena of secession for several reasons, including that it obtained its independence more than forty years ago in the time of the Cold War and in a completely different international system. In addition, the three main entities involved, Pakistan, Bangladesh and India, were all a result of decolonisation. It can be argued, therefore, that the secession of Bangladesh was a belated consequence of the decolonisation process and thus not adequate for the purposes of this study.

This work perceives success as the extent to which a seceding entity has managed to separate from the central state and create a recognised and viable state. Other definitions or perceptions of success remain out of the scope of the thesis. Thus, it does not investigate the

extent to which Kosovo's secession was successful from a cultural, social, economic or humanitarian point of view.

It is stressed once more that the research remains limited to the answer of the research questions and the investigation of the factors that rendered Kosovo's secession successful. Hence, analysis of the construction of the Albanian and Serbian identities and in-depth analysis of the origins of the conflict in Kosovo is out of the scope of this thesis. Furthermore, it is not the purpose of this thesis to analyse the background of events that had played a major role for Kosovo's successful secession, but only to assess how and to what extent they facilitated this outcome. For example, it is out of the scope of this thesis to provide a detailed examination of the reasons that led to the dissolution of Yugoslavia or the reasons that led NATO to proceed to the air campaign against the Federal Republic of Yugoslavia (FRY).

In terms of language, this thesis observed that the word secession is often an undesirable term, viewed negatively and usually with purpose to denounce or oppose such attempts. For this reason, the word secession and its derivatives are mostly used by states, scholars and in general those condemning secessionist movements. In contrast, secessionist movements and those endorsing their demands mostly use the more positive word independence, offering a sense of justice and nobility to the secessionist cause. Nonetheless, this thesis will use the two terms interchangeably free of positive or negative nuances, as at least in the frame of this thesis the meaning, the practices and outcomes each word produces, coincide.

Furthermore, this thesis often uses the term "entity," a vague term aiming to describe a de facto independent region or system of governance being usually either in transition or in limbo. An exact definition of such a situation seems to be absent, thus, this research purposefully employs the flexible term "entity" to describe, for instance, seceding territories.

The word “entity” is preferred to other alternative terms, as it has a more encompassing meaning including territory, population, as well as societal, political and economic function. It is also used to describe unrecognised regions that have achieved a level of self-governance, either as self-administered territories inside the borders of an existing state or as de facto independent states that have received no or limited recognition. They are also sometimes referred as “seceding groups” or “seceding movements.” The states from which entities seek to secede are interchangeably referred in this thesis as “existing states”, “central states” or “parent states.”

This thesis often uses “international community” as a euphemism for the West. Nevertheless, in cases where appropriate or when there is a clear division in the international system the thesis refers to individual actors or alliances in specific.

As final clarifications in terms of names and language used, the term Kosovar refers to Kosovo Albanians, whereas the word Kosovan refers to the citizens of Kosovo regardless of ethnicity. Kosovo is referred with this name instead of its Albanian pronunciation Kosova, with the exception of when an interviewee cites it as Kosova. Bosnia and Herzegovina is also referred to as Bosnia. The names of places and cities are referred with the names used in English language and literature, for example, Belgrade instead of Beograd.

### *Methods of research*

This thesis seeks to contribute theoretically and empirically to the field of secession by examining the assumption that secessionist attempts succeed when they achieve international recognition and internal viability. It also seeks to reveal what creates the conditions for these two criteria to be fulfilled. Thus, this thesis, by having set an assumption on when a secession can be regarded as successful and also seeking to reveal the reasons that lead to this outcome,

combines deductive and inductive approaches to research. The deductive approach, beginning with a theory or an assumption and continuing its examination and final confirmation or rejection, concerns the first part of the question, i.e. the pre-conditions of the success of secession. The second part of the question requires an inductive approach, enabling the investigation of reasons that result in a certain outcome. After all data are gathered and analysed, then the inductive approach is used to produce a tentative theory or assumption; in the case of this thesis that is the observation that changes in four different levels may lead to the successful outcome of a secession. Hence, this thesis blends these two approaches as their combination enables the accommodation of the overlapping processes of theorising and researching (Wallace in Blaikie, 2007).

This research develops under the ontological assumption of “cautious realist” as defined by Blaikie (2007). In view of that, this thesis accepts reality as being independent from humans’ understanding and acknowledgement. However, it also accepts that human senses are imperfect, and recognises that observation and research are interpretive processes. Therefore, it also assumes that reality cannot be observed accurately and a cautious attitude needs to be adopted.

Consequently, this study agrees to a large extent with the epistemological paradigm of critical rationalism, as introduced and developed by Popper (1935/2002). Critical rationalism assumes that due to imperfect human nature it cannot be known whether a theory is true, but only the contrary, i.e. whether it is false. Thus, theories can only be tentative and need to be liable to tests of falsification. In case that the test fails, then the theory needs to be amended. Thus, theories need to be addressed critically instead of dogmatically. This study proposes assumptions on when secessions succeed, which after the conclusion of the research will be

either tentatively accepted or amended. They will also be further applied in future research projects.

In order to conduct the research this thesis uses Kosovo as a case study, a case that had both an unsuccessful and a successful attempt to secede in two different points of time in less than twenty years. Hence, this thesis adopts a process tracing method combined with a within-case comparison. The process-tracing method attempts to identify the intervening causal chain and mechanisms that shape the outcome of the issue in-question (George and Bennett, 2005). The process tracing method traces the steps in a causal chain and explains the causes and the outcome of a situation through an intensive analysis of the events (Levy, 2002). This thesis having 1991 as starting point investigates and analyses the events that created the conditions for Kosovo's second secession to succeed in 2008. The thesis also engages in a within case-study comparison (Levy, 2002) comparing Kosovo's two attempts to secede. The second of the empirical chapters explains why Kosovo's first attempt to secede in 1991 failed, while the last empirical chapter explains the reasons that turned it successful after it declared independence in 2008. Finally, recognising that Kosovo's demands for secession did not suddenly appear in 1991 the thesis shortly examines the historical background preceding the first declaration of independence.

By employing a three-stage research method, including the placement of the research into its historical context, followed by the conduct of within case comparison and process-tracing, this thesis seeks to maximise the depth and the explanatory capacity of this study. Nonetheless, it is also acknowledged that the single-case study methodology has often been accused of lack of generalisability (Yin, 1994, McNabb, 2004, Kerlinger, 1986, Flyvbjerg, 2006). Bearing this in mind, this thesis needs to clarify that its aim is to generate assumptions and initiate a process of theory building that will be completed through future extension of



this research and the application of its finding to other relevant cases. This way by using the findings of single case studies as examples for further research “one can often generalize on the basis of a single case, and the case study may be central to scientific development via generalization as supplement or alternative to other methods” (Flyvbjerg, 2006: 228).

Acknowledging the inevitability of subjectivity and interpretation, this thesis uses three techniques of data collection, seeking to provide as accurate answers as possible to the research questions. The use of different techniques of data collection enables triangulation and enhances the possibility that no relevant data are missed. Triangulation can be defined as “studying a phenomenon in two or more ways to substantiate the validity of the study findings” (McNabb, 2004: 366), a process especially important in studies where a level of interpretation from both the researcher and the participants of the research is unavoidable. Thus, data was collected through primary and secondary sources and elite interviews. The information gathered from each source was checked against each other as to reduce the degree of deception (Gallagher, 2013).

Primary sources used in this thesis include constitutions, government documents, peace agreements, court resolutions and advisory opinions, politicians’ speeches, interviews and public statements, legal documents and resolutions adopted by the organs of the United Nations as well as other international organisations. Primary sources also include reports publicised at the time of research by international governmental and non-governmental organisations located on the ground and aiming to observe and describe the situation. The documents have been mainly retrieved from the internet through the online archives of the institutions and organisations involved. In addition, a number of documents regarding the diplomatic efforts to settle the crisis in Kosovo, the military action against the FRY, as well as the 1974 Constitution of Yugoslavia have been accessed through Krieger’s (2001) analytical

compilation, where significant original documentation is reproduced without any interference or analysis by the editor.

Secondary sources used in this thesis include books, academic articles, newspaper articles and conference papers, either in electronic form or hardcopy, as well as documentary films. Most of the secondary sources were acquired through access provided by the University of Birmingham; however, some sources were also obtained from the library of the Serbian Academy of Science and Arts, the Embassy of Bosnia and Herzegovina and the premises of the Helsinki Committee for Human Rights in Belgrade.

Furthermore, the research data is supplemented through the conduct of field research and elite interviews. In total, thirty-four interviewees participated in the research in four cities; Prishtina, Gračanica, North Mitrovica and Belgrade. The interviews varied greatly in time, lasting from forty-five minutes to two hours. The interviewees comprised both international personnel, including diplomats and international organisations' personnel, and local representatives of civil society, think-tanks and non-governmental organisations in the aforementioned cities. The participants were predominantly male -twenty-six out of thirty-four; however, as the interviewees were approached on the basis of their professional role and this thesis is not concerned with gender-related issues, it is considered that this imbalance between male and female participants does not interfere with the research findings. A detailed list of interviewees is attached in Appendix I.

The field trips took place over two different time periods. The first field trip was conducted in Kosovo and was followed by a trip to Belgrade eight months later. In the intervening time the data from the first field trip were coded and analysed. During this process gaps were identified, as well as issues requiring clarification and approach from a different

perspective. Thus, a second field trip to Belgrade followed, aiming also to include the Serbian point of view of the events.

The interviewees were selected on the basis of their professional capacity and the expectation that their experience in certain events would provide a valuable insight into the research. Thus, the participants were selected predominantly because of their direct personal participation in certain events, such as the Rambouillet accords and the Vienna negotiations. A further reason for selection was the central role their country or hiring institution had played in the settlement of the Kosovo issue throughout the years. Finally, Kosovo Albanians and Kosovo Serbian civil society activists were interviewed to present their own perspective of the background of Kosovo's secession.

The interviewees were initially identified either by the web-page of the relevant institutions and international organisations or through suggestions from scholars having already conducted research in Kosovo. International organisations' personnel and ambassadors were mainly identified and contacted through the details provided on-line, while civil society activists were contacted through personal introductions by other researchers.

Acknowledging that elites have limited time and heavy schedules, the organisation of the field trip started two months in advance. Potential participants were contacted by e-mail introducing myself, explaining the purpose of the research and why they were selected as interviewees, as well as the main points of the interview questions. The participants were also asked whether they wished to be recorded or not and whether to be cited or remain anonymous. In the e-mail a participant information sheet was attached and included further details about the research project, the policies of the University of Birmingham regarding the storage of data, issues of confidentiality and the interviewee's right to withdraw from the research either during or after the interview.

In the beginning of the interview the interviewees were asked to sign a form declaring their consent to participate in this study according to the terms detailed in the participant information sheet and reiterated in the consent form. In cases where a participant agreed to be interviewed but refused to sign the consent form due to reasons of anonymity and confidentiality, they were informed and was agreed that they may be contacted in all confidentiality by the University of Birmingham if necessary to verify their participation in the research. In addition issues concerning their anonymity were discussed in person. The majority of the interviewees -nineteen out of thirty-four- preferred to remain anonymous. In this case, a suitable title was agreed with each of the participants, in case their statements were mentioned in the thesis. These citations are referred in the thesis with the title agreed and the number of the respective interview, for example, "Interview 1, Former NATO Officer." Furthermore, the majority of the interviewees -twenty-two- agreed to be recorded, but they reserved the right to stop the recording at any time. In cases where interviewees preferred not to be recorded, handwritten notes were taken. All data were stored in accordance with the University of Birmingham Code of Practice for Research (2014). Electronic data, i.e. audio-recordings were stored on a password-protected USB stick, which remained locked in a secure compartment when not in use. Likewise, hard-copies of data, i.e. printed transcripts and handwritten notes also remained locked in a secure compartment when not in use.

The interviews were predominantly semi-structured, with open-ended questions. Semi-structured interviews allowed some control over the course of the interview, providing also space for the interviewee to mention whatever they believed to be important and relevant to the matter (Berry, 2002, Kvale, 2006). This type of interview is considered to be most suitable when conducting elite interviews where there is a certain imbalance in the power dynamic between interviewee and researcher, as the interviewee is treated as the expert and the

researcher as the knowledge-seeking novice (Burnham et al., 2004). In addition, elites used to presenting the rhetoric of their government or organisation often diverted from the topic in question. Therefore, asking a set of questions was helpful for limiting the interview to the purposes of the thesis. Although, the questions were constantly modified depending on the position of the interviewee and the reasons why they were invited to contribute to the research, a sample of the interview questions can be found in Appendix II.

After the end of the interview a follow-up e-mail was sent thanking the participants for their time and input and also asking them to suggest further potential interviewees. This way it was possible to obtain personal e-mails or telephone numbers of potential participants and avoid the various gate-keepers elites may have. A “snowball technique” (Mikecz, 2012) was, thus, used to gain access to relevant additional participants. Hence, although both field trips were planned well in advance, admittedly more progress was made after the research on the ground had commenced.

All recorded interviews were transcribed, while all handwritten notes were typed and included in the same document. Printed, hardcopy documents of interviews’ transcript were manually colour coded twice. In the beginning each colour corresponded to each question. After themes emerged, the transcript were colour coded again with colours corresponding respective patterns. After the second coding was complete, findings were summarised in form of tables.

Finally, a process of triangulation followed including data from interviews, primary and secondary sources. Data included in the thesis were cross-checked and verified. Mismatches between the interview findings and the primary documents findings were not uncommon. In such cases, the findings from the primary documents were incorporated in the thesis, while interview findings were discarded. In cases where findings from the field trip

contradicted secondary sources the thesis included both approaches. Finally, in case where secondary sources contradicted primary sources, primary sources were again prioritised and included in the final document.

### *Structure of the thesis*

This thesis is structured in two main parts; the first provides the conceptual foundations of the research, while the second is devoted to an empirical examination of the case study.

In more detail the first part comprises Chapters Two and Three. Chapter Two introduces the term of successful secession, explains its meaning and sets the criteria of international recognition and internal viability. Taking into account that the ultimate goal of secession, unilateral or not, is the creation of a state, this Chapter also explains how this thesis perceives the state. It continues with demonstrating the significance of international recognition for newly created states and seceding entities. Finally, it explains how the thesis defines the internal viability of a state.

Chapter Three places the thesis in the theoretical framework of secession. The Chapter begins with an overview of the principle of self-determination, its meaning and evolution, also presenting the ways in which it was applied through the years. The chapter continues with secession as a form of exercising the right to self-determination, and reviews the main theories expressed in the literature. It then assesses how existing theories of secession attempt to apply and explain the case of Kosovo. The chapter shows that existing theories fail to explain why Kosovo's secession succeeded to such an extent, revealing the theoretical contribution of this thesis.

The second part of the thesis follows, comprising Chapters Four, Five, Six, Seven and Eight. Chapter Four depicts the historical background of the conflict in Kosovo, briefly

portraying the relations between Serbs and Albanians in Kosovo from the Balkan Wars (1912-1913) to the abolition of Kosovo's autonomy in 1989. It is beyond the scope of this chapter to analyse in-depth the origins and the reasons of the conflict in Kosovo. The purpose of this chapter is rather to constitute an introduction to the following empirical chapters of this thesis. Acknowledging that Kosovo's demands for further autonomy, independence and/or unification with Albania were part of a longstanding process, this chapters seeks to demonstrate the nature of relations between the two ethnic groups, the changes that shaped the dynamics between them and present the historical context in which Kosovo's first declaration of independence took place in 1991.

Chapter Five explains why Kosovo's first attempt to secede failed. In order to explain this outcome, the thesis examines the context in which the declaration of independence took place. It analyses how the revocation of Kosovo's autonomous status in 1989 and the characterisation of the Kosovo issue as an internal Serbian matter had a negative effect on the outcome of its first attempt to secede. It also evaluates how the peaceful situation in Kosovo, at a time when the wars in the north of Yugoslavia had already started, undermined the success of its attempt. Finally, this chapter reveals how the changes in the international system and the end of the Cold War affected Kosovo's first attempt to secede.

Chapter Six investigates the changes that occurred from 1991 to 1999 and turned Kosovo from a Serbian internal matter to a major international (in)security issue that triggered NATO's military intervention, demonstrating how those changes affected the success of Kosovo's unilateral secession in 2008. This chapter examines Ibrahim Rugova's non-violent resistance and the parallel society the Kosovars established under his guidance. It shows that the failure of this approach to gain a seat at the negotiations table at Dayton, the process that terminated the Yugoslav wars, led to the emergence and growth of the Kosovo Liberation

Army (KLA); an armed movement that pursued independence by military means. The chapter also analyses how Milošević's misrule, ironically, positively affected the outcome of Kosovo's second secession. Lastly, this chapter examines the role of the Rambouillet negotiations, the consequences of their failure and the impact of NATO's subsequent military intervention on the outcome of Kosovo's secession.

Chapter Seven explores how the position of Kosovo under international administration, following the NATO's air-campaign, and certain events that occurred during this time, affected Kosovo's secession. This chapter presents the structure and the duties of the international administration, evaluating its efficacy and identifying its drawbacks. In addition this chapter reveals how the riots against the Serbs in 2004 accelerated the process of Kosovo's secession, leading to the Vienna negotiations and the Ahtisaari plan. Following this, the chapter examines the course of the negotiations, exploring why they failed and what their impact was on Kosovo's unilateral secession, which took place shortly after their conclusion.

Chapter Eight presents and evaluates Kosovo's progress towards international recognition and internal viability after it seceded unilaterally in 2008. The chapter examines the first international reactions following the unilateral declaration of independence. Subsequently, it investigates how and why the stance of certain states, including Serbia, has changed through the years until 2015. Moreover, the chapter assesses Kosovo's progress towards internal viability, highlighting the major steps forward it has achieved in seven years of independence. Nevertheless, the chapter also depicts the shortcomings and emphasises the areas in urgent need of improvement.

The final chapter recollects the findings of the empirical chapters and integrates them into the theoretical approach the thesis proposed. The thesis concludes with the original



contribution of the research, highlighting its findings and the avenues of further research they generate.

# **PART I**

## **CHAPTER TWO**

### **DEFINING SUCCESSFUL SECESSION**

#### *Introduction*

The main research question this thesis seeks to answer is why the unilateral secession of Kosovo in 2008 succeeded. The thesis acknowledges that Kosovo remains a contested case, neither globally recognised nor a UN member state. Thus, chapter two explains the choice of this particular case study for this thesis. It also sets the criteria under which a secession can be regarded as successful and demonstrates that Kosovo is the most successful case of unilateral secession since Bangladesh in 1971.

This thesis defines successful secession with the use of two criteria: a) the international recognition the seceding entity has achieved and b) its internal viability. International recognition is of major importance, because it offers the opportunity to newly created states to interact with other states. Recognised states can enter into international organisations, sign co-operational agreements, and attract investments, while they can also ask for loans and financial aid. In contrast, unrecognised states have limited, if any, chances to participate in the above procedures. However, being internationally accepted is not enough; it is also essential that the seceding entity creates a viable state. There are numerous states, such as Somalia, South Sudan and the Democratic Republic of Congo (DRC), that although recognised are far from being viable or functional. Nevertheless, there is no consensus in the literature on when a state is viable – or contrariwise failed. Thus, this thesis will accept as a minimum requirement for an entity to be considered viable that its government is at least able to exert control over its population and territory.

The criteria of external recognition and internal viability will be treated as two separate conditions that both need to be fulfilled. Nonetheless, this thesis acknowledges and demonstrates that there is a strong interaction between them. International support, which is more likely in the event of external recognition, enhances the chances for internal viability, by creating favourable conditions for the economic, institutional and infrastructural development of the newly created state. There are also arguments in favour of the view that evident internal viability and compliance with Western standards of democracy, with the term to be used in its widest definition, lead to international recognition (Caspersen, 2012, Caspersen and Stansfield, 2011). This thesis agrees that it would have been easier for the international community to accept entities that honour international norms. Nevertheless, drawing on examples of secessionist entities with demonstrated internal viability, which remain unrecognised or with limited recognition, this thesis claims that evident internal viability does not automatically result in international acceptance.

Examining Kosovo in light of these two criteria of successful secession this thesis argues that it has achieved a remarkable degree of success. Although for the moment its entrance into the UN remains blocked, as it is not recognised by two permanent members of the UN Security Council and it also confronts internal problems stemming mainly from weak institutions and an immature political system, the thesis argues that Kosovo has achieved such a degree of success that constitutes its secession irreversible. Furthermore, Kosovo is the most successful case of unilateral secession since Bangladesh in 1971. There have been other successful secessions since, but they were outcomes of state dissolutions, decolonisation or mutual agreement between parent state and secessionist entity. Kosovo, however, is the only case since 1971 that seceded unilaterally and achieved such a degree of success.<sup>1</sup>

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<sup>1</sup> Some examples of unilateral secessions that have failed to achieve a significant degree of success: Nagorno-Karabakh and Somaliland, although both have achieved a remarkable level of internal viability and stability,

The following sections will analyse in detail the criteria of international recognition and internal viability. In addition, as the goal of the seceding entity is to establish its own state, this chapter will also explain how this thesis perceives the state. The chapter will thus be divided into three parts: the first part will explain how the state is defined in this thesis; the second part will analyse the theory and practice of international recognition; the third part will analyse the notion of the internal viability of a state. The chapter will conclude with an evaluation of the extent to which Kosovo meets the standards of a successful case of secession, explaining also why Kosovo is the most relevant case study for the purposes of this thesis.

### *Defining the state*

Secession is defined in the thesis as “the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state” (Pavković and Radan, 2007). If the seceding entity seeks annexation to another state, instead of creating its own, then it falls in the category of irredenta (Ambrosio, 2001, Horowitz, 1985). As the principal purpose of secession is the creation of a new state, this thesis needs first to explain how it perceives the state. However, there is no clear definition of what a state is (Dunleavy and O'Leary, 1987, Pierson, 2011). Therefore, the following section will review a number of approaches presented by the literature on what the state is, concluding in the end to the most relevant for this study.

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both remain unrecognised. Similarly the Turkish Republic of Northern Cyprus (TRNC) although successfully exerts de facto sovereignty over the northern part of Cyprus, it is recognised only by Turkey, while Abkhazia and South Ossetia are recognised only by four states. Later in the chapter these cases will be discussed in more detail.

*i. What is a state: political theory concepts*

In antiquity the state was presented as a room where citizens could exercise their political rights. The ideas of state and society were intermingled and the state was defined mostly by its inhabitants (Aristotle, 4th Ce.B.C./1993, Plato, 4th Ce.B.C./2009). For instance, in documents of the time the term “Athens” is rarely mentioned to describe this particular city-state. In contrast, the term “Athenian” was widely used for both the state and its inhabitants.

Later, the state was presented as a voluntary association between citizens and government. These theories are known as “contract theories,” the main representatives of which were Hobbes, Locke and Rousseau. Hobbes (1651/1996) argued that the state and the monarch saved humans from savagery, a “state of nature” in which they would have otherwise to live because of their violent nature. Locke (1689/1980) believing that humans are neither good nor bad introduced in his writings the meaning of “property.” Property was not seen only as ownership, but as a combination of rights that the contract would have to fulfil in order to be valid. Rousseau (1762/1973), on the contrary, claimed that humans were happy in the state of nature. However, as societies started to develop, humans had to create laws in order to survive and live peacefully. His social contract would give humans the opportunity both to protect themselves and remain free, since the contract would be made by them and it would be valid for as long as it served them.

Common to all three aforementioned theorists is their argument that humans established societies/ states because they had something to gain. Regardless of the form of government that each theorist considered to be optimal, all converge at the idea that by belonging to a state, humans gain and protect some of their rights. Thus, there is a reciprocal relationship between state and people; the state provides for the citizens’ security and

protection of rights, and in exchange citizens agree to reduce their freedom and submit to the state's laws and authority.

In contrast to the theories presenting the state as a voluntary association there are those that perceive the state as a result of the domination of a group of people over the rest of the population (Kouskouvelis, 2004). Domination is achieved through force or violence and has as main purpose the control of the labour process and the exploitation of the working class (*inter alia*, Marx, 1962, Brewer, 1986, Steiner, 1984, Roemer, 1982). Apart from dominating and controlling the means of production, this form of state also presents the interests of the rulers as if they were interests of the ruled. In this way, the needs of a ruling minority are fulfilled as demands of the citizens (Kotzias, 1993). Consequently, the state is presented as a mechanism of coercion, creating a one-sided relationship in favour of its ruling agents.

Furthermore, the state is presented as an entity that “possesses a monopoly on the legitimate use of physical force within a given territory” (Weber, 1919: 1). Similarly, for Tilly states are relatively centralised, differentiated organisations, whose officials more or less successfully claim control over the chief concentrated means of violence within a population inhabiting a large, contiguous territory (Tilly, 1999: 170).

Douglas North, working on a neoclassical theory of the state, suggests that the state is the organisation that has comparative advantage in violence over a specific territory, whose borders are defined by the state's authority to impose taxes (North, 1981). North and Wallis (2010) by reviewing and comparing their own previous work to that of Weber, admit that the assumption that the state somehow possesses a comparative advantage in violence was inadequate. Although they recognise that there is no comprehensive theory of the state, they suggest that the state can be identified by the way it organises violence rather than how it uses

it. Thus, they suggest that the state is the organisation that has the ability to organise other organisations.

By closely examining the above theories it is observed that they have a common characteristic in their analysis. In all of them, the state is the source of authority or “legitimate power” (Weber, 1919). In other words, the state combines both the right and the power to rule. Whereas power is the ability to influence the behaviour of others through various means, authority is based on the right to do so. This legitimacy is rooted in an acknowledged obligation to obey rather than any form of coercion or manipulation. Authority then is “power cloaked in legitimacy or rightfulness” (Heywood, 2000: 15), exercised by a government and extended over a population, inhabiting a specific territory.

Nonetheless, the aforementioned theories of the state fail to answer what a state is in practical terms. They extensively address philosophical issues about the nature of the state, how it works and how it exercises its powers. Yet, the question of what constitutes a state remains unanswered.

## *ii. What is a state: international law perspectives*

Jellinek (1914) seeking to offer a straightforward definition of what constitutes a state, argued that a state needs three elements in order to exist: territory, population and government. Building his argument on those elements he described the state as “the organisation, which is equipped with power to rule over a permanent population of a territory” (Jellinek, 1914: 180).

A further attempt to establish a concrete definition of the state was made in the Montevideo Convention (1933), which comprised Jellinek’s three elements and added one more, namely “the capacity to enter into relations with other states.” Thus, according to Article 1 of the Montevideo Convention “the state as a person of international law should



possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.” Currently, this is the most widely accepted legal definition of statehood (*inter alia*, Akpinarli, 2010, Crawford, 2006, Schoiswohl, 2004).

However, the “capacity to enter into relations with other states” as a constitutive element of statehood is often disputed (Kimminich and Hobe, 2000, Malanczuk, 1997). It is argued that this capacity is a requirement of the government or a requirement of independence or even a consequence of independence, but not a constitutive element of a state (Akpinarli, 2010, Dugard, 2000). Likewise, Crawford argues that the capacity to enter into relations with other states is rather a combination of the requirement of government and independence (Crawford, 2006: 74), meaning that states are capable of entering into relations with other states and this characteristic is a consequence rather than a prerequisite of statehood (Giorgetti, 2010). Moreover, the existence of the capacity to enter into relations with other states can be interpreted in different ways. For instance, for a newly established state this capacity could be interpreted as independence or recognition. For an existing state, however, the same criterion could be interpreted as an aspect of effective government (Akpinarli, 2010).

It is also worth noting that Article 3 of the Montevideo Convention affirms that the political existence of the state is independent of recognition by the other states. It is also added that even before recognition, the state has the right to defend its integrity and independence, to provide for its prosperity and consequently to organise itself as it sees fit. Yet, given the fact that without recognition states cannot enter into relations with other states,<sup>2</sup> the Montevideo Convention contains serious controversies and limitations regarding the creation of a new state. Thus, although what a state is seems straightforward at first sight,

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<sup>2</sup> The exception is Taiwan or the Republic of China, which while being recognised only by twenty-one states, maintains “unofficial” political and economic relations with a significant number of other countries.

when it comes to newly created states it remains unclear when they officially come into existence.

This thesis claims that if an entity has obtained through secession a permanent population, territory and effective government then it has achieved de facto statehood. However, without international recognition its government does not have the opportunity to interact freely with all the actors of the international system, but its relations are limited to the countries and organisations that have either recognised it or unofficially support it. Thus, for a secession to be entirely successful it needs to create a recognised state<sup>3</sup> fulfilling all four criteria of the Montevideo Convention.

### *International recognition*

Recognition and secession are closely associated. For more than a hundred years, recognition has provided the “imprimatur of statehood to seceding entities” (Dugard and Raič, 2006: 110). Certainly with the passage of time the meaning of secession has significantly changed. In the nineteenth century when Greeks, Serbs, Bulgarians and other nations demanded independence from the Ottoman Empire they eventually received assistance from the Great Powers in support of their purpose (Rodogno, 2012). The Great Powers of the time also recognised the newly created states when they reached the standards for de facto statehood (Fabry, 2010). Hence, during the nineteenth century and the early years of the twentieth, secession primarily meant national independence from an empire or from colonial rule. Later in the era of decolonisation when people under colonial rule had the right to self-determination and

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<sup>3</sup> The threshold for a state to be regarded as recognised is considered to be the same with the one required for admission into the UN. Hence, for a state to be globally recognised it needs to have the recognition of the two-thirds of the UN members states, as well as the recognition of nine of the fifteen members of the UN Security Council, including the five permanent member states.

secession, international recognition was quickly granted to the new state, provided that they respected the *uti possidetis*<sup>4</sup> principle.

However, outside the frame of decolonisation and the *uti possidetis* principle any attempt to redraw existing boundaries is viewed as a violation of the principle of territorial integrity. Similarly, the recognition of a new state that is created from the territory of an existing state without its consent, is viewed as a violation of international law (Dugard and Raič, 2006).

In addition, granting diplomatic recognition may have serious implications, leading on the one hand to the official division of a previously recognised state, and on the other hand to the acceptance of a new entity into the club of sovereign states (Paquin, 2010). Recognition, hence, is both the confirmation of statehood and the act that transforms a secessionist entity into a state (Dugard and Raič, 2006, Heraclides, 1991).

International recognition, though, is difficult to achieve. Until the end of the Cold War the international community recognised only new states that emerged from decolonisation, with the exception of Bangladesh (East Pakistan at the time) in 1971, which unilaterally seceded from (West) Pakistan. Even Bangladesh, however, achieved uncontested statehood and was admitted in the UN only after it was recognised by Pakistan in 1974 (Pavković and Radan, 2007, UNGA, 1974).

At this point the significance of acceptance to the UN should be noted, as it seems to be an indicator of uncontested statehood<sup>5</sup> (Owtram, 2011). Entrance into the UN demonstrates

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<sup>4</sup> The *uti possidetis juris* is defined as the “principle of the intangibility of frontiers inherited from colonization” (ICJ, 1986). Thus, states emerging from decolonisation are supposed to maintain the colonial administrative borders they had at the time of independence (Ratner, 1996). Accordingly, when a territory gains independence, the new international boundaries shall be drawn along the administrative boundaries of the former structure (Watson, 2008).

<sup>5</sup> Exceptionally, East Germany first entered the UN and then achieved uncontested statehood. In 1973 West and East Germany entered the UN as two different states achieving, thus, international recognition. However, by the time of their acceptance the US still refused to recognise East Germany, with the formal recognition and

that the majority of the world's sovereign states recognise the new state as equal and it is subsequently protected by the Charter's principles. Therefore, admission into the UN constitutes one of the priorities of states. The only exception has been Switzerland, which although being a recognised state, was unwilling to participate in the organisation for more than fifty years, considering membership to be incompatible with neutrality. However, even Switzerland eventually declared UN membership to be a "strategic goal" and entered the organisation in 2002.

Returning to seceding entities seeking recognition, after the end of the Cold War several entities took advantage of the collapse of the communist regimes and demanded the creation of their own state. All those, who were constituent republics of their former state, such as the six Constituent Republics of Yugoslavia or the fifteen Union Republics of the former Soviet Union, gained full recognition. Nonetheless, some entities that were autonomous republics or autonomous regions within the constituent republics of those states also declared independence. Most of them however, gained limited, if any, recognition, verifying the assertion that international recognition is far from easy to obtain outside the *uti possidetis* principle. Kosovo seems to be an exception to this rule. While still not universally recognised, with one hundred and nine official recognitions, it has certainly achieved a remarkable level of international acceptance. This level is even more noteworthy, considering the fact that Serbia as former parent state still refuses to recognise its independence, a stance that is supported by two permanent UN Security Council members Russia and China.

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the establishment of diplomatic relations to follow a year later in 1974. In addition, France, UK and the US refused to recognise East Berlin as the capital of East Germany and the latter entered the UN under an explicit relevant provision. Finally, the two Germanys, although they had normalised their relations through a series of agreements, never officially recognised each other (Childs, 1977, Doenhoff, 1993, Pfeil, 2001).

*i. Theories of international recognition*

International recognition is of crucial importance for a seceding entity. Recognition is the element that transforms a unilaterally seceding entity into a state. After its recognition, the newly created state has the opportunity to interact with other states and international organisations, while it is protected by the principles of non-intervention and territorial integrity (Caspersen, 2011). Moreover, recognition allows access to markets, loans, capital investments, and resources necessary for the development of the economy (Mulaj, 2011a, Mihalkanin, 2004). Finally, official documents and passports issued by recognised states are internationally accepted and thus citizens have the opportunity for free movement and access to a globalised world. Therefore, the pursuit of recognition has been a priority for states newly created through secession (Lewis, 2008).

However, there is still not a uniform answer to the questions of when an entity has achieved statehood and what the role of international recognition in this outcome is. The debate on those issues revolves mainly around two theories of statehood: the constitutive and the declaratory theory. The former perceives recognition as “a necessary act before the recognised entity can enjoy an international personality”, while the latter sees it as “merely a political act recognizing a pre-existing state of affairs” (Dixon et al., 2011:158).

In the constitutive approach, the question of “whether or not an entity has become a state depends on the actions of others, i.e. recognition of existing states” (Grant, 1999: 2). In other words, a seceding entity turns into a state only when it achieves international recognition and is able to enter into relations with other states, meeting thus all four criteria of the Montevideo Convention. Support for this view comes from the Supreme Court of Canada’s ruling regarding the Quebec Case, declaring that “the ultimate success of a [unilateral] secession would depend on recognition by the international community, which is likely to

consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition” (Supreme Court of Canada, 1998 §155). Thus, even where an attempt is unilateral, international recognition may create a new state.

Nevertheless, the constitutive theory has certain limitations. First, the fact that one entity may be recognised by some states, but not by others, is an evident deficiency of the constitutive theory. A partial recognition would mean that an entity is simultaneously regarded by some as a state and by some others as a non-state (Dugard and Raič, 2006) and accordingly a partially recognised state both has and does not have an international personality (Brierly, 1963, Crawford, 2006). Second, the question that arises is how many recognitions are enough for a state to be created. Kosovo has currently been recognised by 109 out of 193 UN member states (May 2015). The question is whether 109 recognitions are enough according to the constitutive theory for Kosovo to be considered a state, and if not, then where the threshold lies for the minimum of recognitions required.<sup>6</sup> Although this is a question that falls in the purview of international law to answer, it still may have political implications for Kosovo and for other entities seeking uncontested statehood.

In order to overcome the limitations of the constitutive theory, most contemporary scholars have accepted the declaratory approach (Watson, 2008). In the declaratory approach statehood arises from the empirical existence of sovereignty, not from juridical recognition of its creation by other states (Lynch, 2002). When recognition is granted, other states merely acknowledge the pre-existing situation, that of the existence of a state (Vidmar, 2012). A state therefore may exist without being recognised; a view that coincides with Jellinek’s three-elements doctrine.

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<sup>6</sup>A possible answer to this question would be the UN criteria for admission (see, footnote 4). However, there seems to be for the moment no explicit connection between the constitutive theory and the UN criteria.

Yet, the declaratory theory also creates logical and practical inconsistencies. On the one hand this view alleges that a state can exist, even without recognition. On the other hand, unrecognised entities that have otherwise demonstrated sufficient state capabilities continue to be treated as illegal personalities (Bartmann, 2004).

In this way, the so-called *de facto states* are created. These are entities that have emerged most frequently through secession, but did not achieve uncontested statehood because of the unwillingness of the international community to accept them. They perform the normal functions of a state over their territory and they have, to a large extent, the support of their population (Bahcheli et al., 2004). Most of them have demonstrated viability and stability (Kolstø and Blakkisrud, 2008). Nevertheless, they are not “*de jure*” states, because they are not approved by the international order (McGarry, 2004: 10).

Contrary to the *de facto states* are the *quasi-states*. Jackson defines quasi-states or pseudo-states as entities that, although they are recognised, “do not disclose the empirical constituents by which real states are ordinarily recognised” (Jackson, 1987: 527). He claims that although they enjoy equal sovereignty with other states, they lack established legal and administrative institutions (Jackson, 1987: 528-529). Therefore, they are insufficient, unstable and incapable of protecting their sovereignty (Mihalkanin, 2004) and they only came into existence because of changes in the world order during decolonisation (Jackson, 1990). In short, Pegg (1998) argues that “the quasi-state has recognition but lacks capabilities, whereas the *de facto state* has capabilities but lacks recognition” (Pegg, 1998: 5). It seems, hence, that international recognition and its lack thereof have both legal and political implications.

*ii. The political implications of international recognition*

In addition to its legal effects, recognition is also a political act (McCorquodale, 2005). Unrecognised states are non-existent in the eyes of the organised international community (Bartmann, 2004). Their claims are perceived by most other states as matters of domestic conflict to be resolved within the parameters of the sovereign authority of the challenged state. Recognition, however, would legitimise their struggle, would guarantee protection for the inhabitants and prestige and power for their leaders (Caspersen, 2013). In addition, the new state could afterwards enter into formal relations with other states and be accepted in international organisations, while it is also considerably easier for a recognised entity to request financial support from the International Monetary Fund (IMF) and the World Bank (Paquin, 2010).

Failure to gain widespread recognition has often resulted in the failure of secessionist attempts; to name but a few, Republika Srpska Krajina (Detrez, 2003), Republika Srpska (Zahar, 2004) and Biafra (Radan, 2008). The denial of recognition imposes serious constraints on the capacity of the entity to function as a modern state. The government has no access to international financial institutions or direct bilateral assistance; trade is impeded by the lack of recognised regulatory controls; foreign investors are reluctant to invest in a territory whose very survival is in danger. Hence, the lack of international recognition undermines the viability of the de facto state.

However there is also a paradox to be observed: there are entities that despite remaining unrecognised have existed for more than twenty years, such as Nagorno Karabakh and Transnistria. Kolstø (2006) identifies at least five reasons that contribute to their viability, with them being strong internal strategies of nation-building, militarisation of the society, weakness of the parent state itself, lack of involvement on the part of the international



community, and support from an external patron. Rowland (2008) and Popescu (2006) also emphasise the importance of a patron state, which provides the necessary goods and guarantees that these entities will not be re-annexed by force to the parent state. They mention respectively the examples of Nagorno-Karabakh and Transnistria, which are still not recognised by any country in the world, but Armenia and Russia provide for their security and sustainability.

Consequently, this thesis claims that for a *de facto* state to reach uncontested statehood it needs first to achieve quality recognition, meaning recognition by major powers, able to influence other states to accept the new entity. For centuries state recognition has been led and shaped by the great powers, whose official acceptance bore more weight than recognition by other states and actually, less powerful states have looked to the great powers for direction in this regard (Fabry, 2010). When major powers recognised a new entity, the smaller powers would follow, producing a “snowball effect” (Fawn and Mayall, 1996: 209). This snowball effect leads then to the necessary quantity of recognitions that a newly created state needs in order to be considered as a full state and join international organisations. Simply put, the argument goes as follows: Quality of recognition → Snowball of recognitions → Quantity of recognitions → Uncontested statehood.

Currently, recognition by the USA seems to have a greater impact on the process of secession than recognition by any other state. An official recognition by the US demonstrates publicly its support to the secessionist entity. Due to its power and influence in the global affairs, an official US acceptance can persuade its allies to recognise the new entity, leading to the snowball of recognitions and the process outlined above (Paquin, 2010). The Kosovo case is an example of this; Kosovo was recognised by the US and in a short time major western

powers have also accepted it as a state. Now, seven years after its declaration of independence, Kosovo has 109 recognitions (May 2015).

The argument strengthens if compared with other secessions with similar demands. Nagorno Karabakh, for example, while having survived because of the support Armenia provides, remains completely unrecognised by other states. One of the reasons for that may be the absence of a hegemonic foreign power with enough influence to back it and make its secession a *fait accompli*, as it was in the case of Kosovo (Cheterian, 2012). Other cases such as South Ossetia and Abkhazia do have support by Russia, unquestionably a major power, but they have achieved only limited recognition. The difference between US and Russian recognition is perhaps that the former has a network of allies, whereas Russia is a powerful but currently isolated player in the international arena on this particular issue. In the time of the former Soviet Union, the latter could convince in similar situations its allies to recognise entities seeking recognition. East Germany is an example of such a case which was recognised by the Soviet Union and its associates first, before achieving widespread recognition by the West and *de facto* recognition by West Germany (Childs, 1977). For the moment, however, Russia's only allies that were willing to recognise South Ossetia and Abkhazia were Nicaragua and Venezuela<sup>7</sup> (Al Jazeera, 2009, The New York Times, 2008).

Finally, although Russia has recognised South Ossetia and Abkhazia as independent and sovereign states, it still deals with similar internal problems. Chechnya has demanded independence since the dissolution of the Soviet Union, providing similar reasons as South Ossetia and Abkhazia. While Russia supports the latter movements, it militarily re-annexed Chechnya in 1999 (Pavković and Radan, 2007). By supporting secessionist movements in other states, speaking in favour of self-determination and against human rights violations and

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<sup>7</sup> Nauru has also recognised South Ossetia and Abkhazia after receiving £30.74 million in humanitarian aid from Russia (The Guardian, 2009). In addition Nauru has also recognised Kosovo, therefore, it is questionable whether Nauru can be included in Russia's firm allies.

discrimination, when at the same time domestically suppressing ethnic groups and denying them rights similar to those it emphatically defends in the international scene, Russia presents itself as an untrustworthy player that uses double standards according to its interest.

On the other hand, the US and major European states recognised Kosovo days after its declaration of independence. They also provided arguments that Kosovo should be regarded as a *sui generis* case, trying to ensure that it would not be used as an example to be repeated by other secessionist cases<sup>8</sup> (*inter alia*, US Department of State, 2008, Vrbetic, 2013, Jia, 2009). Perhaps this stark differentiation between Kosovo, South Ossetia, and Abkhazia's acceptance in the international community demonstrates that for the moment the US, followed by its allies is the only power able to provide quality recognition that is able to determine the outcome of a secession.

### *Internal viability*

Apart from being recognised, the new entity needs also to be viable for its secession to be successful. Internal viability is essential because without it the efforts to secession will most probably fail. If a state is not viable sooner or later insecurity and conflict will erupt with the most likely scenarios to be the following: if the entity is internationally unrecognised, or with limited recognition, it will probably return eventually to the control of the parent state; or, if the state has achieved international recognition it will most likely continue to exist as failed state, and a source of instability and lawlessness.

According to both Emmanuel (1976:3) and Bartmann (2004:15) viability is “surviving and functioning in a changing environment.” In the case of a seceding entity, viability refers to the extent to which there is confidence in its ability to continue to exist and function in the

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<sup>8</sup> To what extent they achieved the objective Kosovo to be considered as a unique case providing no precedent will be analysed in subsequent chapter.

foreseeable future. However, there is no consensus in the literature on the characteristics that make a state viable or not. This section seeks to overcome this vagueness and clarify when a state will be considered as viable in this thesis.

Although internal viability is a distinct criterion and equally important with international recognition for the success of secession, it is also acknowledged that it is inextricably connected with international support. It can be claimed that internal viability derives from external support, because the latter creates favourable conditions for the economic, institutional and infrastructural development of the seceding entity. This link, its causes and its implications will be evident throughout this thesis.

There are also arguments in favour of the view that evident internal viability and compliance with Western standards of democracy may lead to international recognition (Caspersen and Stansfield, 2011, Caspersen, 2012). This view was largely encouraged by the “standards before status” policy adopted for Kosovo. In 2003, the UN Interim Administration in Kosovo (UNMIK) introduced a number of key conditions that Kosovo had to meet before a decision on its final status could be made<sup>9</sup> (Ker-Lindsay and Economides, 2012). Thus, there was the indication that international recognition could be achievable even without the consent of the parent state if a democratic and effective entity was created (Caspersen, 2012). Nonetheless, Kosovo’s recognition was based mainly on the “unusual combination of factors” including the historical context of the breakup of Yugoslavia, the human rights violations and the extended period of UN administration rather than on the progress made in institutions building and meeting those standards (US Department of State, 2008).

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<sup>9</sup> The reforms covered the following areas: the existence of functioning democratic institutions; enforcement of the rule of law; freedom of movement; sustainable returns of displaced persons and respect for the rights of communities; creation of a sustainable market economy; fair enforcement of property rights; dialogue with Belgrade; and, transformation of the Kosovo Protection Corps (KPC) in line with its mandate (UNMIK/PISG, 2003).

This thesis does not reject the possibility that a seceding entity demonstrating evident internal viability and liberal democratic institutions is more likely to be recognised than one that does not fulfil those standards. Recalling, however, other cases of secession which have established effective but unrecognised *de facto* states, this chapter argues that internal viability does not necessarily produce international recognition. For instance, since 1997 Somaliland has experienced a steady and increasing rate of stability and democratisation (Schoiswohl, 2004). While Somalia still finds itself in chaos, Somaliland has developed a growing economy and has established functional democratic institutions (Paquin, 2010). Similarly, Nagorno-Karabakh has been characterised as “an oasis of good governance, respect for law and decency by comparison with most of the rest of the post-Soviet Union” (Gardner, 2008). Finally, Taiwan, an “extreme success story” (Kolstø, 2006) has achieved remarkable economic development, being one of the major Asian traders and one of the world’s most significant producers of computer technology. In addition, in the early 1990s Taiwan made the transition to democracy, and the Guomindang’s monopoly on power ended completely in 1996 (Tien and Chu, 1996). Nonetheless, despite their achievements these entities are still either unrecognised or maintain few formal diplomatic relations.

This section continues with an analysis of when a state can be considered as viable. The study will be divided into two parts: the first part will examine whether the size, the economy and the system of government of a seceding entity render it by definition unviable. The second part will review various definitions of failed states. Taking into consideration the findings of both sections and using a *reductio ad absurdum* approach this section, will conclude with a definition of the point at which this thesis will regard a state as viable.

*i. (How) do size, economy and system of government matter?*

This section investigates possible factors that render a state and a seceding entity unviable. More specifically it examines whether the size, the economy and the system of government are factors that determine the viability of a state. This section examines those specific factors as they are often discussed as parameters that could have a negative effect on the viability of a seceding entity (Sala-i-Martin, 1998, Alesina, 2003, Beran, 1984, Caspersen and Stansfield, 2011). This section seeks to show that none of those factors pre-determines that a seceding entity would be unviable as a state.

Beginning with the factor of the size of the state, it is acknowledged that large states have certain benefits. A state with large population and territory has more influence on events outside its frontiers, more prestige and a larger element of choice in respect to the domestic policies it pursues (Vital, 1967/2006). The costs of public goods are lower in larger countries, where more taxpayers can pay for them and also the size of the population affects the capacities of their markets. Furthermore, a larger country is less subject to foreign aggression (Alesina, 2003).

However, there are also small states and microstates whose population does not exceed one million citizens, who despite their small size function normally in the international arena (Hey, 2003, Clarke and Payne, 1987). They are participants in international negotiation settings and they have also developed techniques in order to promote and defend their interests (Panke, 2011). Significantly, their statehood is not contested because of their small size. The very existence of numerous microstates such as Luxembourg, Malta and Cyprus, demonstrates that even a Lilliputian state cannot only be viable, but flourishing.

Still, microstates are unable to defend themselves militarily and therefore they depend on alliances in order to increase security or enter into agreements with larger states (Wivel

and Oest, 2010, Wivel, 2010). France provides forces in the Comoros, Djibouti and Gabon, while the USA remains responsible for the defence of the Marshall Islands, Micronesia and Palau (Bartmann, 2002). Microstates manoeuvre, thus, within the international system to obtain help from others (Handel, 2006). Through participation in international organisations and integration in international institutions they ensure their security (Wivel, 2010). Thus, the most important condition for the security of small states is their ability to appeal to other states for support (Handel, 2006). That means that the main danger for a small state's security is its exclusion from the international community. Hence, the fact that seceding entities are being isolated and treated as non-existent is what can render them not viable. Otherwise they would have the chance to lobby, urging other states to support them, guaranteeing their sovereignty and territorial integrity.

Moving on to the issue of whether economy is a factor that can condemn the viability of a state, it is observed that *de facto* states often have limited economic capacities. Therefore, it is sometimes objected by scholars or opponents of secession as to whether they would be viable economic entities in the competitive international system (Sala-i-Martin, 1998, Mulaj, 2011a).

However, the fact that some of the *de facto* states are poor or have limited economic opportunities does not preclude a possible viable future as recognised states; in contrast, exactly because of their status as unrecognised entities, do they suffer from financial difficulties. It is not uncommon for *de facto* states to suffer from international embargoes and international isolation, practices that condemn them to poverty (Bartmann, 2004). Unrecognised states are usually not entitled to loans from the World Bank, nor have they access to international and regional development programmes, such as the United Nations Development Programme. Foreign Direct Investment remains limited in unrecognised states.

Investors are reluctant to invest in places whose very existence is uncertain. Furthermore, unrecognised states have restricted access to international markets. Many unrecognised states are heavily dependent on their patron states for the necessary imports and exports of goods (Gorgulu, 2014). Due to isolation, lack of foreign investments and restricted access to international markets, unrecognised states are unable to benefit significantly from whatever natural resources they may have or make considerable use of any potential touristic capabilities (Mihalkanin, 2004). Were sanctions and isolation lifted, de facto states would enjoy access to technical assistance, new sources of foreign investment and access to global market. Thus, poor de facto states that are sustained by their patron states would have good chances of economic viability as recognised states, with the economic and trading benefits uncontested statehood produces.

Finally, arriving at the last point for examination, to what extent the system of government renders a state unviable, it is observed that merely the system of governance does not turn a state unviable. There is a great variation in the systems of government among existing states. On the one hand, there are democratic states, with the numerous strands democracy can have, whereas on the other hand, there are also monarchies, one-party government systems and other authoritarian regimes. Although authoritarian regimes are often condemned for lack of respect of human rights and absence of liberties often provided in Western democracies, their viability remains indisputable. China and Saudi Arabia, followed by the majority of the Gulf States are only few of the world leading non-democratic states.

Moreover, although the West in the various state-building missions it has established around the world seeks to impose democratic systems of government, in terms of state viability, democracy does not appear to be more stable than autocracies. In contrast, countries with partial, newly established and transitional democracies are found to be more prone to



state failure, as it will be discussed in the following section, while in several cases autocracies have demonstrated equal level of stability as well-established, full democracies (The State Failure Task Force, 2000).<sup>10</sup> Therefore, the type of the governance cannot be considered as a factor sufficient to render a state viable or not and consequently the viability of a secessionist entity cannot be precluded merely on the event that it may not possess democratic structures.

Thus, the size, the economy and the system of government are not factors that necessarily render a state and consequently a seceding entity unviable. The following section will examine what leads to state failure. By a counter-analysis of when a state can experience failure, combined with the observations from this section, this thesis will reach a conclusion regarding what preserves a state, i.e. what makes it viable.

## *ii. When do states fail?*

Considerable research has been undertaken on failed states in recent years. Nevertheless, there is still no consensus on which states belong in this category (Yoo, 2011). However, a brief review of this field of studies shows that there is an agreement on the basic characteristics of failed states. Lack of authority, break-down of law, failure to control territory, resources and population, inability to provide services and extended violence are predominant elements of a collapsed state. Although some scholars (Rotberg, 2003, Milliken and Krause, 2002) claim that state collapse and state failure are different categories, with collapsed states to be extreme cases of failed states, this thesis will use the terms interchangeably. This is only because the

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<sup>10</sup> In response to a request from Vice President Al Gore in 1994, the CIA established "The State Failure Task Force," a group of independent researchers to examine comprehensively the factors and forces that have affected the stability of the post-Cold War world. The Task Force's goal was to identify the factors or combinations of factors that distinguish states that failed from those, which averted crises over the last 40 years. The study represents the first empirical effort to identify factors associated with state failure by examining a broad range of demographic, societal, economic, environmental, and political indicators influencing state stability. The Task Force found that three clusters of variables had significant correlation with subsequent state failures: (1) quality of life; (2) openness to international trade; and (3) the level of democracy.

distinction makes no difference for the argument of the thesis, as both failed and collapsed states are considered to be unviable for as long as they find themselves in this situation.

According to Rotberg (2003) a failed state is unable to provide political goods to its citizens. He claims that the primary political good is the security of its territory and the physical safety of the population. After security has been assured, the state can promote other political goods, such as participation in the political process, access to health care and education, construction of physical infrastructure and establishment of institutional contexts within which citizens can pursue personal entrepreneurial goals.

Zartman (1995: 5) claims that a state has collapsed “when the basic functions of the state are no longer performed.” He asserts that a state is supposed to be a sovereign authority, an institution and the security guarantor of a populated territory. He argues that the weakening of one of those functions also impacts on the others. According to Zartman a state finally collapses when governance, law and order have broken down.

Krasner (2004), reaffirming Zartman and Rotberg, argues that a state has failed when its governance structures cannot exercise competent and constructive control over the country’s population and territory. In such states he claims “infrastructure deteriorates; corruption is widespread; borders are unregulated; gross domestic product is declining or stagnant; crime is rampant; and the national currency is not widely accepted” (Krasner, 2004: 91). In addition, paramilitary organisations outside the control of the government operate within the state’s boundaries, while corrupted leaders take advantage of the widespread disorder to make personal profit.

The State Failure Task Force (SFTF) defined state failure and state collapse as situations of severe political crisis, where the institutions of the central state can no longer maintain authority or political order beyond the capital city and sometimes not even there

(The State Failure Task Force, 1998, 1999, 2000). Admitting, however, that the instances in which central state authority collapsed for several years are too few for accurate statistical results, the SFTF included in their research four categories of severe political crisis that they also identified as state failure, which would be violent regime change, followed by ethnic war, revolutionary war and genocide (The State Failure Task Force, 2000).

In summary, it can be maintained that there is an agreement that a failed state cannot provide order (Herbst, 1997). The government is unstable with little political authority and ability to impose the rule of law (King and Zeng, 2001), while non-state actors control resources and population. Furthermore, the state cannot provide public goods, the economy has usually collapsed, physical infrastructure decays and living standards decline rapidly (Yoo, 2011). This lack of capacity frequently leads to extensive violence and human rights abuses, while it excludes the population from access to basic social services and condemns the majority of the population to poverty (Krasner, 2004). Hence, a state collapses when it is unable to control its territory, fails to uphold the monopoly of violence and is incapable of providing the services for which it exists (Eriksen, 2011). Common ground between the abovementioned views is that whether a state has failed or not is to be decided according to its performance in certain aspects. Thus, a state is characterised as failed when it cannot carry out those tasks that allegedly belong to a state to fulfil.

However, Weber argues that a state cannot be defined in terms of its ends. He asserts that

there is scarcely any task that some political association has not taken in hand, and there is no task that one could say has always been exclusive and peculiar to those associations which are designated as political ones: today the state, or historically,

those associations which have been the predecessors of the modern state. Ultimately, one can define the modern state sociologically only in terms of the specific *means* peculiar to it, as to every political association, namely, the use of physical force (Weber, 1919).

Weber argues that any aspect of social and political function can also be performed by organisations other than the state. However, he claims that what distinguishes the state from the other organisations is not the tasks that it performs, but the mechanisms that it has available to use. Thus, the state as a political association can only be defined by its capacity to exercise physical force. Weber also argues that the state is the only organisation that has the right to use violence over the population of its defined territory. Thus, the state holds the monopoly of legitimate violence upon the territory it controls.

In addition, “the failure of states to perform certain functions can be, but need not be, a symptom of state failure” (Wolff, 2011: 960). For instance, a state can be unwilling or unable to provide its citizens or some of its citizens with public goods and social services, without the state necessarily being a failed one. In India the state is unable to guarantee the security of its female and child population, while it fails to prosecute even known perpetrators of serious abuses (HRW, 2014, 2012). Although the country suffers from poverty, corruption and inadequate public healthcare, not only it is not characterized as a failed state, but on the contrary, it is considered to be a rapidly emerging regional and global power.

Hence, it could be more adequate if a failed state would be characterised not by its capacity to carry out certain goals, but by whether or not the state controls the means to deliver its ends (Wolff, 2011). According to Weber the means a state exclusively possesses is “the monopoly of the legitimate use of physical force within a given territory” (Weber, 1919).

Thus, a state has failed if it is unable to guarantee that it is the sole actor that has the right to use violence over the territory for which claims sovereignty. The failure to secure these means is the most fundamental one and precedes any other subsequent failure i.e. to guarantee security and provide public goods. Thus, this thesis adopts the minimal view that failed states are those that cannot successfully claim a monopoly over the legitimate use of physical force within a given territory and over a given population; in other words those states who lack empirical sovereignty in all or parts of a territory for which they claim juridical sovereignty (Wolff, 2011).

*iii. Combining the pieces: when is a state viable*

Through a *reductio ad absurdum* approach this section has led to the following conclusions. First, a state can be viable regardless of its size. Small states and microstates confront certain limitations; however, they are neither insurmountable, nor sufficient to render a state and consequently a seceding entity of small size unviable. Second, it was also shown that there are poor states that are viable nonetheless, as well as that the very fact that unrecognised entities remain excluded from the international community endangers their economic viability. These seceding entities therefore can be poor but this could change if they had the chance to interact more freely in the international system. Third, the chapter explained that different systems of governance can result in equally stable states. Hence, this thesis recognises the possibility that viability can be achieved even outside the liberal-democratic system of governance the West endorses.

Furthermore, this thesis adopts the minimal view that failed states are those that cannot successfully claim a monopoly over the legitimate use of physical force within a given territory and over a given population. Thus, using again the *reductio ad absurdum* approach,

this thesis will accept as viable a state whose governmental system has the ability to control the means of violence securing order over a given territory and population.

Combining the findings of those two sections this thesis accepts that a state can be viable regardless of its size, economy and political system for as long as its government is able to ensure domestic order. Applying these findings to cases of secession, an entity that demands independent statehood can produce a viable state if its government can provide order, effectively ruling over its population and territory.

### *Conclusion*

The aim of this chapter was to establish when a unilateral secession can be considered as successful, arguing that a unilateral secession is successful when it results in the creation of a recognised and viable state. This chapter analysed this statement by examining, first, how the state is perceived in political theory and international law; second, it reviewed the theory and practice of international recognition, and finally it explained how this thesis defines the viability of a state.

Beginning with the conclusion of what is a state, this chapter accepts that there are numerous definitions. Acknowledging this, this section adopts the most concrete definition, i.e. the Montevideo Conventions' four criteria of statehood. Thus, the thesis claims that for a secession to be entirely successful it needs to create a state that has a specific territory, a permanent population, an effective government and international recognition. Without the last criterion of international recognition, the seceding entity is considered to have a level of success, creating a de facto state. However, the lack of formal acceptance deprives the de facto state of the opportunity to act freely in the international system, a fact that causes serious

limitations to its functions. Thus, without international recognition a secessionist attempt cannot be considered as completely successful.

Continuing with the role of international recognition in the outcome of secession, this chapter demonstrated the significance of official acceptance and support by other states, highlighting the critical role of the quality of recognition. It was demonstrated that it is essential for the seceding entity to be recognised by influential states, which can persuade others to accept the new entity, creating a snowball of recognitions. This leads eventually to the quantity of recognitions necessary for the seceding entity to be accepted to international organisations and function normally in the international system.

This thesis also claims that a secession is successful when the newly-created state is internally viable. This chapter was led to the conclusion that a seceding entity can be considered as viable when its government is at least able to provide order, effectively ruling over its population and territory. Without internal viability the efforts to secession will most probably fail, as insecurity and conflict will eventually erupt. In this case, if the entity is internationally unrecognised, or has limited recognition, it is probable that it will eventually return to the control of the parent state. If the state has achieved international recognition, it will most likely continue to exist as failed state, being both dysfunctional and a source of instability and lawlessness.

Applying the findings in the case of Kosovo, it can be observed that Kosovo is neither fully recognised nor fully viable. Its statehood remains contested by Russia and China, two Security Council permanent members that block its entrance into the UN. Belgrade although it has relaxed its rigid position, still remains far away from granting formal recognition. Internally, Kosovo's institutions are either weak or in the making and it remains largely

dependent on EU and NATO forces for the maintenance of order especially in Northern Kosovo.

However, Kosovo remains the most suitable case study for this thesis, as it is the most successful case of unilateral secession since Bangladesh in 1971. Other current secessionist attempts have gained either limited or no international acceptance and they seem to be isolated and in stalemate. Kosovo, on the other hand, has 109 formal recognitions (in May 2015). Reflecting also on the years since 2008 when its unilateral declaration of independence took place it is evident that the number of recognitions each year rises. This can be an indication that recognition will continue to rise in subsequent years as well. In addition, Kosovo is far from being isolated. It maintains close ties with countries that refuse to recognise it; Russia, China, Slovakia, Rumania and Greece all have liaison offices in Prishtina promoting friendly relations and on the ground cooperation; China and Serbia are two of Kosovo's most important trading partners, while Greece is also gradually increasing its involvement.

Internally Kosovo is a viable state. Certainly it owes a large degree of its viability to the international community. However, Kosovo is building and strengthening its institutions constantly, increasing at the same time the governmental authority over the whole of population and territory.

Finally, Kosovo has achieved such a degree of external recognition and internal viability that render its secession irreversible. Serbia has excluded the option of use of force to re-occupy Kosovo and there is also the firm commitment by the international community on the ground that it will defend Kosovo against any such threat. As Kosovo is highly unlikely to be willing to return voluntarily under Belgrade's rule, the continuation of its independence is rather guaranteed.



## **CHAPTER THREE**

### **SELF-DETERMINATION AND THEORIES OF SECESSION**

#### *Introduction*

Building on the framework set out at the end of Chapter Two, this chapter aims to set the theoretical underpinnings of the thesis by reviewing and evaluating the most relevant secession theories. This chapter will demonstrate that existing theories of secession are occupying themselves mainly with normative questions on the issue, exploring predominantly if and when secessions are justified. Although these studies cover a wide range of cases and possibilities of when secession would and should be allowed, they leave other dimensions of secession unexplored. This chapter shows that there is little research done on the question of when secessions succeed, whose answers would provide innovative findings on the subject. The chapter will conclude with presenting a novel approach towards the understanding of secession, constituting the theoretical contribution of this thesis.

This chapter is structured as follows. It first analyses the idea of self-determination, its evolution through the years and its use as an underpinning for various secession theories. More specifically, in the following pages a brief historical review of the concept of self-determination will follow, beginning from the Wilsonian idea of self-determination, continuing with its implementation during the Cold War period and finally concluding with the character of the concept after 1991 and the end of the Cold War.

At the same time it will also review the most important international legal documents dealing with self-determination. These documents stem mainly from the UN charter and resolutions, but there are also important documents originating from other international organisations. A short examination of them will take place, analysing how according to their

provisions the right of self-determination could be exercised. Then the variation of internal and external self-determination is introduced and discussed.

Inextricably connected to the idea of self-determination, but also controversial in its relationship, is the principle of territorial integrity. The regular inclusion of both principles in legal documents has generated heated debates about which of the two principles should be taken into account and under what conditions. Through this debate secession theories emerged, attempting to explain how and when secession would be justifiable. These theories are based on the assumption that secession is a manifestation of the right of self-determination and more particularly of the right of external self-determination. However, since there is no general law and no specific applicable criteria to regulate secession, there is also no general theory of secession. Secession theories are broadly divided into three main categories, the remedial right theories, the primary-right theories and the nation-orientated theories, though this chapter also reviews alternative theories that do not fit in the frame of those categories.

Finally, this chapter assesses how existing theories of secession apply and explain the case of Kosovo. It concludes that although existing theories can persuasively present reasons why Kosovo would have the right to secede and under what conditions, they fail to explain why its secession succeeded to such an extent. Thus, this chapter concludes by proposing a novel approach that would explain Kosovo's success, contributing, at the same time, theoretically to the general understanding of the phenomenon of secession.

### *The idea of self-determination*

The purpose of this section is to present the origins of the idea of self-determination as it was first expressed in the beginnings of the twentieth century. The concept of self-determination, while originating from the American and French Revolutions, was propagated by Vladimir

Lenin and Woodrow Wilson in the beginnings of the twentieth century (Falk, 2002). Yet these two leaders had a different vision of the concept.

For Lenin, self-determination was an indispensable condition for peace in the world; in his words “the liberation of all colonies, the liberation of all dependent, oppressed and non-sovereign peoples is necessary for the maintenance of international peace” (Cassese, 1986: 131). Things changed, however, when Lenin welcomed, in the treaty of Brest-Litovsk, the yielding to Germany of parts of Poland, Lithuania, Latvia, Estonia and Byelorussia (Cassese, 1995). His argument was that in order for socialism to thrive the principle of self-determination for these peoples needed to be set aside. Thus, the principle of self-determination for Lenin was initially a means to further the class struggle; in the end, however, it was abandoned in favour of socialism.

Wilson, on the other hand, regarded self-determination as equal to self-government, and specifically to national self-government (Cassese, 1995, Mancini, 2012). In his Fourteen Points speech he had implicitly set the basic principles of self-determination, applicable to ethnic groups that were nationally mobilised and seeking independence from their rulers (Moore, 1998). Although nowhere in the document is the specific term to be found, half of the points are referring to post-war territorial adjustments based on the principle of nationality (Friedlander, 1975, Wilson, 1918).

Wilson explicitly referred to boundary alterations on the European continent, not only those deriving from the collapse of the Austro-Hungarian and Ottoman Empires, but also in relation to Belgian, French and Italian territories. The other points were referring to the free navigation and access to the seas, the removal of economic boundaries, the reduction of national armaments and finally the creation of an international organisation that would guarantee political independence and territorial integrity (Wilson, 1918). Although Wilson

spoke of territorial adjustments based on nationality, he explicitly defined to whom he was referring. By being specific he left little room for vague self-determination demands that were not included in his speech, this way not undermining colonial rule after the First World War (Falk, 2002).

After the end of the Wilsonian era the principle of self-determination was included in the UN Charter. Yet, it was significantly different from Wilson's specific points. On the contrary, it was an unclear statement, the ambiguity of which made its implementation problematic and potentially dangerous for the existing status quo. The next sections follow an analysis of the definition and the meaning of self-determination and its implementation over the years.

### *Self-determination after World War II*

This section shows how the principle, and then right, of self-determination has been implemented during the Cold War. After the end of the Second World War, the principle of self-determination was enshrined in the Charter of the United Nations. In Article 1(2) it is stated that one of the purposes of the UN is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

Later on, in the same document, Article 55 affirms that "with a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations, based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational

cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (UN Charter, 1945, Art. 55).

Although it is important that the principle of self-determination was included in the document, its definition was, and remains, unclear in a number of aspects. First, of all it considered self-determination to be a principle not a right. It was only later, in the Declaration on the Granting of Independence to Colonial Countries and Peoples that it was considered to be a right (UNGA, 1960) and it was also confirmed as such by subsequent resolutions (UNGA, 1966, UNGA, 1970, UNGA, 1983, UNGA, 1996, UNGA, 2007, UNGA, 2012).

It also remained unclear how the principle or right of self-determination would be exercised and by whom. Furthermore, it was uncertain whether an ethnic group had the right to secede from the parent state and establish a new one, or whether self-determination needed to be exercised within the boundaries of an existing state. In addition, another question that arose is who the people are that are entitled to self-determination. Moreover, it remained unclear whether people were to be defined in ethnic or in territorial terms, or perhaps in a combination of factors including aspects of both.

The situation becomes more complicated when the principle of territorial integrity of the state is taken into account. Article 2 (4) of the UN Charter states that “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (UN Charter, 1945). It is also reaffirmed in the Declaration of Friendly Relations that “any attempt at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and the principles of the Charter of the UN” (UNGA, 1970).

Exploring how the right of self-determination can be exercised, Judge Dillard in his separate opinion on the Western Sahara case stated that the right of self-determination should guarantee the “free and genuine expression of the will of the people” and resolved that “it is for the people to determine the destiny of the territory and not the territory the destiny of the people” (ICJ, 1975: 114/122). Weller (2005), analysing Judge Dillard’s statement, claims that according to the latter’s view, theoretically, people must overcome territorial divisions and be able to shape their destiny through collective decisions. That means that if a state was created through peoples’ will, then a collective revocation of that will, should also undo it. Weller adds, however, that the reality is very different. He observed that the international system has prioritised the maintenance of stability and order, defending the principle of territorial integrity over the right of the peoples to decide about the state they want to live in.

Additionally, the principle of state sovereignty, emphasising on the integrity of borders, defends the view that the state is generally entitled to react according to its discretion to internal matters and thus against self-determination movements (Williams et al., 2003, Barkin and Cronin, 1994). The UN trying to reduce the unaccountability of states towards their citizens, only recently adopted resolution A/63/677 according to which each state is responsible to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity (UNGA, 2009). The General Assembly also decided that if a state “manifestly” fails to protect its population from the four specified crimes, the international community then can take action, through the Security Council and in accordance with the principles of the UN (UNGA, 2009, Art. I, 1).

Hence, nowadays the principle of sovereignty does not protect states from external intervention when the crimes against their citizens reach the level of genocide, war crimes, ethnic cleansing and crimes against humanity. There is no provision, however, for action for

cases where violations do not reach this level or when a state discriminates against citizens due to their ethnic background or denies them basic human rights and freedoms. Even when the crimes reach this level, the international community can take action only through the Security Council, this meaning that all five permanent members should agree in favour of intervention, which can be difficult and time-consuming. The adoption of this resolution, thus, by raising the bar so high as genocide and crimes against humanity, prioritised state sovereignty and territorial integrity over self-determination.

In the era of the Cold War on which this section focuses, the right of self-determination was reserved for states emerging from decolonisation and more specifically what is called as salt-water decolonisation. The salt-water decolonisation foresaw the granting of independence to areas under foreign rule usually separated by the parent state not only ethnically but also geographically by sea or ocean (*inter alia*, Hilpold, 2009, Wolff and Rodt, 2013, Cassese, 1995, Harvey, 2010). Former colonies had the right to independence from their colonial ruler and the right to uncontested statehood (UNGA, 1952).

However, even in those cases the former colonial boundaries had to be respected (Danspeckgruber, 2002). At the peak of decolonisation, the Organisation of African Unity (OAU) in its constitutive act also confirmed that one of the objectives of the Union is to “defend the sovereignty, territorial integrity and independence of its Member States” and to “promote peace, security, and stability on the continent.” Subsequently, in Articles 4(a) and 4(b) it is affirmed that the Organisation will act according to the principles of “sovereign equality and interdependence among Member States of the Union” and the “respect of borders existing on achievement of independence” (OAU, 1963). The OAU, therefore, maintained the artificial borders of colonisation and denied ethnic and tribal claimants the possibility of statehood, prohibiting them to pursue independence through unilateral acts.

The first successful secession outside the frame of decolonisation occurred when East Pakistan -today, Bangladesh- separated from (West) Pakistan in 1971. Bangladesh accusing Pakistan of grave discrimination and genocide against Bengalis proclaimed independence in 1971. After months of a war which cost the lives of thousands of civilians and caused the displacement of millions, Bangladesh, supported militarily by India, managed to secede. Its acceptance into the UN took place three years later after it was first recognised by Pakistan (UN, 2014, Pavković and Radan, 2007).

The case of Bangladesh is the first to implement a new way of exercising the right of self-determination, as it was stated in the Declaration of Friendly Relations, adopted one year before its secession took place. In this document seven principles were outlined regulating relations among states. The fifth principle in paragraph four stated that “the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people” (UNGA, 1970).

Three paragraphs later, the document reaffirmed the importance of territorial integrity of the state. However, a significant alteration had been made in the definition. In paragraph seven it was stated that

nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour (UNGA, 1970).



In this section, the territorial integrity of the state is protected, for as long as the latter functions under the principles of the UN (Pavković and Radan, 2007). That would be for as long as the state respects human rights, fundamental freedoms, provides equal opportunities for employment, economic and social progress, health, culture, education, with no discrimination of race, sex, language or religion (UNGA, 1970). Hence, should the state fail to comply with the above, the “people” have the right to establish a sovereign, independent state or join another state.

However, even after the inclusion of the fifth principle in the Declaration of Friendly Relations and the new condition on the principle of territorial integrity in paragraph seven, international practice defended the right of states to territorial integrity against dismembering states on the basis of a claim to self-determination. A general right to secession could have several implications internally and internationally, opening the way to all kinds of secessionist claims. This would have as a result the possibility of the endless division of a state, since very few states are ethnically homogeneous and secessionist territories are not usually ethnically homogeneous either; thus, the problem of “trapped” minorities arises as well as the danger that secessions might lead to the creation of non-viable state entities (Buchheit, 1978, Heraclides, 1991, Moore, 1998).

Hence, the international community continued to view the achievement of self-determination through secession as relating solely to freedom from colonial rule. Even in that case, its purpose was not to restore ethnic or tribal links among populations that were artificially divided by the colonisers (Weller, 2005). Instead, the principle was to be applied within the existing colonial boundaries and the accommodation and the treatment of ethnic groups within these borders was seen as a domestic issue of the respective state.

However, the combination of this variation of the right to self-determination in the Declaration of Friendly Relations and the events in Bangladesh, were crucial for future studies in the field. These studies were further enriched after the dissolutions of the Soviet Union and Yugoslavia. A discussion also emerged about how the terms “internal” and “external” self-determination could and should be implemented. Moreover, the term “people” was elaborated and attempts were made to define it.

### *Self-determination in the post-Cold War era*

This section examines how the right of self-determination has changed after the end of the Cold War and the creation of several new states following the dissolution of communist regimes. During the Cold War, the rigidity of the system limited the possibility ethnic groups to strive for independence and statehood outside the frame of decolonisation (Danspeckgruber, 2002). However, as soon as the communist regimes of Soviet Union and Yugoslavia collapsed, various secession movements emerged in different places of the globe. To name but a few: the Chechen movement still demanding independence from Russia, South Ossetia and Abkhazia demanding independence from Georgia, Transnistria from Moldova and certainly Kosovo, which is the only case that had achieved a significant level of success in its efforts.

The international community did not react immediately to the emergence of new entities after the collapse of the communist regimes, expecting perhaps that it was a matter that could be regulated according to domestic law of their former structures. Indeed, both the constitutions of the Soviet Union (USSR) and Yugoslavia granted the right of secession to their republics (Sakwa, 2003, Coppieters, 2003, Mertus, 1999). More specifically Article 72/1977 of the USSR Constitution foresaw the possibility of secession of a Union Republic

from the USSR<sup>11</sup> (Constitution USSR, 1977). The Yugoslav constitution on the other hand was not that clear. Article 1 of the 1974 Constitution mentioned the right of every nation to self-determination, including the right to secession (Harbo, 2008, Budding, 2008). However, the language the document had used was vague and it remained unclear to whom this right belonged and how it could be exercised<sup>12</sup> (Iglar, 1992, Primoratz and Pavković, 2006). It was unclear, therefore, whether the constituent nations of Yugoslavia, as communities sharing ethnic characteristics, were to enjoy the right to self-determination and secession, or whether the right was reserved for the Republics as territorial entities<sup>13</sup> (Detrez, 2003). Finally, further questions arose around the issue of whether the right to self-determination or secession would expand to the autonomous provinces inside the republics, and thus to what extent these new states could divide themselves (Sakwa, 2003).

Eventually the international community resolved those issues by applying the colonial *uti possidetis* principle to the borders of the former federal republics. The *uti possidetis juris* is defined as the “principle of the intangibility of frontiers inherited from colonization” (ICJ, 1986). According to that, “states emerging from decolonization shall presumptively inherit the colonial administrative borders that they held at the time of independence” (Ratner, 1996: 590). Thus, when a territory gains independence, the new international boundaries should be drawn in line with the previous first-order internal administrative boundaries (Watson, 2008).

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<sup>11</sup> Article 71/1977 states that Union Republics were the Russian Soviet Federative Socialist Republic, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the Uzbek Soviet Socialist Republic, the Kazakh Soviet Socialist Republic, the Georgian Soviet Socialist Republic, the Azerbaijan Soviet Socialist Republic, the Lithuanian Soviet Socialist Republic, the Moldovan Soviet Socialist Republic, the Latvian Soviet Socialist Republic, the Kirghiz Soviet Socialist Republic, the Tajik Soviet Socialist Republic, the Armenian Soviet Socialist Republic, the Turkmen Soviet Socialist Republic and the Estonian Soviet Socialist Republic.

<sup>12</sup> Article 1/1974 states that “the nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession, on the basis of their will, freely expressed in the common struggle of all nations and nationalities in the common interest, have together with the nationalities with which they live, united in a federal republic of free and equal nations and nationalities and founded a socialist federal community of working people- the Socialist Federal Republic of Yugoslavia.”

<sup>13</sup> A more detailed analysis of the relevant provisions of the Yugoslav constitution takes place in Chapter 4.

Therefore, any new international boundaries and any conflicts over them are expected to be resolved according to pre-existing colonial borders (Anstis and Zacher, 2010).

This principle, applied to internal frontiers of former federal units means that the new states would keep existing administrative boundaries. Applying the principle of *uti possidetis* to Yugoslavia meant that the new states were to be created according to the borders that each of the six federal republics had in the time of the Former Yugoslavia (Horowitz, 1998). Hence, according to the *uti possidetis* principle, Kosovo, by not being a constituent Republic of Yugoslavia, but an autonomous province of the Republic of Serbia did, not have the right to turn its internal borders into external ones and create an independent state (Hilpold, 2009).

In this way internal frontiers had replaced external ones as the basis for territorial integrity (Caspersen, 2008). As a result, the new states and the international community refused the right of independence to peoples trapped within these new boundaries (Falk, 2002). Thus, these entities that previously demanded the right for secession, protected afterwards their territorial integrity against similar aspirations (Weller, 2005). The only exception to that rule is Kosovo, which although being an autonomous province in the Republic of Serbia, managed eventually to secede and progress significantly with the establishing of a recognised and viable state.

### *Defining “peoples”*

This section explains how the thesis will define the “peoples” who are entitled to the right of self-determination. Although there are various references concerning the “right of self-determination of peoples” in the UN Charter and international law, these documents do not provide a clear definition of who the peoples are that have this right (Borgen, 2008, Sterio, 2008). Initially, emphasis was given to elaborate the term self-determination itself. However,

without first defining to whom it was intended to apply, the term remained considerably vague (Kirgis, 1994).

In 2007 the UN referred to the right of self-determination of indigenous peoples, limiting the respective rights to those entities that could be identified as such (UNGA, 2007). Based on the characteristics that the UN attributes to indigenous peoples, it could be inferred that a restrictive definition of peoples includes groups who share: a common history, a common racial or ethnic identity, cultural homogeneity, linguistic unity, common religion or ideological affinity, territorial connectedness and a common economic life (Demissie, 1996).

At various points in international legal history, the term “people” has been used to signify either citizens of a nation-state, the inhabitants in a specific territory being decolonized by a foreign power (Borgen, 2008), or an ethnic group, sharing a common ethnicity, culture, language, religion, and social values (Sterio, 2008).

In its wider definition, “peoples” being entitled to self-determination would include national or ethnic, religious and linguistic communities (Vyver, 2000). Yet, the latter definition is usually rejected, because it detaches the group seeking self-determination from the condition of historical and cultural connection with the territory they demand. Considering also that there are hundreds, if not thousands, of minority groups around the globe potentially seeking self-determination, such a wide definition would result in complete chaos.<sup>14</sup>

Margalit and Raz (1990) argue that only “encompassing groups” should have the right for self-determination. With this term they mean a group, with a shared culture, which define its members with its character. Thus, membership in these groups is not achieved by accomplishments, but derives from ascriptive criteria; one belongs there because one shares

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<sup>14</sup> “Just as the concept of individual human liberty carried to its logical extreme would mean anarchy, so the principle of self-determination given unrestricted application could result in chaos” Roosevelt, in Cassese (1995: 318).

these characteristics. Additionally, through these characteristics, members identify and recognise themselves as such.

Tamir (1991) argues that the right to self-determination belongs to nations, where she defines as nation “a community of people, whose members are bound together by a sense of solidarity, a common culture, a national consciousness” (Seton-Watson, 1977: 1). She adds that these characteristics allow members to recognise each other and also to exclude non-members. Tamir (1991) distinguishes the terms “nations” and “peoples,” arguing that the existence of a nation depends on a shared national consciousness and on the will of the people to define themselves as members of the group. A “people” on the other hand, exists independently of the awareness of its members. She places “people” in the same category with “family” and “tribe” and she asserts that its members share some objective characteristics such as relations of blood, race, or a defined territory.

As the majority of the literature does, this thesis will use the terms “nation” and “people” interchangeably. It is argued that for a people to desire to secede, they need to have the resolute belief that they belong to a nation. There are numerous studies and definitions of what constitutes a nation (*inter alia*, Gellner, 1983, Smith, 1986, Guibernau and Rex, 2010, Brubaker, 1996, Eriksen, 2001, Anderson, 1983). This thesis will accept that being part of a nation means that apart from the objective characteristics that a group may have, there is a psychological bond within its members that subconsciously unites them and differentiates them from all other people (Connor, 1994). Thus, it is “the self-view of one’s group rather than the tangible characteristics that is of essence in determining the existence or non-existence of a nation” (Connor, 1994: 43).

Hence, accepting the intangibility and subjectivity of being part of a nation and also acknowledging the fact that the members of a nation can share common characteristics, this

thesis will define as “peoples” who could potentially have a right to secession, a group whose members “share a common racial background, ethnicity, language, religion, history, and cultural heritage” linked with the “territorial integrity of the area the group is claiming” (Nanda, 1981: 276, Brilmayer, 1991, Scharf, 2003: 380, Coppieters and Sakwa, 2003). In addition, the members of the group itself should have a collective consciousness of their common characteristics and perceive themselves as a distinct people (Scharf, 2003). Therefore, the right to self-determination, potentially expressed through secession, is intended to apply to groups with common identity, shared recognition of this identity and connection to a specific territory.

In the case of Kosovo, it is certain that Kosovo Albanians are a distinct people, different than Serbs and other Slavs: they share a common ethnicity, culture, language, religion, and social values that distinguish them clearly from the Serbs (Sterio, 2008: 15). This distinction was constitutionally established since the time of the Former Yugoslavia, when Kosovo Albanians were considered to be a nationality inside the state<sup>15</sup> (Coppieters and Sakwa, 2003). Hence, Kosovo and Kosovo Albanians would be qualified for the right of self-determination. The next section will examine various approaches on how the right of self-determination can be exercised inside and outside the frame of an existing state.

### *The right to internal and external self-determination*

This section presents different ways in which the right of self-determination can be manifested. This section identifies two main categories, first, the application of the right of self-determination within the borders of the state, widely known as the right to internal self-

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<sup>15</sup> Kosovo Albanians were a “nationality” inside the Former Yugoslavia and not a “nation.” The main criterion for an entity to be characterized as a nation was whether its state was located within the borders of Yugoslavia or not. For instance, the Croats were a nation, because their state was located within the borders of Yugoslavia. The Albanians, on the other hand, were a nationality because they had a state of their own outside Yugoslavia.

determination. Second, there is the right to external self-determination, where the right for self-determination is manifested through secession and the creation of a new state.

Even in modern, liberal states, different communities within them may wish to distinguish themselves from the wider society they inhabit: although accepting financial, political and institutional inter-dependence with the state and the majority communities within it, they may be eager to maintain their communal language, values and tradition (Danspeckgruber, 2002). The state, acting according to internationally recognised human right values is expected to respect the right for self-determination of these distinct communities. That means that its members should have the freedom to speak their own language and profess their own religion, as well as have equal opportunities to education, employment and social progress. In addition to the safeguarding of these fundamental rights, the state needs also to provide the possibility of access to governmental mechanisms on an equal footing with the rest of the population (Orentlicher, 2003). Thus, communities can exercise their right to self-determination within the state they belong to, democratically among others through self-government, autonomy and free association (Scharf, 2003).

This exercise of the right of self-determination, within the borders of the state, has been known as the right to internal self-determination. In its wide sense internal self-determination includes democratic choice and election of government. In self-determination studies, in particular, internal self-determination refers to the various forms in which the right of self-determination can be implemented in the frame of the state. Internal self-determination would not threaten the territorial integrity of the state and would encompass *inter alia* federal systems, decentralisation, autonomy and self-government (Henrard, 2008, Philpott, 1995).

These arrangements would provide the possibility to a group considering itself different than the rest of the population to exercise a degree of self-rule. The core value of



internal self-determination, though, is the introduction of policies promoting recognition and accommodation, instead of assimilation in a society or state. Accordingly, states have the obligation not just to prevent discrimination, but to create favourable conditions in order to enable persons belonging to different communities and minorities to express freely their characteristics, i.e. culture, language, religion, traditions, ensuring also the participation in society's institutions (Bell and Cavanaugh, 1999).

Tamir (1993) distinguishes between self-determination and self-rule by claiming that the former concerns a way in which individuals define their personal and communal identity, while the latter reflects the procedure through which individuals try to achieve their purposes. She disagrees with the assumption that national self-determination is solely about civil rights and rights of political participation, freedom of speech, press, assembly and association. Tamir emphasises the cultural dimension of the right of self-determination and claims that its core is the recognition of the differentiation of certain groups seeking self-determination. She argues that according to this cultural version of the right the state needs to secure the ability of individuals to express their identity and culture and allow them to create political institutions and manage communal life in accordance with their customs and traditions (Tamir, 1991).

In short, internal self-determination encompasses the right of various segments of a population to preserve their cultural identity and also participate in the political, economic, social and professional life of their country in equal terms without discrimination (Müllerson, 2009). In that way the cultural and democratic dimension of self-determination is promoted and applied within the borders of the state.

What happens, however, when the state does not fulfil its obligations towards an ethnically different group? As noted above, the UN Declaration of Friendly Relations (1970) mentions the potential of the establishment of a sovereign and independent state as a form of

expression of self-determination, in case that the state does not comply with UN principles. Based on this provision, there is theoretically a right to external self-determination, i.e. secession, when the group is collectively denied civil and political rights and is subject to egregious abuses (Meester, 2012), when, in other words, its right to internal self-determination, is not being met by the central government (Scharf, 2003, Sterio, 2010, Cassese, 1995, Caspersen, 2008).

Nonetheless, the entity wishing to secede is rarely “utopian” (Philpott, 1995: 355). A utopian entity would be democratic, ethnically homogenous, occupying a defined territory - without enclosed minorities-, unanimously desiring independent statehood as the way to realise self-determination. Secessionist movements, though, are rarely homogenous and are sometimes illiberal, include other distinct entities (Horowitz, 1998), and/or with a part of its population reluctant to secede (Philpott, 1995).

In addition, even if a group approximates the ideal utopian standards, the methods that it employs to achieve its purpose are rarely liberal and democratic. There are numerous separatist movements around the globe, whose methods are little different from terrorist movements (Williams and Heymann, 2004). The Basque ETA (Euskadi Ta Askatasuna/ Basque Country and Freedom) and the Kurdish PKK (Partiya Karkerên Kurdistanê/ Kurdistan Workers' Party) are two separatist movements officially designated as terrorist organisations (US Department of State, 2012). In addition, few would disagree with the argument that the various separatist movements operating in Chechnya use predominantly terrorist methods (Kramer, 2005). Even the Kosovo Liberation Army (KLA) was initially characterised as a terrorist group by the United States special envoy to the Balkans Robert Gelbard (BBC, 1998). It is acknowledged, however, that eruption of violence may be an outcome of years of fruitless peaceful attempts for secession. Thus, violence can be seen as last resort, after all other means

have been exhausted. For instance, KLA in Kosovo emerged after the peaceful approach of President Rugova had failed, as Chapters Five and Six will demonstrate in detail. Should there have been a general right to external self-determination, Rugova would have achieved the goal of independence much earlier and with considerably lower levels of violence.

Furthermore, only a few secessionist attempts have been peaceful. Most of them have resulted in violent conflict and waves of refugees and internally displaced persons. Most of them continued for years and if they were brought to an end, it was only after a bloody and decisive victory of one conflict side (Weller, 2005). In that way, they affected not only the lives of those desiring secession, but also the lives of those that were against it. Moreover, war affects the lives of civilians both in the seceding group and in the parent state, while refugee influx affects and destabilises neighbouring states.

Horowitz (1998, 2000, 2003) adds that a right to external self-determination would reduce efforts for coexistence such as federalism or regional autonomy. Central governments would be reluctant to proceed to such arrangements if there was an established right for a situation of autonomy or devolution to turn legitimately into secession. He claims that, since a central government would oppose to a secessionist attempt, the outcome would be in the end an escalation of violence at the expense of potentially fruitful efforts for internal political accommodation of the issue (Horowitz, 2003).

Taking into consideration the potential cost of external self-determination on so many levels, the issues that are fore-fronted are whether and when secessions are justified, who has this right to external self-determination and under what conditions. These are the questions that most of the literature about secession tries to answer. In the following sections a brief review of the most important theories of secession will follow, most of which are normative in nature and try to set criteria according to which secession should be allowed or prohibited.

### *Remedial secession theories*

The remedial secession theories, also known as just cause theories, critically challenge the traditional thinking on territorial integrity and sovereignty. In recent years, the idea that states have absolute freedom to any action within their sovereign jurisdiction has been largely questioned (Ker-Lindsay, 2012). After the World Summit of 2005 the UN announced that sovereignty no longer exclusively protects states from foreign interference, but it is a charge of responsibility that holds states accountable for the welfare of their people (UN, 2005). This announcement was an official articulation of the already emerging doctrine of Responsibility to Protect (R2P) as was demonstrated in previous events of use of force against sovereign states<sup>16</sup> under the justification of protecting civilians from genocide, ethnic cleansing and terrorism. After the announcement of the Responsibility to Protect doctrine, the already existing theories of remedial secession were elaborated and expanded, arguing that an entity has the right to secede due to grave human rights violations it suffered in the past.

According to Allen Buchanan, one of the first theorist of secession, “remedial right only” theory posits that a group has a general right to secede if and only if it had suffered certain injustices, for which secession is the appropriate remedy of last resort (Buchanan, 1997, 1991). He identifies those injustices as threats of the physical survival of the group by actions of the state or other violations of its basic human rights. In addition, he believes secession to be warranted in cases that the group’s sovereign territory was previously unjustly taken by the state. In later works, he had also added the condition of constant violation of agreements allowing a minority group some form of self-government within the state

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<sup>16</sup> The NATO air campaign against the Federal Republic of Yugoslavia (FRY) was promoted under the rhetoric of protecting the Kosovo Albanians from Serbian oppression and escalating military offensive (Clinton, 1999). Similarly, the invasion in Iraq in 2003 had according to president’s Bush statements a threefold purpose, to disarm Iraq of weapons of mass destruction, to end Saddam Hussein's support for terrorism, and to free the Iraqi people (Bush, 2003).

(Buchanan, 2004). However, he accepts that different remedial right theories identify different injustices that authorise secession.

In general Buchanan considers secession to be based on the same theoretical foundations as the Lockean revolution. He also believes the remedial right to secession to be a supplement to Locke's theory. According to the latter the people have the right to overthrow the government if and only if their fundamental rights are violated and more peaceful means have been to no avail (Locke, 1689/1980, in Buchanan, 1997: 35). The main difference between the right to secede and the right to revolution is that the right to secede applies to a part of the population concentrated in a specific territory of the state. Thus, the goal of secession is not to overthrow the government in general, but annul the control of the government over that territory.

Coppieters (2003: 192) argues that due to structural affinities between the moral analysis of the use of force and that of unilateral forms of secession, it is possible to apply the criteria derived from the just war tradition to cases of secession. In just war theory, the relationship between war and justice is assessed by a set of criteria referring to moral constraints on starting military operations (*jus ad bellum*) and on the military operations themselves (*jus in bello*). Subsequently, Coppieters explores how these criteria may also be used to determine to what extent unilateral secession is morally justified. Thus, the *jus ad bellum* criteria of just cause, legitimate authority, right intentions, last resort, proportionality and chance of success are used in order to assess the justification for independence.

Combining the arguments of the aforementioned scholars, Bolton and Visoka (2010: 5) propose the following conditions that could facilitate -or block- remedial secession: a) violations of autonomy agreements by the host state; b) unjust annexation of territory; c) human rights abuses perpetrated by the host state; d) international intervention to mediate a

status outcome; e) support of powerful countries; f) exhaustion of negotiations; g) a commitment from the seceding entity to uphold minority rights.

All conditions that Bolton and Visoka propose are useful and set suitable terms under which secession would occur. However, their argument would be more comprehensive if they separated their conditions into two different categories. The one would be when secession would be permissible or not, with the relevant criteria to be a) violations of autonomy agreements by the host state, b) unjust annexation of territory, c) human rights abuses perpetrated by the host state and f) exhaustion of negotiations. The other category would be when a secession would be feasible with the respective criteria to be d) international intervention to mediate a status outcome, e) support of powerful countries, g) a commitment from the seceding entity to uphold minority rights.

This classification would also lead to different approaches to secession. The first criteria dealing with the permissibility of secession would reveal if an entity has a right to secede based on remedial arguments. In the case of Kosovo, three out of the four apply, i.e. the violation of autonomy agreements, since Kosovo autonomy was unilaterally abolished by Milošević; grave human right abuses occurred under his rule; and finally negotiations eventually reached a stalemate in late 2007.

The second set of conditions would examine if secession is likely to be successful. In the case of Kosovo the international intervention in late 1990s was a significant factor that gave eventually Kosovars the power advantage against the Serbian state. Afterwards it was because of international support that Kosovo survived institutionally and financially as an entity. After it unilaterally declared its secession powerful states supported this decision by recognising it and generating a domino of recognitions. Lastly, because of the support of

influential powers, the conditional sovereignty conditions lifted in 2012, although little progress had been made towards specific aspects (BBC, 2012, Cani, 2012).

Birch (1984) sets four conditions, of which at least one must be present in order for the secession to be justified. First of all, the seceding region should have been unjustly annexed in the first place in the state, and the citizens of this territory should have continuously expressed their disagreement with the union. Second, the central government should have failed to protect the basic rights and the security of the seceding group. A third reason would be the central government to have failed to protect the political and economic interests of the region. Fourth, the national government has ignored or rejected a settlement proposed by the seceding region that aimed to preserve essential interests of this certain region and that might have been outvoted by a national majority (Birch, 1984).

Birch argues that if any of the above conditions is met and if the majority of the voters in the region are in support of this action, then the region should have the right to secede. He adds that this right is independent from the outcome of the secession. That means that the right is granted even if there are concerns about the viability of the new state, the situation of the minorities inside it or about potential harm to strategic and economic interests of the parent state.

Costa (2003) studies secession as part of the broader debate on minority rights within a multinational state. Although he does not defend the right to secession in general and he suggests that there are other ways to achieve self-determination, he considers as a just cause for secession the failure of the state to meet “meaningful multinational arrangements” (Costa, 2003: 64). With the latter he refers to the official recognition of the state as multinational and the adoption of necessary measures that guarantee the equality between the different national

groups. He introduces, thus, the term of “ethnocultural justice” and he argues that the inability to protect the rights of minorities should be considered as a valid reason to justify secession.

Horowitz (2003, 1998) by critically reflecting on the remedial secession theories, points out that secession rarely creates homogenous states. This has as a result the continuation of conflict inside the new state, in view of the fact that minority oppression is most likely to continue, this time in the frame of the new state. Further to this argument, in assessing the last resort argument of the remedial theorists he comments that “if independence can only be won legitimately after matters have been led to extremes, then, by all means there are people willing to carry them to extremes” emphasising this way the human rights violation and the escalation of violence the very right to remedial secession might cause (Horowitz, 2003: 12).

In conclusion, common ground among the remedial secession theories is that an entity might have the right to secede after the parent state have repeatedly and manifestly failed to respect and protect vital human rights of the members of this entity, with each theorist to set their own criteria of what constitutes vital human rights. Finally, secession is viewed as last resort, being only allowed when all other means of co-operation and co-existence have been exhausted and failed.

#### *i. Kosovo under remedial secession theories*

In the case of Kosovo it is undeniable that Kosovo Albanians’ human rights were abused in the early years of the former Yugoslavia when Aleksandar Ranković, the Secret Police Chief and Vice-President of Yugoslavia, ran Kosovo as little more than a district of Serbia. Serbs occupied most administrative posts and Serbian was the principal language of administration and higher education. Kosovo Albanians suffered ethnic harassment by Serb-dominated police and state security, they had little chances of economic and educational development and



limited opportunities for advancement in the senior party-state levels (Petrović and Stefanović, 2010). Kosovo Albanians were similarly discriminated after 1989 under Milošević's control (Watson, 2008). During this time, Albanians were dismissed from their jobs, Albanian language newspapers and television programs were banned, as well as the Albanian language teaching. In addition, Albanian family planning were introduced and also incentives for them to seek employment elsewhere (*inter alia*, Judah, 2000c, I.I.C.K., 2000, Malcolm, 1999).

However, from Ranković's removal in 1966 to 1989 when Milošević abolished Kosovo's autonomous status, Kosovo Albanians enjoyed equal rights with any other nationality and nation inside Yugoslavia. After the constitutional amendments of 1968 the Kosovars had the opportunity to visit Albanian-language schools, the University of Prishtina was founded in 1969, as well as institutes for Albanian literature and culture. Cultural ties between Albania and Kosovo were permitted and the importation of Albanian books was possible (Mertus, 1999). Furthermore, the Yugoslav government provided considerable federal funds for the development of the region (I.I.C.K., 2000).

At the federal level, with the 1974 Yugoslav constitution, the autonomous provinces of Kosovo and Vojvodina were elevated to the status equivalent to that of the other six republics, which included a full representation on the main federal Yugoslav bodies. Thus, Kosovo became a "virtual republic," with its own parliament, constitution, police force and central bank (Bieber and Daskalovski, 2003). Official documents were translated into Albanian and public institutions were recruited in a way such that they could address the Albanian-speaking population's needs (Petrović and Stefanović, 2010). In addition the University of Prishtina's courses were also adapted to the needs of the Albanian population, since Serbs already had the opportunity to attend a university in central Serbia (Petrović and Stefanović, 2010).

Yet, these changes had as a result that gradually the Serbs felt discriminated and excluded. The Serbs complained that the Albanians received preferential treatment in terms of employment (Blagojevic and Petrovic, 1992). Furthermore, while the initial promotion of the Albanian language in public institutions made perfect sense as a means to achieve equal treatment, it gradually reached a point where services in Serbian were not provided. In rural areas, Kosovo Serb peasants “bitterly complained that after 1966 they were subjected to myriad acts of ethnic harassment from younger members of the Albanian majority” (Petrović and Stefanović, 2010: 1097).

Thus, after 1966, it was Serbs who began to leave, moving to Central Serbia and Vojvodina. Census figures of 1961, 1971, 1981 and 1991 demonstrate the demographic change in the region. In 1961 Kosovo was inhabited by 67,1% Albanians, 23,5% Serbs and 9,4% others (mainly Roma and Turks). Ten years later, the Albanians constituted the 73,7% of the population, whereas Serbs and others constituted the 18,4% and 7,9% respectively. In 1981 the Albanian population increased to 77,4%, while the Serbian population had decreased to 13,2%. Finally, in 1991<sup>17</sup> the Albanians composed the 81,6% of the total population, whereas Serbs made up the 9,9% and others the 8,5% (SOK, 2008). This demographic growth of the Albanian population is, on the one hand, due to the high child birth rates of Albanian families (SOK, 2008). On the other hand, figures show a massive exodus of Kosovo Serbs, because of the marginalisation they experienced (Petrović and Stefanović, 2010, Blagojevic and Petrovic, 1992).

It can be observed then that the relations between Kosovo Albanians and Kosovo Serbs had not been those of co-existence and cooperation. On the contrary, they seemed to be relations of domination, in which the group which gained power suppressed the other one

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<sup>17</sup> The 1991 census was boycotted by the Albanian population in Kosovo. The figures were assessed by the ex-Yugoslav Federation Office of Statistics (YFOS).

(Guzina, 2003). The depth of this situation will be more evident in subsequent chapter when the historical roots of the Kosovo conflict will be examined. For now, however, it can be claimed that due to this perennial tension the possibility of a peaceful coexistence between Albanians and Serbs in Kosovo under Serbian rule would be very small, especially after the war of 1999.

In light of this, perhaps Kosovo's secession was the only solution to overcome the stalemate in which Kosovo was after 1999. Nevertheless, it also needs to be taken into consideration that while Serbia would accept substantial autonomy for Kosovo, the Kosovo Albanians were unwilling to accept anything less than independence (Ahtisaari, 2006b), as it will be discussed in more detail in Chapter 7. Hence, in this respect it is questionable if Kosovo's secession in 2008 was the last resort the Kosovars had, given the fact that they refused to try anything else.

In addition, although there is considerable academic support for remedial secession there is still no law regulating such issues. Secession in general is neither legal nor illegal in international law, as there are no applicable law either in favour or against it (Crawford, 2006, ICJ, 2010a). Only the aforementioned UN resolutions, and in particular the Declaration on Friendly Relations of 1970 could imply the right to remedial secession. These resolutions are, however, vaguely formulated, and as General Assembly resolutions also have no legal binding for the states.

Furthermore, when the ICJ examined the question of whether Kosovo's unilateral declaration of independence was in accordance with international law, the Court explicitly added that "issues relating to the extent of the right of self-determination and the existence of any right of "remedial secession" are beyond the scope of the question posed by the General Assembly" (ICJ, 2010a: 405-406). Nevertheless, Judge Jusuf stated in his separate opinion

that “a racially or ethnically distinct group within a state, even if it qualifies as a people for the purposes of self-determination, does not have the right to unilateral secession simply because it wishes to create its own separate State, though this might be the wish of the entire group” (ICJ, 2010b §10). He added, however, that “under such exceptional circumstances, the right of peoples to self-determination may support a claim to separate statehood provided it meets the conditions prescribed by international law, in a specific situation, taking into account the historical context” (ICJ, 2010b §11), while he expressed his view that Kosovo reflected the type of exceptional circumstances that may transform an entitlement to internal self-determination into a right to claim separate statehood from the parent state<sup>18</sup> (ICJ, 2010b §13).

### *Primary-right theories*

In contrast to remedial theories of secession, there are the theories that claim that a group has a right to secede even if it has not been mistreated by the state. Various names have been attributed to these theories: choice theories (Pavković and Radan, 2007), primary-right theories (Buchanan, 1991, 1997, 2004), democratic theories (Beran, 1998) or liberal theories (Beran, 1984). The two latter definitions are considered to be confusing, because scholars such as Buchanan and Birch have also placed remedial right theories within liberal democratic frameworks. This thesis will therefore use the term “primary-right theories,” as it was introduced in the writings of Buchanan, since this is the most accepted and recognised term by the literature.

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<sup>18</sup> Still, from the thirty-six countries that offered their submission for this case, only eleven regarded secession as established in international law, applicable in various circumstances. Although, this acknowledgement constitutes significant progress in the establishment of a concrete, albeit conditional right to secession, it remains far from becoming positive international law (Meester, 2012). Thus, claims that there is a right to remedial secession are based only on theoretical underpinnings with currently limited practical applicability.

Although Buchanan is most possibly characterised as a supporter of a remedial right to secession, he also referred in his writings to a different possible approach. This approach, which he named primary-right theories, views secession to be permissible in a wider range of cases and not only as a remedy of last resort.

He divides these theories into two main categories: ascriptive group theories and plebiscitary/associative group theories. The former refers to groups with “ascriptive” characteristics, such as nationality or ethnicity. He names these characteristics ascriptive, because they are attributed to a person independently of their choice. Accordingly, this theory supports that certain groups whose membership is defined by ascriptive characteristics should have the international legal right to secede (unilaterally), simply because they are such groups, independently of whether they have suffered any injustices or not (Buchanan, 2004, 1997).

On the other hand, plebiscitary or associative group theories assert that it is not necessary for a group to share a common identity, nationality or any other ascriptive characteristics in order to have the right to secede. On the contrary, these theories are based on the “voluntary political choice” of a group, whose will is to form their own independent political unit. Thus, any group no matter how heterogeneous can qualify for the right to secede (Buchanan, 2004, Buchanan, 1997).

The latter theories have their foundations in the writings of other scholars occupying themselves with secession. It appears that the first one to defend a permissive right to secession was Harry Beran (1984, 1988, 1998). Built on basic principles of liberalism, such as freedom, sovereignty and majority rule, he argued that “secession should be permitted, where it is possible, because a separatist group desires secession strongly enough to engage successfully in the organised socio-political activities necessary to achieve it.” He defended this right against the remedial approach by arguing that “to permit secession only on moral

grounds such as oppression or a right to national self-determination, but not on the ground that it is deeply desired and pursued by adequate political action, seems to be incompatible with the arguments of liberty, sovereignty and majority rule” (Beran, 1984: 28).

Analysing those fundamental values he considers freedom to be the most important of all. He understands the ideal society as a “voluntary scheme” (1984: 24), accepting at the same time restraints on participants’ freedom for as long as they are necessary for their physical safety and social and economic development. Thus, a liberal society should be composed by adults that voluntarily have bound themselves to those restraints emanating from the state. Accordingly even the unity of the state should be voluntary, and therefore secession would be permissible.

Originating from the principle of freedom of choice, he claims that a state is sovereign for as long as it has the acceptance of its citizens (Beran, 1984). Consequently, if there are separatists groups, they should have the right to a referendum in the territory they claim. In that way, the majority of people living in the specific area would have the opportunity to determine their political society.

Finally, he sets six conditions according to which secession should not be permitted: First of all, if the group that wishes to secede is not sufficiently large to assume the basic responsibilities of an independent state. Second, if it is not prepared to permit sub-groups within itself to secede although such secession is morally and practically possible. Third, if it wishes to exploit or oppress a sub-group within itself that cannot secede in turn because of territorial dispersal or other reasons. Fourth, if it occupies an area that it is not on the borders of the existing state, but in an area where an enclave would be created. Fifth, if it occupies an area which is culturally, economically or militarily essential to the existing state. Sixth, if it

occupies an area which has a disproportionately high share of the economic resources of the existing state (Beran, 1984).

It is remarkable how restrictive Beran's approach is once conditions are accounted for. Although, he argues so fervently in favour of the freedom of choice, after adding the above criteria in his theory he sets serious limitations to the right of secession, ending up as, or even more, restraining than other theories.

Similar arguments are also expressed by Seymour (2007) and Wellman (2005), who both claim that a group should be entitled to secede even if it was not treated unjustly. Seymour believes remedial right theories and in specific Buchanan's criteria of injustices to be too conservative, and argues that all nations have a general primary-right to self-determination, i.e. a general right to be free and equal.

Wellman (2005), being more restrained than Seymour, suggests that the political abilities of a seceding group are the factor which should determine if it has a right to secession or not. He regards nationality and cultural characteristics to be of secondary importance, substantial only in cases that they support the implementation of the necessary political functions. Additionally, Wellman claims that it is not obligatory for secessions to occur within pre-existing internal borders of only one state, but from more states. In order to make his argument clear he uses the example of the Kurdish secessionist demands. They involve the secession from four different states and the subsequent unification of these territories for the creation of the state of Kurdistan. However, recognising the fact that such a permissible right to secession would lead to chaos, he sets a restraining condition by adding that secession should be permissible only if the political viability of the remaining state will not be undermined.

Another scholar in favour of the Associative theories is Copp. He argues that the morality behind any secessionist attempt is of paramount importance, since that would define whether a group has a right to secede. He develops his theory by taking for granted that the criterion of morality is fulfilled. However, a significant drawback of his argument is that morality is a vague term, variable to mentality, culture, religion and civilisation.

Copp claims that a group can possess the right to secede only if it can qualify as a “society in a relevant sense” (Copp, 1998: 228). According to him, a society in the relevant sense is “a group comparable in size and in social and economic complexity to the population of a state; it has a multi-generational history; it is characterised by a relatively self-contained network of social relationships and by norms of cooperation and coordination that are salient to its members; it is comprehensive of the entire population of permanent residents of a relevant territory, with the exception of recent arrivals who may not yet fit into the group’s network of social relationships” (Copp, 1998: 227-228). In addition Copp (1998) asserts that even if a group has suffered injustices, it cannot have the right to secede, unless it is both a political and a territorial society. He clarifies that a society is political if all of its members have the firm will to constitute a state, and territorial if it occupies a certain area within which it can form a state.

Finally, David Gauthier (1994) has also written in support of voluntary political association. He compares secession to divorce and political association to marriage. He builds his argument on the assumption that right to association stems from the mutual desire of the parties to relate with one another and on the condition that none of the parties desires to better its place by worsening the one of the fellow part. Applying this to a comparative analysis, he seeks to justify some cases of secession.



*i. Kosovo under primary-right theories*

Kosovo fulfils both the ascriptive and the associative characteristics set by Buchanan, since the Kosovars share a common nationality and their voluntary political choice was secession.

Yet, Kosovo fails to meet Beran's criteria. It falls short of passing the third (oppressing a sub-group within it that cannot secede), the fifth (occupying an area which is culturally essential to the existing state) and potentially also the second restriction (not being prepared to permit sub-groups within it to secede although such secession could be morally and practically possible). Kosovo suppresses other sub-groups living on its territory and which are unable to secede, for example, Serbs and Roma. Furthermore, Kosovo is culturally crucial for the Serbs, who regard it as the cradle of their civilisation. Significant orthodox monasteries are located in the region and also the Serbian King Lazar was buried there after losing his life during the historical Battle of Kosovo against the Ottoman Empire (Mertus, 1999, Guzina, 2003). Finally, Kosovo is unwilling to allow secession to Northern Kosovo. Should it be supposed that North Mitrovica is sufficiently large to assume the basic responsibilities of an independent state and that its secession is practically possible, then Kosovo also fails to meet the second term. Thus, the third, the fifth and potentially the second restriction Beran sets against his liberal right to secession are flagged.

However, according to Wellman, Kosovo had the right to secession since it fulfilled the criteria set in the beginning, and Serbia's viability was not undermined.

Finally, Gauthier's marriage/divorce comparison is unable to address unilateral secessions. For a marriage to end both parties need to sign the necessary documents; there can formally be no unilateral resolution of a marriage. On the contrary, the majority of the existing separatist movements pursue secession unilaterally and against the will of the parent state. Kosovo is also a case of unilateral secession, thus Gauthier's theory cannot be applied.

### *Nation-orientated secession theories*

The main argument of the nation-orientated theories is that *nations* should have the right to self-determination. It is argued that a claim of a nation to political self-expression should amount to a defensible right, equal for all nations, and that this claim derives from the mere existence of a nation (Moore, 1997: 900). These theories do not necessarily claim that nations are allowed to secede or to establish their own state. In contrast, they recognise that there are limitations and practical reasons to avoid secession. However, some of them accept the possibility of secession and these theories are going to be reviewed in the current section.

Contrary to remedial secession theories, nation-orientated theories or national self-determination theories, do not presuppose that the nation should have its basic human rights violated in order to have the right to secede. It has this right just because it is a nation, independent of its status and treatment within the state.

National self-determination theories are also different from the primary theories. The latter grant the right to secession to every group which is politically organised and desires secession independently of its national composition. Although almost every primary theory has its limitations, being a nation is rarely one of the pre-conditions to secession. Even for the primary theories that accept the existence of ascriptive characteristics, what is most important for the exercise of the right is the common wish to secession and the political organisation towards this goal, instead of the fact that a group may share the same nationality.

Miller (1997) disagrees with the view that any territorial majority wishing to secede should also have the right to do so. He believes that certain criteria must be met in order to advance secession, instead of other forms of partial autonomy or other constitutional settlement within existing state borders. He recognises that the breaking of a state raises a

plethora of questions about historic identities, economic justice and minority rights and he believes that a sufficient theory of secession must address all of these issues.

Miller builds his theory on the principle of nationality and sets two criteria that a potential separatist group must initially meet in order to have a case to secede. First of all, he suggests that the separatist group should be a nation. He defines as nation a group of people who recognise one another as belonging to the same community, who acknowledge special obligations to one another, and who aspire to political autonomy, by virtue of characteristics that they believe they share. These are typically a common history, attachment to a geographical place, and a public culture that differentiates them from their neighbours (Miller, 1997: 266). Second, the group needs to have a valid claim on the demanded territory, as being understood by the history of the territory in question.

Miller argues that if these criteria are met, then there are subsequent factors that need to be taken into consideration, as only few groups are nationally homogeneous. Thus, the establishment of the new state will create a new minority. The future situation of this minority should be evaluated before a group obtains justification for secession. Second, he claims that secession would be unjust, if it removed from the parent state resources that have been jointly created or if it left the parent state with not enough resources to sustain itself. Miller finally concludes by stating that both sides should have territory and resources to ground a viable community.

Weinstock (2000), on the other hand, disagrees with Miller's approach. He rejects his arguments, beginning with that regarding identity. Weinstock characterises as "naïve" the practice Miller proposes, namely to "look and see" if the seceding group is indeed a distinct nation. Weinstock argues that Miller's argument does not take into account the dynamics in the formation of identity and he claims that through history there is flexibility to the

construction of national identity. This observation may be valid, since there are numerous cases where national identity has been created through institutions or policies, for instance, France, Italy or the USA. However, Weinstock's view fails to recognise that most of the groups desiring independence have kept their distinct nationality, even after years or centuries of occupation and common living in the parent state. So perhaps, it is not as easy as he claims to change identity.

Weinstock (2001), being himself in principle against secession as a practice, supports a more "procedural" approach. For him the distinction between the moral question of whether there is a right to secession and the question of whether and how it ought to be implemented institutionally and judicially is of paramount importance. He argues that the right to secession should be constitutionalised, because in that way, the state would have the opportunity to pose some control on a situation that would otherwise happen in a less manageable manner. He asserts that through institutional mechanisms pressure is applied on the motives and incentives of the relevant actors. Secessionist attempts can be more costly by imposing procedural hurdles. Thus, by reducing centrifugal motives and increasing centripetal ones, a settlement could be achieved in a smoother manner.

Margalit and Raz claim that "the right of self-determination is instrumentally justified as the method of implementing the case for self-government, which itself is based on the fact that in many circumstances self-government is necessary for the prosperity and dignity of encompassing groups" (1990: 460). They use the term self-determination as equal to secession and they argue that a group sharing specific characteristics has the right to an independent state in order to protect the prosperity and dignity of its members.

They also add that the encompassing group should constitute the majority in the claimed territory and that the new state should respect the fundamental interests of its

inhabitants as well as those of other countries (Margalit and Raz, 1990). Moreover, the decision that a group will take should be supported by the vast majority of its members, reflecting deep-rooted, long-lasting beliefs and not mere temporary aspiration. Finally, the right should be exercised in order to secure the prosperity and self-respect of the group.

They conclude by stating that the right of self-determination is relative and conditional. On the one hand, those who desire secession should also take into account other inhabitants' interests. On the other hand, the rights of self-respect and prosperity of the group are among the most important human rights. Summing up their final argument they assert that an encompassing group that constitutes the vast majority of the population in the relevant territory should have the right to self-government and secession, provided that the vital interests of self-respect and prosperity of directly or indirectly affected citizens are protected (Margalit and Raz, 1990).

According to secession approaches built on nationality, most separatist movements have a justification to secede. Abkhazians and South Ossetians claim to be distinct from Georgians, Chechens from Russians, Kurds from Turks, Iraqis, Iranians and Syrians. However, their claims have found little support and have also had little success. Thus, the fact that a nation desires to establish its own state to pursue its interests in a more effective manner, may be a good reason for secession. Nevertheless, there is no guarantee that its cause will be supported or that the outcome of the secession will be successful.

*i. Kosovo under nation-orientated secession theories*

The nation-orientated secession theories recognise a right to secession to every group claiming that it is a nation. According to these theories then Kosovo Albanians would have a right to secede from Serbia, based solely on the fact that they are ethnically different than the

Slavs in general and the Serbs in particular. They identify themselves as belonging to a different nation; they speak a different language, profess a different religion, have different customs and social values and have a collective consciousness of their distinction. They have also been officially recognised as a distinct nationality within the Former Yugoslavia, fact that would further strengthen the claim of national differentiation. Therefore, according to nation-orientated theories and in virtue of this national distinction, Albanians would have the right to secede, not only from Serbia, but also from other states where Albanians constitute a considerable minority, for example from Montenegro and the former Yugoslavia Republic of Macedonia.

It should be noted that not all of the nation-orientated theories grant the right to secession its claimants; on the contrary they recognise the limitations and the implications of such a right and propose alternative accommodation of the demands.

#### *Alternative approaches to secession*

Other scholars have adopted alternative approaches to secession, which do not fall into the category of the above-mentioned theories.<sup>19</sup>

Freeman (1999) does not distinguish between theories of self-determination and theories of secession, but he equates these two terms. He classifies existing theories on the subject into six categories: Liberal theories, including both remedial and primary-right theories; democratic theories, whose main theorist he considers to be Philpott (1995); communitarian theories, with Margalit and Raz (1990) as main representatives; realist

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<sup>19</sup> There are numerous alternative approaches to secession, which however have limited application to the purpose of this thesis. Thus, in this section only the most relevant alternative secession theories are reviewed. Some of the scholars that are not included in this research they are Lake and Rotchild (1998) who try to explain why ethnic conflict and desire for secession arises, Wood (1981) and Hechter (1992) try also to explain the rise of secessionist movements, Ewin (1995) explores when secession should be permissible, Collier and Hoeffler (2002) justify secessionist attempts on economic terms, and Gordon (2002) proposes an anarcho-capitalist theory of secession.

theories, introduced by Shehadi (1993), although the latter's argument as presented in Freeman (1999) has little to do with the international relations approach of realism;<sup>20</sup> cosmopolitan theories, which include parts of aforementioned theories and cosmopolitan realism, which connects the latter two categories. He concludes that there cannot be an absolute right to self-determination. The main reason for this is that all rights have costs, which in the case of self-determination will be diffused to others. Thus, the right to national self-determination requires a complex analysis. Moreover, each particular claim to the right should be judged on its particular merits and should only be recognised with great caution (Freeman, 1999, Raz, 1988).

Bartkus' (2004) research focuses on the motives of secession. She acknowledges that all kinds of societies -liberal, former communist, developing- can struggle with internal secessionist demands. Bearing this in mind, she suggests that the decision of an entity to secede stems from a cost-benefit assessment of its situation. To elaborate further she asserts that the timing of the decision to secede can be understood within a framework structured around four primary variables: the benefits of continued membership in the existing political entity, the costs of such membership, the costs of secession and the benefits of secession. Finally, she argues that secessions arise only when the distinct community determines that there has been a shift in the balance of these four variables (Bartkus, 2004: 4).

Toft (2012), by examining the roots of secession, observes that the literature revolves around two main explanations, with the first one to focus on the economic interests for secession, and the second one to highlight the political motives. She also adds that a new

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<sup>20</sup> Shehadi believes that "the international community must clarify its conception of the right to self-determination; this conception must balance the principle of the territorial integrity of states with the aspirations of aggrieved nations; and there should be international institutions with the authority to settle self-determination disputes in accordance with the rule of law rather than the rule of force" (in Freeman, 1999: 365).

approach has emerged, which emphasises the structure within which these groups operate, meaning the geographic and the demographic characteristics of it.

The economic approach argues that secessionist wars are caused by uneven economic development among the groups that populate the country's territory. Accordingly both rich and poor groups have an incentive to demand greater autonomy and secession. Groups with greater economic development will come to resent that their wealth is being transferred to lesser developed groups, while lesser developed groups will come to fear economic domination, or perhaps increasingly resent perceived exploitation, by the advanced groups. Disparate development within the state leads to tensions between ethnic groups that populate the state (Toft, 2012).

In addition, self-determination and secession are political acts. Therefore it is not surprising that the nature of the political system in which groups operate has been found to influence whether and how groups mobilise for self-determination and secession (Toft, 2012: 587). The factors that are believed to influence a group to secede are the institutions and the leader. The first could provide the appropriate infrastructure, so that political and administrative demands are satisfied. Secondly, the leaders can, under certain conditions, significantly influence the mobility of a group towards secession.

The third approach that Toft mentions is the structural one, referring to the geography and the demography within which a group operates. Thus, argument now moves from the willingness of a group to secede to its actual capacity to do so. With respect to demographics two factors are mostly examined: ethnic diversity and group size. Lastly, the vast majority of the groups trying to secede are geographically concentrated. As a result, the organisation and military operations of the group are easier, and territory that it is demanded is specified.



Toft critically examines the previous approaches and outlines their limitations. She proposes no alternative to these weaknesses, but she seeks to develop a new perspective to secession studies. Her aim is to explain when secessions happen and not when they are justified as remedial/primary-right theories do.

Pavković and Radan (2007) while not trying to introduce a new theory of secession, critically review existing theories and practices. Through a combination of examined secession cases and theories, they mention that secessionist attempts succeeded when secessionists gained both effective political control of the territory and the recognition of their independence from other states and international organisations.

They accurately refer to a two dimensional approach of study of successful secessions, comprising the internal and external aspect of the phenomenon, stressing that the entity needs to achieve both in order for the secession to be successful. However, their study is general and superficial, lacking of depth and strong underpinnings to support this claim.

In addition, their statement needs further support and elaboration, as the two preconditions they have set are not sufficiently analysed. The fact that the secessionists manage to politically control the territory at the time of the secession, does not guarantee that the new state will be politically, institutionally and economically viable. Furthermore, the international recognition is certainly of critical importance for the outcome of secession. However, they fail to address the complexity of the process of international recognition in cases of unilateral secession.

A further limitation of their research is that little effort was made to set a distinction between cases of successful unilateral secession and other forms of secession. This is obvious by the annex of successful secessions provided at the end of their book, where Bangladesh, as the only case of successful unilateral secession is listed together with cases of state

dissolution, secession through agreement and decolonisation. Finally, the book is written prior to the Kosovo declaration of independence; thus Kosovo is categorised according to its failed attempt to secede in 1991. It is evident, therefore, that a renewed effort is essential to explaining when a unilateral secession is successful, using as case study the contemporary and complex case of Kosovo.

### *Conclusion*

The main purpose of this chapter was to set the theoretical foundations on which this thesis is based. This chapter sought to enhance the understanding of the idea of self-determination, explain how it was first introduced in the beginnings of the twentieth century and how it found application afterwards, showing its evolution through the years, moving from the concept of decolonisation to its application in the post-Cold War era.

This chapter also explained the two different applications of self-determination; internal self-determination, taking place within the borders of the state and external self-determination or secession. As the main research question of this thesis concerns secession rather than the internal manifestation of the right of self-determination, the chapter continued with the examination of how and whether the right to secession is supported by international law. The examination concluded that secession is neither legal nor illegal in international law, regardless of the mounting literature arguing in favour of the existence of a right to remedial secession.

Subsequently, various theories on secession were reviewed, most of them falling into following three categories: remedial secession theories, primary theories, and nation-orientated theories, while alternative theories have also been examined. In remedial secession theories, secession is mainly viewed as last resort against grave human rights violations the seceding

entity has experienced by the parent state. Thus, an entity has a right to secede in virtue of past abuses it suffered.

In contrast, primary-right theorists assert that an entity does not need to have suffered injustices in order to have the right for secession. Primary-right theories argue that if the population of a specific territory collectively desires to secede, then it should also have this right. Recognising, however, that such a wide implementation of the right of self-determination and secession would practically lead to chaos, primary-right theorists set some restrictions on the implementation of the right.

Nation-orientated theories presuppose that the seceding entity must be a nation. Although, they stress that there are other options for nations to exercise self-determination, they maintain that if a national entity wishes to secede, it has this right merely based on its nature as a nation.

Certain aspects of the secession of Kosovo could be explained by all previous approaches; however, none of them explains why Kosovo's secession succeeded. The right to remedial secession has been repeatedly presented by states recognising Kosovo after it declared independence to justify their choice to accept it as an independent and sovereign state. According to those statements Kosovo's secession had the right to secede due to grave human rights violations (escalating to the level of ethnic cleansing) it suffered under the rule of Belgrade. Moving to primary-right theories, Kosovo had the right to secede as an entity whose population was vastly in favour of secession. Finally, according to nation orientated theories, Kosovo Albanians had the right to secede from Serbia by virtue of the fact that they are a nation distinct from the Serbs. Thus, although existing theories explain the conditions under which Kosovo's secession would be justified, they fail to explain when or why it would be successful.

Acknowledging the fact that secession literature revolves mainly around the justification of secessionist attempts, some theorists sought to provide a new scope to the issue. Along with these studies, there are also limited attempts to offer insight about when secessions are successful. This section has showed that these efforts remain incomplete and need further elaboration. However, they provide the starting point for this thesis to elaborate and expand upon the studies seeking to understand when secessions succeed. Recognising the two dimensional nature of successful secessions, comprising of the internal and external aspect of the phenomenon, this thesis will argue that a secession succeeds when it has managed to create a recognised and viable entity, at least to such an extent that its secession is rendered irreversible; an argument that was analysed in the previous chapter.

The following chapters, being the empirical chapters of this thesis will show how Kosovo has managed to create a recognised and viable state. It will be demonstrated that this was a complicated process that took place at four different levels of analysis, beginning with the local level, being the seceding entity, continuing to the state level, the parent state, moving on to the region and concluding to how global events affected the outcome of the secession. The following chapters will examine the assumption that secession affects and is affected by all four levels and for a unilateral secession to succeed favourable conditions must be created deriving and involving all four levels.

## **PART II**

## **CHAPTER FOUR**

### **HISTORICAL BACKGROUND: INTRODUCTION TO THE KOSOVO CONFLICT**

#### *Introduction*

The purpose of this chapter is to set the background of the conflict in Kosovo. It also constitutes an introduction to the following empirical chapters, in which the reasons of Kosovo's successful secession will be sought and analysed. Presenting the historical background against which Kosovo's secession took place is important, as Kosovo's craving for independence did not appear suddenly in 1991 when it first attempted to secede. It was a long process, the origins of which can be found in the early twentieth century when Kosovo was conquered by and included in Serbia. This chapter will briefly present the relations between Serbs and Albanians in Kosovo, beginning with the Balkan wars and ending with Milošević's visit to Kosovo in 1987. It will be demonstrated that Serbian-Albanian relations were largely characterised by a dynamic of domination and suppression that constantly shifted hands. This chapter seeks to highlight the changes in the dynamics between the ethnic groups and also show how these changes prepared the ground for the events that followed in the subsequent years, and which will be analysed in the next chapters.

#### *Historical context of the conflict in Kosovo*

The origins of the contemporary conflict on Kosovo can be found in the beginning of the twentieth century and the Balkan wars (Ker-Lindsay, 2009b). In the First Balkan War (1912-1913), Serbs, Montenegrins, Bulgarians and Greeks sought independence from the Ottoman

Empire. The Albanians, although they declared independence from Ottoman rule, did not join the Balkan League in the war against the Ottoman Empire (Dragnich and Todorovich, 1984).

During the Balkan Wars, Serbia occupied Kosovo, a region populated by diverse ethnic groups, with the majority Albanians and the second largest group Serbs. The Albanians considered themselves as the rightful inhabitants of the area due to the belief that their nation has lived in the area since ancient times (Mertus, 1999). On the other hand, for Serbs Kosovo was a fundamental part of their civilization and history. Kosovo was the heart of the Serbian kingdom that flourished in the Byzantine times, and is perceived by Serbs to be the cradle of Serbian Orthodoxy. A number of monasteries dating back to those times are to be found in Kosovo, forming a crucial part of the historical narrative around the glory of Serbs in the region. In addition, the historic battle of 1389 against the Ottomans, which took place in Kosovo at the field of Blackbirds has become an intrinsic part of the mythology of the Serbian nation (Volkan, 2006). Tied in with this is the belief that Serbs sacrificed their lives in this battle in order to save Europe from the Ottoman invasion. The defeat of the Serbian army in this battle signified the start of the fall of the Serbian Kingdom, leading eventually to its conquest by the Ottomans seventy years later. Thus, for Serbs Kosovo seems to be both the connection with their glorious past and at the same time the place where the Serbian suffering began, it is where they lost their state and were subjugated under five hundred years of Ottoman occupation. Therefore, the recapturing of Kosovo in the Balkan wars symbolised for Serbs the end of the suffering and the return to independence and freedom. Udovički (2000) argues then that the Serb-Albanian conflict seems to stem from the firm conviction of both groups that “the land has been theirs for all time” (Udovički, 2000: 317) and Ramet (2001) compares the Kosovo conflict with the Palestinian issue where “two ethnic communities with

distinct languages and religious traditions lay claim to the same territory with competing historical arguments as evidence” (Ramet, 2001: 174).

After the end of the first Balkan war the new boundaries in the Balkans were decided in the London Peace Conference of 1913 and the subsequent treaties of London and Bucharest (The Treaty of London, 1913, The Treaty of Bucharest, 1913). In those treaties it was decided, that Serbia’s borders were to be extended and comprised the territory up to the region of Vardar Macedonia, including thus the area of present-day Kosovo.

After the inclusion of Kosovo in the Serbian state, the latter undertook several policies of both assimilation and exclusion. Examples of policies of assimilation involved the closing of Albanian schools combined with the obligatory attendance of Serbian schools and the penalisation of the use of the Albanian language (Sörensen, 2009, Prifti, 1999, Dragnich and Todorovich, 1984). Strategies of expulsion included a land reform programme laying restrictions on Albanians to owning land areas barely sufficient to sustain a family, providing at the same time incentives for emigration to Turkey. Those who refused to leave willingly were often confronted with dispossession of their land and forced expulsions, while Serbia attempted a change of the demographic balance through the settlement of Serbs and other Slavs in Kosovo (Benson, 2001, Bieber and Daskalovski, 2003, Shtylla, 1993).

This relationship of dominance was reversed during the Second World War when a large part of Kosovo’s territory unified with Albania under Italian occupation. During the war, the Slavic population of the region was systematically expelled or exterminated and subsequently replaced by Albanians (Ker-Lindsay, 2009b, Burg, 1983).

Even so Kosovo was not to remain in Albania after the end of the war. Already in 1943, the wartime partisan parliament under Tito had decided that the post-war Yugoslavia would include six republics, with Kosovo and Vojvodina to be incorporated in the Republic



of Serbia (Tepavac, 2000). Other sources claim that the issue of Kosovo was then not sufficiently addressed and it was also implied by the Communist Party of Albania that Kosovo was to be unified with Albania in a post-war settlement (Pavlakovic and Ramet, 2004). This, though, would also involve Albania's annexation to Yugoslavia as its seventh republic (Pavlowitch, 2002, Ramet, 2002, Auty, 1969). However, by 1948 relations between Tito and Stalin had starkly deteriorated, leading to the exclusion of Yugoslavia from the Soviet bloc and the subsequent deterioration of relations with Albania. Thus, a settlement where Albania would be incorporated into Yugoslavia was impossible and Kosovo remained in Serbia (Dragnich and Todorovich, 1984, Benson, 2001).

According to the Yugoslav constitution of 1946, Kosovo was an autonomous region (област) in Serbia, elevated to an autonomous province (покрајину) in the 1963 constitution, reaching its highest position in the federation with the 1974 constitutional amendment (Constitution of the Federative People's Republic of Yugoslavia, 1946, The Constitution of the Socialist Federal Republic of Yugoslavia, 1963, Constitution of the Socialist Federal Yugoslav Republic of Yugoslavia, 1974). The 1974 Constitution guaranteed enhanced rights for the two autonomous provinces; Kosovo and Vojvodina acquired extensive self-government, fully controlling internal matters such as education, judiciary, taxation and police in their respective provinces (ICJ, 2009). Their full and equal participation was provided, as well as the right to approve or veto decision concerning their provinces. Thus, they have often been referred to as virtual republics (*inter alia*, Dannreuther, 2001, Mertus, 1999), as they were republics "in all but name" (Interview 21, Peci).

Nevertheless, the Albanians of Yugoslavia had always been a nationality in the federal state, never obtaining the status of constituent nation. In Yugoslavia, the peoples or nations were those ethnic groups who had their nation-state inside the borders of the federation.

Hence, for example, the Croats and the Slovenians were nations because their country was located within the borders of Yugoslavia. The Albanians on the other hand were a nationality as Albania, their nation-state, was outside the boundaries of Yugoslavia. Nationalities also included the Bulgarians in Eastern Serbia, the Italians on the Adriatic Coast and the Hungarians in Vojvodina (Detrez, 2003).

Nationalities were not entitled to their own republics, and thus Kosovo never became an actual constituent republic of Yugoslavia. The reason why nationalities were not allowed to run their own republics was not adequately explained (Ramet, 2002). A possible reason could be that nationalities having a nation-state outside the federal boundaries would be regarded to be more inclined to the idea to secede and join their fatherland (Detrez, 2003).

The fact, however, that Albanians were not classed as a nation and Kosovo was not a republic also meant that Kosovo did not have the right to secession. Article 1 of the various Yugoslav constitutions stated that Yugoslavia is a federal state of peoples or nations (народа) who voluntarily associated and created a federation based on the principles of self-determination “including the right to secession”, “укључујући право на отцепљење” (Constitution of the Federative People's Republic of Yugoslavia, 1946). Although it is unclear from the definition whether nations or republics had the right to secession, the fact that only nations were entitled to republics probably leads to the conclusion that only republics had the right to secession. As it will be discussed later, this view was further strengthened by the concluding opinions of the Badinter Commission, which argued that only the constituent republics of Yugoslavia would be considered as its successor states, denying thus Kosovo this right.

Despite the enhanced rights Kosovars enjoyed in the former Yugoslavia after 1966<sup>21</sup> it is alleged that Kosovo Albanians have still desired unification with Albania. As a non-Slavic population in a predominantly Slavic country they were regarded as “second class citizens” in the rest of Yugoslavia (Interview 5, EU Diplomat). They were considered to be more “primitive,” peasants or manual workers meant to do the toughest jobs (Udovički, 2000: 319). Albanians themselves “never felt part of this artificial construction of the state” and believed that “Kosovo was mistakenly a part of Yugoslavia” (Interview 18, Civil Society Activist).

This sentiment of not belonging in the country was further increased by the low living standards Kosovo suffered. Although the province had been allocated special treatment under the Federate Fund for Crediting Economically Underdeveloped Republics and Provinces, 1965-1990, and was receiving generous grants and low-interest loans from the Federal Development Fund, the levels of development and employment remained extremely low in comparison with other regions in Yugoslavia with Kosovo to be the poorest region in the country (I.I.C.K., 2000).

Subsequently, tensions grew between Albanians and Slavs in general and with Serbs in particular. The richer republics of Slovenia and Croatia complained that their revenues and labour supported the population in the underdeveloped South, while other less developed republics such as Bosnia and Herzegovina and Macedonia claimed that Kosovo received more than its fair share of federal funds (Judah, 2000c). Kosovo Serbs in particular accused Kosovo Albanians of indolence, maintaining that the younger generations of Albanians seemed to be reluctant to occupy themselves with traditional ways of production and agriculture and

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<sup>21</sup> In the years 1953-1966 Alexander Ranković had been Minister of Internal Affairs of Yugoslavia and also head of the secret police. During his period in office the ethnic Albanians had been harshly treated, this having as a result the migration of significant proportion of their population to Turkey. After Ranković was dismissed in 1966, a general change of attitude from the federal state towards Albanians followed. Albanians began gradually to enjoy more rights, the University of Prishtina was founded, as well as other institutes for Albanian language, cultural ties between Albania and Kosovo were permitted and the influx of Albanian books was possible (Daskalovski, 2003, Nicolić, 2003, Petrović and Stefanović, 2010, Mertus, 1999).

preferred studying instead of working (Guzina, 2003, Poulton, 1993). Kosovo Albanians, on the other hand, claimed that Serbs and Montenegrins although comprising a significantly lower percentage of the population occupied almost one third of the state run enterprises (Mertus, 1999).

Tensions increased further when the Serbs started to leave Kosovo and relocate to other regions of Yugoslavia. Albanians asserted that Serbs were leaving because of the severe economic situation in the region. The Serbs, however, talked about an “Albanisation” of Kosovo (Arhsien and Howells, 1981: 427) and claimed that they were leaving because of the constant harassment and discrimination against them (Malcolm, 1999).

Eventually the situation escalated, and in 1981 only eleven months after Tito’s death, Kosovo experienced one of the most violent demonstrations that had ever occurred in the province. The riots were triggered by a seemingly insignificant event in Prishtina University’s cafeteria when a student furiously complained about the quality of the food (Binder, 1981). Soon the event gained momentum and demonstrations erupted in Prishtina with students demanding better conditions in the University’s facilities (Rogel, 2003). The demonstrations, having initially little to do with politics, rapidly grew into riots with protesters demanding the status of Republic for Kosovo, and a minority of them asking for unification with Albania (Malcolm, 1999, Mertus, 1999). The demonstrations were suppressed, but resumed again some weeks later, joined by people of all professions, miner workers, teachers, civil servants, turning the riots into a mass revolt demanding the status of Republic. The demonstrations were brutally crushed, a state of emergency was declared and Kosovo’s borders were sealed (I.I.C.K., 2000).

The fierceness of the riots and the exaggerated way Serbia responded shed light into some important concerns Belgrade seemed to have. First, it became apparent that Serbia still

thought of Kosovo as a weak link in the federation, whose demands could potentially cause destabilisation. Second, through this full scale reaction, it was implied that if any other nationalist elements emerged elsewhere in the country, they would be likewise suppressed (Arhsien and Howells, 1981).

The student protests of 1981 were possibly the first sign that Tito's structure had begun to collapse. Tito's ideal for Yugoslavia dictated that all citizens of the federal state were first and foremost Yugoslavs as defined by their citizenship, not by their nation or nationality. Thus, any expression of nationalism was rejected in favour of a creation of a common Yugoslav identity by virtue that all were citizens of Yugoslavia. The demonstration of 1981, however, revealed the long suppressed nationalistic sentiments to such an extent that in hindsight some would claim that the disintegration of Yugoslavia started then in Kosovo (*inter alia*, Interview 12, EU Diplomat, Interviews 10, 18, Civil Society Activists). The 1981 riots were the first significant event of a turbulent decade that would ultimately end with the abolition of Kosovo's autonomy and the consequent open struggle for independence.

Other noteworthy events that followed in the subsequent years after 1981 riots were the funeral of Alexandar Ranković, the Martinović case, the publication of the SANU Memorandum and Milošević's visit to Kosovo in 1987. Each of these events either demonstrated the increase of Serbian nationalism in Kosovo or was used towards this end escalating the relations between the two ethnic groups.

To begin with, Ranković's funeral turned into a Serbian nationalist demonstration. Ranković was the former security chief who ruled Kosovo Albanians in a draconian manner. Thousands attended shouting his name, nationalistic slogans as well as slogans against Albanians clearly expressing long suppressed emotions against Kosovo Albanians (I.I.C.K., 2000).

Some years later the Martinović case followed. It was a case of an elderly man who was rushed into hospital accusing two Albanians of severe sexual abuse. It was a controversial incident that took national dimensions, was discussed in parliament and covered in full detail by press and media (Kamm, 1986). Although there have been indications that the injury might have been self-inflicted, the Martinović case was displayed as a demonstration of the oppression and mistreatment of Serbs in Kosovo (Kola, 2003).

This event gained importance in light of subsequent revelations of the Serbian Orthodox church that nuns had been constantly harassed and monasteries had been vandalised (Kamm, 1986). Their claims were supported by evidence the church had compiled since 1969 offering also information about the numbers of Serbs leaving Kosovo, allegedly because of Albanian pressure (Judah, 2000c).

In regards to the latter, the press continued to show cases of Serbs leaving Kosovo also providing data supporting the view that this migration was due to mistreatment by Albanians. Blagojevic and Petrovic (1992), after conducting a survey in 1985-1986, claimed that the most frequently mentioned reason for emigration were “uncertainty, the lack of security and freedom, fear and the loss of hope” (1992: IV,1b). In their publication they also cited statements such as the following:

I went out in front of them [Serbs leaving their homes] and said: 'Stop, people, where are you going? Don't leave your land, homes, Kosovo-and the answer was always the same: 'We can't take the terror anymore, friend; they attack every day, women, children, old folks, property, they hit and swear; I'm leaving so that my children can live freely' (Farmer from a Serbian village, age 80, cited in Blagojevic and Petrovic, 1992: IV).

Before this survey was published, the Serbian Academy of Sciences and Arts had also publicised another document, known as the SANU<sup>22</sup> Memorandum, which victimised the Serbs not only in Kosovo but in other parts of Yugoslavia as well. The Memorandum denounced among others the “physical, political, legal, and cultural genocide of the Serbian population in Kosovo and Metohija” and the mistreatment of the Serbian people in other republics as well, while it urged Serbia to take action against those practises (Mihailovic and Krestic, 1995: 128). The SANU Memorandum provocatively expressed the grievances of the Serb population and revealed their resentment that subsequently led to the rise of nationalism.

The significance of those events is manifold. They represented a situation in Kosovo where a Serbian minority was oppressed and terrorised by the Albanian majority, bringing to light long suppressed frustration towards Albanians. This exasperation also led to the rise of Serbian nationalism in both Kosovo and Serbia, a phenomenon that had already started to increase in all Yugoslav republics in the post-Tito Yugoslav years. However, the mistreatment of Serbs in Kosovo has been regarded as a Serbian issue surpassing the borders of the province. The victimisation of Serbs, adding to the rise of Serbian nationalism provided the basis for Slobodan Milošević to enhance his political career (Ker-Lindsay, 2009b).

In 1987, Ivan Stambolić, president of Serbia, grasping the deteriorating situation and the possible effects of it, sent Milošević to Kosovo in an effort to abate tensions. Milošević met Communist officials, but also Serb nationalists demanded a meeting. Milošević agreed, although this could be regarded as a violation of Yugoslavia’s principal guideline condemning all kinds of manifestation of nationalism. During the meeting, the Serbs described incidents of everyday harassment taking place against them, until Milošević was informed that the police, composed mainly of ethnic Albanians, had violently restrained Serbs gathered outside.

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<sup>22</sup> The acronym SANU derives from the Serbian Srpska Akademija Nauka i Umetnosti, meaning Serbian Academy of Sciences and Arts.

Milošević, interrupting the meeting, went outside to see what was happening, and this was when he uttered the infamous phrase “you will not be beaten again” (BBC, 1995). The heated reaction of the Serbian media afterwards turned Milošević from a communist bureaucrat into a hero ready to defend the Serbian rights.

Milošević’s alignment with the Serbs was a clear breach of Yugoslav brotherhood and unity. This upset both Yugoslav leaders and also the police, whose authority had been publicly undermined by a politician (Branson and Doder, 1999). Nevertheless, Milošević was determined to continue his ascent to power. Later the same year, he orchestrated Stambolić’s removal from the presidency and in less than two years he occupied the post himself. Milošević’s rise to the presidency of Serbia signified a new era for the Kosovo Albanians. Kosovo’s autonomy was abolished one year later, introducing a time of mistreatment and oppression of the Albanian population (I.I.C.K., 2000). The next two chapters will present in detail Milošević’s policy of oppression in Kosovo, as well as Kosovars reaction to this oppression, demonstrating how the way the Kosovars reacted to Milošević’s misrule shaped the outcome of their attempts to secede.

### *Conclusion*

The purpose of this chapter was to provide a brief overview of the depth of Kosovo’s conflict. The aim was to show the longevity of the circle of domination and suppression between Serbs and Albanians, beginning with the end of the Balkan wars, when Serbs ruled over Kosovo and continuing with the Second World War when the control passed to the Albanians. After the inclusion of Kosovo in Yugoslavia it was again the Serbs’ turn to dominate the Albanians until 1966 when Ranković was removed from the secret police and the vice presidency of Yugoslavia. After the 1974 constitutional amendment it was the Serbs who declared



themselves oppressed by the Albanian majority in Kosovo. Following Tito's death, with the fading of the idea of Brotherhood and Unity and the rise of nationalism, previous frustrations reached the surface by both sides. The students' demonstrations of 1981 shook Yugoslavia to such an extent that many would claim afterwards that the end of Yugoslavia started with Kosovo. Throughout the 1980s the Serbian media presented an exaggerated version of events in Kosovo, intensifying the Serbian feelings of victimisation, adding further to the already emerging nationalism.

When finally the situation in the whole Yugoslavia erupted in 1991, Kosovo declared independence along with the seceding Yugoslav republics. However, its declaration of independence was deliberately neglected by the international community and Kosovo remained a Serbian internal matter. The next chapter will examine why Kosovo's first attempt to secede failed. It will be followed by Chapter Six exploring the events from 1991 to 1999 that turned Kosovo from a Serbian internal matter in 1991 to a major international issue that triggered the 1999 NATO intervention. Chapter Seven will then evaluate Kosovo's position under the UN-led international administration, established after the end of the NATO air-offensive to provide interim governance on Kosovo until a settlement on its status has been reached. Chapter Seven will evaluate the international administration's structure, functioning and efficiency. It will also examine how events such as the 2004 riots against the Serbs led to the Vienna negotiations and the Ahtisaari plan, proposing Kosovo's supervised independence. The last of the empirical chapters, Chapter Eight will assess Kosovo's course after it unilaterally declared independence in 2008. Finally, the thesis will end by reflecting back on the events that took place since 1991 and turned Kosovo's first unsuccessful attempt to secede in 1991 to a more successful one in 2008, answering the main question of the thesis: why did Kosovo's secession succeed.

## **CHAPTER FIVE**

### **KOSOVO'S FIRST UNSUCCESSFUL ATTEMPT TO SECEDE**

#### *Introduction*

This chapter explores the reasons why Kosovo's first attempt to secede in 1991 failed. This first attempt stands in sharp contrast to the subsequent unilateral secession of 2008 which led to the creation of a still contested, but gradually increasingly consolidated state.

This chapter argues that the 1991 declaration of independence failed primarily because of the lack of international recognition, and seeks to discover the reasons behind this deliberate neglect the international community showed to Kosovo's demands. Although the thesis claims that a seceding entity has also to create an internally viable state for its secession to be successful, this chapter focuses only on the international dimension of Kosovo's failure. This is because Kosovo, after the 1991 declaration of independence did not have the opportunity to demonstrate internal viability. Admittedly, the parallel Kosovar society showed a significant level of functionality, however, as it will be shown later, Kosovars were largely able to run their parallel system only because the Serbian apparatus allowed them to do so. The reason why Kosovo failed to establish a viable state, therefore, is quite straightforward; the overwhelming power of Serbia meant that it did not have the chance. On the contrary, the question of why Kosovo failed to receive international acceptance at a time when the former Yugoslavia was falling apart deserves closer scrutiny.

In order to address this issue, the chapter first examines how Kosovo's status as an autonomous province of Serbia affected the outcome of its first declaration of independence. This section will examine the importance of the distinction between the status of autonomous

province and the status of republic, as demonstrated by the Badinter Commission's opinions. The latter provided the blueprint for the international community regarding the acceptance or rejection of the demands for statehood raised by some of the former Yugoslav units. Furthermore, this chapter will discuss how the revocation of Kosovo's autonomy in 1989 turned Kosovo into a Serbian internal matter further impeding its prospects for international acceptance.

Second, this chapter explores how the peaceful situation in Kosovo in contrast to the escalating violence in the northern republics undermined the success of its attempt. Due to absence of armed conflict Kosovo did not seem to be considered as a destabilising factor, turning it to an issue of minor importance for Europe at that time. This section shows how the emerging Yugoslav wars absorbed all international interest, hindering, instead of facilitating, Kosovo's independence in 1991.

Finally, this chapter explores how the dramatic changes in the international system had an effect on the outcome of Kosovo's first declaration of independence. After the end of the Cold War Yugoslavia lost its strategic importance for the US; thus when the crisis in the Balkans erupted the issue was left to an unprepared Europe to manage. This section explores how the lack of adequate mechanisms combined with inexperience and inconsistent decisions led to the deliberate neglect of Kosovo's claims for independence and recognition.

#### *Kosovo declares independence for the first time*

In 1989 Kosovo's Assembly voted for the revocation of its autonomous status. This was resolved under unusual circumstances: federal forces had encircled the parliament, where its members under the threat of arms decided the abolition of Kosovo's autonomy (Perritt, 2010, Malcolm, 1999).

Following the change in Kosovo's status new onerous laws regulating most aspects of everyday life had been introduced in the province. Albanians had been sacked from state institutions and enterprises and been replaced by Serbian personnel (Malcolm, 1999), while new property laws had been imposed hindering Albanians from buying land or houses previously owned by Serbs (Judah, 2000c). Furthermore, Albanian-language education was banned; Serbian curricula were introduced in schools, while Prishtina University was turned into an exclusively Serbian institution (Kostovicova, 2005, Clark, 2000). What is more, Albanian press, television and radio were closed down, as well as most cultural institutions (I.I.C.K., 2000, Judah, 2000c). Finally, Albanians were dismissed from the Kosovo security forces and replaced by Serbs, thus turning the Kosovo police force into an exclusively Serbian unit. The police now, through harassment, arbitrary arrests, the use of violence and even murder, subdued Albanians in a physical and psychological state of continuous suppression and fear (Ramet, 1996, Cohen, 1994).

What the abolition of autonomy also meant is that the province was stripped of all its armed forces. Kosovo as an autonomous province had the right to have its own territorial defence forces in a similar way as the republics (Interview 21, Peci). In Kosovo, however, the territorial defence forces were in a process of disarmament, which had been completed when Kosovo's autonomy was abolished. Kosovo, hence, was overwhelmed by Serbian power, and did not have the military capacity to oppose it (Interview 2, Miljanić, Interview 3, Qehaja).

Having knowledge of the situation, the Kosovar leaders gathered secretly in Kačanik in 1990 and declared the creation of the Republic of Kosovo. This was not yet a declaration of independence, but a call for a republic within the still existent Yugoslavia. It was only later in 1991, after the Slovenian and Croatian secessions were proclaimed, that Kosovar deputies announced the independence of the Republic of Kosovo (I.I.C.K., 2000, Judah, 2000c). In

addition, a referendum was held whose results clearly showed that the vast majority of the Kosovar population was in favour of independence (Abazi, 2008, Guzina, 2003, I.I.C.K., 2000).

This referendum and declaration of independence, however, did not receive the same international acceptance as the declarations of independence of Slovenia and Croatia. The latter were recognised within a year by the majority of the international community and by May 1992 they were accepted into the United Nations, while Kosovo was recognised only by Albania (*inter alia*, Vrieze, 1995, Phillips, 1996, Clark, 2000).

#### *Why Kosovo's demands were deliberately ignored*

There is a variety of possible reasons explaining Kosovo's continuous and deliberate ignoring by the international community. First, by the time Kosovo declared independence the war in the north of Yugoslavia had already begun. This, instead of benefiting Kosovo's cause, proved to be a drawback for its success. The wars in Slovenia and Croatia, with their spill-over into Bosnia monopolised the interest of the international community.<sup>23</sup> A war on the European continent in such proximity to the European Community (EC) member states created waves of refugees in European capitals and produced fears about the social and economic consequences it would create. Hence, the primary purpose of the European powers was the stabilisation of the region as soon as possible (Clark, 2000).

Furthermore, the presence of Serb populations in Croatia and Bosnia escalated the already deteriorating situation in the northern borders of Yugoslavia through ever-growing nationalism. When eventually the war erupted these were amongst the regions where the war raged most violently. The stabilisation of the northern front, therefore, seemed to be the key

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<sup>23</sup> For the Yugoslav wars: (Misha (1996), Denitch (1994), Pavković (2000), Silber and Little (1995), Stokes et al. (1996), Liotta (2001), Glaurdić (2011).

for the stabilisation of the region. Thus, there was a policy of appeasement towards Serbia and its leader Slobodan Milošević, trying to get him to the negotiating table with the achievement of peace as final goal.

Milošević, being then the most powerful man in Serbia and the main interlocutor in the negotiations, had insisted that Kosovo was a Serbian internal matter (*inter alia*, Interview 15, Kursani, Interview 6, UN Official). As such it was regarded as an issue that was completely under Serbia's authority to settle (*inter alia*, Interviews 5, 7, 12, EU Diplomats). Thus, should any state have recognised the independence of Kosovo, it would have been considered as a direct interference into Serbian affairs. Such an involvement "would be unthinkable at a time when the right of the state was more important than the human rights" (Interview 14, EU Diplomat). Besides, with Milošević being the principal Serbian representative such an action would possibly disengage him from the peace process, minimising the possibility for a solution to be found (Ker-Lindsay, 2009a). Hence, the recognition of an independent Kosovo not only would not add anything to the efforts towards stabilisation, but on the contrary it was considered quite possible to lead to further destabilisation (Phillips, 1996).

What is more, Kosovo was not considered as an important and urgent factor of instability, as it remained peaceful during the first half of the decade. Thus, its recognition would possibly pose an additional risk for the regional instability that the international community was not prepared to meet. The absence of violence made Kosovars' demand for independence irrelevant for the international community whilst a terrible war was raging in other republics (Interview 3, Qehaja). Therefore, "the international community was not really prepared to deal with the Kosovo Albanians, at that time they didn't consider it to be of particular importance" (Interview 19, EULEX Official). As a result with the exception of the

“Christmas warning” in 1992 and its reiteration two months later little effort had been made to restrain Serbia’s oppression in Kosovo.<sup>24</sup>

Another sign of deliberate neglect by the international community and simultaneously one of the reasons why its first declaration of independence failed was the concluding opinions of the Badinter Commission. In 1991, the Arbitration Commission of the Conference on Yugoslavia, widely known as the Badinter Commission, was established with the aim to provide answers on major legal questions raised by the Yugoslav wars. The Badinter Commission resolved that Yugoslavia was in a process of dissolution and that its successor states would be its six republics, respecting the “existing frontiers at the time of independence (*uti possidetis juris*)” (Conference on Yugoslavia, 1992: 1498). When the Commission was asked to provide an opinion regarding whether the Serbs in Croatia and Bosnia had the right to self-determination as one of the constituent peoples of Yugoslavia, the Commission repeated the adherence to the *uti possidetis* principle and the inviolability of first-order internal boundaries at the time of independence (Conference on Yugoslavia, 1992, Opinion No 2). It added also that minorities inside the republics should be recognised and their rights should be respected according to the norms of international law.

The Badinter Commission did not address the issue of Kosovo, demonstrating its apparent insignificance at that time. Nonetheless, it can be derived from the Commission’s opinion that Kosovo by not being a republic had no right to be regarded as one of the successor states of Yugoslavia (Hilpold, 2009, Ker-Lindsay, 2009a). In addition, by the time the Commission was founded Milošević had already abolished the autonomous status of

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<sup>24</sup> US President George H.W. Bush warned Slobodan Milosevic on December 25th, 1992 that “in the event of conflict in Kosovo caused by Serbian action, the United States will be prepared to employ military force against the Serbians in Kosovo and in Serbia proper.” In February 1993 Secretary of State of the new elected Clinton administration Warren Christopher reaffirmed the US commitment by stating “we remain prepared to respond against the Serbians in the event of a conflict in Kosovo caused by Serbian action” (The New York Times Archives, 1999).

Kosovo, depriving Kosovo of its previously elevated status as a virtual republic. Hence, Kosovo could not even remotely be considered to be entitled to secession since it was neither a republic so as to be regarded as successor state according to the Badinter Commission nor one of the constituent people of Yugoslavia to seek secession according to domestic constitutional law.

Still, Kosovo's previous peculiar status within the federation made Kosovo's claim different from the claim of Serbs in Croatia and Bosnia. The Serbs in those regions had never had the status Kosovans enjoyed in the federal institutions of Yugoslavia (Caspersen, 2008). What is more, the Badinter Commission requested recognition of the minorities' distinct identity within the Republics and respect of their rights, something that Serbia had already failed to honour. Hence, the Kosovo problem, although not addressed, was far from being that simple and in light of subsequent events far from being resolved.

On top of everything else, in 1991 the international system was amidst a transformational and transitional phase. The Cold War that regulated the global state of affairs for almost half a century was over. The initial feelings of euphoria and relief that the end of the Cold War produced were followed by fears for the future (Evera, 1991). Many questions concerning European security emerged; it was unclear whether the long peace in Europe would outlast the Cold War or whether the united Germany would be a threat once again. It was also uncertain whether the former communist states of Eastern Europe would achieve a successful transition to democracy, while the Soviet Union was dissolved into fifteen successor states. One of the most critical concerns the dissolution of USSR caused for the West was the dispersal of its nuclear arsenal to some of its successor states. Suddenly states such as Belarus, Ukraine and Kazakhstan that "were in a complete state of political, economic, and military flux" found themselves possessing significant numbers of nuclear



facilities and weaponry (Goodby, 1993: 704). The US focus was thus redirected to ensure that nuclear and other weapons of mass destruction, materials and technology would be prevented from proliferating further either to non-state actors or other states (Doder, 1993, Goodby, 1993, Interview 21, Peci).

With the end of the Cold War, Yugoslavia lost its strategic importance for the US (Woodward, 2000, Doder, 1993, Ahrens, 2007). The US therefore turned its attention to settling open issues in the Middle East and Russia and left the European Community to deal with the crises in the Balkans. The EC responded willingly to this role. Perhaps it was considered as an opportunity for the EC to demonstrate its readiness for the imminent Maastricht Treaty and its plan to create a more integrated European Union (Guicherd, 1993). In view of that, Luxembourg's Foreign Minister, Jacques Poos declared that Europe “had a special responsibility to act in a crisis that threatened European stability” adding also that “this is the hour of Europe [...] it is not the hour of the Americans” (Riding, 1991).

However, despite grandiose statements, the EC proved to be unready to deal with problems as complicated as the conflicts in the Balkans. To begin with, the EC, later EU, lacked the experience to deal with a crisis of such scale as a coherent entity (Ahrens, 2007). It was observed that Europe was largely divided, with each country acting according to its own interests as formulated by economic, political, geopolitical reasons (Glaurdić, 2011). Notably, in essence Germany and Italy sided with the breakaway republics, while France, the United Kingdom, Spain and Greece seemed to be more eager to support the unity of Yugoslavia (Steinberg, 1992).

Europe's division became more evident with Germany's early recognition of Slovenia and Croatia. This was one of the actions that both undermined the EC's uniform approach and also weakened the EC's trustworthiness as an objective mediator. The same can be also

argued with regards to the decision not to recognise the Former Yugoslav Republic of Macedonia immediately along with Croatia and Slovenia because of Greek objections,<sup>25</sup> although it largely fulfilled the Badinter Commission's criteria. What further undermined the EC's coherence was the pro-Serbian inclination of France, the United Kingdom and Greece, which obstructed the timely and effective enforcement of measures against it. Another reason for the delayed and to some extent futile adoption of measures against Belgrade was that European countries were unwilling to alienate Russia, a traditional ally of Serbia. Finally, states in proximity or states which were significant recipients of refugees such as Italy, Greece and Germany dealt with the crisis accordingly, seeking also to minimise its impact on their own countries (Guicherd, 1993).

Moreover, the EC/EU lacked the necessary mechanisms to handle such crises. International concepts of preventive deployment of military force or responsibility to protect were not yet developed as to be applied on Yugoslavia (Ahrens, 2007). Various attempts had been made to stabilise the situation and create conditions for peace, including series of peace conferences, deployment of unarmed missions to report on the human rights situation on the ground or to observe compliance with agreed measures. Even then, however, the implementation of those actions had often been delayed and by the time they had been introduced were no longer relevant (Guicherd, 1993). Thus, all in all, the international

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<sup>25</sup> Greece refused to recognise the FYR Macedonia under its constitutional name -Republic of Macedonia- initiating a still ongoing name dispute. Greece considers the use of the term Macedonia without any geographical or other qualifier as usurpation of Greek history and historical symbols mostly referring to the Vergina Sun and Alexander the Great. In addition Macedonia as geographical region of the Balkans is divided among four states -Greece, Bulgaria, FYR Macedonia and Albania- and thus the use of the name Macedonia exclusively by one of those states is considered to entail expansionist claims over the other three countries. Finally, the dispute is exacerbated by the fact that approximately two and half million ethnic Greeks living in the Greek part of Macedonia identify themselves as Macedonians. Hence, the use of the name Macedonia and the ethnic attribute Macedonians without any other qualifier, e.g. Slav Macedonians, is regarded by the Greek Macedonians as rejection of their cultural identity.

reaction was only rarely preventive and most of the time it followed, rather than led developments on the ground (Ahrens, 2007).

The issue of Kosovo could have been a successful example of preventive action. Some of the negotiators, realising that Kosovo was a part of the crisis directly connected with the stability of the region had proposed and insisted on Kosovo being included in the peace processes (Interview 23, Non-EU Diplomat). Unfortunately, the EC/EU was unable to deal with more than one conflict at the time. A lack of experience and consistency combined with personnel and budget fatigue and the desire to settle or conceal the problems as soon as possible made the Kosovo issue one too much to deal with (Ahrens, 2007). Hence, with so many open matters requiring urgent settlement Kosovo was not a priority for the international community and it was excluded from the procedures until it exploded in the second half of the decade.

### *Conclusion*

This chapter investigated the reasons behind Kosovo's unsuccessful attempt to secede in 1991. It concluded that its first attempt for independence failed largely because of the lack of violence. Due to the absence of armed conflict and potential of spill-over of war, Kosovo was not considered to be a major factor of instability. Hence, it was not an issue as urgent to settle as it was with the other republics where a violent war was raging. This chapter revealed that the Yugoslav wars had absorbed the time and energy of the European powers, having as chief priority the stabilisation of the region as soon as possible. Kosovo, by neither being at war, nor geographically in such close proximity to the European powers, was not on their priority list.

Considering also that Milošević had insisted that Kosovo was a Serbian internal matter, its international recognition would possibly disengage the Serbian leader from the peace process, and therefore, carried a risk. Hence, as Kosovo was both peaceful and was regarded as an exclusively Serbian issue, its recognition not only would not have added to the European Community's efforts for stabilisation of the region, but it would have further deteriorated the situation by reducing the possibilities for a settlement.

The international community's position of considering Kosovo as an internal matter of a sovereign state and thus an issue they would be not be in position to settle, was further strengthened by the results of the Badinter Commission. The latter had concluded that Yugoslavia was a state in dissolution and only the constituent republics were to be recognised as successor states. Hence, Kosovo as an autonomous province in Serbia would not be qualified for recognition, adding a further reason to Kosovo's first unsuccessful attempt to secede.

Moreover, in 1991 major changes were taking place in the international system. With the end of the Cold War Yugoslavia lost its strategic importance and the US focus redirected towards its renewed relations with Moscow and the developments in the Middle East. Therefore, Europe had been called to deal with the crises in the Balkans. Europe possessed neither the experience nor adequate conflict management mechanisms and was overwhelmed by the complexity and magnitude of the Balkan wars. In addition, it was divided, with each member supporting actions that promoted individual interests. The European Community, being unable to deal with all issues at once, set the establishment of peace and stability in the region as the leading goal for action. Thus, again Kosovo by not being engaged in armed conflict, was not believed to be a cause of instability and hence not imperative to be addressed.

Finally, the argument that Kosovar demands were ignored because of the absence of armed conflict is further strengthened in light of subsequent events. When the Kosovo Liberation Army emerged early in 1996, their actions provoked Serbian retaliation escalating the level of violence, which in turn the international community finally noticed. Hence, as an interviewee characteristically mentioned “it had to take the lives of people to become a successful case” (Interview 18, Civil Society Activist) demonstrating the predominant role violence played in Kosovo’s quest for independence.

Thus, Kosovo’s first attempt to secede failed because of reasons being found at four different levels: at the local level, being Kosovo, at the state level, Serbia, at the regional level, thus, the Balkans and at the global level. Locally Kosovo was at peace, thus, due to lack of violence was not considered to be a factor of instability. At the state level, Milošević was one of the most powerful leaders of the former Yugoslav states and a key to regional stability. The international community prioritised an agreement with him over supporting Kosovo’s independence and risking disengaging Serbia from the peace processes for the termination of the Yugoslav wars. Then at the regional level the Yugoslav wars had begun. Therefore, again the priority was to establish peace in the parts of Yugoslavia that were at war instead of endangering opening a new front in Kosovo. Finally, at the global level the end of the Cold War and the loss of Yugoslavia’s strategic interest for the US, called for Europe to deal with the Yugoslav wars. The EC/EU, unready and inexperienced, was unable to include the settlement of the issue of Kosovo on the agenda. The next chapter will reveal how changes at all four levels turned Kosovo from a Serbian internal matter to an international issue of such importance that triggered an unauthorised NATO military intervention against Serbia, constituting the first step towards Kosovo’s successful secession.

## **CHAPTER SIX**

### **THE YEARS 1991-1999**

#### *Introduction*

In 1991, when Kosovo declared independence for the first time it was treated as an issue of minor importance and an internal Serbian matter. In contrast, by 1999 Kosovo had gained such importance that triggered the military intervention from NATO without the consent of the UN Security Council. Although the purpose of the NATO intervention was not the creation of an independent Kosovo, it played a catalytic role towards this end. This chapter, using a process tracing methodology, will analyse the events from 1991 to 1999 that changed the dynamic between Kosovo and Serbia and turned Kosovo from a purely internal matter into a global issue that mobilised the Western alliance to conduct a 78 days air-offensive against a sovereign state.

This chapter will examine a number of factors that may have had an effect on Kosovo's second, and far more successful, attempt to secede. To begin with, this section will look into Rugova's non-violent approach and how it influenced following events. Although Rugova's strategy failed to achieve independence, it certainly produced a number of positive outcomes, legitimising Kosovo's claims and making known the human rights violations that Serbia was committing in Kosovo. Even Rugova's failure to bring Kosovo's demands to the Dayton negotiation table is regarded in hindsight as positive for Kosovo's future secession, as Kosovo could barely have achieved independence at Dayton. In addition, Kosovo's exclusion from the Dayton accords led to the emergence of the Kosovo Liberation Army (Ushtria Çlirimtare e Kosovës, UÇK), a radical movement that pursued independence by violent means. The escalation of violence attracted the attention of the international community,

leading eventually to NATO's air campaign and the consequent de facto detachment from Serbia.

Another aspect that will be examined is how Milošević's actions had an effect on the turn of events. In the early 1990s Milošević was the main representative of the Serbian side and was seen by the international community as the pioneer of the Dayton peace agreement. By the second half of the decade, however, he was perceived as an untrustworthy partner. This change was largely due to the revelation of the extent of the atrocities Serbian forces had committed during the Yugoslav wars and the strongly suspected involvement of Milošević in those actions. Frustration and distrust against Milošević was also exacerbated by his erratic and dismissive behaviour towards international representatives. This distrust, combined with the previous experiences from the Yugoslav wars and the exaggerated retaliation of the Serbian forces against KLA attacks in Kosovo both reminded the international community of their shortcomings in Bosnia and also provided them with the moral high ground to intervene actively in Kosovo. Hence, this chapter will reveal how Milošević's leadership, ironically, positively affected the outcome of Kosovo's attempt to secede.

Lastly, this chapter will examine the significance of the Rambouillet negotiations and the impact of NATO's military intervention on the secession of Kosovo. The failure of the Rambouillet accords led to the NATO bombardment of the Federal Republic of Yugoslavia, including Kosovo. The NATO intervention, followed by the establishment of the UN administration in Kosovo, was the first step towards the creation of an independent Kosovo. This chapter will not analyse in length the background or the legitimacy of NATO's involvement, as there is already a significant amount of detailed literature on those issues.<sup>26</sup> Instead, this chapter will focus on the aftermath of NATO's bombing and how it affected

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<sup>26</sup> For example Webber (2009), Booth (1999), Roberts (1999), Lambeth (2001), Greenwood (2000), Wheeler (2000a), Daalder and O'Hanlon (2004), Gowan (2000), Ignatieff (2001).

Kosovo's successful secession. This chapter will also examine certain provisions of the Rambouillet accords, analysing their effect on Kosovo's successful secession.

### *Rugova's non-violent resistance*

Since the abolition of the autonomous status of the province, the Kosovo Albanians established a parallel society within the Serbian state. The leader of the self-proclaimed Republic of Kosovo was the President Ibrahim Rugova and his party, the Democratic League of Kosovo (LDK, Lidhja Demokratike e Kosovës). Rugova imposed a strategy of non-violent resistance against the Serbian oppression, convincing the Kosovo Albanians that this would successfully lead to the fulfilment of their demands and the independence of Kosovo.

However, Rugova's peaceful approach failed to produce the expected results. Kosovo demands were deliberately ignored by the international community, while Kosovo representatives were often invited only as observers to the various peace negotiations procedures aiming to settle the Yugoslav wars (Evangelista, 2015).

Even so, in hindsight it is observed that Rugova's peaceful approach had a significant impact on the processes that led to Kosovo's successful secession. The adherence to non-violent resistance against the human rights violations committed by Serbia and its ruler Milošević in Kosovo legitimised Kosovo's demands for independence. When eventually the international community noticed Kosovo claims in the second half of the decade, the Kosovo Albanians were presented by the international media as helpless victims that needed protection from their oppressors. Mobilising and using the support of public opinion, NATO found the moral justification to conduct an air campaign against a sovereign state without the consent of the UN Security Council. Finally, when Kosovo declared independence for the second time in 2008 some of the recognising states argued that Kosovo's secession was the



only viable solution for Kosovo. It was claimed that due to the grave human rights violations Kosovo Albanians have suffered under Serbian rule in the past, a return to Belgrade's rule would be impossible. Thus, although Rugova's non-violent approach failed to present immediate successful results, it created the conditions for the legitimisation of Kosovo's cause and thus was an important step towards Kosovo's successful secession in 2008.

Rugova's strategy for Kosovo was a threefold one. As Edita Tahiri, the LDK Foreign Minister at the time, said in an interview "first, we wanted to ensure cultural survival and prevent ethnic cleansing. Second, we wanted to create a parallel system and build an independent democratic state. Third, we wanted to win international support for independence" (Tahiri, cited in Stephan, 2006: 72).

In order to ensure cultural survival and prevent ethnic cleansing Rugova knew that any violent revolt should be prevented (Malcolm, 1999). Seeing the events in other parts of Yugoslavia and especially in Bosnia, Rugova expected that the Serbs would engage in mass expulsion or extermination of the Albanian population when a pretext was given (Dannreuther, 2001). Hence, any action that could provoke Serbian retaliation was to be avoided. Allegedly, "whenever a violent episode involving Serbian police occurred, members of the Kosovar Youth Parliament and the Council for the Defence of Human Rights would go to the scene to document the incident and explain to fellow Albanians the rationale behind maintaining non-violent discipline" (Stephan, 2006: 73). This commitment to non-violence brought the plaudits of the international community. Rugova succeeded in placing Kosovo on the international agenda and being recognised as the leader of Kosovo's Albanians (Interview 18, Civil Society Activist).

However, the international community endorsing a peaceful approach was one matter and supporting Kosovo's independence was quite another. Although "Rugova was very

popular internationally he wasn't taken as seriously [as other leaders] who were more successful in lobbying for their goals" and thus "the Albanian cause was not as strongly understood or supported" (Interview 7, EU Diplomat). Hence, the international community, although sympathetic, had repeatedly affirmed that further secessionism would not be encouraged and thus adhered to its position that an independent Kosovo would not be supported (Caplan, 1998, Cottey, 2009).

Rugova's government was successful in its establishment of a parallel society. Kosovo Albanians rejected every association with Serbian institutions, boycotted Serbian elections (Vrieze, 1995), and certainly avoided in every way fulfilling their mandatory military service in the Yugoslav and subsequently Serbian army<sup>27</sup> (Interview 18, Civil Society Activist). In order to fill the gap of services this boycott had produced, the LDK government created parallel structures extending to most aspects of everyday life, including education, health care, transportation, and the market and banking system (Mertus, 2009, I.I.C.K., 2000). This parallel structure, running under the oppression of the Serbian apparatus, was fairly well-organised and well-functioning. The effectiveness of the parallel society in a wide range of competencies demonstrated a significant level of administrative capacities, showing in a way that Kosovo had the capability to create a viable state.

Arguably the greatest success of the parallel state was the education system (Kostovicova, 1999). When, in 1990, the Serbian administration banned teaching in Albanian and demanded that schools introduce the Serbian curriculum, most of the Albanian teachers were removed and replaced by Serbs. Similarly, the University of Prishtina became fully Serbian and tutors were instructed to lecture in Serbian (Bellamy, 2000a). The Albanians

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<sup>27</sup> Kosovo Albanians avoided joining the army out of fear that they would have been killed by Serbian soldiers before even going to the war (Interview 18, Civil Society Activist). However, there is also the argument that this was a deliberate action against Serbia, strengthened by reports of Albanians defecting from the Serbian army to join the Croatian forces (Judah, 2000c).

rejected and opposed those measures by creating a parallel system of education in which the dismissed teachers delivered classes, right up to university courses, in private houses (Interview 4, Kosovar Press Editor).

Another aspect that the parallel society covered was the health care system. Allegedly in the early 1990s there were repeatedly incidents of poisoning in the schools through the ventilation system (Interview 18, Civil Society Activist). Although it still remains uncertain whether the poisoning occurred or not, the mass hysteria that was created filled Albanians with suspicion towards Serbian health care facilities (Mertus, 1999). As a result, the Mother Teresa Society was founded, designed to provide humanitarian assistance and at least basic health care services for Albanians who were reluctant to visit the Serb-dominated hospitals (I.I.C.K., 2000, Clark, 2000). Nonetheless, neither the Mother Teresa Society nor other clinics established at private houses were able to deal with complicated incidents where more sophisticated equipment was required. Thus, inevitably Albanians had to use state hospitals in those cases, largely explaining why Albanian doctors who kept their jobs in Serbian facilities were not rejected by wider society (Judah, 2000c).

Furthermore, some cultural organisations such as the Kosovar Academy of Arts and Sciences or the Institute of Albanology kept operating for some time even without funding. Similarly, the Institute of History and the Institute of Language and Literature continued to function and to publish, though less often than they used to. Some sports events were also organised, and finally after the closing of Radio-Television Prishtina and the daily newspaper Rilindja, Kosovars turned the farmers' magazine Bujku and the youth magazine Zëri i Rinisë into a daily and weekly newspaper, respectively (Pula, 2004).

Finally, after the mass dismissal from state institutions, unemployed Albanians sought alternative forms of income, mainly starting their own private businesses. Along with restaurants, shops and tourist agencies,

the fired Albanian workers, ex-civil servants and former policemen registered several hundred taxis, vans, lorries and minibuses (twice as many began operating without registration) taking over city and intercity lines. Their initiative made transport so cheap and efficient that the main state companies faced bankruptcy and after six months, Belgrade banned alternative transport and taxis (Maliqi cited in I.I.C.K., 2000: 47).

Thus, the parallel society displayed a considerable level of efficiency in several areas, including education, health care, transportation and culture, with those being services often provided by state institutions. Thus, although Kosovo's attempt to create an independent state was unsuccessful because of the lack of international recognition, the successful parallel structure showed that Kosovo effectively had state capabilities and the potential to establish a functioning state in the future.

All these parallel structures and private initiatives required considerable financial backing. In order to raise funds to cover those needs, the LDK imposed taxes on all employed Kosovar citizens and the diaspora. Although the amount expected to be offered varied according to type of occupation, the rate was generally set at 3% of the income (Babuna, 2000). Non-compliance was very low, with the majority of Kosovars contributing according to their capacities, and the diaspora often donating more than the minimum required (I.I.C.K., 2000, Interview 18, Civil Society Activist).

Despite the success of the parallel system, it still operated under the supervision and with the tolerance of the Serbian state, which allowed the parallel structure to continue without committing to actions crushing it. However, reports publicised by international organisations illustrated the grim situation that Kosovo was in, mentioning several incidents of violence against Albanians, describing also a regime of impunity for the perpetrators of such actions (HRW, 1994). Arbitrary raids into houses by Serbian police in the middle of the night with the pretext of searching for weapons were also reported as a frequent phenomenon. Those raids, accompanied by the destruction of property, apart from terrorising, were also humiliating with use of excessive violence against any member of the household regardless of age or gender often in front of the family (Amnesty International, 1994).

Even under these circumstances the Kosovo Albanians adhered to non-violent resistance, and out of fear and necessity two completely segregated, parallel societies were created (Ramet, 1996). In the times of the former Yugoslavia the population reportedly lived in ethnically mixed neighbourhoods and memories of good neighbouring relations between the two ethnic groups are often mentioned today. However in the early 1990s the population was divided according to ethnicity. In rural areas ethnically homogenous neighbourhoods were created, while in larger urban areas, where physical separation was more difficult, division took other forms. For instance the same street would not be used by both Albanians and Serbs or there were specific markets, cafés and bars for each ethnic group (Interview 10, NGO Activist, Interview 18, Civil Society Activist).

Thus, the situation in Kosovo was a bizarre one in the early years of the 1990s. On the one hand, the Kosovo Albanians were allowed, amidst human rights violations, harassment, suppression or the constant threat of those, to continue their parallel society. On the other hand, Kosovo Albanians stoically accepted this subjugation, being convinced by Rugova that

this non-violent approach would lead to independence (Bekaj, 2010). The next section will show that Rugova's non-violent method failed to secure a place at the negotiating table at Dayton, where the peace talks for the termination of the Yugoslav wars took place. It will also demonstrate that only after the KLA emerged and level of violence in Kosovo escalated the international community noticed and took actions for the settlement of the issue of Kosovo (Evangelista, 2015). However, these years of peaceful resistance had a significant impact on the procedures that led eventually to Kosovo's successful secession.

While Milošević was given significant international respect in the early 1990s, with the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the revelation of war crimes committed in Bosnia, he not only lost his legitimacy, but the Kosovars were portrayed as innocent victims (Interview 6, UN Official). The stark contrast the media presented between a ruthless Milošević and the suppressed civilian population in Kosovo provoked the outcry of international public opinion, sidelining in favour of the protection of Kosovo Albanians by all means, including a military intervention if necessary.

Thus, the continuous and systematic human rights violations in Kosovo provided the necessary pretext for the international community to intervene, as it will be discussed later in more detail. These human rights violations constituted a focal point of NATO's rhetoric aiming to promote and justify its military intervention in 1999 (Clinton, 1999). Similarly, the human rights violations also provided a justification for the recognition of Kosovo as an independent state. Under the emerging norm of remedial secession, some of the recognising states have supported that Kosovo had the right to secede because of the grave human rights violations the Kosovar people had suffered (ICJ, 2010a §82). It was also argued that because of the extent and the severity of those violations, no other solution was available short of independence (Interview 11, Malazogu, Interview 14, EU Diplomat). Hence, although the

approach of peaceful resistance failed to lead to Kosovo's secession, it was a beneficial factor for Kosovo's independence, with the human rights abuses and Albanians' stoic reaction to have legitimised Kosovo's cause, providing the moral justification for Kosovo's future secession.

Finally, the human rights violations and the commitment to the creation and preservation of the parallel society strengthened the bonds between the members of the Albanian society. The Albanians had always been an introverted, almost impermeable society, with very strong family ties. All important matters were discussed and solved within the extended family, in the presence of the elders of the community (Sörensen, 2009, Dragnich and Todorovich, 1984). In the 1990s the segregation and the human rights violations strengthened those relationships even further, increasing their solidarity and commitment to a common cause, regardless, as it will be shown later, whether this was peaceful resistance or armed conflict. This bond of solidarity sustained their parallel system for almost a decade and later played a crucial role both for the conduct of guerrilla warfare on the ground and for the diaspora's successful international lobbying, with all these factors combined contributing to Kosovo's eventual successful secession.

The next section will analyse the reasons behind Kosovars' turn from Rugova's peaceful resistance to KLA's violent approach. It will discuss how Rugova's exclusion at Dayton affected this change, leading the Kosovars to the realisation that their non-violent approach would not lead them to independence. The next section will present how and why the KLA was created and expanded and also how the KLA's emergence led to a change of stance of the international community, moving thus Kosovo closer to secession.

### *The KLA emerges*

The emergence of the KLA and the turn of the Kosovo Albanians to a violent approach to pursue their demands for independence was a significant factor for Kosovo's successful secession. The escalation of violence in Kosovo shortly after the end of the Yugoslav wars threatened to destabilise the fragile peace in the region. The international community, having the experience of the Yugoslav wars and the memories of its shortcomings in Bosnia still fresh, as will be discussed in detail in the next section, decided to intervene more actively this time. This section shows that the primary contribution of the KLA in Kosovo's successful secession is that through the emergence and escalation of violence, the international community finally noticed and addressed the Kosovo issue, intervening in its favour.

During the years of the Yugoslav wars there have been repeated declarations and actions from the international community affirming that further secessionism in the Balkans would not be supported, and that Kosovo needed to be settled as an internal matter of Serbia. According to the opinions of the Arbitration Commission of the Conference of Yugoslavia, Kosovo was not entitled to independent statehood, and in the London Conference in 1992 the Kosovar delegation was treated as observers (Rogel, 2003). Similarly, three years later in Dayton, where the main objective of the negotiations was to terminate the war in Bosnia, Kosovo was off the agenda (*inter alia*, Perritt, 2010, Dannreuther, 2001, Bellamy, 2002).

Given the constant rejections Kosovo had received since 1991, its exclusion from the Dayton accords should have been expected. Surprisingly however, the Kosovars were convinced by Rugova's four-year rhetoric that the international community would eventually take their concerns into account and sustained unfounded hopes that their problems would finally be addressed (Bekaj, 2010, Wheeler, 2000b). The fact that the international community



once again disregarded their claims shocked the Kosovo Albanians and led them to the realisation that peaceful resistance led nowhere (Guzina, 2003, O'Neill, 2002).

Thus, after Dayton, Rugova's non-violent approach was marginalised in favour of a more radical one (Wheeler, 2000b). The KLA emerged, an armed, guerrilla group, which initially pledged unification with Albania (Interview 4, Kosovar Press Editor, Interview 15, Kursani). The origins of the KLA can be traced back to the beginnings of the 1990s, when the Popular Movement for Kosovo (Lëvizja Popullore e Kosovës, LPK) was established and created the KLA as its army. The KLA, however, was initially a small, unorganised group, whose tactics were largely unpopular, as they provoked brutal acts of reprisal by the Serbian police against civilian population. At a time when the Kosovars, first, believed that the peaceful way of resistance was the key to independence, and second, were satisfied that they could live in peace when seeing the terror in Bosnia, KLA's violent actions received limited support (Interview 19, EULEX Official).

However, everything changed with Dayton and the international community's subsequent actions. The UN lifted the sanctions against the Federal Republic of Yugoslavia and the latter was formally recognised, including Kosovo (Kubo, 2010, I.I.C.K., 2000). At this point, any intention to exercise pressure on Serbia regarding Kosovo seemed to have evaporated. This was the turning point for Kosovars as they realised that "if there is not a fight sort of, then Kosovo would be forgotten" (Interview 11, Malazogu).

Thus, the military movement started to be more organised both inside and outside the borders of Kosovo. Once again, the role of the diaspora proved invaluable. Kosovo Albanians who promoted armed struggle and worked in the West, especially in Switzerland and Germany, had founded as early as in 1993 the "Homeland Calling Fund" aiming to raise money to support armed struggle (Kubo, 2010). It received limited contributions until 1996,

as the majority of the diaspora supported Rugova's fund for the maintenance of the parallel society. After 1996, however, the support largely shifted from Rugova's fund to the KLA's one. Nevertheless, raising funds although necessary was not sufficient, as an army also needs weaponry and recruits.

The problem of armaments was solved in 1997 when the economic and political institutions of neighbouring Albania virtually collapsed, leading the country into chaotic turmoil. Hundreds of thousands Albanians had invested in fraudulent pyramid banking schemes that became eventually unsustainable.<sup>28</sup> Their inevitable collapse led to extensive riots where approximately two thousand people were killed. The government was overthrown and the country descended into anarchy, with the army and police deserting their posts (Jarvis, 2000, Judah, 2000a). Army warehouses were looted and the black market was flooded with hundreds of thousands of arms and ammunition that the KLA hurried to purchase, effectively solving the problem of the lack of weaponry (Judah, 2000b, I.I.C.K., 2000, Kubo, 2010).

What is noteworthy, however, is that several actors operating in Kosovo reject the relationship between the collapse of the Albanian state structures and the development of the KLA, claiming that the acquisition of weapons had never actually been a significant obstacle. The predominant argument presented is that plenty of arms had been bought from officials of the Yugoslav army itself (Interview 4, Kosova Press Editor, Interview 6, UN Official). In several instances smuggling and illegal trading were hailed as the most successful type of communication and cooperation between Serbs and Albanians. When considering this in relation to the wide availability of weaponry in the former Yugoslavia and taking into account the low standards of living during and after the Yugoslav wars, this perspective appears

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<sup>28</sup> "In a typical pyramid scheme, a fund or company attracts investors by offering them very high returns; these returns are paid to the first investors out of the funds received from those who invest later [...] To attract new investors, a scheme may raise interest rates, but the larger interest payments soon force it to raise rates again. Eventually, the high rates begin to arouse suspicion or the scheme finds itself unable to make interest payments" (Jarvis, 2000).

plausible. Another argument is that “Albania had never been under full control of its army units anyway” implying that trade between the Albanian army and the KLA has always been feasible (Interview 11, Malazogu). Finally, it was maintained that most of the weapons operating in Albania were “operationally useless, with the quality of the chemical composition of the gun powder in bullets to be very low, causing a gun to jam after the firing a couple of bullets” (Interview 6, UN Official). Thus, although the accessibility of the Albanian stockpile may have been a contributing factor to the further equipment of the KLA, it is possible that it was not as central a factor as the existing literature suggests.

Nonetheless, the fact that the KLA acquired weapons when they decided to pursue the violent approach demonstrates significant organisational capacities. The KLA also established military training camps in Kosovo and Albania, where thousands of recruits received at least a basic military training and the KLA leaders even recruited former Yugoslav army officers to conduct the training in some cases (Perritt, 2008, Mulaj, 2008). The ability to build an efficient guerrilla, quasi-regular army as the KLA within such a short period of time, shows management skills that could be later transformed into state running competencies in an independent Kosovo.

However, what proved to be more challenging than the acquisition of weapons was the recruitment of soldiers. Although, by 1997, the Kosovo Albanians were willing to change their support to more aggressive means, until 1997 the KLA numbered only a few hundred members (Kubo, 2010, Hedges, 1999, Bekaj, 2010). The Serbian state reacted ruthlessly to any suspicion of resistance or insurgency, thus, people were terrified and reluctant to risk their and their families’ lives by joining the KLA.

The turning point was the massacre of the Jashari family in 1998 (Interview, 23, Non-EU Diplomat). The Jasharis had been infamous in Kosovo for their long-standing and fearless

resistance towards Serbia. Adem Jashari had been one of the leading members of the KLA (Hedges, 1999) and known to have been guilty of the murder of a Serbian policeman (Judah, 2000b). Their village Prekaz was for years impermeable against Serbian forces, who had attempted by 1998 at least twice to arrest the Jasharis. Every time though, their operations had failed after meeting fierce resistance (Bekaj, 2010).

This time, though, Serbia was determined to use full force to break their defiance. Early in 1998 Robert Gelbard, Bill Clinton's special envoy to the Balkans, had described the KLA as a terrorist group stating also confidently "I know a terrorist when I see one and these men are terrorists" (BBC, 1998). Milošević, probably misinterpreting the statement, perceived it as a green light to proceed to operations against anyone suspected of involvement. In March 1998 a full scale operation began with the Serbian army attacking the region of Drenica, considered as the "hotbed of Albanian terrorism" (HRW, 1998). The operation focused on an attack against the compounds of the Jashari family, which ended with the death of at least fifty-six members of the extended family<sup>29</sup> including eighteen women and ten children aged sixteen or younger (Bekaj, 2010, HRW, 1998).

The massacre of the Jashari family, rather than demoralising the Albanians, had the exact opposite results. The Jasharis were turned into martyrs, while their mass killing showed the Albanians that their families could not be protected as long as Serbian oppression continued (Perritt, 2008). Thus, this event triggered an unprecedented degree of unity, determination and solidarity among the population and thousands of Albanians rushed to join the KLA (Interview 23, Non-EU Diplomat). In a short while, the KLA had multiplied its ranks with volunteers coming not only from Kosovo but also from the diaspora (Bekaj, 2010). Estimating the exact number of KLA soldiers is difficult because the KLA comprised both

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<sup>29</sup> The exact number varies among sources because the bodies were buried in a mass tomb by the police some days after the attack (HRW, 1998).

regular soldiers and civilians, who had weapons and some sort of training, but which were meant only to defend their own houses and villages. Furthermore, in all probability KLA leaders exaggerated the actual numbers of their forces in their public statements, leading to a very broad estimation of fifteen to thirty thousand men (Perritt, 2008). What remains clear, however, is that the KLA had turned from a guerrilla movement with few hundred recruits, into a quasi- regular army numbering thousands in its ranks.

Still, KLA leaders knew that their military capacities were not strong enough to defy the professional and well-equipped Serbian army. Therefore, the principal aim of their strategy was to attract the attention of international public opinion and make the international community notice (Interview 3, Qehaja). In order to achieve this, they maintained guerrilla tactics intending to provoke Serbian retaliation. Serbia indeed responded by committing heinous crimes that were subsequently publicised to the international media (Interview 11, Malazogu). The atrocities committed by the Serbian forces produced an outcry of international public opinion, who only witnessed the Serbian retaliation and not the KLA provocation. Thus, through a combination of the escalation of violence and skilful manipulation of the international media, in less than two years the KLA had attracted such a level of international attention that would eventually lead to the NATO military intervention.

Thus, the tragedy of the Jashari family had triggered the interest of the international community for Kosovo. However, the turning point that led to active international intervention was the Račak massacre, where Serbian forces had allegedly executed forty-five Albanian civilians. Serbia still denies the massacre and subsequent forensic reports indicate that the bodies had possibly not been executed but might have been killed in an armed confrontation between the Serbian army and the KLA the day before and later been placed in a ditch to simulate a massacre (Bissett, 2001). Nonetheless, regardless of whether the Račak

massacre was real or not, international public opinion willingly accepted the assertion of the head of the OSCE Kosovo Verification Mission<sup>30</sup> (KVM), William Walker, who instantly proclaimed that the Serbian security forces were “directly responsible for the massacre of forty-five civilians” (Udovički, 2000: 332). The Račak massacre offered the pretext for the international community to get more involved and justify military intervention on humanitarian grounds.

Hence, the fierce and indiscriminate retaliation of the Serbian state was one of the reasons why the KLA had been so successful. Milošević had overreacted in his responses, provoking an international outcry. In addition, after the Yugoslav wars and the atrocities in Bosnia, international representatives largely mistrusted him. The atrocities in Kosovo were a constant reminder of the failures of the international community in Bosnia, as will be examined in more detail in the next section. Furthermore, the KLA leaders had built a very effective public image, appearing courteous and reliable, when in contrast Milošević disregarded public opinion and also became disrespectful towards international envoys (Interview 12, EU Diplomat, Interview 23 Non-EU Diplomat). Thus, acknowledging that Milošević’s misrule and misbehaviour played a decisive role in the process of Kosovo’s independence, the next section will examine in depth how Milošević’s actions led to international military intervention positively affecting the outcome of Kosovo’s second secession.

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<sup>30</sup>In a previous attempt to stabilise the situation in Kosovo, under the threat of use of force, Richard Holbrooke achieved an agreement with Slobodan Milošević in October 1998 that included the deployment of an OSCE verification mission. The mission would be composed of 2,000 unarmed verifiers and would have as main task to verify compliance by all parties in Kosovo with UN Security Council Resolution 1199, calling for a cease-fire, peaceful settlement of the conflict and return of the displaced persons (OSCE, 1999, S/RES/1199, 1998).

### *Milošević and the Yugoslav wars*

In hindsight, Milošević's heavy-handed rule in Kosovo was a contributing factor to Kosovo's successful secession. Ever since the late 1980s, Milošević had taken actions that could be used against Serbia later. When Milošević abolished the autonomous status of Kosovo, he violated a fundamental element of internal self-determination as expressed in international law. Furthermore, the breach of such a settlement between central state and a self-governed territory is a violation that could potentially justify separation according to the principle of remedial secession. Although remedial secession as an approach was not widely accepted in the 1990s, it gradually gained importance, and by 2008 when Kosovo declared independence for the second time, it was used as one of the arguments in favour of Kosovo's recognition (Bolton and Visoka, 2010).

The arguments of remedial secession are further strengthened through the grave human rights violations Kosovo Albanians had suffered during the 1990s. The scale of violations in Kosovo under Milošević's rule provided the evidence to support independence as the only solution. The combination of the sudden abolition of autonomy and the subjugation that followed provided Kosovars with the argument that this created a precedent that may happen again (Interview 15, Kursani). In addition, although the years of the Former Yugoslavia are often recalled with nostalgia by Kosovo Albanians, through the actions of Milošević the widespread perception was created that the Serbian system as a whole was "anti-Albanian" and thus it made no difference who would be in the leadership in Serbia, leaving thus no other solution apart from complete independence from Belgrade (Interview 11, Malazogu). Milošević's actions then, by coercing the Kosovo Albanians and completely dividing society, had destroyed the possibility for peaceful co-existence among the different ethnic groups in Kosovo in the future.

Even during the 1990s, the human rights violations Milošević's regime was committing had been used as a policy-making tool by Rugova. When the Kosovars had the opportunity to overthrow Milošević in the elections of 1992 by supporting his opponent Panić, they decided that the most beneficial option for their cause would be "to continue with Milošević" (Agami, cited in I.I.C.K., 2000: 49). Panić had promised the restoration of Kosovo's autonomy, including the re-employment of the sacked personnel and the re-opening of Albanian press and schools. However, should the Kosovars have accepted Panić's proposal, they would lose the predominant justification of their demands for independence, as their claims were largely based on the abuse of their basic human rights by the Serbian regime. Therefore, "it would have been a disaster for them if a peace-monger like Panić had restored human rights, since that would have left them with nothing but a bare political agenda to change borders" (Vickers, cited in Udovički, 2000: 324). Rugova's government then instead of ameliorating the living conditions in Kosovo, preferred to continue with the bearing of all violations to achieve the internationalisation of Kosovo's issue. The best way to achieve this was to retain the existing status quo and eventually use Milošević's misrule to promote their goals.

In addition, it is possible that Rugova calculated that the Kosovar cause was more likely to be achieved through the prevalence of Milošević and the implementation of his doctrine "all Serbs in one state." It is possible that the Albanians expected that Milošević would win the war and incorporate the Serb inhabited Croatian region of Krajina and Eastern Slavonia, as well as the Serbian territories of Bosnia. This would practically lead to a general rearrangement of the borders of the former Yugoslavia according to ethnicity. Thus, Rugova may have expected that if the final peace settlement was according to ethnic lines the



international community would have no reason to oppose a similar arrangement for Kosovo as well (Judah, 1999).

It is unknown whether this was indeed Rugova's estimation, as by the mid-1990s the balance has shifted and Milošević was losing the war. Serbia was financially devastated by the long international financial sanctions and its population was demoralised by the war and the continued poverty (Sell, 2002).

In the meantime, the Bosnian Serb forces, led by Radovan Karadžić and Ratko Mladić, proceeded to actions of intimidation against international personnel operating in Bosnia. In May 1995 Mladić's forces took hostage approximately three hundred fifty UN peacekeepers as an answer to the NATO airstrike<sup>31</sup> of some ammunition warehouses. The UN personnel were chained and placed in front of ammunition depots and were used as a human shield to prevent any other potential air attacks (Ramet, 2002). The hostages were released two weeks later after extensive negotiations. However, the capture of the UN personnel showed how inadequately equipped the UN mission was to protect even their own personnel, let alone to provide any substantial security to the local population. Regrettably, those shortcomings were more evidently revealed two months later when the Bosnian Serb army attacked the Muslim enclave of Srebrenica.

In July 1995 Bosnian Serb forces marched towards the Bosnian-held enclaves of Žepa and Srebrenica. Both had been declared safe areas, protected by UN forces and hosted approximately fifty thousand Bosnian Muslim refugees. When Mladić attacked, the Bosnians were unable to defend themselves, as they had handed over their weaponry when Srebrenica was proclaimed a safe area. Although, the Bosnians requested their weaponry back after the

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<sup>31</sup> Between 1993 and 1995 NATO engaged to a number of air strikes against Bosnian Serb facilities. Although, the attacks had an important military and diplomatic impact, they were mainly retaliatory with limited tactical and strategic elements. Hence their objective was to lead the Bosnian Serbs to a change of attitude instead of weaken their capacities.

Serb offensive began, the request was denied under the assurance that the UN forces would protect them. However, as the siege intensified the UN personnel refused to use any military equipment they possessed trying to avoid the escalation of the situation. The requests of the UN commander in Srebrenica for deployment of close air support were repeatedly denied by the UN commanders in Sarajevo and Zagreb. Finally, after five days of siege Srebrenica fell with the UN not firing “a single shot directly at the advancing Serb forces” (A/54/549, 1999: 304). What followed was a clear act of genocide, the worst Europe has seen since the end of the Second World War. An estimate of five to eight thousand men and boys were executed, others had been killed while fleeing, while women, children and elderly had been put into buses and transferred to Muslim territory<sup>32</sup> (Klep and Winslow, 1999, Honig and Both, 1996).

Both events were humiliations that the international community was not disposed to forget. The UN hostage crisis, covered by international media, demonstrated publicly the limitations and inefficiency of the international community on the ground. In the case of Srebrenica the magnitude of the massacre and the atrocities committed were not only a humiliation, but a constant source of guilt for the international envoys for years to come. In that sense, Kosovo was the beneficiary of the experiences of the Yugoslav wars as the international community was not prepared to risk again its reputation as a mediator and guarantor of peace, stability and security. In addition many of the international representatives genuinely felt guilty and responsible for failing to provide safety for the people in Srebrenica (Interview, 23, Non-EU Envoy). Thus, when the KVM reported the escalating situation in Kosovo, the international community, determined not to let a second Srebrenica occur, decided to intervene promptly (Caplan, 1998).

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<sup>32</sup>Also Vollen (2001), Leydesdorff (2011), Brunborg et al. (2003).

In addition, after the end of the Yugoslav wars Milošević was not accused of war crimes along with Karadžić and Mladić by the ICTY (ICTY, 1995). On the contrary, he was praised by the international leaders and media as the man who made peace possible (LeBor, 2003). At the same time, however the international representatives had been aware of Milošević's ability to control the Serbian army and paramilitary organisations, as they also knew about the material and financial support Belgrade provided to the Bosnian Serbs. Thus, the international representatives were "slightly ashamed they had done a deal with him in Bosnia" (Interview 27, Senior UN Official) and this feeling intensified when the extent of the atrocities in Bosnia was slowly revealed through testimonies of witnesses, trials in the ICTY, and through research of governmental and non-governmental organisations operating in Bosnia.

The international community, therefore, sought a pretext that would enable them to get back at Milošević and the pretext was given through the escalation of the situation in Kosovo and the severe retaliation of Serbian forces against the KLA actions (Interview 6, UN Official, Interview 25, EU Diplomat). Serbian military and paramilitary forces, with the excuse of fighting against KLA, indiscriminately attacked civilians, including women, children and elderly. Thus, through the vicious circle of attacks and counter-attacks between the KLA and the Serbian forces, the fourth war in the Balkans was starting. This time, the international community was determined, on the one hand, not to repeat the same deficiencies as in the Yugoslav wars, and on the other hand to act swiftly to stabilise Kosovo as soon as possible, as there were fears that a full-scale conflict in Kosovo could destabilise the still fragile situation in the Balkans as a whole.

Moreover, Milošević's attitude after the Dayton agreement marginalised Serbia on international level. Milošević probably presumed that he would be rewarded for his efforts

and his catalytic role for the achievement of peace in Bosnia. Thus, he expected the revocation of the international sanctions that had brought Serbia's economy to the verge of collapse (Sell, 2002). Indeed, after Dayton, the UN arms embargo and trade sanctions were lifted. However, the US introduced unilaterally the "outer wall" sanctions prohibiting the Federal Republic of Yugoslavia from accessing major international organisations, including the International Monetary Fund (IMF) and the World Bank until "substantial progress towards the solution of the Kosovo issue" was demonstrated (Hasani, 1998: 4). Milošević seemed to feel betrayed by the international community and proceeded to irrational actions. He not only ignored the international community's requests for normalisation of Kosovo but also adopted additional suppressive measures against Kosovo Albanians (Interview 12, EU Diplomat).

Apart from the issue of Kosovo, however, Milošević was turning into a dictator crushing democratic rule in Serbia (Interview 26, Dimitrijević). Fraud in the local elections of 1996 was widely known, while opposition parties boycotted the 1997 parliamentary and presidential elections citing an absence of fair and transparent electoral conditions (CNN, 1997, IFES, 1997). From 1996 onwards massive demonstrations were taking place for months in which citizens demanded his resignation (Interview 27, Senior UN Official). All this indicated to the international community that the Milošević regime was out of control and needed to be constrained, as it could otherwise endanger stability in the region once again (Interview 26, Dimitrijević).

A further reason that contributed to Serbia's international marginalisation was that Milošević was eventually regarded as an untrustworthy partner. Although Milošević repeatedly denied any responsibility and connection with the atrocities in Bosnia, international representatives strongly suspected his involvement, a suspicion that was further

strengthened by witnessing direct negotiations between Milošević and Karadžić and Mladić (Sell, 2002, Holbrooke, 1998). Moreover, Milošević blatantly lied to international envoys resulting in distrust, diminishing the credibility of his claims (Interview 23, Non-EU Diplomat). What further added to the untrustworthy image of Milošević was that through the years of interaction international representatives had realised that Milošević was a “political opportunist” (Interview 28, Former Yugoslav Ambassador). They watched how he betrayed those closest to him, beginning with his friend and mentor Ivan Stambolić,<sup>33</sup> how he ascended to power using nationalistic propaganda, while strongly denying being a nationalist in the presence of foreigners (LeBor, 2003). International representatives also noticed how easily Milošević gave away Krajina to Tudjman and how he gave up some of the most crucial demands of Bosnian Serbs at Dayton when he genuinely wanted the war to be over and the sanctions against Serbia to be lifted (Bildt, 1998). All this combined to turn Milošević into an unreliable partner resulting in the political and diplomatic marginalisation of Serbia.

Serbia’s marginalisation was also increased through the sharp contrast between Milošević’s dismissive behaviour and the successful lobbying of Kosovo Albanians. While Milošević was regarded as a ruthless dictator and was projected as such in the media, Kosovo Albanians managed to win the support of public opinion. The media, along with the endorsement of the West, turned the KLA from a terrorist organisation into legitimate freedom fighters and the Kosovo Albanians into victims that needed urgent protection.

Milošević’s misrule, thus, in combination with the recent memories of the Yugoslav wars, played a catalytic role for Kosovo’s successful secession almost ten years later. The unprecedented atrocities that Serbian forces have committed in Bosnia and the exaggerated actions of suppression against Kosovo Albanians provided the international community the

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<sup>33</sup>Ivan Stambolić, President of the Republic of Serbia 1986-1987, had to resign when his protégé Dragiša Pavlović was accused by Milošević of impeding ideological unity and of being against Tito and Yugoslavia during the Eight Session of the Serbian Communist League in 1987.

necessary reasons to intervene more actively. Hence, under the threat of military intervention the two parties, Serbs and Kosovars, agreed to meet in Rambouillet. Yet, Rambouillet failed to produce an agreement and NATO intervened. The significance of the Rambouillet accords and the role of NATO's intervention in the outcome of Kosovo's secession of 2008 will be analysed in the next section.

#### *Rambouillet fails and NATO intervenes*

The Rambouillet accords are significant for Kosovo's successful secession for various reasons. First, their failure triggered the military intervention of NATO, a milestone for Kosovo's secession as it practically removed Serbian authority and jurisdiction in Kosovo and turned the latter into a UN protectorate, providing one of the major arguments in favour of Kosovo's secession. Second, the Rambouillet accords constituted the foundation of subsequent resolutions regarding the final status of Kosovo. The connection between the Rambouillet accords and the final status of Kosovo will be analysed in detail in the following chapter. This section, however, will provide an overview of the course of the Rambouillet negotiations and what their failure meant for the future of Kosovo.

Previous attempts to restore order in Kosovo had been made by the Contact Group<sup>34</sup> since the autumn of 1998. Under the threat of use of force Richard Holbrooke, the US Special Envoy, achieved an agreement with Milošević on the principles of previous Security Council resolutions 1160 (1998) and 1199 (1998) according to which all actions of violence and terrorism would cease immediately. Serbia committed to withdraw special police units and refrain from actions affecting the civilian population, accepted an OSCE verification mission and agreed to allow access by humanitarian organisations to Kosovo (S/1998/953,

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<sup>34</sup> The Contact Group had been previously founded to address the war in Bosnia and was comprised by representatives of the US, UK, France, Germany and Russia, while later representatives of Italy were included. The meetings of the Contact group were usually attended also by representatives of the EU and the NATO.

S/RES/1160, S/RES/1199, 1998). More specifically Serbia agreed to the deployment of over two thousand OSCE verifiers and the return of refugees, and also consented to the establishment of a NATO air verification mission over Kosovo to confirm compliance with the provisions of S/RES/1199 (Holbrooke, 1999, NATO-FRY, 1998).

Indeed, on 27<sup>th</sup> October 1998, the NATO Secretary-General announced that the level of violence had been significantly reduced and that the cease fire held, with the exception of some sporadic incidents. An immediate improvement in the humanitarian situation was observed, while international relief organisations resumed operations in Kosovo and thousands of displaced persons returned. The NATO Secretary-General also reported that over four thousand members of the Yugoslav Special Police had been withdrawn, most police and military units that were not normally placed in Kosovo had also been removed and check points had been dismantled. Thus, substantial steps had been made, and this progress created the opportunity to move the political process forward towards the achievement of a political solution (NATO SG, 1998).

The agreement, however, was short-lived as the KLA took advantage of the removal of the Serbian forces and renewed its military operations. Later, leading members of the KLA would characterise the ceasefire as “life-saving” for the KLA, as it gave them time to re-organise after the heavy losses they had suffered from the Serbian retaliation and it allowed them to recapture territories seized by the Serbian army (Interviews with Haradinaj and Çeku, cited in Kubo, 2010). Serbia, facing the renewed KLA offensive, responded with returning heavy equipped military units to Kosovo, proceeding also to acts of reprisal.

Although it is commonly accepted that the revelation of the Račak massacre in January 1999 led to the Rambouillet negotiations in February of the same year, this is only partially the case as the Contact Group had already initiated talks on renewed and more active

mediation after the failure of the Holbrooke agreement (Thaci, 2000, Weller, 2009). Nonetheless, it can still be argued that the Račak massacre accelerated the already-existing plan for further negotiations.

Under the threat of use of force, representatives of Serbia and Kosovo Albanians agreed to meet in France in Rambouillet to negotiate an Interim Agreement for Peace and Self-Governance in Kosovo. The Serbian government chose to create a delegation composing of members not only of Serb nationality, but also representatives from Montenegro and ethnic minorities of Kosovo -including Goranis, Turks, Muslims, Romanies and Egyptians- in an attempt to demonstrate that their position was endorsed by the people of Kosovo and FRY as a whole, in contrast to the Kosovo Albanian delegation that was dominated by Albanian “terrorists” (Milošević, 1999). The Kosovo delegation included representatives of the elected government of the LDK, led by Rugova, members from the opposition party United Democratic Movement (LBD, Lëvizja e Bashkuar Demokratike,), which was believed to be closer to the KLA, and members representing the KLA itself, led by Hashim Thaçi. As the Kosovo elected government constituted a minority of the delegation, Hashim Thaçi of the KLA was appointed chief of the delegation (Weller, 1999).

The course of the negotiations remains to this day a matter of controversy. On the one hand, there are prominent voices that maintain that the Rambouillet process was far from a negotiation, claiming that it was a diktat, and only a nominal process necessary to legitimise intervention after its expected failure.<sup>35</sup> This approach focuses both on the fact that the Contact Group had set the so called non-negotiable-principles,<sup>36</sup> and also that the final draft

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<sup>35</sup> Some literature on Rambouillet arguing in favour of this approach Herring (2000), Mccgwire (2000), Chomsky (1999), Schwarz (1999), Jones (2002).

<sup>36</sup> Key points of the Non-Negotiable-Principles included that after an interim period of three years a mechanism would be established to settle the final status of Kosovo, the territorial integrity of FRY and neighbouring countries would be respected, the rights of national communities would be protected, free and elections in



included provisions that no sovereign state would accept, referring mostly to the extensive NATO presence<sup>37</sup> in FRY (Booth, 2000). In addition, it is maintained that the Serb and the Russian delegations were not informed about those crucial points of the draft until only some hours before the planned signing of the agreement (Marković, 2005, Lynch, 1999).

On the other hand, prominent scholars and participants in the negotiations argue that international representatives were making every effort to meet the Serbian demands and persuade the Serbian delegation to sign (Weller, 2009). They report that the Serbian delegation was reluctant to be constructive and cooperative in a substantial manner, while they repeatedly demonstrated inappropriate behaviour (Interview 23, Non- EU Diplomat, Weller, 2009). They also provide counter-arguments to the claims regarding the marginalisation of the Russian and Serbian representatives<sup>38</sup> (Bellamy, 2001).

Another matter of controversy is the stance Russia maintained during the negotiations. Participants in the talks assert that Russian envoys were aware that an agreement at Rambouillet was the last opportunity for a peaceful settlement of the conflict (Petritsch, 2008). Therefore, Russia wanted the negotiations to succeed and played an important and constructive role towards this end (Petritsch, 2008, Interview 23, Non-EU Diplomat). In contrast, Weller (1999), a participant in the Rambouillet conference himself, argues that Russia acted as an advocate of Serbia and tried to frustrate the very concept of a settlement which might appear to have been imposed upon the FRY and which would be enforced by NATO. He adds, nevertheless, that this attitude was praised by the other members of the

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Kosovo would be conducted, amnesty and release of political prisoners and international involvement in full co-operation with the parties (Contact Group Negotiator's Proposal, 1999).

<sup>37</sup> The provisions regarding NATO authority, rights and freedoms are outlined in Chapter 7 and the Appendix B of the Rambouillet document. More specifically, in Chapter 7, Art. I, §2(b) the document provides for the authorisation of NATO to take all actions required to ensure the implementation of the agreement, including also the right of use of force, while paragraphs 6,7 and 8 of the Appendix B present the freedoms NATO was supposed to enjoy in the whole FRY, along with the complete immunity of NATO personnel (Rambouillet Accords, 1999).

<sup>38</sup> Also Daalder and O'Hanlon (2004), Judah (2000c), Judah (2009), Sell (2002).

Contact Group, as they expected that Russia would be in position to persuade Milošević to sign (Weller, 2009).

Examining the course of negotiations and the final draft of the Rambouillet conference, this thesis accepts that the Serbian delegation did not engage in a constructive way in the negotiations as there was no actual incentive to do so, apart from the constant threat of use of force.<sup>39</sup> The documents produced showed that the Albanian delegation was offered incentives in order to sign the agreement, however, no such practice was to be observed for the Serbian side (Mccgwire, 2000). For instance, the principal requirements of the Serbian delegation were that there should be no provisions for future independence of Kosovo and that there should be no NATO military force in Kosovo. On the contrary the Kosovo delegation argued that in light of the previous shortcomings of UN and OSCE both in Kosovo and in Bosnia, only a NATO force would be effective for the implementation of the agreement and demanded also a provision for the settlement of the future status of Kosovo. In order to satisfy the Kosovar side, throughout the negotiations the involvement of NATO appeared to be a fundamental part of the agreement that the FRY should comply with,

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<sup>39</sup> The threat of use of force proved insufficient to secure Serbian unconditional compliance perhaps for two reasons: First, it seemed that Milošević was initially not convinced about the credibility of the threat (Bellamy, 2000b). He probably expected that the NATO would not maintain the necessary coherence to conduct the air-campaign believing that potentially Greece, Italy or Germany would veto such decision (LeBor, 2003). Furthermore, Milošević supposed that Russia's veto in the UN Security Council would block NATO's operations, misjudging the willingness and the ability of the latter to proceed to a military action without the consent of the UN Security Council (Wolff, 2003). Second, after Milošević was convinced that the air campaign would begin in case of not signing the Rambouillet agreement, he still would not comply for a number of reasons (Holbrooke, 1999). To begin with, it seems that Milošević expected that NATO's operation would last only for a short period of time. Thus, he was confident that Serbia military infrastructure could survive some days of air-bombing and after the end of the operations he could renegotiate a settlement for Kosovo in more favourable terms than the ones offered in Rambouillet. In the mean time, he probably expected that through the NATO external threat he would regain his lost legitimacy in the eyes of the Serbs. For months Serbian citizens demonstrated against him demanding his resignation. By the time the air-offensive began, however, these protests immediately stopped and the crowds turned against NATO and the US (Interview 27, Senior UN Official). Thus, it is possible that Milošević had (mis)calculated that a brief NATO military offensive could have been beneficial for him, as he would both be able to keep Kosovo with a more advantageous agreement and he would have regained his legitimacy as the leader who defended the Serbian territorial integrity against an external enemy.

although the presence of NATO was not explicitly mentioned in the non-negotiable-principles (Contact Group Negotiator's Proposal, 1999). Furthermore, in order to meet the requirements of the Kosovo delegation, an amendment was made to the final section of the agreement referring to the settlement of the final status according to “the will of the people”<sup>40</sup> (Weller, 1999). Finally, when the Kosovars threatened that they would not sign the document, Madeleine Albright, the US Secretary of State, spent a considerable time in meetings with the Albanian delegation trying to persuade them to do so (Weller, 2009).

The two principal demands of Kosovo Albanians were met, meaning that the most crucial demands of the Serbian side were rejected and space was left to negotiate only issues of secondary importance. The Serbian delegation seemed to be entrapped between two options that would most possibly lead to Kosovo’s independence, either through the acceptance of the agreement and the determination of the final status three years later based among others on the will of the people, or as it eventually happened through the rejection of the agreement and an imminent NATO intervention (Herring, 2000). Thus, although the Kosovo Albanians made considerable concessions regarding the internal functioning of Kosovo, minority rights, powers of minorities’ within the assembly, the and extent of self-governance of ethnic communities, Serbia at this point was unwilling to negotiate anything that implied an independent Kosovo.

Evidently Russia could not exert enough influence either on the Contact Group so as to amend the proposals in that way that the Serbian side would accept, or as to convince the Serbian government to accept one of the proposed drafts (Bellamy, 2001). Although Russia

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<sup>40</sup> The provision for the future settlement of the final status of Kosovo is to be found in Chapter 8, Article 1(3), where it is stated that “three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party’s efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures” (Rambouillet Accords, 1999).

had worked with the US and the EU as a member of the UN Security Council and the Contact Group and had endorsed previous Resolutions 1160 and 1199, it began to perceive its increasing marginalisation in the decision-making procedures (Harzl, 2008, Antonenko, 1999). At Rambouillet, Moscow realised that the West was resolved to ignore Russia's objections and deploy a large-scale military force on FRY territory and use force to restore peace in Kosovo, if Milošević refused to comply (Averre, 2009). Russia fundamentally opposed to this idea, and constantly reaffirmed the need for a political solution to the conflict (Wolff, 2003). Moscow, however, firmly supporting a non-military solution contributed to Serbia's intransigent stance, instead of persuading Milošević to show flexibility (Petritsch, 2008, Levitin, 2000).

Nevertheless, neither the Serbian nor the Albanian delegation had the authority to sign the agreement in Rambouillet. Thus, the parties requested two weeks consultation time at home and it was agreed to meet again three weeks later in Paris. Upon arrival in Paris, the Serbian delegation proposed a new agreement completely different than the concluding draft of Rambouillet. This draft, shorter, much vaguer and less elaborated than the Rambouillet Accords, deprived Kosovo of any substantial self-governance, while the latter was referred throughout the document as Kosmet,<sup>41</sup> a term that was widely known that Kosovo Albanians regarded as derogatory. Large sections were removed or significantly altered and the whole section of NATO presence was absent (Agreement for Self-Government in Kosmet, 1999).

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<sup>41</sup> Kosmet is the shortened version of Kosovo-Metohija, the name the Serbs attribute to Kosovo and under which Kosovo was first incorporated in Yugoslavia as an autonomous region within Serbia. Metohija, referring to the western part of the present day Kosovo means "monastic estates" and it is a term largely resented by Kosovo Albanians as it indirectly refers to the medieval Serbian Kingdom and also implies ownership by the Serbian Orthodox Church and consequently subordination to Serbia. The name officially changed to Kosovo with the constitutional amendment of 1968 when Kosovo's status elevated from Autonomous Province of Kosovo and Metohija to Socialist Autonomous Province of Kosovo (Amendments VII-XIX, 1963 SFRY Constitution, 1968). Thus, the reference to Kosovo as Kosmet during the Rambouillet negotiation was a provocation, implying the return of Kosovo to a previous status, with significantly less rights and competencies than the status Kosovo enjoyed in the structures of the Former Yugoslavia.

The draft, being considerably different from the non-negotiable principles the Contact Group had set was considered to be a provocation. Thus, with no substantial discussion on the submitted draft, the Kosovo Albanian delegation proceeded to the signing of the agreement, being witnessed by the Contact Group members, except for the Russian representative. At the same time the Serbian delegation signed in the presence of the Russian envoy the document they had proposed (Agreement for Self-Government in Kosmet, 1999).

The Rambouillet negotiations both in terms of the document produced and as a process were of critical importance for the future success of Kosovo's secession. First, the Rambouillet Accords became the cornerstone on which subsequent documents such as Security Council Resolution 1244 were based, including also the provision regulating the final status of Kosovo (S/RES/1244, 1999). The next chapter will analyse in detail the effect on Kosovo's secession of the provision in Chapter 8, Art.1(3) of Rambouillet document and the wording about a mechanism to determine the final status of Kosovo "on the basis of the will of the people" three years after the enforcement of the agreement.

Second, the failure to reach an agreement with Belgrade resulted in eleven weeks of NATO bombing of the whole territory of FRY, including Kosovo. With NATO bypassing the Security Council, a weak and marginalised Russia could not prevent the bombing. There is a vast literature on the NATO campaign regarding its legitimacy, legality, whether it was indeed a humanitarian operation or it served further interests of political, geopolitical, strategic and economic nature, as well as whether this air invasion was actually successful in fulfilling its objectives.<sup>42</sup> Nonetheless, this thesis focuses only on the effect of the NATO campaign on Kosovo's successful secession of 2008.

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<sup>42</sup> For example Webber (2009), Booth (1999), Roberts (1999), Lambeth (2001), Greenwood (2000), Wheeler (2000a), Daalder and O'Hanlon (2004), Gowan (2000), Ignatieff (2001).

What the NATO intervention achieved regarding Kosovo's secession in 2008 was the abolition of Serbian authority in Kosovo and the subsequent position of Kosovo under UN administration. The period of the UN administration will be discussed in the next chapter. However, what is important to highlight here is that this detachment from Serbia was only made possible after NATO's military intervention. Although the end of the NATO bombing legally left Kosovo as a part of the FRY, the withdrawal of Serbian forces and the establishment of NATO troops as guarantors that Serbia would not proceed to any military action to reoccupy Kosovo, in combination with the UN administration until a final status is reached, set in motion the dynamic that eventually led to Kosovo's unilateral declaration of independence in 2008 (Cottey, 2009).

However, the NATO intervention had a further side-effect. At the start of the NATO bombing the situation on the ground escalated to terrifying levels. Serbian military forces expelled hundreds of thousands of Kosovo Albanians, who either managed to reach neighbouring countries or were internally displaced across Kosovo. Considering the severity of the Balkan winter, the latter meant that the most vulnerable members of the civilian population, children and elderly would not survive cold and famine. In addition, Serbian heavily armed forces executed Albanians indiscriminately and en masse. Although the numbers vary from four to ten thousand killed or missing, the situation in Kosovo had certainly turned into a significant humanitarian catastrophe (Webber, 2009, Herring, 2000). Hence, even though NATO cannot be held responsible for causing these atrocities, it can be held accountable for producing the cover of war for the ethnic cleansers and for inflaming the latter's desire for revenge against defenceless civilians, who, unlike NATO's warplanes, were accessible targets (Booth, 2000)

Nevertheless, the level of the atrocities, however sad, had a positive effect on the future outcome of Kosovo's secession. Often it is argued that after the crackdown of 1999 the situation was "beyond the point of reconciliation" (Interview 14, EU Diplomat). This view is further strengthened by the atrocities that followed after the bombing ended and NATO troops entered Kosovo. At this point it was the Albanians' turn to retaliate and the same horror followed, with this time the Albanians as the perpetrators and the Serbs the victims (Interview 20, Maksimović). Therefore, NATO's intervention made both a direct and an indirect contribution to Kosovo's successful secession. Directly it forced Serbia to hand over Kosovo's administration to the UN, and indirectly, through the escalation of violence during and after the bombing, it strengthened the argument that there was no other viable and sustainable solution other than Kosovo becoming independent.

Lastly, the Rambouillet process and the NATO intervention signalled a major shift in power dynamic in the Serbian-Kosovar relations. Through the support of the US and major Western countries, the rights of a sovereign state were marginalised in favour of separatist demands. Although, Serbia was supported by Russia, at the end of the 1990s Russia was an economically weak and politically marginalised country. Rambouillet showed that at that time Moscow had no influence either on the Contact Group members or even on Serbia. This asymmetric power difference between the supporters of each side facilitated a unilateral NATO military intervention that would have never been possible with a mighty Russia to counter-balance the negotiations. This power dynamic established in 1999, continued throughout the 2000s, and led eventually to Kosovo's unilateral declaration of independence in 2008.

## *Conclusion*

This chapter examined the years from 1991-1999 seeking to discover what turned Kosovo from an internal Serbian matter into an international issue that demanded the rapid and active intervention of the international community. The chapter started with the study of the different phases of Kosovo's resistance beginning with Rugova's non-violent approach and continued with the KLA's armed insurgency. The role the Dayton agreement played in this change of strategy was revealed, while the chapter continued with an evaluation of how Milošević's rule and the experiences of the Yugoslav wars led to the internationalisation of Kosovo's issue. Finally, this chapter demonstrated the catalytic impact of the Rambouillet process and the subsequent military intervention on the outcome of Kosovo's secession in 2008. The section closed with NATO's air offensive as this was the decisive event that changed Kosovo's status within Serbia effectively abolishing the latter's jurisdiction on Kosovo.

Various and interrelated reasons led to the internationalisation of the Kosovo issue, constituting the first step towards its successful secession in 2008. Beginning with Rugova's non-violent resistance against Serbian oppression it is acknowledged that although it did not achieve a place at Dayton's negotiation table, it won the respect and the sympathies of the international community. Although, this was not enough at the time to bring Kosovo to independent statehood, the human rights abuses Albanian society endured throughout the 1990s provided them later with strong arguments in favour of Kosovo's secession. First, the combination of the constant suppression they suffered and their stoic reaction created the perception of the Albanians being innocent victims in the hands of a ruthless leader, a view that was increasingly strengthened as the atrocities the Serbian forces had committed in the Yugoslav wars were gradually revealed in more detail. According to the supporters of the



remedial secession approach, this mistreatment provided the Kosovars the right to secede due to the severity of the human rights violations Serbia had committed. Second, the sudden abolition of their autonomy and the harassment that followed, created a precedent that according to Kosovo Albanians could be repeated at any time. Consequently both arguments significantly contributed to the approach that there was no other actual solution short of Kosovo's independence, as because of what they suffered they could not return under Belgrade's rule and any other political settlement could be as easily annulled as Kosovo's autonomy in 1989.

In hindsight, Kosovo's exclusion from the Dayton accords positively contributed to the process of Kosovo's secession. In all probability, Kosovo would not have achieved independence at Dayton (Interview 21, Peci). However, the fact that their demands were once again ignored led to the realisation that peaceful resistance not only would not result in the achievement of their cause but also that without violence the Kosovo issue would eventually be forgotten. Thus, the emergence of KLA and the use of force were legitimised as last resort since previous peaceful means had failed, attracting international attention and leading to NATO's air offensive in 1999.

It is often claimed that the KLA brought Kosovo to independence and there is certainly some truth in this claim. The KLA contributed to Kosovo's successful secession largely by provoking with their actions massive Serbian retaliation. The KLA, even though fairly well-organised in the end, remained less capable than the well equipped Serbian professional forces. However, Milošević's misrule and the excessive way he reacted to KLA attacks, publicised through a well-orchestrated media campaign, provoked an outcry in international public opinion.

The deteriorating situation on the ground alarmed the international community that pursued actions to stabilise the situation in the region. Having the previous experience of the Yugoslav wars and still remembering the inefficiencies in Bosnia, the West was determined to react promptly this time, both to prevent a second Srebrenica from occurring and also to defend its reputation as a capable conflict resolution mediator and peacekeeper. As Milošević was still the Serbian leader, a man the international representatives distrusted and held accountable for the atrocities in Bosnia, the escalation in Kosovo provided the pretext to punish Serbia for previous crimes and rectify past international short-comings. Thus, although the Yugoslav wars had overshadowed Kosovo's importance in the beginning of the decade, by the end of the 1990s this experience accelerated the actions of the international community, offering also the excuse for a humanitarian intervention.

Furthermore, as it became clear during the Rambouillet negotiations that there was an imbalance between the capacities of the international backers of each side. The Kosovo Albanian cause was championed by NATO led by the US at a time when the hegemony of the latter in international affairs was undeniable. Serbia's primary supporter was Russia; a weak Russia, however, not in a position to exert real pressure. Thus, by the absence of a counterweight in the peace processes, NATO was able to pose a credible threat of use of force and to carry it out when necessary. As a consequence of the NATO intervention, Kosovo was separated de facto from Serbia. Although, officially after the bombing Kosovo remained a part of FRY, in reality all Serbian authority was effectively removed. Serbian military forces withdrew, and Kosovo was placed under international administration.

Finally, the Rambouillet document also regulated how the final status would be reached and how Kosovo would function as a self-governed entity. More specifically it called for a mechanism after three years of the entry into force of the agreement to settle the final

status of Kosovo. Although the agreement was never signed this provision along with others were incorporated into subsequent resolutions of the UNSC seeking to settle the issue of Kosovo.

Summing up, this chapter revealed that changes taking place across four different levels, -local, state, regional, global-, turned Kosovo from a Serbian internal matter to a major international issue that triggered NATO's unilateral military intervention. At the local level, the Kosovars abandoned Rugova's peaceful resistance and turned to KLA's violent approach. This resulted in the international community noticing and prioritising the settlement of the Kosovo issue. At the same time at the state level, Milošević had lost his credibility and legitimacy. The international community held him accountable for the crimes committed by Serbs during the Yugoslav wars and sought a pretext to punish him and Serbia for past abuses. At the regional level, first, the Yugoslav wars had been over. Thus, the international community had the time, energy and resources to deal with the issue of Kosovo. Second, the experience of the Yugoslav wars, the humiliation of the numerous international short-comings and the guilt of Srebrenica, persuaded the international community to act as soon as possible to prevent a second Srebrenica from occurring. Finally, at the global level, the Cold War was not only over, but the US enjoyed and demonstrated its absolute supremacy after almost half a century of competition with USSR/ Russia. Thus, in 1999 a weak Russia was unable to defend the interests of Serbia. This one sided power distribution between US and Russia was transferred to the protégés of each country, Kosovo and Serbia respectively, changing the power dynamic in favour of Kosovo and initiating the process of Kosovo's successful secession.

## **CHAPTER SEVEN**

### **KOSOVO UNDER INTERNATIONAL ADMINISTRATION**

#### *Introduction*

The NATO offensive ended with the signing of the Kumanovo agreement, foreseeing and demanding the withdrawal of Serbian forces from Kosovo. Through the subsequent Security Council Resolution 1244, Kosovo was placed under the UN interim administration (United Nations Mission in Kosovo- UNMIK) until an agreement for its final status had been reached.

This chapter will examine how the international administration itself, and how major events that occurred during its time affected Kosovo's successful secession. In order to do this, this chapter will present UNMIK's structure and duties and will evaluate its efficiency. In addition this chapter will discuss constitutive documents of the mission, such as Resolution 1244 and Regulation 1999/1 and will reveal how the formulation of those documents affected Kosovo's secession. More specifically, the direct reference of Resolution 1244 to the Rambouillet accords was perceived by the Kosovars as guaranteeing independence in three years through a referendum. Chapter seven will show how this perception, in combination with impatience for the settlement of the final status and frustration against UNMIK, led to the 2004 riots, which accelerated the process of Kosovo's secession by swiftly leading to the Vienna negotiations and the Ahtisaari plan.

Examining the course of the negotiations, the chapter sheds light on why they failed and what their impact was on Kosovo's unilateral secession shortly after their conclusion. Finally, the chapter closes with a general overview of the years of international administration (1999-2008) evaluating how key events and policies occurring during this time affected Kosovo's secession.

*Resolution 1244, international administration and “standards before status”*

Security Council Resolution 1244 adopted on 10 June 1999 placed Kosovo under an UN-led international administration (UNMIK). Its main purpose was to provide interim administration in Kosovo and develop provisional democratic self-governing institutions, reaffirming at the same time the territorial integrity of the Federal Republic of Yugoslavia (S/RES/1244, 1999). This section analyses the structure of the international administration, its mandate and actions, examining also how it was perceived by the local population. It shows the deficiencies of the international administration and reveals that its policies were often detached from the local realities undermining their effectiveness and legitimacy. However, the section also argues that international presence was beneficial for Kosovo’s future, providing with the foundations to create a functioning state afterwards.

The responsibilities of the international administration were divided into three domains. First, Resolution 1244 prescribed that it would perform civilian administrative functions and would regulate the establishment of substantial autonomy and self-government in Kosovo. Second, the international presence would facilitate a political process for the determination of Kosovo’s final status and the transition from the interim institutions to the permanent ones established after the final status had been reached. Third, the international administration would support reconstruction in Kosovo, offer humanitarian relief, protect human rights and ensure the return of all refugees, while promoting rule of law (S/RES/1244, 1999 §11). Moreover, a NATO-led force (KFOR) would oversee the withdrawal of FRY forces and would be responsible for the maintenance of peace and security in Kosovo (NATO, 1999).

In order to carry out its mandate, the international mission in Kosovo was organized into four “pillars” under the UN leadership. Pillar I, Humanitarian Assistance, led by the

Office of the United Nations High Commissioner for Refugees (UNHCR), Pillar II, Civil Administration, under the UN, Pillar III, Democratization and Institution Building, led by the OSCE, and Pillar IV, Reconstruction and Economic Development, managed by the EU (UNMIK, 1999). However, the Regulation No. 1999/1 provided that UNMIK would exercise all legislative and executive authority, including the administration of the judiciary (UNMIK/REG/1999/1, Section 1 §1). Thus, UNMIK's job was to coordinate the cooperation of all four pillars, a rather difficult task since each one of the pillars had their own management structures and centre of authority. On top of that UNMIK had governance authority with all powers conferred on the Special Representative of the Secretary General (SRSG).

The wide range of tasks entrusted to UNMIK complicated the organisation of the mission and considerably delayed deployment on the ground. Even after deployment, the relations between the respective pillars were largely characterised by competition and lack of practical co-operation. Seeking to materialise their own objectives, the organisations had different priorities and divergent approaches regarding the utilisation of financial resources, impeding the function of international administration as a coherent centre of authority (Yannis, 2001).

This delay in deployment and the lack of co-ordination allowed local centres of power to be established in the respective areas of control of each community and fill the power vacuum that was created after the withdrawal of Serbian forces. In Albanian populated areas the KLA took over former state assets, such as industries and electricity and petrol stations, as well as private properties that used to be owned by Serbs (Perritt, 2010). Self-appointed local rulers in both communities created zones of influence, imposing a system of taxation on the citizens of those particular areas, while fertile ground was created for criminal activity not

only to flourish but also to be institutionalised through this usurpation of power and control of economic resources by the self-appointed authorities (Yannis, 2001). These systems of control were unauthorised by the international administration and were considered to be founded on illegal methods. Nonetheless, their establishment showed that the Kosovar society assumed administrative responsibilities swiftly and effectively. Thus, although unwelcome by UNMIK, which desired to build Western type democratic institutions, the speed and effectiveness with which these unofficial structures were established indicated considerable administrative capabilities, necessary for the future creation of a viable state.

Furthermore, UNMIK's delay and the lack of experience in establishing state administration led to a rule of law vacuum during the first months after the end of the NATO intervention. Regulation 1999/1, on the one hand, provided that the laws applicable in the territory of Kosovo prior to 24 March 1999 would continue to apply as long as they did not conflict with internationally recognised human rights standards, the fulfilment of the mandate of UNMIK and any regulations issued by UNMIK (UNMIK/REG/1999/1, Sections 2,3). On the other hand, the vagueness of the former provision, combined with the slow establishment of UNMIK and the uncertain final status of Kosovo enhanced the rule of law vacuum (Interview 11, Malazogu).

This was again covered by local actors, mainly affiliated with the KLA who provided basic security and law-enforcement services (Perritt, 2010). However, the KLA also took advantage of the prevailing lack of accountability and engaged in horrific actions against Serbs and other ethnic communities, as well as against Albanians, almost annihilating Rugova's army<sup>43</sup> (Interview 4, Kosovar Press Editor, Interview 12, EU Diplomat). Serbs living in Prishtina during the first year of international administration describe the city to be

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<sup>43</sup> Rugova's government alarmed by the KLA's rise created in 1998 the Armed Forces of the Republic of Kosovo (Forcat e Armatosura të Republikës së Kosovës- FARK), an armed wing of the LDK (Strategic Comments, 1999).

in a state of terror, with daily evictions, harassment and arbitrary executions (Interview 20, Maksimović, HRW, 1999). It should also be noted that these actions, being an undeniable ethnic cleansing process, were allowed by the international administration not only out of incompetence, but also out of choice. The international administration implicitly endorsed these actions as it was believed that the creation of an ethnically homogenous Kosovo would strengthen its future stability and viability (King and Mason, 2006, Interview 5, EU Diplomat).

Eventually the UNMIK-led international administration was set up and also managed to impose itself as a source of authority, successfully leading to a considerable degree of order and stability. Institutions were gradually formed and constantly developed, Prishtina was slowly reconstructed and infrastructure was improving. Police capacities were significantly improved and ethnically motivated violence was radically reduced (King and Mason, 2006). From 2002 onwards, the local Provisional Institutions of Self-Government (PISG) were assuming responsibilities in several areas, including education, health service, culture and telecommunications, always, however, under the supervision of UNMIK (Sörensen, 2009). Thus, under UNMIK's administration, Kosovo had made some first steps in the state building process, forming some institutions and slowly acquiring the knowledge on how to run them.

Nonetheless, UNMIK was unsuccessful in establishing itself as honest and trustworthy administrative body due to its undemocratic structure and the impunity its personnel enjoyed (Lemay-Hébert, 2013, Visoka, 2012). UNMIK concentrated all powers over the territory of Kosovo -executive, legislative, judicial- overriding one of the basic principles of democracy, the separation of powers. All powers were exercised by the SRSG, who also had the right to "appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such a person" (UNMIK/REG/1999/1, 1999: 1.2). Thus, the power the



UNMIK enjoyed, in particular the authority of the person of the SRSG, was virtually unlimited, with reports of the UN-appointed Ombudsman in Kosovo personally accusing the SRSC of abuse of power and impediment of the rule of law (Mertus, 2001, Ombudsperson Institution in Kosovo, 2002). Amplifying this perception of impunity, the international personnel were exempted from domestic law. International personnel were free from accountability as they were exempted from the jurisdiction of the local courts (Mulaj, 2011b) and the Ombudsman was not authorised to investigate their actions (Ombudsperson Institution in Kosovo, 2002).

Furthermore, the public policies the international mission pursued showed limited understanding of the reality on the ground, which inhibited UNMIK's effective administration. Often lacking sound understanding of local history, tradition and mentality the international officials designed policies estranged from the everyday life and culture of Kosovo's citizens (Mulaj, 2011b). In the process of the development of the legal, economic and political system international advisers often promoted their own country's regulations with only minor alterations to adjust them to Kosovo's needs (Perritt, 2010). In addition, the international administration seemed to have unrealistic expectations regarding the implementation of laws in a territory that lacked formal state-running experience and "institutional memory" (Interview 19, EULEX Senior Personnel, Interview 15, Kursani). UN Officials admitted that UNMIK sought to introduce policies alien to the local realities and acknowledged that they still expected a level of implementation that had not materialised even in their own countries (Interviews 6, 17 UN Officials).

UNMIK's detachment from the reality on the ground, in combination with the extended powers the SRSG concentrated in his hands and the impunity the international personnel enjoyed, significantly undermined the international administration's legitimacy in

the eyes of the local population. For many Kosovo Albanians, Kosovo was again under foreign rule, while UNMIK administration was even compared with Serbian oppression (Goldstone, 2002, Perritt, 2010). Albin Kurti, political activist and later leader of the Vetëvendosje!, claimed that “UNMIK and Serbia are two sides of the same coin and one aspect of domination cannot be distinguished from the other” (Kurti, cited in Lemay-Hébert, 2013: 93).

Frustration with UNMIK was also fuelled by the awkward position of the mission. UNMIK was in Kosovo with a mandate of interim administration until the settlement of its final status, while one of UNMIK’s responsibilities was to facilitate a political process that would lead to the determination of its future status (S/RES/1244, 1999, 11(e)). UNMIK’s position was further complicated by the condition that the above mandate had to be combined with the respect towards the territorial integrity of the Federal Republic of Yugoslavia. This provision had as a result that whatever action was undertaken to transfer jurisdiction to local institutions were considered by Serbia as a violation of Resolution 1244. Thus, through Russia’s involvement, almost every step towards the establishment of a self-governing territory became subject of discussion in the UN Security Council, leading most of the times to a deadlock (Interview 11, Malazogu).

Moreover, UNMIK evidently procrastinated on the transferring of powers to local actors and avoided discussions related to the settlement of the final status. As the institution-building process was gradually progressing and the conditions on the ground were improving, international actors seemed to be satisfied with the way the situation in Kosovo was evolving (Perritt, 2010). In addition, the option of Kosovo to return to a reformed, democratic Serbia was not excluded during the first years of international administration (Schnabel, 2000). Thus,

from the point of view of UNMIK, this institution building process could continue for a considerable time in the future, avoiding the thorny issue of final status (Perritt, 2010).

Nonetheless, the Kosovo Albanians believed that UNMIK's role was to facilitate the process for the settlement of their future status, as mentioned in Resolution 1244. Resolution 1244 stated that the international administration would support the process for the settlement of the final status "taking into account the Rambouillet accords" (S/RES/1244, 1999: 11(e)). The Rambouillet accords, however, foresaw the settlement of a final status within three years after the agreement's entry into force, and that the status would be based among others on the will of the people. Thus, although the Rambouillet agreement had not been signed by Serbia, the explicit reference on this provision convinced the Kosovars that the implementation date of the resolution 1244 equalled the entry into force of Rambouillet, at least on this matter.

Therefore, the Kosovars expected that a final status would be reached within three years, hence by 2002 (Interview 15, Kursani). In addition, although the Rambouillet did not define who the "people" would be according to whose will the final status would be agreed, the Kosovars took for granted that this referred exclusively to the will of the people of Kosovo. The Rambouillet document referred to a mechanism for the determination of the final status of Kosovo, based also on the "opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures" (Chapter 8, Article 1(3), Rambouillet Accords, 1999). These further conditions, though, were neglected and the view that a final status would be reached within three years, on the basis of the will of the Kosovan people, dominated the Kosovar public opinion.

Furthermore, Kosovars being adamant that they had seceded from Serbia in 1999 expected that the state administration would eventually be handed over to the local institutions. Indeed, a mechanism of dual governance was established in which powers would be transferred from international to local agents, and thus the PISG assumed responsibilities on certain issues (Knoll, 2006). The PISG actions, however, remained subjected to the international administration's supervision, while key powers, including budget control, minorities issues, defence, security, policing and external affairs remained in the hands of the UN and the SRSG (Goldstone, 2002, King and Mason, 2006, Sørensen, 2009). With the international administration controlling major domains of governance, the Kosovar elites were unwilling to address the responsibilities assigned to them, as they seemed to be tasks of minor importance (King and Mason, 2006). Moreover, the two sides -international mission and local actors- often pursued conflicting interests, creating tensions between international officials and local elites (Mulaj, 2011b, Sørensen, 2009). All this combined with the evident reluctance of the international community to deal promptly with the settlement of the final status, made the Kosovo Albanians perceive the international administration as an obstacle on the road to their own state (Perritt, 2010).

Perhaps in an attempt both to motivate Kosovo Albanians to co-operate in various fields concerning the internal functioning of Kosovo and to allow more time to the international community to handle the future status of Kosovo, the SRSG proposed in December 2003 the "Standards for Kosovo." The Standards for Kosovo outlined eight areas in which Kosovo had to reach certain benchmarks that would determine its progress towards European standards. The standards aimed to create a multi-ethnic, democratic society that would be governed by tolerance, freedom of movement and equal access to justice for all people in Kosovo. More specifically, progress was demanded in the following fields:

functioning democratic institutions, rule of law, freedom of movement, sustainable returns of refugees and the rights of communities, economy, property rights, constructive Belgrade-Prishtina dialogue, reform of the Kosovo Protection Force (UNMIK/PISG, 2003).

The Standards for Kosovo were received with mistrust by the Kosovo population with the majority seeing them as an excuse for the international community to continue its rule over Kosovo (Mulaj, 2011b). These benchmarks were regarded to be subjective and their fulfilment was thought to be more a matter of interpretation than actual achievement of measurable goals (Interview 15, Kursani). Hence, these standards rather than motivating the Kosovars to rebuild the society and work towards the achievement of higher standards of living, only added to their frustration towards UNMIK.

However, UNMIK was playing an important role in favour of Kosovo's successful secession in two ways. First, the international missions on the ground, with their institution-building mandate, actually promoted state-building. Thus, although UNMIK was in Kosovo with a neutral position on Kosovo's final status, by developing state mechanisms the international administration effectively set the foundations for the future efficient function and viability of Kosovo as an independent state. Second, the mere fact that Kosovo was under UN administration instead of Serbian rule provided later strong arguments in promotion of Kosovo's international recognition. It was argued that the return of Kosovo to Belgrade's control would not be a viable option as Kosovo was de facto separated from Serbia and, with UN assistance, self-administered since 1999. As Belgrade exerted no control over the majority of Kosovo's territory and population, Kosovo was de facto a state and consequently by declaring its independence the Kosovo authorities merely officially announced a pre-existing situation. Thus, according to the declaratory theory of statehood Kosovo had

achieved statehood by practicing, along with UNMIK, de facto sovereignty over the population and territory of Kosovo.

The international administration, hence, played a catalytic role for the future internal viability of Kosovo and also provided arguments for its international recognition. In 2004, however, the Kosovars, obsessed with the achievement of full independence, did not seem to appreciate the benefits of the international presence. By comparing UNMIK with Belgrade and feeling that the international community had turned Kosovo into a colony, the frustration of the local population was growing. Finally, Kosovo erupted in March 2004 when three Albanian children drowned in the Ibar River in northern Kosovo. This unfortunate event led to a pogrom against Serbs and other non-Albanian communities, the worst wave of violence the region had experienced since the end of the war.

#### *Riots 2004*

On March 17<sup>th</sup> 2004 news spread rapidly of three Albanian children drowned the previous day in the Ibar River, allegedly after being chased by Serbs with their dogs. Although no evidence was found supporting these accusations, soon angry Albanian mobs started attacking Serbian neighbourhoods, threatening and expelling residents from their houses, burning the buildings after the residents' departure. By that afternoon, the riots had spread through the whole of Kosovo and continued to rage for three days, when they stopped as suddenly as they had begun. The 2004 riots were the worst wave of violence Kosovo had seen since the end of the war, largely caused by frustration with UNMIK and impatience with the settlement of the final status. The rapid escalation and the intensity of violence was a brusque reminder to the international community that the issue of Kosovo had to be settled soon, otherwise, stability

in the region was in danger. Thus, this section looks into the riots and shows how they led to the Vienna negotiations, accelerating the process of Kosovo's independence.

The riots lasted three days and according to the UN report a total of nineteen people died, of whom eleven were Albanians and eight Serbs, while hundreds were injured. In those three days four thousand people, mostly Serbs, became displaced. The account of property damage was also tragic, with more than seven hundred houses belonging to minorities being damaged or burned down. Similarly, public buildings such as schools and hospitals were damaged, as well as several orthodox churches and monasteries, including centuries old UNESCO protected cultural sites (S/2004/348, 2004).

Apart from attacks against the non-Albanian population, angry crowds also turned against UNMIK. The frustration with the UN exploded and rioters started vandalising UN property and setting fire to UN cars (Interview 18, Civil Society Activist). Rocks and Molotov cocktails were thrown towards every symbol of UN administration, slogans against UNMIK were chanted and UN flags were burned (King and Mason, 2006, Perritt, 2010). Despite the continuously escalating situation the majority of KFOR commanders chose not to intervene (Interviews 9, 10 and 18, Civil Society Activists). Thus, essentially the riots continued to rage unrestricted (Interview 18, Civil Society Activist).

Whether the riots had been spontaneous or previously organised remains a matter of controversy and speculation. The UN report firmly argued that “the onslaught led by Kosovo Albanian extremists against the Serb, Roma and Ashkali communities of Kosovo was an organized, widespread, and targeted campaign” (S/2004/348, 2004: 1). On the other hand, eyewitnesses maintain that “it is indisputable that they were spontaneous, at least to a considerable extent” (Perritt, 2010: 79). Other witnesses assert that at first the demonstrations were spontaneous, but later “as it usually happens with riots and protests, someone jumps in

and tries to manipulate for their own interest” (Interview 15, Kursani). In addition, it was acknowledged that the media had played an important role in fuelling the rage of the rioters. Television shows followed the events live, reporting how many Albanians were dead or injured, urging also the rioters “to kick Serbs out, because even in a liberated Kosovo they were still making problems” (Interview 15, Kursani).

Regardless of whether the riots were previously organised or not, it is widely accepted that one of the reasons why they escalated to that level was the longstanding frustration of Kosovo Albanians with the impasse the process of the settlement of their final status had reached. Kosovars believed that they had fought for independence throughout the 1990s, first through their peaceful resistance and afterwards their armed insurgency (Interview 18, Civil Society Activist). They were convinced that NATO intervention, the subsequent withdrawal of all Serbian forces and annulment of Serbian authority, equalled their independence (Interview 14, EU Diplomat). Nonetheless, they were prepared to wait for three years, as resolution 1244 foresaw, so that the final status of Kosovo would be determined according to the provisions of the Rambouillet Accords. However, more than three years had passed and their status was still uncertain. In addition, they also seemed to notice the international community’s reluctance to deal with the matter quickly. Therefore, it seems that they realised once again that patience and peace would not lead to the fulfilment of their cause.

Finally, their frustration was further increased by the low standards of living in Kosovo. Although the international administration had spent millions on Kosovo’s reconstruction by 2004, Kosovo Albanians seemed to believe that their economic development was held back because of their undetermined final status. They were convinced that as soon as they were independent, Kosovo would attract more investments, unemployment would be reduced, and economic growth would follow (Interview 4, Kosovar



Press Editor). Thus, UNMIK was perceived both as a barrier on the road towards the establishment of their own state and as an obstacle to their economic welfare. In the end, frustration added up and erupted in the violence of March 2004.

The impact of the riots on the course for the settlement of the final status of Kosovo was enormous. The events served as a “wake up call” for the international community, which, as a result, realised that the existing situation was unsustainable (Interview 11, Malazogu). The process for finding a solution was accelerated, leaving aside the fulfilment of the Standards for Kosovo as a prerequisite for the initiation of the talks for the status (Interview 5, EU Diplomat). Thus, although the EU opined in its 2005 enlargement strategy paper that “Kosovo’s institutions still lack the political maturity necessary to build a truly democratic, secure and multi-ethnic society” (European Commission, 2005: 8), it was decided after the UN Secretary General’s endorsement that status talks would begin later the same year (Ker-Lindsay, 2009b). Thus, as King and Mason (2006) very accurately observed “violence had once again advanced the independence agenda as nothing else in the previous five years had” (King and Mason, 2006: 191).

#### *Vienna talks and the Ahtisaari plan*

The March events showed that the stability in the region remained fragile. Regional stability, though, had been the primary concern and leading cause of the international community’s and in particular the EU’s, actions for more than a decade. On the one hand, the EU could not afford to have a source of instability in such close proximity to its borders. On the other hand, failure to ensure peace and stability after long efforts and millions of Euro spent would reflect once more the inefficiency of the international community and the EU in particular. Thus, the

West and the EU, not willing to have one more failure on their record, decided to act swiftly and the procedure for finding of a permanent solution started.

Consequently, the UN Secretary General appointed Kai Eide as Special Envoy to review the situation in Kosovo and draft a report on the situation on the ground. According to his report a decision would be made regarding the process for the settlement of the final status of Kosovo (S/2005/635, 2005).

Eide's report illustrated a bleak image of Kosovo. He referred to the grave economic situation and the increased cases of illegal economic activities, the absence of rule of law and the malfunction of the judicial system, as well as to the troubling relations between the Albanian majority and the minorities. Nevertheless, Eide concluded that

There will [...] not be any good moment for addressing the future status of Kosovo. Determining Kosovo's future status remains -and will continue to be- a highly sensitive political issue with serious regional and wider international implications. Nevertheless, an overall assessment leads to the conclusion that the time has come to commence this process (S/2005/635, 2005 §62).

The Council accepted Eide's proposal for the initiation of the process for settlement of the final status and shortly afterwards Martti Ahtisaari was appointed UN Envoy for Kosovo. Although Belgrade insisted that the March events were a clear demonstration of Kosovo's inadequacy for statehood, the Serbian authorities agreed to engage in dialogue with Prishtina if the Security Council decided so (Ker-Lindsay, 2009b).

The negotiations started in Vienna in early 2006 and lasted for fourteen months.<sup>44</sup> The negotiations, being a one-sided process, showed from the very beginning that the West was determined to support an independent Kosovo, excluding the possibility of any other alternative solution (Ker-Lindsay, 2009c). Participants in the negotiations confirm that the Kosovo Albanian delegation was assured about the outcome of the negotiations, while Belgrade was put under constant pressure to compromise (Interview 27, Senior UN Official). The UN Envoy himself, instead of retaining the role of impartial mediator, clarified in the first meeting with the Serbian delegation that Kosovo's independence was inevitable, while later he openly stated that:

The democratic leadership in Serbia today cannot be held accountable for the actions of Slobodan Milošević, but the leaders in Belgrade have to face the heritage and responsibility, because this historical heritage cannot be ignored, but rather must be taken into account in the process of finding a solution for the future status of Kosovo (Ahtisaari, 2006a).

With Ahtisaari explicitly holding Serbia accountable for past abuses and believing that the only appropriate remedy would be Kosovo's independence, every proposal the Serbian side submitted for extensive autonomy was ignored. Ahtisaari's stance was also endorsed by the members of the Contact Group, apart from Russia, who repeatedly affirmed that Kosovo would never return to Belgrade's rule (Perritt, 2010).

Kosovo Albanians having been assured of the fulfilment of their demands were willing to make significant concessions on matters concerning the status of minorities in

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<sup>44</sup> Purpose of this section is not to provide a detailed examination of the talks, but to evaluate their impact on the secession of Kosovo two years later. For detailed review of the negotiations: Perritt (2010), Ker-Lindsay (2009b), Weller (2008a), Weller (2008b), Weller (2009), Fridl (2009), Ahtisaari (2008).

Kosovo (Rohan, 2007). The Albanian delegation agreed to protect minority rights and provide among others extensive liberties and competences to the communities, guaranteed representation of minorities in the assembly and in the various state institutions, freedom in education, broadcast media and press and committed to bound to these terms by drafting a constitution including those measures (S/2007/168.Add1, 2007). The constitution and laws aimed to guarantee a peaceful co-existence on equal basis among the communities and set the foundations for the inter-ethnic stability and future viability of Kosovo.

Serbia, in contrast, being once again under pressure to submit to a diktat, refused to compromise and co-operate. As had happened in Rambouillet, Kosovo Albanians' demands were met, leaving space for Belgrade to negotiate only on issues of secondary importance. Hence, with its fundamental demands conclusively rejected, there was no incentive for Serbia to be constructive in a process that would ultimately lead to the official loss of Kosovo.

Throughout the process, Russia remained a firm ally of Serbia, mainly for two reasons. First, Russia was concerned with the possible effect of Kosovo as a precedent to similar secessionist cases. Being itself confronted with secessionist demands on parts of its territory, Russia was reluctant to support Kosovo to achieve independence without the consent of Belgrade. Second, Kosovo was a constant reminder of Russia's humiliation during the Rambouillet process and its inability to prevent the NATO air-offence against Serbia. By 2006, however, Russia under Putin was in a course of re-emerging in the centre of international politics and its uncompromising stance was supposed to be a demonstration of this (Antonenko, 2007).

Nonetheless, Russia failed to exert the necessary influence on the Contact Group for the finding of a mutual accepted plan. The rest of the Contact Group members remained resolved to end the process as soon as possible according to the plan of an independent

Kosovo that would offer extended freedoms to the minority communities. In addition, there seemed to be the widespread opinion within political and diplomatic circles that Russia's stance was a bluff. According to close friends of Ahtisaari, the Russian veto came as a surprise to him who "right to the end believed that the Russians would go along with the Security Council resolution" (Interview 27, Senior UN Official). Indeed, Russia during these months of negotiations had shown periodically some signs of relaxing its stance, urging Serbia to be more co-operative (Ker-Lindsay, 2009b). However, expecting that Russia would compromise was at least overoptimistic, if not misinformed, especially at a time when the Bush administration was promoting the expansion of the missile defence shield in Poland and the Czech Republic, a plan that was assertively and repeatedly condemned by Russia as a threat to its security (BBC, 2007).

Despite the certainty that Belgrade would reject any plan that would allow Kosovo to secede, Ahtisaari presented his proposal for the future status of Kosovo. The document started with the recommendation that "Kosovo's status should be independence, supervised by the international community," arguing that this was the only viable option for Kosovo (S/2007/168, 2007). As expected, Serbia refused to sign the plan and after the failure of the negotiations, a Troika was established to continue the talks, comprising representatives of the US, Russia and EU. This renewed round of negotiations had 10<sup>th</sup> December 2007 as its deadline.

In this renewed round of negotiations, the Troika committed to "leave no stone unturned in trying to find a solution to the Kosovo status question" (DW, 2007). Along these lines, the Troika suggested a solution of partition of Northern Kosovo. Northern Kosovo would pass to Serbian control, in exchange for agreeing to the independence of Kosovo (Weller, 2009). The proposal, however, was swiftly rejected by both Belgrade and Prishtina.

Then the EU representative, Wolfgang Ischinger, proposed a solution based on the West-East Germany experience (Lehne, 2009). The two Germanys, through a series of bilateral agreements, were able to coexist in international organisations, cooperate and engage constructively with each other, while not recognising each other (Childs, 1977). Thus, Ischinger suggested Serbia and Kosovo to regulate their economic and political relations, while temporarily putting aside the dispute over Kosovo's status (Weller, 2008a). The plan was also rejected by Belgrade, as this model of co-operation implied that Kosovo would be able to pursue international recognition and independent statehood. Thus, it would create a win-win situation for Kosovo, enabling it to enter the UN and be internationally recognised, while Serbia would continue to oppose its secession.

Despite rejecting the Troika's proposals, in this round of negotiations Belgrade was actively engaged in the process, producing concrete ideas for widest autonomy solutions. The Serbian delegation presented a settlement based on the Hong-Kong model, with several possible variations, seeking control only over foreign and defence policy, border control and the protection of Serbian heritage (Bataković, 2014). Belgrade was also willing to allow Kosovo to participate in international organisations and use symbols usually reserved for sovereign states (Ker-Lindsay, 2009b, Weller, 2008a). Serbia was disposed to offer Kosovo practically everything except for a UN seat and their own armed forces (Bataković, 2009). Nonetheless, after the announcement of the Ahtisaari plan, the Kosovo Albanians had no incentive for further negotiations (Weller, 2008a).

Thus, although the meetings with the Troika and the Serbian and Kosovar delegations continued, they were far from productive. Any possibility of progress, however, was virtually eliminated after US and European officials publicly stated that their countries would recognise Kosovo if it declared independence after the end of the negotiations (Dempsey,

2007). Fully confident of the support they enjoyed, the Kosovar delegation refused to negotiate further (Bataković, 2009). Consequently, having reached a stalemate, the Troika terminated its operations earlier than the deadline of 10<sup>th</sup> December. In their final report, the US, Russian and EU representatives announced that no mutual solution could be found as neither party was willing to yield on the fundamental question of sovereignty over Kosovo (S/2007/723, 2007).

Assessing the Vienna negotiations and the Troika talks, it can be observed that they followed a quite different route from the one the UN Envoy Kai Eide had proposed when he called for the process of a settlement of the final status to begin. Eide had stressed the complexity of the situation acknowledging that the territory in question was still part of a sovereign state. He had called for caution in the negotiations and emphasised that “artificial deadlines should [...] not be set.” He underlined the need for joint participation of all parties and the necessity of a process with a “clear and common picture of the agenda and the implications” (S/2005/635, 2005: 70).

The Vienna negotiations, in contrast, were rushed, with artificial deadlines, neither following nor concluding a common agenda agreed by all parties. The negotiations were expected to finish by the end of 2006 (Woehrel, 2006), setting an unprecedentedly short deadline for such negotiations. The matter was believed to be irresolvable from the start, i.e., even if the negotiations continued there would be no mutually accepted outcome. Claims by renowned scholars show the hastiness of certain international actors to conclude the negotiations. Weller (2008a) acknowledged that Belgrade proposed a set of solutions during the Troika talks

that might have appeared sufficiently reasonable to international negotiators to warrant further exploration, had it been made in the context of the Ahtisaari negotiations. Under those circumstances Kosovo would have come under very heavy pressure to defend its insistence on independence. However, after 15 months of Ahtisaari talks, there was little inclination to start again from scratch [...] (Weller, 2008a: 1227).

Recalling, however, other cases of contested territories where negotiations continue for years in search of a mutually accepted solution, it can be observed that fifteen months of negotiations is an extremely limited time for reaching a comprehensive agreement. Yet, in the case of Kosovo, fifteen months of negotiations were considered to be already too long. Even when Belgrade proposed potentially viable solutions in the Troika negotiations, its proposals were again dismissed as being put forward too late, which raises questions about the actual reasons why the negotiations had been conducted in the first place.

In hindsight it can be argued that the primary purpose of the negotiations was not the pursuit of a mutually accepted solution, but rather the justification that all means for the achievement of a mutually accepted solution were employed and failed. Kosovo's independence was a pre-determined necessity. However, to conduct negotiations was necessary in order to claim afterwards that all means to reach a consensual solution were exhausted, providing the final argument for major Western powers to recognise the independence of Kosovo (Interview 16, Senior UN Official).

Finally, the negotiations largely aimed to settle and secure the status of the Serbs in Kosovo. One of the predominant reasons why the West so actively promoted Kosovo's secession was to enhance stability in the region. Stability, though, would be impossible in an internally unstable Kosovo. Thus, the Kosovo Albanians, accepting that this was the price



they had to pay for independence (Rohan, 2007), agreed to provide extended liberties and protection of minority rights, so that a 2004 pogrom would not be repeated (Interview 11, Malazogu). To what extent the agreed measures have actually been implemented will be discussed in the next chapter, along with an evaluation of the supervised independence process Ahtisaari had proposed.

### *Conclusion*

This chapter looked into the years following the NATO intervention until the end of the Troika talks in late 2007. During those years Kosovo was under international administration led by UNMIK. The chapter demonstrated the importance of the international administration itself for the future successful secession of Kosovo and also identified major events that accelerated this process, referring mainly to the March riots of 2004 and the subsequent Vienna negotiations.

It revealed that also in the years 1999-2008 changes at four levels affected the outcome of Kosovo's secession. Kosovo's position under international administration had an impact both at the local and at the state level. At the local level, the international administration promoted the development of institutions, necessary for the internal viability of a future independent Kosovo. At the state level, the UN-led administration suspended and eventually permanently annulled Serbia's sovereignty over Kosovo, creating a de facto seceded entity.

Another event that took place at the local level and affected Kosovo's secession was the riots of 2004. The magnitude of violence created fears that a possible repetition of such an enormous wave of protests not only would be destructive for the international administration in Kosovo, but that would also potentially create a domino effect at the regional level. Thus,

procedures were accelerated for the finding of a permanent settlement that would guarantee peace and stability in the region.

This led to global-level negotiations including participants from local, state and global levels. Here, the sole possible outcome from the beginning was the secession of Kosovo as the only solution that would produce a permanent settlement sufficient to ensure stability on the regional level. The very conduct of negotiations provided the argument that all means possible to settle the conflict had been exhausted and therefore there was no other viable solution short of the secession and the recognition of Kosovo as an independent state.

Finally, the negotiations showed again how global dynamics affected the outcome of Kosovo's secession at the local level. Serbia was supported by Russia, which although a re-emerging global power was unable to exert enough influence on the Contact Group. The Contact Group members, on the other hand, could unilaterally accept the Ahtisaari plan, foreseeing the supervised independence of Kosovo, and as will be discussed in the following chapter, proceed to the recognition of Kosovo as an independent state resulting into the fait accompli of its secession.

## **CHAPTER EIGHT**

### **KOSOVO DECLARES INDEPENDENCE**

#### *Introduction*

The aim of this chapter is to present and evaluate Kosovo's progress towards international recognition and internal viability after it unilaterally declared independence on 17 February 2008. In order to do this, this chapter first sets the international background against which Kosovo began its course as a newly created state.

It therefore begins with an evaluation of the first international reactions following the unilateral declaration of independence. Serbia immediately declared Kosovo's declaration illegal and pledged to employ any non-violent means possible in order to prevent a fait accompli (Bataković, 2014). Russia, China and five EU member states -Spain, Greece, Cyprus, Slovakia and Romania- considered Kosovo's unilateral act a breach of international law and called for a solution based on mutually accepted agreement (UN SC SC/9252, 2008). The US and the majority of the EU countries, however, accepted Kosovo's independence and quickly recognised it as a sovereign independent state.

The chapter continues with an examination of whether Kosovo is a unique case or a dangerous precedent for international relations. The international community was and remains divided on whether Kosovo's unilateral secession constituted a breach of international law and a precedent for similar cases. States which perceive Kosovo's unilateral action as illegal and dangerous refuse to recognise it, inhibiting Kosovo's progress to uncontested statehood. Taking also into account that several states waited for the advisory opinion of the International Court of Justice (ICJ) before announcing their position on the issue of Kosovo, it also examines the ICJ's ruling on the question posed to it by the United Nations General

Assembly. The respective section will reveal whether it affected Kosovo's successful secession.

The chapter continues with the evaluation of Kosovo's progress in its international and internal affairs. Kosovo is currently recognised by 109 UN member states (May 2015), a number of recognitions far greater than that which other cases of contested secession have achieved. Kosovo's participation in international and regional organisations is also growing, while it has made the first steps towards European integration with the signing of the Stabilisation and Association Agreement (SAA) (European Commission, 2015b). Relations with Serbia are gradually improving through an EU-facilitated dialogue, the first phase of which was successfully concluded with the reaching of common ground and the signing of a historic agreement (EEAS, 2013). Regarding its internal viability Kosovo has made significant steps forward. Its institutions are still weak, but constantly developing, and the state gradually becomes more and more consolidated (Interview 23, Non-EU Diplomat). Kosovo has made major steps forward in terms of infrastructure, communications, transportations and policing, creating the foundations for a stable and viable state.

This chapter shows that Kosovo's second secession reached this level of success because of the significant support the West provided. After Kosovo's unilateral declaration of independence the West engaged in policies promoting Kosovo's international recognition around the world, resulting into Kosovo's widespread formal acceptance (*inter alia*, Interview 7, EU Diplomat, Interview 14, EU Diplomat, Interview 15, Kursani). Finally, the West promoted and ensured Kosovo's internal viability through the allocation of generous funds aiming to accelerate the state-building process in Kosovo and enhance the efficiency of Kosovo's state institutions.

### *Kosovo declares independence: first reactions*

The Serbian parliament immediately condemned the unilateral declaration of independence of Kosovo and rejected as unacceptable any fait accompli that violated international law. The Serbian parliament reaffirmed its adherence to Resolution 1244 as the only document defining the status of Kosovo, until a mutually accepted solution had been reached. As a sign of protest Belgrade temporarily recalled its ambassadors from all the states that recognised Kosovo's independence (Bataković, 2014).

Serbia, excluding the option to use force or enforce economic sanctions against Kosovo, decided to follow the diplomatic route and seek an advisory opinion from the International Court of Justice (A/63/PV.22, 2008). Bringing the matter to the United Nations General Assembly, Serbia's delegation persuaded the latter to submit a relevant enquiry to the ICJ (UNGA/10764, 2008). Consequently, the ICJ received in October 2008 the request to provide an advisory opinion on the question "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" (ICJ, 2010a: 8). The ICJ agreed to examine the question and delivered an advisory opinion two years later in 2010. How the ICJ opined and what the implications were of this decision for Kosovo's successful secession will be discussed later in this chapter.

Russia similarly condemned the unilateral declaration of independence. Calling for an emergency Security Council meeting after Kosovo announced its independence, the Russian representative declared that this act was illegal and a blatant breach of the norms and principles of international law that would eventually undermine peace and security in the Balkans. Stressing that this act would constitute a dangerous precedent and could have destructive consequences for international relations in general, the Russian representative asked for the unilateral declaration of independence to be proclaimed null and void and called

for a lawful solution based on agreements between Belgrade and Prishtina (UN SC SC/9252, 2008).

Likewise, the Chinese representative opposed Kosovo's unilateral action and expressed concerns about a potential revitalisation of conflict in the region. Considering thus the negative implications that a unilateral action may have for peace and stability he asked for continuation of fruitful and honest negotiations between the parties. Also, similar to the Russian representative, the Chinese envoy stated that this act would constitute a serious challenge to the fundamental principles of international law, therefore urging once more the parties to continue their pursuit of a mutually acceptable solution through political and diplomatic means (UN SC SC/9252, 2008).

In contrast, the US recognised Kosovo with enthusiastic words and congratulated its leaders and citizens for this decision. The US deemed this decision to be an important step towards Kosovo's democratic and national development, while it also welcomed Kosovo's commitment to the implementation of the Ahtisaari proposals (Bush, 2008). Furthermore, the US Secretary of State, Condoleezza Rice, clarified that the recognition of Kosovo is based on a specific combination of factors, including the context of Yugoslavia's breakup, the previous crimes against civilians and actions of ethnic cleansing, as well as the extended period of UN administration. Rice emphasised that because of the previous combination of factors Kosovo constitutes a special case and cannot be seen as a precedent for any other situation in the world (Rice, 2008).

The British representative to the Security Council also stressed that Kosovo is a *sui generis* case, deriving from the break-up of former Yugoslavia, affirming that its secession created no precedent. He supported that it was Resolution 1244 that had committed the unprecedented act to remove the authority of a sovereign state over a part of its territory – the

power of Belgrade over Kosovo- and not the declaration of 2008. He also claimed that through Resolution 1244 it was officially recognised that the respect for human rights in Kosovo and the stability of the region could only be secured if Serbia did not exercise control over Kosovo. The latter, he argued, was a condition that rendered Kosovo's secession inevitable. Thus, the British representative reaffirmed that the only way forward that would adequately ensure the overriding priority of peace and security in the region was the implementation of the Ahtisaari plan, emphasising the importance of respect for minority rights as a parameter that would determine Kosovo's future (UN SC SC/9252, 2008).

Similar were the stance and arguments from the rest of the Contact Group countries. France reiterated the uniqueness of Kosovo's situation, being the last chapter of the dissolution of Yugoslavia, a position that was also repeated by the German Minister of Foreign Affairs (UN SC SC/9252, 2008, Die Zeit, 2008). France and Italy both declared that after the exhaustion of all means the only option that would ensure stability in the region was the implementation of the Ahtisaari plan and the eventual integration of both Serbia and Kosovo in the European mechanisms (Sarkozy, 2008, UN SC SC/9252, 2008).

The majority of EU member states, twenty seven at that time, recognised Kosovo's independence, repeating similar arguments to the above. The context of the break-up of Yugoslavia, the human rights violations that occurred during the 1990s, the exhaustion of all other means, the unsustainability of the current status and the imperative need of stability in the region were the predominant arguments employed (*inter alia* Interviews 7,13,14, EU Diplomats).

Nevertheless five EU member states refused to recognise Kosovo's statehood. Cyprus, Greece, Slovakia, Spain, and Romania opposed Kosovo's unilateral secession as a violation of international law that would constitute a dangerous precedent in international relations

(Vallely, 2008). Although the arguments these countries officially expressed revolved around the adherence to the international law, the position of those states is also a result of latent domestic issues these countries confront and which could potentially take a problematic turn with Kosovo's precedent. The same can also be argued for China and Russia, facing the secessionist demands of Tibet and Chechnya respectively (Interview 6, UN Official, Interview 7 EU Diplomat, Interview 21, Peci). In the case of Cyprus and Greece, their unwillingness to recognise the unilateral secession of Kosovo is understandable when considering the still unresolved issue of the TRNC. Similarly Spain is concerned with separatist demands expressed by the Basque and Catalan communities and prefers to avoid any kind of endorsement of unilateral acts that could potentially harm its territorial integrity. Finally, Romania and Slovakia also deal with internal minority issues that could potentially deteriorate through an official endorsement of a unilateral secessionist act (Interview 5, EU Diplomat, Interview 12, EU Diplomat, Interview 25, EU Diplomat).

Even though the EU failed to officially adopt a coherent approach regarding the recognition of Kosovo, its member states were able to agree on collective actions. The EU was able to decide on the deployment of a mission in Kosovo that would assist the UN in the field of rule of law and maintain at the same time respect for Resolution 1244 (Gow, 2010). The European Rule of Law mission (EULEX) was established shortly after the unilateral secession of Kosovo, whose actions and mandate will be discussed later in more detail.

The reaction of the international community to Kosovo's unilateral secession shows that both recognising and non-recognising countries were concerned with the potential future implications of Kosovo as a precedent. Recognising countries hastily affirmed that they regarded Kosovo as a *sui generis* case and presented arguments supporting the uniqueness of Kosovo's situation. In light also of the assumption that many of the recognising countries deal



to some extent with their own secessionist movements the confirmation that Kosovo could not be used as an example for other cases was repeatedly heard. Non-recognising countries chose the safe option to oppose Kosovo's unilateral act as a violation of international law. Worried that the Kosovo incident would open Pandora's Box and lead to a fatal undermining of the principle of the respect of territorial integrity, these countries abstained from endorsing such an act. As expected, this divergence in approaches also sparked a feverish academic debate on whether Kosovo constitutes a precedent or not.

#### *Academic reflections on Kosovo as a precedent*

This section examines some of the arguments on the matter of whether Kosovo's unilateral secession constitutes a precedent or not. It demonstrates the different views on the potential implications of Kosovo as a precedent in international relations. It also highlights the division Kosovo's widespread recognition created in both international relations' practice and literature. Policy-makers and scholars have been divided on the issue, with many supporting the idea that despite assurances of uniqueness, inevitably Kosovo would encourage other secessionist movements to declare independence. Other academics, however, have argued that Kosovo indeed presented a unique combination of elements that convincingly justifies its unique treatment.

In more detail, scholars who claimed that Kosovo will inevitably be used as an example, argue that there are several similar cases of secessionist demands around the world. Some of those cases have succeeded in creating de facto states, such as South Ossetia, the TRNC, and Nagorno-Karabakh, but have received limited or no international recognition. Ker-Lindsay (2011, 2013) refers to other cases that share similarities with Kosovo, but have failed even to create de facto states, mentioning Iraqi Kurds who suffered significant discrimination

under Saddam Hussein, and Vojvodina, which shared the same status as Kosovo in the Former Yugoslavia.

Caspersen (2013, 2008) and Cheterian (2012) examined the effects of Kosovo's secession on the frozen conflicts in Caucasus and argue that Kosovo's recognition introduces a new dynamism in the region. Implying that Kosovo's case is far more successful than the cases in the examined region, Caspersen argues that the Kosovo example can lead to an increase of the rigidity of the position of all conflicting parties, potentially leading to a violent escalation. However, Caspersen also identifies a potentially positive aspect of Kosovo's precedent. Taking into consideration that Kosovo was placed under supervised independence, allegedly conditional upon the strengthening of democratic rule, multilateralism and respect of minorities and human rights, Caspersen maintained that this could perhaps constitute an incentive for de facto states to turn more democratic and abandon authoritarian rule. Kosovo, therefore, may produce a negative precedent for international relations, but it could also induce positive changes to the internal governance of entities demanding secession.

Another interesting argument was proposed by Vrbetic (2013) who likewise believes that Kosovo would be a source of inspiration for other secessionist movements and supports that Kosovo constitutes a bad model of conflict management. In the case of Kosovo a Security Council resolution that repeatedly affirmed the territorial integrity of a state was placed aside when negotiating the final status of the territory in question. Such a precedent could only undermine the trustworthiness of other interim agreements that foresee the establishment of provisional international administration turning states more reluctant to agree to such terms of conflict settlement.

On the other hand, Fabry (2012) admits that Kosovo encouraged aspirations of various secessionist groups and that it created a permissive environment for Russia to recognise two of

them, referring to South Ossetia and Abkhazia in 2008. Moreover, he also acknowledges that this would have probably not occurred if Kosovo's unilateral secession and recognition had not taken place before. Nonetheless, the limited number of recognitions those two entities have achieved indicates that these cases have not marked the abandonment of the post-decolonisation and post-Cold War norm of non-recognition of unilateral secessions.

Furthermore, Jia (2009) argued that Kosovo can be used as an example for similar demands only if the aspiring secessionist movement fulfils all conditions present in Kosovo. Hence, the population of the seceding entity should fully support secession and have a history of suffering past human right abuses, while the secessionist entity should be a former member of a disintegrated state, in which it had distinct administrative boundaries and enjoyed equal representation in the federal bodies. In addition the seceding entity should have a history of international administration and at the time of the secession it should have developing democratic structures (Malazogu, 2007).

Additionally, Watson (2008) maintained that Kosovo was the last phase of the disintegration of Yugoslavia. As such, by definition Kosovo is a unique case, because it was the last of the administrative units of Yugoslavia that demanded independence. Moreover, Roseberry (2013) asserted that what makes Kosovo a unique case is that recognising countries clearly stated that the people of Kosovo have the right to independence also because the past abuses they suffered under Serbian rule reached the level of ethnic cleansing or genocide. Roseberry claims that by setting the threshold as high as genocide, the recognising countries removed this right from other entities that suffered discrimination, but not ethnic cleansing or genocide. Finally, Borgen (2008) highlighted the fact that Kosovo was under international administration for almost ten years. Thus, Kosovo was, first, already *de facto* independent from Serbia and its return to being ruled by Belgrade would be neither a viable nor a possible

solution. Second, the presence of international administration on a territory wishing to secede constitutes an unusual element that the majority of secessionist entities do not possess,<sup>45</sup> rendering thus Kosovo's case unique.

*i. Reflecting on the literature*

When examining the arguments provided by all sides, each has valid perspectives. To begin with the evaluation of the claims presented in favour of the opinion that Kosovo will constitute a precedent, this thesis accepts that there are several cases around the world that share similarities with Kosovo. For instance, South Ossetia and Abkhazia both demand independence from Georgia since the USSR collapsed. South Ossetia was an autonomous region and Abkhazia an autonomous province in Georgia during the time of the USSR (Toal, 2008). Georgia was a constituent republic of USSR, having thus similar status with Serbia in Yugoslavia. Thus, following the *uti possidetis* principle after the dissolution of the initial structures, i.e., the former Soviet Union and Yugoslavia, Georgia and Serbia, had the right as constituent entities to establish their own states, as successor states of the former Soviet Union and Yugoslavia, respectively (Ratner, 1996, Conference on Yugoslavia, 1992). This right was not extended to the autonomous provinces within the republics. Therefore, by recognising Kosovo and violating the *uti possidetis* principle the way might open for other entities that enjoyed autonomy to demand their independence. Similar arguments can be presented also for Chechnya and Ingushetia that formed together an autonomous province in the Russian Republic at the time of the USSR, and which also have a history of repression and ethnic cleansing by Russia, as Kosovo by Serbia (Sakwa, 2003). Nagorno-Karabakh, an autonomous

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<sup>45</sup> East Timor was also under UN administration (UNTAES) and achieved independence from Indonesia through a referendum in 2002 with the consent of the latter.

region of Azerbaijan in the former Soviet Union, is another example that shares similarities with Kosovo (Caspersen, 2013, Cheterian, 2012).

Furthermore, the TRNC is a *de facto* state created through a military invasion conducted to protect the rights and the physical safety of the Turkish Cypriots (Tocci, 2003, Yakinthou, 2012). In this respect, it shares similarities with Kosovo in the sense that a state - Turkey- or a coalition of states -NATO- conducted a war on humanitarian grounds against a sovereign state, Cyprus and Serbia respectively, and resulted in the separation of a part of the parent state's territory and the creation of a *de facto* state. Thus, if Kosovo is accepted in the international system on the basis of the human rights violations it suffered and/or the previous status it enjoyed in the former structure, then there are also other entities that fulfil those standards and might be eligible for recognition.

On the other hand, despite the similarities these cases share with Kosovo, they also present some important differences. For example, while Kosovo initially pursued a peaceful way for the accommodation of its demands, Chechnya hardly engaged to any attempts for a negotiated accommodation. In addition, Kosovo made significant steps towards the establishment of a functioning state, whereas during its period of *de facto* independence, the Chechen government failed to build any viable institutions of an independent state (Charney, 2001).

In the case of TRNC, the latter was not a pre-existing territorial entity within the Republic of Cyprus, in contrast to Kosovo, which was an autonomous province in Serbia. In addition it is questionable whether the military intervention and the creation of a state was the only viable solution possible (Tocci, 2003), as was argued in the case of Kosovo.

Finally, Kosovo enjoyed a peculiar autonomous status with enhanced rights in the institutions of the former Yugoslavia, different from the status the other cases had in the

USSR. It had representation and a vote in the federal bodies of Yugoslavia, as well as its own constitution, assembly and territorial defence forces as the other republics (ICJ, 2009). That is why it is often called a “virtual republic” or a republic “in all but name” (Mertus, 1999, Dannreuther, 2001).

Even in the case of Vojvodina, which was put forward as a case sharing similar status with Kosovo as virtual republic in Yugoslavia, but never achieved independence, Vojvodina did not declare independence or explicitly expressed such demands. Its ethnic composition is also different to Kosovo. In Kosovo 95% of the population is ethnic Albanian, whereas Vojvodina is an ethnically heterogeneous region, with Serbs to constitute more than 60% (Stojšin, 2015, Judah, 2010). It is, therefore, debatable whether Vojvodina’s secession would be desirable for the majority of the population.

Moving on to the argument that Kosovo is a *sui generis* case, this is founded primarily on the assumption that Kosovo combined certain elements that turned it into a unique case. These elements turned into criteria for other cases demanding statehood that the latter had to meet in full in order to receive the same treatment as Kosovo. It was argued however that the conditions found in the case of Kosovo, including the disintegration of the former Yugoslavia and the peculiar status Kosovo enjoyed in the federal institutions, make its duplication almost impossible, thus, rendering Kosovo a unique case (Rice, 2008, UN SC SC/9252, 2008).

The problematic aspect of this argument is that the criteria set by Kosovo derive from the case itself. There were no previous conditions that Kosovo had to fulfil in order to achieve recognition by other states. To the contrary, after Kosovo unilaterally declared its independence, the recognising countries tailored criteria that fit the case and justified its uniqueness. Similarly then, by advocating Kosovo’s uniqueness according to conditions set *a posteriori* and that specifically addressing a certain case, the recognising countries potentially

opened the way for other “unique cases” to emerge according to circumstances (Ker-Lindsay, 2013).

Furthermore, counter-arguments can be provided for many of the presented arguments. For instance, the claim that Kosovo was the last part of the disintegration of Yugoslavia can be contested when considering the *uti possidetis* principle regarding at the time of its collapse. Recalling the Badinter Commission’s opinions regarding Yugoslavia’s successor states, Kosovo was not examined along with the Yugoslav republics and was not qualified to be among the successor states, as upon Yugoslavia’s disintegration Kosovo was a Serbian province and beforehand it had never reached the status of a republic (Conference on Yugoslavia, 1992). The recognition, thus, of Kosovo as being a chapter of the disintegration of Yugoslavia may not only not be an argument of uniqueness, but in contrast, it may trigger other entities to declare independence from the current structures they belong to, referring mainly to the possibility of Republika Srpska realising its threats for separation from the Federation of Bosnia. Bosnia’s decision for non-recognition of Kosovo in light of the potential disastrous effects such an action could have for the federation shows the latent precedential effects of Kosovo’s secession for still-unsettled former Yugoslav issues (Interview 30, Non-EU Diplomat).

Finally, the argument that Kosovo Albanians had been victims of genocide is founded on an inaccuracy. Although Kosovo Albanians undeniably suffered human rights violations and constant harassment throughout the 1990s, with the level of violence to escalate during the NATO air-offensive to ethnic cleansing, the UN-Supervised Supreme Court in Prishtina ruled that genocide had not occurred by Serbian forces (BBC, 2001). Ethnic cleansing, on the other hand, which certainly took place during the NATO bombardment is a phenomenon frequently

observed in wars and claims of past of ethnic cleansing can be found in the majority of separatist conflicts (Mann, 2005).

All in all, convincing arguments and counter-arguments have been presented by all sides. Nonetheless, this thesis will take no firm position on this debate. It will follow the middle route, accepting, on the one hand, that up to now Kosovo has not been used successfully as example for similar separatist cases. On the other hand, it cannot be excluded that the case of Kosovo could potentially have precedential effects in the long term. This thesis maintains this position through observation of other cases in the world that share similarities with Kosovo. Some of those cases, such as Nagorno Karabakh, while having created *de facto* states (and in some cases fairly successful *de facto* states), were not able to effectively use the case of Kosovo as a precedent to further promote their goals. Even South Ossetia and Abkhazia, which are supported and recognised by Russia, have managed to achieve official recognition by only four states. This single-digit number comes in stark contrast to the one hundred and nine recognitions Kosovo already has (May 2015). Hence, for the moment Kosovo seems to have maintained the status of a unique case.

Nonetheless, this status has been possible only because of the one-sided balance of power in the international system in 1999 at the time when Serbia's authority over Kosovo was annulled. However, this unipolarity that followed the collapse of the USSR has diminished. Although the US remains the most influential country in the world, other powers have emerged. What this means for the argument of this thesis is that more Kosovos may occur in the future, if coalitions of influential powers are created. Whether this is a credible scenario or not remains to be seen. For now this thesis accepts that other powers, such as Russia, were not able to promote their protégés' recognition and thus Kosovo remains a



unique case. However, the precedential effects Kosovo may have in the future should not be dismissed.

*ICJ's decision on the legality of Kosovo's unilateral declaration of independence*

The ICJ finally announced its long-awaited opinion in July 2010. However, the ruling did not live up to the expectations of the parties involved. The judges opted for a very narrow interpretation of the question, deciding that:

the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law (ICJ, 2010a: 122).

At first glance, the ICJ ruling seems to endorse the Kosovar position as it explicitly states that the declaration did not breach international law. Accordingly, Kosovo's government and citizens received the ruling with enthusiasm, while its president, Fatmir Sejdiu, urged all non-recognising countries to recognise Kosovo as an independent and sovereign state (McElroy, 2010). In contrast, Serbian president, Boris Tadic, reiterated Serbia's position that they would "never recognise the unilaterally-declared independence of Kosovo" and called for resumption of talks over the status of Kosovo (Lowen, 2010).

On a closer look, though, the Court by exactly and narrowly answering the question received, produced an opinion that neither condemned nor endorsed Kosovo's independence (Vrbetic, 2013). The Court opined that "general international law contains no applicable prohibition of declarations of independence" (ICJ, 2010a §84). Taking into consideration that

secession is not prohibited under international law (Crawford, 2006) and that international law does not regulate the dissolution of states from within (Bothe, 2010), the Court merely reiterated that since there is no applicable law, then there is also no violation of it.

In addition, the Court clarified that the question was specifically on whether or not the declaration of independence was in accordance with international law. Thus, the issue of whether or not Kosovo has achieved statehood was beyond the scope of the question. The Court also added that the question did not concern the validity or any legal effects of the recognition of Kosovo by those states that had already recognised it (ICJ, 2010a §51). Finally, the Court decided that debates on the extent of the right of self-determination and the existence of any right of “remedial secession” were also beyond the scope of the question and therefore the Court would not address those either (ICJ, 2010a §83).

The Court then literally concluded that it is not illegal for an entity to declare independence. The decision entailed neither political interpretation, nor validation of Kosovo’s statehood. As such, the ICJ’s ruling ultimately did not offer any major contribution to either the specific issue of Kosovo, or to the general understanding of secession and state creation (Hannum, 2011, Gallucci, 2010). Similarly, it provided no particular guidance to the countries waiting for its decision, and its impact on Kosovo’s future and on other similar unresolved conflicts around the world was not as influential as was initially expected (Jamar and Vignes, 2010). The supporters of Kosovo, the US and leading European countries continued to advocate for Kosovo’s recognition, while Russia, China and the five non-recognising EU countries held firm to their position (Economides et al., 2010).

### *Kosovo's international relations*

Up to the submission of this thesis, thus in seven years of independence, Kosovo has progressed significantly in its international and internal affairs. Internationally, through the constant efforts of the supporting countries combined with work of the Kosovar elites and civil society organisations, Kosovo has managed to be recognised by 109 UN member states as an independent and sovereign state (May 2015). The supporting countries strongly promoted Kosovo's statehood worldwide, persistently lobbying in favour of its recognition and its participation in international and regional organisations (*inter alia*, Interviews 5, 7, 14, EU Diplomats). This way, apart from the significant number of recognitions Kosovo has achieved, it has also been admitted as a member in a number of international organisations, among others the World Bank (World Bank, 2009), the International Monetary Fund (IMF, 2009), the Regional Cooperation Council (RCC, 2013) and the Council of Europe Venice Commission (Council of Europe, 2014), as well as in many sports organisations, including the International Olympic Committee (IOC, 2014). Interestingly, the International Olympic Committee declared in its statement announcing Kosovo's admission that Kosovo fulfilled the requirements for participation as outlined in the Olympic Charter, including the condition of being a "country" defined as "an independent State recognised by the international community" (IOC, 2014). Thus, the West's support and the increasing numbers of recognising states and international organisations that accept Kosovo's admission "have strengthened Kosovo's position, casting little doubt on its survival as an entity independent of Serbia" (Vrbetic, 2013: 19).

i. *Relations with non-recognising states*

Despite not recognising Kosovo's independence, China, Russia, Slovakia, Romania and Greece maintain liaison offices in Prishtina. Admittedly, the Russian liaison office, although demonstrating a level of engagement in Kosovo, is established in Prishtina mostly as a mechanism to observe the situation on the ground (Ker-Lindsay, 2015). The liaison offices of the other countries, however, operate as embassies, maintaining close relations with local elites and politicians. Moreover, Greece, Slovakia and Romania, acknowledging the need for regional stability and prosperity support Kosovo's regional integration and further European perspective, while Greece went a step further agreeing to the establishment of an Economic and Commercial Affairs Office of Kosovo<sup>46</sup> in Athens (Hellenic Republic MFA, 2015). All three countries have eventually recognised Kosovo's passport as a legal and valid form of identification (Kosovo MFA, 2012, Selimi, 2015, Kosovo MFA, 2014). Finally, all three countries with their capacity as members of the EU support Kosovo's institution-building process through EULEX (EULEX, 2015b), while Romania and Greece are among the thirty one troop contributing countries of KFOR (KFOR, 2014).

Thus Kosovo, although not fully recognised, is far from excluded by its neighbourhood and the prospects for the future are rather optimistic. In April 2015 the European Commission adopted the proposal for a Stabilisation and Association Agreement (SAA) for Kosovo, constituting an important step towards Kosovo's European integration. The next important and mandatory step will be the verification of the proposal by the EU Council and the European Parliament before it can be signed and enter into force in early 2016 (European Commission, 2015b). Once in effect, the SAA will be the first contractual relation between the EU and Kosovo, which will allow Kosovo to enjoy and benefit from the EU's policies for the Western

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<sup>46</sup> Kosovo is referred with an \* reaffirming the validity of the UN Security Council Resolution 1244/1999.

Balkans, as it will provide a framework for political dialogue, including co-operation in various sectors, such as justice, trade, education, employment, energy and environment (European Commission, 2015b).

Furthermore, Kosovo has made important steps towards the signing of the visa liberalisation agreement with the EU, a process initiated in 2012. The 2014 EU report regarding Kosovo's progress on the requirements of the visa liberalisation roadmap has identified numerous improved areas. In particular, significant progress was noted in the fields of readmission, border management, migration and asylum, while there was also some improvement in the fields of reintegration and freedom of movement (European Commission, 2014b). Despite considerable improvements in the above areas, Kosovo greatly lacks in the fields of document security and rule of law and thus the agreement on visa liberalisation will possibly be delayed until effective measures are met to combat high-profile corruption and organised crime (Avramopoulos, 2015). Nevertheless, the visa liberalisation is an ongoing process that, upon its completion, will be an important step towards Kosovo's European integration.

## *ii. Relations with Serbia*

One of the most important steps towards Kosovo's international acceptance is the ongoing dialogue with Serbia, aiming for normalisation of relations. Serbia, with EU accession as its principal goal, is aware that a prerequisite for its admission to the Union is the settlement of the issue of Kosovo, as indicated in Chapter 35 of the accession procedure.<sup>47</sup> Given also the importance and the complexity of this matter, this Chapter is to be opened first and progress is

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<sup>47</sup> Each country seeking admission to the EU has to meet certain standards in various topics as defined in the thirty five chapters of the *acquis* (European Commission, 2015a). The thirty-fifth chapter, having the general title "other issues" is reserved in the case of Serbia for the normalisation of relations with Kosovo (Republic of Serbia, 2015).

required throughout and in parallel with the progress in the other chapters (European Commission, 2014c). Thus, the settlement of the issue of Kosovo is of primary and urgent importance for Serbia's European course. In light of this, an EU-facilitated, high-level dialogue between Belgrade and Prishtina commenced in October 2012, resulting in April 2013 in a landmark agreement between the two parties (EEAS, 2013).

Even though the high-level dialogue and the signed agreement<sup>48</sup> do not constitute formal recognition by Serbia, the agreement includes various provisions that regulate their relationship as being interstate. More specifically, Article 14 specifies that "neither side will block, or encourage others to block, the other side's progress in their respective EU path" (Brussels Agreement, 2013), while measures decided in the frame of technical agreements foresee progress in the field of freedom of movement, regional representation, integrated boundary management (IBM) and the appointment of liaison officers (Republic of Serbia, 2015).

Notably, progress has been observed in all of the aforementioned areas. In the field of freedom of movement, residents with Serbian and/or Kosovo identity cards are allowed to enter and exit both Serbia and Kosovo (European Commission, 2014c). Serbia, thus, recognises Kosovo-issued documents as valid forms of identification. In the area of boundary management, six interim joint crossing points were established, while the exact location and layout of the permanent ones have been agreed (European Commission, 2014c). Furthermore, Serbia's role in facilitating Kosovo's participation in the South-East Europe Cooperation Process (SEECPP) was especially constructive, as it was in the case of Kosovo's request for participation in the Regional Cooperation Council (RCC) (European Commission, 2014c, Republic of Serbia, 2015). Finally, the system of liaison officers is in place and several

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<sup>48</sup> Officially named First Agreement of Principles Governing the Normalisation of Relations or Brussels Agreement.

official visits have been organised, which the Serbian government reports were unfolded “without a single problem and in excellent cooperation” (Republic of Serbia, 2015: 19).

The Brussels Agreement has also led to significant changes on the ground. For the first time elections were held in the whole of Kosovo, including Northern Kosovo. In addition, the units of the Serbian Ministry of Internal Affairs (MUP) in Northern Kosovo have begun to dismantle and integrate into the Kosovo (Bjeloš et al., 2014). This way, the Kosovo government gradually expands its control in the entire territory of Kosovo, meeting the minimum requirement for state viability this thesis has set, i.e. the ability of the government to exert control over population and territory.

Hence, the relationship between Serbia and Kosovo is increasingly taking the form of neighbouring states, even though Serbia still refuses to recognise Kosovo as an independent state. This increasing quasi-interstate interaction can be regarded as a form of *de facto* recognition, demonstrating at the same time that Serbian government officials have acknowledged the irreversibility of Kosovo’s secession and the need to settle this issue and move forward to EU accession (Interview 26, Dimitrijević, Interview 27, Senior UN Official, Interview 34, Civil Society Activist).

The Brussels Agreement was the first result of the EU-facilitated dialogue for the settlement of the Kosovo issue. The discussions have resumed in February 2015 and progress is expected to be seen with the implementation of the agreement, as well as with the finalisation of remaining issues (Mogherini, 2015). Although the time of the conclusion of negotiations and their outcome is uncertain, the imperativeness of positive results for Serbia’s European integration sends optimistic signals for its acceptance as an independent state.

### *Kosovo's domestic policy*

Along with progress in matters of external recognition, Kosovo has also made significant steps forward on issues of internal state function following the Ahtisaari proposals. After the launching of the Ahtisaari plan, the Kosovo authorities and the international community on the ground committed themselves to its implementation. Ahtisaari recommended an independence procedure supervised by the international community until Kosovo has reached satisfactory standards in several areas<sup>49</sup> of internal regulation. For the fulfilment of the benchmarks set by Ahtisaari, Kosovo's government adopted several laws in the fields of human rights, public administration, local governance, justice, and elections. In addition, the government adopted a constitution corresponding with the international community's standards (Assembly of Kosovo, 2015),

#### *i. Constitution*

Kosovo's constitution is a remarkably democratic document, in line with the Ahtisaari requirements. The Constitution declared Kosovo to be a "multi-ethnic society consisting of Albanian and other Communities" (Constitution of Kosovo, 2008, Art.3.1) and comprises provisions that guarantee the rights of those communities, as well as their representation in

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<sup>49</sup> The provisions of the Ahtisaari proposal included the protection of human rights, and rights of ethnic, linguistic and religious communities in particular, return of refugees and missing persons, regulation of issues of territorial self-governance, so that municipalities would constitute the basic form of self-governance in Kosovo, autonomy and protection of religious denomination, with enhanced protection measures for the Serbian Orthodox Church, establishment of a fiscal surveillance system of public accounts under the aegis of the European Commission and the International Monetary Fund, the development of Kosovo Security Force to a multi-ethnic and professional force, the conduct of free and fair general and municipal elections and drafting of a constitution in cooperation with the international community. The Ahtisaari plan also provided for the establishment of an International Steering Group comprising key international stakeholders and the appointment of an International Civilian Representative who would bear responsibility for the supervision and interpretation of the settlement. Furthermore, the proposal foresees the establishment of a European mission to assist Kosovo authorities in the field of rule of law and also the formation of a NATO International Military Presence to support the implementation of the plan and also to assist with the training of the Kosovo Security Force (S/2007/168.Add1, 2007).



the legislative, judicial and administrative institutions of Kosovo (Constitution of Kosovo, 2008).

In more detail, the Constitution guarantees that out of the one hundred and twenty seats in the Assembly, twenty are reserved for the minority communities. Half of those seats are reserved specifically for the Kosovo Serb community (Art.62.2). Non-majority communities are also guaranteed to hold two Deputy Presidents (Art.67.4), as well as Minister and Deputy Ministers positions (Art.96.3, Art.96.4.). Furthermore, at least three judges of the Supreme Court (Art.103.3) and at least two judges of any other court shall be from minority communities (Art.103.6). There shall also be guaranteed representation of minority communities in the Central Election Committee (Art.139.4.), and although no specific percentage of representation is mentioned, the Constitution of Kosovo requires that the composition of the police shall reflect the ethnic diversity of the population (Art.128.2). Finally, the constitution foresees that for any amendment a two-thirds majority vote is required by all deputies of the Assembly including two thirds of the minorities (Art.144.2), implicitly offering the minorities the right to veto future amendments.

Moreover, the constitution protects the rights of the ethnic, religious and cultural communities of Kosovo. Beginning with reaffirming basic human rights, such as the right to their own language, traditions and religion, Article 59 also includes the right to receive public education in their own language, establish and manage private educational institutions, as well as to use their language in their relations with the municipal authorities in areas where they represent a sufficient share of the population. In addition, guaranteed access is provided to public broadcast media, with the right to use their own language and freedom to create their own independent media. Freedom of movement within and throughout Kosovo is ensured, as well as freedom of expression, the right to participate without discrimination in the activities

of local, regional and international non-governmental organisations and freedom to establish associations for culture, art, science and education fostering and development of their identity (Constitution of Kosovo, 2008, Art.59). Finally, the Constitution of Kosovo pledges to promote and facilitate the return of refugees and assist them with the recovery of their property (Constitution of Kosovo, 2008, Art.156).

However, the implementation of laws remains limited, especially the laws referring to human and minority rights (Interview 20, Maksimović). Serbs still lack solid and tangible assurances of physical security (Bataković, 2014). This insecurity, and more importantly the perception of insecurity have locked Serbs in enclaves allowing them only restricted freedom of movement. Consequently, the possibility for those who abandoned their residence during the 2004 riots to return remains also limited (Interview 10, Civil Society Activist). Impunity against perpetrators of ethnically-motivated violence only enhances the feelings of insecurity and widens the distance between the two communities. Serbs have also limited access to justice, with their lawsuits or appeals often being ignored (Interviews 9,10, Civil Society Activists). In addition, Serbs have poor access to public services, which is exacerbated because of the language barrier. Although the law foresees the translation of public documents to all official languages of the state, the translation is often inadequate, making the text incomprehensible (Interview 20, Maksimović). In addition, although non-majority communities of Kosovo are allowed to use their own language when dealing with the public sector, usually this is a luxury not provided. Serbs also have limited opportunities for employment, being mainly restricted to the Serbian-run structures (Interview 13, EU Diplomat). Furthermore, technical and infrastructural problems are widespread, with power, water and television signal outages a common phenomenon (Interview 20, Maksimović).

Serbs remain marginalised in their enclaves, having limited access to higher education or opportunities for economic and professional development.

*ii. State institutions*

Apart from adoption of new laws, Kosovo has developed its institutions and infrastructure. State institutions are in place and fairly functional, while Kosovo had made significant progress in road and telecommunications infrastructure. In addition, the Kosovo Police has evolved into a remarkably effective force. It sufficiently established order and rendered Kosovo a safe place (ICG, 2010). Moreover, Kosovo has, since the early days of its independence, been a pluralistic political scene with numerous political parties, vibrant media and engaged civil society (Tansey, 2009). The last elections of 2014 were transparent and well-organised. Moreover, for the first time the four northern Serb dominated municipalities of North Mitrovica, Leposavić, Zvečan and Zubin Potok participated in the elections, terminating the longstanding boycott (European Commission, 2014a).

The role of the international community was enormous for this positive development. The EU, through the establishment of EULEX has a more active role in Kosovo since its declaration of independence. EULEX, being the largest EU civilian mission to date, provides expertise for the strengthening of Kosovo's rule of law institutions, seeking to improve and lustrate the judicial system and render it free from political interference (EULEX, 2015a). EULEX significantly contributes to the fight against corruption and organised crime by investigating, prosecuting and adjudicating sensitive cases such as cases of high-profile bribery, drug and human trafficking cases and war crimes (EULEX, 2015b). This way EULEX assists Kosovo to reach the necessary EU rule of law standards promoting its participation to European institutions and eventually its European integration. Finally,

EULEX had played a major role in the police reform and the establishment and orderly function of border police and customs (EULEX, 2015a).

Apart from EULEX, several international institutions and organisation are operating on the ground assisting Kosovo in its state building process. UNMIK, although not governance authority any more, remains in place as the Resolution 1244 is still valid. Although being significantly reduced, UNMIK continues to promote security and stability in Kosovo and encourage inter-ethnic peace and reconciliation through the launching of various cultural programmes aiming to create bridges of communication between Kosovo Serbs and Albanians (Interview 17, UN Official). The OSCE plays a leading role in all matters related to human and community rights, institutions and democracy-building, as well as good governance, gender equality, civic participation and electoral support (OSCE, 2015). Furthermore, through Stand-By Arrangements first signed in 2012 and being renewed in 2015, the International Monetary Fund controls Kosovo's fiscal policies and macro-economic strategies transferring knowledge and expertise to Kosovo's economic institutions (IMF, 2013, IMF, 2015). Along with those organisations, a plethora of other UN specialised agencies and inter-governmental organisations are operating in Kosovo, such as International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and USAID, supporting the state building process, strengthening the institutions, promoting security and stability in Kosovo (Kosovo MFA, 2015).

With international support, Kosovo has established a functioning state structure that is increasingly developing. Its institutions are still weak but continuously strengthened, the political system is also weak, but functional, and the press and civil society enjoy freedom of expression and operation. Everyday life of Kosovo Albanians resembles life in a fully recognised, stable state. Contrary to the widespread assumption of a lack of security, Kosovo

is fairly safe with violent crime at low levels (ICG, 2010). In terms of services and infrastructure the situation is efficient and constantly improving. Prishtina airport is modern and well-organised; transportation throughout Kosovo is well-scheduled and reliable; Prishtina is reconstructed and clean. Telecommunications are at a satisfactory level of service production as well, with internet capacity at European levels and the percentage of internet users at 76,62%, thus higher than some EU countries (STIKK, 2013). Hence, all in all, Kosovo has made great leaps forward in these seven years of independence and has created the mechanisms and sense of a state.

### *iii. Shortcomings and areas for improvement*

Despite Kosovo's remarkable progress it still faces serious shortcomings. To begin with, the lack of rule of law remains a serious concern in cases of high-profile corruption and organised crime (European Commission, 2014b). Corruption continues to be widespread in the vast majority of institutions and organisations operating in Kosovo, referring to both local and international actors (Interview 5, EU Diplomat, Interview 19, EULEX Official). Although, drug-related crime investigations have been increased and a number of human trafficking groups have been dismantled, the number of convictions and drug confiscations remains low (European Commission, 2014a). The independence of the judicial system is contested, while harassment of judges and prosecutors poses serious problems. Furthermore, witness protection remains almost non-existent and witness intimidation is a common phenomenon, further hindering the prosecution of high-profile criminal perpetrators.

Finally, economic development remains limited. Due to high-levels of corruption private foreign investment is discouraged. Productivity is limited and the economy is based on international assistance and contributions from the diaspora. With the unemployment rate to

reach 35% and per capita Gross Domestic Product (GDP) at €3,000 Kosovo is one of the poorest countries in Europe (World Bank, 2015). On the positive side the cost of living is accordingly low, increasing the purchasing power of Euro in Kosovo. Moreover, Kosovo has recorded positive growth rates in every year since its independence even during the global recession period 2008-2012. Kosovo's growth rate continues to be positive at 3.4 % and its banking system is well-capitalized, liquid, and profitable (World Bank, 2015, European Commission, 2014a, IMF, 2015).

Kosovo's most serious shortcomings are to be found in the field of human rights, organised crime and corruption. Laws on human and community rights are not implemented, while the perception of insecurity inhibits minorities from being more integrated. Although some progress has been made, the pace is slow and is further hampered by the increasing social distance between the communities. The language barrier between Serbs and Albanians is growing, as younger generations do not speak each other's language (Interview 19, EULEX Official). By living in segregated communities and not having any communication negative perceptions and mistrust between Serbs and Albanians is growing (Interview 15, Kursani). Reconciliation programmes organised by international organisations often fail; even during the course of the programme members of each community tend to gather together instead of trying to communicate with each other (Interview 17, UN Official). Furthermore, contact and integration is often hindered by members within the minority community itself. Often those who want to integrate and participate in Kosovo's political life are treated as traitors or agents of the Albanians' by the rest of the community (Interview 1, Former NATO Officer, Interview 9, Civil Society Activist). It is fortunate, however, that this has gradually started to change. As an increasing number of Serbs accept the irreversibility of Kosovo's secession and seek opportunities for a better life, they also try to integrate.

Organised crime and corruption are extremely difficult to tackle. Even in cases where perpetrators are widely known, lack of adequate witness protection leads to a corresponding lack of testimonies. Thus, most of the time, investigations stop due to lack of sufficient evidence (Interview 6, UN Official). A further reason why corruption and organised crime are very difficult to tackle is that they involve high-profile people of all communities in Kosovo, who, in turn, have collaborators among the rest of the population, making the illegal network sizeable (*inter alia*, Interview 4, Kosovar Press Editor, Interview 12, EU Diplomat, Interview 14, EU Diplomat). Moreover, corruption dominates the way society works in Kosovo (Interview 3, Qehaja, Interview 7, EU Diplomat, Interview 20, Maksimović). Although such practice is unacceptable for western standards of democracy, this is a socially acceptable and endorsed way of state and social function in the region (Interview 2, Miljanić, Interview 6, UN Official, Interview 19, EULEX Official).

Despite those shortcomings, the international community in Kosovo decided in 2012 that the period of supervised independence was over. Nevertheless, international organisations are still on the ground providing support and expertise, assisting Kosovo to strengthen its institutions and reach the standards for European integration. KFOR remains in place guaranteeing Kosovo's safety from external threats, while continuing with the training of the Kosovo Protection Corps (KPC) and Kosovo Security Force (KSF). The EULEX mandate has been extended until June 2016 and the EU continues to provide financial assistance under the Instrument for Pre-accession Assistance<sup>50</sup> (IPA) (European Commission, 2014a). Apart from the EU, individual countries also continue to support Kosovo financially with some of the

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<sup>50</sup> For the period 2007-13 Kosovo received a total of €673.9 million. An additional €38.5 million was provided in 2013 to support the Prishtina-Belgrade dialogue, the normalisation and integration processes in Kosovo, including the visa dialogue. Under IPA II (2014-2020) Kosovo will continue to benefit from pre-accession assistance with a provisional total of €645.5 million. Through IPA and IPA II the EU aims to enhance democracy and good governance, strengthen the rule of law, promote fundamental rights, increase competitiveness and innovation, improve education and social policies, boost employment and support energy, agriculture and rural development (European Commission, 2014a).

most important donors to be the US, Germany, Switzerland and Norway (FFO, 2015, KCSF, 2015, USDS, 2013, RNEP, 2013). Thus, Kosovo although not under supervised independence any more is far from abandoned.

### *Conclusion*

The purpose of this chapter was to assess Kosovo's progress towards successful secession from its declaration of independence in 2008 to May 2015. This chapter demonstrated that Kosovo has made huge progress considering its young age, both in terms of international recognition and internal viability.

Internationally, Kosovo is recognised by 109 UN member states, an impressive quantity of recognition considering that it is an outcome of a unilateral act. Furthermore, Kosovo has entered a number of international organisations, while its participation in regional fora is growing. Kosovo has also established cooperative relations with non-recognising countries, which support Kosovo's state-building process and regional integration. Kosovo, thus, although not fully recognised is not excluded regionally and internationally, while the signing of the SAA agreement with the EU enhances the optimistic prospects for its future.

What is of major importance for Kosovo's course towards international acceptance is the normalisation of its relations with Serbia, a process that has already shown tangible results. The high-level dialogue between the governments of Serbia and Kosovo and the reaching of an agreement may constitute *de facto* recognition of Kosovo, albeit not *de jure*. Nevertheless, the agreement foreseeing the dismantling of Serbian structures in Kosovo and especially in the North, the acceptance of documents issued by the Kosovo authorities and the implementation of the integrated boundary management constitute significant steps forward. Although still in its early stages, this planned dissolution of Serbian structures in the North



will enable Kosovo's government to exert control over the entire territory of Kosovo ensuring the continuation of Kosovo's territorial integrity. Thus, the conduct of the dialogue with Serbia induces positive results for Kosovo for both its international recognition and internal viability.

In terms of internal viability, Kosovo's government exerts authority over the vast majority of its territory, fulfilling to large extent the criteria for internal viability this thesis has set. Kosovo has established a stable and safe state, able to provide order even in the North, with the international community's assistance. Kosovo's institutions are still weak and Kosovo faces shortcomings in several areas, especially in the areas of corruption, rule of law and human rights. Nevertheless, with the support of the international community on the ground, and the EU in particular, Kosovo makes steps forward, constantly developing its state structures and capabilities.

Thus, in seven years of independence Kosovo has managed, with the West's continuous support, to create a state that is widely recognised and fairly viable. Admittedly, Kosovo's unilateral secession has yet to create an uncontested state; nevertheless, Kosovo has managed to reach a level of international recognition and internal viability that render its secession irreversible. The next chapter, as the concluding chapter of this thesis, will answer the question of why Kosovo's unilateral secession succeeded to such a considerable extent, taking into consideration the entire course of Kosovo's struggle for independence since 1991.

## **CHAPTER NINE**

### **CONCLUSION**

The purpose of this thesis has been to contribute theoretically and empirically to the understanding of secession as a phenomenon of international relations. The field of secession, connected with studies on self-determination and statehood can be a very broad one; nonetheless, in such a broad field of study the questions of when and why secessions succeed remains insufficiently addressed. Secession theories being many times based on legal documents usually debate the question of when a secession is justified and whether and under which circumstances a right to remedial secession exists. Studies based in international relations and political theory present ideas on when a secession should be permissible and which groups would be entitled to this right.

This thesis reviewed three broad categories of secession theories. In specific it examined how remedial secession theories, primary-right theories and nation-orientated theories of secession explain the case of Kosovo. In addition some prominent alternative approaches to secession were reviewed, which do not fit to any of the above categories.

The remedial secession theories argue that an entity has the right to secede only if it had suffered grave injustices in the hands of the parent state. Each scholar sets their own criteria of what constitutes grave injustices, including human rights abuses, ethnic discrimination, and neglect of the political and economic interests of the in-question entity as well as the territory to have been annexed unjustly by the parent state in the first place. Nevertheless, common ground among the remedial secession theories is that an entity might have the right to secede after the parent state have repeatedly and manifestly failed to respect and protect vital human rights of the members of this entity. Also, secession should be the last

resort, being only allowed when all other means of co-operation and co-existence have been exhausted and failed.

Remedial secession theories explain and partially justify why the Kosovo Albanians desired to secede. They explain their wish to secede based on the human rights violations Kosovo Albanians suffered under Milošević's rule. In addition after the failure of the Vienna negotiations it was argued that all other means to settle the issue of Kosovo have been exhausted and thus its secession could be regarded as last resort.

It is questionable, however, whether Kosovo's independence was the last resort Kosovo Albanians had in 2008. By 2008 Serbia had ousted Milošević's and handed him in the ICTY. Serbia has made a turn to democracy and has already begun a policy of approaching the EU, accompanied by efforts to strengthen rule of law and human rights protection. Serbia had also presented various alternatives to Kosovo's independence in the last round of the Troika talks, including the option to allow Kosovo to participate in international organisations and use symbols usually reserved for sovereign states, offering practically everything except for a UN seat and right to armed forces. Kosovo Albanians, however, backed by the West, were not willing to accept anything sort of independence, leading to the stalemate in the negotiations.

Furthermore, although remedial secession theories explain some aspects of Kosovo's secession, they fail to address the issue of why Kosovo's secession succeeded to such an extent. Remedial secession theories, despite their limitations, provide a useful tool for the understanding of the background of a secessionist attempt, potentially justifying and explaining on which grounds a certain entity wishes to separate from the parent state. Nonetheless, the issue of when a secession can be regarded as successful and what turns a secession successful remains unexplored from this approach.

On the opposite side of secession theories they are the primary-right theories arguing that secession ought to be permissible in a wider range of cases and not only as a remedy of last resort. Moreover, for the primary-right theories it is not necessary for a group to share a common identity, nationality or any other ascriptive characteristic in order to have the right to secede. On the contrary, these theories are based on the voluntary political choice of a group that constitutes a political and territorial society and whose will is to form their own independent political unit.

Acknowledging, however, that the extensive permissibility these theories grant to separatist demands would practically lead to chaos, the majority of scholars suggest restrictive conditions for the application of the right. Restrictive conditions varies according to each theorist and may include the size of the seceding entity, whether it has disproportionate resources on its territory, which would seriously affect the economic viability of the parent state or if it is located in a region that would create an enclave within the borders of the parent state, instead of an independent state.

Kosovo meets the criteria most of the primary-right theories have set. It forms an organised socio-political entity on a territory at the borders of the parent state, the majority of whose citizens desired secession. Nevertheless, as it happens also with remedial secession theories, primary-right theories explain when a secession should be permissible, leaving unaddressed the questions of when and why secessions succeed.

Finally, the third major approach of secession theories this thesis reviewed is the nation-orientated theories. According to them if the seceding entity constitutes a nation, then by virtue of this it should have the right to secede independent of its status and treatment within the state. Thus, contrary to remedial secession theories, nation-orientated theories do not presuppose that the nation should have its rights violated in order to have the right to

secede. Furthermore, nation-orientated theories share similarities with the primary-right theories. However, the latter grant the right to secession to every group which is politically organised and desires secession independently of its national composition, whereas nation-orientated secession theories recognise a right to secession to every group claiming that it is a nation.

According to nation-orientated secession theories Kosovo Albanians would have a right to secede from Serbia, based solely on the fact that they are ethnically distinct from the Serbs. Kosovo Albanians identify themselves as belonging to a different nation and have a collective consciousness of their distinction. They have also been officially recognised as a nationality within the Former Yugoslavia, fact that would further strengthen the argument of national differentiation. Therefore, according to nation-orientated theories, in virtue of this national distinction, Kosovo Albanians would have the right to secede.

As with the previously mentioned remedial secession and primary-right theories, nation-orientated theories are occupied with the groups that would have the right to secede and under what conditions. Thus, the majority of the existing secession theories debate on the morality of secession and the conditions of its permissibility. In practical terms, however, the broad permissibility of primary-right theories and nation-orientated theories would open the Pandora's Box for further secessionist demands that would lead to chaos. Remedial secession theories by introducing the conditions of previous violation of rights and last resort qualifier offer a more reserved and perhaps a practically applicable approach to the justification of secession.

However, even if a secession is theoretically and morally justified, this does not guarantee that it will succeed. The success of a secession, this thesis argued, depends on a

complexity of interrelated domestic and international factors that create the necessary conditions for a secession to lead to the establishment of a recognised and viable state.

In more detail, acknowledging the gap the existing secession theories present, this thesis sought to contribute to the studies of secession by researching when secessions succeed. It proposed a novel approach, arguing that a secession can be regarded as successful when it results in the creation of an externally recognised and internally viable entity. In order to examine this assumption the thesis employed Kosovo as case study, a case of unilateral secession that admittedly has not resulted into the creation of an uncontested, globally recognised entity. This, however, not only has not weakened the argument of the thesis, but on the contrary, it expanded the initial assumption by revealing that a secession can be regarded as successful when the seceding entity has received such a level of external recognition and internal viability that has rendered its detachment from the parent state irreversible.

While using Kosovo as a case study presents particular limitations especially as an entity still struggling for uncontested statehood, this thesis resolved that it would be the most suitable case for this research for two reasons; first, because Kosovo has been the most successful case of unilateral secession since Bangladesh in 1971, and second, because unilateral secessions are the most difficult to succeed. To begin with, Kosovo, although an outcome of unilateral secession, has been recognised by one hundred and nine<sup>51</sup> UN member states and has established close cooperative relations with its neighbouring states, including those who still refuse to officially recognise its independence, and has also built an internally functioning, largely viable state. These achievements appear in stark contrast with the outcome of other unilateral secessionist attempts, many of which have resulted in the

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<sup>51</sup> As of May 2015.

formation of de facto states, remaining in the margins of international relations. Furthermore, separatist movements are often perceived as terrorist organisations both by the parent states and the international community and as such their demands receive limited support. It is also not unusual that secessionist attempts result in civil wars, where ultimately the secessionist movements are defeated by the forces of the central state. In most cases where unilateral secessions have reached a level of success, the seceding territories have established de facto states, receiving limited or no recognition by the international community. Thus, unilateral secessions are far more unlikely to succeed than secessions which are outcome of an agreement between the parent state and the seceding region or a product of state dissolution. Hence, the thesis assumed that by explaining why a case of unilateral secession succeeded, its findings would have a broad explanatory application on both unilateral and non-unilateral secessions, being applicable to future research explaining why past, secessions have succeeded, and also potentially applicable to explaining how secessions, again both unilateral and non-unilateral may succeed in the future.

In order to explain why Kosovo's unilateral secession succeeded, this thesis employed a process tracing methodology examining what changed during the years 1991-2008 and turned Kosovo's first unsuccessful attempt to secede in 1991 to a far more successful one in 2008. The research, acknowledging that Kosovo's demands for independence did not appear suddenly in 1991, also presents the historical, economic, political and social background against which the first declaration of independence took place. Similarly, recognising that Kosovo's successful secession is an ongoing process, the research continued to examine and evaluate the factors that rendered Kosovo's secession successful after it unilaterally declared independence from Serbia in 2008, until May 2015.

The thesis concluded that Kosovo's unilateral secession succeeded because events during the years 1991-2008 have created the conditions for Kosovo to secure quality international support in favour of its independence and statehood. This quality support, meaning support from influential countries, promoted Kosovo's international acceptance after it unilaterally declared independence, achieving this way a considerable and necessary quantity of international recognitions. Furthermore, through quality external support throughout the years since 1999, Kosovo has managed to build a viable state, fulfilling to a significant extent the second criterion of successful secession.

In more detail, the analysis began with researching why Kosovo's first attempt to secede in 1999 failed. The thesis showed that Kosovo's first attempt to secede was unsuccessful predominantly because of the absence of international recognition. Kosovo, following Rugova's peaceful approach, by not being engaged in armed conflict was not considered to be a major factor of instability and an urgent issue for the international community to address. With the Yugoslav wars having already started the international community was occupied with stabilising the situation in the northern borders of Yugoslavia. Thus, Kosovo's demands for independence were deliberately neglected by the international community who did not wish to risk opening a new front in the southern part of Yugoslavia, or disengage Milošević from the peace negotiations for the settlement of the Yugoslav wars.

The situation changed, however, in the middle of the 1990s with the end of the Yugoslav wars and the emergence of the KLA. The actions of the KLA, pursuing independence with a more radical approach, provoked the retaliation of the Serbian forces, escalating the level of violence in Kosovo. The mounting violence attracted the attention of the international community, who with the Yugoslav wars resolved had both the time and



resources to address Kosovo's demands and also sought to avoid the destabilisation of the fragile situation in the Balkans.

Furthermore, the Yugoslav wars had been a source of frustration and humiliation for the international community, whose inefficiencies were apparent on several occasions, with the massacre in Srebrenica, being a particular sore point. In addition, with the Yugoslav wars' end, there was no reason for the international community to continue the previous policy of appeasement towards Milošević. In contrast, Milošević had lost his credibility in the eyes of the international community, who hold him accountable for crimes during the Yugoslav wars and Srebrenica in particular.

Thus, the international community determined not to repeat the mistakes of the past and also needing to defend its role as a credible conflict manager decided to take action and settle the Kosovo issue swiftly. In the post-Cold War era when US supremacy in the world affairs was undeniable, this change of stance followed by the NATO air campaign played a catalytic role for Kosovo's successful secession. First, the NATO military intervention ended with the suspension of Serbia's authority over Kosovo and the placement of the latter under international administration. Second, the NATO intervention initiated a process that, along with the international administration, would subsequently secure the quality support of the West in favour of Kosovo's statehood.

Observing the events occurred between 1991 and 1999, and led to the NATO air offensive, the thesis noticed that they took place across four different levels of analysis, with these levels being, first, the local or the seceding entity level, thus Kosovo; second, the state or parent state level, i.e. Serbia; third, the region, i.e. the Balkans; and fourth, the global level. Locally, of critical importance was the rise of violence. At the state level Milošević had turned into an illegitimate and unwanted leader. At the regional level, the Yugoslav wars had

both ended and also provided experience and unpleasant memories to the international community, which it sought to avoid from being repeated. In addition, the European countries wished to avoid any destabilisation in the Balkans, as a region in such close proximity with major EU countries. At the global level, the Cold War had ended and the US was the only superpower in the international system. Thus, when the West decided to support Kosovo's cause, Russia, as the supporter of Serbia was unable to defend the interests of its ally. This one-sided power distribution changed the conditions in favour of Kosovo, initiating the process of its successful secession.

Similarly, this thesis observed that the events that took place from 1999-2008, contributing to the creation of the conditions for Kosovo's successful secession also occurred across four levels of analysis. To begin with, Kosovo was placed under an UN-led international administration, which had an effect both on the local and on the state level, as it detached Kosovo from Serbia. The authority of Serbia on the vast majority of Kosovo's territory and population was annulled, while Kosovo under international administration had de facto seceded from Serbia. Furthermore, at the local level, the international administration created the conditions for the later viability of Kosovo as an independent state, by promoting the state and institution building process on the ground.

Another event that took place on the local level and affected Kosovo's secession were the riots of 2004. The 2004 riots, resulting in thousands of internally displaced persons and huge amount of property destroyed, created fears that a possible repetition of such an enormous wave of violence not only would be destructive for the international administration in Kosovo, but would potentially create a domino effect at the regional level. Thus, in order to avoid a spill over from the local level to the regional, the procedures were accelerated for the finding of a permanent settlement that would guarantee peace and stability in the Balkans.

This led to global-level negotiations, including participants from the local and the state level as well, where the West proposed and practically imposed a plan foreseeing the independence of Kosovo, as being the only settlement that would ensure peace and stability in the region. The negotiations showed again how global dynamics affected the outcome of Kosovo's secession, as Russia, although a re-emerging global power was once more unable to exert sufficient influence in order to defend the interests of Serbia. However, in spite of the one-sidedness of the negotiations, the fact that they occurred provided the legitimacy argument for the West that all means possible to settle the conflict had been exhausted and therefore there was no other viable solution short of the secession and the recognition of Kosovo as an independent state.

This one-sided conduct of negotiations was probably the first clear demonstration of the enormous support the West would provide to an independent Kosovo after its unilateral declaration of independence. The US, the majority of NATO countries as well as the majority of EU countries recognised Kosovo as a sovereign and independent country shortly after it unilaterally declared independence in 2008. The support of those countries has been called quality support in this thesis because it was able to turn Kosovo's unilateral secession into a *fait accompli* by lobbying for its international recognition world-wide and also releasing a considerable amount of resources for institution building and the establishment of a viable state.

Also non-recognising countries support Kosovo's international participation and internal viability. For instance, although five EU members continue not to recognise Kosovo as an independent state, the EU was able to agree for the establishment of EULEX, a mission on the ground aiming to assist Kosovo authorities in the field of rule of law. In addition, Greece, Slovakia and Romania, three of the five EU non-recognising countries maintain

liaison offices in Prishtina, promoting Kosovo's participation in regional organisations and cooperating with the local politicians and authorities. Furthermore, the EU indirectly promotes Kosovo's efforts for uncontested statehood by making Serbia's accession to the EU conditional upon the settlement of the Kosovo issue and the normalisation of their relations.

Moreover, the West, by providing quality support, has managed to achieve a considerable quantity of international recognitions for Kosovo. Kosovo has been admitted to various regional and international organisations and its participation in international fora is gradually growing. Also through the allocation of significant resources, in economic, institutional and technical terms, the West and the EU, in particular, promoted the state building in Kosovo, securing its internal viability.

Thus, this thesis by employing a process tracing methodology and dividing the research into four levels of analysis was able to reveal the complex causal mechanisms that led to Kosovo's successful secession. Process tracing enabled the identification and the analysis of trajectories of change and causation within the studied period. The division of the research into four levels of analysis revealed how events in different areas created a chain of interdependent actions and reactions across those areas. The combination, therefore, of the process tracing method and the levels of analysis framework offered valuable insight into the causal mechanisms that led eventually to the successful outcome of Kosovo's second attempt to secede.

In this research all levels of analysis were closely interconnected, as actions at one level had an effect to the final recipient level, thus the local level being Kosovo. Nevertheless, a closer interaction can be observed between the local and the international level as events at the local level, for example the rise of the KLA and the escalation of violence in Kosovo, led to reactions at the global level, such as the conduct of the Rambouillet negotiations. Similarly

the international support after the unilateral declaration of independence and its positive effect on the success of Kosovo's secession is a demonstration of the interdependence between actions on the global level affecting the local one.

Despite the close association between local and global level, also the study of the state and regional level was of critical importance for the success of Kosovo's secession. Events at those two levels served as catalysts intensifying actions and reactions at the local and global levels as well. For example, previous experiences in the Yugoslav wars accelerated the international community's actions to settle the issue of Kosovo, as also did Milošević's misrule. Although actions especially at the regional level only indirectly affected the outcome of Kosovo's secession, their contribution was of major importance leading the international actors to act in certain ways. Therefore, their research offered a valuable insight explaining the background against which certain decisions were met that would create the conditions for Kosovo's successful secession.

What is also observed by the study of the levels of analysis on the case of Kosovo is a change in the weight of the levels before and after the unilateral declaration of independence in 2008. Before 2008, the events at the local and the global level had a rather balanced interaction. Events at the local level provoked changes on the actions of the other level, as was mentioned above with the emergence of the KLA or with the riots in 2004 that accelerated the international processes for the settlement of the Kosovo issue and the initiation of the Vienna negotiations. Similarly, actions at the global level, such as the NATO air-offensive and the placement of Kosovo under international administration *de facto* separated Kosovo from Serbia generating the process of Kosovo's successful secession.

However, this balance in the weight of the two levels changed after 2008. After Kosovo's declaration of independence, it seems that the importance of the local level has

taken the back seat, whereas a greater weight is observed on actions at the global level. In addition, the weight of the state level has increased, as Serbia's actions have great significance for the success of Kosovo's secession. Kosovo's uncontested statehood still depends on the normalisation with its relations with Serbia, a procedure that through the Brussels agreement involves actors of global, state and local level.

Furthermore, international actors provide support both for the international recognition of Kosovo as well as for its internal viability. The allies of Kosovo lobby in favour of its recognition and promote its participation in international organisations in an attempt to strengthen the international aspect of Kosovo's statehood. For the moment, however, Kosovo's admission to the UN and thus its consideration as an uncontested state remains blocked because of the refusal of Serbia to recognise it and the subsequent decision of China and Russia not to accept Kosovo without the consent of Serbia. Internally the international presence on the ground both supports and undermines Kosovo's stateness. Kosovo is still a recipient of considerable funds that sustain it financially, while EULEX and NATO promote rule of law and ensure order respectively. Kosovo also confronts major problems in regards to considerable levels of unemployment and deficiency in the application of laws regarding minorities' protection.

Despite Kosovo's shortcomings its secession can still be considered as successful and Kosovo can be regarded as state. Internationally it is recognised by one hundred and nine UN member states and this number is gradually growing. Internally, Kosovo fulfils the minimum requirements this research has set for the consideration of a state as viable. Kosovo's government controls the means of violence on its territory, namely the Kosovo Security Forces and the Kosovo Police. Both of those institutions are capable of keeping order in Kosovo and provide for the security of its citizens. In terms of services Kosovo has made

leaps of improvement in seven years of independence, developing infrastructure and improving the fields of communication, internet access and transportation.

In terms of the future of Kosovo as a viable state the prospects are optimistic. Through negotiations with Serbia, Kosovo has established its borders and the agreement regarding the integrated border management and the establishment of joint crossing points has shown positive results. Serbia accepts documents issued by the institutions of Kosovo as valid forms of identification, while both sides have agreed that they would not block each other's European course. All the above constitute forms of *de facto*, albeit not *de jure*, recognition of Kosovo's status as an entity separated from Serbia.

In addition, Serbia has a view towards accession to the EU. One of the prerequisites for its entry into the EU is the normalisation of its relations with Kosovo. Thus, with Serbia moving closer to the EU and meeting the requirements the latter has set, Kosovo is also progressing towards uncontested statehood. With or without official recognition by Serbia in the short term, the practical normalisation of their relations would also lead to the strengthening of Kosovo's internal viability. The normalisation of relations would create a more trustworthy environment for investments in Kosovo from which Serbian, as well as other international enterprises, could benefit from, increasing the productivity level and reducing unemployment in Kosovo.

Finally, Kosovo has recently (2015) signed the Stabilisation and Association Agreement with the EU. This agreement aims to create trade and investment opportunities that would enhance Kosovo's economic growth and would reduce its unemployment. Furthermore, the agreement seeks to address other areas in which Kosovo displays fragility, such as political dialogue, justice, energy and home affairs. Lastly, apart from the benefits the SAA induces for the internal viability of Kosovo, it is also a contractual agreement with the

EU that entails mutual rights and obligations, being a demonstration of Kosovo's stateness and its continuing existence as a state in the future.

Thus, this thesis has contributed theoretically and empirically to the field of secession. Theoretically, it has proposed an explanation regarding when secessions succeed, arguing that a secession can be regarded as successful when it results in the creation of a recognised and viable entity. In order to examine this assumption empirically, the thesis used the case study of Kosovo, a case that had both an unsuccessful attempt to secede in 1991 and a far more successful one in 2008. The thesis used a process tracing methodology in order to discover what turned Kosovo's unsuccessful attempt to secede in 1991 to a far more successful one in 2008. It discovered that changes taking place across four levels of analysis, local, state, regional, global, from 1991 to 2008 created the conditions for Kosovo to secure quality international support from influential states that would promote its international recognition and would support its internal viability after its second declaration of independence turning its secession successful. Finally, this thesis, recognising that Kosovo is neither fully recognised nor fully functional internally yet, expanded the initial assumption of international recognition and internal viability and concluded that a unilateral secession can be regarded as successful when the extent of international recognition and internal viability renders the secession irreversible.

The findings of this research are relevant and applicable to other cases of secession comprising both unilateral and non-unilateral secessions. In addition the findings would also be relevant and explanatory to other cases of secession both successful and failed.

To begin with, the criteria of internal viability and international recognition could be applied to assess the success of various secessions being both an outcome of unilateral act or not. An example for such a research would be the study of the secession of South Sudan.



South Sudan managed to secede from Sudan through an agreement and was quickly internationally recognised and accepted in the UN. Nevertheless, it has not managed to create a viable state, with its government being unable to control the means of violence or to provide order. On the other hand, there are cases of unilateral secession that remain unrecognised but have managed to create internally viable states that exist for more than twenty years. Examples of those cases would be Nagorno-Karabakh in the Caucasus or Somaliland in the Horn of Africa, as both of those unrecognised, de facto states have been characterised as oases of stability and good governance. Thus, the criteria of international recognition and internal viability can be applied and further tested on other cases.

Moreover, the four levels of analysis analytical model can be further employed for the understanding of the outcome of other secessionist attempts both successful or not. This analytical framework could shed light, for instance, on the limited success of the secessions of Abkhazia and South Ossetia, two cases that demonstrate similarities with the case of Kosovo, but have, however, great difference in the international acceptance they received.

This type of research could take two avenues, first by employing a process tracing method in combination with the four levels of analysis model and try to find out the causal mechanisms that led to this specific outcome, testing thus once again the applicability of the analytical framework this thesis have used. Alternatively, the findings of this thesis can be applied and tested in a comparative study with the respective levels of other cases. This way the research will identify differences and similarities and will be able to assess how those differences affected the different outcomes of their secessions. Both of those possibilities for research have a broad applicability and can address various attempts of secession worldwide, from Biafra and South Sudan in Africa to Northern Cyprus and Nagorno-Karabakh in Europe and Asia respectively.

Hence, this thesis constitutes the first step of a series of future research projects not only in the field of secession and statehood, but in the field of conflict resolution as well. The levels of analysis will be used in further projects to explain other secessionist attempts that have either failed to achieve such a degree of success, or have managed to secede by securing the consent of the parent state. The criteria of international recognition and internal viability will be used to assess the outcome of various secessions around the globe, being again either an outcome of unilateral act or mutual agreement. Hence, this thesis will have both a theoretical and a practical impact in the field of international security with its findings being applied on several cases, positively contributing to the studies and efforts for the achievement of sustainable peace and stability in war-torn regions.

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## **APPENDIX I: LIST OF INTERVIEWEES**

- Anonymous Interviewee, [REDACTED], North Mitrovica, 12/06/2014
- Anonymous Researcher, Institute for Balkan Studies, 27/03/2015
- [REDACTED] Helsinki Committee for Human Rights in Serbia, Belgrade, 23/03/2015
- Civil Society Activist, Belgrade, 27/03/2015
- Civil Society Activist (a), North Mitrovica, 12/06/2014
- Civil Society Activist (b), North Mitrovica, 12/06/2014
- Civil Society Activist, Prishtina, 18/06/2014
- [REDACTED] Bureau for Social Research, Belgrade, 18/03/2015
- EU Diplomat (a), Prishtina, 17/06/2014
- EU Diplomat (b), Prishtina, 17/06/2014
- EU Diplomat, Belgrade, 17/03/2015
- EU Diplomat, Prishtina, 07/06/2014
- EU Diplomat, Prishtina, 12/06/2014
- EU Diplomat, Prishtina, 16/06/2014
- EULEX Official, Prishtina, 18/06/2014
- Former NATO Officer, 27/05/2014
- Former Yugoslav Ambassador, Belgrade, 20/03/2015
- [REDACTED] Former Representative of the Secretary-General in Belgrade, Belgrade, 19/03/2015
- [REDACTED] University of Geneva, Prishtina, 20/06/2014
- Kosovar Press Editor, Prishtina, 07/06/2014
- [REDACTED] Kosovar Institute for Policy Research and Development, Prishtina, 17/06/2014
- [REDACTED] Centre for Peace and Tolerance, Gračanica, 19/06/2014
- [REDACTED] Democracy for Development, Prishtina, 16/06/2014
- [REDACTED], Prishtina, 05/06/2014
- [REDACTED] Journalist, Belgrade, 27/03/2015
- Non- EU Diplomat, Belgrade, 24/03/2015
- Non-EU Diplomat, Prishtina, 23/06/2014
- Non-EU Diplomat, Prishtina, 24/06/2014
- [REDACTED], Prishtina, 20/06/2014
- [REDACTED] Kosovar Centre for Security Studies, Prishtina, 06/06/2014
- Senior UN Official, Prishtina, 18/06/2014
- UN Official, Prishtina, 09/06/2014
- UN Official, Prishtina, 18/06/2014
- [REDACTED] University of Belgrade, 25/03/2015

## **APPENDIX II: INTERVIEW QUESTIONS SAMPLE**

### **Question 1:**

Do you think that the secession of Kosovo was successful?

-If so, what do you think made Kosovo's secession possible?

-If so, what do you think made Kosovo's secession successful?

-If not, why do you think so?

### **Question 2:**

In 1991 Kosovo made its first attempt to secede, but it was not recognised by any other state apart from Albania; on the contrary in 2008 its declaration of independence was widely accepted.

How could you explain this shift?

### **Question 3:**

How is Kosovo different from other secessionist entities seeking recognition, which however have achieved either no or limited recognition?

### **Question 4:**

What are in your view the most critical problems Kosovo confronts?